

Is the Doctor In? Why Leonard Peltier and Other Aging Prisoners Lack Adequate Medical Care



The continued incarceration of aging prisoners costs too much, doesn't serve justice and doesn't protect the public. (Image: [Jared Rodriguez / Truthout](#))

By members of the International Leonard Peltier Defense Committee, Truthout | Op-Ed

The Federal Bureau of Prisons (BOP) is responsible for incarcerating federal prisoners and is required to provide them with medically necessary health care. However, a recent [report by the Office of the Inspector General](#) (OIG), United States Department of Justice (DOJ), found that staffing shortages limit inmate access to medical care:

As of September 2014, the BOP had 3,871 positions in its institutions' health services units to provide medical care to 171,868 inmates. Of those 3,871 positions, only 3,215 positions (83 percent) were filled ... Although BOP policy states that the vacancy rate shall not exceed 10 percent during any 18-month period [the OIG] found that only 24 of 97 BOP institutions had a medical staffing rate of 90 percent or higher as of September 2014. Further, 12 BOP institutions were medically staffed at only 71 percent or below.

Despite critical health care shortages throughout the vast prison system, medical professionals (nurses, physical therapists and other senior medical staffers) are reportedly being routinely [assigned guard duties and other security-related shifts](#) (for which they have never been trained) to fill other chronic personnel gaps.

OIG's recommendations for increasing medical staff in federal prisons aren't likely to correct the problem any time soon, if ever. The US faces a [shortage of as many as 90,000 physicians](#) by 2025, including a critical need for specialists to treat an aging population that will increasingly live with chronic disease.

What does the shortage of medical personnel mean to the aging prison population?

According to Human Rights Watch, [aging prisoners are the most rapidly growing group in prisons](#) in the United States. The increase of elderly prisoners has been brought about by mandatory minimum sentences, "three strikes" laws and life sentences (with or without the possibility of parole). Parole was eliminated in many places, including the federal system. Even for those who are eligible for parole, the criteria for release are too narrow and officials continue to release prisoners at a low rate. Consequently, the number of [prisoners in the US, age 65 and older has doubled since 2007](#), even as the overall prison population fell slightly.

Multiple studies have found that a [prisoner's physiological age](#) averages 10 to 15 years older than his or her chronological age, due to the combination of stresses associated with incarceration and the conditions a prisoner may have been exposed to prior to incarceration.

Last year, the OIG found that [aging federal prisoners are costlier to incarcerate](#) than their younger counterparts due to their higher rates of illness and impairments. Older prisoners incur medical costs that are three to nine times as high as those for younger prisoners.



One such prisoner is Native American [Leonard Peltier](#), who is now serving two life terms, and is currently held in a high security federal prison, in Coleman, Florida. Peltier remains incarcerated for a crime he did not commit, having been wrongfully convicted in 1977 in connection with the shooting deaths of two agents of the Federal Bureau of Investigation (FBI). Peltier has been designated a political prisoner by Amnesty International. Nelson Mandela, Desmond Tutu, 55 Members of the US Congress and others -- including Judge Gerald Heaney, who sat as a member of the court in two of Peltier's appeals -- have all called for his immediate release. Widely recognized for his humanitarian works and a seven-time Nobel Prize nominee, Peltier also is an accomplished author and painter.

Appellate courts have repeatedly acknowledged evidence of government misconduct in the Peltier case -- including knowingly presenting false statements to a Canadian court in 1976 to extradite Peltier to the US, and forcing witnesses to lie at trial.

In an April 18, 1991, letter to Senator Daniel Inouye, Chair of the Senate Committee on Indian Affairs, Eighth Circuit Judge Gerald Heaney wrote:

The FBI used improper tactics in securing Peltier's extradition from Canada and in otherwise investigating and trying the Peltier case. Although our court [the 8th Circuit] decided that these actions were not grounds for reversal, they are, in my view, factors that merit consideration in any petition for leniency filed ... We as a nation must treat Native Americans more fairly . . . Favorable action by the President in the Leonard Peltier case would be an important step in this regard.

