

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTORIA LAW)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No. _____
)	
FEDERAL BUREAU OF PRISONS)	COMPLAINT FOR DECLARATORY
<i>Defendant</i>)	AND INJUNCTIVE RELIEF UNDER
)	FREEDOM OF INFORMATION ACT
)	(FOIA), 5 U.S.C. § 552

COMPLAINT

1. Plaintiff brings this action against the Federal Bureau of Prisons (“BOP”)¹ under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the expedition requirements of FOIA 5 U.S.C. § 552(a)(6)(E) to immediately release records to prevent irreparable injury.

2. Plaintiff seeks relief to compel the release of records related to Plaintiff’s request (“the Request”) to the Federal Bureau of Prisons (“BOP” or “Defendant”), seeking expedited release of records related to the Federal Correctional Institution, Dublin (“Dublin”)² closure and transfer of people to other facilities. If records are produced forthwith, they are likely to prevent ongoing harm, and contribute significantly to judicial, public, news media, litigant, and congressional understanding the BOP’s handling of the Dublin prison and camp conditions, medical and mental health treatment, abuse, retaliation, and prison closure, and transfer matters.

¹ The Federal Bureau of Prisons (“BOP” or “Defendant”), an agency within the U.S. Department of Justice (“DOJ”), is improperly withholding records.

² Herein Dublin refers to the prison and camp.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331, and authority to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-06. Defendant did not respond within FOIA's time-limit provisions. Therefore, pursuant to 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff has constructively exhausted administrative remedies and is entitled to bring this action seeking expedited record production. Due to constructive exhaustion, Plaintiff was not required to appeal to the Office of Information Policy³ ("OIP"), but did so out of courtesy.

4. A Court has jurisdiction and power to grant any and all necessary equitable or injunctive relief where an agency improperly delays the production of requested agency records. 5 U.S.C. § 552(a)(4)(B) (providing "jurisdiction to enjoin the agency from withholding agency records and to order the production of" improperly withheld records); *Elec. Privacy Info. Center v. Dep't of Justice*, 416 F. Supp. 2d 30, 35 (D.D.C. 2006) ("*EPIC*") ("FOIA imposes no limits on courts' equitable powers in enforcing its terms and unreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and courts have a duty to prevent such abuses.") (internal citation and quotation marks omitted). Jurisdiction exists where agencies have denied or failed to respond in a timely manner to requests for expedited processing. 5

³ The Office of Information Policy ("OIP"), a Department of Justice entity, handles administrative appeals of BOP FOIA decisions and is an agency under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 701.

U.S.C. § 552(a)(6)(E)(iii) (“Agency action to deny ... a request for expedited processing ... and failure by an agency to respond in a timely manner ... shall be subject to judicial review.”). Additionally, “relevant case law establishes that courts have the authority to impose concrete deadlines on agencies that delay the processing of requests meriting expedition.” *EPIC*, 416 F. Supp. 2d at 38.

5. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) as the prison and camp “in which the agency records are situated” are located in Dublin, in the Northern District of California. Venue is also proper under 28 U.S.C. § 1391(e) because “a substantial part of the events or omissions giving rise to” this action occurred in this District and a substantial part of the records that are subject to the action are situated in this District. Assignment to the Oakland Division is proper pursuant to Civil Local Rules 3-2(c) and (d), because a substantial part of the events giving rise to the claims occurred in, and records in, Alameda County.

PARTIES

6. Plaintiff Victoria Law is a freelance journalist, author, and editor with a decades-long track-record of compiling and disseminating information about the intersection of mass incarceration and gender, and the effect of prison policies and actions on incarcerated people, formerly incarcerated people, and immigrant communities. As evidenced by publishing with high-profile outlets including The New York Times, The Nation, The Guardian, The Appeal, and Al-Jazeera America. Plaintiff is an expert in evaluating law enforcement and carceral agency actions and their potential detrimental effects. Plaintiff’s work currently focuses on the legal proceedings related to Dublin and the stories of people who survived and are surviving abuses perpetrated by

BOP staff. Plaintiff won a motion to unseal records in the *California Coal. for Women Prisoners v. United States* Dublin class action.⁴

7. Defendant BOP has possession, custody, and control of the records related to the Dublin facility, which is located in the Northern District of California. BOP is an agency of the U.S. within the meaning of 5 U.S.C. § 551, 5 U.S.C. § 552(f), and 5 U.S.C. § 702. DOJ is an executive branch agency of the U.S. headquartered in Washington, DC within the meaning of 5 U.S.C. § 552(f)(1).

STATEMENT OF FACTS

BACKGROUND: DUBLIN PRISON SEX ABUSE AND CLOSURE SCANDALS

8. Dublin is the U.S. prison with the highest number of staff charged with sexual abuse.⁵ Six employees at FCI Dublin, including the warden (Garcia was arrested September 2021) and chaplain (Highhouse was arrested in 2021), were arrested for sexually abusing women in custody. *See* Ex. A at Ex. 3, 74-75. Later, two more guards were arrested. *Id.* Since then, seven employees, including the warden and chaplain, have been convicted or pleaded guilty. *Id.* The eighth, Darrell “Dirty Dick” Smith is scheduled for trial on 12 counts of sexually abusing three incarcerated women. *Id.* A

⁴ On June 11, 2024 Requester filed a Motion to Intervene for the Limited Purpose of Unsealing Court Records and Protecting Access to Court Proceedings in *California Coal. for Women Prisoners v. United States*, No. 4:23-CV-4155-YGR, (N.D. Cal. 2023), ECF No. 316 and a Motion to Unseal Court Records and Protect Access to Public Proceedings. *Id.* ECF No. 317. Intervenors “seek to intervene for the limited purposes of moving to unseal certain court records and to ensure continued public access to hearings.” ECF No. 316 at 5. The court granted the Motion to Intervene. *Id.* ECF No. 354. The court granted in part and denied in part the Motion to Unseal. *Id.* ECF No. 354, 355.

⁵ Lisa Fernandez, *Feds Closed FCI Dublin, a Prison Known for Abuse. Things Got Worse*, <https://www.rollingstone.com/politics/politics-features/fci-dublin-prison-closed-abuse-worse-1235033085/> (last visited Jun 26, 2024).

ninth Correctional Officer (C.O.) committed suicide after being investigated.⁶ Twenty-nine other staff are under investigation and on paid administrative leave.⁷

9. What follows is an abbreviated timeline of events related to Dublin. A comprehensive timeline is detailed in the Declaration of Caitlin Kelly Henry enclosed in Plaintiff's initial Request. Ex. A at Henry Decl., 34-38.

10. In 2023, survivors of BOP staff sexual abuse and trafficking started filing lawsuits detailing repeated forcible rapes, coerced sexual activity, inappropriate sexual touching, sexual harassment, voyeurism and retaliation against those who spoke about — or were simply perceived to be speaking about — the abuses. *See* Ex. A at Ex. 3, 58-72.

11. In August 2023, survivors at Dublin filed a class action suit against the BOP for continuing to allow the conditions that fostered “the rape club.” *See California Coal. for Women Prisoners v. United States*, No. 4:23-CV-4155-YGR, (N.D. Cal. 2023)(Herein “CCWP”), ECF No 248.; *See also* Ex. A at Ex. 3, 58. The suit demands an end to placing survivors into solitary confinement as well as improved access to off-site medical and mental health care. *Id.* The litigation highlighted that the BOP staff targeted

⁶ Jeanita Lyman, *Dublin prison worker dies by suicide amid investigation into inmate abuse*, PLEASANTON WEEKLY, Sep. 11, 2022, <http://www.pleasantonweekly.com/news/2022/09/11/dublin-prison-worker-dies-by-suicide-amid-investigation-into-inmate-abuse/> (last visited Jun 22, 2024).

