Investigation and Review of the Federal Bureau of Prisons' Conditions of Confinement and Medical Treatment of Frederick Mervin Bardell and Related Representations to the Court, Upon Referral by Senior U.S. District Judge Roy B. Dalton, Jr.

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INVESTIGATIONS DIVISION

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EXECUTIVE SUMMARY

Investigation and Review of the Federal Bureau of Prisons' Conditions of Confinement and Medical Treatment of Frederick Mervin Bardell and Related Representations to the Court, Upon Referral by Senior U.S. District Judge Roy B. Dalton, Jr.

The U.S. Department of Justice (Department or DOJ), Office of the Inspector General (OIG) initiated this investigation and review following an October 4, 2022 court order issued by U.S. District Judge Roy B. Dalton Jr., Middle District of Florida (MDFL), regarding the death from advanced metastatic colorectal cancer of federal inmate Frederick Mervin Bardell, 9 days after his release from prison on February 8, 2021. Bardell was released from the Federal Correctional Institution (FCI) Seagoville, Texas, pursuant to a February 5, 2021 compassionate release order. The Court's October 4, 2022 order recommended, among other things, that the Attorney General, the OIG, or other appropriate investigative offices undertake an examination into the conditions of Bardell's confinement and treatment, as well as any misrepresentations made to the Court in connection with Bardell's case.[1] The OIG investigated and reviewed whether the Federal Bureau of Prisons' (BOP) medical diagnosis and care of Bardell was timely and appropriate, whether the BOP appropriately handled Bardell's request for a reduction in sentence (RIS), whether the government made misrepresentations to the Court in connection with Bardell's motions for compassionate release, and whether the BOP complied with Judge Dalton's order to release Bardell immediately after the U.S. Probation Office (USPO) approved a release plan.

The OIG found that the BOP's ability to provide quality and timely medical care to Bardell was negatively impacted by severe understaffing in FCI Seagoville's Health Services Unit (HSU). Specifically, we found that Bardell initially reported to FCI Seagoville medical staff that he saw blood in his stool in July 2020, and the BOP referred Bardell for blood work which showed possible colon cancer in early September 2020. The BOP then arranged for Bardell to have a computed tomography (CT) scan on September 17, 2020, and the results indicated that Bardell likely had stage IV colon cancer that had spread to his liver. The Regional Medical Asset Support Team Physician (Regional MAST Physician) for the BOP's South Central Region told the OIG, and also conveyed to staff at the time, that this diagnosis was very serious, and that Bardell urgently needed a colonoscopy to confirm whether he had advanced colon cancer. However, the OIG found that Bardell did not undergo a successful colonoscopy until January 29, 2021, more than 6 months after he initially reported seeing blood in his stool and 73 days after the CT scan showed that he likely had stage IV colon cancer and urgently needed a colonoscopy. The colonoscopy confirmed that Bardell had stage IV colon cancer.

The Regional MAST Physician told the OIG that following receipt of Bardell's CT scan results in September 2020, Bardell should have had a colonoscopy and biopsy and began treatment

[1] See United States v. Bardell, No 6:11-cr-401-RBD-DAB (M.D.F.L., Oct. 4, 2022) (available at https://www.flmd.uscourts.gov/sites/flmd/files/documents/flmd-order-holding-the-federal-bureau-of-prisons-and-warden-kristi-zoon-in-her-official-capacity-in-civil-contempt-6-11-cr-401-rbd-ejk.pdf) (accessed Dec. 30, 2025). The OIG coordinated with DOJ, including DOJ's Office of Professional Responsibility, when we made the decision to open an investigation.

that month. The OIG determined that the delay in Bardell's medical care and treatment at the BOP was due to a number of factors, including severe understaffing in FCI Seagoville's HSU, difficulty securing timely appointments with offsite medical providers during the COVID-19 pandemic, and inadequate procedures to ensure that, among other things, outside medical appointments occurred in a timely manner, inmates were properly prepared for scheduled colonoscopies, and inmates with serious medical needs were seen regularly by BOP medical providers. We note that the OIG's prior work has repeatedly identified staffing issues across the BOP's institutions, including understaffing in HSUs, and the OIG currently has multiple open recommendations, including one priority recommendation, related to BOP understaffing.[2] In addition, on May 20, 2025, the OIG publicly released an evaluation of the BOP's colorectal cancer (CRC) screening practices for inmates and clinical follow-up on screenings, which identified widespread concerns with the BOP's compliance with established guidelines for CRC screening of inmates, the provision of follow-up care for inmates with positive screenings, and the timeliness of colonoscopies for BOP inmates who needed them.[3]

We further found that the BOP's handling of Bardell's RIS request was inadequate and the government's related representations to the Court that there was "no indication" that Bardell could not "receive adequate care in custody" were inconsistent with what we learned during the course of our investigation and review. Specifically, the BOP denied Bardell's request with the BOP for a RIS on October 30, 2020, stating, "A review of medical documentation does not reflect you are currently experiencing deteriorating mental or physical health which substantially diminishes your ability to function in a correctional facility." The government, through Assistant United States Attorney (AUSA) Emily C. L. Chang, relied on this finding and, in turn, opposed Bardell's motion to the Court for compassionate release the next month.[4] The RIS decision and

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[2] See, e.g., Limited-Scope Review of the Federal Bureau of Prisons' Strategies to Identify, Communicate, and Remedy Operational Issues, Report No. 23-065 (May 2023), https://oig.justice.gov/reports/limited-scope-review-federal-bureau-prisons-strategies-identify-communicate-and-remedy, (We designated Recommendation 5 as a priority recommendation, which states: "Develop and implement a reliable method to calculate appropriate staffing levels at the enterprise and institution levels. Such a method should seek to baseline appropriate staffing levels for the current inmate population and be flexible to account for future population changes overall and among institutions as well as other factors (e.g., institution security level and layout) that determine appropriate staffing levels. Once such a method is developed, communicate the need to align funding levels with appropriate staffing levels to executive and legislative branch stakeholders."); Investigation and Review of the Federal Bureau of Prisons' Custody, Care, and Supervision of Jeffrey Epstein at the Metropolitan Correctional Center in New York, New York, Report No. 23-085 (June 2023), https://oig.justice.gov/reports/investigation-and-review-federal-bureau-prisons-custody-care-and-supervision-jeffrey, (Recommendation 6 states: "The BOP should continue to develop and implement plans to address staffing shortages at its prisons."); Inspection of the Federal Bureau of Prisons' Federal Correctional Institution (FCI) Sheridan, Report No. 24-070 (May 2024), https://oig.justice.gov/reports/inspection-federal-bureau-prisons-federal-correctional-institution-sheridan, (finding that healthcare staffing challenges seriously impacted FCI Sheridan's ability to provide adequate healthcare to inmates).

[3] Evaluation of the Federal Bureau of Prisons' Colorectal Cancer Screening Practices for Inmates and Its Clinical Follow-up on Screenings, Report No. 25-057, May 20, 2025, https://oig.justice.gov/reports/evaluation-federal-bureau-prisons-colorectal-cancer-screening-practices-inmates-and-its?utm_source=slider&utm_medium=web&utm_campaign=report.

[4] Upon reviewing a draft of this report, Chang submitted comments to the OIG, which included her request to be named in this report. We honored Chang's request because doing so did not implicate the privacy interests of third parties.

Chang's reliance on it were based on Bardell not having a definitive diagnosis of terminal cancer at that time. However, by October 2020 the CT scan results showed that there was a strong likelihood that Bardell had stage IV colon cancer, and the only reason he did not have a definitive diagnosis was that the BOP had failed to timely schedule a colonoscopy following the Regional MAST Physician's urgent order earlier that month. These facts, combined with the severe understaffing in FCI Seagoville's HSU, were inconsistent with representations made by the government to the Court that the BOP was actively addressing Bardell's medical issues and that there was no indication that Bardell could not receive adequate care in custody. The OIG investigation did not find evidence that the BOP assisted with drafting the government's responses to Bardell's motions, or that any BOP employee made inaccurate statements to the Court. However, we found that the government's inaccurate representations were the result of the government's reliance on the BOP's RIS decision, which we found to be based on a seriously deficient process within the BOP, and Chang's honest, although nonexpert, understanding of the limited records provided by the BOP. While we believe that it would have been prudent for Chang to consult with BOP medical professionals, other BOP employees, or other medical experts to better understand the BOP medical records, Bardell's medical condition, and the BOP's ability to care for him, we noted that Department procedures in place at the time did not require her to speak with such individuals, and Chang received guidance and input from her supervisor before submitting her responses to the Court. Overall, we did not find that Chang made any knowing or intentional misrepresentations in Court, because Chang based her representations on an honest interpretation of the BOP medical records that were available to her at the time and she provided those records in their entirety to the Court.

Finally, the OIG found that the BOP did not comply with Judge Dalton's order to release Bardell immediately after the USPO approved a release plan, because at least nine BOP employees failed to read or fully read the Court's order. Some BOP employees told us that they did not notice the condition to wait for a USPO-approved release plan, because they were focused on the words "time served" and "immediately" in the order and, thus, worked to release Bardell as soon as possible.

The hastiness of the BOP's handling of Bardell's release was extremely concerning, because the BOP did not take measures to ensure his safe and compassionate transport in light of his medical condition. Rather, the BOP asked Bardell's parents to book a commercial flight for Bardell and arranged for an inmate to transport him to the airport. Although Bardell required a wheelchair to be taken to Receiving and Discharge for his release from FCI Seagoville, the inmate dropped Bardell off at the curb at the local airport without a wheelchair, and he had to navigate his way to his flight there as well as to a connecting flight in Atlanta, Georgia. By the time Bardell arrived at his destination in Florida, his clothes were soiled with excrement and blood due to his illness and he had to be pushed off the plane in a wheelchair by a fellow passenger. He died 9 days later.

We note that Bardell's health issues coincided with the COVID-19 pandemic and we learned through our investigation and review that numerous FCI Seagoville inmates and correctional staff were either diagnosed with COVID-19 or were quarantined because of exposure to COVID-19 during the time period relevant to this review. We were told that this situation impacted the ability of FCI Seagoville to provide other types of medical care to inmates. In addition, multiple BOP employees told us that the pandemic impacted the BOP's ability to schedule timely appointments with offsite medical providers, because many providers were closed or operating on a limited capacity at the time. The COVID-19 pandemic also significantly increased the number of requests by BOP inmates for compassionate release.

Overall, we identified serious job performance and management failures at multiple levels within FCI Seagoville, from line staff through the Warden. We also identified problems with the BOP's medical care of inmates, handling of compassionate release requests due to medical circumstances, and handling of compassionate release orders.

The U.S. Attorney's Office for the Northern District of Texas declined prosecution in this case.

The OIG has completed its investigation and is providing this report to the BOP to review the performance of the employees as described in this report for any action it deems appropriate. Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The U.S. Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

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INTRODUCTION AND BACKGROUND

I. Introduction

The U.S. Department of Justice (Department or DOJ), Office of the Inspector General (OIG) initiated this investigation and review following an October 4, 2022 court order issued by U.S. District Judge Roy B. Dalton Jr., Middle District of Florida (MDFL), regarding the death from advanced metastatic colorectal cancer of federal inmate Frederick Mervin Bardell, 9 days after his release from prison on February 8, 2021. Bardell was released from the Federal Correctional Institution (FCI) Seagoville, Texas, pursuant to a February 5, 2021 compassionate release order. The Court's October 4, 2022 order recommended, among other things, that the Attorney General, the OIG, or other appropriate investigative offices undertake an examination into the conditions of Bardell's confinement and treatment, as well as any misrepresentations made to the Court in connection with Bardell's case.[5] The OIG investigated and reviewed whether the Federal Bureau of Prisons' (BOP) medical diagnosis and care of Bardell was timely and appropriate, whether the BOP appropriately handled Bardell's request for a reduction in sentence (RIS), whether the government made misrepresentations to the Court in connection with Bardell's motions for compassionate release, and whether the BOP complied with Judge Dalton's order to release Bardell immediately after the U.S. Probation Office (USPO) approved a release plan.

II. Methodology

During the course of this investigation and review, the OIG interviewed numerous witnesses. They included Kristi Zook, who had been the Warden of FCI Seagoville since November 10, 2019, and an employee of the BOP since December 2, 2001, as well as numerous other BOP employees. The OIG also interviewed Assistant U.S. Attorney (AUSA) Emily C.L. Chang, who represented the government in the proceedings related to Bardell's motions for compassionate release.[6] In addition, the OIG relied on the expertise of a contracted medical expert in assisting us with understanding Bardell's medical diagnosis and treatment. We also collected and reviewed numerous documents, including DOJ and BOP policy and procedure documents, court records, emails, and BOP medical and administrative records related to Bardell.

III. Applicable Law and DOJ and BOP Policies

A. BOP Care to Inmates

The BOP is responsible for providing safekeeping, care, and subsistence of federal inmates, as well as for establishing prerelease planning procedures and reentry planning procedures for inmates.[7] In the case of an inmate who is required to register under the Sex Offender Registration and Notification Act, the BOP is required, by statute, to provide notice of the inmate's release to "the chief law enforcement officer of each State, tribal, and local jurisdiction in which the inmate will reside" as well as to "a State, tribal, or local agency

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[5] See United States v. Bardell, No 6:11-cr-401-RBD-DAB (M.D.F.L., Oct. 4, 2022) (available at https://www.flmd.uscourts.gov/sites/flmd/files/documents/flmd-order-holding-the-federal-bureau-of-prisons-and-warden-kristi-zoon-in-her-official-capacity-in-civil-contempt-6-11-cr-401-rbd-ejk.pdf) (accessed Dec. 30, 2025). The OIG coordinated with DOJ, including DOJ's Office of Professional Responsibility, when we made the decision to open an investigation.

[6] Upon reviewing a draft of this report, Chang submitted comments to the OIG, which included her request to be named in this report. Although the OIG does not ordinarily name line-level Department employees in its public reports, we honored Chang's request because doing so did not implicate the privacy interests of third parties.

[7] 18 U.S.C. § 4042.

responsible for the receipt or maintenance of sex offender registration information in the State, tribal, or local jurisdiction in which the person will reside."[8] This statutory requirement is reiterated in BOP policy.

B. BOP Disciplinary Code

The BOP's Standards of Employee Conduct identify various offenses that may result in discipline against employees. One such offense is "inattention to duty," which is defined to include "[p]otential danger to safety of persons." Another such offense is "Endangering the safety of or causing injury to staff, inmates, or others, through carelessness or failure to follow instructions."

C. Compassionate Release and Reductions in Sentences Under the First Step Act and Department and BOP Policy

1. The First Step Act and Associated Sentencing Guidelines

The First Step Act of 2018, Public Law Number 115-391 aimed to reduce recidivism, improve prison conditions, and reduce lengthy sentences where appropriate. As part of this effort, the First Step Act increased the use and transparency of compassionate release by amending 18 U.S.C. § 3582. Pursuant to the amended 18 U.S.C. § 3582(c), a court may consider reducing a defendant's term of imprisonment upon motion by the Director of the BOP or motion of a defendant. The Court will consider the defendant's motion only after:

- The defendant first requests the BOP to file a motion on the defendant's behalf;
- The BOP does not file the motion; and
- Either the defendant has exhausted all administrative rights to appeal the BOP's decision or 30 days have lapsed since the defendant's request, whichever is earlier.

Upon receiving a motion for compassionate release, the Court may reduce the defendant's term of imprisonment, after considering the factors set forth in 18 U.S.C. § 3553(a) to the extent they are applicable, if it finds, in pertinent part, that "extraordinary and compelling reasons warrant such a reduction," and that a reduction is consistent with applicable policy statements issued by the U.S. Sentencing Commission.[9]

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[8] 18 U.S.C. § 4042(c).

[9] 18 U.S.C. § 3582(c). The factors set forth in 18 U.S.C. § 3553(a) are, in pertinent part: "(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed—(A) to reflect the seriousness of the offense to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; and (4) the kinds of sentence and sentencing range established for…the applicable category of offense committed by the applicable category of defendant as set forth in [the Sentencing Guidelines]…; (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."

According to the 2018 U.S. Sentencing Guidelines (USSG) § 1B1.13, Commentary Application Note 1, extraordinary and compelling reasons may be established based on the medical condition of the defendant, when:

> (i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end-of-life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include, among other things, metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia; or
>
> (ii) The defendant is—
>
> (I) suffering from a serious physical or medical condition,
>
> (II) suffering from a serious functional or cognitive impairment, or
>
> (III) experiencing deteriorating physical or mental health because of the aging process,
>
> that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.[10]

(Underlining in original).

The 2018 USSG further state that a court should only grant a motion for release if it determines that the defendant is not a danger to the safety of any other person or the community.

In 2023, the USSG were revised to incorporate the language above from the 2018 Commentary Application Note 1 into the guidelines themselves.[11] In addition, the following categories were added to the list of medical circumstances warranting a sentencing reduction:

> (C) The defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.
>
> (D) The defendant presents the following circumstances-

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[10] According to the 2018 U.S. Sentencing Guidelines, extraordinary and compelling reasons also may be established based on the age of the defendant, family circumstances, or other reasons. These reasons were not at issue in Bardell's case.

We used the 2018 U.S. Sentencing Guidelines, because the facts relevant to this investigation and review occurred in 2020, before the Sentencing Guidelines were revised in 2021, 2023, and 2024.

[11] While the facts relevant to this investigation and review occurred in 2020, we are referencing the 2023 revisions because they are relevant to our recommendations for improvements to Department and BOP policies.

> (i) the defendant is housed at a correctional facility affected or at imminent risk of being affected by (I) an ongoing outbreak of infectious disease, or (II) an ongoing public health emergency declared by the appropriate federal, state, or local authority;
>
> (ii) due to personal health risk factors and custodial status, the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and
>
> (iii) such risk cannot be adequately mitigated in a timely manner.

2. BOP Policy Regarding Compassionate Release

The BOP's Compassionate Release Program Statement states that the BOP may consider a RIS for inmates who "have been diagnosed with a terminal, incurable disease and whose life expectancy is eighteen (18) months or less, and/or has a disease or condition with an end-of-life trajectory." In addition, the policy states that RIS may be considered for inmates who have "an incurable, progressive illness or who have suffered a debilitating injury from which they will not recover." The program statement indicates that the Clinical Director is responsible for making the terminal diagnosis.

According to the Compassionate Release Program Statement and federal regulations, a request by an inmate for compassionate release must be submitted to the Warden and must contain the following information:

> (1) The extraordinary or compelling circumstances that the inmate believes warrant consideration.
>
> (2) Proposed release plans including where the inmate will reside, how the inmate will support himself/herself, and, if the basis for the requests involves health, information on where the inmate will receive medical treatment, and how the inmate will pay for such treatment.[12]

The BOP Director will file a motion with the Court for compassionate release for medical reasons only after review and consideration by the Warden, the General Counsel, and the BOP Medical Director in the Central Office.[13] The Compassionate Release Program Statement states, regarding RIS requests based on nonmedical circumstances, that the Warden should convene a committee consisting of the inmate's unit manager, correctional counselor, and any other relevant staff (social worker, physician, psychologist, etc.) (RIS Committee) to inform the Warden's review. While the Program Statement does not address the use of a RIS Committee in the context of medical RIS requests, one BOP employee told the OIG and Bardell's BOP records indicated that such committees are also used by the BOP for medical RIS requests.

