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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VICTORIA LAW,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

Case No. 3:24-CV-06628-AGT

JOINT CASE MANAGEMENT STATEMENT

The parties to the above-captioned action jointly submit this joint case management statement ("JCMS") in advance of the Case Management Conference ("CMC") set for October 23, 2026, pursuant to the Court's September 24, 2026 Order. ECF No. 94. In its September 4, 2026 Order, the Court directed the parties to submit a proposed case schedule and, if they could not agree, to provide briefing with legal authority addressing how the Court should evaluate the reasonableness of a proposed schedule in a FOIA case, given the current procedural posture. ECF No. 91

Plaintiff's Position:

Two years and three months after granting expedited status, BOP has yet to make a determination quantifying the final universe of records[1] requiring processing or provide a date certain for completing production or filing dispositive motions. This occurs while BOP has continued to miss entire monthly processing and production obligations without seeking leave, most recently in June 2026. Henry Decl. ¶ 11 & Ex. C. This brief, its Declaration, and its Exhibits A through F,[2] provide the facts and authority for how the Court should evaluate reasonableness and why the Court should use authority it already exercised and adopt Plaintiff's Proposed Case Management Order.

BOP treats the volume of records and potential benefits of disclosure as reasons for delay, whereas those circumstances are central to why BOP granted expedition in July 2024, triggering its 552(a)(6)(E)(iii) obligation to process the Request "as soon as practicable," rather than merely according to its position in the ordinary queue. *See* Ex F. As previously briefed, prioritizing expedited requests over older, non-expedited requests is what Congress contemplated in establishing expedited processing. ECF Nos. 33 at 2–3, 45-1 at 21–23. The existence of substantial records about a scandal of great interest to the public, government, and survivors, in which BOP abruptly closed a prison and transferred over 600 people while the prison was subject to extraordinary judicial oversight due to rampant staff sexual abuse that resulted in 11 criminal cases (the most recent of which was filed and in the news in September 2026) and over 130 civil suits, is neither unexpected nor evidence that Plaintiff no longer deserves FOIA expedition. This is especially true as the facility remains newsworthy given the ongoing cases and its potential conversion to an ICE facility. The Henry Declaration summarizes the procedural record, with citations to the original Request, Complaint, and supporting declarations, which briefed with facts and legal authority the harms already suffered by Plaintiff, the public, elected officials, and survivors of staff abuse and misconduct. Henry Decl. ¶¶ 3–6. Plaintiff briefed her entitlement to expedited processing on four statutory

[1] On April 24, 2026 BOP instructed Plaintiff to obtain DOJ Form 361 authorizations for a subset of requested items (numbers, 6, 8–10, and 45) enumerated in the Henry Declaration, which Plaintiff did. BOP has yet to make a page count or determination on these items.

[2] Exhibit A identifies the email search parameters. Exhibit B documents the requested items, prior agreements, and outstanding commitments. Exhibit C compares BOP's reported processing against ECF No. 42. Exhibit D distinguishes pages reviewed from pages disclosed. Exhibit E calculates processing rates, narrowing scenarios, and completion dates, including the estimated Form 361 workload. Exhibit F visualizes FOIA.gov data about expedited case workload and staffing.

grounds: (1) imminent threats to life and physical safety; (2) urgent need to inform the public, litigants, courts, the Special Master, and elected officials concerning government misconduct, ongoing proceedings, investigations, and legislation; (3) potential loss of substantial due process and liberty rights, including access to courts and counsel, freedom from retaliation, medical care, administrative remedies, timely release, compassionate release, and immigration relief; and (4) exceptional public and media interest in government integrity following the scandals. *Id.* Plaintiff briefed the public benefits of prompt disclosure, government transparency, accountability for violations of law and court orders, and prevention of further harm. *Id.* The Request prioritized records according to their urgency in reporting on and remedying threats to life and liberty; these interests remain relevant to evaluating the reasonableness of the schedule because delayed reporting may deprive affected individuals, their counsel, and advocates of information while administrative and judicial remedies remain available.

