

FEDERAL PRISONS

# Judge Holds Federal Bureau of Prisons in Contempt for Allowing Man To Waste Away From Untreated Cancer

A federal judge wrote that the Bureau of Prisons should be "deeply ashamed" of medical delays that resulted in a man dying from treatable cancer.

C.J. CIARAMELLA | 10.10.2022 12:25 PM



In a scathing opinion, a federal judge held the Bureau of Prisons (BOP) in civil contempt and levied sanctions against the agency last week for allowing an incarcerated man to waste away from untreated cancer, as well as for willfully ignoring and misleading the court.

U.S. District Judge Roy Dalton for the Middle District of Florida wrote that the BOP should be "deeply ashamed" of how it treated the now-deceased inmate Frederick Bardell. Its actions, he said, were "inconsistent with the moral values of a civilized society and unworthy of the Department of Justice of the United States of America."

Bardell was convicted in 2012 of downloading child pornography from a peer-to-peer file sharing website and sentenced to 151 months in federal prison. But he was not sentenced to death by medical neglect, and he was ostensibly protected by the Eighth Amendment's prohibition on cruel and unusual punishment, as are all incarcerated people, no matter how heinous their crimes. That includes the right to basic health care behind bars.

Nevertheless, the BOP allowed a highly treatable colon cancer to progress until Bardell was terminally ill, all while insisting in court that there was no evidence he had cancer and that he was receiving appropriate, timely care.

In addition to holding the BOP and Kristi Zook, the warden of Seagoville Federal Correctional Institution, in contempt, Dalton ordered the BOP to pay Bardell's parents nearly \$500 to reimburse them the airline ticket they purchased to get their dying son home. Dalton also requested that the attorney general and the Office of Inspector General for the Justice Department investigate the circumstances of Bardell's death.

"It takes a deeply rotten culture to make otherwise decent people act as these prison officials did," Kevin Ring, president of the criminal justice advocacy group FAIMM, says. "The BOP is in desperate need of independent oversight."

Medical neglect in U.S. prisons and jails is an ongoing constitutional disaster. Earlier this year, federal judges also held the Arizona and Illinois prison systems in contempt for failing to address gruesome medical neglect within their walls. The infamous Rikers Island jail complex in New York City is also under threat of being put in receivership by a federal judge because of chronic corruption, violence, and preventable deaths.

Reason also reported in 2020 on several allegations of fatal medical neglect inside FCI Aliceville, a federal women's prison in Alabama.

Earlier this month, bipartisan legislation was introduced in both the House and Senate that would create an independent ombudsman to act as a BOP watchdog. Criminal justice advocacy groups say Bardell's case is exactly the sort of incident that makes such a position necessary.

Bardell filed a motion for compassionate release—a process through which terminally ill inmates can be afforded the comfort of returning home for their last days—in November of 2020, arguing that he likely had advanced colon cancer. An affidavit from a doctor accompanying his motion said he had "a high likelihood of having cancer of the colon with likely metastasis to the liver."

The BOP and federal prosecutors, in their opposition to Bardell's motion, argued that while Bardell had liver lesions, no one had determined his condition was life-threatening; they assured the judge that Bardell was receiving adequate medical treatment. Dalton denied Bardell's motion.

Bardell filed a second motion for compassionate release in February of 2021, this time with an affidavit from an oncologist. The oncologist wrote that a more than year-long delay in getting Bardell a colonoscopy after he first noticed rectal bleeding "allowed this tumor to progress from a stage III with an average cure rate of 71 percent in November 2019 to a stage IV disease in September 2020."

That delay, the doctor stated, would, "more likely than not, cost Mr. Bardell his life in a matter of weeks to months."

The government again opposed Bardell's motion, arguing, as Dalton summarized it in his opinion, "that it was not even definitive that Mr. Bardell had cancer—let alone terminal cancer."

This time, a disgusted Judge Dalton ordered the BOP to free Bardella as soon as the U.S. Probation Office crafted a proper release plan for him. But the Bureau of Prisons defied Dalton's order and instead immediately released Bardell. The prison directed Bardell's parents to pay nearly \$500 for an airline ticket to fly their dying son back home on a commercial flight.

Although he had to be pushed out of prison in a wheelchair, a BOP van dropped Bardell off on a curb outside the Dallas/Fort Worth airport without a wheelchair and left him there. Bardell was weak, as well as bleeding and soiling himself, but he managed to navigate the airports, layovers, and connecting flights through the help of good Samaritans. When he arrived back in Florida to meet his parents, "his father had to take off his own shirt and put it on the seat of [Bardell's lawyer's] car to absorb the blood and feces," Dalton's opinion says.

Bardell died in the hospital nine days later. Pictures accompanying Dalton's order show Bardell severely emaciated.

Dalton's opinion is worth quoting at length:

While the sanctions imposed are remedial in nature and restricted by law, the Court admonishes the BOP and Warden Zook for their blatant violation of a Court Order and sheer disregard for human dignity. The BOP as an institution and Warden Zook as an individual should be deeply ashamed of the circumstances surrounding the last stages of Mr. Bardell's incarceration and indeed his life. No individual who is incarcerated by order of the Court should be stripped of his right to simple human dignity as a consequence. The purposes of incarceration, which include rehabilitation, deterrence, and punishment, do not include depriving a human being of the fundamental right to a life with some semblance of dignity. The treatment Mr. Bardell received in the last days of his life is inconsistent with the moral values of a civilized society and unworthy of the Department of Justice of the United States of America...

The Court is hopeful that in some small way, these proceedings will illuminate the BOP's arrogant—and wholly mistaken—notation that it is beyond reproach and the reach of the Court. It is not. If any institution should embody respect for the Rule of Law, it is an agency that operates under the aegis of the Department of Justice. This Court will do everything in its power to ensure that the BOP is held to account for its demonstrated contempt for the safety and dignity of the human lives in its care.

The BOP did not respond to a request for comment.

