

1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF FLORIDA  
3 ORLANDO DIVISION  
4 CASE NUMBER 6:11-cr-401-RBD-EJK

5 . . . . .  
6 UNITED STATES OF AMERICA, :  
7 :  
8 Plaintiff, :  
9 : Orlando, Florida  
10 v. : August 3, 2022  
11 : 10:04 a.m.  
12 FREDERICK MERVIN BARDELL, :  
13 :  
14 Defendant. :  
15 . . . . .

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17  
18 TRANSCRIPT OF SHOW CAUSE HEARING  
19 BEFORE THE HONORABLE ROY B. DALTON, JR.  
20 UNITED STATES DISTRICT JUDGE

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1 APPEARANCES:

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3 Special Master: A. Lee Bentley, III

4

5 Counsel for Government: Julie Posteraro

6 Lacy R. Harwell, Jr.

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8 Counsel for Defendant: Kimberly L. Copeland

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10 Counsel for Warden Zook in her individual capacity:

11 Glenn S. Greene

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P R O C E E D I N G S

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(Court called to order.)

THE DEPUTY CLERK: Case Number 6:11-cr-401,  
United States of America versus Frederick Mervin Bardell.

Counsel, please state your appearances for the  
record starting with the Government.

MS. POSTERARO: Julie Posteraro on behalf of the  
Bureau of Prisons.

THE COURT: Good morning.

MR. GREENE: Good morning, Your Honor. Glenn  
Greene with the Department of Justice on behalf of  
Warden Zook in her individual capacity.

THE COURT: Good morning.

MS. ZOOK: Kristi Zook, warden for the Bureau of  
Prisons.

THE COURT: Good morning.

Mr. Bentley.

MR. BENTLEY: Good morning, Your Honor. Lee  
Bentley, appointed special master.

THE COURT: Good morning.

MS. COPELAND: Good morning, Your Honor. I'm  
Kimberly Copeland. I'm the former attorney for Frederick  
Bardell.

THE COURT: Yes, welcome, Ms. Copeland.

1           All right. We're here for the purpose of  
2 providing the Bureau of Prisons and Warden Zook an  
3 opportunity to respond to the report of the special master  
4 and to give the special master an opportunity to summarize  
5 for the Court, in addition to the written materials already  
6 provided, a summary of the investigation and findings of  
7 the special master pursuant to the Court's order to show  
8 cause directed to the Bureau of Prisons and Warden Zook as  
9 to why they should not be held in civil contempt for  
10 failure to comply with the Court's order of February  
11 the 5th of 2021. That's at document number 92.

12           I wanted to give the Bureau of Prisons and  
13 Warden Zook an opportunity in open court to explain why  
14 they should not be held in civil contempt for failing to  
15 follow the Court's order that required Mr. Bardell's  
16 release only after the development and approval of a  
17 release plan that had been developed by the United States  
18 Probation Office to assure that he had appropriate release  
19 and was delivered into the care of healthcare facilities in  
20 order to provide for his terminal colorectal cancer.

21           I think I've made clear my view about the way the  
22 Bureau of Prisons handled Mr. Bardell's confinement and his  
23 release. And I've expressed in my written orders my  
24 displeasure with what I perceived to be the Government's  
25 complete -- and when I say "the Government," I'm talking

1 about the Bureau of Prisons -- the Bureau of Prisons'  
2 complete indifference to Mr. Bardell's medical  
3 circumstances.

4 I also wanted to say, Ms. Posteraro, for the  
5 benefit of the local assistant United States attorneys -- I  
6 think it was Ms. Chang from the local office that was  
7 handling the responses to Mr. Bardell's motions for  
8 compassionate release -- that I was more than a little bit  
9 troubled by the responses that came from the Bureau of  
10 Prisons in opposition to the submissions by Mr. Bardell's  
11 medical doctors that he was not receiving adequate care and  
12 that the delay in providing him care was likely to lead to  
13 his death, which turned out to be prophetic. In fact, that  
14 is what happened.

15 So I'm not sure that my ire about the situation  
16 was adequately communicated in my written orders, and so I  
17 wanted to have the opportunity to have you all here before  
18 me so that I could perhaps elaborate on that and tell you  
19 why it's so concerning to me.

20 But what I'd like to do first, Mr. Bentley, the  
21 way we'll go forward is I'm going to give Mr. Bentley an  
22 opportunity to come to the podium and summarize the  
23 assignment that was given to the special master, the work  
24 that was undertaken by the special master in order to  
25 discharge the responsibilities imposed upon him by the

1 Court, a summary of his findings; after which I'll give the  
2 Bureau of Prisons and Warden Zook an opportunity to make  
3 any response that they want to make to the special master's  
4 findings. And then, if necessary, Mr. Bentley, I'll give  
5 you an opportunity to briefly respond.

6 And then I'll share with you my views about the  
7 appropriate disposition going forward after I've had some  
8 input from you all.

9 So, Mr. Bentley, let me invite you to the podium  
10 first. And lest I forget -- I don't think I will forget --  
11 thank you for accepting this assignment which I think is  
12 vitally important in terms of the administration of justice  
13 and the requirement that the Bureau of Prisons comply with  
14 orders of the Court.

