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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 VICTORIA LAW,

12 Plaintiff,

13 v.

14 FEDERAL BUREAU OF PRISONS,

15 Defendant.
16

Case No. 4:24-CV-06628-YGR

JOINT CASE MANAGEMENT STATEMENT

Date: February 3, 2025

Time: 2:00 p.m.

Courtroom: Via Zoom

17 The parties to the above-captioned action jointly submit this initial joint case management
18 statement (“JCMS”) in advance of the Case Management Conference (“CMC”) set for February 3, 2025.

19 **1. Jurisdiction and Service**

20 There are no issues regarding jurisdiction, venue, or service at this time. Plaintiff brings this
21 action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
22 The Court has subject matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).
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24 **2. Facts**

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

1 Defendant answered on November 27, 2024. *See* Dkt. No 16. The parties are engaging in good faith
2 discussions and agreed to custodians, search terms, and search parameters for a search of agency email.
3 The parties agreed on the temporal parameters for other searches. On December 20, 2024 BOP provided
4 all 568 pages responsive to item 44. On January 24, 2025, BOP released 51 pages in responsive to items
5 7, 9, 10, 12, and 13. BOP redacted the registration numbers and names. BOP is working on 1, 2, 11, 12,
6 13, 14, and 35 as release priorities. BOP will make rolling releases of records approximately every four
7 weeks.

8 **3. Legal Issues**

9 **Plaintiff's Statement**

10 A Court order is essential to advance progress in this expedited case because the BOP is
11 engaging in a pattern of actions that impede progress, including failing to meet the deadline parties
12 agreed on, and refusing to agree to a production schedule with dates and pages certain. By the date of
13 this Conference, 206 days will have elapsed since BOP's receipt of the request. Plaintiff and journalist
14 Victoria Law's need for the requested records is urgent, as the BOP is currently under intense media
15 scrutiny, and because reporting on the records could impact hearings and pending h, compassionate
16 release, and civil rights cases. Previous filings substantiate¹ Plaintiff's request for a sanctions
17 enforceable order that, at a minimum, addresses four issues: 1. monthly production and status update
18 deadlines; 2. production substance; 3. production format; 4. substantial production completion deadline
19 and case procedures that meet FOIA's expedited standard. A Court has jurisdiction and power to grant
20 any and all necessary equitable or injunctive relief where an agency improperly delays the production of
21 requested agency records. 5 U.S.C. § 552(a)(4)(B) (providing "jurisdiction to enjoin the agency from
22 withholding agency records and to order the production of" improperly withheld records); *Elec. Privacy*
23 *Info. Center v. Dep't of Justice*, 416 F. Supp. 2d 30, 35 (D.D.C. 2006) ("EPIC") ("FOIA imposes no
24 limits on courts' equitable powers in enforcing its terms and unreasonable delays in disclosing non-
25 exempt documents violate the intent and purpose of the FOIA, and courts have a duty to prevent such

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28 ¹ The seven issues enumerated in Initial Case Management Statement (*Dkt.* No. 21) remain, but are not
briefed as they do not all need to be addressed at the initial Case Management Conference.

1 abuses.”) (internal citation and quotation marks omitted).

2 First, an order with enforceable monthly production schedule and status update deadlines is
3 needed because of BOP’s delays and breach of agreement. BOP failed to meet FOIA’s deadline to make
4 determination and produce records on August 16, 2024. BOP cancelled five meet and confers. BOP
5 postponed its Answer twice. Plaintiff asked BOP to agree to a production schedule with dates, pages,
6 and format certain. BOP agreed only to produce records every four weeks. BOP immediately breached
7 its agreement. Its first production was December 20, 2024. Its second production was January 24, seven
8 days after the deadline. This pattern and practice likely to continue unless an enforceable order is issued.

