

Necessary Documents and How to Obtain Them for Federal Defenders

To evaluate or assist in evaluating whether an applicant meets the criteria for sentence commutation, and to prepare or assist in preparing a petition on behalf of a qualified applicant, you will need to obtain and review a number of documents. The documents fall into four categories: (1) case documents (a checklist of case documents is attached at Appendix A); (2) petitions for sentence commutation already submitted and accompanying materials previously submitted to the Office of the Pardon Attorney (OPA) (necessary if pending, not absolutely necessary if denied); (3) Bureau of Prisons (BOP) records including (4) records relating to any request for compassionate release submitted to BOP. 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. *See Overall Instructions, Part IV.*

Before beginning the evaluation, send the applicant a letter explaining what you propose to do (a sample of which is attached at Appendix B), and asking the applicant to sign and return to you (1) a Consent to Release of Information (a sample of which is attached at Appendix C); (2) the BOP Release of Information Consent (posted separately as Appendix F-1); and (3) a Certification of Identity (posted separately as Appendix F-2). These forms are necessary to obtain the documents you will need and to discuss the case with the applicant, current and former attorneys, and others.

In your first letter to the applicant, if you do not already know, ask (1) if another attorney previously represented or currently represents him for purposes of sentence commutation, and if another attorney currently represents him in any other matter; (2) if he has already filed a petition for sentence commutation, and whether any such petition is pending or was denied; and (3) whether he has submitted a request for compassionate release to the Bureau of Prisons (BOP), whether any such request is still pending or was denied, and whether he was assisted by counsel.

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.

Case Documents

The documents listed in the chart at Appendix A can be obtained from one or more of the following sources: (1) the district/appellate court file (criminal or civil) that is accessible online via Public Access to Electronic Records, “PACER” at www.pacer.gov, or the physical court file managed by the Clerk of the Court; (2) the applicant’s former or current attorney(s); (3) the applicant himself; (4) the U.S. Probation Office (USPO); or (5) the BOP.

For relatively recent cases, the documents listed in Appendix A can be obtained most quickly and easily through PACER. However, if the applicant has been incarcerated for a decade or more, it is likely that his case was closed before the court switched to electronic filing. In these

cases, though a document is listed on the docket sheet that appears on PACER, the document itself may not be accessible electronically through PACER. Even after the court switched to electronic filing, certain records (such as the Pre-Sentence Investigation Report (PSR) and any objections or addenda thereto) are accessible only by counsel of record. Some documents (such as the Statement of Reasons or sentencing memoranda) are filed under seal in order to protect private information such as mental health issues or cooperation with law enforcement. In some instances, such as those in which an applicant cooperated with the government, the entire case may be under seal (meaning that it may not appear on PACER at all).

If you are not the applicant's former or current attorney and you cannot obtain the documents you need from PACER, ask the applicant's former or current attorneys (there are usually more than one) if they can provide the documents with the applicant's signed Consent to Release of Information ([Appendix C](#)). Contacting the former/current attorneys can save time and effort by avoiding the need to file motions in court to obtain records; it also may alert you to documents and potential sources of information unique to the applicant's case. (Though the applicant may have some of the relevant documents, for example, the sentencing transcript or pleadings, he is unlikely to have a copy of the PSR or Statement of Reasons because the BOP prohibits inmates from retaining those records while in federal custody.)

If you cannot access documents from PACER and are unable to obtain them from the applicant's former/current attorney(s), or the applicant himself, contact the Clerk of the District Court to find out the best way to obtain them. (The physical court file may be available for copying at the Clerk's office. If the file was archived, it may need to be ordered and shipped to the Clerk's office.)

As noted above, certain documents (such as the PSR and sentencing memos) may be sealed, and certain documents (such as the PSR) may not even be listed on the docket sheet. If you are unable to obtain these documents from former/current attorney(s), they may be accessible only with a court order. A sample motion seeking a court order to obtain documents filed under seal or documents that are otherwise unavailable through PACER is attached at [Appendix D](#). Depending on local practice, you also may need to enter a notice of appearance (limited or not) before filing the motion. A sample notice of appearance is attached at [Appendix E](#). If the document you seek is required or suggested by the OPA, you can attach a copy of the OPA Checklist to your motion. *See OPA Checklist, Appendix A to [Overall Instructions](#).*

The USPO is another potential source for case documents. The USPO is likely to have the PSR, objections to the PSR, and any addenda to the PSR. It may have a copy of the charging document, sentencing memos, sentencing transcript, final Judgment and Commitment Order, and Statement of Reasons. In some cases, the USPO may have a copy of the state charging document and judgment for prior convictions upon which a guideline increase or statutory sentencing enhancement was based. Finally, if the applicant was released on bond, the USPO should have (or have access to) the pretrial services report; otherwise, that report can be obtained from the district's Pretrial Services Office. (The USPO's policy for distributing case material to counsel varies from district to district. You may need to produce some form of authorization, e.g., the applicant's signed Consent to Release of Information ([Appendix C](#)), to obtain the records. Some courts have issued a standing order authorizing the disclosure of the PSR and the Statement of Reasons to the Federal Defender for purposes of evaluating eligibility.)

