

JAMES B. CRAVEN III

ATTORNEY AT LAW

CYNTHIA C. KEITH
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March 10, 2016

Kathleen Cooper Grilli, Esquire
General Counsel
U.S. Sentencing Commission
One Columbus Circle, NE-Suite 2-500
Washington, DC 20002-8002

Dear Ms. Grilli:

Thanks for your March 1 letter. This is about just the latest BOP compassionate release horror story. I could tell you dozens more, truly, and will as I find the time.

For 18 months we worked to get Kevin Zeich home to die. Enclosed are copies of just a very few letters from my thick file. In March 2015 Judge O'Neill in Fresno called Kathy Kenney and asked her to speed things up. Last fall he called her again. William Wong, AUSA in Sacramento, called her at least twice. The office of Congressman Kevin McCarthy weighed in as well.

Finally, on March 4 Kathy Kenney emailed me that Kevin Zeich had been approved for compassionate release. The news brought tears to my eyes and I immediately advised Kevin's daughter in Bakersfield, California that her father would be coming home at last. Monday morning, March 7, Kevin Zeich died at FMC Butner. Judge O'Neill's reaction, "I am saddened beyond description." Me too.

There are dozens more as bad as this. Help!

Many thanks.

Very truly yours,



James B. Craven III

JBCIII/jkl
Enclosure



U.S. Department of Justice


Federal Bureau of Prisons

Office of the General Counsel

Washington, DC 20534

JAN 27 2016

MEMORANDUM FOR J. C. HOLLAND, WARDEN
FEDERAL MEDICAL CENTER
BUTNER, NORTH CAROLINA

FROM: 
Kathleen M. Kenney
Assistant Director/General Counsel

SUBJECT: ZEICH, Kevin
Federal Register No. 56360-097
Request for Reduction in Sentence

Please be advised that Mr. Zeich's request for a reduction in sentence (RIS) pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) and PS 5050.49, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), Section 3(a) ("Terminal Medical Condition") is denied. We have carefully reviewed the documentation submitted with this request and have consulted with the Medical Director, Health Services Division.

Mr. Zeich, 55 years old, has been diagnosed with metastatic cholangiocarcinoma, hypertension, hyperlipidemia, diabetes, and visual disturbance. On September 3, 2015, he was found to have cancer outside of the bile duct during surgery to remove his gall bladder. Chemotherapy was initiated and the treating oncologist reports Mr. Zeich's disease is stable. He is currently independent with his activities of daily living (ADL). The Medical Director believes Mr. Zeich's life expectancy is currently indeterminate.

JAMES B. CRAVEN III
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February 4, 2016

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Kathleen M. Kenney, Esquire
Assistant Director and General Counsel
Federal Bureau of Prisons
320 First Street, NW-Suite 654
Washington, DC 20001

Re: Kevin Brian Zeich
Reg. No. 56360-097

Dear Kathy:

I could not have been more astonished then when I saw today your January 27 memorandum in which you concluded Kevin Zeich is not sick enough for compassionate release. I will go so far as to say that had you personally seen Kevin Zeich or spoken with the oncologists at FMC Butner, your decision would have been favorable.

Enclosed is a November 5 radiology report showing that the nodule or tumor on his right lung has grown, "to approximate 6 mm in greatest dimensions as opposed to 5 mm on previous exam." And, guess what, on August 5 (copy of that report enclosed too), it had grown to 4.3 mm, "slightly larger than the previous CT scan." So we know that from August 5 to November 5 the tumor grew from 4.3 mm to 6 mm. That's just under 40% in size, for heaven's sakes.

Almost a year ago, on February 23, 2015, Kevin Zeich's records showed the following:

- A. Syphilis is suspected as a possible cause of his loss of sight, but "given Mr. Zeich's life expectancy and desire to maximize quality of life...if MRI is suggestive of metastasis, I would not perform a biopsy since the risks would outweigh the benefits in his case."
- B. Stage 4 cholangiocarcinoma with liver mets.
- C. Mass suspected for metastatic disease in the chest.
- D. Heart demonstrates coronary artery calcification consistent with arteriosclerosis.
- E. Malignant neo of liver...Malignant neoplasm of biliary track.
- F. Minimal light perception in right eye and cannot count fingers in left-eye.

