

**OFFICE OF THE GOVERNOR: STATE OF NEW YORK**

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**IN THE MATTER OF THE APPLICATION OF :**

**OSVALDO HERNANDEZ :**

**FOR EXECUTIVE CLEMENCY :**

..... X

**APPLICATION FOR EXECUTIVE CLEMENCY**

**October 6, 2009**

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OSVALDO HERNANDEZ :  
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JAMES D. HARMON, JR., an attorney duly admitted to practice law in the State of New York,  
hereby affirms the truthfulness of the following under penalties of perjury:

1. I am the attorney for Specialist Fourth Class Osvaldo Hernandez of the United States Army in this matter. I have personal knowledge of the facts herein, except as set forth to the contrary. The annexed affidavit of Specialist Hernandez confirms the factual statements made herein. See Exhibit A.
2. I submit this affirmation, and the exhibits attached hereto, in support of the application of Specialist Hernandez that the Governor of the State of New York grant him executive clemency in the form of a pardon for his conviction for Criminal Possession of a Weapon in the Third Degree in violation of Penal Law section 265.02.
3. Only the Governor has “the power to grant pardons....upon such conditions and with such restrictions and limitations, as he may think proper...”. N.Y. CONST. Art. IV, Section 4; Executive Law, Section 15. The pardon power of the President is limited to pardons "for Offenses against the United States." U.S. CONST., Art. II, Section 2.

**The Governor Should Exercise His Power to Grant a Pardon to Osvaldo Fernandez**

4. Specialist Hernandez is a “fit subject for mercy,” Roberts v. State, 160 N.Y. 217, 222 (1899), because there exists clear and compelling evidence that, within his capabilities, he:
  - a. Has made exceptional strides in self-development and improvement;

- b. Has been rehabilitated through the redemptive power of military service;
  - c. Has served his country with distinction as a paratrooper in the United States Army, including combat service in Afghanistan;
  - d. Has successfully made the transition to civilian employment as a member of the Plumbers' Union; and
  - e. Will again serve his country as an infantryman, after being recalled to active duty for deployment to Iraq by the end of 2009.
5. Specialist Hernandez seeks this grant of mercy, not as a person of privilege or position, but as an American soldier who answered the call when it came.....not once, but twice.....at great personal risk
6. This application for executive clemency raises important societal interests. The national security policy of the United States is to entrust the defense, safety and welfare of America to Specialist Hernandez, notwithstanding his conviction. He honored that trust with his prior service and is prepared to do so again, not only in Iraq, but in his own community. Granting the mercy of a pardon would further this national policy in a way that would demonstrate tangible support for all who serve in the military. A pardon also would enhance the confidence of the public in the criminal justice system, showing that justice is always the goal of prosecution. Finally, the quality of mercy evident in a pardon would acknowledge the redemptive and rehabilitative power of military service.

**The Circumstances of the Offense**

7. Almost seven (7) years ago, on November 22, 2002, before he joined the United States Army, then Mr. Hernandez was arrested in Queens County for possession of a loaded gun.

He was twenty (20) years old at the time. During a routine traffic stop, a police office officer observed a gun under the seat of a car occupied by Mr. Hernandez and his friend. Mr. Hernandez readily admitted that the gun was his, which he felt he needed for self-protection given the tough Corona, Queens neighborhood in which he lived.

8. On September 19, 2003, Mr. Hernandez pleaded guilty to Criminal Possession of a Weapon in the Third Degree in violation of Penal Law section 265.02, a felony, under Queens County indictment no. 3910/02. He was then sentenced to a term of imprisonment of one year. As a result, he served his sentence in Rikers Island, and was released after serving eight months.
9. This was Mr. Hernandez' first and only arrest.
10. The offense did not cause any physical injury or property damage.

#### **Specialist Hernandez' Exemplary Military Service**

11. On June 9, 2004, after completing his sentence, Specialist Hernandez enlisted in the United States Army because he wanted to change his life through military service, which is precisely what he did. At the time of his enlistment, Specialist Hernandez volunteered for service as an infantryman and paratrooper.
12. His military service began on February 10, 2005, with Infantry basic training, followed by successful completion of Airborne School at Fort Benning, Georgia. Specialist Hernandez then was assigned to the 82nd Airborne Division, Fort Bragg, North Carolina in July of the same year. During his assignment to the 82<sup>nd</sup> Airborne, Specialist Hernandez completed 26 parachute jumps from various aircraft, including the C-130, C-17 and Chinook helicopter.
13. After being further assigned to B Company, 3/325 Airborne Infantry Regiment (later

becoming the 2/508th Parachute Infantry Regiment) <http://www.bragg.army.mil/2-508/>,

Specialist Hernandez received specific training in the following areas:

- a. CATC (Combined Arms Training Course) – Advanced shooting techniques and marksmanship with domestic and foreign weapons;
  - b. Designated Marksman Course - Practical sniper course to include long range marksmanship, cover and concealment, and range estimation;
  - c. Shoulder Launched Munitions Weapons Course - Anti-tank, rocket, man packed missile systems to include LAW, SMAW, Javelin, and AT-4;
  - d. US Army combatives - Hand to hand, and grappling ground fighting techniques
  - e. Military vehicle training;
  - f. Combat Lifesaver - Basic triage and field medical techniques; and
  - g. Field Sanitation - 1 week course intended to increase and control of disease, health, morale, and basic physical needs of soldiers in extended field situations.
14. As his unit awaited deployment orders, Specialist Hernandez participated in training Ukrainian paratroopers, earning that country's parachutist wings, as well as extensive summer training of West Point cadets. At West Point, Specialist Hernandez held the position of lane walker/instructor for Infantry battle drills and movement techniques. Over the course of three months at West Point, Specialist Hernandez was responsible for training over 500 future Army officers. His unit also continued training for deployment to Afghanistan with a 35 mile march on the Appalachian Trail with full combat load. Specialist Hernandez was awarded a certificate of achievement by the officer in charge of the cadet training program for his work at West Point.

15. Pre-deployment training upon returning to Fort Bragg included rigorous physical training and conditioning, and battalion and company sized attacks and missions to include airfield seizure, air assault by UH-60 Blackhawk and CH-47 Chinook helicopters, live-fire capture of urban terrain with building clearing, long distance foot movements with tactical load and further parachute proficiency.
16. In October 2006, his company (Company B) attended the Joint Readiness Training Center at Fort Polk, Louisiana where all previous training culminated in complex mission sets, including coordination with Afghan National Army (ANA) soldiers and commanders. This introduced the realities of language and culture that Company B and Specialist Hernandez would face in the upcoming 15 month deployment.
17. In February 2007, his unit deployed to the Ghazni Province of Afghanistan with its base of operations at Forward Operating Base Warrior. Among the unit's primary responsibilities was the training of the Afghan National Police (ANP) and ANA. Specialist Hernandez personally trained these personnel in marksmanship, first aid, movement techniques and basic communications for unit level operations. His unit completed over 400 missions and patrols to include force protection, convoy security, traffic control, search operations, tactical questioning, IED and sensitive site exploitation, counter-narcotics (documentation and evidence collection), "High Value" snatch and grabs, search of enemy indirect origin sites, and participation in Shuras (town meetings) in surrounding areas. Company B also augmented special operations forces, psychological operations and electronic intelligence gathering assets in several other areas of Afghanistan. During this deployment, Specialist Hernandez held the positions of rifleman and designated marksman throughout.

18. In December 2007, while in Afghanistan, Specialist Hernandez applied to take the exam to become a New York City police officer. In response, the NYPD sent him a “yellow slip” which authorized him to take the exam upon his return from Afghanistan. Specialist Hernandez carried the “yellow slip” with him in Afghanistan as a reminder of what he wanted to be. See Exhibit B.
19. Prior to leaving Afghanistan, the Army offered to promote him to the rank of sergeant if Specialist Hernandez were to re-enlist in the Army. Although Specialist Hernandez was honored by the gesture, his goal was to become an NYPD police officer.
20. On April 30, 2008, Specialist Hernandez returned with his unit to Fort Bragg, North Carolina after a fifteen (15) month tour of duty in Afghanistan. On June 16, 2008, he took the New York City Police Department entrance exam. On June 21, 2008, Specialist Hernandez received an Honorable Discharge from the Army.
21. Specialist Hernandez’ received the following in recognition of his military service:
  - a. Combat Infantryman Badge;
  - b. 2 Army Commendation Medals; and
  - c. 3 Army Achievement Medals.

See Exhibit C.
22. The Combat Infantryman Badge is an award of the United States Army which is presented to those officers, warrant officers and enlisted soldiers, in the grade of Colonel and below, who participate in active ground combat, to close with and destroy the enemy with direct

fires, while assigned as a member of an infantry or special forces unit, brigade or smaller size. The Combat Infantryman Badge was created with the primary goal of recognizing the sacrifices of infantrymen who were disproportionately likely to be killed or wounded during combat operations.

23. The Army Commendation Medal is a military award which is presented for sustained acts of heroism or meritorious service.

24. The Army Achievement Medal is a military award for meritorious service or achievement in either combat or non-combat based on sustained performance or specific achievement of a superlative nature.



25. The citation for one Army Commendation Medal summarizes Specialist Hernandez' service in Afghanistan in these words:

For exceptionally meritorious service while deployed in support of Operation Enduring Freedom, Afghanistan. Your personal courage, devotion to duty, and commitment to mission accomplishment in a combat zone, under the most extreme circumstances, greatly contributed to the success of Operation Enduring Freedom. Your performance reflects great credit upon you, Combined Task Force Fury, Combined Joint Task Force-82 and the United States Army.

26. The citation for the second award of the Army Commendation Medal, covering Specialist