9 Further, BOP has not estimated how many responsive pages exist. In 203 days, BOP released
10 619 pages. It has only provided an estimate for item number one of fifty. BOP located approximately
11 50,000 pages of emails for item one. At BOP’s proposed rate of 300-500 pages every four weeks this
12 item alone could take thirteen years.² Moreover, after proposing a schedule of 300-500 pages a month,
13 BOP only released 51 pages, and did so a week after its deadline. At Plaintiff’s proposed production rate
14 of 5,000 pages every four weeks, email production alone would take ten months. Plaintiff’s proposal is
15 within the scope of what courts regularly order. Judges have ordered production of approximately 5,000
16 pages per month where the records sought on an expedited basis were, like here, a “recent subject of
17 national policymaking,” could prevent the loss of life, involve time sensitive issues of “enormous public
18 concern,” national significance, ongoing scandals, and news coverage. *See E.g., Am. C.L. Union Found.*
19 *of S. California v. United States Immigr. & Customs Enft*, 705 F. Supp. 3d 1077 (C.D. Cal. 2023)(3,000
20 pages); *Los Angeles Times Commc'ns LLC v. U.S. Dep't of Homeland Sec.*, No.

21 220CV10911FLAMRWX, 2022 WL 18932816, at *3 (C.D. Cal. Mar. 7, 2022)(3,000 pages); *Al Otro*
22 *Lado v. DHS*, 20-cv-5191, Dkt. 35 (C.D. Cal. Sept. 23, 2020)(1,000 pages); *The Center for Investigative*
23 *Reporting v. Central Intelligence Agency*, No. 3:20-cv-06641, (N.D. Cal., 2020)(ECF No. 42)(Ordering
24 100 documents produced per month); *Pub. Health & Med. Pros. for Transparency v. Food & Drug*
25 *Admin.*, No. 4:21-CV-1058-P, 2022 WL 90237, at *2 (N.D. Tex. Jan. 6, 2022)(55,000 pages); *Nat. Res.*

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² At 300 page a month, the emails would be released in 166 months, or over 13 years. At 500 pages a
month, the emails would be released in 100 months, or over 8 years.

1 *Def. Council v. Dep't of Energy*, 191 F. Supp. 2d 41, 43 (D.D.C. 2002) (7,500 pages); *Villanueva v.*
 2 *United States Dep't of Just.*, No. 19-23452-CIV, 2021 WL 5882995, at *1 (S.D. Fla. Dec. 13,
 3 2021)(5,125 pages); *Clemente v. FBI*, 71 F. Supp. 3d 262, 269 (D.D.C. 2014)(5,000 pages); *Open Soc'y*
 4 *Just. Initiative v. Cent. Intel. Agency*, 399 F. Supp. 3d 161, 176 (S.D.N.Y. 2019) (5,000 pages); *Judicial*
 5 *Watch, Inc. v. Dep't of Energy*, 191 F. Supp. 2d 138 (D.D.C. 2002)(4,500 pages). Judge Thompson
 6 (previously assigned to this case) has overseen a “1,200 page per month review and production
 7 schedule” in *Center for Gender and Refugee Studies, et al. v. U.S. Customs and Border Protection*, No.
 8 3:24-cv-01601 (N.D. Cal., 2024) (ECF No. 21).

9 Second, an order is needed on the substance of production because the production is incomplete
 10 and insufficient. Plaintiff asks court to order release prioritize the requested order of processing “in
 11 chronological order, from the most pressing for remedying harm to life and liberty interests, to the least
 12 pressing.” Complaint *Dkt.* No. 1-1. First it released disposal schedules, which were ranked nearly last in
 13 priority and seemingly available³ on the National Archives’ website.⁴ Second, it released a 51 pages
 14 PDF of grievance summaries.⁵ Due to merging records, and release of back-end database edited
 15 summaries instead of individual grievance forms themselves, it is unclear what record relates to what
 16 request item and what exemptions claimed ((b)(6) and (b)(7)(c)) relate to what request item number.

17 Third, an order on production format is needed because BOP altered records and made them less
 18 useful. Plaintiff’s request did “reasonably describe” the preferred output format, and specified that she
 19 sought records “preserved in the native format with metadata.” Plaintiff followed the regulations that
 20 “requesters should include as much detail as possible about the specific records or the types of records”
 21 and specifically named that she sought “ the native format with metadata.” 28 C.F.R. § 16.3 BOP was
 22 on notice of, and thus had an obligation to accommodate the demand to transmit records as they are kept
 23 in the ordinary course of business, and in the native format with metadata, which is an integral or
 24 intrinsic part of an electronic record. “Where documents already exist in the requested format in an
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26 ³Parties were both unable to locate these records until an archivist responded to Plaintiff’s counsel.

