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## BY FIRST-CLASS MAIL

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January 18, 2011

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

Re: *Petition for Commutation on behalf of Kenneth Lumpkin, Federal Register No. 07026-112*  
Release Date: September 28, 2013

*Ultimately a genuine leader is not a searcher of consensus but a molder of consensus. On some positions cowardice asks the question, "is it safe?" Expediency asks the question, "is it politic?" Vanity asks the question, "is it popular?" But conscience asks the question, "is it right?" And there comes a time when one must take a position that is neither safe, nor politic, nor popular but he must take it because conscience tells him it is right.*

Martin Luther King, Jr.,  
Washington, D.C., Feb. 6, 1968

Dear Mr. President:

On the morning of December 30, 1996, Kenneth Jackson Lumpkin appeared in United States District Court in Los Angeles for sentencing. It was only a couple of weeks after his thirtieth birthday and a few months after a jury found him guilty of conspiring to possess 1,021 grams of crack cocaine with the intent to distribute. Mr. Lumpkin (or "Kenny," as virtually everyone knows him) had never before been to prison. In fact, his sentencing judge, the Honorable Dickran Tevrizian, found that Mr. Lumpkin had only one criminal history point and was therefore in the lowest criminal history category under the federal sentencing guidelines.

Mr. Lumpkin's sentencing hearing was rather perfunctory—especially considering the gravity of his situation. Despite the fact that he was facing a twenty-year prison sentence, there was no discussion of the struggles Kenny faced as a young boy growing up in a drug and gang infested neighborhood; the effect that a lengthy sentence would have on Kenny's family, including his four then-young children; the very small amount that he personally profited from his involvement in the crime; or that Kenny's crime involved neither violence nor the presence of a weapon, threats, or coercion. Instead of considering those factors, Judge Tevrizian explained that his "hands [we]re tied." (*See* Reporter's Transcript (Sept. 30, 1996), 27:2, attached at Exh. M.) He lamented the "very, very harsh" nature of the sentence called for by law and told Mr. Lumpkin that the Court had to "punish the crime and not the individual. . . . Those are the problems that we have." (*Id.* at 17:4-13) Mr. Lumpkin was then sentenced to twenty years in federal prison—the mandatory minimum sentence required by federal law.

Significantly, if Kenny's offense had involved *powder* instead of *crack* cocaine—the same quantity of the same drug in a different form—his mandatory minimum would have been ten years, and not twenty. Kenny would have already served his entire sentence and would now be home. He would have been there to raise his children as they entered their formative teenage years; he would have watched his children graduate from high school; he would have been there for the birth of his only grandson (who is now more than two years old); and he would have been there for his mother's difficult and ongoing recuperation from the stroke she suffered a few years ago. Mr. Lumpkin's case is a prime example of the unjust, insupportable, and discredited "crack-powder disparity" that Congress recently reduced but did not eliminate.

In that way, Mr. Lumpkin's case is, sadly, not unique. Thousands of men and women in this country, the great majority of whom are underprivileged racial minorities, have been sentenced to Draconian sentences based on a sentencing scheme that previously treated fifty grams of crack cocaine (the weight of ten nickels and a quantity yielding between 100 and 500 doses) the same as five kilograms of powder cocaine (the weight of a bowling ball and a quantity yielding between 25,000 and 50,000 doses). *See* United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy* (May 2007), p. 63. That 100-to-1 ratio of crack to powder cocaine has its origins in the mid-1980s public frenzy over crack cocaine following the exponential growth in the drug's availability and prevalence (which essentially marked the first time that cocaine had become widely available to the poor) and the cocaine-induced death of star basketball player Len Bias. On the heels of Bias's death in 1986, and in the face of almost daily sensationalized news reports about the crack "epidemic," Congress hurriedly enacted the Anti-Drug Abuse Act of 1986. That law's mandatory penalties for crack cocaine were the harshest ever adopted for low-level drug offenses and created drastically different penalty provisions for crack cocaine compared to powder cocaine, notwithstanding the fact that they are pharmacologically identical substances.