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Rediscovery of the PSR. In some districts, a local rule prohibits rediscovery of the PSR and its contents without a court order. In other districts, the district court or individual judges expect that the PSR cannot be rediscovered without a court order. The sample motion to obtain documents attached at Appendix D includes language to request permission for you (or the applicant) to provide a copy of the PSR to the OPA, and to Clemency Project 2014's Steering Committee for the purpose of forwarding the submission to the OPA. Attach the OPA Checklist to your motion to show that the OPA requires the PSR. *See* OPA Checklist, Appendix A to Overall Instructions. Local rules and customs vary, so be sure your request satisfies the local standard. Regardless of whether a court order is required, if you may be submitting a petition on the applicant's behalf, obtain the applicant's consent to provide the PSR to the OPA, and to Clemency Project 2014's Steering Committee for the purpose of forwarding the submission to the OPA. Sample language is included in the Consent to Release of Information attached at Appendix C.

Finally, you can obtain the Judgment and Commitment Order from the BOP. *See* "BOP Records" below for details.

Note that the OPA requires the applicant to submit the Statement of Reasons page from the Judgment and Commitment Order if there was one. The BOP will not be able to provide you the Statement of Reasons page. If you obtain the Judgment and Commitment Order from any of the other sources noted above, the Statement of Reasons page may or may not be attached. The only way to ensure that you get the Statement of Reasons page (if there was one) is to obtain a certified copy of the Judgment from the District Court Clerk's Office. Contact the Clerk and ask what is required to obtain it. If a motion is required, you can attach a copy of the OPA Checklist to show that the OPA requires this document. *See* OPA Checklist, Appendix A to Overall Instructions.

Documents pertaining to prior state convictions used to increase the criminal history score, sentence the applicant as a career offender, or require or enhance mandatory minimums under 21 U.S.C. § 851 or 18 U.S.C. § 924(e) may be available in the discovery or sentencing materials obtained from PACER, prior counsel, the client, or the USPO. If the state records are not available through these sources, you will need to obtain them directly from the state court file. Many state courts make criminal dockets available online; from an online docket, you may be able to locate prior counsel who can assist with obtaining state court records.

To obtain records of military convictions, write to the following address and include the Consent to Release of Information (Appendix C):

Deputy Assistant JAG
Office of the Judge Advocate General
716 Sicard Street SE, Suite 1000
Washington, DC 20374-5047
202-685-7053

Contacts:

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James Duncan w/JAG – 202-685-8525

Lt. Denise Romeo – 202-685-7056

Thomas Gauzer – 202-685-4485

Previously-Submitted Petitions for Sentence Commutation

Determine whether the applicant has already filed a petition for sentence commutation, whether any such petition is pending or was denied, and whether the applicant is or was assisted by counsel. (If the client is or was assisted by counsel, determine whether he wishes to proceed with that attorney before continuing with the case.) Obtain a copy of any pending petition and accompanying materials (such as exhibits, letters from the sentencing judge, letters from family, etc.) from counsel or the applicant himself. If you cannot obtain it from the applicant or counsel, complete a Certification of Identity, posted separately as Appendix F-2 and available at http://www.justice.gov/oip/forms/cert_ind.pdf, with your name and address under “Authorization to Release Information to Another Person” and signed by the inmate.

You will need to review previously filed petitions because they are unlikely to have adequately addressed, or even acknowledged, the commutation criteria announced to inmates on May 5, 2014. In most cases, a supplement must be filed, both to address the criteria and to correct or explain any mistakes, inaccuracies, or inconsistencies in the earlier petition; in some instances, you may even have to withdraw the petition and resubmit it. *See Overall Instructions, Part IV.* If a petition was previously filed but denied, you may want to review it, but it is not absolutely necessary.

