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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **OAKLAND DIVISION**

10 VICTORIA LAW,
11 PLAINTIFF,
12 vs.
13 FEDERAL BUREAU OF PRISONS,
14 DEFENDANT.

CASE No.: 4:24-cv-06628-YGR

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION FOR PARTIAL
JUDGMENT ON THE PLEADINGS,
DECLARATORY JUDGMENT, AND
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF**

HON. YVONNE GONZALEZ ROGERS
COURTROOM NUMBER: 1
DATE & TIME OF HEARING: SEPTEMBER 30,
2025

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I. INTRODUCTION

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2 More than a year after submitting an expedited processed Freedom of Information Act (FOIA)
3 Request to the Bureau of Prisons (BOP) (“Defendant”) seeking records about the notorious criminal
4 “rape club” federal officials ran at the Dublin Federal Correctional Institute (Dublin), this action has no
5 end in sight. That is due in significant part to BOP’s handling of Plaintiff’s Request and its conduct in
6 this litigation, which have departed fundamentally from the statutory framework Congress established
7 for processing FOIA requests. BOP has yet to complete a search and make the statutorily required
8 determination on Plaintiff Victoria Law’s (“Plaintiff “or “Law”) Request. Far from moving the
9 expedited Request to the head of the line and producing responsive records “as soon as practicable,”
10 BOP conceded in sworn testimony that it buried her Request near the end of its growing 6,000+-request
11 backlog. Notwithstanding dozens of good faith attempts to confer and multiple hearings, BOP refuses to
12 make responsive records “promptly available” as FOIA requires or indicate when its search and
13 productions will conclude. Even under the present 1,000-page-per-month processing order (*Dkt.* No.
14 42), by the BOP’s estimates, the Request will go unfulfilled, and this case will languish on the court’s
15 docket for *well over six* years due to email production alone. *See* Ex. 11, Ex. 12.

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20 FOIA vests courts with jurisdiction to allow the agency additional time to complete its review of
21 records *only* where the agency can demonstrate exceptional circumstances and due diligence; a defense
22 BOP waived by not claiming an *Open America* stay (stating: “[A]n *Open America* stay motion... that's
23 not at all what the Government is seeking in this case.”). Transcript of Discovery Hr’g, *Dkt.* No. 43 at
24 20:19–22 (May 12, 2025). *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605
25 (D.C. Cir. 1976). If BOP fails to prove the defense or waives it, a court may enjoin withholding and
26 order production, which is what Plaintiff seeks here. Plaintiff seeks an order that within the next 30 days
27 BOP must: 1. Complete its search for all records responsive to Plaintiff’s request; 2. Issue a
28

1 determination, including identifying what responsive records exist, how many there are, an estimated
2 date for completing production, and what exemptions it intends to claim; 3. Cease improperly
3 withholding agency records from Plaintiff and produce all records improperly held; 4. Cease improperly
4 withholding agency records from Plaintiff and produce all records improperly held; 5. Make records
5 promptly available; 6. Produce each record in its native format with metadata preserved, retaining
6 original file names and structure (aggregating multiple distinct records into a single file is prohibited),
7 unless it demonstrates in writing and with specificity that a record cannot be reproduced in that format;
8
9 6. Begin expeditious proceedings in this action pursuant to 28 U.S.C. § 1657; and FRCP 12(a)(2)
10 (Courts are not required to automatically accord expedited treatment to FOIA lawsuit; however, as with
11 other civil actions, they may do so "if good cause therefore is shown."); 7. Designate an expedited
12 processing queue, move the Request to the front of the queue, process the Request and disclose, in their
13 entirety, unredacted versions of all records responsive to the Request that are not specifically exempt
14 from disclosure under FOIA, including any non-identical copies of any such records; 8. File monthly
15 status reports stating, at minimum, the number of deduplicated pages the Defendant released and
16 withheld, and on what basis, the locations searched, custodians contacts, the terms used, whether
17 releases were in native format, exemptions claimed, and what remains to be searched; and 9. Preserve all
18 potentially responsive records, including electronically stored information, pending final resolution of
19 this action. Plaintiff seeks an order that the Court will retain jurisdiction of this action to ensure that no
20 agency records are wrongfully withheld and award Plaintiff attorney's fees and litigation costs incurred
21 in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
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1 This case arises out of a July 2024 Request seeking records about the most egregious systemic
2 abuse scandal¹ in the history of the BOP. *Dkt.* No. 1-1 at 1-85. When Court oversight and a Special
3 Master arrived in April 2024 attempting to establish transparency and remedy harm, BOP responded
4 with a chaotic and retaliatory shutdown that appeared calculated to obstruct accountability. *Id.*

6 Plaintiff Victoria Law is a journalist, author, and expert in the rights of incarcerated people who
7 intends to analyze and interpret the requested records to produce news articles and other edited works
8 and to provide direct access to these records to incarcerated people, litigants, public officials, courts, and
9 other media outlets. *See* Complaint, *Dkt.* No. 1, Law Decl. *Dkt.* No. 1-1 at 32-33. The information
10 sought holds particular value for incarcerated individuals, legislators, and judges that will be lost if not
11 disseminated quickly. *Id.* at 1-85. Law obtained expedited processing because, without prompt release,
12 records exposing government criminal conduct recently subject to national policymaking, that “could
13 prevent the loss of life,” involving time-sensitive issues of “enormous public concern,” public concern,
14 active scandals, and sustained news coverage could lose value if not timely reported. Exigency was
15 needed as the *CCWP* docket indicated BOP may be destroying records and evidence. *See Dkt.* No. 1-1 at
16 13.

19 As part of her efforts to inform the public in a timely manner regarding the unprecedented, years-
20 long, widespread systemic and ongoing abuse scandal, Law sought several categories of records that
21 would shed light on the BOP’s actions. *Id.* at 1-85. The urgency and scale of the public interest make
22 transparency about the ongoing scandal especially imperative. Ongoing coverage of the mishandling of
23 the closure, the mistrial and upcoming retrial of Officer Smith, pleas of two more officers, and reports
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27 ¹ For years, a warden, chaplain, and dozens of correctional officers ran a “rape club,” involving dozens
28 of staff who sexually trafficked and exploited incarcerated individuals with impunity at Dublin. *Id.* BOP
silenced victims through threats of retaliation, solitary, ICE detention and deportation, and denial of
medical care or release. *Id.*

1 that the uninhabitable, mold and asbestos ridden facility could be repurposed into a for-profit
2 immigration detention center, and that ICE and BOP may reopen Alcatraz, demonstrates there was and
3 continues to be widespread public and media interest in immediate access to information. *Id.* at 76-85,
4
5 Henry Decl. at ¶¶ 35, 44.

