

UNITED STATES DISTRICT COURT

CERTIFIED COPY

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

CALIFORNIA COALITION FOR WOMEN)
PRISONERS, et al.,)

Plaintiffs,)

vs.)

UNITED STATES OF AMERICA)
FEDERAL BUREAU OF PRISONS,)
et al.,)

Defendants.)

Motions Hearing

NO. CV 23-04155-YGR

Pages 1 - 110

Oakland, California
Friday, August 2, 2024

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 **Friday, August 2, 2024**

1:00 P.M.

2 **P R O C E E D I N G S**

3 **--o0o--**

4
5 **THE CLERK:** Calling civil case 23-4155-YGR,
6 California Coalition for Women Prisoners, et al. versus United
7 States of America Federal Bureau of Prisons, et al.

8 Counsel, please state your appearances.

9 **MR. NIMNI:** Good afternoon, Your Honor. Oren Nimni
10 for the plaintiffs.

11 **THE COURT:** And when you come up, to the extent that
12 you all have designated who is arguing what portions of the
13 various things that are on calendar, if you would let me know.

14 **MR. NIMNI:** Of course, Your Honor. I will be arguing
15 on the motion to dismiss. And to the extent the Court
16 requests any questioning of -- of Mr. Lothrop, who's here as a
17 witness, I'll be conducting that.

18 My colleague, Mr. Anderson, will be discussing the motion
19 to intervene.

20 **THE COURT:** Okay.

21 **MR. ANDERSON:** Good afternoon, Your Honor. Carson
22 Anderson from Arnold & Porter.

23 **MS. MATTIOLI:** Good afternoon --

24 **THE COURT:** Hold on, Ms. Mattioli. I see lots of
25 other lawyers over there.

1 Jacqueline Arando Osorno for intervenors. And I'll be arguing
2 the motion to unseal.

3 **THE COURT:** Okay.

4 **MS. SALCEDA:** Good afternoon, Your Honor. Angelica
5 Salceda on behalf of the ACLU for intervenors.

6 **THE COURT:** Okay. You all can take a seat at -- I
7 don't care what side you want, but there are plenty of chairs
8 up here.

9 **MS. ARANDA OSORNO:** Thank you, Your Honor.

10 **THE COURT:** Ms. Mattioli, good afternoon.

11 **MS. MATTIOLI:** Good afternoon, Your Honor. Madison
12 Mattioli for the United States.

13 **THE COURT:** Good afternoon.

14 Mr. France, I see you over there.

15 **MR. FRANCE:** Good afternoon, Your Honor. Robert
16 France also for the United States.

17 **THE COURT:** And then is -- Kristi Sutton, is it?

18 **MS. SUTTON:** Good afternoon, Your Honor. Kristi
19 Sutton for the United States.

20 **THE COURT:** Great.

21 And I take it we have our BOP official with us.

22 **MS. MATTIOLI:** Yes, Your Honor.

23 **THE COURT:** Okay.

24 All right. We have a lot to do today so we'll get
25 started.

1 I would like to start with updates primarily from BOP. So
2 I think that's probably you, Mr. France?

3 **MR. FRANCE:** Yes, Your Honor.

4 **THE COURT:** And then I don't care who comes up on the
5 plaintiffs' side, but maybe Ms. Janssen would be the
6 appropriate person.

7 All right. Let me just bring up some information.

8 The Court, along with the parties, have been receiving the
9 weekly updates from Ms. Still. I'm showing 126 unresolved
10 medical alerts.

11 Are those still unresolved, to your knowledge, Mr. France?

12 **MR. FRANCE:** Yes, to my knowledge. There are some
13 alerts that are time interval alerts that are dependent on
14 appointments to get lab works done at certain thresholds of
15 time down the road.

16 There are other alerts that need to be resolved that
17 depend on the last vaccination shot for hepatitis B. So those
18 consist of about -- probably about half of the alerts that are
19 remaining.

20 And then --

21 **THE COURT:** What about the other 60-plus?

22 **MR. FRANCE:** Those are alerts that we're working
23 diligently to close.

24 **THE COURT:** But they're still outstanding.

25 **MR. FRANCE:** They're still outstanding, that's

1 correct.

2 **THE COURT:** And they're not resolved.

3 **MR. FRANCE:** Presently they're not resolved, but
4 they're being attended to.

5 **THE COURT:** I show 63 MAT alerts. What is the status
6 of those?

7 **MR. FRANCE:** In -- in some instances, Your Honor, I
8 know that our agency has sent strike teams to facilities to
9 assist with triaging medical care as needed. I can't speak to
10 the specifics of those alerts any more than that --

11 **THE COURT:** All right.

12 **MR. FRANCE:** -- at this time.

13 **THE COURT:** Then I need updates.

14 **MR. FRANCE:** Understood.

15 **THE COURT:** When can you get it to me?

16 **MR. FRANCE:** I can send you an email over the weekend
17 if that's to the Court's pleasure.

18 **THE COURT:** I show 39 still unresolved mental health
19 alerts or mental health issues that have not been resolved.

20 **MR. FRANCE:** Your Honor, my understanding of the
21 alert system is the alert system was only put in place for
22 medical alerts and not mental health alerts.

23 **THE COURT:** Well, maybe "alert" was the wrong word
24 then. You're getting the same spreadsheet I am, correct?

25 **MR. FRANCE:** Yes.

1 **THE COURT:** Okay. So you know that there's a column
2 with the mental health issues or AICs who are identified.
3 I've got 39 still outstanding that have not been resolved,
4 correct?

5 **MR. FRANCE:** Yes. Well, that's -- that may be true,
6 Your Honor. Our medical team is working with the Special
7 Master to resolve specific issues. I know that in some cases
8 that there is some discrepancy on getting alerts removed if --
9 if AICs have been released or gone to halfway houses.

10 In some cases, the Special Master had insisted that there
11 needed to be notification even if they weren't in our
12 custodial care.

13 **THE COURT:** How many of those 39 does that represent?

14 **MR. FRANCE:** I don't have a specific number on that,
15 Your Honor. I know that generally speaking from my
16 conversations with our health services chief and other people
17 that are on her team that have their weekly conversations with
18 the Special Master.

19 **THE COURT:** So it's not zero, right?

20 **MR. FRANCE:** That's probably a fair presumption, but
21 I don't have specifics on that number.

22 **THE COURT:** Do you have any updates, Ms. Janssen?

23 **MS. JANSSEN:** We are in contact with -- with class
24 members from the rosters to confirm whether or not actions
25 were taken as appropriate to clear these alerts.

1 We are collecting declarations on that which we can
2 provide to the Court as needed or in any other form.

3 We have a lot of concerns because we have been hearing
4 from individuals, whose alerts have been cleared, that at
5 least for some of those people, they have not seen anyone or
6 are unclear how that happened.

7 While there may be an explanation for that, we have a lot
8 of questions about exactly how this process is taking place
9 and, specifically, if people are being seen, because we are
10 hearing from individuals that they are not actually being seen
11 in all cases by medical before these alerts are cleared.

12 In addition, we are continuing and have been of course
13 conveying these to the Special Master as appropriate to
14 receive concerns from people who, while they may have been
15 seen initially immediately after transfer by mental health,
16 have struggled to be seen or access services since then and so
17 would, of course, greatly appreciate an update on those
18 efforts as well.

19 In addition, we continue to get questions from folks about
20 the property claim forms that were submitted at this point,
21 you know, a month or more go, as well as issues with their
22 case reviews, credits, management variables, and other things
23 that individuals believe are impacting their ability to move
24 to other institutions or to halfway houses in which they
25 believe may be in retaliation.

1 Those are the various issues that we remain concerned
2 about.

3 **MR. FRANCE:** So I'd like to speak to that if I could,
4 Your Honor.

5 **THE COURT:** Well, sure. We can move to that one.

6 **MR. FRANCE:** Yeah, just generally speaking,
7 plaintiffs' counsel has --

8 **THE COURT:** Hold on.

9 **MR. FRANCE:** Okay.

10 **THE COURT:** I show, according to the last
11 spreadsheet, 137 remaining outstanding issues with respect to
12 property claims.

13 **MR. FRANCE:** Yeah, I think that number is probably
14 around 148 or 149. And we have a person in our office that's
15 dedicated to doing that. But that individual is also
16 responsible for other property claims in the western region.
17 So those are being investigated in the normal course.

18 There's a possibility that if everybody were to submit a
19 property claim, we could have upwards of 600 claims on top of
20 the claims that she is responsible for doing.

21 **THE COURT:** Well, I'll just remind you that none of
22 this would have happened but for BOP's own conduct --

23 **MR. FRANCE:** Yes.

24 **THE COURT:** -- and their inability to create a
25 process to transfer these individuals where perhaps none of

1 this would have happened in the first instance.

2 So you can have your normal course, but I still have
3 137 outstanding issues with respect to property from the
4 closure that happened a few months ago.

5 So what is the timetable for resolving those?

6 **MR. FRANCE:** I can speak to this. The AICs have up
7 to a year to make a property claim submission under the
8 statute. There is no --

9 **THE COURT:** 137 have already been made. Those are
10 the ones I'm asking about.

11 **MR. FRANCE:** Yes. Well, those have to be handled
12 individually so it's on a case-by-case basis.

13 **THE COURT:** How long?

14 **MR. FRANCE:** I would say minimally, Your Honor, at
15 least six months because there's a lot of claims there and
16 there'll be a lot more.

17 I'm trying to be sensitive to the fact that, again, we
18 have limited personnel to work on that. I know that may not
19 be persuasive to the Court, but there's just practical
20 realities with that that we have to deal with.

21 **THE COURT:** You're also asking to dismiss this case
22 because everything is hunky-dory and everything's been fixed.
23 And apparently you're sitting here and you're telling me you
24 can't even resolve property claims for six months. Yet you
25 don't want to have this case pending.

1 **MR. FRANCE:** Your Honor, when it -- with respect to
2 the property claims, there is no time frame on when those need
3 to be resolved by statute. So handling those in the normal
4 course --

5 **THE COURT:** Perhaps -- perhaps by statute. So now I
6 have to give you an order by which to resolve it. That's what
7 you're telling me.

8 Since you don't have a statutory deadline, and BOP caused
9 the problems themselves, that what you're saying is "I can do
10 it in six months, but I don't have to do it in any given
11 amount of time." So what you're telling me is that I have to
12 give you a deadline by which to resolve this.

13 **MR. FRANCE:** I'm -- I'm just saying, Your Honor, that
14 we're doing it as fast as we can, but in addition to resolving
15 those claims, we also have to resolve the claims from the
16 other institutions in the west, and we're trying to triage
17 that as best as we can.

18 **THE COURT:** I understand. And "In the meantime,
19 Judge, dismiss the case." Right? That's what you're saying,
20 too.

21 **MR. FRANCE:** Yeah, yes. But this is --

22 **THE COURT:** Yes.

23 **MR. FRANCE:** This is unrelated to that.

24 **THE COURT:** It's not unrelated. It's all integrated.
25 But we'll get to the motion to dismiss, Ms. Mattioli. You

1 don't have to sit up in your seat. I can see you. I'm a
2 parent. I can see out of the back of my head just like you
3 can.

4 All right. We're going to keep going about all of the
5 things that are still outstanding in light of the motion to
6 dismiss.

7 At the beginning of July, I ordered you to give me an
8 update with respect to compassionate release requests. There
9 were eight adults in custody who were at Dublin who brought
10 these requests because of the sexual abuse specific
11 allegations.

12 They were filed back in 2023. I understand additional
13 ones were filed in 2024. What is the status of all of those
14 requests that stems precisely from the allegations giving rise
15 to this lawsuit?

16 **MR. FRANCE:** Some of those have been closed, Your
17 Honor. And I can give you the names of those in a separate
18 correspondence. And some are still pending review.

19 **THE COURT:** How many? There's eight at issue. Do
20 you have a number?

21 **MR. FRANCE:** I believe there is eight -- I believe
22 there were 11 at issue for 2023. I believe three are
23 resolved. And I think there are eight still at issue or seven
24 still at issue for 2023.

25 **THE COURT:** When are they going to get resolved?

1 **MR. FRANCE:** The -- the team is working diligently to
2 investigate those and to make a decision.

3 Some of those decisions are pending upcoming criminal
4 trial next year. And some of that information is tied up with
5 OIG and the FBI.

6 And some, I believe, are being routed to the director's
7 office for review as well.

8 But we --

9 **THE COURT:** Do you know the number?

10 **MR. FRANCE:** -- closed -- we closed a number in early
11 July.

12 **THE COURT:** Do you know the number which fall into
13 each of those categories?

14 **MR. FRANCE:** In early July, I can tell you the
15 number. I have it on my computer, but I don't have it in
16 front of me.

17 **THE COURT:** Okay. Well, pull it up while you're
18 sitting and Ms. Mattioli is up here, whenever she gets up
19 here.

20 **MR. FRANCE:** Sure. Sure.

21 **THE COURT:** There were additional ones filed in 2024.
22 Do you know what the number is of those? And, again, I'm
23 talking about the ones that were specifically related to
24 sexual abuse allegations from Dublin.

25 **MR. FRANCE:** Yes, I have that on a spreadsheet. I

1 can give you an update on that as well.

2 **THE COURT:** With respect to the disciplinary due
3 process violations, as you know, the number that were
4 previously reviewed, the western region hearing administrator
5 reviewed all of the disciplinary actions taken by FCI Dublin
6 during the period of January 1, 2024, through the closure date
7 of May 1, 2024.

8 There were 552 disciplinary actions written up by FCI
9 Dublin officers. A total of 120, that is, 22 percent were
10 expunged. So what is the status of the AICs classification
11 level time credits, earnings and release dates?

12 **MR. FRANCE:** So that's being communicated to our
13 western correctional program's administrator for dissemination
14 into the various regions in the Bureau of Prisons for
15 correction.

16 As I indicated to the Special Master still in a separate
17 correspondence, if an AIC has a year or less on their
18 sentence, their program review normally happens within 90
19 days. It's been about 90 days since facility closure.

20 And I would estimate those updated numbers would be
21 incorporated into the next team's review for ones that have
22 more than a year on their sentence. Those happen
23 approximately every 180 days. And so those will happen in
24 their normal course as well.

25 I would submit, Your Honor, that for ones where they're

1 getting expungement of good conduct time -- and that's not all
2 of the incident reports at play. Several are UDC reports
3 where there's no good conduct time taken. But for ones that
4 are more than a year, it's not going to have an appreciable
5 effect on their release date because they would have had to
6 lose an extraordinary amount of good conduct time for that to
7 be moved up that dramatically.

8 But there is a process of communicating that to the
9 appropriate people and disseminating it out to the field.

10 **THE COURT:** Well, given that 22 percent were
11 expunged, I then asked that the review next happen for the
12 2020 to 2023 time frame given all of the misconduct that
13 happened at Dublin. What is the status of those additional
14 reviews of all of those disciplinary incidents?

15 **MR. FRANCE:** So I was told by Ms. -- the regional
16 discipline hearing administrator that in a separate
17 conversation with the Special Master over the past week, that
18 she wanted the regional discipline hearing administrator to
19 focus on AICs with release dates through the balance of 2024
20 and then proceed to 2025.