⁷ DUBLIN PRISON SEXUAL ABUSE SURVIVORS, INCLUDING VICTIM OF PRISON CHAPLAIN, SPEAK ABOUT FEELING “HELPLESS” THE MERCURY NEWS, <https://www.mercurynews.com/2024/09/08/dublin-prison-sexual-abuse-survivors-including-victim-of-prison-chaplain-speak-about-feeling-helpless/> (last visited Sep 10, 2024).

non-citizens for abuse, and that many victims who worked with the Department of Justice to make the prosecutions possible were deported.⁸

12. In December 2023, incarcerated survivors asked federal judge Yvonne Gonzalez Rogers to appoint a special master to ensure that BOP implemented court ordered changes. *See CCWP*, ECF No 248.

13. In January 2024, in *CCWP*, Judge Gonzalez Rogers held a four-day hearing in which high-ranking prison officials testified about the changes BOP implemented. *Id.* ECF No 97. Incarcerated people testified that these changes failed to stop ongoing harassment, abuse, and retaliation. *Id.* After testifying, people faced retaliation, transfers to solitary confinement, and at least one woman was transferred to a different federal prison, in direct contravention of the court order barring transfers.⁹

14. In February 2024, Judge Gonzales Rogers made a semi-surprise in-person visit to the Dublin facility, for nine hours speaking with approximately one hundred incarcerated people and touring the facility.¹⁰

⁸ Victoria Law, *These Survivors Rooted Out Sexual Abuse in Federal Prison. Now They Face Deportation.*, THE APPEAL, Jun. 2, 2023, <https://theappeal.org/fci-dublin-u-visas-sexual-abuse-deportation/> (last visited May 30, 2024).

⁹ Victoria Law, *Women Speaking Up About Sexual Abuse Behind Bars Face Retaliation in California*, TRUTHOUT, Feb. 22, 2024, <https://truthout.org/articles/women-speaking-up-about-sexual-abuse-behind-bars-face-retaliation-in-california/> (last visited May 24, 2024); Lisa Fernandez, *Woman who testified about conditions at FCI Dublin, thrown in solitary, transferred*, Feb. 12, 2024, <https://www.ktvu.com/news/woman-who-testified-about-conditions-at-fci-dublin-thrown-in-solitary-transferred> (last visited Jun 27, 2024).

¹⁰ JUDGE APPOINTS SPECIAL MASTER TO OVERSEE CALIFORNIA FEDERAL WOMEN'S PRISON AFTER RAMPANT ABUSE AP NEWS, <https://apnews.com/article/california-prison-sexual-abuse-special-master-dublin-3398d7ffdd6f0e7e31ed229404f725e1> (last visited Sep 16, 2024) ;SCANDAL-PLAGUED FCI DUBLIN TO RECEIVE SEMI-SURPRISE VISIT FROM JUDGE KTVU FOX 2, <https://www.ktvu.com/news/scandal-plagued-fci-dublin-to-receive-semi-surprise-visit-from-judge> (last visited Sep 16, 2024).

15. In March 2024, the Federal Bureau of Investigation (FBI) raided Dublin, seized computers, documents, and other evidence from the prison administration.¹¹ The acting warden, the associate warden, a captain, and an executive assistant were removed from their positions.¹² This was the second such raid.¹³

16. In March 2024, Judge Gonzalez Rogers appointed Special Master Wendy Still to oversee changes at Dublin. *See CCWP*, ECF No. 248.

17. In April 2024, in violation of the *CCWP* judge's order not to transfer Adults in Custody ("AIC"), and without prior approval of the court or notice to counsel or plaintiffs, the BOP transferred AIC's from FCI Dublin to other facilities.¹⁴ The *CCWP* Court stated "Shortly after the Court issued a preliminary injunction to protect the constitutional rights...and appointed a Special Master to assist therewith, the BOP announced its decision to shutter FCI Dublin and relocate the population." *CCWP*, Order Re Closure of FCI Dublin and Preliminary Injunction, ECF No. 300 at 1, May 8, 2024. Judge Gonzalez Rodgers implied that BOP was not transparent with the Court "BOP had

¹¹ Victoria Law, *FBI Raids California Prison Facing 63 Lawsuits Over Systemic Sexual Abuse*, TRUTHOUT, Mar. 14, 2024, <https://truthout.org/articles/fbi-raids-california-prison-facing-63-lawsuits-over-systemic-sexual-abuse/> (last visited May 28, 2024) Bob Egelko Hernandez David, *More scandal at troubled Dublin prison: FBI raid, warden ousted, lawsuits*, SAN FRANCISCO CHRONICLE, Mar. 11, 2024, <https://www.sfchronicle.com/politics/article/fci-dublin-warden-18888205.php> (last visited May 30, 2024).

¹² FCI DUBLIN WARDEN, 3 OTHER TOP MANAGERS OUSTED AMIDST FBI RAID KTVU FOX 2, <https://www.ktvu.com/news/fci-dublin-warden-3-other-top-managers-ousted-amidst-fbi-raid> (last visited May 20, 2024).

¹³ TIMELINE: DUBLIN PRISON RAIDED BY FBI HAS HISTORY OF ABUSING INMATES, <https://www.kron4.com/news/bay-area/timeline-dublin-prison-raided-by-fbi-has-history-of-abusing-inmates> (last visited Jun 27, 2024).

¹⁴ *Dublin prison shutdown on hold as judge, U.S. prison officials spar over closure*, <https://www.msn.com/en-us/news/crime/dublin-prison-shutdown-on-hold-as-judge-u-s-prison-officials-spar-over-closure/ar-BB1lOyZ7> (last visited May 28, 2024).

advised the Court that it was considering closure, although no certainty existed, and noted that if it occurred, for security reasons, it would have to be conducted quickly.” *Id.* The Order critiqued the harm caused by the BOP’s haphazard approach to closure and transfers: “Although it had as much time as needed to prepare, BOP’s operational plan for closure of FCI Dublin was ill-conceived and, like Swiss cheese, full of holes. BOP regional staff worked the prior weekend hastily reviewing AIC case files to recommend placements.” *Id.* The Court suggested that in its closure and transfer process “BOP ignored other operational issues including the proper movement of the AICs’ property and the appropriate communication and messaging to the AICs and staff who were not advised of the closure until the last minute.” *Id.* at 2.

18. The Court highlighted some of BOP’s misrepresentations to the Court and parties: “despite regular and direct email communications with the Court, through counsel, BOP “announced” the closure to the Court by burying it in an administrative filing on Friday, April 12, 2024.” *Id.* The Court described the harm caused by BOP’s hiding information from the Court and Special Master, “on that Friday, April 12, the BOP filed a notice (in the body of a sealed attachment to an administrative motion) wherein it “informed” the Court of its intention to close the facility over the following week, without specifying when such closure would begin.” *Id.* at 3. The Court named BOP’s untruths: “The BOP’s obfuscation is obvious. Its lack of transparency with the Court resulted in negative consequences.” *Id.* at 3. One egregious direct intentional distortion was highlighted: “BOP Regional Director, Western Region Melissa Rios-Marques refused to advise Special Master Still of the impending closure, which would begin the next day, even when asked directly on Sunday, April 14.” *Id.*

19. The Court explicitly named the irreparable harm caused during and since the closure, wherein BOP “jeopardized the AICs’ health and safety, due process, access to programming and basic rights.” *Id.* at 5. It articulated some of the many threats to life and safety BOP caused in its disastrous closure of Dublin: “The effect of these shortcomings was felt acutely by the AICs during the 16-day period leading to the closure...” *Id.* It pronounced that people had not been properly cleared “To the extent clearances had been obtained...they were nothing more than rubber-stamps...[and] did not meaningfully engage with the fact that many AICs had waited so long for care that even otherwise routine matters may have become more serious given lack of timely treatment in the first instance.” *Id.* The Court highlighted harms to family bonds “The closure was particularly difficult on those who were being transported farther away from families.” *Id.* at 4.

