

TO THE PRESIDENT OF THE UNITED STATES

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PETITION FOR PARDON OF

MARCUS MOSIAH GARVEY

Convicted for “Use of the mails in furtherance of a scheme to defraud”  
in the United States District Court for the Southern District of New York on June 21, 1923.

Conviction Upheld by the United States Court of Appeals for the Second Circuit on Feb. 2, 1925.

Writ of Certiorari Petition Denied by the United States Supreme Court March 23, 1925.

Sentenced to Five Years in Prison.

Sentenced Commuted by President Calvin Coolidge on November 18, 1927.

Deported November 19, 1927.

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**BRIEF IN SUPPORT OF PETITIONER’S APPLICATION FOR PARDON**

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June 24, 2016

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[Marcus Garvey] was the first man of color in the history of the United States to lead and develop a mass movement. He was the first man on a mass scale and level to give millions of Negroes a sense of dignity and destiny. And make the Negro feel that he was somebody.

--- Dr. Martin Luther King, Jr. (1965)<sup>1</sup>

## I. INTRODUCTION

We submit this memorandum in support of the application of Marcus Mosiah Garvey for a posthumous pardon and exoneration for his wrongful 1923 U.S. federal conviction of use of the mails in furtherance of a scheme to defraud, a conviction which effectively ended Garvey's global movement advocating for the economic and human rights for people of African descent. As the leader of the Universal Negro Improvement Association ("UNIA"), Garvey was one of the most prominent leaders of the civil rights movement in the first half of the 20<sup>th</sup> century. He was an advocate for the social, political, and economic independence of those of African descent across the world. A congressional inquiry and review of the historical record has led to agreement that Garvey was wrongfully convicted of using the mails to further a scheme to defraud in the United States District Court for the Southern District of New York in 1923. That conviction led to Garvey's deportation; effectively ended the movement which he spawned; precipitated his own personal demise; and has harmed his family and community for over 90 years.

Garvey's exoneration can be fulfilled through grant of a posthumous pardon. While we recognize that posthumous pardons are rarely granted, this is an extraordinary case warranting a pardon. In evaluating this application, we urge the President, Department of Justice and the White House Counsel's Office to consider the circumstances of Garvey's arrest, trial and

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<sup>1</sup> COLUMBUS SALLEY, THE BLACK 100: A RANKING OF THE MOST INFLUENTIAL AFRICAN-AMERICANS, PAST AND PRESENT 82 (Citadel Press, 3d ed. 1999), attached as Exhibit 1.

incarceration; President Calvin Coolidge’s commutation of his sentence—which was supported by nine of the twelve jurors who voted to convict; and Garvey’s substantial sustained efforts to improve the lives of African-Americans and those of African descent living in the United States, Jamaica, England, the Caribbean, Central America, and across Africa. The facts demonstrate that Garvey was targeted because of his race and political beliefs, that he received an unfair trial, that he nonetheless made substantial contributions to the community and the civil rights movement, and that a full pardon is warranted to remedy this significant miscarriage of justice.

**II. PRESIDENTIAL POSTHUMOUS PARDONS ARE GRANTED TO CORRECT INJUSTICES AND HEAL SOCIETAL DIVISIONS BY RESTORING THE UNJUSTIFIABLY DIMINISHED REPUTATIONS OF FIGURES ADMIRER BY THEIR COMMUNITIES**

**A. The Legal Justification for Presidential Pardons**

Under the Constitution, the President has the authority to grant a pardon for federal offenses, including those adjudicated in the United States District Courts, the Superior Court of the District of Columbia, and military courts-martial. Article II, Section 2, of the United States Constitution states in part: “The President . . . shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.”<sup>2</sup>

Discussing the rationale behind the presidential pardon power, the Supreme Court has explained that “[t]he plain purpose of the broad power conferred by § 2, Cl. 1, was to allow plenary authority in the President to ‘forgive’ the convicted person in part or entirely . . . .” *Schick v. Reed*, 419 U.S. 256, 266 (1974). The presidential pardon power may be used to correct injustice and restore the reputations of those who have been wrongly convicted. *See Ex parte Grossman*, 267 U.S. 87, 120 (1925) (“Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law.”) In *Ex parte*

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<sup>2</sup> U.S. Const. Art II. Sec. 2, attached as Exhibit 2.

*Grossman*, the Supreme Court explained, “[t]he administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt.” *Id.* 120-21. As a result, the executive is entrusted with a “check” on the judiciary to “ameliorate or avoid particular judgments.” *Id.*

Under this authority, Presidents Bill Clinton and George W. Bush have both authorized posthumous pardons.<sup>3</sup>

**B. President Bill Clinton Posthumously Pardoned Lt. Henry Ossian Flipper**

On February 19, 1999, President Clinton granted the first federal posthumous pardon to Lieutenant Henry Ossian Flipper, the first African-American graduate of West Point and the first African-American commissioned officer in the regular United States Army.<sup>4</sup> As the acting Commissary Officer in 1881, Lt. Flipper discovered a deficiency of approximately \$2,400 and was subsequently charged with embezzlement and dishonorably discharged from the Army after a court martial for conduct unbecoming of an officer and a gentleman. Lt. Flipper was acquitted of the embezzlement charge, but the dishonorable discharge remained until his 1999 pardon by President Clinton.

Lt. Flipper was held in high regard and celebrated by his community before his pardon. Beginning in 1977 and continuing today, the Army annually bestows the Henry O. Flipper Award upon outstanding cadets at West Point who have persevered despite dealing with adversity and hardship.<sup>5</sup> In the state of Georgia, where Lt. Flipper was born into enslavement, the Governor of

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<sup>3</sup> Stephen Greenspan, Ph.D., *Posthumous Pardons Granted in American History* 11-12 (2011), [www.deathpenaltyinfo.org/documents/PosthumousPardons.pdf](http://www.deathpenaltyinfo.org/documents/PosthumousPardons.pdf), attached as Exhibit 3.

<sup>4</sup> David Stout, First Black From West Point Gains Pardon, N.Y. TIMES, Feb. 20, 1999, <http://www.nytimes.com/1999/02/19/us/national-news-briefs-clinton-to-pardon-officer-army-dismissed-in-1882.html>, attached as Exhibit 4.

<sup>5</sup> Kathy Eastwood, West Point honors Henry O. Flipper, Cadet Ryan (Feb. 25, 2016), available at <http://www.pointerview.com/2016/02/25/west-point-honors-henry-o-flipper-cadet-ryan/>, attached as Exhibit 5.

Georgia proclaimed “Henry O. Flipper Day” in 1977 and placed a special commemorative marker at his gravesite in Thomasville, Georgia, in 1989.<sup>6</sup> However, notwithstanding the admiration of his community, Lt. Flipper’s family painfully recognized the enduring nature of the conviction’s stigma as recognized by historians and other community members.<sup>7</sup>

In granting the pardon, President Clinton spoke of the racial injustice endured by Lt. Flipper, a patriot and a hero, in having his reputation unjustifiably tarnished, as well as the redress offered by the pardon:

A later Army review suggested that he had been singled out for his race, but at the time there wasn’t much justice available for a young African American soldier . . . This good man now has completely recovered his good name. It has been a trying thing for the family to fight this long battle, to confront delays and bureaucratic indifference, but this is a day of affirmation. It teaches us that, although the wheels of justice turn slowly at times, still they turn. It teaches that time can heal old wounds and redemption comes to those who persist in a righteous cause. Most of all, it teaches us – Lt. Flipper’s family teaches us – that we must never give up the fight to make our country live up to its highest ideal.<sup>8</sup>

In Lt. Flipper’s case, President Clinton’s granting of the posthumous pardon spoke to the pardon’s potential to heal ethnic divisions in society by atoning for past racial injustices, as well as the pardon’s appropriate use as a correction for injustices perpetuated by our criminal justice system.<sup>9</sup>

### **C. President George W. Bush Posthumously Pardoned Charles T. Winters**

Following President Clinton’s lead, President Bush granted the second presidential posthumous pardon to Charlie Winters on December 23, 2008, relating to Winters’ January 1949

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<sup>6</sup> Darryl W. Jackson, Jeffrey H. Smith, Edward H. Sisson, & Helene T. Krasnoff, *Bending Toward Justice: The Posthumous Pardon of Lieutenant Henry Ossian Flipper*, 74 INDIANA L. J. 1251, 1253 (1999), attached as Exhibit 6.

<sup>7</sup> *Id.* at 1263.

<sup>8</sup> President William J. Clinton, Remarks by the President at Ceremony in Honor of LT. Henry O. Flipper (Feb. 19, 1999) (Transcript available at [http://www.history.army.mil/html/topics/afam/clinton\\_flipper.html](http://www.history.army.mil/html/topics/afam/clinton_flipper.html)), attached as Exhibit 7.

<sup>9</sup> Exhibit 6 at 1263.

guilty plea of violating the Neutrality Act.<sup>10</sup> Winters served eighteen months in prison for smuggling three military planes to the new state of Israel, in direct violation of the Neutrality Act of 1939.