6 When BOP wants to move, it doesn't crawl; it musters the resources to drop everything and
7 sprint. After "announcing" the closure of Dublin to the Court in filing on April 12, 2024, it took just
8 three days to mobilize and reassign staff and begin violently uprooting the 600 people incarcerated there,
9
10 many of whom had lived there for years. *Dkt.* No. 1 at 19. Although BOP expedited the closure and
11 attempted to dismiss the *CCWP* case and related transparency and oversight issues two months after
12 closure, it has not expedited this FOIA. Here, where the law explicitly requires BOP to "immediately"
13 release records, it should be made to take equal if not greater steps to do so. After a year and numerous
14 written and telephonic conferrals, BOP has yet to perform its most basic obligations under the Act—
15 including identifying responsive agency records and communicating what categories of records it
16 intends to withhold or produce. BOP oversight and democratic accountability depend on real-time
17 transparency, not *post hoc* records dumps years after the utility of records has been diminished or
18
19 extinguished. Because of the judicially recognized diminishing value of information over time, untimely
20 FOIA production thwarts transparency and violates FOIA's text and purpose. Therefore, Plaintiff seeks
21 an order to bring BOP into compliance and this case to a just, and efficient resolution.
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24 **II. FACTS AND PROCEDURAL BACKGROUND**

25 **A. Plaintiff's FOIA Request and BOP's Pre-Litigation Response**

26 Law submitted the FOIA Request at issue in this case to BOP on July 5, 2024. *Dkt.* No. 1-1.
27 BOP acknowledged receipt on July 10, assigned it number 2024-04492. *Dkt.* No. 1-2 at 1-2. BOP
28 recognizes the clear risk of harm and public interest at stake—as evidenced by its grant of expedited

1 processing after Law submitted 80 pages of proof of civil, criminal, compassionate release, immigration,
 2 and government proceedings that would benefit from publication of articles and records. *See Dkt.* No. 1-
 3 1². Though she sought expedited processing treatment, BOP failed to grant or deny her Request within
 4 the ten calendar days as required by law. When BOP failed to make a determination within the
 5 statutorily prescribed timeframe, Plaintiff filed suit on September 20, 2024. *Dkt.* No. 1. After seeking
 6 multiple extensions (*Dkt.* No. 13, 14), BOP filed its Answer on November 27, 2024, at which time BOP
 7 had neither provided records responsive to Plaintiff’s Request nor made a determination as to whether it
 8 would comply. *Dkt.* No. 16. at ¶ 60. BOP has still not completed a search or made and communicated a
 9 determination regarding Plaintiff’s Request or provided an estimated date on which it intends to
 10 complete production.
 11

12 **B. The Parties’ Litigation Positions**

13 Across the Case Management Statements, Discovery Letter Briefs, and Status Reports, Plaintiff
 14 consistently documented and challenged the pace, substance, and format of disclosure. (*Dkt.* Nos. 21,
 15 28, 31, 33, 34, 39). BOP agreed to release records every four weeks (*Dkt.* No. 21 at 2), then immediately
 16 breached that agreement. BOP has missed five deadlines and entirely skipped two releases. *See Ex.* 9.³
 17 What should have been the eighth release (due July 4) became the sixth, completed on June 30 only after
 18 Judge Tse ordered it (*Dkt.* No. 42). *Id.* Though an agency is required to “provide the record[s] in any
 19 form or format requested... if the record is readily reproducible by the agency in that form or format,” 5
 20 U.S.C. 552(a)(3)(B), BOP repeatedly altered records and changed the format of readily reproducible
 21 records. Before Judge Tse’s May 30, 2025, Discovery Order (*Dkt.* No. 42), BOP reviewed 1,220 pages
 22
 23

24 _____
 25 ² *See Dkt.* No. 1-1 Ex. A Initial FOIA Request to BOP DOJ (Pgs 1-25) and enclosures; Enumerated List
 26 of Requested Records (Pgs 26-31), Declaration of Victoria Law (Pgs 32-33); Declaration of Caitlin
 27 Kelly Henry (Pgs 34-39); Exhibit 1: Imminent Threat to the Physical Safety and Life (abbreviated as Ex.
 28 A at Ex. 1)(Pgs 40-47); Exhibit 2: Urgency to Inform the Public (Pgs 48-57); Exhibit 3: Substantial Due
 Process Rights (Pgs 58-75); Exhibit 4: Exceptional Media Interest(Pgs 76-85).

³ The second through fourth productions were each a week late; the fifth, due April 11, was three weeks late. BOP produced nothing for the sixth and seventh, due May 9 and June 6.

1 and released 1,219 pages either in full or in part. BOP released only 728 pages that were not public
 2 already—an average rate of 182 pages monthly.⁴ *See* Ex. 10 (Release Timelines and Page Counts), Ex.
 3 11 (Estimated Production Timeline Based on Email Production Rate), Ex. 12 Categories of Records
 4 Produced and Withheld. Law requested **production** (not review) of 5,000 pages to ensure timely access
 5 and case resolution. *See* First Case Mgmt. Statement, *Dkt.* No. 21, Second Case Mgmt. Statement, *Dkt.*
 6 No. 28. Law repeatedly proposed to streamline and narrow the scope and process; BOP repeatedly
 7 rejected or did not respond. Counsel for BOP also suggested that the volume of nonresponsive
 8 documents is “a problem of Plaintiff’s own making,” which is inaccurate as the government proposed
 9 and controlled the search terms used. Henry Decl. ¶ 50. The agency is both the custodian of the records
 10 and the party with the ability to tailor or test search queries, and it has yet to communicate which terms
 11 it searched, where, and when. BOP defended itself with arguments against expedited processing and
 12 about overall agency resource limits. Christenson Decls. *Dkt.* No. 31-2, 33-4.

15 C. **Judge Tse’s Order**

16 On May 30, 2025, Judge Tse issued an order compelled BOP to increase its rate to 1,000 pages
 17 reviewed per month. (*Dkt.* No. 42). BOP since released in full 61 pages (3.05%), in part 640 pages
 18 (32%), withheld 11 pages (0.55%), found duplicative 42 pages (2.1%), and deemed non-responsive
 19 1,246 pages (62.3%). *See* Ex. 10. At this rate production will take over six years for email alone, with no
 20 estimates for 46 remaining items.⁵ *See* Ex. 11, Estimated Production Timeline Based on Email
 21 Production Rate, Ex. 12, Categories of Records Produced and Withheld.

23 _____
 24 ⁴ Its initial 568-page release consisted of BOP forwarding NARA-maintained retention schedules
 25 (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)).

