



U.S. Department of Justice
Federal Bureau of Prisons

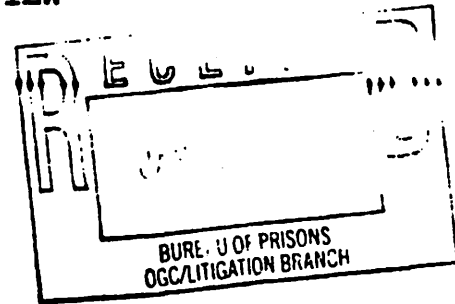
Dublin, California 94568

November 6, 2001

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

FROM: *Harlan W. Penn*
Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for October 2001



LITIGATION

1. 3621(e) CASES SIGNIFICANT DEVELOPMENTS/APEALS

Gunderson v Hood (SET) This DAP appeal raised the issue of whether P.S. 5162.04 was properly promulgated or whether it should have been published pursuant to the APA. The Court held that P.S. 5162.04 was properly promulgated as an interpretive rule as it applied in this case. The holding, however, is limited to the facts in this case.

Lloyd v. Slade (LOS) Petition for Writ of Habeas Corpus contesting 3621(e) ineligibility due to 922(g) conviction denied.

Shaw v. Pontesso (PHX) Petition for Writ of Habeas Corpus contesting 3621(e) ineligibility due to weapon enhancement denied.

Warden v. Hood (SET) After a lengthy procedural battle, the Court granted Asst. Federal Public Defender's motion to reinstate its original order and granted the Petitioner one year off his sentence. Jurisdiction was questionable in this case as the inmate is now at TCI.

2. NEW CASES (NON-3621(e))

Ames v. Pontesso (PHX) Inmate appealed the lower court's dismissal of this case involving loss of personal property. Lower court dismissed case on grounds of FTCA law enforcement exception.

Shorter v. Slade (LOS) Petitioner alleges due process violations of third DHO re-hearing held October 2, 2000, and seeks expungement of incident report dating from 1995 riots at FCI Terminal Island.

U.S. v. Williams (LOS) Petition for Writ of Habeas Corpus seeking credit for prior state custody time.

Uplinger v. Barron (LOM) Inmate challenges the constitutionality of testing under the DNA Backlog Elimination Act via first amended complaint. (Originally dismissed with leave to amend.)

Wisdom v. Andrews (TCI) Petition for Writ of Habeas Corpus arguing that his PLRA sentence and SRA sentence should be aggregated so he can get GCT. Each sentence individually is less than a year, so he currently would not get any GCT. Combined, the sentence would be greater than a year.

3. SIGNIFICANT DEVELOPMENTS/APPEALS

Friedman v. U.S. Bureau of Prisons (PHX) Privacy Act suit is expected to be settled soon for costs of approximately \$400.00.

Gonzales v. Pendleton (TCN) This case was dismissed as moot by the district court on October 4, 2001. This was a habeas case in which the inmate requested sentence credit for time spent in state custody while awaiting to be brought into Federal custody. The inmate was released from custody in 2000.

Gonzales v. Slade (LOS) Petitioner contested sentence computation, arguing that he was entitled to time spent on federal writ at MDCLA, when he was receiving credit for the same time on his state sentence. Petition denied.

Gossai v. BOP (LOM) Allegations by inmate visitor that he was improperly denied the right to visit his brother at FPC Lompoc. Case dismissed without prejudice.

Perkins v. U.S. (LOS) Ninth Circuit dismissed appeal for failure to prosecute. Petitioner alleged that because she served less than one year, she was denied credit for good conduct time.

Three overcrowding cases (*Granger v. Mitchell*, *Chilcote v. Mitchell*, *Wainwright v. Mitchell*) (SET) dismissed by the District Court stating triple bunking of inmates does not violate their constitutional rights. In the alternative, the court dismissed the cases based upon qualified immunity.

Harrell v. U.S. (SET) FTCA complaint of lost property dismissed by applying postal matter exception of the FTCA.

Parsons v. Hood (SHE) Petition for Writ of Habeas Corpus contesting allegedly inadequate medical and psychiatric care denied.

Parker v. Herrera (LOM) FTCA case involving allegations of lost property dismissed without prejudice.

Ramos v. U.S. (LOM) Petition for Writ of Habeas Corpus dealing with jail credit. Court modified (reduced) the inmate's sentence since BOP could not award certain jail credit that was promised in a plea agreement.

