



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

October 23, 2019

**BY 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 Ebbers*, 02 Cr. 1144 (VEC)**

Dear Judge Caproni:

The Government writes in further response to the motion of Bernard Ebbers, the defendant in the above-captioned case, for a sentence reduction pursuant to 18 U.S.C. § 3582, as amended by the First Step Act. As noted by Ebbers in his reply, after the filing of the Government's opposition to his motion, Ebbers, who is incarcerated at the Federal Medical Center in Fort Worth, Texas ("FMC Fort Worth"), was transferred from a housing unit without nursing care to a housing unit with 24-hour nursing care. In response to Ebbers' reply, the Government requested and received additional information from the Bureau of Prisons (the "BOP") concerning Ebbers' health, which is summarized below. For the reasons detailed in the Government's opposition, despite Ebbers' health status, which appears to be in flux, the Government respectfully submits that FMC Fort Worth is appropriately managing Ebbers' health conditions and that the 3553(a) factors weigh strongly against Ebbers' early release.

The Government has learned the following about Ebbers' current health status:

- On October 9, 2019, following reports that Ebbers had been disoriented, Dr. Sergio Mercado, Jr., the Medical Officer at FMC Fort Worth, evaluated Ebbers and determined that he should be placed in "a smaller unit where nursing can help keep him in a stable environment." See Clinical Encounter, attached hereto as Exhibit A.<sup>1</sup>
- Dr. Mercado also noted other health concerns related to Ebbers' weight loss and anemia, and reported that a colonoscopy is pending. See *id.*; see also Clinical Encounter Administrative Note, attached hereto as Exhibit B (noting that the request for a colonoscopy is "urgent").

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<sup>1</sup> Given the highly personal medical information contained in these records, the Government has filed all exhibits to this letter under seal. The Government last received information from the BOP regarding Ebbers' health on October 22, 2019.

- On October 11, 2019, Dr. Morris met with Ebbers and determined that Ebbers “appears to be suffering from cognitive issues to include memory and orientation.” Dr. Morris added that Ebbers is “appropriately housed in [a unit] where he can receive assistance with daily living skills.” *See* Psychology Services Consultation, attached hereto as Exhibit C.
- On October 21, 2019, Ebbers was seen for a monthly follow-up appointment. The Doctor noted that Ebbers is “[f]unctioning well with current environment . . . with minimal assistance . . . .” *See* Clinical Encounter, attached hereto as Exhibit D.

The Government recognizes the change in Ebbers’ health condition since the Government filed its opposition, including that Ebbers’ medical conditions now require that he be housed in a unit with 24-hour nursing care. The Government respectfully submits, however, that the Court should deny Ebbers’ motion for compassionate release. As an initial matter, the BOP’s ability to provide appropriate care for Ebbers is evidenced by the BOP’s placement of Ebbers in a unit with around the clock care, follow-up psychological evaluations, and other medical testing. Moreover, as detailed in the Government’s opposition, even assuming that Ebbers meets one of the categories of relief described in United States Sentencing Guidelines Section 1B1.13, a sentencing reduction for Ebbers – who was responsible for one of the largest frauds in history – would be grossly insufficient to comply with the sentencing goals set forth in Section 3553(a).

Respectfully submitted,

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