15 I know it's not something that falls within your  
16 ordinary wheelhouse of assignments, but as a former  
17 United States Attorney, I thought you were especially well  
18 put to conduct the investigation. And I want to commend  
19 you and commend Ms. Nwokolo for your very significant  
20 efforts in discharging the responsibilities imposed on you  
21 by the Court.

22 But let me turn it over to you, Mr. Bentley.

23 MR. BENTLEY: Well, thank you very much,  
24 Your Honor.

25 And let me begin by expressing my thanks to you.

1 It was a great privilege to be able to serve as special  
2 master in this matter. I was surprised when you called me.  
3 I was grateful and humbled to be asked to take on this  
4 task.

5 And I can tell you that I, with the very able  
6 assistance of Soma Nwokolo took your charge very seriously  
7 and endeavored to the best of our abilities to investigate  
8 thoroughly the circumstances regarding BOP and  
9 Warden Zook's disregard of this Court's order and in making  
10 recommendations with respect to the legal findings and  
11 sanctions that we've recommended here today.

12 You know, you mentioned, of course, the  
13 investigation that we undertook, and we really, Your Honor,  
14 engaged in a scorched-earth investigation to the best of  
15 our abilities.

16 We interviewed well over 20 individuals. Those  
17 included Mr. Bardell's former attorney, Kimberly Copeland,  
18 who's here in court today, who I might say is as  
19 compassionate a lawyer as I've ever dealt with in all my  
20 years of practice. Her heart went out to Mr. Bardell. And  
21 I was extremely impressed with everything she did for  
22 Mr. Bardell over the course of her representation of  
23 Mr. Bardell and for the Bardell parents after Mr. Bardell,  
24 Fred Bardell, passed away.

25 But, you know, we interviewed Ms. Copeland, her

1 legal assistant who was involved in this; at least five or  
2 six probation employees, U.S. Probation Officers. We  
3 interviewed some BOP employees. We interviewed at least  
4 four doctors, five doctors in counting the BOP doctor that  
5 we interviewed.

6 And we also took 13 depositions. All of those  
7 were of BOP personnel. Most of those were in Dallas. We  
8 deposed Warden Zook.

9 And we also, in addition to these interviews and  
10 depositions, we looked at all the documents, quite  
11 voluminous documents that were filed in the -- in this  
12 Court prior to my appointment as special master. And we  
13 also asked the liaison for the BOP, which was AUSA Julie  
14 Posteraro, to assist us in getting other documents that  
15 weren't publically available.

16 And I would also like to commend AUSA Posteraro.  
17 She was extremely cooperative. Everything that we asked  
18 for, she provided very promptly. She did her best to make  
19 every witness available to us on the timetable we asked. I  
20 mean, she could have dragged her feet and made things a  
21 little more difficult, but she did none of that. She was  
22 extremely forthcoming, and it made our job easier. So I  
23 want to thank her, you know, personally for that.

24 After doing these, you know, taking these  
25 depositions, doing the interviews, looking at the



1 documents, I endeavored to put together a report for your  
2 court, for this Court. It's been filed. I know you've had  
3 an opportunity to read it as have all the other parties in  
4 the courtroom today. And we attempted to lay out, you  
5 know, a pretty detailed summary of what we found.

6 And I want to make it clear here at the beginning  
7 what we didn't do in our investigation or report. I think  
8 probably the greatest tragedy here is that Mr. Bardell was  
9 not diagnosed with colon cancer earlier, when it moved to  
10 stage IV earlier.

11 And I know -- because I didn't investigate that,  
12 that was not part of my charge from the Court, you know, I  
13 didn't look into that in any great detail. But I know it's  
14 been alleged by at least one doctor who evaluated the  
15 reports involving Mr. Bardell that, you know, BOP should  
16 have discovered that Mr. Bardell had colon cancer back in,  
17 you know, mid-2019, long before the events that transpired  
18 here.

19 If he had, I think it's -- I guess I'm not in a  
20 position to say. I know some doctors believe he may have  
21 been able to survive the cancer. That, I don't know. But  
22 I just want to make it clear, that's not something that we  
23 examined in the course of our investigation.

24 It's also, in my opinion, very likely that if  
25 Mr. Bardell had been diagnosed with colon cancer earlier,

1 not only would his life possibly have been spared, but, in  
2 addition, almost certainly, he would have been transferred  
3 to a federal medical center.

4           And after conducting the interviews of all of the  
5 -- you know, all the BOP employees that we did in  
6 Seagoville, it became apparent that that facility, like  
7 most FCCs, is not accustomed to dealing with inmates as sick  
8 as Mr. Bardell was.

9           And I believe if he had been in a federal medical  
10 center and the Court had issued a compassionate release  
11 order there would have been a lot more attention paid to  
12 what Mr. Bardell needed to get home.

13           In fact, it's probably very likely that some type  
14 of medical air transport would have been arranged by BOP.  
15 It's quite common, as I understand it, for BOP at the  
16 federal medical centers, when someone is ill as  
17 Mr. Bardell, to arrange for an air ambulance to take them  
18 to the place where they're going to be released.

19           And the folks at FCC Seagoville, they, again,  
20 don't see patients like that. None of them were aware of  
21 any prisoner release from that facility ever having an air  
22 ambulance.

