



U. S. Department of Justice

Pardon Attorney

Washington, D.C. 20530

AUG 31 1998

TO: Kevin Ohlson
FROM: Roger Adams *RC*

Here is the revised report on the Puerto Rican prisoners that conforms with the DAG's instructions at the time Susan Kuzma and I met with him earlier this Summer. It is particularly important that the proposed report be kept on very close hold. A "leak" of the proposed report would be disastrous.

You will note that my cover memo calls for the DAG to make some choices in the wording of the commutation warrant. I assume he will want to discuss the report with Susan and me again before finalizing it and making the policy choices reflected in the alternative wordings of the warrant. I think such a meeting would be highly advisable.

There is one more issue, in addition to those I note in my cover memo, that we should think about. If the Department's recommendation is for commutations for some of the prisoners, beginning in the future, we present BOP with a major management problem, both with respect to the inmates to whom commutations are granted and will be staggered to begin between 2003 and 2016 and, especially, with respect to the two inmates recommended for continued service of sentence until 2022 and 2027. The first inmates released are likely to be given a sort of "heroes' welcome" in Puerto Rico and in Puerto Rican communities across the United States. I base this on the fact that when Antonio Camacho-Negrón, one of the Connecticut defendants for whom commutation is not now recommended, was released on his mandatory release date in February of this year, he flew immediately to Puerto Rico. News reports indicated that a large crowd greeted him at the airport. (In the gathering was Lolita Lebrón, leader of the 1954 shooting incident in the House of Representatives whose sentence was commuted by President Carter in 1979.) News reports also indicated that Camacho-Negrón addressed the crowd and said he was willing to die for Puerto Rican independence. Either at that gathering or shortly thereafter, he also said he had no intention of abiding by parole conditions and, in fact, failed to report to his parole officer. He has been rearrested for violating his parole. I think we can anticipate similar statements and actions if any of the other defendants are released in 2003. I also think it is possible that those to be released in 2003 may, at the time the commutations are announced, state that they will not leave prison to express solidarity with the other prisoners.

While I cannot predict exactly what any of these prisoners or their supporters may do or

say either in 2003 or prior to that time, the fact that some are to have their sentences commuted will present major issues for BOP. There is likely to be a major outpouring of support for the release of all the other prisoners. Those still incarcerated will be likely to present special problems for BOP as they either join in acting to secure their release or react to the fact they are not getting out either then or very soon thereafter.

I would not tell BOP we are recommending or even considering commutations beginning in 2003, but we have to give them some way to plan for it. Maybe if the DAG is ready to send the attached, or similar, recommendation to the White House, he should speak to Director Hawk-Sawyer directly and let her begin planning while charging her with the responsibility of making sure the recommendation does not leak.



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Pardon Attorney

300 First Street, N.W.
Suite 400
Washington, D.C. 20530

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MEMORANDUM

TO: Eric H. Holder, Jr.
Deputy Attorney General

FROM: Roger C. Adams *RC A*
Pardon Attorney

SUBJECT: Puerto Rican Nationalists; Transmittal of Revised Report and Discussion of Issues Raised by Recommendation to Grant Clemency

Pursuant to your request, we have revised the report and recommendation on the Puerto Rican Nationalists cases. As was discussed at our last meeting, the desired objective was to recommend that the President grant clemency to the extent it would result in the prisoners' serving 20 years in prison, premised on the extreme length of the sentences and the fact that the federal sentences were consecutive to state sentences for related offenses. These circumstances, however, apply to only nine of the prisoners, the nine prisoners convicted in the first Chicago case, whose cases are described in Appendix B of the report.¹ Accordingly, the report has been rewritten to recommend granting clemency to those prisoners, although not commutation to time served as requested by their legal representatives, and to recommend denying clemency to the remaining prisoners. Because of the length of the report and because the recommendation includes denial of clemency altogether to eight prisoners and denial of immediate release for the rest, we have continued to use the denial report format. For your consideration, we have attached, in addition to the redrafted report, a draft warrant.

