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May 4, 2020

Literature Review Committee
c/o Dean Peterson, Library Services Administrator
Florida Department of Corrections
Allen.Peterson@fdc.myflorida.com
501 South Calhoun Street
Tallahassee, FL 32399-2500

Re: Impoundment of *The Militant*, Vol. 84, Issue No. 13

VIA E-MAIL

Dear Literature Review Committee,

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) is an unincorporated nonprofit association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. We understand Jefferson Correctional Institute impounded Vol. 84, Issue No. 13 of *The Militant* on April 6, 2020. We write to urge you to reverse the impoundment.

This impoundment infringes upon the First Amendment rights of both *The Militant*’s publisher and its incarcerated subscribers. The justification offered for the ban is unsupported by the contents of the impounded issue, making the impoundment appear to be a pretense for censoring expressions of concern over safety and health conditions during the ongoing COVID-19 pandemic. We therefore urge that the impoundment decision be overturned, and that all impounded copies of *The Militant* Vol. 84, Issue No. 13 be delivered to *The Militant*’s subscribers at Jefferson Correctional Institute.

The Militant is published in New York and describes itself as “a socialist newsweekly published in the interests of working people” that reflects the program, perspectives, and activities of the Socialist Workers Party in the United States. Newspapers like *The Militant* have a First Amendment right to communicate with their incarcerated subscribers. *Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989) (“[T]here is no question that publishers who wish to communicate with those who, through subscription, willingly seek their point of view have a legitimate First Amendment interest in access to prisoners”). Prisoners have a parallel First Amendment right to receive publications like *The Militant* through the mail. *See id.*; *see also Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972). While these First Amendment rights are not absolute, “[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.” *Turner v. Safley*, 482 U.S. 78, 84 (1987).

Under the framework set forth by the U.S. Supreme Court in *Turner* and *Thornburgh*, a prison regulation may validly censor incoming mail only when the regulation “is reasonably related to legitimate penological interests.” *Turner*, 482 U.S. at 89; *Thornburgh*, 490 U.S. at 414 (adopting *Turner* standard for incoming prison mail First Amendment challenges). To make such a showing, the government must demonstrate the existence of a “valid, rational connection” between the ban and the claimed penological interest so that the ban is not “arbitrary or irrational.” *Turner*, 482 U.S. at 89–90.

The Notice of Impoundment states that Vol. 84, Issue No. 13 of *The Militant* was impounded pursuant to Fla. Admin. Code Ann. r. 33-501.401(3)(m), which prohibits material that “otherwise presents a threat to the security, good order, or discipline of the correctional system or safety of any person.” The Notice of Impoundment states further that this issue was impounded because it contains “gang signs” on pages 1, 5, 14, and 16. However, as is made clear by the captions and articles accompanying the photographs on the cited pages, the images do not show gang signs, but instead show protestors with raised fists. Two photographs involve protests related to the COVID-19 pandemic, including workers protesting unsafe sanitation practices at a Purdue chicken processing plant and nurses protesting a lack of personal protective equipment. Another photograph, dated November 12, 1979, shows steelworker union members on strike. None of these photographs depict any kind of gang activity.

The justification cited for impoundment of Vol. 84, Issue No. 13 of *The Militant* is inapplicable. None of the images referenced in the Notice of Impoundment could reasonably be interpreted to contain gang signs or other gang activity, or otherwise encourage violence, threaten safety, or pose a risk to prison security. The impoundment does not appear to be rationally connected to the penological interests it purportedly furthers; to the contrary, it appears arbitrary and irrational. Prisons should not invoke facially legitimate but overly broad justifications—such as “safety and security”—to censor content.

For these reasons, the Reporters Committee strongly urges the Literature Review Committee to overturn the impoundment of Vol. 84, Issue No. 13 of *The Militant*.

Respectfully,

The Reporters Committee for Freedom of the Press