November 13, 2013

President Barack Obama
c/o Office of the Pardon Attorney
1425 New York Avenue, N.W.
Suite 11000
Washington, D.C. 20530

RE: Commutation Petition of Weldon Angelos

Dear Mr. President:

On behalf of Weldon Angelos and his family, we strongly urge you to grant Mr. Angelos’s request for commutation. The undersigned—former judges and prosecutors, former elected and appointed government officials, and prominent authors, scholars, artists, activists, and business leaders—firmly believe that justice necessitates the exercise of executive clemency in this case.

In 2004, Mr. Angelos was sentenced to 55 years’ imprisonment for possessing firearms in connection with selling small amounts of marijuana. Mr. Angelos never brandished or used the firearms, nor did he cause or threaten any violence or injury. Moreover, Mr. Angelos was a first-time offender with no adult record. Nonetheless, this father of young children and aspiring music producer was subject to an effective life sentence under 18 U.S.C. § 924(c), a notorious blunderbuss statute carrying harsh mandatory sentences.

1 The District Court summarized the relevant facts as follows:

Mr. Angelos has no prior adult criminal convictions and is treated as a first-time offender under the Sentencing Guidelines. The sentence-triggering criminal conduct in this case is also modest. Here, on two occasions while selling small amounts of marijuana, Mr. Angelos possessed a handgun under his clothing, but he never brandished or used the handgun. The third relevant crime occurred when the police searched his home and found handguns in his residence. . . . Mr. Angelos did not engage in force or violence, or threats of force or violence, in furtherance of or in connection with the offenses for which he has been convicted. No offense involved injury to any person or the threat of injury to any person.


2 18 U.S.C. § 924(c) provides a mandatory 5-year sentence for possessing a firearm during a drug transaction and a 25-year sentence for each subsequent transaction. Multiple charges can be brought under § 924(c) in one case, and the mandatory sentences must be served consecutively, that is, one after the other rather than simultaneously. As a result, mandatory sentences can be stacked on top of each other in 25-year increments. A defendant does not need a criminal record to trigger § 924(c). Moreover, the firearm does not even have to be brandished or used, nor does the law require that any violence or injury be caused or threatened.
Mr. Angelos’s sentence is not only draconian but also unique. No other jurisdiction would have imposed a 55-year sentence for the crimes in this case. Had Mr. Angelos been charged in local state court, for instance, he would have been paroled years ago. Indeed, Mr. Angelos’s sentence is longer than the punishment imposed on far more serious federal offenses and offenders. His term of imprisonment exceeds the federal sentence for, among others, an aircraft hijacker, a second-degree murderer, a kidnapper, and a child rapist.\(^3\) Incredibly, Mr. Angelos’s sentence is longer than those imposed for three aircraft hijackings, three second-degree murders, three kidnappings, or three rapes. In fact, the 55-year sentence for possessing a firearm three times in connection with minor marijuana offenses is more than twice the federal sentence for a kingpin of a major drug trafficking ring in which a death results, and more than four times the sentence for a marijuana dealer who shoots an innocent person during a drug transaction. Even a habitual offender who receives a “life sentence” under the federal three-strikes provision could end up serving a shorter term than Mr. Angelos.

In a compelling, laudable opinion, U.S. District Court Judge Paul G. Cassell found that Mr. Angelos’s sentence was “unjust, cruel, and irrational.”\(^4\) Judge Cassell contrasted the virtual life sentence via mandatory minimums versus the sentence prescribed by the U.S. Sentencing Guidelines—between 97 to 121 months (approx. 8–10 years)—and concluded that the latter, far lower prison term would be just punishment for all of the criminal conduct in this case.\(^5\) Nonetheless, Mr. Angelos’s 55-year sentence was obligatory as a result of 18 U.S.C. § 924(c) and an outlier precedent of the Supreme Court.\(^6\) “While I must impose the unjust sentence,” Judge Cassell concluded, “our system of separated powers provides a means of redress.”