[12] 28 C.F.R. § 571.61(a).

[13] 28 C.F.R. § 571.62(a).

According to the BOP's Health Services Administration Policy Statement, when a request for RIS or compassionate release due to medical conditions is being considered, the Health Services Unit (HSU) of the institution where the inmate is housed must provide a comprehensive medical summary including:

- An estimate of life expectancy or a statement that life expectancy is indeterminate.
- The level or degree of functionality.
- All relevant test results.
- All relevant consultations.
- Referral reports/opinions from which the medical assessment was made.
- The level of self-participation in activities of daily living.

In addition, BOP policy lists other information that may be helpful in assessing the inmate's condition, including:

- Are they in a hospice program?
- What type of pain medication is the inmate taking and how frequently is it required?
- Weight loss.
- Frequency of hospitalization.
- Mental status.
- Mobility status.
- Requirement for supplemental oxygen.

If the Warden denies the request, the inmate will receive written notice and a statement of reasons for the denial, and the inmate may appeal the denial through the Administrative Remedy Procedure.[14] If the decision is made to move forward with a motion for compassionate release, the BOP must develop a release plan, which "must include, at a minimum, a place of residence and the method of financial support, and may require coordination with various segments of the community, such as hospices, the Department of Veteran's Affairs or veterans' groups, Social Security Administration, welfare agencies, local medical organizations, or the inmate's family." If a term of supervised release follows the term of imprisonment, the BOP must contact the USPO that is assuming supervision. The USPO is also involved with ensuring the appropriateness of the identified release residence when, among other things, the inmate being released is a convicted sex offender.

Both federal regulation and BOP policy require urgency once the Court orders compassionate release. Specifically, they state: "Upon receipt of notice that the sentencing court has entered an order granting the motion [for compassionate release], the Warden of the institution where the inmate is confined shall release the inmate forthwith."[15] In addition, both federal regulation and the Compassionate Release Program Statement state: "In the event the basis of the request is the medical condition of the inmate, staff

[14] 28 C.F.R. § 571.63(a); *see* 28 C.F.R. Part 542, subpart B.

[15] 28 C.F.R. § 571.62(b).

shall expedite the request at all levels."[16] Similarly, according to the BOP's Correctional Systems Manual: "If an order for immediate release is received, every effort will be made to release the inmate as soon as possible."

The BOP also has a Frequently Asked Questions document related to Compassionate Release and RIS, which was prepared by BOP's Office of General Counsel in December 2019. According to this document, the release plan for an inmate receiving RIS "is coordinated at each institution and should be done on an individual basis." The document further states that institution staff should work with the appropriate USPO to ensure the release plan is appropriate, and "staff (usually Social Workers) should work closely with the inmate and inmate's family to establish the release plan, make necessary contacts with community services, and collect all required documentation from those organizations or agencies." If a social worker is not available at the institution, a regional social worker may be available to assist.

According to the Correctional Systems Manual, the BOP's Designation and Sentence Computation Center (DSCC), which has various responsibilities related to placement of inmates and computation of sentences, is responsible for reviewing judicial orders and recommendations concerning compassionate release and forwarding them to the "appropriate Chief Executive Officer." Each institution is required to have a RIS Coordinator, whose principal responsibility is to receive and document RIS requests and other RIS-related information in the RIS electronic tracking database.

3. U.S. Attorney's Office Guidance Regarding Responding to Motions for Compassionate Release

In 2019, the Department issued guidance for prosecutors regarding compassionate release (U.S. Attorney Compassionate Release Guidance). According to this guidance, a prosecutor who receives a motion for compassionate release should "consult with BOP (either BOP legal staff where the inmate is located or the Legislative and Correctional Issues Branch in the BOP Central Office), which should in turn provide all necessary materials and information to permit an informed response." The U.S. Attorney Compassionate Release Guidance also states that upon receiving a motion for compassionate release, the assigned prosecutor should consult with the BOP regarding the status of its administrative review, by similarly contacting the BOP legal staff where the inmate is located or the Legislative and Correctional Issues Branch in the BOP Central Office. The guidance states that if the administrative review is still ongoing, the prosecutor should either ask the court to summarily deny the motion if the motion is clearly without basis under the Sentencing Guidelines described above, or, if the request has potential merit, request a stay until the BOP can complete its review and the court may "benefit from BOP's expert and thorough review of the request." The guidance states that when the BOP denies a request for compassionate release, the BOP "should cooperate with prosecutors in providing all pertinent information to allow the prosecutor in the most efficient manner possible to present the pertinent facts to the court."

The U.S. Attorney Compassionate Release Guidance states that "the inmate bears the burden of proving both that he has satisfied the procedural prerequisites for judicial review…and that 'extraordinary and compelling reasons' exist to support the motion." In addition, the guidance notes that the "precise contours"

[16] 28 C.F.R. § 571.62(c).

of the definition of terminal illness in the 2018 Sentencing Guidelines are "unclear" and "will have to be developed in practice."

The U.S. Attorney Compassionate Release Guidance also sets forth language that "the BOP requests" courts include in any final order granting compassionate release, as follows:

> IT IS THEREFORE ORDERED that the defendant's term of imprisonment is hereby reduced to the time he has already served.
>
> IT IS FURTHER ORDERED that the defendant shall be released from the custody of the Bureau of Prisons as soon as the release plan is implemented, and travel arrangements can be made.

On August 10, 2023, following Bardell's death and Judge Dalton's Order, the then Deputy Attorney General issued a memorandum to all U.S. Attorneys and Heads of Affected Components regarding responding to certain motions for sentence reduction. Among other things, this memorandum stated the following about new instructions the Deputy Attorney General provided to the BOP regarding motions for compassionate release based on medical conditions:

> To ensure consistent and efficient responses and to prepare for the implementation of the amended [Sentencing Guidelines], I have instructed the BOP Director to review BOP processes for responding to motions for compassionate release to ensure that all compassionate release requests grounded in medical claims receive prompt and careful review from a trained medical professional, including where the defendant has moved directly in court for the release. In addition, I have asked the BOP to identify points of contact for each facility that [U.S. Attorney's Offices (USAO)] should consult in connection with any request for compassionate release on medical grounds.

The memorandum also directed USAOs to consider applying certain best practices when responding to motions for compassionate release predicated on medical circumstances, including, in pertinent part:

- **Coordinating with BOP to obtain relevant records.** When an individual files a motion based on medical circumstances, USAOs should contact BOP to obtain relevant records, including medical records, as soon as possible. As explained above, BOP will ensure that a trained medical professional reviews and assesses the individual's medical circumstances and associated records, and it will identify points of contact for each facility to assist USAOs in responding to motions.
- **Identifying a USAO point of contact for consultation on motions involving complex medical questions.** Collaborations within USAOs can help offices evaluate and respond to motions that involve complex medical issues. For instance, particular [AUSAs] in the office may have experience with reading and understanding BOP or other governmental medical records and/or

deciding when a medical expert is needed to evaluate a complex medical issue. USAOs should identify an AUSA or AUSAs within their office with relevant expertise, whether criminal or civil, as appropriate for the USAO, whom other AUSAs can consult when responding to motions involving complex medical issues.

- **Requiring supervisory approval before agreeing to or opposing motions based on terminal illnesses or other medical circumstances implicating complex or novel questions.** To maintain consistency, USAOs should require supervisory review and approval before an attorney agrees to or opposes motions for compassionate release based on either a terminal illness or other medical circumstances raising complex or novel questions.

D. The BOP's Health Services for Inmates

The BOP's Health Services Administration Program Statement provides policies and procedures for the BOP to "deliver medically necessary health care to inmates effectively in accordance with proven standards of care without compromising public safety concerns inherent to the [BOP's] overall mission." The Health Services Administration Program Statement sets forth certain core principles, the first of which is "Human Value," which is further explained as follows: "All inmates have value as human beings and deserve medically necessary health care."

The BOP's Patient Care Program Statement sets forth the BOP's policies related to inmate medical care.[17] Each BOP facility has an onsite HSU that provides urgent and routine healthcare services. Each HSU is supposed to be led jointly by a Clinical Director (CD), who provides direct patient care and supervises other health care providers, and a Health Services Administrator (HSA), who has administrative responsibility and supervises nonclinical staff. Both the CD and the HSA report to the Warden. BOP facilities also have physicians; midlevel practitioners, such as nurse practitioner or physician assistants; registered nurses; licensed practical nurses; health information technicians (HIT); and medical clerical staff. The mid-level providers are considered the medical primary points of contact for inmates.

According to the BOP's Patient Care Program Statement, each inmate is assigned to a Primary Care Provider Team (PCPT), which is a medical team of health care providers and support staff responsible for managing the inmate's health care needs. The Program Statement states that the PCPT is "designed to improve health care services delivery by enhancing continuity of care and promoting preventive health care measures." In implementing the PCPT model, institutions are required to consider the institution's staffing pattern. The Patient Care Program Statement provides an example that a day shift PCPT staffing pattern for 1,000 general population inmates should have one physician, three mid-level practitioners (such as Physician Assistants), a registered nurse, one or two licensed practical nurses and/or medical assistants, two HITs, and a medical clerical staff person. This model would result in each midlevel provider being assigned a caseload of approximately 330 inmates. The Program Statement states: "Adequate numbers of mid-level providers need to be available to provide diagnostic and treatment services to the inmate population during the

[17] The BOP updated its Patient Care Program Statement in 2024 and 2025. However, we rely on the Program Statement dated June 4, 2014, because it was in effect during the events relevant to this investigation and review.

typical weekday hours when the bulk of health care is delivered in institutions," and: "Insufficient staffing will have an adverse effect on the quality, continuity, and cost-effectiveness of healthcare."

BOP institutions are each assigned a medical care level of 1, 2, 3, or 4, with Medical Care Level 1 institutions being appropriate for inmates with the least medical needs and Medical Care Level 4 institutions being appropriate for inmates with the most medical needs. Medical Care Level 4 institutions are also known as Medical Referral Centers (MRC). According to the BOP's guidelines, inmates who are diagnosed with cancer requiring treatment with systemic chemotherapy, radiation, or organ transplantation are considered Medical Care Level 4 inmates and should be housed at an MRC.

The BOP has specific procedures for scheduling offsite medical appointments. According to the 2014 Patient Care Program Statement, every institution has a Utilization Review Committee (URC), which, among other things, is responsible for reviewing—and approving, approving with a modification, or denying—requests for routine and urgent outside medical, dental, and surgical procedures, as well as requests for specialist evaluations. As the chair of the URC, the Clinical Director is the final authority for most URC decisions, including those related to preventive health workups and cancer treatment as relevant to this case. In addition, "It is expected that a staff physician will have examined most inmates referred to an outside consultant."

BOP staff told us that the midlevel provider is usually responsible for submitting requests for offsite medical consultations into the BOP's Electronic Medical Records System (BEMR). The person submitting the request will mark the request as emergent, urgent, or routine, and include a target date for the appointment to take place. We were told that an urgent order for medical care should be completed within 30 days and an emergent order is expected to be completed within 24 hours. After the referrals are approved by the Clinical Director, HITs, who are supervised by the HSA, are responsible for scheduling the appointments by contacting the institution's Comprehensive Medical Services contractor (CMS), which will then schedule the appointment with the offsite medical provider. After the appointment, the HIT uploads the paperwork from the offsite appointment into BEMR. We were told that after an inmate is transported back to the institution from an offsite medical appointment, the inmate should have an appointment either that same day or the next day with their medical provider. If laboratory tests were conducted, the inmate "must be counseled regarding any necessary follow-up treatment or testing within a time frame which is clinically appropriate."

BOP staff told us that sometimes appointments with offsite providers are delayed due to the offsite provider's schedule. In addition, delays can occur if the BOP does not have sufficient staff or vehicles available to transport inmates to their appointments. However, institutions are also required to have procedures in place for 24-hour emergency medical care, including emergency transfer to a community medical facility when necessary.

E. Colorectal Cancer Screening Guidelines

Colorectal cancer (CRC) is a type of cancer that starts in the colon or rectum. According to the American Cancer Society (ACS), excluding skin cancer, CRC is the third most common cancer diagnosed in both men

and women in the United States, the third leading cause of cancer-related deaths in men, and the second most common cause of cancer deaths when numbers for men and women are combined.[18]

The ACS recommends that individuals ages 45 through 75 who have an average risk of CRC undergo regular screening.[19] The ACS guidelines recommend that if a person chooses to be screened with a test other than colonoscopy, any abnormal test result should be followed up with a timely colonoscopy.[20] In addition, the ACS guidelines state that people at an increased risk of CRC might need to start screening before age 45, be screened more often, and/or receive specific tests, and that they should speak with their medical provider for guidance.[21]

The BOP provides Clinical Guidance on Preventative Health Care Screening to its HSUs.[22] In 2018, the BOP guidelines stated that inmates at an average risk of colorectal cancer between the ages of 50 and 74 should undergo stool-based screening every year and, if positive, undergo a colonoscopy. In 2022, the BOP updated this guidance to begin screening at age 45. For individuals who are at an increased risk of colorectal cancer, including due to a history of polyps at a prior colonoscopy, a history of colorectal cancer, family history, genetic predisposition, or inflammatory bowel disease, the BOP's Preventative Health Care Screening guidance states, "Follow the *American Cancer Society Recommendations for Colorectal Cancer Early Detection.*"

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[18] *See* American Cancer Society (ACS) website at https://www.cancer.org/cancer/types/colon-rectal-cancer/about/key-statistics.html (accessed September 26, 2025).

[19] American Cancer Society, Colorectal Screening Tests, last revised June 29, 2020, https://www.cancer.org/cancer/types/colon-rectal-cancer/detection-diagnosis-staging/screening-tests-used.html (accessed July 30, 2025). The ACS specifically recommends screening through one of the following methods:

- Stool-based tests:
    - Highly sensitive fecal immunochemical test (FIT), which uses antibodies to detect blood in the stool, every year.
    - Highly sensitive guaiac-based fecal occult blood test (FOBT), which relies on chemical detection of blood in the stool, every year.
    - Multi-targeted stool DNA test (mt-sDNA), which detects DNA biomarkers for cancer in cells shed from the lining of the colon and rectum into stool, every 3 years.
- Visual (structural) exams of the colon and rectum:
    - Colonoscopy every 10 years.
    - Computed Tomography (CT) colonography (virtual colonoscopy) every 5 years.
    - Flexible sigmoidoscopy (FSIG) every 5 years.

[20] American Cancer Society, Colorectal Screening Tests, https://www.cancer.org/cancer/types/colon-rectal-cancer/detection-diagnosis-staging/screening-tests-used.html.

[21] Colorectal Screening Tests.

[22] The BOP updated its Preventative Health Care Screening Clinical Guidance in 2022 and again in 2024. However, unless otherwise stated, we rely on the Clinical Guidance dated June 2018, because it was in effect during the events relevant to this investigation and review.

IV. The OIG's Recent Report on the BOP's Colorectal Cancer Screening Practices

The OIG publicly released an evaluation of the BOP's CRC screening practices for inmates and clinical follow-up on screenings, on May 20, 2025.[23] The OIG reviewed CRC screening rates for a sample of inmates from January 2020 through April 2024 and follow-up care for a sample of inmates who received positive screening results from January 2022 through December 2023. The OIG found:

- Among a sample of 37,942 inmates aged 45-74 at average risk for CRC sampled BOP-wide, less than two thirds (24,345) were offered a CRC screening by the BOP between April 2023 and April 2024.
- Among the 24,345 inmates who were offered a CRC screening in the sample described in the first bullet, about 27 percent refused. As a result, overall, only about 47 percent of average risk inmates completed an annual CRC screening.
- Among a sample of 327 inmates who had a positive CRC screening, 14 percent had either no documented follow-up or insufficient follow-up by BOP medical staff.
- 133 of the 327 inmates in the sample above were tested for timeliness of follow-up colonoscopies. Inmates in that sample waited an average of 8 months for a colonoscopy following a positive CRC screening, and 8 inmates waited over 18 months for a colonoscopy. (We were told by a Central Office official responsible for oversight of Health Services programs that community practice generally aims to complete a colonoscopy within 90 days of a positive CRC screening.)
- In the same sample of 133 inmates, 54 percent of the colonoscopies were completed after their BOP target dates.
- Some of the factors that impact timeliness of colonoscopies: inmates refusing to cooperate, poor inmate colonoscopy preparation, ineffective BOP employee coordination, availability of colonoscopy providers in the community, scheduling issues due to custody and transportation staffing, and inmate transfers.[24]
- Gaps exist in the BOP's processes to identify, monitor, and document future screening needs for inmates at increased risk for CRC.

Regarding Bardell specifically, the evaluation determined that:

- While at FCI Seagoville, Bardell reported seeing blood in his stool on July 15, 2020, but he did not complete a successful colonoscopy for over 6 months;

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[23] Evaluation of the Federal Bureau of Prisons' Colorectal Cancer Screening Practices for Inmates and Its Clinical Follow-up on Screenings, Report No. 25-057, May 20, 2025, https://oig.justice.gov/reports/evaluation-federal-bureau-prisons-colorectal-cancer-screening-practices-inmates-and-its?utm_source=slider&utm_medium=web&utm_campaign=report.

[24] During bowel preparation, in addition to abstaining from solid foods, inmates are required to consume a prescription laxative 24 hours prior to their colonoscopy to ensure clear images during the procedure. If the bowel preparation is inadequate, the colonoscopy cannot be properly completed and the appointment has to be rescheduled. During interviews in connection with the OIG evaluation, BOP Health Services employees stated that some inmates find the prescription laxative unpleasant and are unable or unwilling to consume all of it, which can affect the success of the colonoscopy preparation.

- During that period, Bardell had a pre-colonoscopy evaluation, an unsuccessful colonoscopy, and then a successful colonoscopy that led to his colon cancer diagnosis;
- However, each of these appointments occurred weeks to months later than the BOP's target dates for them.

V. Relevant Entities and Individuals

The BOP consists of a headquarters office in Washington, D.C. (commonly referred to by BOP employees as "Central Office"), 6 regional offices, and 122 BOP-managed facilities throughout the country that house inmates. The Health Services Division (HSD) at BOP's Central Office oversees all aspects of inmate healthcare. HSD assigns each BOP facility a Regional Medical Director and Regional Health Services Administrator that oversee the health services provided in the respective BOP institutions, mirroring the governance established at each facility by the Clinical Director and Health Services Administrator.