20. The Court conveyed: “Class counsel also alleged that the buses lacked sufficient feminine hygiene products, toilet paper/bathroom facilities, food, and heat, with one particularly egregious case for an AIC on her monthly cycle.” *Id.* at 7. The Court ordered cataloguing of complaints concerning the conditions during transit, including injuries and “immediate medical examinations upon arrival at new facilities, as well as photographic documentation of any injuries.” *Id.* at 8. The Court found that threats to safety and life are ongoing “The BOP’s closure of FCI Dublin, especially coming so soon after issuance of this Court’s preliminary injunction, created serious concerns relative to the AICs’ welfare, some of which persist.” *Id.* at 8. Class counsel represents that “Plaintiffs continued to suffer daily retaliation, lack of access to basic human needs, and risk of sexual abuse in the facilities to which the Defendant officials hurriedly transferred

them, in a rush to escape monitoring by the Special Master that began work just days earlier.” *CCWP*, Joint Case Management Statement, ECF No. 303 at 11, May 9, 2024.

21. On May 24, 2024 ten US Congress members requested that the House Judiciary Committee and the House Committee on Oversight and Accountability hold a hearing on the closure, transfer, and on “the facility’s past pervasive culture of abuse, and BOP facilities and their treatment of inmates more broadly.”¹⁵ The letter reveals that “Following the closure of the facility, several U.S. Senators and Members of Congress have sent letters to BOP Director Colette Peters and Attorney General Merrick Garland demanding accountability for past crimes and answers to outstanding questions.” *Id.* Exhibits to the FOIA Request detail various government investigations, hearings, and audits regarding the BOP and its Dublin facilities. Ex. A at Ex 2.

22. On June 13, Congress Members sent a follow up letter to BOP Director Colette Peters with four pages of questions, and requested a response by July 10, 2024.¹⁶

23. Before Plaintiff’s July Request, extensive media coverage provided different perspectives and quotes about the ramifications of the unexpected, chaotic, and

¹⁵ Mark DeSaulnier, Sydney Kamlager-Dove & Robert Scott, *Letter From Senators to House Judiciary and Oversight on FCI Dublin*, (2024), <https://desaulnier.house.gov/sites/evo-suresbsites/desaulnier.house.gov/files/evo-media-document/FINAL%20LETTER%20-%20House%20Judiciary%20and%20Oversight%20on%20FCI%20Dublin.pdf> (last visited May 29, 2024); Sydney Johnson, *US Representatives Call for Investigation into Abrupt East Bay Prison Shutdown* | *KQED*, May 24, 2024, <https://www.kqed.org/news/11987663/us-representatives-call-for-investigation-into-abrupt-east-bay-prison-shutdown> (last visited May 24, 2024).

¹⁶ CONGRESSMAN DESAULNIER, SENATOR BUTLER, AND CHAIR OF SENATE JUDICIARY COMMITTEE DURBIN LEAD MEMBERS IN DEMANDING ANSWERS FROM BUREAU OF PRISONS ABOUT ABUSE AT FCI DUBLIN |, <http://desaulnier.house.gov/media-center/press-releases/congressman-desaulnier-senator-butler-and-chair-senate-judiciary> (last visited Jun 13, 2024)

troubling aspects of the closure.¹⁷ Media found that the BOP orchestrated and effectuated the closure with particular tactics to avoid oversight.¹⁸ Request Exhibits provide more citations. Ex. A at Ex 4. Media published accounts of how the BOP retaliated against plaintiffs and others during the transfers and upon arrival at new facilities.¹⁹ Media

¹⁷ *Judge Rips Chaotic Closure of Dublin Women's Prison, Orders That Transferred Prisoners' Rights Be Restored*, SFist, May 9, 2024, <https://sfist.com/2024/05/09/judge-rips-chaotic-closure-of-dublin-womens-prison-orders-that-transferred-prisoners-rights-be-restored/> (last visited May 30, 2024)(Describing the BOP hastily shoving people into buses with no notification to counsel, the overseeing judge, special master or family, no property, no medical items, and no idea where they were being sent); Keri Blakinger & Richard Winton, *Women at California prison dubbed the "rape club" now worry where they'll be transferred*, LOS ANGELES TIMES, Apr. 16, 2024, <https://www.latimes.com/california/story/2024-04-16/closure-of-womens-prison-dubbed-the-rape-club-stokes-worry> (last visited Jun 27, 2024)(describing BOP destruction of property, distance from family, lack of medical care, BOP misrepresentations);

¹⁸ Pat Nolan, *Feds close prison dubbed the 'Rape Club,' but accountability is needed*, THE HILL, May 7, 2024, <https://thehill.com/opinion/4648109-feds-close-prison-dubbed-the-rape-club-but-accountability-is-needed/> (last visited May 30, 2024)(reporting that "The timing makes it clear that the BOP intended to avoid outside oversight of its operations."); FCI DUBLIN CLOSING, WOMEN TRANSFERRED TO PRISONS ACROSS U.S., <https://www.ktvu.com/news/fci-dublin-closing-women-transferred-elsewhere> (last visited May 20, 2024)(reporting that a BOP source said closure is "payback" for the judge appointing a special master); Lisa Fernandez, *FCI Dublin prison closure raises questions of retaliation*, KTVU FOX 2, Apr. 16, 2024, <https://www.ktvu.com/news/fci-dublin-prison-closure-raises-questions-of-retaliation-with-u-s-congressman> (last visited Jun 19, 2024)(describing retaliation against the journalists, lawyers, advocacy groups and the federal judge exposing the abuses).

¹⁹Victoria Law, *Survivors of Prison Staff Abuse Say Transfer to New Facilities Hasn't Ended Harm*, TRUTHOUT, May 24, 2024, <https://truthout.org/articles/survivors-of-prison-staff-abuse-say-transfer-to-new-facilities-hasnt-ended-harm/> (last visited May 24, 2024)(Recounting the harrowing and punitive bus ride with C.O.s playing "The Wheels on the Bus" and sexually explicit music at top volume, setting the air conditioning to freezing temperatures, insulting people, driving erratically and causing handcuffed and shackled people to fall from their seats and fear for their lives. Detailing the painful multiple day journeys in chains and in freezing cold conditions, with no opportunity to sleep and denial of medications, pads and toilet paper. Exposing the bruises and cuts from being tightly handcuffed and leg and waist shackled. Reporting a C.O. said "We should just shoot all these Dublin inmates" and pulled people off the bus, pulled out the guns, and acted like they were getting ready to shoot the shackled and exhausted transferees. It further detailed ongoing mistreatment, sexual assault, retaliation, unsanitary conditions, and lack of medical care at new facilities.); More FCI Dublin women complain of

covered violence and rights violations in the transfer process at new facilities.²⁰ Exhibits to the FOIA Request detail these articles. Ex. A at Ex 4.

BACKGROUND: PUBLIC INTEREST

24. Since the July 2024 Request, the urgency to inform the public has continued, as has the public interest in and served by disclosure.