U.S. v. Ziski (LOS) Two criminal defendants awaiting sentencing have filed liens on the homes of the sentencing judge, the two prosecutors and MDCLA Warden. AUSA has filed Temporary Restraining Order and Order to Show Cause to quash these liens.

Unger v. Gaines (SAF) Former inmate's complaint of delay in providing necessary dentures dismissed for failure to prosecute.

Vander v. U.S. DOJ (SAF) Ninth Circuit affirmed the district court's decision that an inmate's exclusive remedy against the government for a work-related injury is the Inmate Accident Compensation Act. This is true even if the inmate is challenging the medical care provided in response to the injury. This case has been published at 2001 WL 1181348.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	15	17	14	25	9	10	29	34	14	29		
Accepted	0	3	2	4	2	1	2	1	0	1		
Declined	12	9	9	16	4	7	18	16	7	23		
Pending Decision	59	64	38	72	75	77	86	103	110	115		

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

U.S. v. Rodriguez-Lopez (SDC) Inmate on staff assault case. Inmate pled guilty and sentencing is set for January 7, 2002.

U.S. v. Mendoza-Aguilar (TCN) Inmate on staff assault trial postponed to January 8, 2002.

U.S. v. Ponce-Hernandez (TCN) Inmate on staff assault trial postponed to December 18, 2001.

U.S. v. Escano (TCN) Inmate on staff assault trial postponed to November 27, 2001.

ESCAPE

U.S. v. Quintin Lee Havier (TCN) CCC escapee scheduled for sentencing on November 15, 2001.

U.S. v. Layne (PHX) CCC escapee sentenced to 18 months consecutive to his current sentence followed by 3 years of supervised release.

United States v. Nelson (BRN) FPC Boron escapee pled guilty October 4, 2001. Sentencing set for December 10, 2001.

U.S. v. Romero (TCN) CCC escapee ordered detained pending trial.

U.S. v. Simpson (TCN) CCC escapee ordered detained pending trial.

U.S. v. Thomas (PHX) CCC escapee scheduled to be sentenced on December 3, 2001.

CONTRABAND

U.S. v. Davis (LOS) Inmate indicted for possession of amphetamines and marijuana. (Contraband discovered during dry-cell procedure.)

U.S. v. Exum (TRM) Trial for inmate possessing heroin set for November 27, 2001.

U.S. v. Martinez (LOM) Inmate visitor sentenced to a year and a day plus 3 years supervised release for attempting to provide contraband to prison inmate.

SEX OFFENSES

U.S. v. McKnight (PHX) Retired FCI Phoenix Assistant Food Service Manager scheduled to be sentenced November 19, 2001, on two counts of sexual abuse of ward.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
98	67	104	65	67	67	34	116	103	70		

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	43	35	48	32	51	42	40	49	35	30		
CLOSED	37	30	53	33	49	36	49	47	32	39		
PENDING	38	43	38	37	39	45	36	38	41	32		
30 DAYS	0	1	0	4*	6*	5*	7*	7*	4*	6*		
6 MONTHS	0	0	0	0	0	0	0	0	0	0		
APPEALS	3	6	5	0	2	4	2	2	0	0		

*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	7	5	0	0	0	1	1	1	1	2	2	0	1	11

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	40	26	43	40	45	41	39	47	39	38		
CLOSED	45	33	23	28	91	18	30	68	22	15		
RECONSIDER	0	0	0	0	0	0	0	0	0	0		
PENDING	98	91	111	123	98	121	128	107	124	147		
OVER 6 MONTHS	0	0	0	0	0	0	0	1	1	1		

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

¹ Numbers adjusted as of June 1, 2001, by researching Lawpack.

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	476	479	473	477	472	474	475	469	482	476		
NEW CASES RECEIVED	11	5	14	10	9	8	4	22	9	5		
HC	8	3	6	8	5	5	2	13	3	3		
FTCA	0	0	2	2	0	0	0	1	1	1		
BIVENS	3	2	3	0	1	1	1	3	2	0		
OTHER	0	0	3	0	3	2	1	5	3	1		
CLOSED	8	11	10	15	7	7	10	9	15	17		
PENDING AT END OF MONTH	479	473	477	472	474	475	469	482	476	464		
LITIGATION REPORTS COMPLETED	7	8	12	8	8	9	6	10	4	7		



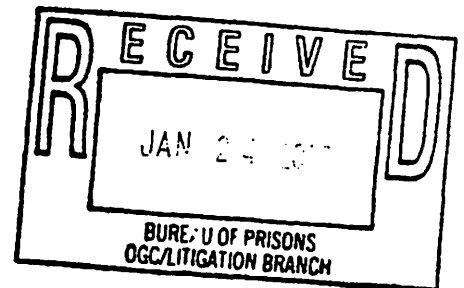
U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

December 5, 2001

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

FROM:  Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for November 2001



LITIGATION

1. NEW 3621(e) CASES

Machado v. Pendleton (TUC) Petition for Writ of Habeas Corpus contesting 3621(e) denial as well as denial of UNICOR job assignment.