Winters' action helped secure the independence of the state of Israel, and he was honored by Israeli Prime Minister Golda Meir as an American who helped establish the state of Israel. When he died, his ashes were taken to Israel for his final resting place. Congressional signatories in support of the pardon application, submitted on behalf of Winters' son and the Jewish Federation of Palm Beach County, mentioned how important Winters' legacy was to members of the Jewish community. However, according to his son James Winters, without a pardon his father would "forever be labeled a felon," and he requested that the record be amended to reflect that his father's actions were "honorable and reflective of the United States' ultimate position toward Israel."<sup>11</sup> Based on the changing times and relationship between the United States and Israel, President Bush granted Winters a posthumous pardon.

#### **D. President Barack Obama Should Posthumously Pardon Marcus Garvey**

Based on Garvey's work celebrating black pride and respect, economic self-reliance and self-sufficiency, the President should grant him a posthumous pardon. Garvey's petition is both singular and exceptional. The circumstances surrounding Garvey's arrest, wrongful conviction, and deportation are not likely duplicated. Like both Lt. Flipper and Winters, Garvey was not simply a wrongfully-convicted person—his wrongful conviction involved racial and political motivations that require rectification and redress. Given President Obama's policy commitment to criminal justice reform through the granting of clemency and sentence commutation, Garvey

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<sup>10</sup> George W. Bush, *Executive Grant of Clemency for Charles W. Winters* (Jan. 1, 2009), [http://www.israellobby.org/Pardon/01012009\\_Winters\\_Pardon.pdf](http://www.israellobby.org/Pardon/01012009_Winters_Pardon.pdf), attached as Exhibit 8.

<sup>11</sup> *Id.*

is an excellent candidate for pardon. Taking into account the weight of local, congressional, and international efforts to clear his name, Garvey's case presents a truly extraordinary set of circumstances that merit a presidential pardon.

The Office of the Pardon Attorney has stated that “[i]t is the general policy of the Department of Justice not to accept for processing applications for posthumous pardons for federal convictions.”<sup>12</sup> This policy is based on the assertion that “given that decades have passed since the commission of the offense . . . the historical record would have to be scoured objectively and comprehensively to investigate such claims.”<sup>13</sup> However in this case, the historical record has already been scoured by historians, congressional hearings held, and scholarly research completed which have objectively and comprehensively investigated the case.

As more fully described below, Garvey's actions and his case were thoroughly documented by contemporary government records, reports, and articles still available today and attached to this petition. As early as 1927, the year when Garvey's sentence became eligible for commutation, the U.S. Attorney General concluded that the case against Garvey was unwarranted and untenable given the weak evidence against him.<sup>14</sup> In the decades that have passed since that first official pronouncement, history and society have confirmed Garvey's unfair conviction and sentencing was based on racial and political motivations. However, as expressed by historians during congressional hearings on the exoneration of Garvey, his name is still tarnished by the stigma of his conviction, particularly as it implies that he used his activism only to aid a project of deception designed to exploit his own community. Now, the Garvey

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<sup>12</sup> U.S. Dept. of Justice, Policies, Policy on Posthumous Pardon Applications <https://www.justice.gov/pardon/policies>, attached as Exhibit 9.

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Attorney General John Sargent to President Calvin Coolidge (Nov. 12, 1927), *in* VI THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS, 607-08 (Robert A. Hill, et al. eds., 1989), attached as Exhibit 10.

family seeks to amend the historical record to reflect the honorific nature of its ancestor's contributions to the global community. Like Winters and Lt. Flipper, Garvey is an exceptional, historical figure whose community continues to be wronged by the unjustifiable diminishment of his contributions to society wrought through the criminal justice system of the United States. As is evident from the facts and records presented in the sections that follow, Marcus Garvey should be exonerated.

### **III. GARVEY'S CONVICTION WAS AN INJUSTICE AND THE PETITION FULFILLS THE REQUIREMENTS FOR A PARDON**

#### **A. Statement of Facts**

##### **1. Background**

Marcus Mosiah Garvey was born in Jamaica in 1887, the youngest of eleven children. His father was a mason and his mother a domestic worker. Only two of the eleven Garvey children lived to adulthood. Garvey first came to the United States in 1916 to meet Booker T. Washington after having been inspired by his autobiography, *Up from Slavery*. By 1921, Garvey had built the largest black organization in history, the Universal Negro Improvement Association ("UNIA") with a membership comprising 900 branches and nearly 6 million people, with chapters in 40 countries and 40 states.<sup>15</sup> Starting out as a street corner orator in Harlem, Garvey founded a movement that instilled racial pride and "focused on the need to develop and influence the inclusion of African Americans into the economic spectrum of American life."<sup>16</sup> At the heart of Garvey's teachings were the tenets of economic development and self-sufficiency in the black community.

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<sup>15</sup> Justin Hansford, *Jailing a Rainbow: The Marcus Garvey Case*, 1 GEO. J.L. & MOD. CRITICAL RACE PERSP. 325, 335-36 (2009), attached as Exhibit 11.

<sup>16</sup> *Mail Fraud Charges Against Marcus Garvey: Hearing Before the Subcomm. on Criminal Justice of the H. Comm. on the Judiciary*, 100th Cong. 8 (prepared statement of Rep. Charles B. Rangel), attached as Exhibit 12.

Garvey championed a variety of platforms to spread his message, including the *Negro World*, a weekly publication he founded in 1918, which became the most widely-circulated black newspaper of its time. The Negro Factories Corporation, UNIA's financial empowerment and employment division, put hundreds of black men and women to work. Garvey also organized numerous convention-style meetings of supporters.

In his testimony at 1987 hearings before the House Judiciary Subcommittee on Criminal Justice conducted to review the case against Garvey, Congressman Charles B. Rangel described the state of black America in Garvey's era and the hope and direction he inspired:

It was incredible...how thirsty and hungry Black Americans were to show their patriotism for this great country, but in order to do so they had to refine those values that made them feel like they were somebody. It tore apart the black community. Those who thought they were somebody greater, because they were accepted by whites and not making any problems, versus those who thought in terms of what we are trying to do today. Those African-Americans like Marcus Garvey, who taught that a good American was one that respects himself, has pride in himself, his family and his background, but more importantly, is not dependent on someone else for that pride and for survival.

Marcus Garvey was able to come to my Harlem and to instill a sense of racial pride and to incorporate people who were poor, to give parts of their money to start a shipping line, and to get into business. As that movement grew, he went to Chicago, he went to St. Louis, he went around the country and it was spreading. It just defies belief to see the depth of hatred that he generated in the white community as this new type of leadership was emerging among what had been considered slave people. The only way you could possibly feel the depth of the anger and the hatred that was generated by Marcus Garvey, is to take a page from the hatred that was generated against the late prince of peace, Dr. Martin Luther King.<sup>17</sup>

Through his leadership in the UNIA, Garvey instilled in many African-Americans a deep sense of pride and self-esteem.

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<sup>17</sup> Exhibit 12 (prepared statement of Rep. Charles B. Rangel).

Garvey's teachings challenged conventional attitudes that black Americans were inferior to whites. As Garvey explained, "We are organized for the absolute purpose of bettering our condition industrially, commercially, socially, religiously, and politically. We are organized not to hate other men, but to lift ourselves, and to demand respect to all humanity."<sup>18</sup> He exhorted his followers: "Up you mighty race, you can accomplish what you will."<sup>19</sup>

The 1987 hearing testimony of the Jamaican Ambassador to the United States, Keith Johnson, described Garvey's aims and goals for black Americans, as well as blacks worldwide:

[I]t is worth noting that as an activist and mass leader, Garvey was perhaps unique in his scrupulous respect for the laws of the land. Wherever he went, he took great care to caution his followers to "give unto Caesar the things that are Caesar's." In his own words, "I was not disloyal to anything American, to anything British, or to any constituted government in the world. All I was interested in was the liberation of the people who look like me ... The world has made being black a crime ... and instead of making it a crime I hope to make it a virtue. That was all I had in mind when I travelled from one part of America to the next."<sup>20</sup>

## **2. The Black Star Line**

Garvey, along with four other investors, incorporated the Black Star Line in June 1919 with capital stock equivalent to \$5 million today. The initial board of directors included seven black men and women. Garvey was the president. The Black Star Line – the first and only all black-owned shipping line of its time – represented Garvey's greatest expression of the creed of economic self-reliance.<sup>21</sup>

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<sup>18</sup> *Philosophy and Opinions of Marcus Garvey* 46 (Amy Jacques-Garvey, Ed.) J, OF PAN AFR. STUD. (2009) (eBook), attached as Exhibit 13.

<sup>19</sup> Exhibit 11 at 335 (citing Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411,2412 (1989)).

<sup>20</sup> Exhibit 12 (prepared statement of Amb. Keith Johnson).

<sup>21</sup> Exhibit 11 at 336.

The Black Star Line sought to empower the black community by providing a sense of ownership and by providing quality and respectful service to a group routinely denied such courtesy on existing steamship lines. To facilitate this sense of ownership, the Black Star Line offered stock for sale to members of the black Diaspora. The Black Star Line advertised the sale of company shares in the UNIA newspaper, the *Negro World*, and through flyers, mailings, and circulars. The organization also offered the stock for sale for \$5.00 a share at UNIA meetings, events, and activities worldwide in its various countries of operation.

