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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 VICTORIA LAW,

12 Plaintiff,

13 v.

14 FEDERAL BUREAU OF PRISONS,

15 Defendant.

) Case No. 3:24-CV-06628-YGR (AGT)

)
) **DEFENDANT’S OPPOSITION TO**
) **PLAINTIFF’S MOTION FOR ORDER TO**
) **SHOW CAUSE AS TO WHY BOP SHOULD**
) **NOT BE HELD IN CONTMEPT**

)
) Date: December 26, 2025
) Time: 10:00 a.m.
) Courtroom: A
) Hon. Alex G. Tse

I. INTRODUCTION

Plaintiff's motion seeking to hold defendant in contempt of Court ignores the obvious reason for the missed releases: the *missed releases in September, October and November are a direct result of the longest lapse of appropriations in history: 43 days, as well as other obligations*. BOP's entire FOIA staff was furloughed for the entire lapse of appropriations, and thus it was impossible for BOP to process any pages or make a release at the end of October. However, the lead-up to the lapse of appropriations and other work responsibilities caused the missed release at the end of September, and the massive workload once furloughed employees returned to work (November 13) made it impossible to make a release by the end of November.

Plaintiff's motion should be denied in light of the lapse of appropriations and other obligations. The issue to discuss is the path forward, a path that is uncertain given that funding has been restored only through January 30, 2026. BOP seeks to make up the missed releases by February 2026. The Court should deny Plaintiff's motion.

II. BACKGROUND

A. BOP Complies With the Court's Order in June, July and August.

On May 30, 2025, the Court issued a discovery order regarding the two letter briefs. ECF No. 42. The Court ordered Defendant to process 1,000 pages per month, and to make a release at the end of each month beginning on June 30, 2025. *Id.* BOP complied with this order in June, July, and August. Declaration of Kara Christenson in Support of Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause ("Christenson Dec.") ¶ 2.

B. The Lapse of Appropriations Causes all BOP FOIA Staff to Be Furloughed.

At midnight on September 30, 2025, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. *Id.* ¶ 3. Ms. Christenson, along with the rest of BOP's entire FOIA staff, were furloughed due to the lapse of appropriations and thus were unable to work on any FOIA matters without violating the Anti-Deficiency Act. *Id.* Ms. Christenson understands that the Anti-Deficiency Act, 31 U.S.C. §1341, as construed by the Attorney General, provides that in the absence of appropriated funds no obligation can be incurred except for the protection of life and property, the orderly suspension of operations, or as otherwise authorized by law. *Id.* ¶ 4.

1 Absent an appropriation, Department of Justice employees like Ms. Christenson and her FOIA staff
2 were prohibited from working, even on a volunteer basis, “except for emergencies involving the safety
3 of human life or the protection of property.” 31 U.S.C. § 1342. *Id.* She understands that an officer or
4 employee of the United States who violates 31 U.S.C. § 1341(a) (obligate/expense in excess or advance
5 of appropriation), § 1342 (voluntary services prohibition), or § 1517(a) (obligate/expense in excess of an
6 apportionment or administrative subdivision as specified in an agency’s regulations) “*shall* be subject to
7 appropriate administrative discipline including, when circumstances warrant, suspension from duty
8 without pay or removal from office.” 31 U.S.C. §§ 1349(a), 1518 (emphasis added). *Id.*

9 **C. BOP Could Not Make a September Release Due to End of Fiscal Year Obligations and**
10 **the Impending Lapse of Appropriations.**

11 While BOP FOIA staff strive to process as many FOIA requests as possible throughout the year,
12 September, as the last month of the fiscal year, puts an additional pressure and strain on resources.
13 Agencies with high backlogs, like BOP, strive to close as many overdue FOIA requests as possible
14 before October 1 when preparation of the Annual Report to Congress for the “just ended” fiscal year
15 begins. *Id.* ¶5. Consequently, in September, seven of BOP’s 14 Government Information Specialists
16 (GIS) normally assigned to the intake team spent at least half of their day processing requests. *Id.* The
17 processed requests could not be completed until one of four reviewers, including Ms. Christenson,
18 reviewed the request for responsiveness and accuracy. *Id.* With the additional number of requests being
19 processed, the reviewers, again, including Ms. Christenson, worked several hours beyond regular duty
20 hours each day to accomplish as many reviews as possible to reduce the backlog. *Id.* While the
21 temporary shift of the intake team to the processing team is necessary in September, when resources are
22 diverted, other duties suffer including the management of the new requests. *Id.* While requests received
23 in the month of September will not increase BOP’s backlog, any request received until the close of
24 business on September 30 must be entered into the FOIA database prior to it being locked by 11:59 p.m.
25 on September 30 to ensure accurate accounting and reporting of data for the annual report. *Id.* To that
26 end, it was incumbent upon Ms. Christenson and the other Supervisory GIS to ensure all the FY25
27 requests were entered into the database. *Id.* This required Ms. Christenson and her staff to remain on
28 duty past our regular work schedule to review as many requests as possible, to complete the data entry

1 of all the FY25 requests. Because of the end of year requirements, and preparing for the lapse in
2 appropriations, Ms. Christenson was unable to process any pages for the month of September. *Id.*

3 **D. BOP Could Not Make an October Release Because FOIA Staff Were Furloughed.**

4 BOP could not process any documents in October 2025 because Ms. Christenson and the rest of
5 BOP's FOIA staff were furloughed and unable to work on any FOIA matters. *Id.* ¶ 6.

6 **E. BOP Could Not Make a November Release Due to Workload and Thanksgiving
7 Holiday Following the Return to Work on November 13.**

8 Appropriations for the Department of Justice were restored the night of November 12, 2025, and
9 the first day back at work for Ms. Christenson and her entire FOIA staff was November 13, 2025. *Id.* ¶
10 7. Upon returning to the office, BOP received more than 1900 emails during the lapse in appropriations,
11 requiring all FOIA staff to assist in reviewing and taking appropriate action on those emails. *Id.*
12 Significant progress was made on the emails the first week after the furlough ended. *Id.* As the
13 Thanksgiving holiday was the following week, however, more than half of the FOIA staff, including
14 Ms. Christenson, were out of the office on scheduled annual leave. *Id.* Upon their return to the office
15 on Monday, December 1, 2025, the number of emails received requiring action climbed to over 1200.
16 *Id.* Review of these emails will require deploying additional resources to the intake team, to the
17 detriment of the processing team. *Id.* Importantly, the annual leave used by FOIA staff during the
18 Thanksgiving holiday week was leave which would be lost if not used. Termed "use or lose," leave this
19 annual leave represents the maximum number of leave carry over hours for 2025. *Id.* While FOIA staff
20 with "use or lose" leave spread their leave throughout October, November, and December 2025, because
21 of the furlough, FOIA staff were unable to take the leave as planned. *Id.* Further, certain FOIA staff,
22 including Ms. Christenson, will need to also take "use or lose" leave the last two weeks of the year. *Id.*

23 **F. BOP Will Work to Make Up the Missed Processing of Records by February 1, 2026.**

24 With nearly every FOIA litigation Ms. Christenson has been involved in, unforeseen events and
25 circumstances arise which impede a monthly, and sometimes multiple-month, production. *Id.* ¶8. When
26 this occurs, while Ms. Christenson make every effort to catch up with subsequent monthly productions,
27 this may take several months to accomplish. *Id.* BOP, however, will make every effort to make up the
28 processing missed September through November 2025, by February 1, 2026. *Id.*

1 **G. Plaintiff Knew about the Furlough of BOP FOIA Staff and the Amount of Work**
2 **Furloughed Employees and Others Had on the Return to Work on November 13.**

3 On October 2, 2025, counsel for Defendant received an e-mail from Plaintiff’s counsel inquiring
4 about the status of the September 2025 FOIA release. Declaration of Michael Pyle in Support of
5 Defendant’s Opposition to Plaintiff’s Motion for an Order to Show Cause (“Pyle Dec.”) ¶ 2 & Ex. 1.
6 Counsel for Defendant responded to Plaintiff’s counsel on October 6, 2025, in which he explained that
7 all BOP FOIA staff had been furloughed due to the lapse of appropriations and that he was unable to
8 work on the case for the same reason. *Id.* Thus, as of October 6, 2025, Plaintiff’s counsel knew about
9 the furlough of BOP FOIA staff.

10 On Friday, November 14, 2025 Plaintiff’ counsel sent Defendant’s counsel an e-mail asking for
11 information about BOP’s position on a number of matters, including BOP’s position “regarding a
12 potential Motion for an Order to Show Cause why the BOP should not be held in contempt of Judge
13 Tse’s Order requiring completing of the September production before the shutdown.” *Id.* ¶ 3 & Ex. 2.
14 Her e-mail also stated: “We recognize that the government shutdown has caused significant disruption
15 and appreciate the challenges that your office and the Bureau of Prisons have faced during that period.”
16 *Id.* She also stated: “I recognize things must be very busy.” *Id.* Plaintiff filed the motion for an Order
17 to Show Cause on Tuesday, November 18, 2025. *Id.*

18 Indeed, Counsel for Defendant was extremely busy with work once the lapse in appropriations
19 ended, and planned to respond to Plaintiff once some urgent events had been completed. *Id.* ¶ 4.

20 **III. ARGUMENT**

21 **A. Magistrate Judges Lack Authority Over Civil Contempt.**

22 Absent consent by the parties, magistrate judges lack authority over civil contempt proceedings
23 except in limited circumstances, none of which are applicable here. *See* 28 U.S.C. § 636(c). A
24 magistrate judge may only investigate whether further contempt proceedings are warranted and, if the
25 magistrate judge so finds, certify such facts to a district judge. 28 U.S.C. § 636(e)(6); *see also Alcade v.*
26 *NAC Real Estate Invs. & Assignments, Inc.*, 580 F.Supp.2d 969, 971 (C.D. Cal. 2008).

27 As a result, the Court lacks the power to sign Plaintiff’s proposed order granting her motion.
28 The Court would have the power to consider this matter as a discovery dispute, but Plaintiff did not meet

1 and confer and submit a joint statement. *See* Civil Standing Order, Section VII.B. Defendant believes
 2 this dispute falls squarely within the Court’s Standing Order for a discovery dispute.

3 **B. BOP Should Not Be Held in Contempt.**

4 ‘Civil contempt ... consists of a party’s disobedience to a specific and definite court order by
 5 failure to take all reasonable steps within the party’s power to comply.’” *Inst. of Cetacean Research v.*
 6 *Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 945 (9th Cir. 2014) (quoting *In re Dual-Deck Video*
 7 *Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993)). The moving party bears the
 8 burden of showing the contemnor’s noncompliance by clear and convincing evidence. *FTC v.*
 9 *Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). The court may exercise its civil contempt power
 10 for one or both of two purposes: “to coerce the defendant into compliance with the court’s order, and to
 11 compensate the complainant for losses sustained.” *United States v. United Mine Workers of Am.*, 330
 12 U.S. 258, 303–304 (1947). “The measure of the court’s power in civil contempt is determined by the
 13 requirements of full remedial relief.” *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949).

14 A party may be held in contempt even if its conduct was not willful, *Reno Air Racing Ass’n v.*
 15 *McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006), and “there is no good faith exception to the requirement
 16 of obedience to a court order,” *Dual-Deck Video*, 10 F.3d at 695, but substantial compliance can serve as
 17 a defense. *Balla v. Idaho State Bd. of Corr.*, 869 F.2d 461, 466 (9th Cir. 1989). The Ninth Circuit thus
 18 places the burden on Plaintiff to “establish ‘(1) that [the respondent] violated the court order, (2) beyond
 19 substantial compliance, (3) not based on a good faith and reasonable interpretation of the order, (4) by
 20 clear and convincing evidence.’” *See Labor/Cmty. Strategy Ctr. v. L.A. Cty. Metro. Transp. Auth.*, 564
 21 F.3d 1115, 1123 (9th Cir. 2009) (quoting *Dual-Deck Video*, 10 F.3d at 695).

22 “Where compliance is impossible, neither the moving party nor the court has any reason to
 23 proceed with the civil contempt action.” *United States v. Rylander*, 460 U.S. 752, 757 (1983). Here,
 24 BOP provided a sufficient explanation for its inability to complete releases in September, October, and
 25 November. Christenson Dec. ¶¶ 3-7. After all, Plaintiff’s counsel stated before she filed her motion
 26 that: “We recognize that the government shutdown has caused significant disruption and appreciate the
 27 challenges that your office and the Bureau of Prisons have faced during that period.” Pyle Dec., ¶ 3 &
 28 Ex. 2. The Court should not recommend that BOP be held in contempt on this record.

1 **C. Plaintiff is Not Entitled to An Award of Attorney’s Fees.**

2 “Absent a waiver, sovereign immunity shields the Federal Government and its agencies from
3 suit.” *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) (citations omitted). Sovereign immunity also protects
4 federal employees acting within their official capacities. *Hodge v. Dalton*, 107 F.3d 705, 707 (9th Cir.
5 1997) (citing *South Delta Water Agency v. U.S. Dep’t of Interior*, 767 F.2d 531, 536 (9th Cir. 1985)).
6 Indeed, “the terms of [the government’s] consent to be sued in any court define that court’s jurisdiction
7 to entertain the suit.” *Hodge*, 107 F.3d at 707 (citing *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981)).
8 The Supreme Court has explained that any waiver of federal sovereign immunity must be contained in
9 an express and particularized statement by Congress and cannot be inferred by the courts. *See United*
10 *States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992); *Irwin v. Dep’t of Veterans Affairs*, 498 U.S.
11 89, 95 (1990).

12 Even where a statute has waived the government’s immunity, any ambiguities in its scope must
13 be construed in favor of the sovereign. *FAA v. Cooper*, 566 U.S. 284, 291 (2012). The Supreme Court
14 has been “particularly alert to require a specific waiver of sovereign immunity before the United States
15 may be held liable” for “monetary exactions,” *United States v. Idaho*, 508 U.S. 1, 8-9 (1993), because
16 such claims present heightened separation-of-powers concerns.

17 In part because the Constitution provides that “[n]o Money shall be drawn from the Treasury, but
18 in Consequence of Appropriations made by Law,” U.S. Const. art. I, § 9, cl. 7, neither the Executive
19 Branch nor the Judicial Branch can effect a waiver of sovereign immunity. *See Office of Pers. Mgmt. v.*
20 *Richmond*, 496 U.S. 414, 424-434 (1990); *United States v. Shaw*, 309 U.S. 495, 501-502 (1940). Narrow
21 construction of statutory waivers of immunity ensures that courts do not mistakenly impose burdens on
22 the public fisc that Congress did not authorize and that “public funds will be spent [only] according to
23 the letter of the difficult judgments reached by Congress as to the common good and not according to
24 the individual favor of Government agents or the individual pleas of litigants.” *Richmond*, 496 U.S. at
25 428, 432. Federal courts possess “inherent powers . . . which ‘are necessary to the exercise of all
26 others.’” *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) (quoting *United States v. Hudson*,
27 11 U.S. (7 Cranch) 32, 34 (1812)). A lower court’s inherent powers “are governed not by rule or statute
28 but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly

1 and expeditious disposition of cases.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (citation and
2 internal quotation marks omitted). Those powers generally include the authority to impose a “sanction
3 for conduct which abuses the judicial process.” *Id.* at 44-45. But the federal courts' inherent powers are
4 not absolute. The Supreme Court has repeatedly recognized that district courts may not invoke their
5 inherent supervisory power in ways that would circumvent or conflict with constitutional principles. *See,*
6 *e.g., Bank of Nova Scotia v. United States*, 487 U.S. 250, 255 (1988) (holding that supervisory power
7 cannot be used circumvent the harmless-error inquiry prescribed by Fed. R. Crim. P. 52(a)); *United*
8 *States v. Hasting*, 461 U.S. 499, 506 (1983) (holding that supervisory power cannot be used to reverse a
9 conviction in order to deter prosecutorial misconduct); *United States v. Payner*, 447 U.S. 727, 736-737
10 (1980) (holding that supervisory power cannot be used to suppress evidence otherwise admissible under
11 the Fourth Amendment); see generally *Bank of Nova Scotia*, 487 U.S. at 254 (“[I]t is well established
12 that ‘even a sensible and efficient use of the supervisory power . . . is invalid if it conflicts with
13 constitutional or statutory provisions.’”) (quoting *Thomas v. Arn*, 474 U.S. 140, 148 (1985)) (brackets
14 omitted).

15 The Supreme Court has accordingly required express statutory authorization before the
16 government can be compelled to pay the kinds of litigation expenses that could be imposed on other
17 parties. In *United States v. Chemical Found., Inc.*, 272 U.S. 1, 20 (1926), the Court modified a judgment
18 ordering the United States to pay the costs of transcripts and copying. The Court reasoned that, in the
19 absence of any such specific authority (as of 1926) in which Congress consented to having such costs
20 taxed against the government, the government could not be required to pay them. *Id.* at 20- 21.

21 Similarly, the Supreme Court has recognized that sovereign immunity bars an award of
22 attorney's fees against the government in the absence of a statutory waiver. *See Ruckelshaus v. Sierra*
23 *Club*, 463 U.S. 680, 685 (1983) (narrowly construing statute authorizing fee awards including attorney's
24 fees because it applied to “awards against the United States, as well as against private individuals”);
25 *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 267-268 (1975) (stating that fee awards
26 against the government, “if allowable at all, must be expressly provided for by statute”).

27 In *Barry v. Bowen*, 884 F.2d 442, 443-44 (9th Cir. 1989), the Ninth Circuit vacated a district
28 court order imposing monetary sanctions against the government for contempt in a civil case in part

1 because it could not find “anything which suggests that the United States expressly has waived its
2 sovereign immunity with respect to contempt sanctions” and therefore had “doubts about the power of
3 the district court to impose monetary sanctions.” Other circuits faced with similar arguments have
4 suggested that the government's sovereign immunity wins when it comes head-to-head with a lower
5 court's inherent authority. *See, e.g., United States v. Droganes*, 728 F.3d 580, 588-90 (6th Cir. 2013)
6 (rejecting the argument that a district court’s inherent authority to sanction “simply trumps the
7 government’s sovereign immunity.”); *United States v. Horn*, 29 F.3d 754, 761–67 (1st Cir.1994)
8 (holding that absent an explicit statute or waiver, “sovereign immunity saves the federal government
9 harmless from all court-imposed monetary assessments, regardless of their timing and purpose”);
10 *Coleman v. Espy*, 986 F.2d 1184, 1192 (8th Cir. 1993) (holding that a court cannot imply a waiver of
11 federal sovereign immunity for civil compensatory contempt actions).

12 Plaintiff ignores this law, and instead relies on cases holding nonfederal parties in contempt of
13 court (Motion at p. 10), and therefore no sovereign immunity concerns are present.

14 The Supreme Court has established that “when it comes to an award of money damages,
15 sovereign immunity places the Federal Government on an entirely different footing than private parties.”
16 *Lane v. Pena*, 518 U.S. 187, 196 (1996); *Sossamon v. Texas*, 563 U.S. 277, 291 n.8 (2011) (noting, in
17 the context of state sovereign immunity, that the essence of sovereign immunity “is that remedies
18 against the government differ from ‘general remedies principles’ applicable to private litigants”) (citation
19 omitted).

20 Accordingly, the Court should not recommend any monetary sanctions, including attorney’s fees
21 should it find recommend that BOP be held in contempt of court, which it should not recommend.

22 **D. BOP Would be Entitled to An Opportunity to Come Into Compliance.**

23 Even if BOP were held in contempt, which it should not be, a court may lift any sanctions
24 imposed on the defendant if the defendant complies with the order. *United Mine Workers of Am. v.*
25 *Bagwell*, 512 U.S. 821, 827-29 (1994) (emphasizing that civil contempt sanctions are avoidable through
26 obedience and that the court may suspend such sanctions pending future compliance); *Petties v.*
27 *Dist. of Columbia*, 897 F.Supp. 626, 629-30 (D.D.C. 1995) (noting that “sanctions imposed in civil
28 contempt proceedings . . . ordinarily are conditional, and a person or entity held in civil contempt may

1 avoid the sanctions by promptly complying with the court’s order”).

2 Here, BOP has committed to “make every effort to make up the processing missed September
3 through November 2025, by February 1, 2026.” Christenson Dec. ¶ 8.

4 **IV. CONCLUSION**

5 Defendant respectfully requests that the Court deny Plaintiffs’ motion.

6 Dated: December 2, 2025

7 Respectfully submitted,

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9 United States Attorney

10 */s/ Michael T. Pyle*

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