

DEPARTMENT OF JUSTICE Washington

August 10, 1943

Honorable Merrill E. Otis,
United States District Judge,
Kansas City, Missouri.

My dear Judge:

I enclose herewith a petition for executive clemency filed by T. J. Pendergast, who pleaded guilty in your District to violation of the Income Tax Laws, and on May 22, 1939, was sentenced to imprisonment for one year and three months, and also placed on probation for five years, to commence at the expiration of the prison sentence.

Ordinarily a petition for executive clemency is not entertained when presented by a person on probation. In view, however, of the representations made in behalf of this applicant, I am referring this case to you for such comment and recommendation as you may see fit to make.

The most cogent feature of the case which impels the consideration of this petition at this time is found in the extraordinary terms of probation which are said to be unusually severe and oppressive. If the Court should see fit to dismiss the proceedings and discharge the defendant from probation at this time the need for executive clemency would appear to be obviated and the defendant might properly be advised to await the expiration of the usual four-year period before applying for pardon to restore his civil rights. A similar result might also be brought about if the order of probation were so modified as to eliminate the unusual conditions and place the applicant upon the same basis as an ordinary probationer. In that case there would, however, remain the additional consideration as to whether period of probation is unduly long under all the circumstances.

FILED AUG 13 1943

A. L. ARNOLD, Clerk

By W.W. Caster, Deputy

In view of the foregoing I should be pleased to have from you an expression of your view as to the prospect of a judicial termination of the probation proceedings or a

modification of the conditions. In the event that you are unwilling to entertain a petition for modification or termination, your views as to the extension of executive clemency are invited.

I feel it my duty to assure you that my inquiry as to the prospect of judicial action in this case is not instigated by the applicant but is corollary to the submission to you of the application for clemency in accordance with the pardon rules. It ought not, therefore, be regarded as a violation of Condition 9, as stated and interpreted in the order of May 24, 1940, on pages 4 and 5 thereof.

Will you be good enough to return the petition and attached papers with your reply.

A self-addressed envelope is enclosed for your convenience.

Respectfully,

Daniel M. Lyons,

Pardon Attorney

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A. L. ARNOLD, Clerk

By W.W. Caster, Deputy