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**C.J. CIARAMELLA** is a reporter at *Reason*.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

Orlando Division

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UNITED STATES OF AMERICA )  
 )  
 V. ) Case No. 6:11-CR-401  
 FREDERICK MERVIN BARDELL, )  
 Defendant. )

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**EMERGENCY MOTION FOR COMPASSIONATE RELEASE; OR, ALTERNATIVELY  
FOR A REDUCTION OF SENTENCE AND WAIVER OF 30-DAY EXHAUSTION  
REQUIREMENT**

COMES NOW the Defendant, **FREDERICK MERVIN BARDELL**, [hereinafter “**Bardell**”] and files his motion for compassionate release and shows the Court the following:

1. **Bardell** meets the “extraordinary and compelling” requirements for compassionate release under *U.S.S.G. § 1B1.13, application note 1(A)(ii)(I)* of the *Guidelines*.
2. **Bardell’s** chronic medical condition, from which he is not expected to recover, substantially diminishes his ability to provide self-care against serious injury or death within the environment of a correctional facility. **See Burrowes Affidavit attached.**
3. The § 3553(a) factors do not preclude **Bardell’s** early release and/or reduction in sentence.
4. **Bardell** may also be released under the provisions of the *First Step Act of 2018. See 18 U.S.C §3582(c)(1)(A).*



5. **Bardell** has been diagnosed by a practicing physician as probably suffering from terminal cancer.

6. **Bardell's** family can provide him with the crucial medical care he requires at this time.

7. The court is respectfully requested to grant **Bardell's** motion.

### **Statement of Proceedings and Background**

On June 20, 2012, pursuant to a plea agreement, **Bardell** entered a guilty plea to Count One (**Distribution of Child Pornography**) of a Two Count Indictment. The distribution count was based upon the use of a peer-to-peer computer program to download and view the images and photographs. Count Two (**Possession of Child Pornography**) was dismissed in accordance with the plea agreement. **Bardell** was subsequently sentenced to 151 months of incarceration, with special parole of 20 years. He began serving his sentence on June 26, 2012 and his expected release date is March 2023. The plea agreement also provided, in effect, that the government would not oppose **Bardell's** allocation for a sentence on the lower end of the applicable scale. **Bardell** is credited with having served approximately 102 months of the sentence imposed, that is more than 65% of the sentence.

### **The Guideline Sentence**

According to **Bardell's** Pre-Sentence Report at the time of sentencing, his total offense level of 34 for the sentence consisted of the following: (1) base offense level of 22 because the offense involved the distribution of child pornography; (2) plus 2 because the material involved minors under the age of 12 or prepubescent; (3) plus 2 because the distribution involved the use of a peer-to-peer software computer program; (4) plus 4 because the material portrayed masochistic or sadistic conduct; (5) plus 2 because the offense involved the use of a computer;

(6) plus 5 because the offense involved over 17,000 images and movies; (7) minus 2 for acceptance of responsibility; and (8) minus 1 because **Bardell** assisted and cooperated with the government in its investigation. **Bardell** did not have a prior criminal record at the time of his sentence. Thus, he was a first offender relative to the instant case and therefore he had a criminal history category of 1. **Bardell's** projected release date is March 10, 2023.

### **Bardell's Background**

**Bardell** is 54 years old and has been incarcerated since 2012 serving the sentence imposed upon him. He comes from a good family and good home environment and continued to maintain a very close relationship with his family notwithstanding his present incarceration. **Bardell** served twenty-five (25) years in the United States Coast Guard, with eleven (11) of the 25 years stationed on Coast Guard ships.

**Bardell** officially retired on August 31, 2011. As noted on **Bardell's** Certificate of Release or Discharge from Active Duty, **Bardell** had extensive training while with the US Coast Guard in many different areas and fields, including electronics, fire control, and emergency medical technician. **Bardell** received numerous commendations, awards, medals, and decorations from the US Coast Guard during his 25-year tenure. He did not have any alcohol or substance abuse problems.

It is because of his present medical condition that **Bardell** now brings this **Emergency Motion For Compassionate Release; Or, Alternatively For A Reduction Of Sentence and Waiver of the Exhaustion Requirement.**

### **BARDELL'S CURRENT MEDICAL CONDITION**

Presently, **Bardell** is suffering from unspecified bleeding probably requiring blood transfusions; metastatic liver lesions (suspected cancer); and malignancy in his colon. These conditions require extensive and constant treatment and are probably terminal.<sup>1</sup> **See Burrowes Affidavit attached.**

### **Argument**

The compassionate release provisions of *18 U.S.C. §3582(c)(1)(A)*, now allows courts to modify sentences not only upon motion from the Director of the Bureau of Prisons [BOP] but additionally on a motion from the defendant. A court may now modify a defendant's sentence “if it finds . . . that ‘extraordinary and compelling reasons warrant such a reduction’ and ‘such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.’ ” *Cf. United States v. Hamilton, 715 F.3d 328, 337 (11th Cir. 2013); United States v. Willingham, No. CR 113-010-1, 2020 WL 2843223, at 2 (S.D. Ga. June 1, 2020); see also United States v. Heromin, 2019 U.S. Dist. LEXIS 96520, 2019 WL 2411311, at \*2 (M.D. Fla. June 7, 2019); United States v. Mollica, No. 2:14-CR-329-KOB, 2020 WL 1914956, at \*2 (N.D. Ala. Apr. 20, 2020.)*

Furthermore, § 3582 requires that a court contemplating a sentence reduction consider “the factors set forth in section 3553(a) to the extent that they are applicable.” *18 U.S.C. § 3582(c)(1)(A)*;

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<sup>1</sup> Although the physician who recommends Bardell's compassionate release has not physically examined him, in these extraordinary times, most medical diagnosis are now remotely performed. Moreover, this physician has agreed to appear in court to give his opinion within the court's discretion.

*United States v. Mollica, No. 2:14-CR-329-KOB, 2020 WL 1914956, at \*5 (N.D. Ala. Apr. 20, 2020).*

There are seven (7) factors that must be considered under *18 U.S.C. § 3553(a)*: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range established; (5) any pertinent policy statement; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. None of these factors requires a denial of **Bardell's** motion.

