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16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

18 CALIFORNIA COALITION FOR WOMEN

19 PRISONERS; et al.,

20 Plaintiffs,

21 v.

22 UNITED STATES OF AMERICA; UNITED

23 STATES OF AMERICA FEDERAL BUREAU OF

24 PRISONS, et al.,

25 Defendants.

Case No. 4:23-cv-04155

**INTERVENORS' SECOND REPLY
REGARDING MOTION TO
UNSEAL**

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INTRODUCTION

1
2 For years, FCI Dublin staff perpetrated grievous and systemic sexual violence against
3 incarcerated women with impunity. This pattern of violence is both the grounds for this lawsuit and the
4 subject of dozens of administrative and criminal investigations by multiple law enforcement agencies.
5 Intervenors, whose efforts have resulted in the unsealing of hundreds of pages of records documenting
6 FCI Dublin's pervasive culture of abuse, continue to challenge Defendants' efforts to keep information
7 hidden from the public, including information related to some of the many ongoing administrative and
8 criminal investigations. *See generally* Dkt. No. 358.¹ Defendants argue that the remaining redactions are
9 warranted to protect the reputational and privacy interests of former FCI Dublin staff, as well as to avoid
10 compromising ongoing administrative and criminal investigations. *Id.* at 1-2. As explained below,
11 however, these arguments rely on broad, unsupported assertions about what could arise if information is
12 disclosed. Because these generalized assertions alone are insufficient to outweigh the public's right of
13 access, this Court should fully unseal the remaining documents and order that they be re-filed without
14 redactions.

PROCEDURAL HISTORY

15
16 The Appeal, Inc., reporter Victoria Law, the ACLU of Northern California, and the First
17 Amendment Coalition (collectively, "Intervenors") sought to intervene for the limited purpose of
18 moving to unseal court records and preserving the public's right of access to presumptively public court
19 proceedings. Dkt. No. 316 at 5.² Intervenors challenged the sealing of over sixty court records, including
20 the nine documents presently at issue. Dkt. No. 317 at 7, n.1. In response to Intervenors' Motion to
21 Unseal, Defendants conceded that the recent closure of FCI Dublin had rendered certain sealing
22 arguments moot but maintained that many documents still should remain sealed to protect "significant
23 law enforcement safety and security concerns" and individual privacy interests. Dkt. No. 329 at 1-2.
24 After consideration of Intervenors' arguments on reply (Dkt. No. 340), Defendants requested the
25 opportunity to meet and confer with Intervenors to further narrow the sealing disputes. *See* Dkt. No. 346.

26 Following a meet-and-confer, Defendants agreed to unseal additional documents. Dkt. No. 351 at

27 ¹ The documents that remain in dispute are Dkt. Nos. 175, 175-2, 178-3, 363-1, 363-2, 363-3, 363-4,
28 363-5, and 363-6. A chart describing these documents, with accompanying docket numbers, is appended
hereto as Exhibit 1.

² The Court granted the Motion to Intervene on July 26, 2024. Dkt. No. 354.

1 2. However, they also asserted a new ground for sealing some of the documents: that the documents
2 “contain[ed] information relating to ongoing criminal investigations.” Dkt. No. 351-1 at 4, 5, 7, 8. The
3 Court thereafter ordered Defendants to “provide the Court with more specificity.” Dkt. No. 354 at 3. It
4 observed that Defendants had made only “vague references” about needing to safeguard information
5 relevant to ongoing criminal investigations and institutional security. *Id.* The Court concluded that such
6 “[g]eneric references” are “insufficient.” *Id.* It then ordered the U.S. Attorney’s Office to respond to the
7 sealing arguments raised by Defendants because “Defendants are not the prosecuting agency.” *Id.*
8 Defendants subsequently filed a three-page notice clarifying their and the U.S. Attorney’s position. Dkt.
9 Nos. 358, 358-1, 358-2.

10 The Court heard argument on the remaining sealing disputes on August 2, 2024. At the hearing,
11 Federal Defendants conceded that additional information could be unsealed, further narrowing the
12 disputes. *See* Dkt. No. 373. Pursuant to the Court’s order, Defendants refiled new, redacted versions of
13 the disputed documents.³ Intervenors requested, and the Court granted, an opportunity to challenge the
14 remaining redactions. Dkt. No. 369. This brief follows.

