

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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No. 13-3205

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SAMUEL MULLET, SR.,

Defendant-Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

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UNITED STATES' RESPONSE TO APPELLANT SAMUEL MULLET, SR.'S  
MOTION FOR EMERGENCY BOND/FURLOUGH

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On November 12, 2014, Appellant Samuel Mullet, Sr. (Mullet) filed a motion for release from incarceration on “emergency bond/furlough” to attend the funeral of his wife, who died unexpectedly on November 11, 2014. Mullet has represented that the funeral will be held Friday, November 14, 2014.

1. Under 18 U.S.C. 3622, the Bureau of Prisons is authorized to release a prisoner for a limited time to, among other things, attend the funeral of a relative. The Bureau has issued regulations that govern this process. See generally 28 C.F.R. 570.30 *et seq.* Under these regulations, a request must be made to the

inmate's Warden, who will decide whether to grant or deny the request. 28 C.F.R. 570.37. If a request is denied, an inmate may appeal through the Administrative Remedy Program, 28 C.F.R. Pt. 542, Subpt. B. See 28 C.F.R. 570.37(c).

2. The regulations commit these decisions to the Wardens' discretion for sound policy reasons. The Wardens are charged by law with managing the security, housing, allocation, and basic rights of thousands of inmates and guards each day. They are in the best position to weigh any individual request against numerous concerns that lawyers and courts are not equipped to fully evaluate, especially on an emergency basis. These considerations include such things as travel logistics, site and route security, potential contact with outside third parties (including victims, former associates, etc.), and an inmate's ongoing behavior and records inside the institution. All this, of course, is geared both toward what is best in any individual case as well as ensuring equal and fair treatment of such requests across the broad prison population, consistent with the law and BOP regulations.

3. Section 3622 of Title 18 vests authority to grant furloughs with the Bureau of Prisons, not the federal courts. See, e.g., *McMullen v. Hambrick*, No. 93-5089, 1993 WL 302197, at \*1 (6th Cir. Aug. 6, 1993) (The BOP "is charged with the discretion over whether to temporarily release a prisoner for the purpose of attending a relative's funeral."); *United States v. Bradford*, No. 88-5356, 1989 WL 40108, \*1 (6th Cir. Apr. 24, 1989) (district court "has no authority to order

that defendant be furloughed”); *In re Radcliff*, No. 12-1444, 2012 WL 5974172, \*1 (10th Cir. Nov. 28, 2012) (“Numerous courts have agreed that this provision [18 U.S.C. 3622] gives authority over temporary-release decisions to the Bureau of Prisons \* \* \* , not the federal courts.”) (citation omitted); *United States v. Premachandra*, 78 F.3d 589 (8th Cir. 1996) (same); *Castro v. Hollingsworth*, No. 13-7213, 2014 WL 197835, \*1 (D.N.J. Jan. 14, 2014) (denying inmate’s petition for mandamus so he could seek medical care, because it is within the Bureau of Prisons’ discretion under 18 U.S.C. 3622 to grant a temporary release).<sup>1</sup> It is not typical for prosecutors to be involved in such decisions, and in this case, for instance, the Warden ruled on the present request without asking or consulting with the prosecution team. That is the norm.<sup>2</sup>

4. The United States learned last evening, after Mullet’s motion was filed with this Court, that Mullet submitted the required furlough request with his

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<sup>1</sup> Therefore, Mullet’s reliance on 18 U.S.C. 3143(b) and 18 U.S.C. 3145(c) is misplaced. Those provisions do not apply to furloughs, which are governed by 18 U.S.C. 3622. Moreover, this matter is properly within the normal BOP framework for deciding this type of difficult issue, quite apart from any past or future proceedings before this Court. Despite Mullet’s characterization of the panel decision and the appellate posture generally, he remains lawfully incarcerated because he was convicted of several different obstruction of justice related offenses. Indeed, Mullet’s counsel conceded at oral argument in this case that Mullet had “forfeited” any challenges to all such convictions.

<sup>2</sup> Also, Mullet never contacted the government attorneys in this case about his motion in this Court for a furlough.

Warden under BOP regulations, and that the request was denied. Absent an administrative appeal from this decision, that is the end of the matter. Although we are sympathetic to Mullet for the loss of his wife, and certainly understand his desire to attend her funeral, this is not a matter on which federal courts are authorized to grant him the relief he seeks. His motion should therefore be denied.<sup>3</sup>

Respectfully submitted,

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<sup>3</sup> Understanding BOP's concerns regarding issues of emergency release or furlough, the government inquired about the possibility of remote, or virtual, attendance. Although BOP does not permit such attendance for network security reasons, among others, Mullet may seek to arrange to view a recording of the service, if he were inclined to permit and receive such a recording. BOP has permitted inmates to view recorded services after making suitable arrangements with their Warden pursuant to BOP policy and guidelines.

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2014, I electronically filed the foregoing UNITED STATES' RESPONSE TO APPELLANT SAMUEL MULLET, SR.'S MOTION FOR EMERGENCY BOND/FURLOUGH with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the Appellate CM/ECF system.

I further certify that all parties are CM/ECF registered, and will be served electronically.

s/ Thomas E. Chandler  
THOMAS E. CHANDLER  
Attorney