As of November 2, 2020, **COVID-19** has ravaged our nation with 9,260,026 Americans infected and 230,834 are dead. *Coronavirus Disease 2019 (COVID-19), Cases in the U.S., Centers for Disease Control and Prevention.*<sup>2</sup> The Court needs no further documentation of the extraordinary and unprecedented challenges this country faces in its battle with the virus. They are known to nearly everyone. *Cf. United States v. Ullings, No. 1:10-CR-00406, 2020 WL 2394096, at \*3 (N.D. Ga. May 12, 2020) compassionate relief granted when Government conceded the merits of the defendant's motion for compassionate relief by not responding and the § 3553(a) factors did not preclude release.* Possibly, only two of the factors should be considered, the others are not applicable at this juncture: 1 and 6. An examination of these factors do not intrinsically preclude the grant of **Bardell's** motion. The risk of contracting the disease is what is assessed when considering **Bardell's** chronic medical condition which also presents a very high risk of contracting **COVID-19**.

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<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>



Given the surge in positive cases at **BOP** sites, in March 2020, Attorney General Barr issued directives to the **BOP** to immediately review all inmates who have **COVID-19** risk factors, as described by the CDC, to determine which inmates are suitable for home confinement. Since the release of the Attorney General's original memo to the **BOP** on March 26, 2020 instructing **BOP** to prioritize home confinement as an appropriate response to the **COVID-19** pandemic, the **BOP** has placed 7,709 inmates on home confinement.<sup>3</sup>

It was reported that FCI Seagoville, a low-security federal correctional facility where **Bardell** is housed, has been the hardest hit federal prison in the nation by the **COVID-19** pandemic with over 72% of its population testing positive for the coronavirus, this according to data released by the **BOP**. The facility is reporting 1,276 inmates positive with **COVID-19** and three inmate deaths. Those deaths were reported on Tuesday, July 28, 2020; July 25, 2020; and July 16, 2020. Another 14 staff members have tested positive, according to **BOP**. Given **Bardell's** current condition, the § 3553(a) factors, the Attorney General's policy statement, **Bardell** is an excellent candidate for home confinement where his family will provide him with the severely needed medical care at their own expense.

Finally, the court should find that compassionate release would be consistent with applicable policy statements issued by the Sentencing Commission. The relevant policy statement explains that a court may order a sentence reduction under § 3582(c)(1)(A) when it determines, "after considering the factors set forth in 18 U.S.C. § 3553(a)," that "(1)(A) extraordinary and

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<sup>3</sup> <https://www.justice.gov/file/1262731/download>. **Bardell** acknowledges that the Attorney General's Memorandum states that "[s]ome offenses, such as sex offenses, will render an inmate ineligible for home release." However, because of **Bardell's** current condition he is not precluded from participation in home confinement. The Attorney General considered the protection of the public; and, thus if **Bardell** presented a danger to the community he would probably not be eligible for home confinement. See the pre-incarceration Psychosexual and Risk Assessment of **Bardell** by Richard B. Krueger, MD, which concluded that **Bardell** was not a risk to community nor was there a danger of recidivation.

compelling reasons warrant the reduction; ... (2) the defendant is not a danger to the safety of any other person or to the community, as provided *in 18 U.S.C. § 3142(g)*; and (3) the reduction is consistent with this policy statement.” *U.S.S.G. § 1B1.13. United States v. Asher, No. 1:09-CR-414-MHC-AJB, 2020 WL 3424951, at \*5 (N.D. Ga. June 15, 2020).*

**BARDELL SHOULD NOT BE REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES.**

Normally, a person seeking compassionate release must first comply with the statutory mandates and exhaust all administrative remedies.. However, *18 U.S.C. § 3582(c)(1)* provides an exception to the exhaustion requirement:

**[A] court may reduce a sentence upon motion of a defendant provided that: (1) the inmate has either exhausted his or her administrative appeal rights of the BOP's failure to bring such a motion on the inmate's behalf or has waited until 30 days after the applicable warden has received such a request; (2) the inmate has established “extraordinary and compelling reasons” for the requested sentence reduction; and (3) the reduction is consistent with the Sentencing Commission's policy statement. The defendant generally bears the burden of establishing that compassionate release is warranted. *See United States v. Hamilton, 715 F.3d 328, 337 (11th Cir. 2013)* (providing that defendant bears the burden of establishing a reduction of sentence is warranted under § 3582(c) due to a retroactive guideline amendment); *United States v. Heromin, Case No. 8:11-cr-550-T-33SPF, 2019 WL 2411311, at \*2 (M.D. Fla. June 7, 2019)* (citing *Hamilton* in the context of a § 3582(c) motion for compassionate release).**

*United States v. Smith, No. 8:17-CR-412-T-36AAS, 2020 WL 2512883, at \*2 (M.D. Fla. May 15, 2020).*<sup>4</sup>

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<sup>4</sup> Bardell requested compassionate release on October 16, 2020. If he has to wait for the expiration of 30 days, it may be too late.

Extraordinary and compelling reasons warrant a reduction of **Bardell's** sentence and 'such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.' ” *Cf. United States v. Hamilton*, 715 F.3d 328, 337 (11th Cir. 2013); *United States v. Willingham*, No. CR 113-010-1, 2020 WL 2843223, at 2 (S.D. Ga. June 1, 2020); *see also United States v. Heromin*, 2019 U.S. Dist. LEXIS 96520, 2019 WL 2411311, at \*2 (M.D. Fla. June 7, 2019); *United States v. Mollica*, No. 2:14-CR-329-KOB, 2020 WL 1914956, at \*2 (N.D. Ala. Apr. 20, 2020.).

In *United States v. Moody*, No. 05-80121-CR, 2020 WL 4059766, at \*1 (S.D. Fla. June 16, 2020), the District Court waived the 30-day requirement observing that “some courts have waived the requirement that a prisoner wait 30 days after filing a request with the warden, finding that a delay in granting compassionate release would unduly prejudice the defendant by potentially exposing him or her to life-threatening conditions.” *See United States v. Perez*, — F.Supp.3d —, 2020 WL 1546422, at \*3 (S.D.N.Y. Apr. 1, 2020) (“Here, even a few weeks’ delay carries the risk of catastrophic health consequences for Perez. The Court concludes that requiring him to exhaust administrative remedies, given his unique circumstances and the exigency of a rapidly advancing pandemic, would result in undue prejudice and render exhaustion of the full BOP administrative process both futile and inadequate.”); *United States v. Colvin*, No. 3:19CR179 (JBA), 2020 WL 1613943, at \*2 (D. Conn. Apr. 2, 2020) (*finding that courts may waive a statutorily-mandated exhaustion requirement where “Defendant would be subjected to undue prejudice—the heightened risk of severe illness—while attempting to exhaust her appeals.”*) *Id.* at 1.