25. On July 25, 2024 during the pendency of this Request, the U.S. House and Senate passed the Federal Prison Oversight Act.²¹ The BOP's delays in release of records

retaliation, including having rifles pointed at them KTVU FOX 2, <https://www.ktvu.com/news/more-fci-dublin-transfer-complaints-of-retaliation-including-having-rifles-pointed-at-them> (last visited May 23, 2024)(Describing C.O.s not intervening in attacks on the Dublin transferees, retaliatory searches, transfers to solitary, and C.O.s pointing rifles at transferees); Lisa Fernandez, *FCI Dublin transfers complain of poor treatment, retaliation at other prisons*, KTVU FOX 2, May 7, 2024, <https://www.ktvu.com/news/fci-dublin-transfers-complain-of-poor-treatment-retaliation-at-other-prisons> (last visited May 28, 2024)(describing retaliation at new facilities; denial of jobs that could reduce sentences and; having rifles pointed at them to scare them); FEMALE PRISONERS SAY THEY HAVEN'T SEEN SUNLIGHT IN MONTHS KTVU FOX 2, <https://www.ktvu.com/news/former-fci-dublin-prisoners-say-havent-seen-sunlight-months> (last visited Jul 30, 2024) (Describes conditions at new facilities built for short-term incarceration that don't have yards, like FCI Dublin, or classes that reduce sentences.).

²⁰ BUSES SEEN TRANSFERRING WOMEN FROM FCI DUBLIN PRISON AHEAD OF SUDDEN SHUTDOWN, <https://www.ktvu.com/news/buses-seen-transferring-women-from-fci-dublin-prison-ahead-of-shutdown> (last visited May 20, 2024)(reporting that sources felt trauma, chaos, distress, abuse, and neglect); WOMEN AT TROUBLED EAST BAY PRISON FORCED TO RELOCATE ACROSS THE COUNTRY | KQED, <https://www.kqed.org/news/11984115/women-forced-to-relocate-from-fci-dublin-prison-report-traumatizing-journey-seek-compassionate-release> (last visited Jul 16, 2024)(quoting incarcerated people describing being unable to use the bathroom and pain from shackling, medicine deprivation, and denial of medical care).

²¹ COURT MONITOR DECLARES CONDITIONS AT FCI DUBLIN 'UNCONSCIONABLE' | DUBLIN NEWS | INDEPENDENTNEWS.COM, https://www.independentnews.com/news/dublin_news/court-monitor-declares-conditions-at-fci-dublin-unconscionable/article_0f6abe88-5549-11ef-95ca-4baeb5110c01.html (last visited Sep 16, 2024) (describing the Oversight Act as “a nation wide prison reform measure sparked largely by horrific stories that trickled out of FCI Dublin for years.”)

caused irreparable harm to Plaintiff, Congress, and the public in not being able to fully investigate and assess the closure and transfer process before passage of this bill.

26. In its July 2024, Oder Granting Law’s Motion to Unseal Court Records, the Court found that BOP failed to meet its burden²² and unsealed limited records related to the Dublin closure and transfer. ECF No. 316, 354. Two records that were unsealed as a result of Law’s Motion to Unseal received an elevated amount of news coverage that evidences “Imminent Threat to the Physical Safety and Life,” and “Urgency to Inform the Public” and “Substantial Due Process Rights” and “Exceptional Media Interest.” In July, 2024 Law’s motion unsealed the February 2, 2024 Moss Group report commissioned by the BOP to assess the culture at Dublin. ECF No. 143-5. Articles show the public continues to be interested in the Dublin misconduct and oversight, including the Moss Group report, a 35-page report, which Plaintiff sought in her Request.²³

27. On August 2, 2024, the Court’s unsealing of the Special Master’s June 5, 2024 report garnered media interest that shows the public’s sustained interest in the BOP’

²² The Court found it was “defendants’ burden to show why these documents should remain under seal. To date, they have not carried this burden. ECF No. 354 at 3. The Court ordered defendants to “provide the Court with more specificity. Their papers consist of vague references to the need to protect personally identifiable information (including relative to AICs), safeguard information relevant to ongoing criminal investigations, and preserve institutional security. Generic references such as these are insufficient.” *Id.* The Court also held, “to the extent defendants wish to keep certain documents under seal to protect the personally identifiable information of individual AICs ... it is not clear the AICs agree. As this argument directly implicates the privacy interests.” *Id.* The Court ordered Plaintiffs’ counsel to respond “insofar as it concerns information relative to their clients.” *Id.*

²³ DOZENS OF SEALED FCI DUBLIN RECORDS NOW PUBLIC KTVU FOX 2, <https://www.ktvu.com/news/dozens-sealed-fci-dublin-records-now-public> (last visited Sep 16, 2024).

handing of the Dublin scandal and closure.²⁴ The Special Master recommended that “the BOP should regularly share data with the general public related to AICs, demographics, programs, outcomes, etc. This will help increase transparency, improve the public’s knowledge of the BOPs services and enhance collaboration with its government and community partners.” WENDY STILL, FIRST REPORT OF THE SPECIAL MASTER PURSUANT TO THE COURT’S ORDER OF MARCH 26, 2024, U.S BUREAU OF PRISONS FEDERAL CORRECTIONAL INSTITUTION, DUBLIN (Special Master) (2024), at 32. The Special Master noted the important of the Court’s April 16, 2024 Order, the day following the closure

²⁴See FCI DUBLIN: SPECIAL MASTER FINDS “CASCADE OF FAILURES” AT WOMEN’S PRISON KTVU FOX 2, <https://www.ktvu.com/news/fci-dublin-special-master-finds-cascade-failures-womens-prison> (last visited Aug 5, 2024)(reporting that “A federal court-appointed “special master” found that the medical care, investigations into sex abuse reports, unnecessary disciplinary measures, lack of programming and classes, as well as the hasty transfer of 605 incarcerated women at FCI Dublin were a “cascade of failures.” ““It is critical to note that some of the deficiencies and issues exposed within this report are likely an indication of systemwide issues with the BOP,” Still wrote, “rather than simply within FCI Dublin.””); See also, SPECIAL MASTER SLAMS CONDITIONS AT FCI DUBLIN IN REPORT | KQED, <https://www.kqed.org/news/11998682/special-master-slams-conditions-at-fci-dublin-in-report> (last visited Aug 4, 2024) (Reporting that ““Management’s failure to ensure staff adhered to [the Bureau of Prison] policy put the health, safety and liberty of [adults in custody] at great risk for many years,” the report from Wendy Still, who was appointed special master in April, reads. “It is unconscionable that any correctional agency could allow incarcerated individuals under their control and responsibility to be subject to the conditions that existed at FCI-Dublin for such an extended period of time without correction.” She added that she “continues to have concerns that the mistreatment, neglect and abuse” inmates experienced at the facility not be repeated where they were transferred, “as many of the conditions that existed at this facility appear to be longstanding and systemic in nature.””); See also NEW REPORT CHARGES CONDITIONS AT FCI DUBLIN ‘UNCONSCIONABLE,’ CITING ‘SYSTEM WIDE ISSUES AT BOP’ DAVIS VANGUARD, <https://davisvanguard.org/2024/08/new-report-charges-conditions-at-fci-dublin-unconscionable-citing-system-wide-issues-at-bop/> (last visited Sep 16, 2024) (Reporting that “Some of the systematic failures included in the report were “the sexual misconduct of FCI Dublin staff” with “mismanagement and lack of appropriate attention from the Region and Central Office,” as well as a complete lack of evidence that “significant resources have been devoted to the problem” despite claims by the BOP Director.”

date of April 15, 2024 addressing among other items, that BOP's mass "document shredding cease and an accounting of all shredding documentation be provided to the Court." *Id.* at 5.