15 ARGUMENT

16 A party seeking to seal a court record must overcome a “strong presumption in favor of access.”
17 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Foltz v. State Farm*
18 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003)). To justify secrecy, a party must demonstrate
19 “compelling reasons and specific factual findings.” *See San Jose Mercury News, Inc. v. U.S. Dist. Ct.*,
20 187 F.3d 1096, 1102 (9th Cir. 1999). A court may recognize compelling interests in sealing where
21 information relates to the substance of ongoing administrative or criminal investigations, or to the
22 identities of those being investigated. *See, e.g., In re Sealed Search Warrant*, 622 F. Supp. 3d 1257,
23 1262 (S.D. Fla. 2022). But the mere possibility that disclosure of information may cause
24 “embarrassment, incrimination, or exposure to further litigation will not, without more, compel the
25 court to seal its records.” *Kamakana*, 447 F.3d at 1179.

26
27 ³ Federal Defendants re-filed new versions of Dkt. Nos. 46, 46-1, 175-1, 197-3, 197-6, and 206-3. They
28 also filed a new version of Dkt. 332-3, which is not part of the group of documents Intervenors moved to
unseal and is not in dispute. *See* Dkt. No. 363-7. In addition to the six newly-filed documents, three
additional documents remain in dispute. *See* Dkt. Nos. 175, 175-2, 178-2.

1 After balancing the interests of the public against those of the party seeking to seal records, a
2 court must “base its decision [to seal] on a compelling reason and articulate the factual basis for its
3 ruling, without relying on hypothesis or conjecture.” *Id.* at 1178–79 (quoting *Hagestad v. Tragesser*,
4 49 F.3d 1430, 1434 (9th Cir. 1995)).

5 **I. Defendants Have Failed to Establish a Compelling Interest in Sealing the Names and**
6 **Information Relating to Investigations of Former FCI Dublin Staff**

7 Defendants offer two justifications for continuing to withhold information from the public. First,
8 they argue that disclosing the currently redacted information “could jeopardize” ongoing administrative
9 or criminal investigations. Dkt. No. 358 at 3 (citing Dkt. No. 358-1 at ¶¶ 8-12). Second, Defendants
10 argue that information must remain sealed to safeguard the reputational and privacy interests of those
11 being investigated. Dkt. No. 358 at 3.

12 Although sparse, case law on unsealing court records related to ongoing investigations and
13 related privacy interests does exist. And yet, Defendants have cited none. *See, e.g., In re Press Appl. for*
14 *Access to Jud. Recs. in Case No. 23-SC-31*, No. MC 23-84 (JEB), 2023 WL 8254630, at *1 (D.D.C.
15 Nov. 29, 2023) (considering motion to unseal search warrant for Twitter records associated with the
16 @realDonaldTrump account in the course of an investigation into election interference); *In re Matter of*
17 *Appl. of the Pub. Def. Serv. for D.C. to Unseal Certain Recs.*, 607 F. Supp. 3d 11, 16-17 (D.D.C. 2022)
18 (considering motion to unseal exhibits to a motion to exclude drug analysis evidence that discussed
19 misconduct of two chemists who were arrested for stealing drugs from the DEA laboratory); *United*
20 *States v. Gonzalez*, 927 F. Supp. 768, 770 (D. Del. 1996) (considering motion to unseal documents
21 containing information relating to misconduct investigation of government employee who testified as
22 expert). These cases illustrate the rigor a court must apply when balancing the government’s interest in
23 maintaining secrecy over information relating to a criminal investigation and protecting privacy
24 interests against the strong presumption of access to court documents.

25 A recent case considering a request to unseal a search warrant of Donald Trump’s Mar-a-Lago
26 residence affidavit and related documents provides a helpful analytical framework. *See In re Sealed*
27 *Search Warrant*, 622 F. Supp. 3d at 1262. There, the court recognized that, “[i]n the context of an
28 ongoing criminal investigation, [] legitimate governmental concerns include whether: (1) witnesses will

1 be unwilling to cooperate and provide truthful information if their identities might be publicly
2 disclosed; (2) law enforcement’s ability to use certain investigative techniques in the future may be
3 compromised if these techniques become known to the public; (3) there will be an increased risk of
4 obstruction of justice or subornation of perjury if subjects of investigation[s] know the investigative
5 sources and methods; and (4) if no charges are ultimately brought, subjects of the investigation will
6 suffer reputational damage.” *Id.* (citations omitted). The court found that there was “a significant
7 likelihood that unsealing the [search warrant] Affidavit would harm legitimate privacy interests by
8 directly disclosing the identity of the affiant as well as providing evidence that could be used to identify
9 witnesses” and that the affidavit “disclose[d] the sources and methods used by the Government in its
10 ongoing investigation,” both weighing against disclosure. *Id.* at 1263. On the other hand, the court also
11 found that the warrant involved “matters of significant concern” and unsealing “would promote public
12 understanding of historically significant events.” *Id.* at 1264. After carefully weighing these factors, the
13 court found that the government’s interests outweighed the public’s right of access, though it ordered
14 the government to narrowly tailor its sealing. *Id.* at 1265.

