

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ANTHONY CALABRESE,)	
)	
Plaintiff,)	
)	Case No. 2:18-cv-00148-WTL-MJD
v.)	
)	
FEDERAL BUREAU OF PRISONS,)	
)	
Defendant.)	

ANTHONY CALABRESE'S RESPONSE TO BOPS MOTION TO DISMISS

Now Comes the Plaintiff, ANTHONY CALABRESE, by and through his attorney JOSEPH R. LOPEZ, and states as follows:

Mr. Calabrese's request for compassionate release was submitted to Warden J. R. Bel who forwarded the request to the Bureau of Prison's Office of the General Counsel. The Office of General Counsel denied the request. Mr. Calabrese met the threshold criteria for consideration but the reduction in sentence was not appropriate. This decision was arbitrary and capricious as the OGC decided that early release was not appropriate, and it would minimize the severity of his offense without further explanation. Now, Mr. Calabrese's condition has deteriorated and he has been placed in hospice care.

Based on the review of applicable case law, this is an unusual situation since here the *Warden* submitted the request on behalf of the inmate. The action by the Warden verifies that Mr. Calabrese did meet all threshold requirements for a reduction in sentence based on his terminal illness.

This case does present extraordinary and compelling reasons warranting a sentence reduction and the OGC denial is arbitrary and capricious. Counsel has requested that the United

States Attorney in the Northern District agree to a de novo review of the reduction in sentence. The initial response was if Mr. Calabrese would cooperate and be interviewed there was a possibility of an agreement to de novo review of the RIS. Mr. Calabrese declined. This action is also arbitrary and capricious in an attempt to get Mr. Calabrese to waive his 5th amendment right as condition of consideration of recommending a de novo review of the RIS.

It is undisputed that Mr. Calabrese is terminally ill and has a limited amount of time to survive. In *United States v. Dimasi*, 220 F.Supp.3d (D. Massachusetts 2016), Judge Wolf commented on the Bureau of Prisons' restrictive policy for filing §3582(c)(A)(i) motions have been criticized by the Department of Justice Inspector General and various organizations, including Human Rights Watch, and the results have been broadened to include elderly inmates with serious medical conditions. Here, we have an inmate over 50 years of age who is terminally ill, yet the OGC denied the request but granted it in *Dimasi* who was not terminally ill. This restrictive policy is enforced without any clear guidelines and is arbitrary and capricious and worthy of criticism.

The facts in *Dimasi* are different here but the reasoning is the same. In *Dimasi* after his compassionate release motion was denied he was able to have four lawyers and one of which was a former Federal Judge convince the United States Attorney to encourage the BOP to reconsider its denial for Dimasi's request for early release. Unlike Mr. Dimasi, the plaintiff has been unable to convince the United States Attorney to reconsider the denial of Mr. Calabrese's request for early release. Since Mr. Calabrese is now in hospice and debilitated, there can be no real justification for the denial of a de novo review of his RIS.

The *Dimasi* case is an example of how the BOP caters to certain requests and denies other requests. Mr. Dimasi had the advantage of being a well-known politician who was able to

have a former Federal Judge as his advocate. Perhaps if Mr. Calabrese was able to persuade a former Federal Judge to intervene *pro bono*, the United States Attorneys and the BOP would reconsider his request. Calabrese requests similar treatment by the BOP and the United States Attorney's Office. Mr. Calabrese requests this Court to review the BOP's failure to comply with its own rules and regulations as mandated by 5 U.S.C. § 701 et. seq. It is obvious that the BOP and OGC give preferential treatment to inmates like Mr. Dimasi. Judge Wolf in *Dimasi* noted "Rather, the conduct of the Bureau of Prisons changed after Dimasi's lawyers persuaded the United States Attorney to intervene, and she encouraged the Bureau's General Counsel to reconsider the denial of Dimasi's request for a motion to reduce his sentence". This was a deviation from the process prescribed by the Bureau's regulations. It suggests that the decision to file the Motion for a reduction of Dimasi's sentence was driven more by the judgment of lawyers than of medical professionals at 220 F. Supp. 179. In other words, the BOP did not follow their own directives.

Judge Wolf also wrote in his opinion, "The Bureau of Prisons states that it filed the Motion on behalf of Dimasi because of his medical condition and would do the same for any inmate similarly situated." Although the involvement of the United States Attorney means the Bureau did not follow its established procedures with regard to Dimasi, its judgment is supported by the opinions of doctors, and therefore, deserves some deference. Here, the compassionate release is clearly supported by medical opinion, which now finds Mr. Calabrese lying in a bed at a hospice because BOP has acted arbitrary and capricious. The BOP should not be allowed to deviate from its procedures for one inmate and not another. Like *Dimasi*, Mr. Calabrese should get another review of his RIS and be released as he is not a danger to society and there will be no sentencing disparity under these set of facts.

The BOP should read Judge Wolf's opinion in *Dimasi*, because he wrote, "The future, of course, cannot be foretold. The Sentencing Commission, the Department of Justice Inspector General, and organizations including Human Rights Watch have encouraged the Bureau of Prisons to file motions for compassionate release more often when an inmate's health seriously deteriorates while he is in custody. This would allow courts to perform their traditional role in weighing all of the competing considerations and deciding what sentence is sufficient and no more than necessary for that inmate. The court hopes that the decision in this case will contribute to the humane administration of § 3582(c)(1)(A)(i) by the Bureau of Prisons in the future. 220 F. Supp. At 178. Needless to say, the BOP is allowing Mr. Calabrese who is bed ridden, debilitating and deteriorating to die, unlike Mr. Dimasi, who was cancer free when it filed its Motion for Compassionate Release. All inmates should be treated equally and Mr. Calabrese is entitled to the same review bestowed on Mr. Dimasi.

Respectfully submitted,

/s/Joseph R. Lopez

Joseph R. Lopez
Lopez & Lopez, LTD.
Attorney No. 6186562
53 W. Jackson Blad., Suite 1651
Chicago, IL 60604 (312) 922-2001

CERTIFICATE OF SERVICE

I, Joseph R. Lopez, an attorney, certify that in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), the foregoing document was served on May 24, 2018, pursuant to the District Court's system as to ECF filers.

Respectfully submitted,

/s/Joseph R. Lopez

Joseph R. Lopez
Lopez & Lopez, LTD.
Attorney No. 6186562
53 W. Jackson Blad., Suite 1651
Chicago, IL 60604 (312) 922-2001