



Northern
California

December 7, 2022

Via U.S. Certified Mail and E-Mail

Melissa Rios
Regional Director of Western Region – BOP
Federal Bureau of Prisons
7388 Shoreline Drive
Stockton, CA 95219
WXRO-ExecAssistant@bop.gov

Re: Federal Bureau of Prisons News Media Contacts and Communications Policies

Dear Regional Director Rios:

We write on behalf of Andrea Reyes to express concern regarding news media contacts and communication policies by the Bureau of Prisons (“BOP” or the “Bureau”). Specifically, BOP’s Program Statement 1480.5 (“Media Policy” or “Policy”)¹ dictates how media contacts and interviews are to be authorized and conducted only at a *BOP institution*. The Policy is, however, being applied to *all* individuals under BOP community supervision, including those like Ms. Reyes who are on home confinement or in a halfway house. Because the Media Policy is so inapposite to the conditions of those serving sentences outside of a BOP institution, it provides a vague and unworkable framework. The Policy’s ambiguity also affords the BOP arbitrary and unfettered discretion to punish speech it does not favor, while providing no clear guidance or due process to people wishing to exercise their First Amendment rights outside of a BOP institution. Accordingly, we write to put BOP on notice that it would contravene constitutional principles and other important legal rights if Ms. Reyes is returned to prison for speaking with the media.

I. Factual Background

A. FCI Dublin’s Long History of Horrific Sexual Abuse

On January 21, 2022, Bay Area reporter Lisa Fernandez published a story revealing that four employees of the FCI Dublin all-women’s prison, including the warden and the chaplain, had been

¹ See FEDERAL BUREAU OF PRISONS NEWS MEDIA CONTACTS, PROGRAM STATEMENT § 1480.05 (2000) https://www.bop.gov/policy/progstat/1480_005.pdf.

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charged with an array of sexual assault crimes.² Ms. Fernandez reported that, in addition to raping women incarcerated at FCI Dublin, some of the correctional officers were alleged to have arranged sexual encounters with the imprisoned women in shipping containers and bathrooms, to have taken these women's naked photos during regular rounds, and to have demanded that the women strip or perform demeaning acts. Correctional officers reportedly used women's personal medical files to exploit their vulnerabilities and threatened women who failed to obey the officers' commands with solitary confinement and other punishment.

Weeks later, an Associated Press article revealed that the misconduct of these four employees was the norm at FCI Dublin. The AP reported that an investigation by the Federal Bureau of Investigation and the Office of the Inspector General at the Department of Justice had found years of permissive and rampant sexual abuse at FCI Dublin.³ The abuse was so common that workers and people incarcerated at FCI Dublin even had a name for it: "The rape club." The reporting prompted the U.S. Senate to launch a bipartisan working group to investigate conditions within BOP, and leaders of the Senate Judiciary Committee wrote to Attorney General Merrick Garland demanding that he take immediate action to reform the Bureau.⁴ To date, however, only the chaplain has been sentenced for sexual assault and lying to federal agents.⁵ Currently, a trial is underway against the former warden of FCI Dublin charged with sexually abusing three women in prison.⁶

B. Sexual Abuse Inflicted on Ms. Reyes at FCI Dublin

In February 2022, after reading the various news articles on the flagrant sexual abuse at FCI Dublin, Ms. Reyes summoned the courage to speak out publicly about the horrors she had personally experienced while incarcerated at the facility. She had only recently been released on home confinement⁷ and was, at the time, checking in at a halfway house. But what Ms. Reyes endured

² Lisa Fernandez, *4 correctional employees at Dublin prison – including warden – charged with sex crimes*, KTVU FOX 2 (Jan. 21, 2022), <https://www.ktvu.com/news/4-correctional-employees-at-dublin-prison-including-warden-charged-with-sex-crimes>.

³ Michael Balsamo & Michael R. Sisak, *AP investigation: Women's prison fostered culture of abuse*, AP NEWS (Feb. 6, 2022), <https://apnews.com/article/coronavirus-pandemic-health-california-united-states-prisons-00a711766f5f3d2bd3fe6402af1e0ff8>.