2. NEW CASES (NON-3621(e))

Dixon v. Slade (VIM) *Bivens* complaint alleging deliberate indifference to medical treatment of broken arm.

El-Jassem v. U.S. Parole Commission (LOM) Petition for Writ of Habeas Corpus contesting continued incarceration. Emergency motion asserting petitioner was not permitted to send or receive legal mail was denied after declarations were submitted detailing petitioner's status in Administrative Detention.

Friedman v. Herrera (LOM) Petition for Writ of Habeas Corpus contesting sentence computation.

Gano v. Hood (SHE) Petition for Writ of Habeas Corpus contesting CIMS assignment and alleged lack of prior notice.

Hodson v. Schultz (DUB) Emergency Motion for Injunctive Relief claiming he has been restricted in receiving documents from court clerk. Staff have facilitated delivery of documents and expect proceedings to be dismissed as no other relief was requested.

Jackson v. Herrera (LOM) Petition for Writ of Habeas Corpus contesting disciplinary proceedings.

Kay v. United States (LOM) Inmate filed motion seeking to amend sentence because he is required to make restitution payments via IFRP.

King v. Andrews (TCI) Inmate alleged sentencing judge failed to group his sentences and after his \$ 2255 petition was denied, inmate filed a \$ 2241 petition. BOP believed case should be addressed by Wackenhut's counsel so the USAO filed only a procedural motion asserting improper venue. On appeal, Wackenhut counsel felt the inmate's position had merit and decided not to file a brief. USAO sent letter to 9th Circuit resting on the record below.

McCrary v. Adams, et al. (LOM) *Bivens* complaint complaining of use of force and four-point restraints.

Oliver v. Andrews (TCI) Petition for Writ of Habeas Corpus seeking credit for street time before return to custody. Inmate had been on appeal bond; U.S. Marshals Service did not receive mandate after Court of Appeals affirmed conviction and thus did not notify inmate to surrender.

Turner v. United States (SHE) FTCA complaint alleging failure to protect.

3. SIGNIFICANT DEVELOPMENTS/APPEALS

Blum v. Hardin-Cassel (PHX) Trial held in case alleging retaliation due to inmate's legal activities. Testimony completed but judge has ordered certain records from the central file of plaintiff's incarcerated husband be produced. Plaintiff is a former inmate.

Casarez v. Slade (VIM) Petition for Writ of Habeas Corpus granted in 3621(e) case in which inmate was denied eligibility on account of prior state conviction for assault with a deadly weapon.

Flowers v. Finnerty & Flowers v. United States (LOM) *Bivens* and FTCA complaint alleging staff assault and improper placement in restraints for five days pending settlement conference.

Foley-Clark v. United States (DUB) *Bivens*/FTCA action in which former DUB inmate alleges BOP, FBI, and OIG failed to protect her while she wore body microphone during investigation of staff for sexual assault. All *Bivens* defendants previously dismissed. Discovery stayed but must be completed by December 30, 2001.

Friedman v. U.S. Bureau of Prisons (PHX) Joint stipulation to settle Privacy Act suit for \$500 which represents plaintiff's costs has been submitted to the court for approval.

Godfrey v. Ashcroft (SET) FTCA complaint by staff member arising from inmate assault dismissed with prejudice.

House v. Barron (LOM) Petition for Writ of Habeas Corpus contesting DHO findings denied.

Merritt v. Morck (LOS) Ninth Circuit dismissed appeal from ruling on discovery matters. Underlying *Bivens* complaint alleges employment discrimination, loss of prospective earnings, loss of employment longevity and constitutional violations.

Moore v. Schultz (DUB) FCI Dublin key case scheduled for settlement conference on December 6 but due to potential impasse, litigation will likely proceed.

Morris v. Hood (SHE) Petition for Writ of Habeas Corpus seeking release to CCC dismissed as moot.

Muhammed v. Adams (LOM) Petition for Writ of Habeas Corpus contesting 3621(e) eligibility denied.

Pacheco-Camacho v. Hood (SHE) 9th Circuit upheld lower courts decision that BOP sentence prorating procedures (28 C.F.R. § 523.20) do not conflict with 18 U.S.C. § 3624(b)(1).