FCI Seagoville is low-security, Medical Care Level 2 institution in Texas, which is in the BOP's South Central Region. According to BOP policy, Medical Care Level 2 institutions are appropriate for inmates who are "stable outpatients who require clinical evaluations monthly to every 6 months," whose "medical and mental health conditions can be managed through routine, regularly scheduled appointments with clinicians for monitoring," and who may require "enhanced medical resources, such as consultation or evaluation by medical specialists…from time to time." FCI Seagoville has a total population of 1,480 inmates. Kristi Zook was the Warden of FCI Seagoville from November 2019 through January 2022.

At the time of this investigation and review, FCI Seagoville's HSU was severely understaffed. The institution did not have a Clinical Director or any physicians assigned to the institution. As a result, the South Central Regional Medical Asset Support Team Physician (Regional MAST Physician) served as the Acting Clinical Director for FCI Seagoville and visited FCI Seagoville approximately 2 to 3 days per month. In addition to being responsible for reviewing the charts of inmates at FCI Seagoville, treating patients there, and approving their requests for offsite appointments, the Regional MAST Physician was responsible for administrative and other matters for the entire South Central Region.[25] For much of the period relevant to this investigation and review, there was only one midlevel provider at FCI Seagoville, and for a period of time the midlevel provider was on medical leave, leaving no medical providers at the facility aside from nurses.[26] For a portion of the period relevant to this investigation and review, FCI Seagoville had both an HSA and an Assistant Health Services Administrator (AHSA); however, the HSA left FCI Seagoville in around November 2020, at which point the AHSA served as the Acting HSA.

During the period relevant to this review, Emily C. L. Chang, an AUSA who was part of the Criminal Division of the U.S. Attorney's Office for the Middle District of Florida (USAO MDFL), represented the government in responding to Bardell's compassionate release motions.

[25] The Regional MAST Physician later became the Regional Medical Director for the South Central Region.

[26] According to the BOP, there was also a midlevel provider assigned specifically to the associated Federal Detention Center (FDC).

FACTUAL FINDINGS

I. Bardell's Conviction and Incarceration

On March 2, 2012, Frederick Mervin Bardell, who was born in 1966, pleaded guilty in the U.S. District Court for the Middle District of Florida to one count of Distribution of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2). The factual statement in support of Bardell's guilty plea states that a forensic report of devices seized from Bardell showed that he possessed over 17,000 child pornography images and movies, which included bestiality, sadistic and masochistic images, and violent rape of children. On June 21, 2012, Bardell was sentenced to 151 months in prison and 20 years of supervised release.

Bardell was initially designated to FCI Jesup, in Georgia, on July 27, 2012. On December 8, 2017, Bardell was transferred to FCI Mariana in Florida, after he reportedly attempted to obtain sexually explicit material depicting nude female children through the mail. The request for transfer was based on Bardell's engagement in "risk-relevant behavior," which would "undermine" FCI Jesup's ability to prevent other sex offenders from engaging in similar behavior. Bardell was transferred to participate in FCI Mariana's Sexual Offender Management Program. Bardell was later moved to FCI Seagoville, Texas, in March 2018, and he remained there until his court-ordered release from incarceration in February 2021.

II. Bardell's Medical Condition and Treatment from February 2017 Through November 2020, and November 6, 2020 Motion for Compassionate Release

The OIG found that in July 2020, Bardell reported to FCI Seagoville medical staff that he had seen blood in his stool. Although the BOP took some actions to address Bardell's concerns, Bardell did not have a colonoscopy scheduled before October 2020, when he requested a RIS from the BOP which was denied, or November 2020, when he filed a motion with the Court for compassionate release. These factual findings are detailed below.

A. Bardell's Medical Condition and Treatment from February 2017 Through November 2020

According to BOP records, Bardell was offered three CRC screenings by the BOP before he first reported to FCI Seagoville medical staff that he had observed blood in his stool:

- On February 10, 2017, Bardell was offered but refused a stool-based screening at FCI Jesup.
- On April 3, 2018, Bardell was offered but refused a stool-based screening at FCI Seagoville.
- On September 9, 2019, Bardell underwent a stool-based screening at FCI Seagoville, and the results were negative.

For each of the refusals, Bardell signed a Medical Treatment Refusal form, which warned him that refusing screening could lead to "death."

On July 5, 2020, Bardell tested positive for COVID-19 while at FCI Seagoville. On July 15, 2020, while he was still in COVID isolation, Bardell reported to sick call complaining about blood in his stool and changes in his bowel movements. Bardell was seen by a BOP nurse practitioner (NP), who was working at FCI Seagoville on

a part-time basis during the summer of 2020. According to the medical record from the clinical encounter with the NP on July 15, 2020, Bardell relayed that he first started seeing blood in his stool 8 months prior (in November 2019) but that his symptoms had increased in frequency and severity. The NP examined Bardell and wrote under Comments: "suspicious for [Irritable Bowel Syndrome] vs colon [cancer]." Under Assessment, the NP wrote: "Disease of intestine unspecified." The NP ordered laboratory tests, including a complete blood count, hepatitis panel, complete metabolic panel, and carcinoembryonic antigen (CEA), all with a routine priority level and due date of July 20, 2020, and put in a referral for an urgent diagnostic pre-colonoscopy consultation with an offsite gastroenterologist (GI) with a target date of July 27, 2020.[27] As we discuss below, this diagnostic pre-colonoscopy consultation did not occur until October 2, 2020, after a CT scan had found evidence that Bardell had metastatic cancer. The NP advised Bardell to return immediately if his conditions worsened.

The NP told the OIG that he did not specifically recall Bardell or the July 15 examination of Bardell; however, he explained the usual BOP process for referrals for offsite medical consultations, which is described in the Background section above. The NP stated that he would typically be notified once a referral for an offsite medical appointment was completed, but he would not be notified if the referral was not completed by the target date, even, as in this case, if the referral was marked as urgent. The NP stated that he did not remember being notified of Bardell's colonoscopy consultation being completed. The NP further stated that there were delays in scheduling offsite medical appointments during the COVID-19 pandemic. The NP told the OIG that he did not recall speaking about Bardell's case with the South Central Regional MAST Physician, who at the time was also the Acting Clinical Director of FCI Seagoville.

The South Central Regional MAST Physician told the OIG that he visited FCI Seagoville approximately 2 to 3 days per month as its Acting Medical Director. Based on the OIG's review of Bardell's medical records, the Regional MAST Physician never examined Bardell, but he reviewed Bardell's chart on multiple occasions and sent emails to FCI Seagoville staff regarding Bardell's medical needs, as described below.

According to Bardell's medical records, the laboratory tests ordered by the NP were not completed until September 8, 2020, about 8 weeks after Bardell's examination by the NP. On September 9, 2020, the Regional MAST Physician reviewed Bardell's laboratory results and wrote in an administrative note that Bardell had an elevated CEA marker. He further wrote that Bardell's provisional diagnosis was: "Blood in stool." The Regional MAST Physician told the OIG that normally the BOP would not order a CEA following the first report of blood in stool, because the CEA is not a diagnostic test but rather is used clinically as a tumor marker. However, the Regional MAST Physician told the OIG that it was very fortunate that the NP ordered the CEA, because the results showed possible colon cancer. The Regional MAST Physician told the OIG that the NP "did everything correct."

Bardell's medical records further indicate that, based on the CEA results, the Regional MAST Physician ordered a GI consult and an urgent computed tomography (CT) scan of Bardell's abdomen and pelvis with a target date of September 15, 2020. Additionally, on September 9, at 2:58 p.m., the Regional MAST Physician emailed Bardell's laboratory results to both the then FCI Seagoville HSA and the AHSA, and wrote: "Please note the following[.] Abnormal lab, elevated CEA, blood in stool greater than 1 year, CEA is 205.30 with

[27] A CEA blood test is used clinically as a tumor marker to help diagnose and manage certain types of cancers, especially for cancers of the large intestine and rectum.

normal being 0.50-5.00[.] He will need CT of [abdomen (ABD)]/Pelvis urgently as well as GI consult urgently." About 1 hour later, at 3:59 p.m., the AHSA emailed the Regional MAST Physician and HSA, copying two Health Information Technicians (HIT1 and HIT2): "Can we please try to get this inmate scheduled for these [as soon as possible]? Preferably this week if possible?" On September 11 at 2:55 p.m., HIT 1 emailed several BOP employees, including the AHSA and the Regional MAST Physician, a transport schedule indicating that Bardell would be transported to the Radiology Department of the local medical center on September 17, 2020, at 8:30 a.m.

According to BOP medical records, the CT scan was completed on September 17, 2020. The Regional MAST Physician told the OIG that this timeline for completing the CT scan was appropriate.

On Friday, September 18 at 11:28 a.m., the AHSA emailed the Regional MAST Physician that she received a phone call that morning "with critical results" for Bardell and, "Per radiologist, CT results show lesions suspicious for metastatic disease of the liver, and probable sigmoid carcinoma" (i.e., probable colon cancer). The Regional MAST Physician wrote back at 11:42 a.m., "He needs to have the colonoscopy asap so we will have a biopsy. Will also need to see oncology after the colonoscopy. Please push in thru." The ASHA replied at 12:43 p.m., "Copy. Will do."

The CT scan report contained the following language under the heading, "Impression":

> MULTIPLE LOW ATTENUATION LIVER LESIONS HIGHLY SUSPICIOUS FOR METASTATIC DISEASE AND SHOULD BE CONSIDERED AS SUCH UNTIL PROVEN OTHERWISE. LOCALIZED AREA OF WALL THICKENING AND NARROWING OF THE SIGMOID COLON WORRISOME FOR MALIGNANCY.

(Emphasis in original).

The Regional MAST Physician told the OIG that these results combined with the CEA results caused him to "think" that Bardell had stage IV colon cancer, because the lesions were on the liver which was external to the original site of the colon, meaning that the cancer likely spread or metastasized. The Regional MAST Physician further stated that Bardell's likelihood of having cancer was 90 to 95 percent. However, he stated that, "Until there is a biopsy, you can never be 100 percent." The AHSA told the OIG that based on CT results, Bardell's medical condition was "severe."

In an administrative note dated Tuesday, September 22, 2020, at 11:13 a.m., the Regional MAST Physician changed Bardell's provisional diagnosis to, "Blood in stool. Possible live[r] met[astases]," and ordered an urgent Oncology consultation with a target date of October 29, 2020. Three minutes later, at 11:16 a.m., the Regional MAST Physician wrote to the HSA, "The consult to GI is urgent. Send a copy of his CT result to the GI office, and see if we can get his colonoscopy scheduled asap. Once he is back, he will need to see oncology asap." On September 23 at 9:43 a.m., the HSA emailed the AHSA, the Regional MAST Physician, HIT1, and HIT2, "Records, can you please get this scheduled?" The AHSA told the OIG that at this point she had probably already asked an HIT to contact FCI Seagoville's Comprehensive Medical Services (CMS) contractor to schedule the colonoscopy consultation, in response to the Regional MAST Physician's September 18 email. On September 23 at 9:46 a.m., HIT2 replied, "It's scheduled for 10-2-2020, next week."

However, the appointment that occurred on October 2 was not a colonoscopy but rather a pre-colonoscopy consultation with an offsite GI, for which the NP had originally put in an urgent order on July 15, 2020, nearly 3 months earlier, with a target date of July 27, 2020. The GI who conducted the consultation reported that Bardell stated that he had been experiencing rectal bleeding since April and lower abdominal pain for several months but denied all other gastrointestinal issues, including nausea, vomiting, diarrhea, and black stools, and also denied recent weight loss. The GI recommended a colonoscopy and esophagogastroduodenoscopy (EGD) to help determine the source of Bardell's lower abdominal pain and rectal bleeding.

On October 8, 2020, the Regional MAST Physician ordered an urgent colonoscopy and EGD with a target date of October 12, 2020, just 4 days later. Under the heading, "Reason for the Request," he quoted the language above from the CT scan report, specifically:

> MULTIPLE LOW ATTENUATION LIVER LESIONS HIGHLY SUSPICIOUS FOR METASTATIC DISEASE AND SHOULD BE CONSIDERED AS SUCH UNTIL PROVEN OTHERWISE. LOCALIZED AREA OF WALL THICKENING AND NARROWING OF THE SIGMOID COLON WORRISOME FOR MALIGNANCY.

(Emphasis in original).

Under the heading, "Provisional Diagnosis," he wrote: "Blood in stool, abnormal CT of the Abd and pelvis with possible metastatic disease process."

The Regional MAST Physician told the OIG that, following receipt of the CT scan results, Bardell should have had a colonoscopy and biopsy and begun treatment that month (October). He stated it was important that Bardell be scheduled quickly for the colonoscopy, "Because you have somebody who's going to die if you don't do something." He further stated that, following the CT scan, a midlevel provider at FCI Seagoville should have seen Bardell in the clinic within 24 hours and then for regular follow-up appointments. However, there was no indication in the medical records that such appointments occurred until several months later. Specifically, as described below, Bardell did not have a successful colonoscopy until January 29, 2021, and he was not seen in person at the FCI Seagoville clinic between July 15, 2020, when he first complained of rectal bleeding, and February 3, 2021, almost 7 months later, after the colonoscopy that ultimately diagnosed him with colon cancer. The Regional MAST Physician noted that during this timeframe COVID-19 was a factor in scheduling offsite appointments. However, he stated that, "if you have somebody who needs to get out, and it's urgent, they should be able to get out." He further stated that he believed the time lapse in Bardell's case was unusual, "Especially with the fact that everybody knows that he's having problems."

A second nurse practitioner, NP2, told the OIG that she started working at FCI Seagoville in around September 2020. NP2 stated that when she started at FCI Seagoville, she was the only fulltime medical provider there and, due to understaffing at the facility, she was overworked, worked late hours, and, as a result, suffered health problems that caused her to be on medical leave in January 2021. NP2 stated that she began working as the only midlevel provider at FCI Seagoville before she even finished training, because the prior midlevel provider had already left. NP2 further stated that if she needed guidance, she would seek that from the Regional MAST Physician; however, as discussed above, the Regional MAST Physician was not

onsite. NP2 did not remember Bardell, although, as discussed below, she examined him in the clinic in February 2021.

The first attempt at a colonoscopy and EGD for Bardell did not occur by the October 12 target or before Bardell's application with the BOP for a RIS or first motion with the Court for compassionate release, which are described in the next section.

B. Bardell's Request with the BOP for a RIS, Which is Denied

On October 17, 2020, Bardell filed a request with the BOP for a RIS pursuant to the BOP's Compassionate Release Program Statement. Multiple witnesses told the OIG that at the time of Bardell's request, the COVID-19 pandemic had significantly increased the number of requests by inmates to the BOP for compassionate release. In his request, Bardell described "recent findings of severe health issues," including "copious blood" in his stool in July 2020, a blood test (the CEA test) revealing signs of kidney disease and possible colon cancer on September 8, 2020, and a CT scan showing signs of colon cancer and multiple liver lesions indicative of liver disease on September 17, 2020. Bardell argued that he would have better access to healthcare and nutrition if he were released and also noted that his "risk on the community according to [his] latest assessment [had] been calculated to be minimum."

In response to the application, the BOP held a Reduction in Sentence Committee Meeting on October 28, 2020, which was attended by several FCI Seagoville employees, including the FCI Seagoville RIS Coordinator, the AHSA, and two Unit Managers.[28] The AHSA told the OIG that she did not recall Bardell or being part of his RIS process, but she acknowledged that she participated based on her signature on the RIS paperwork. She further told the OIG that she was likely acting as the HSA at the RIS Committee meeting due to the HSA being on leave at the time.

The AHSA stated that the typical process for Health Services with respect to RIS requests was to review the inmate's medical records, prepare a medical summary and recommendation as to whether the inmate meets the criteria for RIS based on medical circumstances (e.g., that the inmate suffers from a terminal illness), and meet with the members of the inmate's Unit Team participating in the RIS Committee. She further stated that the assessment of whether the inmate has a terminal illness is based on a review of the medical records and consultation with the inmate's medical provider. However, the AHSA did not know whether the Regional MAST Physician or any other physicians or midlevel providers were consulted in connection with Bardell's RIS request. In addition, there were no doctors, midlevel providers, or nurses at the RIS Committee meeting and, as noted above, the participation of such medical staff was not specifically required by BOP policy. The AHSA also did not know whether she or anyone else created a comprehensive medical summary as required by BOP policy, and there was no medical summary included within the RIS file provided by the BOP to the OIG.

[28] As noted above, the BOP Compassionate Release Program Statement did not require RIS committees in the context of medical RIS requests.

The RIS Committee produced a worksheet in connection with the meeting. The box entitled "Primary Medical Provider" on the worksheet was blank. A box entitled "Medical Review" on the worksheet was completed with the following information:

> 54 year old male
> No formal diagnosis on liver/colon cancer[.] Nothing terminal w/less than 18 months[.]

The form also noted that Bardell was a sex offender. A box entitled Committee Recommendation was completed with the word: "Denial."

Bardell's Case Manager also completed a Reduction in Sentence Case Management Worksheet, which was signed by both the Case Manager and Bardell's Unit Manager. The worksheet indicated that Bardell had no previous criminal or disciplinary history and that his adjustment to programming was "good," but stated that RIS was not recommended, "due to community safety."

The OIG asked the AHSA whether the CEA or CT results which showed a high likelihood of colon cancer should have impacted the medical assessment on the RIS worksheet. She responded that there has to be a formal diagnosis of a terminal illness for her or a medical provider to include such information on the worksheet, explaining, "Even though there's a suspicion, we don't know for certain that that's what it is." The AHSA did not know whether the committee discussed the impact of the pandemic on FCI Seagoville's ability to provide adequate care to Bardell, and she did not think the committee would have considered the impact of staffing constraints on the BOP's ability to provide adequate care. She also did not know whether the committee could have delayed its RIS decision until after Bardell's colonoscopy could be completed and the results obtained. She stated that the RIS process is standard and that the HSU will not recommend RIS for medical circumstances unless there is a formal diagnosis of a terminal illness.

On October 30, 2020, FCI Seagoville denied Bardell's application for a reduction in sentence in a memorandum signed by an FCI Seagoville Associate Warden on Zook's behalf. The denial memorandum stated that the BOP had evaluated Bardell's request consistent with federal law and BOP policy and that:

> A review of medical documentation does not reflect you are currently experiencing deteriorating mental or physical health which substantially diminishes your ability to function in a correctional facility.

The memorandum advised Bardell of his right to file an administrative appeal.

Zook told the OIG that in determining whether to grant a request for compassionate release, she typically considers the relevant medical documentation and the opinion of her medical staff, specifically a doctor or the HSA. However, she stated that her Associate Warden handled Bardell's request for compassionate release, because she was not in the office at the time. Zook further told the OIG that she was not aware of Bardell's medical history or condition until Judge Dalton issued a compassionate release order in February 2021. Additionally, Zook noted that inmates can address concerns regarding their medical care directly with her either by email or during her weekly rounds in the housing units, but Bardell never did so. Zook stated that staff can also bring medical concerns to her attention, but typically the medical staff are able to provide medical care without seeking her assistance, unless a medical transfer is needed due to a serious medical concern such as stage IV cancer. Zook told the OIG that during the COVID-19 pandemic, the medical staff

were focused on taking temperatures of inmates and checking for other symptoms of COVID-19. As a result, the primary health concerns that were brought to her attention were related to COVID-19.

