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Denied Commutations - Closed [8]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	Report to the President on Proposed Denial of Executive Clemency for Jose Collazo; RE: Personal [partial] (1 page)	11/09/1995	b(6)
002. report	Report to the President on Proposed Denial of Executive Clemency for Francisco Gabriel Martos, Sr.; RE: Personal [partial] (1 page)	11/09/1995	b(6)
003. report	Report to the President on Proposed Denial of Executive Clemency for Rose Gallagher; RE: Personal [partial] (2 pages)	06/14/1996	b(6)
004. report	Report to the President on Proposed Denial of Executive Clemency for Bobby William Gray; RE: Personal [partial] (2 pages)	11/01/1995	b(6)
005. report	Report to the President on Proposed Denial of Executive Clemency for Carolyn Sue Johnson; RE: Personal [partial] (1 page)	11/09/1995	b(6)
006. report	Report to the President on Proposed Denial of Executive Clemency for Jodessa Robinson; RE: Personal [partial] (2 pages)	11/09/1995	b(6)
007. report	Report to the President on Proposed Denial of Executive Clemency for Deborah Ann Stout; RE: Personal [partial] (2 pages)	11/09/1995	b(6)
008. report	Report to the President on Proposed Denial of Executive Clemency for Charles Junior Spears; RE: Personal [partial] (2 pages)	08/24/1997	b(6)
009. report	Report to the President on Proposed Denial of Executive Clemency for Khalifa Hamaas Abdul Khaalis formerly Ernest Timothy McGhee; RE: Personal [partial] (4 pages)	08/11/1996	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Dawn Chirwa
OA/Box Number: 14404

FOLDER TITLE:

Denied Commutations - Closed [8]

2006-1704-F
db3825

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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Office of the Deputy Attorney General
Washington, D.C. 20530

*Cheryl Mills
Copies 1*

NOV 29 1995

MEMORANDUM FOR: The Honorable John Quinn
Counsel to the President

FROM: Jamie S. Gorelick *LT.SG. - David M. apt*
Deputy Attorney General

SUBJECT: Recommended Denials of Executive Clemency --
Two Petitions for Commutation of Sentence

Attached are two reports to the President recommending denial of commutation of sentence for the following persons:

93 11 0098
93 11 0094

Jose Collazo
Francisco Martos

Attachments

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
JOSE COLLAZO

Offense: Conspiracy to possess with intent to distribute, and possession with intent to distribute, cocaine.

Sentence: 151 months' imprisonment; four years' supervised release.

Date: July 14, 1989.

District: Southern Florida.

Relief sought: Commutation of sentence.

Summary of essential facts:

In January 1989, agents of the Drug Enforcement Administration (DEA) were told by an informant that he knew someone who could supply 20 kilograms of cocaine. Thereafter, an undercover agent met with petitioner to discuss the sale to the agent of 20 kilograms of cocaine for \$14,500 per kilogram. Petitioner met with the agent on two more occasions, the second meeting taking place at petitioner's home, where petitioner showed the agent one kilogram of cocaine. Later that day, the agent agreed to make an initial purchase of four kilograms of cocaine from petitioner's associate, Juan Galvan, with the balance of the 20 kilograms to be delivered to petitioner's house later in the day. Petitioner, Galvan, and another associate were arrested at petitioner's home after Galvan, armed with a concealed and loaded gun, appeared with the cocaine for the agent.

Convicted after a jury trial, petitioner was sentenced to the bottom of the sentencing range (151 to 181 months), above the 10-year mandatory minimum.¹ He denied being involved in the cocaine transaction and claimed that he approached Galvan about purchasing cocaine as a favor to the informant, but that the matter ended when Galvan could not find any cocaine. He claimed that the informant supplied the four kilograms of cocaine seized at the time of petitioner's arrest. Galvan and the other associate were also convicted and sentenced to 280 and 188 months, respectively.

¹The court based the sentence on the 20 kilograms of cocaine that were the subject of negotiation, and did not award a reduction for mitigating role in the offense or for acceptance of responsibility.

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Petitioner has been incarcerated since May 1989. He has incurred no incident reports during that time, and has a projected release date in April 2000. Petitioner is a citizen of Cuba who came to the United States in 1980; however, there is presently no pending detainer for his deportation. He has no prior record.

Grounds for clemency and official comments:

Petitioner, now 70 years old, seeks clemency based on his age, his health problems, and his desire to be with his aging and ill sister. He notes that he is not likely to live long after his release from prison if he serves his entire sentence. The Bureau of Prisons reports that petitioner (b)(6) is in good health and in regular duty status (b)(6). He has earned good work evaluations and is not viewed as a management problem. [001]

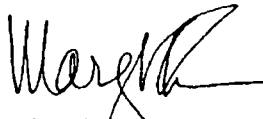
The United States Attorney's office and the sentencing judge, the Honorable Kenneth Ryskamp, both recommended commuting petitioner's sentence to time served in light of his age, his relatively minor level of participation in the offense, the length of time he has served, and his good prison adjustment. The sentencing judge opined that petitioner's punishment was completely out of line with his involvement in the offense.

Reasons for denial:

Petitioner has now served more than six years for his participation in negotiating a sizable drug transaction. At his age, service of the balance of his sentence may effectively mean spending the rest of his life in prison. Both the Assistant United States Attorney who prosecuted petitioner and the judge who sentenced him believe that he has been adequately punished for his involvement in the offense.

Nonetheless, at age 64 he became involved in brokering a multi-kilogram cocaine transaction, displaying to the buyer one kilogram of cocaine that he stored in his home, and permitting the transaction to take place on his premises. His involvement was active and, though not as extensive as that of his codefendants, substantial, as is evidenced by the fact that the court in computing his sentence did not award a reduction for mitigating role. Additionally, although petitioner is 70 years old, he is apparently in good health and works in prison. Under all of the circumstances, I do not believe that commutation of sentence is warranted. Accordingly, I recommend that you deny the petition.

Respectfully submitted,



Pardon Attorney

Date: 11/9/95

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
FRANCISCO GABRIEL MARTOS, SR.

Offense: Conspiracy to possess with intent to distribute, possession with intent to distribute, and distribution of, cocaine.

Sentence: 120 months' imprisonment; five years' supervised release.

Date: April 2, 1992.

District: Southern Florida.

Relief sought: Commutation of sentence.

Summary of essential facts:

In February 1991, petitioner's son distributed five kilograms of 89 percent pure cocaine to a man named Vazquez, who was shortly thereafter arrested by the Drug Enforcement Administration and began to cooperate with the government. At Vazquez' request, petitioner's son agreed to exchange the five kilograms of cocaine for better quality drugs and to obtain an additional 10 kilograms of cocaine. Petitioner's home, which the son owned, was to be used as an exchange point. A monitored telephone call between Vazquez and petitioner established that petitioner was aware of the presence of the drugs in his home. Petitioner accompanied Vazquez as Vazquez carried 10 kilograms of 88 percent pure cocaine to his car. In addition, petitioner was to receive some undefined financial benefit from the transaction.

Petitioner, who was then 77 years old and had no prior criminal record, was convicted after a jury trial. Under the Sentencing Guidelines, his sentencing range was 78 to 97 months, which included a four-level reduction for having a minimal role in the offense; however, a statutory mandatory minimum sentence of 10 years applied. Petitioner's son, the principal in the distribution scheme, was sentenced to 188 months' imprisonment and five years' supervised release. Vazquez, described as second in culpability to petitioner's son, received a sentence of 30 months' imprisonment, five years' supervised release, and a fine of \$17,500, which was later reduced to \$10,000. Petitioner's conviction was affirmed on appeal.¹

¹United States v. Martos, 1994 U.S. App. LEXIS 18105 (11th Cir. 1994).

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RR. Document will be reviewed upon request.

Petitioner has been incarcerated since June 1992, and has incurred no incident reports during his imprisonment. He is projected for release in February 2001, when he will be 87 years old. A Cuban national, petitioner has resided in this country since 1981; an immigration detainer has been filed for his deportation.

Grounds for clemency and official comments:

Petitioner, now aged 81, seeks clemency primarily on medical grounds, (b)(6)

(b)(6)

(b)(6) Petitioner also seeks a reduction in his sentence so that he can return to his wife, who is also aged and unwell.

The United States Attorney's office recommends denial of clemency based on "the nature of the offense" and the recommendation of the Assistant United States Attorney who prosecuted petitioner. The prosecutor notes that petitioner was knowingly involved in a large drug transaction. The sentencing judge was not contacted.

Reasons for denial:

Petitioner's sentence is a long one, particularly in light of his age and health, his role in the offense, and the applicable sentencing range. Moreover, the court, due to the mandatory minimum, had no choice but to impose it. However, petitioner was involved in a large drug transaction, and he has served less than one-third of his sentence as of this writing and appears to be in stable condition at the present. As no compelling reason for clemency has been presented, I recommend that you deny his petition at this time.

Respectfully submitted,



Pardon Attorney

Date: 11/9/95

EXECUTIVE CORRESPONDENCE

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U.S. Department of Justice

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Pardon Attorney

Washington, D.C. 20530

DEC 5 1995

MEMORANDUM FOR: The Honorable John Quinn
Counsel to the President

FROM:  Margaret Colgate Love
Pardon Attorney

SUBJECT: Favorable Recommendation for Executive Clemency

Attached is a report to the President signed by the Deputy Attorney General recommending commutation of sentence for:

94 05 0490 Rafael Diaz

Rafael Diaz is a codefendant of Johnny Palacios, whose sentence the President commuted on August 21, 1995. Clemency was recommended in Palacios' case due to his unrewarded cooperation with the government. Clemency is likewise recommended for Diaz for the same reason.

Attachment

cc: Jamie S. Gorelick
Deputy Attorney General



Office of the Deputy Attorney General
Washington, D.C. 20530

December 4, 1995

IN THE MATTER OF THE APPLICATION FOR COMMUTATION OF SENTENCE
OF
RAFAEL DIAZ

The President

Sir: Petitioner was convicted on October 11, 1991, in the United States District Court for the Middle District of Florida of conspiracy to possess with intent to distribute, and possession with intent to distribute, marijuana, for which he was sentenced to 71 months' imprisonment, followed by a four-year term of supervised release. The United States Attorney for the Middle District of Florida has recommended that you commute petitioner's sentence based on his unrewarded cooperation with the government.

Petitioner's offenses involved his joining an on-going marijuana and cocaine distribution organization. One of his codefendants was Johnny Palacios, whose sentence you commuted to time served on August 21, 1995.¹ On September 18, 1990, petitioner, along with Palacios and another codefendant, agreed to buy 1,000 pounds of marijuana every two weeks from an undercover agent of a Drug Enforcement Administration task force who was posing as a drug trafficker. They then inspected 500 pounds of marijuana produced by the agent and agreed to purchase it, the exchange of the 500 pounds for \$300,000 to take place at

¹Clemency in that case was requested due to Palacios' unrewarded cooperation with the government, for which no other remedy than clemency was reasonably available.

a nightclub owned by Palacios. Later that day petitioner and a second codefendant met with the undercover agent to discuss the marijuana transaction, and it was agreed that the codefendant would make the purchase while petitioner went home. The codefendant then purchased from the undercover agent 72 pounds of marijuana for \$50,000 and drove it in a truck rented by petitioner to petitioner's house, where both were arrested. At the time of the arrest, petitioner's codefendant had in his briefcase an unloaded semiautomatic handgun.

Petitioner was found guilty on April 24, 1991, after a jury trial,² and on October 11, 1991, was sentenced within the sentencing range (63 to 78 months) under the Sentencing Guidelines, above the five-year mandatory minimum sentence.³ He filed an appeal on October 18, 1991.

After the verdict, petitioner began cooperating with the government in drug-trafficking investigations pursuant to an oral promise by the government that, if his assistance was deemed substantial, the government would file a motion for reduction of his sentence under Fed. R. Crim. Pro. 35(b). At that time, Rule 35(b) provided that a sentence could be reduced based on a defendant's cooperation only if the government filed the motion for reduction within one year of sentencing.⁴

²Petitioner was also charged with aiding and abetting the use of a firearm during a drug-trafficking crime based on his codefendant's act of having a gun in his briefcase, but was acquitted of this count. Petitioner told the probation office that he was innocent, that he had met with his codefendant only to discuss business, and that when his codefendant brought up the subject of a marijuana transaction, petitioner informed him that he wanted nothing to do with drugs. He further contended that he had rented the truck only after being assured by his codefendant that it would be used to move office furniture. In computing his sentence under the Sentencing Guidelines, the court did not award him a reduction for acceptance of responsibility.

³For the purposes of the mandatory minimum and the Sentencing Guidelines, the court held petitioner responsible only for the 500 pounds of marijuana that he and his codefendants inspected and for which his codefendant promised to pay, rather than for the greater amounts that they agreed to purchase.

⁴The rule provides for an exception when "the defendant's substantial assistance involves information or evidence not known by the defendant until one year or more after imposition of sentence." The cooperation petitioner provided, however, involved information known to him at the time of sentencing.

As the one-year anniversary of petitioner's sentencing drew near, his cooperation was not yet complete. The United States Attorney's office believed that the pendency of petitioner's appeal tolled the one-year filing period, but nonetheless, on October 9, 1992 (just short of the one-year mark), it filed a Rule 35 motion, stating that its purpose was to safeguard the rights of the parties should petitioner, within a reasonable period, provide substantial assistance to the government.⁵ Similarly worded Rule 35 motions were filed on behalf of some of petitioner's codefendants. In reliance on the filing of the Rule 35 motion, petitioner abandoned his appeal in February 1993.

On May 11, 1993, the trial court ruled in the cases of petitioner's codefendants that the government's requests for sentence reduction were untimely because the initial filings were inadequate and not cured by supplemental motions filed by the government on behalf of petitioner's codefendants more than one year after sentencing.⁶ Because of this ruling, the government did not seek to supplement the Rule 35 motion in petitioner's case. In November 1993, petitioner moved the court to allow the government to supplement its Rule 35 motion, but on December 1, 1993, the trial court denied petitioner's motion because the government had not in fact sought to supplement its October 9 filing and because the October 9 filing contained no prayer for relief that required adjudication by the court. Petitioner appealed that

⁵Although the motion was so worded, in fact petitioner had already undertaken acts of cooperation, although his efforts to assist the government were not then complete.

⁶The government supplemented its Rule 35 filings for petitioner's codefendants with in camera memoranda detailing the cooperation that they had provided, and requesting a reduction of their sentences. The court concluded that the October 9 filings did not satisfy the requirements of Rule 35 because they did not indicate that the defendants had actually undertaken any acts of cooperation and did not contain a prayer for relief, and the supplemental motions did not independently meet the requirements of Rule 35 because they were not filed within a year of sentencing.

order, and his appeal is pending in the Eleventh Circuit. On August 15, 1995, however, the Eleventh Circuit ruled in the case of his codefendant Palacios that the trial court did not err in concluding that the Rule 35 motion was not timely and refusing to consider it.⁷

Petitioner has been incarcerated since November 3, 1991, and has incurred no incident reports during that period. His projected release date is December 26, 1996. He has no other criminal record. He seeks clemency based on his unrewarded cooperation with the government.

The United States Attorney supports petitioner's request for commutation of sentence because of petitioner's efforts to cooperate with law enforcement officials.⁸ The United States Attorney's office advises that petitioner has assisted the government, although his cooperation was not as extensive as that of his codefendant Palacios. Specifically, petitioner provided information relating to a marijuana-trafficking organization, some of whose members have histories of violent crime and were suspected of having committed murders. Petitioner's information corroborated information provided by his codefendant Palacios. Although petitioner did not testify at any trials because, due to the guilty pleas of most of the defendants his testimony was unnecessary in the case that went to trial, the investigation in which he cooperated ultimately resulted in the indictment of 14 persons and the conviction of nine of them. Petitioner also provided information in an unrelated marijuana investigation, but that investigation resulted in no arrests.

⁷United States v. Palacios, No. 93-2966 (11th Cir., August 15, 1995).

⁸We did not solicit the views of the sentencing judge, the Honorable William Terrell Hodges, in connection with petitioner's application because he, when contacted with respect to the clemency application of petitioner's codefendant Palacios, stated that while he had "no objection to the application," he "wished to take no position on the merits and substance of the application."