Although the attached report is ready for your signature and transmittal to the White House,² I continue to have concerns. I thought it appropriate to describe why the proposed commutation to 20 years' imprisonment neither fits within the above-described rationale in eight cases nor is appropriate in two of them based on the offenses of the defendants, and to outline a number of practical and policy issues that are raised by recommending that clemency be granted.

¹Those prisoners are Elizam Escobar, Ricardo Jiménez, Adolfo Matos, Dylcia Noemi Pagán, Alicia Rodríguez, Ida Luz Rodríguez, Luis Rosa, Carlos Alberto Torres, and Carmen Valentín.

²As you may recall, the White House has asked to be notified before the report is transmitted to the President, so that further instruction may be given regarding its transmittal.

1. *Contravening the strong negative recommendation of two United States Attorneys:*

A recommendation to grant clemency in any of these cases would contravene the strong negative recommendation of two United States Attorneys. In other clemency matters, you have expressed a policy of giving considerable weight to the view of the United States Attorney. Given that the President has granted commutation of sentence in only three cases and given the strong views of the United States Attorneys in the present cases, some thought might be given to how and when the Department will notify the United States Attorneys of a decision they will likely find surprising and unwelcome.³

2. *Impact on pending prosecutions and investigations:* The need for notice to the United States Attorneys is particularly acute because of the pendency of various prosecutions and investigations relating to Puerto Rican Nationalists. The primary such matters of which we are aware are:

a. Prosecution of Jose Solis: The United States Attorney for the Northern District of Illinois is presently prosecuting Jose Solis for a 1992 FALN bombing at an Army recruiting center in Chicago. The case is expected to go to trial this year.

b. Fugitive investigations: In addition, the Department (through one or more of the United States Attorneys offices and the FBI) has a number of ongoing fugitive investigations concerning other participants in the criminal activity for which the present Puerto Rican Nationalists were prosecuted. Indeed, one of the codefendants of these prisoners is on the FBI's 10-most wanted list. Some consideration may need to be given to how, if at all, a decision to recommend clemency will affect the Department's posture in negotiating with the fugitives in the future.

c. Investigation of misuse of Clemente school funds: According to news reports, the Illinois state legislature has investigated the alleged diversion of state school funds to support the present clemency request. In addition to state legislative hearings, the United States Attorney's Office in Chicago is reportedly investigating the matter as well.

d. Bombing investigation: Also unsolved but reportedly still being pursued is the FALN bombing at the Fraunces Tavern in New York in 1974, in which four people were killed and 50 injured. A May 1998 newspaper article in a New Jersey newspaper and a June 7, 1998, article in the *Houston Chronicle* relate the story of the family of one of the victims, Frank Connor, including their opposition to clemency for these prisoners. According to the New Jersey article, the family has been advised by the Justice Department that it continues to pursue William Morales, a fugitive reportedly living in Cuba, for the bombing.

3. *Congressional testimony on domestic terrorism:* In testimony before Congress in January 1998, FBI Director Louis J. Freeh identified the FALN as one of the three sources of domestic terrorist threats in the United States. Questions may be raised about why the Department is recommending that clemency be granted to persons who belong to a group the

³The United States Attorney for the Southern District of New York may also be concerned about a grant of clemency, as that office conducted lengthy grand jury investigations relating to the bombing of the Fraunces Tavern. The views of that office were not solicited in connection with the pending clemency request.

FBI director has identified as such a domestic terrorist threat. Newspaper articles concerning the recent murders of two police officers at the Capitol have resurrected in the public mind the memory of the 1954 attack on the Capitol by a group of Puerto Rican Nationalists and the fact that President Carter granted clemency to them.

