



U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

February 5, 2002

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for January 2002

LITIGATION

NEW CASES

Collier v. LeBlanc (SDC) Petition for Writ of Habeas Corpus claiming unlawful detention on account of allegedly improperly executed arrest warrant by U.S. Parole Commission. Also seeks order preventing transfer out of district during pendency of petition.

Foster v. Hood (SHE) Petition for Writ of Habeas Corpus contesting discipline sanctions.

Hunter v. Herrera (LOM) Petition for Writ of Habeas Corpus contesting DHO matter.

Jiminez v. United States (LOM) FTCA/Bivens complaint alleging dental malpractice.

McDavid v. Hood (SHE) Petition for Writ of Habeas Corpus contesting computation of good conduct time.

Rhonemus v. Warden (LOM) Petition for Writ of Habeas Corpus contesting Inmate Financial Responsibility Program.

Smith v. Jusino (SET) Petition for Writ of Habeas Corpus seeking credit for time spent during court order drug rehabilitation and CCC.

Woods v. United States (LOM) FTCA complaint alleging medical malpractice resulting in loss of eyesight.

SIGNIFICANT DEVELOPMENTS/APPEALS

Boehner v. Hood RDAP cases reported dismissed in December 2001 report have been appealed to the Ninth Circuit. Motion to consolidate has been granted and case is captioned *Boehner v. Hood*, 02-35025, (lead case). Court imposed expedited briefing schedule with oral argument slated for April 8, 2002, in San Francisco.

Carter v. United States (TRM) FTCA complaint alleging medical malpractice at FCI Terminal Island and MCC Chicago dismissed with prejudice for failure to file administrative claim within two years of alleged event. Plaintiff has filed notice of appeal.

Castillo v. United States (SDC) Settlement conference held in medical malpractice case. Plaintiff insisted on sentence reduction as part of agreement. Court clearly stated that was not an option.

Felix-Perez v. Acosta, et al. (SDC) Court dismissed former Warden Lathers with prejudice as part of her immunity motion. As a result, plaintiff's counsel decided against pursuing any claim against current warden in *Bivens* case alleging sexual assault and battery.

Flowers v. United States and *Flowers v. Finnerty, et al.* (LOM) FTCA and *Bivens* complaints alleging assault, battery and constitutional violations. Settlement reached and filed. Dismissals of both actions filed January 23, 2002.

Friedman v. U.S. Bureau of Prisons (PHX) District Court approved \$500 settlement of Privacy Act lawsuit.

Jones-Heim v. Reese (DUB) District judge found in favor of defendants in *Bivens* complaint regarding DHO matter and summary judgement was issued in their favor.

Lopez v. United States (LOS) FTCA complaint involving inmate on inmate assault scheduled to start trial February 5, 2002.

Moreland v. Rothstein, et al. (SET) Inmate voluntarily dismissed *Bivens* complaint against Judge, AUSA, and Warden alleging denial of access to courts.

Murphy v. Hood (SHE) Ninth Circuit affirmed denial of RDAP Petition for Writ of Habeas Corpus which sought early release notwithstanding prior escape rendering inmate ineligible for CCC placement.

Sherrod v. Rardin (LOM) District Court granted Petition for Writ of Habeas Corpus complaining of DHO matter after inmate appealed original dismissal to Ninth Circuit.

Stewart v. Adams (LOM) *Bivens*/FTCA complaint alleging deliberate indifference and medical negligence. Settlement reached as to FTCA case during settlement conference. *Bivens* action to be dismissed when FTCA settlement is filed.

Wharton v. Hood (SHE) Ninth Circuit affirmed lower court's dismissal of Petition for Writ of Habeas Corpus arising from DHO action revoking 13 days of good conduct time. Appeal determined moot as inmate had been released.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	10											
Accepted	1											
Declined	12											
Pending Decision	139											

NEW INFORMATION ON ACTIVE PROSECUTIONS

MURDER

U.S. v. Figueroa (LOS) Trial for three inmate defendants charge with murder, assault with the intent to murder, and assault with intent to do bodily harm scheduled for August 13, 2002. (Inmate victim subsequently died from injuries sustained in assault.)

