

ALAN M. DERSHOWITZ

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August 17, 2018

The Honorable Donald F. McGahn II  
Counsel to the President  
Office of the White House Counsel  
The White House  
Washington, D.C. 20502

RE: **Sholam Weiss**, Commutation of Sentence

Dear Mr. McGahn,

I am writing you in support of a commutation of sentence for Sholam Weiss to time-served. He has already served 17 years, which is effectively a 20-year sentence considering goodtime credits.

Ten years ago, attorney Jay Sekulow sent a letter to the White House Counsel under President George W. Bush, requesting a commutation of sentence. The basis of his request was to honor international commitments to Austria given by the U.S. Department of Justice under the extradition treaty to Austria. His letter remains as valid today as then. The Department of Justice and prosecutors in charge of his case consistently (and I think wrongly) refused to honor the assurances it gave to Austria under the extradition treaty, and the matter is now closed in the courts.

In a 2017 letter from the Chancellor of Austria to President Donald J. Trump, the Chancellor explains that when Mr. Weiss was extradited from Austria, the U.S. gave assurances under its extradition treaty with Austria that Mr. Weiss would have a full re-sentencing. Because no re-sentencing has been given, the Chancellor respectfully suggests that this obligation be fulfilled by a commutation of sentence. Indeed, a Florida district court has explicitly suggested this solution (after it denied a full re-sentencing on procedural grounds), referencing an earlier 2016 letter from the Austrian Ministry of Justice.<sup>1</sup>

The Chancellor's request is reasonable. According to the Chancellor, under Austrian law, Mr. Weiss would have received no more than 10 years. And if he had been given the re-sentencing as assured by the DOJ, he may well have already been released.

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<sup>1</sup> *Sholam Weiss v. Stan Yates*, 02-cv-204-Oc-10-GRJ, Doc. 194 at 4 (M.D. Fla. 2016).

Mr. Weiss is currently serving an excessive 835-year sentence for a non-violent crime, primarily for money laundering. He has already effectively served a 20-year sentence. His restitution has been fully paid. All of his co-defendants have long been released from prison, and his 835-year sentence is grossly in disparity to similar crimes. He has been a model inmate, and provided assistance to the prison officials to prevent inmate violence. Lastly, he is suffering from serious health conditions and his family fears that he may not survive much longer in prison. These factors alone would be enough to reduce his sentence to time-served if he were re-sentenced today.

Sholam Weiss is 64 years old, has 5 children and 30 grandchildren. He has paid his debt to society, both in restitution and in prison time. Please consider recommending him to the President for a commutation of sentence to time-served so that he may return home to be with his family.

Sincerely,



Alan M. Dershowitz

*Attachments:*

Letter from attorney Jay Alan Sekulow, Director of the American Center for Law and Justice, to White House Counsel Fred F. Fielding, dated January 6, 2009.

Letter from Chancellor of Austria, to the Honorable Donald J. Trump, President of the United States, dated August 7, 2017.



Jay Alan Sekulow, J.D., Ph.D.  
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January 6, 2009

The Honorable Fred F. Fielding  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Re: Commutation Request Submitted on Behalf of Sholam WEISS; Supported to Fulfill International Commitments by the U. S. Department of Justice and for Reasons of Humanitarianism and Compassion

Dear Fred:

We are writing in support of the petition to commute to ten years the sentence of Mr. Sholam Weiss. The petition was submitted December 11, 2008 by Judah Best, at Dewey LeBoeuf LLP, and Stephen A. Saltzburg, at The George Washington University School of Law.

We respectfully believe that the unique circumstances of Mr. Weiss' extradition from Austria, and the unfulfilled assurances provided by the U. S. Department of Justice, Criminal Division (DOJ) to Austria during extradition support commutation. In addition to reviewing the application and the supporting material, we have a longstanding professional relationship with Ambassador Danny Ayalon. Ambassador Ayalon has undertaken this case and has met with Josh Bolton. We have handled significant international matters with Ambassador Ayalon and have the utmost confidence in him.

Mr. Weiss was extradited on June 9, 2002. During the process, DOJ provided letters on February 8, 2002 and May 14, 2002 to Austria's Ministry of Justice assuring that Mr. Weiss was being extradited on the condition of specialty, denying one or more counts, and as a result, as stated by Austria's Minister of Justice at the time, "would have a re-sentencing on the remaining counts, followed by a full appeal of his conviction and a new sentence." Unfortunately, when the U. S.