⁴ Michael Balsamo & Michael R. Sisak, *Whistleblowers say they're being bullied for exposing federal prison abuses*, PBS NEWSHOUR (Feb. 24, 2022), <https://www.pbs.org/newshour/politics/whistleblowers-say-theyre-being-bullied-for-exposing-federal-prison-abuses>.

⁵ Balsamo & Sisak, *supra* note 3; Press Release, U.S. Department of Justice, Federal Prison Chaplain Sentenced for Sexual Assault and Lying to Federal Agents (Aug. 31, 2022), <https://www.justice.gov/opa/pr/federal-prison-chaplain-sentenced-sexual-assault-and-lying-federal-agents>.

⁶ Nate Gartrell, *Taking nude photo of incarcerated woman in her cell was an accident, says ex-Dublin prison warden charged with sex abuse*, THE MERCURY NEWS (Dec. 2, 2022), <https://www.mercurynews.com/2022/12/02/taking-nude-photo-of-incarcerated-woman-in-her-cell-was-an-accident-says-ex-dublin-warden-charged-with-sex-abuse/>; *see also United States v. Garcia*, 21-cr-00429-YGR (N.D. Cal., filed Nov. 2, 2021).

⁷ Ms. Reyes was placed in home confinement as a result of the CARES Act and the Attorney General Guidelines. *See* Memorandum for Dir. of Bureau Prisons on Prioritization of Home Confinement As Appropriate in Response to

while in prison had been haunting her, and she wanted to share her story to help draw attention to the prison's toxic culture, demand accountability, and ensure this type of abuse did not happen to any other incarcerated women.

Specifically, and as detailed in filed criminal charges, Correctional Officer Ross Klinger repeatedly raped Ms. Reyes, as well as two other women incarcerated at FCI Dublin.⁸ Klinger did so notwithstanding the fact that the law prohibits officers from having such relations with those under their custodial, supervisory, and disciplinary control.⁹ Klinger's conduct continued even after he transferred to another facility. He continued to engage with, harass, and threaten Ms. Reyes through email, text, and video visits—at times using an alias to avoid detection.

Although Officer Klinger has since pleaded guilty to these charges, he remains out of custody awaiting sentencing and residing a short distance from where Ms. Reyes and her children live. Frustrated that neither the government nor her victim advocate were keeping her informed about case developments and worried about her family's safety, Ms. Reyes also believed that talking to the media would help to protect her while publicizing FCI Dublin's egregious failures.

C. Media Interviews by Ms. Reyes and BOP's Retaliatory Threats of Punishment

Around January or February 2022, Ms. Reyes spoke with reporter Lisa Fernandez, who had published some of the early articles on FCI Dublin's systemic problems. The two spoke first via Zoom and then with a news crew at Ms. Reyes' location. On March 14, Ms. Fernandez published the details of these interviews.¹⁰ The article was the first public interview given by a formerly incarcerated FCI Dublin woman depicting the prison's culture of sexual abuse and corruption. On May 10, 2022, Ms. Fernandez published a second article referencing Ms. Reyes's earlier exclusive interview.¹¹

After Ms. Fernandez's March article was published, an administrator of the halfway house called Ms. Reyes and warned that she was not allowed to speak with the press because she was still in BOP "custody." Ms. Reyes was intimidated by the phone call and took the warning seriously. When the second article (based on the same set of initial interviews) was published in May, officials at the halfway house again contacted Ms. Reyes. This time, it was the halfway house director, who

COVID-19 Pandemic (Mar. 26, 2020) [hereinafter "March 26, 2020 AG Memo"], https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf; Memorandum for Dir. of Bureau of Prisons on Increasing Use of Home Confinement at Institutions Most Affected by COVID-19 (Apr. 3, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf.

⁸ See *United State v. Klinger*, 22-cr-00031-YGR (N.D. Cal., filed June 25, 2021).