- G. Paresthesia both hands and feet.
- H. He also has end-stage malignancy (Dr. Milton Jones-10/28/14).
- I. Inmate being treated for Metastatic Cholangiocarcinoma...epigastric pain secondary to his ca.
- J. Chronic LBP (low back pain) that is getting progressively worse...Pt. with history of stage IV cancer and it may be possible that he has bone Mets, which could explain resting pain.

Kevin Zeich is 55 now, but long out of warranty. He is indisputably terminally ill. He has a loving home waiting for him with his daughter, Kimberly Heraldez in California. And the home has been blessed and approved by a USPO there. As of today he has served just over 22 years 3 months straight calendar time, 25 years 6 months with earned BOP good time, or just under 94% of his sentence. His release date is April 27, 2019 but that is truly academic, given his health situation.

Judge Lawrence O'Neill in Fresno has called you at least twice about this sad case, as has William Wong, the AUSA who has the case in Sacramento. What possibly could be the up side for the BOP in keeping Kevin Zeich at FMC Butner any longer? It just makes no sense at all.

Finally, in a February 1 letter, Kevin Zeich very poignantly told me that all the chemotherapy he has had has served only to make his eyesight worse. He is virtually blind now, and simply wants to go home to California and be with his daughter and grandchildren, while there is yet time. Is that too much to ask? Please reconsider and let us know.

Many thanks.

Very truly yours,



James B. Craven III

JBCIII/jkl

Enclosure

Cc: Hon. Lawrence J. O'Neill
Hon. Kevin McCarthy
William Wong, Esquire
Mr. Kevin Brian Zeich
Ms. Kimberly Z. Heraldez

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February 19, 2016

Kathleen M. Kenney, Esquire
Assistant Director and General Counsel
Federal Bureau of Prisons
320 First Street, NW-Suite 654
Washington, DC 20001

Re: Kevin B. Zeich
Reg. No. 56360-097

Dear Kathy:

Kevin Zeich called this morning to tell me that:

- A. He has turned yellow from head to toe. Jaundice I suppose.
- B. He has lost 20 pounds over the past six weeks, without trying to.
- C. He hurts like hell and doesn't want to die at FMC Butner as so many others have. See for example Edmundo Olivera and David Bazan, just to name two tragic cases of BOP inaction.

Is there any reason to keep this poor man there any longer? Of course not. For heaven's sake, let him go. And tell me something, please.

Many thanks.

Very truly yours,



James B. Craven III

JBCIII/jkl

Cc: Hon. Lawrence J. O'Neill
Hon. Kevin McCarthy
William Wong, Esquire
Mr. Kevin Brian Zeich
Ms. Kimberly Z. Heraldez

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February 19, 2016

Kathleen M. Kenney, Esquire
Assistant Director and General Counsel
Federal Bureau of Prisons
320 First Street, NW-Suite 654
Washington, DC 20001

Re: Kevin B. Zeich
Reg. No. 56360-097

Dear Kathy:

Second letter today about Kevin Zeich. An oncologist at FMC Butner told him today that:

- A. He has total liver failure.
- B. His cancer is remarkably aggressive.
- C. He will be transferred to palliative/hospice care.

Need I say more? Please let me know.

Very truly yours,



James B. Craven III

JBCIII/jkl

Cc: Hon. Lawrence J. O'Neill
Hon. Kevin McCarthy
William Wong, Esquire
Mr. Kevin Brian Zeich
Ms. Kimberly Z. Heraldez

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March 1, 2016

Kathleen M. Kenney, Esquire
Assistant Director and General Counsel
Federal Bureau of Prisons
320 First Street, NW-Suite 654
Washington, DC 20001

Re: Kevin B. Zeich
Reg. No. 56360-097

Dear Kathy:

As you know, on February 5 Judge O'Neill asked me if there was any way to get an outside evaluation of Kevin Zeich by a physician knowledgeable about end of life care/issues. I gave my very thick file on Kevin Zeich to a hospice doctor friend at my church here over the weekend. He and his wife, a hospice nurse, reviewed the records and told me it is little short of miraculous that Kevin Zeich is still among the living. Who I am to argue with them, or with the oncologists at FMC Butner who agree? This week maybe? Let us know.

Many thanks.