Previously-Submitted Requests for Compassionate Release

Determine whether the applicant has submitted a request for compassionate release to the BOP, whether any such request is still pending or was denied, and whether the applicant was assisted by counsel. You can obtain the inmate’s request, approval or denial memorandum provided to inmate, and relevant administrative remedy by checking the box on the master form for obtaining BOP records. *See next section.* Any request for compassionate release should be attached to the commutation submission to OPA. *See OPA Checklist, Appendix A to Overall Instructions.*

BOP Records

The BOP release of information consent form (posted separately as Appendix F-1) lists the following:

1. Judgment and Commitment Order
2. Most recent Progress Report
3. SENTRY PPPI (Sentencing Information)
4. SENTRY PD15 (Disciplinary Information)
5. SENTRY PP44 (Inmate Profile Information, including housing, education, work assignments, etc.)
6. SENTRY PIDF (Inmate Financial Information, including restitution information)
7. Medical Records (Only if necessary; Office of Pardon Attorney does not require in all cases)

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8. Information concerning a request for a “Compassionate Release” Reduction in Sentence (pursuant to 18 U.S.C. § 3582(c)(1)), if any (e.g. Inmate request, approval or denial memorandum provided to inmate, relevant administrative remedy)
9. Other records (please identify specifically)

After having the inmate sign the BOP consent form, email it to the executive assistant for the institution. 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 “records request” in the subject line.

The first six documents are required to be submitted with every petition. *See* OPA Checklist, Appendix A to Overall Instructions. A medical report is required to be submitted “if the inmate claims to suffer from a serious medical condition,” and is to include the inmate’s current condition; treatment the inmate is undergoing; the inmate’s prognosis; and information about whether the inmate has applied for compassionate release and if so, the status of that request. *Id.*

These documents and perhaps others will be needed to evaluate whether a client meets the criteria, and to prepare a memorandum in support of commutation if so. You can request other documents that you find you need under “Other.” For other documents you may need, *see* Reading, Interpreting and Using BOP Records.

Information about BOP’s policies and procedures is available at www.bop.gov.

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APPENDIX A

Checklist and Potential Sources for Obtaining Necessary Case Documents

Documents marked with an * may have been filed under seal and, as a result, may be available only with a court order.

Document Needed	Source						Document Obtained
	PACER ¹ or Clerk of Court	Former or Current Federal Attorney ²	Applicant	Probation	BOP	Other	
Docket Sheet (incl. co-defendants' docket sheets, if any)	✓	✓	✓				
Charging Doc. (incl. original/superseding complaint, information, and/or indictment)	✓	✓	✓	?			
If defendant pleaded guilty: Plea Agreement*	✓	✓	✓				
Presentence Report* (incl. objections, addenda)		✓		✓			
Sent. Motions & Memoranda*	✓	✓	✓	?			
Sentencing Transcript(s)* (incl. trans. of resentencing, if any)	✓	✓	✓			✓ Court Reporter	
Judgment (incl. corrected or amended judgment)	✓	✓	✓	✓	✓		
Statement of Reasons*	✓	✓		✓			

¹ Public Access to Court Records (“PACER”) is available online at www.pacer.gov.

² Former and current attorneys’ names and contact information should be available on the docket sheet in the federal case, usually on PACER. Some attorneys’ names and contact information may also be in the Clemency Project 2014 database, if the inmate provided them in response to the BOP Survey.

Document Needed	Source						Document Obtained
	PACER ¹ or Clerk of Court	Former or Current Federal Attorney ²	Applicant	Probation	BOP	Other	
If def. released on bond: Order Releasing Applicant*	✓	✓	✓	✓			
Pretrial Services Report*		?		✓		✓	Pretrial Services
If government filed notice under 21 U.S.C. § 851 to increase mandatory minimum sentence: Notice/Info. to Establish Prior Conviction(s)	✓	✓	✓				
If court relied on 1 or more prior conviction(s) to: (a) <u>increase mand. min. sent.</u> (21 U.S.C. §851); (b) <u>classify defendant as career offender</u> (USSG §§4B1.1, 4B1.2); (c) <u>impose mand. min. 15-year term for illegal firearm possession</u> (18 U.S.C. § 924(e)); or (d) <u>improperly increase criminal history score</u> Records of Prior Conviction(s)³	✓ (see, e.g., exhibit to sentencing hearing or sentencing memo)	?	?	?		✓ Court of Conv. Former Counsel	

³ 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.

