

NATIONAL WHISTLEBLOWERS LEGAL DEFENSE & EDUCATION FUND

5235 P STREET, N.W. WASHINGTON, DC 20007 | 202-342-1902 (tel) 202-342-1904 (fax) | WWW.WHISTLEBLOWERSBLOG.ORG

April 15, 2010

The Honorable Barack Obama
President of The United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

**Re: Petition for Commutation of Sentence
Bradley Charles Birkenfeld**

Dear Mr. President:

We appeal to you today, the day that honest Americans must pay their taxes, with the hope that you will help correct a severe injustice.

Attached you will find a copy of the petition for commutation of sentence sent to the Pardon Attorney. As Supreme Court Justice Oliver Wendell Holmes recognized, "a pardon" is "not a private act of grace... it is part of the Constitutional scheme." It constitutes a "determination" that the "public welfare will be better served by inflicting less than what the judgment fixed." *Biddle v. Perovich*, 274 U.S. 480, 486 (1927).

The record of this case demonstrates that the "public welfare" will be best served if you, pursuant to Article II, section 2 of the United States Constitution, issue a full pardon to UBS whistleblower Bradley Birkenfeld. In the alternative we plead that you use your authority to commute his sentence to time served.

Mr. Birkenfeld's unprecedented voluntary disclosures led directly to the agreement between the United States and UBS AG for payment of \$780 million in fines and penalties. His disclosures led to the creation of an IRS amnesty program, under which 14,700 people have come forward and admitted to illegal secret accounts. The IRS has recovered billions of dollars from this program. Mr. Birkenfeld's whistleblower contributions also led to the termination of the illegal UBS program that existed to solicit and encourage wealthy Americans to hide their money in secret offshore accounts, and the creation of a new international tax treaty between the U.S. and Switzerland. UBS had illegally sheltered approximately \$20 billion in assets through its client accounts until Mr. Birkenfeld contacted the U.S. government.

Without whistleblowers like Mr. Birkenfeld these crimes would continue with little chance of ever being discovered. The Department of Justice stated that the U.S. Government might never have learned of the \$20 billion dollar tax fraud conspiracy, but for Mr. Birkenfeld's whistleblowing. On the other hand, continuing to punish Mr. Birkenfeld will have a deleterious effect on the ability of the government to find the whistleblowers needed to help end the practice of hiding assets in offshore accounts.



Combating tax fraud is important both as a matter of revenue for the government and as a matter of ensuring trust in the government. No one has sacrificed more for that fight than Mr. Birkenfeld, yet he was punished more severely than any other UBS banker or any UBS client. He has already served more time in prison than any individual connected with this conspiracy. Indeed, Mr. Birkenfeld's prison sentence of forty months is larger than any other person convicted in connection with the UBS conspiracy. Prior to beginning his prison sentence Mr. Birkenfeld also served nineteen months in quasi-home confinement, which included court-imposed curfew, severe travel restrictions and mandatory ankle bracelet.

Every day Mr. Birkenfeld remains in prison undermines trust in the tax system and is a step backward in the fight against corruption. The nation's greatest weapons in halting corruption are those rare individuals with the courage to be whistleblowers. The chilling effect Mr. Birkenfeld's conviction and severe sentence has had on other potential whistleblowers will continue until the U.S. government demonstrates it is serious about supporting whistleblowers and cracking down on tax fraud.

Mr. Birkenfeld has suffered. He voluntarily quit his job after he learned that the UBS program for which he worked violated both Swiss and U.S. securities law. His career as an international banker is over. He paid his fine. He has already served more time in jail than any other UBS Swiss banker involved in the UBS scandal, including bankers that were detained by the Justice Department. He has already served more jail time than any U.S. "taxpayer" who held an illegal offshore account at UBS. Yet, he was the only whistleblower to voluntarily step forward, without immunity, and provide critical testimony to the U.S. government.

At the time of his sentencing, the Department of Justice filed a Motion for Reduction of Sentence, stating the following:

"Defendant Birkenfeld has provided substantial assistance in the investigation and prosecution of others who have committed offenses. This substantial assistance has been timely, significant, useful, truthful, complete and reliable."

Motion for Sentence Reduction filed by the U.S. Department of Justice, U.S. District Court for the Southern District of Florida (No. 08-60099)(docketed August 18, 2009), page 4.

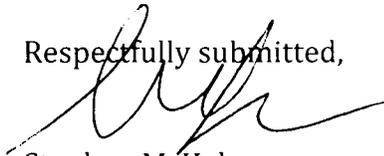
The Justice Department filed this motion despite being constrained in its ability to recommend a reduction of sentence based on the mandatory sentencing guidelines. Mr. Birkenfeld's case was and is unprecedented. There has never been such a important tax whistleblower in U.S. history. There has never been one courageous individual who, standing alone and confronting (at the time) the largest bank in the world, made disclosures that resulted in the recovery for the U.S. taxpayers of billions of dollars.

Your constitutional authority to grant clemency is an essential part of our system of justice. As Alexander Hamilton explained in Federalist 74, a president must exercise his clemency powers so that “justice” is not “cruel.” Our Founding Fathers understood that clemency, in the appropriate circumstances, would not be unreasonably withheld, and in fact Mr. Hamilton (the first Secretary of the Treasury), understood that there would be “easy access” to exceptions, especially when it serves the public interest (See Federalist 74).

With the greatest respect to the powers granted your office under the U.S. Constitution, we hereby ask that you pardon Mr. Birkenfeld, or grant his application of executive clemency and reduce his sentence to time served.

We stand ready to answer any questions you may have and are confident that the more you learn about this case the more you will agree that there has rarely been a more deserving candidate for a president to use his authority to pardon.

Respectfully submitted,



Stephen M. Kohn
Dean Zerbe
Attorneys for Bradley Birkenfeld

Attachment: Petition for Clemency (Exhibits 1-13 to follow by mail)

CC:

Ronald L. Rodgers
Pardon Attorney
United States Department of Justice

Senator Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate