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8 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 VICTORIA LAW,
Plaintiff,

11 v.

12 FEDERAL BUREAU OF PRISONS,
13 Defendant.

Case No. 3:24-CV-06628-TLT

**INITIAL JOINT CASE MANAGEMENT
STATEMENT**

Date: January 16, 2025
Time: 2:00 p.m.
Courtroom: Via Zoom

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16 The parties to the above-captioned action jointly submit this initial joint case management
17 statement (“JCMS”) in advance of the Case Management Conference (“CMC”) set for January 16, 2025.

18 **1. Jurisdiction and Service**

19 There are no issues regarding jurisdiction, venue, or service at this time. Plaintiff brings this
20 action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
21 The Court has subject matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B). Plaintiff consented to
22 proceed before a Magistrate. *See* Dkt. No. 11. Defendant has not filed a consent/declination form since
23 this case is not assigned to a Magistrate Judge.

24 **2. Facts**

25 **Joint Statement**

26 Plaintiff submitted a FOIA request on July 5, 2024 requesting, in order of priority, approximately
27 50 types of records (many with subparts that increase the number of records sought) regarding the
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1 closure of the Dublin prison and transfer of people. *See* Dkt. No. 1-1. On July 10, 2024, Defendant
2 acknowledged the Request and expedited status. *See* Dkt. No. 1-2. On September 20, 2024 Plaintiff filed
3 the complaint. *See* Dkt. No. 1. Defendant answered on November 27, 2024. *See* Dkt. No 16.

4 The parties are regularly engaging in good faith discussions. The parties agreed to custodians,
5 search terms, and search parameters for a search of agency email. The parties agreed on the temporal
6 parameters for other searches. On December 20, 2024 Defendant provided all 568 pages of records
7 responsive to item 44. BOP is working on items 1, 2, 7, 10, 11, 12, 13, 14, and 35 as priorities for future
8 releases. Defendant will make rolling releases of records every four weeks.

9 **Plaintiff’s Statement**

10 Time is of the essence. The BOP has not agreed to review records at a pace consistent with the
11 urgency of Plaintiff’s expedited request. Plaintiff asked for a production schedule for each record with
12 dates certain. Defendant provided a page estimate of for one item. Defendant has not confirmed which
13 records will be produced by what date, or the minimum number of records it will release. This leaves
14 Plaintiff and the Court unsure of whether this case will continue for one year or ten years. An accurate
15 estimate will ensure effective negotiations, and allow for understanding this case’s scope. Every day of
16 delay threatens more harm to incarcerated survivors of staff misconduct and sexual abuse and
17 stakeholders working to remedy the harm, including in ongoing compassionate release, immigration,
18 and civil rights cases.¹ Journalist Law's need for the records is urgent, as the BOP is currently under
19 intense media scrutiny. On December 5, 2024 the BOP announced the permanent closure of Dublin and
20 six other facilities. On December 6, 2024 the parties in *California Coal. for Women Prisoners v. United*
21 *States*, No. 4:23-CV-4155-YGR (N.D. Cal. 2023) (herein “*CCWP*”), the Dublin sex abuse class action,
22 moved to approve consent judgment and settle. (ECF No. 438). On December, 17, 2024 103 plaintiffs in
23 individual suits settled. As of December 18, 2024, the US agreed to pay survivors over \$130 million.

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26 ¹ The Complaint (*Dkt.* No. 1) evidenced that a lack of expedited release poses an imminent threat to life
27 and physical safety (Ex. A at Ex. 1). that an urgency exists to inform the public about an actual or
28 alleged government activity of the BOP (Ex. A at Ex. 2), that failure to expedite is causing the loss of
substantial due process rights (Ex. A at Ex. 3); and the Request concerned questions about government
integrity and documenting the widespread and exceptional domestic and international media coverage at
Ex. A at Ex. 4.