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\(^3\) Mr. Angelos’s punishment is far in excess of the federal sentence for: an aircraft hijacker (maximum term of 24 years, 5 months); a terrorist who detonates a bomb in a public place intending to kill a bystander (maximum term of 19 years, 7 months); a racist who attacks a minority individual with the intent to kill and does, in fact, inflict permanent or life-threatening injuries (maximum term of 17 years, 6 months); a spy who gathers top secret information (maximum term of 17 years, 6 months); a second-degree murderer (maximum term of 14 years); a criminal who assaults with the intent to kill and does, in fact, inflict permanent or life threatening injuries (maximum term of 17 years, 7 months); a kidnapper (maximum term of 17 years, 7 months); a saboteur who destroys military materials (maximum term of 7 years, 7 months); a child who possesses weapons to support a dangerous foreign terrorist organization (maximum term of 8 years, 1 month); a criminal who detonates a bomb in an aircraft (maximum term of 8 years, 1 month); and a rapist (maximum term of 7 years, 3 months). See Angelos, 345 F. Supp. 2d at 1244-46, 1258-59. According to the federal probation office, if Mr. Angelos had been prosecuted in Utah state court, he likely would have been paroled after serving about 2–3 years in prison. See id. at 1242–43. For a transnational perspective, Mr. Angelos would have received the following sentences had he been convicted abroad—England and Wales: 2–4 year sentence; France: 1-year sentence or probation; Germany: 5-year sentence or less; The Netherlands: fine of 300–350 euros; Poland: 3½ year sentence or less; and Sweden: 1-year sentence or less. See Erik Luna & Marianne Wade, Prosecutors as Judges, 67 WASH. & LEE L. REV. 1413, 1496–1501 (2010).

\(^4\) Id. at 1262. See also id. at 1230. Judge Cassell’s Angelos opinion was honored for “exemplary legal writing.” See Ex Ante, 9 GREEN BAG 2D 101, 101 (2005).

\(^5\) See Angelos, 345 F. Supp. 2d at 1241, 1243, 1252.

\(^6\) See id. at 1259–60 (discussing Hutto v. Davis, 454 U.S. 370 (1982)).
Because Mr. Angelos’s punishment was “one of those rare cases where the system has malfunctioned,” Judge Cassell recommended that “the President commute this unjust sentence.” Judge Cassell was not alone in his belief that Mr. Angelos’s sentence is unjust. A group of 145 individuals—including former U.S. Attorneys General, retired U.S. Circuit Court Judges, retired U.S. District Court judges, a former Director of the FBI, former U.S. Attorneys, and other former high-ranking U.S. Justice Department officials—submitted a brief *amicicus curiae* in support of Mr. Angelos’s case. This unprecedented group of officials, “who together have hundreds of years of expertise in federal criminal law and federal sentencing issues,” believed that the 55-year mandatory minimum prison sentence was “cruel, unjust and even irrational,” and could not comport with “fundamental notions of justice and fairness.”

Similar sentiments about Mr. Angelos’s sentence have been expressed outside of the courtroom. In 2009, Chief Judge Julie Carnes, Chair of the Criminal Law Committee of the U.S. Judicial Conference, testified before Congress regarding the judicial perspective on mandatory minimum sentencing. In her testimony, Chief Judge Carnes used Mr. Angelos’s case as an example of “the very real injustice that some specific mandatory minimum statutes have caused.” In 2011, the U.S. Sentencing Commission’s report to Congress on mandatory minimums cited Mr. Angelos’s case to demonstrate “the unduly severe sentences that stacking mandatory minimum penalties under section 924(c) produces.” Likewise, a tentative draft of the new sentencing provisions for the Model Penal Code cited Mr. Angelos’s case as a vivid illustration of disproportionate, “even nonsensical,” outcomes that can occur with mandatory minimum sentences. In August 2013, Senator Orrin Hatch (R-UT) commented on Mr. Angelos’s plight: “We can’t put a fellow like that in jail for 55 years.”

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7 *Id.* at 1261–63. As a matter of background, Paul G. Cassell clerked for then-Judge Antonin Scalia of the U.S. Court of Appeals for the District of Columbia and Chief Justice Warren Burger, before serving as an Associate Deputy Attorney General and an Assistant U.S. Attorney for the Eastern District of Virginia from 1984 to 1991. Prior to his appointment to the U.S. District Court by President George W. Bush in 2002, Mr. Cassell was one of the nation’s leading proponents of the death penalty and crime victims’ rights, as well as the leading academic critic of *Miranda v. Arizona.* 384 U.S. 436 (1966). In 2007, he resigned his judgeship and returned to the University of Utah to teach, write about criminal justice reform, and litigate on behalf of crime victims.


10 *U.S. SENTENCING COMM’N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 359–60 n.903 (2011).*


Most recently, Mr. Angelos’s case was referenced several times during a U.S. Senate Judiciary Committee hearing on “Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences.” For instance, Senator Rand Paul (R-KY) specifically mentioned Mr. Angelos’s case in his testimony:

The injustice of mandatory minimum sentences is impossible to ignore when you hear the stories of the victims. . . . Weldon Angelos was a 24 year old who was sentenced to life in prison for 3 marijuana sales. . . . Each case should be judged on its own merits. Mandatory minimums prevent this from happening.