23           And, in fact, when Ms. Copeland spoke to  
24 Mr. Bardell's case manager on February 5th, which was  
25 the day the release -- the Court's order was issued, you

1 know, granting the second motion for compassionate release,  
2 when she spoke to the case manager there, the case manager,  
3 when she was talking about air transport, he thought that  
4 Ms. Copeland meant some type of private luxury jet.

5 And that's what he told us. And, frankly, I  
6 believe him. He just didn't -- he just was not thinking at  
7 all about the potential need for an air ambulance.

8 But, again, that was not really the focus of our  
9 investigation, the fact that he should have been diagnosed  
10 earlier. And Mr. Bardell also probably should have been at  
11 a federal medical center where things would have come out  
12 quite differently, I believe.

13 What we focused on is what happened when the Court  
14 issued its order on February 5th. And as you know, the  
15 order is several pages, but there were two specific  
16 conditions that are critical for purposes of this  
17 proceeding.

18 One is, as the Court just mentioned, it ordered  
19 that Ms. Copeland, Mr. Bardell's attorney, work with the  
20 Probation Office to come up with a release plan. And that  
21 was one condition. And I can say with respect to that  
22 condition it's amazing to me how hard Ms. Copeland and the  
23 Probation Office worked to try to satisfy that first  
24 condition. Ultimately, Mr. Bardell was released before  
25 Probation had signed off on a release plan, but I will say

1 Ms. Copeland and the Probation Office worked very hard to  
2 do that as quickly as possible as the Court ordered.

3           And let me just further address that. The Court's  
4 order came out midday on February 5th. And  
5 Ms. Copeland got the order. She was not, at first, sure  
6 who she should contact at Probation; but before the end of  
7 the day, she was able to reach the duty probation officer  
8 in Cocoa Beach, which is the office that handled New Smyrna  
9 Beach which is where Mr. Bardell owned a house where he  
10 hoped to reside upon his release.

11           And she told, you know, Nick Shea at Probation  
12 that, you know, Mr. Bardell was going to be released. She  
13 mentioned to him her plan to have an air ambulance handle  
14 the transportation. At least that's what Ms. Copeland told  
15 us.

16           Nick Shea does not specifically remember that  
17 Ms. Bardell (sic) mentioned anything about an air  
18 ambulance, but he doesn't deny he was told that. And I, as  
19 a special master, believe what Ms. Copeland said, that she  
20 did mention the air ambulance to Nick Shea.

21           Nick Shea was -- by the time he got the call, it  
22 was about 5:00 on a Friday night. He was about to leave.  
23 He sent an email to his supervisor letting him know what  
24 had happened.

25           The supervisor by the name of Lubinski on Saturday

1 sees the email, knows that urgent action is needed. He  
2 doesn't take any specific action over the weekend apart  
3 from forwarding the email to one of his senior probation  
4 officers in Cocoa Beach for her to deal with first thing  
5 Monday morning.

6 And that is what she did. She didn't see the  
7 email until she got into the office on Monday morning. But  
8 the probation officer in Cocoa Beach immediately began  
9 making phone calls, calling law enforcement authorities to  
10 talk about the potential release of Mr. Bardell to his home  
11 in New Smyrna Beach.

12 You know, she was told by law enforcement that  
13 Mr. Bardell could not be released there because his home  
14 was within 2500 feet of a school, and he was not  
15 grandfathered in. And she immediately began brainstorming  
16 to try to figure out what could be done.

17 You know, it was suggested by Ms. Copeland's legal  
18 assistant that he be released to a hospital in  
19 Jacksonville, and the probation officers in Cocoa Beach  
20 thought that was a good idea. That would work for purposes  
21 of getting the release order that was required by the  
22 Court. And the case was immediately transferred to a  
23 probation officer in Jacksonville named Joseph Pinto.

24 Mr. Pinto -- this is still on February 8th,  
25 the day of the release and the first business day after the

1 Court entered its order.

2 Mr. Pinto began talking to Ms. Copeland's office.  
3 He talked to the local hospitals. It was finally decided  
4 that Mr. Bardell was going to be released to the emergency  
5 room at Baptist Hospital and from there go to Baptist  
6 MD Anderson there in Jacksonville. And the admission  
7 through the emergency room was arranged through a doctor  
8 who had a relationship with Ms. Copeland. So Ms. Copeland  
9 and the probation officer were working very diligently to  
10 find a place that he could be released to.

11 And during the course of that day, you know,  
12 February 8th, again, that first business day when  
13 things were happening, the primary focus of Ms. Copeland  
14 and -- you know, Ms. Copeland and the probation officers  
15 was where can he be released to since he can't be released  
16 to his home, at least for purposes of Probation's  
17 reporting, and they had not quite gotten around to  
18 addressing -- at least the Probation Office had not gotten  
19 around to thinking about what the means of transport would  
20 be.

21 Ms. Copeland already had that lined up. She made  
22 arrangements for Angel air to be on stand by and that they  
23 would go to, you know -- they would go to the closest  
24 airport they could find near FCC Seagoville and be ready  
25 whenever Mr. Bardell was released, but that had not been

1 discussed with the probation officers in Jacksonville  
2 because they were still focused on making sure he could be  
3 released to the hospital.