Although the excessive punishment resulting from the crack-powder disparity affects many more lives than just Kenny's, his case is unique for his extraordinary rehabilitation during the first fourteen years of his twenty-year sentence. Though originally housed in a medium-security prison, he has now been at a fenceless minimum-security camp for several years. At the camp, Kenny has taken virtually all of the college courses available to him; he teaches two art classes per week to fellow inmates and leads them in a community mural painting project; he is an active participant in his Native American religious group; he is the organizer and league chairman of the inmate softball league; he was selected by the prison staff to serve as the unit clerk, a position of trust held by very few inmates; and, perhaps most importantly, he is the executive chairman of a group called Those Outspoken Against Drugs (TOAD)—a select group of inmates who speak to teenagers at local schools and juvenile halls about the dangers of drugs, taking responsibility for one's own actions, and making good choices.

His conduct at the camp has earned the respect and sincere admiration of not only fellow inmates—both long-timers and those recently incarcerated—but also of members of the prison staff, including the Associate Warden, who have all written to declare their support for Mr. Lumpkin's early release. Indeed, United States District Judge David O. Carter, who presided over Kenny's motion to reduce his sentence in light of the retroactive changes to the sentencing guidelines for crack, "praise[d] Lumpkin for the efforts to rehabilitate himself" before reluctantly concluding that "the law as it stands does not allow for this Court to reduce Lumpkin's sentence." (Order Denying Motion to Reduce Sentence, p. 9, attached as Exh. L.) Finally, as noted in the letters attached to this Petition, Mr. Lumpkin has managed, as best he can, to be a loving and caring father, son, and friend to so many "on the outside."

As of the filing of this petition, Mr. Lumpkin still has just under three years until he reaches his release date. Everyone who has worked with Kenny or considered his present situation has arrived at the same conclusion: his rehabilitation is extraordinary and complete, he has more than paid his debt to society, and he is ready to return to his family and community. Importantly, with strong community and family support, Kenny has already secured commitments for employment and housing upon his release.

Mr. President, it has been widely reported that, in 2009, you stated that "the disparity between sentencing crack and powder-based cocaine is wrong and should be completely eliminated." You made this statement not because it was safe, politic, or popular at the time; but rather, because it was right. The public—and now Congress to a great extent—has followed your lead on this issue, and the tide is turning. But in this case, Mr. President, only you can do what is right for Kenny Lumpkin, his family and friends, all the other inmates who look up to Kenny as a role model for their own rehabilitation, and the correctional officers who point to Kenny as a model inmate. Only

you can release Kenny. This Petition for Commutation respectfully requests that you do so forthwith.

**I. Kenneth Lumpkin Is Serving a Sentence that Is Grossly Disproportionate to the Crime He Committed**

Kenny Lumpkin grew up on Grape Street in Watts, California in the late 1960s and 1970s—around the time when Watts burned with racial violence. Put up for adoption by his biological parents near the time of his birth, Kenny was adopted by Kenneth Jackson Lumpkin, an African American, and Rumalda Lumpkin, a Mexican American. He was their only child. Kenny's childhood was difficult. His father abandoned the family before Kenny turned five years old. His mother, who suffered from alcoholism and an addiction to prescription medications, lacked the job skills to secure and maintain steady employment, the life skills to cope with her poverty and loneliness, and the parenting skills to make sure that the lights were turned on and there was food on the table. As a result, Kenny was a poor kid growing up in a rough neighborhood with little supervision or guidance.

Unfortunately, neither his fractured family nor his family's poverty made Kenny particularly different in his neighborhood. Rather, what separated Kenny from the other kids in his neighborhood was his mixed-race background. Because his mother was Mexican American, he was "too" Latino to be African American; and, because of his light complexion, he was "too" white to be Latino. As a result, Kenny oftentimes felt as though he did not fit in.

Fortunately, Kenny found that his athletic talents allowed him to be a part of a group: a baseball team. On the baseball field, neither his family issues nor his racial identity mattered. He was an all-star player and, after graduating from high school, he caught a realistic glimpse of a career in professional baseball—a career that could provide a better life for himself, his mother, and, by this time, his young daughter, Mercedes, who was born while Kenny was still in high school. As a freshman at Compton College, he played for the baseball team. Not long after, he signed a contract with the Chicago White Sox, then the Kansas City Royals, and he played briefly in the minor leagues.