Romero v. United States (PHX) FTCA wrongful death (suicide in SHU) settlement of \$86,000 approved by District Court.

Rose v. Adams, et al. (LOM) *Bivens* complaint alleging sexual harassment dismissed without prejudice.

Sum v. Fitzpatrick (LOM) Petition for Writ of Habeas Corpus contesting 3621(e) eligibility denied.

Thornton v. Fitzpatrick (LOM) Petition for Writ of Habeas Corpus contesting 3621(e) eligibility denied.

Vacarro v. Dobre (NEL) Oral argument set for December 4, 2001, in 9th Circuit on challenge to district court's partial summary judgement dismissal and trial verdict for certain defendants in this deliberate indifference suit. Asst. Regional Counsel Stewart and AUSA to attend.

Williams v. Herrera (LOM) Petition for Writ of Habeas Corpus contesting 3621(e) eligibility denied.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	15	17	14	25	9	10	29	34	14	29		
Accepted	0	3	2	4	2	1	2	1	0	1		
Declined	12	9	9	16	4	7	18	16	7	23		
Pending Decision	59	64	38	72	75	77	86	103	110	115		

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

U.S. v. Escano (TCN) Inmate on staff assault trial postponed to January 15, 2002.

U.S. v. Rios-Escobar (VIM) Inmate on staff assault accepted for prosecution. Inmate struck lieutenant in face and kicked officer in chest.

ESCAPE

U.S. v. Bergie (SET) Prosecution for CCC escape, initially declined by USAO in Montana, is being urged again due to BOP priorities.

U.S. v. Bryant (SDC) Escapee sentenced to 60 month term concurrent with current term plus three years supervised release.

U.S. v. Denton & U.S. v. Caskey (SHE) Prosecution accepted against two FPC Sheridan inmates who stole institution van and effected escape. Inmates still at large.

U.S. v. Fischer (SHE) Inmate escape while en route to CCC in custody in Arizona. USAO indicated willingness to prosecute.

U.S. v. Havier (TCN) CCC escapee sentenced to 8 month consecutive term with 2 years supervised release to follow.

U.S. v. Johnson (WXR) CCC escapee pled guilty and sentencing scheduled for December 7, 2001.

U.S. v. Little (SET) Seattle CCC escapee pled guilty to escape and is pending sentencing.

U.S. v. Nelson (LOS) FPC Boron escapee scheduled for sentencing December 10, 2001.

U.S. v. Palma (WXR) CCC escapee pled not guilty and trial is scheduled for January 28, 2002.

U.S. v. Wallace (SET) Montana CCC escapee pled guilty to escape and is pending sentencing.

U.S. v. Leon-Cabrero (SDC) Escapee scheduled for sentencing January 17, 2002.

U.S. v. Orendain (SDC) Escapee sentenced to four month consecutive term.

Three CCC escapes were declined for prosecution by USAO. Attempts will be made to persuade USAO to reconsider, or in the alternative, to request permission to have Matt Carney, PHX CLC Supervisor, prosecute the cases.

CONTRABAND

U.S. v. Exum (TRM) Trial for inmate possessing heroin removed from calendar. Defense has filed motion to suppress confession and requested government's position on plea bargain and possible sentence.

U.S. v. Maldonado-Gutierrez (PHX) Introduction of contraband case accepted for prosecution. Staff observed inmate kiss visitor and make swallowing movement. During dry cell observation, inmate produced 6 balloons containing cocaine.

U.S. v. Parrado-Herrera (PHX) Inmate possession of marijuana and heroin in visiting room scheduled for trial January 8, 2002.

Three previously declined prosecutions of drug introduction cases arising out of FCI Phoenix have been redelegated to another AUSA and it is anticipated these cases will move forward in the near future.

SEX OFFENSES

U.S. v. Donaldson (DUB) Former Recreation Specialist pending new indictment on charges of sexual contact with ward. Original charges dismissed pending grand jury.

U.S. v. McKnight (PHX) Retired Assistant Food Service Manager scheduled to be sentenced December 18, 2001, on two counts of sexual abuse of ward.

