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August 6, 2012

**To:** The Deputy Attorney General, Department of Justice

**From:** Human Rights Watch

**Subject:** Motions for a Reduction in Sentence/Compassionate Release

We are submitting the questions below with the hopes of obtaining clarification of the role of the Department of Justice (DOJ) in the Bureau of Prison's Reduction in Sentence/Compassionate Release program and the DOJ's views about it. We look forward to receiving your answers or to a meeting, to discuss them should you prefer. Please address your response to Jamie Fellner, at the address on this letterhead.

In the questions below, all references to motions for compassionate release or for reduction in sentence refer to motions for a sentence reduction under 18 USC §3582 (c)(1)(A).

- 1) Does compassionate release further the Justice Department's criminal justice goals and if so, how?
- 2) Does the Justice Department believe more inmates should receive compassionate release and if so, what steps does it believe would facilitate that increase? If not, why not?
- 3) In light of the concerns expressed in a recent speech by Criminal Division Chief Lanny Breuer to the National District Attorneys Association (<http://www.justice.gov/criminal/pr/speeches/2012/crm-speech-120723.html>), and in a letter to the United States Sentencing Commission ("USSC") (<http://www.justice.gov/criminal/foia/docs/2012-annual-letter-to-the-us-sentencing-commission.pdf>) about the need to contain the costs of incarceration and overcrowding in Bureau of Prison (BOP) facilities, is the Department prepared to reevaluate, or is it currently reevaluating, the BOP's use of compassionate release motions, as a potential way to lower prison costs and save bed space?
- 4) To our knowledge, the BOP has never issued any rule, regulation or program statement setting forth what constitutes



“extraordinary and compelling circumstances” warranting a motion by the Director for a reduction in sentence. The most recent BOP guidance of which we are aware appears to limit compassionate release to inmates within one year of death or with an “extremely serious or debilitating” medical condition.<sup>218</sup> In 2007, the U.S. Sentencing Commission amended commentary to USSG § 1B1.13 to describe the circumstances that it believes satisfy the requirements of 18 USC §3582 (c)(1)(A). The guidance in USSG § 1B1.13 includes some grounds for release that are different from those traditionally used by the BOP, e.g.: “the death or incapacitation of the defendant’s only family member capable of caring for the defendant’s minor child or minor children.” USSG § 1B1.13, cmt. 1 (A)(iii).

- a. Does the Justice Department believe that USSG §1B1.13 describes circumstances that are “extraordinary and compelling” under 18 USC §3582 (c)(1)(A) that might warrant a motion by the BOP?
  - b. If so, has the BOP made motions for a reduction in sentence when circumstances other than impending death or “severe or incapacitating medical or mental health conditions” are present?
  - c. If not, what is the Justice Department’s understanding of the types of circumstances that warrant a motion for compassionate release?
  - d. What guidance has the Justice Department provided to the BOP regarding circumstances that might be considered “extraordinary and compelling?”
- 5) Under 18 USC §3582(c)(1)(A), the sentencing court, in making a decision with regard to a motion to reduce a sentence, must take into consideration the factors delineated in 18 USC §3553– including the nature and seriousness of the offense and public safety. USSG § 1B1.13 also indicates that the sentencing court should consider public safety. Nevertheless, in declining to make motions for a reduction in sentence, the BOP often explains its decision as due to the inmate’s offense and the risk of re-offending, i.e. on public safety grounds. What law or regulation authorizes the BOP to take into account considerations of public safety in deciding whether to make a motion for a sentence reduction? The Hawk-Sawyer Memo referred to above included a number of considerations the BOP staff should consider and balance when evaluating individual cases for possible recommendation for release, e.g., the nature and circumstances of the offense; the risk of recidivism; criminal history; age; sentence length and how much of the sentence remains, among others. While these are important considerations for a judge to consider, it is not made clear why the BOP should consider them.

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<sup>218</sup> Memorandum from Kathleen Hawk Sawyer, former director of the United States Federal Bureau of Prisons, to Executive Staff, July 22, 1994.

- a. Does the DOJ believe the factors in the Hawk-Sawyer memo should be considered by the BOP in evaluating whether to bring a motion for a sentence reduction and if so, why?
  - b. In the opinion of the DOJ, what law or regulation authorizes the BOP to consider such factors in determining whether to bring a motion?
  - c. Does the DOJ agree that such considerations are best left to the court and if not, why not?
  - d. If the DOJ believes that these considerations are best left to the BOP, has the DOJ given the BOP any guidance on how to evaluate and weigh these factors when deciding whether a motion is warranted?
- 6) What criterion does the Deputy Attorney General (DAG) use, and what guidance has the Justice Department provided to the BOP to assess whether a motion for compassionate release should be made? Has the Justice Department provided any guidance to the BOP regarding this? If so, how and to what extent is the BOP advised to take into account such factors as the nature of the offense, the likelihood of re-offending, and the amount of the sentence served to date?
- 7) What is the role of the Deputy Attorney General's office (DAG) in the decision-making process by which the BOP decides whether to ask a US Attorney to file a motion on its behalf seeking a reduction in sentence?
- 8) When is the BOP required or expected to consult with the DAG, or seek its opinion with regard to a possible 18 USC §3582 (c)(1)(A) motion?
- 9) What criteria or considerations does the DAG use in evaluating possible motions for a reduction in sentence?
- 10) If the DAG disagrees with the BOP, how is the difference resolved? Does the DAG have final say over whether a motion will be brought?
- 11) Does the Justice Department expect the BOP to consult with the US Attorney when considering whether a 18 USC §3582 (c)(1)(A) motion should be filed?
- 12) Does the US Attorney have authority to refuse to file a motion upon request of the BOP?
- 13) What instructions, training, or guidance has the Justice Department provided to US Attorneys regarding requests for motions for sentence reduction?
- 14) How many 18 USC §3582 (c)(1)(A) cases did the DAG review or consider in 2011?
  - a. In how many of those cases did the DAG object to, or counsel against, a motion for reduction in sentence and for what reasons? In how many of those cases did the DAG counsel the BOP to seek the motion?
  - b. In how many cases did the DAG request that the BOP obtain additional information, and what was the nature of the information sought?



**U.S. Department of Justice**

**Federal Bureau of Prisons**

Office of the General Counsel

Washington, DC 20534

**OCT 22 2012**

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Senior Advisor  
U.S. Program  
Human Rights Watch  
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Dear Ms. Fellner:

I write in response to your letter to the Deputy Attorney General, dated August 6, 2012. In your letter, you ask several questions regarding the Bureau of Prisons' ("Bureau" or "BOP") Reduction in Sentence/Compassionate Release ("RIS") program. We agree that appropriate implementation of the RIS program is vitally important and appreciate your interest in this issue.

The Department of Justice ("Department" or "DOJ"), through the BOP, has provided you with extensive access to information regarding the RIS program. In May 2012, I met with you along with BOP Director Charles Samuels and now Deputy Director Thomas Kane to answer your questions regarding the RIS program. We also accommodated your request to visit a Bureau facility by providing access for a visit to the Federal Medical Center (FMC) in Butner, North Carolina. During this visit in June 2012, you were provided a tour of several medical units and you interviewed Warden Sara Revell and other FMC Butner staff as well as inmates. In addition, you have interviewed Bureau Central Office legal staff and have been provided written responses to several inquiries.

The authority and basis for implementation of the RIS program is set forth in statute, BOP regulation, and BOP policy. The RIS statutory authority is found in 18 U.S.C § 3582(c)(1)(A)(i), which permits the court to modify a term of imprisonment in any case in which the court, upon motion of the Director of the BOP and after considering specified factors to the extent they are applicable, "finds that . . . extraordinary and compelling reasons warrant such



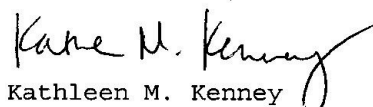
a reduction . . . ." The BOP's regulations (28 CFR §§ 571.60-571.64) and policy (Program Statement 5050.46) provide guidance and procedures for the RIS program. The regulations permit a request for a RIS "only when there are particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing." 28 C.F.R. § 571.61(a). The regulations and policy provide for BOP consideration of RIS requests in both medical and non-medical circumstances. The BOP reviews each RIS request on a case by case basis. Historically, the BOP has submitted RIS requests to a sentencing judge on behalf of inmates who are suffering from a terminal illness with a life expectancy of less than one year or are severely debilitated. The Bureau consults with the United States Attorney's Office that prosecuted the inmate in all RIS cases. The Bureau considers the information provided by the United States Attorney's Office in making a decision regarding a RIS request.

As a law enforcement agency, the Bureau's mission to protect society includes a responsibility to provide for public safety and make decisions with public safety in mind. Granting inmate furloughs, escorting inmates into the community, and designating inmates to appropriate facilities, are examples of decisions that the BOP routinely makes that involve public safety considerations. As we have discussed, we consider it the Bureau's responsibility to consider public safety when determining whether to pursue an inmate's release through a RIS motion.

As you are aware, BOP is reviewing and assessing our use of the RIS statute.

I hope that this information is helpful. Please note that to the extent your letter seeks information regarding pre-decisional internal deliberations and decisions on law enforcement matters, we are not able to provide answers to all of your questions.

Sincerely,



Kathleen M. Kenney  
Assistant Director/General Counsel

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August 3, 2012

Kathleen M. Kenney, Assistant Director/General Counsel  
Bureau of Prisons  
320 First St., NW  
Washington, DC 20534

Via USPS and facsimile at (202) 307 2995

Dear Assistant Director Kenney:

We continue to seek clarification of the nature and scope of the Department of Justice's role in the Bureau of Prison's Reduction in Sentence/Compassionate Release program. While the information and perspectives we received from you and Director Samuels were extremely helpful, we understand that you are not in a position to speak for the Justice Department itself.