Heaney had previously also written this statement in 1986 in the Eighth Circuit's *United States v. Peltier* (800 F.2d 772, 775):

We find that the prosecution withheld evidence from the defense favorable to Peltier, and that had this evidence been available to the defendant it would have allowed him to cross-examine certain government witnesses more effectively...

Hon. Donald Ross also made this claim in 1978 in conjunction with the Eighth Circuit's *United States v. Peltier* (585 F.2d 314, 335 n.18):

The use of the affidavits of Myrtle Poor Bear in the extradition proceedings [of Leonard Peltier from Canada to the U.S.] was, to say the least, a clear abuse of the investigative process by the F.B.I.

And in 2003, Judges Seymour, Anderson and Brorby issued this statement in conjunction with the Tenth Circuit's *Peltier v. Booker* (348 F.3d 888, 896):

Much of the government's behavior at the Pine Ridge Reservation and in its prosecution of Mr. Peltier is to be condemned. The government withheld evidence. It intimidated witnesses. These facts are not disputed.

The federal prosecutor Lynne Crooks during oral argument on appeal before the Eighth Circuit Court on October 15, 1985 and again on November 9, 1992 has admitted that the

government "can't prove who shot those agents." In spite of this stunning admission, Peltier's conviction has not been overturned, nor has he been granted a new trial.

Eligible since 1986, Peltier also is long overdue for parole. The US Parole Commission has yielded to the objections of the FBI and DOJ in denying Peltier's applications for parole at every turn -- most recently in 2009 when he was told he will not receive another full parole hearing until 2024 when, if he survives, he will have reached nearly the age of 80 years.

Peltier is over 71 years old and suffers from diabetes, high blood pressure and a heart condition. In the past several years, frequent and sometimes long-term prison lockdowns have exacerbated these conditions. (In late April, prisoners at USP Coleman I began a hunger strike to protest such lockdowns – lockdowns for which the prisoners say there is no legitimate cause. Peltier participated in the action despite possible health consequences, and out of a genuine concern that to refuse might make him a target for retribution by his fellow inmates.)

According to an affiliate of Physicians for Human Rights, Peltier risks blindness, kidney failure, stroke and premature death, given his inadequate diet, living conditions and health care.

Indeed, in his review of [Peltier's medical records in 2000 and 2015](#), the physician concluded that his overall medical treatment had already been below a reasonable standard of care.

Decades before that review, Peltier suffered a stroke which left him nearly blind in one eye -- damage [independent physicians](#) say could have been prevented had he been treated sooner.

For many years, Peltier had a seriously debilitating jaw condition that left him unable to chew properly and caused consistent pain and headaches. The BOP medical facilities could not properly treat this condition. In fact, two prison surgeries only worsened Peltier's condition. A [physician from the Mayo Clinic in Rochester, Minnesota, offered to repair Peltier's jaw](#) free-of-charge, but was turned down again and again by prison authorities until the United Nations sharply rebuked the United States for subjecting Leonard Peltier to inhumane conditions. Surgery was performed and Leonard's condition improved somewhat. Subsequent surgeries are required, however, to fully address his condition. To date, such treatment has not been approved by BOP officials. In recent years, Leonard Peltier has again begun to experience severe discomfort related to his jaw, teeth and gums.

Peltier began exhibiting symptoms commonly attributed to prostate cancer in 2009. Medical experts agree that the cure rate for prostate cancer is high, but only if detected early. Pressured by Peltier's attorneys, the BOP ran standard blood tests in June 2010. Peltier received the results over four months later. On November 9, 2010, a prison physician ordered that a biopsy be performed. The biopsy wasn't performed until February 2011, and Peltier wasn't allowed to know the findings until late March 2011.

While the biopsy did not reveal the presence of cancer, Peltier's symptoms persist and BOP physicians have failed to determine the cause.

Late last year, during a physical examination, Peltier was diagnosed with an abdominal aortic aneurysm. Two weeks went by before the necessary equipment was brought into the prison to perform a magnetic resonance imaging scan and thereby verify the diagnosis. Again, weeks went by before Peltier was given feedback regarding the scan. BOP physicians at the prison could not definitively determine that surgery was needed. Peltier was taken to an outside physician many miles away from the prison, who opted to only monitor his condition. The aneurysm, if not repaired, could rupture at any time. Lacking access to immediate care, Peltier would bleed to death in a matter of minutes.

