

COMMUTATION INSTRUCTIONS

*Information and Instructions on Commutations and Remissions
Please Read Carefully Before Completing Commutation Form*

1. Submit the petition to the Office of the Pardon Attorney

To be considered for commutation (reduction) of sentence, an eligible inmate should submit a completed Petition for Commutation of Sentence to the Office of the Pardon Attorney, preferably through the warden in accordance with BOP Program Statement 1330.15. Commutation petitions that are not submitted through the warden may be emailed to us directly at USPARDON.Attorney@usdoj.gov. If email is not available, petitions may be mailed to the U.S. Department of Justice, Office of the Pardon Attorney, 950 Pennsylvania Avenue, Washington, D.C. 20530. The completed commutation petition must be entirely legible; therefore, please type or print in ink. The form must be completed fully and accurately and signed by the applicant in order to be considered. You may attach to the petition additional pages and documents that amplify or clarify your answer to any question. **Please do not staple, glue, bind or tape any portion of your petition or supplemental documents. We also will not accept photographs of documents, so they must be scanned on a flatbed scanner and submitted in PDF format if sent electronically.**

2. Federal convictions only

Under the Constitution, the President has the authority to commute sentences for federal criminal convictions, which are those adjudicated in the United States District Courts. In addition, the President's clemency power extends to convictions adjudicated in the Superior Court of the District of Columbia. However, the President cannot commute a state criminal sentence. Accordingly, if you are seeking clemency for a state criminal conviction, you should not complete and submit this petition. Instead, you should contact the Governor or other appropriate authorities of the state where you were convicted (such as the state board of pardons and paroles) to determine whether any relief is available to you under state law.

3. Reduction of sentence only

The President's clemency power includes the authority to commute, or reduce, a sentence imposed upon conviction of a federal offense, including the authority to remit, or reduce, the amount of a fine or restitution order that has not already been paid. This form of clemency is different from a pardon after completion of sentence. Under the current regulations governing petitions for executive clemency, a person may not apply for a full pardon until at least five years after his or her release from incarceration. Accordingly, the commutation form should be used only for the purpose of seeking a reduction of sentence.

4. Completion of court challenges

A request for a commutation of a prison sentence generally is not accepted unless and until a person has begun serving that sentence. In addition, a commutation request generally is not accepted from a person who is currently challenging his or her conviction or sentence through appeal or other court proceeding. Accordingly, you should not complete and submit this petition until you have concluded all judicial challenges to your conviction and sentence and you have begun serving your sentence. You should also be aware that, in evaluating the merits of a commutation petition, clemency authorities take into consideration the amount of time the petitioner has already served and the availability of other remedies to secure the relief sought (such as parole or judicial action).

5. Special assessment

Requests for the remission of a special assessment are not accepted. The special assessment is not considered to be a fine, and should not be included in describing any fine that might have been imposed upon you.

6. Commutation of probation, supervised release, or special parole.

If you are seeking reduction of a period of probation, supervised release, or special parole, you should state that fact specifically on the form and set forth the particular reasons why this portion of your sentence should be reduced, including the reasons why you believe serving probation, supervised release, or special parole would be an unusual hardship for you. You should also explain why requesting the sentencing court or the U.S. Parole Commission to grant early termination of a term of supervision, pursuant to 18 U.S.C. § 3583(e)(1) or former 18 U.S.C. § 4211, is not an adequate remedy.

7. Immigration status

If you are not a citizen of the United States, you should be aware that commutation of your sentence only shortens the prison sentence and will not result in a change of your immigration status. A full pardon is the only form of executive clemency that might affect a person's immigration status; however, as noted in paragraph 3 above, a person who is currently serving a prison term is not eligible to apply for that form of relief. Accordingly, if a detainer has been lodged against you for deportation or removal, commutation of sentence, if granted, will not prevent your deportation or removal from the United States and may actually hasten the process. You may wish to contact U.S. Immigration and Customs Enforcement in the Department of Homeland Security, which is the agency responsible for decisions regarding a person's immigration status, to determine whether any other relief from deportation or removal is available to you.