Since you have been designated the liaison to us for communications with the Justice Department, I hope you will forward the attached questions about Reductions in Sentence/Compassionate Release to the Office of the Deputy Attorney General (DAG). I think the questions lend themselves to a meeting, but if the DAG prefers to answer them in writing, we will of course be grateful for that. I would be extremely grateful if you would also communicate to the DAG that in light of the delays in receiving a response to our repeated requests for a meeting, we hope that the responses to these questions can be expedited.

Many thanks for your continued assistance with this matter.

Sincerely,

Jamie Fellner, Esq.  
Senior Advisor  
US Program



**Responses to questions submitted by Human Rights Watch**  
(July 27, 2012)

I. For calendar year 2011, how many requests for the BOP to file a motion in court to seek reduction of sentence "because of "extraordinary and compelling reasons" (i.e., compassionate release) were reviewed at headquarters having been approved by regional directors.

**There were 38 RIS requests received in Central Office filed by 37 inmates (one inmate filed a second request for reconsideration). All of the requests were reviewed.**

A. How many were sought by inmates who were terminally ill.

**30 cases forwarded to Central Office were cases represented as terminal. In some cases Health Services Division determined that the inmate did not, in fact, meet the medical criteria for terminal and thus, these cases were denied, as not presently appropriate for consideration.**

a. Of those, how many were approved by general counsel's office.

**The General Counsel reviews all requests received in Central Office. The General Counsel does not approve the cases, but rather provides recommendations to the Director. If a request is determined not to be medically warranted, the General Counsel will deny the request.**

b. Of those approved by general counsel, how many were approved by director.

**Of the 30 cases that were represented as terminal, the Director approved 25 of those cases.**

c. For those that were denied, how many were denied on medical grounds and how many were denied on other grounds (please identify those grounds).

**Of the 5 cases denied:**

**3 were denied for medical reasons, but 1 was approved upon reconsideration. 2 were denied for non-medical reasons.**

d. How many inmates seeking compassionate release whose cases were sent to headquarters died before final decision made by Director?

**2**

B. How many were sought by inmates with medical conditions other than terminal illness.

**5 RIS requests were sought by inmates for medical conditions other than terminal illness.**

a. Of those, how many were approved by general counsel's office.

**See response to I.A.a.**

b. Of those approved by general counsel, how many were approved by Director.

**The Director approved 5 cases.**

c. For those that were denied, how many were denied on medical grounds and how many were denied on other grounds (please identify those grounds).

**N/A**

C. How many were sought by inmates on grounds other than medical conditions/terminal illness.

**2**

a. Of those, how many were approved by general counsel's office.

**See response to I.A.a.**

b. Of those approved by general counsel, how many were approved by Director.

**N/A**

c. For those that were denied, what were the grounds for the denial.

**One was denied because the circumstances were not extraordinary or compelling as expressed in the United States Sentencing Guidelines 1B1.13. The other was denied because the inmate's history raised concerns about whether the inmate could remain crime-free upon release.**

D. In how many of the cases denied by the general counsel or the Director had the office of the Deputy Attorney General or prosecuting attorneys indicated they opposed a motion for reduction of sentence? On what grounds did they oppose sentence reduction?

**None**

E. How many motions did the BOP file in court to seek sentence reduction because of the existence of "extraordinary and compelling reasons."

**United States Attorneys' Offices submitted 30 motions on behalf of the Director of the BOP.**

a. How many motions were granted?

**All were granted.**

b. May we have copies of the motions and the courts' decisions?

**Due to Privacy Act restrictions, the BOP is not able to release these documents.**

c. How many inmates on whose behalf the BOP filed motions for sentence reduction died before the court's decision was rendered?

**None**

d. How many inmates for whom courts ordered sentence reduction to time served died before they were actually released from the BOP?

**None**

II. How many inmates pursued administrative remedies in 2011 because wardens denied their request that BOP file motions with court seeking sentence reduction because of the existence of extraordinary and compelling reasons?

A. How many filed at warden level; how many did the warden grant.

**There were approximately 41 administrative remedies (BP-9's) filed at the institution level. 1 was granted.**

B. How many were appealed to regional directors and how many did the regional directors grant.

**24 were appealed and 1 was granted.**

C. How many inmates appealed to headquarters and how many did headquarters grant?

**23 were appealed to Central Office. None were granted. One was returned to the institution for reconsideration.**

III. Does the BOP have any written analysis of its authority to consider of public safety in response to requests from inmates to file motions for a sentence reduction on grounds of "extraordinary and compelling reasons." If so, could that analysis be provided.

**Case law and legislative history describe the Director's discretion to determine whether extraordinary and compelling reasons exist to warrant a reduction in sentence. See also, July 22, 1994, memorandum from the Director to the Executive Staff clarifying the medical criteria and the factors to consider for determining appropriateness of a reduction in sentence (attached.)**

IV. Who is responsible for initiating a compassionate release request?

Anyone can initiate a compassionate release request. Ordinarily, the request is made in writing and submitted by the inmate. The Bureau of Prisons processes a request made by another person on behalf of an inmate in the same manner as an inmate's request. Staff refer a request received at the

Central Office or at a Regional Office to the Warden of the institution where the inmate is confined. See PS 5050.46, Compassionate Release; Procedures for Implementation of 18 U.S.C. 3582 (c) (1) (A) & 4205(g) (May 19, 1998).

A. If the inmates, what guidance is provided to them

- a. to advise them of the availability of compassionate release,
- b. to provide them the procedures they and the BOP follow
- c. and to explain to them the criteria the BOP uses to evaluate a petition
- d. If the guidance is provided in writing, can you provide copies of the materials given to the inmates.

PS 5050.46 provides guidance for the inmates and is available to all inmates via the Electronic Law Library (ELL), and is available to the public at [www.BOP.gov](http://www.BOP.gov).

B. If staff is responsible, what guidance is provided to them, other than the information in the Program Statement from 1998, as to

- a. who might be eligible for compassionate release,
- b. the procedures to follow, and
- c. the criteria to address in making decision on the request..
- d. Are there any written materials other than the Program Statement that address these procedures and criteria? If so, may we have copies.

Staff is not tasked with the responsibility for initiating the RIS process. They are tasked with processing the RIS request in accordance with PS 5050.46, which provides guidance. In addition, guidance has been provided in the form of training and training materials (attached). The training and training materials discuss eligibility criteria, procedures, and criteria for analyzing the appropriateness of inmates who meet the initial medical criteria. These training materials incorporate the 1994 memorandum from the Director (previously discussed). Staff may seek the assistance of legal staff, particularly

**Central Office legal staff who are responsible for administering the program.**

V. Are any staff charged with the responsibility as party of their job to identify inmates who might be eligible for compassionate release on grounds of terminal illness or other medical conditions?

**No.**

A. If so, which staff?

**N/A**

B. Are such staff instructed to advise the inmates of their potential eligibility and how to make a request to the warden?

**N/A**

VI. What assistance is provided prisoners who cannot advocate for themselves for compassionate release, e.g., because of illness, mental health status, illiteracy or incapacitation

A. With respect to initial requests for compassionate release to the warden

**Inmates may seek the assistance of family, friends, or attorneys, but staff will provide general guidance. Inmates in Medical Referral Centers may seek general assistance from Staff including Social Workers.**

B. With respect to appeals of adverse decisions from the warden.

**Program Statement 1330.16, Administrative Remedy Program, also addresses procedures for filing an administrative Remedy. The PS provides in Section 10:**

a. An inmate may obtain assistance from another inmate or from institution staff in preparing a Request or an Appeal. An inmate may also obtain assistance from outside sources, such as family members or attorneys. . . .

b. Wardens shall ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English. Such assistance includes provision of reasonable accommodation in order for an inmate with a disability to prepare and process a Request or an Appeal.]

**For example, Wardens must ensure that staff (ordinarily unit staff) provide assistance in the preparation or submission of an Administrative Remedy or an Appeal upon being contacted by such inmates that they are experiencing a problem.**

## **FMC Butner's responses to questions submitted by HRW**

(August 10, 2012)

- 1) How many inmates sought compassionate release on medical grounds in calendar year 2011?

**164 inmates requested consideration for compassionate release for reasons the inmate described as medical reasons. However, the determination of whether a compassionate release request is medically warranted is determined by the Tumor Board or the inmate's primary physician. Of the 164 cases submitted, 66 were determined to be medically warranted and were reviewed by the institution's multidisciplinary team. Every inmate who submits a RIS request receives a written response concerning his request.**

- a. How many did the warden approve and send to the region?

**The Warden approved 15.**

**Butner counts the number of inmates in the year the activity (denial or release) was completed, regardless of date the case was initiated, whereas the Central Office counts cases based upon the calendar year the case was received in Central Office, regardless of when the case is completed. Please note, in 2011, in accordance with the Central Office counting system, the Director approved 18 cases from Butner.**

- b. Of those sent to the region, how many did the regional approve?

**The Regional Director approved 15 and all were forwarded them to the Central Office.**

- i. Of those denied by regional, what were the grounds for denial. **N/A**

- c. Of those approved by regional, how many were ultimately approved by BOP director? **The Director approved 12.**

- i. Of those that were denied by the General Counsel or the Director, what were the grounds for denial.

**2 inmates were not medically appropriate for consideration.**

**1 inmate posed a risk to the community.**

- 2) Among the requests for compassionate release on medical grounds in 2011, how many did the warden deny? **Of the 66 cases that were determined medically warranted for review, the Warden denied 12 requests.**

- a. Grounds for warden's denial



How many were denied because the medical condition did not warrant compassionate release. **All 66 cases were determined to be medically appropriate for reviewed by the multidisciplinary team.**

How many were denied because release might jeopardize public safety? **12. These were cases that had been considered medically appropriate for review by the multidisciplinary team.**

- 3) Did a multi-disciplinary team of staff review each request for compassionate release made in 2011?

