

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

YASSIN MUHIDDIN AREF, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 10-0539 (BJR)
)	
ERIC HOLDER, <i>et al.</i>)	
)	
Defendants.)	
)	

**DEFENDANTS’ STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT
OF THEIR MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7(h), Defendants submit the following statement of material facts as to which there is no genuine dispute:

Undisputed Facts Regarding Origins of the Communication Management Units (“CMUs”)

1. The Communication Managements Units (“CMU”) were developed partly in response to a September 2006 U.S. Department of Justice, Office of the Inspector General Report (“OIG”), which reviewed the effectiveness of BOP’s monitoring procedures for high-risk inmates. *See* Decl. of David Schiavone (“Schiavone Decl.”) (Ex. 1) ¶ 2; *see also* Intelligence and Counter Terrorism Branch, “Communications Management Units” (CMU Talking Points) (Schiavone Decl. Ex. A) at BOPCMU76403.
2. The OIG report revealed that, while incarcerated at BOP’s most restrictive prison, the Federal “Supermax” in Florence, Colorado (“ADX”), three convicted terrorists involved in the first World Trade Center bombing had been able to correspond with extremists in Spain, including those with links to the March 2004 Madrid train bombings. Schiavone

Decl. ¶ 2; *see also* U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *The Federal Bureau of Prisons' Monitoring of Mail for High-Risk Inmates* (September 2006) (Ex. 25) at BOPCMU076536.

3. To address promptly the national security concerns raised by the OIG report, BOP recognized the need for new procedures to ensure that high-risk inmates, including those with terrorist ties, could not use approved communication methods to engage in illicit activities while incarcerated. Schiavone Decl. ¶ 3; *see also* Schiavone Decl. Ex. A at BOPCMU76403.
4. In attempting to accomplish this objective, BOP was cognizant of the difficulties involved in monitoring the communications of inmates in a typical general population unit, given the many opportunities that exist to evade such monitoring. Schiavone Decl. ¶ 4.
5. For instance, an inmate subject to heightened monitoring in a normal general population environment might request that another inmate, not subject to such monitoring controls, pass along a prohibited message. Schiavone Decl. ¶ 4; *see also* Proposed Rule, “Communication Management Units,” 75 Fed. Reg. 17324, 17325 (April 6, 2010) (“CMU Proposed Rule”) (“It is difficult to police inmate communication in the ‘open’ context of a general prison population setting because it is harder to detect activity such as inmates sending mail under another’s name, or using another’s PIN number, without constant monitoring.”)
6. For these reasons, CMU inmates are separated from other general population inmates, thereby preventing the inmates in the CMU from evading monitoring controls. Schiavone Decl. ¶ 4.

7. Otherwise, the CMU is designed, and in fact functions, as a general population unit. Schiavone Decl. ¶ 4; *see also* Schiavone Decl. Ex. A at BOPCMU76403 (“The CMUs operate as open, general population units.”).
8. The first CMU opened at the Federal Correctional Institute in Terre Haute, Indiana (“FCI Terre Haute”), on December 2006. Schiavone Decl. ¶ 5; *see also* Schiavone Decl. Ex. A at BOPCMU76403. Because of capacity issues, a second CMU was later established at the United States Penitentiary in Marion, Illinois (“USP Marion”) in May 2008. *Id.*

Undisputed Facts Regarding Conditions and Communication Controls in CMU

9. “The CMU is a self-contained general population housing unit where inmates reside, eat, and participate in all educational, recreational, religious, unit management, and work programming within the” unit itself. *See* 11/28/12 USP Marion CMU Institution Supplement (Ex. B to Schiavone Decl.) at BOPCMU064110; 3/31/14 Terre Haute CMU Institution Supplement (Ex. C. to Schiavone Decl.) at 1.
10. The two CMU are large enough to accommodate about 100 inmates in total, but they currently house about half that number. Consequently, inmates typically are each assigned to their own cell. Schiavone Decl. ¶ 8; *see also* Schiavone Decl. Ex. A at BOPCMU76403; Schiavone Decl. Ex. B at BOPCMU064113 (“Ordinarily, [CMU] inmates will be housed in single bunk cells.”); Schiavone Decl. Ex. C at 4.
11. Like any general population inmate, other than at night and during security checks, inmates in a CMU are typically not confined to their cells. Schiavone Decl. ¶¶ 4, 7; Schiavone Decl. Ex. B at BOPCMU064114; Schiavone Decl. Ex. C at 4.
12. CMU inmates typically have access to common areas up to 16 hours per day. Schiavone Decl. ¶ 7.

13. CMU inmates have access to the following:

- educational and programming opportunities;
- legal and other reading materials;
- holding a job and receiving a salary;
- religious services;
- health services and medication, including treatment in the institution's main health unit as needed;
- mental health services, including consultations with psychology staff;
- commissary items for purchase.

Schiavone Decl. ¶ 7; Schiavone Decl. Ex. B at BOPCMU064113-5; Schiavone Decl. Ex. C at 4-6.