BOP continues to shift to Plaintiff and the Court the burden that FOIA (5 U.S.C. § 552(a)(4)(B)) places on BOP: "the burden is on the agency to sustain its action." A remedy cannot depend on BOP first completing the very process whose indefinite duration is at issue, particularly where BOP possesses the information necessary to quantify the remaining universe, explain its processing constraints, and propose a finite path to completion. On May 30, 2025, the Court exercised its authority, granted Plaintiff substantive relief, and entered a judicially enforceable order establishing a processing and production schedule (review 1,000 pages monthly and release) to begin bringing BOP into compliance with FOIA. ECF No. 42. FOIA places the burden on BOP to justify both the reasonableness of its production and the reasonableness of the schedule it proposes going forward, not on Plaintiff or the Court to reconstruct the agency's processing or wait indefinitely for BOP to determine when it will end. 5 U.S.C. § 552(a)(4)(B). The briefing that follows holds that Court may exercise the authority it already invoked in ECF No. 42 to evaluate BOP's past compliance and establish a finite path to FOIA compliance and case resolution.

"The value of information [obtained through FOIA] is partly a function of time." *Fiduccia v. D.O.J.*, 185 F.3d 1035, 1041 (9th Cir. 1999). BOP's compliance history as documented in Exhibits A through E provides an objective benchmark against which the reasonableness of its actions vis-à-vis the

relevant FOIA provisions,[3] and any proposed case schedule can be evaluated. The Court has broad "authority to impose concrete deadlines on agencies that delay the processing of requests meriting expedition." *CREW v. DOJ*, 846 F.3d 1235, 1241-42 (D.C. Cir. 2017) (establishing the courts' injunctive power and retention of "the inherent powers of an equity court" under FOIA). *Fiduccia v. DOJ* emphasized that Congress enacted a "tough statute on agency delay" and rejected a FOIA regime in which requesters effectively must wait years for records. 185 F.3d 1035, 1041 (9th Cir. 1999); ECF No. 45-1 at 11. In *Renegotiation Board v. Bannercraft Clothing Co., Inc.*, 415 U.S. 1, 18–20 (1974), the Supreme Court explained that FOIA's "broad language" makes the district courts the enforcement arm of the statute and expressly grants them the inherent power of equitable jurisdiction. (reviewing preliminary injunctions, holding that FOIA's remedies are not exclusive and Congress did not strip district courts equitable powers). The *EPIC* court warned that DOJ's position would permit the agency to "pay lip service" to the requester's statutory right to expedition and would require the court to abdicate its duty to prevent "unreasonable delays in disclosing non-exempt documents" and instead ordered a factual showing and volume estimate under the FOIA "authority to impose concrete deadlines on agencies that delay the processing of requests meriting expedition." *Elec. Privacy Info. Ctr. v. Dep't of Just.*, 416 F. Supp. 2d 30, 38 (D.D.C. 2006) (motion for a preliminary injunction seeking expedited processing and a production deadline, rejecting argument that DOJ had unfettered discretion to decide how long processing would take and holding that courts have authority to review delay and impose concrete deadlines).

Under FOIA, "federal courts have long 'understood that [c]ertain implied powers necessarily result to our [c]ourts'[,]" which are "'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Club v. E.P.A.*, 505 F. Supp. 3d 982, 988-89 (N.D. Cal. 2020)(FOIA action before a magistrate judge, denying agency motion to claw back documents it had already produced). FOIA courts "recogniz[e] they may draw on their equitable powers to effectuate FOIA's 'policy of broad disclosure.'" *Los Angeles Times*

[3] FOIA required BOP to make its determination by July 24, 2024. 5 U.S.C. § 552(a)(6)(A)(i). Because BOP granted expedited processing, Congress separately required that the Request thereafter be processed "as soon as practicable." 5 U.S.C. § 552(a)(6)(E)(iii). FOIA further entitles a requester to an estimated completion date, § 552(a)(7)(B)(ii), and requires BOP to make records "promptly available," § 552(a)(3)(A).