**In 2011, the multidisciplinary team reviewed 66 requests that were medically warranted for review.**

- a. Who was on the team?

**The team is generally comprised of the following Institution staff members: Chairperson, Primary Social Worker, Psychologist, Director of Nursing, Attorney, Primary Case Manager, Unit Manager, Primary Physician or Physician's Assistant or both, and sometimes the Chaplain.**

- b. What materials did the team review in connection with compassionate release requests.

**Materials reviewed included, but were not limited to, central files, Medical staff's verbal and written summaries, Social Worker's verbal and written summaries.**

- c. How many requests, if any, were not reviewed by the team? **The team reviewed 66 cases.**

- d. Were there any cases in which the team recommended to the warden that the request be granted, but the warden denied the request? If so, how many and what were the reasons for the warden's decision? **None.**

- e. Were there any cases in which the team recommended to the warden that the request be denied but the warden granted it? If so, how many and what were the reasons for the warden's decision? **13. No reason was given by the Warden. Of these 13, the majority of the inmates expired during the process of completing the release planning.**

- 4) How many BOP motions to the court for sentence reduction were made for inmates confined at FMC Butner between January 1, 2011 and June 1, 2012?

**During the 17-month time frame identified, the court issued 33 court orders for compassionate release. Central Office indicates approximately 29 court orders were filed during this period because Central Office tracks these cases as described in #1 (a).**

Did the courts reduce the sentences in each case to time served? **Yes.**

- 5) How many inmates sought compassionate release in calendar year 2011 on grounds of terminal illness? **91 inmates requested compassionate release, claiming they suffered from a terminal illness. 66 cases were reviewed because they were medically warranted, including cases where the inmates were either terminally ill or severely debilitated.**
- a. Did the BOP file motions for sentence reduction for any of them? **See answer 1(c)**
  - b. Of those inmates whose requests were denied by the warden, how many subsequently died. **0**
  - c. What was the date of warden's denial and the date of death. **N/A**
- 6) How many inmates currently in the hospice at FMC have sought compassionate release? **1. This is a small 8-bed unit. At this time there is one inmate in the unit. This number can fluctuate.**
- 7) Among the inmates who died between January 1, 2011 and June 1, 2012, how many had sought compassionate release? **For this 17-month time frame-60 inmates died.**

**In 2011:**

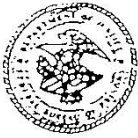
**22 inmates died after they were reviewed by the multidisciplinary team.**

**22 inmates died who were never reviewed by the multidisciplinary team (The reasons they were never reviewed include, but are not limited to, no release plan, unresolved detainers, transfer to Butner when the disease was too advanced, parole cases, etc.).**

**In 2012:**

**16 inmates died as of June 2012.**

- a. From January 1, 2011 through June 1, 2012, how many inmates pursued administrative remedies after the denial of their request for compassionate release? **There were 4 Administrative Remedies filed following the denial of the compassionate release request.**
- b. How many did the warden grant? **0**
- c. Of those the warden denied, how many were granted by regional or headquarters? **N/A**



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

July 22, 1994

MEMORANDUM FOR EXECUTIVE STAFF

FROM:

*Kathleen M. Hawk*  
Kathleen M. Hawk, Director  
Federal Bureau of Prisons

SUBJECT: Compassionate Release Requests

The Bureau of Prisons has historically taken a conservative approach to filing a motion with the courts for the compassionate release of an inmate under 18 U.S.C. § 4205(g) or § 3582(c)(1)(A). Until recently, our general guideline was to recommend release of an inmate only in cases of terminal illness when life expectancy was six months or less. Not many months ago, we extended the time limit to a one year life expectancy as long as medical staff felt comfortable with the accuracy of their prediction of life expectancy. Of course, this is a general guideline, not a requirement.

As we have further reviewed this issue, it has come to our attention that there may be other cases that merit consideration for release. These cases still fall within the medical arena, but may not be terminal or lend themselves to a precise prediction of life expectancy. Nevertheless, such cases may be extremely serious and debilitating.

While each case must be judged on an individual basis, with consideration of a number of factors, we are willing to consider other cases for possible recommendation for release. In evaluating individual cases that you may wish to submit, you and your staff should consider and balance the following factors, in addition to others that may bear on your recommendation:

- the nature and circumstances of the offense (e.g., was violence or a weapon used);

- the criminal and personal history and characteristics of the inmate, including an assessment of whether the inmate is likely to participate in criminal activities if released (Does the inmate have other criminal convictions?);
- the age of the inmate (both current age and age at time of sentencing);
- the danger, if any, the inmate poses to the public if released (Does the inmate have a history of violence? Could the inmate still commit his/her prior offense even in his/her present condition?);
- appropriate release plans, including family or outside resources (Does the inmate have insurance or the ability to pay for necessary medical care? If released, would the cost of care be borne by taxpayers?);
- the nature and severity of the inmate's illness, including consideration of whether outside medical care will be necessary; for example:
  - an inmate with severe debilitating heart or kidney disease that clearly limits his or her daily activity and in which conventional treatment such as medication, dialysis, or other measures are not sufficient to stabilize the disease or illness;
  - an inmate with a terminal illness, but no definitive life expectancy can be determined.

Cases which could be remedied with transplantation will be considered, but other factors such as time remaining on the inmate's sentence will be weighed heavily to determine if a release motion is appropriate;

- the length of the inmate's sentence and the amount of time left to serve.

These factors are not criteria which the inmate must meet to qualify for consideration; rather, they are guidelines which should be evaluated before staff make a final decision. Staff should not recommend compassionate release merely because the inmate has met a majority of the above factors. Instead, staff should rely on their correctional judgment, available documentation, and verifiable information in making recommendations.

f: OGC - LCI  
File - Exec Staff, OGC

Conversations with Staff about Compassionate Release

1/5/11- My husband went to the doctor and was informed that something was obstructing his bile duct, possibly a tumor on his pancreas.

1/12/11- Doctors put a metal stint in his liver and confirmed a malignant tumor on his pancreas. He was given information about Compassionate Release by a social worker there.

1/13/11- After reading about the prognosis for pancreatic cancer and that fewer than two percent survive for five years after the diagnosis, I went to open house to request information from staff about how to apply for Compassionate Release.

Counselor G : "I don't know, you'll have to ask your case manager."

Myself: "Do you know when she'll be back?"

Counselor G : "Sunday" (1/16/11)

Then I left. Approximately five minutes later I was called back to camp admin by Case Manager S.

Case Manager S : "Why are you requesting information on Compassionate Release?"

Myself: "My husband was diagnosed with pancreatic cancer."

Case Manager S : "Submit an inmate request to staff."

1/16/11- I was called to camp admin by my Case Manager, Ms. S who was with both Chaplains H. and F. with whom both I had spoken to about my husbands' condition. She spoke with them alone for approximately ten minutes while I waited in the hallway, then she called me in.

Case Manager S : "Ms. B. have you read the program statement on Compassionate Release?"

Myself: "No, my husband spoke with the social worker at the doctor's office about it and said we met the criteria."

Case Manager S : "Not according to the BOP you don't"

Then she proceeded to read me the program statement and showed me the statement of "extraordinary and compelling circumstances not foreseen at the time of sentencing." Not wanting to argue, I changed the subject.

Myself: "How about a phone call to the doctor to try and find out more information?"

Case Manager S : "I can do that, come back Tuesday. (1/18/11)

1/18/11- I went to open house at camp admin to see Ms. S about the phone call to my husband's doctor.

Case Manager S : "Do you have the information you need?"

Myself: "Yes, I have the phone numbers here."

Case Manager S : "What do you want to ask?"

Myself: "Any kind of information about my husband's condition and possibly some medical records so I can file for Compassionate Release."

Case Manager S : "They can't verify who you are over the phone, they aren't going to tell you anything. Your husband has to give consent."

Myself: "I thought you would introduce who I was, my husband has already told them I was in prison."

Case Manager S : "It doesn't work like that. I don't even believe you're allowed to have his medical records here anyway, they contain pertinent information."

Then I left feeling confused, disappointed and deceived wondering why she had said she was going to allow me to call the doctor when she had no intention of letting me do it.

1/24/11- My husband's tumor was confirmed as inoperable. I went to open house.

Myself: "How do I submit a request to the Warden?"

I was unsure after reading the program statement on how to do this, if it was a BP-9 or a certain form.

Case Manager S : "A request for what?"

Myself: "For Compassionate Release."

Case Manager S : "Use the procedure."

Secretary M : "Cop-out, then BP-8, then BP-9."

Later that evening I put a cop-out (inmate request to staff) in the mail box addressed to unit team.

1/25/11- I was called to camp admin by my Case Manager, Ms. S.

Case Manager S : "Is this how you want to submit your request?"

Myself: "Yes."

Case Manager S \_\_\_\_\_: "Your reasons for Compassionate Release are invalid, cancer is not an extraordinary or compelling reason, no one can foresee cancer Ms. B \_\_\_\_\_."

Myself: "That is what the program statement says, not reasonably foreseen at the time of sentencing."

Case Manager S \_\_\_\_\_: "What are your reasons, where is your documentation?"

Myself: "I have it in my unit."

Then I left to go get it and came back. I brought amendment 698, which states an extraordinary or compelling reason as the death or incapacitation of defendant's only family member capable of caring for minor children.