Under the circumstances, petitioner has a legitimate claim that the spirit of the government's promise to seek a sentence reduction was not fully satisfied.⁹ His efforts to cooperate were made on the understanding that a motion for sentence reduction would be made and considered by the trial court, but, through no fault of petitioner's, the request for sentence reduction was never consummated because the court indicated through its rulings on sentence reduction motions filed on behalf of petitioner's codefendants that such a motion would be futile. Petitioner has exhausted all reasonably available avenues to obtain a sentence reduction; at this point there are no further judicial avenues that, if successful, would result in a sentence reduction in time to effect a meaningful decrease in the amount of time petitioner must serve.¹⁰

I believe that sentence reduction in this case is warranted both as a matter of fairness to petitioner and in the interest of future law enforcement efforts to obtain cooperation. Sentence reduction will not only compensate for petitioner's cooperation in reliance on the government's promise, but also will help safeguard against a potential loss of confidence in future government assurances to reward cooperation.¹¹ Because these goals cannot be achieved in this case through any other means, I recommend that you grant clemency to petitioner.¹²

⁹Although a court has discretion whether to grant or deny a motion for sentence reduction, there is no affirmative reason to doubt that the court would have granted the government's motion had it been timely filed.

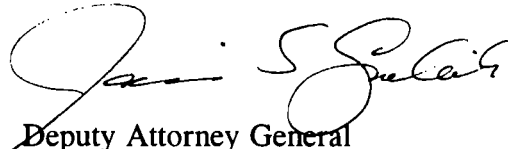
¹⁰Although petitioner theoretically could still prevail on appeal, this result seems highly unlikely given the Eleventh Circuit's decision in Palacios' case. See text at note 7, supra.

¹¹In addition to Johnny Palacios, two of petitioner's other codefendants also cooperated but did not receive expected sentence reductions, due to a similar failure on the government's part to file timely motions under Rule 35. One, Charles Honeycutt, has neither challenged the denial of the Rule 35 motion in court nor sought clemency; the second, Jose Mejias, unsuccessfully challenged the denial of the Rule 35 motion in his case, and has recently filed a clemency petition.

¹²Clemency historically has been employed as one means for rewarding cooperation with the government. In recent history, clemency has been recommended at least in part for this reason in three cases in which Presidents Reagan and Bush commuted the sentence. In two of the three cases in which you have commuted a

As to the form that clemency should take, I recommend that petitioner's prison sentence be commuted to time served, leaving intact the four-year period of supervised release. The United States Attorney advises that it would have sought a reduction in petitioner's case of up to four offense levels, which would have effectively reduced his sentence to as low as 46 months.¹³ Petitioner has served 48 months at the time of this writing. I believe that a 13-month reduction of petitioner's sentence by means of commutation to time served is justified by petitioner's cooperation,¹⁴ and will nonetheless result in petitioner's serving a substantial period of incarceration for his offense. Accordingly, I recommend that you commute petitioner's prison sentence to time served, retaining the four-year period of supervised release.

Respectfully submitted,



Deputy Attorney General

sentence -- Johnny Palacios and Jackie Trautman -- the petitioner rendered substantial assistance to the government in its investigation and prosecution of others.

¹³A reduction of four offense levels would have resulted in a sentencing range of 41 to 51 months. Petitioner was initially sentenced in the middle of the range; the middle of the range four levels lower is 46 months.

¹⁴The August 21, 1995, commutation of Palacios' sentence to time served reduced his sentence by approximately 14 months.



U.S. Department of Justice

Pardon Attorney

Washington, D.C. 20530

DEC 5 1995

MEMORANDUM FOR: The Honorable John Quinn
Counsel to the President

FROM:  Margaret Colgate Love
Pardon Attorney

SUBJECT: Favorable Recommendation for Executive Clemency

Attached is a report to the President signed by the Deputy Attorney General recommending commutation of sentence for:

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Rafael Diaz is a codefendant of Johnny Palacios, whose sentence the President commuted on August 21, 1995. Clemency was recommended in Palacios' case due to his unrewarded cooperation with the government. Clemency is likewise recommended for Diaz for the same reason.

Attachment

cc: Jamie S. Gorelick
Deputy Attorney General



Office of the Deputy Attorney General
Washington, D.C. 20530

December 4, 1995

IN THE MATTER OF THE APPLICATION FOR COMMUTATION OF SENTENCE
OF
RAFAEL DIAZ

The President

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Petitioner's offenses involved his joining an on-going marijuana and cocaine distribution organization. One of his codefendants was Johnny Palacios, whose sentence you commuted to time served on August 21, 1995.¹ On September 18, 1990, petitioner, along with Palacios and another codefendant, agreed to buy 1,000 pounds of marijuana every two weeks from an undercover agent of a Drug Enforcement Administration task force who was posing as a drug trafficker. They then inspected 500 pounds of marijuana produced by the agent and agreed to purchase it, the exchange of the 500 pounds for \$300,000 to take place at

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²Petitioner was also charged with aiding and abetting the use of a firearm during a drug-trafficking crime based on his codefendant's act of having a gun in his briefcase, but was acquitted of this count. Petitioner told the probation office that he was innocent, that he had met with his codefendant only to discuss business, and that when his codefendant brought up the subject of a marijuana transaction, petitioner informed him that he wanted nothing to do with drugs. He further contended that he had rented the truck only after being assured by his codefendant that it would be used to move office furniture. In computing his sentence under the Sentencing Guidelines, the court did not award him a reduction for acceptance of responsibility.

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As the one-year anniversary of petitioner's sentencing drew near, his cooperation was not yet complete. The United States Attorney's office believed that the pendency of petitioner's appeal tolled the one-year filing period, but nonetheless, on October 9, 1992 (just short of the one-year mark), it filed a Rule 35 motion, stating that its purpose was to safeguard the rights of the parties should petitioner, within a reasonable period, provide substantial assistance to the government.⁵ Similarly worded Rule 35 motions were filed on behalf of some of petitioner's codefendants. In reliance on the filing of the Rule 35 motion, petitioner abandoned his appeal in February 1993.

On May 11, 1993, the trial court ruled in the cases of petitioner's codefendants that the government's requests for sentence reduction were untimely because the initial filings were inadequate and not cured by supplemental motions filed by the government on behalf of petitioner's codefendants more than one year after sentencing.⁶ Because of this ruling, the government did not seek to supplement the Rule 35 motion in petitioner's case. In November 1993, petitioner moved the court to allow the government to supplement its Rule 35 motion, but on December 1, 1993, the trial court denied petitioner's motion because the government had not in fact sought to supplement its October 9 filing and because the October 9 filing contained no prayer for relief that required adjudication by the court. Petitioner appealed that

⁵Although the motion was so worded, in fact petitioner had already undertaken acts of cooperation, although his efforts to assist the government were not then complete.

⁶The government supplemented its Rule 35 filings for petitioner's codefendants with in camera memoranda detailing the cooperation that they had provided, and requesting a reduction of their sentences. The court concluded that the October 9 filings did not satisfy the requirements of Rule 35 because they did not indicate that the defendants had actually undertaken any acts of cooperation and did not contain a prayer for relief, and the supplemental motions did not independently meet the requirements of Rule 35 because they were not filed within a year of sentencing.

order, and his appeal is pending in the Eleventh Circuit. On August 15, 1995, however, the Eleventh Circuit ruled in the case of his codefendant Palacios that the trial court did not err in concluding that the Rule 35 motion was not timely and refusing to consider it.⁷

Petitioner has been incarcerated since November 3, 1991, and has incurred no incident reports during that period. His projected release date is December 26, 1996. He has no other criminal record. He seeks clemency based on his unrewarded cooperation with the government.

The United States Attorney supports petitioner's request for commutation of sentence because of petitioner's efforts to cooperate with law enforcement officials.⁸ The United States Attorney's office advises that petitioner has assisted the government, although his cooperation was not as extensive as that of his codefendant Palacios. Specifically, petitioner provided information relating to a marijuana-trafficking organization, some of whose members have histories of violent crime and were suspected of having committed murders. Petitioner's information corroborated information provided by his codefendant Palacios. Although petitioner did not testify at any trials because, due to the guilty pleas of most of the defendants his testimony was unnecessary in the case that went to trial, the investigation in which he cooperated ultimately resulted in the indictment of 14 persons and the conviction of nine of them. Petitioner also provided information in an unrelated marijuana investigation, but that investigation resulted in no arrests.

⁷United States v. Palacios, No. 93-2966 (11th Cir., August 15, 1995).

⁸We did not solicit the views of the sentencing judge, the Honorable William Terrell Hodges, in connection with petitioner's application because he, when contacted with respect to the clemency application of petitioner's codefendant Palacios, stated that while he had "no objection to the application," he "wished to take no position on the merits and substance of the application."

Under the circumstances, petitioner has a legitimate claim that the spirit of the government's promise to seek a sentence reduction was not fully satisfied.⁹ His efforts to cooperate were made on the understanding that a motion for sentence reduction would be made and considered by the trial court, but, through no fault of petitioner's, the request for sentence reduction was never consummated because the court indicated through its rulings on sentence reduction motions filed on behalf of petitioner's codefendants that such a motion would be futile. Petitioner has exhausted all reasonably available avenues to obtain a sentence reduction; at this point there are no further judicial avenues that, if successful, would result in a sentence reduction in time to effect a meaningful decrease in the amount of time petitioner must serve.¹⁰

I believe that sentence reduction in this case is warranted both as a matter of fairness to petitioner and in the interest of future law enforcement efforts to obtain cooperation. Sentence reduction will not only compensate for petitioner's cooperation in reliance on the government's promise, but also will help safeguard against a potential loss of confidence in future government assurances to reward cooperation.¹¹ Because these goals cannot be achieved in this case through any other means, I recommend that you grant clemency to petitioner.¹²

⁹Although a court has discretion whether to grant or deny a motion for sentence reduction, there is no affirmative reason to doubt that the court would have granted the government's motion had it been timely filed.

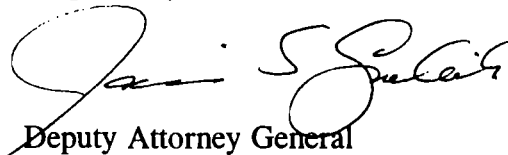
¹⁰Although petitioner theoretically could still prevail on appeal, this result seems highly unlikely given the Eleventh Circuit's decision in Palacios' case. See text at note 7, *supra*.

¹¹In addition to Johnny Palacios, two of petitioner's other codefendants also cooperated but did not receive expected sentence reductions, due to a similar failure on the government's part to file timely motions under Rule 35. One, Charles Honeycutt, has neither challenged the denial of the Rule 35 motion in court nor sought clemency; the second, Jose Mejias, unsuccessfully challenged the denial of the Rule 35 motion in his case, and has recently filed a clemency petition.

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As to the form that clemency should take, I recommend that petitioner's prison sentence be commuted to time served, leaving intact the four-year period of supervised release. The United States Attorney advises that it would have sought a reduction in petitioner's case of up to four offense levels, which would have effectively reduced his sentence to as low as 46 months.¹³ Petitioner has served 48 months at the time of this writing. I believe that a 13-month reduction of petitioner's sentence by means of commutation to time served is justified by petitioner's cooperation,¹⁴ and will nonetheless result in petitioner's serving a substantial period of incarceration for his offense. Accordingly, I recommend that you commute petitioner's prison sentence to time served, retaining the four-year period of supervised release.

Respectfully submitted,



Deputy Attorney General

sentence -- Johnny Palacios and Jackie Trautman -- the petitioner rendered substantial assistance to the government in its investigation and prosecution of others.

¹³A reduction of four offense levels would have resulted in a sentencing range of 41 to 51 months. Petitioner was initially sentenced in the middle of the range; the middle of the range four levels lower is 46 months.

¹⁴The August 21, 1995, commutation of Palacios' sentence to time served reduced his sentence by approximately 14 months.

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U.S. Department of Justice

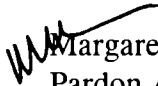
Pardon Attorney

500 First Street, N.W.
Suite 400
Washington, D.C. 20530

OCT 23 1996

MEMORANDUM

TO: The Honorable Jack Quinn
Counsel to the President

FROM:  Margaret Colgate Love
Pardon Attorney

SUBJECT: Recommendation to Grant Commutation of Sentence for Rafael Diaz

On December 5, 1995, we forwarded to you a recommendation by the Deputy Attorney General that the sentence of Rafael Diaz be commuted, which is currently pending. (A copy of that recommendation is attached for your reference.) Mr. Diaz has been released to home confinement for the balance of his prison sentence, the full term of which will expire on December 26, 1996.

Attachment



U.S. Department of Justice

Pardon Attorney

Washington, D.C. 20530

DEC 5 1995

MEMORANDUM FOR: The Honorable John Quinn
Counsel to the President

FROM: *WML* Margaret Colgate Love
Pardon Attorney

SUBJECT: Favorable Recommendation for Executive Clemency

Attached is a report to the President signed by the Deputy Attorney General recommending commutation of sentence for:

94 05 0490 Rafael Diaz

Rafael Diaz is a codefendant of Johnny Palacios, whose sentence the President commuted on August 21, 1995. Clemency was recommended in Palacios' case due to his unrewarded cooperation with the government. Clemency is likewise recommended for Diaz for the same reason.

Attachment

cc: Jamie S. Gorelick
Deputy Attorney General



Office of the Deputy Attorney General
Washington, D.C. 20530

December 4, 1995

IN THE MATTER OF THE APPLICATION FOR COMMUTATION OF SENTENCE
OF
RAFAEL DIAZ

The President

Sir: Petitioner was convicted on October 11, 1991, in the United States District Court for the Middle District of Florida of conspiracy to possess with intent to distribute, and possession with intent to distribute, marijuana, for which he was sentenced to 71 months' imprisonment, followed by a four-year term of supervised release. The United States Attorney for the Middle District of Florida has recommended that you commute petitioner's sentence based on his unrewarded cooperation with the government.

Petitioner's offenses involved his joining an on-going marijuana and cocaine distribution organization. One of his codefendants was Johnny Palacios, whose sentence you commuted to time served on August 21, 1995.¹ On September 18, 1990, petitioner, along with Palacios and another codefendant, agreed to buy 1,000 pounds of marijuana every two weeks from an undercover agent of a Drug Enforcement Administration task force who was posing as a drug trafficker. They then inspected 500 pounds of marijuana produced by the agent and agreed to purchase it, the exchange of the 500 pounds for \$300,000 to take place at

¹Clemency in that case was requested due to Palacios' unrewarded cooperation with the government, for which no other remedy than clemency was reasonably available.

a nightclub owned by Palacios. Later that day petitioner and a second codefendant met with the undercover agent to discuss the marijuana transaction, and it was agreed that the codefendant would make the purchase while petitioner went home. The codefendant then purchased from the undercover agent 72 pounds of marijuana for \$50,000 and drove it in a truck rented by petitioner to petitioner's house, where both were arrested. At the time of the arrest, petitioner's codefendant had in his briefcase an unloaded semiautomatic handgun.

Petitioner was found guilty on April 24, 1991, after a jury trial,² and on October 11, 1991, was sentenced within the sentencing range (63 to 78 months) under the Sentencing Guidelines, above the five-year mandatory minimum sentence.³ He filed an appeal on October 18, 1991.

After the verdict, petitioner began cooperating with the government in drug-trafficking investigations pursuant to an oral promise by the government that, if his assistance was deemed substantial, the government would file a motion for reduction of his sentence under Fed. R. Crim. Pro. 35(b). At that time, Rule 35(b) provided that a sentence could be reduced based on a defendant's cooperation only if the government filed the motion for reduction within one year of sentencing.⁴

²Petitioner was also charged with aiding and abetting the use of a firearm during a drug-trafficking crime based on his codefendant's act of having a gun in his briefcase, but was acquitted of this count. Petitioner told the probation office that he was innocent, that he had met with his codefendant only to discuss business, and that when his codefendant brought up the subject of a marijuana transaction, petitioner informed him that he wanted nothing to do with drugs. He further contended that he had rented the truck only after being assured by his codefendant that it would be used to move office furniture. In computing his sentence under the Sentencing Guidelines, the court did not award him a reduction for acceptance of responsibility.

³For the purposes of the mandatory minimum and the Sentencing Guidelines, the court held petitioner responsible only for the 500 pounds of marijuana that he and his codefendants inspected and for which his codefendant promised to pay, rather than for the greater amounts that they agreed to purchase.

⁴The rule provides for an exception when "the defendant's substantial assistance involves information or evidence not known by the defendant until one year or more after imposition of sentence." The cooperation petitioner provided, however, involved information known to him at the time of sentencing.

As the one-year anniversary of petitioner's sentencing drew near, his cooperation was not yet complete. The United States Attorney's office believed that the pendency of petitioner's appeal tolled the one-year filing period, but nonetheless, on October 9, 1992 (just short of the one-year mark), it filed a Rule 35 motion, stating that its purpose was to safeguard the rights of the parties should petitioner, within a reasonable period, provide substantial assistance to the government.⁵ Similarly worded Rule 35 motions were filed on behalf of some of petitioner's codefendants. In reliance on the filing of the Rule 35 motion, petitioner abandoned his appeal in February 1993.