C. Bardell's First Emergency Motion with the Court for Compassionate Release, the Government's Response, and the Court's Ruling

1. Bardell's Motion

On November 6, 2020, Bardell, through counsel, filed an Emergency Motion for Compassionate Release in the U.S. District Court for the Middle District of Florida (MDFL), where he had been convicted and sentenced, in which he asserted that he suffered from "unspecified bleeding," "metastatic liver lesions (suspected cancer)," and "malignancy in his colon" and that his condition was "probably terminal." Bardell also focused in his motion on his risk of contracting COVID-19, which he asserted was enhanced due to his medical condition. The motion was assigned to U.S. District Judge Roy B. Dalton.

The Emergency Motion for Compassionate Release was accompanied by an affidavit from a doctor (Medical Expert 1), who did not examine Bardell, but based their medical opinion on their "teleconference interview" of Bardell and their review of Bardell's BOP medical records, including the results of the CT scan described above. Medical Expert 1 noted that Bardell reported that he had inexplicably lost 20 pounds over the preceding 2.5 months, and at the time of the affidavit he was underweight at 5'9" in height and 122 pounds. Medical Expert 1 attested "with a reasonable degree of medical certainty" that Mr. Bardell had a "very high likelihood of having cancer of the colon with likely metastasis to the liver." Medical Expert 1 further attested that Bardell needed an immediate diagnostic colonoscopy but, based on the delay in treatment that Bardell had already experienced at FCI Seagoville, "further confinement of this patient would be antithetical to current medical standards and directly negatively impact his short- and long-term survival."

2. Judge Dalton's Order for an Expedited Response

Judge Dalton ordered the government to supply the medical and administrative records for Bardell and to respond to the Emergency Motion for Compassionate Release in an expedited manner by November 16, 2020. On November 10, 2020, Emily C. L. Chang, an AUSA with the Criminal Division of the USAO MDFL, filed an opposition to Bardell's motion. Chang told the OIG that the original prosecutor who handled Bardell's prosecution had retired, and she became involved during the compassionate release proceedings.

3. AUSA's Interactions with BOP to Respond to the Motion and Government's Opposition to Bardell's Motion

Chang told the OIG that after receiving the motion for compassionate release, pursuant to the USAO's standard practice, she contacted a BOP Supervisory Attorney to obtain relevant documents, including medical records, disciplinary history records, the Warden's response to the inmate's compassionate release request, and other administrative records. Chang explained that there was one BOP Supervisory Attorney who handled all such requests for the MDFL, regardless of the institution in which the inmate was housed. Chang said that there was no policy or procedure at the time requiring her to contact FCI Seagoville to discuss Bardell's medical condition before responding to the motion for compassionate release.

On November 6, 2020, at 12:39 p.m., Chang emailed the Supervisory Attorney, "Would you please send me information relevant to [Bardell's] motion for compassionate release?" The BOP Supervisory Attorney replied that same day at 1:33 p.m., "See attached," and attached Bardell's medical and other relevant

records. Chang responded on November 8 at 3:42 p.m., "If I'm reading this right, he hasn't appealed the warden's denial (as he must), right?" The BOP Supervisory Attorney responded on November 9 at 8:57 a.m., "Correct. The administrative log doesn't show he's filed an appeal to institutional level. Assuming a denial at the institutional level, he would then have to appeal to both the Regional and Central office levels to fully exhaust."[29]

The BOP Supervisory Attorney told the OIG that he was physically located at the BOP's Coleman Consolidated Legal Center, in Coleman, Florida, but he was the BOP point of contact for all MDFL AUSAs to request information to respond to inmate motions for RIS and compassionate release. He stated that he provided a standard array of documents in response to such requests, including disciplinary, public, and administrative records, as well as medical records from the past year. The BOP Supervisory Attorney told the OIG that during the COVID-19 pandemic, he received up to 30 requests each day from AUSAs for inmate documents to respond to RIS and compassionate release requests, as compared to before the pandemic when he received only a few of these types of requests per year.

Chang similarly told the OIG that during the COVID-19 pandemic, her office was receiving a large volume of compassionate release motions. However, Chang stated that Bardell's request was more complicated than that of a typical inmate requesting release due to COVID-19, because Bardell was also "alleging that he had a very serious medical issue." Thus, she said that she reviewed Bardell's medical records to identify any indication that he was diagnosed with terminal cancer, but she did not find one. In addition, Chang stated that she consulted with her supervisor before submitting her response to the Court and included in her response the exact language she and her supervisor discussed. Chang provided the OIG chat messages that corroborated her testimony. Chang told the OIG that she likely showed her supervisor a draft opposition before engaging in this exchange and ultimately submitting the opposition to the Court.

In the written opposition to Bardell's Motion for Compassionate Release, Chang argued, on behalf of the government, that Bardell's motion should be denied because he had not demonstrated extraordinary and compelling reasons warranting release.[30] Chang attached Bardell's BOP medical records and quoted from both BOP medical records and Medical Expert 1's affidavit. Specifically, the opposition acknowledged that BOP medical records indicated that Bardell had "liver lesions highly suspicious for metastatic disease and should be considered as such until proven otherwise" and that Medical Expert 1's opinion was that Bardell had "a very high likelihood of having cancer of the colon with likely metastasis of the liver." However, she argued, citing USSG factors, that, "to date, no one has determined that the defendant's condition is terminal," and Bardell had "not made a showing that his condition impacts his ability to provide self-care in prison." Further, she argued that the BOP medical records indicated that the BOP was actively addressing

[29] As noted above, pursuant to 18 U.S.C. § 3582(c), a court will consider a defendant's motion for compassionate release only after the defendant first requests the BOP to file a motion on the defendant's behalf; the BOP does not file the motion; and either the defendant has exhausted all administrative rights to appeal the BOP's decision or 30 days have lapsed since the defendant's request, whichever is earlier.

[30] Chang also argued that the Court should deny Bardell's motion, because Bardell had neither waited for 30 days to lapse following his initial RIS application with the BOP nor exhausted administrative remedies following FCI Seagoville's denial of his application. However, this point became moot, because by the time of the Court's ruling, 30 days had expired since Bardell's initial request with the BOP.

Bardell's "issues" and that there was "no indication" that Bardell could not "receive adequate care in custody."

The government also argued that the applicable § 3553(a) factors strongly weighed against granting compassionate release. Specifically, the government argued that, "The nature and circumstances of the defendant's offense (which included online distribution and extensive possession of scores of child sex abuse images and videos) and sexual interest in underage girls render him an ongoing danger to the community."

Chang told the OIG that she did not intend to hide anything from the Court, which is why she included quotes from the medical records in her opposition and provided all the hard copy medical records she had received from the BOP Supervisory Attorney to the Court as an exhibit. The Regional MAST Physician told the OIG that the government's representation that it was not definitive that Bardell had cancer at this point was accurate, because there had not been a biopsy.

4. Bardell's Reply, Victim Statements, and the Court's Ruling

Bardell, through counsel, filed a reply on November 14, 2020, in which he asserted, among other things, that his condition was "even more severe than Medical Expert 1 originally believed," "there is a neglect of routine medical treatment that would [not] have occurred but for Bardell's incarceration," and the government's "wait and see attitude places Bardell's life at risk." Bardell's counsel attached to his reply a Supplemental Affidavit, in which Medical Expert 1, after reviewing additional BOP medical records, attested that, "Bardell has either terminal cancer or advanced cancer," the BOP medical records revealed an "inordinate delay in undertaking medical treatment of Bardell's complaints and accompanying symptoms," and "It is accepted medically that all malignant cancers are made terminal by delay of treatment."

Following the Defendant's Reply, between November 16, 2020, and December 1, 2020, the government filed four statements from victims of Bardell's criminal conduct. They opposed Bardell's Motion for Compassionate Release due to safety and other concerns. One victim described the ongoing trauma and chronic impacts on her health caused by individuals who viewed images of "the worst moments of [her] life." This victim also highlighted the concern that during the pandemic, children were at home and particularly vulnerable to online sexual predators.

On December 2, 2020, Judge Dalton denied Bardell's Emergency Motion for Compassionate Release. The Court concluded, applying the Sentencing Guidelines criteria, that Bardell had not shown an extraordinary and compelling reason for release. The Court stated that it took Bardell's cancer diagnosis seriously and that it was concerned by Medical Expert 1's allegations that the BOP had inordinately delayed testing and treatment for Bardell, but that it "remained satisfied that the BOP had the capacity to meet Mr. Bardell's medical needs" and that there was "no evidence that Mr. Bardell would have access to better care should he be immediately released." In the October 4, 2022 order recommending that the OIG conduct this investigation, the Court stated that it had denied Bardell's Emergency Motion for Compassionate Release, "[b]ased, 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 noted that Bardell had not shown that Medical Expert 1 "specializes in oncology, has particular expertise with colon cancer, or would treat Mr. Bardell should Mr. Bardell be released." The Court further found that, "even if Bardell had shown an extraordinary

and compelling reason, the § 3553(a) sentencing factors don't favor release and Mr. Bardell poses a danger to the community." The Court indicated that it would reconsider "should the delay continue."

III. Bardell's Medical Condition from December 2020 Through February 2021 and His Second Emergency Motion for Compassionate Release

As discussed below, following Bardell's first motion for compassionate release, his condition worsened and the delay in medical care by the BOP continued. Bardell did not have a successful colonoscopy until January 29, 2021, more than 6 months after he first reported to FCI Seagoville medical staff that he was seeing blood in his stool, and the results confirmed that Bardell had advanced, metastasized colon cancer. Following the colonoscopy, but before the BOP received the results, Bardell filed a Second Emergency Motion for Compassionate Release, which the government opposed. The BOP received the colonoscopy results shortly before the Court issued its ruling, and the Court granted Bardell's second motion. These factual findings are detailed below.

A. Bardell's Medical Condition From December 2020 Through February 3, 2021, According to BOP Records

On December 1, 2020, at 6:59 a.m., the Regional MAST Physician wrote an email to the AHSA, Medical Records, and a BOP nurse,[31] inquiring as to the status of the urgent colonoscopy and EGD orders he had placed on October 8 with a target date of October 12 and the urgent Oncology consultation he had ordered with a target date of October 29, 2020. He wrote:

> I just happen to be going over records and I noticed this one has not has [sic] his colonoscopy/EGD, nor his oncology consult. He most likely has stage 4 colon cancer, and cannot wait. So these need to be done urgently, the first being the GI procedure, and then his oncology consult, so that we can get the 770 [transfer to a medical care level 4 facility] done. If there is a problem, let me know, as we are looking at delay of care. If we have others that are listed as urgent or emergent and not on the schedule, we need to identify and evaluate them.

On December 1 at 8:03 a.m., the BOP nurse forwarded the Regional MAST Physician's email to HIT2 and wrote that the appointments should be scheduled "ASAP." HIT2 replied, "10-4 I'm on it."

The OIG asked the AHSA why the urgent colonoscopy that had been ordered by the Regional MAST Physician on October 8, with a target date of October 12, had not been scheduled as of December 1. The AHSA did not recall Bardell's case or why this delay occurred, but noted that she was on leave from November 29 through December 8. She stated that the Regional MAST Physician's October 8 order should have been received by an HIT, who then was responsible for scheduling the appointment through the CMS contractor. The AHSA did not know whether these steps did not occur as of December 1 or, alternatively, whether the HIT attempted to schedule an appointment but there was a delay on the part of either the CMS contractor or the offsite provider. HIT 1 told the OIG that there were often delays with the CMS contractor scheduling appointments, especially appointments for certain types of procedures such as colonoscopies;

[31] The BOP nurse was acting as the HSA at the time due to the HSA having left the facility and the AHSA being on leave.

however, he was unable to confirm from the BOP records available to him whether he or another HIT had contacted the CMS contractor about scheduling Bardell's colonoscopy.

On December 16, 2020, NP2 entered a note in Bardell's medical file stating that Bardell was scheduled for a colonoscopy on December 18, 2020, and ordered the bowel preparation medication for the colonoscopy. Under the heading "Assessment," NP2 wrote, "Disease of intestine, unspecified." Thus, the urgent colonoscopy ordered by the Regional MAST Physician was not scheduled to occur until 2 months after the target date of October 12 and 5 months after Bardell's initial sick call encounter when he complained about the increased severity of blood in his stool.

The Regional MAST Physician told the OIG that this delay was abnormal, because an urgent order must be completed within 30 days or less, depending on the target date in the order.[32] In this case, as noted above, the Regional MAST Physician included a target of October 12, within just 4 days of the order. The Regional MAST Physician stated that there was no explanation for this 2-month delay, but noted that one of the biggest problems at the BOP is "making sure we have adequate personnel." NP2 told the OIG that during the COVID-19 pandemic, scheduling offsite medical appointments was difficult and that routine colonoscopies were not happening. Other BOP staff similarly told the OIG that during the pandemic some offsite providers were closed, which made scheduling timely appointments challenging. NP2 explained that it was not only difficult for the BOP to schedule routine colonoscopy appointments for inmates but it was similarly difficult for anyone in the community to schedule such appointments. She stated that if it was urgent, as in Bardell's case, the BOP could send the inmate to the emergency room. However, the AHSA told us that in her experience the emergency room would not conduct a colonoscopy.

According to BOP records, Bardell was transported to the hospital for the scheduled colonoscopy and EGD on December 18. The colonoscopy was unsuccessful due to poor bowel preparation and had to be rescheduled. According to the hospital records, Bardell "did not follow instructions and ate solid food yesterday." The EGD was completed and deemed by the attending physician as relatively unremarkable with no indication of tumor or active bleeding. However, the EGD only examines the upper gastrointestinal tract; it does not examine the lower gastrointestinal track, which includes the colon, and therefore is not used to diagnose the potential for colon cancer. Based on the EGD, the doctor at the hospital diagnosed Bardell with a Schatzki's ring, gastritis and a hiatal hernia.[33]

The OIG did not find evidence that any FCI Seagoville employees had provided Bardell with instructions for completing his bowel preparation in advance of the December 18 appointment. The Regional MAST Physician told the OIG that it is "incumbent on the nurses" or midlevel providers acting as nurses to "make sure that [the] inmate knows exactly what to do" for bowel preparation before a colonoscopy. NP2 told the OIG that the nurses are responsible for ensuring that the inmates are properly prepared for their

[32] In the OIG's recent CRC report, we found that it took an average of 8 months for a colonoscopy following a positive CRC screening result, significantly longer than the 90 day target that we were told by a BOP Central Office official was the BOP's goal. Other than considering Bardell's case, we did not assess wait times for colonoscopies where they were requested on an urgent basis due to an inmate experiencing symptoms or receiving other concerning test results.

[33] A Schatzki's ring is a circular membrane of mucosa and submucosa that forms at the squamocolumnar junction of the distal esophagus. *See* National Institute of Health, National Library of Medicine, at https://www.ncbi.nlm.nih.gov/books/NBK519022/ (accessed August 3, 2025).

colonoscopies, and NP2 does not get involved with that process. However, based on the OIG's review of FCI Seagoville HSU schedules, the only FCI Seagoville nurse working on December 16 and 17, the 2 days before Bardell's colonoscopy, was in offsite training during his entire time on duty those days. BOP pharmacy records indicate that the bowel preparation medication was dispensed to Bardell in the Special Housing Unit (SHU) on December 16;[34] however, there are no notations in the BOP's medical or pharmacy records to show that anyone discussed with Bardell the fasting or medication instructions.

On December 23, 5 days after the failed colonoscopy, another BOP physician with the South Central Regional Office put in a new order for a colonoscopy, now with a target date of January 8, 2021. However, the physician set the priority status as "routine" despite prior BOP clinical documentation emphasizing urgency. The provisional diagnosis to support the referral was "Rectal bleeding." The physician also indicated that Bardell needed a 2-week follow-up BOP clinic visit, which would have been January 6. However, Bardell was not seen again in the clinic until February 3 when Bardell put in a sick call request after his colonoscopy.

On January 29, 2021, 41 days after Bardell's unsuccessful colonoscopy and 21 days after the BOP's target date for the second colonoscopy, Bardell was transported for a second colonoscopy, which was successfully completed. The Regional MAST Physician told the OIG that there was "no reason" for the delay between the first and second colonoscopy appointments, because at that point Bardell should have been at the "top of the list. If not number one, at least number two." NP2 told the OIG that she could not tell from the records why it took 41 days from the date of his first colonoscopy attempt to schedule the second colonoscopy appointment.

During Bardell's colonoscopy on January 29, the hospital doctor removed several colonic polyps and observed an obstructing rectal mass, which was biopsied. The doctor recommended colorectal surgery, a CT scan of the abdomen and pelvis, and a repeat colonoscopy in 1 year. The biopsy results, dated February 1, 2021, confirmed adenocarcinoma, or cancer. These results were not received by BOP medical staff or inputted into BEMR until February 3, 2 days later.

B. Bardell's Second Emergency Motion for Compassionate Release and Government's Opposition

On February 2, 2021, Bardell filed in MDFL, through counsel, a Second Emergency Motion for Compassionate Release. In the second motion, Bardell argued that his condition had "substantially worsened" due to continued lack of proper and timely medical care by the BOP and that his "chronic medical condition, from which he [was] not expected to recover, substantially diminish[ed] his ability to provide self-care within the environment of a correctional facility." The Second Motion for Compassionate Release was accompanied by an affidavit, dated February 1, 2021, from a board-certified oncologist (Medical Expert 2), who certified, based on a review of Bardell's BOP medical records and Medical Expert 1's affidavit, that Bardell required immediate specialized treatment from a medical oncologist specializing in metastatic cancer of the colon. Medical Expert 2 attested that, among other things, Bardell's September 17, 2020 CT

[34] FCI Seagoville employees told the OIG that inmates are moved to the SHU during the time that they are expected to complete their bowel preparation, so that they have privacy and can be appropriately monitored. According to a representative of the BOP, BOP records show that Bardell was housed in the SHU for approximately 12 hours prior to his December 18 appointment.

scan was consistent with stage IV metastatic colorectal cancer; the delay in treatment at the BOP "will, more likely than not, cost Mr. Bardell his life in a matter of weeks to months"; and, thus, "he needs to have immediate compassionate release from the prison to allow for life-saving emergency treatment at another higher level facility."[35]

That same day, the Court ordered the government to respond to Bardell's second emergency motion by February 4, 2 days later.

Chang told the OIG that on February 2, she consulted with her supervisor regarding the substance of her response to Bardell's Second Emergency Motion for Compassionate Release and received approval to file the response. The OIG identified emails that corroborated Chang's testimony.

