

**Overall Instructions for Federal Defenders:  
How to Determine Whether an Applicant Meets the Criteria  
What Is Required in a Clemency Package**

Amy Baron-Evans, abaronevans@gmail.com  
Jennifer Coffin, jennifer\_coffin@fd.org

Please review this memo whether you will only be gathering clients' documents for *pro bono* lawyers, consulting on whether cases meet the criteria, providing memos to Clemency Project 2014 on whether cases meet the criteria, preparing submissions, or otherwise assisting clients or *pro bono* lawyers. Even offices that do not plan to help will get requests for documents, information about clients' cases and personal circumstances, and advice about sentencing law.

This memo lays out the overall process, as well as how to analyze each of the criteria and what goes in a clemency package. In addition, memos on particular issues, including obtaining documents; interpreting and using BOP records; conflicts; analyzing whether the sentence would be lower today; the time served requirement; the non-violent offender and history of violence criteria; and a release plan are posted at <http://www.fd.org/navigation/select-topics-in-criminal-defense/sentencing-resources/subsections/clemency>. Clemency Project 2014 has been given essentially the same materials for *pro bono* lawyers.

We will answer questions, help spot issues, direct you to the right resources, review analyses of the criteria at your request, and otherwise help. If you review cases to determine whether they meet the criteria, we can double check a negative conclusion (*e.g.*, you might have missed a reason the person really does meet the 10-years-served requirement, or a reason the sentence would be lower if imposed today), and can help improve on a positive conclusion (*e.g.*, the sentence may be lower than you thought). We will give advice if you ask.

Your analysis of why many people *do not* meet the criteria can be fairly simple, for example, you can send us a list of names and BOP Register numbers for people who were sentenced to 10 years or less. (We think there will be lots of these.) Your analysis of why they *do* meet the criteria should be the foundation of the Executive Summary and the criteria section of the Memorandum in Support of Petition for Commutation of Sentence. *See* Parts III and IV.

If you prepare submissions, please send them to us. We will check them over to make sure everything is in order, and pass them on to Clemency Project 2014, which will submit them to the OPA. If the case does not meet or arguably meet the criteria, and you believe a petition should be filed, it can be filed directly with OPA. Petitions filed through Clemency Project 2014 will be considered on a priority basis and may have a presumption in their favor. Petitions filed directly with OPA will be processed in the normal course.

**I. Eligibility Criteria and Components of a Submission**

The President's sentence commutation initiative invites petitions from inmates who:

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- Are currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today;
- Are non-violent, low-level offenders without significant ties to large-scale criminal organizations, gangs, or cartels;
- Have served at least 10 years of their sentence;
- Do not have a significant criminal history;
- Have demonstrated good conduct in prison; and
- Have no history of violence prior to or during their current term of imprisonment.<sup>1</sup>

For those who qualify, the clemency package will consist of the following components:

- Executive Summary of the criteria
- OPA Checklist (attached as Appendix A)
- OPA Form “Petition for Commutation of Sentence” (available at [http://www.justice.gov/pardon/forms/commutation\\_form.pdf](http://www.justice.gov/pardon/forms/commutation_form.pdf))
- Memorandum in Support of Petition for Commutation of Sentence – analysis of the criteria, mitigation, any disparity issues, release plan
- Each “Necessary” document listed in the OPA Checklist, any “Elective Items” listed in the OPA Checklist that you decide to include, and any other exhibits/appendices you decide to include

Submissions need to be succinct, easy to follow, and supported by citations to the relevant documents and law. The Office of the Pardon Attorney (OPA) will be reviewing thousands of petitions, and time is of the essence.

## **II. Obtaining Necessary Documents and Other Information**

As explained in Necessary Documents and How to Obtain Them, documents in four categories need to be obtained and reviewed in order to evaluate the case and prepare a submission: (1) case documents (which may or may not be available on PACER); (2) certain BOP records; (3) any pending petition for commutation and accompanying materials, and (4) any request to BOP for compassionate release, any approval or denial memorandum provided to inmate, and any relevant administrative remedy. Some of these documents are required to be included with the submission to the OPA; others can just be cited, or attached if deemed appropriate.

Attached to the Necessary Documents memo are: (1) a checklist of case documents and potential sources for obtaining them (if you do not already have all of them); (2) a sample letter to client; (3) a consent to release of information; (4) a sample motion for leave to obtain and review documents under seal and/or not available on PACER; (5) a sample notice of [limited] appearance of counsel; (6) a consent form for obtaining records from BOP; and (7) a Certification of Identity form for obtaining any pending petition. *Id.*, Apps. A-E.

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<sup>1</sup> [http://www.bop.gov/resources/news/pdfs/Notice\\_to\\_Inmates\\_Initiative\\_on\\_Executive\\_Clemency.pdf](http://www.bop.gov/resources/news/pdfs/Notice_to_Inmates_Initiative_on_Executive_Clemency.pdf).

If you are obtaining documents for any purpose (to provide them to a *pro bono* lawyer, to determine whether the applicant meets the criteria, or to prepare a submission), have the applicant sign and return to you the consent to release of information, the BOP consent form, and the Certification of Identity. *Id.*, Apps. B, C, F1, F2. You should also ask if s/he has already filed a petition for sentence commutation or submitted a request for compassionate release, and if so, what the status is and to send you a copy if s/he has one. You can also obtain a pending petition with the Certification of Identity, *id.*, App. F2, and information regarding a request for compassionate release with the BOP consent form, *id.*, App. F1.

While waiting for a response, you can check the docket sheets and available documents on the criminal, civil (for any habeas pleadings and orders), and appellate dockets on PACER to determine which documents will need to be obtained from other sources, possibly with a consent to release of information or a motion for court order. *Id.*, Apps. D, E.

In addition, if you do not already know, ask the applicant if another attorney previously represented or currently represents him/her for any purpose. If so, determine whether the applicant wants that attorney to represent him/her for purposes of sentence commutation. If a pre-existing attorney will represent the person, and that attorney is in private practice, tell the attorney that s/he can participate in the Clemency Project 2014 process by contacting [croseberry@nacdl.org](mailto:croseberry@nacdl.org), and please let us know by emailing [abaronevans@gmail.com](mailto:abaronevans@gmail.com).

You already know most of this, but there is a special procedure for setting up attorney/client calls:

***U.S. Mail.*** Mail to an inmate must be marked “Special Mail-Open Only in the Presence of the Inmate.” The return address must identify the attorney by name and legal title (Attorney at Law), not just the law office, *e.g.*, “Jane Doe, Attorney at Law, Federal Defender Office ...” not “Federal Defender Office ....” By doing so, the correspondence will be opened only in the presence of the inmate and may not be otherwise reviewed. Failure to do so will result in the institution not treating the correspondence as confidential.

***Corrlinks.*** Corrlinks emails are good only for limited, non-confidential communications. They are not confidential and the messages are limited in length. The inmate initiates the request to communicate with you and you receive an email that requires you to consent to be added to the inmate’s contact list. Emails from the inmate do not come directly to your inbox. You can set the account to send an email to alert you that there is a new message from the prisoner, but this feature is unreliable as Corrlinks does not always send an email notifying you of a new email from the inmate. So you need to periodically log in to Corrlinks to check to see if you have any messages.

***Unmonitored Attorney Client Telephone Calls.*** The only way to be sure of communicating confidentially is an unmonitored attorney client phone call. Otherwise, the client has to call collect or use her personal phone call funds, and these calls are subject to monitoring. You need to request the call to avoid delay and ensure that it happens. The request should not

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come from the inmate because it may be ignored, and because he must show that communication with his attorney by other means is inadequate in order to receive permission.

Ordinarily, you would contact the case manager or unit manager to set up an unmonitored call. BOP has asked that you use the email links for the executive assistant for each institution posted on its website. Go to this link, <http://www.bop.gov/locations/list.jsp>, then click on the institution, and you will see the email address on the left. Write “Clemency Project 2014 attorney client call” (or “records request” if you are sending the BOP consent form to obtain documents) in the subject line. If the executive assistant is unresponsive, try contacting BOP Regional Counsel or the legal staff at the facility, *see* Appendix B.

### **III. Evaluating Whether the Case Meets the Criteria**

We recommend that you analyze the 10-years-served and non-violent offender criteria first. If the applicant’s own conduct in the instant offense was violent (as defined in #2 below), he is not eligible for commutation under this initiative. The 10-years-served criteria can be analyzed fairly quickly in most cases and may lead to a conclusion that the applicant will never serve 10 years, or that a clemency submission should at least be delayed. In addition, how much time the applicant has already served will have a bearing on how far you need to go in analyzing how much lower the sentence would be if imposed today. Though not absolutely necessary, the best case for clemency will be that time served (as defined in #1 below) is as much or more than the sentence that would be imposed today.

If a person does not meet or arguably meet the criteria, a clemency submission can be filed directly with the OPA. *See* Part V.

In interpreting some of the criteria, keep in mind that the Deputy Attorney General has repeatedly said that the President wants to consider applicants “similar to” the eight whose sentences were commuted in December 2013.<sup>2</sup>

Whether you are evaluating cases for Clemency Project 2014 or preparing submissions, you should support your analysis with citations to the relevant source documents and law so that the analysis will be useful.

#### **1) Served at least 10 years**

Besides those who have already served 10 or more calendar years, applicants will fall into three other categories: (a) those who will never serve 10 years because they are serving a sentence of 10 years or less; (b) those who are serving a sentence of more than 10 years and can argue that they will reach 10 years at some point by January 20, 2017 based on some combination of Good Conduct Time (GCT) credit, projected 12-month RDAP reduction if

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<sup>2</sup> *See, e.g.*, Remarks as Prepared for Delivery by Deputy Attorney General James M. Cole at the Press Conference Announcing the Clemency Initiative, Washington, D.C., April 23, 2014, <http://www.justice.gov/iso/opa/dag/speeches/2014/dag-speech-140423.html>.

determined eligible, and/or state time served not included in BOP's "time served" figure; and (c) those who are serving a sentence of more than 10 years but cannot reach 10 years by January 20, 2017 through any combination of arguments.