The longer the Court waits to grant **Bardell's** Motion, the greater his risk of contracting COVID-19. That is why, as previously mentioned, some courts have completely waived the

requirement that a prisoner wait 30 days after submitting a request to the warden. *See United States v. Haney, No. 19-CR-541 (JSR), 2020 WL 1821988, at \*4 (S.D.N.Y. Apr. 13, 2020)* (“the Court concludes that Congressional intent not only permits judicial waiver of the 30-day exhaustion period, but also, in the current extreme circumstances, actually favors such waiver, allowing courts to deal with the emergency before it is potentially too late.”); *Cf. United States v. Amelio Mack, No. 3:13-CR-206-J-32MCR, 2020 WL 6044560, at \*4 (M.D. Fla. Oct. 13, 2020); United States v. Milner, No. 516CR325LAGCHW, 2020 WL 2744088, at \*6 (M.D. Ga. Apr. 20, 2020); United States v. Feucht, No. 11-CR-60025, 2020 WL 2781600, at \*2 (S.D. Fla. May 28, 2020); United States v. McCall, No. 2:18CR95-MHT, 2020 WL 2992197 (M.D. Ala. June 4, 2020)*. If **Bardell** is required to wait for at least another 30 days, it increases his odds of contracting **COVID-19** and his ultimate death. Since **Bardell** has presently served almost 9 years—approximately 65% of his sentence he may therefore now be released under the *First Step Act*.

### Conclusion

**Bardell** has demonstrated extraordinary and compelling reasons which warrants his compassionate release and the waiver of the administrative exhaustion requirement. The Court should grant **Bardell’s** Motion.

**WHEREFORE, Bardell** requests the following relief:

- a) Waive the administrative exhaustion requirement;
- b) Set his motion down for a hearing should the Court desire oral argument and testimony from Celio O. Burrowes, MD;
- c) Reduce **Bardell’s** sentence to time served;

- d) Alternatively, allow **Bardell** to serve the remainder of his sentence on home confinement, with or without conditions; and
- e) For such other and further relief as the Court deems just and proper.

**THIS 6<sup>th</sup> DAY OF NOVEMBER 2020.**

**RESPECTFULLY SUBMITTED,**

*/s/ Kimberly L. Copeland*

**KIMBERLY L. COPELAND**

**GA. BAR #186783**

**Attorney for Bardell**

**Kim12Cope@aol.com**  
**256 N. Brunswick Street**  
**Jesup, Georgia, 31456-4380**  
**(912) 530-7317**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY that the foregoing document has been electronically filed with the Clerk of the Court and a true copy has been furnished by United States Mail to Myrna Mesa, Assistant United States Attorney, U.S. Attorney's Office, 501 West Church Street Suite 300 Orlando, FL 32805, and by email at [Myrna.Mesa@usdoj.gov](mailto:Myrna.Mesa@usdoj.gov).**

**THIS 6<sup>th</sup> DAY OF NOVEMBER 2020.**

*/s/ Kimberly L. Copeland*

**KIMBERLY L. COPELAND**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

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3. The § 3553(a) factors do not preclude **Bardell’s** early release and/or reduction in sentence.
4. **Bardell** may also be released under the provisions of the *First Step Act of 2018. See 18 U.S.C §3582(c)(1)(A).*

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### **The Guideline Sentence**

According to **Bardell's** Pre-Sentence Report at the time of sentencing, his total offense level of 34 for the sentence consisted of the following: (1) base offense level of 22 because the offense involved the distribution of child pornography; (2) plus 2 because the material involved minors under the age of 12 or prepubescent; (3) plus 2 because the distribution involved the use of a peer-to-peer software computer program; (4) plus 4 because the material portrayed masochistic or sadistic conduct; (5) plus 2 because the offense involved the use of a computer;

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### **Bardell's Background**

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### **BARDELL'S CURRENT MEDICAL CONDITION**

Presently, **Bardell** is suffering from unspecified bleeding probably requiring blood transfusions; metastatic liver lesions (suspected cancer); and malignancy in his colon. These conditions require extensive and constant treatment and are probably terminal.<sup>1</sup> **See Burrowes Affidavit attached.**

### **Argument**

The compassionate release provisions of *18 U.S.C. §3582(c)(1)(A)*, now allows courts to modify sentences not only upon motion from the Director of the Bureau of Prisons [BOP] but additionally on a motion from the defendant. A court may now modify a defendant's sentence “if it finds . . . that ‘extraordinary and compelling reasons warrant such a reduction’ and ‘such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.’ ” *Cf. United States v. Hamilton, 715 F.3d 328, 337 (11th Cir. 2013); United States v. Willingham, No. CR 113-010-1, 2020 WL 2843223, at 2 (S.D. Ga. June 1, 2020); see also United States v. Heromin, 2019 U.S. Dist. LEXIS 96520, 2019 WL 2411311, at \*2 (M.D. Fla. June 7, 2019); United States v. Mollica, No. 2:14-CR-329-KOB, 2020 WL 1914956, at \*2 (N.D. Ala. Apr. 20, 2020.)*

Furthermore, § 3582 requires that a court contemplating a sentence reduction consider “the factors set forth in section 3553(a) to the extent that they are applicable.” *18 U.S.C. § 3582(c)(1)(A)*;

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There are seven (7) factors that must be considered under *18 U.S.C. § 3553(a)*: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range established; (5) any pertinent policy statement; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. None of these factors requires a denial of **Bardell's** motion.

As of November 2, 2020, **COVID-19** has ravaged our nation with 9,260,026 Americans infected and 230,834 are dead. *Coronavirus Disease 2019 (COVID-19), Cases in the U.S., Centers for Disease Control and Prevention.*<sup>2</sup> The Court needs no further documentation of the extraordinary and unprecedented challenges this country faces in its battle with the virus. They are known to nearly everyone. *Cf. United States v. Ullings, No. 1:10-CR-00406, 2020 WL 2394096, at \*3 (N.D. Ga. May 12, 2020) compassionate relief granted when Government conceded the merits of the defendant's motion for compassionate relief by not responding and the § 3553(a) factors did not preclude release.* Possibly, only two of the factors should be considered, the others are not applicable at this juncture: 1 and 6. An examination of these factors do not intrinsically preclude the grant of **Bardell's** motion. The risk of contracting the disease is what is assessed when considering **Bardell's** chronic medical condition which also presents a very high risk of contracting **COVID-19**.