On May 11, 1993, the trial court ruled in the cases of petitioner's codefendants that the government's requests for sentence reduction were untimely because the initial filings were inadequate and not cured by supplemental motions filed by the government on behalf of petitioner's codefendants more than one year after sentencing.⁶ Because of this ruling, the government did not seek to supplement the Rule 35 motion in petitioner's case. In November 1993, petitioner moved the court to allow the government to supplement its Rule 35 motion, but on December 1, 1993, the trial court denied petitioner's motion because the government had not in fact sought to supplement its October 9 filing and because the October 9 filing contained no prayer for relief that required adjudication by the court. Petitioner appealed that

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Petitioner has been incarcerated since November 3, 1991, and has incurred no incident reports during that period. His projected release date is December 26, 1996. He has no other criminal record. He seeks clemency based on his unrewarded cooperation with the government.

The United States Attorney supports petitioner's request for commutation of sentence because of petitioner's efforts to cooperate with law enforcement officials.⁸ The United States Attorney's office advises that petitioner has assisted the government, although his cooperation was not as extensive as that of his codefendant Palacios. Specifically, petitioner provided information relating to a marijuana-trafficking organization, some of whose members have histories of violent crime and were suspected of having committed murders. Petitioner's information corroborated information provided by his codefendant Palacios. Although petitioner did not testify at any trials because, due to the guilty pleas of most of the defendants his testimony was unnecessary in the case that went to trial, the investigation in which he cooperated ultimately resulted in the indictment of 14 persons and the conviction of nine of them. Petitioner also provided information in an unrelated marijuana investigation, but that investigation resulted in no arrests.

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Under the circumstances, petitioner has a legitimate claim that the spirit of the government's promise to seek a sentence reduction was not fully satisfied.⁹ His efforts to cooperate were made on the understanding that a motion for sentence reduction would be made and considered by the trial court, but, through no fault of petitioner's, the request for sentence reduction was never consummated because the court indicated through its rulings on sentence reduction motions filed on behalf of petitioner's codefendants that such a motion would be futile. Petitioner has exhausted all reasonably available avenues to obtain a sentence reduction; at this point there are no further judicial avenues that, if successful, would result in a sentence reduction in time to effect a meaningful decrease in the amount of time petitioner must serve.¹⁰

I believe that sentence reduction in this case is warranted both as a matter of fairness to petitioner and in the interest of future law enforcement efforts to obtain cooperation. Sentence reduction will not only compensate for petitioner's cooperation in reliance on the government's promise, but also will help safeguard against a potential loss of confidence in future government assurances to reward cooperation.¹¹ Because these goals cannot be achieved in this case through any other means, I recommend that you grant clemency to petitioner.¹²

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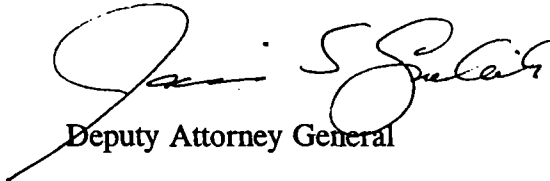
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As to the form that clemency should take, I recommend that petitioner's prison sentence be commuted to time served, leaving intact the four-year period of supervised release. The United States Attorney advises that it would have sought a reduction in petitioner's case of up to four offense levels, which would have effectively reduced his sentence to as low as 46 months.¹³ Petitioner has served 48 months at the time of this writing. I believe that a 13-month reduction of petitioner's sentence by means of commutation to time served is justified by petitioner's cooperation,¹⁴ and will nonetheless result in petitioner's serving a substantial period of incarceration for his offense. Accordingly, I recommend that you commute petitioner's prison sentence to time served, retaining the four-year period of supervised release.

Respectfully submitted,



Deputy Attorney General

sentence -- Johnny Palacios and Jackie Trautman -- the petitioner rendered substantial assistance to the government in its investigation and prosecution of others.

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Office of the Deputy Attorney General

Washington, D.C. 20530

JUN 21 1996

MEMORANDUM FOR: The Honorable Jack Quinn
Counsel to the President

FROM: Jamie S. Gorelick *[Signature]*
Deputy Attorney General

SUBJECT: Recommended Denial of Executive Clemency --
Rose Gallagher

Attached is a report signed by the Pardon Attorney recommending denial of executive clemency in the form of commutation of sentence for the following person:

96 02 0218

Rose Gallagher

I concur in the Pardon Attorney's recommendation.

Attachment

*Dawn - I've
reviewed these
and agree.*

Trey

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
ROSE GALLAGHER

Offense: Mail fraud.

Sentence: 27 months' imprisonment; three years' supervised release; \$102,926.40 fine; \$486,392 restitution.

Date: March 13, 1995.

District: Northern Illinois.

Relief sought: Commutation of sentence.

Summary of essential facts:

Petitioner was the administrator and sole owner of Helping Care, Inc., an Illinois company that provided health care services to elderly people in their homes through contracts with the state. The company initially served two counties, and expanded to a total of seven counties between 1988 and 1990. Petitioner, however, wanted to expand state-wide, and directed an effort to obtain "working agreements" with nursing homes and other agencies in the counties petitioner wanted to serve. "Working agreements" are non-binding, non-exclusive referral arrangements widely used in the home-care industry to demonstrate a company's contacts with the community and required by the state to be submitted by bidders seeking contracts with the state. By May 1990, petitioner had identified 32 counties in which she wanted to bid for contracts and instructed an employee to obtain working agreements in any of these counties in which Helping Care, Inc., did not already have such agreements.

On May 31, 1990, the state announced that bidders would only receive credit for a contract area if they had clients or at least three working agreements in that area before May 31, 1989. Although Helping Care, Inc., had been attempting to obtain working agreements in the new areas petitioner wanted to serve, it had no clients and few working agreements that predated May 31, 1989, in any county other than the seven in which Helping Care, Inc., was already doing business. Petitioner's employees nonetheless continued to seek working agreements in the additional counties; even by late June 1990, the company still had not obtained three agreements in every county on which petitioner wanted to bid.

Petitioner nonetheless instructed a secretary to prepare applications for contracts in counties in which Helping Care, Inc., was already doing business and for contracts in 25 additional counties; each application listed three institutions with which the company purportedly had working agreements and represented that these agreements predated May 31, 1989. In fact, Helping Care, Inc., had no working agreements with some of the institutions listed in the applications, and most of the agreements listed had been signed less than one month earlier. Nor did Helping Care, Inc., have clients in most of the counties in which it sought contracts, contrary to the representations in its applications that it had been serving clients in these counties for at least one year. Petitioner signed each of these applications and they were submitted to the state.

In November 1990, Helping Care, Inc., was awarded contracts for 25 counties -- the seven in which it was already doing business and 18 additional counties. The applications for 16 of these 18 additional counties contained false representations. Several competitors of Helping Care, Inc., filed protests of the contract awards, which led to an administrative inquiry in connection with which Helping Care, Inc., was required to provide documentation supporting the representations in the applications it submitted. In responding to the protests, petitioner and two employees fabricated documents by back-dating actual working agreements and by creating fictitious working agreements, which were also made to appear to predate May 31, 1989. They further created fictitious client records, petitioner herself handwriting "client service sheets" using names and addresses of persons who were not clients of Helping Care, Inc. These false documents were submitted to the state in December 1990, and the protests were overruled.

Competitors in two counties determined that the documentation petitioner submitted in connection with the bid protests was false, and the matter thereafter was brought to the attention of the United States Attorney. In the resulting grand jury investigation, petitioner, during the period July 1991 to May 1994, influenced her employees to falsely implicate a former employee in the back-dating of the working agreements used to support the contract bids, and influenced them to support a false explanation petitioner gave for the presence of her handwriting on fictitious client records.¹

Petitioner's profit from the fraudulently obtained contracts was \$436,392. In addition, the government's investigation showed that petitioner was involved in overbilling the state and the City of Chicago for services her company had performed by inflating the number of hours of service and altering timesheets to prevent detection of the scheme.² The overbilling was estimated to be \$50,000.³

¹The former employee is a cousin of petitioner, and was fired by her in October 1990, before the contracts were even awarded and before information contained in the falsified documents submitted to support the contract bids was obtained.

²Paragraphs 3 and 4 of the charge to which petitioner ultimately pleaded guilty recite that petitioner intentionally overbilled and altered documents to support the inflated charges.

³The government and petitioner agreed that \$50,000 was a reasonable estimate of the amount of overbilling, which was described as incalculable due to the failure to maintain records.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. report	Report to the President on Proposed Denial of Executive Clemency for Rose Gallagher; RE: Personal [partial] (2 pages)	06/14/1996	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Dawn Chirwa
OA/Box Number: 14404

FOLDER TITLE:

Denied Commutations - Closed [8]

2006-1704-F
db3825

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

In May 1994, petitioner was charged with five counts of mail fraud, seven counts of obstruction of justice, one count of conspiracy to obstruct justice, and two counts of causing false statements and documents to be submitted to the Department of Justice. Also indicted were Helping Care, Inc., and Carol Richardson, the company's executive assistant and program manager.⁴ Petitioner pleaded guilty to one mail fraud count and was sentenced on March 14, 1995, to the bottom of the sentencing range (27 to 33 months), which was enhanced based on petitioner's leadership role in the offense and her obstruction of justice. Her sentence also included a fine of \$102,926.40, which she has paid, and restitution of \$486,392, which she has also paid.⁵

Petitioner has been incarcerated since April 11, 1995, at the Federal Prison Camp at Pekin, Illinois, and has incurred no incident reports. Her projected release date is in March 1997. She has no prior record (b)(6)

[003]

Grounds for clemency and official comments:

Petitioner now seeks clemency on the grounds of family hardship, the claimed disproportionately harsh sentence she received, and the "overall equity of the situation." As to her family situation, petitioner asserts that her three sons, ages 15, 17, and 19, need her at home because they live in an "essentially unsupervised atmosphere." She states that her 78-year-old mother, who lived for a time with petitioner's sons after she went to prison, is unable to cope with the stress of raising three boys, and their father, (b)(6), is not an acceptable caretaker.⁶

Petitioner further maintains that her sentence is disproportionate to that of her codefendant Richardson, in that petitioner has paid a fine and restitution while Richardson paid no restitution, and Richardson has served no prison time while petitioner has now served more than one year. She maintains that the 15-count indictment against her involved "only one specific wrong," which she characterizes as her unfortunate trusting of the word of Richardson

⁴Richardson pleaded guilty to one count of mail fraud, cooperated with the government, and was sentenced to five years' probation with a condition of six months of house arrest, and a \$4,000 fine. The charges against the corporation were dismissed.

⁵Petitioner pleaded guilty pursuant to a plea agreement that required her to pay \$486,392 in restitution prior to sentencing. In return, the government agreed to dismiss the remaining 14 counts of the indictment and to recommend a sentence at the bottom of the sentencing range. Both parties agreed that a fine at the high end of the fine range was appropriate. The sentencing range comported with the parties' agreement about how the range should be computed. It reflected a two-level enhancement for obstructing justice based on petitioner's efforts to impede the grand jury investigation and a two-level enhancement for being an organizer or leader of the criminal activity. Petitioner also received a three-level reduction for acceptance of responsibility. The amount of loss was agreed to be \$486,392, representing \$436,392 profit on the fraudulently obtained contracts and \$50,000 in overbilling on other contracts.

⁶Petitioner's sons continue to live with a full-time, live-in housekeeper.

and other employees without checking the facts herself,⁷ and that "there was no true victim" of her crime. She further asserts that Richardson fabricated stories about her in order to avoid punishment for embezzling from petitioner's company, which petitioner asserts Richardson accomplished by issuing company checks to pay bills for Richardson's personal credit card. Petitioner further claims that when she pleaded guilty she did not know that she would receive a sentence of 27 months, because her lawyer assured her that her case was atypical, in that her company provided good health services.

As to the "overall equity" argument, petitioner states that she should be released because she provided good health care services, she gave jobs to "people like Carol Richardson" and petitioner's husband, and because the amount of loss used to calculate her sentence is not equitable. Petitioner submitted a letter from U.S. Representative Jerry Weller, who asks that you consider her clemency petition and "grant such relief as you see fit,"⁸ as well as letters asking that you "look favorably" on her petition and "grant such relief as you see fit" from a number of state and local officials in Illinois, including State Representative Eugene "Gene" Moore, Will County Board Commissioner Glenn Warning, City of Chicago Alderman Edward Burke, Alsip Park Commissioner Mary Lynch, and Village of Frankfort President Raymond Rossi. In addition, petitioner has submitted letters of support from family members, friends, and business acquaintances.

The United States Attorney, Frances Hulin, vigorously opposes clemency, urging that petitioner's sentence is appropriate in light of her crime and is justifiably harsher than that of her codefendant. She further asserts that petitioner's family situation does not merit clemency on equitable grounds.

The United States Attorney characterizes petitioner's crime as "a significant one," involving an "insidious and complex fraud." Describing the investigation that led to petitioner's conviction as "lengthy and extremely difficult," the United States Attorney points out petitioner's repeated efforts to falsify evidence in the case: "Some documents were totally destroyed, others were back dated in order to appear proper. Mrs. Gallagher directed employees to commit perjury. She attempted to implicate other employees through false evidence and false testimony. She asked employees to cover up for her actions. She rewarded or punished employees based on how they responded to her." The United States Attorney further notes that "[a]s a result of the contracts being awarded to Mrs. Gallagher, other honest health care providers were forced out of business."

⁷She states that Richardson and two other employees were responsible for listing false dates for working agreements in various applications, and that petitioner "could have, and should have, discovered this as [she] was signing the applications." She adds: "Internally, I had been led generally to believe that all applications contained true factual data. I was given erroneous information in-house, which I should have discovered. . . . [A]lthough my ignorance is inexcusable, it was based for the longest time on an implicit trust in Carol Richardson."

⁸Congressman Weller, while noting that he is "[a]dmittably . . . not thoroughly familiar with the legal details of Ms. Gallagher's case," states that "it seems to me she has paid her debt to society."

As to the sentence received by Richardson, the United States Attorney explains that Richardson's sentencing range was lower than petitioner's because petitioner received enhancements for obstructing justice and for being an organizer of the criminal activity. Richardson was able to receive a sentence of home confinement rather than prison because of a four-level departure based on her substantial assistance to the government. Further, as to the question of fines and restitution, Richardson's financial situation was not only far more modest than petitioner's, but also was bleak, (b)(6). Petitioner, on the other hand, at the time of sentencing had a net worth in excess (b)(6). Finally, the United States Attorney says of the alleged embezzlement by Richardson that Richardson made purchases for petitioner's company using her personal credit card and in turn her personal credit card bills were paid by the company, which documented the payments as business expenses. Although noting that this procedure "did result in some gain" to Richardson, the United States Attorney confirms that company purchases were indeed made with Richardson's credit card.

The sentencing judge, the Honorable Richard Mills, also opposes clemency, stating that it would be a "travesty of justice" if clemency were granted. In Judge Mills' view, petitioner "earned her sentence and should serve all of her time." He further notes that petitioner's family situation "is far better than the vast majority I see before my Court. . . . [U]nlike the children of many defendants, the Gallagher children do not lack for money and apparently (b)(6)

Reasons for denial:

Petitioner pleaded guilty to a crime that requires proof of intent to defraud and accepted the benefit of a reduction for accepting responsibility for her offense. Nonetheless, in her clemency petition she repeatedly denies that she knew of the falsity of the contract applications and supporting documents at the time she submitted them to the state, and seeks to blame others for it. For example, her petition states:⁹

I recognize, now more than ever, that HCI was involved in wrongdoing vis-a-vis the State of Illinois. However, it is my firm belief that Carol Richardson specifically knew the applications submitted to [the Illinois Department of Aging] contained false information and that I myself did not specifically know but was in no position to deny constructive knowledge of all corporate information.

⁹The petition is replete with similar instances in which petitioner describes her involvement in a way that would negate criminal intent and is directly inconsistent with her plea of guilty and the sentencing determinations in this case. All petitioner really admits is that her "ignorance is inexcusable" and that "as head of the companies, [she] was responsible" for the falsity. Furthermore, she does not address certain admitted facts, such as the overbilling of the state.

Further, she repeatedly minimizes the extent of her wrongdoing. Her characterization of her conduct as involving "one specific wrong," despite the fact that she submitted false documents to the state in both the application process and the bid-contest proceeding and obstructed the grand jury proceeding by prevailing on several witnesses to present false information in connection with it, is but one example of her propensity to present, at best, less than the full picture regarding her conduct.

Contrary to petitioner's assertion, her sentence is not unjustifiably disproportionate to that of her cooperating codefendant. In addition to the obvious distinction between the two that Richardson cooperated with the government while petitioner did not, petitioner's sentence was harsher than Richardson's because petitioner received enhancements for her leadership role in the offense and her efforts to obstruct justice. Thus, the two sentences are appropriately different.