As explained below, you cannot rely on "current sentence length" or "actual time served" on the lists provided Defenders by Clemency Project 2014 in order to disqualify anyone.

**a) will never serve 10 years**

The only clear reason to disqualify an applicant once and for all based on the 10-years-served requirement is that the sentence imposed (or as modified) is 10 years or less. First, check the judgment and any order or amended judgment modifying the sentence imposed. Second, check whether the applicant has served time in state custody that the judge took into account in fashioning the federal sentence that should be aggregated with the federal sentence. This would occur if:

- the federal judge imposed a shorter federal sentence in order to reflect time the defendant spent in state custody that BOP would not credit to service of the federal sentence -- usually reflected in an adjustment or departure under USSG § 5G1.3, or
- more generally, the federal judge indicated in sentencing the defendant that he/she took into account the defendant's prior state sentence in determining the "reasonable incremental punishment" for the instant federal offense. USSG § 5G1.3, comment. (n.3).

For example, suppose the defendant was sentenced to five years in state court, and had served one year of that sentence at the time he was sentenced in federal court. The bottom of the guideline range for the federal sentence was 151 months. The judge believed that a reasonable incremental punishment for the instant federal offense would be 91 months. The judge could have imposed a federal sentence of 151 months to run concurrent with the state sentence, but instead imposed a federal sentence of 91 months to run consecutive to the state sentence. BOP would not credit any of the 60-month state sentence to the federal sentence because BOP gives credit for a state sentence only if it was ordered concurrent and only as of the date of the federal sentencing.

Evidence that this occurred should appear in the judgment, sentencing memoranda, and/or sentencing transcript. Note that you cannot rely on "current sentence length" shown on the lists provided by Clemency Project 2014 because it may not be correct in the first place, it is only as of the date BOP provided the data to Clemency Project 2014 (June 2014 for the first set of lists) but the sentence may have been revised later, and it does not include any time served in state custody that the judge took into account in fashioning the federal sentence.

**b. will serve 10 years by January 20, 2017 with GCT credit, RDAP reduction, and/or state time**

If the applicant is serving a sentence of more than 10 years, but has not yet served 10 calendar years, you can argue that he would meet the 10-years-served requirement with one or more of the following:

- Time up to Jan. 20, 2017
- Good Conduct Time (GCT) credit – 47 days/year of sentence imposed
- Residential Drug Abuse Prevention Treatment Program (RDAP) reduction –12 months
- Time served in state custody not reflected in BOP’s “Time Served” figure

The judgment and commitment order, and any order or amended judgment subsequently modifying the sentence imposed, will show the sentence the applicant is currently serving.

The Progress Report should specify the sentence imposed or as modified; the date the sentence “commenced”<sup>3</sup>; time served in a BOP facility as of the date of the progress report; jail credit (also called “credit for prior custody” or “prior credit time”)<sup>4</sup>; and Good Conduct Time (GCT) credit earned or lost as of the date of the progress report.

The SENTRY PPPI (Sentencing Information) shows “Time Served.” This number of years, months and days aggregates without differentiation:

- Pre-sentencing time served (after arrest), also known as “jail credit,” “prior credit time,” and “credit for prior custody,”
- Time served as a sentenced prisoner in a BOP facility (*as of the printout date*), and
- Concurrent/*nunc pro tunc* time served in a state facility credited towards the federal sentence.

Note that you cannot rely on “actual time served” shown on the lists provided by Clemency Project 2014 because it is only as of the date BOP provided the data to Clemency Project 2014 (June 2014 for the first set of lists), and does not include any GCT credit, projected RDAP credit, or most kinds of state time served that you can argue should count towards time served (like PPPI “time served,” it includes only pre-sentencing time served, time served in BOP custody, and concurrent/*nunc pro tunc* time served in a state facility that has been credited towards the federal sentence).

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<sup>3</sup> “A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.” 18 U.S.C. § 3585(a).

<sup>4</sup> This refers to “credit for prior custody,” defined as “any time [the defendant] has spent in official detention prior to the date the sentence commences—(1) as a result of the offense for which the sentence was imposed; or (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed; that has not been credited against another sentence.” 18 U.S.C. § 3585(b). *But see* The Interaction of Federal and State Sentences.

**Good Conduct Time Credit.** The PPPI’s “Time Served” figure does not include earned GCT credit, but earned GCT credit appears on the same page. GCT credit accrues at the rate of 47 days per year of sentence imposed. Inmates can lose GCT credit only for serious incidents (100-200 series violations) of up to 54 days per year, and they can have it restored. Loss and restoration of GCT credit will appear in the PD15 report. See How to Read, Interpret and Use BOP Records. A shortcut for determining GCT credit is to divide time served by .871. To get the most accurate number, use the Good Time Chart.

**RDAP.** The PPPI’s “Time Served” figure also does not include any reduction an inmate may receive for participating in the Residential Drug Abuse Prevention and Treatment Program (RDAP).<sup>5</sup> The RDAP eligibility requirements are contained in BOP Program Statement 5331.02.<sup>6</sup> Inmates serving life are not eligible for RDAP because they cannot participate in the final phase, which requires residence in a residential reentry center or home confinement. Inmates serving a term of years are typically determined to be eligible within 36-48 months of their projected release date, though it can be earlier or later (time varies by institution). Once a prisoner is determined to be eligible to participate, BOP re-computes the projected release date based on a tentative reduction of one year. This should be reflected in the PPPI, which will note a “3621(e) adjustment” or something similar. You can also request the Residential Drug Abuse Program Notice to Inmate, BP-A0761, with the BOP consent form.

**State Time.** If the applicant has served time in a state facility that is not reflected in the PPPI “Time Served” figure, you may have an argument that that time should count towards time served. See The Interaction of Federal and State Sentences, Parts I-III.

You should exercise judgment in making arguments based on GCT credit, RDAP reduction, or state time. Such arguments will be most effective if the applicant has more than a few years left to serve. When the applicant will meet the 10-years-served requirement through some combination of these arguments, consider asking the prosecutor to support clemency.

For example: Mr. Jones was sentenced to 360 months, and has been incarcerated since his arrest on January 20, 2008. By January 20, 2017, he will have served nine actual years (108 months). Thus far, he has earned all of his GCT credit. Assuming he does not lose any GCT credit between now and then, he will have served 124 months including good time by January 20, 2017. See Good Time Chart.

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<sup>5</sup> See 18 U.S.C. § 3621(e).

<sup>6</sup> BOP Program Statement 5331.02, Early Release Procedures Under 18 U.S.C. § 3621(e), [http://www.bop.gov/policy/progstat/5331\\_002.pdf](http://www.bop.gov/policy/progstat/5331_002.pdf). The definition of violent offenses in the program statement is broader than the definition in most statutes and guidelines and that you will use to determine whether the client meets the non-violent offender criterion. Most notably, inmates convicted of possession of a firearm and those convicted of a drug offense who received a guideline increase because a weapon “was possessed” are excluded from RDAP.

What if Mr. Jones had only been incarcerated since January 20, 2009? By January 20, 2017, he will have served eight actual years (96 months). Thus far, he has earned all of his GCT credit and assuming he does not lose any GCT credit, he will have served 111 months including good time by January 20, 2017. See Good Time Chart. Mr. Jones is still 9 months short. But he has been determined to be eligible to participate in RDAP. You can argue that because he is eligible for a 12-month reduction, he should be considered to have served 123 months by January 20, 2017.

**c. will not reach 10 years by January 20, 2017 through any combination of arguments**

If the applicant is serving a sentence of more than 10 years but there is no argument that s/he will meet the 10-years-served requirement by January 20, 2017, we are available to help with analyzing the other criteria and discuss the options. If the applicant is otherwise a good candidate (*e.g.*, a non-violent offender sentenced five years ago to 360 months and would likely be sentenced to no more than 135 months today), a clemency submission could be filed through Clemency Project 2014 later, could be filed directly with OPA now, or could be filed directly with OPA after January 20, 2017 when the inmate has more time in (but keep in mind that this clemency initiative is confined to this administration). If you can get the U.S. Attorney's support, it may not have to be delayed or filed directly with OPA.

**2) Non-violent offender**

When the Deputy Attorney General first announced the clemency initiative on January 30, 2014, he said that eligible candidates would be non-violent drug offenders. When the final criteria were announced on April 23, this was amended to non-violent offenders. Thus, regardless of the offense type (including robbery, possession of child pornography, or any other offense), you need to determine whether the applicant's conduct in the instant offense was non-violent.

Look at the proven facts of record to determine whether the applicant herself used, attempted to use, made a credible threat to use, or directed the use of physical force against the person of another. Attempt situations may warrant a closer look. For further guidance, see Was the Client a Non-Violent Offender? Does She Have Any History of Violence?; How a Person Who Was Convicted of a Firearms Offense, or Was Convicted of a Drug Offense and Received a Guideline Increase Because a Firearm "Was Possessed" May Qualify for Commutation.

**3) Currently serving a sentence that would likely be substantially lower today by operation of law**

The sentence may be lower today by operation of law for a variety of reasons, including:

- an applicable mandatory minimum has been reduced or eliminated by Congress (i.e., the FSA);

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- the guideline range has been reduced and the reduction was not retroactively applied (because the Commission did not make the amendment retroactive, relief was unavailable because a mandatory minimum or the career offender guideline stood in the way, or no one moved for a reduction);
- the Supreme Court rendered the guidelines advisory;
- Supreme Court and/or appellate decisions have narrowed the definitions of predicates used to require or enhance a mandatory minimum in a drug or firearms case, or to sentence the defendant as a “career offender” under the guidelines, or to increase the guideline range in an immigration case;
- an applicable mandatory minimum would be reduced or eliminated under the Attorney General’s charging policy; or
- a mistake or oversight occurred at sentencing that was not caught at the time and was never corrected.