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Document Needed	Source						Document Obtained
	PACER or Clerk of Court	Former or Current Federal Attorney	Applicant	Probation	BOP	Other	
If defendant cooperated before sentencing: Motion for Downward Departure under U.S.S.G. § 5K1.1 or 18 U.S.C. §3553(e)*	✓	✓					
If defendant cooperated after sentencing: Motion & Order for Downward Departure under Fed.R.Crim.P.35(b)*	✓	✓					
If motion or other request made to reduce sent. under 18 USC §3582(c)(2): Motion⁴ & Sentence Reduction Order	✓	✓ (*unless <i>pro se</i>)	✓	✓			
If direct appeal, including an appeal of an order granting or denying a §3582(c)(2) motion/request: Briefs & Opinions	✓ (appellate)	✓ (*unless <i>pro se</i>)	✓			✓ PACER (appeals court docket) Westlaw, LEXIS	
If habeas review under 28 U.S.C. §§ 2241, 2255: Motions, Memoranda, Orders, Decisions	✓ (civil and criminal)	✓ (*unless <i>pro se</i>)	✓			✓ PACER (civil & criminal dockets) Westlaw, LEXIS	

⁴ In some cases, the district court may have granted a sentence reduction under 18 U.S.C. § 3582(c)(2) even though no motion or other request for relief appears on the docket sheet.

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Appendix B

OFFICE OF THE FEDERAL PUBLIC DEFENDER
DISTRICT OF [STATE]
999 Main Street
City, State 12345
Tel: (xxx) xxx-xxxx
Fax: (xxx) xxx-xxxx

NAME
FEDERAL PUBLIC DEFENDER

NAME
ASSISTANT FEDERAL PUBLIC DEFENDER

ATTORNEY-CLIENT PRIVILEGED
CONFIDENTIAL COMMUNICATION

[DATE]

[Applicant]
Reg. No. [xxxxxx-xxx]
FCI Fort Dix
Federal Correctional Institution
P.O. Box 2000
Fort Dix, NJ 08640

Re: United States v. [Applicant], Crim. Case No. ABC-01-2345

Dear [Applicant]:

As you know, the Deputy Attorney General recently announced that the Department of Justice will begin reviewing petitions for sentence commutation from federal inmates using a new set of criteria.¹ [**EITHER:** We have received your request for assistance in pursuing sentence commutation from Clemency Project 2014. **OR:** We have received your letter/call seeking this office's assistance in pursuing sentence commutation.] Our office would be pleased to evaluate your case to determine whether you meet the criteria, and [**EITHER:** if so, to prepare a petition for sentence commutation on your behalf. **OR:** if so, to provide assistance in preparing a petition for sentence commutation.]

To assist us in reviewing all records that may bear on your eligibility for clemency, please sign and return the enclosed forms:

- Consent to Release of Information
- Certification of Identity (Form DOJ-361)

¹ The criteria are as follows: The inmate (1) is serving a federal sentence that would likely be substantially lower if the inmate were convicted of the same offense today; (2) is a non-violent, low-level offender without significant ties to large-scale criminal organizations, gangs, or cartels; (3) has served at least 10 years of his or her sentence; (4) does not have a significant criminal history; (5) has demonstrated good conduct while in BOP custody; and (6) has no history of violence before the offense or during his or her term of incarceration.

- BOP Release of Information Consent

In addition, if you have already filed a petition for sentence commutation, please let us know, send us a copy of the petition and any supporting materials submitted with it if you have them, and advise us of the current status of the petition. If you have submitted a request for compassionate release, please let us know, send us a copy of the request, and advise us of the current status of the request.

If we determine that you meet the criteria, you will receive a detailed questionnaire regarding release plans. Meanwhile, please let us know if you have plans for your release—for example, where you may live, where you may find employment, your expected family responsibilities. Finally, please let us know anything else that you think may be relevant, such as a change in your physical health or a change in family circumstances.

I look forward to hearing from you.

Sincerely,

[Name]

Encl.

APPENDIX C

Consent to Release of Information

United States v. _____

Case No: _____

I, _____, Defendant in the above-referenced case, hereby consent and authorize _____ (hereinafter "lawyer") to do the following on my behalf:

1. To file any motions or other pleadings needed to obtain and review all documents and other information related to the sentence imposed upon me in the above-referenced case, including but not limited to the presentence report, sentencing memoranda, sentencing transcript, and statement of reasons, whether or not any such document is under seal or otherwise not available to the public; and

2. To obtain and review all documents and other information related to the sentence imposed upon me in the above-referenced case for the purpose of evaluating whether I meet the eligibility criteria to seek executive clemency and/or for the purpose of [EITHER: preparing a clemency petition on my behalf; OR: providing assistance in preparing a clemency petition]

[IF YOU WILL BE SUBMITTING PETITION ON BEHALF OF APPLICANT IF ELIGIBLE: ; and

3. Should lawyer determine that I meet the eligibility criteria, to provide a copy of my presentence report to the Office of the Pardon Attorney as part of my clemency submission, as required by the Office of the Pardon Attorney, and to the Clemency Project 2014 Steering Committee for the purpose of forwarding my submission to the Office of the Pardon Attorney].