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<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

Given the surge in positive cases at **BOP** sites, in March 2020, Attorney General Barr issued directives to the **BOP** to immediately review all inmates who have **COVID-19** risk factors, as described by the CDC, to determine which inmates are suitable for home confinement. Since the release of the Attorney General's original memo to the **BOP** on March 26, 2020 instructing **BOP** to prioritize home confinement as an appropriate response to the **COVID-19** pandemic, the **BOP** has placed 7,709 inmates on home confinement.<sup>3</sup>

It was reported that FCI Seagoville, a low-security federal correctional facility where **Bardell** is housed, has been the hardest hit federal prison in the nation by the **COVID-19** pandemic with over 72% of its population testing positive for the coronavirus, this according to data released by the **BOP**. The facility is reporting 1,276 inmates positive with **COVID-19** and three inmate deaths. Those deaths were reported on Tuesday, July 28, 2020; July 25, 2020; and July 16, 2020. Another 14 staff members have tested positive, according to **BOP**. Given **Bardell's** current condition, the § 3553(a) factors, the Attorney General's policy statement, **Bardell** is an excellent candidate for home confinement where his family will provide him with the severely needed medical care at their own expense.

Finally, the court should find that compassionate release would be consistent with applicable policy statements issued by the Sentencing Commission. The relevant policy statement explains that a court may order a sentence reduction under § 3582(c)(1)(A) when it determines, "after considering the factors set forth in 18 U.S.C. § 3553(a)," that "(1)(A) extraordinary and

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<sup>3</sup> <https://www.justice.gov/file/1262731/download>. **Bardell** acknowledges that the Attorney General's Memorandum states that "[s]ome offenses, such as sex offenses, will render an inmate ineligible for home release." However, because of **Bardell's** current condition he is not precluded from participation in home confinement. The Attorney General considered the protection of the public; and, thus if **Bardell** presented a danger to the community he would probably not be eligible for home confinement. See the pre-incarceration Psychosexual and Risk Assessment of **Bardell** by Richard B. Krueger, MD, which concluded that **Bardell** was not a risk to community nor was there a danger of recidivation.

compelling reasons warrant the reduction; ... (2) the defendant is not a danger to the safety of any other person or to the community, as provided *in 18 U.S.C. § 3142(g)*; and (3) the reduction is consistent with this policy statement.” *U.S.S.G. § 1B1.13. United States v. Asher, No. 1:09-CR-414-MHC-AJB, 2020 WL 3424951, at \*5 (N.D. Ga. June 15, 2020).*

**BARDELL SHOULD NOT BE REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES.**

Normally, a person seeking compassionate release must first comply with the statutory mandates and exhaust all administrative remedies.. However, *18 U.S.C. § 3582(c)(1)* provides an exception to the exhaustion requirement:

**[A] court may reduce a sentence upon motion of a defendant provided that: (1) the inmate has either exhausted his or her administrative appeal rights of the BOP's failure to bring such a motion on the inmate's behalf or has waited until 30 days after the applicable warden has received such a request; (2) the inmate has established “extraordinary and compelling reasons” for the requested sentence reduction; and (3) the reduction is consistent with the Sentencing Commission's policy statement. The defendant generally bears the burden of establishing that compassionate release is warranted. See *United States v. Hamilton, 715 F.3d 328, 337 (11th Cir. 2013)* (providing that defendant bears the burden of establishing a reduction of sentence is warranted under § 3582(c) due to a retroactive guideline amendment); *United States v. Heromin, Case No. 8:11-cr-550-T-33SPF, 2019 WL 2411311, at \*2 (M.D. Fla. June 7, 2019)* (citing *Hamilton* in the context of a § 3582(c) motion for compassionate release).**

*United States v. Smith, No. 8:17-CR-412-T-36AAS, 2020 WL 2512883, at \*2 (M.D. Fla. May 15, 2020).*<sup>4</sup>

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<sup>4</sup> Bardell requested compassionate release on October 16, 2020. If he has to wait for the expiration of 30 days, it may be too late.

Extraordinary and compelling reasons warrant a reduction of **Bardell's** sentence and 'such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.' ” *Cf. United States v. Hamilton*, 715 F.3d 328, 337 (11th Cir. 2013); *United States v. Willingham*, No. CR 113-010-1, 2020 WL 2843223, at 2 (S.D. Ga. June 1, 2020); *see also United States v. Heromin*, 2019 U.S. Dist. LEXIS 96520, 2019 WL 2411311, at \*2 (M.D. Fla. June 7, 2019); *United States v. Mollica*, No. 2:14-CR-329-KOB, 2020 WL 1914956, at \*2 (N.D. Ala. Apr. 20, 2020.).

In *United States v. Moody*, No. 05-80121-CR, 2020 WL 4059766, at \*1 (S.D. Fla. June 16, 2020), the District Court waived the 30-day requirement observing that “some courts have waived the requirement that a prisoner wait 30 days after filing a request with the warden, finding that a delay in granting compassionate release would unduly prejudice the defendant by potentially exposing him or her to life-threatening conditions.” *See United States v. Perez*, — F.Supp.3d —, 2020 WL 1546422, at \*3 (S.D.N.Y. Apr. 1, 2020) (“Here, even a few weeks’ delay carries the risk of catastrophic health consequences for Perez. The Court concludes that requiring him to exhaust administrative remedies, given his unique circumstances and the exigency of a rapidly advancing pandemic, would result in undue prejudice and render exhaustion of the full BOP administrative process both futile and inadequate.”); *United States v. Colvin*, No. 3:19CR179 (JBA), 2020 WL 1613943, at \*2 (D. Conn. Apr. 2, 2020) (*finding that courts may waive a statutorily-mandated exhaustion requirement where “Defendant would be subjected to undue prejudice—the heightened risk of severe illness—while attempting to exhaust her appeals.”*) *Id.* at 1.