27 ⁴ RECORDS CONTROL SCHEDULES NATIONAL ARCHIVES, [https://www.archives.gov/records-
 mgmt/rcs/schedules/index.html?dir=/departments/department-of-justice/rg-0129](https://www.archives.gov/records-mgmt/rcs/schedules/index.html?dir=/departments/department-of-justice/rg-0129) visited Jan 15, 2025)

28 ⁵ It summarized only 37 grievances from April, 2023-July, 2024. It didn’t share forms written by AICs.

1 agency's system and "would require no conversion to a different format to comply with the plaintiff's
2 format request, the records should be plainly 'readily reproducible.'" *Scudder v. CIA*, 25 F. Supp. 3d 19,
3 43 (D.D.C. 2014). "When an agency already creates or converts documents in a certain
4 format...requiring that it provide documents in that format to others does not impose an unnecessarily
5 harsh burden, absent specific, compelling evidence as to significant interference or burden." *TPS, Inc. v.*
6 *United States Department of Defense*, 330 F.3d 1191, 1195 (9th Cir. 2003).

7 When BOP transmitted its two releases, it merged individual files into one PDF, stripping each
8 file of metadata, native formatting, and titles. By renaming and consolidating over 170 retention
9 schedules, BOP made it difficult to determine whether the records matched what was likely required to
10 be publicly available and on the National Archives site already. The second release merged an export of
11 database content from items 7 (compassionate release), 9 (immigration), 10 (immigration), 12
12 (property), and 13 (transfer grievances) into one PDF, obscuring which records are responsive to what
13 item and which exemptions are claimed. BOP did not release the forms AICs drafted. As the format in
14 which a record is produced can affect the integrity and utility of the record itself, Plaintiff seeks an order
15 preventing BOP from changing records from the format in which they are maintained in the ordinary
16 course of business into a new format that eliminates substance from the record. BOP is obstructing
17 Plaintiff by altering files to make the records less functional and unnecessarily prolonging the review
18 process and increasing the costs of litigation.

19 Fourth, an order with a substantial production completion deadline and case procedures that meet
20 FOIA's expedited timeline is needed. If BOP is permitted to continue its current actions, the case will
21 drag on for years. Plaintiff has no objection to Judge Thompson's Draft Case Management and
22 Scheduling Order's proposal: Last day to file dispositive motions - February 20, 2026; Last day to be
23 heard - April 28, 2026; Discovery Cut-Off - January 23, 2026*⁶; Settlement conference with a
24 Magistrate - by September 30, 2025; Last Day to Amend Pleadings July 25, 2025; Initial Disclosures
25 January 30, 2025*; Further Status Conference - April 17, 2025; July 24, 2025.

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⁶*The Draft Order contemplated discovery deadlines. Plaintiff seeks the Court's guidance on the matter of discovery. Plaintiff's position is that discovery may be appropriate. Defendant opposes discovery.

1 Because BOP is so deficient in complying with the letter and the spirit of FOIA, and so long has
2 elapsed despite BOP deeming the request expedited, Plaintiff requests a sanctions enforceable order
3 addressing these four issues and any other matters the court deems appropriate. Plaintiff, her readers,
4 and the public, will lose the value of release, holding the BOP accountable in hearings, and civil,
5 immigration, and compassionate release cases, if release is not completed in an expedited manner. Delay
6 is, as Congress recognized, “tantamount to denial.” 1974 U.S.Code Cong. & Admin. News, pp. 6267,
7 6271. Here, failure to order expedition would “preclude[the public] ... from obtaining in a timely
8 fashion information vital to the current and ongoing debate surrounding the legality of a high-profile
9 government action.” *Protect Democracy Project, Inc. v. Dep’t of Defense*, 263 F. Supp. 3d 293, at 300
10 (D.D.C. 2017) (internal quotation omitted). Here, the Request must not be merely labeled as expedited,
11 but records must be produced as soon as possible lest they will become stale, and “stale information is of
12 little value.” *See American Oversight v. Dep’t of State*, 414 F. Supp. 3d 182, 186 (D.D.C. 2019) (citing
13 *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988); *Elec. Frontier Found. v. Office*
14 *of Dir. of Nat’l Intel.*, 2007 WL 4208311, at 7 (N.D. Cal. Nov. 27, 2007) (“[O]ngoing public and
15 congressional debates about issues of vital national importance ‘cannot be restarted or wound back.’”)
16 (internal citation omitted). The “loss of that ‘value’ constitutes a cognizable harm.” *Electronic Privacy*
17 *Info. Center v. Dep’t of Justice* 416 F. Supp. 2d 30, 43 (D.D.C. 2006). Plaintiff submits that only an order
18 will prevent further misconduct and delay in proceedings, waste of court resources, and unnecessary
19 increases in legal costs and fees.