14. CMU inmates also have access to exercise equipment and various recreational activities.

Schiavone Decl. ¶ 7; *see also* Schiavone Decl. Ex. C at 5 (explaining that CMU inmates have access to leisure and law libraries, table games such as chess, hobby crafts, and televisions, radios provided used with earphones, and recreational activities including handball, basketball courts, stationary biking, stair-stepping machines, and walking).

15. Transfer to a CMU does not constitute punishment and does not increase the length of incarceration, since inmates continue to earn good-conduct sentence credit in accordance with Bureau policy. Schiavone Decl. ¶ 9. *See also* CMU Proposed Rule, 75 Fed. Reg. at 17328.

16. Pursuant to the goal of effectively monitoring the communications of CMU inmates, CMU inmates have somewhat less time to talk on the phone and to visit than inmates in a

non-CMU general population environment. Schiavone Decl. Ex. B at BOPCMU064112; Schiavone Decl. Ex. C at 3.

Telephone Use

17. All calls in the CMU are live-monitored by staff at BOP's Counter Terrorism Unit ("CTU") in West Virginia and are subject to recording. Schiavone Decl. ¶ 10; Schiavone Decl. Ex. C at 3; Schiavone Decl. Ex. B at BOPCMU064113; Schiavone Decl. Ex. A at BOPCMU76405.
18. Since January 3, 2010, CMU inmates have been permitted to make two 15-minute calls per week for a total of 120 minutes every four weeks. *Id.*
19. Calls may be made on any day except Saturday. *Id.*
20. Inmates in a non-CMU general population environment typically receive 300 minutes of social telephone time per month. Program Statement P5264.08, Inmate Telephone Regulations (Pls.' Ex. 4), at BOPCMU 000146.

Visiting

21. Since January 3, 2010, CMU inmates have been allowed up to 8 hours of visiting time per month, scheduled in increments of no more than four hours. Schiavone Decl. ¶ 11; Schiavone Decl. Ex. B at BOPCMU064113; Schiavone Decl. Ex. C at 4.
22. Visits may take place every day except Saturday. *Id.*
23. While CMU inmates may have "contact visits" with their attorneys, for other members of the community visits are conducted "using non-contact facilities," which employ secure partitioned rooms where inmates and their visitors speak using telephone lines. Schiavone Decl. ¶ 12; Schiavone Decl. Ex. B at BOPCMU064113; Schiavone Decl. Ex. C at 4. These conversations are live-monitored and subject to recording. *Id.*

Communication must be verbal and the use of hand signals or sign language may result in the termination of the visit. *Id.* Violations of the visiting rules may result in immediate termination of the visit. *Id.*

24. Because CMU inmates speak on the telephone during social non-contact visits, this permits their conversations to be live-monitored remotely by personnel at the CTU. Schiavone Decl. ¶13.
25. These conversations are also recorded for later intelligence analysis. Schiavone Decl. ¶ 13.
26. Non-contact visits make it easier for BOP personnel to monitor, detect and control communications that pose a threat to security. Schiavone Decl. ¶ 13. If CTU personnel detect anything in an inmate's communications that poses a danger to institutional or public security, the conversation can be quickly terminated before a prohibited message is communicated. *Id.* See also CMU Proposed Rule, 75 Fed. Reg. at 17324 (collecting cases in which courts have recognized "[t]he danger of coded messages from prisoners"); Schiavone Decl. Ex. A at BOPCMU076404.
27. Non-contact visits also reduce the likelihood that contraband will be introduced into the CMU. Schiavone Decl. ¶ 13.

Correspondence and Email

28. CMU inmates have access to social correspondence via both the U.S. mail and email. Schiavone Decl. ¶ 14; Schiavone Decl. Ex. C at 2-3; Schiavone Decl. Ex. B at BOPCMU064112.
29. CMU inmates also are permitted to receive magazines and other reading materials in the mail consistent with BOP's normal rules and procedures. Schiavone Decl. ¶ 14.

30. All social correspondence is reviewed and screened before it is received by the CMU inmate and before it is sent to the recipient. Schiavone Decl. ¶ 14; Schiavone Decl. Ex. A at BOPCMU76405.
31. Social correspondence (both mail and electronic) is not limited in frequency and/or volume, other than on a case by case basis for an individual inmate. *Id.*
32. Any such limitations are done consistent with normal BOP procedures and legitimate penological goals in maintaining security and good order. *Id.*
33. Inmates may receive magazines and other reading materials in the mail consistent with BOP's normal rules and procedures. Schiavone Decl. ¶ 14. Incoming special mail (i.e., addressed to an attorney, federal courts, probation officers) is inspected in the presence of the inmate for contraband, however, it is not read for content. *Id.* Outgoing special mail is not inspected.

**Undisputed Facts Regarding Conditions and Communication Controls in
Administrative Detention**

34. Inmates who are placed in administrative detention typically remain in their cells 23 hours per day. *See* Declaration of Frank Lara ("Lara Decl.") (Ex. 6) ¶ 19; *see also* Program Statement 5270.10, *Special Housing Units* (Lara Decl. Ex. A) at BOPCMU067165-66.
35. Inmates in administrative detention are placed in what BOP refers to as the Special Housing Unit ("SHU") for a variety of reasons, including protection from any threat posed by the inmate remaining in the general population. Lara Decl. ¶¶ 7-8.
36. Inmates in administrative segregation are either housed alone or with another inmate. *See* Lara Decl. ¶¶ 22, 24.