1 The public and stakeholder’s widespread interest in these matters is evidenced by a legislator statement²
2 and coverage in over eighty articles.³ On December 17, 2024 Plaintiff provided Defendant a
3 memorandum supporting her request to release at least 5,000 pages every four weeks. On December 20,
4 2024 BOP made its first production, releasing approximately 173 records retention schedules, ranked 44
5 out of 50 in urgency. BOP merged individual records into one 568-page PDF, stripped of individual
6 files, file names, metadata, and other information critical for understand where a record begins and ends.

7 Plaintiff also provided Defendant a memorandum on why exemptions 6 and 7(c) are
8 inapplicable, or if applicable, the public interest outweighs the privacy interests and mandates release.

9 **Defendant Statement**

10 Plaintiff claims “time is of the essence” because “delay threatens more harm to incarcerated
11 survivors of staff misconduct and sexual abuse and stakeholders working to remedy the harm.” Plaintiff
12 does not represent any of the individuals formerly incarcerated at Dublin. The lawyers that represent the
13 class reached a consent decree in *CCWP* did not need the FOIA documents to represent the class and
14 settle the case. Plaintiff claims there is widespread interest in the documents she seeks through FOIA
15 because “over eighty articles” have been published. None of journalists writing these articles needed the
16 documents Plaintiff seeks to report on the story. Plaintiff published numerous articles without needing
17 the documents. Defendant did not ask for Plaintiff’s memorandum regarding FOIA exemptions 6 and
18 7(c). There are numerous Ninth Circuit cases that address these exemptions. Plaintiff’s memorandum
19 on page numbers was not helpful. BOP’s release of 568 pages of records on December 20, 2024 was
20 provided in native format, as these documents were downloaded from PDFs on National Archives
21 website. BOP submits that it makes more sense to focus on releasing records than providing information
22 about the more than 50 categories of documents Plaintiff seeks.

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25 ² CONGRESSMAN DESAULNIER STATEMENT ON PERMANENT CLOSURE OF FEDERAL CORRECTIONAL
26 INSTITUTE (FCI) DUBLIN, [http://desaulnier.house.gov/media-center/press-releases/congressman-](http://desaulnier.house.gov/media-center/press-releases/congressman-desaulnier-statement-permanent-closure-federal-correctional)
27 [desaulnier-statement-permanent-closure-federal-correctional](http://desaulnier.house.gov/media-center/press-releases/congressman-desaulnier-statement-permanent-closure-federal-correctional) (last visited Dec 6, 2024).

28 ³ Articles appeared in outlets such as the New York Times, Washington Post, Los Angeles Times, The
Guardian, Good Morning America, Forbes, Associated Press, Newsweek, Fox, CBS, ABC, NBC, NPR,
KALW, KQUED, KTVU, Democracy Now, MSN, Mercury News, SF Chronicle, East Bay Times,
Courthouse News, Law 360, and the Daily Journal.

3. Legal Issues

(1) Whether, after granting expedited status, Defendant violated the FOIA by failing to conduct a search or respond to the FOIA request within the statutory period; (2) whether Defendant violated the FOIA by withholding and failing to disclose agency records; (3) whether Defendant failed to conduct timely and adequate searches reasonably calculated to uncover responsive records; (4) whether Defendant improperly applied exemptions to withhold records; (5) whether Defendant improperly failed to grant a fee waiver; (6) what declaratory and injunctive relief Plaintiff is entitled to; and (7) whether Plaintiff is eligible and entitled to attorney's fees, and, if so, the amount of Plaintiff's attorney's fees.