But Kenny's stint in professional baseball was short-lived. In 1990, the Royals released him from his contract, and he returned to Watts to live with his mother. During this time he found a job with the Orange County Sheriff's Department. But Kenny still dreamed of playing baseball. He quit his job to try out for another team. As his ex-wife explains,

Words cannot express the anger, sadness and depression he seem[ed] to experience, but he decline[d] help from his friends and love[d] ones

and proclaim[ed] his life a failure. Kenny became a different person after he was released from baseball.

(Letter from Letishia Stillwell, Exh. U.) Kenny vividly remembers the disappointment he felt after getting cut from the team:

I was crushed. The game I loved so much and worked so hard to play began to crumble in my hands. I had no upbringing or education to prepare me for such a blow. For months I felt embarrassed and frustrated, and in my mind everyone saw me as a failure.

(Letter from Kenny Lumpkin, Exh. A.)

Feeling like he had next to nothing left to lose, but needing to make some money to help support his young daughter and his mother, Kenny suddenly found himself drawn into the neighborhood drug ring he had so assiduously avoided growing up. Although Kenny was neither a drug dealer nor a drug user, he agreed to play, at worst, a middling role in an on-going scheme to transport crack cocaine from Los Angeles to Cleveland, Ohio. On January 6, 1996, Kenny picked up Mary Breveard, a drug courier, at her apartment and took her to the residence of Gerald Pickett. (Presentence Report ("PSR"), ¶¶ 15-16.) At Pickett's residence, Kenny gave Breveard a bus ticket to Cleveland, Ohio and \$20 for travel expenses. (*Id.* at ¶ 17.) Kenny told her that someone would be there in Ohio to meet her when she arrived in Cleveland. (*Id.*) Pickett then provided Breveard with an ice chest containing crack cocaine. (*Id.*) Kenny then left Pickett's residence and drove a different individual, Keith Chatman, to the bus terminal. Chatman's role was to escort Breveard to Cleveland and to keep an eye on the cocaine. (*Id.* at ¶¶ 18, 20.) Breveard and Chatman were arrested shortly after they boarded the bus to Cleveland. (*Id.* at ¶ 21.) Kenny was arrested months later, on April 27, 1996.

Breveard was convicted for her role in the conspiracy and sentenced to serve five months in prison and five months in home confinement. Kenny and Chatman both went to trial and were found guilty. Chatman received a sentence of eleven years and three months. Even though Pickett actually provided the crack cocaine, it does not appear from a docket search that he was charged.

For his part in the scheme, Kenny received a mandatory minimum sentence of twenty years in prison, based on the quantity of crack cocaine in the ice chest and a prior drug conviction for which Kenny had been sentenced to probation. The Presentence Report does not indicate that Kenny was an organizer, leader, manager, or supervisor of others in the offense. He did not possess a weapon or use violence or threats of violence. Nobody was injured. There is no indication that he coerced or recruited Breveard, Chatman, or Pickett to participate in the scheme. There is no indication that

Kenny had previously participated in the scheme or that he continued to be involved after he left the bus station. There is no indication that Kenny set up the proposed transaction or that he had contacts with the intended recipients in Cleveland. There is no indication that Kenny handled (or even saw) the cocaine, knew the quantity of cocaine, or had any ownership interest in the cocaine.<sup>1</sup> There is no indication Kenny played so vital a role that the deal would not have happened without him.

Nonetheless, Kenny knows that what he did was wrong, and he knows that he deserves to be punished. As Kenny explains, “I now understand that, although at the time my part in the scheme seemed small, it was wrong. I played a role in selling the same drugs that I saw, first hand, ruin lives and destroy families. I accept full responsibility for what I did and it is not an exaggeration to say I regret it everyday.” (Petition for Commutation, Response to Question No. 5.)