21 I saw a spreadsheet of approximately several hundred AICs
22 that would need to be reviewed in order to fall in that time
23 line of the balance of 2024, 2025, 2026.

24 Some of those AICs have 12 incident reports. And so that
25 requires the discipline hearing administrator to go through

1 each of them individually and go through the process of seeing
2 what, if anything, requires the incident report to be
3 expunged, and then through -- go through the normal reporting
4 mechanism.

5 That's one person that's doing that, in addition to having
6 to review all the other ones in the office for the other
7 institutions in the west.

8 **THE COURT:** Again, a major problem, major issues, all
9 resulting from the conduct that occurred by Dublin officers
10 and correctional staff.

11 And yet, again, you want me to dismiss this case because
12 apparently everything's working and everything's done.

13 Clearly still major issues to be resolved. And
14 accountability. We are very far from having resolution of
15 issues that occurred out there and making sure that these
16 individuals who could have been harmed in lots of different
17 ways and perhaps are receiving time that they shouldn't or at
18 least are potentially being incarcerated with release dates
19 that may be impacted.

20 **MR. FRANCE:** And we're --

21 **THE COURT:** It's just -- it's just -- I have to tell
22 you, it is -- it strains credulity for this motion to have
23 been filed given everything that is outstanding. It strains
24 credulity.

25 But we'll keep going.

1 How many PREA investigations are outstanding with respect
2 to actions taken at Dublin?

3 **MR. FRANCE:** So we estimated about 42 or 43. What we
4 did proactively is if there was any investigation that was
5 still open when the AICs left Dublin, we reset the clock on
6 that to zero days and made that effective July 1st so there
7 would be 90 additional days of monitoring. And that's ongoing
8 at their current facilities to make sure there's no
9 retaliation.

10 **THE COURT:** And when are those going to get resolved?

11 **MR. FRANCE:** Well, presuming there's no issues that
12 emerge in the 90 days, then that would put us at the end of
13 September.

14 But we didn't have to do that. But we did that as an
15 extra added measure of precaution.

16 **THE COURT:** I have 101 outstanding
17 transportation-related issues that have not been resolved. Is
18 that right, approximately?

19 **MR. FRANCE:** Approximately. Yes.

20 **THE COURT:** And when are those getting resolved?

21 **MR. FRANCE:** Those were forwarded, as you saw from
22 some of the correspondences that I sent to -- to chambers,
23 those were forwarded to the Office of Internal Affairs for
24 investigation. Beyond that, I can't speak to where those are
25 in the investigative process.

1 I did connect Ms. Still with somebody that reports
2 directly to Ms. Reese's office. Should she have any specific
3 questions on that, she can raise those with that individual.

4 But as far as I can tell you, Your Honor, those are under
5 investigation, and I can't provide the Court any more
6 specifics on those.

7 **THE COURT:** But unresolved. Right?

8 **MR. FRANCE:** As far as I know, the investigation is
9 ongoing and a determination has not been made.

10 **THE COURT:** Did you personally draft the declaration
11 for Mr. Lothrop?

12 **MR. FRANCE:** Yes, I had input in that. That's
13 correct.

14 **THE COURT:** You and who else?

15 **MR. FRANCE:** Myself and the U.S. Attorney's Office
16 for the District of Montana.

17 **THE COURT:** The Court has found in its preliminary
18 findings that all of the issues with respect to medical,
19 mental health, and -- and then I didn't find it with respect
20 to the transportation or property issues, but certainly with
21 respect to mental health and medical, that those -- that had
22 this case gone to trial immediately, there would have been a
23 likelihood of success by the plaintiffs with respect to their
24 claims.

25 You rely on Mr. Lothrop's declaration to argue that there

1 are no more constitutional conditions. And yet none of these
2 things have been fully resolved.

3 So did you share with him before he signed this
4 declaration that there were 126 medical alerts outstanding,
5 63 MAT alerts -- or not alerts but MAT indicators outstanding,
6 39 mental health outstanding, compassion -- and then
7 everything else we've gone through?

8 Did you share all of that data with him?

9 **MR. FRANCE:** Yes. He's generally aware that there
10 are issues that we're working through at other institutions.
11 But as you'll hear in argument, there are some distinctions
12 that we would like the Court to consider.

13 **THE COURT:** Okay. Well, let's move to that.

14 I take it Ms. Mattioli's coming to the stand. So you can
15 go back and find the other information for me.

16 **MS. MATTIOLI:** Your Honor, if I may just --

17 **THE COURT:** You may not yet.

18 **MS. MATTIOLI:** Okay.

19 **THE COURT:** First, the government -- or the BOP, I
20 should say. I won't say the government given that different
21 government branches are serving in different capacities in
22 this particular case, given all the criminal indictments.

23 The BOP argues, based in part on this declaration which is
24 all of one page, that the case is moot. We'll start there.

25 Is it moot?

1 **MR. NIMNI:** No, Your Honor. And I'm happy to walk
2 through a couple of different things -- couple of different
3 reasons why.

4 Starting with the declaration, and we can address some of
5 the issues with the declaration, but starting with the
6 declaration, it's almost irrelevant to the issue of mootness.

7 The declaration mostly speaks to -- I believe the thrust
8 of the declaration is that there are presently no plans to
9 reopen FCI Dublin as a facility that would house female adults
10 in custody.

11 Now, there are reasons why -- there are problems with the
12 declaration, but whether or not that's true, there are ongoing
13 problems for the same plaintiffs, the same class members
14 incarcerated by the same defendants under the same policies,
15 and that's just not the stuff of mootness.

16 The issues are ongoing. This Court is well aware of that
17 from the testimony even back in the preliminary injunction
18 hearing where officials from BOP also testified, from the
19 Special Master's report, from the weekly updates. All of
20 these things indicate that the same plaintiffs are being
21 harmed by the same defendants, and that doesn't equal
22 mootness.

23 Now, as to the declaration itself -- and maybe we'll learn
24 more of this if Mr. Lothrop is questioned -- but even on its
25 face, it's not clear to me that this binds the BOP in any way

1 to any particular sort of behavior, that there's been any
2 policy or administrative changes that bind the BOP in any way.

3 And it doesn't seem to address in any way the ongoing
4 medical issues, risk of sexual assault, risk of retaliation.

5 It's -- the mootness argument boils down to the same
6 argument that BOP has been making since we filed this case
7 almost a year ago, which is, you know, at first it was, okay,
8 it's only a couple of officers. Then it was, okay, it's some
9 officials. Then it was, okay, it's the higher level
10 officials. Then it's, okay, it's the facility. And it's
11 always "and now everything is okay."

12 And that's just not what the evidence bears out. And at
13 the very least, it's a case that should go forward to trial,
14 and the evidence should be presented and a fact finder should
15 be able to determine whether those constitutional issues that
16 we raised and that this Court found a likelihood of success on
17 have been resolved or whether they haven't.

18 Right now it's clear that they haven't.

19 **THE COURT:** Why is it moot?

20 **MS. MATTIOLI:** Your Honor, the legal argument as to
21 why it's moot is that the conditions of confinement claims
22 that were raised in plaintiffs' complaint that were litigated
23 through the preliminary injunction, through the evidentiary
24 hearing, and in the amended complaint relate to unique
25 conditions of confinement at FCI Dublin.

1 **THE COURT:** Well, how have you shown to me that it is
2 unique?

3 **MS. MATTIOLI:** There is no evidence that it is not.
4 There is no evidence in the record that --

5 **THE COURT:** If you cannot -- you can't clear any of
6 these outstanding issues at any of these facilities. You
7 still haven't been able to clear them.

8 **MS. MATTIOLI:** Your Honor, some of them have been
9 cleared.

10 **THE COURT:** Some --

11 **MS. MATTIOLI:** A great number of them have --

12 **THE COURT:** But not all.

13 **MS. MATTIOLI:** Not all.

14 **THE COURT:** Well, then how's it moot if you've not
15 done it all and have given me no assurance whatsoever as to a
16 timetable when they will be resolved?

17 **MS. MATTIOLI:** I believe Mr. France was able to say
18 within six months.

19 **THE COURT:** Well --

20 **MS. MATTIOLI:** Maybe --

21 **THE COURT:** -- maybe in six months I'll dismiss it as
22 moot. But we're not at six months. And you've given me zero
23 assurance.

24 I'm looking at the staffing reports in these other
25 facilities. He tells me he's got one person doing some of

1 these things for the entire country. That's not moot.

2 **MS. MATTIOLI:** Your Honor, I think it goes back to
3 the nature of the alerts that remain to be cleared. This
4 Court --

5 **THE COURT:** It's not moot if it's ongoing and
6 outstanding. It is not resolved. How is there any
7 accountability whatsoever? How would there be any
8 accountability?

9 By the way, Congress is asking the same question.

10 **MS. MATTIOLI:** And they did just pass legislation
11 that will increase oversight of the prisons.

12 **THE COURT:** Because there hasn't been sufficient
13 accountability. And yet you would like this Court to just
14 wipe its hands clean and let you go on your merry way -- not
15 you personally, but the BOP -- with respect to all of those
16 hundreds of individuals who are out there.

17 **MS. MATTIOLI:** The BOP understands this Court's
18 position. The government understands this Court's position
19 and the public's perception of this being an escape from
20 accountability. But that's not what it is. It is a coequal
21 branch of government.

22 **THE COURT:** You are not a coequal branch of
23 government. The BOP is not a branch.

24 **MS. MATTIOLI:** I understand, Your Honor.

25 **THE COURT:** Right?

1 significant --

2 (Simultaneous colloquy.)

3 **MS. MATTIOLI:** -- medical conditions.

4 **THE COURT:** I've seen no analysis of the outstanding
5 issues by the BOP. You've not given me any analysis of that.
6 You gave me a one-page declaration by someone who said, "Yeah,
7 we closed Dublin."

8 By the way, I know that. I could have taken judicial
9 notice of it.

10 And "maybe we won't open it again." Okay. That doesn't
11 give me any assurance of anything whatsoever other than maybe
12 you won't open it again.

13 **MS. MATTIOLI:** I understand, Your Honor. And I -- I
14 think based on our receipt of the tracking spreadsheets and
15 my -- our understanding of the -- the amount of alerts that
16 have been cleared in a relatively short amount of time and the
17 nature of the outstanding alerts, like Mr. France said, some
18 of the alerts can't be cleared until six months has passed so
19 somebody can get a second booster of a vaccine.

20 **THE COURT:** I am particularly concerned about there
21 are some severe medical issues still outstanding. I'm
22 concerned about the mental health issues in particular. These
23 mental health issues stem directly to what was happening out
24 there.

25 And yet, I still hear complaints -- I have hundreds of

1 letters from people who are still struggling. And -- and I am
2 not saying -- because I understand at some point, you know,
3 we'll get to a point. But to claim at this -- at this
4 juncture, three months after you closed, that you've mooted
5 everything? Like I said, it strains credulity.

6 **MS. MATTIOLI:** I think, Your Honor, it just goes back
7 to the distinction that we -- we have not claimed that there
8 is no -- that there are no outstanding issues. That has never
9 been the claim.

10 The claim is that subject matter jurisdiction rests on
11 there being a live case or controversy which stems from the
12 allegations in the complaint.

13 Nowhere in the complaint do they mention other facilities.
14 Nowhere in the complaint do they mention staffing ratios at
15 FCI Danbury or SeaTac. We have memos that we're receiving
16 from plaintiffs' counsel that we have done a -- a scratch of
17 the surface to find gross inaccuracies in what is being
18 represented to the Court and the Special Master through those
19 memos.

20 **THE COURT:** So why aren't you -- why don't you want
21 to go to trial? I offered to take this case to trial in
22 October. You refused.

23 So you ready to go to trial? If there's nothing, then are
24 you ready to go to trial, Ms. Mattioli? I'll finish up my
25 four-month criminal trial and turn this courtroom into a

1 different trial venue.

2 **MS. MATTIOLI:** I think it's important to remember --
3 to understand also that in providing the weekly spreadsheets
4 to the Court and the Special Master, BOP is committed to
5 clearing the alerts. BOP is unified in the goal that the
6 Court has, which is to ensure that the fallout from the
7 closure of FCI Dublin goes no further than necessary.

8 Closing the facility is a measure of accountability. It
9 is an acknowledgment that there were issues there that,
10 despite enormous expenditure of resources and staffing changes
11 and training and consulting groups and upgraded cameras, they
12 could not solve the cultural problem that persisted in that
13 facility.

14 Out -- not to mention the lack of medical care that was
15 exacerbated by the reputation of the facility, that was
16 cultivated over years. There are community providers who are
17 unwilling to provide care to a female population because of
18 the fear of having allegations of sexual assault raised
19 against them.

20 This -- this exact situation has never happened in the
21 history of the Bureau. And they -- they did everything they
22 could to fix that issue.

23 The next step in the playbook was to close the facility,
24 relocate the AICs to other more successful institutions that
25 have the staffing, including medical staff, to address those

1 issues.

2 No -- no facility is fully staffed. The agency -- there
3 is a shortage. There is -- we cannot dispute that. But there
4 are no facilities that I am aware of that community providers
5 are refusing to treat the AIC population because they don't
6 want to lose their medical licenses.

7 **THE COURT:** So this is all news to me. This is --
8 there's -- there has been -- the representations that you just
9 made are nowhere in the record. Nowhere. So you may be
10 right, but that's not in the record anywhere.

11 **MS. MATTIOLI:** I believe I have made references, Your
12 Honor, to the lack of community providers being willing to
13 treat this population.

14 **THE COURT:** I have not heard any evidence to that
15 effect.

16 **MS. MATTIOLI:** Okay. I think it's important to
17 understand the argument that the government and the BOP is
18 making is not that everything is fine, don't look any further,
19 we've got it under control.

20 There was an acknowledgment by the agency that the issues
21 at that facility, highlighted in part through this litigation
22 and the evidentiary hearing, the FBI raid and removal of the
23 executive staff for the umpteenth time, those things changed
24 the course of the decision-making in the agency.

25 It was not preplanned in order to deprive the court of

1 jurisdiction. If that were the case, they would have done it
2 a long time ago.

3 **THE COURT:** Well, I -- I can appreciate that you can
4 acknowledge that the BOP is acknowledging that issues are
5 still outstanding. That part of your statement we agree on.

6 What we don't agree on is the second part of your
7 statement. Because by bringing a motion to dismiss, you are
8 in fact arguing that no one need look any further, you have it
9 all under control, and so therefore the case should be
10 dismissed. You are arguing that.

11 **MS. MATTIOLI:** I think what we're arguing, Your
12 Honor, is that there are -- there are policies in place. The
13 constitution requires a level of care in those other
14 facilities. And absent a specific allegation and evidence
15 that those facilities are failing to adhere to policy or meet
16 those standards, like I said, the clearing of an alert that
17 requires somebody to have a teeth cleaning, that is not an
18 unconstitutional condition of confinement.

19 Serious medical needs have been treated because that's
20 what BOP policy and the Constitution require.

21 **THE COURT:** Again, you've given me nothing in the
22 nature of a specific analysis with respect to specific issues.
23 Nothing. All you gave me was a one-page declaration from that
24 gentleman over there. That's all you gave me.