Plaintiff's Statement

Plaintiff seeks an order directing the BOP to produce at least 5,000 deduplicated pages every four weeks and file monthly status reports stating the number of pages released. FOIA provides courts with broad authority and "imposes no limits on courts' equitable powers in enforcing its terms." *Brown v. U.S. Customs & Border Prot.*, 132 F. Supp. 3d 1170, 1112 (N.D. Cal. 2015) (quoting *Payne Enterprises, Inc. v. U.S.*, 837 F.2d 486, 494 (D.C. Cir. 1988)). "[C]ourts have discretion to set production schedules they deem reasonable when an agency has improperly withheld agency records." *Advocs. for the West v. Bonneville Power Admin.*, No. 3:20-CV-01028- AC, 2021 WL 2229280, at *6-7 (D. Or. June 2, 2021) (1,000 pages per month). The *Washington v. U.S. Gen. Servs. Admin.* court ordered production of records within twenty-one days after finding that the agency failed to promptly produce records. No. 2:21-CV-00794-TL, 2022 WL 823550, at *5 (W.D. Wash. Mar. 18, 2022). In the Ninth Circuit, "promptly available" means "within days or a few weeks of a 'determination,' not months or years." *Sierra Club v. U.S. Env't Prot. Agency*, No. 18-CV-03472-EDL, 2018 WL 10419238, at *5 (N.D. Cal. Dec. 26, 2018) (quoting *Citizens for Resp. & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013); See *E.g. Owen v. U.S. Immigr. and Customs Enf't.*, No. CV220550DSFAFMX, 2023 WL 9470904, at *6 (C.D. Cal. Jan. 12, 2023) (collecting cases); *Advocs.*, 2021 WL 2229280, at *5. Courts are authorized to order production schedules based on Plaintiffs' need for the requested documents and the agency's processing capacity. *Id* at 5. While status reports are custom in the DC Circuit, Ninth Circuit courts also order them. See *E.g., Am. C.L. Union of San Diego*

1 & *Imperial Ctys. v. United States Dep't of Homeland Sec.*, No. 8:15-cv-00229 (C.D. Cal., 2015)(ECF
 2 No. 31); *Northwest Immigrant Rights Project v. United States Immigration and Customs Enforcement*,
 3 2:24-cv-01533, (W.D. Wash., 2024)(ECF No. 8); *Estate of Ashli Babbitt v. U.S. Department of Justice*,
 4 3:24-cv-00119, (S.D. Cal., 2024)(ECF No. 8).

5 BOP has not agreed to a production schedule with pages certain.⁴ Judges have ordered
 6 production of approximately 5,000 pages per month where the records sought on an expedited basis
 7 were, like here, a “recent subject of national policymaking,” could prevent the loss of life, involve time
 8 sensitive issues of “enormous public concern,” national significance, ongoing scandals, and news
 9 coverage. See *E.g., Am. C.L. Union Found. of S. California v. United States Immigr. & Customs Enft.*,
 10 705 F. Supp. 3d 1077 (C.D. Cal. 2023)(3,000 pages); *Los Angeles Times Commc'ns LLC v. U.S. Dep't of*
 11 *Homeland Sec.*, No. 220CV10911FLAMRWX, 2022 WL 18932816, at *3 (C.D. Cal. Mar. 7,
 12 2022)(3,000 pages); *Al Otro Lado v. DHS*, 20-cv-5191, Dkt. 35 (C.D. Cal. Sept. 23, 2020)(1,000 pages);
 13 *The Center for Investigative Reporting v. Central Intelligence Agency*, No. 3:20-cv-06641, (N.D. Cal.,
 14 2020)(ECF No. 42)(Ordering 100 documents produced per month); *Pub. Health & Med. Pros. for*
 15 *Transparency v. Food & Drug Admin.*, No. 4:21-CV-1058-P, 2022 WL 90237, at *2 (N.D. Tex. Jan. 6,
 16 2022)(55,000 pages); *Nat. Res. Def. Council v. Dep't of Energy*, 191 F. Supp. 2d 41, 43 (D.D.C. 2002)
 17 (7,500 pages); *Villanueva v. United States Dep't of Just.*, No. 19-23452-CIV, 2021 WL 5882995, at *1
 18 (S.D. Fla. Dec. 13, 2021)(5,125 pages); *Clemente v. FBI*, 71 F. Supp. 3d 262, 269 (D.D.C. 2014)(5,000
 19 pages); *Open Soc'y Just. Initiative v. Cent. Intel. Agency*, 399 F. Supp. 3d 161, 176 (S.D.N.Y.
 20 2019)(5,000 pages); *Judicial Watch, Inc. v. Dep't of Energy*, 191 F. Supp. 2d 138 (D.D.C. 2002)(4,500
 21 pages). This court has overseen a “1,200 page per month review and production schedule” in *Center for*
 22 *Gender and Refugee Studies, et al. v. U.S. Customs and Border Protection*, No. 3:24-cv-01601 (N.D.
 23 Cal., 2024)(ECF No. 21).