Accordingly, neither equity nor proportionality warrants sentence reduction. As to petitioner's asserted family hardship, while it is generally true and unfortunate that a parent's commission of crimes and resulting incarceration impose a hardship on his or her minor children, petitioner's claims in this regard do not distinguish her from the many other persons who seek clemency to mitigate the burden of incarceration upon their families. Indeed, petitioner is far more fortunate than many clemency applicants, in that her children are older, other family members have helped provide for them, and they have considerable financial resources to help cope with the family's burden.

In light of the magnitude and duration of petitioner's wrongdoing, her obdurate refusal to accept responsibility for her offense, and the lack of any compelling equitable reason to commute this sentence, I recommend that you deny the petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Margertha", written in a cursive style.

Pardon Attorney

Date: June 14, 1996

EXECUTIVE CORRESPONDENCE

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. report	Report to the President on Proposed Denial of Executive Clemency for Bobby William Gray; RE: Personal [partial] (2 pages)	11/01/1995	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Dawn Chirwa
OA/Box Number: 14404

FOLDER TITLE:

Denied Commutations - Closed [8]

2006-1704-F
db3825

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
BOBBY WILLIAM GRAY

Offense: Mail fraud (26 counts); bank fraud (21 counts); conspiracy to commit mail fraud and bank fraud.

Sentence: 60 months' imprisonment; three years' supervised release.

Date: March 3, 1992.

District: Eastern North Carolina.

Relief sought: Commutation of sentence.¹

Summary of essential facts:

Petitioner was convicted for his part in a scheme by his codefendant, Shackelford, to divert to Shackelford's personal use funds paid to the Interstate Casualty Insurance Company (ICIC) as insurance premiums and to misrepresent the financial condition of the company. Petitioner first became involved with Shackelford, ICIC's founder and chairman, when petitioner was employed as a deputy insurance commissioner with the North Carolina Department of Insurance, a state agency that regulates insurance companies. Petitioner was then in charge of a team responsible for examining and auditing ICIC's books. In 1985 and 1986, petitioner received from Shackelford \$41,000 in purported "loans,"² which were never repaid and later became the subject of state bribery charges. In March 1987, petitioner was hired by ICIC as executive vice president, and in November 1989 became its president at an annual salary of

(b)(6)

[004]

During the period 1984 through 1989, Shackelford was diverting to his personal use funds of ICIC, then the seventh largest automobile insurance company in North Carolina, through another company he owned, Interstate Insurance, Inc. (III), which collected premiums and processed insurance applications for 85 percent of ICIC's policies. Shackelford directed III

¹Petitioner also seeks remission of the \$2,400 felony assessment.

²In 1988 and 1989 petitioner also received approximately (b)(6) in improper payments from Interstate Insurance, Inc., another company owned by Shackelford, despite doing no work for III, and received another (b)(6) in 1990 from ICIC in unearned vacation pay and deferred compensation to which he was not entitled. Petitioner claims he accepted loans from ICIC to pay the attorney's fees for his son, (b)(6) and "for other urgent family needs."

to divert to his account rather than to ICIC's account \$34 million in funds paid to III on ICIC's behalf, of which \$27.6 million had been paid to III as premiums for ICIC insurance policies.

As a result of these practices, the financial picture for ICIC was bleak, and petitioner and Shackelford were notified by ICIC's comptroller that improper accounting procedures were being used, impacting adversely on the amount of surplus required by law for an insurance company. Petitioner and Shackelford ordered employees of ICIC to falsify quarterly and annual financial statements, thereby falsely indicating that ICIC's financial status met insurance company requirements. From March 1988 through early September 1989, numerous false financial statements were submitted to a reinsurance company, banks and other creditors of ICIC, and the National Association of Insurance Commissioners, a company that rated insurance companies. In April 1990, ICIC collapsed and was taken over by the North Carolina Department of Insurance. The North Carolina Insurance Guaranty Association was obligated to pay more than \$24 million on policyholders' claims, unearned premiums to be refunded to policyholders, and its cost associated with the payment and settlement of claims. Additional losses of \$4 million were incurred by other insurance companies as a result of reinsurance or unpaid losses suffered by policyholders and creditors of ICIC.

Petitioner was convicted after jury trial and sentenced below the applicable sentencing range (70 to 87 months)³ due to the court's decision to depart downward based on its conclusions that the amount of the loss (\$27.6 million) overstated the seriousness of the offense and that the "loss involved was not necessarily foreseeable to the defendant."⁴ No fine or restitution was imposed, based on the court's finding that petitioner was unable to pay. He was, however, ordered to pay a felony assessment totalling \$2,400.⁵ He did not appeal his conviction or sentence. He did, however, move for a new trial based upon an affidavit of his codefendant Shackelford, who was also convicted. That motion was denied.⁶

Petitioner has been incarcerated since April 1992. He is also serving concurrent state sentences for bribery and malfeasance.⁷ He has incurred no incident reports while incarcerated,

³Petitioner maintained to the probation officer that he was merely following Shackelford's orders, and that he went to the North Carolina Department of Insurance to report the bad financial condition of ICIC. The court in computing his sentence gave an enhancement for petitioner's managerial role in the offense and declined to apply the reduction for acceptance of responsibility.

⁴The court denied the government's request for an upward departure based on the jeopardizing of the safety of a financial institution, on the degree of loss, and on the disruption of a government function.

⁵A \$50 assessment is imposed by law for each felony count of which a person is convicted. Petitioner was convicted of 48 felony counts.

⁶Shackelford's affidavit states that he took full responsibility for the activities of ICIC and III, and that petitioner "is innocent." Shackelford was sentenced to 100 months' imprisonment.

⁷The charges are for accepting a bribe, conspiracy to commit bribery, malfeasance by a corporate agent by false entries, and malfeasance by a corporate agent by misapplication of funds, embezzlement, and conspiracy. Despite his bribery convictions, petitioner in his clemency petition states that his "borrowing" \$41,000 from Shackelford was "neither a criminal act nor a violation of the insurance statutes."

and has no prior record. His projected release date is in August 1996. He has been paying (b)(6) per quarter toward satisfaction of the felony assessment.

Grounds for clemency and official comments:

Petitioner, now 58 years old, seeks clemency based on family hardship. He states that he is needed at home because his wife had a boating accident in June 1990, following which she

(b)(6)
(b)(6) His petition further asserts that he warned the North Carolina Department of Insurance about the poor financial condition of ICIC, that Shackelford was responsible for the downfall of the company, that Shackelford asserted his Fifth Amendment rights at trial and was therefore unavailable to exonerate petitioner, and that petitioner was coerced to abandon an appeal of his conviction by a threat that he would receive consecutive, rather than concurrent, sentences for his state convictions. Letters in support of his clemency petition were sent to this office by U.S. Senator Lauch Faircloth⁸ and then Congressman H. Martin Lancaster, both of North Carolina. The United States Attorney opposes clemency, disputing petitioner's "representation that he became unwittingly involved in this scheme," and asserting that petitioner's sentence "accurately reflects his involvement in the crimes for which he was convicted."

Reasons for denial:

Petitioner repeatedly was involved in the submission of false documents to the North Carolina Department of Insurance, thereby materially assisting his codefendant in perpetrating a fraud, to the substantial loss to the taxpayers of the state. It may be true that petitioner is less culpable than his codefendant, but he fails to accept any responsibility for his role in the fraud, seeking to shift all the blame to Shackelford. Petitioner's family circumstances, though difficult, are of the sort shared by many prisoners and are not so extraordinary or compelling as to warrant reduction of his sentence. As to the remaining balance of his felony assessment, petitioner has been paying toward the \$2,400 in installments, and I do not believe that continued payment would be unduly onerous, particularly since petitioner was not required to pay any restitution or fine. Accordingly, I recommend that you deny the petition.

Respectfully submitted,


Pardon Attorney

Date: 11/1/95

⁸Senator Faircloth urged clemency because of the hardship to petitioner's wife.

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
DWAYNE ELIJAH HENRY

Offense: Possession with intent to distribute cocaine base.

Sentence: 121 months' imprisonment; five years' supervised release.

Date: August 25, 1988.

District: District of Columbia.

Relief sought: Commutation of sentence.

Summary of essential facts:

In January 1988, petitioner, then 19 years old, was arrested at Union Station in Washington, D.C., for transporting from New York 665 packets containing a total of 229 grams of 93 percent pure crack cocaine. Petitioner pleaded guilty and was sentenced at the bottom of the sentencing range of 121 to 151 months, just above the 10-year mandatory minimum sentence. Petitioner appealed, contesting both the legality of his arrest and his sentence, but he was unsuccessful.¹

Petitioner has been incarcerated since his arrest in January 1988, and has a projected release date in November 1996. He has had one incident report, about a year after beginning his sentence, but since that time he has maintained an above average institutional adjustment. He has no prior convictions, although he admitted having made two prior trips to New York to obtain drugs and having street runners sell drugs for him in Maryland. Pending local charges for carrying a pistol without a license and for possession with intent to distribute cocaine, relating to an arrest on February 6, 1987, were dismissed as part of his plea agreement.

Grounds for clemency and official comments:

Petitioner, now aged 27, urges that clemency be granted because he was 19 years old when the offense was committed, he has no prior convictions, and his offense was non-violent. He attributes his offense to lack of motivation and responsibility and to peer pressure, and points to his considerable educational efforts while incarcerated, as well as his participation in drug

¹United States v. Henry, 893 F.2d 400 (D.C. Cir. 1990).

treatment programs, stating that he has "learned to become responsible" and to be "a mature adult." He also argues that 10 years is too harsh a sentence for a first offender, and that the enhanced sentencing for crack cocaine compared to powdered cocaine is racially discriminatory.²

The United States Attorney opposes clemency. He notes that petitioner came from a stable family background and rejected an opportunity for a free college education at Howard University, where his step-father is employed as Director of the University Hospital. He opines that petitioner seems to have entered upon drug transactions as a way of obtaining easy money, and that no mitigating circumstances are present. In the United States Attorney's view, petitioner's sentence is fair because it is a result of the statutory and Sentencing Guidelines provisions for persons similarly situated.

Reasons for denial:

Petitioner was just 19 when he was apprehended for this offense. During his more than seven years' incarceration, he has demonstrated considerable maturation. While there is considerable controversy regarding the fairness of the sentencing scheme for crack, petitioner is a person more than tangentially involved with drugs, as is evidenced by his admission that he made other trips to obtain drugs and sold drugs through others, and by his prior arrest for a cocaine and a gun offense. His status as a "non-violent first offender" is therefore fortuitous, as his pending charges were dismissed pursuant to a plea bargain. Under the circumstances, I do not believe that his is a compelling case for clemency. I therefore recommend that you deny his petition.

Respectfully submitted,



Pardon Attorney

Date: 11/1/95

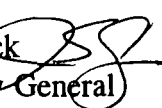
²If petitioner had been sentenced for powdered cocaine, his sentencing range would have been 27 to 33 months. The United States Sentencing Commission's recent proposal to change the Sentencing Guidelines as they relate to crack offenses by making the punishment for those offenses equal to that for powdered cocaine was rejected by Congress. While the Commission has been charged with reconsidering crack sentences, the reconsideration process is not likely to be completed before the expiration date of petitioner's prison sentence.



Office of the Deputy Attorney General
Washington, D.C. 20530

March 22, 1996

MEMORANDUM FOR: The Honorable John Quinn
Counsel to the President

FROM: Jamie S. Gorelick 
Deputy Attorney General

SUBJECT: Recommended Denials of Executive Clemency --
Two Petitions for Commutation of Sentence

Attached are three reports to the President recommending denial of commutation of sentence for the following persons:

93 10 0012	Carolyn Sue Johnson
93 08 0682	Jodessa Robinson
93 02 0227	Deborah Ann Stout

For your information a denial report on the Robinson case signed by the Pardon Attorney was sent to the White House in June 1994, but was returned to her for further consideration in July 1995. We have reviewed the facts and file again, but are still recommending denial of clemency at this point.

Attachments

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
CAROLYN SUE JOHNSON

Offense: Conspiracy to distribute heroin and to possess with intent to distribute cocaine.

Sentence: 78 months' imprisonment; three years' supervised release (as reduced).

Date: September 24, 1990 (reduced on November 18, 1992).

District: Oregon.

Relief sought: Commutation of sentence.

Summary of essential facts:

Petitioner's conviction results from her efforts to assist a cocaine and heroin trafficking operation in Portland, Oregon, run by her codefendant, Daniel Longoria, Sr.¹ Her involvement in Longoria's drug-dealing operation was first discovered in May 1988, when law enforcement authorities executed a search warrant at a residence where petitioner was living and seized a half ounce of cocaine, scales, pagers, a .32 caliber pistol, and drug records, including a ledger showing individual drug transactions and address books containing the telephone number of Longoria. The evidence indicated that shipments of cocaine were sent to petitioner's home, for ultimate delivery to Longoria. When petitioner was arrested on state charges in March 1989, she had in her possession approximately 11 grams of cocaine, a pager, and scales. In April, June, and July 1989, petitioner arranged to have the drugs delivered in connection with three sales of cocaine, totaling 85 grams, although she was ultimately acquitted of criminal charges arising from these sales.

Petitioner was charged with one conspiracy count and three counts of distributing cocaine, and went to trial along with a number of other women who worked for Longoria. Evidence was introduced at trial that Longoria's operation employed intimidation and violence

¹Longoria's wife employed petitioner as a domestic, initially part-time and then, beginning in December 1988, full-time.

to collect drug debts and to discourage anyone from becoming an informant. Petitioner and some of her codefendants testified that Longoria threatened and abused them in order to force them to work, or to continue to work, for him. In particular, petitioner testified that she began to work for Longoria's drug operation at the end of January 1989 after he made an implied threat to injure her child, and that she continued to work for him "to keep from getting a beating," as she had seen others receive. Petitioner's husband was "thrashed" at Longoria's direction after attempting to get petitioner away from Longoria. Petitioner further testified that she tried to talk to the police in March 1989, but was offered no protection, and she was thereafter threatened with death by Longoria. According to petitioner, Longoria further inflicted a severe beating on petitioner's husband in April 1989, and threatened to kill him; a week later Longoria arranged for petitioner's husband to see his men nearly kill a man and threatened to do the same to petitioner's whole family if her husband continued "messing" with Longoria.

The issue of duress as a defense to the crimes with which petitioner was charged was presented to the jury. The jury acquitted her of three counts of distribution of cocaine relating to the three sales in April, June, and July 1989. The jury, on the other hand, convicted her of the conspiracy count, which alleged that she participated in the offense between January 1, 1988, and October 25, 1989. According to the court of appeals, which upheld petitioner's conviction, the jury "in acquitting [petitioner] on three counts of distribution, believed her [testimony regarding duress]; but, in convicting her of conspiracy, apparently did not accept the view that she was under complete duress for the six months she was involved in drug dealing."²

Petitioner was originally sentenced under the Sentencing Guidelines to 188 months' imprisonment, the bottom of the sentencing range found applicable by the court (188 to 235 months).³ The court denied petitioner's request for a downward departure based on duress not amounting to a complete defense to the crime, under U.S.S.G. §5K2.12.⁴ Although upholding

²United States v. Johnson, 956 F.2d 894, 901 (9th Cir. 1992). The court is apparently referring to the period January to July 1989, the period petitioner admitted being involved with the drug ring.

³Although petitioner's sentence was computed on the basis of more than 50 kilograms of cocaine distributed as a result of the conspiracy of which petitioner was a member, as charged petitioner's offense did not carry a mandatory minimum sentence.

⁴Section 5K2.12 provides:

The extent of the decrease ordinarily should depend on the reasonableness of the defendant's actions and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. The Commission considered the relevance of economic hardship and determined that personal financial difficulties and economic pressures upon a trade or business do not warrant a decrease in sentence.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. report	Report to the President on Proposed Denial of Executive Clemency for Carolyn Sue Johnson; RE: Personal [partial] (1 page)	11/09/1995	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Dawn Chirwa
OA/Box Number: 14404

FOLDER TITLE:

Denied Commutations - Closed [8]

2006-1704-F
db3825

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

petitioner's conviction, the court of appeals remanded her case for resentencing, concluding that the trial court did not understand that it had the power to depart based on duress despite the jury's rejection of duress as a defense to the crime of which she was convicted. After remand, the court sentenced petitioner to 78 months' imprisonment, followed by four years' supervised release.⁵

Petitioner has been incarcerated since September 1990, and has incurred no incident reports during her incarceration. Her projected release date is in May 1996.

A native of Arkansas, petitioner grew up in an unstable home environment, marked by abusive stepfathers. According to the presentence report, she assumed many child rearing responsibilities for her siblings and picked cotton during the summers to earn money for her family. (b)(6)

(b)(6)

[005]

Petitioner has one other conviction, resulting from her March 1989 arrest for conduct considered to be included within the federal charges of which she has been convicted. She was sentenced on the March 1989 charges to 180 days in jail and three years' probation.

