



**CENTRO LEGAL
DE LA RAZA**



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Warden Theresa Jusino
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Re: Unconstitutional Conditions and Rampant Sexual Assault at FCI Dublin

Dear Regional Director Rios and Warden Jusino:

We write on behalf of the multiple individuals incarcerated at FCI Dublin who have been subject to sexual harassment, abuse, retaliation, and related misconduct due to the Bureau of Prison's (BOP) failures to protect the people in its care, and on behalf of the California Coalition for Women Prisoners whose members have been directly impacted by this abusive misconduct. Though our investigation is still ongoing, we have identified egregious violations of federal law that are causing immediate and ongoing harm to our clients that the BOP must take immediate steps to address.

We have been in contact with over 140 survivors who were held at Dublin and experienced sexual abuse and harassment over the past five years. They have reported a range of horrific abuse and exploitation including but not limited to: rape and molestation by officers; manipulation and sexual coercion, including officers entering into relationships with incarcerated individuals and officers forcing individuals to undress in order to be released from cells or for exchange of goods; rampant degrading sexual comments on an everyday basis; voyeurism and taking and sharing explicit photos; drugging, groping, and other forms of abuse during medical exams; and targeted abuse towards undocumented individuals because of the threat of deportation. Officers, supervisors, and leadership throughout the facility not only knew of the sexual abuse, but ensured the abuse continued. Officers protected abusive officers by retaliating against women who reported abuse, taunted women by making comments about their sexual abuse in front of other officers and incarcerated people, and prevented reporting.

FCI Dublin and the BOP's inadequate systems for preventing, detecting, investigating, and responding to sexual abuse put people incarcerated at FCI Dublin at substantial risk of serious harm from sexual assault, harassment, and retaliation from staff. The Eighth Amendment prohibits prison staff from engaging in sexual abuse or sexual conduct with the people in their custody. *Bearchild v. Cobban*, 947 F.3d 1130, 1144 (9th Cir. 2020) (“We now hold that a prisoner presents a viable Eighth Amendment claim where he or she proves that a prison staff member, acting under color of law and without legitimate penological justification, touched the prisoner in a sexual manner or otherwise engaged in sexual conduct for the staff member’s own sexual gratification, or for the purpose of humiliating, degrading, or demeaning the prisoner.”).

This problem is not a result of the actions of a few recent bad actors; sexual assault and harassment has been a serious, systemic problem for decades without recourse. In 1998, the BOP settled a lawsuit involving officers who placed women prisoners in the male solitary confinement unit and agreed to a variety of reforms intended to address sexual assault including providing training to prevent abuse, providing psychological and medical services, and adopting measures to protect confidentiality.¹ But it appears these reforms were ultimately ineffective or abandoned. Twenty years later, in 2019, the Congressional House Subcommittee on National Security found widespread misconduct in the federal prison system was tolerated and routinely covered up or ignored, including among senior officials.²

The following year, in 2020, the U.S. Attorney’s Office began a criminal investigation that led to charges against five former officers, including the former Warden Ray Garcia and the Chaplain James Highhouse. Three of the officers have pled guilty and the former Warden Ray Garcia was convicted of all charges after trial. A significant number of additional correctional officers have been placed on administrative leave pending additional criminal investigations.

In February 2022, the Associated Press conducted an investigation that included review of internal BOP documents, court documents, statements from incarcerated persons, and interviews with staff and “found a permissive and toxic culture at [FCI

¹ *Lucas v. White*, 63 F. Supp. 2d 1046, 1051 (N.D. Cal. 1999) (indicating BOP’s agreement to these reforms on a national level and the government’s agreement to comprehensive monitoring them).

² Subcommittee on National Security, Majority Staff Memorandum, Independent Investigations and Employee Discipline at the Bureau of Prisons (Jan. 2, 2019), available at <https://oversight.house.gov/wp-content/uploads/2019/01/Memo-to-Chairman-Russell-re-BOP.pdf>.