4. *Diversity of the group for whom clemency is sought:* Supporters of clemency routinely discuss the prisoners as a group, as if they are homogenous. They are not. They belong to two different organizations, which have different methods and spheres of operation and have committed different acts. Further, the prisoners committed different crimes, had different culpability for those crimes, and exercised different levels of responsibility within the organizations. Finally, their sentences differ considerably. As drafted, the report employs as a rationale for granting clemency that the terms of imprisonment in excess of 20 years largely result from convictions of crimes that overlap those for which the defendants have been convicted in state court and served time in state prison, that the federal government's real interest is in enforcing the seditious conspiracy statute, and that 20 years' imprisonment is sufficient to vindicate that interest. That rationale, however, applies to fewer than all of the defendants. Only nine of the 17 defendants were prosecuted in state court. In addition, six of the eight defendants who were not prosecuted in state court will serve less than 20 years under their present sentences.⁴ For example, Edwin Cortés, Alberto Rodríguez, and Alejandrina Torres, whose cases are described in Appendix D, will serve approximately 19 years if released at their present projected release dates in 2004. Similarly, Antonio Camacho-Negrón, Alberto Maldonado-Rivera, and Norman Ramírez-Talavera, three of the four Connecticut defendants whose cases are described in Appendix E, received sentences of 15 or less years and therefore have been or will be released before serving 20 years. (Although Camacho-Negrón was reincarcerated for a parole violation, his release date would be approximately September 23, 2003, assuming the Parole Commission finds that he violated parole and requires that he serve to the expiration of his sentence.)

Neither remaining defendant, Juan Segarra-Palmer and Oscar López-Rivera, was prosecuted in state court. While both have considerably longer to serve than 20 years, according them the same measure of clemency as the others would be especially problematic. To do so would, for example, treat Segarra-Palmer--who is reputedly the head of Los Macheteros, believed to be a far more violent organization than the FALN and to be responsible for murdering a number of American servicemen--the same as Dylcia Pagán, who is reportedly a member, not a leader, of the FALN. Consequently, the report recommends denying commutation of any portion of Segarra-Palmer's 55-year sentence, under which he is presently likely to serve to his mandatory release date in 2022. Similarly, granting clemency at all to someone like López-Rivera would raise questions. Although he too was convicted of seditious conspiracy and the other federal offenses of which the nine persons for whom the report recommends granting clemency were convicted, he, unlike the others, was also

⁴This course will advance the release dates of the prisoners to late 2003 at the earliest and 2016 at the latest. The later release dates are attributable to the fact that two of the prisoners, Alicia Rodríguez and Luis Rosa, had longer state sentences and only began serving their federal sentences in 1996. The proposed commutation will not affect their parole eligibility dates.

subsequently convicted of plotting to escape by helicopter from federal prison, for which a consecutive 15-year sentence was imposed. The report therefore does not recommend commuting any portion of his aggregate 70-year sentence--including the 55-year sentence originally imposed--and he presently is likely to serve until 2027.

5. *Measure of clemency:* The explanation for choosing 20 years' federal incarceration as an appropriate measure of punishment in these case may not be convincing, either to supporters or to opponents of clemency. The report, for example, states that 20 years' imprisonment adequately vindicates the federal interest in enforcement of the seditious conspiracy statute, but that statute carries a 20-year maximum penalty and a 20-year old-law sentence generally requires service of no more than 12 $\frac{3}{4}$ years.⁵ Conversely, under more recent sentencing laws and practices, many defendants are required to serve 20 years or longer for drug offenses, which some would consider non-violent or at least less serious than the conduct in which these defendants engaged.