4           While Probation was still doing its work -- and,  
5 again, I don't know that this is in the report, but I think  
6 it's very likely that if Mr. Bardell had not been released,  
7 Probation would have approved a release plan by the next  
8 day, by February 9th. They were working hard. They  
9 knew it was urgent. They really wanted to get it done.

10           They were expecting to get something from BOP  
11 because, typically, as we've explained in our report, when  
12 a prisoner is released by BOP, there is a report -- it's  
13 also called a supervised release report that comes from the  
14 prison with a number of -- with information about where the  
15 prisoner intends to live, what job he intends to have.  
16 Those are the kind of things that are usually in the  
17 report.

18           Most of those weren't going to apply to  
19 Mr. Bardell because he was terminally ill and was going to  
20 be released to a hospital.

21           But, typically, BOP, just in a run-of-the-mill  
22 case, when a prisoner is going to be released, they send  
23 something to BOP -- I'm sorry, to Probation. Probation  
24 hadn't received that yet.

25           And I believe it's clear that once they were ready

1 to finalize the report, they would have reached out to BOP,  
2 but they didn't have a chance to do so because Ms. Copeland  
3 found out on February 8th that Mr. Bardell had already  
4 been released and that he was going to be flying by  
5 commercial aircraft.

6 So at that point in time, the report by Probation,  
7 it was never -- it was ordered by the Court as a condition  
8 for the release -- was never finalized. It was dropped.

9 Exigent circumstances meant that, you know,  
10 Mr. Bardell was going to be flying to Jacksonville, go to  
11 the Baptist Emergency Room and then on to the hospital.

12 The probation officer, Joseph Pinto, went to visit  
13 Mr. Bardell at the hospital on February 9th, observed  
14 the condition he was in, how sick that he was, and decided,  
15 you know, among other things that he didn't need to wear an  
16 ankle monitor.

17 And I think Mr. Pinto's view was he didn't want to  
18 get too bogged down in a lot of formalities and putting  
19 Mr. Bardell through a lot of -- making him jump through a  
20 lot of hoops because he realized at that time that  
21 Mr. Bardell was most likely going to die in the hospital.  
22 But he showed quite a bit of compassion toward Mr. Bardell,  
23 and that came through in our interview with the probation  
24 officer.

25 In the meantime, while the probation officer was,



1 you know, very busy working with Ms. Copeland to try to  
2 satisfy that first condition and get the report, the  
3 supervised release plan the Court had ordered, you know,  
4 the email -- you know, BOP in Seagoville was informed by  
5 email about this Court's order.

6           Initially, Emily Chang from the U.S. Attorney's  
7 Office sent the order to BOP officials in Ocala -- we're  
8 not in Ocala. To FCC Coleman. And the FCC Coleman folks  
9 transmitted the order to FCC Seagoville.

10           FCC Seagoville transmitted it to what's called the  
11 DSCC, the designated sentencing -- or Designation and  
12 Sentence Computation Center, which is in, I think,  
13 Grandview, Texas.

14           And it first looks at every order that comes  
15 through just to determine whether it's authentic. And as  
16 far as I can tell, the DSCC, primarily when it gets an  
17 order like that, doesn't do much other than go on Pacer and  
18 make sure that what's been transmitted to the prison is an  
19 authentic order of the Court in this type of situation.

20           So DSCC did that quickly, sent it back to  
21 FCC Seagoville. All this is on February 8th, the day  
22 of the release. And it went to at least 11 different  
23 people at FCC Seagoville with this Court's order attached.

24           And Ms. Nwokolo and I deposed most of the  
25 individuals who received that, the Court's order. And most

1 of them acknowledged they didn't bother reading the order  
2 and opening the attachment. A few said they opened it,  
3 said they glanced at it, and didn't fully appreciate what  
4 was required, didn't heed it.

5 And there was no real mechanism set in place that  
6 required, specifically required, a single individual to be  
7 responsible for reading all judicial orders regarding  
8 release and making sure all the conditions were satisfied.

9 And according to the individual employees at  
10 Seagoville, they all said that -- or many of them said they  
11 just saw the words "immediate release" and "time served"  
12 and thought they needed to get him out of the prison that  
13 day with no further explanation.

14 And I submit to the Court, you know, the line in  
15 the Court's order that spoke of immediate release was the  
16 very same sentence in which the Court said "upon receiving  
17 an approved release plan from U.S. Probation." There was  
18 really no excuse for BOP to disregard that condition and to  
19 release Mr. Bardell prior to receiving, you know, the  
20 approved release plan from U.S. Probation.

21 But they were moving quickly. They, you know,  
22 spoke to Mr. Bardell's counsel. They spoke to Ms. Bardell,  
23 Fred's mother, and told her that she was going to need to  
24 pay for an airline ticket on a commercial airline to fly  
25 from Dallas to Jacksonville via Atlanta for a flight that

1 same day. And they got him on that flight.

2           When he presented to the folks who were conducting  
3 the release, he was in a wheelchair. He was too weak to  
4 walk. And the arrangements that were made to take him to  
5 the airport was with a trustee who was an inmate in the  
6 attached camp who was going to drive him to the airport.