The longer the Court waits to grant **Bardell's** Motion, the greater his risk of contracting COVID-19. That is why, as previously mentioned, some courts have completely waived the

requirement that a prisoner wait 30 days after submitting a request to the warden. *See United States v. Haney, No. 19-CR-541 (JSR), 2020 WL 1821988, at \*4 (S.D.N.Y. Apr. 13, 2020)* (“the Court concludes that Congressional intent not only permits judicial waiver of the 30-day exhaustion period, but also, in the current extreme circumstances, actually favors such waiver, allowing courts to deal with the emergency before it is potentially too late.”); *Cf. United States v. Amelio Mack, No. 3:13-CR-206-J-32MCR, 2020 WL 6044560, at \*4 (M.D. Fla. Oct. 13, 2020); United States v. Milner, No. 516CR325LAGCHW, 2020 WL 2744088, at \*6 (M.D. Ga. Apr. 20, 2020); United States v. Feucht, No. 11-CR-60025, 2020 WL 2781600, at \*2 (S.D. Fla. May 28, 2020); United States v. McCall, No. 2:18CR95-MHT, 2020 WL 2992197 (M.D. Ala. June 4, 2020)*. If **Bardell** is required to wait for at least another 30 days, it increases his odds of contracting **COVID-19** and his ultimate death. Since **Bardell** has presently served almost 9 years—approximately 65% of his sentence he may therefore now be released under the *First Step Act*.

### Conclusion

**Bardell** has demonstrated extraordinary and compelling reasons which warrants his compassionate release and the waiver of the administrative exhaustion requirement. The Court should grant **Bardell’s** Motion.

**WHEREFORE, Bardell** requests the following relief:

- a) Waive the administrative exhaustion requirement;
- b) Set his motion down for a hearing should the Court desire oral argument and testimony from Celio O. Burrowes, MD;
- c) Reduce **Bardell’s** sentence to time served;

- d) Alternatively, allow **Bardell** to serve the remainder of his sentence on home confinement, with or without conditions; and
- e) For such other and further relief as the Court deems just and proper.

**THIS 6<sup>th</sup> DAY OF NOVEMBER 2020.**

**RESPECTFULLY SUBMITTED,**

*/s/ Kimberly L. Copeland*

**KIMBERLY L. COPELAND**

**GA. BAR #186783**

**Attorney for Bardell**

**Kim12Cope@aol.com**  
**256 N. Brunswick Street**  
**Jesup, Georgia, 31456-4380**  
**(912) 530-7317**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY that the foregoing document has been electronically filed with the Clerk of the Court and a true copy has been furnished by United States Mail to Myrna Mesa, Assistant United States Attorney, U.S. Attorney's Office, 501 West Church Street Suite 300 Orlando, FL 32805, and by email at Myrna.Mesa@usdoj.gov.**

**THIS 6<sup>th</sup> DAY OF NOVEMBER 2020.**

*/s/ Kimberly L. Copeland*

**KIMBERLY L. COPELAND**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

Case No. 6:11-cr-401-RBD-DAB

FREDERICK MERVIN BARDELL

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ORDER

Judges carry the heavy burden of depriving individuals of their liberty. But the Bureau of Prisons shoulders the constitutional burden of protecting the remaining rights of the incarcerated while in custody. The possibility that the Bureau of Prisons would be so indifferent to the human dignity of an inmate in its care as the facts here demonstrate, increases the burden on the sentencing judge exponentially. This, of course, pales in comparison to the suffering of the inmate and his family.

Frederick Marvin Bardell was a convicted child pornographer. He was also a human being. Sentenced in June 2012 to 151 months in federal prison, Mr. Bardell ultimately found himself housed at the Seagoville Federal Correctional Institute in Seagoville, Texas, under the supervision of Warden Kristi Zook. (Doc. 59; Doc. 77, p. 6.) While in federal custody Mr. Bardell developed an intestinal mass that developed into metastatic colon cancer. (Doc. 106-4, p. 306.)

On November 6, 2020, Mr. Bardell filed a counseled Emergency Motion for



Compassionate Release, contending that he suffered from “unspecified bleeding,” “metastatic liver lesions (suspected cancer),” and “malignancy in his colon.” (Doc. 77, p. 4.) These facts were attested to by Celio O. Burrowes, M.D., who averred that Mr. Bardell “ha[d] a high likelihood of having cancer of the colon with likely metastasis to the liver.” (Doc. 77-1, p. 2.) Troubled by the apparent severity of Mr. Bardell’s condition, the Court ordered the Government to supply the medical and administrative record for Mr. Bardell and to respond to the motion in an expedited fashion. (Doc. 78.) In response, AUSA Emily C. L. Chang, focused, in the main, on the Bureau of Prisons’ (“BOP”) COVID-19 protocols and argued that while Mr. Bardell has “liver lesions highly suspicious for metastatic disease . . . to date, no one has determined that [his] condition is terminal.” (Doc. 80, p. 16.) The Government also argued that there was no indication that Mr. Bardell could not receive adequate care in custody. (*Id.* at 1.) Based, largely, on the Government’s assurance that Mr. Bardell’s condition had not been determined to be critical and that he was receiving adequate care, the Court denied his motion for compassionate release. (Doc. 85.) Concerned about the claim of delayed diagnosis and treatment, the Court ordered that a copy of the Order be provided to Warden Zook. (*Id.* at 6.) As we now know, it was not true that Mr. Bardell could receive adequate care in custody, and, regrettably, his condition was indeed terminal.

On February 2, 2021, Mr. Bardell filed a second counseled Emergency

Motion for Compassionate Release, this time supported by an affidavit from a board-certified oncologist who averred that Mr. Bardell required immediate specialized treatment from a medical oncologist specializing in metastatic cancer of the colon and that his medical condition was emergent and likely terminal. (Doc. 86-1, ¶¶ 41, 22, 24–25). That same day, the Court again directed the Government to respond to the motion, this time within forty-eight hours. (Doc. 87.) In its response, the Government asserted that Mr. Bardell had been examined on December 18, 2020, and that examination revealed “no evidence of malignancy.” (Doc. 88, p. 3.) A colonoscopy was later performed on January 29, 2021, with results pending. (*Id.*) Based on those exams, despite Mr. Bardell’s evidence, the Government again asserted that the BOP was adequately managing Mr. Bardell’s medical condition and that his motion should be denied. (*Id.* at 3–4.) The Government maintained that it was not even definitive that Mr. Bardell had cancer – let alone terminal cancer. (*Id.*)

This time, the Court granted Mr. Bardell’s motion, directed his attorney Kimberly Copeland, Esq. to work with the U.S. Probation Office to create a release plan, and ordered the BOP to release him from custody **AFTER** having an approved release plan. (Doc. 92, p. 6 (“Release Order”).) But the BOP ignored the Release Order.