To be sure, there are problems with any commutations of sentence, even commuting the sentences to the current projected release dates incorrectly computed by the Bureau of Prisons, as I have suggested.⁶ Such action would require an explanation of facts of which the public is unaware, and an admission that the Bureau of Prisons erred in calculating release dates. Moreover, it too would fall well short of satisfying the many proponents of clemency for these persons. However, such commutations merely to correct the Bureau of Prisons' mistakes are likely to be seen as a much more measured use of executive clemency--and hence more acceptable to those who oppose any clemency in these cases--than "capping" the federal sentences at 20 years' incarceration for nine of the defendants. Moreover, such "corrective" commutations would at least blunt any criticism that the Department, in recalculating the release dates, retaliated against some of the defendants by increasing the length of time they have to serve, as a kind of punishment for our having to deal with the clemency request.

6. *Victim impact:* The continuing interest in the Fraunces Tavern bombing highlights the question of dealing with the victims of the crimes committed by the prisoners for whom clemency will be recommended. As has typically been the practice in clemency matters, at least in recent times, the Department did not formally seek the input of victims in these cases, although the United States Attorneys Offices may have contacted one or more victims before formulating a response to our request for comment on the clemency request. In this regard, the son of bombing victim Frank Connor wrote a letter to the editor that appeared in the March 14, 1998, edition of *Newsday*, which states in part: "The FALN's cowardly terrorist acts, such as the bombing of New York landmark Fraunces Tavern, which killed our father,

⁵Commuting the sentences of only nine of the prisoners and staggering their release dates would also be disappointing to supporters of clemency because that action would preclude a group exodus from prison and the sort of "heroes' welcome" they seem to envision, as reportedly occurred when President Carter granted clemency to four Puerto Rican Nationalists in 1979. During our June meeting with the families of the prisoners, they and the prisoners' legal representative made clear that immediate release of all the prisoners is sought.

⁶The Bureau of Prisons has not yet notified the prisoners that their release dates have been recalculated. The new release dates range from 6% to 30 years later than originally computed.

cannot ever be forgotten. Furthermore, your article implying that Dylcia Pagan is a political prisoner is disgraceful and does a great disservice to those true prisoners of conscience who fight for freedom in an honorable and peaceful manner. Let us not forget that the true victims of Pagan's actions include those maimed and murdered by her organization's deadly crime spree against the people of New York. She should serve her 63 years and her son should be thankful his mother didn't pay the same price as our father."

7. *Recovery of stolen funds:* Another unsolved aspect of the crimes for which some of the prisoners were convicted, also relating to the victim-impact issue, involves the disposition of \$7.2 million stolen from the Wells Fargo office in Connecticut. The defendants in that case are required to pay sizable fines, and at least one of them has refused to pay anything toward satisfaction of his fine. The report as drafted recommends against remitting the fines. If clemency in the form of remission of the fines were to be granted, questions may be raised about why restitution or at least an explanation of what happened to the stolen money was not required.

8. *Conditional clemency:* The contemplated grant of clemency is to commute the sentences of nine of the defendants to 30 years' imprisonment, with the intention of effecting their release after serving two-thirds of the commuted term (20 years). Due to the earning of good time credits and the possibility of earlier parole, these prisoners would not necessarily serve 20 years if their sentences were commuted to 30 years. Consequently, the report recommends conditioning the commutation on the defendants' not earning good conduct time credit (which should be legal under the rationale of *Schick v. Reed*, 419 U.S. 256 (1974)). The report, however, does not completely eliminate the possibility of earlier parole, on the theory that the Parole Commission (or its replacement) will respect the wish of the President that the prisoners serve 20 years, especially since it has already denied parole in four cases. In addition, conditioning the commutation on the defendants' being ineligible for parole would not be congruent with also requiring the Parole Commission to determine that the defendants meet the usual standards for release at their two-thirds dates.

If you wish to preclude the possibility of earlier parole, the warrant should be redrafted to impose a condition that the prisoners not be granted earlier parole and state that earlier parole would make the commutation void or voidable. The report would also be modified to reflect this condition, if you wish to recommend imposing it.

