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Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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July 14, 2015

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Attorney General Lynch:

Last year, former Attorney General Holder announced the implementation of a new policy governing the issuance of executive clemency for certain federal drug offenders. The purpose of this new clemency program was, in his words, "to restore a degree of justice, fairness and proportionality for deserving individuals who do not pose a threat to public safety." Following that announcement, then-Deputy Attorney General James Cole took the unprecedented step of asking the defense bar to recruit candidates for executive clemency; specifically, federal drug offenders.

Specifically, former Attorney General Holder stated that the Justice Department would prioritize applications from drug offenders who met certain criteria, including those who: (1) "likely would have received a substantially lower sentence if convicted of the same offense(s) today," (2) are "non-violent, low-level offenders without significant ties to large scale criminal organizations, gangs or cartels," (3) "have served at least 10 years of their prison sentence," (4) "do not have a significant criminal history," (5) "have demonstrated good conduct in prison," and (6) "have no history of violence prior to or during their current term of imprisonment."¹

Yesterday, President Obama commuted the sentences of 46 drug offenders.² That means that, during his presidency, the President has granted executive clemency, in the form of commutations, to no fewer than 89 offenders. All but one of those commutations has been issued since December 2013. The vast majority of commutations under this President have been

¹ "Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants," April 23, 2014, available at <http://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new>.

² "Obama Commutes Sentences for 46 Drug Offenders," The New York Times, available at http://www.nytimes.com/2015/07/14/us/obama-commutes-sentences-for-46-drug-offenders.html?_r=0.

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awarded to drug offenders – though in December 2014, the President did use his clemency power to commute the sentences of three Cuban spies and murderers who were serving life sentences.³

As Members of the Judiciary Committee, which oversees the Department of Justice, including the functions performed by the Office of the Pardon Attorney, we are deeply concerned that the President continues to use his pardon power to benefit specific classes of offenders, or for political purposes. No one disputes that the President possesses the constitutional authority to grant pardons and commutations. However, as the Department's own U.S. Attorney's Manual states, commutation of sentence is "an extraordinary remedy that is rarely granted."

Additionally, the fact that the Department's clemency initiative is focused solely on federal drug offenders continues this Administration's plainly unconstitutional practice of picking and choosing which laws to enforce and which to change. This is not, as the Founders intended, an exercise of the power to provide for "exceptions in favour of unfortunate guilt,"⁴ but instead the use of the pardon power to benefit an entire class of offenders who were duly convicted in a court of law – not to mention a blatant usurpation of the lawmaking authority of the Legislative branch.

In order to ensure that this Committee is able to conduct its oversight of the Executive branch's law enforcement activities, please respond to the following questions as soon as possible, but no later than **July 24, 2015**:

1. As your predecessor noted, we are currently facing an "urgent and growing public health crisis" due to an influx of heroin into this country. How many offenders granted clemency were convicted of heroin trafficking? Does the type of drug affect the Department's analysis?
2. Methamphetamine is also a horrible drug that ruins lives and families. How many offenders granted clemency were convicted of trafficking in methamphetamine?
3. How does the Department determine whether an offender "likely would have received a substantially lower sentence if convicted of the same offense(s) today"? What is the process for making that determination and what factors are considered?
4. Will the victims of crimes committed by these offenders, or the federal prosecutors who handled the cases, be notified before the offenders are released?

³ "Price of U.S.-Cuba deal: Releasing a Murderer," POLITICO, December 17, 2014, *available at* <http://www.politico.com/blogs/under-the-radar/2014/12/price-of-uscuba-deal-releasing-a-murderer-200102.html>.

⁴ THE FEDERALIST No. 74 (Alexander Hamilton).

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5. Of the drug offenders granted clemency by this President, what quantity of narcotics did each offender possess?
6. How many of the offenders granted clemency were in each of the six criminal history categories, as outlined by the U.S. Sentencing Commission? For those with prior convictions, what were their prior convictions at the federal and state levels?
7. How many offenders granted clemency were affiliated with organized crime or street gangs at the time of their conviction, and which offenders were they?
8. How many offenders granted clemency were convicted for a firearms possession offense in addition to the drug offense? Are those offenders included in the Department's definition of "non-violent"?
9. In addition, with respect to each offender, please provide the following documentation: the underlying plea agreement, factual proffer, pre-sentence report and original judgment and conviction order.

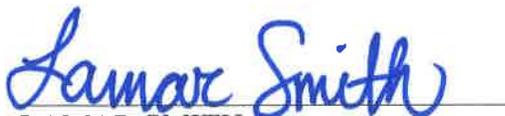
Thank you for your attention to this important matter.



BOB GOODLATTE
Chairman
House Committee on the Judiciary



STEVE CHABOT
Member
House Committee on the Judiciary



LAMAR SMITH
Member
House Committee on the Judiciary

Sincerely,



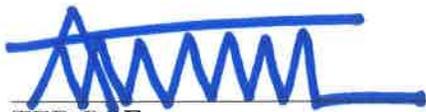
A. JAMES SENSENBRENNER, JR.
Chairman
Subcommittee on Crime, Terrorism,
Homeland Security, and Investigations



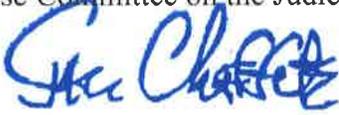
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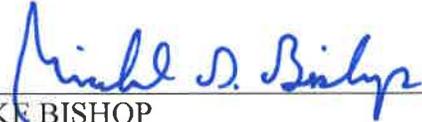
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