Grounds for clemency and official comments:

Petitioner seeks clemency based on a lifetime of abuse she says she has suffered at the hands of her three husbands, and her poor health as a result. She points to the needs of her two teenaged children and her efforts to rehabilitate herself. (b)(6)

(b)(6) The Bureau of Prisons reports that petitioner is in regular duty status (b)(6) and has worked in the landscape detail, food service, and UNICOR. She has received good work reports and has completed a 40-hour drug education program.

The United States Attorney's office opposes clemency on the grounds that petitioner's case does not present any unusual circumstances and that the issue of duress has already been taken into account in sentencing and does not warrant further reduction of petitioner's sentence. The prosecutors report that (b)(6) they did not believe "the

⁵According to the prosecutor, the 78-month sentence was agreed upon between the parties; it represents a departure of eight offense levels. In remanding the case, the court of appeals noted that the trial court at the original sentencing "took note of [petitioner's] 'unusual life' (a life replete with abuse by her father and her three husbands), and that she had become involved 'with an evil man,'" and said, "'It's not with happiness that I impose sentence upon you.'" *United States v. Johnson*, 956 F.2d at 901. The court of appeals further noted the trial court's "apparent acceptance of [petitioner's] credibility as to her sad and savage treatment by male abusers" and "recognition that [petitioner] had been involved with a manipulative, violent, brutal drug lord." *Id.* at 902.

evidence offered by [petitioner] during trial regarding the physical abuse which she claimed she suffered at the hands of Danny Longoria." Rather, they contend, petitioner "participated in the drug conspiracy because it offered an opportunity for quick money." They conclude: "Given her limited job skills and generally impoverished situation, it is easy to understand why she succumbed to the temptation of quick money."

Reasons for denial:

The duress described by petitioner, if true, presents a chilling insight into the later months of her life of crime. Her claims of duress appear to have been credited, at least to some degree, by both the jury and the sentencing judge. Indeed, petitioner was acquitted of three counts, presumably because the jury believed she acted under duress. Yet, the jury also concluded that part of petitioner's involvement in criminal conduct was not undertaken as a result of duress, and her ultimate sentence reflects substantial mitigation based on duress. Under the circumstances, further reduction of her sentence is not warranted by virtue of duress related to this offense. As to petitioner's general claims of abuse, no causal connection has been asserted or demonstrated between that abuse and the instant offense, and petitioner's health problems, whether or not related to any abuse, do not appear to be seriously debilitating at the present. Accordingly, although petitioner's life circumstances have been difficult, they are not so compelling to provide a basis for commuting her sentence. Accordingly, I recommend that you deny the petition.

Respectfully submitted,



Pardon Attorney

Date: 11/9/95

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. report	Report to the President on Proposed Denial of Executive Clemency for Jodessa Robinson; RE: Personal [partial] (2 pages)	11/09/1995	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Dawn Chirwa
OA/Box Number: 14404

FOLDER TITLE:

Denied Commutations - Closed [8]

2006-1704-F
db3825

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REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
JODESSA ROBINSON

Offense: Conspiracy to unlawfully manufacture methamphetamine and phenylacetone.

Sentence: 120 months' imprisonment; five years' supervised release.

Date: May 1, 1991.

District: Southern Alabama.

Relief sought: Commutation of sentence.

Summary of essential facts:

Petitioner assisted her husband, Norman Robinson, in his manufacture of methamphetamine and phenylacetone (a precursor chemical used in manufacturing methamphetamine and itself a controlled substance). She was present, but did not speak, at a meeting on March 12, 1990, at Bennigan's Restaurant in Humble, Texas, during which her husband Norman discussed with two undercover agents purchasing precursor chemicals which an associate of Norman's would "cook" into methamphetamine. She also arranged and attended a meeting at Wyatt's Cafeteria in Houston, Texas, on October 25, 1990, during which she participated in negotiations with undercover agents for the purchase of precursor chemicals to be "cooked" by an associate into methamphetamine, which petitioner promised would be "as white as sugar."

Petitioner was also present during two trips to Mobile, Alabama, during which further negotiation and preparation for the manufacture of methamphetamine occurred. During the first, she remained in car, lying down and apparently ill, while her husband carried on negotiations at a bait and tackle shop near Mobile. She was also present on October 29, 1990, at the AWC Chemical Company in Mobile, Alabama, where she and her husband picked up precursor chemicals they had purchased, and loaded them into the trunk of their car. During a search of their residence in Houston, Texas, methamphetamine, precursor chemicals, scales, and syringes were found.

Petitioner and her husband were convicted after a jury trial, at which petitioner raised a defense of duress. Petitioner, then 51 years old, (b)(6) sought a downward departure from the applicable sentencing range based on duress not amounting to a complete defense, resulting from a pattern of domination and abuse

[006]

by her husband, with whom she had lived for 20 years.¹ A number of witnesses supported her claim that he had beaten her, fired a gun into her car when she tried to leave him, and terrorized and molested her now grown daughters. One of the daughters testified that he once, in front of them, shot a dog that had disobeyed him in order to demonstrate what happened when he was disobeyed. The presentence report notes that, according to petitioner and as corroborated by the testimony of her family and friends, her "participation in the instant offense can be largely attributed to her husband's coercion and threat of physical violence."

At sentencing, the judge concluded that the offense involved 25.8 kilograms of methamphetamine,² and concluded, without objection from the defense, that the trial testimony established her participation and knowledge in all phases of the manufacture of the controlled substances and that she was therefore responsible for that entire amount of drugs. Although noting that his own observation of the husband on the witness stand led him to believe that "there was some involvement of [her husband] that may have caused [her] to participate [in the offense] more than she might have wanted to," he concluded that he did "not think there is any evidence to convince this Court that [petitioner] wasn't nevertheless a knowing and willful participant." Nonetheless, he found that petitioner had a minor role in the offense, and in consideration of the testimony of petitioner's family concerning duress, he departed from the sentencing range of 121 to 151 months to the mandatory minimum sentence of 120 months. Her husband was sentenced to 365 months.

Petitioner's conviction was affirmed on appeal. She has been incarcerated since October 1990, and has a projected release date in July 1999. She has incurred no incident reports during her confinement. (b)(6)

(b)(6)

Grounds for clemency and official comments:

Petitioner seeks clemency because of the severity of the sentence, stating that she was not a willing participant in the offense, but was obeying her husband, who abused her and who dominated every aspect of her life. She states that she filed for a divorce from her husband, and would like another chance to prove herself a good citizen.

¹Under the Sentencing Guidelines, §5K2.12 provides for a downward departure in such cases as follows:

The extent of the decrease ordinarily should depend on the reasonableness of the defendant's actions and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. The Commission considered the relevance of economic hardship and determined that personal financial difficulties and economic pressures upon a trade or business do not warrant a decrease in sentence.

²This amount is based on the presentence report, which estimated that 25.8 kilograms of methamphetamine could be produced with the quantity of precursor chemicals discussed at the March 1990 meeting in Texas and the quantity obtained in October 1990. There is no indication that any of this methamphetamine was actually produced.

The United States Attorney's office opposes clemency. The prosecutor states that petitioner "has been less than candid in her request for reduction of sentence," and notes that petitioner raised the defense of domination by her husband at trial, on appeal, and in a motion under 28 U.S.C. § 2255, all without success. The prosecutor indicates that the evidence at trial showed petitioner to be "more than an innocent dupe," and to be a "willing co-conspirator," with a "working knowledge of the methamphetamine business." He finally states that petitioner's conduct during cross-examination at the trial was "contrary to her being the wilting wallflower and submissive wife that she would like to portray," and opines that "she and her husband are both exactly where they need to be."

The sentencing judge was contacted by the United States Attorney's office for his views on the clemency petition. He stated that he left the matter to this office's discretion, but mentioned that he might have possibly given her a lower sentence had there been no mandatory minimum.

Reasons for denial:

Petitioner's claim of coercion and abuse is supported by the court's acceptance of it for the purpose of imposing sentence. Indeed, the government's brief in her husband's appeal of his sentence states that he testified that he forced his wife to accompany him on trips to Alabama. While the United States Attorney correctly points out that duress was rejected as a complete defense to the crime, it does not follow that it should not be considered as a mitigating factor at sentencing or in a clemency proceeding. In fact, the sentencing judge departed downward on this basis, and subsequently indicated that he possibly would have been even more lenient had he not been constrained by the 10-year statutory minimum sentence.

At the time of this writing petitioner has served only about half of her mandatory 10-year sentence. While it may be appropriate to reconsider petitioner's case when she has served a more substantial portion of her sentence, I believe that a grant of clemency at this time would be premature. Accordingly, I recommend that you deny the petition for commutation.

Respectfully submitted,



Pardon Attorney

Date: _____

11/9/95

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
DEBORAH ANN STOUT

Offense: Conspiracy to manufacture and distribute methamphetamine; aiding and abetting the manufacture and possession with the intent to distribute methamphetamine; and establishing a methamphetamine-manufacturing operation.

Sentence: 97 months' imprisonment; five years' supervised release.

Date: August 11, 1989.

District: Eastern California.

Relief sought: Commutation of sentence.

Summary of essential facts:

Petitioner's conviction relates to a large-scale methamphetamine-manufacturing operation that her father, George Stout, ran from a house that she had purchased at his direction in San Andreas, California, in early 1987. In mid-1988 law enforcement officers developed evidence that methamphetamine was being manufactured at the house and executed a search warrant there on September 1, 1988. During the raid, they made four arrests and found nearly two kilograms of finished methamphetamine, large quantities of precursor chemicals and liquids containing methamphetamine, and a great deal of laboratory equipment. The absence of normal household items such as furniture indicated that the house was mainly used for manufacturing drugs. The case agent described the operation as one of the largest methamphetamine operations he had seen, capable of producing hundreds of pounds of methamphetamine and using four distinct systems of production. The operation also had caused severe environmental damage that would have been so costly to clean up that the government declined to seek forfeiture of the property.

Shortly after the raid petitioner contacted investigators and claimed to be an innocent landlord who had rented the property to a stranger, and substantiated this claim with a phony lease and receipts. When petitioner was arrested a few weeks later she claimed that she had obtained the \$90,000 used to purchase the house¹ by serving as a prostitute to a man named

¹There is conflicting information about the purchase price: the presentence report stated that it was \$90,000, while the prosecutor indicated it was \$95,000.

Jeff Moran for a six-month period, and that she rented the house to a man named Robert Mitchell. She denied knowing any of the four people arrested during the raid, but a cooperating witness provided information about a lunch meeting she attended with petitioner's father, and another conspirator, Keith Nowland, at which petitioner's father discussed buying the house in her name and giving it to her when he was finished using it.

Petitioner was tried before a jury, together with two men arrested during the raid.² Trial evidence showed that in order to buy the house petitioner received approximately \$90,000 in cash from her father, who had a lengthy drug-related criminal record. She bought it in her married name, although she was by then divorced and apparently using her maiden name, and paid for it with cash and cashier's checks purchased in small denominations at her request by Moran. She also had Moran do errands related to the house, such as paying utility bills, in exchange for small amounts of cash and methamphetamine. Although there was no evidence that petitioner had participated in the actual production of the methamphetamine,³ the government presented evidence that she knew the house was to be used as a methamphetamine laboratory and that she had agreed to act as a straw purchaser of the home in return for her father's agreement to give the house to her after he was finished using it for the drug operation.

Petitioner did not testify at trial but asserted as a defense the claim that she earned the money to buy the house through prostitution. The government called her alleged "client," Moran, as a rebuttal witness. According to the Assistant United States Attorney who tried the case, "anyone who saw [Moran] walk into the courtroom knew that this was not a man who ever had \$90,000." She was convicted along with her codefendants.⁴

Petitioner initially declined to be interviewed for her presentence investigation report. As a result, the probation officer noted that it was difficult to determine her role in the offense, and to evaluate whether she had accepted responsibility for the offenses or whether there were any mitigating factors in the case. At a sentencing hearing the court suggested a reinvestigation, if petitioner was willing to cooperate with the probation officer. A reinvestigation thereafter occurred, during which petitioner for the first time raised a claim of coercion or duress. According to the presentence report, petitioner "indicated she spent her whole life being fearful of her father since her father killed her mother when the defendant

²The two female codefendants -- who, unlike petitioner, had been actively involved in the manufacturing process itself -- struck very favorable early plea bargains with the government that provided they would be sentenced to just nine months' imprisonment. Petitioner's father was charged but was a fugitive at the time of her trial.

³Although petitioner's fingerprint was found on a chemical bottle seized during the search, the prosecutor has advised that there is no other evidence linking her to the production of methamphetamine, and therefore the fingerprint may have been put on the bottle before it got to the San Andreas house.

⁴The two men arrested during the raid were sentenced to 210 and 188 months, respectively.

was about four years of age,"⁵ and had become increasingly fearful of her father because of violent behavior she had observed in him over the years. Petitioner admitted to the probation officer that she had suspected that her father might use the house for illegal purposes, but said that she did not visit the house and did not know for certain what he was doing there until the house was searched. She stated, however, that shortly before the search she threatened to call the police after she overheard her father talking about his drug-related activities at the house and a short time later her father and Nowland threatened her and beat her up. This account was corroborated by her boyfriend and paternal grandfather.⁶ Petitioner also told the probation officer that she had earlier lied to investigators out of fear of her father.

In evaluating the information received through the reinvestigation, the probation officer recommended that the court depart downward because "it appears, at least from interviews with family members, that there was some coercion and duress involved in her actions caused by her father."⁷ Although the probation officer noted that "it is unknown for sure if such coercion and duress played a big role in her involvement," he "opted to err on the side of the defendant, if to err at all, given the rather unique circumstances in this case." The court departed downward to 97 months from the otherwise applicable sentencing range of 135 to 168 months based upon duress, stating that petitioner

was under heavy pressure from her father whom she loved dearly and yet at the same time feared dearly and with good cause in light of the extensive record he enjoys. In light of the admissions from her father's own father as to his violent temperament. In light of the nature of the violence he bestowed upon her from time to time. In light of the undisputed record that he was responsible for killing her mother at age four.

⁵According to petitioner's paternal grandfather, who raised her after her mother was killed, her mother was fatally wounded during an argument with petitioner's father by a gun that discharged when he threw it against the wall after wresting it from her mother's hand.

⁶Petitioner's grandfather recalled that she had a black and swollen eye, but she told him that she had an accident. Petitioner's boyfriend stated that he witnessed the assault, in which petitioner's father pinned her down on a couch, yelled at her to "keep [her] mouth shut," and left her with a black eye. She later told the boyfriend that her father had beaten her because she confronted him about his illegal activity in the San Andreas house.

⁷Under the Sentencing Guidelines, §5K2.12 provides for a departure based on duress or coercion not amounting to a complete defense as follows:

The extent of the decrease ordinarily should depend on the reasonableness of the defendant's actions and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. The Commission considered the relevance of economic hardship and determined that personal financial difficulties and economic pressures upon a trade or business do not warrant a decrease in sentence.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. report	Report to the President on Proposed Denial of Executive Clemency for Deborah Ann Stout; RE: Personal [partial] (2 pages)	11/09/1995	b(6)

COLLECTION:

Clinton Presidential Records
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Dawn Chirwa
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FOLDER TITLE:

Denied Commutations - Closed [8]

2006-1704-F
db3825

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Sentencing Hearing Transcript at 455. The court further stated that the sentence reflected in part an effort to reduce the disparity between petitioner's sentence and that of the two codefendants who had pleaded guilty early in the case.⁸ Her conviction and sentence were upheld on appeal.⁹

Petitioner began serving her sentence in August 1989. (b)(6) Her projected release date is in May 1996. She has no prior record.

[007]

In February 1994, in connection with the resentencing of her father, petitioner signed a declaration and testified on his behalf; both her declaration and her testimony contradicted information that she had provided to the court in connection with her own sentencing. In particular, she testified that she did not obtain the money to purchase the house from her father but rather from Nowland and a man named Clint Chambers, whom she said is also known as Robert Mitchell. She further claimed that Chambers, not her father, threatened her when she said she intended to notify the police about the drug-related activity at the San Andreas house, and that she had made false statements to the probation officer in connection with her own sentencing at the direction of Chambers. The court cautioned her that he did not believe her, that her testimony was inconsistent with a declaration she had filed in connection with her own sentencing, and that she should consult with a lawyer; after conferring with counsel, petitioner asserted her fifth amendment privilege against self-incrimination.

Grounds for clemency and official comments:

Petitioner, now 33 years old, seeks clemency primarily because, in her words, "I am not guilty." She explained this assertion by stating that she "only bought a house for Clint Chambers and was ignorant of his reasons and motives." She further elaborated:

I am only guilty of being George Royal Stout's daughter who only owned the house that was used by Clint Chambers [and] others to allegedly manufactured in [sic] I am not guilty because I did not break any laws [and] the prosecutor used my father [and] my father's record to convict me.

