

June 30, 2020

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Re: Sholam Weiss (BOP No. 32610-054)

Dear Mr. President,

We write as an informal group of former federal prosecutors, judges and senior government officials to urge you to commute the sentence of Sholam Weiss, a federal prisoner who has been incarcerated for almost 20 years and who can safely be sent home and supervised by a probation officer.

Mr. Weiss was convicted on November 1, 1999 on 76 counts, primarily of wire fraud and money laundering, connected to the collapse of a small insurance company, National Heritage Life Insurance Co. He was subsequently sentenced to 835 years in federal prison with no parole.¹

In urging you to commute his sentence, we highlight the following facts:

- This 835-year sentence is the largest sentence ever imposed by a federal court in U.S. history for a white-collar crime.
- Mr. Weiss is now 66 years old. He is the father of five children and has 33 grandchildren and two great grandchildren.
- Mr. Weiss is in extremely poor health. While incarcerated, Mr. Weiss was diagnosed with colon cancer and has had several heart surgeries. Additionally, he suffers from hypertension, hyperthyroidism, anemia, asthma, sleep apnea, and chronic depression.
- Mr. Weiss owes no restitution. The U.S. Attorney for the District Court of the Middle District of Florida, A. Lee Bentley, III, confirmed that the restitution of \$125 million imposed upon Mr. Weiss on February 22, 2000 *has been satisfied in full*.
- According to a legal opinion from the law firm of Neiman & Maranz P.C., there is evidence that supports an argument that there was no actual loss caused by Mr. Weiss because the value of the mortgages his company (South Star) returned to National Heritage before there ever was a criminal investigation, exceeded the amount of losses

¹ The outrageous length of Mr. Weiss' sentence is not only a result of overcharging and consecutive sentencing on such charges but also a product of the "trial penalty" which lengthens a sentence of a defendant who chooses to exercise their constitutional right to go to trial before a jury of their peers.

attributed to him by the sentencing court. With no losses, albeit with \$100 million laundered, Weiss' sentence would be approximately 36 months, which he has served many times over.

- He has been a model prisoner and is a minimum-risk of recidivating according to BOP's PATTERN risk assessment system.²
- Mr. Weiss is a non-violent offender.
- The country of Austria has repeatedly requested a commutation of sentence—specifically in letters, which are attached below, from the Austrian Chancellor, Austria's head of Government, to former President George W. Bush, former President Barack Obama, and recently to you, President Donald J. Trump.³

Review of sentences in other cases helps to demonstrate the severity of Mr. Weiss's sentence and the unfair disparity in his sentence in comparison to others. According to the United States Sentencing Commission's Sourcebook of Federal Sentencing Statistics for 2013, Table 13, the median sentence for murder is 240 months—*more than 800 years* less than the sentence imposed on Mr. Weiss. Median sentences for kidnapping (204 months), sexual abuse (120 months), child pornography (96 months), arson (63 months), and robbery (63 months) are also immensely shorter than the ridiculous and practical death sentence of 835 years which Mr. Weiss received. Even in massive fraud cases affecting thousands of victims where the defendants committed multi-billion-dollar fraud solely or primarily for personal gain and greed, defendants did not receive sentences as long as Mr. Weiss:

- Bernard Ebbers (former CEO of Worldcom): 300 months
- Jeffrey Skilling (former CEO of Enron): 292 months (later reduced to 168 months)
- Timothy Rigas (former CFO of Adelphia): 204 months
- John Rigas (founder of Adelphia): 144 months
- Sanjay Kumar (former CEO of Computer Associates): 144 months
- Dennis Kozlowski (former CEO of Tyco): served 96 months
- Stephen Richards (former Vice-President of Computer Associates): 84 months (reduced to time served after appeal)

Within this case itself, Mr. Weiss' co-defendants received far lower sentences, besides one. While co-defendant Keith Pound received 740 years, co-defendant Patrick Smythe received 25 years (later reduced to 10 years for his cooperation), co-defendant David Davies 84 months (reduced to 70 months for cooperating), co-defendant Lyle Pfeffer and co-defendant Michael Blutrigh were both sentenced to 25 years (reduced to 13 years for cooperating). Importantly, Mr. Weiss is the only co-defendant in this case still incarcerated.