Dublin], enabling years of sexual misconduct by predatory employees and cover-ups that have largely kept the abuse out of the public eye.”³

In July 2022, the U.S. Department of Justice (DOJ) Office of the Deputy Attorney General (DAG) issued a memorandum “identifying grave concerns about instances of sexual misconduct involving employees of the Federal Bureau of Prisons (BOP)” and establishing a “Working Group” to review the BOP’s approach to sexual misconduct. The DAG’s Working Group issued its report in November 2022 and found that BOP must take “immediate actions to address the Department’s approach to sexual misconduct perpetuated by BOP staff” as well as conduct “further review to consider longer-term—and more systemic—changes.”⁴

While this process was unfolding, sexual misconduct at FCI-Dublin was also the subject of multiple hearings by the United States Senate’s Permanent Subcommittee on Investigations. These hearings culminated in a December 2022 report that refers to the abuse at FCI Dublin as “horrific” and found that BOP has (1) failed to detect, prevent, and respond to sexual abuse of female prisoners, including specifically at FCI Dublin; (2) failed to hold employees accountable for misconduct; and (3) failed to take agency-wide action to address sexual abuse by BOP employees.⁵ The Report further found that “BOP management failures enabled continued sexual abuse of female prisoners by BOP’s own employees” and that BOP’s investigative practices are “seriously flawed” with “a backlog of 8,000 internal affairs cases, including at least hundreds of sexual abuse cases.”⁶

Despite the BOP’s awareness of these long-running conditions and problems, the BOP has failed to take action to address these well-documented issues. Specifically, the BOP has failed to: (1) adequately hire, train, and supervise its employees to their prevent

³ Michael Balsamo and Michael Sisak, AP Investigation: Women’s prison fostered culture of abuse (Feb. 6, 2022), available at <https://apnews.com/article/coronavirus-pandemic-health-california-united-states-prisons-00a711766f5f3d2bd3fe6402af1e0ff8>.

⁴ Report and Recommendations Concerning the Department of Justice’s Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons (“Senate Report”), (Nov. 2, 2022), available at https://www.justice.gov/d9/pages/attachments/2022/11/03/2022.11.02_bop_sexual_misconduct_working_group_report.pdf.

⁵ United States Senate, Permanent Subcommittee on Investigations Committee on Homeland Security and Government Affairs Staff Report, Sexual Abuse of Female Inmates in Federal Prisons (Dec. 13, 2022), available at <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2022-12-13%20PSI%20Staff%20Report%20-%20Sexual%20Abuse%20of%20Female%20Inmates%20in%20Federal%20Prisons.pdf>.

⁶ Senate Report at 1.

their abuse of power; (2) implement any truly confidential method for individuals to report abuse to outside authorities who are not employed by the BOP; (3) properly investigate claims of abuse; (4) address rampant retaliation against victims, including but not limited to solitary confinement, punitive cell searches, and punitive transfers, which harm survivors and deter others from reporting; (5) ensure that officers who have substantiated claims of sexual abuse and harassment against them are promptly fired and not permitted to return to BOP employment; (5) provide constitutionally adequate medical and mental health care to survivors; (6) provide consistent access to attorneys to speak to survivors (7) promptly facilitate the U-visa certification process for survivors who are assisting in the investigation of sex abuse and harassment; (8) create a process to assist survivors of abuse with compassionate release petitions; (9) install fixed cameras in areas known to be targeted by officers for abusing prisoners and failed to properly monitor and maintain the fixed cameras that do exist; (10) address increasingly dire living conditions at the facility including extensive asbestos and mold, inadequate access to fresh food and basic sanitation items, lack of access to educational and therapeutic programming, and a growing sinkhole in the outdoor recreation yard that is currently limiting access to outside recreation and preventing indigenous prisoners from accessing an area previously used for religious ceremonies, an important coping tool for indigenous survivors of abuse.