24 **Defendant’s Statement**

25 As to the number of pages BOP should release, Plaintiff cherry-picked cases. The parties do not
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 28 ⁴The only page estimate Defendant provided is for item one, where there are at least 50,000 pages. At a
 rate of 5,000 pages a month, the emails in item one alone would take 10 months to release.

1 yet have an agreed-upon page count. The parties have requested that the Court set a further CMC in April or
2 May. After the January, February and March, releases the parties will have a better basis to determine the
3 amount of records and the pace of releases. The Court could set a monthly number of pages if the parties
4 could not agree on a number at the subsequent CMC.

5 BOP notes that BOP will be *processing* a certain number of pages — as opposed to *producing* that
6 number — because some of the processed pages will be nonresponsive or exempt from disclosure, and
7 therefore it cannot predict the number of pages to release. The BOP staff person assigned has monthly
8 releases for three other cases in litigation: two with 500 pages/month processed and one with 300
9 pages/month released. In recent years, BOP received between 6,170 and 4,403 requests per year. BOP’s
10 FOIA staff also handle requests for medical records in support of motions for compassionate release or home
11 confinement. BOP has seventeen FOIA staff. In a year with 5,000 requests, that would average 294 requests
12 per staff member. BOP is not able to process, much less release, 5,000 pages per month for Plaintiff’s
13 request. The Court should not upend all of BOP’s other cases and requests in favor of Plaintiff’s.

14 BOP disagrees with the contention that releasing 5,000 pages monthly is reasonable, especially while
15 collection efforts are ongoing. Parties stipulate to (and courts in this district approve) more reasonable
16 processing rates even where collection efforts concluded. *See, e.g., Swords to Plowshares v. U.S. Dep’t of*
17 *Veterans Affairs*, No. 3:20-cv-07146-JSC, ECF No. 31 (March 19, 2021) (600 pages); *USRTK v. U.S. Dep’t*
18 *of Education*, No. 20-cv-09117-DMR, ECF No. 21 (750 pages); *see also ACLU of N. Cal. v. ICE*, No. 4:21-
19 *cv-02632-DMR*, ECF No. 31 (October 13, 2021), Ex. A (500 pages in *ACLU of N. Cal. v. DHS*, No. 3:18-cv-
20 04105-LB (N.D. Cal.); *Cohdoes v. U.S. Dep’t of Justice et al.*, 3:20-cv-4015, ECF No. 78 (500 pages). The
21 only cases from the Northern District cited by Plaintiff set the rates of releases far below 5,000 pages, with
22 one setting the rate at 100 documents per month and one with 1200 pages per month.

23 Indeed, all of the cases Plaintiff cites for a higher processing rate involved “exceptional” and
24 “unusual” factors not present here. In setting a processing rate of 5,000 pages per month, the district court in
25 *Open Society Justice Initiative v. CIA* explained that “a heightened commitment of resources is warranted for
26 this particular FOIA request” because it “concerns a matter of exceptional public importance and obvious
27 and unusual time-sensitivity.” 399 F. Supp. 3d 161, 167 (S.D.N.Y. 2019) (emphasizing the “paramount
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1 public importance and urgency” of the request). Further, each agency had identified over 300,000 pages of
2 potentially responsive records, and that rate would allow the material to be reviewed in “just under five
3 years.” *Id.* at 166–68. This case, by contrast, does not involve an “exceptionally” important issue or “unusual
4 time-sensitivity,” and the number of pages is currently unknown.