Garveyism expanded exponentially through the establishment of the Black Star Line with employees and shareholders purchasing stock, making donations, and working without pay all to contribute to the success of the first black-owned steamship corporation.

Everyone connected with the Black Star Line understood its higher purpose – including both employees and stockholders. Often employees would work without asking for payment, simply because they knew that the Black Star Line was part of a greater plan to uplift the Black Diaspora. The stockholders generally contributed in the hopes that they could see the project come into fruition, not to reap financial profit for themselves. In the beginning, Garvey solicited funds as donations and turned to selling stocks later when the District Attorney urged him to incorporate the business. Garvey then appealed to the same people (UNIA members) for stocks as he did for donations. Consequently, it seems that even the sales of stock were more like philanthropic contributions than profit driven investments. As one investor said, “Colored people do not always think in dimes and dollars . . . . If Garvey fails and we all loose [sic] our money it is our business.”<sup>22</sup>

Despite its success as a symbol of black economic independence and a recruiting tool for the UNIA, the Black Star Line failed to achieve economic success. From its inception, the Black Star Line encountered significant obstacles because of its founders’ race. For example, when purchasing vessels for voyage, the Black Star Line encountered inflated prices for ships at rates that exceeded their actual value as well as higher deposits and bond requirements. The Black

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<sup>22</sup> *Id.* at 337.

Star Line also struggled to find qualified captains and first mates to crew its ships given the sparse opportunities for promotions available for black sailors at that time.

In addition to the difficulties imposed by the racial environment, the entire shipping industry faced a downturn in 1919. The shipping industry was bustling at the end of World War I due to the surplus of ships available for purchase at depressed prices from the military. However, the boom was short-lived and by the time the Black Star Line was incorporated in 1919, the shipping industry was on the verge of collapse. The U.S. Shipping Board announced a loss of \$51 billion in 1922 and another \$44 billion loss in 1923.<sup>23</sup> Shortly thereafter, other shipping companies, including the Black Star Line, failed. During that time, the Black Star Line and its competitors continued to advertise shipping voyages until the day the companies ceased to do business. However, only Garvey was charged with engaging in misrepresentation for undertaking the same actions as his competitors endeavoring to keep his operation afloat during the industry's depression.

### **3. Opposition from Rivals within the Black Community**

Rival movement leaders A. Phillip Randolph and Chandler Owen, along with Reverend Robert Bagnall, the NAACP's Director of Branches, and Professor William Pickens, the NAACP's Field Secretary, formed "The Friends of Negro Freedom," an organization that lasted from 1920 to 1932.<sup>24</sup> This organization, assisted by other black leaders of the NAACP and the African Blood Brotherhood, was the driving force behind a campaign to discredit and ultimately imprison Garvey, known as the "Garvey Must Go!" campaign.<sup>25</sup> The members of the campaign

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<sup>23</sup> *Id.* at 359.

<sup>24</sup> JUDITH STEIN, *THE WORLD OF MARCUS GARVEY* 190 (1986), attached as Exhibit 14.

<sup>25</sup> RAYMOND WOLTERS, *DUBOIS AND HIS RIVALS* 231 (2002), attached as Exhibit 15; Exhibit 11 at 340.

were motivated by a combination of ideological, financial, and personal factors.<sup>26</sup> For instance, Cyril Briggs, a native of St. Kitts who embraced Communism and later founded the African Blood Brotherhood, attempted a coup of the UNIA at an international convention and had Garvey arrested and tried for libel.<sup>27</sup> At this time, Garvey was receiving millions of dollars in contributions to the Black Star Line and therefore “killing . . . the contribution market” for other activists.<sup>28</sup> Briggs went on to publish an issue of his magazine, *The Crusader*, with ten editorials criticizing Garvey and the UNIA.<sup>29</sup>

The Garvey Must Go! Campaign launched a media attack to manipulate the public narrative about Garvey and influence state actors to take action against him. In August 1922, the leaders of the rival movements behind the Garvey Must Go! Campaign held a series of large public events denouncing Garvey, and over the years, each published inflammatory rhetoric about Garvey and his movement in their respective newspapers.<sup>30</sup> The campaign’s self-described Committee of Eight, led by Pickens, also corresponded with the federal government, encouraging the U.S. Attorney General to engage in surveillance of Garvey and to “use his full influence completely to disband and extirpate [Garvey’s] vicious movement” by aggressively pursuing charges against him.<sup>31</sup>

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<sup>26</sup> Exhibit 11 at 340-42.

<sup>27</sup> TONY MARTIN, RACE FIRST: THE IDEOLOGICAL AND ORGANIZATIONAL STRUGGLES OF MARCUS GARVEY AND THE UNIVERSAL NEGRO IMPROVEMENT 239-40 (1976), attached as Exhibit 16.

<sup>28</sup> Exhibit 14 at 71; Interview by Charles Mowbray White Chandler Owen and A. Phillip Randolph, editors and publishers of *The Messenger (Negro)* and leaders of the Negro Socialist Party of the Bronx and Harlem, in Manhattan, N.Y. (Aug. 10, 1920), in II THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS 609-12 (Robert A. Hill et al. eds., 1983), attached as Exhibit 17.

<sup>29</sup> Exhibit 16 at 239-40.

<sup>30</sup> “Garvey Must Go” Campaign Poster (August 1922), in IX THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS 553 (Robert A. Hill et al. eds., 1995), attached as Exhibit 18; Exhibit 11 at 342-43.

<sup>31</sup> Exhibit 18 at 556 (citing Letter from William Pickens to U.S. Atty. Gen. Harry M. Daughtry (Jan. 15, 1923)).

#### 4. The Federal Government's Targeting of Garvey

In 1918, the Military Intelligence Division of the United States Army began receiving reports regarding Garvey's activities. The first report stated that "there was a man by the name of Garvey (colored) who preaches every night against the white people, generally from 134th to 137th Street and Lenox Avenue."<sup>32</sup> On September 18, 1918, the Bureau of Investigation reported that a "confidential employee" had been inserted into Garvey's meetings, who submitted reports and copies of the *Negro World*.<sup>33</sup> This was followed by reports that the War Department was investigating meetings of the *Negro World* and a warning that it was "imperative that Mr. Garvey's activities should be closely watched until the terms of peace are signed."<sup>34</sup>

In 1919, U.S. Attorney General Mitchell Palmer placed J. Edgar Hoover as head of the General Intelligence Division of the Justice Department's Bureau of Investigation, responsible for gathering evidence against radicals and immigrants Palmer feared were promoting communism.<sup>35</sup> It was in this fearful atmosphere that the General Intelligence Division began taking measures to arrest and deport Garvey. In 1919, Hoover wrote in a memorandum that Garvey was "particularly active among the radical elements in New York City in agitating the Negro movement. Unfortunately, however, he has not as yet violated any federal law whereby he could be proceeded against on the grounds of being an undesirable alien, from the point of

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<sup>32</sup> Emory J. Tolbert, *Federal Surveillance of Marcus Garvey and the UNIA*, 14 J. OF ETHNIC STUD., 25, 28 (Winter 1987) (citing National Archives, RG 165, 10218-29-124 (records of the War Department, General and Special Staffs, Office of the Chief of Staff)), attached as Exhibit 19.

<sup>33</sup> *Id.* at 28 (citing National Archives, RG 165, 10218-29-124 (records of the War Department, General and Special Staffs, Office of the Chief of Staff)).

<sup>34</sup> *Id.* at 29 (Winter 1987) (citing National Archives, RG 165, 10218-261 (23) 2/273).

<sup>35</sup> *People & Events: J. Edgar Hoover*, PBS ONLINE, [http://www.pbs.org/wgbh/amex/garvey/peopleevents/p\\_hoover.html](http://www.pbs.org/wgbh/amex/garvey/peopleevents/p_hoover.html) (last visited April 4, 2012), attached as Exhibit 20.

view of deportation. It occurs to me, however, from the attached clipping that there might be some proceeding against him for fraud in connection with his Black Star Line propaganda.”<sup>36</sup>

For years before Garvey’s eventual arrest for mail fraud in connection with the Black Star Line, Hoover pursued and targeted Garvey. For example, as early as June 1920, Hoover attempted to prosecute Garvey under the Mann Act for traveling with Amy Jacques, his then-secretary and future wife.<sup>37</sup> In an effort to gather evidence against Garvey for Mann Act violations, Hoover posted observers to surveil Garvey’s hotel rooms in an attempt to catch Garvey in immoral acts.<sup>38</sup> The government was never able to develop sufficient evidence.<sup>39</sup>

By early 1920, multiple federal agents had infiltrated Garvey’s organization or befriended him. Herbert Boulin, who went by the code name P-138, used his status as a fellow Jamaican to gain Garvey’s trust, all the while reporting on his activities to the Bureau of Investigation. Boulin reported skepticism about the viability of the Black Star Line.<sup>40</sup>

In early 1921, Hoover learned that Garvey intended to leave the country. He wrote to an aide:

[I]t is my desire, should Garvey leave this country, that he be denied entry in the future, and it is suggested that some arrangement be made with the State Department on this matter.<sup>41</sup>

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<sup>36</sup> Memorandum from J. Edgar Hoover to Special Agent Ridgley (Oct. 11, 1919) available at [http://www.pbs.org/wgbh/garvey/filmmore/ps\\_fbi.html](http://www.pbs.org/wgbh/garvey/filmmore/ps_fbi.html), attached as Exhibit 21.