You can see how this works in the step-by-step process and examples in [How a Sentence for a Drug Offender May Be Lower If Imposed Today](#). It’s not hard once you get the hang of it.

***You will need:***

To determine whether the sentence the applicant is currently serving would be lower if imposed today, and how much lower, you need the following legal references:

- Current Guidelines Manual and the Manual under which the client was sentenced. Current and previous versions of the Guidelines Manual are available at <http://www.ussc.gov/guidelines-manual/guidelines-manual>. Use the pdf version rather than the html version (if you are given a choice for the particular year) because it shows the tables more clearly.
  - You may want to consult Fed. Sent. L. & Prac. (2014 ed.), database FSLP on Westlaw, which contains a chapter on each guideline with interpretive caselaw, not the only caselaw, but a good start.
- Attorney General Holder’s Memoranda setting forth current charging policies dated May 19, 2010, August 12, 2013, and August 29, 2013 (in the training materials)

You will need the following case documents:

- Docket Sheet
- Charging Document – original and any superseding complaint, indictment, information
- Plea Agreement, if any
- Presentence Report, and any Objections and Addenda
- Sentencing Motions and Memoranda
- Sentencing Transcript and any Re-sentencing Transcript
- Judgment and any Corrected or Amended Judgment
- Statement of Reasons
- Order Releasing client and Pretrial Services Report if s/he was released on bond

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- Notice/Information filed by the government under 21 U.S.C. § 851, if any
- Records of prior conviction(s)<sup>7</sup> if 1 or more prior conviction(s): (a) were used to increase a mandatory minimum under 21 U.S.C. §§ 841, 851; (b) subjected client to the career offender guideline under USSG §§4B1.1, 4B1.2; or (c) may have been used to improperly increase the criminal history score
- Motion for Downward Departure under USSG § 5K1.1 or 18 U.S.C. § 3553(e) if client cooperated before sentencing
- Motion for Downward Departure under Fed. R. Crim. P. 35(b) if client cooperated after sentencing
- Motion or other request for sentence reduction under 18 U.S.C. § 3582(c)(2), order granting or denying the motion/request
- Appellate Briefs and Opinions, if there was a direct appeal, including an appeal of an order granting or denying a § 3582(c)(2) motion/request
- Motions, Memoranda, Orders, Decisions, if habeas review was sought under 28 U.S.C. §§ 2241, 2255

See Necessary Documents and How to Obtain Them & App. A.

You will need the following training memos, as relevant to the case:

#### All Cases

- Ameliorating Amendments to the U.S. Sentencing Guidelines
- Calculating the Guideline Range Then and Now
- How the Supreme Court’s Decisions Rendering the Guidelines Advisory Would Result in a Lower Sentence Today
- The Interaction of Federal and State Sentences
- Mistakes and Oversights Not Caught at the Time and Never Corrected
- Pending and Possible Court Challenges: Appeals, Habeas Petitions, § 3582(c)(2) Motions

#### Drug Cases

- How a Sentence for a Drug Offender May Be Lower if Imposed Today
- How a Person Whose Sentence Was Previously Enhanced Based on a “Felony Drug Offense” under 21 U.S.C. § 851 Would Receive a Lower Sentence Today
- Would an Enhancement for Accidental Death or Serious Bodily Injury Resulting from the Use of a Drug No Longer Apply Under the Supreme Court’s Decision in *Burrage v. United States*, 134 S. Ct. 881 (2014), and *Alleyne v. United States*, 133 S. Ct. 2151 (2013)?

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<sup>7</sup> Records of prior conviction include: (1) charging document and any amended charging document; (2) plea colloquy transcript; (3) judgment and commitment order or abstract of judgment; (4) docket entries; (5) any available NCIC report or other document noting the conviction (if government provided document to former counsel in discovery); (6) if applicable, jury instructions; and (7) if applicable, a written document reflecting the court’s findings.

- Would the Supreme Court’s Decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013), Lead to a Lower Sentence Today?
- How a Person Previously Sentenced as a “Career Offender” Would Likely Receive a Lower Sentence Today
- California “Wobblers”: How to Determine Whether a Prior California Conviction Was a Felony or a Misdemeanor
- How to Deal With the Retroactive Drugs Minus Two Amendment
- Attorney General’s Charging Policies (May 19, 2010, Aug. 12, 2013, Aug. 29, 2013)

#### Firearms Cases

- How a Person Who Was Convicted of a Firearms Offense, or Was Convicted of a Drug Offense and Received a Guideline Increase Because a Firearm “Was Possessed,” May Qualify for Commutation
- How a Person Who Was Sentenced Under the ACCA, 18 U.S.C. § 924(e), Would Likely Receive a Lower Sentence Today
- Would the Supreme Court’s Decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013) Lead to a Lower Sentence Today?

#### Immigration Cases

- How a Sentence for an Immigration Offense May be Lower if Imposed Today

*Follow these steps in order.*

#### **Step A. Determine the components of the current sentence.**

Determine (1) the original statutory range and the factual and legal bases for it, and (2) the guideline range that applied (or would have applied but for a trumping mandatory minimum or career offender enhancement) at the original sentencing, and the facts and guideline provisions upon which it was (or would have been) based.

Determine whether the sentence was later revised as the result of an appeal (by the client or the government), grant of a writ of habeas corpus, sentence reduction under 18 U.S.C. § 3582(c)(2), or Rule 35 motion. If so, determine the statutory range and the guideline range for the sentence the client is currently serving.

#### **Step B. Determine whether the sentence would be lower if imposed today, and how much lower.**

As noted above, the most persuasive case for clemency will be that the time the client has already served or will serve (as defined under #1, *supra*) is as much or more than the sentence that would be imposed today. The President can commute a sentence to any length. He could commute a sentence of 30 years, 10 of which have been served, to 10 more years. However, it would be most persuasive if the applicant would already or very soon be out if he were sentenced under today’s laws, guidelines, and charging policies. And if so, he should be released as soon

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as possible. Thus, it may not be enough to identify one way in which the sentence would be lower and stop. Follow the relevant steps from beginning to end.

1. Is the sentence the applicant is currently serving dictated by a mandatory minimum? If so, would the mandatory minimum be reduced or eliminated by subsequent legislation (i.e., the Fair Sentencing Act of 2010), Supreme Court or appellate caselaw (e.g., eliminating statutory enhancements, requiring enhancing facts to be charged and proved to a jury), or the Attorney General's current charging policies (directing prosecutors not to charge certain facts under certain circumstances)?

What would the statutory range be if the applicant were sentenced today?

2. If no mandatory minimum applied at the original sentencing, or the guideline range was higher than an applicable mandatory minimum, or the mandatory minimum would be eliminated or reduced under the analysis in Step B.1, what would the guideline range be today?

The guideline range may be lower today if there has been a subsequent ameliorating amendment that has not already been applied retroactively to reduce the sentence<sup>8</sup>; the guideline range was increased based on a prior or concurrent offense that no longer qualifies as a predicate under current law; in a drug case, there is now a lower statutory maximum that would cap the guideline range due to the Fair Sentencing Act or the Attorney General's charging policy; or a mistake to the applicant's detriment was made in calculating the guideline range.

What would the guideline range be if the inmate were sentenced today?

3. Would the sentence be lower under the Supreme Court's decisions rendering the guidelines advisory if imposed today?

If the applicant was sentenced before *Booker* (Jan. 12, 2005), or after *Booker* but before *Kimbrough* (Dec. 10, 2007) or *Spears* (Jan. 21, 2009) or *Gall* (Dec. 10, 2007), or before the circuit accepted these decisions, or at any time but the guideline range was trumped by a higher mandatory minimum that would be eliminated or reduced under the analysis in Step B.1, the sentencing judge would now have the power to impose a sentence below the guideline range under *Booker* and its progeny.

Estimate what the sentence would be after a variance from the guideline range.

4. Would the sentence be lower today but for some mistake or oversight that was not caught at the time and was never corrected? In the course of the analysis above, be alert for mistakes in

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<sup>8</sup> This would be because (a) the Commission did not make the amendment retroactive, (b) the Commission did make the amendment retroactive but relief was unavailable because a mandatory minimum or the career offender guideline stood in the way, or (c) no one moved for a reduction.

the sentence that went unnoticed by the court, the probation officer, and the parties at the time of sentencing.

5. Regardless of whether the sentence was driven by a mandatory minimum or a mandatory guideline range, it will be significant if the sentencing judge, court of appeals on direct appeal, or a judge or court of appeals in a habeas case stated contemporaneously that the sentence required by the statute or guidelines was too harsh.