Chang told the OIG that, in response to the Court's order, she contacted the BOP Supervisory Attorney to obtain Bardell's updated medical records. Specifically, on February 2 at 3:05 p.m., Chang emailed the BOP Supervisory Attorney: "The defendant filed another motion today and the judge is giving me just two days (until Thursday) to respond. Can you please send his updated medical and other records as soon as possible?"

Ten minutes later, the BOP Supervisory Attorney emailed the requested records to Chang. The medical records the BOP provided to Chang were printed on February 2, 2021, before the BOP's receipt and uploading into BEMR on February 3 of the February 1 colonoscopy results. According to Chang, she reviewed the records and they still did not indicate that Bardell had a definitive diagnosis of cancer. The BOP Supervisory Attorney similarly told the OIG that at the time he sent the records to Chang, Bardell's colonoscopy results had not yet been received and, thus, there was no definitive diagnosis of cancer reflected in Bardell's file.

The BOP Supervisory Attorney did not recall having a telephone conversation with Chang about Bardell's medical condition or the BOP's ability to provide him adequate medical care. The BOP Supervisory Attorney stated that at times AUSAs would ask to speak with medical staff or to receive an email containing information about an inmate's medical diagnosis, prognosis, or plan of care, but this happened more often after Bardell's case. The BOP Supervisory Attorney also told the OIG that during the pandemic, it would have been difficult to find the time to arrange a call between a medical staff member and Chang.

Chang filed an opposition to Bardell's Second Emergency Motion for Compassionate Release on February 3, 2021. We did not find evidence that Chang had been aware, prior to the time of filing, of the results of Bardell's January 29 colonoscopy. Chang made two arguments in opposition to compassionate release. First, she argued that Bardell's original sentence was based on an analysis of § 3553(a) factors that apply with

[35] Medical Expert 2 also attested that Bardell likely had stage III sigmoid colon cancer in November 2019 when he started noticing rectal bleeding, he should have received a colonoscopy at that time, and he "would have been cured with a 71% probability with surgery and adjuvant chemotherapy." The OIG asked the Regional MAST Physician about Medical Expert 2's opinion that Bardell had a 71% chance of being cured with a timely diagnosis and treatment. The Regional MAST Physician responded, "You can't do that." He explained that in order to make an assessment, an expert would need to know how aggressive the cancer was, which could only be determined with a biopsy.

equal force today, noting Bardell's danger to the community and the numerous victims who "voiced their strong opposition to his early release."

Second, she argued that Bardell had still not established extraordinary and compelling reasons for compassionate release. In making this argument, she wrote that on December 18, 2020, Bardell underwent an EGD, which "found gastritis and a Schatzki's ring" but "no evidence of malignancy." She also wrote that on January 29, 2021, Bardell underwent a colonoscopy, the results of which were pending. Chang addressed Medical Expert 2's affidavit by stating that although Medical Expert 2 opined that certain medical records were consistent with a cancer diagnosis, Medical Expert 2 "did not provide a definitive diagnosis—let alone a *terminal* cancer diagnosis—nor does it appear that she could." (Emphasis in original). She further argued that the BOP was actively addressing Bardell's medical conditions, there was no evidence he could not receive adequate care in prison, and he had not shown that his condition impacts his ability to provide self-care in prison.

Chang attached to her opposition the medical records she had received from the BOP Supervisory Attorney, which she said she did to ensure that the Court could have "the most complete picture possible." Chang also stated that she quoted from Bardell's expert in her response, but she did not give Bardell's expert's opinion much weight because, unlike the providers referenced in Bardell's medical records, the expert did not examine Bardell.

C. Bardell Visits Sick Call on February 3, 2021, and BOP Receives Result of Bardell's January 29 Colonoscopy

On February 3, 2021, at 9:29 a.m.—while the BOP was awaiting the results of Bardell's colonoscopy—Bardell reported to sick call complaining of severe weakness, exhaustion, ongoing abdominal pain, unexplained weight loss, and loss of appetite. At this point, the last time Bardell had been seen in person at the FCI Seagoville clinic was July 15, 2020, when he first complained of rectal bleeding. NP2 examined Bardell and found evidence of jaundice and scleral icterus, both of which were indicative of severe liver disease. NP2 ordered multiple laboratory tests, nutritional supplements, daily weight checks, and a wheelchair for Bardell. Following the listing of laboratory orders, NP2 wrote, "Lab personnel verbally notified of a priority order of Today or Stat" meaning that the order was urgent. In addition, BOP records indicate that on February 3, the BOP placed a restriction in Bardell's file that he should be in a lower bunk and that he was permitted to have his shirt untucked, due to "generalized weakness and possible history of malignant disease." NP2 told the OIG that she did not remember Bardell, but acknowledged that she treated him based on the medical records.

On February 3, at 1:25 p.m., NP2 entered an administrative note into Bardell's medical file, stating that the BOP received the result from the colonoscopy and biopsy "today." The colonoscopy and biopsy records were then scanned in BEMR at 1:43 p.m. NP2 noted Bardell's diagnosis of "adenocarcinoma colon" (i.e., colon cancer), and ordered an urgent Positron Emission Tomography (PET) scan with a target date of February 9, 2021; an urgent surgery consult with a target date of February 19, 2021; and an urgent Oncology appointment with a target date of February 23, 2021. NP2 told the OIG that she scheduled the Oncology and surgery appointments later than the PET scan, because she knew that the oncologist and surgeon would not be willing to see Bardell before the PET scan was completed.

On February 3 at 2:53 p.m., the Regional MAST Physician wrote in an email:

> He has colon [cancer] with partially obstructing mass lesion. His workup is in progress, but if his abdominal pain increases, I would send him to the ER as he may be completely obstructed. He will be getting nutritional support with [E]nsure three times per day, and hopefully this will hold him until his work up is complete and we can get a 770 [form for transfer to a Medical Care Level 4 facility] completed and approved. Please alert all of those involved.

NP2 told the OIG that inmates diagnosed with cancer must be transferred to Medical Care Level 4 facilities, because FCI Seagoville does not have the ability to "take care of them."

D. The BOP Regional MAST Physician Does Not Believe Bardell's Case Was Handled Correctly

The Regional MAST Physician told the OIG that Bardell's medical case "wasn't handled correctly." Specifically, he stated that following receipt of the CT scan results in September 2020, Bardell should have had a colonoscopy, a biopsy, and begun treatment that month. The Regional MAST Physician attributed the delay in Bardell's case to a lack of adequate healthcare personnel at FCI Seagoville, which he stated was not unusual at BOP institutions and getting worse. The Regional MAST Physician also made some suggestions for how medical care could be improved at BOP institutions. Specifically, he told the OIG the "number one" change that is needed is for the BOP to hire an adequate number of correctional and healthcare personnel, and that until an institution is adequately staffed there should be a "moratorium" on allowing additional inmates into that facility. He further told the OIG, "We need to have what's called, an urgent list. These are people that we can't let fall through the cracks because it may cause a significant problem." In addition, he stated that medical providers who put in consultations orders should be notified regarding the status of those orders.

E. Bardell's Reply and the Court's February 5 Ruling Granting Compassionate Release

Bardell replied to the government's opposition, through counsel, on February 4, 2021. Bardell's counsel argued that extraordinary and compelling reasons justified compassionate release, because "Bardell's sentence has evolved into a death sentence." To support this argument, Bardell's counsel attached a second affidavit from Medical Expert 2, in which Medical Expert 2, after reviewing additional BOP medical records, including the results of the January 29 colonoscopy, attested that Bardell had metastatic colon cancer, which is a terminal diagnosis, and that the BOP's failure to conduct a colonoscopy until more than a year after the onset of rectal bleeding constituted "medical malpractice" which "will cost [Bardell] his life."

The Court granted Bardell's Second Motion for Compassionate Release on February 5, 2021. The Court found that the government provided no medical experts to refute Bardell's expert's opinions or to support its claims that the BOP was meeting its duty and taking steps to address Bardell's medical concerns. The Court modified the terms of Bardell's supervised release to include home confinement in order to ensure that Bardell did not pose an unreasonable danger to the community. In addition to granting Bardell's motion and modifying his conditions of supervised release, the Court ordered the following:

> Defendant Federick Mervin Bardell's previously imposed sentence of 151 months…is REDUCED TO TIME SERVED….
>
> Defendant Frederick Mervin Bardell's counsel shall work with the United States Probation Office to create an approved plan of release as quickly as possible. Counsel for Mr. Bardell

and the Government shall file joint status reports every **seven (7) days** from the date of this Order summarizing all progress made toward creating a compliant plan of release until Defendant is released. Counsel shall immediately notify the Court upon Defendant's release.

The Federal Bureau of Prisons is **DIRECTED** to release Defendant Frederick Mervin Bardell immediately after the United States Probation Office approves a release plan.

(Emphasis in original).

IV. Efforts By Bardell's Counsel and USPO to Create a Release Plan as Provided for in the Court's February 5 Order

According to a report written by a Special Master appointed by Judge Dalton, upon receiving the Court's February 5, 2021 order, Bardell's counsel began looking into whether she could arrange an air ambulance flight to transport Bardell from FCI Seagoville to a hospital in Florida. She also reportedly reached out to the local USPO in Cocoa Beach, Florida, to inform the USPO of the Court's order and Bardell's health needs. According to the Special Master's report, a duty officer at the USPO received the call and notified his supervisor, who, on February 6, assigned a senior officer to Bardell's case. On Monday, February 8, the senior USPO officer began investigating the suitability of Bardell's proposed release address. According to the Special Master's report, the local sheriff's office notified the senior USPO officer that Bardell's proposed release address was not suitable due to its proximity to a daycare and a school.

Bardell's counsel then reportedly arranged for Bardell to be admitted to a hospital in Florida, upon his release, which required the case to be transferred to the local USPO. According to the Special Master's report, the USPO was working to approve the release plan when Bardell was released by the BOP before the release plan was approved.

V. BOP's Response on February 8 to the Court's February 5 Release Order

We spoke with numerous BOP employees who were involved with Bardell's release, and they all told us that they either did not read Judge Dalton's release order or did not fully read or understand it, which they said led them to release Bardell before the USPO approved a release plan, contrary to the court order. Several BOP employees acknowledged that they should have read the release order but explained that upon reading the words "time served" and "immediately" in the release order, they were focused on getting Bardell released as quickly as possible and, therefore, did not notice the conditions of release. Some BOP employees also expressed that they appreciated the gravity of their mistake and deeply regretted how Bardell's release was handled.

Bardell's BOP Case Manager told the OIG that on Friday, February 5, 2021, he received a phone call from a female who identified herself as Bardell's attorney. The Case Manager stated that Bardell's attorney informed him that Bardell had been granted an immediate release, and she wanted him picked up in a private airplane. The Case Manager stated that at the time of the attorney's call, he had not yet received a release order for Bardell but told the attorney he would notify his supervisor. The Case Manager told the OIG that he notified his Unit Manager of the call, and the Unit Manager advised him to wait until the release order was received from the Court to begin processing paperwork or contact the USPO.

The Case Manager told us he went on annual leave on Monday, February 8, 2021, before the court order was received. He stated that a second case manager (Case Manager 2) then took over his duties with respect to Bardell's release. The Case Manager also noted that at this time he was a new Case Manager, had a full caseload, and had no training, including no training on how to handle an inmate release.

On February 8, 2021, at 8:17 a.m., Chang emailed the release order to the BOP Supervisory Attorney and wrote that the Court had "ordered BOP to release Bardell in accordance with the attached order" and that Bardell's "counsel has been ordered to work with Probation to fashion an acceptable plan of release." The BOP Supervisory Attorney told the OIG that he initially forwarded the email to Federal Correctional Complex (FCC) Coleman staff, under the mistaken belief that Bardell was housed at FCC Coleman. The Supervisory Attorney further told the OIG that he did not read the release order, but had he done so he would have contacted Judge Dalton's chambers for clarification on the wording. The BOP Supervisory Attorney explained that he found the order to be "contradictory" because the order used the language "time served," which means that the BOP no longer has the authority to supervise an inmate, but also stated that Bardell should not be released until after the USPO approved a release plan.

On February 8 at 11:30 a.m., an FCC Coleman Supervisory Correctional Systems Specialist forwarded Chang's email attaching the release order to FCI Seagoville Correctional Systems staff. An FCI Seagoville Correctional Systems Officer (CSO) told the OIG that he received the release order from the joint correctional systems email inbox and then forwarded it to the Designation and Sentence Computation Center (DSCC) at the BOP's South Central Regional Office to verify the authenticity of the order. The CSO stated that he understood the order to be a compassionate release order, which is considered under BOP policy to be an "immediate release" for which "everything is done to ensure the release is done the same day." The CSO stated he did not read the release order in its entirety and did not realize until after Bardell was released from custody that the release was conditioned upon authorization by the USPO.

A Classification and Computation Specialist (Classification Specialist 1) in the DSCC at the BOP's South Central Regional Office told the OIG that she could not specifically recall how she received Bardell's release order but believed she probably received it through the DSCC team's email inbox. She stated that nothing in Bardell's release order stood out to her as different from a typical release order. However, she told the OIG that she did not recall reading the portion of the order about complying with the USPO. Classification Specialist 1 stated that, per her usual practice, she verified the validity of the release order in the Public Access to Court Electronic Records (PACER) database, forwarded it to FCI Seagoville's Unit Team via email, and included language advising FCI Seagoville to comply with the provisions of the order. On February 8 at 11:36 a.m., Classification Specialist 1 sent an email to three group BOP mailboxes, with Bardell's name and register number in the subject line, stating:

> I have attached a verified copy of the compassionate release order for the above inmate. Please ensure he is released accordingly. Due to this being a compassionate release, the computation will not be updated. If you need anything else, please let me know.

A second Classification and Computation Specialist (Classification Specialist 2) told the OIG that she received an email from the CSO inquiring about the validity of Bardell's compassionate release order. She stated that she checked the DSCC team inbox and saw that Classification Specialist 1 already verified the validity of the release order and forwarded it by email to FCI Seagoville personnel. Classification Specialist 2 stated that she forwarded this email to the CSO. She told the OIG that she did not read Bardell's release order;

however, she noted that Classification Specialist 1's email had already advised FCI Seagoville personnel to release Bardell according to the order.

On February 8 at 1:33 p.m., the CSO emailed the Unit Secretary for Bardell's unit that Bardell's release order had been verified; the Unit Secretary acknowledged receipt at 2:34 p.m. The subject line of the email included the words "Immediate release." The Unit Secretary stated that at first she did not read the release order in its entirety, she later read it but did not fully understand it, and she found out approximately 1 month later that no one within the BOP complied with the conditions of the release order. The Unit Secretary further stated that she understood the order to be an "immediate release" order which she said requires the inmate to be released within 3 days from the date of the order. She told the OIG that this circumstance, along with the fact that the institution was short-staffed due to the COVID-19 pandemic, caused "a lot of stress."

The Unit Secretary told the OIG that her Unit Manager informed her that Bardell would be flying to his destination upon release. The Unit Secretary stated that she then met in person with Bardell to search for government contract flights, but she could not identify a government contract flight that worked for all parties. The Unit Secretary stated that she relayed this information to the Case Management Coordinator (CMC), who advised her to call Bardell's family to see if the family was willing to pay for the flight. The Unit Secretary stated she contacted Bardell's family, the family agreed to purchase a ticket for Bardell, and the family sent her a copy of the flight itinerary. BOP paperwork indicated that Bardell would depart FCI Seagoville on February 8 "via town driver" for a 6:14 p.m. departure on February 8, 2021, and that the flight was due to arrive in Florida, at 11:44 p.m., following a layover in Atlanta, Georgia. A "town driver" is an inmate housed at a minimum security facility who maintains a valid driver license and whose prison job involves driving in the community for specific purposes. Zook told the OIG that while the BOP normally pays for the inmate's transportation to the approved release location, her staff did not violate any BOP policy by asking the family to pay for the flight. The OIG similarly did not identify any BOP policy regarding asking an inmate's relative to pay for the inmate's flight upon release.

The Unit Secretary stated when she interacted with Bardell, he appeared "a little weak" but did not appear sick. She further stated that Bardell asked for a wheelchair to be transported from her office to Receiving and Discharge (R&D), which she provided.

The Unit Manager also received a copy of the Release Order on the morning of February 8. The Unit Manager, as the manager of the Unit Team including the Case Managers and Unit Secretary, told us that she took responsibility for the mistakes that occurred in connection with Bardell's release, including the failure to coordinate with the USPO. She also expressed regret for the decision to have Bardell's family pay for his flight, given that "the judge wasn't very happy about" that decision. She stated that when DSCC forwards a copy of a release order to the Unit Team, the first order of business is to read it. However, she admitted that she did not read Bardell's release order. The Unit Manager acknowledged that she should have read the court order and stated that following Bardell's case she made that her practice.

The Unit Manager said that due to the Case Manager being on leave beginning on February 8, she assigned Case Manager 2 the task of completing the paperwork for Bardell's release. The Unit Manager told the OIG that she interacted with Bardell around the time of his release, and he did not appear to be sick but rather like "a little old man." She said she did not realize at the time that he was 52.

Case Manager 2 told the OIG that he received an email from the Unit Manager advising him to assist in the release paperwork for Bardell. Case Manager 2, like the CSO, the Classification and Computation Specialists, and the Unit Manager, told the OIG that he did not read Bardell's release order in its entirety and, thus, was unaware of the conditions of Bardell's release. Case Manager 2 said that he knew he had to contact the USPO when a sex offender was being released and that he therefore emailed Bardell's release paperwork to the USPO. Specifically, Case Manager 2 emailed the Prisoner Release Notification Form to the USPO in Orlando, Florida on February 8 at 2:25 p.m.[36] However, he stated that he did not await confirmation from the USPO before processing Bardell for release. Case Manager 2 said that he met with Bardell, in his office, to work on the release paperwork, obtain a release address, and have Bardell sign off on release planning documents. Case Manager 2 told the OIG that Bardell did not appear to need assistance walking to and from his office.

The Unit Manager told the OIG that after all necessary paperwork was completed, she forwarded the Prisoner Release Notification form to Zook for her signature. The Unit Manager acknowledged that before forwarding the paperwork to Zook, she should have noticed that the required coordination with the USPO did not occur and made sure that it happened.

The CMC and Assistant Case Management Coordinator (ACMC) told the OIG that they were responsible for conducting the final processing and review of Bardell's release paperwork before he was released into the community. The CMC stated that she received Bardell's release order by email, but did not recall reading it. The CMC acknowledged that it was her responsibility or the ACMC's responsibility to review all completed release paperwork and provide the final signatures on BOP forms to confirm compliance with a release order, before an inmate is sent to Receiving and Discharge (R&D). The ACMC similarly told the OIG that she was responsible for reading court orders but admitted that she failed to read Bardell's release order in its entirety. She stated that she assumed the court order would be similar to typical court orders the BOP receives. The ACMC expressed that she appreciates the gravity of her mistake, regretted how Bardell's release was handled, and now has a practice of fully reading all court orders. The CMC told the OIG that since Bardell's case, she and the ACMC always ensure that all release packets include confirmation from the USPO that the USPO is aware of the inmate who is being released and has approved the release destination.