The day the Court issued the Release Order, Copeland began working with

Probation to form a plan for Mr. Bardell's release.<sup>1</sup> (Doc. 129, pp. 23–24.) But the BOP released Mr. Bardell without waiting for a release plan. (*Id.* at 37.) In disregard of the clear language of the Court's Order, the BOP unilaterally implemented its own release plan without Probation's input by contacting Mr. Bardell's parents and having them pay almost \$500 for a commercial flight to bring their dying son home. (*Id.* at 29.)

Rather than a medical transport, the BOP chose a "trustee-inmate" – another prisoner – to get Mr. Bardell to the airport. (*Id.* at 6.) The trustee-inmate was apparently not authorized to get out of the vehicle to assist Mr. Bardell – though the BOP has no written policy to this effect. (*Id.* at 6, 37.) Mr. Bardell had to be pushed out of the prison in a wheelchair but the BOP did not allow him to keep the wheelchair for his travel. (*Id.* at 9, 37.) So Mr. Bardell was deposited on the curb of the Dallas/Fort Worth ("DFW") airport to fend for himself. (*Id.*)

Somehow, Mr. Bardell managed to get a wheelchair. (*Id.* at 38.) Now skin and bones, wheelchair dependent, and bladder and bowel incontinent, Mr. Bardell flew commercial from DFW to Jacksonville, Florida. He was forced to navigate the busy DFW and Atlanta airports and he endured a layover and change of planes, alone. (*Id.* at 9, 37.) A good Samaritan fellow passenger helped Mr. Bardell off the

<sup>1</sup> Probation's plan in process included Bardell taking a commercial flight to Jacksonville, Florida, though Copeland had been making her own arrangements for Bardell to be medically transported by air. (Doc. 129, pp. 23, 26–27.)

flight. (*Id.* at 38.) Mr. Bardell, who had a tumor protruding from his stomach and was visibly weak and bleeding, unsurprisingly soiled himself during this not so bon voyage. (*Id.*) He was nearly unrecognizable to his parents, who waited at the end of his long odyssey to take him to the hospital. (*Id.*) They described Mr. Bardell as a “whittled old man with gray hair.” (*Id.*) Once Mr. Bardell’s parents were reunited with their son and attempted to get him in the car, his father had to take off his own shirt and put it on the seat of Copeland’s car to absorb the blood and feces. (*Id.*) Copeland immediately drove Mr. Bardell to the hospital. (*Id.*) This is how Mr. Bardell, then 54 years old, arrived:





(Docs. 94-1, 94-2, 107-6.)

Mr. Bardell never made it out of the hospital. He died nine days after his release. (Doc. 97.) With timely diagnosis and treatment, Mr. Bardell's attesting physician assessed his chances of survival at 71%. (Doc. 77-1, ¶ 9; Doc. 86-1, ¶ 14.)

For its wholesale disregard of the Court's Release Order, the BOP is found to be in civil contempt and sanctions are imposed.

### BACKGROUND

Once notified of Mr. Bardell's death and the disturbing circumstances of his release, the Court issued a show cause order to the BOP and Warden Zook why they should not be held in contempt for violating the Release Order, to which they responded. (*See* Doc. 99 ("OSC"); Docs. 106-07.) The Court appointed former U.S. Attorney A. Lee Bentley, Esq. as Special Master to develop a record for further investigation and recommendation. (Docs. 109, 111.) The Court ordered the BOP to pay for the Special Master's attorney's fees. (*See* Doc. 111, ¶ 7.) On completion of his investigation, the Special Master recommended the Court find the BOP and Warden Zook (in her official capacity) in civil contempt and impose sanctions.<sup>2</sup> (Doc. 129 ("R&R").) The Special Master found:

- The BOP and Warden Zook had the ability to comply with the Release Order.

<sup>2</sup> Neither party objected to the Special Master's appointment or the R&R. (Docs. 110, 130-32.)

- There were *no* procedures in place to ensure court orders were followed.
- Most BOP employees did not even read the Release Order.
- No BOP employee attempted to speak to Probation to comply with the approved release plan condition.
- No BOP employee considered whether Bardell should have been provided assistance given his medical condition.

(Doc. 129, pp. 4–6, 45, 65.) Further, though it is the BOP’s responsibility to pay for an inmate’s transportation once released, it refused to pay for Mr. Bardell’s flight.

(*Id.* at 5, 46–47; Doc. 129-24, p. 6.) Instead, his parents paid. (Doc. 129-26.)

At the hearing, the Court adopted the Special Master’s recommendation, held the BOP and Warden Zook in civil contempt, and sanctioned the BOP. (*See* Doc. 135.) This Order memorializes the oral pronouncements made in the hearing.

## STANDARDS

A finding of civil contempt must be based on clear and convincing evidence that: “(1) the allegedly violated order was valid and lawful; (2) the order was clear, definite and unambiguous; and (3) the alleged violator had the ability to comply with the order.” *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000). Civil contempt sanctions may either coerce the party into compliance or compensate the injured party for losses sustained. *See In re McLean*, 794 F.3d 1313, 1323 (11th Cir. 2015). Once the “contumacious conduct” ceases, the need for a coercive sanction ends, but the court retains the power to impose compensatory sanctions. *FTC v.*

*Garden of Life, Inc.*, 516 F. App'x 852, 860 (11th Cir. 2013).<sup>3</sup> Damages only need to be shown by a preponderance of the evidence. *See McGregor*, 206 F.3d at 1387. A compensatory sanction “reimburses the injured party for the losses and expenses incurred because of his adversary’s noncompliance. This [reimbursement] includes losses flowing from noncompliance . . . .” *Rickard v. Auto Publisher, Inc.*, 735 F.2d 450, 458 (11th Cir. 1984).