26 ⁵ In the June 30, 2025 production of 674 located email pages, BOP released only 2 pages in full (0.3%)
 27 and 41 pages in part (6%), while withholding the rest as 28 pages “duplicative” (4%) and 592 pages
 28 “non-responsive” (88%) — with no disclosure of search parameters or responsiveness criteria. *See* Ex.
 10 (Release Timelines and Page Counts). In the July 31, 2025, production of 687 located email pages,
 BOP released **zero** pages in full and only 22 pages in part (3%), while withholding the remaining 665
 pages — including 651 pages labeled “non-responsive” (95%) and 14 “duplicative” (2%) — again
 without explanation. *Id.*

III. LEGAL STANDARDS

A. Standard of Review

“Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law.” *Hal Roach Studios, Inc. v Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1990). The standard for motions for judgment on the pleadings under Fed. R. Civ. P. 12(c) is “functionally identical” to the standard for motions under 12(b)(6). *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Generally, a district court may not consider materials beyond the pleadings in ruling on the motion. *Hal Roach Studios, Inc.*, 896 F.2d at 1555 n.19. “Judgement on the pleadings may be granted as to fewer than all of the claims, or as to part of a claim.” *FEC v. Adams*, 558 F. Supp. 2d 982, 987 (C.D. Cal. 2008).

The Declaratory Judgment Act provides that “[i]n a case of actual controversy within its jurisdiction . . . any court . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a); *see also MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007). District courts have jurisdiction over a claim for declaratory judgment if it meets the case or controversy requirement of Article III of the U.S. Constitution. *Rhoades v. Avon Prods., Inc.*, 504 F.3d 1151, 1157 (9th Cir. 2007). A case or controversy exists when “the facts alleged, under all circumstances, show that there is a substantial controversy, between parties having adverse legal interest, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *MedImmune*, 549 U.S. at 127.

B. The Freedom of Information Act

Upon receiving a request that reasonably describes agency records and made in accordance with published rules, FOIA requires agencies to make the records “promptly available to the requestor.” 5 U.S.C. §§ 552(a)(3)(A) & 552(a)(6)(C)(i). Upon receiving a request, the agency shall “determine within

1 20 [working] days after receipt of any such request whether to comply with the request and shall
2 immediately notify the person making such request[.]” 5 U.S.C. § 552(a)(6)(A)(i). A statutorily adequate
3 determination requires, at minimum, that the agency: “(i) gather and review the documents; (ii)
4 determine and communicate the scope of the documents it intends to produce and withhold, and the
5 reasons for withholding any documents; and (iii) inform the requestor that it can appeal whatever
6 position of the ‘determination’ is adverse.” *Citizens for Responsibility & Ethics in Wash (CREW). v.*
7 *FEC*, 711 F.3d 180 (D.C. Cir. 2013) (Kavanaugh, J.). Agencies must provide requestors “an estimated
8 date on which the agency will complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii). Agencies
9 “shall process as soon as practicable any request for records to which the agency has granted expedited
10 processing,” and “failure by an agency to respond in a timely manner to such request shall be subject to
11 judicial review.” 5 U.S.C. §552(a)(6)(E)(iii).
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14 FOIA granted courts jurisdiction to “enjoin the agency from withholding agency records” and
15 “to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. §
16 552(a)(4)(B). In constructive exhaustion actions where the agency’s failure to meet statutorily mandated
17 timelines confers jurisdiction upon the court notwithstanding a requestor’s exhaustion of administrative
18 remedies, Congress added an additional burden on the agency. 5 U.S.C. § 552(a)(6)(C)(i). Only if the
19 government can “show exceptional circumstances exist and that the agency is exercising due diligence
20 in responding to the request,” may the court “retain jurisdiction and allow the agency additional time to
21 complete its review of the records.” *Id.* If the government cannot meet its burden, the court’s jurisdiction
22 is limited to declaring the agency’s withholding unlawful and ordering production of agency records
23 improperly withheld.
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IV. ARGUMENT

A. Plaintiff is Entitled to Partial Judgment on the Pleadings that BOP Improperly Withheld Agency Records

Plaintiff is entitled to judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) and 5 U.S.C. § 552(a)(4)(B) that BOP has improperly withheld agency records. Courts define “withholding” as an action in which the “net effect is to impair the requester’s ability to obtain the records or significantly to increase the amount of time [s]he must wait to obtain them.” *EPIC v. NSA*, 795 F. Supp. 2d 85 (D.D.C. 2011) (quoting *McGehee v. CIA*, 697 F.2d 1095, 1110 (D.C. Cir. 1983)). Failure to abide by statutory deadlines and to timely produce records is an improper withholding of records. *See, e.g., DOJ v. Tax Analysts*, 492 U.S. 136, 151 n.12 (1989) (“Even when an agency does not deny a FOIA request outright, the requesting party may still be able to claim ‘improper’ withholding by alleging that the agency has responded in an inadequate manner.”); *see also Gilmore v. DOE*, 33 F. Supp. 2d 1184, 1188 (N.D. Cal. 1998) (“The documents were still improperly withheld, however, because unless an agency makes a timely determination that documents should or should not be disclosed, . . . there is no compliance with the FOIA.”); *Oregon Natural Desert Ass’n v. Gutierrez*, 409 F. Supp. 2d 1237, 1248 (D. Or. 2006) (“defendants failed to make a timely determination, resulting in an improper withholding...”).

Here, BOP is improperly withholding agency records in four discrete ways. As discussed further below, Plaintiff is entitled to judgment on the pleadings because BOP has failed to: i) complete a search in violation of 5 U.S.C. §§ 552(a)(3)(A); (a)(3)(C)-(D); ii) make a timely “determination” on Plaintiff’s Request, in violation of 5 U.S.C. § 552(a)(6)(A)(i); iii) release all segregable, non-exempt portions of records “as soon as practicable”— despite granting the Request for expedited processing—in violation of 5 U.S.C. § 552(a)(6)(E)(iii) and 28 C.F.R. §§ 16.5 (b) and (e); and (iv) make records promptly available, in violation of 5 U.S.C. §§ 552(a)(3)(A) and 552(a)(6)(C)(i). While this judgment as a matter of law section is limited to the pleadings, as discussed at length in the defense and declaratory judgment

1 sections, *infra*, BOP's actions establish a pattern and practice of continuing and ongoing violations after
2 the Answer.