Case Manager S \_\_\_\_\_: "I don't want the program statement, I want something else. I want documentation of your extraordinary or compelling reasons."

Myself: "This is it, death of incapacitation of defendant's only family member capable of caring for minor children."

Case Manager S \_\_\_\_\_: "Your husband isn't dead."

Myself: "Not yet, but he is incapacitated, and the tumor is inoperable. My mom is handicapped and my dad is a sex offender."

Case Manager S \_\_\_\_\_: "I don't care about that, I want documentation of your circumstances."

Myself: "I have medical records."

Case Manager S \_\_\_\_\_: "Oh you do? How did you get them?"

Myself: "When you told me I couldn't call the doctor, I told my husband he would have to get them and send them."

Case Manager S \_\_\_\_\_: "When did you call him? When did you get them?"

Myself: "I called Thursday, (1/20/11) I got them yesterday." (1/24/11)

Case Manager S \_\_\_\_\_: "Ms B \_\_\_\_\_, judges don't ask themselves is this person gonna get cancer before they sentence them. You are not a special case. I've got men in the FCI who have newborn babies that've had five family members die within two years. You are not being realistic. There are sixty-year old women walking around this camp with canes. What makes you more special, there are thousands of cases in the BOP."

Myself: "I didn't say I was special. I am sorry you are getting angry. If you found out your husband was going to die you would do the same."

Case Manager S \_\_\_\_\_: "That is the reality of prison, people die, women lose their children all the time. You are not being realistic. I am going to end this right here and now. I am going to deny it."

Then she and I both walked out of the admin building. She went to her office, but I didn't get my cop-out back from her.

2/2/11- I was called to camp admin by Case Manager S. . She gave me my cop-out back, with a denial from Camp Administrator, Ms. S , stating submit your request to the Warden.

Later that day I went to open house and got an informal resolution. (BP-8) I submitted it on 2/3/11.

2/6/11- Early Sunday Case Manager S. called me to her office. Correctional Officer S. was present.

Case Manager S. : "I received your BP-8, is this it?"

She showed it to me.

Myself: "Yes."

Case Manager S. : " I just wanted to inform you, we've been listening to your phone calls and we know your statement about the inoperable tumor is not true."

Myself: "It is true."

Case Manager S. : "On 2/2/11 at 5:04pm you were recorded asking your husband to write down several questions including, "Will they be able to shrink it, then operate?, Is it terminal?, What is the prognosis?" If you already know it is inoperable why were you asking him to ask the doctor?"

Myself: "He was going to see another doctor and I wanted him to get a second opinion."

Case Manager S. : "That isn't what you said on the phone, I can send you over to SIS to hear your call."

Myself: "I have records that say it is inoperable."

Case Manager S. : "Where is it, I want it now, go get it!"

I went to my unit to get the medical report, then returned.

Myself: "Why are you getting angry?"

Correctional Officer S. : "Don't ask that question."

Case Manager S. : "Don't go there with me, I will show you who I am."

I handed her the report, and she flipped through it.

Case Manager S. : "Who is ?"

Myself: "My husband."

Case Manager S. : "That's not what your PSI says, how do I know he's your husband?"

Myself: "I couldn't get my marriage license to the probation officer in time for my PSI report, but I had it sent here."



Then she found my marriage license in my file and handed me the medical report back.

Case Manager S \_\_\_\_\_: "Where does it say you husband's tumor is inoperable?"

I found the page and read it to her.

Case Manager S \_\_\_\_\_: "No, I want the part that says it's malignant."

Then I read that part to her.

Case Manager S \_\_\_\_\_: "Don't get smart with me, I know what that means, I was a medic in the military. Why didn't you submit these records with your BP-8 (informal resolution)?"

Myself: "I was going to submit it along with my request to the Warden."

Case Manager S \_\_\_\_\_: "Why did you submit a BP-8 anyway, didn't Ms. S \_\_\_\_\_ tell you in her response to your cop-out to submit your request to the Warden?"

Myself: "Yes, But remember a few weeks ago at open house I was told to follow the procedure, cop-out, then BP-8, then BP-9?"

Case Manager S \_\_\_\_\_ handed me back my BP-8.

Myself: "So do I submit this BP-8 with the medical records, or submit my request to the Warden?"

Case Manager S \_\_\_\_\_: "Who runs things around here?, Who answered your cop-out?, What did she say? I'm warning you Ms. B \_\_\_\_\_ don't submit anything that's not true, You heard me tell her Mr. S \_\_\_\_\_."

2/7/11- I went to mainline (lunch) and re-submitted my BP-8 with the medical report attached. Later that day I was called to camp admin by Case Manager S \_\_\_\_\_.

Case manager S \_\_\_\_\_: "What is this?" (holding my BP-8)

Myself: "My BP-8 with documentation."

Case Manager S \_\_\_\_\_: "You aren't understanding this, let me read it to you again."

She read to me the reply Camp Administrator Ms. S \_\_\_\_\_ gave me on my cop-out of "submit your request to the Warden."

Myself: "Okay, then can I have a BP-9?" (request to Warden form)

Case Manager S \_\_\_\_\_: "No."

Myself: "Well then how do I submit my request to the Warden?"

Case Manager S \_\_\_\_\_: "Figure it out, you read the program statement."

Then I left.

2/8/11- I went to mainline, Camp Administrator Ms. S. was present with Assistant Warden C. G. .

Myself: "Thank you for responding to my cop-out. You said in your reply that I could submit my request to the Warden, so does that mean I don't have to do a BP-8?"

Camp Administrator S : " Your cop-out served as your BP-8, I don't have the authority to grant your request, it has to go to the Warden."

Myself: "I was told in the beginning that I needed to do a cop-out, then BP-8, then BP-9. I asked Ms. S. for a BP-9 but she wouldn't give it to me. I know I can't submit my request to the Warden in a cop-out because if he denies it I need to do a BP-10 (regional appeal form). I can't go from a cop-out to a BP-10, so what do I do?"

Camp Administrator S : " A BP-9 is not what you need. The request for Compassionate Release is a specific form." (She verified this with A )

Myself: "How do I get this form?"

Camp Administrator S : "From your case manager at open door."

Later that day, I went to open house. My case manager, Ms. S. handed me three BP-9 forms. Not wanting to argue about the form, I took the BP-9's and left.

2/22/11- After receiving additional documentation about my husband's condition and a letter from his doctor, I submitted the BP-9.

2/23/11- I received my BP-9 back, rejected for not having included a BP-8, which I was told on numerous occasions that I didn't need.

After this, I submitted a BP-8, received it back, followed with a BP-9 and turned it into the mail box, where I had initially submitted my cop-out. I didn't want to have any more contact with staff unless necessary because I was upset about the wasted time, run around and lies. This BP-9 was also rejected because I did not submit it through a staff member.



U.S. Department of Justice  
Federal Bureau of Prisons

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# Change Notice

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DIRECTIVE AFFECTED: 5050.46  
CHANGE NOTICE NUMBER: 5050.46  
DATE: 5/19/98

1. PURPOSE AND SCOPE. To update the Program Statement concerning Compassionate Release; Procedures for Implementation of 18 U.S.C 3582(c) (1) (A) & 4205(g).
2. SUMMARY OF CHANGES. Program Objectives have been added to Section 2 of the Program Statement.
3. ACTION. File this Change Notice in front of the Program Statement titled Compassionate Release; Procedures for Implementation of 18 U.S.C 3582(c) (1) (A) & 4205(g).

/s/  
Kathleen M. Hawk  
Director



U.S. Department of Justice  
Federal Bureau of Prisons

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# Program Statement

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OPI: OGC  
NUMBER: 5050.46  
DATE: 5/19/98  
SUBJECT: Compassionate Release;  
Procedures for  
Implementation of 18  
U.S.C 3582 (c) (1) (A) &  
4205(g)

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1. [PURPOSE AND SCOPE §571.60. Under 18 U.S.C. 4205(g), a sentencing court, on motion of the Bureau of Prisons, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served. Under 18 U.S.C. 3582(c) (1) (A), a sentencing court, on motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment of an inmate sentenced under the Comprehensive Crime Control Act of 1984.

The Bureau uses 18 U.S.C. 4205(g) and 18 U.S.C. 3582(c) (1) (A) in particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing.]

CFR Cross Reference Note:

[\$572.40 Compassionate release under 18 U.S.C. 4205(g). 18 U.S.C. 4205(g) was repealed effective November 1, 1987, but remains the controlling law for inmates whose offenses occurred prior to that date. For inmates whose offenses occurred on or after November 1, 1987, the applicable statute is 18 U.S.C. 3582(c) (1) (A). Procedures for compassionate release of an inmate under either provision are contained in 28 CFR part 571, subpart G.]

**[Bracketed Bold - Rules]**

Regular Type - Implementing Information

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. A motion for a modification of a sentence will be made to the sentencing court only in particularly extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing.

b. The public will be protected from undue risk by careful review of each compassionate release request.

c. Compassionate release motions will be filed with the sentencing judge in accordance with the statutory requirements of 18 U.S.C. § 3582 (c) (1) (A) or § 5405(g).

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 5050.44      Compassionate Release: Procedures For  
Implementation of 18 U.S.C. 3582 (c) (1) (A) &  
4205(g) (1/7/94)

b. Directives Referenced. None.

c. Rules cited in this Program Statement are contained in 28 CFR 571.60 through 571.64

d. Rules referenced in this Program Statement are contained in 28 CFR 542.10 through 542.16 and 572.40

e. U.S. Code Referenced

Title 18, United States Code, Section 4205(g)  
Title 18, United States Code, Section 3582(c) (1) (A)

4. STANDARDS REFERENCED. None.

5. [INITIATION OF REQUEST - EXTRAORDINARY OR COMPELLING CIRCUMSTANCES § 571.61

a. A request for a motion under 18 U.S.C. 4205(g) or 3582(c) (1) (A) shall be submitted to the Warden. Ordinarily, the request shall be in writing, and submitted by the inmate. An inmate may initiate a request for consideration under 18 U.S.C. 4205(g) or 3582(c) (1) (A) only when there are particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of

sentencing. The inmate's request shall at a minimum contain the following information:

(1) The extraordinary or compelling circumstances that the inmate believes warrant consideration.

