

Warden J. Grondolsky
FMC Devens
Federal Medical Center
P.O. Box 880
Ayer, MA 01432

July 24, 2013

Dear Warden Grondolsky,

As requested in a June 13th letter from the Department of Justice, I am submitting another application for Compassionate Release. This time, I have done so "at the institution level" as directed by Associate General Counsel James C. Wills. I sincerely apologize if this is redundant, but I want you to have all the facts necessary to make an appropriate decision, including a relevant update on changes to my health status since arriving at FMC Devens.

My name is Gerald Lee Duval, Jr. and my Register Number is 10717-050. I surrendered on June 11th, 2013 to begin serving a 10-year prison sentence. Since arriving here, my health has rapidly declined. This is extremely troubling to family members and concerned observers, especially since this prison is designated as a "federal medical center."

Within the first month of imprisonment, my right eye hemorrhaged. I am now awaiting emergency care at an outside facility that is able to meet my advanced needs. My initial request for Compassionate Release, dated May 28, 2013, specifically mentioned the diabetic retinopathy that has forced me to undergo nearly two-dozen eye surgeries since adulthood. I warned that "these expensive optical procedures will likely need to be repeated several times during the decade that I am in BOP custody."

Instead of processing my Compassionate Release request, the Department of Justice has directed me to file the paperwork a second time. That is what you see before you today. I would like to officially initiate another motion for relief under 18 U.S.C. 3582(c)(1)(A). I respectfully request that the Bureau of Prisons take into consideration the extraordinary and compelling circumstances that could not have been reasonably foreseen at sentencing.

In addition to the serious health complications that have robbed me of all vision in my right eye, I have been denied critical medication that is necessary to prevent organ transplant rejection. This medicine is not optional. If I do not take it, there is only one possible outcome: the rejection of my kidney and pancreas, which will ultimately lead to death if left untreated. When I surrendered, I brought a 30-day supply of medication with me. Almost immediately, I was informed that one of my anti-rejection medicines, Myfortic, was being switched to mycophenolate. I was told in my initial visit with Dr. McKittrick that a six-month supply of this drug would be ordered and in stock before my current prescription ran out. 31 days after my arrival, the required doses were no longer available. That was Friday, July 12. I went the entire weekend without anti-rejection pills before I was able to go to sick call on Monday, July 15. I asked the nurse practitioner, Mrs. Kilduff, why I didn't receive my medicine. You can imagine my shock when she replied that I "fell through the cracks" and my prescription had not been ordered. It wasn't until Tuesday that I received a four-day emergency supply of mycophenolate. Knowing that would run out again by the weekend, I smartly began cutting my anti-rejection pills in half to ration them. I am told that I must be assigned a doctor before any more medication can be ordered, but as of today, I have not seen the appropriate physician.

Once again, this exact scenario was eerily foreshadowed in my first Compassionate Release request, filed 6 weeks prior to my fall through the bureaucratic cracks. In the May 28th letter, I clearly stated: "A strict twelve-hour regimen of nearly a dozen different medications must also be maintained at a cost of \$3,000 per month. If any portion of the immunosuppression therapy is halted, my body will reject the organs and the BOP will spend an exorbitant sum to reverse the damage or I will die as a result."

So here I languish at FMC Devens nearly two months after filing my first compassionate release request, completely blind in my right eye from a hemorrhage and possible detached retina, anxiously awaiting the arrival of crucial anti-rejection medicine. Every decision the BOP makes could mean the difference between life and death for me. Even if you agree with a ten-year prison term for a state-registered medical marijuana patient, few will argue that a death sentence is reasonable. Some would actually call it cruel and unusual punishment.

For your review, I have enclosed the same materials that were originally submitted as part of my first request for compassionate release, along with the initial response from Mr. Wills. Other than the facts laid out above, the details remain the same, so I won't waste valuable time repeating myself. However, when it comes to the need to avoid unwarranted sentencing disparities, as required by 18 U.S.C. 3553(a)(6), I think it is important to consider some recent court rulings and subsequent legal precedents.

The U.S. Supreme Court ruling in *Alleyne v. United States* settled a long-standing controversy surrounding the burden of proof required by the Sixth Amendment. In short, Justices ruled that a jury must find a person guilty of specific conduct, in order for a judge to use that element to impose a mandatory minimum sentence. This is of particular importance in my current case, where the mandatory minimum penalty was doubled, based solely on a crime that I was convicted of in the 80's. The jury did not weigh my criminal history when it issued a verdict. If the *Alleyne* decision were applied here, the sentence would be half as long.

Even more important is the outcome of a federal case in the same District where I was prosecuted. Edwin Schmeiding and his wife, Linda, were indicted for growing marijuana on their farm about 30 miles up the road from mine. U.S. Attorneys dismissed the indictment against Linda, while Edwin received two years of probation. This, despite the Schmeiding's cultivation of more than 8,000 plants, a number 55 times greater than the amount found on my family's farm. Due to its large size, the Schmeiding's operation could not have been compliant with Michigan law. The exact opposite is true in my case. Both my son and daughter were registered caregivers with properly displayed patient ID cards outside their two distinctly separate greenhouses. Although the plants were grown on my land, I was not responsible for their care and knew little about what took place behind the barbed wire fence and burlap that was put up at the request of local law enforcement.

Finally, the DOJ Office of the Inspector General issued a report in May entitled *The Federal Bureau of Prisons' Compassionate Release Program*. Among other findings, the review found that the program "inevitably provides cost savings to the BOP and provides assistance to the BOP in addressing its ever-increasing and significant capacity problems." In my case, the \$1.2 million price tag initially estimated for healthcare costs alone has already increased due to my eye problem. If my anti-rejection medication continues to be denied, I will either need dialysis every two to three days or I will require another kidney-pancreas transplant. Sadly, the Inspector General's evaluation found that out of just over 200 prisoners approved for compassionate release by a Warden or Regional Director, 13% perished while waiting for a decision from the BOP director. I genuinely fear that I am quickly becoming the latest statistic.

For the purposes of providing all of the information laid out in 18 U.S.C. 3582(c)(1)(A), my proposed release plan includes residing with my wife, Tracey. She works at the University of Michigan and has a small home in Britton, MI. In the event that compassionate release is granted, my healthcare would be provided by established physicians in Michigan. I would support myself and pay for necessary treatment with income from disability, as well as Tracey's private insurance and personal wages.

In the event that relief cannot be provided under 18 U.S.C. 3582(c)(1)(A), further legal action will be the only remaining option to ensure my survival in prison. Please carefully weigh the impact of your decision.

Thank you in advance for your thoughtful consideration of these issues.

Sincerely,

Gerald Lee Duval, Jr. #10717-050

cc: President Barack Obama

Vice President Joe Biden

Attorney General Eric H. Holder

Deputy Attorney General James M. Cole

Charles E. Samuels, Jr.
Director, Bureau of Prisons

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U.S. Senator Carl Levin

U.S. Senator Debbie Stabenow

Congressman Tim Wahlberg

Michigan Governor Rick Snyder