

The Honorable Merrick Garland
Washington DC

Dear Judge Garland,

As people and organizations who care deeply about the federal clemency process, we watched your confirmation hearing with interest. There, you noted that “the role of the Justice Department through its pardon attorney is to provide a careful and visualized examination of the people who are asking to be pardoned,” and that “the office has a set of very detailed regulations which describe when people are appropriate for pardons and when they are not. It provides an important screen that not only yields who maybe should be pardoned but also protects the president from improper influence.”

In fact, the clemency system is in crisis, with more than 15,000 petitions pending (compared to less than 2,000 at the start of the Obama administration). The current review system cannot resolve this crisis. That process involves not only the Pardon Attorney, but the Deputy Attorney General and the White House Counsel—a seven-level bureaucratic process that has failed all of the recent presidents.

Clemency should play a key role in providing the racial equity you defended at the confirmation hearing. We hope that you will concur with us in seeing the need to address this crisis by creating a better process and identifying categories of people who should be prioritized for clemency, including the elderly and chronically ill, those in prison for marijuana offenses, those currently on home confinement, women over-sentenced as accessories, those who have received harsh trial penalties, and those sentenced under mandatory minimums.

The Pardon Attorney can play a role in addressing the crisis if needless bureaucracy is eliminated. The best practice—based on historical precedent and state experiences—would be to position the Pardon Attorney as chief of staff to an advisory board of qualified individuals charged with evaluating cases and making recommendations directly to the president.

No other jurisdiction in the United States puts prosecutors in the role of being the principal evaluators of clemency petitions, because fresh eyes are freer of institutional conflicts. Taking the task out of DOJ would also take a responsibility off of the DAG’s heavily laden plate. The idea of moving the clemency process

from the DOJ has been endorsed by a remarkable and bipartisan array of groups and experts, including [Greg Craig](#), Paul Larkin, Jr. of the [Heritage Foundation](#), [Senator Amy Klobuchar](#), [Vice President Kamala Harris](#), [Transportation Secretary Pete Buttigieg](#), [Senator Cory Booker](#), [Senator Elizabeth Warren](#), [Senator Bernie Sanders](#), and former Acting Pardon Attorney [Larry Kupers](#). The New York Times Editorial Board argued compellingly for the move in both [2014](#) and [2020](#), and it was endorsed as part of the [Democratic Platform](#) in 2020.

We appreciate your devotion to justice and hope that your talents will turn towards this crisis. We stand at the ready to help.

Sincerely,

Braxton Institute
Breaking Chains
Brennan Center for Justice at NYU School of Law
Buried Alive Project
CAN-DO Clemency
Center for Community Transitions
Center for Disability Rights
Clause 40 Foundation
Coalition for Jubilee Clemency
The Daniel Initiative
DC Caucus for Returning Citizens
Due Process Institute
Drug Policy Alliance
Federal Public and Community Defenders
Inner Voices, Inc.
Life for Pot
National Association of Criminal Defense Lawyers
National Council for Incarcerated and Formerly Incarcerated
Women and Girls
National Council on Alcoholism and Drug Dependence
Church of Scientology National Affairs Office
StopThe DrugWar.org
Students for Sensible Drug Policy
The Taifa Group
Tzedek Association

Until Freedom
VDay
We Got Us Now

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