25 **MS. MATTIOLI:** And the purpose of providing that

1 declaration, Your Honor -- I understand your point and the --
2 we would be able to provide the additional analysis to you
3 based on the spreadsheets, the nature of the alerts that
4 remain outstanding and our analysis of whether or not the lack
5 of those alerts being cleared is a violation of the
6 Constitution. Our position is that it is not.

7 **THE COURT:** That's not what you did, Ms. Mattioli.

8 **MS. MATTIOLI:** I understand.

9 **THE COURT:** Any response?

10 **MR. NIMNI:** Just briefly, Your Honor.

11 A lot of what Ms. Mattioli is discussing is extra record
12 evidence. It's not appropriate to evaluate at a motion to
13 dismiss. Many of the arguments that Ms. Mattioli is making
14 would be appropriate to come out as evidence at trial, and
15 then a finder of fact could evaluate whether those conditions
16 are actually unconstitutional.

17 This is a case largely about Dublin, but also we named the
18 director of the BOP. This is also an agency case because
19 there are policies that directly informed what was going on at
20 FCI Dublin or were not being properly enforced at FCI Dublin.

21 And just to bring it back to the standard that we're on
22 here at a motion to dismiss, *West Virginia vs. EPA* lays out
23 what the court needs to consider, the government's high burden
24 in moving for mootness when -- by voluntary cessation of their
25 activity. And in *West Virginia vs. EPA*, the EPA said

1 another -- the EPA, another executive agency, said, oh, you
2 know, all of our -- even though we've litigated this case
3 saying that everything we've been doing was fine, now this
4 case is moot because we've -- you know, we've changed course.

5 And the Supreme Court made very clear that the consistent
6 litigation position that everything that they were doing was
7 constitutional and fine meant that there was nothing
8 preventing the EPA there and the BOP here from going back to
9 the exact same behavior.

10 There've been no policy changes. There have been some --
11 like medical alerts have been cleared. Some things have
12 happened. Those are all record evidence that might come out
13 at trial.

14 But right now what we have is -- I appreciate the
15 acknowledgment that things are not going okay at BOP and that
16 they weren't going okay at Dublin. But that wasn't the
17 litigating position of BOP throughout the entirety of this
18 case until closure.

19 The litigating position of BOP was there are no
20 constitutional issues at Dublin and that there continue to be
21 no constitutional issues with medical care, retaliation, and
22 risk of sexual assault at FCI Dublin. That was, from day one,
23 BOP's litigating positions until closure. And they haven't
24 changed that or reversed that in any meaningful way. And that
25 is the crux of voluntary cessation mootness.

1 So, you know, perhaps some of this evidence is true.
2 Perhaps it's not. The Court is getting a lot of evidence
3 through the Special Master and through weekly updates and
4 reports. All of those would inform summary judgment and trial
5 after discovery.

6 **MS. MATTIOLI:** Your Honor, if you go back to the
7 first amended complaint and plaintiffs' claims that this is a
8 case against BOP, we named BOP, there's two references in the
9 hundreds of paragraphs about being transferred to other
10 facilities in retaliation. I understand their position that
11 the closure changed the nature of the complaints in this case
12 but that's not how litigation works.

13 They, in their complaint, sued the BOP for its failures to
14 manage FCI Dublin and the AIC population therein. That's what
15 the evidence that this preliminary injunction was granted on
16 consisted of, were the unique conditions of confinement at FCI
17 Dublin.

18 In order for the closure to not moot those claims, there
19 has to be a reasonable expectation that those AICs will be
20 transferred back, that those same conditions will exist again,
21 which is the purpose of Mr. Lothrop's declaration is to show
22 that that cannot happen.

23 Also when we're talking about them -- when they're saying
24 that they're challenging policies, and BOP's in charge of
25 policy, that is not what they were challenging. Nowhere in

1 the amended complaint do they challenge as unconstitutional a
2 single BOP policy. They challenge the implementation or lack
3 thereof of the policies in this specific facility.

4 To say that they've received complaints from AICs who've
5 been transferred elsewhere, that is also not record evidence.
6 There is no evidence -- there's no allegation in the complaint
7 that they're challenging a nationwide policy that would apply
8 to other facilities. And there is no evidence to support that
9 this population will ever return to FCI Dublin or that those
10 conditions will again resume.

11 **THE COURT:** All right. Identify for me, to the
12 extent that you disagree with what Ms. Mattioli just said,
13 identify for me where in the complaint it shows otherwise.

14 **MR. NIMNI:** Of course, Your Honor.

15 So paragraphs 8, 60 through 70, 71 through 105,
16 258 through -62, 263 through -67.

17 And I agree -- I don't -- I don't want to misrepresent
18 plaintiffs' position. We're not trying to litigate the
19 conditions of confinement at every single BOP facility.

20 Who we represent is the certified class of plaintiffs here
21 who are affected by the conditions at FCI Dublin that were
22 allowed by BOP. And at the preliminary injunction hearing,
23 many officials from FCI Dublin testified, but also higher
24 level officials from BOP testified. And one of the main
25 pieces of testimony was, for example, Beth Reese's testimony

1 where she said as a categorical rule BOP-wide, we do not
2 investigate, at her office, claims of retaliation, that those
3 are left to the individual facilities.

4 And that was part of the argument of why retaliation
5 claims were swept under the rug at FCI Dublin.

6 **MS. MATTIOLI:** Your Honor, if I may --

7 **MR. NIMNI:** Additional --

8 **THE COURT:** Hold on.

9 **MS. MATTIOLI:** That misstates the testimony just a
10 bit.

11 **THE COURT:** I said hold on.

12 **MS. MATTIOLI:** Okay.

13 **THE COURT:** Do not interrupt.

14 **MR. NIMNI:** Additionally, Ms. Mattioli made a series
15 of references of what's in the record and what's not in the
16 record. This is a motion to dismiss. It's defendant's burden
17 to show that the case is moot through voluntary cessation.
18 It's an extremely high burden. They have not met it with this
19 declaration.

20 We have the same plaintiffs incarcerated by the same
21 defendants. That just isn't mootness. If -- if this record
22 evidence that Ms. Mattioli -- if Ms. Mattioli wants to
23 challenge class members' experiences of what's going on in BOP
24 custody or advance the evidence that she's discussing about
25 what each medical alert means, that is perfectly fine, but

1 that's something that should come out through discovery. Then
2 we can have summary judgment briefing. Then we can have
3 trial.

4 It's just completely inappropriate at the motion to
5 dismiss stage, particularly in a case, though, where we
6 actually do have a lot of evidence. We have evidence from the
7 preliminary injunction hearing, from the Special Master, from
8 the weekly updates, from BOP itself about experiences that the
9 class members are having as a result of what happened in FCI
10 Dublin and a result of the BOP transfer of those class members
11 that are unresolved.

12 **THE COURT:** So why isn't this better resolved on
13 summary judgment where you can say, here's the status, here's
14 the evidence, these 150 -- 126 alerts are all medical -- or
15 dental appointments for teeth cleaning. If that's in fact
16 what it is, which I am not sure I would agree with you as I
17 sit here.

18 **MS. MATTIOLI:** The government filed a motion to
19 dismiss based on Mr. Lothrop's declaration based on its
20 understanding that what it needed to prove in order to
21 establish -- to overcome the voluntary cessation exception to
22 mootness was that there was no reasonable probability that the
23 challenged conduct could recur.

24 The closure of that facility and the second highest
25 ranking official in the agency saying it will never reopen to

1 house female AICs meets that burden, especially when
2 considering the presumption of good faith that is afforded to
3 governmental entities when they change policies and take
4 action.

5 **THE COURT:** Are you saying there's a policy change?

6 **MS. MATTIOLI:** It --

7 (Simultaneous colloquy.)

8 **THE COURT:** Are you saying there's a policy change?

9 **MS. MATTIOLI:** There isn't a policy change but --

10 **THE COURT:** Okay, then don't say there is.

11 **MS. MATTIOLI:** As a general matter, Your Honor, when
12 governments change policies or take action in response to
13 litigation, so long as it is done in good faith, the court,
14 under the law, must presume that it is in good faith unless
15 there's evidence to the contrary.

16 **THE COURT:** I don't know you, Mr. Lothrop, but I have
17 to tell you I am a little -- I've sentenced too many BOP
18 officials to take anything without a grain of salt.
19 Nothing -- nothing against you personally, though.

20 And the record will reflect that he acknowledged by
21 shaking his head in an affirmative-type -- affirmative-type
22 way.

23 **MS. MATTIOLI:** I think the agency understands the
24 position that the Court is in. The agency understands --

25 **THE COURT:** Well, you should also understand that I

1 never -- and I said this at the outset. You all remember, at
2 the very beginning I said I had no interest in running Dublin.
3 But we do what we have to do. That's our obligation as
4 judges. We do what we have to do.

5 So I have no interest in -- in the job that many of my
6 colleagues have who have run some of these state facilities
7 for decades. That's not my goal.

8 But my goal is to make sure that what we started is
9 finished and is finished properly. And I am not about to find
10 that it is over and done without full accountability with
11 respect to the issues that we started here. So that's my
12 position.

13 Mr. Nimni, you gave an example of Ms. Reese. Are there
14 other policy failures that you're arguing in this case?

15 **MR. NIMNI:** All of the policy failures that we're
16 arguing about, Your Honor, are either -- are simply BOP
17 policy -- I mean we named the director, we named the Bureau of
18 Prisons because -- and we heard from other Dublin staff that
19 occasionally their hands were tied by BOP policy.

20 And so a lot of the relief that we've requested, for
21 example, things like a third-party confidential reporting
22 mechanism, which now in some respects exists with the Special
23 Master's email despite some of the issues that have been going
24 on there.

25 Those sorts of things would be -- my understanding is

1 those communication mechanisms are designated at a BOP or
2 regional-wide level as far as whether those reporting
3 mechanisms are allowed or exist, and so the relief would run
4 against the BOP.

5 **MS. MATTIOLI:** Your Honor, Ms. Reese has provided
6 three declarations in this case. And her testimony at the
7 evidentiary hearing was that it used to be that OIA would not
8 routinely engage in retaliation claims.

9 With the reorganization of OIA and the policy change that
10 took that chain of reporting from the local facility and put
11 it with her office, when it came to FCI Dublin, all
12 allegations against staff of any nature were taken by OIA and
13 not handled at the local level.

14 What she was referring to in that testimony was just as a
15 general matter, if there were a standalone retaliation
16 complaint, which there rarely is, it would not rise to the
17 level of something that her office would investigate. But
18 when it comes to FCI Dublin, those cases are all referred.

19 And that is happening at the local institutions, the
20 receiving institutions, because that's what is required by BOP
21 policy.

22 Any allegations of retaliation that are being raised by
23 former AICs that were at Dublin at their new facilities are
24 being referred and investigated.

25 **THE COURT:** Do you want to respond, Mr. Nimni?

1 **MR. NIMNI:** As to the last point, that's not my
2 memory of the testimony. We can -- we're happy to submit the
3 portion of the -- of the PI transcript just to clear things
4 up.

5 As far as what's going on at the new facilities, once
6 again that's evidence that I don't believe is in the record
7 and is inappropriate to rely on at the motion to dismiss
8 stage.

9 We have, you know, relief that would run against the BOP.
10 We have allegations that BOP lack of oversight over Dublin
11 allowed a number of these things to happen.

12 And, you know, as telling, as I mentioned before, the
13 government's position -- or BOP's position was, up until the
14 closure in this court that everything is fine.

15 And I also have nothing against you, Mr. Lothrop. But
16 your declaration --

17 But Mr. Lothrop's declaration is not definitive. There's
18 no policy change. There's no rule making. There's no
19 internal memoranda that it addresses about how things are
20 going to change.

21 All it says is there are no immediate plans to open FCI
22 Dublin and it wouldn't reopen as the type of facility that
23 would house female AICs. And BOP is able to presently care
24 for its female AIC population and anticipates the ability to
25 do so in the future.

1 It's a lot of qualifying language. It doesn't bind a
2 future BOP in a new presidential administration to any of
3 these things.

4 And to the extent that Ms. Mattioli thinks that this case
5 isn't about the specific plaintiffs incarcerated by the
6 defendants but is rather about the building of FCI Dublin, if
7 that is the world that we're -- if that's the world that we're
8 operating in, then there's no reason that whoever gets
9 reincarcerated there, whether it be men or women, wouldn't be
10 subject to the exact same lack of medical care, risk of
11 retaliation, risk of sexual assault.

12 Now none of that evidence is in the record because this is
13 a motion to dismiss. And we're --

14 **THE COURT:** And what authority do you have for the
15 proposition that absent a policy change or rule making, the
16 BOP doesn't qualify for a voluntary cessation exception?

17 **MR. NIMNI:** I would rely on *West Virginia vs. EPA* and
18 also *FBI vs. Fikre*. So both of those are cases where an
19 agency claims to voluntarily cease its activity. In *Fikre*,
20 which was a case about the sort of no-fly list, there a
21 high-level official did submit a declaration and the
22 Supreme Court said a declaration just that you're not going to
23 do this isn't enough. There needs to be something more
24 that -- to meet this high bar that binds the agency so that we
25 don't think that this is reasonably expected to happen in the

1 future, particularly considering -- and now we're on
2 *West Virginia vs. EPA* -- particularly considering that this
3 has been their litigation position from day one that
4 everything was fine. There's nothing in this declaration that
5 means that BOP couldn't revert to that exact same position.

6 **THE COURT:** Do you -- do you have a response with
7 respect to the case law?

8 **MS. MATTIOLI:** I do, Your Honor.

9 Those -- in each of those cases, especially *Fikre*, the --
10 the issue that hung up the court was the quality of the
11 declaration. There's a lot of terms like "vague," "sparse."
12 Mr. Lothrop is here.

13 **THE COURT:** Well, the reason he's here is because it
14 was pretty vague, it was pretty generic, and it was only one
15 page. So do you want to bolster and call him to the stand?

16 **MS. MATTIOLI:** I would, Your Honor.

17 **THE COURT:** All right. Come forward, sir.

18 And you'll have an opportunity to cross.

19 Ms. Mattioli, you can move over to the other podium.

20 And courtroom deputy will put you under oath.

21 **THE CLERK:** You can go ahead and step into the
22 witness box.

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WILLIAM W. LOTHROP,

called as a witness by the defendants, having been duly sworn,
testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you.

THE COURT: All right. Good afternoon.

THE WITNESS: Good afternoon.

THE COURT: You may proceed.

MS. MATTIOLI: Thank you, Your Honor.

THE COURT: And why don't you state your name and
spell your last name for the record.

THE WITNESS: It's William Lothrop, L-O-T-H-R-O-P.

DIRECT EXAMINATION

BY MS. MATTIOLI:

Q. Good afternoon, Mr. Lothrop. Thank you for being here.

What is your current position?

A. Deputy director.

Q. Of...?

A. The Bureau of Prisons.

THE COURT: Okay. I think maybe moving that mic up.
We had a witness here who was having issues with the mic.

All right. Let's try that again.

Deputy director --

THE WITNESS: Deputy Director of the Federal Bureau
of Prisons.

1 **BY MS. MATTIOLI:**

2 Q. Thank you.

3 **THE COURT:** Much better. Thank you.

