



**U.S. Department of Justice
Federal Bureau of Prisons
North Central Regional Office**

*Tower II, 8th Floor
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Kansas City, KS 66101-2421*

February 11, 2002

**MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL
GENERAL COUNSEL AND REVIEW DIVISION**

FROM: DARYL KOSIAK, Regional Counsel

SUBJECT: Monthly Report (January 2002)

LITIGATION, CLAIMS, AND ADMINISTRATIVE REMEDY STATISTICS

LITIGATION:

INST	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD
NCR	21	12	3	4	7*	23	463	91	13	1	0.00

Total cases for Calendar Year - 317

*Includes Mental Health Cases under 18 USC § 4245 (not counted in the total number)

- NUM - Number of total lawsuits filed in the month
- HC - Number of habeas corpus actions filed in the reporting period
- FTC - Number of FTCA actions filed
- BIV - Number of Bivens actions filed
- OTH - Number of other actions filed, e.g., mental health, mandamus
- ANS - Number of litigation reports completed
- PEN - Number of cases pending
- CLD - Number of cases closed
- H/T - Number of hearings or trials (include in narrative)
- SET - Number of settlements (include in narrative)
- AWD - Number of Awards (include in narrative)

Appeals	NUM	HC	FTC	BIV	OTH	ANS	PEN	CLD	H/T	SET	AWD

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NCR	2	1	0	1	0	0	19	8	0	0	0.00
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Mental Health	Petitions filed	Hearings
18 USC § 4245	6	4
18 USC § 4246	8	5

ADMINISTRATIVE CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	212											
#Received	46											
#Answered	48											
#Over 6 month	1											
#Pending	203											

Total for Calendar Year - 46

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Received	228											
#Answered	239											
# Rejected	108											

Total for Calendar Year - 228

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FREEDOM OF INFORMATION ACT/PRIVACY ACT REQUESTS

FOIA/PA	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
#Pending	74											
#Received	82											
#Processed	60											
#Backlog	0											

Total for Calendar Year - 82

ADVERSE DECISIONS

Nothing to report.

SETTLEMENTS OR JUDGMENTS

White v. U.S., Case No. 96-M-952, USP Florence

This was an FTCA action alleging staff failed to protect the plaintiff from assault by another inmate in SHU. The AUSA settled the action during the settlement conference on January 23, 2002. The case was settled for \$23,000.

DECISIONS OF INTEREST

Diego Gil v. James Reed, et al., Case No. 00-C-724-C, FCI Oxford

The Defendant's Motion for Summary Judgment was granted on January 30, 2002, dismissing all claims. The plaintiff had alleged the defendants provided him with inadequate medical care in violation of the 8th Amendment, and that the U.S. was liable under FTCA for the negligent or reckless provision of medical care.

McHenry v. USA, Case No. 01-3256-CV-S-4-H, USMCFP Springfield

This case was dismissed on January 9, 2002. Petitioner had alleged that respondent was denying him 17 months incarceration time due to a detainer lodged against him while he was in state custody awaiting adjudication on the state detention.

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PENDING CASES OF INTEREST

Michael F. Disch v. Lt. Friar, et al., Case No. 01-C-6808, MCC Chicago

On January 22, 2002, the plaintiff signed an agreed stipulation to dismiss with prejudice this Bivens action pursuant to Fed. R. Civ. P. 41(a)(1)(ii). The original document was forwarded to the AUSA for his signature and filing with the court. This action was initiated after the inmate mentioned he wanted to dismiss his case, but did not know how.

Bryant v. Hines, et al., Case No. 97-S-891, USP Florence

On January 11, 2002, the plaintiff offered to settle this matter against all defendants for \$10,000. The offer is being reviewed and discussed with Mary Mason, Torts Branch. This is a Bivens action wherein the inmate is claiming abuse and cover-up by several staff members in 1996.

Willis v. Holt, Case No. 01-WM-2248, USP Florence

This is a habeas action wherein the inmate claims his due process was violated as a result of being disciplined and sanctioned without receiving prior "fair notice" that refusing to go to the compound from SHU was a prohibited act. The inmate also argues that ordering him to the compound when he placed himself in SHU for protection, and using his refusal as evidence of guilt violates his constitutional right to protection.

Zaldivar-Castillo v. Gunja, Case No. 01-Z-2318, USP Florence

This is a habeas action wherein the inmate is challenging his indefinite incarceration as an INS detainee under Zadvydas. The inmate is a Mariel Cuban. A declaration concerning the inmate's efforts to exhaust his administrative remedies was provided to the AUSA on January 31, 2002. The remainder of the litigation assistance will be provided by the INS.

Bean et. al, v. U.S., Case No. 01-1025, FCI Greenville

This is an FTCA action alleging that an officer negligently allowed the finger of a child to be slammed in a door. The child allegedly suffered amputation of the fingertip and permanent scarring. The mother allegedly incurred medical expenses and lost wages. Damages in the amount of \$500,000 and attorneys fees are sought.

RELIGIOUS FREEDOM RESTORATION ACT

No new cases.

UPCOMING HEARINGS AND TRIALS

Kikumura v. Hurley and Gallegos, Case No. 98-B-1442, ADMAX Florence

Chief Judge Babcock set another status conference in this matter for February 28, 2002. During this conference, the Judge will determine whether there needs to be a hearing on the merits, pursuant to Rule 65. The Judge also granted the plaintiff limited discovery, which includes ten admissions, ten interrogatories, and ten requests for production in preparation for a hearing on

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the merits.

US v. Stroud, Case No. 00-CR-0133, FCI Florence

Trial in this matter is set for February 11, 2002. J. D. Crook assisted AUSA George Gill in obtaining central files and medical records of numerous inmate witnesses, and also provided a crime scene tour to the defendant's private investigator on February 5, 2002.

Van Someren v. United States, Case No. 01-5005, FMC Rochester

This is an FTCA action filed in the Western District of Arkansas. The matter is set for trial to begin on February 19, 2002. The legal department has provided extensive assistance to the AUSA as he is unfamiliar with prison litigation.

CRIMINAL MATTERS

State v. DeForest, FCI Greenville






On January 10, 2002, Timothy DeForest was sentenced to 45 months in the Illinois Department of Corrections for the attempted introduction of cannabis into the institution.

USP Terre Haute

On January 7, 2002, Inmate Tommy Ray McAdoo was sentenced to 70 months imprisonment following his guilty plea to assault with a deadly weapon. Inmate McAdoo struck inmate Marshall Fitzgerald numerous times with a steel bar. Fitzgerald sustained serious injuries including the loss of his left eye as a result of the assault.

PERSONNEL ISSUES

STAFF TRAVEL AND LEAVE

	February 11-15	San Diego	
	February 19-21	South Carolina	
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	February 1-7	Glynco, GA	
	February 8	Annual Leave	
	February 4-25	Salt Lake City	
	February 26	Annual Leave	
	February 11-15	San Diego	