She wishes to be released in order to care for her 10-year-old son and elderly grandparents.

⁸See note 2, *supra*. After a period of being a fugitive, petitioner's father was also ultimately convicted and sentenced to 240 months. A resentencing was ordered due to a procedural error and mistakes in computing his sentence. *United States v. Stout*, 8 F.3d 33 (9th Cir. 1993). On remand, he was again sentenced to 240 months.

⁹*United States v. Stout*, 917 F.2d 567 (9th Cir. 1990) (opinion at 1990 U.S. App. LEXIS 19354).

The United States Attorney, Robert M. Twiss, proposed commuting petitioner's sentence to time served after the service of 51 months of her sentence, noting that petitioner's conduct could have been charged as money laundering and that such a charge would have carried a sentence of 51 to 63 months.¹⁰ The prosecutor who tried the case, however, noted that he was "quite frankly torn" about whether to recommend commutation of sentence. Although he largely discounted petitioner's claim of duress, contending that she had in fact been motivated by her desire to acquire a home for herself and her son and could have refused to purchase the house for her father, as other conspirators had done, he reasoned that commutation would be fair given the length of her sentence in relation to her actual conduct and to the sentences of others convicted of drug crimes:

On the one hand, she has done nothing to demonstrate that she is deserving of a reduction in her sentence. Rather, she has consistently denied her culpability and lied to attempt to escape her responsibility. On the other hand, drug defendants in other cases who have much greater culpability (both because of there [sic] direct role in the offense and in amount of drugs involved) frequently receive the same or smaller sentences because of their cooperation. Moreover, I do not feel that a reduction of her sentence to 51 months will create an injustice. Nor do I feel that she is likely to revert to illegal activity if released.

After the United States Attorney's recommendation was made, however, petitioner's declaration and testimony were submitted in connection with her father's resentencing, which contradicted the claims she previously made to the court in connection with her own sentencing. The United States Attorney's office advised that it would be difficult to continue to recommend clemency in light of petitioner's testimony in connection with her father's resentencing.

Reasons for denial:

If petitioner's claims of duress could be credited and given her limited level of involvement in her father's methamphetamine operation, there might be some reason to consider sentence reduction. However, in her clemency petition, she again claims that she is innocent of the offenses for which she was convicted, and her declaration and testimony in support of her father, given after four or more years' separation from him, cast doubt on the veracity of her initial claims about alleged coercion by him and its relationship to her

¹⁰The Bureau of Prisons initially declined to recommend clemency because of the absence of qualifying criteria, but later advised that, in light of the United States Attorney's initial recommendation, it had no objection to commutation of petitioner's sentence after 51 months. (b)(6)

involvement in the offenses. In any event, the mutual inconsistencies of the various statements she has made regarding the offenses -- at her own sentencing, in the clemency petition, and at her father's resentencing -- indicate that petitioner has not been entirely candid about the facts relating to the offenses in at least one of these proceedings. Under the circumstances, I do not believe that it is unjust for petitioner to serve the balance of her sentence, which was considerably reduced to begin with based on the claim of duress. This is particularly true since petitioner, although not actively involved in the methamphetamine-manufacturing operation, provided methamphetamine to Moran in return for his performing tasks related to the house she purchased, and therefore she was not removed entirely from the actual distribution of drugs. Considering all the circumstances in this case, I recommend that you deny the petition.

Respectfully submitted,



Pardon Attorney

Date: _____

11/9/95

EXECUTIVE CORRESPONDENCE

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U.S. Department of Justice

Pardon Attorney

All denied -
done

500 First Street, N.W.
Suite 400
Washington, D.C. 20530

SEP 10 1997

MEMORANDUM FOR: The Honorable Charles F.C. Ruff
Counsel to the President

FROM: *WML* Margaret Colgate Love
Pardon Attorney

SUBJECT: Recommended Denial of Executive Clemency --
Two Petitions for Commutation of Sentence

Attached are two reports signed by the Deputy Attorney General recommending denial of executive clemency in the form of commutation of sentence for the following persons:

94 11 0075	Richard Clark Johnson
93 10 0078	Charles Junior Spears

Attachments

cc: Eric H. Holder, Jr.
Deputy Attorney General

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
RICHARD CLARK JOHNSON

Offenses: Conspiracy to violate Arms Export Control Act; violation of Arms Export Control Act; conspiracy to injure or destroy property of a foreign government; possessing property in aid of foreign insurgents.

Sentence: 120 months' imprisonment; three years' supervised release.

Date: August 20, 1990.

District: Massachusetts.

Relief sought: Commutation of sentence.

Summary of essential facts:

Petitioner has served six years of a ten-year prison term for conspiracy and substantive crimes arising from his activities in the United States between 1978 and 1989 in the research and development of a weapon system and explosive devices to support the terrorist activities of the Provisional Irish Republican Army ("PIRA").¹ A highly trained electrical engineer and native-born citizen of the United States with no prior criminal record, he was convicted following a 28-day jury trial² of all counts of a four-count indictment. The first two charges in the indictment related to his procurement, development, and export of electronic components and bomb detonation devices. The last two counts of the indictment concerned his work in the development of a system to shoot down low-flying British helicopters stationed in Northern Ireland.

The evidence presented against petitioner to establish the conspiracies and other charges consisted largely of three types: letters written by him to co-defendant Peter Eamon Maguire, an

¹Petitioner was indicted with four co-defendants. One co-defendant, Gerald Hoy, pleaded guilty to the two counts of conspiracy for which he was indicted. Two others, Martin Peter Quigley and Christina Leigh Reid, were found guilty at their trial with petitioner of all counts for which they were indicted. Peter Eamon Maguire, an Irish national who was not present in the United States, was not arrested until 1992 and was prosecuted separately. Following protracted extradition proceedings, he pleaded guilty in the United States in 1994 to all three charges for which he had been indicted. Hoy was sentenced to 24 months in prison, Reid was sentenced to 41 months in prison, Quigley was sentenced to 96 months in prison, and Maguire was sentenced to 70 months in prison. According to the United States Attorney, the district court departed upward from the applicable sentencing ranges in sentencing Maguire and Quigley as well as petitioner.

²The trial included testimony from a variety of government, law enforcement, and military witnesses from the United States, the Republic of Ireland, and the United Kingdom.

electronic systems expert in the Republic of Ireland;³ recordings of intercepted conversations between petitioner and other conspirators; and physical evidence seized from a variety of sources including the workshop petitioner maintained in the basement of his parents' home in Harwich, Massachusetts. This evidence established that he procured for and exported to Maguire particular types of electronic components used in PIRA remote-control bombs, and that he developed a bomb detonation system utilizing Weather Alert radio transmitters that the PIRA began to use shortly after petitioner indicated in his letters that he was ready to ship the devices to Ireland.⁴ The letters likewise chronicled petitioner's efforts to improve the detonation mechanism of bombs through the use of laser technology and develop a time-delayed fuse mechanism from a digital watch. His work in these areas was further established by the seizure from his workshop of a prototype of the watch mechanism and related records and most of the components of a laser-based bomb detonation system.

In connection with the charges of conspiracy to destroy property of a foreign government and possession of property in aid of foreign insurgents, the evidence established that in December 1988, co-defendant Martin Peter Quigley, a citizen of the Republic of Ireland and a United States resident, solicited petitioner's advice concerning the development of a new type of surface-to-air missile system to "counteract . . . low-flying helicopters."⁵ Petitioner opined that the effectiveness of such a system could be increased by incorporating a proximity fuse based upon a police radar speed gun. He assured Quigley that he could "start working up something on that immediately" and requested Quigley to tell Maguire that petitioner was "still in business . . . [and had] a lot of other stuff for him to go over . . . when [Maguire could] get in touch with [him]." Thereafter, intercepted conversations between petitioner and other conspirators and physical evidence seized from various sources including petitioner's workshop established that he developed the radar-based proximity fuse and conceived a design for a second, infrared proximity fuse. Other evidence demonstrated that petitioner advised Quigley regarding the type of electronic jamming equipment British Army engineers likely used to counter PIRA radio-control bombs, provided him with material on how to plot rocket and missile trajectories, and offered suggestions on how to increase the likelihood of destroying helicopters. According to the United States Attorney, "[t]he only reason that Johnson did not actually export the missile system to Quigley or [Maguire] . . . was that the conspirators . . . except [Maguire] were arrested after the investigation was compromised as a result of Johnson's discovering federal agents in the process of bugging his car."

Upon conviction, petitioner faced statutory maximum prison terms of 10 years for violating the Arms Export Control Act and for possessing property in aid of foreign insurgents, five years for conspiring to violate the Arms Export Control Act, and three years for conspiring

³Petitioner's authorship of these letters was established through handwriting analysis and corroborated by the seizure of components from his workshop that matched materials mentioned in the letters and by internal references in the correspondence that matched information regarding petitioner's employment history, mailing addresses, and travel.

⁴In a letter to Maguire dated June 23, 1983, petitioner said that he expected shortly to finish the first two Weather Alert detonation system devices; thereafter, by letter dated July 30, 1983, he wrote that he had two devices ready for shipment. The first PIRA bomb containing such a device was found in August 1983. Evidence presented at trial concerning another PIRA explosive device with a Weather Alert detonation system, which was recovered intact in March 1985, permitted the jury to find that petitioner had built that Weather Alert transmitter.

⁵The intended targets of this system were five classes of British helicopters stationed at Aldergrove Air Station in Northern Ireland.

to destroy or injure property. Pursuant to the United States Sentencing Guidelines, he faced a sentencing range of 51 to 63 months. On August 20, 1990, petitioner was sentenced to an aggregate prison term of 120 months and three years' supervised release. Citing sections 5K2.14 and 5K2.15 of the sentencing guidelines,⁶ the court departed upward from the applicable guidelines range to the statutory maximum sentence for each offense, "find[ing] that the following aggravating circumstances exist that were not adequately taken into consideration by the Sentencing Commission. Those circumstances are that the public was significantly endangered and that the conduct by the defendant furthered terroristic action." (Emphasis in original.) The sentencing judge's upward departure was affirmed on appeal. United States v. Johnson, 952 F.2d 565, 583-585 (1st Cir. 1991), cert. denied, 506 U.S. 816 (1992).

Petitioner commenced service of his sentence in February 1991. Presently incarcerated at the Federal Correctional Institution at Allenwood, Pennsylvania, he is projected for release in October 1999. He has maintained clear conduct while in prison, is considered an "excellent worker," and voluntarily teaches courses for inmates one night per week.

Grounds for clemency:

Petitioner, who is 48 years of age, seeks commutation primarily on the ground that his sentence is unduly harsh because it is double the length of the prison term recommended by the Sentencing Guidelines, and because his imprisonment has caused much sorrow and hardship to his elderly parents. He also contends that clemency should be granted because he has "been a model prisoner," who has "dedicated [his] time while incarcerated to helping others." Although representing that he does not want the clemency decision to turn on his guilt or innocence, petitioner nonetheless asserts that he is "a political prisoner," that his trial was "blatantly unfair," that "the [Federal Bureau of Investigation] and the prosecutor . . . manufacture[d] a case against [him]" and the judge who presided at his trial "was interested in . . . career and politics," that he is guilty of nothing more than "talking," and that he "should not have been incarcerated in the first place."

Scores of supporters have written letters and several hundred people have signed petitions that have been sent to the President, the Attorney General, and the Office of the Pardon Attorney urging that petitioner's sentence be commuted. Members of Congress Diana DeGette of Colorado and Thomas J. Manton of New York also have expressed support for clemency, as has former Congresswoman Patricia Schroeder.

Official comments:

The United States Attorney "strenuously opposes Johnson's request for commutation of his sentence," pointing out that petitioner "repeatedly minimizes his culpability, suggests he is innocent, and refuses to accept his guilt." The prosecutor also opines that there is no merit to petitioner's complaint that he was sentenced above the applicable sentencing range because the district court's decision in this regard was soundly based and has been thoroughly reviewed and upheld by the appellate court. Regarding petitioner's assertions that the Federal Bureau of

⁶These policy statements authorize sentences above the sentencing guidelines range "[i]f national security, public health, or safety was significantly endangered," § 5K2.14, or "[i]f the defendant committed the offense in furtherance of a terroristic action." § 5K2.15.

Investigation ("FBI") and the prosecutor "manufacture[d] a case against [him]"⁷ and that the presiding district judge "was interested . . . in career and politics," the United States Attorney responds that "these assertions are not only slanderous, but absurd" given the strength of the evidence adduced at trial.

The sentencing judge had no comment upon petitioner's clemency request.

Reasons for denial:

Petitioner was convicted after trial of several extremely serious crimes arising from his involvement for over a decade with a dangerous foreign terrorist organization. His highly skilled assistance in developing and producing sophisticated explosive devices and improving the anti-helicopter weapon system contributed substantially to the PIRA's ability to wage a campaign of violence and terrorism in Northern Ireland in the 1980's. As the United States Court of Appeals for the First Circuit noted in examining and rejecting petitioner's many challenges to his conviction and sentence, the evidence against the conspirators was very strong.⁸ Nevertheless, petitioner refuses to acknowledge his guilt and adamantly maintains that he is a "political prisoner" whose incarceration is unjustified. Asserting that he "hurt no one," the only remorse he admits stems from having "caused a great deal of suffering for [his] family." Under these circumstances, commutation of his sentence undoubtedly would be viewed by petitioner and his supporters as vindication of his claim of innocence, and would seriously undermine law enforcement's efforts to deter terroristic activity.

Furthermore, the primary ground on which petitioner seeks commutation of sentence -- the judge's upward departure in fashioning his sentence from the range determined by the Sentencing Guidelines -- provides no basis for clemency. The appellate court considered the validity of the judge's decision in this regard and upheld petitioner's sentence. In so doing, it concluded that the district court properly found the conspirators' terroristic purpose, the threat to national security, and the potential for death and destruction produced by the conspirators'

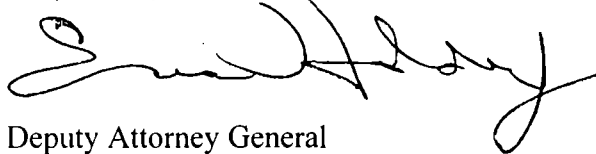
⁷An earlier version of this report recommending denial of commutation was submitted by the Department of Justice to the White House on October 26, 1995. In January 1997, the Office of the Pardon Attorney learned that an explosives expert of the FBI who testified at petitioner's trial was one of a number of FBI Laboratory personnel being investigated by the Department of Justice Office of the Inspector General ("OIG") following allegations of misconduct in another case made by FBI Supervisory Special Agent Frederic Whitehurst. At the request of the Department of Justice, the White House at that time returned the report on petitioner's commutation application, upon which no decision had been made, so that it could be updated and reexamined in light of the OIG inquiry into the agent's conduct and a review of petitioner's case then being conducted by the United States Attorney for the District of Massachusetts. The OIG's final report, issued in April 1997, concluded that in the other trial (which was unrelated to petitioner's case), the agent at issue testified to conclusions that were scientifically unsound and matters that were beyond his expertise; the OIG did not find, however, that the agent had either perjured himself or manufactured evidence in the other case, as had been alleged by Whitehurst. The United States Attorney's Office, in the meantime, reviewed petitioner's case in light of the Whitehurst allegations and OIG inquiry, to determine whether any exculpatory evidence material to the issues of guilt or punishment within the doctrines of Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972), had been withheld from petitioner. Upon completion of that review, it was determined that no such violations had occurred. Petitioner has not sought to challenge his conviction by means of a collateral attack pursuant to 28 U.S.C. § 2255.

⁸The appellate court observed that "[t]he government marshalled a wealth of evidence, most of it comprised of appellants' own admissions in telephone conversations and correspondence, of appellants' participation in the offenses for which they were charged and of their connections to the PIRA and its longstanding, ongoing terroristic campaign." United States v. Johnson, *supra*, 952 F.2d at 574.

conduct to be aggravating circumstances.⁹ The appellate court also noted that "there was ample evidence . . . to support the district court's findings on the factors justifying upward departure." United States v. Johnson, *supra*, 952 F.2d at 584.¹⁰ The district court's reasons for departing from the sentencing guidelines range were well founded, and the sentence imposed serves a legitimate and important deterrent purpose to discourage those who would engage in terroristic conduct. Particularly given that it was petitioner's own weapons research and development that provided the basis for the prison term he received, he has no colorable claim that his sentence at the statutory maximum constitutes a miscarriage of justice.¹¹ Measured against these facts, petitioner's positive prison adjustment, while commendable, is insufficient to warrant the extraordinary remedy of commutation of sentence.

The record establishes that for an extended period, petitioner was deeply involved in potentially deadly terroristic activity having wide-ranging consequences for the international community, that he received an appropriate sentence, and that he is completely unremorseful regarding his criminal acts. In light of these facts and the United States Attorney's strong opposition to petitioner's request, I advise you to deny the petition for commutation of sentence.