ASSAULT

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U.S. v. Rios-Escobar (VIM) Inmate on staff assault accepted for prosecution. Inmate stuck lieutenant in face and while being escorted and in restraints, inmate kicked an escorting officer in chest.

ESCAPE

U.S. v. Eaton (SHE) Escapee from FPC Sheridan pled guilty to charge January 31, 2002.

U.S. v. Fischer (SHE) Inmate escape during transfer to CCC recently apprehended and in custody in Arkansas. Prosecution to be effected in Eastern District, Arkansas.

U.S. v. Little (SET) Seattle CCC escapee pled guilty to escape and sentenced to 12 month consecutive term of incarceration.

U.S. v. Mayhorn (PHX) CCC escape indictment dismissed for failure to prosecute. USAO may refile case.

Hand made clothing and mask designed for use in escape were discovered in two man cell at FCI Phoenix. USAO declined prosecution of inmate accepting responsibility for items due to length of his current sentence.

CONTRABAND

U.S. v. Davis (LOS) Inmate sentenced to 18 months with three years supervised release for possession of amphetamines and marijuana.

U.S. v. Exum (TRM) Trial for inmate possessing heroin continued.

U.S. v. Parrado-Herrera (PHX) Trial previously set for January 8 has been postponed.

SEX OFFENSES

State of California v. Gaines Former FCI Phoenix inmate received 20 year sentence for sexual contact with minor. Facts of the offense were discovered through ITS at FCI Phoenix. Inmate completed federal sentence at USP Lompoc December 26, 2001.

U.S. v. Mosequeda-Gonzalez (PHX) USMCFP report indicates inmate is capable of standing trial for sexually assaulting female officer. Inmate forcefully attempted to kiss staff while straddling and simulating sex act with officer. Inmate made admission that he was attempting to rape the officer.

U.S. Attorneys Office has agreed to reconsider possible prosecution involving sexual contact with inmate by two former FCI Phoenix staff members.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
103											

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	45											
CLOSED	34											
PENDING	31											
30 DAYS	6*											
6 MONTHS	0											
APPEALS	2											

*Waiting for records from Archives, not considered overdue.

NUMBER OF FOI/PA PENDING:														
ATW	DUB	LOM	HON	NEL	PHX	SAF	SDC	SET	SHE	TCI	TCN	TRM	VIM	OTHER
0	5	2	0	1	3	5	3	1	3	2	0	2	1	3

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	26											
CLOSED	34											
RECONSIDER	0											
PENDING	109											
OVER 6 MONTHS	5											

Tort Claim Investigations Over 60 Days:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TCI	TCN	TRM	VIM	TOTAL
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	413											
NEW CASES RECEIVED	9											
HC	6											
FTCA	1											
BIVENS	0											
FTCA/BIVENS	1											
OTHER	1 ¹											
CLOSED	9											
PENDING AT END OF MONTH	413											
LITIGATION REPORTS COMPLETED	4											

MISCELLANEOUS :

Phoenix area newspaper article reports waste dump for city to be located at a site other than land adjacent to FCI Phoenix. Land adjacent to FCI was one of previously proposed sites.

[REDACTED]

b2

[REDACTED]

b2

¹ Fifty RDAP petitions previously reported as dismissed have been consolidated and appealed to Ninth Circuit under *Boehner v. Hood*, 02-35025.

Assistant Regional Counsel Valerie Stewart met with U.S. Fish and Wildlife Branch Chief to discuss matters regarding the Endangered Species Habitat and environmental rehabilitation of land encompassing USP Atwater.



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APPEALS 2

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0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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Attorney Advisor Matt Carney met with Deputy Criminal Chief, USAO, Phoenix, to discuss prosecution of CCC escapes and drug introduction cases.

USP Atwater received their initial group of designated, high security inmates. This institution is handled by the WXR CLC.

Assistant Regional Counsel Valerie Stewart met with U.S. Fish and Wildlife Branch Chief to discuss matters regarding the Endangered Species Habitat and environmental rehabilitation of land encompassing USP Atwater.

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