37. Pursuant to BOP national policy, inmates who are placed in administrative detention receive the opportunity to exercise one hour every five days. Lara Decl. ¶ 19; Lara Decl. Ex. A at BOPCMU067165-66.
38. Inmates placed in administrative detention at FCI Terre Haute and USP Marion may exercise for one hour every five days. *Id.*
39. Inmates in administrative detention at FCI Terre Haute and USP Marion do not have access to TV. Lara Decl. ¶¶ 22, 24.
40. Inmates in administrative detention at FCI Terre Haute and USP Marion do not control whether the light remains on in their cell. Lara Decl. ¶¶ 22, 24.
41. Inmates in administrative detention at FCI Terre Haute and USP Marion are permitted to maintain personal possessions in their cells, but the amount is more limited than inmates in general population due to fire, safety, and sanitation concerns. Lara Decl. ¶¶ 28; Lara Decl. Ex. A at BOPCMU067166-67.
42. Inmates in administrative detention at FCI Terre Haute and USP Marion are permitted to maintain fewer possessions in their cells than inmates in a CMU. Lara Decl. ¶ 34.
43. Inmates in administrative detention at FCI Terre Haute and USP Marion are not permitted to hold jobs. Lara Decl. ¶¶ 33.
44. Inmates in administrative detention at FCI Terre Haute and USP Marion have less access to educational programming than inmates in general population because of security concerns as well as space and staffing limitations. Lara Decl. ¶ 33.
45. Inmates in administrative detention at FCI Terre Haute and USP Marion have less access to educational programming than inmates in a CMU. Lara Decl. ¶ 33.

46. Pursuant to national policy, inmates in administrative detention typically receive one 15 minute phone call every 30 days. Lara Decl. ¶¶ 9.
47. Inmates in administrative detention at Terre Haute and USP Marion typically receive one fifteen-minute phone call every 30 days. Lara Decl. ¶¶ 10, 17-18; USP Marion Institution Supplement, Telephone Regulations for Inmates (Lara Decl. Ex. C) at BOPCMU066884; FCI Terre Haute Institution Supplement, Telephone Regulations for Inmates (Lara Decl. Ex. D) at BOPCMU06702.
48. This time period can be further restricted as the result of a specific disciplinary sanction. *Id.*
49. At the discretion of the warden, the time period can be increased in the case of a verifiable emergency. Lara Decl. ¶ 10; Lara Decl., Ex. C at BOPCMU066884; Lara Decl., Ex. D at BOPCMU06702.
50. Inmates in administrative detention at Terre Haute and USP Marion are not allowed social contact visits at either facility. Lara Decl. ¶¶ 12, 15; 2/21/13 Memorandum from J. Oliver to Stanley Lovett Re: Special Housing Unit (SHU) Inmate Visiting Procedures (Lara Decl. Ex. H) at BOPCMU067120.
51. Inmates in administrative detention at USP Marion do not visit in the same room with their visitors, but instead social visits are conducted using video monitors. Lara Decl. ¶ 16; USP Marion Institution Supplement, Visiting Regulations (Lara Decl. Ex. I) at BOPCMU066903.
52. Inmates in administrative detention at USP Marion and FCI Terre Haute receive four hours of social visits per calendar month. Lara Decl. ¶¶ 12, 15; Lara Decl., Ex. F, FCI

Terre Haute Institution Supplement, Visiting Regulations (Lara Decl. Ex. F) at BOPCMU067032; Lara Decl. Ex. I at BOPCMU066904.

53. Inmates in administrative detention at USP Marion and FCI Terre Haute do not have access to email for social correspondence. Lara Decl. ¶ 23.
54. Both while he was in the CMU and since he was transferred out, Aref “sen[t] a lot of e-mails out” and “usually” used e-mail “every day.” Aref Dep. (Ex. 17) 214:24 – 215:13.
55. While in the CMU at USP Marion and FCI Terre Haute, McGowan “frequently sen[t] email.” McGowan Dep. (Ex. 19) 156:24 – 157:4; 193:6-9.
56. Likewise, Jayyousi “would access e-mail almost every couple [of] hours” when he was in the CMU. Jayyousi Dep. (Ex. 18) 113:10-21.
57. Aref’s wife currently does not own a telephone and is “afraid to talk on the phone” because she was purportedly denied U.S. citizenship for lying during a monitored phone conversation with Aref. Aref Dep. 126:2-18; 127:14-25.
58. Sometimes at least one month passes between Aref’s phone conversations with her. *Id.* 142:20-25.
59. Aref does not “see any reason for her or [him] to worry about” the consequences of their phone conversations being monitored while he is incarcerated. *Id.* 128:20 – 129:8.
60. While Jayyousi was housed in the CMU, he “could not use [all of] the [visiting] time that was allowed to [him] every month.” Jayyousi Dep. 141:11 - 142:7.
61. This was due to the “[d]istance and the cost” of his family getting to the institution. *Id.*
62. As a result, Jayyousi testified that his family would visit him approximately every six months while he was in the CMU. *Id.*