5 Plaintiff’s cases likewise involve unique circumstances on which the court based a higher processing
6 rate, none of which are present here. In *Clemente v. FBI*, the district court found a processing rate of 5,000
7 pages reasonable in light of “the importance of [the requester’s] work *and the possibility that she may have*
8 *only a limited time in which to do it*” — i.e., because of her terminal illness. 71 F. Supp. 3d 262, 265, 269
9 (D.D.C. 2014) (emphasis added) (faulting the FBI for “not address[ing] what, if any, impact Clemente’s
10 declining health should have on the Court’s decision to stay her request”). In *Judicial Watch, Inc. v.*
11 *Department of Energy*, seven federal agency defendants moved to dismiss plaintiff’s FOIA action for failure
12 to exhaust administrative remedies, arguing that plaintiff sued “seven days (excluding weekends) too early.”
13 191 F. Supp. 2d 138, 139 (D.D.C. 2002). In the ensuing ten months, most of those agencies fully responded
14 to plaintiff’s requests; for those that did not, the court set a high processing rate. *Id.* at 141.

15 Finally, in *NRDC v. Department of Energy*, the request was made in April 2001, the Department
16 made an initial release in May 2001 and completed its collection, but, as the court explained, “[i]t is very
17 hard to discern . . . what in the world Department personnel were doing from July 2001 through December
18 2001” instead of reviewing the 7,584 pages of documents collected. 191 F. Supp. 2d 41, 43 (D.D.C. 2002).
19 As the court explained further: “What is even more distressing is that [p]laintiff was not the only requester
20 seeking this information. . . . Thus, by processing [p]laintiff’s request in a far more expeditious manner, as
21 this Court will order, DOE will also be carrying out its FOIA responsibilities to the other 11 requesters.” *Id.*
22 For these reasons, and because “the material which [p]laintiff seeks is of extraordinary public interest,” the
23 court rejected the Department’s request to have until May 15, 2002 to process the records, and required them
24 to be processed by March 25, 2002. *Id.*

25 While BOP believes it is premature for the Court to set a processing rate before the parties have
26 determined a final estimated page count, BOP respectfully submits that a rate consistent with the authorities
27 from this Court cited is reasonable given the facts of this case. The Court should not require monthly status
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1 reports about the number of pages released. Plaintiff will know how many pages are released with each
2 monthly release, and there is no reason to fill the Court's docket with duplicative information. The parties
3 can update the Court at further status conferences about the progress of the monthly releases.

4 BOP agrees to release documents in native format with metadata to the extent required by FOIA
5 or Ninth Circuit law if the record is readily reproducible by the agency in that form or format." 5 U.S.C.
6 § 552(a)(3)(B).

7 **4. Motions**

8 There are no prior or pending motions. Plaintiff may move for a preliminary injunction.

9 **5. Amendments to the Pleadings**

10 No amendments to the pleadings are anticipated by either party at this time.

11 **6. Evidence Preservation**

12 The parties have preserved evidence, reviewed the "ESI Guidelines," and are not aware of any
13 preservation issues that may impact this dispute.

14 **7. Disclosures**

15 The parties stipulate that at this time, initial disclosures pursuant to FRCP 26 are unnecessary.
16 Accordingly, the parties ask that the Court defer setting a deadline for initial disclosures at this time.

