

April 15, 2011

Barack H. Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: Petition for Stay of Execution of Incarceration
and Executive Commutation of Sentence
Marion P. Fry, M.D.

Dear Mr. President:

1. I, Laurence Jeffrey Lichter, attorney for Petitioner Marion P. Fry, M.D., do hereby swear that each question is answered fully, truthfully and accurately based upon my information and belief and to the best of my ability. The only attachment is the Reporter's Trial Transcript entitled "Status Conference", dated March 6, 2008. Therein is included the sentencing of Marion P. Fry, M.D., her husband, attorney Dale Schafer, and the accompanying Motion for Bail on Appeal which was granted by the Honorable Frank C. Damrell, Jr., Judge of the United States District Court for the Eastern District of California.

This petition is for commutation of sentence only, and there is no need for remission of fines and/or restitution in this case.

The undersigned, Laurence Jeffrey Lichter, attorney at law, petitions on behalf of Petitioner, Marion P. Fry, M.D., a convicted federal offender. She is due to report to a federal designated facility on May 2, 2011.

Marion P. Fry, M.D. has yet no registration number and hopefully, will never have one. Her Social Security No. is 562-08-3536. She is not yet confined to a federal institution.

Dr. Fry was born on June 8, 1956 in Los Angeles, California and is a United States citizen.

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She has never before been arrested nor convicted of an offense or applied for a commutation of sentence.

2. Offenses for Which Commutation is Sought.

Marion P. Fry, M.D. was convicted by jury trial in the United States District Court for the Eastern District of California for the crime of violation of 21 U.S.C. § 841(a)(1) (manufacture of marijuana and conspiracy), and 21 U.S.C. § 846 (conspiracy to distribute at least 100 pounds of marijuana). She was acquitted of manufacturing at least 100 plants.

Dr. Fry was sentenced on March 6, 2008, to imprisonment for sixty months on each of Counts I and II to be served concurrently for a total term of sixty months imprisonment. Petitioner was ordered to pay a special assessment of \$200. The Court found the defendant did not have the ability to pay a fine, and imposition of the fine was waived. Upon release from imprisonment, Petitioner was sentenced to be placed on supervised release for a term of forty-eight months on each of Counts I and II concurrently for a total term of forty-two months.

Petitioner was over 50 years of age when the offense was committed.

3. Petitioner has not begun her sentence of imprisonment. This is because the undersigned counsel, like the Court, is

concerned about the health of these two defendants. This is not anything malingering. There are serious health problems, emotional problems as well.

Dr. Fry has been diagnosed with bi-polar condition, panic disorder, social phobias, hyperactive disorder, but that coupled with her situation involving the breast cancer and its potential to return, and all the circumstances surrounding this case, I think are exceptional.

Reporter's Transcript, page 122, lines 21 through page 123, line 1.

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The Court heard from numerous physicians about Dr. Fry's chronic pain from chemotherapy and two automobile accidents she was in shortly before the date of sentencing. One of these included a letter from her board-certified psychiatrist.

Dr. Fry's multiple mental disorders severely impair her ability to function and can compromise her judgment and insight and cause severe fluctuations in her mood and intermittent impairment in her reality testings. These disorders would be made much worse, in my professional judgment, by incarceration. If incarcerated, Dr. Fry's fragile psyche is likely to decompensate and she will be paralyzed by her anxiety and become psychotic, depressed and/or manic and likely require hospitalization. All of these states are very damaging to the brain and would make treatment and recovery difficult or impossible post-incarceration. Costs of required interventions could increase considerably were she to be incarcerated. Due to these mitigating factors and Dr. Fry's efforts to address these problems on an outpatient basis with medication and psychotherapy and due to Dr. Fry's non-criminal nature, fundamental honesty and good intentions and lack of a criminal record, I strongly recommend that she be treated with leniency.

Reporter's Transcript, page 37, line 19 through page 38, line 20.

Dr. Fry appealed her conviction to the Ninth Circuit Court of Appeals unsuccessfully. It is my understanding that her attempt to seek review by the United States Supreme Court was also unsuccessful, and she is due to be incarcerated on May 2, 2011, having exhausted all other avenues but for this appeal for clemency.