Respectfully submitted,



Deputy Attorney General

Date: August 24, 1997

⁹The appellate court agreed with petitioner that the district court's reliance on the policy statement of § 5K2.15 concerning terrorism was technically incorrect because that section was not issued until after the criminal acts charged in the indictment. However, the reviewing court found the "error to be of no consequence" because the district court had "articulated a number of legitimate bases, quite apart from the terrorism factor, for its departure decision," and because the court was free to consider terrorism an aggravating factor even prior to the publication of § 5K2.15. United States v. Johnson, *supra*, 952 F.2d at 585.

¹⁰According to the appellate opinion, among the reasons cited by the district court for the upward departure were "the 'cool, deliberative, calculated' quality of appellants' conversations regarding the development of weaponry in aid of the PIRA and the utter lack of 'any expression of remorse or contrition' in these conversations"; "the 'potential for death to innocent people' produced by appellants' activities"; "the 'extreme' amount of 'planning and sophistication' in the arms export conspiracy"; "the 'multiple occurrences' of illegal conduct"; and the threat the arms export conspiracy posed to the "American security interest" in "the peaceful resolution of the conflict in Northern Ireland." United States v. Johnson, *supra*, 952 F.2d at 583.

¹¹Petitioner suggests in passing that his sentence is unfair because it is more severe than sentences received by several defendants who have been convicted of other crimes involving illegal export of materials under a variety of statutes. Aside from the facts that the relative levels of culpability of those defendants cannot be discerned from petitioner's descriptions and not all of the cases involved weapons, most of the defendants with whom petitioner compares himself pleaded guilty rather than go to trial, and by so doing availed themselves of sentencing leniency that he did not seek.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. report	Report to the President on Proposed Denial of Executive Clemency for Charles Junior Spears; RE: Personal [partial] (2 pages)	08/24/1997	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Dawn Chirwa
OA/Box Number: 14404

FOLDER TITLE:

Denied Commutations - Closed [8]

2006-1704-F
db3825

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
CHARLES JUNIOR SPEARS

Offense: Possession with intent to distribute cocaine.

Sentence: 212 months' imprisonment; four years' supervised release.

Date: September 21, 1989.

District: Central Illinois.

Relief Sought: Commutation of sentence.

Summary of essential facts:

On June 10 and 21, 1988, petitioner provided a total of 25 grams of cocaine to his girlfriend for sale to an undercover agent. On August 31, 1988, a kilogram of 92 percent pure cocaine and more than \$20,000 in cash were found in a car in which petitioner and his girlfriend were riding. His girlfriend testified that she and petitioner took two trips to Florida during which he purchased a total of four kilograms of cocaine, and other cohorts provided information that petitioner trafficked in quantities of up to 20 kilograms of cocaine per week. Petitioner was sentenced on the basis of involvement with 5.25 kilograms, above the 10-year mandatory minimum, but within the sentencing range of 188 to 235 months, which reflected a four-level enhancement for his leadership role in the offense. Petitioner was not given a reduction for acceptance of responsibility because, although he admitted possessing the kilogram of cocaine found in the car and trafficking in drugs, he claimed that his involvement with drug-dealing stemmed from and related solely to his efforts to keep his girlfriend, (b)(6) supplied with drugs. His sentence and conviction were affirmed; in his appeal, petitioner challenged, among other things, the adequacy of the evidence to support the court's inclusion of the four kilograms transported from Florida in the amount of drugs for which he would be held accountable for sentencing purposes.¹

[008]

Petitioner has been incarcerated since August 1988, and has a projected release date in January 2004. (b)(6) but no other criminal record.

¹United States v. Spears, 965 F.2d 262 (7th Cir. 1992), cert. denied, 506 U.S. 989 (1992)

Grounds for clemency and official comments:

Now aged 70, petitioner seeks clemency based on the severity of the sentence, asserting that he was sentenced to what is effectively a term of life imprisonment. He also asserts that he has several medical problems. (b)(6)

(b)(6)

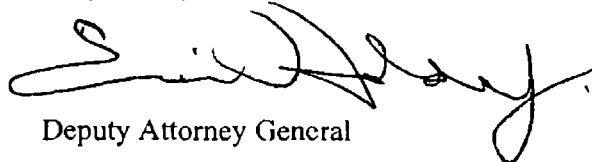
Bureau of Prisons indicates that it cannot give a long-term prognosis due to petitioner's age and his multiple medical problems, but his health appears to be stable. Petitioner also submitted with his petition a letter to the Attorney General in which he again challenged the adequacy of his girlfriend's testimony to support the determination that he was involved in bringing four kilograms of cocaine from Florida.

Reasons for denial:

Petitioner has now served nearly nine years of a very long sentence, but he was involved in trafficking substantial amounts of drugs, for which he continues to deny responsibility. His resurrection of his unsuccessful challenge to his girlfriend's statements about the amount of cocaine with which he was involved exemplifies his continuing failure to accept responsibility, and ignores the fact that other witnesses implicated him in trafficking up to 20 kilograms of cocaine per week. The court's decision to rely on the conservative amounts reflected in the testimony of petitioner's girlfriend actually redounded to his benefit.

While petitioner is of an advanced age and has a number of health problems, he committed the instant offense when he was 61 years old, (b)(6). Moreover, these conditions were made known to the court before sentence was imposed. Although the court had the power to depart downward from the sentencing range if petitioner's poor health represented an extraordinary physical impairment, see U.S.S.G. §5H1.4, it did not do so. Petitioner's health appears to be stable, and he is receiving treatment while incarcerated. Should his health worsen, he may seek compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). In the absence of mitigating factors that would warrant granting clemency, I recommend that you deny the petition.

Respectfully submitted,



Deputy Attorney General

Date: August 24, 1997

²Petitioner is not to stand nor be exposed to the wind and cold for prolonged periods of time. Further, petitioner cannot lift more than 15 pounds.

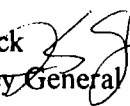


Office of the Deputy Attorney General
Washington, D.C. 20530

denied - done

August 16, 1996

MEMORANDUM FOR: The Honorable Jack Quinn
Counsel to the President

FROM: Jamie S. Gorelick 
Deputy Attorney General

SUBJECT: Recommended Denial of Executive Clemency --
One Petition for Commutation of Sentence

Attached is a report recommending denial of executive clemency in the form of commutation of sentence for the following individual:

92 07 0289 Khalifa Hamaas Abdul Khaalis
(fka Ernest Timothy McGhee)

I concur in the Pardon Attorney's recommendation in this case.

Attachment

REPORT TO THE PRESIDENT
ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR
KHALIFA HAMAAS ABDUL KHAALIS
formerly known as
ERNEST TIMOTHY McGHEE

Offenses: Conspiracy to kidnap while armed (one count), second-degree murder (one count), assault with intent to kill while armed (two counts), assault with a dangerous weapon (one count), and kidnaping while armed (24 counts).

Sentence: 41 years to life imprisonment

District: Superior Court for the District of Columbia.

Date: September 6, 1977.

Relief sought: Commutation of sentence.

Facts of offense conduct:

On the morning of March 9, 1977 petitioner, then the national leader of the Orthodox Hanafi Muslims in the United States, organized the seizure and armed occupation of the International Headquarters of B'nai B'rith, the Islamic Center, and the District Building in Washington, D.C. The events, during which three separate groups of hostages were taken by petitioner and 11 codefendants, came to be known as the "Hanafi takeovers."

Petitioner and six fellow Hanafi's invaded the B'nai B'rith building at 1640 Rhode Island Avenue, N.W., taking more than 100 employees and visitors hostage. Shortly thereafter, other heavily armed Hanafi's stormed the Islamic Center at 2551 Massachusetts Avenue, N.W., and the District Building at 14th and E Streets, N.W. Three Hanafi's invaded the Islamic Center and seized 11 hostages. At the District Building two Hanafi's took a building guard and 14 other individuals hostage, and during an exchange of gunfire with police officers killed a radio news reporter (Maurice Williams), and wounded a policeman (Officer Cantrell), D.C. City Council

member (now D.C. Mayor) Marion Barry, and a law student/intern (Robert Pierce).¹ Over a period of several days, the hostages at the three sites were subjected to brutal psychological treatment and physical wounding.² For many of those who were cut or shot, medical treatment was either delayed or denied. Petitioner personally participated in, or condoned, several physical assaults on individual hostages at the B'nai B'rith building.³

On Friday, March 11, at approximately 1:40 a.m., as a result of telephone negotiations between petitioner and the police, the siege at the B'nai B'rith building ended 39 hours after it began, and the hostages were released. A short time later the takeovers at the Islamic Center and the District Building also came to a conclusion.

During petitioner's seven-week trial, he expressed no remorse for the offenses and denied responsibility for the two takeovers at which he had not been personally present. In particular, he disclaimed knowledge of the brutal treatment of the hostages at the other sites. However, police wiretaps of the telephones at the B'nai B'rith building introduced into evidence at trial established that petitioner had been in frequent telephone contact with his codefendants at the District Building and the Islamic Center during the ordeal and that he had directed their activities. In addition to the wiretap evidence, the trial testimony of one Betty Neal (a hostage who was forced to serve as petitioner's secretary during the siege) corroborated that petitioner maintained regular contact with his codefendants at the District Building and at the Islamic Center. Another hostage at the B'nai B'rith building reported that petitioner said "we've taken the Islamic Center" and "we're in the District Building." *See Khaalis v. United States*, 408 A.2d 313, 324 (D.C. App. 1979). Thus, as pointed out in the presentence report, "there was never any real doubt that [petitioner] was in command of the hostages in [the District Building and the Islamic Center] as well."

Petitioner was convicted of offenses that occurred at all three takeover sites, while his 11 codefendants were convicted of various kidnaping and assault charges related to a particular site. The judgments of conviction of all 12 defendants were affirmed on appeal. Petitioner was sentenced to an aggregate minimum term of 41 years' imprisonment, which he began serving in March 1977.⁴ He becomes eligible for parole in January 2008. His only previous arrest, for bank

¹The wounds of Barry and Cantrell were not life threatening. The law student/intern was permanently paralyzed as a result of the shooting.

²The Hanafi's had brought with them a wide array of weapons in a rental moving truck, including shotguns, revolvers, semi-automatic pistols (with 8,700 rounds of ammunition), hatchets, knives, razors, machetes, a cross-bow, and a blackjack.

³Petitioner told the hostages at the B'nai B'rith building that they should "be prepared to die," that "heads would roll" if his demands were not met, and that "[t]here are other places where we have taken over, and we are holding hostages." He ordered his codefendants to bind the hands and feet of the hostages with neckties and telephone cords. He personally punched one male hostage in the stomach twice and hit another man on the head with a pistol, causing him to lose consciousness for five hours. He also threatened a third man with decapitation.

⁴The court imposed the multiple sentences described below and directed that petitioner serve each of the sentences concurrently with each other, except as otherwise noted. His sentence was: from one to three years' imprisonment for conspiracy to kidnap while armed (consecutive to the sentence imposed on eight counts of kidnaping while armed); from 15 years to life imprisonment for second-degree murder; from five to 15 years' imprisonment for assault with intent to kill while armed (two counts); from five to 15 years' imprisonment for assault with a dangerous weapon; and from five to 15 years' imprisonment for kidnaping while armed (24 counts). The court directed that the sentences

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009. report	Report to the President on Proposed Denial of Executive Clemency for Khalifa Hamaas Abdul Khaalis formerly Ernest Timothy McGhee; RE: Personal [partial] (4 pages)	08/11/1996	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Dawn Chirwa
OA/Box Number: 14404

FOLDER TITLE:

Denied Commutations - Closed [8]

2006-1704-F
db3825

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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robbery, occurred in Washington, D.C. in 1967. (b)(6)

[009]

Background:

As might be expected with such a savage and sensational episode in the Nation's Capital, the Hanafi takeovers were the subject of widespread media coverage at the time. The crime and subsequent trial also received extensive publicity because of petitioner's prominent national position as a Muslim leader. The presentence report recounts his long history of Muslim involvement, reporting his first association with the Muslim faith in 1947 and his subsequent emergence as a teacher and spiritual leader of Islam with an international reputation.

Petitioner was born (b)(6) the seventh of 11 children. He served honorably in the U.S. Army during World War II (1942-1944), completed his undergraduate studies at the City College of New York, and attended graduate school for six months at Columbia University in New York City. He also studied at the Midwestern Conservatory of Music in Chicago for about one year. He converted to Islam in 1947, became an orthodox Muslim, and adopted his present name. He headed the University of Islam in Chicago, Illinois between 1956 and 1958, and he continued his religious activities in that city over the next decade. (His employment history reflects that he earned a living in a variety of occupations, including school teacher, longshoreman, and professional musician.) In the late 1960's, after serving for four years as a senior level executive in the National Urban League, he became National Secretary of the Nation of Islam, often referred to as Black Muslims. A few years later he withdrew (along with his protégé Malcolm X) to establish the Orthodox Hanafi Muslims, largely because of what he regarded as the Nation of Islam's racially discriminatory policies. He moved to Washington, D.C. in 1970, where he again worked for the Urban League and served as national leader of the Orthodox Hanafi Muslims. His family began operating a jewelry store there in 1972.

In 1972 petitioner wrote a book that was apparently interpreted by certain factions within the Nation of Islam as an insult to their leadership and their organization. In 1973 the hostility between the rival religious sects culminated in the brutal murder of seven members of petitioner's family. This shocking and violent episode is described in detail in the clemency petition:

In 1972, increasingly disturbed by the separatist doctrine of the Nation of Islam, its deviation from orthodox Islamic teachings and its practices, Mr. Khaalis wrote a letter strongly criticizing the separatist doctrine and practices of the leadership and sent copies to its mosques across the country.

The response to the letter came on January 18, 1973, while Mr. Khaalis was away from his home. A group of approximately

for eight of the 24 counts charging kidnaping while armed be served consecutively to each other and concurrently with his other sentences, for a total of from 40 to 120 years' imprisonment on the kidnaping while armed charges. His aggregate minimum sentence therefore is 41 years' imprisonment, which consists of the minimum 40-year term imposed on eight of the kidnaping while armed counts, plus the minimum one-year term imposed for conspiracy to kidnap while armed.

eight Black Muslims forced their way into the Khaalis home on 16th Street and murdered or maimed all of his family that were found there. After rounding up the occupants of the house and demanding money, the intruders bound them, covered their heads and, one at a time, shot them execution style, leaving seven dead, and others they presumed dead, critically wounded.

Mr. Khaalis' oldest son, Daud, trained to succeed him as spiritual leader of the Hanafis, was shot in the head and killed. His 10-year-old son, Rahman, was similarly murdered with his hands tied behind his back. Abdul Nur, a young man in the community and an adopted son preparing to attend West Point Military Academy, was also executed with two bullets to the head.

The killers drowned four young children, three of them Mr. Khaalis' children, the youngest but nine days old, and his one and one-half-year-old granddaughter.

Two more victims, Mr. Khaalis' wife Bibi and daughter Amina, were repeatedly shot in the head. Both miraculously survived. Bibi was left brain damaged, epileptic, paraplegic and nearly blind. Amina survived with relatively minor physical disabilities but suffering extreme emotional trauma. Amina was later to be forced to relive the nightmare of that day by testifying at the repeated trials of her attackers.

In connection with the attack on petitioner's family, six men were tried and three of them, William Christian, Theodore Moody, and John W. Clark,⁵ were convicted in 1974 of seven counts of first-degree premeditated murder, seven counts of first-degree felony murder, two counts of assault with intent to kill while armed, one count of armed robbery, three counts of attempted robbery while armed, one count of first-degree burglary while armed, and one count of conspiracy, and sentenced to life imprisonment.⁶ The judgments of conviction were affirmed on all counts as to Christian, Moody, and Clark. *Christian v. United States*, 394 A.2d 1 (D.C. App. 1978).

⁵Defendants John Griffin and James Sinclair were tried with Christian, Moody, and Clark. Griffin was convicted on all counts; however, after the court granted a motion for a new trial based on newly discovered evidence, he was acquitted after retrial. The court granted a motion for judgment of acquittal as to Sinclair at the close of the government's case. The sixth defendant, Ronald Harvey, was tried separately and convicted; however, he died while his case was on appeal. A seventh defendant, James Price, was scheduled to be tried separately in 1975; however, Griffin, Moody, and another individual murdered him in 1974 while he was in Holmesburg Prison in Philadelphia awaiting trial on unrelated charges. An eighth individual, unindicted co-conspirator Thomas Clinton, died five weeks prior to his indictment.

⁶Sentences of life imprisonment were imposed on each man for each count of premeditated murder, felony murder, assault with intent to kill, and attempted robbery while armed. The sentences for multiple counts of like offenses were made concurrent with each other but consecutive to the sentences for groups of other like offenses. In addition, concurrent sentences of life imprisonment were imposed for armed robbery and burglary while armed, and a concurrent sentence of from one to five years' imprisonment was imposed on the conspiracy count.