⁹ See 18 U.S.C. § 2243 (1986) (entitled "Sexual Abuse of a Minor, a Ward, or an Individual in Federal Custody").

¹⁰ Lisa Fernandez, *Woman at center of Dublin prison sex scandal says guard used mental health files to prey on her*, KTVU FOX 2 (Mar. 14, 2022), <https://www.ktvu.com/news/woman-at-center-of-dublin-prison-sex-scandal-says-guard-used-mental-health-files-to-prey-on-her>.

¹¹ Lisa Fernandez, *Activists seek early release for women sexually abused at Dublin Prison*, KTVU FOX 2 (May 10, 2022), <https://www.ktvu.com/news/activists-seek-early-release-for-women-sexually-abused-at-dublin-prison>.

relayed BOP's threat that Ms. Reyes's home confinement status would be terminated and that she would be sent back to prison if she continued to speak with the press.

To her knowledge, Ms. Reyes was never informed of any press restrictions or requirements that she first obtain permission from BOP before giving an interview to the press. When issuing the warnings, the halfway house administrators failed to give Ms. Reyes a copy of the policy that she was purportedly violating and failed to explain why the policy applied to her or why the exercise of her free speech rights would result in re-confinement at the very BOP prison where she had been assaulted. Ms. Reyes believes that BOP officials instructed the halfway house administrators to issue the warnings and threaten such re-confinement.

Ms. Reyes is not done sharing her story. Nor should the government want her to stay silent amidst multiple investigations into the systemic sexual abuse at FCI Dublin and the public's call for accountability. But the warnings and threats of being sent back to FCI Dublin have created a chilling effect and paralyzed Ms. Reyes from further sharing her story. She is justifiably worried that speaking to the press—even about an issue widely reported and investigated by the media, federal law enforcement, the Department of Justice, and Congress—could result in retaliation from BOP. And while other brave victims have recently shared their stories with the media,¹² there are many others on home confinement or in halfway houses who likely want to share their truth but are scared to speak out because it is unclear how—or even if—BOP's Media Policy applies to them.¹³

Ms. Reyes and other victims now face two impossible choices: advocate for change via the press and risk being sent back to the very place where they were abused; or remain silent while other women are victimized, and their abusers escape accountability. The devastating result is that most victims will opt for silence because of BOP's Media Policy.

II. BOP's Media Policy and Regulations are Written to Apply *Only* to People in Prison

Review of the Media Policy, together with BOP's governing regulations, reveals that the Policy is intended to regulate people incarcerated in BOP prison institutions only, not persons on home confinement or in halfway houses. By its own text, the Policy “appl[ies] to inmates in Federal institutions.”¹⁴ The Policy guidelines govern a prison warden's discretion to grant or deny a media

¹² Lisa Fernandez, *Dozens of women detail rape and retaliation at Dublin prison, real reform is questioned*, KTVU FOX 2 (Sept. 23, 2022), <https://www.ktvu.com/news/dozens-of-women-detail-rape-and-retaliation-at-dublin-prison-real-reform-is-questioned>.

¹³ On December 13, 2021, Willkie Farr & Gallagher LLP sent a letter to BOP on behalf of FAMM (formerly Families Against Mandatory Minimum) asking for immediate clarification of the BOP policy that permits interactions between the press and persons in BOP custody under community supervision. The letter also includes examples of individuals on home confinement who have sought to obtain BOP approval for media interviews to no avail or who have been reprimanded for appearing on a podcast. See Letter from Willkie Farr & Gallagher LLP to Michael Carvajal, Dir. of The Bureau of Prisons (Dec. 13, 2021), <https://famm.org/wp-content/uploads/bop-letter-first-amendment.pdf>.