Very truly yours,



James B. Craven III

JBCIII/jkl

Cc: Hon. Lawrence J. O'Neill
Hon. Kevin McCarthy
William Wong, Esquire
Mr. Kevin Brian Zeich
Ms. Kimberly Z. Heraldez

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March 2, 2016

Kathleen M. Kenney, Esquire
Assistant Director and General Counsel
Federal Bureau of Prisons
320 First Street, NW-Suite 654
Washington, DC 20001

Re: Kevin B. Zeich
Reg. No. 56360-097

Dear Kathy:

Kevin Zeich has now been moved to the palliative care/hospice unit at FMC Bunter. His oncologist told him this morning that they are "asking D.C. for expedited compassionate release." Seems appropriate. On an hour's notice I can pick him up and put him on a flight to California.

Many thanks.

Very truly yours,



James B. Craven III

JBCIII/jkl

Cc: Hon. Lawrence J. O'Neill
Hon. Kevin McCarthy
William Wong, Esquire
Mr. Kevin Brian Zeich
Ms. Kimberly Z. Heraldez

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February 16, 2016

Hon. Patti B. Saris
Chief United States District Judge
U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Re: Compassionate Release

Dear Judge:

I just read the statement of Marianne Mariano, the Federal Public Defender in Buffalo, on compassionate release, for delivery before the Sentencing Commission tomorrow. She is a wise woman who speaks the truth.

Kathy Kenney, Assistant Director and General Counsel of the BOP, tells me I do more compassionate release work than any other lawyer in the country. That said, my batting average is abysmal, though there are success stories occasionally. I could tell you horror stories though for the rest of the week. Enclosed is one of the best examples, an order entered July 23, 2015 by Judge Fuste in United States v. Olivera, No. 3:13 CR 111 (D. Puerto Rico). He was positively livid that day, and with good reason. Since then he has referred two of his cases to me for compassionate release, one of which we succeeded in. Judge Fuste and I, I hasten to add, are available as witnesses as to this absolutely broken dysfunctional process.

Many thanks. I hope to see you at the ALI meeting in May. Nancy Gertner, by the way, has a most deserving compassionate release case now, but last I heard was getting nowhere with it.

Very truly yours,

James B. Craven III

JBCIII/jkl

Cc: Marianne Mariano, Esquire

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**United States of America
Plaintiffs**

vs.

**Edmundo Olivera
Defendant**

CRIMINAL CASE 13-00111 (JAF)

MEMORANDUM TO COUNSEL AND BUREAU OF PRISONS

I am attaching to this memorandum my letter to Kenny Atkinson, Complex Warden at the BOP Butner Facility. That letter was copied to BOP Assistant Director / General Counsel Kathleen M. Kenney and the BOP General Counsel Rina Desai.

Inmate Edmundo Olivera passed away this morning. For today, we had set an emergency hearing on a habeas corpus motion filed by counsel due to the inaction of the BOP in reference to this case of compassionate release. Coincidentally, today we received a letter from Warden Atkinson informing that while he was reconsidering, as requested by us, the inmate passed away from metastatic lung and prostate cancer. It is obvious that this letter was only a convenient and disingenuous method to explain why the matter had not been dealt with in a timely way.

I must say that the Court feels that the BOP has acted late, arbitrarily and unfairly regarding this matter. It shocks the conscience to see federal correctional officials exhibiting harshness and lack of basic human charity towards a human being.

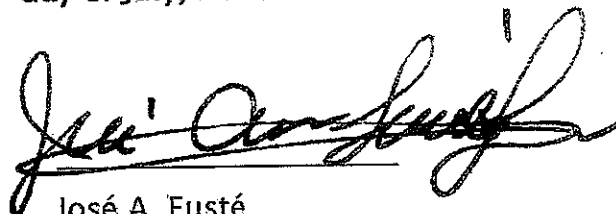
Inmate Olivera was properly convicted and sentenced, but I must stress that the principles of compassionate release should be administered and managed in keeping with our American traditions of justice and equality. The US Attorney's Office had no objection to the release.

Nothing was gained by the lack of action on our endorsement dated June 24. Personnel at Butner had previously voiced that this case was one proper for compassionate release. Waiting almost two months for a decision is an unfortunate act of correctional cruelty and, as such, must be denounced.