Another congressional witness, Brett Tolman, served as the U.S. Attorney for the District of Utah from 2006–2009—a time period during which Mr. Angelos’s case was still on appeal. Mr. Tolman described Mr. Angelos’s case “[a]s a particularly egregious example” of the problems with mandatory minimums. Perhaps the hearing’s most powerful statement was delivered by the Chairman of the Senate Judiciary Committee, Senator Patrick Leahy (D-VT):

Many of [the federal] mandatory minimums originated right here in this Committee room. When I look at the evidence we have now, I realize we were wrong. Our reliance on a one-size-fits-all approach to sentencing has been a great mistake. Mandatory minimums are costly, unfair, and do not make our country safer.

Take for example Weldon Angelos, a 23-year-old with no criminal history who received a 55-year mandatory minimum sentence for selling $350 worth of marijuana on 3 occasions while in possession of a firearm. There is no question that Mr. Angelos committed a crime and deserved to be punished. But 55 years? Mr. Angelos will be in prison until he is nearly 80 years old. His children, only 5 and 6 at the time of his sentencing, will be in their 60s. American taxpayers will have spent more than $1.5 million locking him up.

The federal judge who sentenced Mr. Angelos, a Republican appointee, called this sentence “unjust, cruel, and irrational” and noted the sentence, which involved no violence, was much more than the minimum for hijacking, kidnapping, or rape. We must stop and ask ourselves what good does that sentence do society? . . . Attorney General Eric Holder’s decision last month not to pursue mandatory minimum sentences for certain drug cases is an encouraging step, but it won’t

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15 Before his appointment as U.S. Attorney, Brett Tolman was Chief Counsel for Crime and Terrorism for the U.S. Senate Judiciary Committee (first under Chairman Arlen Specter and then under Chairman Orrin Hatch). Prior to his service in the U.S. Senate, Mr. Tolman was an Assistant U.S. Attorney for the District of Utah.

reach cases like Mr. Angelos’s. And the Department of Justice cannot solve this problem on its own.\textsuperscript{17}

Chairman Leahy is absolutely correct: The extraordinary injustice of Mr. Angelos’s sentence cannot be undone by a change in prosecutorial charging practices. Instead, it requires the President to exercise his explicit power under the Pardon Clause of the U.S. Constitution.\textsuperscript{18} Some media pieces have mentioned the possibility of commutation in this case.\textsuperscript{19} In 2006, for instance, the Washington Post called upon President George W. Bush to commute Mr. Angelos’s sentence, just as Judge Cassell had done in his opinion. “Bush put Judge Cassell on the bench. As a law professor before that, [Cassell] was a staunch advocate of tough justice,” the Post noted. “His exceptional discomfort with this case—and his passionate plea for presidential mercy—ought to carry weight even with a president so disinclined to use the powers the Constitution gives him to remedy injustices.”\textsuperscript{20} In June 2013, the New York Times proclaimed, “The case of Weldon Angelos has long stood for the injustice of mandatory minimums.”\textsuperscript{21}


\textsuperscript{18} See U.S. CONST. art. II, § 2, cl. 1.


\textsuperscript{20} *Commute This Sentence*, WASHINGTON POST, Dec. 9, 2006, at A18.

We recognize that the executive clemency power has been besmirched in recent years by a few tawdry cases. But we also know that you, as a former constitutional law professor and keen student of history, appreciate the vital function that clemency plays in our tripartite system of checks and balances. In The Federalist No. 74, Alexander Hamilton spoke of the role of clemency in ameliorating the unavoidable excesses of criminal justice: “The criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel.” Nearly a century and a half later, Justice Oliver Wendell Holmes emphasized that a presidential pardon “is not a private act of grace from an individual happening to possess power. It is part of the Constitutional scheme.”

Both history and current circumstances support clemency for Mr. Angelos as a matter of politics. During 1963 and 1964, Presidents Kennedy and Johnson commuted a number of lengthy sentences imposed on drug offenders under the 1956 Narcotics Control Act, the policy forerunner of modern federal mandatory minimums. These presidential acts of mercy did not carry any negative political repercussions. In fact, the commutations played a part in the reevaluation of unforgiving punishment for drug offenders, culminating in 1970 with the repeal of most mandatory drug sentences under the guidance of then-Congressman George H.W. Bush.