Zook told the OIG that she generally did not receive or review release orders from judges, that she did not receive or review Bardell's release order, and that she was not briefed on Bardell's release order other than receiving the Prisoner Release Notification form. Zook stated that her only involvement in Bardell's release was signing the Prisoner Release Notification Form on February 8, 2021.

Zook told the OIG that it is incumbent upon each correctional employee involved with a compassionate release to read the release order. However, she noted that Bardell's release order was unusual in that it was several pages long with conditions attached to it, whereas typically release orders are about 2 pages and have no conditions attached. Zook told the OIG that BOP staff always send the Prisoner Release Plan to the

[36] The Prisoner Release Notification Form is typically sent to the local USPO; the Chief State Law Enforcement Office, in this case the Florida Attorney General's Office; the Chief Local Law Enforcement, in this case the Chief of Police in Orlando, Florida; and the Sex Offender Registration Office, if applicable. This notice informs the recipients of the offender's final release date, his projected address, the type of offense—sex offense, Federal Drug Trafficking Offense, or Violent Crime; a description of the offense; and any release conditions other than the standard release conditions.

USPO in the relevant sentencing district, but that the usual process does not require USPO approval, as was the case with Judge Dalton's order. Zook stated that her staff were focused on the words "time served" and "immediately," and did not focus on the conditional language in the order. Zook further stated that when the DSCC received Bardell's the February 5 release order on February 8 and read that it said "time served," they hurried to send the order to FCI Seagoville because they believed they were already 3 days behind on releasing Bardell.

Zook told the OIG that prior to Bardell's case, she had never experienced a situation in which an inmate was released from BOP custody by private medical flight or where a social worker accompanied a medically fragile inmate to the inmate's release destination. She stated that she now knows that private medical flights and social workers are sometimes used for inmates who are being released from MRCs and that these options are also available for inmates being released from lower medical care level facilities, like FCI Seagoville. However, she noted that there was no social worker assigned to FCI Seagoville at the time of Bardell's release.

VI. Bardell's Release From BOP Custody on February 8 and Death 9 Days Later

Bardell was released from FCI Seagoville on February 8, 2021, at approximately 4:00 p.m. As discussed above, the BOP notified the USPO of Bardell's impending release but did not wait for the USPO to approve a release plan. Consistent with the BOP paperwork described above, Bardell departed FCI Seagoville and was taken to the local airport for a 6:15 p.m. flight, through Atlanta, Georgia to Florida.

On February 12, 2021, Bardell, through his counsel, and the government filed a joint status report with Judge Dalton regarding Bardell's release. The Joint Status Report advised the Court:

- The BOP released Bardell while his counsel was still attempting to work with the USPO to finalize his release plans;
- The BOP did not notify Bardell's counsel of Bardell's release;
- Bardell was left at the curb at the local airport;
- Bardell travelled on a commercial flight, with a layover in Atlanta, Georgia, to Florida;
- Bardell's attorney and parents met Bardell at the airport. Bardell's parents did not recognize him. Bardell's attorney observed that Bardell's clothing was soiled from blood and excrement from his bowels;
- Bardell's attorney transported Bardell to the emergency room at a nearby hospital;
- Bardell was evaluated and told that he would survive, at most, less than 6 months;
- Bardell's weight had dropped from 160 pounds to 103 pounds.

On February 16, 2021, the Court ordered Zook to "provide a detailed report of the circumstances of [Bardell's] discharge and an explanation of why the Court's February 5, 2021 order…was not followed."

On February 18, 2021, Bardell's counsel and the government filed a Second Joint Status Report in which they reported that Bardell succumbed to his illness on February 17, 2021, 9 days after his release from the BOP.

On March 1, 2021, the government filed with the Court a February 26, 2021 letter from Zook in response to the Court's February 16, 2021 order. In the letter, Zook apologized and expressed deep regret for failing to comply with the Court's order and explained that FCI Seagoville staff misunderstood the Court's order to be "an immediate release order." Zook further wrote that, "Staff involved have been counseled regarding the importance of carefully reading all portions of relevant release orders." Zook explained that the procedures at the time did not require Warden approval when a federal sentencing court orders the release of an inmate, but stated that, "in light of the circumstances of this case, I reviewed and bolstered the routing procedures relative to immediate release orders to ensure thorough review is given to the text of these orders." Zook noted that she believed such procedures were particularly important in light of the "dramatic increase" in release orders during the pandemic.

On April 13, 2021, the Court ordered the government to show cause by May 4, 2021, as to why it should not be held in civil contempt or otherwise sanctioned for failing to obey the Court's February 5 order.

The Civil Division for the USAO MDFL filed a response to the Court's Order to Show Cause on May 18, 2021, and acknowledged that the Court's February order was lawful and unambiguous, and that the BOP had the ability to comply with it. However, the government set forth several facts related to the handling of the release order, which it maintained demonstrated the "lack of willfulness" by BOP employees. The government further detailed various procedures Zook had put in place at FCI Seagoville to prevent a recurrence of the failures that occurred in connection with Bardell's release. These procedures were also set forth in a sworn declaration from Warden Zook. These procedures included the following:

- The CMC or ACMC review all immediate release orders and then forward them by email to all affected staff, with language in the email highlighting for staff "any provisions listed by the Court which need to be met prior to release."
- Such court orders and accompanying emails will be printed and sent, along with other relevant paperwork, to the Unit Manager, Associate Warden, and Warden for review prior to release.
- The Warden will initial and date the last page of the Court Order to acknowledge their review, and R&D staff will not release the inmate without the Warden's or Acting Warden's initials.

The government requested that the Court "consider these actions in entering any order with respect to the Order to Show Cause." However, the government did not indicate in its Response to the Court's Order to Show Cause that the BOP made these changes at all BOP institutions. The government also did not address the healthcare issues that were present in the BOP's management of Bardell's case or the BOP's processes for handling RIS requests related to medical circumstances. On May 27, 2021, Bardell's counsel filed a reply to the government's response, arguing that the Court should use its inherent power and impose sanctions on the BOP for contempt.

On January 13, 2022, the Court issued an order advising the parties that they may file any objections regarding the appointment of a Special Master, and on January 26, the government filed a Notice of No Objections. On January 27, Judge Dalton appointed a Temporary Special Master to, among other things, investigate the circumstances surrounding Bardell's release and assess whether Zook or the BOP should be held in contempt for violating the compassionate release order. The Special Master submitted a report to

the Court on June 6, 2022. The Special Master made numerous findings and conclusions of law including, similar to the OIG's finding, that FCI Seagoville did not comply with the condition in Judge Dalton's order to release Bardell after approval of a release plan from the USPO, despite that this condition was "consistent with BOP policy and practices already in place at FCI Seagoville." The Special Master further found, similar to the OIG's findings, that multiple FCI Seagoville employees failed to read or fully read and appreciate the provisions of the release order because they were focused on the words "immediate release" and "time served," and that FCI Seagoville did not have adequate systems in place to ensure compliance with compassionate release orders. In addition, the Special Master noted that while MRCs have procedures for handling releases of medically fragile inmates, including consideration of air ambulance flights, other institutions are often unaware of such procedures because they are not accustomed to handling releases of inmates with serious medical conditions.

At the Show Cause Hearing on August 3, 2022, the Special Master expressed that he believed Bardell likely would have been transferred to an MRC had he been diagnosed with colon cancer earlier and that an MRC likely would have heeded closer attention to the compassionate release order and Bardell's medical needs upon release. The Special Master recommended that the Court hold the BOP and Warden Zook in her official capacity in civil contempt for violating the release order, and the Court so held on October 4, 2022.

ANALYSIS

In this section, we provide our analysis of whether the BOP's medical diagnosis and care of Bardell was timely and appropriate, whether the BOP appropriately handled Bardell's request for a reduction in sentence (RIS), whether the government made misrepresentations to the Court in connection with Bardell's motions for compassionate release, and whether the BOP complied with Judge Dalton's order to release Bardell immediately after the U.S. Probation Office (USPO) approved a release plan. The OIG concluded that the BOP's ability to provide quality and timely medical care to Bardell was negatively impacted by severe understaffing in the Health Services Unit (HSU) at FCI Seagoville. Further, the OIG concluded that the BOP's handling of Bardell's RIS request was inadequate, which was due, in large part, to BOP procedures that did not facilitate individualized review of complex medical circumstances or require the BOP to consider its own ability to meet an inmate's medical needs. In addition, we found that the government's court filing in response to Bardell's first Emergency Motion for Compassionate Release did not paint the full picture of Bardell's medical condition and the BOP's ability to meet his needs, which led to the Court denying Bardell's first Emergency Motion for Compassionate Release. However, we found the evidence was insufficient to conclude that the government made knowing or intentional misrepresentations to the Court. We also concluded that the BOP failed to follow the condition in Judge Dalton's order requiring the BOP to wait to release Bardell until the USPO approved a release plan, and that this failure resulted in the unsafe transport of Bardell to his release destination.

We identified serious job performance and management failures at multiple levels within FCI Seagoville, from line staff through the Warden. We also identified problems with the BOP's medical care of inmates, handling of compassionate release requests due to medical circumstances, and handling of compassionate release orders, and we make eight recommendations (seven to the BOP and one to the Department) to address these problems. These findings and recommendations are discussed below.

I. The BOP's Ability to Provide Quality and Timely Medical Care to Bardell Was Negatively Impacted by Severe Understaffing

We concluded, as did the BOP Regional MAST Physician, that the BOP's ability to provide quality and timely medical care to Bardell was negatively impacted by severe understaffing in FCI Seagoville's HSU. BOP policy sets forth standards for the structure and operations of HSUs, including that each institution is expected to have a Clinical Director on staff and that each inmate should be assigned to a Primary Care Provider Team (PCPT), consisting of at least one physician and multiple midlevel providers, nurses, and medical administrative staff. FCI Seagoville did not have a Clinical Director and Bardell did not have a PCPT. Indeed, there were no physicians and only one midlevel provider at the institution during the period when Bardell was experiencing serious health problems at FCI Seagoville, and the midlevel provider was on medical leave for a portion of that time. We determined that the failures and delays in medical care described throughout this report and discussed below were largely due to this inadequate staffing.

We found that in response to Bardell's report to the FCI Seagoville medical staff on July 5, 2020, that he had seen blood in his stool and that he had first started seeing it 8 months prior, a nurse practitioner (NP) examined him on that same date, ordered multiple tests, and told Bardell to return immediately if his symptoms worsened. Specifically, the NP ordered a complete blood count, hepatitis panel, complete metabolic panel, and carcinoembryonic antigen (CEA), all with a routine priority level and due date of July 20, 2020. In addition, the NP put in an order for an urgent diagnostic colonoscopy consultation with a target

date of July 27, 2020. We did not identify concerns with the NP's handling of Bardell at this time; however, none of the testing the NP scheduled occurred in a timely manner. Moreover, the gravity of these delays intensified after September 18, 2020, when the BOP received "critical results" from a computed tomography (CT) scan, which showed that Bardell likely had stage IV colon cancer that had spread to his liver. We found that these CT results should have triggered multiple actions by the BOP that either did not occur or did not occur timely.

First, based on the Regional MAST Physician's contemporaneous emails to BOP staff, medical appointment orders, and testimony to the OIG, the BOP should have ensured that Bardell underwent a colonoscopy in September, or at the latest in early October 2020. However, Bardell's first colonoscopy was not scheduled until December 18, 2020, and he did not undergo a successful colonoscopy until January 29, 2021, more than 6 months after he initially reported seeing blood in his stool and 73 days after the CT scan showed that he likely had stage IV colon cancer. While some BOP employees told us that during the COVID-19 pandemic there were delays on the part of the third party Comprehensive Medical Services (CMS) contractor in scheduling offsite medical appointments, we were not able to determine whether this was the cause of the delay in Bardell's case. Specifically, based on a review of Bardell's medical records and witness testimony, we did not find any record of an attempt by FCI Seagoville employees to schedule Bardell's colonoscopy between the October 2 gastroenterologist (GI) consultation and the December 1 email from the Regional MAST Physician identifying appointments that had not been scheduled. We were unable to determine whether this was due to poor recordkeeping or, alternatively, due to the fact that no effort was made by BOP employees to make the appointment.[37] Similarly, we found no explanation in the medical records or witness testimony for the delay between Bardell's first and second colonoscopy appointments, and the Regional MAST Physician told us that at this point Bardell should have been "at the top of the list."

Second, the BOP should have ensured that Bardell was properly prepared for his first scheduled colonoscopy on December 18. The BOP controls cell placements, cellmate assignments, provision of food, provision of medicine, and medical instruction to inmates. Given this control, it is imperative that the BOP take the actions within its control to help inmates properly prepare for scheduled colonoscopies, especially when such colonoscopies are designated as urgent due to serious medical needs. That did not happen here. Although BOP records indicate Bardell was placed in the SHU and the colonoscopy preparation medication was dispensed to him, there was no indication in the medical records that anyone provided Bardell diet and medication instructions. We were told that a nurse would have been responsible for providing such instructions; however, the only FCI Seagoville nurse working during the 2 days before Bardell's colonoscopy was in offsite training at that time.

Third, once Bardell reported symptoms in June 2020—and especially after the September 2020 CT scan results showed a strong likelihood of metastatic colon cancer—Bardell should have been seen regularly by a

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[37] In prior reports, the OIG has identified similar deficiencies with the BOP's recordkeeping regarding scheduling of outside medical appointments, including canceled and rescheduled appointments. *See* Evaluation of the Federal Bureau of Prisons' Colorectal Cancer Screening Practices for Inmates and Its Clinical Follow-up on Screenings, Report No. 25-057, May 20, 2025, https://oig.justice.gov/reports/evaluation-federal-bureau-prisons-colorectal-cancer-screening-practices-inmates-and-its?utm_source=slider&utm_medium=web&utm_campaign=report; Audit of the Federal Bureau of Prisons Comprehensive Medical Services Contracts Awarded to the University of Massachusetts Medical School, Audit Report 22-052, March 2022, https://oig.justice.gov/reports/audit-federal-bureau-prisons-comprehensive-medical-services-contracts-awarded-university.

medical provider in FCI Seagoville's clinic. However, Bardell was not seen in person at the FCI Seagoville clinic between July 15, 2020, when he first complained of rectal bleeding, and February 3, 2021, almost 7 months later, after the colonoscopy that ultimately diagnosed him with colon cancer. Regular appointments not only would have enabled BOP Health Services providers to monitor and treat Bardell's weight loss and other symptoms, but also likely would have flagged the delay in scheduling Bardell's colonoscopy.

On May 20, 2025, the OIG publicly released a BOP-wide evaluation of the BOP's colorectal cancer (CRC) screening practices for inmates and clinical follow-up on screenings.[38] This report has many important recommendations that would address some of the concerns identified in this report, such as considering strategies and practices to eliminate the need for offsite pre-colonoscopy evaluations and implementing a reliable, consistent process throughout all BOP facilities to monitor and analyze wait times for outside inmate appointments.

The OIG believes that the following additional changes to BOP's policies and procedures could prevent the types of issues we observed with Bardell's case:

- First, while the BOP has a practice of designating orders for outside medical appointments as routine, urgent, or emergent, we did not identify any BOP policies or procedures regarding such designations. In addition, the NP and the Regional MAST Physician both told us that they were not given updates on the status of their medical orders, such as when such orders would not be completed timely. Such status updates may have alerted these providers to delays in scheduling Bardell's appointments before the delays became unreasonable and detrimental. Accordingly, we recommend that the BOP develop policies or formal procedures regarding timelines for scheduling offsite medical appointments for inmates and documenting and tracking the scheduling of such appointments. Such policies or formal procedures should explain the designations of routine, urgent, and emergent; provide expectations for when such designations are used and how quickly orders with such designations should be completed; and set forth processes for monitoring the status of orders and notifying the ordering provider of such status.
- Second, the BOP does not have a policy to ensure that inmates who develop serious medical symptoms or receive concerning test results are seen regularly while their diagnoses are being confirmed. In Bardell's case, such regularly scheduled appointments may have alerted BOP medical professionals to scheduling delays in his offsite medical appointments before such delays became unreasonable or detrimental. In addition, providers would have had the opportunity to monitor his weight loss and other indications of his declining health before his health situation became severe. Accordingly, we recommend that the BOP refine their policies or formal procedures to ensure that inmates who report serious medical symptoms or receive critical test results are provided regular follow-up medical care. As part of these policies or formal procedures, the BOP should consider requiring each institution to develop an "urgent list" of inmates who have urgent medical needs to

[38] Evaluation of the Federal Bureau of Prisons' Colorectal Cancer Screening Practices for Inmates and Its Clinical Follow-up on Screenings, Report No. 25-057, May 20, 2025, https://oig.justice.gov/reports/evaluation-federal-bureau-prisons-colorectal-cancer-screening-practices-inmates-and-its?utm_source=slider&utm_medium=web&utm_campaign=report, 41-42.

ensure they receive consistent follow-up medical care and, as the Regional MAST Physician stated, prevent them from "fall[ing] through the cracks."

- Third, we recommend that the BOP develop policies or procedures to help ensure that inmates who are scheduled for colonoscopies follow the diet and medication regimen to properly prepare for such colonoscopies.

II. The BOP's Consideration of Bardell's RIS Request Was Seriously Deficient

We found that FCI Seagoville denied Bardell's RIS request without fully considering his medical condition. The BOP's policy regarding compassionate release states that the BOP may consider RIS for inmates who "have been diagnosed with a terminal, incurable disease and whose life expectancy is eighteen (18) months or less, and/or has a disease or condition with an end of life trajectory." In addition, the policy states that RIS may be considered for inmates who have "an incurable, progressive illness or who have suffered a debilitating injury from which they will not recover." To inform this assessment, the HSU of the institution where the inmate is housed must provide the BOP staff that is considering the RIS request a comprehensive medical summary, including all relevant test results and all relevant consultations.

Rather than provide a comprehensive medical summary to the FCI Seagoville committee that considered Bardell's RIS request on October 28, the RIS paperwork included very limited information about Bardell's medical condition. By October 28, BOP medical records reflected that Bardell had an elevated CEA marker that was indicative of colon cancer and that his CT scan found multiple liver lesions that were "highly suspicious for metastatic disease and **should be considered as such until proven otherwise**." (Emphasis added). The records also showed that, in response to the CT scan, the Regional MAST Physician had ordered an urgent colonoscopy with a target date of October 12 but that the colonoscopy had still not been scheduled as of October 28 when the committee met.

Yet, the RIS paperwork only stated with regard to Bardell's medical condition: "No formal diagnosis on liver/colon cancer[.] Nothing terminal w/less than 18 months." In its denial of Bardell's RIS request, the BOP said: "A review of medical documentation does not reflect you are currently experiencing deteriorating mental or physical health which substantially diminishes your ability to function in a correctional facility."