15 Other courts that have sealed information related to ongoing investigations have considered
16 similar factors, as well as whether an investigation was “in its nascent stage, where the risk of
17 disclosing information might affect its viability,” *Gonzalez*, 927 F. Supp. at 779, and whether the
18 information would reveal the “the scope or direction of the continuing investigation,” *In re Press Appl.*
19 *for Access to Jud. Recs.*, 2023 WL 8254630, at *6 (citation omitted).

20 As explained below, consideration of these factors demonstrates that Defendants have not
21 presented sufficient facts to establish that disclosure would impair any ongoing investigations or
22 significantly harm any staff’s privacy interests.

23 **A. Documents Related to Ongoing Administrative or Criminal Investigations**

24 Dkt. Nos. 363-1 and 363-2 contain the names of individuals on administrative leave pending the
25 results of sexual abuse investigations and the employment status of other officers referenced in Plaintiffs
26 complaint. Dkt. Nos. 363-4, 363-5, and 363-6 contain information relating to an individual officer’s
27 administrative investigation that is “pending deferral by OIG.” Dkt. No. 358-1 at ¶ 6. Defendants’
28 privacy argument as to these five documents lacks merit. Allegations of individual officers’ misconduct,

1 and many of their names, are already public in court filings, media reports, and congressional records.
2 *See, e.g.*, Dkt. No. 363-2 at ¶ 38 (redacting information relating to officers referenced in Plaintiffs’
3 complaint); Dkt. No. 363-1 at 15 (redacting information seemingly tied directly to allegations of
4 misconduct detailed in preceding sentences); Dkt. No. 317 at 8-12 (citing publicly available information
5 about individual officers). This, together with the fact that those being investigated are government
6 employees, significantly diminishes their privacy interests.⁴ *See In re Matter of Appl. of the Pub. Def.*
7 *Serv.*, 607 F. Supp. 3d at 25 (considering unsealing records that contained disciplinary documents and
8 noting the public interest “may be slightly higher because . . . there is a public interest in ascertaining
9 how the [government] disciplines its employees” (citation omitted)); *Gonzalez*, 927 F. Supp. at 777
10 (unsealing records relating to past misconduct of a government employee who had testified against
11 defendant in a case with significant media attention and noting that “one’s privacy interests are
12 diminished where the matter at issue has already been made public”); *In re Press Appl. for Access to*
13 *Jud. Recs.*, 2023 WL 8254630, at *6 (recognizing that privacy interests may be attenuated where “the
14 very subject of the investigation has acknowledged it” or “the investigation involved actions taken by a
15 public official in his public capacity”) (citation omitted); *Doe I v. Nielsen*, No. 18-CV-02349-
16 BLF(VKD), 2019 WL 2266622, at *2 (N.D. Cal. May 28, 2019) (rejecting argument that documents
17 produced in discovery in a case alleging discriminatory action by the federal government should be
18 marked confidential solely because they included the names of government employees where
19 government had failed to establish that invasion of privacy would result in harm to employees and
20 government had already disclosed the names of some of the employees).

21 Further, Defendants conclusion that disclosure of this information “could jeopardize the
22 ongoing investigations” is completely unsupported by specific facts. Dkt. No. 358 at 3. Defendants note
23 that there is a compelling interest in “maintain[ing] the integrity of any ongoing investigations – for
24 example, [by] prevent[ing] witness and evidence tampering or destruction” but do not explain how that
25 might happen in this case. *Id.* Neither do they claim that any of the information could reveal sources or

26 ⁴ Federal Defendants invoke the reputational and privacy interests of FCI Dublin staff who are under
27 investigation, but Intervenor are unaware of any of those objecting to disclosure. In such cases “[w]here
28 the individuals whose privacy interests are in question have interposed no objections, [a] defendant’s
institutional challenge is not persuasive.” *In re Matter of Appl. of the Pub. Def. Serv. for D.C. to Unseal*
Certain Recs., 607 F. Supp. 3d at 26–27 (quoting *Cobell v. Norton*, 157 F. Supp. 2d 82, 91 (D.D.C.
2001)).

