

November 19, 2012

President Barack H. Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Request to Issue an Executive Order Establishing a Fair Sentencing Act Review Board to Consider Relief for People Serving Sentences Under the Now Discredited 100-to-1 Crack Cocaine Sentencing Disparity

Dear Mr. President:

The undersigned organizations and individuals represent thousands of people interested in reform of federal criminal justice laws and policies. Many are part of The Justice Roundtable, a broad Washington-based coalition instrumental in the achievement of major legislative victories, including the Second Chance Act of 2008 and the Fair Sentencing Act of 2010 (FSA). Others are academics, including law professors, who are concerned about the lack of fairness in sentencing, and the importance of using the constitutional pardon power when appropriate. We all believe in the importance of fairness and equity in the criminal justice system and are concerned about the unequal treatment of individuals incarcerated for crack-cocaine offenses prior to the passage of the FSA. We write to request that you issue an Executive Order establishing a review board to examine these convictions and make recommendations for executive clemency consistent with the new law.

We applaud your Administration's continued support for the elimination of the disparity between crack and powder cocaine, which led to the passage of the Fair Sentencing Act. Under the FSA, Congress reduced the quantity ratio between the two forms of the same drug from 100-to-1 to 18-to-1. In 2011, the United States Sentencing Commission amended its guideline ranges to be consistent with the new law and unanimously agreed to make those changes apply to those already serving sentences. Further, the Department of Justice revised its guidance to prosecutors, instructing that defendants with cases pending between passage of the FSA and sentencing should also receive the benefit of the new law. Finally, this past June, in *Dorsey v. United States* 132 S. Ct. 2321 (2012), the Supreme Court agreed with the Department of Justice's approach, stressing the importance of sentencing uniformity. Despite these important strides, thousands of individuals who were sentenced under the former crack cocaine law have received no relief.

The steps taken by all three branches of government affirm that the old sentencing structure was unjust, inconsistent, and biased. It is for these reasons that we encourage you to use your constitutional power to create, through Executive Order, a board to consider petitions for clemency from individuals sentenced under the earlier flawed system. There is widespread public support for fairness and consistency in cocaine sentencing, and commutation of the sentences from this identifiable class of people can be readily accomplished. A Fair Sentencing Act Review Board would evaluate appropriate cases, recalculate the sentences pursuant to the dictates of the FSA, and make recommendations to you for commutation consistent with current law.

Moreover, there is sound precedent for the use of the clemency power to close painful chapters in our national history. President Kennedy issued commutations to provide relief to those sentenced to

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mandatory minimum penalties under the 1956 Narcotics Control Act, as a result of a widely held belief that application of that law was unnecessarily harsh. In 1974, Gerald Ford used his presidential pardon power to create an executive clemency board to oversee the petitions of 21,000 people convicted of draft-related offenses during the Vietnam War. President Ford's approach allowed for individualized review of each clemency application and included the option of no reduction in sentence at all. Within a year, 90 percent of the Ford petitions were favorably granted.

We believe that these examples provide a guide for a measured and appropriate means to remedy this current injustice. We urge you to adopt the pragmatic approach established under the Ford Administration and create a Fair Sentencing Act Review Board to examine and make recommendations for relief, where appropriate, to the remaining class of pre-FSA crack cocaine cases. An individualized review process would not be difficult. A formula already exists for sentencing calculations based on the FSA's current statutory 18-to-1 ratio. An Executive Order establishing a process for systematic review of pre-FSA cases would swiftly and objectively eliminate disparate sentencing treatment between current prisoners and those newly sentenced for crack cocaine offenses. Furthermore, a process to expeditiously address these lingering cases would achieve the important public policy objectives of reducing unfair sentencing disparities and increasing confidence and integrity in the criminal justice system.

Mr. President, we hope that you will follow successful precedent and act within your constitutional power to create a transparent process by which these discredited sentences can be reviewed and remedied.

Sincerely,

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