7           And according to the people we interviewed, the  
8 trustees did not have permission to get out of their  
9 vehicle. We could not find anything in writing that said  
10 that was the case, but we were told orally in depositions  
11 and interviews that the trustee who took Mr. Bardell to the  
12 Dallas/Fort Worth Airport couldn't leave his vehicle.

13           So he was taken to the vehicle in a wheelchair,  
14 put into the vehicle, driven to the airport, and just  
15 dumped at the curb. The trustee said, Here you go. And  
16 Mr. Bardell, somehow, made his way through DFW airport,  
17 which many of us in this courtroom have been to. It's not  
18 an easy airport to navigate when you're in the best of  
19 health and you've been flying regularly. And Mr. Bardell,  
20 who had been in prison since before 2012 and who was  
21 terminally ill with stage IV colon cancer, is dropped at  
22 this airport.

23           Somehow he found his way. He had no luggage to  
24 check, but somehow he found his way to the gate, got to  
25 Atlanta. We have no idea how he was able to maneuver

1 through the Atlanta airport and make his connecting flight  
2 to Jacksonville.

3           What we do know is when he got to Jacksonville,  
4 somebody, a good Samaritan found a wheelchair for him and  
5 wheeled him outside. It wasn't an airline employee, but  
6 just a good Samaritan in the airport found a wheelchair,  
7 wheels him out.

8           His parents were there. His parents didn't  
9 recognize him because of his emaciated condition and  
10 because of how much he'd aged, and he didn't recognize his  
11 parents. He was so ill. He did recognize Ms. Copeland,  
12 who had been in regular contact with him. Of course,  
13 Ms. Copeland was there with the parents.

14           Ms. Copeland said that she would take Mr. Bardell  
15 in her car. Although we don't really know much about the  
16 adventure or misadventure that Mr. Bardell endured getting  
17 from DFW to the Jacksonville airport, we do know that when  
18 he arrived in Jacksonville he was very weak. He could  
19 barely walk.

20           He had -- he had soiled his pants. And because  
21 his pants were in such bad shape because he couldn't  
22 control his bowels, Mr. Bardell's father took off his shirt  
23 and laid it down in the seat of Ms. Copeland's car so that  
24 he wouldn't soil the seats, so that Fred wouldn't soil the  
25 seats of Ms. Copeland's car. And it was Ms. Copeland who

1 drove him to the emergency room at Baptist Hospital there  
2 in Jacksonville.

3           Again, the inhumanity and the indifference, as the  
4 Court expressed, it is really hard to fathom how anybody  
5 could put Mr. Bardell in that situation where he's dropped  
6 at the curb and left to fend for himself.

7           But that, Your Honor, in summary -- a lot of this  
8 is spelled out in more detail in the report that was filed  
9 with the Court.

10           But I'd like to say we make several  
11 recommendations here.

12           First, we're recommending that this Court adopt  
13 the factual findings in the report. And we're also asking  
14 that the Court find both the Bureau of Prisons and  
15 Warden Zook in her official capacity in civil contempt.

16           And as the Court knows, for a finding of civil  
17 contempt, all that is required is that there be a valid and  
18 lawful order, and the terms of the order, in this case that  
19 condition we discussed, be clear and unambiguous and that  
20 the party against whom -- the party to be found in contempt  
21 had the ability to comply with the order. And here there's  
22 no question that all three of those elements are met.

23           I think the Court's order was lawful. There's no  
24 dispute about that. There's no dispute from BOP or  
25 Warden Zook.

1           It was clear and unambiguous. It really couldn't  
2 have been more clear. And there's no dispute about that.

3           And also, Bureau of Prisons clearly -- and  
4 Warden Zook in her official capacity -- had the ability to  
5 comply with the order. What was required of them by the  
6 order was to simply wait until they received a release plan  
7 that was approved by U.S. Probation.

8           Now, in order to impose sanctions for civil  
9 contempt, there is a good argument to be made that there  
10 must be a finding of willfulness. But as the Eleventh  
11 Circuit found in Rum -- and there's other authorities cited  
12 in the brief -- a finding of willfulness in this context,  
13 for the imposition of civil -- for sanctions, compensatory  
14 sanctions for civil contempt just requires recklessness.

15           And I submit to the Court that there's no question  
16 that BOP and Warden Zook in her official capacity were  
17 reckless in their disregard of the Court's order. And, in  
18 fact, there's really no dispute -- or there is no dispute  
19 from BOP or Warden Zook that they were reckless in  
20 disregarding the Court's order. So compensatory sanctions  
21 are appropriate, and we ask that the Court impose those  
22 sanctions.

23           The sanctions that we recommended are that, first  
24 of all, BOP reimburse Charlotte Bardell for the cost of the  
25 airplane ticket from Dallas to Jacksonville, which was

1 \$494.20. And also that BOP be required to pay the  
2 attorneys' fees that were incurred by me and Ms. Nwokolo  
3 investigating this matter and writing up the report. And  
4 there's no dispute from the other parties here, BOP and  
5 Warden Zook, that they should be required to pay that.

6 I want to -- I want to address why, you know, I  
7 did not recommend sanctions in connection with sending  
8 Mr. Bardell by commercial airline as opposed to air  
9 ambulance. There are really a couple of primary reasons.