63. Out of 95 low and medium security institutions within the BOP system, 41 restrict contact visits for inmates placed in administrative segregation. See Pls.' Statement of Material Facts ¶ 80.
64. An Excel spreadsheet that was provided to the plaintiffs (BOP CMU 67589-75574) indicates that from February 1, 2012 through August 2, 2013, over 24% of low and medium security inmates placed in administrative detention at USP Marion and FCI Terre Haute spent at least one month in administrative detention; 13% of these inmates spent at least two months; 7% spent at least three months, and approximately 4% spent at least four months. *See* Declaration of Vineeta Kamath ("Kamath Decl.") (Ex. 8) ¶¶ 2-5.
65. The same Excel file (BOP CMU 67589-75574), which contained information about inmates placed in administrative detention at all low and medium BOP security facilities indicates that, from February 1, 2012 through August 2, 2013, over 37% of these low and medium security inmates spent from four to up to ten weeks in administrative detention, 24.21% spent 10 to up to 20 weeks in administrative detention, approximately 7% spent 20 to up to 30 weeks in administrative detention and 2.52% spent 30 to up to 40 weeks. *See* Declaration of Jennifer Batchelder ("Batchelder Decl.") (Ex. 7) ¶ 4.
66. Inmate Yassin Aref was sentenced on March 8, 2007, and was housed at FCI Ray Brook, New York, FMC Devens, Massachusetts, and MDC Brooklyn, New York, and FTC Oklahoma from March 28, 2007 to May 11, 2007. *See* Declaration of Ralph Miller ("Miller Decl.") (Ex. 5) ¶ 14.
67. During this period, inmate Aref was placed in administrative detention in the Special Housing Unit at each of these facilities in holdover status. Miller Decl. ¶ 14.
68. Aref described his time in the SHU as being in "a box." Aref Dep. 64:14-25.

69. Regarding the SHU at FCI Raybrook, Aref said that when you are in the unit, “you believe you are in [a] hole.” Aref Dep. 77:18-24.
70. In a letter to a friend, Aref wrote that while in the CMU “literally there is nothing to do obligated [sic]. They open the door and you are out of your cell.” Aref Dep. 198:11-15.
71. In a letter to a friend, Aref wrote that while in the CMU the inmates “are locked down in the unit inside the building but we have complete freedom to spend our time the way we want.” Aref Dep. 195:21 – 197:16.
72. Kifah Jayyousi was sentenced on January 22, 2008. Miller Decl. ¶ 16.
73. From April 4, 2005 until March 9, 2006, inmate Jayyousi was housed at FDC Miami in a pre-trial status in administrative detention in the Special Housing Unit. Miller Decl. ¶ 16.
74. On March 9, 2006, he was released on bail/bond. Miller Decl. ¶ 16.
75. On April 16, 2007, he was returned to FDC Miami on holdover status and was again placed in administrative detention in the Special Housing Unit. Miller Decl. ¶ 16.
76. On June 17, 2008, Jayyousi was removed from FDC Miami and transported to FTC Oklahoma where he remained on holdover status in administrative detention until June 18, 2008. Miller Decl. ¶ 16. Jayyousi thus was in the SHU at FDC Miami for approximately five months total after he was sentenced. *See id.*
77. On June 18, 2008, Jayyousi was transported from FTC Oklahoma to the CMU at FCI Terre Haute and arrived the same day. Miller Decl. ¶ 16.
78. As a result, from April 4, 2005 to March 9, 2006, and then again from April 16, 2007 to June 18, 2008, inmate Jayyousi was in holdover status in administrative detention. *See* Miller Decl. ¶ 16.

79. In total, inmate Jayyousi spent over two years in administrative detention prior to his placement in the CMU. Miller Decl. ¶ 16.
80. Jayyousi described his time in the SHU as being “pretty devastating.” Jayyousi Dep. 29:10-14. Jayyousi stated that the conditions of confinement in the SHU are “[o]bviously they are horrific. This is not my opinion. My experience was a horrific experience for someone who first came to a jail environment.” *Id.* 37:12-14.
81. According to Jayyousi, there were “positive changes” about the CMU in comparison with the SHU. Jayyousi Dep. 111:8-12.
82. Among the positive changes Jayyousi experienced were having other inmates to “spend the time with and join” in activities and “having an area to go out to instead of being in a cell all the time,” Jayyousi Dep. at 111:15-21; being able to watch television, *id.* at 112:1-2; and having a “regular window” he could open to get fresh air, *id.* at 114:15 – 115:4.
83. Former inmate Daniel McGowan was initially classified by the BOP as a low-security inmate on July 9, 2007 and was housed in FCI Sandstone beginning in September 2008. Miller Decl. ¶ 10.
84. While en route to the CMU at USP Marion, McGowan was housed in holdover status at FCI Oxford, FCI Terre Haute, and FTC Oklahoma. McGowan spent all but seven of his days at these institutions in administrative detention. Miller Decl. ¶ 10.
85. McGowan described the SHU as being “stark,” “oppressive,” “suffocating,” “lonely,” and “cold.” McGowan Dep. 91:12-17. He further said that being in the SHU “brings out anxiety” and that it “affects your physical fitness” by making an inmate “lethargic” due to the fact that inmates are confined to their cells for almost all of the day. *Id.* at 91:17;

92:7-19. According to McGowan, the SHU is appropriately called “the hole” because “[t]hat’s what it feels like. It feels like a black hole.” *Id.* 92:20 – 93:10.