4 **BY MS. MATTIOLI:**

5 Q. How long have you been in this role?

6 A. Two years.

7 Q. And how did you come to be in the role?

8 A. I started in November of 1992 as a correctional officer
9 and worked my way up through the ranks as a lieutenant,
10 captain, associate warden, warden, regional director, and then
11 deputy director.

12 Q. And what -- what does the deputy director of the Federal
13 Bureau of Prisons do?

14 A. So I oversee the operations of 120 prisons. I supervise
15 the regional directors who are -- that are supervising those
16 wardens in those facilities.

17 I also provide information to the director. I take in
18 information from the -- the regional directors of ongoing of
19 the institutions, discuss them with the director. And my main
20 job to provide the resources that the RD's, the regional
21 directors, need for the facilities.

22 Q. Are you involved in decision-making?

23 A. Yes.

24 Q. And how are you involved in decision-making? What does
25 that look like?

1 **A.** High-level decision-making, not necessarily at the
2 institution level or the regional level, but -- at central
3 office level when -- you know, those decisions that affect the
4 entire agency.

5 **Q.** Would that include the decision to temporarily close a
6 facility?

7 **A.** Yes.

8 **Q.** And when the agency is considering a temporary closure,
9 can you explain what that means and what you consider?

10 **A.** So we take into consideration what resources that we've
11 already provided the -- and what -- what the issue is. So we
12 had to individualize that for each facility.

13 **THE COURT:** Can you remind me, when did you become
14 deputy director?

15 **THE WITNESS:** July of 2022.

16 **THE COURT:** Okay. Thank you.

17 **BY MS. MATTIOLI:**

18 **Q.** And just to stop you briefly, would it be fair to say that
19 when you began your position, you -- did you understand what
20 was going on at FCI Dublin?

21 **A.** Not fully. Not fully. You know, was aware of, you
22 know -- in very general what was -- what was taking place. I
23 was a regional director at the time. So there was some
24 communication at the table at our execs team meetings.

25 So I caught -- I knew in general what was going on.

1 **THE COURT:** Regional director of what area?

2 **THE WITNESS:** Southeast region.

3 **BY MS. MATTIOLI:**

4 **Q.** And I interrupted you when you were discussing
5 considerations. I -- I'd like to back up.

6 Has BOP ever closed a facility?

7 **A.** Yes.

8 **Q.** And can you give the Court an example, a general example,
9 of what would lead to that decision?

10 **A.** We individualize. We try to come to the -- get to the
11 bottom of what's going on at the facility. Obviously it's --
12 it's not a decision that's taken lightly whatsoever. It's --
13 it's a very difficult decision to -- to close a facility
14 because there's so many things that need to be taken into
15 account.

16 But so we individualize it, figure out what resources that
17 we can provide in order not to close it. The goal is not to
18 close. But when we get to a point where we realize we need to
19 close the facility, that's -- that's -- that's what we have to
20 do.

21 **Q.** So what are some examples -- and we can now talk
22 specifically about FCI Dublin -- of resources that you know
23 personally the agency devoted to not closing the facility?

24 **A.** So there were several administration changes there,
25 wardens, associate wardens. We added additional positions

1 there. When we did get a warden in that requested additional
2 positions, additional monitoring in the evenings and things
3 like that, so we provided additional positions in the way of
4 an additional associate warden, captain, and some other --
5 other positions that we gave them.

6 We had switched out a large number of the department
7 heads, the other supervisors in the facility. We sent task
8 force and audit teams and other resources that -- to go in and
9 do interviews, and -- and to assess the facility.

10 We had a third party, the Moss Group, that had come in for
11 them the look at what issues that were at the facility and
12 kind of guide us in a -- in a direction because what we've --
13 what we had done up to that point was not working.

14 **Q.** So I want to turn to the declaration and the statement
15 that you made. And paragraph 6 says, "BOP had been seriously
16 exploring the closure of FCI Dublin over the past couple of
17 years."

18 And that's sort of what you just described.

19 **A.** Yes.

20 **Q.** And the next sentence -- the next line says, "As mounting
21 challenges suggested that meeting expected standards might not
22 be possible, including most recently the removal of several
23 executive staff members on March 11th, 2024."

24 **A.** Yes.

25 **Q.** Can you describe the mounting challenges that suggested to

1 you the measures you had attempted to implement were not
2 working and the agency needed to do something else?

3 **A.** It was continued -- the same -- we kept hearing the same
4 thing over and over again, the retaliation, the sexual abuse,
5 the infrastructure issues that were there. And those just
6 continued to grow and grow until it got to the national level,
7 which it got to my level. And that's -- we knew we had to
8 address those concerns.

9 **Q.** And then the next -- I'm going to go back up to
10 paragraph 4. It says, "The BOP has no immediate plans to
11 reopen FCI Dublin absent first addressing factors that have
12 caused previous issues."

13 Why -- why did you say that BOP has no immediate plans?

14 **A.** Those -- some of those contributing factors for closing
15 the facility still remain at that facility. And some of them
16 are out of our control. Local community health care providers
17 are outside of our control. We can dump as much recruiting
18 effort as we can into the facility. If we can't staff the
19 facility to an acceptable level, we can't -- we couldn't be
20 able to reopen it.

21 **Q.** What about the factor that you have listed, aging
22 infrastructure, environmental and safety concerns, what needs
23 to be done in order to address those factors?

24 **A.** So we had a security assessment that was completed a few
25 weeks ago. Last week we had an architectural and engineering

1 firm come in and do a infrastructure survey, audit for us so
2 that we could determine what infrastructure needs that
3 facility has.

4 We haven't received those final reports yet. I expect
5 them, you know, any time now.

6 **Q.** Do you have a rough estimate based on any assessments that
7 were done in the past what it might cost the agency to repair
8 those issues?

9 **A.** Rough estimate, it would be in the tens of millions of
10 dollars to repair that facility.

11 **Q.** And is it your statement that BOP will not reopen
12 FCI Dublin until those issues are addressed?

13 **A.** That's correct.

14 **Q.** And the last thing that you say in your declaration.
15 Assuming the infrastructure, safety, and environmental issues
16 can be addressed, will the agency ever use this facility to
17 house female AICs?

18 **A.** No. The issues in the community still exist. It would be
19 the same staffing -- staff that would be there. And the
20 issues still are there. And I think it's -- it's rooted in
21 that culture of the facility.

22 And even removing that entire population and putting a new
23 one in I don't think would resolve those issues. So, no, we
24 will not be putting another female population at FCI Dublin.

25 **Q.** Do you have precedent in the agency for that approach, to

1 switch the population if you reopen?

2 **A.** Yes. We've done that at both USP Atlanta and USP Thomson,
3 Illinois.

4 **Q.** And why is it -- why is it necessary to change the
5 population when you reopen?

6 **A.** When we -- when we close the facility, we -- we go do
7 intensive training. Train the staff back to the basics-type
8 training, advanced training and communication. And then we
9 also send them out TDY to other facilities so that they can
10 work at other facilities alongside facilities that are -- that
11 are successfully being run and to basically get a taste of how
12 a facility should run when it is running appropriately.

13 So that's the course of action. And then we bring them
14 back with a lower security -- normally a lower security AICs.

15 **Q.** The last thing I would like you to clarify, if you could.
16 There's been some references to it being a temporary closure.
17 Why does the -- in light of what you said, "We need
18 assessments, we need to do repairs," why are we calling it a
19 temporary closure?

20 **A.** So the Bureau of Prisons has the authority to temporary
21 close and we have the authority to assign the population to a
22 facility, what population we would like housed at that
23 facility. However, we don't have the authority to permanently
24 close a facility. We have to seek congressional concurrence
25 with that.

1 Q. There are formal steps that need to --

2 A. There's formal steps, yes.

3 Q. Have any of those formal steps been taken?

4 A. No, they haven't. Not yet.

5 MS. MATTIOLI: Okay. That's all I have.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 BY MR. NIMNI:

9 Q. Good afternoon, Mr. Lothrop.

10 A. Good afternoon.

11 Q. Just a couple of questions for you.

12 When was the first time you became aware that BOP was
13 exploring the closure of FCI Dublin?

14 A. I can't definitively put an answer, put a date on that.
15 It has been years. Even prior to me taking this role and even
16 before I was a regional director in the southeast region, I
17 was a warden in the western region, and there was -- there was
18 talks about it then.

19 Q. Okay. So a long time.

20 And have you ever been involved in a prison closure
21 before?

22 A. Yes, I have.

23 Q. Which prison?

24 A. USP Thomson, USP Atlanta.

25 Q. And how did you first learn that there were discussions of

1 closing FCI Dublin?

2 **A.** I think the first time that I learned -- the communication
3 about it when it was first talked about, I was the warden
4 in -- in Phoenix, and the regional director at the time was
5 discussing some options with the wardens.

6 **Q.** And I believe you testified and also in your declaration
7 said that the reasons for discussing closing FCI Dublin were
8 aging infrastructure and also staff misconduct, including
9 sexual assault and retaliation; is that correct?

10 **A.** Correct.

11 **Q.** And I believe you just testified that during your tenure
12 as deputy director, those conditions continued to grow and
13 grow worse; is that correct?

14 **A.** Not at Dublin. By the closure of Dublin, that -- that
15 minimized -- or not minimized -- um, we hit -- you know, we
16 hit the -- the point where we felt as if we could do nothing
17 more at Dublin except close the facility.

18 That was the increasing amount of medical appointments in
19 the community that the -- the care providers were refusing.
20 We couldn't send, you know, any more exec staff than we
21 already had to the facility. We were increasing incentives
22 and intention -- intention bonuses -- retention bonuses,
23 excuse me, and we just couldn't get staff to the facility.

24 We were doing the best we could. We started TDY'ing
25 employees from other facilities to come to Dublin to work. We

1 were bringing in resources like the regional employees to come
2 to the region and work. And that's just -- it wasn't
3 sustainable.

4 **Q.** At what point did you become aware that the conditions at
5 FCI Dublin had not improved concerning medical care?

6 **A.** I think early 2024, February, March, somewhere in that
7 time frame, is -- is when we realized that, you know,
8 certainly right after the FBI raid and that exec staff and
9 when those exec staff were -- were removed, I -- we felt we
10 had no other choice.

11 **Q.** And what about the condition -- at what point did you
12 become aware that the conditions at FCI Dublin had not
13 improved concerning sexual -- risk of sexual assault?

14 **A.** I don't know that I can speak on behalf of knowing that it
15 was increasing, decreasing. It was always prevalent, meaning
16 that it was continuously being brought up in the news. There
17 was always a new story every couple months. It seemed like
18 somebody else was -- was going into -- you know, that was
19 convicted. So it just continued to resurface over that period
20 of time.

21 **Q.** And the same question for retaliation. At what point did
22 you become aware that the risk of retaliation against AICs for
23 reporting misconduct had not significantly improved --
24 improved at FCI Dublin?

25 **A.** I don't think I can speak that it hadn't improved or

1 didn't improve, but we continued to hear that people were
2 being retaliated against.

3 **Q.** Are you aware that the Bureau of Prisons litigation
4 position up until the closure of FCI Dublin was that there was
5 no risk of sexual assault at FCI Dublin?

6 **A.** I didn't.

7 **Q.** I'm sorry, I didn't hear.

8 **A.** I did not.

9 **Q.** And are you aware that the BOP's litigating position was
10 that there was no unconstitutional risk of retaliation up
11 until the closure of FCI Dublin?

12 **A.** I did not.

13 **Q.** And are you aware that the BOP's litigating position was
14 that there were no unconstitutional deficiencies in medical or
15 mental health care at FCI Dublin?

16 **A.** I did not.

17 **Q.** And you spoke a little bit before about the closure
18 process.

19 **A.** Yes.

20 **Q.** Has BOP issued any internal memoranda concerning the
21 closure -- the decision to not reopen FCI Dublin as a women's
22 facility?

23 **A.** The -- no, we have not released any documents.

24 **Q.** Has the BOP issued any proposed rule-making concerning FCI
25 Dublin and the plans to not reopen it as a women's facility?

1 **A.** No, not at this time.

2 **Q.** Other than your declaration, has the BOP bound itself to
3 not reopening FCI Dublin as a women's facility?

4 **A.** No.

5 **Q.** And you spoke before about other facility closures that
6 you'd been involved in. It was USP Thomson, and what was the
7 other one?

8 **A.** USP Atlanta.

9 **Q.** USP Atlanta. Were either of those facilities closed in
10 the middle of litigation?

11 **A.** No. I don't believe so.

12 **Q.** But FCI Dublin was closed one week after the Special
13 Master was appointed in this case; is that correct?

14 **A.** Correct.

15 **THE COURT:** Did that impact the decision?

16 **THE WITNESS:** No.

17 **BY MR. NIMNI:**

18 **Q.** At what point was the final decision made?

19 **A.** The final decision was made, like I said, February or
20 March.

21 **Q.** Before the FBI raid?

22 (Simultaneous colloquy.)

23 **THE WITNESS:** I believe in February.

24 There was discussions of closing the camp in February.

25 The FCI, I'm not sure whether it was February or March.

1 **BY MR. NIMNI:**

2 **Q.** And in January when the preliminary injunction hearing was
3 going on in this case, were you aware that FCI Dublin would
4 likely close?

5 **A.** The decision hadn't been made, but we had been talking
6 about it, yes.

7 **Q.** And I believe you spoke about the staff at FCI Dublin.
8 Are all of the staff, other than those who have been indicted
9 and convicted, that were working at FCI Dublin at the time of
10 the closure still employed by BOP?

11 **A.** Yes.

12 **Q.** And they're still paid by BOP?

13 **A.** Yes.

14 **Q.** And does anything prevent those same staff from working at
15 another BOP facility?

16 **A.** No. They would have to apply through the normal process.

17 **Q.** And does anything prevent those same staff from working at
18 FCI Dublin were it to open again?

19 **A.** No.

20 **Q.** And I believe you said that if FCI Dublin were to reopen,
21 it would not reopen as a women's facility; that's correct?

22 **A.** Correct.

23 **Q.** So is it safe to assume that it would reopen potentially
24 as a men's facility?

25 **A.** Yes.

1 Q. Is it BOP's position that male AICs are not subject to --
2 or cannot be subject to retaliation?

3 A. No. They can be.

4 Q. Is it BOP's position that male AICs cannot receive
5 Constitutionally deficient medical care?

6 A. Correct.

7 Q. Is it BOP's position that male AICs cannot be at risk of
8 sexual assault?

9 A. Correct.

10 Q. If there were an administration change -- there's an
11 election coming up.

12 A. Yes.

13 Q. If there's an administration change, would anything bind a
14 future BOP to the position that you articulated in your
15 declaration to not reopen FCI Dublin until a certain -- until
16 certain metrics are met and definitely not as a women's
17 facility?

18 A. Right. BOP still maintains the authority of what -- what
19 population is housed at each facility.

20 I can't speak on a -- on a new administration coming in
21 and -- and what they're -- what they would choose to do with
22 it.

23 Q. Okay. So nothing would bind them?

24 A. Not me. I --

25 Q. Okay. Nothing further --

1 **A.** Not sure of the question exactly, I guess.

2 **MR. NIMNI:** Nothing further.