Communications LLC v. U.S. Department of Homeland Security, 2:20-cv-10911-FLA (MRWx), 2022 WL 18932816, at *3 (C.D.Cal. 2022) (citing *FBI v. Abramson*, 456 U.S. at 621, 102 S.Ct. 2054 (1982)).

A court may establish both a monthly processing rate and a completion date through case management while FOIA processing remains ongoing, without awaiting summary judgment. *See ACLU Foundation of Southern California v. U.S. ICE*, 705 F. Supp. 3d 1077, 1079–92 (C.D. Cal. 2023) (on plaintiff's motion for a scheduling order and revised FOIA processing rate, the magistrate judge held that under FOIA and its inherent management powers, it had the power to increase the agency's processing rate from 1,000 to 3,000 pages per month and require status reports estimating search completion, remaining volume, and production completion); *See also ACLU v. BOP*, No. 20-cv-3031-RCL, ECF Nos. 75, 79 (D.D.C. Jan. 17 & July 9, 2024)(after years processing, the court invoked 28 U.S.C. § 476(a)(3)'s three-year reporting requirement, and directed the parties to identify a path for completing the case, including a schedule for dispositive motions or resolution without summary judgment); *See also Cohodes v. DOJ*, No. 4:20-cv-04020-LB, ECF Nos. 71–72, 74–75, 78 (N.D. Cal. Oct. 5, 2023) (during production and without a dispositive or preliminary injunction motion, requiring a sworn agency submission concerning production and timeline, then ordering at a CMC that the agency process 500 pages per month and complete production by a date certain).

Rule 1 directs that the FRCP be construed, administered, and employed "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Rule 16 governs judicial case management for the purposes of "expediting disposition of the action" and "establishing early and continuing control so that the case will not be protracted because of lack of management." Fed. R. Civ. P. 16(a)(1)–(2). The Rules authorize the Court to issue a scheduling order as soon as practicable, establish deadlines, provide for disclosure, obtain factual stipulations, and determine the timing of summary adjudication. Fed. R. Civ. P. 16(b)(1)-(3), (c)(2)(E), (L), (P). The Rules provide a mechanism for addressing the concerns raised at the CMC, and the Court's equitable authority permits it to enforce those rules by establishing a schedule from the developed factual record, including a date certain for completion of review and production, maintaining or modifying the monthly processing requirement necessary to reach that date, and requiring monthly reports sufficient to monitor BOP's compliance. Continued processing without an enforceable completion date risks allowing the case to languish indefinitely and

runs contrary to Rule 1's directive that the Rules be administered "to secure the just, speedy, and inexpensive determination of every action and proceeding."

The Court has statutory and inherent authority, already exercised in ECF No. 42, to require the factual showing necessary for its ongoing evaluation of reasonableness and impose an enforceable schedule for this expedited FOIA action. Christenson's October 15, 2026 declaration does not establish that BOP's proposed rate or request to act indefinitely without oversight is reasonable. It does not explain how BOP accounts for Plaintiff's expedited status relative to competing requests, including whether those requests have comparable statutory priority. Henry Decl. ¶¶ 12-14 & Ex. F. Nor does it explain how BOP conducts its searches, which FOIAXpress functions it employs, or whether alternative search terms, near-duplicate detection, email threading, and other technical methods could reduce the count, which BOP acknowledges contains substantial near-duplicate and nonresponsive material. *Christenson Decl*. ¶ 2; ECF No. 48-2; Henry Decl. ¶¶ 13, 18–19, 27, 31–32 & Ex. A. Without that information, the Court cannot determine whether the remaining volume and proposed processing rate reflect necessary review or potentially avoidable inefficiencies. Plaintiff's expert Declaration evaluated FOIAXpress capabilities, industry-standard document-review practices, and BOP's reported processing capacity, and identified methods that could reduce duplicative manual review and improve responsiveness screening. ECF No. 48-2 ¶¶ 4–7, 34–36, 43–44. The Proposed Order establishes a mechanism for evaluating reasonableness, requiring BOP to identify its search methodology, custodians, repositories, and refinements; quantify the records; reconcile its performance under ECF No. 42, including spreadsheet credits; and disclose the facts related to expedition. Henry Decl. ¶¶ 35–40 & Exs. A–F. These recurring disclosures permit the Court to compare BOP's actual performance with its orders, assess the effects of narrowing and additional staffing, and determine whether adjustments to processing obligations or deadlines are warranted on a developed factual record relative to the expedited track. The form 361 timeline prioritizes the establishment of a page count, and release time-sensitive records. The Court should enter the Proposed Order to permit ongoing judicial evaluation and enforcement of a reasonable processing schedule, rather than postponing judicial review until BOP unilaterally determines that its processing is complete.