<sup>37</sup> Exhibit 17 at 345.

<sup>38</sup> See Report by Bureau Agent F.B. Faulhaber (Aug. 31, 1921), in III THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS, 723-25 (Robert A. Hill, et al. eds., 1983), attached as Exhibit 22.

<sup>39</sup> Exhibit 19 at 32-33; Exhibit 17 at 345.

<sup>40</sup> Exhibit 19 at 36.

<sup>41</sup> *Id.* at 33 (citing National Archives, RG 65, BS 198940, J. Edgar Hoover to Mr. Bailey, Feb. 11, 1921).

Despite informing the Commissioner of Immigration, consuls in the Caribbean, and officials at various entry ports that Garvey should be denied reentry, Hoover's efforts failed and Garvey ultimately returned after several months of being denied readmission.

Thereafter, federal agents changed tactics. P. Stewart, an Assistant to the Attorney General, wrote in a letter to the Secretary of Labor:

In the event your Department determines that there is no action it can take looking to the deportation of Garvey, it is suggested that you refer all the papers to the Postmaster General in order that an investigation may be conducted for the purpose of determining whether Garvey has been guilty of using the mails in furtherance of a scheme to defraud.<sup>42</sup>

Thus began the government's efforts to develop a mail fraud case against Garvey.

## **5. The Indictment**

In February 1922, Garvey and three other Black Star Line officers were indicted for mail fraud and charged with "using the mails in furtherance of a scheme to defraud and conspiring to do so."<sup>43</sup> Following the indictment, the government seized the books and records of both the Black Star Line and the UNIA, and prosecutors solicited evidence by mailing questionnaires to all 35,000 Black Star Line stockholders.<sup>44</sup> Garvey and his co-defendants were re-indicted in January of 1923.<sup>45</sup> The indictments alleged multiple counts of mail fraud, charging that Garvey had solicited Black Star Line stock purchases using a brochure sent through the U.S. mail that featured a ship that the Black Star Line had not yet purchased.<sup>46</sup> Unlike the first indictment, the

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<sup>42</sup> *Id.* at 41 (citing National Archives, RG 60, 198940-4).

<sup>43</sup> Tr. of R. at 15, *Garvey v. United States*, 4 F.2d 974 (2d Cir. 1925), attached as Exhibit 24.

<sup>44</sup> Exhibit 19 at 350.

<sup>45</sup> Exhibit 12 (testimony of Robert A. Hill).

<sup>46</sup> *Id.* (testimony of Tony Martin).

second indictment did not include a charge for conspiracy, reflecting a shift in priorities to focus more heavily on Garvey instead of his three co-defendants.<sup>47</sup>

## 6. The Prosecution

As we explain in greater detail below, from the outset the proceedings failed to meet constitutional standards. The trial lacked an impartial judge. Garvey proceeded *pro se* without a legal adviser. Perjured testimony was offered at trial. Garvey's conviction – a reflection of a different era – accordingly constitutes a significant miscarriage of justice, which warrants the extraordinary relief of a posthumous presidential pardon.

### *a. Trial Improperly Proceeded before Judge Julian Mack Despite Evidence of Bias*

Prior to trial, Garvey petitioned for Judge Julian Mack's recusal due to Judge Mack's affiliation with the NAACP, the organization from which most members of the Garvey Must Go! Campaign, discussed above, hailed.<sup>48</sup> Garvey's affidavit in support of the recusal petition alleged that (1) Judge Mack was a member of the NAACP; (2) four of the eight signatories of a letter written to the Attorney General advocating for Garvey's indictment were NAACP members; (3) Judge Mack financially contributed to the NAACP; and (4) Judge Mack regularly subscribed to *The Crisis* magazine, which had published five incendiary articles about Garvey's role in the Black Star Line.<sup>49</sup>

During the time of Garvey's trial, U.S. Supreme Court precedent required that another judge be designated to hear a recusal request, so that the judge assigned to the case was "relieved from the delicate and trying duty of deciding upon the question of his own disqualification."

*Berger v. United States*, 255 U.S. 22, 32 (1921) (holding affidavit of judge's bias sufficient where

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<sup>47</sup> *Id.* (prepared testimony of Robert A. Hill).

<sup>48</sup> Exhibit 24 at 36-53.

<sup>49</sup> *Id.*

defendants were of German birth and judge had stated, *inter alia*, that “[i]f anybody has said anything worse about the Germans than I had, I would like to know it, so I could use it,” and that [German-Americans’] hearts” “reek [] with disloyalty”). In *Berger*, the Supreme Court unambiguously called for “an immediate cessation of action by the judge whose bias or prejudice is averred, and in his stead, the designation of another judge.” *Id.* at 33.

Despite the *Berger* mandate, Judge Mack personally reviewed and promptly rejected Garvey’s petition questioning his impartiality. Judge Mack admitted that he contributed to the NAACP and viewed its headlines, but refused to acknowledge membership in the organization.<sup>50</sup> Judge Mack then concluded that there were no direct or indirect statements in Garvey’s affidavit alleging judicial bias and denied the request.<sup>51</sup> This improper determination of Judge Mack’s fitness to hear the case was the first of many errors that undermined Garvey’s right to a fair trial.

*b. Judge Mack Allowed Garvey to Undertake an Invalid Waiver of His Right to Counsel*

Trial began on May 18, 1923, with Garvey represented by attorney Cornelius McDougald. However, on May 22, 1923, McDougald announced that Garvey no longer wished to retain him as counsel and that Garvey sought to continue *pro se*.<sup>52</sup>

Waiver of the right to assistance of counsel at a criminal trial must be made intelligently and knowingly before the trial court. *Johnson v. Zerbst*, 304 U.S. 458, 465 (1938) (“[D]uty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record.”); *see also*,

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<sup>50</sup> *Id.* at 57-59.

<sup>51</sup> *Id.* at 57-59.

<sup>52</sup> *Id.* at 184.

*Faretta v. California*, 422 U.S. 806 (1975); *United States v. Roy*, 444 Fed. Appx. 480, 484 (2d Cir. 2011) (“The district court should engage the defendant in an on-the-record discussion to ensure that he fully understands the ramifications of his decision.”).

However, Judge Mack did not test Garvey’s awareness of the consequences of forgoing counsel before allowing him to waive the right. Instead, when Garvey’s attorney informed the Court that Garvey wished to continue as his own counsel, Judge Mack immediately accepted the withdrawal, tersely stating, “Very well.”<sup>53</sup> Judge Mack’s only comment on the issue – addressed to counsel and not to Garvey – occurred when a co-defendant’s attorney asked whether he could continue to help Garvey with his defense.<sup>54</sup> Judge Mack responded that Garvey “may either conduct the case in person or by counsel; he cannot do both...so far as the Court is concerned the defendant has a perfect right to do exactly as he chooses, and it is his privilege to exercise his own judgment and not my judgment.”<sup>55</sup> AUSA Maxwell Mattuck eagerly followed up on Judge Mack’s comments, urging, “Mr. Garvey understands that. You understand that? ... If you are conducting your own defense you will have to conduct it all the way through?”<sup>56</sup>

This third-party remark from opposing counsel could not equate to the required soliloquy with the Court and did not at all address the rights at stake. Judge Mack engaged in no questioning to ensure that the waiver was made intelligently and knowingly with full awareness of the consequences. As a result of this invalid waiver of counsel, Garvey suffered multiple reversible errors at trial that a competent attorney could have prevented.

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<sup>53</sup> *Id.* at 185-86.

<sup>54</sup> *Id.* at 185.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 186.

*c. Prosecutorial and Judicial Misconduct Culminated with the Suborning of Perjury*

The trial proceedings included multiple instances of prosecutorial and judicial misconduct aimed at disparaging Garvey. Both AUSA Mattuck and Judge Mack made statements throughout the trial that constituted reversible error.

In fact, judicial conduct of this nature has since been held to violate the right to fair trial in *Offutt v. United States*, a case decided after the conclusion of Garvey's criminal. Upon reviewing the trial record, the District of Columbia Court of Appeals found that the record revealed issues "of degrading and belittling remarks directed at defense counsel by the judge, restrictions upon cross-examination, the judge's assumption of the function of an advocate, lack of impartiality, and prejudicial remarks by the prosecutor." *Peckham v. United States*, 210 F.2d 693, 702 (D.C. Cir. 1953). On further review of the case, the U.S. Supreme Court reversed the petitioner's conviction, stating:

Our concern is with the fair administration of justice. The record discloses not a rare flareup, not a show of evanescent irritation—a modicum of quick temper that must be allowed even judges. The record is persuasive that instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroiled with the petitioner. There was an intermittently continuous wrangle on an unedifying level between the two. For one reason or another the judge failed to impose his moral authority upon the proceedings. His behavior precluded that atmosphere of austerity which should especially dominate a criminal trial and which is indispensable for an appropriate sense of responsibility on the part of court, counsel and jury. Such an atmosphere will also make for dispatch insofar as is consonant with a fair trial.