(2) Proposed release plans, including where the inmate will reside, how the inmate will support himself/herself, and, if the basis for the request involves the inmate's health, information on where the inmate will receive medical treatment, and how the inmate will pay for such treatment.

b. The Bureau of Prisons processes a request made by another person on behalf of an inmate in the same manner as an inmate's request. Staff shall refer a request received at the Central Office or at a Regional Office to the Warden of the institution where the inmate is confined.]

6. [APPROVAL OF REQUEST §571.62.

a. The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c) (1) (A) only after review of the request by the Warden, the Regional Director, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.

(1) The Warden shall promptly review a request for consideration under 18 U.S.C. 4205(g) or 3582(c) (1) (A). If the Warden, upon an investigation of the request determines that the request warrants approval, the Warden shall refer the matter in writing with recommendation to the Regional Director.]

The Warden's referral at a minimum shall include the following:

(a) The Warden's written recommendation as well as any other pertinent written recommendations or comments made by the staff during the institution review of the request.

(b) A complete copy of Judgment and Commitment Order or Judgment in a Criminal Case and sentence computation data.

(c) A progress report that is not more than 30 days old. All detainers and/or holds should be resolved prior to the Warden's submission of a case under 18 U.S.C. § 3582(c) (1) (A) or

§ 4205(g) to the Regional Director. In the event a pending charge or detainer cannot be resolved, then an explanation of the charge or conviction status is needed.

(d) All pertinent medical records if the reason for the request involves the inmate's health. Pertinent records shall include, at a minimum, a Comprehensive Medical Summary by the attending physician, which should also include an estimate of life expectancy, and all relevant test results, consultations and referral reports/opinions.

(e) The referral packet shall include, when available, a copy of the Presentence Investigation and Form U.S.A. 792, Report on Convicted Offender by U.S. Attorney, Custody Classification form, Notice of Action forms, Probation form 7a, information on fines, CIM Classification Summary BP-339, and any other documented information which is pertinent to the request. In the absence of a Form U.S.A. 792, the views of the prosecuting Assistant U.S. Attorney may be solicited and those views should be made part of the Warden's referral memo.

(f) If the inmate is subject to the Victim and Witness Protection Act of 1982 (VWPA), confirmation of notification to the appropriate victim(s) or witness(es) shall be incorporated into the Warden's referral. A summary of any comments received shall be incorporated into the Warden's referral memorandum. If the inmate is not subject to the VWPA, a statement to that effect must be in the Warden's referral memorandum.

(g) For a request under 18 U.S.C. § 3582(c)(1)(A) when a term of supervised release follows the term of imprisonment, confirmation that release plans have been approved by the appropriate U.S. Probation Office must be included in the referral. If the inmate will be released to an area outside the sentencing district, the U.S. Probation Office assuming supervision must be contacted. If no supervision follows the term of imprisonment, release plans must still be developed.

(h) The development of release plans shall include, at a minimum, a place of residence and the method of financial support, and may require coordination with various segments of the community, such as hospices, the Department of Veterans Affairs or veterans groups, Social Security Administration, welfare agencies, local medical organizations, or the inmate's family.

(i) Because there is no final agency decision until the Director has reviewed the request, staff at any level may not

contact the sentencing judge or solicit the judge's opinion through other officers of the court.

[(2) If the Regional Director determines that the request warrants approval, the Regional Director shall prepare a written recommendation and refer the matter to the Office of General Counsel.

(3) If the General Counsel determines that the request warrants approval, the General Counsel shall solicit the opinion of either the Medical Director or the Assistant Director, Correctional Programs Division depending upon the nature of the basis for the request. With this opinion, the General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision.

(4) If the Director, Bureau of Prisons, grants a request under 18 U.S.C. 4205(g), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding moving the sentencing court on behalf of the Bureau of Prisons to reduce the minimum term of the inmate's sentence to time served. If the Director, Bureau of Prisons, grants a request under 18 U.S.C. 3582(c)(1)(A), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding moving the sentencing court on behalf of the Director of the Bureau of Prisons to reduce the inmate's term of imprisonment to time served.

b. Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 4205(g), the Warden of the institution where the inmate is confined shall schedule the inmate for hearing on the earliest Parole Commission docket.]

Institution staff shall prepare an amended Sentence Data Summary for use at this hearing. Staff shall provide a copy of the most recent progress report to the Parole Commission.

[Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 3582(c)(1)(A), the Warden of the institution where the inmate is confined shall release the inmate forthwith.

c. In the event the basis of the request is the medical condition of the inmate, staff shall expedite the request at all levels.]



A request for an expedited review permits the review process to be expedited, but does not lessen the requirement that the documentation cited in Section 6.a.(1) above be provided.

7. [DENIAL OF REQUEST §571.63

a. When an inmate's request is denied by the Warden or Regional Director, the disapproving official shall provide the inmate with a written notice and statement of reasons for the denial. The inmate may appeal the denial through the Administrative Remedy Procedure (28 CFR part 542, subpart B).

b. When an inmate's request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A) is denied by the General Counsel, the General Counsel shall provide the inmate with a written notice and statement of reasons for the denial. This denial constitutes a final administrative decision.

c. When the Director, Bureau of Prisons, denies an inmate's request, the Director shall provide the inmate with a written notice and statement of reasons for the denial within 20 workdays after receipt of the referral from the Office of General Counsel. A denial by the Director constitutes a final administrative decision.

d. Because a denial by the General Counsel or Director, Bureau of Prisons, constitutes a final administrative decision, an inmate may not appeal the denial through the Administrative Remedy Procedure.]

8. [INELIGIBLE OFFENDERS §571.64. The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of state prisoners housed in Bureau of Prisons facilities or D.C. Code offenders confined in federal institutions. The Bureau of Prisons cannot initiate such a motion on behalf of federal offenders who committed their offenses prior to November 1, 1987, and received non-parolable sentences.]

/s/  
Kathleen M. Hawk  
Director



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, DC 20530-0001

July 14, 2006

The Honorable Ricardo H. Hinojosa  
Chair, U.S. Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

Dear Judge Hinojosa:

This letter provides the comments of the Department of Justice in relation to the policy statement submitted to Congress by the Sentencing Commission on May 1, 2006, § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons). The Commission has requested such comments for its development of further criteria and a list of specific examples of extraordinary and compelling reasons for sentence reduction, as provided in 28 U.S.C. 994(i), as well as guidance regarding the extent of any such reduction and modifications to a term of supervised release.

In brief, the recommendations of the Department of Justice are as follows:

- The specific criteria should be to grant a motion for reduction of sentence under 18 U.S.C. 3582(c)(1)(A)(i) upon the filing of such a motion by the Department of Justice based on a determination by the Bureau of Prisons that:
  - the inmate for whom the reduction in sentence is sought has a terminal illness with a life expectancy of one year or less, or a profoundly debilitating (physical or cognitive) medical condition that is irreversible and irremediable and that has eliminated or severely limited the inmate's ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others;
  - a reduction in sentence is appropriate after assessing public safety concerns and the totality of the circumstances; and
  - a satisfactory release plan has been provided including information about where the inmate will live and receive medical treatment, and the inmate's means of support and payment for medical care.

- Specific examples of cases warranting a reduction of sentence should be consistent with the foregoing criteria.
- The amount of sentence reduction and modifications to a term of supervised release should be as requested in the government's motion.

I will address each of these recommendations in greater detail below.

#### THRESHOLD REQUIREMENT OF QUALIFYING MEDICAL CONDITION

The Department of Justice and its correctional component, the Bureau of Prisons, have used 18 U.S.C. 3582(c)(1)(A)(i) primarily to seek reductions of sentence for terminally ill inmates with a prognosis (to reasonable medical certainty) of death within a year. The legislative history of 18 U.S.C. 3582(c)(1)(A) supports this specific ground – that of a terminally ill inmate – as an “extraordinary and compelling” circumstance that may warrant a reduction in sentence:

The first “safety valve” [i.e., current 18 U.S.C. 3582(c)(1)(A)(i)] applies, regardless of the length of sentence, to the unusual case in which the defendant's circumstances are so changed, such as by terminal illness, that it would be inequitable to continue the confinement of the prisoner. In such a case, under subsection (c)(1)(A), the Director of the Bureau of Prisons could petition the court for a reduction in sentence, and the court could grant a reduction if it found that the reduction was justified by “extraordinary and compelling reasons” and was consistent with applicable policy statements issued by the Sentencing Commission.

S. Rep. No. 225, 98th Cong., 1st Sess. 121 (1983).<sup>1</sup>

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<sup>1</sup> The cited report elsewhere noted as changed circumstances which the committee believed may warrant a sentence reduction “severe illness” and “cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence,” *id.* at 55, and stated that subsection (t) [originally subsection (s)] of 28 U.S.C. 994 “requires the [Sentencing] Commission to describe the ‘extraordinary and compelling reasons’ that would justify a reduction of a particularly long sentence imposed pursuant to proposed 18 U.S.C. 3582(c)(1)(A),” *id.* at 179. However, in the portion of the report quoted in the accompanying text, the report stated that the “safety valve” of 18 U.S.C. 3582(c)(1)(A)(i) applies “regardless of the length of sentence.” The Department has never utilized 18 U.S.C. 3582(c)(1)(A)(i) as a means of second-guessing the judgments of the Sentencing Commission or sentencing courts concerning the appropriate length of sentences, and does not believe that the policy statements issued by the Commission should make the propriety of a reduction turn on whether the sentence is “unusually” or “particularly” long, notwithstanding the scattered and not particularly consistent statements about this which appeared in the committee report.