BOP's Position:

Based on its current understanding of the—at minimum—50 FOIA requests at issue in this case, BOP reports that approximately 62,000 pages of potentially responsive records remain to be processed. This approximate page count represents the number of potentially responsive pages; the final number of responsive pages will be a subset of this universe. Approximately 49,000 of those pages came from the parties' agreed-upon email search. The parties are meeting and conferring cooperatively to narrow the email search.

In addition, the 62,000 pages of potentially responsive records does not include records for which Plaintiff was required to submit Privacy Act waivers. Plaintiff provided BOP with a total of 61 Privacy Act waivers on October 9 and 12, 2026. On October 8, 2026, however, Plaintiff indicated during the Parties' meet and confer, that these documents were requested for the inmates' benefit, rather than for Plaintiff's purposes. Given Plaintiff's statements, the proper, more efficient, and quicker procedure to access individual inmate records is for the inmate to submit their own FOIA request. *See* accompanying Declaration of Kara Christenson ("Christenson Decl.") ¶ 4 (requests for an inmates own medical records are typically released within 24 hours). Plaintiff's attempts to circumvent FOIA's usual procedure in this case is resulting in an unwieldy, time-consuming process. Indeed, the individualized requests cover medical, compassionate release, and immigration records; potentially with a subset search of emails relating to compassionate release and immigration. In short, combining Plaintiff's broad, difficult to discern FOIA requests with an ask to acquire individual records for the benefit, not of Plaintiff, but of the inmates, is not an appropriate use of this FOIA case. Regardless, during the September 4, 2026 case management conference, the Court inquired whether BOP could release all records subject to a valid Privacy Act waiver without further processing under the FOIA. BOP looked into this proposal and reports that such an approach is not possible. Although the Privacy Act waiver may cover Exemption (b)(6) issues with respect to the individual who signed the Privacy Act waiver, these records also include personally identifiable and private information from other individuals who have not signed Privacy Act waivers. As a result, even where Plaintiff has provided a Privacy Act waiver, in the event BOP is required to provide these individual records, it still must process all those records under the FOIA to identify and withhold information subject to any statutory exemption (other than Exemption (b)(6) material related to

the individual who signed the Privacy Act waiver).

BOP's Case Schedule Proposal: Rather than set dates certain for post-processing deadlines—which may become stale as processing and negotiations continue—BOP proposes that the Court set deadlines triggered off the end of processing, as follows:

- ADR Deadline: 60 days following end of processing;
- Plaintiff's Motion for Summary Judgment: 90 days following end of processing;
- Defendant's Opposition to Motion for Summary Judgment and Cross-Motion for Summary Judgment: 120 days following end of processing;
- Plaintiff's Reply in support of Motion for Summary Judgment and Opposition to Defendant's Cross-Motion for Summary Judgment: 150 days following end of processing;
- Defendant's Reply in support of Cross-Motion for Summary Judgment: 180 days following end of processing;
- Hearing on Cross-Motions for Summary Judgment: 200 days following end of processing.

BOP's proposed schedule will provide the Parties with concrete deadlines for post-processing events, while also providing sufficient flexibility to avoid requiring the Parties to seek leave of Court to alter deadlines as they become outdated as a result of changes to the scope of the records that must be processed.