8. Additional criminal record

In response to question 6, you must disclose all additional arrests or charges by any civilian or military law enforcement authority, including any federal, state, local, or foreign authority, regardless of whether they occurred before or after the offense for which you are seeking commutation. Your answer should list every violation, including traffic violations that resulted in an arrest or criminal charge, such as driving under the influence. You should also include all convictions, including convictions that may have been expunged, whether or not they were counted in computing your criminal history category under the Sentencing Guidelines. Your failure to disclose any arrest, whether or not it resulted in a conviction, and every conviction may be considered a false statement.

9. Penalty for false statements

The failure to fully and accurately complete the application form may be construed as a falsification of the petition, which may provide a reason for denying your petition. In addition, the knowing and willful falsification of a document submitted to the government may subject you to criminal punishment, including up to five years' imprisonment and a \$250,000 fine. *See* 18 U.S.C. §§ 1001 and 3571.

10. Exclusive Presidential authority

The power to commute a sentence for a federal offense is vested in the President alone. It is an extraordinary remedy that is very rarely granted. No hearing is held on the commutation application by either the Department of Justice or the White House. You will be notified when a final decision is made on your petition, and there is no appeal from the President's decision to deny a clemency request. The Office of the Pardon Attorney does not disclose information regarding the nature or results of any investigation that may have been undertaken in a particular case, or the exact point in the clemency process at which a particular petition is pending at a given time. As a matter of well-established policy, the specific reasons for the President's decision to grant or deny a petition are generally not disclosed by either the White House or the Department of Justice. In addition, documents reflecting deliberative communications pertaining to presidential decision-making, such as the Department's recommendation to the President in a clemency matter, are confidential and not available under the Freedom of Information Act. If your petition is denied, you may reapply one year after the date of denial.

11. Remission of Restitution or Fine

If you are seeking remission of restitution or fine, you should state that fact specifically on the application and set forth the particular reasons why you believe that this portion of your sentence should be reduced, including the reasons why you believe that paying your restitution or fine would present an unusual hardship for you.

**IMPORTANT NOTICE
To Applicants for Commutation of Sentence**

The following notice is provided pursuant to the Privacy Act of 1974 to help you to understand what is involved in petitioning for executive clemency and why we need to obtain certain information about you.

The information that we request from you on the accompanying commutation of sentence application form, and in the event of a background investigation, is needed to help provide the basis for an informed judgment about whether you should be granted clemency. This is our only purpose in asking you to complete and sign the application. You are under no obligation to furnish any information. However, if you do not provide all the information requested, we may be unable to process your application. Failure to provide your Social Security number will not prejudice your case.

Our authority for requesting the information solicited in the accompanying commutation of sentence application form is the United States Constitution, Article II, Section 2 (the pardon clause); Orders of the Attorney General Nos. 1798-93, 58 Fed. Reg. 53658 and 53659 (1993), 2317-2000, 65 Fed. Reg. 48381 (2000), and 2323-2000, 65 Fed. Reg. 58223 and 58224 (2000), codified in 28 C.F.R. §§ 1.1 *et seq.* (the rules governing petitions for executive clemency); and Order of the Attorney General No. 1012-83, 48 Fed. Reg. 22290 (1983), as codified in 28 C.F.R. §§ 0.35 and 0.36 (the authority of the Office of the Pardon Attorney).

After the President has taken favorable final action on an application, a public affairs notice is prepared describing each grant of clemency (such a notice also may be prepared for a denial of clemency in cases of substantial public interest). A copy of each warrant of clemency is maintained in this office as a public and official record. Copies of the public affairs notices, clemency warrants, and lists of recent clemency recipients are routinely made available to the public upon request.

Executive clemency files are compiled and maintained to assist the President in exercising his constitutional clemency power and are routinely made available to him, members of his staff, and other government officials concerned with clemency proceedings. The Pardon Attorney may disclose the contents of executive clemency files to anyone when the disclosure is required by law or the ends of justice. In particular, public record documents that may be compiled in the course of processing a clemency application, such as the judgment order from the criminal case for which commutation is sought, trial or sentencing transcripts, court opinions, and newspaper articles, are generally made available upon request by third-parties (including representatives of the news media) pursuant to the Freedom of Information Act, unless such disclosure could reasonably be expected to constitute an unwarranted invasion of the petitioner's personal privacy. In addition, unsolicited Congressional correspondence is treated in the same manner. On the other hand, non-public documents that may be compiled in the course of processing a clemency application, such as the petition and supporting documents, the presentence investigation report, the results of any background investigation, and the report and recommendation of the Department of Justice to the President, are not generally available under the Freedom of Information Act.