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The Honorable Fred F. Fielding  
January 6, 2009  
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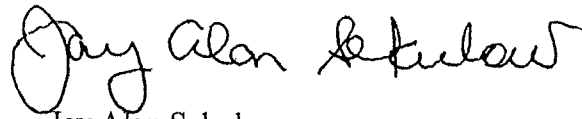
Attorney moved for Mr. Weiss' re-sentencing, the court denied the request concluding that the principle of speciality did not apply in Mr. Weiss' case since the trial had been completed before extradition.

Austria granted extradition based on the representations of DOJ and the mutual understanding that the condition of speciality would afford re-sentencing, a full appeal of Mr. Weiss' conviction, and a new sentence. In order to insure the integrity of the international commitments DOJ made, to preserve international relationships and protect the institution of extradition, we earnestly believe the application for commutation of Mr. Weiss's sentence should be granted. No other option for correction is available, and after all a deal-is-a-deal.

Mr. Weiss' application is also supported for reasons of humanitarianism and compassion. Mr. Weiss is being treated for colon cancer and his health is deteriorating in prison. Commuting his sentence now will mean he has been in custody and incarcerated for nearly ten years, the maximum sentence he could have otherwise received under Austrian law had his crimes been prosecuted there, which they would have been absent DOJ's representations regarding extradition.

Thank you for your time and consideration in this matter. We are happy to answer any questions you or your staff may have.

Respectfully Submitted,



Jay Alan Sekulow



Colby M. May

Bundeskanzler  
Mag. Christian Kern

Ballhausplatz 2, 1010 Wien  
www.bundeskanzleramt.at

The Honorable Donald J. Trump  
President of the United States of America  
White House  
1600 Pennsylvania Ave NW  
Washington, DC 20500  
United States of America

Vienna, 7 August 2017

Mr. President,

For over 16 years, our respective departments of justice have been seized with the extradition case of Mr. Sholam Weiss, a U.S. citizen who was sentenced *in absentia* for a non-violent financial crime to 845 years.<sup>1</sup>

The Republic of Austria granted the extradition of Mr. Weiss in 2002, relying on assurances from the United States (given under the authority of the extradition treaty between our two nations) that if Austria denied extradition on one count of his conviction, Mr. Weiss would be provided a full re-sentencing on all remaining counts of his conviction. However, US courts have refused to provide a full re-sentencing. Instead his sentence was only reduced by 10 years, from 845 years to 835 years, to correspond to Austria's rejection of one count of his conviction during extradition, without giving him a full re-sentencing.

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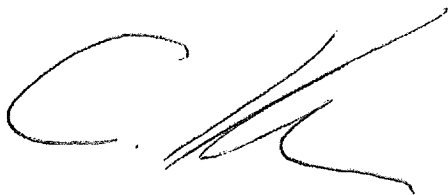
<sup>1</sup> I sent an identical letter to former President Obama in September of 2016. Austria's former Minister of Justice, Dr. Dieter Böhmendorfer, who granted Mr. Weiss' extradition, also sent a letter to former President Obama. And my predecessor, former Chancellor Dr. Alfred Gusenbauer, sent a letter to former President George W. Bush. All *attached*.

The extreme harshness of the 835-year sentence imposed on Mr. Weiss for a non-violent financial crime underscores the importance to a U.S. Court fully review his sentence, giving Mr. Weiss the opportunity to make arguments and present evidence in support of a more reasonable sentence. In Austria, the maximum possible sentence for his financial crimes would be 10 years. Austria continues to expect a full re-sentencing, as obligated under the treaty and terms of extradition.

One possibility to rapidly resolve this issue would be a Presidential commutation to time served, which I understand is 18 years. In further support of this request is the fact that Mr. Weiss is currently 63 years old, has a long history of poor health, and has had colon cancer surgery and a recent heart procedure. His restitution for his crimes has also been fully paid.

I would be deeply grateful if you could consider this request and ensure that this 16-year old issue is resolved.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of overlapping, sweeping lines that suggest the letters 'K' or 'K'. The signature is fluid and cursive in style.