28. Still's report detailed some of the irreparable harm, and facts related to questions about government integrity at issue in Plaintiff's Request, and of widespread interest in media coverage as contemplated by 5 U.S.C. § 552(a)(6)(E)(I) and 28 C.F.R. § 16.5(e)(1)(iv):

Upon the BOP's notification on April 15, 2024 of its immediate intent to close this facility, the Special Master's mission quickly changed to on behalf of the court ensure the safe transfer of the AICs occurred. In response, specific action was taken by the Court, that required prior to the transfer of any AIC, specific issues were identified and tracked for resolution.

Id. at 13. Still also stated that the BOP's actions were unconscionable:

In addition to the dysfunction noted by the Court, the SMT [Special Master Team] found numerous operational, policy and constitutional violations as outlined in the body of this report. This included the failure of Central Office and Regional Office management to correct significant and longstanding deficiencies that had previously been identified in multiple audits and investigations. Furthermore, management's failure to ensure staff adhered to BOP policy put the health, safety and liberty of AICs at great risk for many years. **It is unconscionable that any correctional agency could allow incarcerated individuals under their control and responsibility to be subject to the conditions that existed at FCI-Dublin for such an extended period of time without correction** (*emphasis added*). This Special Master continues to have concerns that the mistreatment, neglect and abuse the AICs received at FCI-Dublin not be repeated at the facilities where these individuals are being transferred to as many of the conditions that existed at this facility appear to be longstanding and systemic in nature.

Id. In summarizing the irreparable harm caused in the closure and transfer process that is ongoing and the subject of Plaintiff's FOIA Request, the Special Master reached several findings:

Finding: The closure was unnecessarily rushed. Methodical, planned, thoughtful practices could not be carried out, leading to mass chaos.

Communication from leadership changed daily leading to even more confusion.

Finding: Staff temporarily transferred from other facilities to FCI-Dublin, to expedite and assist existing staff who had not been previously made aware of the impending closure, added to the chaotic environment, trauma and stress.

Finding: AIC Property processing from the beginning to the end of the closure process was chaotic and created anxiety for both the AICs and staff.

Finding: Many of the staff who were brought in from men's facilities to assist in packing property had never worked with women or transgender AICs, and had no idea how to communicate or deescalate the emotional responses the AICs had during the chaotic closure process associated with their property.

Finding: There were attitude conflicts between some of the staff BOP brought in from other facilities and FCI-Dublin staff that made the closure even more difficult and traumatic for both staff and AICs.

Id. at 13.

BACKGROUND: PLAINTIFF

29. Plaintiff Victoria Law is a freelance journalist, author, and editor who writes about the Dublin prison sex abuse and related criminal and civil cases, as well as stories of people who survived the abuse, and ongoing efforts to change BOP conditions. *See* Ex. A at Law Decl. Plaintiff is a journalist who qualifies as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(d)(1) and requested the fee waiver and expedited described therein. Plaintiff's Request detailed how, in writing articles about Dublin, she has been "primarily engaged in disseminating information to the public," and the "urgency to inform the public about actual or alleged government activity" that she has been reporting about Dublin, and about which she wishes to continue to reporting. 5 U.S.C. § 552(a)(6)(E)(v)(II).

BACKGROUND: IMMINENT IRREPARABLE HARM TO PLAINTIFF

30. Plaintiff, the general public, elected officials, and survivors of Dublin staff abuse and misconduct have already suffered in the months of BOP delaying its response to the Request. Plaintiff's Request and exhibits detailed the harm that BOP obfuscation of records and information caused her and the public as of July 5, 2024. Exhibit 1 provided eight pages of facts and citation as that evidence an "Imminent Threat to the Physical Safety and Life" caused by the BOP in the closure and transfer process, stemming in part from its failure to be transparent and honest with the courts and public, and failure to disclose records. That failure to disclose records and harm to Plaintiff and the public (including litigants and elected officials requesting information) is ongoing. Exhibit 2 "Urgency to Inform the Public" detailed ten pages of related government investigations and hearings, memoranda, reports, task force investigations, independent oversight reports, and advocate letters and petitions explicating the numerous entities that would likely have interest in, and surely benefit from records detailing the BOP's handling of the Dublin abuse, closure, and transfer activities. Exhibit 3 "Substantial Due Process Rights" detailed Congressional hearings that are likely to continue in the Fall of 2024, and which would benefit from Plaintiff reporting on previously withheld records.

31. The paucity of information the BOP has released, even when ordered by the Court, deprives the public of information about BOP's past and potential future actions and rationales. The value to the public of the information sought by the Request will be greatly diminished if its disclosure does not occur in time for the public to absorb, evaluate, and engage in well-informed debate on the appropriateness and legitimacy of such actions before upcoming civil and criminal litigation deadlines and Congressional

hearings. Plaintiff, the public, and elected officials will be deprived of a time sensitive opportunity to engage in more fully informed dialogue that could serve as a check on the BOP's abuses, and to hold those responsible for them accountable.

BOP REQUEST AND RESPONSE

32. On July 5, 2024, Plaintiff submitted the Request. A true and correct copy is attached as Ex. A. Plaintiff sought expedited processing, citing the urgent need to inform the public, lawmakers, courts, and litigants about BOP malfeasance in the closure and transfer process and to prevent further injury to life, liberty, property, and other due process interests. To substantiate the expedition portion of the Request, Plaintiff proffered evidence that a lack of expedited determination poses an imminent threat to life and physical safety per 5 U.S.C. § 552(a)(6)(E)(v)(i) and 28 C.F.R. § 16.5(e)(1)(i). Ex. A at Ex. 1. Plaintiff proffered evidence that an urgency exists to inform the public about an actual or alleged government activity of the BOP and DOJ per 5 U.S.C. § 552(a)(6)(E)(v)(ii) and 28 C.F.R. § 16.5(e)(1)(ii). Ex. A at Ex. 2. Plaintiff proffered evidence that failure to expedite the determination is causing the loss of substantial due process rights per 5 U.S.C. § 552(a)(6)(E)(I) and 28 C.F.R. § 16.5(e)(1)(iii). Ex. A at Ex. 3. Plaintiff proffered evidence that the Request concerns questions about government integrity and documenting the widespread and exceptional domestic and international media coverage as per 5 U.S.C. § 552(a)(6)(E)(I) and 28 C.F.R. § 16.5(e)(1)(iv). Ex. A at Ex. 4. Plaintiff argued that, as a journalist, she be granted a waiver of all fees related to the Request because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k)(2). Plaintiff stated that, as a member of the media, she is entitled to be designated as “primarily

engaged in disseminating information” within the meaning of FOIA’s expedition provisions.

33. On July 10, 2024 attorney Henry received correspondence from the BOP. It assigned the Request Number: 2024-04492. It stated “Your request meets the requirement to be processed on an expedited basis and will be expedited to the best of our ability. This request will be placed on the processing track ahead of other requests and processed as soon as practicable.” A true and correct copy is attached as Ex. B.

34. On August 4, 2024 attorney Henry emailed Ms. Kara Christenson, FOIA/Privacy Act Liaison, asking for a status and timeline update. A true and correct copy is attached as Ex. C.

35. On August 12, 2024 attorney Henry emailed P. Willcott and the general email asking for a status and timeline update. A true and correct copy is attached as Ex. D. On August 12, 2024 attorney Henry emailed the Western Regional Office asking for a status and timeline update. A true and correct copy is attached as Ex. E.