3 *1. BOP Failed to Complete an Adequate Search*

4 BOP's Answer admitted it had not completed the search required to issue a determination (*Dkt.*
5 No. 16 at ¶¶ 39, 60) under 5 U.S.C. §§ 552(a)(3)(A); (a)(3)(C)-(D) and therefore Plaintiff is entitled to
6 judgment as a matter of law that the agency is unlawfully withholding records. *Zemansky v. EPA*, 767
7 F.2d 569 (9th Cir. 1985) (agency must conduct a "search reasonably calculated to uncover all relevant
8 documents").
9

10 *2. BOP Failed to Make a "Determination"*

11 It is undisputed that BOP has not issued a determination and therefore violated its obligations
12 under FOIA. *Dkt.* No. 16 at ¶ 39. The statutory "determination requirement" requires agencies to do
13 more than make a "general promise to produce non-exempt documents and claim exemptions in the
14 future." *CREW*, 711 F.3d at 187. In its Answer, BOP acknowledged that it had not completed a search,
15 communicated a determination letter to Plaintiff regarding her FOIA, "nor produced any records
16 responsive to it." *Dkt.* No. 16 at ¶ 39. While Plaintiff is entitled to judgment on the pleadings alone, the
17 depth of this problem in BOP's pattern and practices is amplified by its recurring violations of the
18 statute in the instant matter.
19

20 In failing to communicate a determination, and thereby, any basic information about its diligence
21 in responding to the Request, BOP admits that it failed to meet its basic statutory duties. Without a
22 determination, it is impossible to assess the volume of records, the production timeline, or the potential
23 case resolution, which prevents the parties from meaningfully conferring about the scope or sequencing
24 of disclosures. This opens Plaintiff and the Court to the sort of interminable delays and endless, multi-
25 year waits Congress sought to prevent. Plaintiff is entitled to judgment as a matter of law for BOP's
26 failure to make a FOIA determination.
27
28

1 issues of vital national importance ‘cannot be restarted or wound back.’”) (internal citation omitted). In
2 *EPIC v. DOJ*, the court found that the plaintiff would likely suffer irreparable harm if records regarding
3 the agency’s warrantless surveillance program were not produced in a timely fashion. 416 F. Supp. 2d
4 30, 40-41 (D.D.C. 2006). The court found that “the loss of that ‘value’ constitutes a cognizable harm,”
5 and ordered the DOJ to complete the processing of plaintiff’s FOIA requests and produce or identify all
6 responsive records within 20 days. *Id.* at 43.

8 Congress required agencies to make records “promptly available.” BOP has not, which has
9 caused irreparable harm to Plaintiff and the public. Plaintiff is entitled to judgment as a matter of law
10 that BOP failed to make responsive agency records “promptly available.”

11 4. *BOP Failed to Fulfill Its Expedited Processing Obligations*

12 Similarly, because BOP conceded it failed to place the Request on an expedited track (*Dkt.* No.
13 16 at ¶ 50), it necessarily follows that it failed to comply with the statutory requirement that agencies
14 process expedited processing requests “as soon as practicable” in a track with other expedited cases. 5
15 U.S.C. § 552(a)(6)(E)(iii). BOP admits in its Answer that the Request “met the requirement to be
16 processed on an expedited basis . . . and placed on the processing track ahead of other requests . . .” *Id.*
17 “[E]xpedited processing of a FOIA request is a statutory right, not just a matter of court procedure.”
18 *Edmonds v. FBI*, 417 F.3d 1319, 1323 (D.C. Cir. 2005). For requests granted expedited processing,
19 agency delay constitutes a denial of that statutory right. *EPIC*, 416 F. Supp. 2d at 41 (“Unless the
20 requests are processed without delay, EPIC’s right to expedition will be lost.”). Because “unreasonable
21 delays in disclosing non-exempt documents violate the intent and purpose of the FOIA” the Ninth
22 Circuit has long recognized “courts have a duty to prevent these abuses.” *Long v. IRS*, 693 F.2d 907, 909
23 (9th Cir. 1982).

26 Because BOP, by its own admission, failed to comply with the FOIA statute and expedite the
27 Request in practice, Plaintiff, her readers, and the public lost (and will continue to lose) the value of
28 release; including holding the BOP accountable in Congressional hearings, legislation, and civil and

1 criminal cases, and potentially securing release from immigration or carceral facilities. BOP’s delay in
 2 complying with this expedited Request was and is, as Congress recognized, “tantamount to denial.” H.R.
 3 Rep. No. 93–876, at 6 (1974), 1974 U.S. Code Cong. & Admin. News, pp. 6267, 6271. Without
 4 judicially imposed timelines, the statutory promise of expedited processing remains hollow and
 5 ineffective; the BOP will continue to “preclude[the public] ... from obtaining in a timely fashion
 6 information vital to the current and ongoing debate surrounding the legality of a high-profile
 7 government action.” *Protect Democracy Project, Inc. v. DOD*, 263 F. Supp. 3d 293, at 300 (D.D.C.
 8 2017) (internal quotation omitted).

9
 10 The Request must not be merely labeled as expedited, but records must be produced as soon as
 11 possible lest they become stale, and “stale information is of little value.” Plaintiff is entitled to judgment
 12 that BOP failed to grant and fulfill expedited processing.

13
 14 *5. Conclusion: BOP Is Improperly Withholding Agency Records*

15 In conclusion, Plaintiff is entitled to partial judgment as a matter of law that each foregoing
 16 violation constitutes improper withholding of agency records.

17 **V. PLAINTIFF IS ENTITLED TO DECLARATORY RELIEF ORDERING BOP’S FOIA**
 18 **COMPLIANCE.**

19 Plaintiff is entitled to Declaratory Judgment pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C.
 20 §§ 2201, 2202 on the foregoing and additional counts, that on the pleadings and in subsequent filings
 21 and activities,⁷ BOP violated and continues to violate a number of FOIA’s core provisions and cannot
 22 carry its burden of demonstrating exceptional circumstances and due diligence such that the statute
 23 permits the Court to retain jurisdiction while the agency completes its review of responsive records.
 24 BOP has failed to uphold the most basic FOIA obligations—an issue that reflects not just the systemic
 25

26 ⁷ The Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202 authorizes the Court to declare the rights and
 27 legal relations of the parties in light of present conditions, “whether or not further relief is or could be
 28 sought.” In the declaratory judgment context, the Court may consider facts and evidence beyond the four
 corners of the pleadings, including: events that have occurred since the filing of the Answer; in
 determining whether there remains a live controversy, whether the agency’s violations are ongoing or
 likely to recur; and whether forward-looking relief is appropriate. *Id.*

1 actions in this case, but a broader pattern and practice within the agency. Therefore, the remaining task
2 before the Court is to fashion an appropriate remedial scheme bringing the government into compliance.

3 The Court is not limited to declaratory relief. FOIA empowers courts with a broad range of tools
4 to fashion relief and bring agencies into compliance, including ordering production of withheld records;
5 enjoining⁸ agencies; and assessing attorneys' fees against agencies. *See* 5 U.S.C. § 552(a)(4)(B)-(F).