Due to BOP's FOIA processing resource constraints described in more depth in the accompanying Christenson Declaration, BOP is able to commit to processing 1,000 pages per month for the next 12 months, and it is willing to revisit the processing rate after 12 months. BOP has at least one new staff member who is going to be assigned to process records for this case starting in early 2027. Defendant has a backlog of FOIA requests that it must also process, as well as a number of cases in litigation. The agency's current backlog includes over 7,600 FOIA requests in the queue for processing, and 67 active litigations. *See* Christenson Decl. ¶¶ 9 & 11. At its present staffing capacity, BOP is unable to process records for Plaintiff (or any particular requester) at a higher rate without adversely impacting the needs of other requestors by redirecting significant resources away from the processing of other FOIA requests. *See* Christenson Decl. ¶ 8. Importantly, a higher processing rate would expose the agency to the risk of failing to meet concurrent court-imposed production deadlines in other FOIA lawsuits.

Plaintiff's processing proposal is simply not feasible given current resources. The agency has 9

Government Information Specialist ("GIS") staff members assigned to process litigations. The average number of BOP FOIA requests closed between 2019 and 2026 is 6,672, which results in an average individual GIS process rate of 607 requests per fiscal year, which does not include monthly productions for FOIA litigation. *See* Christenson Decl. ¶ 7. Kara Christenson is the only GIS assigned to process records in this case, and that is the normal practice in BOP's FOIA and Privacy Act section. One GIS is assigned to each litigation matter. The reason for this is twofold. First, BOP does not have the staffing to assign more than one GIS to any one litigation matter. The second reason is the need for consistency in how the records are processed and any exemptions are applied. In this particular case, consistency in processing of the records released and application of the exemptions applied is particularly important given the ongoing litigation—both civil and criminal—related to FCI Dublin. *See* Christenson Decl. ¶¶ 11-12.

BOP's proposed processing rate of 1,000 pages per month in this case capitalizes on its workflow and ensures that more pages for more FOIA requests are processed per month. This allows for fair and equitable processing of all FOIA requests submitted to BOP. Implementing an extreme page review requirement as requested by Plaintiff in this litigation would result in a diverting of resources from the office in responding to myriad other FOIA requests and other litigations. This would create even more delays in processing other requests, create an even greater bottleneck of requests, and likely result in other litigations being filed against the already overburdened agency. Any large processing requirement, even one not as large as that requested by Plaintiff, would stress BOP's FOIA office's operations and create serious consequences for other requesters.

Finally, Plaintiff's insert to this case management statement suggests that BOP is not expediting processing of the approximately 50 FOIA requests that Plaintiff put at issue in this omnibus FOIA lawsuit. That is simply not true. BOP is already processing the significant volume of records that are responsive to Plaintiff's multiple FOIA requests at a rate far faster than almost any other BOP FOIA litigation. In other words, BOP has been forced to de-prioritize the processing of equally meaningful FOIA requests submitted by other requesters, and Plaintiff is already getting preferential treatment in the processing of her FOIA requests. The timeline necessary for BOP to process those records is a function of the volume and amorphous nature of Plaintiff's FOIA requests; it is not because BOP has refused to expedite

processing here. To be clear, once Plaintiff filed this district court lawsuit, her FOIA requests were taken out of BOP's expedited processing queue, and they are now being processed pursuant to the Court-ordered processing rate. As a result, Plaintiff has effectively jumped the line ahead of more than 100 other FOIA requesters who were similarly granted expedited processing, and she now seeks to divert additional resources away from those other expedited processing requesters by asking for a Court order forcing BOP to process her—and only her—FOIA requests even faster.

Case Law Regarding FOIA Processing Rates: The Court's September 4, 2026 minute order directed the parties to "include briefing with authority addressing how the Court should evaluate the reasonableness of a proposed schedule in a FOIA case (given the procedural posture of this case)." ECF No. 91. BOP responds as follows:

As an initial matter, contrary to the thrust of Plaintiff's insert above, BOP clarifies that it does not contest this Court's authority either (1) to order a processing rate and/or (2) issue a case schedule. As such, the issue currently before the Court is not whether it has the inherent authority to issue such orders, but rather what those processing and case schedule orders should look like given the extreme overbreadth and ambiguity of the at least 50 different FOIA requests that Plaintiff seeks to litigate in this one combined FOIA action and BOP's FOIA processing resource constraints.

