

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

May 28, 2013

Dear Warden Grondolsky,

My name is Gerald Lee Duval, Jr. and my Register Number is 10717-050. I have been ordered to self-surrender to FMC Devens on June 11th, 2013. While I do not yet reside in your facility, I would like to officially initiate a 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 in my case, which could not have been reasonably foreseen at sentencing.

Some of the factors to consider include the meticulous management and continual follow up attention necessary to provide me with adequate medical care, the prohibitive financial burden of such treatments and the minimal threat posed to society if I am released. Also of importance is the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.

I am a disabled farmer from rural Michigan. My son and I were convicted of drug trafficking, despite our status as registered medical marijuana patients and our adherence to state law. In November 2008, 63% of Michigan voters passed a law to authorize the use of cannabis for medical purposes. In the months prior to that vote via video on April 21, 2008, President Obama himself declared "if it's an issue of doctors prescribing medical marijuana as a treatment for glaucoma, I think that should be appropriate because there really is no difference between that and a doctor prescribing morphine or anything else."

I am one of the glaucoma patients the President specifically referenced, although eye diseases are not the only serious conditions that I suffer from. I am the recipient of a pancreas and kidney transplant, which requires \$1,300 of monthly lab work just to monitor my organs. Often, doctors order additional diagnostic tests which run upwards of \$25,000 a piece. 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. The annual cost to preserve my kidneys and pancreas alone tops \$100,000. In addition, I require treatment for coronary artery disease and diabetic retinopathy, which has forced me to undergo nearly two-dozen eye surgeries. These expensive optical procedures will likely need to be repeated several times during the decade that I am in BOP custody.

According to 18 U.S.C. 3582(c)(1)(A), a request for consideration may be initiated "only when there are particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing." While the gravity of my illnesses might have been conceivable, my status as a state-legal medical marijuana patient was ruled inadmissible. In addition, the court could not have predicted that Colorado and Washington would pass laws to legalize recreational cannabis two months after my sentencing, joining 18 states and the District of Columbia with medical marijuana laws on the books.

Equally compelling and unanticipated by the court are results of a March 2013 poll by the Pew Research Center. It shows a majority of Americans favor the total repeal of cannabis prohibition. Pew indicates that three out of four U.S. citizens believe cannabis has a legitimate medical use and almost as many feel that federal enforcement of marijuana laws costs more than its worth. The polling data is enclosed for your review.

The overwhelming support of the American public is essential to consider given that 18 U.S.C. 3553(a) calls for several factors to be accounted for when imposing a sentence, including the need to “promote respect for the law, and to provide just punishment for the offense.” I humbly ask you whether locking up a disabled medical marijuana patient for ten years - a sentence longer than some child rapists and murderers receive – achieves the statutory mandate. My son is currently serving a five-year prison sentence and I’ve lost the family farm. Little more could “afford adequate deterrence to criminal conduct” than the forfeiture of my estate and the imprisonment of my son. Additionally, “protecting the public from further crimes” will be substantially mitigated by the eight-year term of supervised release that’s been imposed.

18 U.S.C. 3553(a)(6) also mandates “the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.” While relief usually comes from a Judge, the BOP’s Compassionate Release program is also an appropriate mechanism for delivering justice. In the case of medical cannabis specifically, the typical prison sentence ranges from 18 months to five years. Rarely are medical marijuana offenders sent to prison for over five years, especially in cases like mine where every effort has been made to obey all state laws. In many instances, similarly situated offenders receive house arrest, probation or prison terms of less than two years.

For instance, Ed Rosenthal was sentenced to one day in federal prison after being convicted at trial for operating a warehouse in California where thousands of plants were seized. Robert Pattison is another prime example. DEA agents in Montana confiscated 420 plants from Pattison compared to the 140 seized in my case. Pattison received twenty months in prison. My sentence is six times longer than his even though I was convicted of growing one-third the number of plants. To further illustrate the disparity, Randy and Stephanie Leibenguth pleaded guilty to manufacturing more than 500 plants. One was given probation and the other received a three-month prison sentence. Charlie Lynch operated both a nursery and a dispensary in California, while I am a patient who provided medicine for myself and no one else. Lynch received a year and a day in prison after being convicted at trial, while my sentence is ten times longer. The BOP is uniquely positioned to right this obvious wrong in the swiftest manner possible.

Attached to this request for compassionate release, you will find notes from my nephrologist on the extensive kidney and pancreas monitoring required on a monthly basis. My physician also wrote a letter explaining the lethal consequences of denying routine treatment. Allowing me to continue to bear the financial burden of this costly care in a setting outside prison is the fiscally responsible choice for the BOP, especially in light of the recent budget sequester.

The Department of Justice's Office of the Inspector General issued a report last month entitled *The Federal Bureau of Prisons' Compassionate Release Program*. Among other findings, the DOJ review found that "a properly managed compassionate release 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 BOP could save at least \$1.2 million in healthcare costs alone. Sadly, the Inspector General's evaluation found that out of just over 200 cases where compassionate release was approved by a Warden or Regional Director, 13% of the prisoners died while waiting for a decision from the BOP director. This necessitates the urgency with which I write you today, before I have even turned myself in to begin serving my sentence.

It's also worth noting that the recent DOJ review clarifies that the BOP's regulations and Program Statement *do not* limit compassionate release to medical requests. Similarly, the report indicates that Congress did not intend for "extraordinary and compelling circumstances" to include only medical conditions. That is why the Office of the Deputy Attorney General has been purposely tasked with reviewing "non-medical requests for compassionate release." This is of particular importance when considering whether state laws that authorize the use of marijuana play any role in my compassionate release request.

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 recently purchased a home. In the event that compassionate release is granted, my healthcare would continue to be provided by established physicians in Michigan. I would support myself and pay for the necessary treatment with disability payments that I currently receive, as well as Tracey's private insurance and personal income.

In the event that relief cannot be provided under 18 U.S.C. 3582(c)(1)(A), I fear that I will have no choice but to take further legal action to ensure my survival beyond prison. Please carefully weigh the impact of your decision.

Thank you in advance for your thorough consideration of the issues contained within.

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

Thomas R. Kane, PhD.
Deputy Director, Bureau of Prisons

Joe Norwood
Regional Director, Northeast Region
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U.S. Senator Debbie Stabenow

U.S. Senator Carl Levin

Michigan Governor Rick Snyder

Congressman Tim Wahlberg