

STEVE COHEN

9TH DISTRICT, TENNESSEE

1005 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

TELEPHONE: (202) 225-3265
FAX: (202) 225-5663

CLIFFORD DAVIS/ODELL HORTON
FEDERAL BUILDING
167 NORTH MAIN STREET
SUITE 369
MEMPHIS, TN 38103

TELEPHONE: (901) 544-4131
FAX: (901) 544-4329

www.cohen.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515-4209

COMMITTEE ON THE JUDICIARY

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WATER RESOURCES AND ENVIRONMENT

June 18, 2013

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama:

You have, at times, made bold use of your executive power to help the powerless, from granting deferred action to DREAM Act beneficiaries to providing some relief from crushing student loan burdens. But you have been surprisingly reluctant to use your pardon power, a very important power granted to you under the Constitution. However, you still have the opportunity to help those who need it most and leave an important legacy of justice.

Criminal sentences reflect a society's values but as our values change, many of those sentences unfortunately remain on the books and people still serving them suffer needlessly. In his "Letter from a Birmingham Jail," Dr. Martin Luther King, Jr. argued that "one has a moral responsibility to disobey unjust laws." I hope you will use your legal authority under the Constitution, and your moral responsibility in the spirit of Dr. King, to "disobey" unjust sentences and make them right through your pardon power.

To date, you have pardoned only 39 people and commuted one sentence, far fewer than most of your recent predecessors. Meanwhile, our prisons are packed with non-violent offenders serving excessive sentences, particularly for drugs, simply because Congress wanted to look tough on crime. But the public is awakening to the fact that this policy is taking us in the wrong direction. 40 years of the drug war has proven to be a failure and not only are we throwing away the lives of millions of people who pose no risk to society, but we are also wasting precious resources through our vast prison industrial complex.

We can do better and you have the opportunity to lead the way. Unfortunately, the Pardon Office at the Department of Justice (DOJ) is currently headed by a holdover from the Bush Administration who has been admonished by the DOJ's Inspector General for withholding and misrepresenting information. He should be immediately replaced by a highly respected figure in

the legal field, someone who would see the job as an opportunity to restore liberty to those who have long since paid their debt to society, not one who sees denying justice as his mission.

This new leader of the Pardon Office ought to create a special Compassionate Release Review Board (CRRB) to conduct a systematic review of the sentences of all current prisoners and recommend worthy candidates for pardon or commutation. As part of this review, a CRRB would also consider broad classes of offenders serving unjust sentences that no longer align with our national values and policies.

For example, in the 1980s, tough new sentences were imposed on crack cocaine, leading to a 100:1 disparity compared to powder cocaine. Thanks to your leadership, Congress recognized the injustice of this law, including the racial disparities in sentencing it created, and passed important legislation that you signed in 2010, the Fair Sentencing Act, which greatly reduced the disparity. Yet because the law was not made retroactive, thousands of individuals who were sentenced prior to 2010 remain in prison, serving sentences that have now been repudiated by Congress and your Administration.

Similarly, the American people have changed their attitudes towards marijuana, and a majority now supports legalization, but the laws on our books have yet to catch up, leaving too many people in prison waiting for Congress to act. In addition, your Administration has continued to prosecute individuals and businesses for violating federal marijuana laws despite their being in full compliance with their state laws regulating the medical use of marijuana. You should use your commutation authority to correct these injustices.

This is not only a matter of fairness. Considering the historic fiscal constraints we face, releasing prisoners who pose no risk to society and who have served the bulk of their sentences would help save precious resources. This is an issue that should bring liberals and conservatives together.

In your recent inspiring speech at Morehouse College, you urged the graduating class to defend the powerless. You also spoke of the special obligation you felt to “help those who need it most, people who didn’t have the opportunities that I had — because there but for the grace of God, go I — I might have been in their shoes. I might have been in prison. I might have been unemployed. I might not have been able to support a family. And that motivates me.”

You can channel this motivation into a historic opportunity to give a second chance to people who have paid their rightful debt to society. In one bold stroke, you can create a CRRB to evaluate existing sentences in light of our shifting policies and values and recommend release where justice no longer calls for an offender’s confinement. The Constitution grants you unlimited, unfettered authority to grant pardons and commutations and this power cannot be thwarted by Congress, like so much of your agenda. You can use this power to reduce unjust sentences and right some of the wrongs of our criminal justice system. I urge you to use it fully, compassionately, and without delay for justice delayed is most certainly justice denied.

Thank you for your leadership on criminal justice issues and I look forward to working with you on this very important matter.

As always, I remain,

Most sincerely,

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

Steve Cohen
Member of Congress

cc: Attorney General Eric H. Holder, Jr.