To this day, there is no confidential mechanism for survivors to report sexual abuse, harassment, or retaliation to entities outside the BOP. Survivors must report to the same staff members who are their assailants or who knowingly allowed the abuse to occur. Oftentimes when survivors report abuse to staff, their experiences are not kept confidential, and are instead shared among staff and even other incarcerated people. Also, if survivors attempt to use the “confidential” DOJ email to report they must do so on the unit with the screen they are typing on in full view of staff and other incarcerated persons. As a result, survivors frequently face immediate retaliation including placement in the Special Housing Unit (SHU), having their cells and belongings unnecessarily searched, losing access to programs, and transfer away from support networks. This retaliation is well known at FCI Dublin and deters a significant number of survivors from reporting their abuse.

Investigation and accountability issues have not been addressed and the same individual who was responsible for investigating sexual misconduct during the period when the Warden and others were blatantly abusing incarcerated individuals continues to serve in that role. To date fixed cameras have not been installed in additional locations and it is unclear whether any steps have been taken to address maintenance and monitoring of the cameras that exist.

Survivors are not provided with mental health care. To the contrary, the facility appears to be actively blocking outside mental health counselors from providing such services to survivors. Though FCI Dublin recently re-established an agreement with an

outside agency, Tri-Valley Haven, to provide mental health services to survivors of sexual abuse at the facility, these services were not available at the facility for over a year. Even now, there is no way for survivors to confidentially contact the outside mental health agency, Tri-Valley Haven, to request mental health services. Survivors must first put in a request to FCI Dublin staff, who then contact Tri-Valley Haven on their behalf. Even once contacted, no one in FCI Dublin has been able to see a counselor from Tri-Valley Haven in-person or able to speak with them on a confidential line. Further, individuals who have testified in criminal cases concerning abuse at FCI Dublin are unable to access victim-witness advocates appointed to them by the United States Attorney's Office for months. Thus, survivors who have been asked to bring up painful experiences in court and who have anxiously prepared to testify are left to further decompensate without access to virtually any mental healthcare. Similarly, there is a total lack of medical care with few to no doctors on staff at the facility and a lack of access to timely and quality care for survivors. For instance, exams to determine whether sexual assault occurred were taken weeks after the incident, or did not take place at all.

Finally, we have heard countless examples of individuals being placed in the SHU, having their cells searched for no reason, and otherwise being harassed by staff after reporting abuse to their families via CorrLinks, meeting with us as counsel, or reporting abuse internally. This retaliation is illegal and must end.

These failures by the BOP, the conditions of confinement, and culture of sexual misconduct at FCI Dublin cause very real harm to the inmates in these Jails, in violation of the Eighth Amendment prohibition on cruel and unusual punishment and the Fifth Amendment substantive due process, as well as federal statutory law, including the Trafficking Victims Protection Act. The survivors also have numerous personal injury claims, actionable under the Federal Tort Claims Act, sounding in, among other things, gender violence (Cal. Civ. Code Section 52.4), sexual assault (Cal. Civ. Code Section 1708.5), battery, and negligent supervision.

We request a meeting to discuss these matters as soon as possible and to discuss whether the parties can agree on a framework to resolve these issues. Any such framework must ultimately result in a court-enforceable settlement to include adequate reporting and monitoring to ensure compliance. The framework must address the issues described herein including access to confidential outside reporting mechanisms, access to confidential mental health care provided by community-based organizations, access to outside medical providers for exams relating to sexual abuse, and immediate cessation of retaliation towards individuals who report abuse or who exercise the right to access counsel in regards to such abuse. The framework must also include a process for considering victims for compassionate release, transferring victims to other facilities depending on their needs and a process for assisting victims with obtaining compassionate release and/or U-Visas as appropriate.

Please let us know within the next fourteen (14) days, **by March 9, 2023**, whether the BOP is open to discussing a framework to address these issues consistent with this letter. We sincerely hope the BOP will collaborate with us to negotiate a mutually agreeable solution to these systemic problems that would obviate the need for costly litigation. That being said, we will vigorously pursue all means of advocacy, including litigation, to ensure the rights of people incarcerated at FCI Dublin.

February 23, 2023

Sincerely,

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RIGHTS BEHIND BARS
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By: Oren Nimni Esq.