¹⁴ See MEDIA POLICY § 1480.05, *supra* note 1. We understand that there is a similar media policy related to “contract facilities.” See also FEDERAL BUREAU OF PRISONS CMTY. CORRECTIONS MANUAL, PROGRAM STATEMENT § 7300.09,

request based on institutional concerns alone.¹⁵ If a request is granted, the Media Policy provides that “[i]nterviews are normally held in the *institution* visiting room during normal weekday business hours.”¹⁶ The Policy further directs that a warden may exercise his discretion to “[l]imit the amount of . . . equipment or number of media personnel entering the *institution*” if it “would create a disruption within the *institution*.”¹⁷ For people in federal custody, but “confined in any non-Federal facility[,] the local or state facility rules and regulations will govern.”¹⁸ Nothing in the Media Policy references how or when a person on home confinement or in a halfway house can be interviewed by the media.

That the Media Policy applies only in institutional settings is also bolstered by provisions set forth in Title 28, Chapter V, of the Code of Federal Regulations concerning BOP administration. Specifically, 28 C.F.R. § 500.1 defines an “institution” as “a U.S. Penitentiary, a Federal Correctional Institution, a Federal Prison Camp, a Federal Detention Center, a Metropolitan Correctional Center, a Metropolitan Detention Center, a U.S. Medical Center for Federal Prisoners, a Federal Medical Center, or a Federal Transportation Center.”¹⁹ The definition does not include home confinement or halfway houses. Section 540.6 further clarifies that “[r]epresentatives of the news media . . . may visit *institutions* for the purpose of preparing reports about the institution, programs, and activities.”²⁰ This regulation accounts for the need to “protect the privacy and other rights of inmates and members of the staff.”²¹ To that end, “an interview in an *institution* must be regulated to insure the orderly and safe operation of the *institution*.”²²

The regulatory process for requesting a media interview is also designed to apply only to people in prison. A reporter or a “news media representative who desires to make a visit or conduct an interview at an *institution* must make [an] application in writing to the *Warden*, indicating that he or she is familiar with the rules and regulations of the *institution* and agrees to comply with them.”²³ Media requests may be submitted to the Warden by “[e]ither an inmate or a representative of the news media . . . for a personal interview at an *institution*.”²⁴ If the Warden grants a media request, interviews are “normally held in the *institution* visiting room during normal weekday business hours.”²⁵

CN-3 (1998) at Ch. 2, https://www.bop.gov/policy/progstat/7300_009_CN-3.pdf. This contract facility policy is, however, also inapposite to those on home confinement or in halfway houses for the same reasons discussed herein.

¹⁵ *Id.* at 6 (“The Warden shall normally approve or disapprove an interview request within 24 to 48 hours of the request.”).

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ *Id.* at 1.

¹⁹ 28 C.F.R. § 500.1 (2010).

²⁰ 28 C.F.R. § 540.60 (2010) (emphasis added).

²¹ *Id.*

²² *Id.* (emphasis added).

²³ 28 C.F.R. § 540.61(a) (2010) (emphasis added).

²⁴ 28 C.F.R. § 540.63(b) (2010) (emphasis added).

²⁵ 28 C.F.R. § 540.63(h) (2010) (emphasis added).

Although the Media Policy unambiguously—and exclusively—applies in institutional settings, BOP appears to be imposing the Policy on people, like Ms. Reyes, who are not housed in an institutional setting, but who are serving their sentences at home or in a halfway house. And yet, as the foregoing demonstrates, the Media Policy and regulations are inapplicable in such non-institutional settings. They are meant to address concerns that exist within *institutions*: limiting the duration of an interview; limiting the amount of equipment or number of media personnel at an interview; protecting the privacy and rights of other incarcerated persons and staff; and ensuring the orderly and safe operation of BOP institutions. These same concerns do not exist in home confinement or halfway house settings.

For individuals in such locations, it appears that there is no uniform guidance or regulations regarding media interviews. Yet, these same individuals may be penalized for failing to comply with inapposite policies and regulations meant for *institutional settings*.

