


ATTORNEY & COUNSELOR AT LAW

graham.carner@gmail.com

October 25, 2019

VIA ECF

The Honorable Valerie E. Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Bernard J. Ebbers; Cause No. 1:02-CR-1144-VEC

Dear Judge Caproni:

This letter is submitted by Mr. Ebbers in further support of his Motion for Reduction in Sentence (Docket # 350). Specifically, this letter addresses the new information regarding Mr. Ebbers' health conditions that was provided by the Government on October 23, 2019 (Docket # 358). This new information further supports Mr. Ebbers' Motion, as demonstrated below.

Ebbers has previously cited three extraordinary and compelling reasons for this Court to grant compassionate release: (1) his age, (2) his medical condition, and (3) the support of his release by Hon. Barbara Jones, the retired judge who imposed his sentence. The new information provided by the Government bolsters all three of those reasons.

Age

Under U.S.S.G. § 1B1.13, Application Note 1(B), Age of the Defendant, extraordinary and compelling reasons exist where "[t]he defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less."

Ebbers is 78 years old, has served over 13 years in prison, and is experiencing a serious deterioration in physical or mental health because of the aging process. Ebbers has already demonstrated in prior filings that he meets the health component of Application Note 1(B). As demonstrated in Ebbers' Reply, the BOP agrees. But the new medical evidence submitted by the Government, highlighted below, further shows that Ebbers is experiencing a serious deterioration in physical or mental health because of the aging process.

Letter to Judge Caproni
October 25, 2019
Page 2

Medical Condition

Under Application Note 1(A), Medical Condition of the Defendant, extraordinary and compelling reasons exist if an inmate is suffering from “serious physical or medical condition”, “serious functional or cognitive impairment”, or “experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.”

The recent information supplied by the Government shows that Mr. Ebbers is suffering from functional and cognitive impairment as well as deteriorating physical and mental health because of the aging process. These conditions substantially diminish Mr. Ebbers ability to provide self-care. As previously shown, the BOP agrees that Mr. Ebbers is not expected to recover from many, if not all, of his ailments. Below, Ebbers highlights the significant new information provided by the Government regarding Mr. Ebbers’ physical and mental health.

From Sealed Exhibit “A”:

- Mr. Ebbers has been found on multiple occasions to be disoriented.
- Mr. Ebbers scored **10/30** on the St. Louis University Mental Status Examination (SLUMS). A score of 20 or lower indicates dementia. *See, e.g., http://medschool.slu.edu/agingsuccessfully/pdfsurveys/slumsexam_05.pdf* (this is offered as representative of the SLUMs test, and is not necessarily the precise test given to Mr. Ebbers).
- There is a concern that Mr. Ebbers’ anemia and rapid weight loss are indicative of a malignant condition.
- Mr. Ebbers has difficulty remembering time.
- Mr. Ebbers was recorded at 155 pounds on 10/09/2019. (Mr. Ebbers weighed 200 pounds on 07/12/2018 and 187 pounds on 01/17/2019. *See* Docket # 350.3 at pp. 32, 65).

From Sealed Exhibit “B”:

- Mr. Ebbers has been provisionally diagnosed with “abnormal weight loss, microcytic anemia, and abnormal LFT’s (Liver Function Tests).”
- An “urgent request” has been made for EGD with colonoscopy with anesthesia.
- A request has also been made for a sonogram of the liver.

Letter to Judge Caproni
October 25, 2019
Page 3

From Sealed Exhibit "C":

- In this psychological evaluation, Mr. Ebbers stated that he was not aware he was in a prison and did not know the date or time.
- The evaluation determined that Mr. Ebbers "appears to be suffering from cognitive issues to include memory and orientation."
- The new unit where Mr. Ebbers is appropriate so "**he can receive assistance with daily living skills**". (emphasis added). (This is indicative of an inability to provide self-care).

From Sealed Exhibit "D":.

- Mr. Ebbers was found to have "slow" and "asymmetric" movements when his coordination was tested.
- Mr. Ebbers was noted as having "Poor Grooming, Unkempt, Disheveled" (This is indicative of an inability to provide self-care).
- Mr. Ebbers' "Recent Memory" and "Learning Ability" were found to be impaired.
- His "Calculating Ability" was found to be Inaccurate.

Remarkably, nearly all of the recent changes in Mr. Ebbers' physical and mental health mirror the observations and concerns expressed by his daughter in her Declaration of August 28, 2019. *See* Docket # 350.6. The Government originally downplayed her observations, but now the BOP doctors have finally taken notice of these conditions.

In short, the new information submitted by the Government further underscores the serious decline in Mr. Ebbers' physical and mental health. His ability to provide self-care is substantially diminished.

Judge Jones' Support

Mr. Ebbers' poor health was a major factor cited by Hon. Barbara Jones in her letters supporting Mr. Ebbers' release. *See* Docket # 350.1. Her reasoning is further bolstered by Ebbers' continued mental and physical deterioration, as evidenced by the new information recently submitted by the Government.

Again, the Sentencing Commission has expressed its position that compassionate release be granted if the inmate meets all other requirements of 18 U.S.C. § 3582(c)(1)(A) and **any one** of the extraordinary and compelling reasons is found to exist. *See* Application Note 4. Here, Ebbers has conclusively demonstrated three

Letter to Judge Caproni
October 25, 2019
Page 4

extraordinary and compelling reasons for this Court to order his compassionate release.

As demonstrated in Ebbers' original Motion, Reply, and herein, Ebbers meets all of the criteria for compassionate release under 18 U.S.C. § 3582(c)(1)(A).

When Congress passed the First Step Act, it declared its clear intent for greater use of compassionate release. In light of the overwhelming medical evidence now before this Court, Mr. Ebbers respectfully requests that this Court grant his Motion and order his immediate release under any conditions the Court deems appropriate under the circumstances.

Sincerely,

/s/ Graham P. Carner

GRAHAM P. CARNER, PLLC