The foregoing rules apply to the disclosure of documents in the possession of the Department of Justice. However, the President and his immediate staff are not subject to the constraints of the Freedom of Information and Privacy Acts. Accordingly, while clemency-related documents in the possession of the White House traditionally have not been made public, they may be legally disclosed at the discretion of the President. In addition, clemency-related documents retained by the White House at the end of a presidential administration will become part of the President's official library, where they become subject to the disclosure provisions of the Presidential Records Act.

Moreover, in accordance with the ruling by the federal court of the District of Columbia in *Lardner v. Department of Justice*, 638 F.Supp.2d 14 (D.D.C. 2009), affirmed, *Lardner v. United States Department of Justice*, No. 09-5337, 2010 WL 4366062 (D.C. Cir. Oct. 28, 2010) (unpublished), the Office of the Pardon Attorney is obliged to release existing lists of the names of persons who have been denied executive clemency by the President to anyone who requests such records pursuant to the Freedom of Information Act. Given the frequency of such requests, the Office of the Pardon Attorney has started to proactively disclose the names of persons who have been denied executive clemency by the President on our website, in accordance with our Freedom of Information Act obligations.

PART I - EXECUTIVE CLEMENCY

Sec.

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Authority: U.S. Const., Art. II, Sec. 2; authority of the President as Chief Executive; and 28 C.F.R. §§ 0.35, 0.36.

§ 1.1 Submission of petition; form to be used; contents of petition.

A person seeking executive clemency by pardon, reprieve, commutation of sentence, or remission of fine shall execute a formal petition. The petition shall be addressed to the President of the United States and shall be submitted to the Pardon Attorney, Department of Justice, Washington, D.C. 20530, except for petitions relating to military offenses. Petitions and other required forms may be obtained from the Pardon Attorney. Petition forms for commutation of sentence also may be obtained from the wardens of federal penal institutions. A petitioner applying for

executive clemency with respect to military offenses should submit his or her petition directly to the Secretary of the military department that had original jurisdiction over the court-martial trial and conviction of the petitioner. In such a case, a form furnished by the Pardon Attorney may be used but should be modified to meet the needs of the particular case. Each petition for executive clemency should include the information required in the form prescribed by the Attorney General.

§ 1.2 Eligibility for filing petition for pardon.

No petition for pardon should be filed until the expiration of a waiting period of at least five years after the date of the release of the petitioner from confinement or, in case no prison sentence was imposed, until the expiration of a period of at least five years after the date of the conviction of the petitioner. Generally, no petition should be submitted by a person who is on probation, parole, or supervised release.

§ 1.3 Eligibility for filing petition for commutation of sentence.

No petition for commutation of sentence, including remission of fine, should be filed if other forms of judicial or administrative relief are available, except upon a showing of exceptional circumstances.

§ 1.4 Offenses against the laws of possessions or territories of the United States.

Petitions for executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction of the United States should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.5 Disclosure of files.

Petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition. However, they may be made available for inspection, in whole or in part, when in the judgment of the Attorney General their disclosure is required by law or the ends of justice.

§ 1.6 Consideration of petitions; notification of victims; recommendations to the President.

(a) Upon receipt of a petition for executive clemency, the Attorney General shall cause such investigation to be made of the matter as he or she may deem necessary and appropriate, using the services of, or obtaining reports from, appropriate officials and

agencies of the Government, including the Federal Bureau of Investigation.

(b)(1) When a person requests clemency (in the form of either a commutation of a sentence or a pardon after serving a sentence) for a conviction of a felony offense for which there was a victim, and the Attorney General concludes from the information developed in the clemency case that investigation of the clemency case warrants contacting the victim, the Attorney General shall cause reasonable effort to be made to notify the victim or victims of the crime for which clemency is sought:

- (i) That a clemency petition has been filed;
- (ii) That the victim may submit comments regarding clemency; and
- (iii) Whether the clemency request ultimately is granted or denied by the President.

(2) In determining whether contacting the victim is warranted, the Attorney General shall consider the seriousness and recency of the offense, the nature and extent of the harm to the victim, the defendant's overall criminal history and history of violent behavior, and the likelihood that clemency could be recommended in the case.