3 **REDIRECT EXAMINATION**

4 **BY MS. MATTIOLI:**

5 **Q.** I just wanted to clear up a point that Mr. Nimni made
6 because I was unclear.

7 I think what you said was that male AICs cannot be at risk
8 of sexual assault.

9 **A.** No. They can be.

10 **Q.** Okay. Can male AICs be retaliated against by staff?

11 **A.** Yes, they can be.

12 **Q.** Okay. So why is it -- why did the director's office come
13 to the conclusion that a different population, that is, one of
14 male AICs, wouldn't experience what the female population
15 experienced there?

16 **A.** I think there was other -- there was other factors there.
17 Like the medical care. We're all aware that -- that the
18 female population requires specialty medical care that was
19 difficult for the agency and the community to -- to -- to
20 meet.

21 Male population is -- is less likely to have -- to need
22 those specific medical needs. We feel that it's easier for us
23 to do that.

24 We feel that with the proper training and communication,
25 training that were given to the AIC -- or to the staff, I'm

1 sorry -- that a male population can succeed there.

2 **Q.** Do you recall when the decision was made to close the
3 Dublin camp?

4 **A.** I believe it was in 2023. There was a vote amongst the
5 exec staff. And it was put forth to close both the FCI and
6 the camp. We deferred the FCI and we approved to close the
7 camp.

8 **THE COURT:** So if officials from the BOP testified in
9 a way that suggested otherwise, that would have been a
10 misrepresentation to this Court?

11 **THE WITNESS:** Your Honor, they wouldn't be aware of
12 that.

13 **THE COURT:** Who was aware of that?

14 **THE WITNESS:** That was amongst the executive staff,
15 which would be myself and director, the regional directors.

16 **THE COURT:** Which regional director?

17 **THE WITNESS:** Would be all of -- each of the regional
18 directors would have been in that meeting.

19 **BY MS. MATTIOLI:**

20 **Q.** If I could help to clarify. When you say "executive
21 staff," are you referring to the executive staff at the
22 institution?

23 **A.** No. I'm speaking about the executive staff at the
24 national level.

25 **Q.** When would executive staff at an institution be notified

1 of a decision?

2 **A.** There would be a timeline that was developed by our
3 legislative affairs group that would line out when the
4 notifications would be made. And it would really depend on
5 the situation for the closure of when the notification would
6 be made.

7 **Q.** How long would you estimate that it took to organize the
8 movement of AICs out of FCI Dublin? How long was that being
9 worked out?

10 **A.** We started soon after we -- the decision was made. So in
11 March, we started to evaluate where they could be housed.

12 **Q.** Were there any -- had you ever looked into that before to
13 preliminarily assess whether it could be done?

14 **A.** I'm not sure.

15 **Q.** Can you estimate what the cost to the agency of moving all
16 of the AICs was?

17 **A.** No. I couldn't put a cost on it. It -- it was quite a
18 bit though.

19 **THE COURT:** More than it cost to operate the
20 facility?

21 **THE WITNESS:** Not more than it cost to operate the
22 facility, no.

23 **MS. MATTIOLI:** That's all I have.
24
25

RECROSS-EXAMINATION

1
2 **BY MR. NIMNI:**

3 **Q.** Hello again, Mr. Lothrop. Just a few quick questions on
4 the timeline that Ms. Mattioli was asking you about.

5 Can you just remind me when the decision to close FCI
6 Dublin was made?

7 **A.** I believe it was in March of 2024.

8 **Q.** Do you know when in March?

9 **A.** I don't recall, no.

10 **Q.** Do you know if it was early March?

11 **A.** Yes, I believe it was -- yes, early in March would have
12 been our exec staff meeting.

13 **Q.** And was that before the removal of the -- the most recent
14 removal of the executive team at FCI Dublin?

15 **A.** I don't -- I don't recall.

16 **Q.** Are you aware that on March 11th, counsel for BOP
17 represented to the Court that the staff -- the executive staff
18 at BOP was removed and that a new team has been put in place
19 and, quote, charged with developing a plan for the future of
20 the facility?

21 **A.** I'm aware that the exec staff was switched out, yes. I'm
22 not sure what they testified in court.

23 **Q.** And are you aware that BOP and counsel for BOP at no point
24 in that March 11th notice to the Court indicated that the
25 facility may be closed?

EXAMINATION BY THE COURT

1 **A.** I don't believe they would have known at that point.

2 **Q.** All right. Thank you, Mr. Lothrop.

3 **MS. MATTIOLI:** I have no further questions, Your
4 Honor.

5 **EXAMINATION BY THE COURT**

6 **THE COURT:** So I have a question, a few questions
7 about this one-page declaration.

8 Did you review it before coming in today?

9 **THE WITNESS:** Yes, I did.

10 **THE COURT:** Okay.

11 This was filed on June 18th of this year. As you know,
12 it's one page. I can give you a copy if you need to look at
13 it.

14 When it was given to you by counsel, did you make changes?

15 **THE WITNESS:** No, I didn't, Your Honor.

16 **THE COURT:** So they drafted it. You -- and did they
17 draft it after -- and don't tell me what was said, but after
18 meeting with them?

19 **THE WITNESS:** Yes.

20 **THE COURT:** And how many meetings did you have with
21 them?

22 **THE WITNESS:** We had two meetings.

23 **THE COURT:** How long did the meetings last?

24 **THE WITNESS:** I don't recall how long but more than
25 an hour.

EXAMINATION BY THE COURT

1 **THE COURT:** Each meeting lasted more than an hour?

2 **THE WITNESS:** Each meeting, yes.

3 **THE COURT:** And after each of those two meetings,
4 which lasted more than an hour, they drafted a one-page
5 declaration, you made no changes, and you signed it?

6 **THE WITNESS:** Yes, Your Honor.

7 **THE COURT:** Did you review -- have you reviewed any
8 of the spreadsheets that the Court has been receiving on a
9 weekly basis?

10 **THE WITNESS:** I have not.

11 **THE COURT:** Did you review any of the specifics of
12 the 126 medical alerts that are outstanding?

13 **THE WITNESS:** No, I haven't.

14 **THE COURT:** Have you reviewed any of the details of
15 the 63 -- there's a -- there's a MAT column -- of those issues
16 that are outstanding?

17 **THE WITNESS:** No, I haven't.

18 **THE COURT:** Did you review any of the specifics with
19 respect to the 39 individuals who still have mental health
20 issues?

21 **THE WITNESS:** No, I haven't.

22 **THE COURT:** So you have absolutely no idea as to the
23 details of that; do I understand that?

24 **THE WITNESS:** Correct.

25 **THE COURT:** So when you say that the BOP is presently

EXAMINATION BY THE COURT

1 able to care for its female AIC population, you say that not
2 knowing the specifics of any of the information the Court has;
3 is that right?

4 **THE WITNESS:** That's correct.

5 **THE COURT:** Did you review anything with respect to
6 the Dublin-specific AICs before signing this one-page
7 substantive declaration?

8 **THE WITNESS:** I don't recall what we did. We
9 reviewed some documents, but I don't know what -- I don't
10 recall what we -- we reviewed.

11 **THE COURT:** Do you recall anything about those
12 documents?

13 **THE WITNESS:** There was concerns about mental health,
14 medical help. I knew that we were tracking, that we were
15 putting -- tracking things in place, tracking mechanisms in
16 place.

17 I had assigned a -- an employee that would track for us
18 out of central office certain aspects of the AICs that were
19 moved from Dublin to -- to other facilities.

20 **THE COURT:** Okay. What you do you mean by that?

21 **THE WITNESS:** And that was the -- making sure that
22 they were seen by medical upon arrival, that their -- any
23 administrative remedies that they had put in followed them to
24 their new facility and were -- were getting the answers.

25 I knew there was -- I was told that there was -- made

EXAMINATION BY THE COURT

1 aware of the issues with the property. So those -- those
2 things were being tracked at the -- at this -- this person in
3 central office is tracking those for us.

4 **THE COURT:** But my question is documents.

5 **THE WITNESS:** Correct.

6 **THE COURT:** What was it -- what was the nature of the
7 documents that you reviewed?

8 **THE WITNESS:** I believe it was the -- the mental --
9 mental health needs and the medical needs that weren't being
10 met at Dublin.

11 **THE COURT:** In what form did you review it?

12 **THE WITNESS:** I guess I'm not --

13 **THE COURT:** So you said you didn't -- you didn't
14 review the spreadsheet and you didn't review all of the
15 specifics. So I'm trying to understand what kind of document
16 you might have been looking at prior to signing this
17 declaration.

18 **THE WITNESS:** I'm not sure. I'm not sure what -- I
19 can't recall what kind of document it was.

20 **THE COURT:** Was it one document?

21 **THE WITNESS:** And when I'm telling you I didn't
22 review the spreadsheets, I'm talking about in the last two
23 days I have not reviewed a spreadsheet. It may have been on a
24 spreadsheet form when I signed that declaration. There may
25 have been a spreadsheet form. But the spreadsheets that I

EXAMINATION BY THE COURT

1 testified to just now are the ones -- are you talking about
2 that I looked at in the last two days since I've --

3 **THE COURT:** Well, I'm -- you signed this declaration
4 on June 18th.

5 **THE WITNESS:** Correct.

6 **THE COURT:** And you've made representations to me in
7 this declaration.

8 **THE WITNESS:** Correct.

9 **THE COURT:** And I want to know what it is you
10 reviewed prior to making these declarations.

11 **THE WITNESS:** So medical and mental health documents.

12 **THE COURT:** Like what?

13 **THE WITNESS:** Like I said, I don't recall the type of
14 document. It may have been that spreadsheet. But I know
15 it -- it concerned mental health follow-ups and medical
16 follow-ups.

17 **THE COURT:** So you don't know if it was an Excel
18 spreadsheet versus some other kind of form?

19 **THE WITNESS:** I -- I don't recall.

20 **THE COURT:** Who provided the documents to you?

21 **THE WITNESS:** Our legal counsel.

22 **THE COURT:** And did they review the documents with
23 you, or did you review them on your own?

24 **THE WITNESS:** Yes, during the meeting we reviewed
25 them.

EXAMINATION BY THE COURT

1 **THE COURT:** Okay. What else do you recall that you
2 reviewed?

3 **THE WITNESS:** We looked at the -- they were
4 explaining to me what the document -- what we were requesting
5 in the document, which -- 'cause I -- obviously I didn't
6 understand what we were -- what the ultimate goal was for the
7 document which was understanding that Dublin is now closed,
8 that population has moved out, and explaining to me what --
9 what it meant to -- for the case to become mute [sic].

10 **THE COURT:** When you -- how many facilities did you
11 move the female AICs to?

12 **THE WITNESS:** I believe they went to seven
13 facilities.

14 **THE COURT:** And prior to their arrival, did you
15 increase the medical staff at each facility?

16 **THE WITNESS:** No. We did not.

17 **THE COURT:** Have you increased the medical staff at
18 those facilities since their arrival?

19 **THE WITNESS:** There may be an increase in the hiring.
20 We may have hired more at those facilities. I'm not sure at
21 each one if there was a -- we didn't personally add any
22 additional staffing to those facilities.

23 **THE COURT:** So even though you had all these cost
24 savings from shutting down Dublin, you didn't increase the
25 medical staff or the mental health staff at any of the other

EXAMINATION BY THE COURT

1 facilities?

2 **THE WITNESS:** No. So the ones that we moved them to
3 were open beds. So those facilities are staffed at the
4 level --

5 **THE COURT:** Aren't they all understaffed?

6 **THE WITNESS:** They are understaffed only because --
7 (Simultaneous colloquy.)

8 **THE COURT:** So you sent them to understaffed
9 facilities and didn't increase the staffing. Do I understand
10 that right?

11 **THE WITNESS:** Correct. Correct.

12 **THE COURT:** Ms. Mattioli, any follow-up with respect
13 to my questions?

14 **MS. MATTIOLI:** No, Your Honor.

15 **THE COURT:** Mr. Nimni?

16 **MR. NIMNI:** No, Your Honor.

17 **THE COURT:** All right. You may step down, sir.

18 Thank you.

19 **THE WITNESS:** Thank you, Your Honor.

20 **THE COURT:** Are you from DC?

21 **THE WITNESS:** Yes.

22 **THE COURT:** Well, at least our weather is better
23 here.

24 **THE WITNESS:** I'm sorry?

25 **THE COURT:** I said at least our weather is better

1 here.

2 **THE WITNESS:** Yes, much cooler.

3 **THE COURT:** Okay. Let's move on. We have a few
4 other things to discuss today.

5 Does anybody wish to be heard on the -- on the other
6 motion before we move to the motion to intervene, or do you
7 submit on the papers?

8 **MS. MATTIOLI:** Nothing further from the government,
9 Your Honor.

10 **MR. NIMNI:** Apologies, Your Honor. Which other
11 motion? There are so many motions.

12 **THE COURT:** We had the -- we've got the motion to
13 intervene, the motion to unseal. There were -- I thought
14 there was another motion with respect to Ms. Still. There's a
15 motion to stay. There are lots of motions that I will be
16 resolving.

17 **MR. NIMNI:** Yes, Your Honor.

18 Just briefly on the motion regarding Ms. Still. I think
19 this Court's July 1st order and July 3rd order -- I'm happy to
20 get into some of the deficiencies with the government's
21 motion, but, really, to save us all a lot of time, the Court's
22 July 1st order complies with the needs, narrowness,
23 intrusiveness standards of the PLRA, appoints Ms. Still --
24 reappoints Ms. Still as monitor, which is the normal course
25 for these cases. And nothing in defendant's brief really

1 addresses that order other than the needs, narrowness,
2 intrusiveness standards.

3 I do believe they make one point about whether or not this
4 Court is able to reissue a 90-day preliminary injunction. And
5 I would just like to direct the Court's attention to a Ninth
6 Circuit case from 2001, which is not in the briefing,
7 *Mayweathers vs. Newland*. The citation for that is
8 258 F.3d 930, and the pin cite is 934.

9 And there the Ninth Circuit makes very clear that under
10 the Prison Litigation Reform Act, a judge may either, once
11 preliminary relief expires, may either make that relief final
12 or may reissue or issue a new preliminary injunction as a
13 court has the inherent authority to do.

14 On the motion to stay --

15 **THE COURT:** So I --

16 **MR. NIMNI:** Oh, apologies, Your Honor.

17 **THE COURT:** Go ahead.

18 **MR. NIMNI:** On the motion to stay, we don't believe a
19 stay is necessary during this time. We have a discovery
20 schedule. We've issued document requests. We're in the
21 process of trying to get those from defendants. And we just
22 think this case should proceed on the course that was set by
23 this Court so that we can get towards trial.

24 **THE COURT:** A permanent injunction wouldn't issue
25 until trial. Typically what I do anytime I have a request for

1 injunctive relief -- we get lots in IP cases. I took a major
2 antitrust case from preliminary motion to trial in eight
3 months. And I've offered to resolve this issue at trial on an
4 expedited -- on an expedited calendar.

5 I understand that both parties have refused that offer.
6 And again, because the BOP is the one under the injunction,
7 I'll ask you again, do you wish to advance the schedule so I
8 can get to a decision on a permanent injunction or not?

9 **MS. MATTIOLI:** Your Honor, we can take that under
10 consideration and let the Court know.