More recently, Peltier has been diagnosed with a pulmonary granuloma. Again, he was seen by an outside physician after a considerable delay.

As various human and civil rights organizations have argued in recent years, it isn't only expensive to keep the elderly confined; it's unnecessary. In many cases, the prisoners have served lengthy sentences already and, as the OIG determined, aging prisoners not only engage in fewer misconduct incidents while incarcerated, but have [a lower rate of re-arrest once released](#).

Simply put, the continued incarceration of elderly prisoners doesn't serve justice, isn't financially sustainable and doesn't protect the public.

Peltier has already served a major portion of his sentence and is being unnecessarily held in prison. His continued imprisonment will not ensure his safety and well-being. The recent OIG report on medical staffing shortages makes it clear that he will continue to be deprived of adequate health care when he needs it, if he receives care at all. Peltier's increasing age and infirmity, chronic illnesses and conditions of confinement should be reasons enough to give Peltier a compassionate release.

But it's doubtful that the BOP will concur.

The US Sentencing Commission provides criteria that warrant a reduction in sentence -- in this case, compassionate release. The BOP identifies those prisoners that qualify based on the criteria laid out by the Commission and bring a motion to the court for their early release. The courts hold final responsibility to judge whether a motion for compassionate release is appropriate or not.

In 2013, the OIG found that the BOP's [compassionate release program](#) had been poorly managed and implemented inconsistently, likely resulting in eligible prisoners not being aware of the program and not being considered for release, and terminally ill prisoners dying before their requests were decided. Two years later, despite changes made by the BOP, the OIG found that still more could and should be done to improve the compassionate release program.

However, according to testimony offered during a February 17, 2016 Commission hearing on compassionate release, the BOP too often impedes progress. Mary Price, general counsel for Families Against Mandatory Minimums, [stated](#): "The BOP has effectively hijacked the process and enforced its authority by withholding compassionate release motions, even for people who squarely had extraordinary and compelling reasons, if it felt for other reasons the prisoner should not be released. This bias has infected the process ... undermining the judicial role by effectively usurping it."

Those "other reasons" are likely to be the barriers to Peltier's release on compassionate grounds. The BOP includes factors in its determination, such as the nature and circumstances of the prisoner's offense and whether release would undermine the deterrent effect of the punishment (or be an affront to law enforcement). These are the same considerations that have repeatedly prevented Peltier's release on parole.

Being ill-equipped to cope with life in a dangerous maximum security prison, and in light of his deteriorating health, in recent years, Leonard Peltier has repeatedly requested a transfer to a medium security facility close to family and ready access to medical care that best meet his needs, but to no avail.

Frustrated by the federal government's refusal to release some 70,000 files related to his case, and lacking any new evidence, the only avenue to freedom for Leonard Peltier is a grant of clemency from President Barack Obama. Ironically, Peltier filed his formal application to the Office of the Pardon Attorney and the White House for commutation of his sentences on February 17, 2016, the same day the US Sentencing Commission held its hearing on compassionate relief.

There are many valid reasons why President Obama should grant Peltier clemency -- the process and circumstances that led to and contributed to Leonard Peltier's wrongful conviction, in particular. But compassion should be no less of a consideration.

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International Leonard Peltier Defense Committee

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The International Leonard Peltier Defense Committee is the hub of communication between Leonard Peltier and his program coordinators, the general public, government officials, political and tribal leaders, the media, and his supporters worldwide.

What YOU can do to help: Ask President Obama to grant clemency to Leonard Peltier. Call President Obama at 202-456-1111 or 202-456-1414 (M-F, 9:00 a.m. - 5:00 p.m., EST). Send an email to President Obama: <http://www.whitehouse.gov/contact/submit-questions-and-comments>. Post a comment on Obama's Facebook page: <https://www.facebook.com/potus>. Send a tweet to President Obama: @POTUS. And don't forget to write a letter: President Barack Obama, The White House, 1600 Pennsylvania Avenue NW, Washington, DC 20500. You also can send a post card to the President: <http://www.whoisleonardpeltier.info/home/store/send-a-postcard-to-the-white-house/>.