**Step C. Determine whether there are any pending or possible court challenges.**

You may find that a reason the sentence would be lower today has already been raised and is pending, or could be raised, in a habeas petition or a motion to reduce sentence. If the applicant meets the criteria, you may need to address this in the clemency submission depending on the circumstances. *See Pending and Possible Court Challenges: Appeals, Habeas Petitions, § 3582(c)(2) Motions; How to Deal With the Retroactive Drugs Minus Two Amendment.*

**Step D. The End Result**

Make a chart showing the end result. If a clemency package is prepared, the chart can be used in the Executive Summary to fulfill the OPA’s requirement of a “calculation of how the imposed sentence would change if inmate were sentenced today.” *See Appendix A.* There are several examples in *How a Sentence for a Drug Offender May Be Lower if Imposed Today*, such as:

<b>Calculation of How the Imposed Sentence Would Change if Inmate Were Sentenced Today</b>		
<b>Components</b>	<b>Current Sentence</b>	<b>Likely Sentence Today</b>
Statutory Range	Life	0-20 years, or 5-40 years
Career Offender Guideline Range	360 months - Life	N/A
Ordinary Guideline Range	262-327 months	135-168 months
With Booker Variance	N/A	Estimated 88 months
<b>Sentence Imposed/ Likely Would Be Imposed</b>	Life	88 months

**4) Low-level offender**

If the applicant acted alone, he was likely a low-level offender. If the crime involved more than one participant, the applicant may have received a mitigating role adjustment, an aggravating role adjustment, or no role adjustment under the sentencing guidelines. *See USSG §§ 3B1.1-3B1.2.* You may find that the applicant would not receive an aggravating role adjustment, or would receive a mitigating role adjustment, if he were sentenced today. *See Ameliorating Amendments to U.S. Sentencing Guidelines.*

But whether the applicant received a role adjustment, and if so what kind, does not necessarily mean much. Four of the eight people whose sentences were commuted in December 2013 received aggravating role adjustments. A defendant need only have been found by a

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preponderance of hearsay information to have supervised or managed one other person, even in a single fairly innocuous act.<sup>9</sup> Many low-level drug offenders, such as street-level dealers, couriers, and lookouts, do not receive mitigating role adjustments, but are nonetheless low-level offenders.

So, it depends on the circumstances. Where does the applicant fit in the circumstances of the case? *E.g.*, although she received an aggravating role adjustment, her role was to collect money for her boyfriend who beat her and paid her in crack; he was 21 years old and working for his older brother; he supervised no one; he was an addict; he made little or no profit; she participated for a short time. Where does the applicant fit in the broader picture? *E.g.*, leading or supervising others in a group of people who get together to sell drugs in the neighborhood is low-level compared to a person who organizes or leads a cartel.

**5) Without significant ties to large-scale criminal organizations, gangs, or cartels**

Focus on the terms “significant” and “large-scale.” This does not mean a group of people who work together to sell drugs in the neighborhood, or to the possibility that the drugs the applicant eventually sold may have originated with a cartel. In most cases, there will be no indication that the applicant had any ties to large-scale criminal organization, gangs or cartels.

The PSR may contain an allegation that the applicant was involved in a gang. This may be based on nothing more than a stray comment that an agent heard on the street or hearsay from an informant. The defense lawyer may have objected because it could affect the applicant’s custody classification in BOP, but the lawyer may not have objected, or the judge determined that a ruling was unnecessary because it would not affect or would not be considered in sentencing. *See Fed. R. Crim. P. 32(i)(3)(B).*

If there is some indication that the applicant had “significant ties to a large-scale criminal organization, gang or cartel,” this may be explained by his age at the time, the adult influences in his life, family or intimate relationships, and/or the area in which he lived.

At least one of the eight whose sentences were commuted in December 2013 had what could be characterized as significant ties to a large-scale gang. But his lawyer was able to show that he had renounced the gang, and done everything he could to become a responsible and productive citizen, even while serving a sentence of life without parole. Similarly, you may be able to show that the applicant is currently “without” ties to a large-scale criminal organization based on his positive accomplishments in prison, any removal of tattoos,<sup>10</sup> a BOP report noting that the applicant is not affiliated with a gang, a low or minimum security level, and/or the fact

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<sup>9</sup> *See United States v. Irlmeier*, 750 F.3d 759 (8th Cir. 2014) (upholding aggravating role adjustment where defendant asked a friend to retrieve a bag of marijuana from a shed and bring it to him, and noting that an aggravating role adjustment was appropriately applied where a defendant asked his roommate to be a lookout for one drug transaction).

<sup>10</sup> Laser removal is of course not available in BOP, but inmates sometimes scrape or burn off tattoos.

that he has engaged in no criminal activity while incarcerated for the past 10 years or more. *See How to Read, Interpret and Use BOP Records.*

**6) Does not have a significant criminal history**

If the applicant has prior convictions, not just the number but the nature of the prior offenses is what matters. Six of the eight people whose sentences were commuted in December 2013 had more than one prior conviction for non-violent drug and/or weapons offenses. Four were “career offenders” as defined in the guidelines at the time they were sentenced, and four received an increased mandatory minimum for one or more prior “felony drug offenses.” One had 10 criminal history points.

As you know, it is not difficult to amass a large number of criminal history points. Some defendants have a criminal history score in the double digits for driving offenses alone. Prior diversionary dispositions count even if a conviction is not formally entered. USSG § 4A1.2(f). Many defendants receive an extra 2 criminal history points on top of the points for the prior conviction itself if they committed the instant offense while on supervision for another offense, *see id.* § 4A1.1(d), and if sentenced before November 1, 2010, 1 or 2 additional points for committing the instant offense less than two years after release from imprisonment on another offense. *Id.* § 4A1.1(e) (2009); USSG, App. C, Amend. 742 (Nov. 1, 2010) (eliminating § 4A1.1(e)).

In determining whether the applicant’s criminal history, even though it may be lengthy, may not be “significant,” look to the Attorney General’s August 2013 charging policy for drug cases in your materials. “A criminal history involving three or more points may not be significant ... if, for example, a conviction is remote in time, aberrational, or for conduct that itself represents non-violent, low-level drug activity.”<sup>11</sup> Look at “[t]he nature of the defendant’s criminal history, including any prior history of violent conduct, or recent prior convictions for serious offenses.”<sup>12</sup>

**7) Has demonstrated good conduct in prison**

Information about the applicant’s achievements and awards can be obtained from the PP44 and the Progress Report. The Inmate Skills Development Plan (Program Review) can also be very helpful in demonstrating positive institutional adjustment. The fact that the applicant has

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<sup>11</sup> Memorandum from Eric H. Holder, Jr., Attorney General, to the United States Attorneys and Assistant Attorney General for the Criminal Division on Retroactive Application of Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases at 1 (Aug. 29, 2013).

<sup>12</sup> Memorandum from Eric H. Holder, Jr., Attorney General, to the United States Attorneys and Assistant Attorney General for the Criminal Division on Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases at 3 (Aug. 12, 2013).

not lost any GCT credit, or had GCT credit restored, is evidence of good conduct. *See* Reading, Interpreting and Using BOP Records.

Look at the timing and nature of any conduct that resulted in an incident report. If an incident appears to be serious, investigate further. *See* Factor 8, *infra*. Conduct that is remote or relatively minor should not be disqualifying. Inmates often get into trouble early on but become model prisoners once they adjust. An inmate may have had a difficult relationship with a particular BOP staff member during a particular period.

#### **8) No history of violence prior to or during current term of imprisonment**

A prior offense may not be violent as a matter of law, or if it is a “crime of violence” or a “violent felony” as a matter of law, it may not have been violent under the particular facts. *See* Was the Client a Non-Violent Offender? Does She Have Any History of Violence?; How a Person Previously Sentenced as a “Career Offender” Would Likely Receive a Lower Sentence Today; How a Person Who Was Sentenced Under the ACCA, 18 U.S.C. § 924(e), Would Likely Receive a Lower Sentence Today.

Don’t assume that anyone reviewing your analysis will understand the difference between a violent and a non-violent offense, or that it will be obvious that an offense was not violent. For example, if the PSR states that the applicant has a prior conviction that was a “crime of violence” or a “violent felony,” but it no longer qualifies as such as a matter of law, say so, not just in connection with whether the sentence would be lower but in connection with this factor too. As another example, suppose that a person was arrested for discharge of a firearm but convicted of the misdemeanor of failing to secure an ordnance. It may seem obvious to you that he did not discharge a firearm, but it will not be obvious to others. In fact, the PSR reveals that his mother discharged a firearm, and that his crime was merely failing to secure it. Include details like these in your analysis of this factor.

If the BOP PD15 (Inmate Discipline Data Form) reflects a 100-200 series violation during the current term of imprisonment, use the BOP consent form to request the DHO report. It will contain the charge, the findings of fact, the evidence relied upon, and the sanctions including loss of GCT credit. If the PD15 reflects an incident with a 300-400 series violation, it should be minor, but if for some reason it looks serious, obtain the Incident/UDC report. For any serious violation, determine whether the applicant’s own conduct was violent (or, e.g., was she written up for an altercation between others?), if so, how it arose (e.g., was it self defense?), and how serious it was (if serious, there should be a loss of GCT credit). *See* How to Read, Interpret and Use BOP Records.

Note that the OPA Checklist states under “Elective Items” that “[i]ncident reports of serious violations of prison regulations should be accompanied by an explanation of events and inmate’s role.”

## Conclusion

As noted above, we will answer any questions you may have and, at your request, review your analysis of the criteria.

If a person does not meet or arguably meet the criteria, someone -- either you or a *pro bono* lawyer depending on your role -- needs to inform the client.

## IV. Clemency Package

Please review this part whether you will only be gathering clients' documents for *pro bono* lawyers, reviewing cases to determine whether they meet the criteria, or preparing submissions, and even if you have no current plans to help.

The first thing that should be done if the applicant meets or arguably meets the criteria is to send her the Reentry Questionnaire, and review the memorandum entitled Release Preparation. Contact family or friends who might be enlisted in lining up job prospects, a place to live, and other resources to support a release plan.

