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November 30, 2023

VIA EMAIL LISA.MONACO@USDOJ.GOV
FIRST CLASS MAIL

Deputy Attorney General Lisa O. Monaco
United States Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

Re: Request for Compassionate Release of Leonard Peltier

Dear Deputy Attorney General Monaco:

Because of Leonard Peltier's health condition and the reasons below, we request that the United States grant Leonard Peltier compassionate release.

We are former law clerks of the Honorable Gerald W. Heaney of the 8th Circuit, United States Court of Appeals, who sat on the bench for 40 years from 1966 to 2006. Judge Heaney was part of two of the three 8th Circuit Court of Appeals panels which rejected – because the law at the precise time mandated both results – Leonard Peltier's direct appeal and appeal from denials of post-conviction relief. The signees below include law clerks who assisted Judge Heaney, including those who helped draft the opinions reported at *United States v. Peltier*, 585 F.2d 314 (8th Cir. 1978); 731 F.2d 550 (8th Cir 1984); and 800 F.2d 772 (8th Cir. 1986).

This letter expresses our views – not Judge Heaney's – favoring Mr. Peltier's compassionate release. That being said, for many of us, Judge Heaney had a great influence; he informed our beliefs and sensibilities.

We do not write this letter with a blank slate. Judge Heaney's April 18, 1991, attached letter to Senator Daniel K. Inouye reflected his concerns about how the conviction and imprisonment of Leonard Peltier harmed our Native American neighbors, colleagues, friends and fellow citizens. As law clerks, colleagues, and friends of Judge Heaney, we take the liberty of attaching Judge Heaney's letter and incorporating Judge Heaney's heartfelt sentiments. While Judge Heaney had empathy for every party that appeared before him and all persons affected by his decisions, and while Judge Heaney had both empathy and sympathy for the families of Agents Williams and Coler, there is probably no case that troubled him more than the conviction of Mr. Peltier and his sentence.

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Mr. Peltier was convicted of killing Agents Williams and Coler at the Pine Ridge Indian Reservation in June 1975. Over the last 45-plus years, many of us have visited Pine Ridge, and it remains the integral context in which the events took place. We don't wish to rehash the tragic events, the disputes over Mr. Peltier's exact role, the wrongful conduct by the federal government that violated constitutional standards (*Brady*), the intervening change of law that meant that the constitutional violations were not prejudicial (*Bagley*), the decision of the trial court to exclude critical exculpatory evidence supporting Mr. Peltier's claim of self-defense, or why a jury convicted Mr. Peltier of the killings while other juries acquitted the other two shooters. Nevertheless, the circumstances of Pine Ridge in 1975 are often overlooked and affect the validity of the conviction and sentence, as well as forming the heartbreaking environment of the overall case.

Pine Ridge is an Oglala Lakota Indian reservation located primarily in South Dakota and some of Nebraska, two states within the 8th Circuit Court of Appeals. It is within the territory of the Great Sioux Reservation. Its origin story reflects, in the view of many, the federal government's illegal taking of land, and is the location of the Wounded Knee massacre, where the United States Army killed more than 300 Lakotas.

Pine Ridge is and has always been one of poorest areas in the United States. The land has largely never been suitable for agriculture.

By the 1970s, there were many accusations of violence, intimidation, corruption, voter fraud, and abuse by the tribal government. The federal government supported the tribal government against these accusations. In 1973, two years before the killing of Agents Williams and Coler, hundreds of Oglala Lakota seized and occupied the town of Wounded Knee on Pine Ridge in defiance of the corrupt tribal government. Federal law enforcement came to the aid of the tribal government, surrounding and cordoning-off the Oglala Lakota. After 71 days, the shooting of a US Marshal, and the shooting of two Oglala Lakotas (killing one), the incident ended. Two Native Americans were charged, but the case was dismissed due to prosecutorial misconduct.

Two years later, the circumstances at Pine Ridge had only become worse. Through the date of the shooting (June 26, 1975) and Mr. Peltier's conviction two years later, the tribal government's violence, intimidation, corruption and abuse was ongoing, and federal law enforcement continued to support the tribal government. The unconstitutional conduct by federal law enforcement in investigating and prosecuting those believed to be responsible for killing the two agents aggravated this situation.

During our work with Judge Heaney, he and many of his law clerks expressed concerns that some facially-neutral aspects of the American judicial system disadvantaged Native Americans and impacted the relationships between Native Americans and federal and state governments. This was a concern regarding Leonard Peltier's conviction and sentence.

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Speaking generally, Native Americans have not fared well in our justice system. Even with a decline in numbers over the last decade, Native Americans are still imprisoned in state and federal prisons at twice the rate of the national average and four times higher than the incarceration rate of white people, according to the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics: December 2022, NCJ 305125. Even though Native Americans are only around 2.6% of the United States population, they are overrepresented in negative categories (i.e. prisons, health disparities, youth suicide) and severely underrepresented in the positive categories (i.e. education, homeownership, employment).

This disparate treatment, within the context of the events at Pine Ridge over more than 100 years, is the lens through which the Native American community has viewed Mr. Peltier's conviction and sentence. It appears harsher than any conviction and sentence his fellow American would have received and more of the same from a justice system and country that continues to have disparate results in their community.

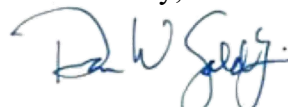
Several recent opinions from the Supreme Court such as *McGirt* and *Brackeen* have started to acknowledge the United States' role in creating systemic disadvantages for Native Americans. Whether it is the taking of jurisdiction and land, or enforcing policies to take Native American children from their homes, healing begins for tribal nations and their people when these historical wrongs are acknowledged and efforts are made to either correct them or keep them from happening again.