11 I just, as a minor point to all of this, the July 1st and
12 3rd orders came out while the motion to dismiss was pending.
13 The agency and the government have not fully evaluated the
14 position that we take as to those orders. We rest on the
15 arguments that we made in the motion to dismiss, which is that
16 the PLRA, by its express terms, limits the period of
17 injunctive relief to 90 days. It expired on June 15th because
18 it was not made final prior to that date. That -- that's the
19 argument.

20 To the -- to the extent that the July 1st and 3rd orders
21 require an additional response, we intend to do that, and as
22 part of that response, may consider consenting to an expedited
23 docket.

24 **THE COURT:** Okay. Let's move to the motion to
25 intervene.

1 **MR. NIMNI:** Thank you, Your Honor.

2 **THE COURT:** And to unseal.

3 As a courtesy, we sent an email out advising that we would
4 go through these documents document by document. And I did
5 that so that no one was surprised. You should have them with
6 you because that's the plan.

7 Ms. Mattioli, are you arguing this?

8 **MS. MATTIOLI:** Yes.

9 **THE COURT:** So I understand that there are
10 13 documents that are now in dispute. A number of them were
11 resolved, I thought; is that right? Or no? Yes.

12 So in civil litigation, civil litigators, I think, are
13 much more attuned to these issues, Ms. Mattioli, than lawyers
14 who come from the government side and do principally criminal
15 work.

16 You are required under the law, if you want me to keep
17 something sealed, to be very specific, and you failed to do
18 that. Generic references are not sufficient. Generic
19 arguments are not sufficient.

20 So we were moving very quickly. And it is better to seal
21 and then unseal than to unseal something that should have been
22 sealed.

23 So we start at Docket 45-4. This is Agostini's
24 declaration. The fact that Agostini made a declaration is not
25 a sealable issue.

1 **MS. MATTIOLI:** Understood, Your Honor. In our
2 July 31st response, we submitted a declaration from Beth Reese
3 that covers the subject matter of this declaration.

4 **THE COURT:** Everything in this declaration is not
5 sealable.

6 **MS. MATTIOLI:** No. There's a redacted version in the
7 docket. The only portion of that docket --

8 **THE COURT:** So 45-4, I -- it's our understanding that
9 you're still -- well, there is no highlighting. There's --
10 it's -- I was under the impression that the 29-page document
11 you were still seeking to seal in its entirety.

12 **MS. MATTIOLI:** No.

13 **THE COURT:** All right. Where on the docket? Give me
14 a page and -- a document number and a page where you tell me
15 exactly what pages and lines you're seeking to seal.

16 **MS. MATTIOLI:** In doc 40 -- excuse me, Your Honor.

17 Doc 46-1 has a redacted version of this declaration. And
18 the only paragraphs that are redacted are on page 14,
19 paragraphs 36, 37, and 38.

20 The subject matter in those paragraphs is covered by the
21 declaration of Beth Reese that we submitted to the Court on
22 the 31st of this month.

23 (Pause in the proceedings.)

24 **THE COURT:** Okay. So we're going to need some
25 clarity. The briefing refers to 45-4 which is not

1 highlighted. It doesn't mention 46. So you're saying that I
2 need to look at 46?

3 **MS. MATTIOLI:** Your Honor, the under-seal version of
4 that document is 45-4.

5 **THE COURT:** Right. Which is -- which is the entire
6 document.

7 **MS. MATTIOLI:** Okay.

8 **THE COURT:** Okay. So that tells me that you're --
9 currently the entire document is under seal.

10 **MS. MATTIOLI:** Okay. So the only information in 45-4
11 that needs to remain sealed is on page 14, paragraphs --
12 starting on page 14, paragraphs 36, 37, and 38.

13 **THE COURT:** And where did you -- where is that
14 information?

15 **MS. MATTIOLI:** Your Honor, I apologize for the format
16 of the chart. I believe the -- the chart with updated
17 positions indicates that that's the approach, but it is not
18 outlined by page number or paragraph. And I can do that for
19 the Court.

20 **THE COURT:** So I'm supposed to read your mind,
21 Ms. Mattioli?

22 **MS. ARANDA OSORNO:** Jacqueline Aranda Osorno, counsel
23 for intervenors, The Appeal, the ACLU of Northern California,
24 Victoria Law, and the First Amendment Coalition.

25 **THE COURT:** So paragraph 36 relates to -- and I'm

1 going to read line 16 -- I'm going to read lines 17 and 18.
2 It says: The following individuals are on administrative
3 leave pending the results of sexual abuse investigation.

4 That's what those two lines read.

5 **MS. ARANDA OSORNO:** Okay.

6 **THE COURT:** And then there are seven individuals
7 listed and the dates upon which they were placed on leave.

8 Why should that be in the public record? Or maybe I don't
9 know if you knew that or not.

10 **MS. ARANDA OSORNO:** We did not know that that
11 specifically, Your Honor. In part because the motion to seal
12 lacks -- the original motion to seal lacks specificity about
13 the content that the government was seeking to seal.

14 And the declaration that was submitted in support of that
15 original motion similarly had just very general assertions
16 about the type of information that was there.

17 So based on Your Honor's representation right now that the
18 information relates to the -- was it the names of the
19 individuals under investigation and the dates of when they are
20 placed on leave?

21 **THE COURT:** Correct.

22 **MS. ARANDA OSORNO:** I do believe that that's
23 information of public interest. And I -- these are public
24 servants who have been accused of being part of a systemic
25 culture of sexual abuse that is beyond dispute. Your Honor

1 clearly recognizes the severity of the issues underlying this
2 case. And --

3 **THE COURT:** Well, but they're not under federal
4 indictment. That's not what this says. It says that they're
5 on administrative leave.

6 **MS. ARANDA OSORNO:** I think that -- I think the fact
7 that they're under -- that they are under investigation is a
8 matter of -- of public significance.

9 **THE COURT:** Well, it's a matter of public interest.
10 I know you would all like to know it. The question is whether
11 the law -- do you have any Ninth Circuit law that says that
12 the privacy interest of an employee's current status and an
13 employee's personnel issues are required to be in the public
14 record?

15 **MS. ARANDA OSORNO:** At this -- well, first, Your
16 Honor, I will -- I would just like to state that it is
17 actually the government's burden to show that that privacy
18 interest is one that is protected by the law, and there's been
19 no specific briefing on this issue. I do not have a Ninth
20 Circuit authority to support my argument now. But as the
21 issue has not been briefed, I would request the opportunity to
22 brief that before the Court.

23 **THE COURT:** Look --

24 (Simultaneous colloquy.)

25 **THE COURT:** -- I'm in a four-month trial. I actually

1 don't want to have to do this if I thought you all had done
2 this already. So have you not gone line-by-line,
3 page-by-page?

4 **MS. MATTIOLI:** We did, Your Honor. And we -- we have
5 spent several hours going over the documents that were filed
6 under seal in this case. The product of those meetings was
7 the exhibit that we did file. And the government has agreed
8 that almost everything in the case should be unsealed with the
9 exception of the names of individuals who have not yet been
10 indicted.

11 And the Northern District of California submitted a
12 response to the Court's request. That is not routinely
13 information that is shared with the public --

14 **THE COURT:** The United States -- the United States
15 Attorney for the Northern District took no position on this
16 issue.

17 **MS. MATTIOLI:** But did explain that the reputational
18 and privacy interests of individuals who have not yet been
19 charged is a reason that they don't disclose that information
20 in their proceedings.

21 We relied on that same reasoning in our response. We have
22 not received the response on that. As Jackie says, they
23 didn't respond to the argument that those are compelling
24 privacy interests.

25 And it probably would have been prudent to get the

1 response before coming to talk about these -- I have a list of
2 nine documents. It's the government's position that that's a
3 very narrow scope of -- and the only thing we seek to keep
4 sealed.

5 **THE COURT:** Stop. Left her finish coughing.

6 (Pause in the proceedings.)

7 **THE COURT:** Okay. I'm looking at this chart of
8 yours -- or that was filed at 351-1. And this does not
9 identify the specific lines and pages. And if you don't
10 identify the specific lines and pages, then I can't hear from
11 the litigants.

12 So on page 14, I understand the request is for lines 19
13 through 25 only. Correct?

14 **MS. MATTIOLI:** One moment, Your Honor.

15 **THE COURT:** And that is the officers' names and the
16 dates that they were placed on leave.

17 **MS. MATTIOLI:** Including the footnote on line 28.

18 **THE COURT:** On page 15, what lines are you
19 requesting?

20 **MS. MATTIOLI:** Three, 4, and 7 through 28.

21 **THE COURT:** With respect to 3 and 4, that just says
22 that allegations were found to be unsubstantiated and
23 unfounded. And I believe that that information came out
24 during the hearing.

25 **MS. MATTIOLI:** You're -- that's correct, Your Honor.

1 Those lines can be unsealed.

2 **THE COURT:** So 7 through 28 relates to the status
3 of -- of Dublin -- or BOP employment with the officers that
4 were actually referenced in the complaint, so that you know.

5 What else -- then on page 16, it continues, so lines 1
6 through 9. Or I should say 1, and then 3 through 9?

7 **MS. MATTIOLI:** Correct, Your Honor.

8 **THE COURT:** Line 2 relates to Officer Ramos who's
9 deceased. So he has no privacy interest, given --

10 All right. Anything else on this document?

11 **MS. MATTIOLI:** No, Your Honor.

12 **THE COURT:** So the Court will unseal everything
13 except for that. And if you want to do a second round of
14 briefing, you can do a second round of briefing. Okay.

15 With respect to 45-5, what lines specifically? Again I
16 was under the impression based on the briefing that you're
17 seeking to seal the entirety of this -- of your opposition to
18 the motion for preliminary injunction.

19 **MS. MATTIOLI:** Understood, Your Honor. That was just
20 an error in docketing. It was my understanding because there
21 is a redacted version in the docket, that this could remain
22 under seal because it's the same document as the public
23 version with the exception of the highlighted portion. Which
24 is confusing and I apologize for that.

25 I -- we can go through the lines that we seek to keep

1 sealed. They're very few in this document. And the rest can
2 be unsealed.

3 **THE COURT:** Is there a public version? So there's a
4 public version of 45-5?

5 **MS. MATTIOLI:** Yes.

6 **MS. ARANDA OSORNO:** There is, Your Honor. At -- I
7 believe it's at Docket 46.

8 **THE COURT:** Okay. So why are we talking about 45-5?

9 **MS. ARANDA OSORNO:** That -- because that -- that is
10 the unredacted document that we are asking to see.

11 **THE COURT:** You're seeking to -- okay. So I don't --
12 I don't have -- you said it's at 46?

13 **MS. ARANDA OSORNO:** That's right, Your Honor.

14 (Pause in the proceedings.)

15 **THE COURT:** So am I right then the first redaction
16 happens at page 15?

17 **MS. MATTIOLI:** Yes, Your Honor.

18 **THE COURT:** Then that's ECF 15 --

19 **MS. MATTIOLI:** Yes.

20 **THE COURT:** -- of 30?

21 **MS. MATTIOLI:** So the corresponding line numbers in
22 45-5 on page 15 are 11 through 26.

23 (Pause in the proceedings.)

24 **THE COURT:** And this relates to all of the
25 allegations of the individuals who are cross-referenced in the

1 prior document?

2 **MS. MATTIOLI:** Correct.

3 **THE COURT:** The grounds for unsealing are the same?

4 **MS. ARANDA OSORNO:** May I add something, Your Honor?

5 **THE COURT:** Sure.

6 **MS. ARANDA OSORNO:** I would just like to point out
7 that the motion to seal the particular document that we're
8 discussing right now is document 45 which was itself under
9 seal and was only unsealed earlier this week.

10 So I just want to point to the recency of the availability
11 of information that intervenors have had to --

12 **THE COURT:** So do you want -- do you want time to --

13 **MS. ARANDA OSORNO:** I -- I don't. I just -- I just
14 wanted to point that out and say that this motion to seal was
15 actually opposed by plaintiffs in Docket 47.

16 And plaintiffs have had the opportunity -- they've had the
17 benefit of seeing the proposed redactions. And they have made
18 strong arguments for why those redactions should not stand,
19 including that much of this proposed seal information are
20 facts that were taken from plaintiffs' filings.

21 **THE COURT:** Things were -- I'm sorry. I did not hear
22 you. I didn't hear the last thing you said.

23 **MS. ARANDA OSORNO:** Yes. That many of the facts that
24 the government wants to seal were actually -- are actually
25 public and were taken from plaintiffs' filings so....

1 **THE COURT:** All right. Well, do I have a plaintiffs'
2 attorney who can tell me what portions were taken from your
3 filing?

4 Can you come to the microphone. I've got multiple up
5 here. And identify yourself again for the record.

6 **MR. ANDERSON:** Your Honor, this is Carson Anderson
7 from Arnold & Porter.

8 **THE COURT:** So we're on document 45-5.

9 **MR. ANDERSON:** I think specifically are we discussing
10 page 10?

11 **MS. MATTIOLI:** It's 15 of the ECF, but yes.

12 **MR. ANDERSON:** Well, there's no ECF numbers on the
13 unredacted version, right?

14 **THE COURT:** So page 10 of the document.

15 **MR. ANDERSON:** Yes.

16 **THE COURT:** Subsection C.

17 **MR. ANDERSON:** Sure. So just -- just looking at --
18 at this paragraph here, we can see quotes that are from
19 plaintiffs' complaint, and so that's an allegation that
20 plaintiff made so --

21 **THE COURT:** So --

22 **MR. ANDERSON:** -- that shouldn't be sealed, right?

23 **THE COURT:** -- where --

24 **MS. MATTIOLI:** Your Honor, for the -- for the sake of
25 time, the government concedes lines 11 through 13 -- I'm

1 sorry -- 11 through 14, stopping after the parentheses that
2 says docs 10 at 15 can be unsealed, that is information that
3 came from the plaintiffs' complaint.

4 **THE COURT:** All right. Let me just say this.
5 Anything that came from the plaintiffs' complaint will be
6 unsealed. I just need to know what that is. All right?
7 Everybody understand the order?

8 **MS. MATTIOLI:** And for clarity, Your Honor, then that
9 does not include quotes from the paragraphs referenced in
10 45-4. They sort of blend together. I just want to make sure
11 there's not an inadvertent -- and I can -- I can give the
12 Court detailed --

13 **THE COURT:** What you all are going to do is you're
14 going to meet again after this and you're going to go through
15 it yourselves.

16 **MS. MATTIOLI:** Okay.

17 **THE COURT:** Anything that comes from the plaintiffs'
18 complaint is not -- is unsealed.

19 Is there anything from plaintiffs' complaint on page 16?

20 **MS. MATTIOLI:** Yes.

21 **THE COURT:** That's unsealed.

22 Page -- well, 19 of 30, 14 of the document.

23 **MS. MATTIOLI:** That -- that information does not come
24 from plaintiffs' complaint.

25 **THE COURT:** Twenty of 30, page 15 of the document?

1 **MS. MATTIOLI:** Lines 9 through 14 are taken from the
2 declarations.

3 **THE COURT:** Of what?

4 **MS. MATTIOLI:** The plaintiffs' -- the declarations in
5 support of the motion for preliminary injunction.