U.S. v. Mosqueda-Gonzalez (PHX) Inmate attempted to forcefully kiss correctional officer while seated on top of staff member and simulating having intercourse has been ordered to submit to mental competency examination.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
98	67	104	65	67	67	34	116	103	70	93	

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	43	35	48	32	51	42	40	49	35	30	18	
CLOSED	37	30	53	33	49	36	49	47	32	39	31	
PENDING	38	43	38	37	39	45	36	38	41	32	19	
30 DAYS	0	1	0	4*	6*	5*	7*	7*	4*	6*	4*	
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	
APPEALS	3	6	5	0	2	4	2	2	0	0	0	

*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	6	1	0	1	2	0	0	0	2	1	2	0	0	4

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY ₁	JUN	JUL	AUG	SEP	OCT	NOV ₂	DEC
RECEIVED	40	26	43	40	45	41	39	47	39	38	45	
CLOSED	45	33	23	28	91	18	30	68	22	15	67	
RECONSIDER	0	0	0	0	0	0	0	0	0	0	0	
PENDING	98	91	111	123	98	121	128	107	124	147	131	
OVER 6 MONTHS	0	0	0	0	0	0	0	1	1	1	3	

• Numbers adjusted June 1, 2001, by researching Lawpack.

• Numbers adjusted December 1, 2001, by researching Lawpack.

Tort Claim Investigations Over 60 Days:

JB	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	476	479	473	477	472	474	475	469	482	476	464	
NEW CASES RECEIVED	11	5	14	10	9	8	4	22	9	5	11	
HC	8	3	6	8	5	5	2	13	3	3	5	
FTCA	0	0	2	2	0	0	0	1	1	1	1	
BIVENS	3	2	3	0	1	1	1	3	2	0	2	
OTHER	0	0	3	0	3	2	1	5	3	1	3	
CLOSED	8	11	10	15	7	7	10	9	15	17	11	
PENDING AT END OF MONTH	479	473	477	472	474	475	469	482	476	464	464	
LITIGATION REPORTS COMPLETED	7	8	12	8	8	9	6	10	4	7	7	

Miscellaneous

Asst. Regional Counsels Campbell and Stewart made presentations to the USAO, Fresno Branch, E.D. CA.

Deputy Regional Counsel Wong to attend privatization work group, OGC.

FDC Honolulu Attorney Read to report to duty December 4, 2001.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

January 4, 2002

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for December 2001

LITIGATION

NEW CASES

Billingsley v. United States, et al. (Labor Law, PHX) Title VII complaint by former FCI Lompoc employee complaining of unjust termination based on disability and race as well as allegations of sexual harassment by female supervisor.

Cannon v. Slade (LOS) Petition for Writ of Habeas Corpus contesting DHO sanction.

DelRaine v. Femme, et al. (LOM) Bivens complaint alleging wrongful placement in SHU and destruction of personal property.

Johnson v. Lockhart (SAF) Petition for Writ of Habeas Corpus seeking to change PSI based on events occurring after it was authored.

Moreland v. Rothstein, et al. (SET) Bivens complaint alleging interference by Warden, Judge, and AUSA with on-going criminal prosecution.

SIGNIFICANT DEVELOPMENTS/APPEALS

Fifty petitioners for Writ of Habeas Corpus requesting early release eligibility were denied leave to amend petition adding ADA argument. All 50 petitions denied. (SHE)

Castillo v. United States (SDC) Settlement conference in complaint

alleging medical malpractice postponed to January 30, 2002.

English v. Reno (SAF) *Bivens* complaint alleging failure to provide shoulder surgery dismissed based on plaintiff's failure to respond. Inmate on escape status since June 2001.

Flowers v. Finnerty and *Flowers v. United States* (LOS) *Bivens* and FTCA complaints alleging staff assault and improper 5 day restraint to be settled with stipulation for dismissal of both actions to be accomplished January 23, 2002.

Gutierrez v. United States, et al. LOM *Bivens* complaint alleging inadequate medical care dismissed for plaintiff's failure to prosecute and comply with local rules.

Harrell v. United States (SET) FTCA slip and fall complaint settled for \$500.

Howard v. Adams (LOM) *Bivens* complaint alleging loss of personal property and deliberate indifference to medical needs dismissed without prejudice for failing to exhaust administrative remedies.

Moore v. Schultz (DUB) Settlement conference in "key case" scheduled for January 23, 2002.

Parsons v. Hood (SHE) Petitioner complaining of conditions of confinement has appealed to Ninth Circuit the lower court's dismissal of his petition.

Stewart v. Adams, et al. (LOS) Settlement conference scheduled for January 17, 2002, in *Bivens* complaint alleging deliberate indifference to medical care and delayed medical transfer.

Vacarro v. Dobre (NEL) Ninth Circuit upheld lower court's finding in favor of remaining defendants in 10 year old deliberate indifference *Bivens* complaint.