6 "FOIA imposes no limits on courts' equitable powers in enforcing its terms and unreasonable delays in
7 disclosing non-exempt documents violate the intent and purpose of the FOIA, and courts have a duty to
8 prevent [such] abuses." *EPIC*, 416 F. Supp. at 35 (internal cites and quotes omitted). Courts within this
9 circuit routinely issue orders when they determine agencies are violating the "as soon as practicable"
10 expedited processing requirement (5 U.S.C. § 552(a)(6)(E)(iii)), and "promptly available production
11 requirement" (5 U.S.C. § 552(a)(3)(A)). *Nightingale v. USCIS*, 507 F. Supp. 3d 1193 (N.D. Cal. 2020)
12 ("Ordering defendants to adhere to FOIA timing requirements and provide quarterly reports...are forms
13 of relief that are ordinarily granted where an agency routinely violates a statute or regulation.") *citing*
14 *Hajro v. USCIS*, 832 F. Supp. 2d 1095, 1120 (N.D. Cal. 2011) *and* *Gonzalez Rosario v. USCIS*, 365 F.
15 Supp. 3d 1156, 1163 (W.D. Wash. 2018). *See also Los Angeles Times v. DHS*, No. 2:20-cv-10911-FLA
16 (MRWx), 2022 U.S. Dist. LEXIS 239554 (C.D. Cal. Mar. 7, 2022) (denying an agency's motion to

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21 ⁸ Where a federal statute specifically provides for injunctive relief, the traditional equitable test under
22 Rule 65 does not apply. "The standard requirements for equitable relief need not be satisfied when an
23 injunction is sought to prevent the violation of a federal statute which specifically provides for
24 injunctive relief." *Sw. Fair Hous. Council v. WG Scottsdale LLC*, No. CV-19-00180-TUC-RM, 2022
25 U.S. Dist. LEXIS 157450, at *5–6 (D. Ariz. Aug. 30, 2022) (collecting cases); *Antoninetti v. Chipotle*
26 *Mexican Grill, Inc.*, 643 F.3d 1165, 1175 (9th Cir. 2010) (quoting *Silver Sage Partners, Ltd. v. City of*
27 *Desert Hot Springs*, 251 F.3d 814, 827 (9th Cir. 2001)); *see also Burlington N. R.R. Co. v. Dep't of*
28 *Revenue*, 934 F.2d 1064, 1075 (9th Cir. 1991) (citing *In Trailer Train Co. v. State Bd. of Equalization*,
697 F.2d 860, 869 (9th Cir. 1983)); *Shadid v. Fleming*, 160 F.2d 752, 753 (10th Cir. 1947) ("where an
injunction is authorized by statute it is unnecessary for plaintiff to plead and prove the existence of the
usual equitable grounds, irreparable injury and absence of an adequate remedy at law. It is enough if the
requirements of the statute are satisfied."); *Macias v. Lange*, No. 14cv2763-GPC(JMA), 2017 U.S. Dist.
LEXIS 86901, 2017 WL 2445516, at *9 (S.D. Cal. June 6, 2017) ("[W]here a federal statute provides
for injunctive relief to prevent a violation of the statute, the standard requirements for equitable relief
need not be satisfied.").

1 reconsider a minute order requiring the agency to process at least 3,000 pages per month of records
2 involving allegations of sexual and other abuse against incarcerated migrants). “To put it another way,
3 adopting [BOP]’s approach would write the requirement for expedited processing out of the statute.”
4 *Stevens*, 666 F. Supp. 3d 746. Here, the Court should order BOP to comply with its FOIA obligations
5 and promptly release the requested records.
6

7 **A. BOP’s Ongoing Pattern and Practice of FOIA Violations Necessitates Declaratory**
8 **Relief to Prevent Continued Statutory Noncompliance**

9 This case does not involve an isolated FOIA violation or one missed deadline. It arises from the
10 BOP’s entrenched, systemic pattern and practice of disregarding FOIA’s timing, determination,
11 expedited processing, and formatting requirements; especially where records concern BOP’s own
12 misconduct, constitutional violations, and high-profile scandals BOP’s filings admit there is great public
13 interest in. *Dkt.* No. 31 at 5.

14 The D.C. Circuit has recognized that, separate from claims seeking relief for specific FOIA
15 requests, requesting parties may also assert a "claim that an agency policy or practice will impair the
16 party's lawful access to information in the future." *Payne Enters., Inc. v. US*, 837 F.2d 486, 491
17 (D.C.Cir. 1988) (emphasis omitted); *accord Newport Aeronautical Sales v. Dep't of Air Force*, 684 F.3d
18 160, 164 (D.C.Cir.2012). A policy or practice claim requires a plaintiff to allege, *inter alia*, facts
19 establishing that the agency has adopted, endorsed, or implemented some policy or practice that
20 constitutes an ongoing "failure to abide by the terms of the FOIA." *Payne*, 837 F.2d at 491.” *Mutitt v.*
21 *Dept. of State*, 926 F. Supp. 2d 284, 293 (D.D.C. 2013). BOP flouts the most basic tenet of its
22 responsibilities under FOIA—to make a determination on the Request. *CREW* at 182; *Gatore v. DHS*,
23 177 F. Supp. 3d 46, 54 (D.D.C. 2016) (“The Circuit has also clarified that “determination” requires a
24 *decision.*”) (emphasis added). “It is not enough that, within the relevant time period, the agency simply
25 decide to later decide . . . the agency must at least inform the requester of the scope of the documents
26 that the agency will produce, as well as the scope of the documents that the agency plans to withhold
27
28

1 under any FOIA exemptions.” *CREW*, 711 F.3d at 186. Here, BOP did not just elect to “decide later to
2 decide” – with each paltry unexplained production, BOP has established and continued a pattern and
3 practice of “deciding later” by refusing to comply with the plain text of the statute. *Id.*; 5 U.S.C. §
4 552(a)(6)(A)(i).

5
6 BOP has also adopted a policy and practice that patently fails to abide by the terms of FOIA by
7 establishing Plaintiff’s Request as expedited but failing to process it as such. There is no disputed
8 material fact that, according to BOP’s own declarations, Law’s Request is being processed in the same
9 manner as non-expedited requests, contrary to FOIA’s requirement that expedited requests be handled
10 “as soon as practicable” and placed at the front of the expedited processing line. 5 U.S.C. §
11 552(a)(6)(E)(iii); 28 U.S.C. § 16.5(e), *Muttitt*, 926 F. Supp. 2d 284, 296 (D.D.C. 2013) (The “relief
12 required by the FOIA with regard to expedited processing is moving an individual’s request ‘to the front
13 of the agency’s processing queue”). Courts evaluate whether an allegedly expedited processing schedule
14 is reasonable in light of other expedited FOIA requests the agency was already processing, the volume
15 of materials, the need for agency review, and competing obligations of the same agency staffers. *See*
16 *EPIC v. DOJ*, 15 F. Supp. 3d 32, 43 (D.D.C. 2014). The Christenson Declaration (*Dkt.* No. 31-2, ¶6)
17 admits BOP could process up to 1,000 pages monthly. Before Judge Tse’s May 30, 2025, order (*Dkt.*
18 No. 42) BOP elected not to do so, despite finding it merited expedited processing. BOP admits the
19 Request is being treated as number 4,999 out of 6,837 ongoing requests, not in a queue with expedited
20 requests. Christenson Declaration (*Dkt.* No. 33-4, ¶6) This is facially incompatible with FOIA’s
21 expedited framework, which requires that expedited requests be processed “as soon as practicable” in a
22 track with other expedited cases. 5 U.S.C. § 552(a)(6)(E)(iii).

23
24
25 BOP’s pattern includes failure to make a determination, stonewalling with piecemeal and
26 unexplained rolling releases to create the illusion of compliance while planning to withhold the majority
27 of responsive records over six years while it processes records based on undisclosed search terms. *See*
28

1 Ex. 11, Estimated Production Timeline Based on Email Production Rate. BOP's Case Management
2 Statement (*Dkt.* No. 21 7:25-8:3) admits it has not:

3 determined a final estimated page count...The Court should not require monthly status
4 reports about the number of pages released. Plaintiff will know how many pages are
5 released with each monthly release, and there is no reason to fill the Court's docket with
6 duplicative information. The parties can update the Court at further status conferences
7 about the progress of the monthly releases.

8 In its First Joint Discovery Letter Brief (*Dkt.* No. 31 at 6) BOP states:

9 Plaintiff's request for a Vaughn index and monthly status reports identifying what is being
10 withheld, and why, would be counterproductive. BOP should be allowed to focus on
11 gathering and releasing records given its limited resources. Indeed, it is unclear what
12 Plaintiff wants in a monthly status report as identifying what is being withheld, and why
13 appears to be a request for a Vaughn index by another name.

14 BOP admits its seriatim letters (*See* Ex. 1-5, 7) consist of piecemeal ex-post facto summaries
15 accompanying each production that provide only limited information on page counts and exemption
16 claims. BOP admits it is not defining the full scope of the search, stating what records it has searched
17 for, what systems it searched, what remains to be searched, what search terms were used, and what
18 records it plans to withhold and on what basis. With respect to withholdings, BOP states that it will not
19 provide a Vaughn index or equivalent explanation until the end of its productions. Deferring this
20 disclosure until a later time and not giving timely notice impedes the Requester's ability to meaningfully
21 assess or challenge the agency's actions or seek judicial review. BOP's filings indicate that BOP intends
22 to delay its obligations until the close of production or the submission of a Vaughn index.

23 A May 1, 2025, email from Katherine M. Carpenter, Senior Attorney, BOP, Western Regional
24 Counsel's Office to Plaintiff highlights a series of systemic failures within BOP's FOIA operations that
25 directly reinforce the concerns raised throughout Plaintiff's filings: namely, BOP's inability or
26 unwillingness to comply with FOIA's statutory obligations due to chronic understaffing, disorganized
27 workflows, and non-FOIA priorities. *See* Ex. 5. Despite acknowledging a backlog exceeding 6,660
28 requests, over 250 pending final reviews, and a FOIA inbox consistently holding more than 300
unanswered emails, BOP offers no structural plan to remedy these failures. *Id.* Instead, it continues to

1 rely on a single overextended official to perform multiple high-level roles: FOIA production, GAO
2 audits, quarterly reporting, and performance evaluations. *Id.* The admission that records production may
3 not occur “right on schedule,” even for expedited litigation, and its justification that other requests must
4 also be addressed, illustrates precisely the type of resource-based defense courts have rejected,
5 particularly where the agency has made affirmative choices not to allocate staff or seek relief. *Id.* These
6 circumstances confirm that BOP’s delay is the foreseeable result of how it has chosen to design and
7 operate a FOIA system structurally incapable of timely, lawful compliance.

9 Plaintiff’s filings detail the pattern of BOP’s withholdings effectuated by it changing the records,
10 producing in degraded formats that strip metadata and decrease utility and violate the readily
11 reproducible requirement of 5 U.S.C. § 552(a)(3)(B) and improperly shifting burdens to Plaintiff. *See*
12 First Case Mgmt. Statement, *Dkt.* No. 21, Second Case Mgmt. Statement, *Dkt.* No. 28, First Discovery
13 Letter Brief, *Dkt.* No. 31, Second Discovery Letter Brief, *Dkt.* 33, Third Discovery Letter Brief, *Dkt.* No.
14 34, Joint Status Report, *Dkt.* No. 39. These are not one-off administrative errors, but operational choices
15 that nullify FOIA’s statutory guarantees.

17 This Court should enter declaratory relief ordering BOP to comply with its FOIA obligations
18 because BOP’s pattern of delays, changing records before production, degraded formats, and
19 noncompliant processing of expedited requests, is ongoing, likely to recur in future cases, and continues
20 to deprive the public of timely access to information about agency misconduct and leaves Plaintiff
21 unable to assess or challenge the agency’s actions.

23 **B. Plaintiff is Entitled to Declaratory Judgment That BOP Is Unlawfully Withholding**
24 **Records**

25 Plaintiff is entitled to declaratory judgment under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B)
26 that BOP failed to carry its burden of demonstrating exceptional circumstances exist and that it
27 exercised due diligence in responding to the Request. In the present constructively exhausted, FOIA case
28 with expedited processing, the Court may *only* “retain jurisdiction” and “allow the agency additional

1 time” to review and produce records if two antecedents are met: 1) “[t]he Government can show
2 exceptional circumstances exist” and 2) “that the agency is exercising due diligence in responding to the
3 request.” *Id.* § 552(a)(6)(C)(i). All facts in the record establish that BOP committed the four previously
4 briefed, unambiguous violations of FOIA’s timing and processing provisions. Because Plaintiff is
5 entitled to Partial Judgment as a Matter of Law on these issues, BOP’s failure to meet its burden to
6 prove the two elements of 5 U.S.C. § 552(a)(6)(c)(i) (“exceptional circumstances” and “due diligence”)
7 means the Court has no discretion under the statute to “retain jurisdiction and allow the agency
8 additional time to complete its review of the records.”

10 As discussed at length *infra* at §V(4), an agency cannot meet its burden of demonstrating both
11 “exceptional circumstances” and “due diligence” merely by citing administrative delay or resource
12 constraints. FOIA’s statutory scheme does not permit the agency to string both requestors and the courts
13 along indefinitely; especially where, as here, an agency fails to prove (or waives) that both elements of
14 subsection (a)(6)(c)(i) are met. The Court is neither required nor justified in deferring to the agency’s
15 open-ended timeline, which continues to harm both Plaintiff and the public interest. Instead, it should
16 order immediate completion of the search, determination, and production. *See id.* § 552(a)(6)(c)(i).