6 **THE COURT:** They're unsealed.

7 **MS. MATTIOLI:** Same with lines 15 through 17, there's
8 a reference to doc 1024 and 1025.

9 Same with lines 18 --

10 **THE COURT:** Okay. I'm not going to do this here.

11 **MS. MATTIOLI:** Okay.

12 **THE COURT:** All of that is -- anything that's from
13 their complaint is unsealed. I need to know what's left so
14 that I can make decision with respect to what's left.

15 Understand?

16 **MS. MATTIOLI:** Yes, Your Honor.

17 **THE COURT:** Okay. Moving to the next document.

18 **MS. ARANDA OSORNO:** I believe the next document is
19 159-3.

20 **THE COURT:** I have --I have 75-3.

21 **MS. MATTIOLI:** I believe we withdrew the sealing
22 request on that.

23 **THE COURT:** 75-3 is the defendants' opposition to a
24 motion for class certification.

25 **MS. MATTIOLI:** Oh. That -- that one had -- the

1 excerpts that are under seal in that document, Your Honor, are
2 medical information of plaintiffs, and intervenors have agreed
3 not to seek to have that unsealed.

4 **THE COURT:** Is that correct?

5 **MS. ARANDA OSORNO:** That's correct, Your Honor.

6 **THE COURT:** All right. So the motion with respect to
7 that is withdrawn.

8 The next document I have is the defendants' post
9 evidentiary hearing briefing. This is 159-3.

10 **MS. MATTIOLI:** That's correct, Your Honor.

11 **THE COURT:** And here --

12 **MS. MATTIOLI:** Just to save time, Your Honor, the
13 government withdraws its request to have page 17 of that
14 document sealed.

15 **THE COURT:** All right. That's unsealed.

16 **MS. MATTIOLI:** Yes.

17 **THE COURT:** That was the only thing.

18 **MS. MATTIOLI:** Correct.

19 **THE COURT:** All right. So the entire -- so that will
20 be unsealed in its entirety given there was only one issue.

21 The next one I have is 178-3, plaintiffs' reply post
22 evidentiary hearing brief.

23 Here I'm seeing requests for redactions on page 6 of the
24 document, 10 of 20 ECF. That's the first.

25 Who -- and who sought to seal? The government. The

1 defense?

2 **MR. ANDERSON:** Not plaintiffs.

3 **MS. MATTIOLI:** Correct, Your Honor. I believe as
4 reflected in the chart, that this sealing request related to
5 evidentiary hearing exhibits in Docket 162-3, which we agreed
6 should be unsealed subject to the redaction of personally
7 identifying information.

8 **THE COURT:** So the request to seal is withdrawn?

9 **MS. MATTIOLI:** Correct.

10 **THE COURT:** And the same with the word on line 17? I
11 see no reason to seal that.

12 **MS. MATTIOLI:** If I could have the indulgence for one
13 second, Your Honor.

14 (Pause in the proceedings.)

15 **MS. MATTIOLI:** It can be unsealed, Your Honor. I
16 think I know which one --

17 **THE COURT:** It's the second word.

18 **MS. MATTIOLI:** Yeah.

19 **THE COURT:** All right. Unsealed.

20 Then the next sealing occurred on page 10, page 14 of
21 20 for ECF.

22 And then at page 10 and 11.

23 **MS. MATTIOLI:** Just for the sake of the order, Your
24 Honor, I think we did skip 172-2. I'm having trouble pulling
25 up --

1 **THE COURT:** No, no, let's focus on this one. If we
2 have to go back, we'll go back.

3 **MS. MATTIOLI:** Can you remind me of the doc number,
4 please.

5 **THE COURT:** We're at 178-3.

6 **MS. MATTIOLI:** And which page were you on?

7 **THE COURT:** Page 10 of the document, 14 of 20 ECF.

8 **MS. MATTIOLI:** Your Honor, this information relates
9 to the document at 176-4 that the government continues to
10 request remain sealed.

11 Same with line 27 on that same page, and lines 1 and 2 on
12 the following page.

13 **THE COURT:** Has anybody talked to the AIC that's
14 referenced?

15 **MR. ANDERSON:** I believe it's RF.

16 **THE COURT:** Yes.

17 **MR. ANDERSON:** Is that right?

18 We would request that her full name stay under seal and
19 her reg number stay under seal. I don't think that implicates
20 this passage here though. It does implicate other documents
21 that we'll talk about.

22 **THE COURT:** My question is, is RF requesting that it
23 be sealed?

24 **MR. ANDERSON:** I have not asked that question
25 specifically of RF.

1 **THE COURT:** Okay. So that one I'll make a decision
2 on.

3 You want to go back to something?

4 **MS. MATTIOLI:** Your Honor, it's confusing, but I
5 believe that the excerpt referenced in this document appears
6 several times in the docket due to an error on my part.

7 I believe we -- 172-2 is the next document that I have,
8 and that relates to this excerpt.

9 **THE COURT:** All right. I'll look at that.

10 You said 172-2?

11 **MS. MATTIOLI:** Correct.

12 **MR. ANDERSON:** And this document is identical to
13 176-4. So we can cross them both off at the same time.

14 **MS. ARANDA OSORNO:** Your Honor, I believe that
15 document is also identical to 184-4.

16 **THE COURT:** Which document?

17 **MS. ARANDA OSORNO:** 172-2 --

18 **THE COURT:** Is the same --

19 **MS. ARANDA OSORNO:** -- 176-4 and 184-4 I believe are
20 all the same document. I believe it's all the declaration of
21 Dennis Wong.

22 **THE COURT:** Okay.

23 **MR. ANDERSON:** And so plaintiffs would request on --
24 on page 2 of that document --

25 **THE COURT:** So 184-4 is the declaration of Patrick

1 Deveney.

2 **MS. ARANDA OSORNO:** Maybe it's 184-5. They exist on
3 the 184 docket as well.

4 **THE COURT:** 184-5 is Dennis Wong.

5 **MS. ARANDA OSORNO:** Okay.

6 (Pause in the proceedings.)

7 **THE COURT:** I'm waiting for her to get power.

8 (Pause in the proceedings.)

9 **THE COURT:** Okay. You're operational now?

10 **MS. MATTIOLI:** Yes.

11 **THE COURT:** All right. So 184-5 is the declaration
12 of Dennis Wong. And that is identical to 172-2?

13 **MR. ANDERSON:** (Nods head.)

14 **MS. ARANDA OSORNO:** That's correct.

15 **MR. ANDERSON:** Correct. In addition to 176-4.

16 **THE COURT:** All right. Does anybody wish to be heard
17 on that document?

18 **MR. ANDERSON:** Plaintiffs would just request that on
19 page 2 at line 5, RF's full name and reg num appears, and we
20 would request that that remain sealed.

21 **THE COURT:** Okay. And the argument to keep it
22 sealed?

23 **MS. MATTIOLI:** Your Honor, that is covered by the
24 declaration of Beth Reese. The justification for sealing is
25 that the information that is sealed contains to ongoing

1 administrative and/or criminal investigations and as such is
2 sensitive and should not be disclosed.

3 **THE COURT:** And RF's position is unknown?

4 **MR. ANDERSON:** We will follow up with RF and let the
5 Court know.

6 **THE COURT:** Ms. Jansen, could you come to the mic,
7 please?

8 **MS. JANSSEN:** My apologies.

9 We can confirm with RF again. I did have multiple
10 conversations with RF around the time that these documents
11 were filed. At that time, she had made no request to have
12 this under seal, and in fact very much preferred the opposite.

13 However, they were put under seal in an abundance of
14 caution and per the rules as they had been placed under seal
15 by the government which we had opposed.

16 **THE COURT:** Okay.

17 **MS. MATTIOLI:** And to clarify, Your Honor, it is not
18 RF's privacy rights that the government seeks to protect with
19 this document because her name can be -- she -- I believe
20 she's identified by initial.

21 **THE COURT:** But the investigation that you refer to
22 is an investigation of her?

23 **MS. MATTIOLI:** Not exactly, no.

24 **THE COURT:** Well, who?

25 **MS. MATTIOLI:** Your Honor, this --

1 **THE COURT:** Could you -- is it somewhere on here that
2 you could tell me?

3 **MS. MATTIOLI:** All of paragraph 4, Your Honor, I
4 believe.

5 **THE COURT:** Okay. I'll go back and look at it.

6 The next one I had is 184-3. And here the sealed portion
7 is on page 4, ECF 4 of 5. Same issue?

8 **MS. MATTIOLI:** Line 18, Your Honor.

9 **THE COURT:** Right. I have lines 18 to 26. Is this
10 the same issue?

11 **MS. MATTIOLI:** I have 18 through 28. Same issue.

12 **MR. ANDERSON:** Plaintiffs have no need to keep this
13 under seal.

14 **THE COURT:** Okay. There is nothing on 28. I have
15 the last sentence in the paragraph beginning "A week later,"
16 and the beginning of the last paragraph on that page until we
17 get to "on February 16."

18 I'm at 184-3.

19 It almost sounds like Bingo.

20 **MS. MATTIOLI:** Yes, Your Honor, 18 through 26 should
21 remain sealed. Same issue.

22 **THE COURT:** Same issue. All right.

23 Moving to the next document I have is 184-4. And I have
24 paragraphs 5 through 11. Then paragraph 20 through 22. Plus
25 there are a couple of registration numbers.

1 **MS. MATTIOLI:** That's correct, Your Honor.

2 **THE COURT:** Okay.

3 **MS. MATTIOLI:** And that's the same document at 173.

4 **THE COURT:** Okay.

5 **MS. MATTIOLI:** The government's position is that
6 information should remain -- remain sealed, same issue.

7 **MR. ANDERSON:** From plaintiffs, on page 2, lines 14
8 and 17 contain reg numbers that we would say should remain
9 sealed.

10 **THE COURT:** You -- you believe it should remain
11 sealed?

12 **MR. ANDERSON:** Yes.

13 **THE COURT:** Okay. Which -- all of them?

14 **MR. ANDERSON:** I think -- I think per Ms. Jansen's
15 statement, line 17 can be unsealed but CB's registration
16 number appears in line 14.

17 **THE COURT:** Paragraphs 5 through 11, is it your
18 perspective that those should be sealed?

19 **MR. ANDERSON:** Those can be unsealed.

20 **THE COURT:** I thought some of this was in the hearing
21 that was open to the public.

22 I -- I take -- paragraph 8, I thought that was open to the
23 public. So why would I seal it here if it's open to the
24 public?

25 **MS. MATTIOLI:** We can go back through that, Your

1 Honor, and we will submit a more narrow sealing request.

2 **THE COURT:** All right. Then we've already talked
3 about 184-5, which is also identical to 172-2 and 176-4.

4 Then I have 197-3, which I understand you're seeking to
5 seal in its entirety?

6 **MS. MATTIOLI:** Your Honor, we would withdraw the
7 request to have the entire document sealed. And instead
8 beginning on page 4 of the ECF lines 9 through 27 and page 5
9 of the ECF from 1 to 13. They're not exactly lined up, but
10 paragraphs 11 through 20 we would request remain sealed.

11 **MR. ANDERSON:** Yeah, plaintiffs -- the full name of
12 AY appears at page 2, line 16, page 4, lines 9 to 10 and 23 to
13 24 and 25 to 27, and page 5, lines 3 to 4 and 6 to 8. And we
14 would posit that AY's full name should remain under seal.

15 **THE COURT:** It should remain under seal.

16 **MR. ANDERSON:** It should remain under seal.

17 **THE COURT:** Okay. And that's because this person has
18 an ongoing claim being litigated at BOP? Or for what reason?

19 **MR. ANDERSON:** Number one, there is an ongoing claim.
20 Number two, this relates to a -- a sexual assault, and we
21 think the survivor's identity should remain sealed for privacy
22 reasons.

23 **MS. MATTIOLI:** And the government's position, Your
24 Honor, as in Ms. Reese's declaration, this relates to an open
25 investigation, and that's why the details should remain sealed

1 at this time.

2 **THE COURT:** Do you wish to be heard at all?

3 **MS. ARANDA OSORNO:** I would, Your Honor.

4 There are several factual shortcomings as well as legal
5 analytical shortcomings in the government submission from
6 Wednesday. There's been a reference to an ongoing
7 investigation. The declaration of Ms. Reese that was
8 submitted on Wednesday lacks very little details. So I
9 would --

10 **THE COURT:** Well, that's why we're having this
11 hearing. So -- and I'm looking at it. And plaintiffs'
12 counsel is agreeing that there's an ongoing investigation with
13 respect to someone who I suspect the plaintiffs represent.

14 **MS. MATTIOLI:** And, Your Honor, Ms. Reese's
15 declaration specifically refers to the page numbers and the
16 line numbers. She declares personal knowledge of the subject
17 matter and that they are under investigation.

18 The reason that we're seeking to keep them sealed is
19 because details, if made public, could jeopardize the
20 investigation. We shouldn't have to reveal the details in
21 order to justify sealing. She was as specific as she could be
22 in this declaration.

23 **THE COURT:** Any -- anything else you want to be heard
24 on with respect to this issue?

25 **MS. ARANDA OSORNO:** I am unclear about whether this

1 relates to the investigation of someone in the class or
2 allegations of mis- -- or if the subject of the investigation
3 is a government employee.

4 **THE COURT:** Well, the class are -- class members made
5 lots of allegations against employees. This is nothing
6 outside of employees. That's the entire case.

7 **MS. ARANDA OSORNO:** I think I do not understand
8 plaintiffs' position. There's an open investigation about the
9 misconduct of a government employee. And plaintiffs' position
10 is that that investigation is ongoing and the details should
11 be sealed?

12 **MR. ANDERSON:** Our position is that the survivor's
13 identity, AY, should remain sealed. AY has filed a complaint
14 with lots of allegations that are public. So we don't think
15 the rest of the declaration of -- of Mr. France should be
16 sealed, but AY's name should be sealed.

17 **MS. ARANDA OSORNO:** And proposed intervenors do not
18 seek to unseal the names or any personally identifying
19 information of any of the survivors of sexual abuse.

20 **THE COURT:** All right. I understand the issues.

21 Next I have 197-6 that I understand the entire thing is
22 seeking to --

23 **MS. MATTIOLI:** Your Honor, just -- on 197-6 starting
24 on page 3 of the ECF -- excuse me -- I'm looking at the
25 wrong --

(Pause in the proceedings.)

MS. MATTIOLI: Page 2 of the ECF, lines 10 through 28, page 3 of the ECF, lines 1 and 2, we seek to keep sealed.

Again, it contains the AICs full name and register number. We believe that should be sealed.

THE COURT: I don't know that we're looking at the same document. 197-6?

MS. MATTIOLI: Excuse me, Your Honor. I had moved on to 206-3.

On 197-6, beginning on page 3 of the ECF, lines 22 through 28 should remain sealed. Page 4 of the ECF, lines 1 through 10 -- excuse me -- 1 through 8 should remain under seal.

THE COURT: Has the balance been unsealed already?

MS. MATTIOLI: No.

MR. ANDERSON: And plaintiffs request that on page 3, line 22, again contains the full name and reg num of AY, and that should be sealed for privacy concerns.

THE COURT: All right.

