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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VICTORIA LAW, PLAINTIFF, VS. FEDERAL BUREAU OF PRISONS, DEFENDANT.	CASE NO.: 4:24-CV-06628-YGR **[PROPOSED] CERTIFICATION OF FACTS UNDER 28 U.S.C. § 636(E)(6) AND REFERRAL TO DISTRICT JUDGE ORDER TO SHOW CAUSE AS TO WHY BOP SHOULD NOT BE HELD IN CONTEMPT** HON. ALEX G. TSE

This Court issued a binding Order (*Dkt*. No. 42) in pursuant to a referral by Judge Gonzalez Rodgers for supervision and to issue binding orders. (*Dkt.* No. 29.) When a party disobeys such an order, § 636(e)(6) provides that the magistrate judge "shall forthwith certify the facts to a district judge," who then determines whether contempt is appropriate. Department of Justice guidance instructs that when an agency is subject to a court-ordered deadline during a lapse in appropriations, the agency should seek relief from the court if compliance is affected by the lapse. See "Frequently Asked Questions During a Lapse in Appropriations," U.S. Dep't of Justice, https://www.justice.gov/jmd/page/file/1069156/download. The Bureau of Prisons did not comply with the Order, request relief from it, or disclose this guidance. Despite the missed deadlines, Plaintiff's filings, and the pending motions in this case, the Bureau of Prisons has not complied with this Court's Order since August and has not indicated a date certain that it intends to comply with the Order.

Certification of Facts

Pursuant to § 636(e)(6), the undersigned certifies the following facts, found by clear and convincing evidence, to the District Judge in support of the entry of judgment of civil contempt against defendant Federal Bureau of Prisons. The undersigned refers the matters for the District Judge to order to show cause as to why BOP should not be held in contempt.

1. On May 30, 2025, this Court issued an Order (*Dkt*. No. 42) requiring the Federal Bureau of Prisons to review at least one thousand pages per month, to release responsive records to Plaintiff on the last day of each month, and to notify Plaintiff if no responsive records were identified.
2. The December 2, 2025, Declaration of Kara Christenson states the BOP "will make every effort to make up the processing missed September through November 2025, by February 1, 2026." (*Dkt.* No. 57 at ¶ 8). The Declaration does not dispute the existence of the May 30, 2025, Order. It does not make a commitment to produce the September, October, November, December, January, and February releases. It states only that the BOP ""will make every effort to make up the processing" by February 2026, more than three months after the filing of Plaintiff's November 18, 2025, Motion. It does not identify any steps taken to comply with the May Order since August 2025. The Declaration contains no description of pages reviewed since then, files searched, or any concrete processing activity. The BOP does not explain what remains outstanding. The BOP does not explain the efforts that were undertaken to mitigate the delay. It does not provide any information about post-shutdown compliance efforts. It does not identify whether BOP took any internal steps to reallocate staff or reduce other demands to satisfy a binding court order. The BOP did not provide information permitting the Court to conclude that the agency took all reasonable steps to comply with the Order.

3. Before the lapse the Bureau of Prisons did not make the required productions for September 2025.
4. On Sept. 29, 2025, the Department of Justice issued its FY 2026 Contingency Plan that states that "Litigators will approach the courts and *request* that active cases . . . be postponed until funding is available. If a court denies such a request and orders a case to continue, the Government will comply with the court's Order, which would constitute express legal authorization for the activity to continue." *available at* https://www.justice.gov/jmd/media/1377216/dl at 3. The Bureau of Prisons did not disclose this authority. The Bureau of Prisons did approach the Court to request postponement.
5. During the lapse from October 1-November 12, 2025, the BOP did not produce the October 2025 records.
6. During the lapse from October 1-November 12, 2025, the BOP did not seek relief from the May 30 Order.
7. On October 10, 2025, the Department of Justice issued a Lapse in Appropriations Employee Reference Guide that states, "Litigators will need to approach the courts and request that active cases be postponed until funding is available, except for those cases in which postponement would compromise to a significant degree the safety of human life or the protection of property. Litigators should typically request a stay on the first business day following the lapse in appropriations. A sample stay motion will be provided to the litigating divisions if a lapse in appropriations occurs.") *available at* https://www.justice.gov/archives/jmd/media/1415826/dl#:~:text=Employees%20on%20furlough%20during%20a,employee's%20standard%20rate%20of%20pay at 19. The Bureau of Prisons did not disclose this authority. The first business day following the lapse in

appropriations was October 2, 2025. The Bureau of Prisons did not approach the Court to request postponement.

8. Assistant US Attorneys in Other FOIA cases, including one that was previously assigned to this case, complied with the Reference Guide and filed Stipulation to Stay Cases (*see Sherman v. State*, No. 3:25-cv-07130-LJC, ECF. No. 8 (N.D. Cal. filed Oct. 1, 2025); *Carlson v. HHS*, No. 3:25-cv-01164-EMC, ECF No. 15 (N.D. Cal. Oct. 1, 2025); *American Immigration Council v. CBP*, No. 3:23-cv-05270-SK, ECF No. 56 (N.D. Cal. Oct. 1, 2025)). The Bureau of Prisons did not do so in this case.
9. After the lapse concluded on November 12, 2025, the BOP did not produce the October 2025 records or the November 2025 records.
10. Since appropriations were restored, the BOP has not sought relief from the May 30 Order.

Order

It is therefore ordered that Defendant shall appear before Judge Gonzalez Rodger to show cause why Defendant should not be adjudged in contempt by reason of these facts. This Court requests that the District Judge issue an Order to Show Cause and establish a day certain for a hearing requiring the Defendant to appear in person before the District Judge to show cause why it should not be adjudged in civil contempt by reason of the facts so certified and suffer the imposition of sanctions. The Court requests that the District Judge issue an Order that:

1. The Bureau of Prisons shall show cause in writing, no later than _____, why it should not be held in civil contempt for failing to comply with the Court's May 30, 2025 Order.
2. The written response shall:
    a. Explain in a declaration the Federal Bureau of Prisons' failure to produce the September and October 2025 releases.
    b. Identify all steps taken to comply with the Order, describe in detail the types and numbers of files, records, and pages reviewed during the reporting period, specify the

types of records and number of pages outstanding, and set out the steps that remain for full compliance.

c. State when the missing productions will be completed.

i. Produce the September, October, and November records by December 31, 2025.

ii. Produce January records by the end of January, 2026.

iii. Produce February records by the end of February., 2026

d. Inform the Court of its plan for compliance moving forward.

3. Beginning immediately upon the filing of the written response, the Federal Bureau of Prisons shall submit periodic compliance reports every two weeks, each supported by a sworn declaration detailing its progress in processing Plaintiff's FOIA request, including the type and number of records and pages reviewed in the period, the number outstanding, and the specific actions taken toward compliance. Any incomplete, late, or duplicative submission shall not be deemed compliant with this Order.
4. Plaintiff may file a reply no later than _____.
5. The Court will hold a hearing on this Order to Show Cause on _____ at _____.
6. A responsible official with authority over FOIA processing for the Federal Bureau of Prisons shall appear and provide sworn testimony supporting the agency's most recent compliance declaration. Monthly compliance hearings will continue thereafter, at dates set by the Court, until the agency has fully complied with the Court's Order.
7. Plaintiff is entitled to attorney's fees.
8. Sanction the Bureau of Prisons.

IT IS SO ORDERED.

Dated: _____

_____

Hon. Alex G. Tse
United States Magistrate Judge