III. People Serving Federal Prison Sentences Retain their First Amendment Rights

An individual serving a sentence outside of a BOP institution retains strong First Amendment protections to be free of the government’s prior restraint, to speak with the media, and to be free from any reprisals for speaking out.²⁶ This right to free speech derives not only from the individual’s fundamental rights, but also from the press and public’s “right to receive” that person’s speech.²⁷ But even if these salient legal principles were not controlling, people serving sentences outside of a BOP institution should retain at least as much First Amendment protection as those incarcerated at a BOP institution. And yet, the BOP’s Media Policy perverts this framework and flips such protections on their head.

People incarcerated in an institution do not shed all their First Amendment rights at the prison gates.²⁸ The First Amendment still guarantees them the right to communicate with the outside world.²⁹ People who are incarcerated have, for example, the right to make telephone calls, exchange

²⁶ See *Cohen v. Barr*, No. 20-cv-5614 (AKH), 2020 WL 4250342, at *1 (S.D.N.Y. July 23, 2020) (ruling that government had violated First Amendment rights of petitioner by revoking his home confinement status in retaliation for petitioner attempting to publish a book critical of the U.S. President and discuss that book on social media); see also *Cohen v. United States*, 21-cv-10774 (LJL), 2022 WL 16925984 (S.D.N.Y. Nov. 14, 2022) (recognizing same); see also *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (“Official reprisal for protected speech offends the Constitution [because] it threatens to inhibit exercise of the protected right, and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out.”) (internal quotations and citations omitted).

²⁷ *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972); see also *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978) (“[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.”).

²⁸ *Pell v. Procunier*, 417 U.S. 817, 822 (1974) (“A prisoner retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.”).

²⁹ *Valdez v. Rosenbaum*, 302 F.3d 1039, 1048 (9th Cir. 2002) (“We sensibly and expansively define the First Amendment right at issue in this case as the right to communicate with persons outside prison walls.”) (internal quotations omitted).

correspondence, write books and articles, and receive in-person visitors.³⁰ And while their First Amendment rights may be curtailed, only “neutral” restrictions “reasonably related to legitimate penological interests” survive constitutional review.³¹ Thus, courts have recognized various legitimate penological interests in curbing security risks at institutions, such as those that may arise when outsiders visit a prison,³² when an incarcerated person receives incoming correspondence or books,³³ or when an incarcerated person receives notoriety that may result in severe disciplinary problems.³⁴ But courts have also recognized that a prison must do more to justify restrictions when speech in the form of “outgoing correspondence” is directed *outside* of an institution. In such instances, a regulation survives constitutional review only if it (1) furthers an important or substantial government interest unrelated to the suppression of expression; and (2) is no greater than is necessary or essential to protect the particular governmental interest involved.³⁵

Under any of these analytical frameworks, BOP’s Media Policy restricting the ability of individuals on home confinement and in halfway houses to speak with the press fails constitutional scrutiny. Indeed, BOP’s practices risk violating fundamental free speech rights—the deprivation of which “for even minimal periods of time, unquestionably constitutes irreparable injury.”³⁶

A. BOP has Neither a Penological Nor Substantial Government Interest in Imposing its Media Policy on Individuals under BOP Community Supervision

BOP lacks a legitimate penological interest in preventing individuals on home confinement or in halfway houses from speaking to the press without BOP’s prior approval—and it certainly lacks a substantial government interest to infringe these individuals’ fundamental First Amendment rights in this way.³⁷ An individual’s residence does not present the same security or safety concerns that may exist in institutional settings like a prison. Allowing an individual like Ms. Reyes to speak freely and openly to the press would neither lead directly to violence in an institution, nor create an

³⁰ See *Brenneman v. Madigan*, 343 F. Supp. 128, 141 (N.D. Cal. 1972) (providing examples).

³¹ *Turner v. Safley*, 482 U.S. 78, 89 (1987); see also *Pell*, 417 U.S. at 822; see also *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996), *opinion amended on denial of reh’g*, 135 F.3d 1318 (9th Cir. 1998) (“Prisoners have a First Amendment right to telephone access, subject to reasonable security limitations.”); see also *Johnson v. California*, 207 F.3d 650, 656 (9th Cir. 2000) (“Although prisoners have a First Amendment right to telephone access, this right is subject to reasonable limitations arising from the legitimate penological and administrative interests of the prison system.”).