Following the slaughter of his family, petitioner reportedly dedicated himself single-mindedly to his religious activities, and by 1977 had become an internationally known and respected teacher and spiritual leader of Islam. At the time of his offense, petitioner claimed to have initiated the B'nai B'rith "protest action" because the individuals who had been convicted of murdering his family in 1973 had not been executed. He also justified his actions as having been precipitated by "religious conscience," noting in particular the anger he experienced following the release in 1977 of a motion picture entitled, "Mohammed, Messenger of God," which he considered sacrilegious because it portrayed the Prophet in violation of the Koran. In the course of the siege he demanded that his family's murderers be delivered to him for punishment, and that movie theaters in New York and elsewhere cease showing the film he found offensive.⁷ As recounted by the probation officer in the evaluation section of petitioner's presentence report: "Mr. Khaalis seems to regret that some innocent people were harmed by his actions, but he seems also to feel that his actions were fully justified as a means of protecting his Faith and his country from greater harm. He advised this officer that his hands are clean and that he is clean."

A majority of petitioner's 11 codefendants remain incarcerated,⁸ including all but one of petitioner's six codefendants involved in the B'nai B'rith takeover.⁹ The two men who took over the District Building were convicted of second-degree murder and remain incarcerated. Of the

⁷Petitioner's selection of the B'nai B'rith Headquarters and the other locations was designed primarily to stop the showing of the film. He testified at trial, "We stopped it by going to B'nai B'rith, which is one of the Zionist headquarters in this country." Petitioner also testified at trial, "I asked Allah to let me expose the Zionist Jews who wrote the poisonous lessons that the so-called Black Muslims wrote." Also, one of the hostages (Shirley Feigenbaum) stated that "Khaalis blamed the Jews for the fact that the murderers of his family were not dead, because the Jews controlled the banks, the newspapers, and the media." The Islamic Center apparently was chosen because its director, Dr. Mohammad Rauf, was thought to be "misinterpreting Islam in this country" and was blamed "for not doing enough to stop the showing of the movie of Mohammad's life" and for supporting the Black Muslim group headed by Wallace Mohammad in Chicago. The District Building was chosen, in petitioner's words, "To make the city aware the Hanafi . . . were citizens . . . , not to be intimidated, harassed, ignored, when our children and women were shot up and slaughtered" It also appears to have been chosen in the hope of taking hostage someone of importance to help further their goals. See *Khaalis v. United States*, 408 A.2d at 316-332.

⁸The sentences and parole eligibility or release dates of all 11 codefendants are set forth below. Parole eligibility dates are adjusted downward by 10 days a month in accordance with D.C. Good Time Credit Act of 1986 (24 D.C. Code § 428). See n. 11 *infra*.

Location	Defendant	Sentence	Parole Eligibility Date
B'nai B'rith	Abdul Hamid	36 to 108 years	(released in 1981)
	Abdul Adam	44 to 132 years	1/2010
	Abdul Latif	36 to 108 years	9/2004
	Abdul Razzaaq	40 to 120 years	5/2007
	Abdul Salaam	40 to 120 years	5/2007
	Abdul Shaheed	36 to 108 years	8/96
District Building	Abdul Muzikir	77 years to life	3/2032
	Abdul Nuh	47 years to life	1/2012
Islamic Center	Abdul Al-Qawee	24 to 72 years	(released 5/94)
	Abdul Rahim	28 to 84 years	(released 11/94)
	Abdul Rahman	28 to 84 years	4/1999

⁹According to the United States Attorney, the sentencing judge, the late Honorable Nicholas S. Nunzio, believed that Abdul Hamid, who was convicted of various offenses in connection with the takeover at the B'nai B'rith building, was less culpable than the other defendants; the court, therefore, on its own motion, subsequently reduced Hamid's sentence, resulting in his release from custody in 1981.

three men involved in the takeover at the Islamic Center, who were convicted of nine counts of kidnapping while armed, two have been released on parole as a result of motions filed by the District of Columbia Board of Parole to reduce their minimum terms in order to advance their parole eligibility dates.¹⁰

Petitioner's wife and the other surviving members of his family continue to reside in Washington, D.C. in a home given to the family in April 1971 by former professional basketball player Kareem Abdul-Jabbar.

Parole eligibility, other relief available, prison adjustment:

Petitioner, now 73 years old, has served more than 19 years in prison. He becomes eligible for release on regular parole in the ordinary course in January 2008 (with credit for good time), at which time he will be 85 years old.¹¹ Throughout his incarceration petitioner has maintained a clear conduct record and received excellent work reports. He reportedly has continued to be "spiritually involved," and maintains "a very positive relationship with the correctional, medical, and Case Management staff without report of any negative institutional behavior."

¹⁰Pursuant to D.C. Code § 24-201c, the D.C. Board of Parole may, in its discretion, submit a motion for "reduction in minimum sentence" (RIMS) to the sentencing court to reduce an inmate's sentence below the minimum term when the inmate has demonstrated a "reasonable probability" that he can live and remain at liberty without violating the law, and when his immediate release "is not incompatible with the welfare of society." Abdul Al-Qawee was paroled on May 20, 1994 pursuant to such a RIMS motion, based on his good conduct in prison (including receipt of two college degrees) and his claim that he was influenced by his two older brothers to commit the crimes. The D.C. Superior Court also granted a similar motion on behalf of Abdul Rahim to make him immediately eligible for parole, and he was paroled on November 23, 1994. The court currently is considering a RIMS motion on behalf of the third Islamic Center defendant, Abdul Rahman, which the Board of Parole submitted to the court on May 6, 1996.

¹¹With respect to the calculation of the parole eligibility dates of petitioner and his codefendants, by memorandum dated September 1, 1994, David W. London, Supervisory Legal Instruments Examiner, D.C. Department of Corrections, Occoquan Facility, advised:

On April 11, 1987, the District of Columbia Good Time Credit Act of 1986, Title 24 DC § 428, became law (this statute was repealed effective June 22, 1994). The Good Time Credit Act allowed "Good Time" (or time off for good behavior) to be applied to the minimum, as well as the maximum sentence imposed by the Court. The Act was not to be applied retroactively, but provided that an inmate already incarcerated would be entitled to a prorated portion of good time, and that it would be applied to the minimum portion of the remaining sentence to be served from the effective date of the Act. In Inmate Khaalis' case, on April 11, 1987, he had 31 years and 12 days remaining to be served before reaching his original parole eligibility date of March 30, 2018.

Since the remaining portion of the sentence exceeds 10 years, Inmate Khaalis was entitled to a 10 day a month reduction on the remaining 31 years and 12 days to be served on the minimum sentence. A 3,724 day reduction has been applied to Inmate Khaalis' minimum sentence resulting in a new adjusted parole eligibility date of January 18, 2008.

On March 1, 1995, petitioner applied to the D.C. Board of Parole for a reduction of his sentence below the minimum term, or in the alternative, for geriatric parole.¹² The Assistant Director for Health Services, D.C. Department of Corrections, recommended that petitioner be granted geriatric parole. By memorandum dated September 6, 1995, the Director of the D.C. Department of Corrections also recommended to the D.C. Board of Parole that petitioner be granted geriatric parole, with the caveat that "given the violent and sophisticated nature of his offenses, he should be placed under close and intensive parole supervision." On September 11, 1995, the D.C. Board of Parole unanimously disapproved petitioner's request for geriatric parole, stating:

Subject remains a threat. Nothing suggests he understands his actions . . . or the destruction . . . caused. Medical condition does not appear to be life-threatening.

As reflected in the notes of petitioner's interview by the Parole Board in connection with his recent requests for release, petitioner continues to maintain that "he was not aware of the takeover of the District Building." The parole hearing record also contains the following remarks, which provide insight into the rationale for the adverse decision reached by the Board following its personal interview of petitioner:

Subject ruined the lives of young men with good potential. He provided the guns and the motivation. His actions resulted in a death of a citizen. He exhibits no sense of responsibility for these actions and believes he would be a hero in an Islamic country.

Petitioner renewed his request for geriatric parole on October 12, 1995, and the Director of the D.C. Department of Corrections and the Assistant Director for Health Services again supported his second request for geriatric parole. Nonetheless, by order dated February 21, 1996, the D.C. Board of Parole again denied petitioner's request for release.

Grounds for clemency:

Petitioner requests clemency on the basis of his age, poor health, the "excessive severity" of his sentence, and his excellent prison adjustment and rehabilitation. (b)(6)

(b)(6)

(b)(6) In connection with petitioner's requests for reduction of minimum sentence or geriatric

¹²The D.C. Medical and Geriatric Parole Act of 1992, which became effective on May 15, 1993, gives the D.C. Board of Parole independent authority to grant medical or geriatric parole. D.C. Code § 24-263(a). A geriatric inmate is defined as one who is 65 years of age or older who suffers from a "chronic infirmity, illness, or disease related to aging, and poses a low risk to the community." D.C. Code § 24-261. In determining whether to grant geriatric release, the D.C. Board of Parole considers the age of the inmate, the severity of the illness, disease, or infirmities, a comprehensive health evaluation, institutional behavior, level of risk for violence, criminal history, and alternatives to maintaining the inmate in a traditional prison setting. D.C. Code § 24-265(c).

parole in 1995, the health services unit reported that petitioner

(b)(6)

(b)(6)

With respect to the present state of his health, prison physicians do not indicate that petitioner's medical condition is life threatening.

Petitioner's counsel in connection with the clemency application, former Attorney General Ramsey Clark, characterizes petitioner as an internationally-known and respected Muslim leader, "a wise, gentle, loving and good man," and suggests that clemency would be regarded as "an act of reconciliation and compassion respected by all." However, he also appears to base the case for clemency on the same claims made by petitioner at the time of the offense, *viz.*, that his actions were justified by their religious objectives, as well as the trauma associated with his family's murder by the Black Muslims four years before. Specifically, he argues that petitioner was motivated solely by his "concern for the purity of his religious commitment," that he did not intend to injure anyone, and that he was seeking only the "fulfillment of his religious commands." Counsel also continues to advance the notion, which was rejected at trial, that petitioner was unaware of the takeover at the other sites and that the death of the radio news reporter and other injuries caused by gunfire at the District Building were "caused by others acting without his knowledge and were not foreseeable."

Neither petitioner nor his counsel submitted statements in connection with the clemency petition indicating that petitioner in any way accepts responsibility for his crimes or is remorseful for his conduct. The only indication of petitioner's current state of mind in this regard appears in a letter filed by petitioner in connection with his 1995 request for reduction of sentence or geriatric parole and obtained by this office from the D.C. Board of Parole:

During my incarceration, I have tried to live abidingly by the codes and standards of this institution. As for my crime and the sentence, I am deeply remorseful of the acts, and especially of the death of the young gentleman, Mr. Maurice Williams, who I know now to have been an up-and-coming radio personality, and the many other people that were physically and emotionally harmed during the events that transpired on March 9, 1977. I'm totally responsible for the entire events that took place on that dreadful occasion. I say to all of the creator's kind: As-salam' Alaikum! I forgive all, no matter what crime they have committed against me and my family, in the name of Allah according to Allah's wisdom, knowledge and understanding.

Support for clemency:

Petitioner's request for clemency is supported by a number of Muslim leaders in the United States and abroad. The views of Sultan Bin Mohammed Al-Qassimi, the Ruler of Sharjah, United Arab Emirates -- that petitioner and his codefendants "acted not from hatred, greed or lust, but to protect their religion as they understood it" -- appear to be representative of the beliefs of petitioner's supporters. The Sultan writes that petitioner "has conducted himself with religious fidelity and honor during his long imprisonment" and asks for his release "[i]n the spirit of justice and reconciliation."

Official comments:

In October 1993, then Acting United States Attorney J. Ramsey Johnson wrote to strongly oppose clemency. He stated as follows:

In his petition, Khaalis seeks commutation of sentence on the grounds of what he characterizes as the "excessive severity" of his sentence, his age, and his health.* He attempts to justify his actions based on his religious fervor and the suffering he endured at the hands of a group of Black Muslims who murdered most of his family in 1973. His claim that he demonstrated compassion for the hostages and made threats only to maintain discipline and control is contradicted by the testimony at trial of hostages who were brutalized and terrorized by Khaalis and his followers. His argument that no one was seriously injured at the B'nai B'rith Center ignores the fact that at the District Building, one man was killed, another was paralyzed for life, and two others suffered gunshot wounds. Khaalis's claim that he did not even know the names of the men who took over the District Building is an attempt to resuscitate the notion, pressed at trial and rejected by the jury, that the simultaneous takeovers of the District Building and the Islamic Center were somehow spontaneous outbursts of religious fervor, executed without Khaalis's direct participation or knowledge. Khaalis baldly asserts that the sentence imposed upon him was the product of the court's "excessively emotional reaction" to the events described at trial and "a profound prejudice against and fear of Islam and African-Americans who convert to Islam." He offers no evidence whatsoever to support these egregious allegations.

*Although Khaalis claims in his clemency petition that he has "serious medical problems," (b)(6) that threaten his life if he remains imprisoned," the Summary of Medical History submitted with his petition indicates that on July 12 and again on July 13, 1993, he refused to come to the infirmary examining area for a current medical evaluation. Indeed, on July 13 he signed a statement that he refused any and all medical treatment and/or tests prescribed by the Department of Corrections and its physicians.

The former Acting United States Attorney concluded that:

It is clear that Khaalis is responsible for a series of brutal crimes that directly harmed over 130 people and terrified the entire community for a prolonged period of time. The sentence imposed was fair and is commensurate with the severity of the crimes for which he was convicted. Khaalis offers no grounds whatsoever that would justify commutation of his sentence. For the reasons outlined herein, this Office vigorously opposes any commutation of his sentence.

The present United States Attorney, Eric H. Holder, Jr., advises that he concurs in his predecessor's recommendation that the petition be denied. The sentencing judge, the late Honorable Nicholas S. Nunzio, stated that he wished to take no position on the clemency petition.¹³

Recommendation:

Petitioner organized and executed what is characterized in his presentence report as "one of the most sensational crimes in the history of [Washington, D.C.]." He coordinated the armed takeover of three buildings and personally supervised the ensuing siege at the B'nai B'rith building, in the course of which more than 100 hostages were terrorized and physically assaulted. During the assault on the District Building, one man was killed and another was shot and paralyzed for life. Although not personally present during commission of the crimes at the Islamic Center and the District Building, petitioner was found to have had overall responsibility for the takeovers and this finding was affirmed on appeal. In connection with recent parole proceedings, petitioner wrote to express "deep remorse" for the takeovers, conceding for apparently the first time that he was "totally responsible for the entire events." However, the genuineness of petitioner's acceptance of responsibility and remorse was determined to be suspect by the D.C. Board of Parole. Indeed, the Board specifically found that petitioner "exhibits no sense of responsibility" for the crimes.

Ordinarily, I am inclined to be somewhat sympathetic to requests for release from prisoners of an advanced age who have served a substantial time in prison, particularly where their medical situation is such as to make release on compassionate grounds potentially appropriate. In this case, however, the calculated and heinous nature of petitioner's crime creates a heavy presumption against clemency under any circumstances. Even taking into account the respect and support petitioner apparently enjoys by reason of his stature as a religious leader, and the suffering inflicted upon him by the extraordinarily cruel murder of virtually his entire family, there appears to be no credible basis whatever for a grant of clemency that would outweigh the barbaric treatment he was willing to inflict on entirely innocent victims in order to advance his personal religious goals. (Considering that over four years elapsed between the murder of his family in January 1973 and the commission of his own violent crime in March 1977, I am in any event dubious about the weight that the passion of his personal tragedy, as opposed to unrestrained religious zealotry, should be given as the provocation for his actions.) Judging from some of the statements made in his clemency petition, religious zeal remains the driving force in his life even after almost two decades in prison. Whether or not the D.C. Board of Parole is correct that petitioner's release at this time would create a threat in any specific sense, it is certain that the release of an individual avowedly and unrepentantly willing to use violence on a massive scale as an expression of his "religious conscience" would send an unfortunate signal respecting this Administration's willingness to tolerate cold-blooded and brutal acts of terrorism in the name of religion.

In sum, it is my opinion that the brutal and violent nature of petitioner's crimes precludes any gesture of clemency whatever his age or the state of his health, particularly in light of his continued obdurate refusal to express genuine remorse for his conduct. In the circumstances,

¹³Judge Nunzio died shortly after submitting his response to the office's request for his views on the clemency petition.

I believe that any decision respecting early release of this petitioner should be made by parole authorities, in accordance with standards and procedures established under D.C. law, and not through presidential intervention in the form of executive clemency. Accordingly, I advise you to deny the petition.

Respectfully submitted,

Pardon Attorney

Date: August 11, 1996