The Freedom of Information Act establishes certain deadlines for agencies to respond to FOIA requests. An agency must "make and communicate its 'determination' whether to comply with a FOIA request within 20 working days of receiving the request, or within 30 working days in 'unusual circumstances.' *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 182 (D.C. Cir. 2013) ("*CREW*"). Upon a determination that an agency will comply with the request, "the records shall be made promptly available." 5 U.S.C. § 552(a)(6)(C). But in contrast to the specific deadline for the initial determination, "FOIA prescribes no fixed timeframe within which an agency must produce non-exempt records." *Rolling Stone LLC v. Dep't of Just.*, No. 23-cv-10741, 2024 WL 3862521, at *2 (S.D.N.Y. Aug. 19, 2024) (cleaned up). What satisfies this standard may vary according to a variety of factors, including the size of the request, the public interest in the documents, and the competing FOIA obligations of the agency. The FOIA statute itself contemplates that agencies may create multiple tracks of varying speeds for the processing of requests. 5 U.S.C. § 552(a)(6)(D); *see White v. Fed. Bureau of*

Investigation, 851 F. App'x 624, 628 (7th Cir. 2021).

BOP has not failed to comply with § 552(a)(6)(C)'s "promptly release" requirement. While this language generally contemplates that the release of documents will begin within days or weeks of a determination, *see C.R.E.W.*, 711 F.3d at 188-89, a delay of months or years may still be considered prompt under the circumstances, such as where a plaintiff seeks a large number of documents and has refused to narrow the request "to make them more manageable or more likely to produce documents that actually shed light on the functioning of government."[4] *White v. Exec. Off. of US Attorneys*, 444 F. Supp. 3d 930, 943 (S.D. Ill. 2020), *aff'd sub nom*. *White v. Fed. Bureau of Investigation*, 851 F. App'x 624 (7th Cir. 2021) (while the plaintiff "may be entitled to all of the non-excluded or non-exempt records he seeks, he is not entitled to them next week, or even next year"). Indeed, courts routinely approve FOIA processing at rates far below what BOP proposes in this case and for periods that are far longer than what it would take BOP to process these records. *See*, *e.g.*, *Nat'l Sec. Counselors v. U.S. DOJ*, 848 F.3d 467, 471-72 (D.C. Cir. 2017) (FOIA processing policies serve "to promote efficient responses to a larger number of requesters"); *Freedom Watch v. Bureau of Land Mgmt*., 325 F. Supp. 3d 139, 142 (D.D.C. 2018) (upholding the FBI's interim release policy of 500 pages per month despite the fact that processing of plaintiff's FOIA request would take approximately 500 months); *Negley v. U.S. Dep't of Just*., 305 F. Supp. 3d 36, 46 (D.D.C. 2018), *aff'd*., No. 18-5133, 2018 WL 4148608 (D.C. Cir. Aug. 14, 2018) (approving interim release rate even though it would take more than 80 years to produce the pages at issue and the requester was over 70); *Martinez v. Dep't of Just.*, No. 16-cv-1506, 2023 WL 9781681, at *1 (D.D.C. Sept. 27, 2023); *Daily Caller News Found. v. Fed. Bureau of Investigation*, 387 F. Supp. 3d 112, 121 (D.D.C. 2019); *Colbert v. FBI*, No. 16-cv-1790, 2018 WL 6299966, at *3 (D.D.C. Sept. 3, 2018); *Rolling Stone*, 2024 WL 3862521, at *3.