The clemency package will consist of the following:

1. Executive Summary of the criteria
2. Table of Contents
3. OPA Checklist (attached as Appendix A)
4. OPA Form "Petition for Commutation of Sentence" ("OPA Form Petition"), available at [http://www.justice.gov/pardon/forms/commutation\\_form.pdf](http://www.justice.gov/pardon/forms/commutation_form.pdf)
5. Memorandum in Support of Petition for Commutation of Sentence ("Memorandum")
6. Each "Necessary" document listed in the OPA Checklist, any "Elective Items" listed in the OPA Checklist that you decide to include, and any other exhibits/appendices you decide to include

To assemble the components into one document with an interactive Table of Contents, follow the instructions in How to Set Up the Bookmarks Panel in the Combined PDF to Function As an Interactive Table of Contents. Bookmarks make an extra layer of page numbers unnecessary.

Applicants who filed a petition that was denied will start over with all of the components listed above. Under this initiative, there is no waiting period for submission of a new petition after a petition has been denied.

Applicants who have a petition pending need to supplement the OPA form petition with components 1, 2, 3, 5 and 6. Obtain the pending petition and any materials submitted with it from the applicant, any lawyer who represented her, or with a Certification of Identity form. See Necessary Documents and How to Obtain Them. Correct, explain, or update information in the Memorandum as needed. There may be instances in which the OPA form petition is so inaccurate or otherwise problematic that it should be withdrawn and a new one submitted.

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**A. Executive Summary of Criteria**

Here is an example based on the Sam Jones scenario in How a Sentence for a Drug Offender May Be Lower If Imposed Today.

**Executive Summary  
Sam Jones, Register Number 12345-678**

**Factor 1. Currently serving a sentence that would likely be substantially lower today.** On January 15, 2007, Judge Smith sentenced Mr. Jones to mandatory life in prison, stating that the sentence was “not fair or appropriate,” that it was “in fact a gross miscarriage of justice,” but that “my hands are tied.” If Mr. Jones were sentenced today, he would likely receive a sentence of 88 months. Even if he were sentenced to the bottom of the guideline range (135 months), he will have served 135 months including Good Conduct Time credit by October 3, 2015, and 135 actual months by April 3, 2017.

<b>Calculation of How the Imposed Sentence Would Change if Inmate Were Sentenced Today</b>		
<b>Components</b>	<b>Current Sentence</b>	<b>Likely Sentence Today</b>
Statutory Range	Life	0-20 years, or 5-40 years
Career Offender Range	360 months - Life	N/A
Ordinary Guideline Range	262-327 months	135-168 months
With Booker Variance	N/A	Estimated 88 months
<b>Sentence Imposed/ Likely Would Be Imposed</b>	Life	88 months

**Factor 2. Non-violent offender.** Mr. Jones was convicted of conspiracy to distribute and of distributing small amounts of crack. No aspect of his offense was violent.

**Factor 3. Low-level offender.** Mr. Jones was a street-level dealer who sold small amounts of crack for his older brother, for which his brother gave him crack to feed his addiction and small amounts of money.

**Factor 4. Without significant ties to large-scale criminal organizations, gangs, or cartels.** Mr. Jones never had and does not have ties to large-scale criminal organizations.

**Factor 5. Length of sentence served.** Mr. Jones has been incarcerated since his arrest on January 3, 2006. As of January 3, 2016, he will have served 10 actual years. Including accumulated Good Conduct Time credit, he has already served over ten years of his sentence.

**Factor 6. Does not have a significant criminal history.** Mr. Jones has three prior convictions: one for low-level drug selling for which he was sentenced to time served of 18 months in jail and which was 8 ½ years old at the time of his instant offense; one for simple possession of crack for which he was sentenced to probation and which was 2 years old at the time of his instant offense;

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and one for the non-violent offense of carrying a concealed weapon for which he was sentenced to 30 days in jail and which was 9 1/2 years old at the time of his instant offense.

**Factor 7. Has demonstrated good conduct in prison.** Even while serving a mandatory life sentence, Mr. Jones has an exemplary record of achievement in prison, including learning to read and teaching other inmates to read, has been a caring father to his daughter, and has had no significant disciplinary problems.

**Factor 8. Has no history of violence prior to or during current term of imprisonment.** Mr. Jones has two prior convictions for non-violent, low-level drug activity, and one prior conviction for the non-violent carrying of a concealed weapon. The latter offense is not a crime of violence as a matter of law, and Mr. Jones' offense was not violent in fact. Mr. Jones has displayed no history of violence during his term of imprisonment.

## **B. OPA Checklist**

This document needs to be reviewed to ensure that everything necessary or useful is included in the package, and it needs to be filled out and submitted to the OPA. *See* Appendix A. It generally speaks for itself, but a few "Elective Items" bear explanation.

"Any court order that is significant with regard to change in the law" appears to mean a ruling *in the applicant's case* that either reduced the sentence based on a change in law or acknowledged a change in law but declined to apply it to the applicant, for example, because of procedural barriers to habeas relief, or barriers to a retroactive reduction in the guideline range such as a trumping mandatory minimum.

"Appellate opinions" refers to *any* appellate opinion, including a Supreme Court opinion, that is relevant to a "specific legal issue."

"Parole hearing documents (if applicable)" will exist only if the applicant committed his offense before November 1, 1987, the effective date of the Sentencing Reform Act, which eliminated parole, and was sentenced under pre-SRA law.<sup>13</sup>

## **C. OPA Form Petition**

If a petition is pending and is so inaccurate or otherwise damaging that it really cannot be fixed by way of explanation in the Memorandum, it may be best to withdraw the pending petition and submit a new one. *See*, in particular, the discussion of Question 5 below.

The form is available at [http://www.justice.gov/pardon/forms/commutation\\_form.pdf](http://www.justice.gov/pardon/forms/commutation_form.pdf). Once the answers are finalized, it should be filled out, saved as a pdf, sent to the applicant for his original signature, and mailed back to you. A lawyer should generally write the answers based on the relevant records and input from the applicant on certain questions as noted below.

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<sup>13</sup> *See* 18 U.S.C. § 3551 note (Effective and Applicability Provisions).

Answers should generally not be handwritten by the applicant. *See* OPA Checklist (petition must be “legible”).

Some of the answers and where to find them are obvious, but guidance is likely needed on particular questions:

**Question 2.** Use the date and length of the original sentence, *and* the date and length of the modified sentence if the applicant was resentenced after an appeal, habeas proceeding, Rule 35 motion, or § 3582(c)(2) proceeding.

**Question 3.** For the date the applicant began service of imprisonment, use the date s/he was first taken into custody upon arrest if s/he has been detained from then on. This date appears in the first couple of pages of the PSR. The projected release date can be found at <http://www.bop.gov/inmateloc/>.

This question also asks if the applicant has paid in full any fine or restitution, and if not, the remaining balance. OPA advises on its website: “If you are seeking remission of restitution or fine, you should state that fact specifically on the application and set forth the particular reasons why you believe that this portion of your sentence should be reduced, including the reasons why you believe that paying your restitution or fine would present an unusual hardship for you. Furthermore, we require that you complete and submit, with your application, the Financial Statement of Debtor Form.” This form is available at <http://www.justice.gov/pardon/financialstatement.individual.pdf>. If the applicant is seeking remission of a fine or restitution, this appears to be the best place on the form to say so. The particular reasons for this request can be stated here and in the Memorandum in connection with the release plan.

**Question 4.** This question asks if the applicant appealed, sought Supreme Court review, and/or filed a habeas challenge to his conviction or sentence, and if those matters are concluded. Any published decisions should be cited, and any unpublished decisions should be attached.

Petitions from inmates who have post-conviction challenges under 28 U.S.C. § 2255 or § 2241 currently pending should be submitted.<sup>14</sup> For issues to consider and how to answer Question 4, including *a paragraph approved by the OPA for pending habeas claims*, see [Pending and Possible Court Challenges: Appeals, Habeas Petitions, § 3582\(c\)\(2\) Motions](#).

**Question 5.** This question asks the applicant to “provide a complete and detailed account of the offense for which you seek commutation, including the full extent of your involvement.” The Notice to Inmates states: “Please note that the Pardon Attorney may consult with prosecuting authorities and the judge involved in your case when considering the appropriateness

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<sup>14</sup> This is so notwithstanding a statement in the Notice to Inmates distributed by the BOP that “[p]etitions for commutation are not generally accepted from inmates who are presently challenging their convictions or sentences.”

of your petition, and as such, your full candor in this application is critical and will impact the likelihood of the success of your petition.”

In the past, the answer to Question 5 played an important role in whether commutation was granted. An attorney who crafted a well-worded, accurate, and appropriate answer to Question 5 may have spent many hours parsing trial transcripts, the PSR, sentencing transcripts, and other case documents, going through several drafts and involving extensive discussions with the client. However, the answer to Question 5 is not the focus of this initiative. The focus is the criteria announced on May 5, 2014, which will be addressed in the Memorandum in Support of Petition for Commutation of Sentence.

The answer should be as plain and simple as possible, and a lawyer should draft it. It should state only the bare facts necessary to support the elements of the offense of conviction contained in the Judgment, except (in most cases) for drug quantity.<sup>15</sup> Doing so will save time and protect the applicant:

- It will avoid making any factual statements that could jeopardize pending or future litigation, or the commutation petition itself.
- The applicant will not have an opportunity to minimize or deny facts that appear in the PSR or that the prosecutor may recall differently; doing so could result in denial of the commutation petition.
- The lawyer will not spend unnecessary time and energy crafting an elaborate account of the offense that will satisfy the Pardon Attorney, the prosecutor, and the applicant, when that time is better spent analyzing the relevant criteria in your Memorandum.

If the applicant went to trial, the essential facts are among many in the trial transcript. Since witness testimony is often conflicting and unclear, look to the jury instructions for the essential facts the jury had to find in order to convict. If the applicant pled guilty, the essential facts will be in the agreed factual basis in the plea agreement (if there was one) and transcript of the plea colloquy.

