



RESEARCH AND ADVOCACY FOR REFORM

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***Oversight Hearing on Clemency and
the Office of the Pardon Attorney***

Before the U.S. House of
Representatives' Committee on the
Judiciary, Subcommittee on Crime,
Terrorism and Homeland Security

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I first want to thank Chairwoman Jackson Lee, Ranking Member Biggs, and the members of this subcommittee for holding this hearing today, and for sharing this space to hear stories about the importance of second chances for people like me and families like mine. My name is William Underwood and I am a Senior Fellow with The Sentencing Project's Campaign to End Life Imprisonment.

Over 50 years ago, I was a teenage father in Harlem. I needed to provide for my family and there was one way to make fast money. I became involved in the drug trade to ensure that my son didn't know the hunger and pain I did. I previously testified to this committee about the impact of the "War on Drugs" on me and my community, and the racial injustice at its heart. I was ultimately sentenced to life without the possibility of parole and a concurrent 20-year sentence for leading a violent drug operation during the 1970s and early 80s.

During my incarceration, I committed myself to growth and had no infractions in 33 years. I parented my children from behind bars and they became steadfast advocates for my release.

In the fall of 2014, President Obama announced a clemency initiative for people sentenced under mandatory sentencing laws. My clemency petition received support from entertainers, musicians, faith leaders, reformers, conservatives, sports figures, civil rights leaders, scholars, industry leaders, people I mentored in prisons -- and most of all, my children. President Obama ultimately commuted the sentences of 1,715 people convicted of federal drug crimes. I was not one of them.

Instead, following the passage of the First Step Act, I was granted compassionate release in January 2021 at 67 years old. Judge Sidney H. Stein found my sentence reflected the seriousness of my criminal behavior when I was convicted 33 years ago, but its extremity did not account for the person I am today. Judge Stein's release order cited letters from the men I mentored while in prison who said that I created a "culture of responsibility" among the men around me.

Since my release, I've worked to create second chances for others.

I was not an outlier in prison. There are many more people like me in federal prisons - and many who are older and sicker, yet who have been denied clemency and compassionate release. Many of the oldest individuals in federal prisons, people convicted prior to the abolishment of parole in 1987, aren't even currently eligible for compassionate release, despite needing it the most.

I applaud President Biden's recent grant of clemency to 78 men and women, particularly given that many are serving lengthy sentences, including one individual who was sentenced to life without parole. Clemency is valuable and should be available to all people who can safely return to the community, regardless of their crime or sentence. Clemency should also be granted far more frequently.

But clemency should not be the only way that people can receive a second chance. Clemency should be a failsafe for deserving men and women whose cases fall outside the bounds of other types of

relief or whose applications don't receive a fair assessment from a judge. But clemency should never be someone's only hope of freedom.

There are three important ways that Congress could create more second chances today.

First, Congress Should Pass the First Step Implementation Act and COVID-19 Safer Detention Act.

The First Step Act reduced mandatory minimum sentences for drug offenses, but was not retroactive. The First Step Implementation Act would fix that inequity. Among other provisions, it would also allow courts to give a second chance to individuals who have served at least 20 years for crimes they committed as minors.

The COVID-19 Safer Detention Act would also help to reduce excessively lengthy sentences by expanding release opportunities for elderly or terminally ill individuals. It would give compassionate release eligibility to people sentenced before November 1987. The bill also includes urgent provisions to protect the lives of elderly individuals by adding COVID-19 vulnerability as a basis for compassionate release and shorten the judicial review process for early release during the pandemic.

Second, Congress should transfer jurisdiction over “old law” individuals to federal courts, so that they can receive a meaningful opportunity at parole.

People sentenced in federal courts before 1987 are entitled to parole hearings every two years. People age out of crime and “old law” individuals are elderly and have a low risk of recidivism. But few people receive parole. In 2021, the US Parole Commission granted parole to less than 20% of “old law” individuals who received hearings, despite the health emergency in federal prisons.

The Parole Commission estimates that it will continue to operate and maintain jurisdiction over the old law population in federal custody until 2038, more than 50 years after Congress abolished parole. The Commission's longevity should concern members of this Committee. The Commission recently acknowledged that it had discovered over 100 people under its jurisdiction after losing track of them for years. Whether the people lost in the bureaucracy received the parole hearings to which they were entitled is unknown. We believe federal courts are better equipped to fairly judge whether these individuals deserve parole.

Finally, Congress should pass legislation to allow everyone's sentence to be reassessed after ten years.

Ten years is long enough to see how someone has grown and changed, and to reevaluate whether they should go home. That's why, in 2019, Senator Booker and Representative Bass introduced the Second Look Act which would give all people in the federal prison system a chance to have their sentence reviewed after 10 years.

Receiving a second chance shouldn't be an extraordinary event. If we believe in redemption and acknowledge that our criminal justice system has been biased or too harsh, it should be routine. My story should not be rare. I urge you to consider all the men and women like me. Please remember their dignity and worth, their loved ones, and their vulnerability as they grow old behind bars, and give them a path home.