There is no reason to deviate from BOP's proposed processing rate here, which is already considerably higher than BOP applies in its other FOIA litigations. In determining an appropriate rate, "courts often give deference to the agency's release policies," and will consider the "size and compelling need of the request compared to others, as well as the effect of the request on the [agency's] ability to

[4] To that end, it remains unclear whether many of the records that Plaintiff seeks are for Plaintiff's own use or for the private use of third-party individuals not before the Court.

review other FOIA requests." *Colbert*, 2018 WL 6299966, at *3. Here, Plaintiff cast her net broadly and without particularity. The Parties are engaged in good faith efforts to narrow the scope of the requests and the resulting potentially responsive records, but BOP should not face an unworkable and prejudicial processing rate simply because Plaintiff did not frame her requests more carefully from the outset. Moreover, if the Court were to order faster production here, it would result in other, perhaps more time-sensitive and longer-pending, requests being moved further back in the queue. *See Rolling Stone*, 2024 WL 3862521, at *3; *Martinez*, 2023 WL 9781681, at *1. That BOP's proposed processing rate here may result in a long production period does not justify prioritizing the requests at issue in this case over other FOIA requesters who may have a more compelling need.

While BOP does not contest this Court's authority to issue a monthly processing order and/or a case scheduling order, the relief that Plaintiff seeks in her proposed order (filed contemporaneously herewith) goes well beyond a proper exercise of this Court's jurisdiction under the FOIA. Indeed, Plaintiff asks the Court to issue an order, *inter alia*, (1) exercising minute control over the Parties' meet and confer efforts and (2) forcing BOP create new records—including a monthly declaration signed under penalty of perjury and filed on the docket in this case. While BOP is willing to provide certain information amicably and informally to facilitate reasonable case management in this litigation, the FOIA does not authorize a court order requiring BOP to create the new records sought by Plaintiff; Plaintiff's remedy under the FOIA instead is the release of already existing agency records that are responsive to her FOIA requests. *See* 5 U.S.C. § 552(a)(4)(B) (providing jurisdiction "to enjoin the agency from withholding agency records and to order production of any agency records improperly withheld"). Notably, the remedial relief authorized by the FOIA (*i.e.*, release of existing records) would be accomplished by a court-ordered monthly processing requirement, and BOP again does not contest the Court's authority to issue such an order. However, the Supreme Court has squarely held that the FOIA does not require agencies to "create explanatory material." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1974) ("The Act does not compel agencies to write opinions in cases in which they would not otherwise be required to do so. It only requires disclosure of certain documents which the law requires the agency to prepare or which the agency has decided for its own reasons to create"); *see also, e.g.*, *Borom v. Crawford*, 651 F.2d 500, 501 (7th Cir. 1981) (FOIA does not require the compilation of statistical data); *Krohn v. Department of Justice*, 628

F.2d 195, 198 (D.C. Cir. 1980) (same); *Singh v. FAA*, 783 F. App'x 753, 754 (9th Cir. 2019) ("FOIA does not require agencies to create new records"). Moreover, the relief requested in the proposed order is extraordinary insofar as it would not only require BOP to create new records, but the new records Plaintiff asks the Court to force BOP to create are not even responsive to the underlying FOIA requests. This is doubly inappropriate and unsupported by the remedial provisions of the FOIA, which extend to the release of already existing agency records that are responsive to a valid FOIA request in the first place; Plaintiff's new requested remedies meet neither requirement. 5 U.S.C. § 552(a)(4)(B).

Finally, not only is much of the relief requested by Plaintiff in the proposed order outside of the FOIA's remedial jurisdiction, but it would further burden BOP's already overtaxed FOIA processing resources. Every moment BOP's FOIA processors are required to spend compiling the new statistical and other information that Plaintiff seeks in the proposed order is a moment that those FOIA processors are diverted from processing and releasing records, to this Plaintiff, in response to other litigations, and in response to FOIA requests that are still in the administrative phase. In other words, the highly burdensome actions that Plaintiff asks the Court to order here would exacerbate the very FOIA processing issues (for herself and for others) that Plaintiff decries in this case management statement.

DATED: October 16, 2026

Respectfully submitted,

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