But the sentence he ultimately received—and continues to serve—pursuant to the harshly punitive and unfair crack cocaine sentencing laws is grossly disproportionate to the crime he committed. The 100:1 crack to powder sentencing disparity, which at the time of Kenny’s sentencing was found in both the sentencing guidelines and in the Anti-Drug Abuse Act of 1986, was not evidence-based. See *Kimbrough v. United States*, 552 U.S. 85, 109 (2007). Rather, as Illinois Senator Dick Durbin, who in 1986 as a member of the House voted to enact the 100:1 disparity and who in 2010 co-sponsored Fair Sentencing Act to reduce the disparity to 18:1, explained, at the time the 100:1 disparity was enacted, “there was near panic in the halls of Congress” over crack cocaine. “It scared us to death. We overreacted.” Congress Narrows Cocaine-Sentencing Gap, *The Daily Record*, (available at <http://mddailyrecord.com/2010/07/28/congress-narrows-cocaine-sentencing-gap/>). That “overreaction” has had dire consequences for thousands of primarily Black and Latino Americans. There can be little debate that the 100:1 crack to powder disparity is one of the principal causes of the overrepresentation of minorities in the federal prison system. Virginia Representative Bobby Scott has pressed for the law to be changed so that the “the defendant is sentenced for what he or she actually did, not the form of cocaine involved.” *Id.* And you yourself, Mr. President, have suggested that the disparity should be completely eliminated. The 18:1 ratio enacted this year in the Fair

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<sup>1</sup> Because of his minimal criminal history and the nature of his role and participation in the offense, it appears that Kenny would have been eligible for the safety valve. See 18 U.S.C. § 3553(f). To qualify, Kenny simply had, prior to the sentencing hearing, to provide truthfully to the government all information regarding the offense. There is no indication, however, that he was advised by his lawyer regarding the safety valve. Had the safety valve applied, the mandatory minimum sentence would not have applied, and Judge Tevrizian would have had far more discretion.

Sentencing Act represents a meaningful step forward, but even if made retroactive, would not reduce Kenny's sentence. Only you, Mr. President, have the power to send Kenny home and prevent him from serving 20 years because of Congress's "overreaction."

## **II. Kenneth Lumpkin Is Particularly Deserving of a Commuted Sentence**

Despite the harshness, callousness, and sheer excessiveness of his sentence, Kenny has made the most of his time in prison to pay his debt to society, to prepare himself for his release, and to be a mentor and teacher to others. Rather than become discouraged, Kenny has been a source of support and encouragement. Rather than fade away, Kenny has become more present and more involved. Rather than give up, Kenny has grown stronger.

Indeed, the Honorable David O. Carter, in considering Kenny's motion to reduce his sentence in 2009, noted that,

[t]hough he was originally designated to a medium security facility, in 2000, he was transferred to a low security prison and then a minimum security prison in 2005. He has taken almost all college classes available to him, and he has learned to be a barber in order to prepare himself for life outside of prison. Further, since 2006, Lumpkin has been the executive chairman of a group called "Th[os]e Outspoken Against Drugs" or [the] "TOAD" program, a group that speaks to at-risk youth in schools, juvenile hall, and the juvenile court system.

Ultimately, Judge Carter "praise[d] Lumpkin for the efforts he has made to rehabilitate himself." (Order Denying Motion to Reduce Sentence, Exh. L.)

Members of the prison staff at the Taft Correctional Institution, most of whom have known Kenny for several years and can evaluate his rehabilitation and readiness to return to society, echo and expand on Judge Carter's impression. The Associate Warden of the prison, in recommending commutation, explains:

It is evident that Mr. Lumpkin has taken advantage of the programs available to rehabilitate himself. He is respected by his fellow inmates and is viewed as a role model to the newly incarcerated. His participation in religious and community based activities indicate his attempt to become more focused while contributing something of importance to society. I believe he is a good candidate for a commuted sentence and support the petition efforts.

(Letter of Minga Wofford Nelson, Associate Warden, Exh. G.)

Kenny's correctional counselor at the prison describes Kenny's leading role in trying to better the lives of young people and promote good choices through the TOAD program:

The inmates at Taft Correctional Institution have taken a bold step to prevent others from following in their footsteps by taking the message of their convictions to the schools in Kern County. The goal of the [TOAD] program is to help the youth of today to better understand the consequences of drug abuse, gang affiliation, violence, criminal behavior and to encourage them to make better choices by pursuing higher education and avoiding peer pressure. Mr. Lumpkin is the Chairman of the program, and is responsible for the organization of the group meetings. He has also been very instrumental in mentoring other inmates in the program. Mr. Lumpkin has put his heart into this program, and it shows with each group of youth we speak to.

(Letter of C. Mickelberry, Correctional Counselor, Exh. I.)

Both Kenny's correctional counselor and his case manager concur that commutation is appropriate, and speak to the depth of Kenny's acceptance of responsibility and transformation as an individual:

Mr. Lumpkin has realized his mistakes and has worked hard to better himself through education, and positive programming. He also cultivated his talents as an artist and has donated many hours of service to our community-based program on the mural team. He has worked diligently to rehabilitate himself and I believe through his incarceration he has continued to strive toward a new positive direction. Mr. Lumpkin is ready to return to society and [to] his children a positive productive father and citizen.

(*Id.*)

According to his case manager, Kenny has

used his incarceration to mature into a responsible man, with focus and has the drive to move forward and accept the challenges that lie ahead. It is that tenaciousness that will deter him from a life of crime and will keep him on a positive path. . . . He is ready to return to society, ready to return to his children, and start a life of productivity.



(Letter of Marissa Oliver, Case Manager, Exh. J.)

The letters in support of this Petition from Kenny's present and former inmates are no less certain in their view that Kenny is ready to be released. The letters express amazement at Kenny's accomplishments in a rigid institutional system. Kenny has not simply availed himself of the institution's offerings, he has developed and implemented programs that did not previously exist at the Taft Correctional Institution before him and helped keep pre-existing programs vital. Those programs, which will endure well beyond Kenny's incarceration, will benefit perhaps thousands of inmates.

In his tenure at the Taft Correctional Facility . . . he has developed several of what most would define as "Legacy" programs . . . . These programs just to be instituted take patience of an extraordinary scale as change and new concepts are not regularly accepted in this environment by the staff in charge. The fact that he has implemented so many of these Legacy programs shows an uncharacteristic level of trust by and between the staff and Mr. Lumpkin, which is no small measure a sign of respect in a world where it is not given by and large. . . . These Legacy programs are no small feat and the key is that Kenny has not put his ego at the front of them because he designed them all to move forward after he would leave. The point is that he is a poster child for the concept that you can change in prison.

(Letter of Michael Fanghella, Exh. N.)

The letters of the inmates speak to Kenny's earnestness in helping others:

I can see no other more deserving of your commutation petition grant than Mr. Kenneth Lumpkin. He continually shows time after time the person he is today by showing his true colors in helping those who need guidance (like myself) to become or at least understand that [it's] never too late to turn your life around no matter what kind of path, experiences or background you may come from.

(Letter from Marcus Adames, Exh. O.)

In essence, each letter from a present or former fellow inmate expresses that Kenny's life at the Taft Correctional Institution "has been an inspiration for . . . others to follow." (Letter from Joel Ward, Exh. P.)

Because of his extraordinary character and work ethic, Kenny has already secured an offer of housing and employment from a former inmate who has successfully made the transition to productive and law-abiding citizen. Raul Silva, who served time in

prison with Kenny and now is an owner of Excel Transporting & Towing in Bloomington, California, is willing to offer Kenny employment upon his release. Mr. Silva explains:

[Kenny] would be a good asset and succeed at whatever he directs his efforts . . . . I am willing to employ Mr. Lumpkin in a sales position at my company and take full advantage of his skills. I presently manage over 40 employees and have come across various individuals from diverse backgrounds and characters, [and] I am confident that Mr. Lumpkin will outperform many of my current employees. In addition to providing Mr. Lumpkin with employment, I would also provide him with a temporary residence and transportation until he is ready to provide for himself.

(Letter of Raul Silva, Exh. K.)