86. While in the CMU at USP Marion, Daniel McGowan wrote a “small amount of articles” and a “number of updates” about his time in prison. McGowan Dep. 60:19 – 61:5.

McGowan also wrote at least three articles while he was in the CMU that were sent out specifically to be published by the website Huffington Post. *Id.* 62:8 – 63:22. In addition, McGowan estimated that he wrote approximately 30 letters per month. *Id.* 74:21 – 76:8.

87. McGowan cannot recall ever deciding not to write about social and political issues of interest to him or deciding not to write to a particular person because he was in a CMU. McGowan Dep. 77:8 – 78:9.

88. Former inmate Avon Twitty was initially designated to UPS Leavenworth as a high-security inmate in July 2001. Miller Decl. ¶ 9. Twitty was then transferred to the CMU at FCI Terre Haute in May 2007 and was housed there until his transfer to a Residential Reentry Center in Washington, D.C. in October 2010. *Id.*

89. Twitty’s placement in the Residential Reentry Center was delayed by three months. Twitty was told that the reasons for this delay were because of a lack of bed space, Twitty Dep. (Ex. 20) 56:2-8; because of his offense history, *id.* at 58:2-23; and because he was categorized as a violent offender, *id.* 67:21 – 68:21.

90. While housed in the CMU, Twitty’s security level was reduced to medium. Miller Decl. ¶ 9.

91. Twitty was placed in the SHU on approximately six different occasions while incarcerated. Twitty Dep. 122:25 – 125:22. He has referred to the SHU as the “hole.” *Id.* 103:24.

Undisputed Facts Regarding CMU Placement Criteria

92. The CMU is designed “to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communication between inmates and persons in the community in order to protect the safety, security, and orderly operation of Bureau facilities, and protect the public.” Schiavone Decl. ¶ 15; *see also* Schiavone Decl. Ex. B at BOPCMU064110; Schiavone Decl. Ex. C at 1.
93. BOP memorialized the current criteria regarding which inmates are eligible for CMU placement in an October 2009 memorandum from D. Scott Dodrill, then-Assistant Director of BOP’s Correctional Programs Division. *See* 10/14/09 Memo from D. Scott Dodrill, Assistant Director, Correctional Programs Division, to Michael K. Nalley, Regional Director, “Review of Inmates for Continued Communication Management Units (CMU) Designation” (“Dodrill memo”) (Schiavone Decl. Ex. D).
94. Although the Dodrill memo specifically addresses procedures for reviewing CMU placement, it is also sets forth the criteria used for initial placement. Schiavone Decl. ¶ 17.
95. According to Les Smith, “the gist” of the 2009 Dodrill memo and the CMU Talking Points “is basically the same,” and “there’s nothing drastically different” between the criteria listed in each document. Smith Dep. (Ex. 11) 86:4 – 96:15.

96. As the 2009 Dodrill memo explains, an inmate is eligible for placement in a CMU if one or more of the following criteria are met:

- (i) The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;
- (ii) The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a propensity to encourage, coordinate, facilitate, or otherwise act in furtherance of, illegal activity through communication with persons in the community;
- (iii) The inmate has attempted, or indicates a propensity, to contact victims of the inmate's current offense(s) of conviction;
- (iv) The inmate committed prohibited activity related to misuse/abuse of approved communication methods while incarcerated; or
- (v) There is any other evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

Schiavone Decl. Ex. D at 1-2.

97. A notice summarizing the Dodrill memo, including CMU eligibility criteria, was posted in the CMUs in late 2009. Notice to Inmates (Exhibit 26); Schiavone Decl. ¶ 19.

98. The first criterion for CMU placement concerns information bearing on the inmate's conviction and offense conduct. Schiavone Decl. ¶ 18.

99. Among other potential sources of information, BOP will typically consider the inmate's Judgment and Conviction, Statement of Reasons, if any, and the inmate's Presentence Investigation Report to determine whether this criterion is satisfied. *Id.*

Undisputed Facts Regarding BOP's Procedures for Placing Inmates in a CMU

100. Under current BOP policy, BOP's Counter Terrorism Unit ("CTU") is tasked with initially evaluating whether an inmate may warrant placement in a CMU. Schiavone Decl. ¶ 20; *see also* 3/5/08 Memorandum from Joyce K. Conley, Assistant Director,

Correctional Programs Divisions, to All Regional Directors, “Referrals for the Communication Management Units” (Schiavone Decl. Ex. E).