1 investigative methods, *In re Sealed Search Warrant*, 622 F. Supp. 3d at 1262, or the “scope or
 2 direction” of the investigation, *In re Press Appl. for Access to Jud. Recs.*, 2023 WL 8254630, at *6.
 3 What is more, none of these investigations appear to be so early in their stages that disclosing
 4 information might “affect [the] viability” of the investigation. *See Gonzalez*, 927 F. Supp. at 779. The
 5 administrative investigations into the sexual misconduct of certain officers are at least nine months old
 6 and many are likely much older. *See* Dkt. No. 46-1 at ¶ 38 (containing individual officers’ employment
 7 status as of November 13, 2023).

8 In sum, Defendants have not established that disclosure of the information found in Dkt. Nos.
 9 363-1, 363-2, 363-4, 363-6, and 363-6 would significantly harm any individual’s privacy interests or
 10 impair any ongoing investigations.

11 **B. Documents Related to New FBI Investigation**

12 Dkt. Nos. 175, 175-2, 178-2, and 363-3 contain information relating to a new criminal
 13 investigation of FCI Dublin executive staff. Dkt. No. 358-1 at ¶¶ 8-10. The investigation arises from the
 14 transfer of R.F. out of FCI Dublin following her testimony at the preliminary injunction evidentiary
 15 hearing. *Id.* at ¶ 9; *see* Dkt. No. 155.

16 Defendants have not established compelling reasons for sealing the information contained in
 17 these documents. Former Acting Warden Dulgov and other executive staff have diminished privacy
 18 interests where allegations of their wrongdoing are public. *See* Dkt. No. 211 at 2 (informing the court
 19 that “the Bureau of Prisons replaced executive employees (the Acting Warden, an Associate Warden, the
 20 Executive Assistant/Satellite Camp Administrator, and the Acting Captain) . . . in response to recent
 21 developments”);⁵ Richard Winton, *Warden Is Ousted As FBI Raids California Women’s Prison Known*
 22 *As The ‘Rape Club’*, Los Angeles Times, Mar. 12, 2024, available at <https://tinyurl.com/4uy23sh9>.
 23 Defendants have also failed to establish how disclosure of any of the information contained in these
 24 documents “could jeopardize the ongoing criminal investigation.” Dkt. 358-1 at ¶ 11. Indeed, they
 25 would be hard pressed to provide any additional details as they have admitted that “[t]he full parameters
 26

27 ⁵ Although not explicitly named in the notice to the Court, the names of several executive staff are
 28 reflected in the record, including Morgan Agostini (Executive Assistant/Satellite Camp Administrator),
 Patrick Devaney (Associate Warden), and Erika Quezada (Correctional Captain). *See* Dkt. No. 158 at 8-
 9) (describing 2022 restructuring of the executive team).

1 of any investigation are unknown to both [the declarant and counsel for Defendants], as neither office is
2 the investigating office.” Dkt. No. 358 at 3.

3 As with the documents discussed in the preceding section, Defendants have not established that
4 disclosure of the information found in Dkt. Nos. 175, 175-2, 178-2, and 363-3 would significantly harm
5 individuals’ privacy interests or impair the ongoing FBI investigation.

6 **II. The Public Has a Significant Interest in Information Related to Ongoing Investigations**
7 **That Is Not Outweighed by Any Compelling Reasons for Secrecy**

8 In determining whether there are compelling reasons to seal, a court must “conscientiously
9 balance[] the competing interests of the public and the party who seeks to keep certain judicial
10 records secret.” *The Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir.
11 2016). The public’s interest in this case is significant. *See* Dkt. No. 317 at 19-22 (describing public
12 interest in this case). The suffering endured by those incarcerated at FCI Dublin is both well-
13 documented and widely known. The pervasive pattern of misconduct and culture of sexual abuse have
14 been exposed through audits, congressional investigations, advocacy efforts, media reports, and public
15 access to court records in this case. Accordingly, the public has a vested interest in learning the
16 identities of federal employees and possible grounds for any investigations presented to the Court, an
17 interest that is particularly heightened given the egregious abuses suffered by those incarcerated at
18 FCI Dublin.