10 One is there was a recorded phone call between  
11 Ms. Copeland and Fred Bardell. At the time, Ms. Copeland  
12 also had Mr. Bardell's parents on a separate line. I think  
13 she was unable to merge the calls, as I'm frequently unable  
14 to do, so she had them both on the line at the same time.

15 And Fred Bardell said that he was going to be  
16 flying by a commercial airline, and Ms. Copeland initially  
17 expressed some surprise by that but she very quickly agreed  
18 that that could be done and that would be a cost savings.

19 And so it's not -- in fairness to Ms. Copeland,  
20 she was talking to Mr. Bardell, but she did not appreciate  
21 how weak Mr. Bardell was during that phone call or she  
22 probably wouldn't have acquiesced. But the fact that she  
23 did, albeit without a full understanding of what happened,  
24 acquiesced in the commercial flight, I think, militates to  
25 some extent against the imposition of sanctions for failure

1 to get Mr. Bardell into an air ambulance.

2           You know, other -- there are some other factors,  
3 but the other primary reason that I did not recommend to  
4 the Court that it try to fashion some type of compensatory  
5 sanctions for putting Mr. Bardell on the commercial flight  
6 is those damages would be extremely difficult to quantify  
7 and the damages would relate to primarily a period from --  
8 maybe a six-hour period, from the time he was dropped at  
9 the curb until he was admitted into the emergency room at  
10 Baptist Hospital in Jacksonville.

11           And I know that that six-hour period had to have  
12 been extremely difficult for Mr. Bardell, and I don't have  
13 a doubt in my mind that he was much more uncomfortable and  
14 potentially in more pain than he would have been had he  
15 been in an air ambulance.

16           But the damages, nevertheless, for that six-hour  
17 period would be difficult in my estimation to quantify.  
18 And because there's some question about the causation  
19 because of that phone call and because of the fact that  
20 Ms. Copeland did not on February the 8th mention to  
21 Probation the fact that, you know, that she wanted  
22 Mr. Bardell to be transferred by air ambulance, the  
23 causation is not crystal clear.

24           So for those reasons, I did not recommend imposing  
25 sanctions for that problem, which I think is really very



1 difficult, again, to wrap your mind around, the  
2 indifference shown by BOP. But I submit if the Court is  
3 interested in imposing sanctions for that, it could fashion  
4 that type of relief.

5 THE COURT: Thank you, Mr. Bentley.

6 MR. BENTLEY: Thank you, Your Honor.

7 THE COURT: And before I hear from Ms. Posteraro,  
8 I want to take a minute to, again, thank you and to thank  
9 Ms. Nwokolo for your efforts.

10 I did carefully go through and read the  
11 transcripts of the depositions that were taken in this case  
12 in order to fully inform myself about the factual  
13 background in addition to the very excellent summary that  
14 you provided in your report.

15 And I know that much of that work was done by  
16 Ms. Nwokolo under your supervision and at your direction.  
17 I know that she's had to withdraw from the case as a result  
18 of accepting a position with the United States Attorney's  
19 Office in Tampa, for which I congratulate her and  
20 congratulate the office because it made an excellent hire  
21 in my estimation.

22 I do think that the record ought to reflect that  
23 the Court is very appreciative of her efforts and her work  
24 and recognizes her in that respect and appreciates your  
25 work as well, Mr. Bentley.

1 MR. BENTLEY: Thank you, Your Honor.

2 And I can't tell you -- if you went through the  
3 deposition transcripts, you're well aware. I was with  
4 Ms. Nwokolo in most of those depositions but she took the  
5 lead in most of them, and she did an outstanding job.

6 Thank you, Your Honor.

7 THE COURT: Ms. Posteraro.

8 MS. POSTERARO: Before I begin, Your Honor, I will  
9 state also that it was a pleasure to work with Soma and  
10 Mr. Bentley. Soma did a fantastic job in the depositions  
11 that I was in with her, and it really was a pleasure to  
12 work with her.

13 And Mr. Bentley's findings of fact as detailed in  
14 his very comprehensive report and as presented here today  
15 are troubling, to say the least. I don't think there's a  
16 person here today that is without regret and remorse as to  
17 the circumstances of Mr. Bardell's release from the Bureau  
18 of Prisons' custody.

19 As indicated in its response to Mr. Bentley's  
20 report, the Bureau of Prisons does not materially object to  
21 his findings of fact nor does the Bureau of Prisons take  
22 issue with his recommendations, including his  
23 recommendation of holding BOP and Warden Zook in her  
24 official capacity in civil contempt and his recommendations  
25 for sanctions.

1           I understand and appreciate the Court's concerns  
2 regarding Mr. Bardell's medical care while he was in the  
3 custody of the Bureau of Prisons.

4           To address any claims of medical negligence,  
5 Ms. Copeland on behalf of Mr. and Mrs. Bardell have filed  
6 an administrative tort claim with the Bureau of Prisons  
7 which remains pending today. If that claim is not resolved  
8 in a way that is satisfactory to Mr. and Mrs. Bardell, they  
9 have the opportunity or option of filing a civil lawsuit to  
10 address any of those concerns.