36. On August 13, 2024 P. Willcott emailed attorney Henry stating “A search is still being conducted for records responsive to your request. As we have yet to receive responsive records from the records custodian, our anticipated date of completion is January 10, 2025. Until then please feel free to check the status of your request at [website]...” A true and correct copy is attached as Ex. F.

37. August 16, 2024 was 20 business days from transmission plus ten business days for potential agency extension. Per 5 U.S.C. § 552(a)(6)(B)(i). The BOP’s “determination” regarding any request was due no later than 20 business days from

receipt of request plus 10 additional working days if the agency invokes the exceptional circumstances provisions.

38. On September 17, 2024 the BOP portal stated only “Status: Document Search Office Assigned: Western Regional Office.” A true and correct copy is attached as Ex. J.

39. The BOP has not communicated a determination, or produced records.

EXHAUSTION: OIP APPEAL AND RESPONSE

40. Plaintiff was not obligated to file an OIP appeal.²⁵ On August 18, 2024 Plaintiff filed an appeal with the OIP. A true and correct copy is attached as Ex. G. On August 19, 2024 the OIP acknowledged receipt and assigned appeal number “A-24-02406.” A true and correct copy is attached as Ex. H.

41. On August 23, 2024 the OIP responded to appeal number “A-24-02406” stating:

As no adverse determination has yet been made by BOP, there is no action for this Office to consider on appeal. As you may know, the FOIA authorizes requesters to file a lawsuit when an agency takes longer than the statutory time period to respond. See 5 U.S.C. § 552(a)(6)(C)(i). However, I can assure you that this Office has contacted BOP and has been advised that your request is currently being processed. BOP is also still considering your request for a waiver of fees. If you are dissatisfied with BOP's final response, you may appeal again to this Office. This Office has forwarded a copy of your letter to BOP. You should contact BOP's Requester Service Center at 202-616-7750 for further updates regarding the status of your request. Additionally, I note that BOP responded to your request for expedited processing by letter dated July 10,

²⁵ Plaintiff was not required to appeal before filing suit, but did so out of courtesy. A requester is only required to administratively appeal a “determination” before bringing suit if agency has made and communicated its “determination” in a timely manner. *See Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013). However, as occurred here, “if the agency has not issued its “determination” within the required time period, the requester may bring suit directly in federal district court without exhausting administrative appeal remedies.” *Id.*

2024. Because BOP granted your request for expedited processing, your appeal from BOP's expedited processing determination is moot. A true and correct copy is attached as Ex. I.

CAUSES OF ACTION

42. Plaintiff repeats and incorporates herein by reference the allegations of the preceding Paragraphs.

43. The FOIA legislation recognized “the value in hastening release of certain information.” *Edmonds v. FBI*, 417 F.3d 1319, 1324 (D.C. Cir. 2005)). Here, Plaintiff, her readers, and the public, will lose the value of release, holding the Bureau of Prisons accountable in Congressional hearings, legislation, and civil and criminal cases, if release is not expedited. In this case, delay in complying with this expedited Request is, as Congress recognized, “tantamount to denial.” H.R.Rep. No. 93–876, at 6 (1974), 1974 U.S.Code Cong. & Admin. News, pp. 6267, 6271. Here, failure to order expedition would “preclude[the public] ... from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the legality of a high-profile government action.” *Protect Democracy Project, Inc. v. Dep’t of Defense*, 263 F. Supp. 3d 293, at 300 (D.D.C. 2017) (internal quotation omitted). Here, the Request must not be merely labeled as expedited, but records must be produced as soon as possible lest they will become stale, and “stale information is of little value.” See *American Oversight v. Dep’t of State*, 414 F. Supp. 3d 182, 186 (D.D.C. 2019) (citing *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988); *Elec. Frontier Found. v. Office of Dir. of Nat’l Intel.*, 2007 WL 4208311, at 7 (N.D. Cal. Nov. 27, 2007) (“[O]ngoing public and congressional debates about issues of vital national importance ‘cannot be restarted or wound back.’”) (internal citation omitted).

44. Here, as in *Center Public Integrity v. Dep't of Defense*, if the requested information is “released after the ... proceedings conclude, the information may still be of historical value. However, for Plaintiff, the primary value of the information lies in its ability to inform the public of ongoing proceedings of national importance; and, in these circumstances, stale information is of little value.” 411 F. Supp. 3d 5, 7 (D.D.C. 2019) (internal quotation omitted).

45. Here, failure to order expedition would “preclude[the public] ... from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the legality of a high-profile government action.” *Protect Democracy Project, Inc. v. Dep't of Defense*, 263 F. Supp. 3d 293, at 300 (D.D.C. 2017) (internal quotation omitted). Though the *Washington Post* case was about an election and not upcoming civil and criminal trials and congressional hearings, its logic is persuasive: “likelihood for irreparable harm exists if the FOIA request does not receive expedited treatment” because “its FOIA request is predicated on a matter of current national debate, due to the impending election.” *Washington Post v. Dep't of Homeland Security*, 459 F. Supp. 2d 61, 75 (D.D.C. 2006).

46. The *Electronic Privacy Info. Center v. Dep't of Justice* (“*EPIC*”) court found that the plaintiff would likely suffer irreparable harm if records regarding warrantless surveillance program were not produced in a timely fashion. *EPIC*, 416 F. Supp. 2d 30, 40-41 (D.D.C. 2006). When the DOJ granted the request to treat the FOIA as expedited, but failed to release records rapidly, the Court found that “[w]hat matters to [plaintiff] is not how the requests are labeled by the agency, but rather when the documents are actually released.” *Id.* The court found the records at issue to be “vital to

the current and ongoing debate surrounding the legality of the Administration’s warrantless surveillance program,” such that if the agency did not in fact take rapid action to release them, the records value would be greatly diminished. *Id.* The court found that “the loss of that ‘value’ constitutes a cognizable harm,” and ordered the DOJ to complete the processing of plaintiff’s FOIA requests and produce or identify all responsive records within 20 days. *Id.* at 43.

47. The requested records, which BOP already found merited expedition, need to be disclosed forthwith, as it may take weeks or months to meet and confer regarding production scope and schedule, brief BOP’s argued exemptions and exclusions, review records disclosed vis a vis the Vaughn index. It will then take additional weeks for independent journalist Law to index and analyze the records, then write and disseminate articles, and then even more weeks or months for public officials, litigants, judges, and the public to read and digest that work product.

CLAIM FOR RELIEF I
Violation of FOIA 5 U.S.C. § 552
Failure to Make Expedited Determination

48. On July 5, 2024, Plaintiff submitted the expedited FOIA Request. Ex. A. The Request provided 20 pages of argument and 45 pages of exhibits that evidence a compelling need that entitles Plaintiff to expedited processing and determination pursuant to 5 U.S.C. § 552(a)(6)(E)(i)(I), and the DOJ’s implementing regulations. *See* Ex. A. The exhibits provided proof to meet the standard for all four potential expedition provisions, though proof of only one is required. The Request noted that disclosure of the records is urgently requested and benefits the Plaintiff and the public because it is likely to contribute significantly to the court, public, news media, litigant, and congressional understanding of the activities or operations of the BOP and its integrity and to prevent

further due process violations and injuries. *See* Ex. A at 6-10. The Request noted that the requested records possess a particular value to incarcerated people, legislators, and judges that will be lost if not disseminated quickly, and well in advance of any congressional hearings and the June, 2025 trial in *CCWP*.²⁶ Immediate access to this information is crucial for Plaintiff and the readers she serves in the subject area of the rights of incarcerated people. Plaintiff intends to analyze, interpret, and digest records to create secondary source material in the form of news articles. She will then give access to litigants, public officials, courts, and other media, as the information sought is not otherwise available to the Plaintiff or other interested individuals and entities.