18 **C. BOP Failed to Process the Expedited Request “As Soon as Practicable”**

19 FOIA’s expedited processing provision requires the agency to “process as soon as practicable
20 any request for records to which the agency has granted expedited processing.” 5 U.S.C.
21 § 552(a)(6)(E)(iii); *Muttitt*, 926 F. Supp. at 296. Once a request is given expedited treatment and the
22 agency fails to treat it as such, the relief required by the statute “is moving an individual’s request ‘to the
23 front of the agency’s processing queue.’” *Id.* Expedited treatment of certain requests forms part of the
24 bedrock of Congress’ intent in amending the statute: “The 1996 FOIA amendments underlined
25 Congress’ recognition of the value in hastening release of certain information, by creating a statutory
26 right to expedited processing . . .” *Edmonds* 417 F.3d at 1324. BOP admits the Request is being treated
27 as 4,996 out of 6,837 requests overall, not in an expedited queue, which negates its status as an
28

1 expedited request. *Dkt.* No. 33-4, Christenson Decl. ¶6. BOP admits it could process up to 1,000 pages
2 monthly. *Dkt.* No. 31-2, ¶6. BOP elected not to do so before Judge Tse’s May 30, 2025, Order (*Dkt.* No.
3 42), despite finding it merited expedited processing. The agency failed to even distinguish Plaintiff’s
4 expedited processing Request from the thousands of Simple and Complex Track requests pending in its
5 backlogged FOIA queue. BOP’s non-prioritized treatment of Plaintiff’s expedited Request violates
6 interpretations of FOIA that: “expedited processing of a FOIA request is a statutory right, *not just a*
7 *matter of court procedure.*” *See Edmonds*, 417 F.3d at 1324 (emphasis added).
8

9 This failure to even distinguish Plaintiff’s Request from the pool of the agency’s other requests
10 also scoffs at Congress’ intent in passing the 1996 FOIA amendments: “Plainly, there is value to
11 obtaining something earlier than one otherwise would . . . The 1996 FOIA amendments underlined
12 Congress’s recognition of the value in hastening release of certain information, by creating a statutory
13 right to expedited processing . . .” *Id.* at 1324.
14

15 **D. BOP Cannot Establish Exceptional Circumstances Allowing the Court to Retain**
16 **Jurisdiction and Allow the Agency Additional Time**

17 In its Answer, BOP invoked the affirmative defense that exceptional circumstances and due
18 diligence justified its delays in responding to Plaintiff’s Request (*Dkt.* No. 16 at 14). This defense
19 tracked the language of 5 U.S.C. § 552(a)(6)(C), which allows courts to retain jurisdiction and grant
20 agencies additional time under certain conditions. This defense (later codified in FOIA) mirrors the legal
21 and factual standard established in *Open America*, 547 F.2d 605 (D.C. Cir. 1976). *See, e.g., Democracy*
22 *Forward Found. v. DOJ.*, 354 F. Supp. 3d 55, 59 (D.D.C. 2018) (“According to legislative history of the
23 Act, Congress intended for this amendment to be ‘consistent with the holding in *Open America*,’ and
24 only ‘clarif[ied] that routine, predictable agency backlogs for FOIA requests do not constitute
25 exceptional circumstances.’” (quoting H.R. Rep. 104–795 at 24 (1996), reprinted in 1996 U.S.C.C.A.N.
26 3448, 3467)). (*Daily Caller News Found. v. FBI*, 387 F. Supp. 3d 112, 116 (D.D.C. 2019). However,
27 during the May 12, 2025, discovery hearing, BOP expressly waived that defense and stated on the
28

1 record that BOP was not seeking a statutory *Open America* Stay. Transcript of Discovery Hr’g, *Dkt.* No.
2 43 at 20:19–22. BOP waived the only basis that might allow the Court to retain jurisdiction and grant
3 BOP more time.

4 1. *BOP’s Declarations and Statements by Agency Counsel Preclude a Finding of*
5 *Exceptional Circumstances Warranting Delay*

6 BOP’s two Declarations fail to identify any extraordinary facts or systemic factors that would
7 qualify as exceptional circumstances under the statute. Christenson Decls., *Dkt.* No. 31-2, 33-4.
8 Exceptional circumstances do not include “a delay that results from a predictable agency workload of
9 requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog
10 of pending requests.” 5 U.S.C. § 552(a)(6)(C)(ii). As detailed *infra*, Courts find generalized references
11 to workload, staffing limitations, or administrative delay insufficient and require the agency to cite to
12 concrete, case-specific reasons justifying delay in the case.
13

14 BOP has not plead or otherwise indicated that it is deluged with a volume of requests vastly over
15 that which Congress anticipated, or that its systems are under strain due to unforeseen events. Rather,
16 BOP outlines a system seemingly built to *fail* its FOIA obligations: the way it elects to configure
17 software and workflows alters records, which then produces non-compliant and less useful records, and
18 it chooses to staff below historical levels, and anticipates staffing decreasing. Christenson Decls., *Dkt.*
19 No. 31-2, 33-4. BOP is not facing untold numbers of requests but languishes in a crisis of its own
20 making—an affirmative decision to de-prioritize its statutory obligations. BOP’s April 2025 Annual
21 Report data cited in the Second Discovery Letter Brief (*Dkt.* No. 33-2) shows the FOIA office is now at
22 its lowest staffing level *in 17 years*. *Id.* at 1. BOP’s choices predictably led to increased backlogs (*Id.* at
23 2); increased median expedited processing times (*Id.* at 3); a virtual elimination of prompt expedited
24 processing responses (*Id.* at 5); and litigation costs. (*Id.* at 6). Agency-caused resource “constraints”
25 caused by internal choices do not excuse statutory violations.
26
27
28

1 Independent of the agency’s intentional choices to flout its statutory obligations, “[T]he decision
 2 of the executive branch” not to seek a change in law or additional funding from Congress “would be
 3 consistent with a policy choice . . . to delay FOIA requests rather than ask for additional funds to meet
 4 them in a timely way.” *Fiduccia*, 185 F.3d at 1041. BOP has failed to do either. According to the
 5 FY 2026 BOP Salaries and Expenses Request, BOP is only hiring for new correctional officer positions,
 6 and not FOIA-related positions.⁹ Since the April 2025 Christenson Declaration (*Dkt.* No. 33-4, ¶6), BOP
 7 reported a backlog of 6,369 requests; data released by OIP for the third quarter of FY 2025 shows that
 8 BOP’s backlog increased over 6% to 6,760.¹⁰

10 Technology itself is not a limiting factor. FOIAXpress, the software BOP is using to process the
 11 Request, advertises features designed to reduce duplication and streamline compliance.¹¹ BOP’s
 12 declarations and audits indicate it has designed a FOIA processing system that is structurally
 13 noncompliant; not due to inherent flaws in its FOIAXpress software, but because of how it chooses to
 14 implement it. The DOJ, *2025 Chief FOIA Officer Report*¹², elucidates how BOP continues to rely on
 15 inefficient workflows with seemingly unnecessary manual review that delay production:
 16

17 Components identified several challenges, including deduplication of email chains, and
 18 identification of technologies that meet multiple requirements unique to certain FOIA offices.
 19 For example, BOP has highlighted that even when using de-threading software, the unit still
 20 encounters voluminous amounts of duplicated emails, which causes BOP to spend immeasurable
 21 hours searching for duplicate records and/or processing the same records multiple times. Many
 components, particularly those that post high volumes of records, also identified challenges
 related to finding tools that enable FOIA programs to quickly and efficiently bring large volumes
 of records into compliance...