Do not rely on “facts” that are simply alleged in the PSR. As you know, the PSR’s description of the offense in most instances comes solely from the prosecutor’s version, supplemented by hearsay in law enforcement reports. As Justice Scalia observed, the PSR’s version of the facts may be no more than “hearsay-riddled” allegations.<sup>16</sup> The sentencing memoranda and sentencing transcript often shed a different light on the facts of the offense.

The “facts” relied upon by the judge (such as drug quantity), in addition to being found only by a preponderance of the evidence and often based on hearsay, may not have been subject

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<sup>15</sup> Though drug quantity is now recognized as an element of the offense because it increases the statutory minimum penalty, *Alleyne v. United States*, 133 S. Ct. 2151, 2161 (2013), it generally should not be mentioned for the reasons explained in [How to Answer Question 5 on the OPA Form Petition](#).

<sup>16</sup> *United States v. Booker*, 543 U.S. 220, 304 (2005) (Scalia, J., dissenting in part).

to adversarial testing at the time of sentencing, and so may not accurately convey the facts of the offense. Facts in the PSR may never have been objected to, litigated, ruled upon, or found by a judge for any number of reasons. If those facts are used to answer Question 5, it could jeopardize pending or future litigation that depends on facts that may differ from the facts set forth in the PSR.

For example, the PSR may have alleged that the offense involved a quantity of drugs many kilograms greater than the quantity triggering the highest base offense level under USSG § 2D1.1(c) at the time. Though the quantity alleged was based on inaccurate hearsay from a confidential informant, the client did not object because a finding of the true, lower drug quantity would still have been greater than the highest quantity trigger under § 2D1.1, and the client did not want to risk losing acceptance of responsibility, *see* USSG § 3E1.1, cmt. (n.1(A)), or receiving an enhancement for obstruction of justice, *id.* § 3C1.1, by challenging the drug quantity stated in the PSR. At sentencing, the judge may have found, instead of the quantity set forth in the PSR, a quantity *range* above the triggering amount, or that the offense involved “at least” the triggering amount. If clemency is denied, an unnecessary concession in Question 5 regarding quantity could jeopardize future relief in proceedings in which quantity becomes important, possibly dispositive.

Examples of how to answer Question 5 to avoid jeopardizing litigation in these and other circumstances are set forth in [How to Answer Question 5 on the OPA Form Petition](#).

In some cases, you may decide to state a fact that is not an essential element but supports a criterion for commutation. For example, if the applicant received a weapon enhancement, you may choose to state that she only possessed a weapon, or someone else possessed or used a weapon, because it is forthright and supports the analysis in your Memorandum that the applicant herself is a non-violent offender.

If the applicant has a pending petition with an answer to Question 5 that makes unnecessary and potentially damaging statements, consider withdrawing it and submitting a new one.

**Question 6:** This question asks: “Aside from the offense for which commutation is sought, have you ever been arrested or taken into custody by any law enforcement authority, or convicted in any court, either as a juvenile or an adult, for any other incident?” It asks for the date, nature of charge, law enforcement authority involved, and final disposition of the incident.

As you know, this information is contained in the first three columns of the Criminal History section of the PSR, and the PSR also includes the defendant’s age on the date of arrest. You may want to include age even though not requested, particularly if the applicant was young at the time. You can write the information in clear language, for example: Arrested 12/21/94, age 20, possession of cocaine, Los Angeles County, pled nolo contendere 3/10/95, 1 year probation.

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In some cases, it may be a good idea to include more information from the Date Sentence Imposed/Disposition column of the PSR rather than just the final disposition, as it will bear on how serious the offense really was. As you know, a common scenario for low-level offenders in difficult life circumstances is an initial diversionary disposition or sentence of probation, revocation of probation with another sentence of probation, another revocation and only then a final disposition of a brief jail sentence. However, in some cases, the final disposition is termination of probation.

The PSR may also include a paragraph or more giving some details of the prior offense, or attempting to explain a convoluted procedural history. It may be a good idea to include some of these details. For example, the PSR may reveal that the applicant pled no contest to possession with intent to sell 1 marijuana cigarette or .3 grams of cocaine. A convoluted procedural history may alert you to look into whether the prior offense was properly counted to enhance the sentence.

In any event, the PSR itself will be submitted to the OPA. If the PSR contains an error, the error should be noted and the correct information used.

**Question 7:** This question asks the applicant to state her reasons for seeking commutation. This is where the applicant should discuss “any relevant statements about responsibility or rehabilitation.” OPA Checklist (Appendix A). The applicant can discuss, for example, how she got involved in criminal conduct and why it will not happen again, her rehabilitative achievements while incarcerated, aspirations and plans for the future regarding family and work, remorse.

For the sake of efficiency, we recommend that a lawyer first prepare the mitigation section of the Memorandum, *see* below, then send it to the applicant, asking her to tell the story in her own words.

The Petitioner must sign the form.

All “necessary” items from the OPA Checklist, any relevant “elective” items, and any other documents that are relevant and important should be attached.

#### **D. Memorandum in Support of Petition for Commutation of Sentence**

The Memorandum should address the criteria for this sentence commutation initiative, as well as a brief section on mitigation, any argument regarding unwarranted disparity, and a release plan. The Memorandum should be succinct and supported with citations to the record and relevant law. Don’t expect the OPA to find support for facts or legal analysis.

##### **1. Mitigating Background and Character/Acceptance of Responsibility**

While it may be tempting to present at great length all of the sympathy-evoking detail that can be gathered about an applicant’s background and character, a full mitigation work-up

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should not be presented. Most lawyers won't have the time to gather extensive documentation to support a full mitigation work-up, and the OPA won't have time to review it. The primary focus of this initiative is the largely objective criteria announced by the Deputy Attorney General. Efficiency is essential if a large number of petitions are going to be reviewed and granted in a limited period of time.

At the same time, mitigation is relevant, and any lawyer preparing a submission needs to know the client's story in order to present an accurate and succinct version of it. Look for mitigating facts in the PSR, sentencing memorandum, sentencing transcript, and certain BOP records. Talk to the client, family members, and others who knew or know the client such as friends, church pastors, former employers.

Some of the criteria call for discussion of the client's background and character. For example, in any case in which a mandatory minimum did not apply in the first place, or a mandatory minimum that did apply would be reduced or eliminated under current law or charging policies, the guideline range would be the starting point for the sentence today, and the judge would now have discretion to impose a below-guideline sentence based on the client's history and characteristics. *See How the Supreme Court's Decisions Rendering the Guidelines Advisory would Result in a Lower Sentence Today*. Good conduct while incarcerated is also one of the criteria. Thus, in most cases, mitigation can be discussed in the context of the criteria, but not always. For example, if the guideline range today would be far lower than the time the client has already served, it may be overkill to go further and show why the judge would sentence below the guideline range.

In any event, the Memorandum should begin with one or two paragraphs about mitigation, *e.g.*, how and why the applicant got involved in criminal conduct and why it won't happen again. For example, s/he was raised by a crack-addicted mother, began using drugs at an early age, and was addicted to drugs and following the lead of a family member or boyfriend at the time of the offense, but, as shown by his/her achievements while incarcerated, s/he has overcome the problems that led him/her to sell drugs. If the applicant has a request for compassionate release pending, the grounds for that request should be briefly discussed in the Memorandum. A plain statement that the applicant accepts responsibility for his offense can also be included.

Letters from family and others regarding the applicant's character and rehabilitation and from anyone else who can shed light on an important mitigating factor should be attached. *See* OPA Checklist, Elective Items (Appendix A). Mitigation-related attachments should be limited to those that are truly relevant.

## **2. Criteria for Sentence Commutation**

The initial analysis of the criteria, *see* Part III, should be used as the foundation for this part of the Memorandum, streamlining and improving upon it as needed.

Address the eight factors in the order in which they were announced by DOJ: (1) sentence would be lower today, (2) non-violent offender, (3) low-level offender, (4) without significant ties to large-scale criminal organizations, gangs, or cartels, (5) served at least 10 years, (6) does not have a significant criminal history, (7) has demonstrated good conduct in prison, (8) no history of violence prior to or during their current term of imprisonment.<sup>17</sup>

Factual statements and arguments should be supported with citations to relevant documents and law. Attach the “necessary” documents and any relevant “elective items” from the OPA Checklist, and any other documents that are important. (Do not overload it.) For good conduct in prison, BOP records evidencing work experience, education/vocational training, and any special projects or programs completed should be attached. For “serious violations of prison regulations,” attach the incident reports and “an explanation of events and inmate’s role” in the incident. *See* OPA Checklist, Elective Items (Appendix A). *See also* How to Read, Interpret and Use BOP Records.

As noted above, it will be significant if the sentencing judge, court of appeals on direct appeal, or a judge or court of appeals in a habeas case stated contemporaneously that the sentence required by the statute or guidelines was too harsh. If so, attach the entire transcript, opinion or order, and specifically cite and quote (do not paraphrase) the court’s statement of support for a lower sentence. *See* OPA Checklist, Elective Items (Appendix A).

Whether or not the sentencing judge made such a statement at the time she imposed the sentence, consider asking her for a letter stating that she would impose a lower sentence today, which you can quote from and attach to your Memorandum. If the judge is willing, it would be helpful if s/he can say that s/he would have imposed a sentence no greater than the time already served. Provide the judge with all relevant information, including why you believe the sentence would be lower today, and the applicant’s conduct since incarcerated.

If any legal matter is pending, such as a habeas petition or a § 3582(c)(2) motion, let the prosecutor know that you are contacting the judge, and let the judge know that you have informed the prosecutor. Otherwise, although clemency is separate from pending litigation and not necessarily adversarial, the judge or prosecutor might regard it as an ex parte contact, or it may at least cause the judge discomfort.

