

THE WHITE HOUSE

Washington

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MEMORANDUM FOR THE ACTING DEPUTY ATTORNEY GENERAL

FROM: ROBERT F. BAUER, COUNSEL TO THE PRESIDENT 

SUBJECT: Executive Clemency Policy

I write this memorandum to convey the President's views on the exercise of his power under Article II, Section 2, clause 1 of the Constitution to grant executive clemency. The President intends for this guidance to assist you and the Pardon Attorney in fulfilling your traditional advisory functions in connection with executive clemency applications.

The President appreciates the extensive investigation and analysis that your office and the Office of the Pardon Attorney undertake in connection with each clemency application, and your joint recommendations on the appropriate disposition of clemency applications play an important role in his decision-making. With this in mind, the President directed me to provide you with the following guidance for the analysis of clemency applications.

The President agrees with the principal factors that the Department currently takes into account when determining whether to grant an application for a pardon, namely: 1) the applicant's post-conviction conduct, character and reputation; 2) the seriousness and relative recentness of the offense; 3) the applicant's acceptance of responsibility, remorse and atonement; 4) the applicant's need for relief; and 5) official recommendations and reports from the appropriate United States Attorneys and the sentencing judge, among other knowledgeable officials.

The President believes that, in the evaluation of the seriousness of the offense, there are certain offenses for which a pardon should very rarely, if ever, be granted absent truly extraordinary circumstances. These offenses include:

- Terrorism-related offenses and other offenses directly impacting our national security;
- Violent crimes involving serious bodily harm to others, such as murder or rape;
- Offenses involving physical harm to children;
- Crimes involving the use of deadly weapons, including unlawful firearms or explosives, or arson offenses;
- Large-scale drug trafficking offenses in which the applicant had a significant role;

- Public corruption offenses involving significant breaches of the public trust, or financial fraud offenses involving financial harm to a significant number of individuals or substantial loss to the federal government or its programs.

The President does not believe that there should be any fixed rule for evaluating the relative recentness of the offense, beyond the Department's requirement that an applicant wait a period of at least five years after conviction or release from confinement (whichever is later) before filing a pardon application. The recentness of the offense should be evaluated in the context of the entire application, including the offense's seriousness. The President believes, however, that where more time has passed since conviction or release, applications will tend to be stronger, in part because the extended time period provides a greater opportunity for the applicant to establish exemplary post-conviction conduct and demonstrate true acceptance of responsibility, remorse and atonement.

The President agrees with the Department's view that a commutation of sentence is an extraordinary remedy that should be granted only in extraordinary circumstances. The President further believes that the guidance governing offenses for which there should be a presumption against pardons applies with even greater force to applications for commutations.

Finally, the President believes that it is important to consider an applicant's overall criminal history, or lack thereof, when considering clemency applications. Applicants with three or more convictions should generally be considered inappropriate for executive clemency, absent an extraordinary post-conviction rehabilitative history. Conversely, if the crime for which clemency is sought is aberrational—judged by the applicant's otherwise exemplary life or the commission of the offense years before when the applicant was very young—clemency may be warranted. Even these circumstances may not warrant clemency, however, if the crime is one of the types previously cited, in the absence of extraordinary circumstances.

Please do not hesitate to call me if you have any questions.