Similarly, many Native Americans view Leonard Peltier's conviction and his sentencing as part of a system that treats their community different than other Americans. In addition to addressing his own health, compassionate release for Mr. Peltier could allow many in the Native American community to start to heal and give hope to those hurt from historical wrongs and disparate treatment.

The justice system can be improved to treat the Native American people as their fellow Americans are treated in conviction, sentencing, and release. A compassionate release for Mr. Peltier would signal to the Native American community that the justice system and the United States recognizes the disparities in their treatment and is working to correct them.

Additional signatures are attached.

Sincerely,

A handwritten signature in blue ink that reads "Dan W. Goldfine". The signature is stylized and cursive.

Dan W. Goldfine

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Susan Gaertner
Former Ramsey County Attorney

Michael O. Freeman
Past President of the National District Attorneys
Association and former Hennepin County Attorney

Myron Orfield Jr.
Earl R. Larson Professor of Civil Rights
and Civil Liberties Law at the University
of Minnesota Law School

Ann L. Iijima

David M. Fried

Joseph T. Dixon Jr.

Teresa B. Bonner

Margaret C. Hobday

Teresa O'Toole

Jean Boler

Louis N. Smith

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Abigail S. Crouse

Joseph M. Barbeau

Mary Pat Byrn

Laura S. Underkuffler

Thaddeus J. O'Sullivan

Christie Eller

Daniel L. Gerdts

Mike McCarthy

John J. Sommerville

Heidi Johnson

Ingrid K. Johnson

Andy Mitchell

Robert Hennessey

Rebecca A. Knittle

Kenneth Lund

John-Mark Stensvaag

William Cameron

Andrew Toftey

Valerie G. Mallett

Henry Jones

Andrew McLaughlin

Beth Andrus

Thomas Beimers

John Lampe

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Aaron R. Bransky

DWG
Enclosure

cc. BOP Director, Colette Peters cpeters@bop.gov
BOP Deputy Director, James Wills jwills@bop.gov
Kris O. Beecher kbeecher@dickinson-wright.com

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CHAMBERS OF
GERALD W. HEANEY
UNITED STATES SENIOR CIRCUIT JUDGE
FEDERAL BUILDING
DULUTH, MINNESOTA 55802

April 18, 1991

Senator Daniel K. Inouye
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510-6450

Re: Leonard Peltier

Dear Senator Inouye:

Unfortunately I did not receive your letter of February 1, 1991 until April 13, 1991. When I did receive your letter, I was visiting your state. Thus, this is my first chance to reply.

As you know, I wrote the opinion in United States v. Peltier, 800 F.2d 772 (8th Cir. 1986), and I sat as a member of the court in an earlier appeal, United States v. Peltier, 731 F.2d 550 (8th Cir. 1984). In the case I authored, our court concluded:

There is a possibility that the jury would have acquitted Leonard Peltier had the records and data improperly withheld from the defense been available to him in order to better exploit and reinforce the inconsistencies casting strong doubts upon the government's case. Yet, we are bound by the Bagley test requiring that we be convinced, from a review of the entire record, that had the data and records withheld been made available, the jury probably would have reached a different result. We have not been so convinced.

United States v. Peltier, 731 F.2d at 779-80. No new evidence has been called to my attention which would cause me to change the conclusion reached in that case.

There are, however, other aspects of the case that the President may see fit to consider in determining whether he should take action to commute or otherwise mitigate the sentence of Leonard Peltier. My thoughts on these other aspects result from a very careful study of the records of the Peltier trial and the post-trial evidence and from a study of the record in the Robideaux-Butler trial before Judge McManus in Iowa, a trial which resulted in the acquittal of Robideaux and Butler.

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First, the United States government over-reacted at Wounded Knee. Instead of carefully considering the legitimate grievances of the Native Americans, the response was essentially a military one which culminated in a deadly firefight on June 26, 1975 between the Native Americans and the FBI agents and the United States marshals.

Second, the United States government must share the responsibility with the Native Americans for the June 26 firefight. It was an intense one in which both government agents and Native Americans were killed. While the government's role in escalating the conflict into a firefight cannot serve as a legal justification for the killing of the FBI agents at short range, it can properly be considered as a mitigating circumstance.

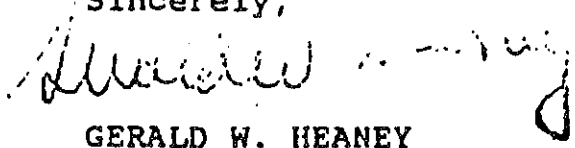
Third, the record persuades me that more than one person was involved in the shooting of the FBI agents. Again, this fact is not a legal justification for Peltier's actions, but it is a mitigating circumstance.

Fourth, the FBI used improper tactics in securing Peltier's extradition from Canada and in otherwise investigating and trying the Peltier case. Although our court decided that these actions were not grounds for reversal, they are, in my view, factors that merit consideration in any petition for leniency filed.

Fifth, Leonard Peltier was tried, found guilty, and sentenced. He has now served more than fourteen years in the federal penitentiary. At some point, a healing process must begin. We as a nation must treat Native Americans more fairly. To do so, we must recognize their unique culture and their great contributions to our nation. Favorable action by the President in the Leonard Peltier case would be an important step in this regard. I recognize that this decision lies solely within the President's discretion. I simply state my view based on the record presented to our court. I authorize you to show this letter to the President if you desire to do so.

Again, I am sorry your letter was not delivered to me at an earlier date.

Sincerely,


GERALD W. HEANEY

GWH:bn