Moreover, Kenny has a vast support network of family and friends eager to accept and embrace him in their lives. Kenny has managed to forge close ties with his children despite the extreme restrictions on his ability to be a father. Kenny's children were young when he was sentenced to prison, and two of them, Blake and Rahkeen, did not even know he existed at the time of his incarceration. That did not stop Kenny from building meaningful relationships with them, who all admire him and long for his release:

My dad, Kenny is a wonderful human being and I'm proud to say I am his daughter. During the countless conversations my dad and I have had he has always been repentant and remorseful for his actions. He encourages my siblings and me to always remain on the right side of the law and teaches us that being a criminal is completely unacceptable. He has helped me immeasurably as I made the transition from girl to young lady, and as I navigate the choppy waters of life. I only wish he could be free to see me.

(Letter of Blake Drummond, Exh. C.)

Over the years, I've learned a lot about my dad. He has such a strong mind. He hasn't let being locked away get any part of him. As I grow, I admire him more and more everyday. He amazes me. . . . My dad has expressed to me how much he regrets making the choices he made. For being around the wrong crowd. For being weak minded. He has learned his lesson a million times and he has changed for the better.

(Letter of Mercedes Lumpkin, Exh. B.)

President Obama, I wish I could tell you what type of person my dad was before he went to prison, but I am more familiar with the person he is now. Now that I am older, I can see that my dad is a very kind and wise man. Although he is far away, I can see his honest effort in staying close to me.

(Letter of Kenya Lumpkin, Exh. E.)

When I speak to my father, he always has a choice of words for me. He tr[ies] to share as much of his wisdom as he can give in the few minutes he is given to talk to me. One of the main topics he has is about making every decision as if it's your last, THE RIGHT ONE! Each time this topic is chosen I can hear the pain in his voice that tells me[,] if he could take back time, he would have picked a different path—he would have chosen the one he reminds me to take. My dad can't take back the past, only be prepared for the future and learn from the past. He has suffered more than twelve years; he tells me . . . "I wish I never did this, I missed out on my kids growing up." I think he has enough time to come into our lives and become the best dad he wants to be! He is filled with art, wisdom, love, and loyalty. I have chosen to give him another chance, so should you! We all need a new path to start in our lives, why not start now.

(Rahkeen Evans, Exh. D.)

It is hard to be a father from inside a prison, yet Kenny has been the best one he can be. It is hard to earn the respect of both correctional staff and one's fellow inmates simultaneously, yet Kenny has done that. It is hard to avail oneself of all of the opportunities to rehabilitate oneself while in prison, yet Kenny has done that and has even created and fostered more opportunities for other inmates. It is hard to stand up in front of a group of troubled teenagers and say "Don't be like me," yet Kenny does that regularly and recruits other inmates to do the same. Kenny does all of this because he knows it is right.

### **III. Conclusion**

A chorus of voices has risen in support of Kenny's petition. The Associate Warden and correctional staff members, many of whom have supervised Kenny for years, support his immediate release. The federal district court judge who presided over his motion for a reduction of his sentence expressed frustration at his inability to reduce Kenny's sentence. The inmates who have previously served or are now serving time with Kenny hold out hope that Kenny will be released so that they can have proof that true

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rehabilitation is possible. Kenny's family is not only committed to providing him with a support network but is already counting on him to help provide one for them. He has offers of employment and places to live. Kenny has a long track record of improving his community in profound and durable ways. Kenny has earned the trust of many, and has never lost it.

Granting Kenny's commutation petition will signal to the thousands of inmates who have watched Kenny work tirelessly to better himself that it is not too late to change. Granting him commutation will provide the correctional officers and staff with a living example of true rehabilitation to show other inmates that if they remain focused, it is not too late to change. Granting Kenny's commutation will provide the children in his neighborhood, at his church, in his family, and those with whom he has spoken through the TOAD program with powerful evidence that it is not too late to change. Granting Kenneth Lumpkin's commutation petition presents you, Mr. President, with among the greatest of opportunities: to publicly deliver the message, as you have time and time again, that it is not too late to change.

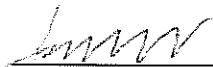
Please commute Kenneth Lumpkin's sentence.

Respectfully submitted,



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MICHAEL V SCHAFLER  
ALASTAIR AGCAOILI  
CALDWELL LESLIE & PROCTOR, PC



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SCOTT MICHELMAN  
JAY RORTY  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION

*Counsel for Kenneth Lumpkin*