*Offutt v. United States*, 348 U.S. 11, 17 (1954).

Even during Garvey's lifetime, the U.S. Supreme Court held as to the prosecutor's conduct that "[t]he United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935).

Set against this principle, the statements made by AUSA Mattuck and Judge Mack throughout Garvey's trial were "thoroughly indecorous and improper," particularly in the presence of the jury. *Id.*

For example, AUSA Mattuck interrupted Garvey and belittled him in front of the jury, often emphasizing Garvey's unfamiliarity with the law and improperly critiquing Garvey's lines of questioning.<sup>57</sup> In these interruptions, AUSA Mattuck made direct orders to Garvey, undermining Garvey's credibility with the jury, yet provoking no intervention from the court.<sup>58</sup> Grievously, Judge Mack frequently joined in the ridicule in the presence of the jury by remarking that he had to conduct a law school, or that he refused to continue to conduct a law school, for Garvey's benefit as he defended himself *pro se*.<sup>59</sup> Judge Mack heaped scorn upon Garvey, sustaining objections to Garvey's lines of questioning when no objection had been made, taking over examination of witnesses and then preventing Garvey from asking further questions, and answering questions for witnesses when Garvey sought their sworn testimony.<sup>60</sup>

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<sup>57</sup> See, e.g., Exhibit 24 at 1091 ("Ask about one circumstance at a time"), 1114, 1119, 1216, 1257 ("You cannot argue with your own witness;" and "Don't lead").

<sup>58</sup> *Id.* at 1091, 1257.

<sup>59</sup> See, e.g., *id.* at 1026 ("...to divide the cross-examination into two parts is utterly unnecessary. Another law school lecture but it will be the last I hope."); 1111 ("There was a great deal that was brought out by Mr. Garvey's cross-examination that was utterly irrelevant to this case. Every lawyer in the room, of course, knows that."); 1117 ("I said a layman has a right to conduct his own case, but I cannot change the rules of law because he conducts it."); 1220 ("Now, I have got to make another law school lecture."); 1288 ("The patience of the Court will be about reaching the limit if this sort of thing keeps on. The result will be serious in the continuation of the examination if that limit is reached. There are limits, even if the defendant conducts his own defense. I am trying to extend those limits to the utmost, but a persistent violation of the instructions of the Court will lead to a stoppage of the examination and by the defendant himself. Now, let's get on."); 1525 ("The sessions of the Law School will begin later. In the meantime if you want legal advice consult your lawyer or consult a lawyer.").

<sup>60</sup> *Id.* at 1317 ("Mr. Garvey [questioning witness]: Do you know what Mr. Tobias' office is? The Court: What difference does that make? ... The witness has said at the time she worked for the 'Negro World' she was on the pay roll of the Black Star Line. That does not make any difference what Mr. Tobias was."); 1323 ("The Court [to Mr. Garvey attempting to question witness]: Pardon me, I do not need any help when I am examining the witness. When I get done you can ask any additional questions you wish, and if I need any help I will call for assistance."); 1329 ("The Court [to Mr. Garvey]: No, no, no. In the first place that is leading, and in the second place you have gone over it all before. Mr. Garvey: You take it for granted that I want the truth of the situation. The Court: You have gone all over that."); 1330 ("Mr. Garvey [questioning witness]: Was [Mr. Tobias] treasurer of any other than the Black Star Line? The Court: Sustained. You have asked her that and she has answered.").

In other instances, AUSA Mattuck evidenced efforts to guide the testimony of witnesses who were perceived as giving harmful testimony.<sup>61</sup> Among these occurrences, while a defense witness testified *on direct examination* that there appeared to be a “premeditated plan” to sabotage Black Star Line vessels and that there was dissension among the UNIA ranks that created animus toward Garvey, AUSA Mattuck instructed the witness that she could only answer questions with a “yes or no” response.<sup>62</sup> AUSA Mattuck then requested, and Judge Mack granted, that her testimony be stricken from the record without offering any basis for the objection.<sup>63</sup>

However, most egregious was AUSA Mattuck’s procurement of perjury by Schuyler Cargill, a key prosecution witness. Cargill testified that he mailed the offending brochure to Benny Dancy at Garvey’s direction, testimony which concerned the only mailing for which Garvey was convicted. When cross-examination raised the question of whether Cargill was even employed at the Black Star Line at the time the letter was allegedly sent, Cargill admitted under oath that AUSA Mattuck had instructed him about what dates he should mention concerning when he was employed with the Black Star Line in order to coincide with the mailing.<sup>64</sup> Likewise, upon further cross-examination, Cargill stated that an inspector for the case had also told him what he must say as to the location where the brochures were put into the mail.<sup>65</sup> After

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<sup>61</sup> *Id.* at 1327-28 (Mattuck eliciting an objection for stating “Now, I want to get you straightened out on this...” after witness gave conflicting testimony about her payment by the Black Star Line as compared to another UNIA entity).

<sup>62</sup> *Id.* at 1097-1103.

<sup>63</sup> *Id.* at 1101.

<sup>64</sup> *Id.* at 688-89.

<sup>65</sup> *Id.* at 697.

immediate re-direct by AUSA Mattuck, Cargill testified simply that he had “made a mistake” when he stated that the government told him what to say.<sup>66</sup>

Despite vigorous objections throughout Cargill’s testimony from both Garvey and counsel for the co-defendants, Judge Mack never struck the remarks, nor was it made clear to the jury that that it should disregard Cargill’s testimony.<sup>67</sup> The testimony was allowed to remain as part of the record even though the law authorized courts to grant a new trial if one could prove that a witness willfully and deliberately testified falsely. *See Smith v. Mitchell*, 221 P. 964, 967 (Cal. Ct. App. 1923) (granting new trial where “uncontradicted evidence” revealed that witness had been induced to give perjured testimony in matters material to the case).

In the aggregate, these improper statements from the government, with sanction and even participation by the presiding judge, undermined Garvey’s right to fair trial. *See Berger v. United States*, 295 U.S. 78; *Offutt v. United States*, 348 U.S. 11.

## **7. Garvey’s Conviction and Commutation**

Of the four co-defendants on trial, only Garvey was found guilty. He was sentenced to the maximum penalty for mail fraud – five years in prison. Garvey’s conviction was upheld on appeal, and he began serving his five year sentence in February 1925.<sup>68</sup>

Calls for Garvey’s release were instant. Notably, nine of the twelve jurors who convicted Garvey later signed an affidavit recommending commutation of his sentence.<sup>69</sup> Garvey’s personal secretary and second wife, Amy Jacques, raised tens of thousands of dollars from Garveyites for Garvey’s defense. Millions of supporters sent letters and signed petitions calling

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<sup>66</sup> *Id.* at 698.

<sup>67</sup> *Id.* at 683-704.

<sup>68</sup> Exhibit 23.

<sup>69</sup> House Con. Res. 44, attached as Exhibit 25.

for Garvey's release.<sup>70</sup> In addition, representatives of the UNIA established official efforts to clear Garvey's name through an April 1925 petition for pardon submitted on Garvey's behalf and signed by "tens of thousands of American citizens."<sup>71</sup>

Recognizing that even an incarcerated Garvey remained a powerful symbol within the black community and realizing that his sentencing had only further agitated his supporters – who saw the prosecution as unjust and politically motivated – federal agents recommended that Garvey be released and subsequently deported. As U.S. Attorney General John Sargent wrote in his November 12, 1927 letter to President Calvin Coolidge recommending immediate commutation of Garvey's sentence:

The situation presented in the Garvey case is most unusual. Notwithstanding the fact that the prosecution was designed for the protection of colored people, whom it was charged Garvey had been defrauding by means of exaggerated and incorrect statements circulated through the mail, none of these people apparently believe that they have been defrauded, manifestly retain their entire confidence in Garvey, and instead of the prosecution and imprisonment of the applicant being an example and warning against a violation of law, it really stands and is regarded by them as a class as an act of oppression of the race and their efforts in the direction of race progress and discrimination against Garvey as a negro.

This is by no means a healthy condition of affairs. . . . In view of subsequent representations made in behalf of Garvey, I am inclined to think that the facts as reported to the Department are perhaps somewhat severely stated and are susceptible of modification and explanation in many respects.<sup>72</sup>

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<sup>70</sup> Exhibit 23.

<sup>71</sup> Exhibit 10 at 144 (Letter from William Sherrill to President Calvin Coolidge, (April 28, 1925)); 314 (Letter from Attorney General John Sargent to President Calvin Coolidge (Jan. 27, 1926)), ("[A]n enormous petition was signed, so I understand it is claimed, by over seventy-thousand Negroes...and since that time additional petitions and considerable correspondence have been received.").

<sup>72</sup> Exhibit 10 at 607-608 (Letter from Attorney General John Sargent to President Calvin Coolidge (Nov. 12, 1927)).

On Attorney General Sargent's recommendation, Garvey's sentence was commuted by order of President Calvin Coolidge on November 18, 1927, and Garvey was deported from the United States, never to return.