20 **Defendant’s Statement**

21 Plaintiff appears to overstate the urgency of this FOIA request. Plaintiff does not represent any
22 of the individuals formerly incarcerated at Dublin. The lawyers that represent the class reached a consent
23 decree in *CCWP* did not need the FOIA documents to represent the class. Many articles have been
24 published about the closure of Dublin and the criminal cases. None of the journalists writing these
25 articles needed the documents Plaintiff seeks to report on the story. Plaintiff herself published numerous
26 articles without needing the documents.

27 BOP notes that BOP will be *processing* a certain number of pages — as opposed to *producing* that
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1 number — because some of the processed pages will be duplicates, nonresponsive documents, or exempt
2 from disclosure, and therefore it cannot predict the number of pages at issue. The BOP staff person assigned
3 has monthly releases for three other cases in litigation: two with 500 pages/month processed and one with
4 300 pages/month released. In recent years, BOP received between 6,170 and 4,403 requests per year. BOP’s
5 FOIA staff also handle requests for medical records in support of motions for compassionate release or home
6 confinement. BOP has seventeen FOIA staff. In a year with 5,000 requests, that would average 294 requests
7 per staff member. BOP understands that the Court may want a faster processing rate than 300 to 500 pages
8 per month, but BOP asks the Court to consider the agency’s limited resources when setting a monthly rate.

9 Plaintiff cites one case from the Northern District of California at the rate of 1200 pages per month,
10 which is greater than most in this district which have stipulated or court imposed rates of 500 to 750 pages
11 per month. *See, e.g., Swords to Plowshares v. U.S. Dep’t of Veterans Affairs*, No. 3:20-cv-07146-JSC, ECF
12 No. 31 (March 19, 2021) (600 pages); *USRTK v. U.S. Dep’t of Education*, No. 20-cv-09117-DMR, ECF No.
13 21 (750 pages); *see also ACLU of N. Cal. v. ICE*, No. 4:21-cv-02632-DMR, ECF No. 31 (October 13, 2021),
14 Ex. A (500 pages in *ACLU of N. Cal. v. DHS*, No. 3:18-cv-04105-LB (N.D. Cal.)); *Cohdoes v. U.S. Dep’t of*
15 *Justice et al.*, 3:20-cv-4015, ECF No. 78 (500 pages).

16 BOP agrees to release documents in native format with metadata to the extent required by FOIA
17 or Ninth Circuit law, but the statute only requires native format **“if the record is readily reproducible by**
18 **the agency in that form or format.”** 5 U.S.C. § 552(a)(3)(B) (emphasis added). BOP’s release of 568
19 pages of records on December 20, 2024 was provided in native format, as these documents were
20 downloaded from PDFs on National Archives website. BOP’s second release had a cover letter
21 identifying the applicable codes, and included print outs from various databases and released the
22 documents together as it is easy to see which record is which, and the redactions are clearly marked on
23 the pages with redactions.

24 Plaintiff complains that BOP did not produce the underlying records, but Plaintiff had earlier
25 indicated that summary documents could be provided and might be sufficient for some categories of
26 records. If Plaintiff stands on receiving “any and all” documents about the categories of records, then
27 the volume of records will be far higher and more burdensome to release. The categories of documents
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1 requested by Plaintiff include immigration, health, and mental health records, which BOP will have to
2 redact to protect the privacy of former inmates who presumably would not want their immigration,
3 health, and mental health records made public. Unlike litigation where there can be a protective order or
4 an ability to seal records, records released under FOIA become fully public documents.