101. Referrals to the CTU regarding CMU placement can come from multiple sources, including personnel at Bureau facilities, courts and other law enforcement agencies. Schiavone Decl. ¶ 20
102. As Chief of the CTU, Leslie S. Smith is responsible for evaluating these referrals and making recommendations regarding the appropriateness of CMU placement to the Regional Director of the North Central Regional Office, who is the final decision-maker with respect to CMU Placement. Declaration of Leslie S. Smith (“Smith Decl.”) (Ex. 2) ¶ 3.
103. The CTU reviews relevant information to assess whether the inmate satisfies the criteria for CMU placement set forth in the Dodrill memo. Smith Decl. ¶ 7. After reviewing all available relevant information, if the CTU determines that the inmate satisfies one or more of the criteria for CMU placement, and that the inmate presents a sufficient risk warranting CMU monitoring, a memo is prepared by the CTU recommending in favor of CMU placement for the inmate. *Id.* ¶¶ 6-8.
104. The CTU referral memo contains background information about the inmate and provides a summary of the reasons and evidence supporting the recommendation. Smith Decl. ¶ 8.
105. As part of this process, the CTU prepares a draft Notice to Inmate of Transfer to a Communications Management Unit (“Notice of Transfer to CMU”). Schiavone Decl. ¶ 22; *see also* Intelligence and Counter Terrorism Branch, “Designations to a Communications Management Unit” (“Designations to CMU Talking Points”) (Schiavone Decl. Ex. F).

106. The Notice is intended to provide a summary of the reasons for the inmate's placement. Schiavone Decl. ¶ 22.
107. However, the Notice does not include information that could compromise law enforcement investigations and interests. Schiavone Decl. ¶ 22.
108. The CTU collects the referral memo, draft Notice of Transfer to CMU, and supporting information into a referral packet. Smith Decl. ¶¶ 7-8.
109. The referral packet will include information about the inmate's conviction and offense history, as set forth in the inmate's sentencing documents and Presentence and Investigation Report (PSR). *See* Pottios Decl. ¶ 5; Pottios Decl. Exs. A-J. It may also contain information about the inmate's institutional conduct, including the inmate's disciplinary history, as well law enforcement and intelligence reporting about the inmate. Smith Decl. ¶ 6.
110. Once the CTU prepares the referral packet, it is first routed to the Office of General Counsel ("OCG") for a legal sufficiency review. Schiavone Decl. ¶ 24.
111. After OCG approves the packet, it is then routed to the Intelligence and Counter Terrorism Branch Administrator, Correctional Programs Divisions at the Central Office of BOP. Schiavone Decl. ¶ 25.
112. Once the Central Office completes its review, the referral packet is sent to the North Central Regional Office ("NCRO"). Schiavone Decl. ¶ 25.
113. At the NCRO, the Correctional Programs Administrator, or his designee, will generate a review form that contains a summary of the CTU's referral memo. Declaration of Michael K. Nalley ("Nalley Decl.") (Ex. 3) ¶ 7.

114. The NCRO review form, along with the CTU's referral packet and memo, is then sent to personnel on the Regional Director's staff. Nalley Decl. ¶ 7.
115. The staff members are the Psychology Services Administrator, the Correctional Programs Administrator, the Correctional Services Administrator, the Executive Assistant to the Regional Director, and the Deputy Regional Director. Nalley Decl. ¶ 7. Each of these individuals then includes his or her recommendation in favor of or against designating the inmate to a CMU and any reasons supporting the recommendation in the NCRO review form. *Id.*
116. The NCRO review form, CTU referral memo and designation packet is then sent to the Regional Director for his review and a final decision about CMU placement. Nalley Decl. ¶ 8.
117. After the Regional Director reviews all these materials, he memorializes his decision about whether to approve or deny placement on the NCRO review form. *See* Designation and Re-Designation packets for Aref, Jayyousi and McGowan, Exs. A-J of Pottios Decl. (Ex. 4).
118. The Regional Director authorizes CMU placement for an inmate only where the eligibility criteria for CMU placement have been met and if, in the Regional Director's professional judgment, the inmate warrants the enhanced monitoring of the CMU. Nalley Decl. ¶ 8.
119. Once the CTU prepares a draft Notice to Inmate of Transfer to CMU, the Regional Director reviews it to ensure that it adequately summarizes the reasons for placing the inmate in the CMU. Nalley Decl. ¶ 9. If the Regional Director concludes that a notice

does not accurately summarize the reasons for placement, he will request that a change be made. *Id.*

120. In cases where the Regional Director approves CMU placement, the CTU informs BOP's Designation & Sentence and Computation Center ("DSSC"), which then coordinates the inmate's transfer to the CMU. Schiavone Decl. ¶ 26.
121. Michael K. Nalley, former NCRO Regional Director, approved the placement of Aref and Jayyousi based on their convictions and offense conduct. Nalley Decl. ¶ 10.
122. Mr. Nalley has explained that his practice was to review the NCRO review form, the CTU's referral memo as well as all the information in the designation packet before making his decision. Nalley Decl. ¶ 8.
123. Based on this review, Mr. Nalley would authorize CMU placement only if the criteria for CMU placement, had been met, *see* Dodrill memo, *supra*, and in his professional judgment the inmate required the enhanced monitoring of a CMU. Nalley Decl. ¶ 5.
124. As part of his review, Mr. Nalley's practice was to review the draft Notice to Inmate of Transfer to CMU prepared by the CTU. Nalley Decl. ¶ 9. He would review the Notice to make sure that it adequately summarized the reasons for placing the inmate in the CMU. *Id.*
125. If, as a result of Mr. Nalley's review of the draft Notice, he concluded that it did not accurately summarize the reasons for placement, he was able to request that a change be made. Nalley Decl. ¶ 9.

