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Hold for no action

as per Bruce L.

02 not for printing

THE WHITE HOUSE

WASHINGTON

September 22, 1994

MR. PRESIDENT:

Attached is a memo from Lloyd Cutler and Cheryl Mills recommending that you deny a clemency request from a 70-year old Nebraska hog farmer whose case has received substantial media attention, including in the New York Times, and the support of such prominent figures as Willie Nelson. The Justice Department recommends denial as well.

The story is that the farmer was in financial trouble with his bank, sold some \$30,000 worth of hogs and failed to use half the proceeds to pay down his debt, as he was required to. Then, in subsequent bankruptcy proceedings, he lied about the sales and was charged with and convicted of perjury. He is serving a five-month prison sentence and is scheduled to be released to five months of home confinement in November.

Leon concurs in Counsel's recommendation of denial.

Agree___ Disagree___ Discuss___

John Podesta
Todd Stern

THE WHITE HOUSE

WASHINGTON

September 9, 1994

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MEMORANDUM FOR THE PRESIDENT

FROM: LLOYD N. CUTLER
SPECIAL COUNSEL TO THE PRESIDENT

CHERYL MILLS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Denial of Clemency Request

We have received the Deputy Attorney General's memorandum recommending denial of the petition for commutation of sentence filed by the following individual:

Ernest Charles Krikava

Nebraska

I. ACTION-FORCING EVENT

Mr. Krikava is a 70-year-old Nebraska hog farmer whose case has received extensive and ongoing media attention. There was a sympathetic front-page story in the New York Times in June. One tabloid news show gives regular updates on the case and has referred viewers to the Pardon Attorney. As a result of the publicity, the Pardon Attorney has received thousands of letters in support of Mr. Krikava. Senators Dole, Kassebaum, Kerrey, Campbell and Exon and Congressmen Slattery and Bereuter have expressed interest in the case. A spokesperson for Willie Nelson and the Farm Aid organization has written to the White House about their plans for a benefit concert on September 18, 1994, to help Mr. Krikava buy back his farm. In response to this attention, the Justice Department expedited the processing of his clemency application and the Counsel's Office recently received their recommendation for denial.

II. BACKGROUND

In 1990, Mr. Krikava took out a \$250,000 loan to expand his hog operations. Mr. Krikava was unable to make loan payments in full or on time from the beginning of the loan term. In July 1991, the bank entered into a repayment agreement plan with Mr. Krikava. The plan provided that 50% of the proceeds of any hog sales would be applied to the loan and 50% could be used for farm operations. Mr. Krikava circumvented this provision by selling under a relative's name approximately 300 hogs in at least eight

transactions totaling \$31,851, failing to disclose these sales to the bank, and personally retaining 100% of the proceeds. In March 1992, Mr. Krikava, still unable to repay his debt, declared bankruptcy under Chapter 12 of the Bankruptcy Code. In the bankruptcy proceeding, Mr. Krikava testified falsely under oath on two separate occasions about these hog sales. As a result of his false statements, Mr. Krikava's bankruptcy was involuntarily converted to a Chapter 7 liquidation and he was forced to sell his farm to satisfy his debts. He was later convicted by a jury of two counts of perjury. He seeks commutation of his five month prison sentence for both perjury counts.

III. SENTENCE

Mr. Krikava was sentenced to ten months in prison which is the bottom of the range permitted under the Sentencing Guidelines for perjury. Consistent with the Guidelines, the judge then converted the sentence to five months in prison, five months home confinement, and three years of supervised release (the home confinement is included as part of the three years of supervision). He has served over two months of his prison term and is scheduled for release to home confinement in November.

IV. RECOMMENDATION

The Department of Justice has recommended that you deny Mr. Krikava's clemency application. We agree.

The media has portrayed Mr. Krikava as a struggling farmer whose only crime was selling hogs to feed the rest of his starving herd. In fact, Mr. Krikava was convicted not for violating the terms of his loan agreement, but for lying twice about it under oath. According to the Pardon Attorney's report, Mr. Krikava "engaged in a pattern of fraudulent acts against his creditor bank, sought the protection of the bankruptcy court against the secured claims of the bank, and then lied on two occasions to prevent the court from being able fairly to consider his case." Mr. Krikava still does not express remorse about or accept responsibility for his criminal conduct. In light of the circumstances of this case, his sentence is neither unjust nor inappropriate.

V. DECISION

We recommend that you deny Mr. Krikava's application for commutation of his sentence.

AGREE [] DISAGREE [] MORE INFORMATION []