We concluded that the BOP's handling of Bardell's RIS request was seriously deficient as a result of the HSU's failure to submit a comprehensive medical summary of Bardell's condition. We found no evidence that the committee considered the September 18 CT scan results showing that Bardell "should be considered" to have metastasized colon cancer or the fact that the Regional MAST Physician had ordered an urgent colonoscopy that was long overdue. While BOP policy provided for compassionate release based on medical circumstances only if the inmate had a terminal illness or an incurable, progressive illness or debilitating injury from which they will not recover, given the diagnosis of the CT scan, combined with the prior CEA result, it was apparent from BOP medical records that Bardell likely had a terminal or incurable, progressive illness and what was needed to confirm the diagnosis was the overdue colonoscopy. Had the BOP scheduled Bardell's colonoscopy in a timely manner, the BOP would have known that Bardell had a terminal illness at the time of its consideration of his RIS request.

Rather than take steps to ensure that Bardell had the overdue urgent colonoscopy so that it could consider the results in deciding on Bardell's request, or grant Bardell's RIS request based on the findings of the CT

scan and CEA test, the BOP simply rejected his RIS request. We believe that the BOP, given the requirement that it carefully assess Bardell's medical condition and information contained in his medical records in assessing Bardell's RIS request, had a responsibility to ensure that the overdue colonoscopy was expeditiously completed so that it had all relevant and necessary medical information before reaching a decision on his application. That did not happen. Instead, the BOP did not arrange for a successful colonoscopy until 3 months after the RIS Committee meeting, a colonoscopy that confirmed what the CT scan said should have been assumed—that Bardell had metastasized colon cancer, a terminal illness.

In 2023, the U.S. Sentencing Guidelines (USSG) were revised to incorporate additional categories of medical circumstances warranting a sentencing reduction.[39] For example, the 2023 revisions added the following category:

> (C) The defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

However, the BOP's Compassionate Release Program Statement has not been revised to incorporate these additional categories. In addition, in August 2023, the then Deputy Attorney General issued a memorandum stating that she had instructed the BOP Director to "review BOP processes for responding to motions for compassionate release to ensure that all compassionate release requests grounded in medical claims receive prompt and careful review from a trained medical professional." However, the BOP's Compassionate Release Program Statement does not state that review by a trained medical professional is required.

To address the concerns we identified, we recommend that the BOP monitor changes to federal and DOJ compassionate release requirements and guidelines, including the USSG, and consider making corresponding changes to its Compassionate Release Program Statement. For example, in view of provisions in the 2023 sentencing guidelines, we further recommend that the BOP assess whether it should revise its Compassionate Release Program Statement to state that the BOP should consider a reduction in sentence when the defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death. In addition, we recommend that the BOP revise its policies, procedures, or training to ensure that BOP employees handling RIS requests based on medical circumstances consider not only whether an inmate has a definitive diagnosis but also whether the BOP has been meeting the inmate's medical needs, has the ability to meet the inmate's medical needs going forward, and has scheduled the medical appointments necessary to diagnose the inmate's medical condition. We further recommend that the BOP require that a physician, midlevel provider, or other trained medical professional be consulted in connection with all RIS requests based on medical circumstances.

III. The Government's Representations to the Court that the BOP Could Provide Adequate Care to Bardell Were Inaccurate

We found that the government's representations to the Court in its November 10, 2020, and February 3, 2021 responses to Bardell's first and second Emergency Motions for Compassionate Release that there was

[39] As noted above, while the facts relevant to this investigation and review occurred in 2020, we are referencing the 2023 revisions because they are relevant to our recommendations for improvements to Department and BOP policies.

"no indication" that Bardell could not "receive adequate care in custody" were not accurate based on the information we identified during the course of this investigation. Specifically, as detailed in part I of this analysis, by November 10, 2020, there was substantial evidence that Bardell had not received, and could not receive, adequate care while in BOP custody, including the fact that FCI Seagoville was severely understaffed and that the BOP was unable to timely schedule his medical appointments, despite some being labeled as a priority. These delays became more dire over time as Bardell's condition worsened. For example, as of November 10, 2020, the BOP still had not scheduled Bardell for either a colonoscopy or oncology consultation despite its Regional MAST Physician advising staff in September—following the Regional MAST Physician's review of the CT scan and CEA test results—that those appointments had to happen urgently.

Judge Dalton's decision denying Bardell's compassionate release motion relied on the government's inaccurate representation about the BOP's capabilities, stating the Court's decision was 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 OIG investigation did not find evidence that the BOP assisted with drafting the government's responses to Bardell's motions, or that any BOP employee made inaccurate statements to the Court. However, we concluded that the government's representations were made as a result of the government relying on (1) the BOP's decision to deny Bardell's RIS request, which, as discussed above, we found to be based on a seriously deficient process; and (2) Chang's honest, although nonexpert, understanding of the records the BOP provided to her. At the time of Bardell's motion, the USSG provided that Bardell's Motion for Compassionate Release based on medical circumstances should be granted only if he was suffering from a terminal illness or was suffering from a serious physical or medical condition that substantially diminished his ability to provide self-care in prison and from which he was not expected to recover. In order to make this assessment, DOJ policies in place at the time required the assigned AUSA to "consult with BOP (either BOP legal staff where the inmate is located or the Legislative and Correctional Issues Branch in the BOP Central Office), which should in turn provide all necessary materials and information to permit an informed response."

Chang complied with these DOJ procedures when she contacted the BOP Supervisory Attorney assigned to handle such requests for FCI Seagoville immediately following each of Bardell's motions for compassionate release and obtained relevant records, including Bardell's medical records. Chang then reviewed the records, which she attached to the government's opposition brief, to determine whether Bardell had been diagnosed with a terminal condition that would warrant compassionate release. However, the medical records did not reflect that Bardell had been diagnosed with such a condition. They also did not explicitly detail the BOP's multiple failures to timely schedule critical appointments for Bardell, or the staffing shortages that FCI Seagoville was facing. The OIG identified those issues based not only on a very close review of the medical records that was informed by our consultation with a medical expert and interviews of BOP medical professionals, but also on our review of documents beyond Bardell's medical records, such as BOP emails. We would not have been able to make these findings based on a nonexpert review of the medical records alone. In particular, our consultation with a medical expert and interviews of BOP employees allowed us to fully understand the seriousness of Bardell's symptoms and test results and how the BOP failed in adequately and timely addressing them. Moreover, in making her representations to the Court regarding Bardell's condition and the BOP's ability to care for him, Chang relied on the BOP's statement in the RIS denial that, "A review of medical documentation does not reflect you are currently experiencing deteriorating mental or physical health which substantially diminishes your ability to function

in a correctional facility," as well as guidance and input from her supervisor who suggested she represent to the Court that, "there is no indication yet that he is terminal or that this is impacting his ability to provide self care in prison." While we believe that it would have been prudent for Chang to consult with BOP medical professionals, other BOP employees, or other medical experts to better understand the BOP medical records, Bardell's medical condition, and the BOP's ability to care for him, we noted that Department procedures in place at the time did not require Chang to speak with such individuals. In addition, we credited Chang's testimony that she did not intend to hide anything from the Court, because she included direct quotes from the medical records in her submissions and provided all the hard copy medical records she had received from the BOP Supervisory Attorney to the Court as exhibits. Accordingly, we did not find that Chang made any knowing or intentional misrepresentations to the Court or otherwise engaged in misconduct.

Since Bardell's death, the USSG have changed regarding motions for compassionate release. Under the current guidelines, an extraordinary and compelling reason for compassionate release may be established by showing that the defendant suffers from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death. In addition, the Department has made significant changes to its guidance for AUSAs on handling motions for compassionate release based on medical circumstances. Specifically, the then Deputy Attorney General's memorandum established certain best practices for responding to motions for compassionate release including identifying a point of contact at each U.S. Attorney's Office whom other AUSAs can consult when responding to motions involving complex medical issues and requiring supervisory approval before AUSAs oppose motions for compassionate release based on medical records.

To address the concerns we identified, the OIG recommends that the Department develop policies or procedures that provide guidance to AUSAs about steps they should take and factors they should consider when responding to motions for compassionate release based on medical circumstances. As part of such policies or procedures, the Department should consider requiring AUSAs, before responding to a motion for compassionate release, to seek input from BOP medical professionals or other medical experts and address timeliness and quality of past medical care by the BOP for the inmate, understaffing at the facility where the inmate is housed, and the BOP's ability to meet the inmate's needs.

IV. The BOP Did Not Comply with Judge Dalton's Compassionate Release Order

Finally, like the Special Master, we concluded that the BOP did not comply with Judge Dalton's release order when it released Bardell while the USPO was still working on a release plan. The OIG found that the failure to follow the Court's order was the result of multiple BOP officials failing to read or fully read the order. At least 9 employees told us that they did not read, did not fully read, or did not understand the release order. We concluded that this rationale was entirely unacceptable. Some BOP employees further told us that they did not notice the condition to wait for a USPO-approved release plan, because they were focused on the words "time served" and "immediately" in the order and, thus, worked to release Bardell as quickly as possible. However, we note that the assertion that this language was unusual was inconsistent with the fact that DOJ guidance in place at the time stated that the BOP supported language that was similar to the

wording of Judge Dalton's release order, including the use of the words "time served" alongside the release being conditioned on the implementation of a release plan and travel arrangements.[40]

In addition, Warden Zook told the OIG that she was not aware of the availability of social workers or air ambulance services for medically fragile inmates. We found that the hastiness of the BOP's handling of Bardell's release was extremely concerning, because the BOP did not take measures to ensure his safe transport in light of his medical condition.

To address the concerns we identified, we recommend that the BOP revise its policies, procedures, or training to ensure that BOP employees understand the importance of carefully reading court orders and seeking guidance when they do not understand them; wait for approval from the relevant U.S. Probation Office before releasing inmates who require such approval; and take other steps to ensure safe transport of inmates to their release destination, including seeking assistance from a BOP social worker or medical provider and utilizing air ambulance services where appropriate.

[40] Specifically, the U.S. Attorney Compassionate Release Guidance sets forth language that "the BOP requests" courts include in any final order granting compassionate release, as follows:

> IT IS THEREFORE ORDERED that the defendant's term of imprisonment is hereby reduced to the time he has already served.
>
> IT IS FURTHER ORDERED that the defendant shall be released from the custody of the Bureau of Prisons as soon as the release plan is implemented, and travel arrangements can be made.

CONCLUSIONS AND RECOMMENDATIONS

The OIG concluded that the BOP's ability to provide quality and timely medical care to Bardell was negatively impacted by severe understaffing in the HSU at FCI Seagoville. Further, the OIG concluded that the BOP's handling of Bardell's RIS request was inadequate, which was due, in large part, to BOP procedures that did not facilitate individualized review of complex medical circumstances or require the BOP to consider its own ability to meet an inmate's medical needs. In addition, we found that the government's court filing in response to Bardell's first Emergency Motion for Compassionate Release did not paint the full picture of Bardell's medical condition and the BOP's ability to meet his needs, which led to the Court denying Bardell's first Emergency Motion for Compassionate Release. However, we found the evidence was insufficient to conclude that the government made knowing or intentional misrepresentations to the Court. We also concluded that the BOP failed to follow the condition in Judge Dalton's court order requiring the BOP to wait to release Bardell until the USPO approved a release plan, and that this failure resulted in the unsafe transport of Bardell to his release destination.

We identified serious job performance and management failures at multiple levels within FCI Seagoville, from line staff through the warden. We also identified problems with the BOP's medical care of inmates, handling of compassionate release requests due to medical circumstances, and handling of compassionate release orders. Accordingly, we make the following seven recommendations to the BOP and one recommendation to the Department:

1. The BOP should develop policies or formal procedures regarding timelines for scheduling medical appointments for inmates and documenting and tracking the scheduling of such appointments. Such policies or formal procedures should explain the designations of routine, urgent, and emergent; provide expectations for when such designations are used and how quickly orders with such designations should be completed; and set forth processes for monitoring the status of orders and notifying the ordering provider of such status.

2. The BOP should refine their policies or formal procedures to ensure that inmates who report serious medical symptoms or receive critical test results are provided regular follow-up medical care. As part of these policies or formal procedures, the BOP should consider requiring each institution to develop an "urgent list" of inmates who have urgent medical needs to ensure they receive consistent follow-up medical care.

3. The BOP should develop policies or procedures to help ensure that inmates who are scheduled for colonoscopies follow the diet and medication regimen to properly prepare for such colonoscopies.

4. The BOP should monitor changes to federal and DOJ compassionate release requirements and guidelines, including the USSG, and consider making corresponding changes to its Compassionate Release Program Statement. For example, in view of provisions in the 2023 sentencing guidelines, we further recommend that the BOP assess whether it should revise its Compassionate Release Program Statement to state that the BOP should consider a reduction in sentence when the defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

5. The BOP should revise its policies, procedures, or training to ensure that BOP employees handling Reduction In Sentence requests based on medical circumstances consider not only whether an inmate has a definitive diagnosis but also whether the BOP has been meeting the inmate's medical needs, has the ability to meet the inmate's medical needs going forward, and has scheduled the medical appointments necessary to diagnose the inmate's medical condition.

6. The BOP should require that a physician, midlevel provider, or other medical professional be consulted in connection with all Reduction In Sentence requests based on medical circumstances.

7. The Department should develop policies or procedures that provide guidance to AUSAs about steps they should take and factors they should consider when responding to motions for compassionate release based on medical circumstances. As part of such policies or procedures, the Department should consider requiring AUSAs, before responding to a motion for compassionate release, to seek input from BOP medical professionals or other medical experts and address timeliness and quality of past medical care by the BOP for the inmate, understaffing at the facility where the inmate is housed, and the BOP's ability to meet the inmate's needs.

8. The BOP should revise its policies, procedures, or training to ensure that BOP employees understand the importance of carefully reading court orders and seeking guidance when they do not understand them; wait for approval from the relevant U.S. Probation Office before releasing inmates who require such approval; and take other steps to ensure safe transport of inmates to their release destination, including seeking assistance from a BOP social worker or medical provider and utilizing air ambulance services where appropriate.

The USAO for the Northern District of Texas declined prosecution in this case.

The OIG has completed its investigation and is providing this report to the BOP to review the performance of the employees as described in this report for any action it deems appropriate. Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The U.S. Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C § 7701(c)(1)(B); 5 C.F.R § 1201.56(b)(1)(ii).

APPENDIX 1: THE FEDERAL BUREAU OF PRISONS' (BOP) RESPONSE

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director *Washington, DC 20534*

December 9, 2025

MEMORANDUM FOR SARAH E. LAKE
ASSISTANT INSPECTOR GENERAL
INVESTIGATIONS DIVISION

FROM: William K. Marshall III, Director

SUBJECT: Response to the Office of Inspector General's Draft Report: Investigation and Review of the Federal Bureau of Prisons' Conditions of Confinement and Medical Treatment of Frederick Mervin Bardell and Related Representations to the Court, Upon Referral by Senior U.S. District Judge Roy B. Dalton, Jr.

The Federal Bureau of Prisons (BOP) fully appreciates the gravity and importance of the investigation conducted by the Office of Inspector General (OIG) resulting in its draft report entitled, Investigation and Review of the Federal Bureau of Prisons' Conditions of Confinement and Medical Treatment of Frederick Mervin Bardell and Related Representations to the Court, Upon Referral by Senior U.S. District Judge Roy B. Dalton, Jr. (Report). In the Report, the OIG identified serious failures regarding the conditions of Mr. Bardell's confinement and medical treatment and "identified problems with the BOP's medical care of inmates, handling of compassionate release requests due to medical circumstances, and handling of compassionate release orders." Additionally, the OIG concluded that "the BOP's ability to provide quality and timely medical care to [Mr.] Bardell was negatively impacted by severe understaffing in the Health Services Unit (HSU) at FCI Seagoville" and notes that "the OIG's prior work has repeatedly identified staffing issues across the BOP's institutions." The BOP is committed to addressing the problems that the OIG identified and is concurring with the OIG's recommendations directed to BOP.

In addition to the actions BOP is taking in response to the Report's recommendations, the BOP is also engaging in the following initiatives as ensuring adequate staffing for health services remains a top priority for the BOP. To improve staffing and recruitment, the BOP continues to offer incentive packages for health services positions, such as recruitment and retention

Page 1 of 5

incentives, student loan repayments, above the minimum rate appointments, annual leave credit, and funds for continuing education. The BOP has also adopted a Hybrid Title 38 pay system for BOP-eligible clinicians, including physicians, dentists, and psychiatrists. Additionally, in Fiscal Year 2026, the BOP launched Direct Hire Authority for registered nurses nationwide. This hiring authority allows a candidate to be determined as qualified more quickly, and once qualified, sent directly to location preferences that the candidate indicated in his or her application.

Additionally, the BOP notes that it is actively implementing the thirteen recommendations from OIG's Evaluation of the Federal Bureau of Prisons' Colorectal Cancer Screening Practices for Inmates and Its Clinical Follow-up on Screenings, Report No. 25-057 (May 20, 2025), to improve processes as well as the delivery of health care to the inmate population. Among these improvements, the BOP's Health Services Division is developing a written plan template that will be specific to colorectal cancer screening, encompassing how the facility will identify the average-risk population; the screening process, including timeframes; assigned employee responsibilities; and plans for providing colorectal cancer screening education to inmates, as well as any best practices identified during the BOP's analysis of high performing institutions. The BOP is also establishing a process for its regional offices to periodically review facility-specific written colorectal cancer screening and education plans. Regional reviews will include an evaluation of both the plans/curriculum for educating the inmate population, as well as the need for revisions to the plan itself based on each facility's ongoing level of performance on the National Performance Measures (NPMs) related to colorectal cancer screening. [1]

The BOP is committed to ensuring that compassionate release or "Reduction in Sentence" (RIS) requests are handled in a way that meets the needs of inmate patients and complies with federal law. The BOP is currently working on revisions to its RIS Program Statement. As indicated in the responses to the recommendations noted below, the BOP is dedicated to ensuring that staff have RIS training in support of this important mission.

The BOP offers the following responses to OIG's recommendations:

Recommendation 1: The BOP should develop policies or formal procedures regarding timelines for scheduling medical appointments for inmates and documenting and tracking the scheduling of such appointments. Such policies or formal procedures should explain the designations of routine, urgent, and emergent; provide expectations for when such designations are used and how quickly orders with such designations should be completed; and set forth processes for monitoring the status of orders and notifying the ordering provider of such status.

BOP Response: The BOP concurs with this recommendation and agrees its current procedures and clinical guidelines could be improved by adding definitions of, or clarification on, expectations for routine, urgent, and emergent consultations, and will undertake updates accordingly. The BOP will assess its options for standardized monitoring of consultation status and incorporating the notification of providers.