## **B. Legal Framework for Granting Presidential Pardons**

The Department of Justice has established standards for evaluating pardon petitions, which require evaluation of the following factors: (1) post-conviction conduct, character, and reputation; (2) seriousness and relative recentness of the offense; (3) acceptance of responsibility, remorse, and atonement; (4) need for relief; and (5) official recommendations and reports.<sup>73</sup> For the reasons discussed below, on each of these measures, Garvey's petition warrants relief.

### **1. Post-Conviction Conduct, Character, and Reputation**

The Department of Justice standards provide that the petitioner's demonstrated ability to lead a "responsible and productive life for a significant period after conviction or release from confinement is strong evidence of rehabilitation and worthiness for pardon."<sup>74</sup> Each pardon petition is evaluated along with an FBI background investigation focusing on the totality of the petitioner's financial stability, familial and community contributions, and other meritorious activities.

Garvey's unwavering commitment to progress for the black community is evident in his actions after the 1927 commutation of his sentence. After his release and deportation in 1927, Garvey returned to Jamaica, where he sought to revive the strength of the Garveyism movement. The day after arriving in Jamaica on December 10, 1927, Garvey addressed a crowd of

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<sup>73</sup> U.S. Dept. of Justice, U.S. Attorneys' Manual Sec. 1-2.112 (1997), attached as Exhibit 26.

<sup>74</sup> *Id.*

supporters in Kingston and began a tour of the country's parishes, giving lectures.<sup>75</sup> On August 5, 1929, he convened the sixth Annual UNIA Convention in Kingston, Jamaica, seeking to give "new life to the organization," which he believed had fallen into disarray due to internal power struggles during his imprisonment.<sup>76</sup>

Garvey also turned his attention toward Jamaican politics as a means of advancing his principles. In September 1929, Garvey formed the People's Political Party in Jamaica to promote progressive candidates for reform of many major elements of Jamaican society, including advocating for a minimum wage, labor rights, increased representation in Parliament, educational opportunity, and legal aid.<sup>77</sup> Garvey's political platform included a tenet calling for the eradication of corruption in the courts and imprisonment of judges who violated the laws for personal gain.<sup>78</sup> His public statements on this tenet led to his being sentenced to three months in prison for contempt of court, based on the perceived insult to the members of the judiciary.<sup>79</sup> The contempt citation did not harm Garvey's standing with his supporters, however, who elected

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<sup>75</sup> Message from Marcus Garvey in the *Negro World* (December 10, 1927), in VII THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS, 10-11 (Robert A. Hill, et al. eds., 1990); Report of Speech by Marcus Garvey in the *Daily Gleaner*, Kingston, Jamaica (December 11, 1927), in VII THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS, 21-31 (Robert A. Hill, et al. eds., 1990); Report on Marcus Garvey by Detective Charles A. Patterson (December 15, 1927), in VII THE MARCUS GARVEY AND UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION PAPERS, 40 (Robert A. Hill, et al. eds., 1990), attached as Exhibit 27.

<sup>76</sup> *Id.* at 314-315 (Speech by Marcus Garvey at the 1929 UNIA Convention, Edelweiss Park, Kingston, Jamaica (August 5, 1929)).

<sup>77</sup> *Id.* at 329 (Speech by Marcus Garvey at Cross Roads, Kingston, Jamaica (September 9, 1929)).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 347-347 (*Daily Gleaner* Article, Marcus Garvey to be Imprisoned for Three Months and Ordered to Pay £100 Fine for Contempt of Court, Kingston, Jamaica (September 27, 1929)) ("The contempt charged is scurrilously abusing all the judges and magistrates of the island. The substance of the speech was: that Garvey, if elected to the Legislature, would propose a law to punish corrupt judges; that judicial corruption was an evil from which the people of the island had long suffered; that the Courts are for the rich and not for the poor; that the people would not have such judges who were His Majesty's worst enemies and bred disloyalty.").

him municipal councilor of Kingston and St. Andrew Corporation while he was still serving his contempt sentence.<sup>80</sup>

Undeterred by the judgment, Garvey continued speaking out against injustice and corruption within the government, and in February 1930, he was found liable for an article of “seditious libel” written by a supporter and published in Garvey’s newspaper, the *Blackman*.<sup>81</sup> The article’s author attacked government officials who sought to declare Garvey’s elected seat vacant during the time that Garvey served his contempt sentence.<sup>82</sup> Despite arguing that he was not aware of the contents of the article before its publication, Garvey was sentenced to six months imprisonment.<sup>83</sup> However, the Jamaican Court of Appeals later vindicated both Garvey and the article’s author by overturning their convictions on appeal.<sup>84</sup> Following this legal and moral victory, Garvey had no further brushes with the law.

Far from limiting his focus to Jamaica, Garvey continued to work tirelessly to bring the UNIA back to prominence in countries around the globe. In October 1931, Garvey traveled to Geneva, Switzerland, and personally met with a representative of the Secretary General of the League of Nations, seeking review of a petition he previously submitted on behalf of the UNIA to address the economic, educational, political, and religious grievances suffered by members of the African diaspora as a result of colonization and enslavement.<sup>85</sup> Indeed, Garvey wrote letters, gave speeches, published articles, held conventions, and pursued the UNIA cause in Canada,

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<sup>80</sup> *Id.* at 345 (Letter from José de Olivares to Henry L. Stimson, Secretary of State, Kingston, Jamaica (September 27, 1929)).

<sup>81</sup> *Id.* at 381-82 (Letter from Marcus Garvey to Gov. R. Edward Stubbs, St. Andrew, Jamaica (February 21, 1920)).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 400, n. 1 (Letter from Marcus Garvey to Phillip Snowden, St. Andrew, Jamaica (March 11, 1930)).

<sup>85</sup> *Id.* at 476-77 (Letter from Peter Anker, Mandates Section, League of Nations, to Mr. Catastini, Chief Officer, Mandates Section (Oct. 22, 1931)).

Trinidad, St. Lucia, Barbados, St. Vincent, British Guyana, and England throughout the 1930s and until his death in London in 1940.

## **2. Seriousness and Relative Recentness of the Offense**

When an offense is very old and relatively minor, the equities may weigh more heavily in favor of forgiveness, provided the petitioner is otherwise a suitable candidate for pardon.<sup>86</sup> The offense at issue here was committed nearly a century ago. It was a non-violent offense. Garvey was accused of defrauding investors when an employee of the Black Star Line mailed out thousands of brochures picturing a ship that was purported to be the *SS Phyllis Wheatley*. Ultimately, the government charged Garvey with defrauding one man of \$25.<sup>87</sup>

In totality, the “victim impact” of Garvey’s scheme was minimal as most of the investors and passengers of the Black Star Line remained fiercely loyal to Garvey even throughout his trial, conviction, and incarceration. In addition, as noted by U.S. Attorney General Sargent, Garvey’s investors never felt that they had been defrauded at all and saw Garvey’s incarceration as the true injustice. This is further borne out by the fact that Garvey’s supporters funded his defense and appeal in the criminal trial, despite the fact that they were the supposed victims of the offense.<sup>88</sup> Given that Garvey’s conviction is very old and with little impact on the alleged victims, the equities in this case weigh heavily in favor of forgiveness.

## **3. Acceptance of Responsibility, Remorse, and Atonement**

The OPA also considers whether a petitioner has accepted responsibility for his criminal conduct and made restitution to his victims. Generally, a petitioner’s application should seek

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<sup>86</sup> Exhibit 26.

<sup>87</sup> Hannah-Grace Fitzpatrick, Marcus Garvey, U. OF LIVERPOOL, [https://www.liverpool.ac.uk/black-atlantic/information/people-d-j/marcus\\_garvey2](https://www.liverpool.ac.uk/black-atlantic/information/people-d-j/marcus_garvey2), attached as Exhibit 28; Exhibit 23.

<sup>88</sup> See Exhibit 10 at 145-46 (Petition for Pardon of Marcus Garvey, filed by the Marcus Garvey Pardon Delegation (April 29, 1925)).

forgiveness rather than vindication. However, while the absence of expressions of remorse do not preclude favorable consideration, pardon petitions based on grounds of innocence or miscarriage of justice face a formidable burden of persuasion.<sup>89</sup>

Here, Garvey's petition meets this formidable burden. Garvey was the target of a concerted government effort to obliterate the popular Garveyism movement based on contemporary fears of a resurgent black community. Garvey faced intense, covert opposition from no less than the Director of the FBI and the U.S. Justice Department, among many others. After proceeding without the benefit of counsel, Garvey's criminal trial was replete with errors and prosecutorial misconduct including the subordination of perjury by a key government witness. From the moment of his indictment and until his death, Garvey maintained his innocence. In his closing statement, Garvey declared: "I want no mercy, only justice – justice – justice. I would not betray my struggling race. If I did I should be thrown into the nethermost parts of hell."<sup>90</sup> Supported by his many thousands of Garveyites, he fought to seek exoneration, pardon, clemency, and full relief for the crime of which he was convicted.