³² *Pell*, 417 U.S. at 826 (“When, however, the question involves the entry of people into the prisons for face-to-face communication with inmates, it is obvious that institutional considerations, such as security and related administrative problems, as well as the accepted and legitimate policy objectives of the corrections system itself, require that some limitation be placed on such visitations.”).

³³ *Bell v. Wolfish*, 441 U.S. 520, 551 (1979) (upholding regulation that prohibited people incarcerated at an institution from receiving hardback books unless directly mailed from a publisher or bookstore because hardback book bindings were found “especially serviceable for smuggling contraband into an institution; money, drugs, and weapons”).

³⁴ *Pell*, 417 U.S. at 832.

³⁵ *Thornburgh v. Abbott*, 490 U.S. 401, 413-416 (1989).

³⁶ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

³⁷ See *Turner*, 482 U.S. at 89-90 (“[A] regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational. Moreover, the governmental objective must be a legitimate and neutral one.”).

intolerable risk of disorder for BOP. That is because the security implications of communications or interviews occurring *outside* of the prison setting “are of a categorically lesser magnitude than the implications of incoming materials.”³⁸ Interviews conducted outside of prison do not present a threat to the core functions of administrating prisons or maintaining their safety and internal security. After all, these *outside* interviews could be conducted hundreds of miles from the nearest BOP institution.

In the case of Ms. Reyes, a reporter interviewed her over Zoom and later near her home. It is difficult to conceive of any security threats to BOP that could emerge from a remote phone call or home visit between a reporter and an individual on home confinement. Requiring Ms. Reyes to follow the Media Policy—a policy designed to address security concerns *inside* a prison—is an exaggerated and seemingly retaliatory response to speech critical of BOP.

B. The Media Policy is Not Reasonably Related to a Penological Interest or Narrowly Tailored to a Substantial Government Interest

Even if BOP could establish some legitimate or substantial penological interest in restricting media access for persons serving sentences outside of a BOP institution, the current Media Policy and BOP’s blanket prohibitions on speaking to all media are not reasonably related or tailored to this as-of-yet unarticulated interest.³⁹ Individuals on home confinement or in halfway houses have been identified by BOP as having lower risk levels and lower needs.⁴⁰ Such transitional settings are also intended to help reintroduce individuals back into their communities.

Nowhere does the Media Policy address the specific security concerns that could exist outside of institutional settings. As written, the policy states that “[i]nterviews are normally held in the *institution* visiting room during normal weekday business hours.”⁴¹ But individuals like Ms. Reyes do not have access to an *institution*’s visiting room and they should not be required to travel hundreds of miles to be interviewed at a prison. The Media Policy also contemplates the risk of “disruption within the *institution*” due to the amount of media equipment or number of personnel at an interview.⁴² But again, such risk does not arise in home confinement or halfway house settings.

Moreover, the Media Policy’s rules are so inapposite when applied outside of BOP institutions that they constitute a genuinely unworkable framework. The Policy provides no objective standards on how to evaluate media requests concerning persons on home confinement or in halfway houses—

³⁸ *Thornburgh*, 490 U.S. at 413.

³⁹ One example of such an overly broad and unlawful BOP policy arose in *Jordan v. Pugh*, 504 F. Supp. 2d 1109 (D. Colo. 2007), where the court enjoined a BOP rule that categorically prohibited people incarcerated at BOP institutions from publishing under a byline in the online “news media.” *Id.* at 1118, 1126.

⁴⁰ Discretionary factors that BOP may consider when evaluating whether to place an individual on home confinement include, among others, “[w]hether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety” and “[an] assessment of the danger posed by the inmate to the community.” See March 26, 2020 AG Memo, *supra* note 7.

⁴¹ PROGRAM STATEMENT § 1480.05, *supra* note 1 at 7 (emphasis added).