Recommendation 2: The BOP should refine their policies or formal procedures to ensure

[1] The NPMs aim to identify areas for improvement in quality of healthcare delivery, preventative health, and chronic disease management.

that inmates who report serious medical symptoms or receive critical test results are provided regular follow-up medical care. As part of these policies or formal procedures, the BOP should consider requiring each institution to develop an "urgent list" of inmates who have urgent medical needs to ensure they receive consistent follow-up medical care.

BOP Response: The BOP concurs with this recommendation to refine procedures and guidelines to ensure appropriately timed follow-up is provided for inmates with serious symptoms or critical test results. The BOP will consider requiring each institution to develop an "urgent list" of inmates with urgent medical needs to ensure they receive consistent follow-up medical care.

Recommendation 3: The BOP should develop policies or procedures to help ensure that inmates who are scheduled for colonoscopies follow the diet and medication regimen to properly prepare for such colonoscopies.

BOP Response: The BOP concurs with this recommendation to develop procedures to help ensure inmates who are scheduled for colonoscopies receive the appropriate education regarding bowel preparation. Given the OIG's current open recommendations from its Evaluation of the Federal Bureau of Prisons' Colorectal Cancer Screening Practices for Inmates and Its Clinical Follow-up on Screenings, the BOP will ensure this procedure is included in the "written plan for consistent colorectal cancer screening" template as required by Recommendation Two in this referenced OIG report. The written plan template is currently under development.

Recommendation 4: The BOP should monitor changes to federal and DOJ compassionate release requirements and guidelines, including the USSG, and consider making corresponding changes to its Compassionate Release Program Statement. For example, in view of provisions in the 2023 sentencing guidelines, we further recommend that the BOP assess whether it should revise its Compassionate Release Program Statement to state that the BOP should consider a reduction in sentence when the defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

BOP Response: The BOP concurs with this recommendation and continues to consider revisions to its RIS Program Statement in light of guidance issued by the Department of Justice (Department) or the Sentencing Commission, including the Sentencing Guidelines. The BOP is working on revisions to its RIS Program Statement.

Recommendation 5: **The BOP should revise its policies, procedures, or training to ensure that BOP employees handling Reduction In Sentence requests based on medical circumstances consider not only whether an inmate has a definitive diagnosis but also whether the BOP has been meeting the inmate's medical needs, has the ability to meet the inmate's medical needs going forward, and has scheduled the medical appointments necessary to diagnose the inmate's medical condition.**

BOP response: The BOP concurs with this recommendation to revise its policies, procedures, or training to ensure BOP employees handling RIS requests based on medical circumstances are thoroughly considering the needs of the patients and are handling these RIS requests in compliance with federal law.

Recommendation 6: **The BOP should require that a physician, midlevel provider, or other medical professional be consulted in connection with all Reduction In Sentence requests based on medical circumstances.**

BOP Response: The BOP concurs with this recommendation to require a physician, midlevel provider, or other medical professional be consulted in connection with all RIS requests based on extraordinary medical circumstances. The BOP notes this requirement exists in current BOP policy and federal regulations, as follows:

- Program Statement 6010.05, *Health Services Administration*, p 20, requires that health services submit a comprehensive medical summary to be considered for a medical RIS request.
- Program Statement 6031.05, *Patient Care*, pp 51-52, requires that when a referral is made for RIS, medical employees will provide complete medical documentation for consideration. The information should include recent medical records, consultations, nursing notes, and a statement about estimated life expectancy.
- Program Statement 5050.50, *Compassionate Release/Reduction in Sentence*, pp 12-15, states the attending physician and the Medical Director will review medical RIS referrals.
- Title 28 of the Code of Federal Regulations Section 571.62(a) states:

> *The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by the Warden, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.*

Recommendation 7: **The Department should develop policies or procedures that provide guidance to AUSAs about steps they should take and factors they should consider when responding to motions for compassionate release based on medical circumstances. As part of such policies or procedures, the Department should consider requiring AUSAs, before responding to a motion for compassionate release, to seek input from BOP medical**

professionals or other medical experts and address timeliness and quality of past medical care by the BOP for the inmate, understaffing at the facility where the inmate is housed, and the BOP's ability to meet the inmate's needs.

BOP Response: The BOP defers to the appropriate Department component(s) for response. The BOP will provide any needed support to the appropriate Department component in order to implement this recommendation.

Recommendation 8: The BOP should revise its policies, procedures, or training to ensure that BOP employees understand the importance of carefully reading court orders and seeking guidance when they do not understand them; wait for approval from the relevant U.S. Probation Office before releasing inmates who require such approval; and take other steps to ensure safe and humane transport of inmates to their release destination, including seeking assistance from a BOP social worker or medical provider and utilizing air ambulance services where appropriate.

BOP Response: The BOP concurs with this recommendation and will revise its policies, procedures, and/or training to ensure BOP employees understand the importance of carefully reading court orders and seeking guidance when they do not understand them; waiting for approval from the relevant U.S. Probation Office before releasing inmates who require such approval; and taking other steps to ensure safe and humane transport of inmates to their release destination, including seeking assistance from a BOP social worker or medical provider and utilizing air ambulance services where appropriate.

Currently, the BOP guidance to social workers in its *Social Worker Orientation Manual* instructs social workers to consider whether an inmate needs a specialized mode of transport and/or escort upon release (see "*Social Worker Orientation Manual*" previously provided to the OIG). These recommendations are sent to the warden, who makes the final decision on release transportation. The BOP concurs with recommendations for training to ensure this guidance is followed to ensure humane transportation of inmates when there are any medical concerns. The BOP has already taken the following steps to address this recommendation:

- Issuance of October 2022 Director Memorandum for all staff on the importance of closely reading and seeking guidance on court orders (see "*Review of Court Orders and Judgments*" previously provided to the OIG).
- The BOP's Office of General Counsel covered the importance of humane release planning and steps to take if a court order is received in RIS training provided to new wardens and social workers (see "*Compassionate Release –New Wardens*" previously provided to the OIG) and will incorporate it into future RIS trainings for other BOP staff.
- In addition, Program Statement 5050.50, *Compassionate Release/Reduction in Sentence*, p 14, requires the approval of the supervising U.S. Probation Office before a RIS can be approved for BOP-initiated RIS requests.

APPENDIX 2: THE EXECUTIVE OFFICE FOR U.S. ATTORNEYS' (EOUSA) RESPONSE

U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 252-1000

MEMORANDUM

DATE: December 8, 2025

FOR: Karen Rich
Senior Counsel
Office of the Inspector General

FROM: Francey Hakes
Director

SUBJECT: Response to the Inspector General's Draft Report: *Investigation and Review of the Federal Bureau of Prisons' Conditions of Confinement and Medical Treatment of Frederick Mervin Bardell and Related Representations to the Court, Upon Referral by Senior U.S. District Judge Roy B. Dalton, Jr.*

The Executive Office for United States Attorneys (EOUSA), in coordination with the Department of Justice's (Department) Office of the Deputy Attorney General, has reviewed the Office of the Inspector General's September 30, 2025 draft report, *Investigation and Review of the Federal Bureau of Prisons' Conditions of Confinement and Medical Treatment of Frederick Mervin Bardell and Related Representations to the Court, Upon Referral by Senior U.S. District Judge Roy B. Dalton, Jr.* (the Report), and hereby provides the below response to the one recommendation directed to the Department.

> **Recommendation No. 7: The Department should develop policies or procedures that provide guidance to AUSAs about steps they should take and factors they should consider when responding to motions for compassionate release based on medical circumstances. As part of such policies or procedures, the Department should consider requiring AUSAs, before responding to a motion for compassionate release, to seek input from BOP medical professionals or other medical experts and address timeliness and quality of past medical care by the BOP for the inmate, understaffing at the facility where the inmate is housed, and the BOP's ability to meet the inmate's needs.**

EOUSA Response: EOUSA concurs with this recommendation. EOUSA will distribute guidance to the United States Attorney community that addresses this recommendation and provides that United States Attorneys' offices should:

- Coordinate with BOP to obtain relevant records;
- Consider BOP's ability to meet the inmate's medical needs;
- Identify USAO point(s) of contact for consultation on motions involving complex medical questions;
- Consult with the Criminal Division's Mental Health Litigation Unit on motions involving complex questions related to the inmate's cognitive ability or mental health; and
- Require supervisory review and approval before line attorneys respond to motions for compassionate release based on terminal illnesses or other medical circumstances implicating complex or novel questions.

If you have questions or concerns regarding this response, please contact Michael Magruder, EOUSA's Audit Liaison, at USAEO.EOUSA.Audit.Liaison@usdoj.gov.

APPENDIX 3: OIG ANALYSIS OF BOP'S AND EOUSA'S RESPONSES

The OIG provided a draft of this memorandum to the BOP and EOUSA, and their responses are incorporated as Appendix 1 and Appendix 2, respectively. Both BOP and EOUSA have indicated in their responses that they concur with the OIG's recommendations.

The following provides the OIG's analysis of the BOP's and EOUSA's responses and a summary of the actions necessary to close the recommendations. The OIG requests that the BOP and EOUSA each provide an update on the status of their responses to the recommendations within 90 days of the issuance of this memorandum.

Recommendation 1: The BOP should develop policies or formal procedures regarding timelines for scheduling medical appointments for inmates and documenting and tracking the scheduling of such appointments. Such policies or formal procedures should explain the designations of routine, urgent, and emergent; provide expectations for when such designations are used and how quickly orders with such designations should be completed; and set forth processes for monitoring the status of orders and notifying the ordering provider of such status.

Status: Resolved.

BOP Response: The BOP reported the following:

> The BOP concurs with this recommendation and agrees its current procedures and clinical guidelines could be improved by adding definitions of, or clarification on, expectations for routine, urgent, and emergent consultations, and will undertake updates accordingly. The BOP will assess its options for standardized monitoring of consultation status and incorporating the notification of providers.

OIG Analysis: The BOP's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after the BOP develops policies or formal procedures regarding timelines for scheduling medical appointments for inmates and documenting and tracking the scheduling of such appointments.

Recommendation 2: The BOP should refine their policies or formal procedures to ensure that inmates who report serious medical symptoms or receive critical test results are provided regular follow-up medical care. As part of these policies or formal procedures, the BOP should consider requiring each institution to develop an "urgent list" of inmates who have urgent medical needs to ensure they receive consistent follow-up medical care.

Status: Resolved.

BOP Response: The BOP reported the following:

> The BOP concurs with this recommendation to refine procedures and guidelines to ensure appropriately timed follow-up is provided for inmates with serious symptoms or critical test results. The BOP will consider requiring each institution to develop an "urgent list" of inmates with urgent medical needs to ensure they receive consistent follow-up medical care.

OIG Analysis: The BOP's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after the BOP refines its policies or formal procedures to ensure that inmates who report serious medical symptoms or receive critical test results are provided regular follow-up medical care, and considers, as part of these policies or formal procedures, requiring each institution to develop an "urgent list" of inmates who have urgent medical needs to ensure they receive consistent follow-up medical care.

Recommendation 3: The BOP should develop policies or procedures to help ensure that inmates who are scheduled for colonoscopies follow the diet and medication regimen to properly prepare for such colonoscopies.

Status: Resolved.

BOP Response: The BOP reported the following:

> The BOP concurs with this recommendation to develop procedures to help ensure inmates who are scheduled for colonoscopies receive the appropriate education regarding bowel preparation. Given the OIG's current open recommendations from its Evaluation of the Federal Bureau of Prisons' Colorectal Cancer Screening Practices for Inmates and Its Clinical Follow-up on Screenings, the BOP will ensure this procedure is included in the "written plan for consistent colorectal cancer screening" template as required by Recommendation Two in this referenced OIG report. The written plan template is currently under development.

OIG Analysis: The BOP's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after the BOP develops policies or procedures to help ensure that inmates who are scheduled for colonoscopies follow the diet and medication regimen to properly prepare for such colonoscopies.

Recommendation 4: The BOP should monitor changes to federal and DOJ compassionate release requirements and guidelines, including the USSG, and consider making corresponding changes to its Compassionate Release Program Statement. For example, in view of provisions in the 2023 sentencing guidelines, we further recommend that the BOP assess whether it should revise its Compassionate Release Program Statement to state that the BOP should consider a reduction in sentence when the defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

Status: Resolved.

BOP Response: The BOP reported the following:

> The BOP concurs with this recommendation and continues to consider revisions to its RIS Program Statement in light of guidance issued by the Department of Justice (Department) or the Sentencing Commission, including the Sentencing Guidelines. The BOP is working on revisions to its RIS Program Statement.

OIG Analysis: The BOP's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after the BOP finalizes revisions to its RIS Program Statement in light of guidance issued by the Department or the Sentencing Commission, and assesses whether it should revise its Compassionate Release Program Statement to state that the BOP should consider a reduction in sentence when the defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

Recommendation 5: The BOP should revise its policies, procedures, or training to ensure that BOP employees handling Reduction In Sentence requests based on medical circumstances consider not only whether an inmate has a definitive diagnosis but also whether the BOP has been meeting the inmate's medical needs, has the ability to meet the inmate's medical needs going forward, and has scheduled the medical appointments necessary to diagnose the inmate's medical condition.

Status: Resolved.

BOP Response: The BOP reported the following:

> The BOP concurs with this recommendation to revise its policies, procedures, or training to ensure BOP employees handling RIS requests based on medical circumstances are thoroughly considering the needs of the patients and are handling these RIS requests in compliance with federal law.

OIG Analysis: The BOP's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after the BOP revises its policies, procedures, or training to ensure that BOP employees handling Reduction In Sentence requests based on medical circumstances consider not only whether an inmate has a definitive diagnosis but also whether the BOP has been meeting the inmate's medical needs, has the ability to meet the inmate's medical needs going forward, and has scheduled the medical appointments necessary to diagnose the inmate's medical condition.

Recommendation 6: The BOP should require that a physician, midlevel provider, or other medical professional be consulted in connection with all Reduction In Sentence (RIS) requests based on medical circumstances.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation to require a physician, midlevel provider, or other medical professional be consulted in connection with all RIS requests based on extraordinary medical circumstances. The BOP notes this requirement exists in current BOP policy and federal regulations, as follows:

• Program Statement 6010.05, *Health Services Administration*, p 20, requires that health services submit a comprehensive medical summary to be considered for a medical RIS request.

• Program Statement 6031.05, *Patient Care*, pp 51-52, requires that when a referral is made for RIS, medical employees will provide complete medical documentation for consideration. The information should include recent medical records, consultations, nursing notes, and a statement about estimated life expectancy.

• Program Statement 5050.50, *Compassionate Release/Reduction in Sentence*, pp 12-15, states the attending physician and the Medical Director will review medical RIS referrals.

• Title 28 of the Code of Federal Regulations Section 571.62(a) states: *The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by the Warden, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.*

OIG Analysis: The OIG appreciates the BOP's response and its identification of current policies that may address the OIG's concerns. However, the OIG found that there were no doctors, midlevel providers, or nurses present at Bardell's RIS committee meeting, and the participation of such medical staff in the meeting was not specifically required by BOP policy. In addition, in Bardell's case health services did not submit a comprehensive medical summary for consideration with his RIS request. Accordingly, the OIG will consider whether to close this recommendation after the BOP takes measures to ensure that a physician, midlevel provider, or other medical professional is consulted in connection with all RIS requests based on medical circumstances.

Recommendation 7: The Department should develop policies or procedures that provide guidance to AUSAs about steps they should take and factors they should consider when responding to motions for compassionate release based on medical circumstances. As part of such policies or procedures, the Department should consider requiring AUSAs, before responding to a motion for compassionate release, to seek input from BOP medical professionals or other medical experts and address timeliness and quality of past medical care by the BOP for the inmate, understaffing at the facility where the inmate is housed, and the BOP's ability to meet the inmate's needs.

Status: Resolved.

EOUSA Response: EOUSA reported the following:

EOUSA concurs with this recommendation. EOUSA will distribute guidance to the United States Attorney community that addresses this recommendation and provides that United States Attorneys' offices should:

• Coordinate with BOP to obtain relevant records;

• Consider BOP's ability to meet the inmate's medical needs;

• Identify USAO point(s) of contact for consultation on motions involving complex medical questions;

• Consult with the Criminal Division's Mental Health Litigation Unit on motions involving complex questions related to the inmate's cognitive ability or mental health; and

• Require supervisory review and approval before line attorneys respond to motions for compassionate release based on terminal illnesses or other medical circumstances implicating complex or novel questions.

OIG Analysis: EOUSA's response is responsive to the recommendation. However, the OIG recommends that EOUSA also consider requiring AUSAs, before responding to a motion for compassionate release, to seek input from BOP medical professionals or other medical experts. The OIG will consider whether to close this recommendation after the Department develops policies or procedures that provide guidance to AUSAs about steps they should take and factors they should consider when responding to motions for compassionate release based on medical circumstances.

Recommendation 8: The BOP should revise its policies, procedures, or training to ensure that BOP employees understand the importance of carefully reading court orders and seeking guidance when they do not understand them; wait for approval from the relevant U.S. Probation Office before releasing inmates who require such approval; and take other steps to ensure safe and compassionate transport of inmates to their release destination, including seeking assistance from a BOP social worker or medical provider and utilizing air ambulance services where appropriate.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation and will revise its policies, procedures, and/or training to ensure BOP employees understand the importance of carefully reading court orders and seeking guidance when they do not understand them; waiting for approval from the relevant U.S. Probation Office before releasing inmates who require such approval; and taking other steps to ensure safe and compassionate transport of inmates to their release

destination, including seeking assistance from a BOP social worker or medical provider and utilizing air ambulance services where appropriate.

Currently, the BOP guidance to social workers in its *Social Worker Orientation Manual* instructs social workers to consider whether an inmate needs a specialized mode of transport and/or escort upon release (see "*Social Worker Orientation Manual*" previously provided to the OIG). These recommendations are sent to the warden, who makes the final decision on release transportation.

The BOP concurs with recommendations for training to ensure this guidance is followed to ensure humane transportation of inmates when there are any medical concerns. The BOP has already taken the following steps to address this recommendation:

• Issuance of October 2022 Director Memorandum for all staff on the importance of closely reading and seeking guidance on court orders (see "*Review of Court Orders and Judgments*" previously provided to the OIG).

• The BOP's Office of General Counsel covered the importance of humane release planning and steps to take if a court order is received in RIS training provided to new wardens and social workers (see "*Compassionate Release –New Wardens*" previously provided to the OIG) and will incorporate it into future RIS trainings for other BOP staff.

• In addition, Program Statement 5050.50, *Compassionate Release/Reduction in Sentence*, p 14, requires the approval of the supervising U.S. Probation Office before a RIS can be approved for BOP-initiated RIS requests.

OIG Analysis: The BOP's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after the BOP completes revisions its policies, procedures, or training to ensure that BOP employees understand the importance of carefully reading court orders and seeking guidance when they do not understand them; wait for approval from the relevant U.S. Probation Office before releasing inmates who require such approval; and take other steps to ensure safe and compassionate transport of inmates to their release destination, including seeking assistance from a BOP social worker or medical provider and utilizing air ambulance services where appropriate.