Well, let's get the rest of it unsealed. And I'll consider the portions that you're seeking to remain sealed.

MS. MATTIOLI: We did have one more, Your Honor. I think 206-3.

THE COURT: That's next.

That's my next number, 206-3.

Again, this has been sealed in its entirety?

1 **MS. MATTIOLI:** Correct. We would ask that the Court
2 keep under seal starting on page 2, lines 10 through 28,
3 page 3, lines 1 through 2.

4 **THE COURT:** All right. I -- this is the same issue.

5 **MS. MATTIOLI:** Correct.

6 **THE COURT:** Get the balance unsealed. Okay.

7 Then on page 12, these are maps?

8 And on page -- or I'm sorry. 247-2 are maps. And 247-3
9 are maps, as I understand it.

10 **MS. MATTIOLI:** Your Honor, I -- it's the position
11 that those should remain sealed for security reasons.

12 **THE COURT:** Is there any reason to seal page 1 of 45?

13 **MS. MATTIOLI:** Which doc number are you looking?

14 **THE COURT:** 247-2. What is the reason to seal
15 page 1? The maps are on page 41 -- oh, okay. That's not --
16 so you're just seeking to seal pages 41 through 45.

17 **MS. MATTIOLI:** Correct.

18 **THE COURT:** Okay. And the same with the other?

19 **MS. MATTIOLI:** Yes.

20 **THE COURT:** Okay.

21 First off, anything that I've unsealed [sic], you need to
22 get it sealed [sic] -- unsealed by Monday. Okay?

23 **MS. MATTIOLI:** Yes, Your Honor.

24 **THE COURT:** To make it -- to make it easier to
25 understand, I think it's best to do it as one filing with a

1 table of contents just like we went through that identifies
2 the documents.

3 If you want to be heard once these portions get unsealed,
4 that's fine. How much time do you want to brief -- so you're
5 going to see something, they'll do it by Monday. So by
6 Tuesday you'll have it.

7 I understand their perspective, but you said you wanted a
8 chance to be heard. So how much time do you want?

9 **MS. ARANDA OSORNO:** Your Honor, I suppose the
10 question is not just -- is whether there's going to be any
11 specificity about the nature of the information that remains
12 sealed. I can't really respond --

13 **THE COURT:** The -- the --

14 **MS. ARANDA OSORNO:** I don't have the benefit of
15 knowing what we're fighting about. So I can't --

16 **THE COURT:** So -- so I will let them make a proffer
17 because a lot of this is repeat -- it's a lot of repetitive
18 information.

19 **MS. ARANDA OSORNO:** Yes, Your Honor.

20 **THE COURT:** But there are two to three buckets.

21 **MS. ARANDA OSORNO:** Yes, Your Honor.

22 **THE COURT:** And Ms. Mattioli is going to tell you
23 what she can, and that's what you're going to have to --
24 that's what you can respond to.

25 And you can -- you know, you'll be able to see the other

1 stuff that was there that was unsealed. But given the nature
2 of the allegations, I'm not going to go through and have yet
3 another declaration made. I'm going to have her tell you
4 right now, and then you can let me know whether or not you're
5 going to want to respond.

6 **MS. ARANDA OSORNO:** Understood, Your Honor.

7 **MS. MATTIOLI:** I believe it is outlined in the
8 responsive filing and the declaration of Beth Reese that the
9 only category of excerpts and informations the government
10 seeks to keep under seal are the names of federal employees
11 who have been investigated administratively or criminally,
12 related to allegations raised in this case.

13 There is a new investigation that is referenced in
14 Ms. Reese's declaration that is a different investigation than
15 the subject matter contained in the declaration. I know it's
16 confusing.

17 **THE COURT:** Well, that's -- I'm not sure you've done
18 a good enough job.

19 There are -- there are names. There is an incident with
20 respect to RF. What, if anything, can you say about that?

21 **MS. MATTIOLI:** What I can say is that there is a lot
22 of information that can be inferred about that situation from
23 the show-cause hearing that was public, from this Court's show
24 cause order, and from the response provided by BOP to the
25 Court's show cause order.

1 The information that was provided in response to that
2 situation with RF is now being investigated separately.

3 **MS. ARANDA OSORNO:** Your Honor --

4 **THE COURT:** Again, to the extent that it was already
5 publicly heard, it needs to be unsealed.

6 **MS. MATTIOLI:** Understood.

7 **THE COURT:** Go ahead.

8 **MS. ARANDA OSORNO:** I just wanted to note that in the
9 evidentiary submission from Wednesday, Ms. Reese says that
10 she's not familiar with the specific parameters of the new
11 investigation that we're currently discussing.

12 And it's -- it -- again I cannot see the information that
13 is sealed, but the -- the legal analysis and the notice
14 together with the facts in the declaration do not show a nexus
15 between why release of the specific information would harm an
16 ongoing investigation.

17 **THE COURT:** And this is news to me. So if -- and
18 again, I -- this has been a bit obtuse which is why I was
19 going to go document by document.

20 So if there's a new investigation with respect to this
21 incident with RF that's in these filings, and this
22 information, again to the extent it was already in -- in the
23 public record, it needs to be unsealed.

24 So you're ordered to do that.

25 **MS. MATTIOLI:** Understood, Your Honor.

1 **THE COURT:** And if Reese is saying she doesn't know
2 anything about it, then there needs to be -- then I need to
3 know who's -- I need something from someone telling me that
4 there's a new investigation, and it needs to be under oath in
5 a declaration.

6 **MS. MATTIOLI:** Understood, Your Honor.

7 **THE COURT:** Then there is another incident that
8 relates to many of these redactions regarding AY. So your
9 proffer with respect to all of that.

10 **MS. MATTIOLI:** Is the same justification for keeping
11 under seal the information in 45-4 and 45-5 relating to the
12 employment status of federal employees who have not yet been
13 charged with a crime and don't have a forum to vindicate the
14 reputational and privacy interests that would be harmed by the
15 release of their names.

16 **THE COURT:** Is there -- well, can it then be redacted
17 without that person's name?

18 **MS. MATTIOLI:** Yes.

19 **THE COURT:** Maybe I said that wrong. Can it be
20 unsealed?

21 **MS. MATTIOLI:** Yes, subject to redaction.

22 **THE COURT:** Other than the name of the person?

23 **MS. MATTIOLI:** If -- if we're talking about AY, Your
24 Honor, that goes to several documents. I would have to go
25 line by line and --

1 **THE COURT:** We always have to go line by line. My
2 question is AY is not requesting that this information be
3 sealed?

4 **MS. MATTIOLI:** Correct.

5 **THE COURT:** Has AY filed a claim?

6 **MR. ANDERSON:** Yes. AY has filed a complaint that
7 includes most of these details, if not all, except obviously
8 she wouldn't know anything about an investigation. But it
9 does include this individual's name.

10 **THE COURT:** Okay. So if it's already in the public
11 record, why would I seal it?

12 **MS. MATTIOLI:** We would default to the position that
13 it is -- it still implicates their privacy rights which they
14 have not consented to. And with an ongoing criminal or
15 administrative investigation into the truth of those --

16 **THE COURT:** But you're saying that you want to
17 protect their privacy, but it's already in the public record.

18 **MS. MATTIOLI:** But we didn't put it there. The
19 government --

20 **THE COURT:** Okay. But I have to decide. So you
21 don't put it there. The record will reflect that you've asked
22 that I seal it.

23 **MS. MATTIOLI:** Understood.

24 **THE COURT:** And then I can unseal it.

25 So I need to know from you if there's anything in here

1 that's not already in the public record. And if it's not in
2 the public record, you know, then -- then I think the argument
3 is stronger.

4 So I'll order the plaintiffs and BOP counsel to meet and
5 confer, and let me know what, of the information with respect
6 to AY, is already in the public record.

7 **MS. MATTIOLI:** Understood, Your Honor.

8 **THE COURT:** And then it's not your decision, it's my
9 decision.

10 **MS. MATTIOLI:** Understood.

11 **THE COURT:** And if it's already in the public record,
12 you'll get it -- this is going to be all repetitive so it's
13 not as if you won't -- you don't have it.

14 **MR. ANDERSON:** Your Honor, I have the case number for
15 AY's complaint.

16 **THE COURT:** You can give it to her. I'm not going to
17 do this myself.

18 **MR. ANDERSON:** Oh, I meant for the public record, in
19 case a member of the public wanted to go look at it after --
20 after hearing.

21 **THE COURT:** Go ahead. You can say it.

22 **MR. ANDERSON:** Yeah, it's 4:24-CV-01365.

23 **THE COURT:** Okay. Let me know by Wednesday whether
24 you want to file something and when you can get it on file.

25 If not, then I will just -- I'll just proceed on my own.

1 **MS. ARANDA OSORNO:** Yes, Your Honor. And for the
2 sake of clarity, you are saying that by Wednesday you would
3 like to know whether I would like more time to file a
4 response?

5 **THE COURT:** Correct.

6 **MS. ARANDA OSORNO:** Understood.

7 **THE COURT:** And you can just send a note to the email
8 box, just the YGR proposed order P.O. Box.

9 To make it so that it is not -- well, actually not
10 Wednesday. When can the two of you meet and confer on what of
11 this is either in the -- I need -- I'm going to need more
12 information. So sound -- I think the two of you still need to
13 talk.

14 **MS. MATTIOLI:** Any time, Your Honor.

15 **MR. ANDERSON:** We can talk by Monday.

16 **THE COURT:** Okay. So just let me know by the end of
17 the week by -- by Friday.

18 **MS. ARANDA OSORNO:** Yes, Your Honor.

19 **THE COURT:** They're going to talk. Then we're going
20 to get these things unsealed. And then just let me know by
21 Friday whether or not you want to brief. Okay?

22 **MS. ARANDA OSORNO:** Yes, Your Honor.

23 **THE COURT:** All right.

24 Is there anything else to discuss today?

25 **MR. ANDERSON:** I have one further sealing issue, Your

1 Honor.

2 **THE COURT:** Okay.

3 **MR. ANDERSON:** In our opposition to the motion to
4 dismiss, we filed -- I believe it was Exhibit A. It's at
5 ECF 339-3, a copy of Special Master Still's report. We filed
6 that under seal and filed an administrative motion to
7 determine whether or not whether another party's information
8 should be sealed.

9 I don't believe defendants filed a brief in support of
10 that. Pursuant to Local Rule 79-5(f)(3), we would request
11 that the Special Master's report be unsealed. We have lots of
12 named plaintiffs and class members who are asking us for it.

13 **MS. MATTIOLI:** No objection.

14 **THE COURT:** All right. It's unsealed.

15 **MR. ANDERSON:** Thank you, Your Honor.

16 **THE COURT:** Okay.

17 **MS. ARANDA OSORNO:** Your Honor, I have a couple more
18 things on my list. Sorry.

19 **THE COURT:** That's okay. Look, there was a lot of
20 confusion. This is -- this is what we thought the totality
21 was. Go ahead.

22 **MS. ARANDA OSORNO:** Docket number 292 is a notice of
23 manual filing of documents under seal. Our position is that
24 the documents should be docketed and, if there is a need for
25 them to be sealed, that the government file the appropriate

1 sealing procedure.

2 Ms. Mattioli made a representation to us that those
3 documents relate to issues of record retention during the
4 closure of FCI Dublin and that they include a declaration
5 discussing that particular subject. So we would ask for that
6 to be docketed unsealed.

7 **MS. MATTIOLI:** The reason that those were filed, Your
8 Honor, was in response to an order that the Court issued that
9 is also under seal. I believe it goes to an issue that we
10 discussed. Defendants have no objection to those documents
11 being unsealed, assuming that the Court's order ordering us to
12 file them is also unsealed.

13 **THE COURT:** Okay. And no one objects?

14 **MR. ANDERSON:** No, Your Honor.

15 **THE COURT:** All right. They're unsealed.

16 **MS. ARANDA OSORNO:** Your Honor, relatedly, we have an
17 outstanding request for attachments of certain of your orders
18 to be unsealed. I understand that they may include sensitive
19 information including names and register numbers, and we would
20 again agree that that information could be redacted, but we
21 would request that those attachments be unsealed.

22 **THE COURT:** Any objections?

23 **MS. MATTIOLI:** No, Your Honor.

24 **MR. ANDERSON:** No.

25 **THE COURT:** Okay. They're unsealed.

1 **MS. ARANDA OSORNO:** Thank you, Your Honor.

2 The final thing on my list, we also moved to unseal some
3 transcripts. And this relates to docket entry 113 and 114.

4 Ms. Mattioli made the representation that these ex-parte
5 proceedings did not relate to the merits of the case. We ask
6 for clarification about the nature of those proceedings. We
7 don't have a position about whether or not they were sealed
8 and properly -- I understand they were ex-parte, but that does
9 not mean they cannot be sealed at a later date.

10 I would like the opportunity to make that argument once I
11 understand what the proceedings were.

12 **THE COURT:** In this the one we had in chambers?

13 **MR. ANDERSON:** I'm unaware of the content.

14 **MS. MATTIOLI:** Yes, Your Honor.

15 **MR. NIMNI:** In this hearing we had in chambers? Was
16 that --

17 **MS. MATTIOLI:** Yes.

18 **THE COURT:** They're going to remain sealed.

19 **MS. ARANDA OSORNO:** Thank you, Your Honor.

20 **THE COURT:** Okay. What else?

21 **MS. ARANDA OSORNO:** I don't have a specific document,
22 but if I may be heard, a sort of very, very short closing
23 statement.

24 **THE COURT:** On what?

25 **MS. ARANDA OSORNO:** I would just ask Your Honor to

1 consider issuing a detailed analysis for anything that remains
2 sealed so that the public can have the benefit of
3 understanding the way that the Court is understanding these
4 sealing disputes and the way in which the government's
5 arguments are being interpreted by the Court in making these
6 decisions.

7 **THE COURT:** Okay. It means it's going to take longer
8 but okay.

9 **MS. ARANDA OSORNO:** I understand.

10 **THE COURT:** All right.

11 **MS. ARANDA OSORNO:** You have great clerks, I think,
12 though, so hopefully not too long.

13 **THE COURT:** I have great clerks, but I also have a
14 crushing docket right now.

15 **MS. ARANDA OSORNO:** I understand, Your Honor.

16 **THE COURT:** All right. That's why I said I'm not
17 going to do this work on my own; they're going to do it for
18 me.

19 So, all right. Anything else?

20 **MS. MATTIOLI:** No, Your Honor.

21 **MR. ANDERSON:** Nothing from plaintiffs, Your Honor.

22 **MS. ARANDA OSORNO:** No, Your Honor.

23 **THE COURT:** Okay. All right. Everybody travel
24 safely.

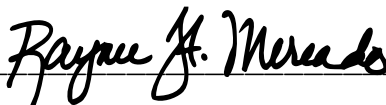
25 We're adjourned. Thank you.

1 (Proceedings were concluded at 3:46 P.M.)

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6 **CERTIFICATE OF REPORTER**

7
8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above-entitled matter.
10 I further certify that I am neither counsel for, related to,
11 nor employed by any of the parties to the action in which this
12 hearing was taken, and further that I am not financially nor
13 otherwise interested in the outcome of the action.

14
15 

16 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

17 Thursday, August 2, 2024