² His official BOP Progress Report states that "Mr. Weiss has a good rapport with staff and fellow inmates." The report goes on to say that he helped single-handedly prevent what might have been deadly "planned violent inmate on inmate attacks."

³ Prior to sentencing, Mr. Weiss absconded to Austria fearful of the impending conviction and outrageous sentence. Recognizing his mistake, Mr. Weiss turned himself in to authorities. The Austrian government extradited Mr. Weiss but demanded that he be resented to a reasonable amount of time. To this day, Austrian officials insists the US failed to live up to commitments to resentence to a reasonable sentence and have been requesting clemency for Mr. Weiss of the Bush, Obama, and Trump administrations. The Middle District Court of Florida stated that it is the responsibility of the Executive Branch to fulfill the international obligations owed to Mr. Weiss. *Weiss v. Warden*, Case No. 02-cv-204-10, Doc. 198, page 4 (September 27, 2016).

Mr. Pound, facing so many years in prison, killed himself while incarcerated. The remaining defendants have all been released.

In an interview with “Best Reviews,” an insurance journal, Assistant U.S. Attorney, Judy Hunt, the main prosecutor on this case, admitted on the record that “Smythe, Pfeffer and Blutrich received lighter sentences because they pleaded guilty.” In other words, Mr. Weiss received an astronomically larger sentence, not because of a difference in conduct or culpability, but because he did not take the plea and instead exercised his constitutional right to a trial.

To sentence someone to prison for life for a financial crime for which there is no restitution owed absolutely defies our values as a nation to seek justice and fairness. Nearly two decades in prison is more than enough time for the fair administration of justice and any interest in punishment for this offense.

In addition to the compelling factors of age, the length of the excessive sentence served, the health of Mr. Weiss and the requests of Austrian officials, we should also consider the rehabilitation of Mr. Weiss. He is a model inmate, is highly respected by prison officials and is a mentor to his fellow inmates. Mr. Weiss’s prison record demonstrates that he has devoted himself to rehabilitative and religious activities while incarcerated, focusing on improving himself and always helping others in need. Mr. Weiss’s behavior throughout his lengthy incarceration has demonstrated that from both a retributive and rehabilitative perspective, the objectives and purposes of his sentence have been successfully served.

As former federal prosecutors and senior government officials who worked on the front lines of our criminal justice system, we have always been tough on crime but believe deeply in notions of fairness in the administration of justice. While employed by the Department of Justice, we consistently pursued successful prosecutions and argued for appropriate and substantial punishment in federal courts. However, we are also aware of many needed improvements to the federal criminal justice system. Over-punishment is one of the areas of needed improvement as it results in undue human and financial costs and erodes the effectiveness of our criminal justice system.

Our goal is to increase public safety. One of the purposes of this clemency recommendation is not just to provide relief to Mr. Weiss but to highlight the need to manage the federal prison population more effectively and efficiently. This would preserve limited Department of Justice resources needed for federal law enforcement efforts to identify, interdict, disrupt, and dismantle transnational criminal organizations, and to focus on the highest levels of serious and violent crime.

Research and evidence clearly demonstrate that community supervision is the most cost-effective way to supervise low-risk, low-need prisoners. The current cost of community supervision is much lower than federal prison. According to the Administrative Office of the

U.S. Courts, the average annual cost to supervise a person in the community is \$4,392 as opposed to \$34,770 to imprison a person.⁴

According to the Statement of the Department of Justice Inspector General before Congress on March 21, 2017, “Examining Systemic Management and Fiscal Challenges within the Department of Justice,” one of the top challenges facing the Department is “managing an overcrowded federal prison system in an era of limited budgets and continuing security concerns.” Specifically:

- *The BOP currently has the largest budget of any Department component other than the FBI, accounting for more than 25 percent of the Department’s discretionary budget in FY 2016. Department spending on the federal prison system impacts its ability to fund other important Department operations, such as its critical law enforcement and national security missions.*
- *As such, it is imperative that the Department manage the prison system in the most cost- efficient manner possible.*

Further, according to the October 16, 2017, memorandum for the Attorney General from the Inspector General regarding the “Top Management and Performance Challenges Facing the Department of Justice”:

- *Despite a declining federal inmate population in recent years, the Department continues to face several challenges with the federal prison system. As of mid-April 2017, the federal prison system remained 14 percent above its rated capacity, with high security institutions operating at 25 percent overrated capacity.*
- *These population changes compound the Department’s challenge of weighing BOP’s resource needs against those of other Department components and programs.*

In Mr. Weiss’ case, it is also important to note that at 66 years-old, he is in an age bracket that is even more costly to the taxpayer than younger inmates. In a May 2015 report, “The Impact of an Aging Inmate,” the U.S. Inspector General concluded that “inmates age 50 and older were the fastest growing segment of its inmate population, increasing 25 percent from 24,857 in fiscal year (FY) 2009 to 30,962 in FY 2013. By contrast, during the same period, the population of inmates 49 and younger decreased approximately 1 percent, including an even larger decrease of 29 percent in the youngest inmates (age 29 and younger). Based on BOP cost data, we estimate that the BOP spent approximately \$881 million, or 19 percent of its total budget, to incarcerate aging inmates in FY 2013.” Inmates over 65 years of age, like Mr. Weiss, are even costlier.

In conclusion, the commutation of Mr. Weiss, a non-violent, low-risk, aging prisoner, is appropriate because Mr. Weiss is deserving, and his outrageous sentence is not justified.

⁴ <http://www.uscourts.gov/news/2017/08/17/incarceration-costs-significantly-more-supervision>

However, commutation is also appropriate in this case because it will effectively help the Department free up limited resources needed for more vital law enforcement efforts. Accordingly, we urge that Mr. Weiss' petition for clemency be granted.

Thank you for your consideration.

Respectfully yours,

Edwin Meese
Former United States Attorney General

Kenneth Starr
Former United States Circuit Judge, Court of Appeals for the D.C. Circuit
Former United States Solicitor General

Carol E. Dinkins
Former Deputy Attorney General of the United States
Former Assistant Attorney General, Environment and Natural Resources Division,

Frank Keating
Former Associate Attorney General of the United States
Former United States Attorney, Northern District of Oklahoma
Former FBI Agent
Former Governor of Oklahoma

Seth P. Waxman
Former Solicitor General of the United States

Bob Barr
Former United States Attorney, Northern District of Georgia
Former Anti-Drug Coordinator for the US DOJ, Southeastern United States
Former Member of Congress (R-GA)

Brett L. Tolman
Former United States Attorney, District of Utah
Former Member of the Attorney General's Advisory Committee
Former Assistant United States Attorney, District of Utah

Alex Kozinski
Former United States Chief Circuit Judge, Court of Appeals for the Ninth Circuit

Matthew Orwig
Former United States Attorney, Eastern District of Texas
Former Assistant United States Attorney, Northern District of Texas
Former President of NAFUSA

Kent B. Alexander
Former United States Attorney, Northern District of Georgia
Former Assistant United States Attorney, Northern District of Georgia

Ben Burgess
Former United States Attorney, District of Kansas
Former State Judge, Eighteenth Judicial District of Kansas

A. Bates Butler III
Former United States Attorney, District of Arizona
Former First Assistant United States Attorney, District of Arizona

Kendall Coffey
Former United States Attorney, Southern District of Florida

Paul Coggins
Former United States Attorney for the Northern District of Texas

Michael Crites
Former United States Attorney, Southern District of Ohio
Former Assistant United States Attorney, Southern District of Ohio

William B. Cummings
Former United States Attorney, Eastern District of Virginia

Bud Cummins
Former United States Attorney, Eastern District of Arkansas

Margaret E. Curran
Former United States Attorney, District of Rhode Island

W. Thomas Dillard
Former United States Attorney, Northern District of Florida
Former Assistant United States Attorney, Eastern District of Tennessee