I expect the BOP to revisit the actions of its personnel in this case with the expectation that corrective action be taken to avoid this unacceptable result in the future.

The undersigned has served in the Federal Judiciary for 30 years, 6 of which were served as a member of the Judicial Conference Committee on Criminal Law that liaison with the BOP. What has transpired here is perhaps an indicator of ongoing discrimination, totally wrong and reprehensible. Otherwise, the only possible explanation is the carelessness across-the-board at the BOP.

In San Juan, Puerto Rico, this 23rd day of July, 2015.



José A. Fusté
United States District Judge

Attachments:

1. Letter addressed to Mr. Kenny Atkinson, Complex Warden, dated June 24, 2015 from Judge José A. Fusté.
2. Letter received on July 23, 2015 from Mr. Kenny Atkinson, Complex Warden.
3. Letter received on June 4, 2015 from MDC Guaynabo Attorney Advisor Kenneth L. Richardson.
4. Copy of letter addressed to Attorney Kathleen M. Kenney from Attorney James B. Craven, III, received on May 28, 2015, dated May 21, 2015.
5. Copy of letter addressed to Attorney Kathleen M. Kenney from Attorney James B. Craven, III, received on April 28, 2015, dated April 22, 2015.
6. Copy of letter addressed to Attorney Kathleen M. Kenney from Attorney James B. Craven, III, received on April 28, 2015, dated April 24, 2015.
7. Copy of letter addressed to Mr. Kenny Atkinson from Attorney James B. Craven, III, received on April 28, 2015, dated April 24, 2015.
8. USPO's Home Assessment Report for Compassionate Release.
9. Letter received on February 6, 2015 from Attorney James B. Craven, III.
10. Copy of letter addressed to Mr. Kenny Atkinson from Attorney James B. Craven, III, dated January 30, 2015.
11. Copy of letter addressed to Attorney Kathleen M. Kenney from Attorney James B. Craven, III, received on June 1st, 2015, dated May 26, 2015.
12. Copy of letter addressed to Attorney Kathleen M. Kenney from Attorney James B. Craven, III, received on June 24, 2015, dated June 16, 2015.
13. Copy of letter addressed to Attorney Kathleen M. Kenney from Attorney James B. Craven, III, received on June 24, 2015, dated June 17, 2015.
14. Copy of letter addressed to Attorney Kathleen M. Kenney from Attorney James B. Craven, III, received on June 24, 2015, dated June 10, 2015.

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February 25, 2016

Hon. Patti B. Saris
Chief United States District Judge
U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Re: BOP Compassionate Release

Dear Judge:

Enclosed is a piece a BOP client sent me by Nat Hentoff, about the sad case of Carlos Tapia-Ponce, who died at age 94 on February 1 at FMC Butner. I helped Ellen Lake in Oakland in this matter, as she was new to this frustrating work. Two BOP wardens and the Mexican government were pushing for compassionate release for him for three years, yet Ellen Lake truly could not get anyone to take her calls.

Many thanks.

Very truly yours,



James B. Craven III

JBCIII/jkl
Enclosure

~~████████████████████~~
~~████████████████████~~
SUBJECT: FYI

DATE: 02/05/2016 02:51:02 AM

Inmate's Death Leaves Lessons for U.S. "Justice" System

By Nat Hentoff and Nick Hentoff

This article appeared on Cato.org on April 3, 2016

Carlos Tapia-Ponce, the 94-year-old federal prisoner we have been writing about ("A Slow, Lonely Death in Prison" and "Dying in Prison for Love of Family") is finally going home. Tapia-Ponce died on Monday in a Federal Bureau of Prisons (BOP) medical facility in Raleigh, North Carolina. His remains will be cremated and mailed to his daughters in Juarez, Mexico. His death leaves us with important lessons for the future of the U.S. criminal justice system

~~A week ago, Ellen Lake, Tapia-Ponce's pro bono attorney, emailed U.S. Attorney Eileen Decker. She asked for an urgent meeting to discuss Decker's continued opposition to her dying client's request for a compassionate release. Under federal law, only the BOP can petition a court for the compassionate release of a federal prisoner.~~

Attached to Lake's email was a letter from Mexico's Ambassador to the United States, Miguel Basanez, the former director of the Judicial Reform Program at Tufts University's Fletcher School of Law and Diplomacy. Ambassador Basanez reported that during a recent consular visit at the BOP's medical center, Tapia-Ponce was found to be suffering from a severe gastric ulcer that made it difficult for him to eat. The condition, Basanez said, reduced Tapia-Ponce's life expectancy "in the short term."