49. The Request noted that failure to expedite will cause the loss of substantial due process rights as contemplated under 5 U.S.C. § 552(a)(6)(E)(I) and 28 C.F.R. § 16.5(e)(1)(iii). The Request and exhibits proffered evidence of related pending and future government proceedings, civil, criminal, and compassionate release cases, as well as prison-based due process rights. *See* Ex. A. at Ex 2; Ex. A. at Ex 3. Approximately 77 individual cases and one class action case (*CCWP*) that could benefit from reviewing these records are pending against the BOP related to its treatment of people at Dublin. *See* Ex. A. at Ex 3. Plaintiff's rights would be impaired if she is not able to report in a timely fashion, before deadlines in upcoming legal proceedings, including settlement conferences, and the June 23, 2025 *CCWP* trial. Civil case counsel could use her

²⁶ *CCWP*, Case Management and Pretrial Order, ECF No. 310, May 24 2024, scheduled: Initial Disclosures 6/21/2024, Close of Fact Discovery 10/31/2024, Disclosure of Experts Opening 11/22/2024, Rebuttal Reports 12/20/2024, Close of Expert Discovery 1/31/2025, Dispositive/Daubert Motions 2/28/2025, Dispositive/Daubert Motion Hearing 4/8/2025, Pretrial Conference Statement 5/23/2025, Pretrial Conference 6/6/2025, and Jury Selection/Jury Trial 6/23/2025.

reporting and records to preserve due process rights, and prevent further physical, emotional, and psychological injury. Her reporting and records could be used by counsel to preserve due process rights in Dublin related cases. Public records not subject to an order to seal, a protective order, or not disclosed in discovery could assist with factual development of the record and vindication of litigants' rights. It would provide for more informed and appropriate remedies for ongoing rights violations in dozens of cases.

50. On July 10, 2024 BOP assigned the Request to the expedited track, but did not make an expedited determination: "Your request meets the requirement to be processed on an expedited basis and will be expedited to the best of our ability. This request will be placed on the processing track ahead of other requests and processed as soon as practicable." Ex. B.

51. FOIA requires agencies of the federal government to "promptly" release records upon request, unless a specific statutory exemption applies or disclosure is prohibited by law. 5 U.S.C. § 552(a)(3)(A). A requester may seek expedited processing where there is a "compelling need." 5 U.S.C. § 552(a)(6)(E). An agency must process and make a determination "as soon as practicable" for any request for which it has granted expedited processing. 5 U.S.C. § 552(a)(6)(E)(iii).²⁷

52. The agency has not provided an estimated date of **determination** (emphasis added) that satisfies the statutory or regulatory deadline for an expedited request. On August 13, 2024, P. Willcott emailed attorney Henry stating

²⁷ Though unlikely to be relevant here as BOP designated the request as expedited, in the event that the agency determines there is no compelling need to expedite, the agency must determine within twenty working days after receipt of a request for records whether to comply with the request, and must immediately notify the requester of its determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).

A search is still being conducted for records responsive to your request. As we have yet to receive responsive records from the records custodian, our **anticipated** (emphasis added) date of **completion** (emphasis added) is January 10, 2025. 5 U.S.C. § 552(a)(7)(B) states that each agency shall ...establish a system to...provide to each person making a request the tracking number assigned to the request and “an estimated date on which the agency will complete action on the request.”

Ex. F. BOP’s failure to make a **determination** (emphasis added) by the statutory and regulatory deadline constitutes constructive denial.

53. The BOP is required to make “**determination**” whether to comply with a FOIA request, and communicate “the reasons therefor,” within 20 business days of its receipt. 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(B)(i). A “**determination**” (emphasis added) “must be more than just an initial statement that the agency will generally comply with a FOIA request and will produce non-exempt documents and claim exemptions in the future. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013) (“*CREW*”). To satisfy its statutory obligations the BOP "must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Id.* The August 13, 2024 email indicates the BOP has not gathered and reviewed the documents; as it has “yet to receive responsive records from the records custodian.” The August 13, 2024 email indicates BOP has not determined and communicated the scope of the documents it intends to produce and withhold, and the reasons it may withhold records, as it has “yet to receive responsive records from the records custodian.”

54. 5 U.S.C. § 552(a)(6)(B)(i) allows an agency to extend the date of determination by no more than "ten working days" in "unusual circumstances." BOP has not asserted “unusual circumstances” and waived its right to an extension. Had BOP

requested an extension, August 16, 2024 would have been the 30-day statutory and regulatory deadline, yet BOP failed to make a **determination** within 30 business days as defined by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i); *Id.* § 552(a)(6)(B)(i); *Id.* § 552(a)(6)(B)(iii)(III). Therefore, BOP violated FOIA's statutory deadline.

55. The BOP's failure to provide a **determination** within the statutory deadline for an expedited request violates the FOIA statute and Department of Justice's implementing regulations, 28 C.F.R. § 16 et seq.. A requester is deemed to have exhausted its administrative remedies if the agency fails to comply with FOIA's applicable time limit provisions. 5 U.S.C. § 552(a)(6)(C)(i). When an agency fails to respond to a FOIA request within the statutory timeframe, it has constructively denied the request. *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57 (D.C. Cir. 1990) ("Congress adopted the time limit provision in the FOIA in order to 'contribute to the fuller and faster release of information, which is the basic objective of the Act.'" (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess., reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271) "The constructive exhaustion provision was a spur to the agencies to respond within the ten-day deadline."). Here, the public will lose the value of release in this matter if release is not expedited. In this case, delay in complying with this expedited FOIA Request is, as Congress recognized, "tantamount to denial." H.R.Rep. No. 93-876, at 6 (1974), 1974 U.S.Code Cong. & Admin. News, pp. 6267, 6271.

56. As no **determination** has been made, and BOP has not informed Plaintiff that she can appeal whatever portion of the 'determination' is adverse, BOP has failed to comply with its obligations under FOIA's expedition provisions.

CLAIM FOR RELIEF II
Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records

57. Plaintiff repeats and realleges the preceding allegations.

58. Plaintiff properly requested records within the possession, custody, and control of Defendant BOP.

59. Defendant BOP is an agency subject to and within the meaning of FOIA, and accordingly must make reasonable efforts to search for requested records.

60. The BOP has not produced any documents in response to the Request and has not made a determination as to: 1. the scope of the records it intends to produce; 2. the scope of the records it intends to withhold; 3. reasoning and exclusions/exemptions argued for the withholding of any documents; or 4. A Vaughn Index. Therefore, the BOP is in violation of its statutory duties under FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i); *Id.* § 552(a)(6)(B)(i); *Id.* § 552(a)(6)(B)(iii)(III); *CREW*, 711 F.3d 180, 188.

61. BOP has failed to make “reasonable efforts” in conducting a search for responsive records. *See* 5 U.S.C. § 552(a)(3)(C). BOP has not conducted a “search reasonably calculated to uncover all relevant documents” pursuant to a detailed, specific Request. *Zemansky v. EPA*, 767 F.2d 569 (9th Cir. 1985). When responding to a FOIA request, BOP has a statutory obligation to search for “agency records for the purpose of locating those records which are responsive to a request.” FOIA, 5 U.S.C. § 552(a)(3)(D). Defendant is also required to “make reasonable efforts to search for the records in electronic form or format.” 5 U.S.C. § 552(a)(3)(C).