If the judge agrees to write a letter, it should begin with the salutation, Dear President Obama, and the judge should submit the original to [USPardon.Attorney@usdoj.gov](mailto:USPardon.Attorney@usdoj.gov), or mail it to the following address:

Office of the Pardon Attorney  
1425 New York Avenue, N.W.  
Suite 11000  
Washington, D.C. 20530

Ask for a copy.

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<sup>17</sup> [http://www.bop.gov/resources/news/pdfs/Notice\\_to\\_Inmates\\_Initiative\\_on\\_Executive\\_Clemency.pdf](http://www.bop.gov/resources/news/pdfs/Notice_to_Inmates_Initiative_on_Executive_Clemency.pdf).

### 3. Unwarranted Disparity

A traditional ground for sentence commutation (though not required for this initiative) is that the sentence the applicant is serving represents an unwarranted disparity.

The applicant's sentence may reflect an unfair disparity compared to the sentences of equally or more culpable participants in the offense, or an equally or more culpable participant who was not even charged. If this is a drug case and the applicant's mandatory minimum was increased based on one or more § 851 enhancements, you may already have developed this ground in determining that the sentence would be lower today, since one reason prosecutors should decline to file § 851 enhancements under the Attorney General's current charging policy is that "the filing would create a gross sentencing disparity with equally or more culpable co-defendants."<sup>18</sup>

If this issue was not already examined at the evaluation stage, it should be examined now. You can determine who the co-defendants were from the indictment in the applicant's case, and what their sentences were from their PACER docket sheets. Sometimes, the relative roles of the various participants are discussed in the applicant's PSR. If not, investigate further.

The names and sentences of the other participants, and a brief account of their culpability relative to that of the applicant, should be included in the Memorandum. Court documents showing their names and sentences should be attached if available. *See* OPA Checklist, Elective Items (Appendix A).

Another kind of unwarranted disparity is that reflected in unfair laws, guidelines, or charging policies, such as the disparity in the quantity ratio between powder and crack cocaine reflected in sentences imposed on crack offenders, the unfair disparity reflected in ACCA sentences, and the unfair disparity in the charging of § 851 enhancements and § 924(c)s.<sup>19</sup>

### 4. Release Plan

The key elements of a release plan are a place to live, work, treatment if needed, and positive connections to the community. The OPA Checklist includes under Elective Items:

- Where will inmate live? Describe job prospects and skills that will help inmate to obtain a job; any continuing plans for substance abuse counseling or treatment; proposed

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<sup>18</sup> Memorandum from Eric H. Holder, Jr., Attorney General, to the United States Attorneys and Assistant Attorney General for the Criminal Division on Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases at 3 (Aug. 12, 2013).

<sup>19</sup> *See How a Person Who Was Convicted of a Firearms Offense, or Was Convicted of a Drug Offense and Received a Guideline Increase Because a Firearm "Was Possessed" May Qualify for Commutation; How a Person Whose Sentence Was Previously Enhanced Based on a "Felony Drug Offense" under 21 U.S.C. § 851 Would Receive a Lower Sentence Today.*

volunteer work or other methods of giving back to the community; if inmate's criminality resulted from negative influences, how inmate will avoid those after release.

- Letters of support (particularly from supporters who are willing to provide employment, housing, substance abuse counseling, volunteer opportunities, or other positive means of re-adjusting to society).

A release plan should not be treated as optional. Have the applicant fill out the Re-Entry Questionnaire early in the process, review the memo entitled Release Preparation, and review FJC Reentry Court Information & Contact List to see if a re-entry court is available in the district in which the applicant will live.

BOP records will be useful to demonstrate that the applicant has engaged in purposeful activity to position himself to be successful after release through educational activities, vocational and skills training, and work. *See* How to Read, Interpret and Use BOP Records. Enlist the help of family, former employers, or other personal contacts to arrange a job. A regularly-scheduled, wage-paying job where the applicant is accountable to others is best. Avoid self-employment; it is not verifiable and entrepreneurship may be what got the applicant into trouble in the first place. Ideally, get a letter from a potential employer on letterhead. If that is not possible, get a letter from the person or persons who are committed to helping the applicant find employment. However, in most cases, it will be unrealistic to arrange a job when there is no guarantee that the applicant will be released, and without a prospective employer ever meeting the applicant. Re-Entry Courts in some districts can help with employment once the applicant is out. *See* FJC Reentry Court and Contact List. Contact the Probation Office in the district to see if they can help if the applicant is released. Emphasize the applicant's work experience and vocational training in BOP.

The best living situation is an identifiable home where the applicant will live with others. Seek the help of family or friends in providing or finding a place for the applicant to live. If they are unable or unwilling, find community resources. Avoid having the applicant return to family or friends who were part of the crime. Sometimes a move to a new area is advisable.

Many districts have drug courts and other re-entry courts available for those on supervised release. *See* FJC Reentry Court Information & Contact List. For positive connections to the community, the applicant may express interest in joining a club, a church, or a sports team, or volunteering for a worthy cause.

Non-citizens may present a special challenge because it may be difficult to locate family in a foreign country, and the applicant's family may in fact be here. If you cannot locate family in the applicant's home country without undue effort, you can say that he remains subject to deportation proceedings. Do not say that he *will* be deported, as that could be construed as a waiver to any objections to deportation he may have.

If the applicant has a serious medical or mental health condition, a targeted release plan will be needed.

**THIS DOCUMENT WAS PREPARED BY EMPLOYEES OF A FEDERAL DEFENDER OFFICE  
AS PART OF THEIR OFFICIAL DUTIES.**

## 5. Remission of Fine or Restitution

To assist with re-entry, it may be worthwhile to seek remission of any fine or restitution obligation. If so, state that the applicant is seeking such remission in response to Question 3 of the OPA's form petition, and explain in the Memorandum why this portion of the sentence "should be reduced, including the reasons why you believe that paying your restitution or fine would present an unusual hardship for you."

The Financial Statement of Debtor Form, available at <http://www.justice.gov/pardon/financialstatement.individual.pdf>, must be completed and submitted.

## V. Where to Send Completed Submissions

Please send any completed submissions to [abaronevans@gmail.com](mailto:abaronevans@gmail.com). We will make sure everything is in order and send them to Clemency Project 2014, which will submit them to the OPA.

If the case does not meet or arguably meet the criteria, and you believe a submission should be filed, it can be filed directly with OPA. Submissions for those who do not meet or arguably meet the criteria should be addressed to the President of the United States, and mailed to:

Office of the Pardon Attorney  
1425 New York Avenue, N.W.  
Suite 11000  
Washington, D.C. 20530

*See* [http://www.justice.gov/pardon/contact\\_info.htm](http://www.justice.gov/pardon/contact_info.htm).

## Preparation of Commutation of Sentence Application Packages

Criteria for consideration within DAG Initiative:

- They are currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today;
- They are non-violent, low-level offenders without significant ties to large scale criminal organizations, gangs or cartels;
- They have served at least 10 years of their prison sentence;
- They do not have a significant criminal history;
- They have demonstrated good conduct in prison; and
- They have no history of violence prior to or during their current term of imprisonment.

### Application Content Checklist

Please complete this checklist and send it via PDF as part of the application package, along with each “Necessary” document listed below, and any additional documents you wish to submit from the list of “Elective Items.” Each document to be submitted should be a separate PDF attachment to a cover email sent to [USPardon.Attorney@usdoj.gov](mailto:USPardon.Attorney@usdoj.gov). To aid in the processing of the application and minimize confusion, please email complete packages only.

<b>Inmate Name</b>	<b>Inmate Register Number</b>
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#### Necessary in Every Case:

If any of these documents is missing from the application package, please note in the cover email which documents are missing and why, and the Office of the Pardon Attorney will attempt to obtain them.

- |   |
|---|
| <input type="checkbox"/> Petition for Commutation of Sentence form (properly and truthfully completed, legible, and signed by inmate) <ul style="list-style-type: none"> <li><input type="checkbox"/> Including a statement from inmate, with signature, describing the offense of conviction and any relevant statements about responsibility or rehabilitation</li> </ul> |
| <input type="checkbox"/> Presentence Investigation Report (PSR)   |
| <input type="checkbox"/> Judgment of Conviction <ul style="list-style-type: none"> <li><input type="checkbox"/> Statement of Reasons (if applicable)</li> <li><input type="checkbox"/> Amended Judgment or Court Order Modifying Sentence (if applicable)</li> </ul>  |
| <input type="checkbox"/> Progress Report (the most recent available)  |
| <input type="checkbox"/> BOP Sentry Reports <ul style="list-style-type: none"> <li><input type="checkbox"/> PSCD</li> <li><input type="checkbox"/> PD15</li> <li><input type="checkbox"/> PP44</li> <li><input type="checkbox"/> PIDF</li> </ul>  |
| <input type="checkbox"/> Calculation of how the imposed sentence would change if inmate were sentenced today  |

### Necessary in Specific Cases:

- Medical report (required if inmate claims to suffer from a serious medical condition).  
The medical report should be signed by a physician or other medical officer and should address and summarize information regarding the following four points (do not submit individual records of sick call visits, medical tests, drug prescriptions, etc.):
  - The inmate's current condition;
  - Treatment that the inmate is undergoing;
  - The inmate's prognosis; and
  - Information about whether the inmate has applied for compassionate release pursuant to 18 U.S.C. § 3582(c)(1) and, if so, the status of that request.
- Financial Statement of Debtor Form (required if inmate is also requesting remission of fine and/or restitution)

### Elective Items:

- Attorney memorandum supporting clemency
- Relevant Court Documents – e.g., from PACER
  - Any court order that is significant with regard to change in the law
  - Information regarding co-defendants' names and sentences
- Appellate opinions
  - If a specific legal issue is relevant, please highlight, point to, or cite specific page numbers and sections.
- Documents/any other information about co-defendants' names and sentences, if available. This is especially relevant if inmate makes an argument for sentencing disparity.
- Sentencing transcript
  - Please include the whole document (if available), but specifically cite the judge's statements of support for a lesser sentence.
- Letters of support (particularly from supporters who are willing to provide employment, housing, substance abuse counseling, volunteer opportunities, or other positive means of re-adjusting to society).
- Institutional Conduct
  - Conduct in prison, work experience, educational/vocational training, any special projects or programs completed
  - Incident reports of serious violations of prison regulations should be accompanied by an explanation of events and inmate's role
- Parole hearing documents (if applicable)
- Release plan
  - Where will inmate live? Describe job prospects and skills that will help inmate to obtain a job; any continuing plans for substance abuse counseling or treatment; proposed volunteer work or other methods of giving back to the community; if inmate's criminality resulted from negative influences, how inmate will avoid those after release.