In recent times, lengthy mandatory sentences for low-level offenders have come under fire from federal judges (including Justices Stephen Breyer and Anthony Kennedy, and the late Chief Justice William Rehnquist), as well as some federal lawmakers and law enforcers (including a former “drug czar”). Currently pending before Congress are bipartisan bills that seek to prevent the injustices perpetuated under mandatory minimums. In introducing one such bill, Senator Mike Lee (R-UT) said, “Our current scheme of mandatory minimum sentences is irrational and wasteful.” Senator Lee later asked whether the nation could afford “a system that so directly and so inevitably involves these kinds of minimum mandatory sentences.” Commentators and organizations of all political stripes have spoken out against mandatory minimums, and some public opinion data suggests that most people oppose mandatory sentences for non-violent offenses and would vote for candidates who support eliminating such sentences.

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But even those who still advocate for mandatory minimums must recognize that the continued viability of such laws requires a check against misapplication. Until the other branches of government provide a means to prevent draconian sentences, epitomized by the one imposed on Mr. Angelos, clemency will remain the only remedy for such miscarriages of justice.

All told, the case of Weldon Angelos is perhaps the best example of what you denounced as “blind and counterproductive warehousing of a non-violent offender.” We respectfully ask you to grant him clemency.

Sincerely,

Elizabeth Ainslie  
Assistant United States Attorney, Eastern District of Pennsylvania (1979-1985)

Albert W. Alschuler  
Julius Kreeger Professor Emeritus of Law and Criminology, University of Chicago Law School

Ross C. (Rocky) Anderson  
Mayor, Salt Lake City, Utah (2000–2008); Presidential Candidate, Justice Party (2012)

Harry Lee Anstead  

Dr. Allen Ault  
Dean, College of Justice and Safety, Eastern Kentucky University; former Commissioner, Georgia Department of Corrections; Director, Mississippi Department of Corrections; Director, Colorado Department of Corrections; Co-Chairman, Florida Board of Corrections

Shirley Baccus-Lobel  
Assistant United States Attorney, Northern District of Texas (1971–1985); Trial Attorney, United States Department of Justice (1971–1977)

Norman H. Bangerter  

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28 In a 2007 address at Howard University, after noting that then-President George W. Bush had been skeptical of lengthy sentences for first-time drug offenders, you stated: “I agree with the President. The difference is he hasn’t done anything about it. When I’m President, I will. We will review these sentences to see where we can be smarter on crime and reduce the blind and counterproductive warehousing of non-violent offenders.” Sen. Barack Obama, Address at Howard University Convocation (Sept. 28, 2007).
Anthony S. Barkow

William G. Bassler

Rebecca A. Betts

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Chief Justice, Supreme Court of Alabama (2007–2011)

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Daniel Ellsberg
Activist, Author, and Former Official (GS-I8, FSR-1), U.S. Department of Defense and U.S. Department of State

Mike Epps
Comedian, Actor, Film Producer, Writer, and Rapper

Frances Fisher
Social Activist and Actress (credits include prominent roles in the Academy Award-winning films Unforgiven and Titanic)

Norman Fletcher
Chief Justice, Supreme Court of Georgia (2001–2005); Associate Justice (1989–2001)

E. J. “Jake” Garn
United States Senator, Utah (1974–1993); NASA Astronaut (payload specialist on STS-51D Discovery, April 12–19, 1985); First Vice President, National League of Cities (1974); Mayor, Salt Lake City (1971–1974); Brigadier General, Utah Air National Guard (ret.)

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District Attorney, Bexar County (San Antonio), Texas (1983–1987)

Sheila Murphy
Presiding Judge, Sixth Municipal District, Circuit Court of Cook County, Illinois (1992–1992); Associate Judge, Circuit Court of Cook County (1989–1992)

Ralph Nader
Consumer Advocate, Political Activist, Author, and Presidential Candidate

Napoleon
Motivational Speaker and Musician (former member of Tupac Shakur’s rap group Outlawz)
Graham Nash, OBE
Hall of Fame Singer-Songwriter and Social Activist

Robert Newman
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Jeanne Woodford  
Former Undersecretary, California Department of Corrections and Rehabilitation

Ronald Wright  
Needham Yancy Gulley Professor of Criminal Law, Wake Forest University School of Law

Kevin Zeese  
Attorney General, Green Party Shadow Cabinet; Co-Founder, Drug Policy Alliance

Michael D. Zimmerman  

* Affiliations provided for identification only.