11           THE COURT: Thank you, Ms. Posteraro.

12           MS. POSTERARO: Thank you.

13           THE COURT: Mr. Boynton.

14           MR. GREENE: Thank you, Your Honor.

15           Glenn Greene representing Warden Zook in her  
16 individual capacity.

17           THE COURT: I didn't mean to call you by the wrong  
18 name. My apologies.

19           MR. GREENE: No problem.

20           THE COURT: I made myself a note, and I looked at  
21 the wrong one. So my apologies, Mr. Greene.

22           MR. GREENE: No problem, Your Honor.

23           Just with respect to the we, in Warden Zook's  
24 individual capacity, we do not take issue with the special  
25 master's comprehensive findings and in particular note that

1 to the extent that any finding is likely that it would be  
2 against Warden Zook in her official capacity given that all  
3 of the actions here involved the performance of her  
4 official government job.

5 Thank you.

6 THE COURT: Thank you, Mr. Greene.

7 Well, let me make a couple of observations.

8 As I've said before, both in my orders and in my  
9 opening remarks for the proceeding here this morning, that  
10 I am deeply distressed by the actions of the Bureau of  
11 Prisons in connection with the -- not only the release  
12 circumstances of Mr. Bardell, but also his care and  
13 treatment while he was confined, especially during the  
14 latter stages of his confinement and incarceration.

15 And I want to take a minute and talk to you  
16 directly, Warden Zook, about some of my -- I don't really  
17 know how to properly characterize it. I started to say  
18 discomfort, which is a totally inadequate word for my  
19 reaction to the treatment of Mr. Bardell.

20 I will tell you that the Bureau of Prisons should  
21 be deeply ashamed of its conduct in connection with  
22 Mr. Bardell's last stages of his incarceration and with the  
23 circumstances surrounding his release.

24 And I will tell you that while the power that I  
25 have over the Bureau of Prisons is constrained to a large

1 degree, that as long as I have the ability to have some  
2 input into the situation, that no individual who's  
3 incarcerated by my order or an order of one of my  
4 colleagues is going to be allowed to be stripped of his  
5 right to claims for simple human dignity as a consequence  
6 of having committed a federal offense and being  
7 incarcerated.

8           The purposes of incarceration, as I know you're  
9 well aware from your training, do not include depriving an  
10 individual of his or her human dignity and the right to be  
11 treated as a living human being. That's what happened in  
12 this case. Mr. Bardell was stripped of his human dignity  
13 during the last stages of his incarceration.

14           The other thing that troubles me deeply about this  
15 is that it's my opinion -- I don't know that I could  
16 support it empirically, but it's my opinion -- that had the  
17 Bureau of Prisons responded truthfully with respect to  
18 Mr. Bardell's condition at the time of his original motion  
19 for compassionate release three months prior to the date of  
20 my order when he was initially denied release, based on the  
21 representations of the Bureau of Prisons, which were  
22 directly contrary to the truth, that Mr. Bardell was not  
23 suffering from any terminal illness, that Mr. Bardell's  
24 medical care was adequate, that he could be managed  
25 comfortably in his current state of confinement at

1 Seagoville, none of those things were true and none of them  
2 were accurate when the Bureau of Prisons made those  
3 representations to Assistant United States Attorney Emily  
4 Chang.

5           And I want to tell you, Ms. Chang practices before  
6 me all the time. And the Bureau of Prisons, as a result of  
7 this, has damaged her reputation and her credibility. And  
8 that's something that is very difficult to recover.

9           So I don't know whether or not I should be unhappy  
10 with Ms. Chang for not being more diligent in terms of  
11 inquiring as to what Mr. Bardell's actual circumstances  
12 were. Perhaps. But I know that I should be unhappy with  
13 the Bureau of Prisons' representation from Seagoville that  
14 Mr. Bardell's motion for compassionate release had no  
15 merit, that his medical situation was not severe, that he  
16 was not suffering from cancer, that he had some as yet  
17 undiagnosed or undetermined malady that was not colorectal  
18 cancer.

19           Because even a cursory examination by any medical  
20 practitioner, based on what we know of Mr. Bardell's  
21 circumstances at the time of his expiration nine days after  
22 my order, his death nine days after my order, would have  
23 demonstrated that he was in extremis and that he was  
24 suffering from terminal colorectal cancer and that he was  
25 in desperate need of medical care.

1           And I find the Bureau of Prisons' conduct in this  
2 case to be reprehensible, and I desperately wish that there  
3 was more that I could do in terms of imposition of  
4 sanctions.

5           But I'm going to adopt the findings that were  
6 recommended by the special master and incorporate those  
7 into a written order. I am going to find both the Bureau  
8 of Prisons and Warden Zook in her official capacity to be  
9 in civil contempt of the Court.

10           I'm going to reduce those findings to writing. I  
11 am going to require that the Bureau of Prisons pay the  
12 airfare amount, which is reflected in the special master's  
13 report as well as pay the attorney fees and costs incurred  
14 by the special master, not only the amount submitted in the  
15 report but also, Mr. Bentley, if you would amend your  
16 application or make an application with an up-to-date  
17 description of your costs and fees including but not  
18 limited to your participation in this hearing here today.  
19 And I'm going to require the Bureau of Prisons to make --  
20 to pay that amount.