Defendant's Signature

Reg. No.

Date

APPENDIX D

UNITED STATES DISTRICT COURT

DISTRICT OF _____
(_____ Division)

United State of America,)
Plaintiff,)
)
v.) Case No. _____
)
_____,)
Defendant.)
_____)

[Unopposed] Motion for Leave to Obtain, and Review Documents
[Filed Under Seal / Not Available to the Public Through PACER] [and/or] [to
Redisclose the Presentence Report]

Defendant [NAME], through undersigned counsel, respectfully requests leave of this Court to obtain and review a copy of documents [filed under seal / not available to the public through PACER]. [Further,] [Defendant [NAME], through undersigned counsel, requests leave of this Court to provide a copy of the Presentence Report and any addenda to the Office of the Pardon Attorney should a petition for clemency be filed, and to the Clemency Project 2014 Steering Committee for the purpose of forwarding Defendant's clemency submission to the Office of the Pardon Attorney.] In support thereof, counsel states the following:

1. Defendant has authorized undersigned counsel to obtain and review the file in the above-captioned case in connection with counsel's [EITHER: evaluation of Defendant's eligibility to seek executive clemency and the possible

preparation of a clemency petition on Defendant's behalf.] [OR: assistance in evaluating Defendant's eligibility to seek executive clemency.] In order to properly assess whether Defendant qualifies for clemency, counsel seeks access to the following documents (including those under seal and those not otherwise available to the public): [list documents].

2. Defendant, who is currently in the custody of the U.S. Bureau of Prisons [or state prison facility] serving a federal sentence, is indigent and does not have copies of the needed material.

3. [Undersigned counsel has been authorized by the U.S. Attorney's Office to represent that the government does not oppose the requested relief.]

4. This motion is made in good faith. Review of the requested material is necessary to determine whether Defendant meets the criteria for clemency announced by the Department of Justice.

5. Counsel will abide by this Court's rules governing confidential and sealed documents.

[IF COURT ORDER REQUIRED TO REDISCLOSE PSR:

6. If a clemency submission is filed on Defendant's behalf, the Office of the Pardon Attorney requires that the Defendant include a copy of the Presentence Report as part of the submission. See OPA Checklist (attached). Defendant has requested that his clemency submission, including a copy of the

**Presentence Report, be forwarded to the Office of the Pardon Attorney by the
Steering Committee of Clemency Project 2014.]**

Wherefore, undersigned counsel, on behalf of Defendant [NAME], hereby moves this Court for an order authorizing counsel to obtain and review a copy of the aforementioned documents **[IF COURT ORDER REQUIRED TO REDISCLOSE PSR: and authorizing counsel/Defendant to provide the Presentence Report to the Office of the Pardon Attorney should a clemency submission be filed, and to the Steering Committee of Clemency Project 2014 for the purpose of forwarding the submission to the Office of the Pardon Attorney].**

Respectfully submitted,

Certificate of Service

I hereby certify that on this _____ day of _____ 2014, the foregoing motion was electronically filed with the Clerk of the Court using the CM/ECF system, which automatically sends notice of such filing to all registered CM/ECF parties, and that a copy of the foregoing motion was sent by U.S. mail, first-class postage prepaid, to Defendant [NAME], [REGISTER NUMBER], at [NAME AND ADDRESS OF FACILITY].

APPENDIX E

UNITED STATES DISTRICT COURT

DISTRICT OF _____
(_____ Division)

United State of America,)
Plaintiff,)
)
v.) Case No. _____
)
_____,)
Defendant.)
_____)

Notice of [Limited] Appearance of Counsel

Undersigned counsel hereby gives notice of [**his/her**] appearance on behalf of Defendant [NAME] for the [**limited**] purpose of obtaining and reviewing documents, including sealed documents and other documents not available on PACER, in connection with [**EITHER:** the evaluation of Defendant's eligibility for sentence commutation and potential preparation of a petition for commutation of sentence on Defendant's behalf. **OR:** assisting in the evaluation of Defendant's eligibility for sentence commutation.]

Respectfully submitted,

Certificate of Service

I hereby certify that on this _____ day of _____ 2014, the foregoing notice was electronically filed with the Clerk of the Court using the CM/ECF system, which automatically sends notice of such filing to all registered CM/ECF parties, and that a copy of the foregoing notice was sent by U.S. mail, first-class postage prepaid, to Defendant **[NAME], [REGISTER NUMBER]**, at **[NAME AND ADDRESS OF FACILITY]**.