(3) For the purposes of this paragraph (b), "victim" means an individual who:

- (i) Has suffered direct or threatened physical, emotional, or pecuniary

harm as a result of the commission of the crime for which clemency is sought (or, in the case of an individual who dies or was rendered incompetent as a direct and proximate result of the commission of the crime for which clemency is sought, one of the following relatives of the victim (in order of preference): the spouse; an adult offspring; or a parent); and

(ii) Has on file with the Federal Bureau of Prisons a request to be notified pursuant to 28 CFR § 551.152 of the offender's release from custody.

(4) For the purposes of this paragraph (b), "reasonable effort" is satisfied by mailing to the last-known address reported by the victim to the Federal Bureau of Prisons under 28 CFR § 551.152.

(5) The provisions of this paragraph (b) apply to clemency cases filed on or after September 28, 2000.

(c) The Attorney General shall review each petition and all pertinent information developed by the investigation and shall determine whether the request for clemency is of sufficient merit to warrant favorable action by the President. The Attorney General shall report in writing his or her recommendation to the President, stating whether in his or her judgment, the President should grant or deny the petition.

§ 1.7 Notification of grant of clemency.

When a petition for pardon is granted, the petitioner or his or her attorney shall be notified of such action and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action and the warrant of commutation shall be sent to the petitioner through the officer in charge of his or her place of confinement, or directly to the petitioner if he/she is on parole, probation, or supervised release.

§ 1.8 Notification of denial of clemency.

(a) Whenever the President notifies the Attorney General that he has denied a request for clemency, the Attorney General shall so advise the petitioner and close the case.

(b) Except in cases in which a sentence of death has been imposed, whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General shall so advise the petitioner and close the case.

§ 1.9 Delegation of authority.

The Attorney General may delegate to any officer of the Department of Justice any of his or her duties or responsibilities under §§ 1.1 through 1.8.

§ 1.10 Procedures applicable to prisoners under a sentence of death imposed by a United States District Court.

The following procedures shall apply with respect to any request for clemency by a person under a sentence of death imposed by a United States District Court for an offense against the United States. Other provisions set forth in this part shall also apply to the extent they are not inconsistent with this section.

(a) Clemency in the form of reprieve or commutation of a death sentence imposed by a United States District Court shall be requested by the person under the sentence of death or by the person's attorney acting with the person's written and signed authorization.

(b) No petition for reprieve or commutation of a death sentence

should be filed before proceedings on the petitioner's direct appeal of the judgment of conviction and first petition under 28 U.S.C. § 2255 have terminated. A petition for commutation of sentence should be filed no later than 30 days after the petitioner has received notification from the Bureau of Prisons of the scheduled date of execution. All papers in support of a petition for commutation of sentence should be filed no later than 15 days after the filing of the petition itself. Papers filed by the petitioner more than 15 days after the commutation petition has been filed may be excluded from consideration.

(c) The petitioner's clemency counsel may request to make an oral presentation of reasonable duration to the Office of the Pardon Attorney in support of the clemency petition. The presentation should be requested at the time the clemency petition is filed. The family or families of any victim of an offense for which the petitioner was sentenced to death may, with the assistance of the prosecuting office, request to make an oral presentation of

reasonable duration to the Office of the Pardon Attorney.

(d) Clemency proceedings may be suspended if a court orders a stay of execution for any reason other than to allow completion of the clemency proceeding.

(e) Only one request for commutation of a death sentence will be processed to completion, absent a clear showing of exceptional circumstances.

(f) The provisions of this § 1.10 apply to any person under a sentence of death imposed by a United States District Court for whom an execution date is set on or after August 1, 2000.

§ 1.11 Advisory nature of regulations.

The regulations contained in this part are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, Section 2 of the Constitution.

Published in the FEDERAL REGISTER of the National Archives and Records Administration of the United States, October 18, 1993, Vol. 58, No. 199, at pages 53658 and 53659; as amended by a publication in the FEDERAL REGISTER of the National Archives and Records Administration of the United States, August 8, 2000, Vol. 65, No. 153, at page 48381; and as amended by a publication in the FEDERAL REGISTER of the National Archives and Records Administration of the United States, September 28, 2000, Vol. 65, No. 189, at pages 58223 and 58224, 28 CFR §§ 1.1 et seq. See also 28 CFR § 0.35

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