21           I'm also going to include in my order a  
22 recommendation that the attorney general of the  
23 United States undertake through the Inspector General or  
24 other investigative offices an examination into  
25 Mr. Bardell's circumstances during the course of his

1 incarceration, the failure of the Bureau of Prisons to  
2 adequately tend to him and to respond to his medical needs,  
3 the misrepresentations, in my view, again, of the situation  
4 surrounding Mr. Bardell's medical condition at the time  
5 that they responded in a formal response to an order of  
6 this Court as to the veracity of his claims of medical  
7 emergency that warranted his compassionate release.

8 I don't know whether or not the attorney general  
9 is going to undertake that investigation. I'm going to  
10 recommend that it be done. I intend to post my order on  
11 the Court's website in the hope that it gets as much  
12 exposure as is possible.

13 And I'm going to direct Ms. Posteraro and  
14 Mr. Greene to file a certification with the Court within  
15 10 days after my order is entered that you have also  
16 provided a copy of it to the head of the Bureau of Prisons  
17 as well as a copy to the attorney general and the deputy  
18 attorney general of the United States so that I can -- so  
19 that there can be no question that the message has been  
20 delivered.

21 I intend to do it myself, but I'm going to require  
22 Mr. Greene to do it on behalf of the warden and  
23 Ms. Posteraro to do it on behalf of the Bureau of Prisons.

24 I want to take a minute, Ms. Copeland, and to  
25 commend you for your efforts on behalf of Mr. Bardell.



1 Oftentimes, I know that the efforts of defense counsel  
2 are -- it's a tough -- it's a tough job representing an  
3 individual like Mr. Bardell who's charged with such a  
4 despicable crime.

5 I certainly am not intending in any way to make  
6 any comment about Mr. Bardell's criminal offense which I  
7 sentenced him for, and I sentenced him appropriately. And  
8 I made findings at that time about the 3553 factors, the  
9 need to protect the community, and the seriousness of the  
10 offense that was committed by Mr. Bardell.

11 But as I said before, the purpose of incarceration  
12 for both rehabilitation, deterrence, and punishment does  
13 not include depriving a human being of a fundamental right  
14 to live a life that has some semblance of dignity. And  
15 that's what happened to Mr. Bardell here.

16 In addition to -- and I would be remiss if I  
17 didn't mention what I perceive to be on the part of the  
18 Bureau of Prisons a level of arrogance with respect to not  
19 only the orders imposed by the Court, but what I would call  
20 their perceived insularity to any further repercussions  
21 once individuals are delivered to them for their care and  
22 custody.

23 It may be -- it may be difficult to communicate to  
24 both the lawyers, all of the lawyers and to the  
25 representatives of the Bureau of Prisons and to you,

1 Warden Zook, how much angst an individual who serves as a  
2 United States district judge suffers in connection with the  
3 sentencing process, how heavily it weighs on our minds to  
4 deprive an individual of their liberty for whatever period  
5 of time to commit them over to the custody of the Bureau of  
6 Prisons.

7           And to have our concern about stripping someone of  
8 their rights and their freedom by delivering them to the  
9 custody of the Bureau of Prisons to then have considerable  
10 -- and I underscore considerable -- doubts and concerns  
11 about whether or not the Bureau of Prisons is going to give  
12 the slightest thought to treating those individuals with  
13 even a small smattering of dignity while they're in their  
14 custody troubles me greatly. It adds to my burden more  
15 than you can possibly imagine.

16           So I don't know where you are currently. I know  
17 it's in the report, Warden Zook. But I hope you take some  
18 measure of this message back with you and spread it amongst  
19 your colleagues that this notion that the Bureau of Prisons  
20 is beyond reproach, beyond touch, beyond the scope and  
21 effect of the orders of a United States District Court is  
22 misplaced. I, for one, am going to do everything I can to  
23 make sure that the Bureau of Prisons is held to account for  
24 its failure to do what the court orders be done.

25           And I will tell you that I think that your conduct

1 not only reflects very poorly on yourself, it reflects very  
2 poorly on your leadership, it reflects very poorly on the  
3 people that were involved in Mr. Bardell's situation.

4           It reflects very badly on the United States of  
5 America because the Bureau of Prisons is an agency that  
6 operates under the umbrella of the Department of Justice.  
7 The Department of Justice is supposed to stand for  
8 something. It's supposed to mean something in this  
9 country. It's supposed to stand for human rights and for  
10 integrity and for vigilance and adherence to the rule of  
11 law.

12           And encompassed within that is the responsibility  
13 to recognize that each and every one of us, there but for  
14 the grace of God go we, that each and every one of us is  
15 entitled to not only all the unalienable rights that are  
16 included in our founding papers, but most certainly to be  
17 treated like a human being, to be afforded at least some  
18 semblance of dignity.

19           You stripped Mr. Bardell of that and you should be  
20 ashamed, and the people that work for you should be  
21 ashamed. And I wish there was more that I could do.

22           But I want to thank you, Ms. Posteraro, for  
23 representing the United States as well and ably as you have  
24 done and appreciate your service.

25           And, again, my thanks to you, Mr. Bentley and



C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

August 5, 2022

s\ Amie R. First  
Amie R. First, RDR, CRR, CRC, CPE  
Federal Official Court Reporter  
United States District Court  
Middle District of Florida