

March 29, 2024

Legislative and Correctional Issues Branch, Office of the General Counsel
Bureau of Prisons
320 First Street NW
Washington, DC 20534

Re: Docket No. BOP-1171-P—Inmate Discipline Program: Disciplinary Segregation and Prohibited Act Code Changes

On behalf of the Due Process Institute and Justice Action Network, we write to you regarding the proposed rule, Inmate Discipline Program: Disciplinary Segregation and Prohibited Act Code Changes (Docket No. BOP-1171-P / RIN 1120-AB71). Specifically, we are concerned about the proposed “[a]ddition of code 294, regarding unauthorized use of social media.”

As the proposed rule states, *“We propose to create a new High Severity Level prohibited act code (294) for accessing, using, or maintaining social media, or directing others to establish or maintain social media accounts on the inmate’s behalf (including, but not limited to the following: Facebook, Twitter, Instagram, Snapchat, TikTok, etc. or any successor). In contrast to proposed code 194, code 294 acts will not involve commission or aid in the commission of any criminal act or any Greatest category prohibited act.”*

The proposed language would unjustly punish people incarcerated at Bureau of Prisons (BOP) facilities using the harshest possible means for communication on social media, without regard to whether the communication has a legitimate legal or personal purpose. We believe that a full and total ban would be excessive in its own right, but a ban with significant sanctions for violations is an extreme policy. This rule is especially concerning when proposed amid increasing documented instances of abuse, including rape and unconstitutionally inhumane conditions such as substandard medical care and more at BOP facilities. Further, victims of this abuse have faced retaliation or cover-ups by prison personnel or other incarcerated people, and can thus feel a chilling effect when reporting issues through the normal channels. There are several examples.

- FCI Atlanta: An investigation conducted by the Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations found several major issues, including unsanitary conditions, sexual violence, and attempts to cover up the problems in the prison.¹
- FCI Coleman: At least 12 women have alleged that correctional officers sexually abused them while they were incarcerated at the facility.²

¹ <https://www.nytimes.com/2022/07/26/us/politics/atlanta-federal-prisons-corruption.html>

² <https://reason.com/2023/09/03/i-knew-they-were-scumbags/>

- FCI Dublin: Sixty-three lawsuits have been filed related to this facility, known as “the rape club.”³ As of July 2023, seven former employees had been convicted of sexual abuse against women incarcerated in the prison.⁴ In March 2024, the warden of the prison was removed “in the wake of allegations that his staff had retaliated against an inmate who testified in January in a lawsuit against the prison.”⁵
- FCI Tallahassee: Incarcerated individuals were served moldy bread and faced unsanitary conditions.⁶

There are other examples of documented sexual abuse and disturbing conditions in BOP-controlled facilities⁷ that clearly illustrate the need for significant reforms to ensure incarcerated people are housed in a manner that recognizes their basic rights of safety and dignity. The proposed rule sets these systemic problems aside and focuses on overly broad and severe punishment of incarcerated people for simply contacting someone outside of the prison walls.

Many individuals who are incarcerated have family and friends who are concerned about their well-being while in prison. Not only do we know that maintaining these contacts is vital for incarcerated peoples’ mental health, considering the likelihood of abuse and poor conditions, these concerns are justifiable. Social media provides a way for incarcerated individuals, families, and friends to raise awareness of violence, sexual abuse, unsafe and unsanitary conditions, and more inside the walls of federal prison facilities. Social media also provides a means to advocate for an incarcerated individual beyond the conditions inside of prisons, which may include ongoing court proceedings, appeals, and clemency or pardon petitions.

We understand that the BOP is concerned about the use of social media by incarcerated people to coordinate violent acts inside or outside prisons. The safety of BOP personnel and incarcerated people is and must remain a priority. However, social media communication can be used as evidence in an investigation aiming to hold people accountable for inciting violence without a wholesale ban on the use of social media with severe consequences for violations. With this rule, the BOP is using a chainsaw when a scalpel would do.

With news headlines dominated by criminal investigations on abuse in prisons, a Department of Justice Inspector General report on preventable deaths in prisons, and several congressional oversight hearings focusing on these matters, including the language cited above in the proposed rule is a step backward. BOP Director Colette Peters has long stated that she believes in increasing transparency at the BOP, and has said she wants to humanize and normalize life in prison. Including this language in the proposed rule runs contrary to these views. We oppose the

³ <https://www.latimes.com/california/story/2022-02-06/federal-womens-prison-in-california-fostered-culture-of-abuse>

⁴ <https://www.ktvu.com/news/8-correctional-officers-now-charged-with-sex-abuse-at-fci-dublin-7-found-guilty>

⁵ <https://apnews.com/article/federal-prisons-dublin-sexual-abuse-fbi-d59870c859d58e1ab2b158392adaee57>

⁶ <https://www.newsnationnow.com/us-news/southeast/inspectors-unsafe-florida-prison/>

⁷ <https://apnews.com/article/federal-prisons-5be574b4103a2f5420e0d9da2daf5c9c>

inclusion of this language on social media use and urge the BOP to remove it from the proposed rule.

Sincerely,

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