In addition, in a small number of cases, the Department has sought reductions in sentence for inmates suffering from a profoundly debilitating (physical or cognitive) medical condition that is irreversible and cannot be remedied through medication or other measures, and that has eliminated or severely limited the inmate's ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others (including personal hygiene and toilet functions, basic nutrition, medical care, and physical safety). *Cf. id.* at 55 (noting belief of committee that there may be unusual cases in which eventual reduction of prison term is justified by changed circumstances including "cases of severe illness"); H.R. Rep. No. 685, 107th Cong., 2d Sess. 189 (2002) ("limited authority" of court to reduce prison term under 18 U.S.C. 3582(c)(1)(A) on motion of the Bureau of Prisons "has been generally utilized when a defendant sentenced to imprisonment becomes terminally ill or develops a permanently incapacitating illness not present at the time of sentencing"). In the absence of these medical conditions as described, requests from inmates to seek reductions of their sentences under 18 U.S.C. 3582(c)(1)(A)(i) are not entertained.

This limitation is necessary to avoid undermining the abolition of parole and the system of determinate sentencing pursuant to sentencing guidelines established by the Sentencing Reform Act of 1984. The authority of the Bureau of Prisons under the Sentencing Reform Act to seek reductions of sentence for extraordinary and compelling reasons obviously was not intended by Congress as a back door for the reintroduction of a parole-like early release mechanism, but as an element of a system whose fundamental premise is that prisoners should serve an actual term of imprisonment close to that imposed by the court in sentencing, subject only to very limited qualifications and exceptions.

Prisoners frequently seek reduction in their sentences. The grounds they offer include, for example, subsequent good works, rehabilitation and good conduct in prison, hardship to themselves and their families if their incarceration continues, alleged unfairness of their sentences in comparison with those received by other offenders, alleged unsoundness or injustice of the statutory penalties and sentencing guidelines that put them where they are, purported changes in societal attitudes towards the criminal conduct in which they engaged, and so on.

To the extent that such considerations may warrant a departure from the sentence originally imposed by the court, they are already addressed through carefully controlled and defined exceptions. For example, the "good conduct" credit of 18 U.S.C. 3624(b)(1) allows progress towards rehabilitation and good behavior in prison to be rewarded with a reduction of time served – but such a reduction must be earned through "exemplary compliance" with institutional rules, and it is capped at a maximum reduction of 54 days per year. The provisions of 18 U.S.C. 3621(e)(2)(B) similarly authorize some reduction of time served for inmates who successfully complete drug treatment – but the reduction cannot exceed a year, and it is not available to violent offenders. 18 U.S.C. 3582(o)(2) effectively allows sentence reduction based on changes in the seriousness with which an offense is viewed – but only if the change is confirmed by the Sentencing Commission's lowering of the applicable sentencing range.

An overly broad reading of the statutory authority to seek reductions of sentence for "extraordinary and compelling" reasons would potentially nullify all of these carefully considered limitations in existing law on departing from the sentence originally imposed by the court, and the general system of truth-in-sentencing they protect. The Department of Justice has accordingly not taken 18 U.S.C. 3582(c)(1)(A)(i) as an open-ended invitation to second guess the legislative decision to abolish parole, to undermine the guidelines/determinate sentencing system created to replace it, and to revisit the decisions of courts in imposing sentence, but rather has limited the use of this authority to cases of impending mortality and profound incapacitation as described above.

So limited, the Department's use of this authority has not conflicted significantly with the principles of certainty and consistency in criminal sanctions which underlie the federal sentencing system, and the objectives of those sanctions as set forth in 18 U.S.C. 3553(a)(2). Under the usual mortality in a year standard, the inmate's imprisonment would be terminated by death within a year or less in any event, so the practical reduction of imprisonment under this standard cannot be more than a year. Nor are the sentencing system and its underlying objectives undermined by seeking reductions of sentence in rare cases for prisoners with irreversible, profoundly debilitating medical conditions, as described above. Such an offender carries his prison in his body and mind, and will not in any event be living in freedom in any ordinary sense if released from a correctional hospital facility to be cared for in some other setting.

The policy statements adopted by the Sentencing Commission for granting motions under 18 U.S.C. 3582(c)(1)(A)(i) cannot appropriately be any broader than the Department's standards for filing such motions. In contrast to 18 U.S.C. 3582(c)(2), which allows sentence reductions based on guidelines changes on motion of the defendant, the Bureau of Prisons, or the court, 18 U.S.C. 3582(c)(1)(A) expressly provides that the court may reduce a sentence on the grounds set forth in that provision only on motion of the Bureau of Prisons. As the concluding language in section 3582(c)(1)(A) indicates, the policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(i) function as a further constraint on the court's discretion to reduce the sentence, following an antecedent decision by the Bureau of Prisons to exercise its discretion to seek such a reduction. Given the legislative decision to control the reduction of sentences for "extraordinary and compelling" reasons by allowing such reductions to be considered only on the initiative of the agency responsible for the inmate's custody, it would be senseless to issue policy statements allowing the court to grant such motions on a broader basis than the responsible agency will seek them.

At best, such an excess of permissiveness in the policy statement would be a dead letter, because the Department will not file motions under 18 U.S.C. 3582(c)(1)(A)(i) outside of the circumstances allowed by its own policies. At worst, it would be an incitement to prisoners to file more suits seeking to compel the Department to exercise its authority under section 3582(c)(1)(A)(i) -- in contravention of its own policies, judgment, and discretion -- in order to get them out of prison before they have served their sentences as imposed by the court. At a minimum, this would waste the time and resources of the courts and the Department in dealing with meritless suits of this type, concerning an issue which simply should not be open to litigation. The risk also must be considered that some courts might be misled by such a discrepancy between the policy statement and the



Department's standards and practices into misconstruing the assignment of responsibility under the statute for seeking reductions of sentence, and might then enjoin the Department to seek such reductions under more permissive standards. If this occurred, the result would be exactly the evil – the undermining of the abolition of parole and determinate sentencing – that Congress sought to avoid by vesting exclusive authority to seek reductions of sentence for prisoners under section 3582(c)(1)(A)(i) in the executive agency responsible for their custody.

We also reject the argument that the Commission should adopt more permissive standards for reduction of sentence based on certain factors mentioned in the United States Attorneys Manual (USAM § 1-2.113) – “disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government” – which may be considered in deciding whether to recommend that the President commute a sentence. The Manual does not state that any of these factors in isolation is a sufficient basis for recommending commutation. Rather, it simply notes that appropriate grounds for considering commutation have traditionally included those mentioned, and states that “a combination of these [factors] and/or other equitable factors” may provide a basis for recommending commutation in the context of a particular case. Since commutation is purely a matter of executive grace, referring to a range of factors that may be considered in the Department's internal guidance regarding executive clemency entails no risk that prisoners will have any measure of success in attempting to turn these references into litigable issues, in an effort to persuade courts to compel the Department to seek their release against its judgment, as may occur if the Commission's policy statements relating to judicial reduction of sentence are more permissive than the policies the Department has adopted for seeking such reductions. More basically, the decision to show mercy and commute a prisoner's sentence is a power reserved by the Constitution to the President, which by its nature is boundless in its legal scope and in the factors that may be considered in its exercise, but also extremely limited in its practical operation given the need for a personal decision by the Chief Executive. The Department has not regarded 18 U.S.C. 3582(c)(1)(A)(i) as a backdoor method to obtain clemency without having to seek it from the President through the established process, and it should not be so regarded in the Commission's formulation of policy statements relating to judicial granting of the Department's motions under that provision.

#### CONSIDERATION OF PUBLIC SAFETY AND OTHER RELEVANT CIRCUMSTANCES

The medical criteria described above are a threshold requirement for the Department's consideration of seeking a reduction of sentence. If this threshold requirement is satisfied, the Bureau of Prisons carefully assesses the public safety concerns and the totality of the circumstances (including the impact of a reduction of sentence on any victims). The Bureau may find that the inmate is not likely to pose a danger to the public or the community if released, and that the other objectives of criminal sanctions – such as confinement, punishment, and rehabilitation – are no longer principal considerations. Viewing the totality of the circumstances, it may be concluded that extraordinary and compelling circumstances exist that warrant a reduction of sentence.

In this connection, it should be noted that the policy statement submitted to Congress by the Sentencing Commission is at odds in one respect with the statute, in that it refers to 18 U.S.C.

3142(g) – a statute providing criteria for assessing dangerousness and flight risk in the context of pretrial release – as the basis for assessing dangerousness in relation to reductions of sentence. In the statute itself, this reference applies only to section 3582(c)(1)(A)(ii), a provision incorporating various specific limitations, including requirements that the defendant must be at least 70 years old, must have served at least 30 years in prison, and must be doing time under a sentence imposed under 18 U.S.C. 3559(c). In contrast, the policy statement makes the same provision regarding the determination of non-dangerousness apply as well to reductions of sentence sought for extraordinary and compelling reasons under section 3582(c)(1)(A)(i).