**Undisputed Facts Regarding Notice Provided To Inmates Placed in CMU and
Administrative Opportunities to Appeal Placement.**

126. Upon being transferred to a CMU, inmates receive a Notice of Transfer to CMU, which summarizes the factual basis for their placement in the unit. Schiavone Decl. ¶ 27; *see also* Schiavone Decl. Ex. B at BOPCMU064116.
127. The Notice of Transfer received by inmates states that they may appeal their transfer decision to the CMU, or any conditions of confinement while there, using the Bureau's Administrative Remedy Program. Schiavone Decl. ¶ 27; *see also* Schiavone Decl. Ex. B at BOPCMU064116.
128. BOP's administrative remedy procedure set out in 28 C.F.R. § 524.10 *et seq* provides formal review of any complaint which relates to any aspect of an inmate's confinement. Plumley Decl., ECF No. 47-2, ¶ 3. Pursuant to this process, inmates are encouraged to first attempt resolution of their complaints informally by discussing the matter with a member of their Unit Team. *Id.* If informal resolution is insufficient to resolve the matter, the inmate may submit a formal written Administrative Remedy Request to the Corrections Counselor for response by the Warden, on a designated form known as BP-9, within twenty days of the event that triggered the inmate's complaint. *Id.*; 28 C.F.R. § 542.14(a).
129. If an inmate is not satisfied with the Warden's response, he or she may appeal the response to the Regional Director, on a designated form known as a BP-10, within twenty calendar days of the date the Warden signed the response. Plumley Decl. ¶ 3; 28 C.F.R. § 542.15(a). If the inmate is dissatisfied with the Regional Director's response, he or she may file a national appeal, on a designated form known as a BP-11, with the Office of General Counsel (Central Office) in Washington, D.C., within thirty calendar days of the date the Regional Director signed the response. *Id.* Plumley Decl. ¶ 3.

130. As the final decision maker with respect to CMU placement, the Regional Director has the authority to grant the remedy and order the release of the inmate from a CMU.

Nalley Decl. ¶ 15.

Undisputed Facts Regarding BOP's Ongoing Review of CMU Placement.

131. BOP regularly reviews the appropriateness of an inmate's ongoing placement in a CMU. Schiavone Decl. ¶ 29.

132. BOP memorialized CMU specific review procedures in the October 2009 Dodrill memo. *See* Schiavone Decl. ¶ 29.

133. A notice with this criteria listed was placed in the CMU in 2009. *See* Ex. 26; Schiavone Decl. ¶ 19.

134. Pursuant to the procedures set forth in the 2009 Dodrill memo, BOP engages in an ongoing review of the inmate's placement and will release the inmate once it is determined that he no longer requires the enhanced monitoring of a CMU. Schiavone Decl. ¶ 29.

135. There is no minimum period of time an inmate must spend in the CMU. Schiavone Decl. ¶¶ 29.

136. The 2009 Dodrill memo explains that BOP will review the placement of inmates in a CMU at six-month "program reviews," where the inmate meets with members of his Unit Team. Schiavone Decl. ¶ 30. Inmates are provided at least 48 hours of prior notice before a program review, are expected to attend, and can raise questions and concerns with their Unit Team regarding placement in the CMU. *Id.*

137. The Dodrill memo directs the Unit Team to consider whether the inmate continues to "require the degree of monitoring and controls afforded at a CMU." Schiavone Decl.

- ¶ 31. In order to determine whether CMU placement is still necessary, the Unit Team “will consider whether the original reasons for CMU placement still exist.” *Id.* To do so, the Unit Team assess whether the inmate continues to satisfy the criteria for CMU placement. *Id.*
138. In addition, the Unit Team will also assess “whether the original rationale for CMU designation has been mitigated” and “whether the inmate no longer presents a risk” warranting CMU monitoring. Schiavone Decl. ¶ 31.
139. In cases where the inmate’s Unit Team recommends in favor of release, and the warden concurs, a written recommendation in favor of transfer (i.e., “re-designation”) is prepared by the Unit Team. Schiavone Decl. ¶ 32.
140. The Unit Team’s written recommendation also includes any comments or statements from the inmate. Schiavone Decl. ¶ 32.
141. The institution’s re-designation request is initially sent to the CTU, which is required under BOP’s procedures to prepare its own independent recommendation to the Regional Director. Schiavone Decl. Ex. D at 2.
142. The CTU follows the same review procedures used by the Unit Team (i.e., the CTU considers whether the inmate still satisfies the CMU’s criteria for placement, whether the original reasons for placement have been mitigated and whether the inmate continues to pose a risk warranting CMU monitoring) to assess whether CMU placement is still required. Smith Decl. ¶ 9.
143. The CTU then prepares a memorandum for the North Central Regional Director’s review, containing the CTU’s recommendation in favor or against releasing the inmate from a CMU. *Id.* ¶ 10.