62. Defendant failed to promptly review agency records for records responsive to the request. Defendant’s failure to conduct adequate searches for responsive records violates FOIA and applicable regulations.

63. Because Defendant failed to determine a production scope and reasoning by the statutory and regulatory deadline, Plaintiff has constructively exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i). Additionally, Plaintiff exhausted OIP administrative remedies with respect to Defendant's failure to make records sought by Plaintiff's request "promptly available." 5 U.S.C. § 552(a)(6)(C)(i).

64. Defendant's failure to make records sought by Plaintiff's expedited request "promptly available" violates FOIA. See 5 U.S.C. § 552(a)(3)(A).

65. Plaintiff is entitled to declaratory and injunctive relief requiring Defendant to promptly search for and produce all responsive non-exempt records and provide indexes justifying the withholding of any responsive records it argues are exempt.

CLAIM FOR RELIEF III

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

66. Plaintiff repeats and realleges the preceding allegations.

67. Plaintiff properly requested records within the possession, custody, and control of Defendant.

68. Defendant is an agency subject to and within the meaning of FOIA, and accordingly must release non-exempt records and provide a lawful reason and Vaughn Index for withholding any materials for which exemptions are claimed.

69. Defendant is wrongfully withholding non-exempt agency records by failing to produce non-exempt records responsive to the requests.

70. Defendant is wrongfully withholding non-exempt agency records requested by failing to segregate exempt information in otherwise non-exempt records.

71. Defendant's failure to provide all non-exempt responsive records violates FOIA and applicable regulations.

72. Because Defendant failed to comply with the applicable time-limit provisions of FOIA, Plaintiff has constructively exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

73. Plaintiff is entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records it argues are exempt.

CLAIM FOR RELIEF IV
Violation of FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II)
Failure to Classify as News Media for Expedition and Fee Waiver

74. Plaintiff repeats and realleges the preceding allegations.

75. Plaintiff's request and declaration proffered evidence that she is a member of the news media with no commercial interest in the records. *See* Ex. A at 5-6; Ex. A at Law Decl. The request proffered evidence that, for the purposes of expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Plaintiff is a representative of the news media. Plaintiff adds to the fund of information that citizens may use in making vital political choices by utilizing primary source BOP records to assist the public in evaluating BOP policies and actions. *See* Ex. A at Law Decl. Plaintiff's articles will turn the BOP's raw materials into a distinct work that includes narratives from incarcerated people to paint a fuller picture. *Id.* Plaintiff will distribute this work to an audience through the news outlets previously listed, or outlets similar in profile and audience-reach. *Id.*

76. Failure to classify Plaintiff as a member of the news media that receives the expedited status that accompanies this designation is a violation of FOIA and enabling regulations. Under FOIA, a "representative[] of the news media," is defined as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and

distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). The request detailed how Plaintiff will share information with the public, elected officials, incarcerated people, and their attorneys and advocates in order to prevent more unlawful activity and injuries caused by BOP staff. *See* Ex. A at Law Decl. Plaintiff's scope of activities in the public interest qualifies for news media expedited treatment classification. *See ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information"). *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

77. Failure to classify Plaintiff as a member of the news media, and provide Plaintiff with the fee waiver that accompanies this designation is a violation of FOIA and enabling regulations. A fee waiver would fulfill Congress's legislative intent in drafting and amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

78. The BOP's failure to grant the request for treatment as a news media representative by the statutory and regulatory deadline constitutes constructive denial that violates 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(d)(1) and exhausts remedies. Plaintiff is entitled to declaratory and injunctive relief classifying plaintiff as a

member of the news media for fee waiver and expedition categories, and all other relevant considerations.

CLAIM FOR RELIEF V
Violation of FOIA, 5 U.S.C. § 552(a)(4)(A)(iii)
Failure to Grant Fee Waiver

79. Plaintiff repeats and realleges the preceding allegations.

80. The BOP's failure to grant a request for a fee waiver violates 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k)(2).

81. Plaintiff is a member of the news media who has written and will write about BOP sex abuse, retaliatory transfers, prison closures and other aspects of recent issues of government malfeasance of interest to the public. *See* Ex. A, 1-25; Ex. A at Law Decl. As detailed in the initial request and exhibits, the immediate release of the information sought is in the public interest and made by a representative of the news media, Plaintiff Victoria Law. *Id.*

82. Plaintiff Law is entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *Id.*

83. Therefore, failure to classify Plaintiff as a member of the news media, and provide Plaintiff with the fee waiver status that accompanies this designation is a violation of FOIA and enabling regulations. Failure to grant a fee waiver by the statutory and regulatory deadline constitutes constructive denial and exhaustion of remedies.

84. Plaintiff is entitled to declaratory and injunctive relief granting a fee waiver.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request the Court to:

- a. Declare, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that the Defendant violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552;
- b. Declare that Plaintiff is entitled to disclosure of the requested records;
- c. Order expeditious proceedings in this action pursuant to 28 U.S.C. § 1657; and FRCP 12(a)(2) (Courts are not required to automatically accord expedited treatment to FOIA lawsuit; however, as with other civil actions, they may do so "if good cause therefore is shown.");
- d. Order Defendant to immediately designate the Request as expedited, process the Request and disclose, in their entirety, unredacted versions of all records responsive to the Request that are not specifically exempt from disclosure under FOIA, including any non-identical copies of any such records;
- e. Order Defendant to prepare an index pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974), for any documents it seeks to withhold under a FOIA exemption;
- f. Order Defendant to grant the Request for treatment as a news media representative;
- g. Grant a fee waiver and enjoin Defendant from charging search, review or duplication fees;
- h. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's Request;

- i. Retain jurisdiction of this action to ensure that no agency records are wrongfully withheld;
- j. Award Plaintiff attorney's fees and litigation costs incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- k. Order such other relief as the Court may deem just and proper.

Dated: September 20, 2024

Respectfully Submitted,

/s/ Caitlin Kelly Henry_____

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TABLE OF EXHIBITS

Exhibit	Date	Title
A	2024.07.05	Initial FOIA Request to BOP DOJ (Pgs 1-25) Enumerated List of Requested Records (Pgs 26-31) Declaration of Victoria Law (abbreviated as Law Decl.)(Pgs 32-33) Declaration of Caitlin Kelly Henry (abbreviated as Henry Decl.)(Pgs 34-39) Exhibit 1: Imminent Threat to the Physical Safety and Life (abbreviated as Ex. A at Ex. 1)(Pgs 40-47) Exhibit 2: Urgency to Inform the Public (abbreviated as Ex. B at Ex. 2)(Pgs 48-57) Exhibit 3: Substantial Due Process Rights (abbreviated as Ex. A at Ex. 3)(Pgs 58-75) Exhibit 4: Exceptional Media Interest (abbreviated as Ex. A at Ex. 4)(Pgs 76-85)
B	2024.07.10	BOP Letter Assigning Expedited 2024-04492
C	2024.08.04	Law Request for Response, Determination, and Timeline Expedited Request Number 2024-04492
D	2024.08.12	Law Request for Response, Determination, and Timeline Expedited Request Number 2024-04492 to HQ
E	2024.08.12	Law Request for Response, Determination, and Timeline Expedited Request Number 2024-04492 Western Regional
F	2024.08.13	BOP Response 2024-04492
G	2024.08.18	Appeal to OIP
H	2024.08.19	OIP Letter Assigning Appeal Number a-24-02406
I	2024.08.23	OIP Denial A-2024-02406 Appeal Response
J	2024.09.17	BOP FOIA Portal Status Check 2024-04492
K	2024.09.20	Civil Cover Sheet