As to the two-thirds determination, 18 U.S.C. § 4206(d) precludes release at the two-thirds date if the Parole Commission determines that a prisoner has frequently or seriously violated prison rules or poses a reasonable probability of future criminality. Under present statutory law, the existence of the Parole Commission will terminate in 2002 at the latest. Accordingly, as things stand the Parole Commission will no longer exist at the time it would have to make its release determination in these cases. To avoid any argument that the warrant is invalid because it requires action that will not be possible at the time of these prisoners' two-thirds dates, we have provided that the release determination be made by either the Parole Commission or the person or entity designated to fulfill its functions after its termination date. Left unclear in our earlier discussions was what would happen if the Parole Commission

should determine that one or more prisoners should not be released at his or her two-thirds date. As we have drafted the warrant, the Parole Commission's decision is not a condition of clemency. The effect of the commutation therefore would be not to reinstate the original sentences, but rather to limit the amount of time the prisoners would serve to 30 years if the Parole Commission denies parole or release at the two-thirds date.

The warrant also imposes the condition that the prisoners not be charged with additional crimes. Possible formulations of this condition are bracketed in the draft warrant. Violation of this condition would permit revocation of the commutation, with the result that the defendants' original sentences of 55 to 90 years would be reinstated and they would serve until their release dates under those sentences.

Generally, we sought to minimize the number of conditions and to use some degree of particularity in defining them and the consequences of violating them, but did not seek to have the warrant anticipate every possible permutation of future events. As we have previously advised, there is no established mechanism in place for revoking a grant of a conditional commutation due to violations of the conditions. Providing that the present sentences will be served in their entirety if the prisoners violate the conditions of commutation has some appeal but may be difficult to enforce. It may also draw attention to the possibility of problems with the prisoners' future behavior. For example, a condition could be imposed that the commutation would be void or voidable if the prisoner violates the conditions of his or her release. (Under 18 U.S.C. § 4206(d), a prisoner released at his two-thirds date is released on parole until the expiration of the full term of his sentence.) While such a condition would allow reinstatement of the original sentence if the prisoner misbehaves, it would also shift the burden of enforcement of the condition to a later President. That burden is not hypothetical, as the recent experience with Camacho-Negrón indicates.⁷ Further, it seems likely that other prisoners, given their stated opposition to the authority of the United States, would persist in a similar course of defiance of the Parole Commission, leaving a future President in the perhaps unwelcome position of having to decide whether to revoke the commutation of a past President and to reinstate the original sentence.

On the other hand, a significant public relations problem could arise if one or more of the prisoners granted clemency is charged with an additional crime, either a crime committed during incarceration or homicide arising from the deaths caused by FALN bombings. Accordingly, the warrant as drafted imposes compliance with parole as a condition of the commutation only insofar as it conditions the commutation on not being charged with a future crime, where we thought the burden of enforcement worth the gain. If you wish to add a condition of compliance with other parole conditions, the warrant and report must be redrafted accordingly.

9. *Press release:* It would seem prudent to devote careful attention to the drafting of a press release by the Department concerning these cases, as the decision may well be criticized.

⁷According to newspaper accounts, Camacho-Negrón virtually immediately upon his release from prison announced that he had no intention of reporting to his parole officer.

Likewise, the White House may request our assistance in drafting a press release, particularly since President Clinton has only granted three commutations and the reductions granted in those three cases were much less than the present cases.⁸ In this regard, basing the commutation recommendation on the service of state sentences for the same conduct is at least explainable in a public document.

10. *Notice to interested persons/agencies:* Consideration may be given to giving advance notice to the Parole Commission of a decision to commute the sentences, particularly since it may appear to be a criticism of the Commission's decisions to deny parole for Dylcia Pagán and Carlos Torres, for whom clemency would be granted.

Attachments

⁸For your information, the Department has recommended granting commutation in only one case since President Clinton took office, that of Johnny Palacios, whose cooperation with the government was unrewarded because of the government's failure to timely file a motion for reduction of sentence under Rule 35.