Edward L. Dowd, Jr.
Former United States Attorney, Eastern District of Missouri

Troy A. Eid
Former United States Attorney, District of Colorado

Lawrence D. Finder
Former United States Attorney, Southern District of Texas

Thomas B. Heffelfinger
Former United States Attorney, District of Minnesota

David C. Iglesias
Former United States Attorney, District of New Mexico
Former Member of the Attorney General's Advisory Committee
Former Assistant Attorney General, New Mexico

Gregory G. Lockhart
Former United States Attorney, Southern District of Ohio
Former Assistant United States Attorney, Southern District of Ohio

A. Melvin McDonald
Former United States Attorney, District of Arizona
Former Member of the Attorney General's Advisory Committee
Former Superior Court Judge, Maricopa County

Stephen B. Pence
Former United States Attorney, Western District of Kentucky
Former Lieutenant Governor of Kentucky
Former Assistant United States Attorney, Western District of Kentucky

George W. Proctor
Former United States Attorney, Eastern District of Arkansas
Former Chair of the Attorney General's Advisory Committee
Former Federal Immigration Judge
Former Assistant United States Attorney, Territory of Guam

James H. Reynolds
Former United States Attorney, Northern District of Iowa

Richard Roper
Former United States Attorney, Northern District of Texas

John Smietanka
Former United States Attorney, Western District of Michigan
Former Principal Associate Deputy Attorney General, U.S DOJ

Michael J. Sullivan
Former United States Attorney, District of Massachusetts
Former Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives
Former District Attorney, Plymouth County, Mass
Former Representative, Massachusetts House of Representatives

Stanley Twardy Jr.
Former United States Attorney, District of Connecticut

Joseph M. Whittle
Former United States Attorney, Western District of Kentucky
Former Chairman, Attorney General's Advisory Committee

Atlee W. Wampler
Former United States Attorney, Southern District of Florida

William G. Bassler
Former United States District Court Judge, District of New Jersey
Professor of Law, Fordham Law School

Edward N. Cahn
Former United States District Judge, Eastern District of Pennsylvania

William F. Downes
Former United States District Judge, District of Wyoming
Former Member of the Judicial Conference of the U.S. Committee on Criminal Law

James T. Giles
Former United States District Chief Judge, Eastern District of Pennsylvania

Hector M. Laffitte
Former United States District Court Judge, District of Puerto Rico

Robert J. O'Connor, Jr.
Former United States District Court Judge, Southern District of Texas

Stephen M. Orlofsky
Former United States District Judge, District of New Jersey
Former United States Magistrate Judge, District of New Jersey

Abraham D. Sofaer
Former United States District Court Judge, Southern District of New York

Alfred M. Wolin
Former United States District Judge, District of New Jersey

Bruce L. Castor, Jr.
Former Solicitor General & Acting Attorney General of Pennsylvania
Former Commissioner of Montgomery County, PA
Former District Attorney, Montgomery County, PA
Former President of the Pennsylvania District Attorneys' Association

Leah Ward Sears
Former Chief Justice, Supreme Court of Georgia

Nathan Lewin
Former Deputy Assistant Attorney General, Dept. of Justice Civil Rights Division
Former Assistant to the Solicitor General

Matt Lewis
Former Senior Counsel to the Assistant Attorney General for the Criminal Division

Eric Benson
Former Assistant United States Attorney, District of Utah

John F. Lauro
Former Assistant United States Attorney, Eastern District of New York

Brett Parkinson
Former Assistant United States Attorney, District of Utah

Harold J. Krent
Appellate Attorney, Department of Justice
Professor of Law, Chicago-Kent College of Law

Mark R. Lee
Former Appellate Attorney, United States Department of Justice
Former Assistant Attorney General, Texas

Brian Levin, J.D.
Professor of Law and Criminal Justice

Steven Newborn
Former Director of Litigation, United States Federal Trade Commission
Former Special Assistant United States Attorney, Eastern District of Virginia