5 **4. Motions**

6 There are no prior or pending motions. Plaintiff may move for a preliminary injunction. BOP
7 believes that a preliminary injunction is unwarranted and would unnecessarily burden the Court.

8 **5. Amendments to the Pleadings**

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

10 **6. Evidence Preservation**

11 The parties preserved evidence, reviewed the “ESI Guidelines,” and are not aware of issues.

12 **7. Disclosures**

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

15 **8. Discovery**

16 No discovery has been taken. Plaintiff is open to discovery. Defendant opposes discovery.

17 **9. Class Actions**

18 This case is not a class action.

19 **10. Related Cases**

20 The Court determined this case is related to *M.R. v. Federal Correctional Institution "FCI"*
21 *Dublin* (4:22-cv-05137) See Related Case Order ECF No. 273.

22 **11. Relief**

23 Plaintiff seeks an order from the Court to:

- 24 a. Order Defendant to produce at least 5,000 deduplicated pages every four weeks.
25 b. Order the Defendant to provide each record in its native format, retaining its unique file
26 characteristics, name, and metadata in the past productions, and all productions going forward.
27 c. Order the Defendant to file monthly status reports stating, at minimum, the number of deduplicated
28 pages the Defendant released and withheld, and on what basis.
d. Declare, pursuant 28 U.S.C. § 2201, that the Defendant violated 5 U.S.C. § 552;
e. Declare that Plaintiff is entitled to disclosure of the requested records;

- 1 f. Order expeditious proceedings in this action pursuant to 28 U.S.C. § 1657; and FRCP 12(a)(2)
- 2 (Courts are not required to automatically accord expedited treatment to FOIA lawsuit; however, as
- 3 with other civil actions, they may do so "if good cause therefore is shown.");
- 4 g. Order Defendant to immediately process the Request and disclose, in their entirety, unredacted
- 5 versions of all records responsive to the Request that are not specifically exempt from disclosure.
- 6 h. Order Defendant to prepare an index pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973),
- 7 cert. denied, 415 U.S. 977 (1974), for any documents it seeks to withhold under a FOIA exemption;
- 8 i. Order Defendant to grant the Request for treatment as a news media representative;
- 9 j. Grant a fee waiver and enjoin Defendant from charging search, review or duplication fees;
- 10 k. Enjoin Defendant from continuing to withhold any and all non-exempt responsive records;
- 11 l. Retain jurisdiction of this action to ensure that no agency records are wrongfully withheld;
- 12 m. Award Plaintiff attorney's fees and litigation costs incurred in this action.
- 13 n. Order such other relief as the Court may deem just and proper.

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

16 **12. Settlement and ADR**

17 The parties each filed an ADR Certification and will be prepared to discuss ADR at the CMC.
18 Given the early stage of this case, the parties suggest that ADR is premature at this time. BOP suggests
19 that a settlement conference with a magistrate judge would be appropriate before any motions are filed.

20 **13. Other References**

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

23 **14. Narrowing of Issues**

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

25 **15. Schedule**

26 Plaintiff requests a Further Status Conference within the quarter. BOP does not believe it is
27 necessary to have a further status conference in the next six months, and counsel for BOP will be out of
28 the country and unavailable April 14 through May 2, 2025.

16. Trial

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

17. Disclosure of Non-Party Interested Entities or Persons

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

1 **28. Professional Conduct**

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

3 **21. Such Other Matters as May Facilitate Just, Speedy and Inexpensive Resolution**

4 None

5 DATED: January 27, 2025

Respectfully submitted,

6 ISMAIL J. RAMSEY
United States Attorney

7
8 /s/ Michael T. Pyle
MICHAEL T. PYLE
9 Assistant United States Attorney

10 *Attorneys for Defendant*

11 /s/ Caitlin Henry
CAITLIN HENRY

12 *Attorney for Plaintiff*

13
14 *In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury that all signatories have concurred in the filing of this document.*

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