Like Garvey's case, Lt. Flipper's court martial proceedings and subsequent conviction were undoubtedly harsh and a miscarriage of justice that could only be remedied by a posthumous pardon. Also like Garvey, Lt. Flipper worked tirelessly to clear his own name.<sup>91</sup> After his death, Lt. Flipper's family continued to fight for a posthumous pardon to restore his reputation. After 117 years, Lt. Flipper finally received a pardon from President Clinton in 1999, restoring the reputation of a lauded war hero and patriot. Both Lt. Flipper and Garvey suffered trials plagued by racial animus and endured unjust convictions and tarnished reputations as a

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<sup>89</sup> Exhibit 26

<sup>90</sup> Exhibit 23.

<sup>91</sup> Exhibit 6 at 1251.

result. Both men also maintained their innocence throughout the trial phase and after their convictions, and made considerable efforts to clear their names.

Today, nearly a century after Garvey's 1923 conviction, Garvey's family continues to suffer the injustice caused by the U.S. government's targeted effort to destroy the reputation of a civil rights leader and dismantle his civil rights movement. Garvey's trial and subsequent conviction is another grave injustice that endures absent a presidential pardon. Like Lt. Flipper's family, Garvey's family deserves the peace and justice that can only be granted through a posthumous pardon.

#### **4. Need For Relief**

The OPA also considers the ultimate purpose underlying the request for a pardon. The reasons for a pardon may include specific needs, such as access to federal services, or may be based on the desire for forgiveness generally.<sup>92</sup>

In this case, the purpose of Garvey's petition is to correct a grave injustice and restore the reputation of one of the great leaders of the nascent civil rights movement. In this regard, Garvey is like both previous recipients of posthumous presidential pardons – each of these men were lauded for their accomplishments and sacrifices notwithstanding their convictions, but each man was also manifestly undeserving of the lasting stigma of the wrongs imposed on him based on racial and political reasons no longer befitting of this country. Like Lt. Flipper and Winters, Garvey's need for relief is to forgive and heal, and divisions that our nation should have put behind it long ago.

#### **5. Official Recommendations and Reports**

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<sup>92</sup> Exhibit 26.

The recommendations of involved parties, including knowledgeable officials, the United States Attorney whose office prosecuted the case, and the sentencing judge, also influence the OPA's evaluation of the petitioner's application. Furthermore, the grant or denial of a pardon petition may also be an important component of defining and promoting "rehabilitative goals" of the criminal justice system. As a result, the impact of "favorable action in the district or nationally, particularly on current law enforcement priorities," is relevant to the President's decision to grant or deny a pardon petition.<sup>93</sup>

In this case, many inquiries were made into Garvey's case shortly after his conviction, particularly given the strength of the calls for his pardon and release. While imprisoned, Garvey requested both a pardon and clemency in a petition to President Coolidge. On the evidence submitted and reviewed by Attorney General Sargent, President Coolidge commuted Garvey's sentence. Notably, in his review of the case, Attorney General Sargent found that much of the evidence against Garvey had been overstated.<sup>94</sup> He recommended to President Coolidge that commutation was further warranted given the alleged victims' belief that no fraud had been committed on them, and that in fact it was Garvey who suffered injustice by being prosecuted. Following in this tradition of seeking redress on Garvey's behalf, members of the U.S. Congress have continued to call for Garvey's pardon since at least 1985.

The current pardon petition is not the first submitted since Garvey's death. In September 2011, the White House rejected a posthumous pardon petition for Garvey submitted by Donovan Parker, an attorney in Florida. Parker had been sending weekly requests seeking clemency for Garvey, and he eventually received a reply from Former White House Pardon Attorney Ronald

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<sup>93</sup> Exhibit 26.

<sup>94</sup> Exhibit 10 at 607-608 (Letter from Attorney General John Sargent to President Calvin Coolidge (Nov. 12, 1927)).

Rogers stating that the limited resources of the Justice Department would be better spent on other requests for presidential clemency.<sup>95</sup> Neither the descendants of Marcus Garvey nor any of the signatories to this petition were in any way involved in these requests, which were submitted without the signatories' knowledge or consent.

Despite the White House's general policy to reserve resources for living petitioners, there is precedent for granting posthumous clemency for the purpose of helping to remove unjustified blemishes on an individual's reputation and to acknowledge the contributions of those who have provided special services to our country.<sup>96</sup> For instance, granting a posthumous pardon to Lt. Flipper helped to restore the name of one of the first African-American soldiers and heroes of the military. Moreover, granting the posthumous pardon provided public recognition and acknowledgement that Lt. Flipper's reputation and career were unjustly sullied.<sup>97</sup>

Here, Garvey's petition presents a similar opportunity to recognize a leader of the civil rights movement and restore a reputation that was marred by an unjust criminal proceeding fueled by then-prevailing political and racial tensions. Granting Garvey a pardon will correct a substantial injustice that has stood for far too long.

#### **IV. THE UNIQUE NATURE OF GARVEY'S PETITION AND HIS MERIT FOR PRESIDENTIAL PARDON HAVE BEEN RECOGNIZED AROUND THE WORLD**

As the U.S. Attorneys' Manual explains, the petitioner's "post-conviction accomplishments" should be taken into account, including "the petitioner's financial and

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<sup>95</sup> Tony Best, White House Rejects Bid for Marcus Garvey Posthumous Pardon, NEW AMERICA MEDIA (Sept. 14, 2011), <http://newamericamedia.org/2011/09/white-house-rejects-bid-for-marcus-garvey-posthumous-pardon.php>, attached as Exhibit 29. We note that Former Pardon Attorney Ronald Rogers was removed from his post after a 2012 report issued by the Department of Justice, Office of the Inspector General found that Rogers withheld key evidence from the President in order to improperly ensure denial of a petitioner's request for clemency.

<sup>96</sup> Exhibit 6 at 1263.

<sup>97</sup> Exhibit 6 at 1263.

employment stability, responsibility toward family, reputation in the community, participation in community service, charitable or other meritorious activities.”<sup>98</sup> Garvey is an outstanding example of a petitioner who engaged in commendable acts, notwithstanding his conviction. Indeed, his efforts to support the black community have been felt and celebrated the world over.

From the moment Garvey was found guilty, calls for his exoneration and pardon have been constant. Beginning with his own petition, supported by nine members of the jury signing an affidavit recommending commutation, President Calvin Coolidge commuted his sentence in 1927.<sup>99</sup> Most recently, while President Barack Obama was on a trip to Jamaica in April 2015, Prime Minister Portia Simpson Miller told President Obama “it is the deep desire of the government and people of Jamaica” for Garvey to be exonerated of his 1923 conviction.<sup>100</sup> Based on their own in-depth exploration of Garvey’s efforts after his conviction, leaders around the world – including heads of state, historians, and scholars worldwide – have commended Garvey for his community efforts.

**A. U.S. Congressional Resolutions Call for Garvey’s Exoneration**

As far back as the 99th Congress up to and including the 111th Congress, members of Congress have introduced resolutions that express the sense of the Congress that the President should grant a pardon to Garvey of crimes for which he was unjustly prosecuted and convicted. The chart below identifies each of the resolutions introduced and when:

<u>Congress Session</u>	<u>Resolution Designation</u>	<u>Date Introduced</u>
111th Congress	H. Con. Res. 44	February 10, 2009

<sup>98</sup> Exhibit 26.

<sup>99</sup> Exhibit 11 at 365-66.

<sup>100</sup> David McFadden, *Jamaica asks Obama to exonerate black nationalist leader* (Apr. 9, 2015), <http://news.yahoo.com/jamaica-asks-obama-exonerate-black-nationalist-leader-014832571.html>, attached as Exhibit 30.

110th Congress	H. Con. Res. 24	January 10, 2007
109th Congress	H. Con. Res. 57	February 14th, 2005
108th Congress	H. Con. Res. 74	February 27, 2003
107th Congress	H. Res. 50	February 14, 2001
106th Congress	H. Res. 150	April 26, 1999
105th Congress	H. Res. 216	August 1st, 1997
100th Congress	H. Con. Res. 58	March 6, 1987
99th Congress	H. Con. Res. 159	July 17, 1985

House Concurrent Resolution 44 presents a representative example of the nature of each of the prior resolutions. Introduced in the 111th Congress (2009-2010) on February 10, 2009, the resolution expresses “the sense of the Congress that the President should grant a pardon to Marcus Mosiah Garvey to clear his name and affirm his innocence of crimes for which he was unjustly prosecuted and convicted.”<sup>101</sup> The provisions recite Garvey’s history and accomplishments, and then focus upon the substantial defects discussed above regarding his prosecution and conviction.

**B. Federal and Local Government Measures Celebrate Garvey’s Accomplishments and Demonstrate His Character**

On July 28, 1987, the House of Representatives Subcommittee on Criminal Justice of the Committee on the Judiciary held hearings and took testimony on “expressing the sense of the Congress that mail fraud charges brought against Marcus Garvey by the Federal Government were not substantiated and that his convictions on those charges was unjust and unwarranted.”<sup>102</sup> Congressman Charles Rangel’s prepared statement clearly states the purpose of the hearings, while also recognizing the lasting importance of Garvey’s contributions to the black community:

To this day there has not been a leader in America’s Black community who has focused on the need to develop and influence the inclusion of African Americans into the economic spectrum of American life. And, as we all know, economic independence is one of the rungs to the ladder of success in this country. This was the crux of the Garvey teachings.