⁴² *Id.* (emphasis added)

which, in turn, gives BOP arbitrary and unfettered discretion to restrict media contacts in a non-neutral way against speech it does not favor. Such content-based judgements and retaliatory actions fail constitutional muster under any standard.⁴³ And the ambiguity of when and how these rules will be applied to persons serving their sentences on home confinement or in halfway houses further deprives those persons of the keystones in our judicial system: notice and due process.⁴⁴

BOP has readily available alternatives to ensure that individuals like Ms. Reyes can exercise their constitutional rights and speak to the media, while still protecting its penological interests. Currently, individuals on home confinement or in halfway houses are able to work, attend medical appointments, and participate in certain social activities without a risk to BOP facilities. There is no ascertainable difference or risk to BOP when these same individuals choose to interact with, or respond to an inquiry from, the media. That BOP could “fully accommodate[]” Ms. Reyes’s rights “at *de minimis* cost to [its] valid penological interests,” is “evidence” that its regulation “does not satisfy the reasonable relationship standard.”⁴⁵

C. Permitting Media Interviews for Individuals on Home Confinement or in Halfway Houses Will Not Negatively Impact BOP Operations

Individuals like Ms. Reyes can exercise their First Amendment rights without risking the liberty and safety of guards and other incarcerated persons. Interviews given at home are vastly different than those given in “closed environments” like an institutional setting.⁴⁶ In a home environment, there are no BOP staff, guards, or other incarcerated people who may be directly impacted by a media interview. The interviews are conducted via a personal phone, personal computer, or in a person’s home without the need for BOP to expend its resources to safeguard any penological or administrative interests.

Allowing individuals like Ms. Reyes to be interviewed by the press requires nothing of BOP. Ms. Reyes should not be punished or retaliated against for being brave enough to speak about the

⁴³ See, e.g., *Garnier v. O’Connor-Ratcliff*, 41 F.4th 1158, 1178 (9th Cir. 2022) (explaining in context of limited public forum analysis that the “standards for inclusion and exclusion . . . must be unambiguous and definite [because] without objective standards, government officials may use their discretion as a pretext for censorship”) (internal quotations and punctuation omitted); *Kaahumanu v. Hawaii*, 682 F.3d 789, 806 (9th Cir. 2012) (explaining in context of permitting that the “unbridled discretion” doctrine requires laws to include adequate standards and protect against risk that officials “will favor or disfavor speech based on its content”) (citation omitted).

⁴⁴ See, e.g., *Kolender v. Lawson*, 461 U.S. 352, 358, 361 (1982) (invalidating law because it contained a vague enforcement standard that had “potential for arbitrarily suppressing First Amendment liberties” and therefore failed to give adequate notice of the type of conduct prohibited) (quoting *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965)); see also *Lanzetta v. State of New Jersey*, 306 U.S. 451, 453 (1939) (“No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.”)

⁴⁵ *Turner*, 482 U.S. at 91.

⁴⁶ *Cf. id.* at 90 (“In the necessarily closed environment of the correctional institution, few changes will have no ramifications on the liberty of others or on the use of the prison’s limited resources for preserving institutional order. When accommodation of an asserted right will have a significant ‘ripple effect’ on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials.”).

systemic sexual abuse that BOP has too long ignored. It may be inconvenient for BOP to have these acts brought into the public conscience, but it is essential to not only holding BOP accountable, but also to advancing meaningful change at FCI Dublin.

* * *

In light of the above, BOP would contravene the First Amendment and other important legal rights if it returned Ms. Reyes to FCI Dublin in retaliation for speaking with the media about the abuse she suffered while incarcerated at the prison. We therefore request that BOP immediately clarify that its Media Policy, as currently written, does not apply to persons on home confinement or in halfway houses and that individuals, including Ms. Reyes, who are not held in *institutions* be permitted to speak freely with the press. We also request a meeting to further discuss our concerns. Please respond to us with your availability to meet by December 21, 2022.

Thank you for your consideration and timely attention to this important matter.

Sincerely,



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ACLU Foundation of Northern California



Chessie Thacher
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