17 **8. Discovery**

18 To date, no discovery has been taken by any party. The parties stipulate that discovery is not
19 necessary at this time. Plaintiff notes discovery is appropriate in some FOIA cases, including against
20 the BOP. *See Weisberg v. United States Dept. Of Justice*, 627, F.2d 365, 371 (D.C. Cir. 1980); *Nat'l*
21 *Com'n on Law Enforcement and Social Justice v. C.I.A.*, 576 F.2d 1373, 1375 (9th Cir. 1978); *Raher*
22 *v. BOP*, No. 09-526, 2012 WL 2721613 (D. Or. July 6, 2012). Defendant notes that discovery is
23 generally not appropriate in FOIA actions. *See Lane v. Department of Interior*, 523 F.3d 1128, 1134
24 (9th Cir. 2008) (noting that discovery is limited in FOIA cases "because the underlying case revolves
25 around the propriety of revealing certain documents"); *Wheeler v. CIA*, 271 F. Supp. 2d 132, 139
26 (D.D.C. 2003) ("Discovery is generally unavailable in FOIA actions.") (citing *Judicial Watch, Inc. v.*
27 *Export-Import Bank*, 108 F. Supp. 2d 19, 25 (D.D.C. 2000)).

1 **9. Class Actions**

2 This case is not a class action.

3 **10. Related Cases**

4 There are no related cases pending before this Court as defined by Local Rule 3-12.

5 **11. Relief**

6 Plaintiff seeks an order from the Court to:

- 7 a. Order Defendant to produce at least 5,000 deduplicated pages every four weeks.
- 8 b. Order the Defendant to provide each record in its native format, retaining its unique file characteristics, name, and metadata in the first production, and all productions going forward.
- 9 c. Order the Defendant to file monthly status reports stating, at minimum, the number of deduplicated pages the Defendant released and withheld, and on what basis.
- 10 d. 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;
- 11 e. Declare that Plaintiff is entitled to disclosure of the requested records;
- 12 f. 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.");
- 13 g. Order Defendant to immediately process the Request and disclose, in their entirety, unredacted versions of all records responsive to the Request that are not specifically exempt from disclosure.
- 14 h. 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;
- 15 i. Order Defendant to grant the Request for treatment as a news media representative;
- 16 j. Grant a fee waiver and enjoin Defendant from charging search, review or duplication fees;
- 17 k. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's Request;
- 18 l. Retain jurisdiction of this action to ensure that no agency records are wrongfully withheld;
- 19 m. Award Plaintiff attorney's fees and litigation costs incurred in this action.
- 20 n. Order such other relief as the Court may deem just and proper.

21 Defendant seeks judgment in its favor and against Plaintiff, along with such other relief as may
22 be appropriate.

23 **12. Settlement and ADR**

24 The parties each filed an ADR Certification and will be prepared to discuss ADR at the CMC.
25 Given the early stage of this case, the parties suggest that ADR is premature at this time.

26 **13. Other References**

27 The parties agree that this case is not suitable for reference to binding arbitration or a special
28 master, or reference to the Judicial Panel on Multidistrict Litigation.

1 **14. Narrowing of Issues**

2 The parties are conferring on ways to narrow or streamline this case.

3 **15. Schedule**

4 As defendant has just begun producing documents, the parties are not yet able to propose a
5 summary judgment schedule. The parties request that the Court schedule another case management
6 conference on April 3 or 10, 2025 or on May 8 or 15, 2025. Expedited Trial Procedure of General Order
7 No. 64 is not applicable in this case.

8 **16. Trial**

9 The parties anticipate the case will resolve in meet and confer, ADR, or summary judgment.

10 **17. Disclosure of Non-Party Interested Entities or Persons**

11 Plaintiff filed the certificate of interested parties. *See* Dkt. No. 3. Defendant is exempt.

12 **18. Professional Conduct**

13 Both parties' counsel reviewed the Guidelines for Professional Conduct.

14 **19. Such Other Matters as May Facilitate Just, Speedy and Inexpensive Resolution**

15 None.

16 DATED: January 9, 2025

Respectfully submitted,

17 ISMAIL J. RAMSEY
18 United States Attorney

19 /s/ Michael T. Pyle
20 MICHAEL T. PYLE
Assistant United States Attorney

21 *Attorneys for Defendant*

22 /s/ Caitlin Henry
23 CAITLIN HENRY

24 *Attorney for Plaintiff*

25 *In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury*
26 *that all signatories have concurred in the filing of this document.*