19 Moreover, there is a significant public interest in knowing whether staff under investigation—
20 whose names remain redacted—have been placed on administrative leave or transferred to other
21 facilities. *See, e.g.*, Dkt. No. 263-3 at 13 (noting that “at least some accused staff members have been
22 transferred to other BOP facilities” and “and no BOP staff will lose their job, despite
23 contemporaneous reports of sexual abuse by officers”). The public’s right to know the full extent of
24 BOP’s response to these allegations is crucial, as it reveals how BOP handles serious misconduct and
25 seeks to prevent those in its custody from being retaliated against.

26 Weighing against this significant public interest are individual staff’s privacy concerns and the
27 need to protect the integrity of ongoing investigations. As discussed above, *supra* Section 1, staff
28 already publicly accused of misconduct, including those named in the complaint, have diminished

1 privacy concerns. *See Gonzalez*, 927 F. Supp. at 777 (“[O]ne’s privacy interests are diminished where
 2 the matter at issue has already been made public.”). Even though disclosure of names and further
 3 details may result in some degree of embarrassment or reputational harm to FCI Dublin staff under
 4 investigation, the risk is not sufficient to warrant withholding the information from the public.
 5 Public’s interest in transparency and accountability, particularly in the context of such serious
 6 misconduct, outweighs these concerns.

7 The FCI Dublin staff in question hold positions of public trust, funded by taxpayers. These
 8 positions demand scrutiny, and these court records “must be exposed to the light of human conscience
 9 and the air of natural opinion.” *Doe v. Marsalis*, 202 F.R.D. 233, 239 (N.D. Ill. 2001) (citation
 10 omitted) (finding that the public’s need to review police misconduct files, including documents
 11 containing allegations of sexual assault, outweighed defendant’s privacy interests). Even if some
 12 investigations do not lead to indictments or administrative consequences, public access to names and
 13 details of these investigations is essential for maintaining public confidence in a system that has
 14 already failed so many.

15 CONCLUSION

16 Because Defendants have failed to establish compelling interests in secrecy that outweigh the
 17 public’s right of access, Intervenors respectfully request that this Court lift the redactions contained in
 18 Dkt. Nos. 175, 175-2, 178-2, 363-1, 363-2, 363-3, 363-4, 363-5, and 363-6.

19 Dated: August 20, 2024

Respectfully submitted,

20 PUBLIC JUSTICE

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EXHIBIT 1

DISPUTED DOCUMENTS

<u>Original Sealed Document</u>	<u>Original Publicly Available Version</u>	<u>Latest Publicly Available Version</u>	<u>Description</u>	<u>Defendants' Grounds for Sealing per Dkt. No 358</u>
45-5	46	363-1	Federal Defendants' Opposition to Motion for Preliminary Injunction	Contains references to information in Agostini Declaration (Dkt. No. 366-2).
45-4	46-1	363-2	Declaration of Morgan Agostini (in support of Dkt. No. 46)	Contains names and the employment status of officers who are under administrative or criminal investigation.
172	175	175	United States Reply to Doc. 163	Contains references to information in Deveney and Wong Declarations.
173 ¹	175-1	363-3	Declaration of Patrick Deveney (in support of United States' Reply to Doc. 163)	Contains information relating to investigation "concerning FCI Dublin Executive Staff" and their role in placing R.F. in the SHU and transferring her out of FCI Dublin.
172-2 ²	175-2	175-2	Declaration of Dennis M. Wong (in support of United States' Reply to Doc. 163)	Contains information relating to investigation "concerning FCI Dublin Executive Staff" and their role in placing R.F. in the SHU and transferring her out of FCI Dublin.
178-3	178-2	178-2	Plaintiffs' Reply Post Evidentiary Hearing Brief	Contains references to Deveney and Wong Declarations.
197-3	none	363-4	Declaration of Robert J. France (in support of United States' Notice In Response to Doc. 186)	Paragraph 11 contains information relating to investigation of an officer that is "pending deferral by OIG."
197-6	none	363-5	Declaration of Beth Reese (in support of United States' Notice In Response to Doc. 186)	Contains information relating to investigation of an officer that is "pending deferral by OIG."
206-3	none	363-6	Second Declaration of Beth Reese (relating to February 27, 2024 hearing)	Contains information relating to investigation of an officer that is "pending deferral by OIG."

¹ This document was accidentally filed multiple times and is the same as Dkt. Nos. 176-5 and 184-5.

² This document was accidentally filed multiple times and is the same as Dkt. Nos. 176-4 and 184-4.