CRIMINAL CASE TRACKING

Criminal Cases	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	15	17	14	25	9	10	29	34	14	29	22	18
Accepted	0	3	2	4	2	1	2	1	0	1	2	1
Declined	12	9	9	16	4	7	18	16	7	23	5	5
Pending	59	64	38	72	75	77	86	103	110	115	130	142
Decision												

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

U.S. v. Mendoza-Aguilar (TCN) Trial for inmate on staff assault postponed to February 26, 2002.

U.S. v. Ponce-Hernandez (TCN) Trial for inmate on staff assault postponed to February 5, 2002

ESCAPE

U.S. v. Little (SET) Seattle CCC escapee pled guilty to escape and is pending sentencing on January 11, 2002.

U.S. v. Nelson (LOS) FPC Boron escapee sentenced to 12 month consecutive term with 3 years supervised release.

U.S. v. Thomas (PHX) CCC escapee sentenced to time served (approximately 6 months), 3 years supervised release, \$100 special assessment and \$50 fine.

U.S. v. Wallace (SET) Montana CCC escapee sentenced to 4 months concurrent, 3 years supervised release, 40 hours community service and \$100 fine.

CONTRABAND

U.S. v. Davis (LOS) Sentencing hearing continued to January 14, 2002 for inmate possession of amphetamines and heroin.

U.S. v. Exum (TRM) Trial for inmate possessing heroin set for January 8, 2002.

U.S. v. Garcia-Salas (LOS) Indictment pending for inmate found with 10.5 grams of heroin while at FCI Victorville.

SEX OFFENSES

U.S. v. McKnight (PHX) Retired Assistant Food Service Manager sentenced (two counts of sexual abuse of ward) to 5 years probation, \$50 special assessment, \$5,000 fine, 100 hours community service, enroll in mental health program and register with state as sex offender.

STATISTICS

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
98	67	104	65	67	67	34	116	103	70	93	59

FREEDOM OF INFORMATION/PRIVACY ACT:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	43	35	48	32	51	42	40	49	35	30	18	26
CLOSED	37	30	53	33	49	36	49	47	32	39	31	22
PENDING	38	43	38	37	39	45	36	38	41	32	19	23
30 DAYS	0	1	0	4*	6*	5*	7*	7*	4*	6*	4*	4*
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	0
APPEALS	3	6	5	0	2	4	2	2	0	0	0	0

*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	4	3	0	1	0	0	0	0	8	1	0	0	0	6

ADMINISTRATIVE TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	40	26	43	40	45	41	39	47	39	38	45	30
CLOSED	45	33	23	28	91	18	30	68	22	15	67	52
RECONSIDER	0	0	0	0	0	0	0	0	0	0	0	0
PENDING	98	91	111	123	98	121	128	107	124	147	131	109
OVER 6 MONTHS	0	0	0	0	0	0	0	1	1	1	3	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	476	479	473	477	472	474	475	469	482	476	464	464
NEW CASES RECEIVED	11	5	14	10	9	8	4	22	9	5	11	6
HC	8	3	6	8	5	5	2	13	3	3	5	3

¹ Numbers adjusted June 1, 2001, by researching Lawpack.

² Numbers adjusted December 1, 2001, by researching Lawpack.

FTCA	0	0	2	2	0	0	0	1	1	1	1	0
BIVENS	3	2	3	0	1	1	1	3	2	0	2	2
OTHER	0	0	3	0	3	2	1	5	3	1	3	1
CLOSED	8	11	10	15	7	7	10	9	15	17	11	57
PENDING AT END OF MONTH	479	473	477	472	474	475	469	482	476	464	464	413
LITIGATION REPORTS COMPLETED	7	8	12	8	8	9	6	10	4	7	7	7

MISCELLANEOUS:

U.S. v. Jason Duncan Smith (TCN) On November 13, 2001, Judge Collins ordered the BOP provide the medication Klonopin to inmate Smith. Inmate Smith had recently received an 11-month supervised release violator sentence. On December 11, 2001, a hearing was held in which the Clinical Director (CD) testified that Klonopin was not an appropriate medication for inmate Smith. Due to a scheduling conflict, the hearing was continued to December 14. Following this hearing, Judge Collins again ordered the BOP to provide Klonopin to inmate Smith. Due to FCI Tucson's Clinical Director's unavailability, the Clinical Director from FCI Phoenix examined inmate Smith on December 18. A hearing was held the following day in which the FCI Phoenix CD appeared telephonically. Judge Collins canceled the order to immediately provide Klonopin to inmate Smith. However, he scheduled another hearing for January 7, 2002, in which he ordered the presence of FCI Tucson Warden, CD and HSA. Judge Collins also ordered that inmate Smith be transferred to USMCFP Springfield for medical evaluation. AUSA Westby advised that there is a hearing scheduled in this matter for January 3, 2002, at which Tom Fink, Chief of the Criminal Division, will argue that the court is without jurisdiction in this matter. As of January 3, 2002, inmate Smith is en route to USMCFP.