5. It should be clear that this appeal for clemency is based on the unfairness of this case with the mandatory minimum five-year sentence. This was felt by the Court at the time of sentencing and the Assistant United States Attorney who understood there was no way to avoid the mandated sixty month sentence imposed in this case as the minimum required by law.

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That makes this sentencing, should it stand, a tragedy for all involved: from Dr. Fry's five children to the Judge of the District Court. This tragedy can be averted only by the President of the United States and those who advise him.

Dr. Fry was originally plagued by back problems. As treatment, it was recommended that she undergo a breast reduction surgery. Unfortunately, the surgery revealed breast cancer and Dr. Fry, instead of having her breasts reshaped, had a radical double mastectomy and left the hospital with no breasts at all. As noted in the attached Reporter's Transcript, Dr. Fry's oncologist and surgeon were concerned about her extreme reaction to the chemotherapy required by her as a cancer patient. They recommended that she try medical cannabis, recently legalized at that time in the State of California. The recommendation of cannabis in her particular case worked extremely well.

Dr. Fry set out to learn about cannabis medicine and its legal status, both in the State of California and in the United States of America. She knew she could recommend cannabis to others and not run afoul of the federal law from Conant v. Walters, 302 F.2d 629 (9th Cir. 2002), *cert. denied* October 14, 2003.

The attorneys who advised her, including her husband and co-defendant, Dale Schafer, closely followed the Ninth Circuit Court of Appeals' case of Raich v. Ashcroft, 352 F.3d 1222 (9th Cir. 2003), which held that marijuana could at times be necessary medically and should be allowed to be distributed under state law without violating the Controlled Substances Act. Dr. Fry had been advising her patients that marijuana was unlawful under federal law which to her meant transactions had to be within the state boundaries. She was being advised by her attorneys that the Ninth Circuit had broadened its decision in Raich, *supra*.

The deputy sheriffs, invited by Dr. Fry into her home to see the growing cannabis, were directed by the District Attorney of El Dorado County, Gary Lacy, not to pursue further investigation because Dr. Fry, in all the aspects of her practice and personal life, was following California state law. This was further verified by her husband who had been in contact with California's Attorney General Bill Lockyer.

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It is to be noted with some irony that Dr. Fry came under the aegis of the sixty-month mandatory minimum federal sentence only because the investigation continued to a degree right until the Supreme Court reversed the Ninth Circuit in Gonzalez v. Raich, 545 U.S. 1 (2005), decided June 6, 2005. Dale Schafer stopped all distribution immediately upon the Supreme Court's decision. Dr. Fry and Dale Schafer were indicted shortly after. Reporter's Transcript, page 63, lines 16-17.

Despite the legal confusion, Dr. Fry at all times acted as a prudent physician. This is why, of the ten undercover agents and officers sent to her posing as patients, only one received a medical cannabis recommendation. Since it is common in medical practice to provide patients with medicine on hand, Dr. Fry provided that patient/investigator medicine as well, even though she was clearly nervous about doing so. Otherwise, she only acted as a physician while her husband-attorney and co-defendant manufactured the plants and with others agreed to distribute some cannabis to patients. Dr. Fry was involved in none of that.

The attached transcript provides ample description of this tragedy. including the position at that time of the Assistant United States Attorney.

On behalf of Dr. Fry and her five children, I beseech you to release Judge Damrell and others from participating in this tragic result not by pardoning her behavior but by commuting her sentence to one that does not involve the brutality of incarceration. The attached transcript aptly demonstrates why the mandatory five-year incarceration in this case would be unjust, even perhaps fatal. This is the rare case where clemency is warranted beyond any reasonable doubt.

I hereby certify that all answers to the above questions and all statements contained herein are true and correct to the best of my knowledge, information and belief. I understand that any intentional misstatements of material facts contained in this application form may cause adverse action on my petition for Executive Clemency and may subject me to criminal prosecution. Executed this 15th day of April, 2011, at San Francisco, California.

LAURENCE JEFFREY LICHTER
Attorney for Petitioner
MARION P. FRY, M.D.