**U. S. Department of Justice**

Federal Bureau of Prisons

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***LEGAL RESOURCE GUIDE***

***TO THE***

***FEDERAL BUREAU OF PRISONS***

**2014**

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**APPENDIX B: Regional Counsel and Consolidated Legal Center Offices**

<p><b><u>Mid-Atlantic Region - MARO:</u></b></p> <p>Matthew Mellady, Regional Counsel          Phone: 301-317-3120          Fax: 301-317-3132          Zachary Kelton, Deputy Regional Counsel          Phone: 301-317-3113          Mid-Atlantic Regional Office          302 Sentinel Drive, Suite 200          Annapolis Junction, MD 20701</p>	<p><b><u>North Central Region - NCRO:</u></b></p> <p>Richard W. Schott, Regional Counsel          Phone: 913-551-1004          Fax: 913-551-1107          Rick Winter, Deputy Regional Counsel          Phone: 913-551-1006          North Central Regional Office          Gateway Complex Tower II, 8th Floor          4th and State Avenue          Kansas City, KS 66101</p>	<p><b><u>South Central Region - SCRO:</u></b></p> <p>Jason Sickler, Regional Counsel          Phone: 972-730-8920          Fax: 972- 730- 8929          Michael Frazier, Deputy Regional Counsel          Phone: 972-730-8921          South Central Regional Office          U.S. Armed Forces Reserve Complex          344 Marine Forces Drive          Grand Prairie, TX 75051</p>
<p><b><u>Northeast Region - NERO:</u></b></p> <p>Michael Tafelski, Regional Counsel          Phone: 215-521-7375          Fax: 215-521-7483          Joyce Horikawa, Deputy Regional Counsel          Phone: 215-521-7376          Northeast Regional Office          U.S. Custom House - 7th Floor          2nd and Chestnut Streets          Philadelphia, PA 19106</p>	<p><b><u>Western Region - WXRO:</u></b></p> <p>Dennis Wong, Regional Counsel          Phone: 209-956-9732          Fax: 209-956-9795          Dominic Ayotte, Deputy Regional Counsel          Phone: 209-956-9731          Western Regional Office          7338 Shoreline Drive          Stockton, CA 95219</p>	<p><b><u>Southeast Region - SERO:</u></b></p> <p>Lisa Sunderman, Regional Counsel          Phone: 678-686-1260          Fax: 678-686-1299          Craig Simmons, Deputy Regional Counsel          Phone: 678-686-1281          Southeast Regional Office          3800 Camp Creek Parkway, SW          Building 2000          Atlanta, GA 30331-6226</p>

**Consolidated Legal Centers**

• = CLC LEADER      \* = NOT ACTIVATED

<b>MARO</b>	<b>NERO</b>	<b>NCRO</b>	<b>WXRO</b>	<b>SCRO/Dallas</b>	<b>SERO</b>
<p>• Zachary Kelton 301-317-3113</p> <p>FCI Cumberland, MD FCI Morgantown, WV FCI Memphis, TN FCC Hazelton, WV</p>	<p>• Joyce Horikawa 215-521-7378</p> <p>FDC Philadelphia, PA FCI Fort Dix, NJ FCI Fairton, NJ FCI McKean, PA FCI Elkton, OH FCI Loretto, PA USP Canaan, PA Contract: Youngstown, OH Phillipsburg, PA</p>	<p>• Rick Winter 913-551-1006</p> <p>USP Leavenworth, KS USMCFP Springfield, MO</p>	<p>• Dominic Ayotte 209-956-9731</p> <p>FCI Dublin, CA MCC San Diego USP Atwater, CA FDC Honolulu, HI FCI, Herlong, CA FCI Sheridan, OR FCI Mendota, CA FDC SeaTac, WA USP Atwater, CA Contract: TCI Taft, CA</p>	<p>• Michael D. Frazier 972-730-8921</p> <p>FCI Ft. Worth, TX FMC Carswell, TX FCI La Tuna, TX FSI La Tuna, TX FCI Big Spring, TX FCI Seagoville, TX Contract: Big Spring, TX Eden, TX Milan, NM Post, TX Pecos, TX Raymondville, TX</p>	<p>• Craig Simmons 678-686-1281</p> <p>FCI Talladega, AL FCI Jesup, GA MDC Guaynabo, PR Contract: McCrae, GA Folkston, GA</p>
<p><b>FMC Lexington</b></p> <p>• Carlos Javier Martinez 859-255-6812 x5710</p> <p>FMC Lexington, KY FCI Ashland, KY FCI Manchester, KY USP Big Sandy, KY USP McCreary, KY</p>	<p><b>MCC New York</b></p> <p>• Adam Johnson 646-836-6455</p> <p>MCC New York, NY MDC Brooklyn, NY FCI Otisville, NY</p>	<p><b>FMC Rochester</b></p> <p>• VACANT 507-424-7445</p> <p>FMC Rochester, MN FPC Duluth, MN FCI Sandstone, MN FCI Waseca, MN FPC Yankton, SD</p>	<p><b>FCI Phoenix</b></p> <p>• David Huband 623-465-9757 x4378</p> <p>FCI Phoenix, AZ FCC Tucson, AZ (2) FCI Safford, AZ</p>	<p><b>FDC Houston</b></p> <p>• Eric Hammonds 713-229-4104</p> <p>FCI Bastrop, TX FCI Three Rivers, TX FDC Houston, TX USP Pollock, LA FCI Pollock, LA FCC Oakdale, LA (2)</p>	<p><b>FCC Coleman</b></p> <p>• Jeffrey Middendorf 352-689-7382</p> <p>FCC Coleman, FL</p>

**Consolidated Legal Centers**

• = CLC LEADER      \* = NOT ACTIVATED

<p><b>FCI Beckley</b></p> <ul style="list-style-type: none"> <li>• Debbie Stevens 304-252-9758 x4105</li> </ul> <p>FCI Beckley, WV FPC Alderson, WV USP Lee, VA FCI McDowell, WV FCI Gilmer, WV</p>	<p><b>FCC Allenwood</b></p> <ul style="list-style-type: none"> <li>• Lori Cunningham 570-522-7642</li> </ul> <p>FCC Allenwood, PA USP Lewisburg, PA FCI Schuylkill, PA</p>	<p><b>St. Louis, MO</b></p> <ul style="list-style-type: none"> <li>• Paul Pepper 314-539-2382</li> </ul> <p>MCC Chicago, IL FCI Oxford, WI FCI Pekin, IL USP Marion, IL FCI Greenville, IL FCI Terre Haute, IN USP Terre Haute, IN FCI Milan, MI *USP Thomson, IL</p>	<p><b>MDC Los Angeles</b></p> <ul style="list-style-type: none"> <li>• Eliezer Ben-Shmuel 213-485-0439 x5428</li> </ul> <p>MDC Los Angeles, CA FCI Terminal Island, CA FCC Lompoc, CA FCC Victorville, CA</p>	<p><b>FCC Beaumont</b></p> <ul style="list-style-type: none"> <li>• Juliana Reese-Colson 409-727-8187 x3262</li> </ul> <p>FCC Beaumont, TX FPC Bryan, TX</p>	<p><b>FDC Miami</b></p> <ul style="list-style-type: none"> <li>• Rick DeAguiar 305-259-2511</li> </ul> <p>FDC Miami, FL FCI Miami, FL FCI Tallahassee, FL FCI Marianna, FL FPC Pensacola, FL</p>
<p><b>FMC Butner</b></p> <ul style="list-style-type: none"> <li>• Mike Bredenberg 919-575-3900 x6078</li> </ul> <p>FMC Butner, NC FCI I Butner, NC FCI Butner, NC FCI II Butner NC LSCI Butner, NC FCI I Petersburg, VA FCI II Petersburg, VA Contract: Winton, NC</p>	<p><b>FMC Devens</b></p> <ul style="list-style-type: none"> <li>• Les Owen 978-796-1043</li> </ul> <p>FCI Danbury, CT FCI Ray Brook, NY FMC Devens, MA FCI Berlin, NH</p>	<p><b>FCC Florence</b></p> <ul style="list-style-type: none"> <li>• Chris Synsvoll 719-784-5216</li> </ul> <p>FCI Florence, CO USP Florence, CO ADMAX Florence, CO FPC Florence, CO FCI Englewood, CO</p>		<p><b>FTC Oklahoma City</b></p> <ul style="list-style-type: none"> <li>• J. D. Crook 405-680-4004</li> </ul> <p>FTC Oklahoma City, OK FCC Forrest City, AR (2) FCI Texarkana, TX FCI El Reno, OK</p>	<p><b>SC/FCI Edgefield</b></p> <ul style="list-style-type: none"> <li>• Tami Rippon Cassaro 803-637-1307</li> </ul> <p>FCI Edgefield, SC FCI Estill, SC FCI Williamsburg, SC FCI Bennettsville, SC</p>