Paul Charlton was sworn in as new U.S. Attorney for the District of Arizona on December 18, 2001.



U.S. Department of Justice
Federal Bureau of Prisons

File

Dublin, California 94568

January 4, 2002

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

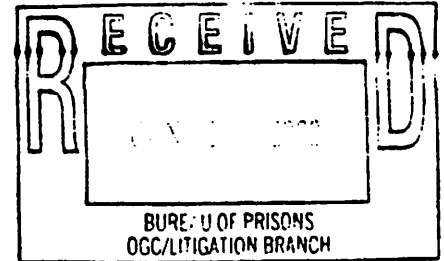
FROM:

Harlan W. Penn
Harlan W. Penn, Regional Counsel

SUBJECT:

Monthly Report for December 2001

LITIGATION



NEW CASES

Billingsley v. United States, et al. (Labor Law, PHX) Title VII complaint by former FCI Lompoc employee complaining of unjust termination based on disability and race as well as allegations of sexual harassment by female supervisor.

Cannon v. Slade (LOS) Petition for Writ of Habeas Corpus contesting DHO sanction.

DelRaine v. Femme, et al. (LOM) *Bivens* complaint alleging wrongful placement in SHU and destruction of personal property.

Johnson v. Lockhart (SAF) Petition for Writ of Habeas Corpus seeking to change PSI based on events occurring after it was authored.

Moreland v. Rothstein, et al. (SET) *Bivens* complaint alleging interference by Warden, Judge, and AUSA with on-going criminal prosecution.

SIGNIFICANT DEVELOPMENTS/APPEALS

Fifty petitioners for Writ of Habeas Corpus requesting early release eligibility were denied leave to amend petition adding ADA argument. All 50 petitions denied. (SHE)

Castillo v. United States (SDC) Settlement conference in complaint alleging medical malpractice postponed to January 30, 2002.

English v. Reno (SAF) *Bivens* complaint alleging failure to provide shoulder surgery dismissed based on plaintiff's failure to respond. Inmate on escape status since June 2001.

Flowers v. Finnerty and *Flowers v. United States* (LOS) *Bivens* and FTCA complaints alleging staff assault and improper 5 day restraint to be settled with stipulation for dismissal of both actions to be accomplished January 23, 2002.

Gutierrez v. United States, et al. (LOM) *Bivens* complaint alleging inadequate medical care dismissed for plaintiff's failure to prosecute and comply with local rules.

Harrell v. United States (SET) FTCA slip and fall complaint settled for \$500.

Howard v. Adams (LOM) *Bivens* complaint alleging loss of personal property and deliberate indifference to medical needs dismissed without prejudice for failing to exhaust administrative remedies.

Moore v. Schultz (DUB) Settlement conference in "key case" scheduled for January 23, 2002.

Parsons v. Hood (SHE) Petitioner complaining of conditions of confinement has appealed to Ninth Circuit the lower court's dismissal of his petition.

Stewart v. Adams, et al. (LOS) Settlement conference scheduled for January 17, 2002, in *Bivens* complaint alleging deliberate indifference to medical care and delayed medical transfer.

Vacarro v. Dobre (NEL) Ninth Circuit upheld lower court's finding in favor of remaining defendants in 10 year old deliberate indifference *Bivens* complaint.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	15	17	14	25	9	10	29	34	14	29	22	18
Accepted	0	3	2	4	2	1	2	1	0	1	2	1
Declined	12	9	9	16	4	7	18	16	7	23	5	5
Pending Decision	59	64	38	72	75	77	86	103	110	115	130	142

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

U.S. v. Mendoza-Aguilar (TCN) Trial for inmate on staff assault postponed to February 26, 2002.

U.S. v. Ponce-Hernandez (TCN) Trial for inmate on staff assault postponed to February 5, 2002

ESCAPE

U.S. v. Little (SET) Seattle CCC escapee pled guilty to escape and is pending sentencing on January 11, 2002.

U.S. v. Nelson (LOS) FPC Boron escapee sentenced to 12 month consecutive term with 3 years supervised release.