The application of 18 U.S.C. 3142(g) to determinations relating to dangerousness in the post-conviction reduction-in-sentence context will present difficulties because it includes features which presuppose the pretrial release context, and because it mixes together factors relevant to dangerousness with factors relevant to risk of flight or nonappearance. As a practical matter, these issues will not have to be addressed for decades in relation to section 3582(c)(1)(A)(ii), given its requirement that the inmate must have served at least 30 years of a sentence under the statutory "three strikes" provision. But there is no reason to bring them into play in relation to reductions of sentence under section 3582(c)(1)(A)(i). As noted, public safety concerns and potential dangerousness of an inmate are fully considered by the Bureau of Prisons before such a reduction is sought, and there is no benefit in stipulating that the standards of 18 U.S.C. 3142(g) apply to such assessments, where the statute itself does not make them applicable. It would certainly be wrong to equate the inquiries concerning these matters in relation to reductions of sentence for extraordinary and compelling reasons with the corresponding inquiry concerning dangerousness in relation to pretrial release. A defendant before trial has not been proven guilty of the charged offense, and is subject to detention only upon clear proof that no release conditions will adequately protect the public. In contrast, a defendant for whom a reduction of sentence is sought has been convicted, and the strong presumption must be that he is to serve the sentence imposed by the court. In these circumstances, early release should not be considered unless there is a high degree of confidence that there will be no resulting danger to the public.

Hence, in finalizing or modifying the policy statement in the future, the cross reference to determining non-dangerousness on the basis of the standards of 18 U.S.C. 3142(g) should be confined to section 3582(c)(1)(A)(ii), as the statute provides.

#### PLAN FOR RELEASE

The final element in the Department's assessment of an inmate for the appropriateness of a reduction in sentence is ensuring that adequate provision has been made for the inmate following his release. The inmate, or those seeking release on his behalf, are accordingly required to provide a proposed release plan, including information about where the inmate will live and receive medical treatment, and about his means of support and payment for medical care.

## EXTENT OF REDUCTION AND SUPERVISED RELEASE

The Commission's solicitation of comments referred specifically to "guidance regarding the extent of any such reduction and modifications to a term of supervised release." As discussed above, before seeking a reduction of sentence, the Bureau of Prisons will have determined with reasonable medical certainty that the inmate is terminally ill with a prognosis of death within a year, or suffers from a profoundly debilitating medical condition as described. The Bureau of Prisons will also have carefully considered public safety concerns and all other relevant circumstances in determining whether such a reduction is appropriate. A release plan will have been submitted relating to the inmate's means of support and care following his release, and the Bureau of Prisons will be aware of any timing or logistical considerations relating to transferring the inmate from correctional confinement to care and treatment in some other setting. In light of the foregoing, it would be appropriate for the court to accept the Department's recommendation in its motion regarding the extent of the reduction of sentence – i.e., the timing of the inmate's release.

Similar considerations apply to "modifications to a term of supervised release." The authority of the court to "impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment" as part of a reduction of sentence under 18 U.S.C. 3582(c)(1)(A)(i) was added in 2002 by § 3006 of Pub. L. 107-273. The conference committee report explained:

This section would confer express authority on courts under section 3582(c)(1)(A), when exercising the power to reduce a term of imprisonment for extraordinary and compelling reasons, to impose a sentence of probation or supervised release with or without conditions. Such added flexibility is consistent with the purposes for which the statute was designed and will likely facilitate its use in appropriate cases.

Under 18 U.S.C. 3582(c)(1)(A), a court is authorized, on motion of the Bureau of Prisons and consistent with the purposes of sentencing in 18 U.S.C. 3553, to "reduce the term of imprisonment" upon a finding that "extraordinary and compelling reasons" warrant such a reduction. This limited authority has been generally utilized when a defendant sentenced to imprisonment becomes terminally ill or develops a permanently incapacitating illness not present at the time of sentencing. In such circumstances, the situation of a prisoner (e.g., one suffering from a contagious debilitating disease), may make a court reluctant simply to release the prisoner back into society unless another sentencing option such as home confinement as a condition of supervised release or probation can be imposed. Presently, however, it is doubtful whether a court can order such a sentence since section 3582(c)(1)(A) speaks only in terms of reducing "the term of imprisonment," not imposing in its stead a lesser type of sentence. Cf. Fed. R. Crim. P. 35(b), which gives a court the power to "reduce a sentence" to reflect substantial assistance. The proposed language also makes it clear that any new term of supervised release or probation cannot be longer than the unserved portion of the original prison term, as it is not intended that this provision be used to increase the total amount of time that a person's liberty is restricted.



As the committee report indicates, the authority to impose a period of supervision and terms of supervision under 18 U.S.C. 3582(o)(1)(A)(i) provides a means of responding to new concerns, and particularly public safety concerns, raised by the release of the inmate from a correctional facility, such as controlling the risk to others from an offender with a contagious condition. As discussed above, the Bureau of Prisons will have assessed the inmate's medical condition and any public safety concerns related to the inmate's release before the decision is made to seek a reduction of sentence. If concerns of this type cannot be adequately addressed, then the Department will not seek a reduction of sentence. If such concerns can be adequately addressed through an appropriate term of supervision and conditions of supervision, the Department will propose such conditions in its motion. As with the timing of release, it would be appropriate for the court to accept the Department's recommendation in its motion concerning these matters.

### SPECIFIC EXAMPLES

Any specific examples provided concerning extraordinary and compelling reasons for sentence reduction should be consistent with the principles described above. We would suggest specifically the following:

*Example 1:* An offender is sentenced to three years of imprisonment for income tax evasion. After serving two years of the term, he is diagnosed with metastatic cancer, with a life expectancy (to reasonable medical certainty) of less than a year. The Bureau of Prisons' review of the case indicates that there is no realistic concern that the inmate will be a danger to others, or that the purposes of criminal sanctions will otherwise be seriously disserved, if the inmate is released, considering his personal history, the nature of the offense, his current condition, and all other relevant circumstances. Victim impact concerns are not deemed to countervail because the offense lacks an individual victim and the inmate has satisfied the tax liability to the best of his ability. The inmate has made arrangements for hospice care to commence immediately following his release and to continue until his death, and has submitted a satisfactory release plan to that effect. A reduction in sentence to time served could appropriately be allowed under the circumstances.

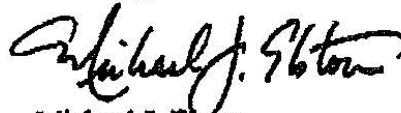
*Example 2:* An offender is sentenced to five years of imprisonment for a drug offense. After serving three years of the term, the inmate attempts to kill himself. The suicide attempt is unsuccessful, but it results in severe brain damage. This reduces the inmate's mentality to that of a three-year-old, irreversibly and irremediably, which largely eliminates his ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others. The facts relating to the inmate's medical condition, its consequences, and its permanent character are confirmed with reasonable medical certainty by Bureau of Prisons medical personnel or a Bureau-selected consulting physician. The Bureau of Prisons determines that the inmate is no potential danger to anyone and incapable of further criminality considering his condition and all relevant circumstances, and that a reduction of sentence is warranted. Victim impact concerns are not deemed to countervail because there is no identifiable victim of the offense who would be endangered or aggrieved by the

inmate's release. A satisfactory release plan is submitted which shows that the inmate's family is willing and able to assume responsibility for his care on a permanent basis. Allowing a reduction of the sentence to time served would be appropriate under the circumstances.

In sum, the authority to seek reductions of sentence for extraordinary and compelling reasons is vested by law in the Bureau of Prisons. Properly exercised, this authority allows an appropriate measure of compassion to be shown to offenders who are mortally ill or profoundly debilitated, without undermining the objectives of criminal sanctions and the integrity of the federal determinate sentencing system. Policy statements adopted for the courts' granting of such motions will similarly be sound, productive, and free of offsetting costs if formulated in a manner consistent with the Justice Department's statutory role and the policies it has adopted for this purpose, as described in this letter.

Thank you for this opportunity to provide the Commission with the views, comments, and suggestions of the Department of Justice. We look forward to continuing to work with the Commission to improve the federal sentencing guidelines.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Elston". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael J. Elston  
Senior Counsel to the  
Assistant Attorney General

## RESPONSE TO REQUEST FOR REDUCTION IN SENTENCE CONSIDERATION

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Smith, Phillip  
Reg. No. 65072-065  
Healthcare Unit/F-4

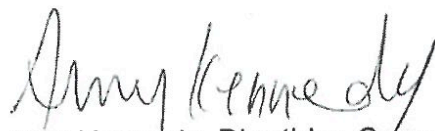
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Based on your request, your case was reviewed for possible reduction in sentence due to your medical situation. The Bioethics Committee reviews all such requests to determine if your situation meets the criteria set forth by the Bureau of Prisons in Program Statement 5050.46, Compassionate Release; Procedures for Implementation of 18 U.S.C. 3582 (c)(1)(A) & 4205 (g), dated May 19, 1998. Specific areas the committee must address include: your total medical condition and the impact it has on your incarceration; was the court aware of your medical condition when you were sentenced; your criminal background including instances of violence and/or use of weapons; and the safety of the community should you be released early.

The Bioethics Committee previously met and discussed your case in October 2011 and you were denied at that time. Your case was reviewed again and while your medical condition is very poor your criminal history outweighs your medical condition.

Based on the above assessment, the Bioethics Committee finds you are not appropriate for Reduction in Sentence (Compassionate Release) because your criminal history supersedes your medical condition.

If you are not satisfied with this decision, you may appeal to the Warden through the Administrative Remedy Process within 20 days of receiving this notice. Your counselor or case manager will assist you with directions and appropriate forms if you request them.