22 ⁹ Department of Justice, *FY 2026 Congressional Budget Submission: Federal Prison Industries (FPI)*
 23 *Exhibits* (June 16, 2025), <https://www.justice.gov/media/1403221/dl?inline>, also available at
<https://www.justice.gov/doj/fy-2026-congressional-budget-submission>.

24 ¹⁰ Office of Information Policy, *FOIA.gov Quarterly FOIA Data for Federal Bureau of Prisons, Third*
 25 *Quarter FY 2025: Requests Received, Processed, and Backlogged* (July 25, 2025),
<https://www.foia.gov/quarterly.html/results>.

26 ¹¹ OPEXUS, *FOIAXpress*, FOIAXpress Benefits (May 14, 2024), [www.opexustech.com/wp-](http://www.opexustech.com/wp-content/uploads/2024/05/FOIAXpress-2pg-Factsheet_5.14.24.pdf)
 27 [content/uploads/2024/05/FOIAXpress-2pg-Factsheet_5.14.24.pdf](http://www.opexustech.com/wp-content/uploads/2024/05/FOIAXpress-2pg-Factsheet_5.14.24.pdf).

28 ¹² Department of Justice, *2025 Chief FOIA Officer Report*, Section V (“Steps Taken to Remove
 Barriers...”) (June 9, 2025), [www.justice.gov/oip/united-states-department-justice-2025-chief-foia-](http://www.justice.gov/oip/united-states-department-justice-2025-chief-foia-officer-report#SectionV)
[officer-report#SectionV](http://www.justice.gov/oip/united-states-department-justice-2025-chief-foia-officer-report#SectionV).

1 Where an agency fails to seek additional resources to abide by the “tough statute” Congress
 2 wrote to address “agency delay in FOIA compliance”, that policy choice has legal consequences. *See*,
 3 *e.g.*, *Fiduccia*, 185 F. 3d. 1041-42. Resource constraints thus do “not grant the agency carte blanche to
 4 repeatedly violate congressionally mandated deadlines.” *Our Children's Earth Found. v. Nat'l Marine*
 5 *Fisheries Serv.*, No. 14-1130 SC, 2015 WL 4452136, at *8 (N.D. Cal. July 20, 2015). *See also*
 6 *Nightingale v. USCIS*, 507 F. Supp. 3d 1193 (N.D. Cal. 2020) (“Ordering defendants to adhere to FOIA
 7 timing requirements” is “ordinarily granted where an agency routinely violates a statute or regulation.”).
 8 BOP has not identified anywhere in the record why it has not sought additional resources or adjusted its
 9 current process or staffing to meet its FOIA obligations. Allowing an agency to elect to under-resource
 10 its FOIA office and adopt technologies and workflows that obstruct rather than enable compliance, then
 11 shield itself from liability by citing the very inefficiencies it designed, would convert policy choices into
 12 legal immunity. Permitting an agency to continue delaying while refusing to seek additional resources or
 13 reform flawed systems undermines FOIA’s deadlines and allows evasion of congressional intent.
 14

15
 16 *2. BOP Cannot Show It Has Exercised Due Diligence in Responding to Plaintiff's*
 17 *FOIA Request*

18 To prove “due diligence,” the agency must prove that it has a satisfactory “present procedure for
 19 processing FOIA requests”—such as one that categorizes requests by difficulty, seeks to proceed on a
 20 “first-in, first-out basis,” and is staffed by an adequate number of personnel. *Informed Consent Action*
 21 *Network v. FDA*, No. 1:24-CV-1761 (CJN), 2024 WL 4836405, at *1 (D.D.C. Nov. 20, 2024) (internal
 22 citations omitted).

23 The record contains no evidence that BOP exercised due diligence in processing the Request.
 24 BOP agreed to expedited processing. *Dkt.* No. 1-2 at 1-2. A year later, it has yet to finish a search or
 25 make a determination. BOP admits it ranked the Request 4,996 out of 6,837 requests, without
 26 distinguishing it from non-expedited requests. (Christenson Decl. ¶6, *Dkt.* 33-4.) Though capable of
 27 processing 1,000 pages monthly, it declined until ordered by the Court. (*Dkt.* No. 42; *Dkt.* No. 1-2 at 1–
 28

1 2.)

2 BOP's actions are facially incompatible with FOIA's expedited framework, which requires that
3 qualifying requests be processed "as soon as practicable" (5 U.S.C. § 552(a)(6)(E)(iii)) to be considered
4 diligent. BOP has not met its burden to demonstrate the due diligence and exceptional circumstances
5 that would justify the six-year delay in email production. Having already waived the only available
6 statutory defense, and in any event unable to prove the elements of that defense, BOP does not meet the
7 standard required for the Court to retain jurisdiction or to grant additional time for compliance.
8

9 **VI. CONCLUSION**

10 A FOIA case regarding treating an agency's illegal activity (FBI's COINTELPRO program)
11 differently from routine agency investigation should guide the treatment of this case:
12

13 "Even where there is no evidence that the agency acted in bad faith with regard to the
14 FOIA action itself there may be evidence of bad faith or illegality with regard to the
15 underlying activities which generated the documents at issue. Where such evidence is
16 strong, it would be an abdication of the court's responsibility to treat the case in the
17 standard way..."

18 *Jones v. FBI*, 41 F.3d 238, 242–43 (6th Cir. 1994). Amid a public reckoning triggered by agency,
19 legislative, and judicial oversight, BOP has failed to meet even its basic FOIA obligations. BOP's
20 unlawful actions reflect a broader pattern of evading transparency and resisting oversight—both here
21 and in other misconduct cases. FOIA promises more than access to documents; it ensures that those
22 seeking the truth about government misconduct are not forced to wait indefinitely while the agency
23 controls the narrative and timeline. Despite granting expedited processing, BOP has neither completed a
24 search nor issued a determination and has failed to disclose records at a pace meaningful for journalists
25 and others who rely on timely access to inform the public, protect or release those still in custody, and
26 ensure accountability. That has compounded harm to survivors, reporters, advocates, litigants, and
27 policymakers who depend on disclosure to respond to ongoing misconduct. Without timely
28 transparency, there can be no meaningful oversight. Allowing an agency to structure its personnel and
technology to knowingly produce delay, then invoke resource constraints to justify noncompliance after

1 waiving its defense, renders FOIA unenforceable and invites impunity. Plaintiff respectfully asks the
2 Court to declare BOP's withholding unlawful, deny additional time, and order immediate compliance.
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4 DATED: August 19, 2025

5 Signature: _____/s/_____

6 By: Caitlin Kelly Henry, Esq.

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