Basanez argued that Tapia-Ponce had "a consistent history of good behavior in prison," "no history of violence" and was "not likely to pose a threat to any of our societies, if released and repatriated to Mexico."

Basanez's letter concluded: "The Government of Mexico believes there are extraordinary and compelling humanitarian reasons in Mr. Tapia's case for the Government to request" a compassionate release "for (the) sake of fairness and humanity on which our societies are founded."

Ten minutes after sending Basanez's letter by email, Lake received a call from Assistant U.S. Attorney Chris Kendall, who instructed her not to send any further communications. In a conversation straight out of Kafka's *The Trial*, Kendall tersely informed Lake that no one would meet with her, the U.S. Attorney's position was final, and the office was not willing to change it or to even talk about it.

Such officious indifference is familiar to judges and criminal defense attorneys who deal with the unchecked power of federal prosecutors on a daily basis. Prosecutors like Decker and Kendall act more like kings' ministers dispensing pardons than representatives of the people dispensing justice.

Such a steely sense of certainty and rectitude is what Victor Hugo described in Inspector Javert as "the evil of the good."

"Probity, sincerity, candor, conviction, the sense of duty, are things which may become hideous when wrongly directed," Hugo wrote in *Les Misérables*. "They are virtues which have one vice: error."

No less culpable for the injustice inflicted on Tapia-Ponce is Kathleen M. Kenney, the BOP's assistant director and general counsel. Since 2013, Tapia-Ponce was twice approved by two different prison wardens as eligible for a compassionate release. Yet Kenney waited eight months before denying Tapia-Ponce's first request on a technicality. Kenney delayed her ruling on Tapia-Ponce's second request for five months after it was filed in August 2015.

As Tapia-Ponce's health deteriorated, Kenney ignored Lake's repeated letters and telephone calls seeking a decision. Finally, Lake was forced to file a motion requesting that the U.S. District Court order the BOP to rule on her dying client's request for a compassionate release. Kenney finally denied Tapia-Ponce's second request the day before the scheduled court hearing, but failed to inform the court or Lake of her decision.

Kenney's denial letter conceded that Tapia-Ponce met all of the BOP's requirements for a compassionate release.

The disgraceful way in which Kenney handled Tapia-Ponce's requests is not an isolated incident. Since 2004, Kenney has presided over a compassionate release program that the DOJ's Office of Inspector General (OIG) described as "grossly

"mismanaged" in a scathing 2013 report. The year before, Human Rights Watch filed a report that was also highly critical of the BOP's badly mismanaged compassionate release program.

In late 2013 the DOJ announced the adoption of expanded compassionate release guidelines. However, as Tapia-Ponce's case demonstrates, there has been little overall change in Kenney's mismanagement of the program. Kenney's continued malfeasance justifies her immediate removal.

A 2015 DOJ OIG report, "The Impact of an Aging Inmate Population on the Federal Bureau of Prisons," concluded that a properly managed compassionate release program would result in a dramatic reduction of the federal prison population. Obama, who has yet to appoint a new BOP director since the retirement of Charles Samuels last year, should choose a proven manager from outside the BOP bureaucracy; someone who is capable of restructuring the compassionate release program into an engine for the rapid reduction of the federal prison population through the release of sick and aging prisoners.

Congress will consider comprehensive criminal justice reform later this year. Any legislation passed must allow qualified federal prisoners to bypass the BOP bureaucracy and file their compassionate release requests directly with the courts.

Of all those involved in Carlos Tapia-Ponce's case, only one person deserves to be applauded. As much as Decker and Kenney represent the worst failings of the American criminal justice system, Ellen Lake's pro bono efforts on behalf of Tapia-Ponce represent the best traditions of that system. After decades of indifference, Carlos Tapia-Ponce died knowing that there was at least one person involved in the U.S. court system who cared about what happened to him and was willing to fight for justice in his case.