  
Amy Kennedy, Bioethics Committee Chairperson

~~February 3, 2012~~

Hand delivered

2-9-12



**COPY**

- gave 11M copy  
10-21-11 -  
- explained  
Admin. Review  
- noticed Unit Team



U.S. Department of Justice  
Federal Bureau of Prisons  
Federal Correctional Complex  
Federal Medical Center

P.O. Box 1600  
Butler, NC 27509

DATE: September 27, 2011  
REPLY TO:  
ATTN OF: Sara M. Revell, Complex Warden  
SUBJECT: Reduction in Sentence  
TO: [REDACTED]  
Reg. No.: 12434-042

On August 5, 2011, the Reduction in Sentence Committee met to review your request for reduction in sentence. The committee reviewed your history and other sources of collateral information.

The medical team provided information about your medical condition, including information about the course, treatment and severity of your illness. You have a medical history significant for C5-C7 spinal stenosis which has left you partially paralyzed and bedridden at this time requiring skilled nursing care, hypertension, anemia, diabetes, hypothyroidism, and chronic constipation.

You were housed in the complex until May 2011, when you required more assistance, and were moved to the FMC. You are currently housed on the inpatient unit and require total assistance with bathing, dressing, toileting, and all transfers. You have a baclofen pump which is used for pain control, though you remain mostly bedridden as you are unable to tolerate sitting up or being out of the bed for an extended time. Due to the overall decline in your condition, it is felt that you are an appropriate candidate for reduction in sentence consideration.

The case manager provided a review of the material contained in your Presentence Investigation Report (PSI) and discussed your institutional adjustment. You are a LOW security level inmate with IN custody. You were convicted of Sexually Exploiting a Minor by Producing Sexually Explicit Visual Materials and Possession of Child Pornography and are serving a 240 month sentence with five years' supervised release. You have received no incident reports during your incarceration. According to your Presentence Investigation Report (PSI), you have no prior criminal history.

The medical social worker reviewed your proposed release plan. The social worker explained your support system consists of your wife, [REDACTED]. Through a telephone interview, [REDACTED] reported a willingness to act as your caretaker. She indicated she would insure you would receive appropriate medical care, and shared how the care would be financed.

Committee Recommendation

Overall findings indicate your medical condition is serious. However, the Committee recommends denial of your request for reduction in sentence due to the nature of your offense and the length of sentence imposed.

Warden's Decision

I concur.

*[Signature]* 10/4/2011



**Admin Remedy Number:** 683345-F1

This is in response to your Request for Administrative Remedy received 04-06-2012, wherein you request a compassionate release, and for a motion to be made to the District Court, Eastern District of Michigan to reduce your sentence to time served.

A review of your case indicates your family requested, via a phone call, April 01, 2011, for you to be considered for Reduction in Sentence (RIS), also known as "Compassionate Release." Social Work requested a medical review of your case and you were deemed not medically appropriate for RIS consideration 04-05-2011 due predominantly to your positive response to chemotherapies and also given your disease condition was stable. The medical recommendation was to re-visit your case in 3 months to re-assess for medical appropriateness. On April 18, 2011, you made a second request for consideration of RIS, however your case was already being processed from the April 1<sup>st</sup> contact. Your medical appropriateness was re-visited May 10, 2011 with the determination you were not medically appropriate for RIS consideration, and a recommendation was made to re-visit your case again in 3 months. Your medical appropriateness re-visited a third time for RIS consideration August 2, 2011 with a determination you were not medically appropriate for RIS consideration, and a recommendation was made to re-visit your case again in 3 months. On October 18, 2011, your case was deemed medically appropriate for RIS consideration and moved forward in the RIS process. A multi-disciplinary team of medical, case management, legal, and social work staff reviewed the totality of your case and made a recommendation to the Warden for your RIS request to be denied due to the nature of your criminal offense and the risk of re-offending. An updated review of your case did not reveal a significant change in your situation or condition since our last review.

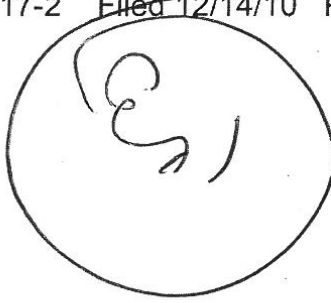
Regarding your request for a motion to be filed with the District court, your case has been reviewed at every level within the institution with extensive reviews as it relates to P.S. 5050.46 Compassionate Release. Your request for Compassionate Release has been denied.

If you are dissatisfied with this response, you may appeal to the Regional Director, Federal Bureau of Prisons, Mid-Atlantic Regional Office, 302 Sentinel Drive, Suite 200, Annapolis Junction, MD 20701. Your appeal must be received in the Regional Office within 20 calendar days from the date of this response.

Date

5/3/2012

Sara M. Revell, Warden



March 19, 2008

[REDACTED]  
Federal Prison Camp  
Yankton, South Dakota 57078

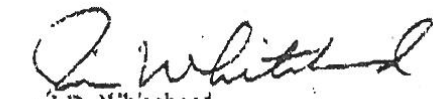
This is in response to your letter dated March 13, 2008, and received in my office on March 17, 2008, wherein you request to be released under the compassionate release program based on the condition of your daughter who is dying of brain cancer. You state that you would like to be released to the custody of your brother and sister-in-law, [REDACTED] in Lincoln, Nebraska. You further state that you will be able to find a job in a relatively short period of time because of your skills as a journeyman in the dry-wall industry.

In accordance with program statement 3050.46, Compassionate Release; Procedures for Implementation of 18 U.S.C. 3582 (c) (1) (A) & 4205 (g), I have carefully reviewed your request and your case file. The following factors were used in considering your request:

You arrived at the Federal Prison Camp in Yankton, SD, on August 9, 2007, to participate in the 500 Hour Residential Drug Abuse Program (RDAP) as recommended by the sentencing court. You were sentenced to 66 months incarceration with five years supervised release to follow for conspiracy to possess and distribute methamphetamine. On October 15, 2007, you were offered participation in RDAP. However, you declined participation stating that you were ineligible for any time off your sentence because of a two-point gun enhancement. You have an extensive criminal history dating back to 1994 which includes a history of assault, resisting arrest, careless driving, and felony possession of a firearm amended to attempted possession of deadly weapon. You have a total of 12 separations, four of whom reside in the Lincoln/Omaha, Nebraska area. You are more than \$2125.00 in arrears in your child support payments. Moreover, your wages were garnished for nonpayment of child support prior to your incarceration in the Federal Bureau of Prisons. And finally, you were engaged in criminal activity when you had sole custody of your two daughters.

Based on the aforementioned, I cannot find extraordinary or compelling circumstances to warrant recommending approval of your request for compassionate release. I have enormous compassion for your dying daughter. However, your situation is not unlike many other incarcerated inmates in similar situations. Although you are not eligible for a furlough due to your criminal history, I have approved no less than three escorted trips for bedside visits to allow you to support your daughter in her final days. Two of which were within the last 30 days. I have also instructed your unit team to provide you with additional phone calls when necessary.

If you are not satisfied with this response, you may file an appeal with the Regional Director, North Central Region, Gateway Tower II, 8<sup>th</sup> Floor, 400 State Avenue, Kansas City, KS 66101

  
J.D. Whitehead  
Warden





Attachment A



**U.S. Department of Justice  
Federal Bureau of Prisons**

*Federal Correctional Complex  
Federal Medical Center*

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*P.O. Box 1600  
Butner, NC 27509*

DATE: November 30, 2011

REPLY TO  
ATTN OF: Sara M. Revell, Complex Warden

SUBJECT: Reduction in Sentence

TO: [REDACTED]  
Reg. No.: 41563-039

On November 3, 2011, the Reduction in Sentence Committee met to review your request for Reduction in Sentence. The committee reviewed your history and other sources of collateral information.

The medical team provided information about your medical condition, including information about the course, treatment and severity of your illness. You initially presented in August 2009 with mediastinal masses and pleural lesions. You had a bronchoscopy, a right thoracoscopy and an excision of the mediastinal mass for biopsy. The biopsy was consistent with a lymphocyte predominant tumor. The mass was subsequently diagnosed as a malignant thymoma as you developed myasthenia gravis after the surgery.

You were evaluated by the Oncology Primary Care Team and presented to the FCC Butner Tumor Board after arrival at FMC Butner. After an extensive work-up, you have a diagnosis of stage IV 2B metastatic thymoma. You were initially treated with Cisplatin and Etoposide, and most recently you have received Gemcitabine. You are on Mestinon for your myasthenia gravis and multiple other medications for coronary artery disease (status post stents), gastroesophageal reflux disease (GERD), diabetes mellitus, and hyperlipidemia. You have had episodes of myasthenia gravis exacerbation requiring IVIG infusion. You are currently ambulatory and housed on an outpatient unit. You are able to care for your daily activities of daily living. The medical oncologist determined that you have a poor prognosis due to the advance stage of your cancer.

The case manager provided a review of the material contained in your Presentence Investigation Report (PSI) and discussed your institutional adjustment. You are a LOW security level inmate with IN custody. You were convicted of International Emergency Economic Powers Act and are serving a 46 month sentence with two years' supervised release. You have received no incident reports during your incarceration. According to your Presentence Investigation Report (PSI), your prior criminal history includes 1981 - Aggravated Assault and 1983 - Carrying a Concealed Weapon.

The medical social worker reviewed your proposed release plan. The social worker explained your support system consists of your wife, [REDACTED] and family. Through a telephone interview, [REDACTED] reported a willingness to act as your caretaker. She indicated she would insure you would receive appropriate medical care, and shared how the care would be financed.

Committee Recommendation

Overall findings indicate your medical condition is serious. However, the Committee recommends denial of your request for reduction in sentence due to the nature of your criminal offense and your ability to reoffend.

Warden's Decision

*I concur w) the committee's recommendation*  
*J 12/2/2011*

cc: AW  
Medical Records  
Unit Team