## ANALYSIS

### I. Civil Contempt and Sanctions

The Special Master recommended finding that the Release Order was lawful and unambiguous and that the BOP and Warden Zook had the ability to comply. (Doc. 129, p. 4); *see McGregor*, 206 F.3d at 1383. Neither the BOP nor Warden Zook dispute this finding, implicitly acknowledging that they disregarded the Court’s directives. (Docs. 131, 132.) So the BOP and Warden Zook<sup>4</sup> are held in civil contempt for their violation of the Release Order.

As for sanctions, the Special Master recommends imposing compensatory sanctions against the BOP in the form of reimbursing<sup>5</sup> Mr. Bardell’s parents for the

<sup>3</sup> *See* 11th Cir. R. 36-2 (“Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority.”).

<sup>4</sup> The Court holds Warden Zook in civil contempt only in her official capacity given that all actions she undertook were in the course of her duties as a warden. (*See* Doc. 129, pp. 58–60); 28 U.S.C. § 2679(d)(1).

<sup>5</sup> The Special Master did not recommend a sanction regarding the possibility of Mr. Bardell being medically transported by air because he may have traveled through commercial flight even if the BOP and Warden Zook had complied with the Release Order—



commercial flight and requiring the BOP to pay for the Special Master's attorney's fees as the Court previously ordered, which currently total over \$200,000. (See Doc. 111, ¶ 7; Doc. 129, pp. 73–80; Doc. 132, p. 2 n.2); *Garden of Life*, 516 F. App'x at 860. Again, the BOP does not contest this sanction. The Court adopts the Special Master's recommendation and finds that reimbursing Mr. Bardell's parents for the flight they purchased, along with paying the Special Master's fees, are appropriate sanctions against the BOP. These consequences are, unfortunately, grossly inadequate to address the callous disregard for Mr. Bardell exhibited by his custodians but the Court's sanction toolbox is limited when dealing with civil contempt.

While the sanctions imposed are remedial in nature and restricted by law, the Court admonishes the BOP and Warden Zook for their blatant violation of a Court Order and sheer disregard for human dignity. The BOP as an institution and Warden Zook as an individual should be deeply ashamed of the circumstances surrounding the last stages of Mr. Bardell's incarceration and indeed his life. No individual who is incarcerated by order of the Court should be stripped of his right to simple human dignity as a consequence. The purposes of incarceration, which include rehabilitation, deterrence, and punishment, do not include depriving a

though nothing is certain because the BOP did not wait for an approved plan before releasing Mr. Bardell. (Doc. 129, pp. 6, 7.)

human being of the fundamental right to a life with some semblance of dignity. The treatment Mr. Bardell received in the last days of his life is inconsistent with the moral values of a civilized society and unworthy of the Department of Justice of the United States of America.

The BOP does not just bear a constitutional responsibility to care for incarcerated human beings. The BOP, like every other government entity in this country, must follow the Orders entered by United States District Courts by the power vested in them by Article III of the U.S. Constitution. They are not above the law or beyond its reach however insular may be their operation.

The Court is hopeful that in some small way, these proceedings will illuminate the BOP's arrogant—and wholly mistaken— notion that it is beyond reproach and the reach of the Court. It is not. If any institution should embody respect for the Rule of Law, it is an agency that operates under the aegis of the Department of Justice. This Court will do everything in its power to ensure that the BOP is held to account for its demonstrated contempt for the safety and dignity of the human lives in its care.

## **II. The Court's Recommendations**

Though this contempt proceeding focused primarily on the circumstances surrounding Mr. Bardell's release, the Court is also troubled by his care and treatment while confined, especially during the latter stages of his incarceration.

(*See, e.g.*, Doc. 86-1.) The Court has serious reservations about the adequacy of his treatment and diagnosis. In light of these concerns, the Court recommends that the Attorney General (or Inspector General for the Department of Justice) undertake an investigation into the circumstances of Mr. Bardell's confinement and treatment, the failure of the BOP to respond to his medical needs, and the BOP's misrepresentations in connection with the compassionate release briefing regarding the seriousness of his condition.

On a parallel track, the Court retains jurisdiction to continue investigating the circumstances surrounding the truthfulness of the assertions in the Government's filings as well as Mr. Bardell's incarceration and release. To this effect, the Court does not discharge the Special Master from his duties, as further directives and Orders may follow.

### CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED**:

1. The R&R (Doc. 129) is **ADOPTED, CONFIRMED**, and made a part of this Order in its entirety.
2. The OSC (Doc. 98) is **DISCHARGED**.
3. The BOP and Warden Kristi Zook in her official capacity are **HELD IN CIVIL CONTEMPT** for violating the Release Order (Doc. 92).
4. By **Monday, October 17, 2022**, the BOP is **ORDERED** to reimburse

Mr. Bardell's parents for the commercial flight totaling \$494.20.

5. The Court **RECOMMENDS** that the Attorney General, Office of the Inspector General, or other appropriate investigative offices undertake an examination into the conditions of Mr. Bardell's confinement, treatment, and misrepresentations to the Court.
6. By **Monday, October 17, 2022**, attorneys for the BOP and Warden Zook, Julie Posteraro, Esq., and Glenn S. Greene, Esq., are **DIRECTED** to certify that they have served this Order on the following parties:
  - a. The Director of the BOP;
  - b. The Attorney General of the United States;
  - c. The Deputy Attorney General of the United States; and
  - d. The Office of the Inspector General for the Department of Justice.
7. By **Tuesday, October 18, 2022**, the Special Master is **DIRECTED** to file a motion to recover fees and costs incurred through the date of this Order or to otherwise file a notice with the Court certifying that the billing is current under (Doc. 111, ¶ 7).
8. The Court **RETAINS JURISDICTION** to continue its own investigation into the Government's misrepresentations to the Court

and Mr. Bardell's confinement and release.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on October 4,  
2022.



  
ROY B. DALTON JR.  
United States District Judge

Copies:

A. Lee Bentley, Esq.  
Kimberly L. Copeland., Esq.  
Glenn S. Greene, Esq.  
Julie Posteraro, Esq.