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<sup>101</sup> Exhibit 25.

<sup>102</sup> Exhibit 12 (Rep. John Conyers).

Among Mr. Garvey's most notable achievements were his proposals to foster economic development and self-sufficiency in the Black community. Mr. Garvey envisioned the development of a cargo and passenger shipping line that would be the key to the economic development of the Black community. It was his efforts to solicit funds for this business venture that brought him notoriety as a revered leader of the people....

There is clear evidence to show that the charges for which Marcus Garvey was convicted were not substantiated and were unjust. Under the leadership of Hoover, the government infiltrated the United Negro Improvement Association with said spies. These individuals recorded financial information in minute detail. Government intelligence agents laid in wait for any possible wrong. When nothing happened, the government made broad assumptions that had no factual basis to accuse Marcus Garvey of mail fraud. The fact of the matter is that Marcus Garvey was soliciting support for the Black Star Line, a cargo and passenger shipping line which was designed as the basis of African-American economic independence. While there is no substantial support for the government's conviction of Marcus Garvey, there is substantial information showing the obsession of J. Edgar Hoover in "getting rid of a Negro agitator."<sup>103</sup>

Among the many witnesses who testified during this hearing were his two sons, Marcus Garvey Jr. and Dr. Julius Garvey; the late Jamaican Ambassador to the United States from 1981 to 1991, His Excellency Keith Johnson; and four noted historians – Dr. John Henrik Clarke, Dr. Judith Stein, Dr. Robert Hill, and Dr. Tony Martin. All of the witnesses, particularly the historians, testified to the injustice perpetrated on Garvey as a result of his efforts to improve the conditions of his race, efforts that garnered the attention of Hoover and others who were intent on suppressing his message.

The concept of Garvey is that "I will lead you to a new dream, a new promise, and a new land." America did not want its slaves awakened and that was the real crime they charged him for. A nebulous case of using the mail for fraud was something they did not care anything about because they do not care too much about what happened between blacks and blacks, until they decided to use it to conquer both of them.<sup>104</sup>

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<sup>103</sup> *Id.* (prepared statement of Rep. Charles B. Rangel).

<sup>104</sup> *Id.* (testimony of John Henrik Clarke).

Identified as an agitator, a radical and even a Communist by J. Edgar Hoover, the bureau chief had attempted to find a crime so that Garvey, an alien, could be deported. Failing to discover income tax violations, sexual improprieties, or passport irregularities, the Justice Department hit upon mail fraud at the time the Black Star Line was in economic difficulties. . . . The legal system should not be used, as it was in all stages of this case, to suppress dissent or serve the political prejudices of bureaucrats.<sup>105</sup>

[Garvey's] words were subverted to comport with the pre-conceived notion of the incendiary, menacing individual. This is amply borne out in the account of the Government surveillance that Garvey was subjected to . . . The record of the Government surveillance shows that the trial itself was only the culminating event in a witch hunt conducted against Garvey.<sup>106</sup>

From very early in the country, Garvey was subjected to an incredible amount of harassment. He was under surveillance from a variety of intelligence operations, both in the Government and also from quasi-governmental organizations like the National Civic Federation. There was a heavy police presence, both uniformed and secret, at his meetings. Infiltrators were placed in his organization to try to stir up trouble and to report back on what was happening. J. Edgar Hoover, as a lawyer in the Department of Justice in 1919, actually expressed regret that Garvey has not yet committed any crime which would serve as a pretext for deporting him.<sup>107</sup>

A number of city governments have passed resolutions recognizing the injustice of Garvey's conviction and seeking to have his name cleared. In March 2006, the city of Los Angeles adopted a resolution, which after recounting Garvey's accomplishments and events involved in his conviction, resolved:

[S]upport for House Concurrent Resolution 57 (Rangel) which declares that MARCUS MOSIAH GARVEY was innocent of the charges brought against him by the U.S. Government and should be recognized internationally as a leader and thinker in the struggle for human rights and dignity. Furthermore, it calls upon the President to endeavor to restore Marcus Garvey's honor and good name by granting a full posthumous

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<sup>105</sup> *Id.* (testimony of Judith Stein).

<sup>106</sup> *Id.* (testimony of Robert Hill).

<sup>107</sup> *Id.* (testimony of Tony Martin).

pardon and that proclaims his conviction to have been unjust and affirms his innocence.<sup>108</sup>

In recognition of his efforts and achievements, various communities have also honored Garvey by dedicating monuments and landmarks to his memory. Examples include:

- 1) The Marcus Garvey Park in Harlem, New York;
- 2) A street bearing Garvey's name in Bedford-Stuyvesant, Brooklyn, New York;
- 3) Marcus Garvey Square in the Bronx, New York;
- 4) Marcus Garvey Place, a park in Hartford, Connecticut;
- 5) Marcus Garvey Way, a street in Hartford, Connecticut;
- 6) Numerous schools bearing Garvey's name, including in Los Angeles, California; Memphis, Tennessee; and Chicago, Illinois.

### **C. The International Community Desires Garvey's Exoneration**

Garvey's legacy is carried on throughout the international community through monuments, organizations, and actions inspired by his works. Perhaps no country heralds his memory more than his native Jamaica. In 1964, the Government of Jamaica posthumously honored Garvey by declaring him the first National Hero of Jamaica, in recognition for his most distinguished services to the country. This honor encompassed adding the "Right Excellent" title to Marcus Garvey's name; raising a statue of the Right Excellent Marcus Mosiah Garvey in St. Ann's Bay, Jamaica; and the creation of a memorial and resting place for Garvey's body in the form of a tomb and monument in National Heroes Park in Jamaica. In addition, the Jamaican government honored Garvey and the work that he did to uplift people of African ancestry by placing his image on Jamaica's \$20 coin.

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<sup>108</sup> City of Los Angeles, Resolution Title: MARCUS MOSIAH GARVEY, Council File Number 05-0002-S192 (Mar. 3, 2006), attached as Exhibit 31.

Garvey's legacy figures prominently elsewhere as well. Notably, the red, black, and, green flag of the UNIA<sup>109</sup> has become known as the flag of the Pan-African Movement and is still raised today throughout the world. The flag's color scheme is also reflected in the national flags of Kenya, Malawi, and other African nations. Garvey's memory has further been honored throughout the international community. Examples include:

- 1) In 2009, Garvey was honored by the Organization of American States ("OAS"), which re-dedicated its Hall of Culture as Marcus Garvey Hall. Previously, Garvey was honored with a bust in the OAS's Hall of Heroes;<sup>110</sup>
- 2) The Republic of Ghana launched and maintained a state-owned shipping line called the Black Star Line, which operated in the 1960s and 1970s, and named its men's national soccer league, "The Black Stars." Ghana's national flag also features a black star, described as "the lodestar of African freedom,"<sup>111</sup>
- 3) The Marcus Garvey Library in Tottenham, London;
- 4) Marcus Garvey Way in Brixton, London;
- 5) The Marcus Garvey Centre in Lenton, Nottingham, England; and
- 6) Marcus Garvey Park in London.

Following the commutation of his sentence, the effort to fully clear Garvey's name has been an ongoing and concerted effort of the U.S. Congress, civil organizations, cities, states, and international groups. These various groups demonstrate the high regard in which history holds Garvey as a result of his works and that of the UNIA and African Communities League.

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<sup>109</sup> See Exhibit 17 at 575 (UNIA Declaration of Rights, Art. 39 (August 13, 1920)).

<sup>110</sup> See Permanent Council of the Organization of American States, OEA/Ser. G, CP/ACTA 1723 09, at 51-61 (Oct. 21, 2009) (honoring "[t]he life, works and legacy of the Right Excellent Marcus Mosiah Garvey, Jamaica's first National Hero, politician, trade unionist, journalist, publisher, playwright, poet, philosopher, entrepreneur and father of black nationalism who inspired peoples the world over through his profound message of freedom, self-determination and racial pride and his unswerving commitment to social justice, equality, and human rights."), *English translation available at*, [http://www.scm.oas.org/idms\\_public/ENGLISH/hist\\_10/cpsc04090e10.doc](http://www.scm.oas.org/idms_public/ENGLISH/hist_10/cpsc04090e10.doc), attached as Exhibit 32.

<sup>111</sup> *Ghana National Flag*, Embassy of the Republic of Ghana, <http://www.ghanaembassy.nl/index.php/about-ghana/ghana-at-a-glance/70-national-flag.html>, attached as Exhibit 33.

Although the public and civil organizations have not been successful to date in their efforts to effectuate a pardon, the accolades and honors bestowed upon Garvey demonstrate the esteem in which he is held in the United States and around the world.

V. CONCLUSION

Accordingly, for the reasons stated herein, we respectfully submit that Garvey's petition for a pardon for his 1923 conviction of mail fraud should be granted.

We are prepared to respond to any questions concerning Garvey's application, either by way of further submission or in person.

Respectfully submitted,



Dr. Julius Garvey, M.D.,  
on behalf of the Descendants of Marcus Garvey



Professor Charles Ogletree, Esq.



Professor Justin Hansford, Esq.



Anthony Pierce, Esq. and Melissa Chastang, Esq.,  
Akin Gump Strauss Hauer & Feld LLP