U.S. v. Thomas (PHX) CCC escapee sentenced to time served (approximately 6 months), 3 years supervised release, \$100 special assessment and \$50 fine.

U.S. v. Wallace (SET) Montana CCC escapee sentenced to 4 months concurrent, 3 years supervised release, 40 hours community service and \$100 fine.

CONTRABAND

U.S. v. Davis (LOS) Sentencing hearing continued to January 14, 2002 for inmate possession of amphetamines and heroin.

U.S. v. Exum (TRM) Trial for inmate possessing heroin set for January 8, 2002.

U.S. v. Garcia-Salas (LOS) Indictment pending for inmate found with 10.5 grams of heroin while at FCI Victorville.

SEX OFFENSES

U.S. v. McKnight (PHX) Retired Assistant Food Service Manager sentenced (two counts of sexual abuse of ward) to 5 years probation, \$50 special assessment, \$5,000 fine, 100 hours community service, enroll in mental health program and register with state as sex offender.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
98	67	104	65	67	67	34	116	103	70	93	59

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	43	35	48	32	51	42	40	49	35	30	18	26
CLOSED	37	30	53	33	49	36	49	47	32	39	31	22
PENDING	38	43	38	37	39	45	36	38	41	32	19	23
30 DAYS	0	1	0	4*	6*	5*	7*	7*	4*	6*	4*	4*
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	0
APPEALS	3	6	5	0	2	4	2	2	0	0	0	0

*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	4	3	0	1	0	0	0	0	8	1	0	0	0	6

ADMINISTRATIVE TORT CLAIMS													
	JAN	FEB	MAR	APR	MAY ¹	JUN	JUL	AUG	SEP	OCT	NOV ²	DEC	
RECEIVED	40	26	43	40	45	41	39	47	39	38	45	30	
CLOSED	45	33	23	28	91	18	30	68	22	15	67	52	
RECONSIDER	0	0	0	0	0	0	0	0	0	0	0	0	
PENDING	98	91	111	123	98	121	128	107	124	147	131	109	
OVER 6 MONTHS	0	0	0	0	0	0	0	1	1	1	3	5	

¹ Numbers adjusted June 1, 2001, by researching Lawpack.

² Numbers adjusted December 1, 2001, by researching Lawpack.

Tort Claim Investigations Over 60 Days:

UB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TCI	TCN	TRM	VIM	TOTA
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	476	479	473	477	472	474	475	469	482	476	464	464
NEW CASES RECEIVED	11	5	14	10	9	8	4	22	9	5	11	6
HC	8	3	6	8	5	5	2	13	3	3	5	3
FTCA	0	0	2	2	0	0	0	1	1	1	1	0
BIVENS	3	2	3	0	1	1	1	3	2	0	2	2
OTHER	0	0	3	0	3	2	1	5	3	1	3	1
CLOSED	8	11	10	15	7	7	10	9	15	17	11	57
PENDING AT END OF MONTH	479	473	477	472	474	475	469	482	476	464	464	413
LITIGATION REPORTS COMPLETED	7	8	12	8	8	9	6	10	4	7	7	7

MISCELLANEOUS:

U.S. v. Jason Duncan Smith (TCN) On November 13, 2001, Judge Collins ordered the BOP provide the medication Klonopin to inmate Smith. Inmate Smith had recently received an 11-month supervised release violator sentence. On December 11, 2001, a hearing was held in which the Clinical Director (CD) testified that Klonopin was not an appropriate medication for inmate Smith. Due to a scheduling conflict, the hearing was continued to December 14. Following this hearing, Judge Collins again ordered the BOP to provide Klonopin to inmate Smith. Due to FCI Tucson's Clinical Director's unavailability, the Clinical Director from FCI Phoenix examined inmate Smith on December 18. A hearing was held the following day in which the FCI Phoenix CD

appeared telephonically. Judge Collins canceled the order to immediately provide Klonopin to inmate Smith. However, he scheduled another hearing for January 7, 2002, in which he ordered the presence of FCI Tucson Warden, CD and HSA. Judge Collins also ordered that inmate Smith be transferred to USMCFP Springfield for medical evaluation. AUSA Westby advised that there is a hearing scheduled in this matter for January 3, 2002, at which Tom Fink, Chief of the Criminal Division, will argue that the court is without jurisdiction in this matter. As of January 3, 2002, inmate Smith is en route to USMCFP.

Paul Charlton was sworn in as new U.S. Attorney for the District of Arizona on December 18, 2001.