144. The CTU re-designation memo provides background information about the inmate as well as the CTU's recommendation, including a summary of the reasons supporting the recommendation. Smith Decl. ¶ 10. Both the CTU's and the institution's recommendations, as well as a referral packet containing relevant information, are sent to the Regional Director's Office. *Id.*
145. The unit team's recommendation often focus on the inmate's institutional conduct, while the CTU is more likely to be aware of additional information regarding intelligence and/or law enforcement sensitive information. Schiavone Decl. ¶ 32.
146. After the NCRO receives the Unit Team's and CTU's separate written recommendations, as well as the re-designation packet prepared by the CTU, NCRO staff prepares a review form summarizing these recommendations. Nalley Decl. ¶ 12.
147. The NCRO review form and designation packet is then routed to members of the Regional Director's staff for their recommendation. Nalley Decl. ¶ 12. Once these staff members have completed their review and memorialized their recommendations, the NCRO review form and re-designation packet is then sent to the Regional Director. *Id.*
148. After reviewing all these materials, pursuant to the Dodrill memo, the Regional Director determines whether the inmate satisfies the CMU eligibility criteria and whether the inmate presents a security risk that warrants continued CMU monitoring. He then decides to grant or deny the re-designation request and memorializes his decision in the NCRO review form. Nalley Decl. ¶ 12.
149. If the Regional Director orders the release of the inmate from a CMU, the inmate is placed into a 6 month "step-down" process. Schiavone Decl. ¶ 33.

150. Low- and medium-security inmates are ordinarily transferred to the non-CMU general population at FCI Terre Haute or USP Marion. Miller Decl. ¶ 8.
151. High security inmates are ordinarily transferred to general population at USP Terre Haute, a high security facility. Miller Decl. ¶ 8.
152. Inmates on CMU step-down are assigned security levels that are commensurate with the stepdown unit's security level. Miller Dep. (Ex. 43) 24:13 – 22.
153. In cases where an inmate is denied re-designation from a CMU, BOP policy requires that the inmate “be notified in writing by the Unit Team of the reason(s) for continued CMU designation.” Schiavone Decl. ¶ 34; Dodrill Memo at 2.
154. As with an inmate's initial placement in the CMU, the inmate may also appeal the Regional Director's decision to deny the re-designation request by filing an administrative appeal. *See* Albright Dep. (Ex. 16) 129:10 – 130:8.
155. If the warden denies the administrative remedy, the inmate may then appeal to the NCRO. Nalley Decl. ¶ 15; Albright Dep. 66:13 – 67:15.
156. The Regional Director, as the final decision maker with respect to CMU placement decisions, then has the authority to grant the remedy and order the release of the inmate. Nalley Decl. ¶ 15.
157. Once the CMU step-down process is completed, an inmate's prior CMU placement has no impact on his security level nor any impact on where he will be housed for the duration of his sentence. Miller Decl. ¶ 8.

Undisputed Facts Concerning the Feasibility of Additional Procedures

158. A hearing and written report detailing evidence relied upon by BOP in designating inmates to the CMU could implicate sensitive law enforcement information. Schiavone

Decl. ¶ 35. This, in turn, could compromise ongoing investigations or reveal law enforcement methods and/or techniques. *Id.*

159. A pre-transfer hearing that informed inmates of their possible placement in a CMU could encourage the inmates at issue to engage in prohibited communications prior to their transfer. Schiavone Decl. ¶ 36. This is a particular concern for inmates who warrant CMU placement. *Id.*

160. The procedures used for ADX and Special Management Unit (“SMU”) hearings are not designed to assess the kind of information at issue in CMU placement decisions about whether an inmate’s communications pose a security risk warranting enhanced monitoring. Schiavone Decl. ¶ 38.

161. For example, although ADX placement involves a pre-transfer hearing by a Hearing Officer, the Officer does not have a security clearance and therefore may not have access to sensitive law enforcement or classified information that would be relevant to CMU placement. Schiavone Decl. ¶ 38.

162. In addition, unlike the trained counter terrorism officials at the CTU, the Hearing Officer is unlikely to have the background and knowledge to adequately assess all available intelligence and law enforcement information relevant to the decision about whether an inmate warrants the monitoring and controls of a CMU. Schiavone Decl. ¶ 38.

Undisputed Facts Concerning the Plaintiffs

163. Aref is serving a fifteen-year sentence for money laundering, providing material support for terrorism, conspiracy, and making a false statement to the FBI. Am. Compl., ECF No. 86, ¶ 105.

164. When transferred to a CMU in May 2007, Aref was given a Notice of Transfer citing his convictions and his offense-related communication with a terrorist organization as reasons for his designation to the CMU. Am. Compl., ECF No. 86, ¶ 111; Am. Compl., Ex. E.
165. Aref was placed in the CMU based on his terrorism conviction and offense conduct, as set forth in his sentencing documents and Presentence Investigation Report. Nalley Decl. ¶ 10.
166. Regional Director Nalley determined that, in his professional judgment, this information demonstrated that Aref's communications posed a security risk and warranted CMU monitoring. Nalley Decl. ¶ 10.
167. Aref's notice stated the following:
- Your current offenses of conviction include Providing Material Support & Resources to a Foreign Terrorist Organization, & Conspiracy to Use a Weapon of Mass Destruction. Your offense conduct included significant communication, association and assistance to Jaish-e-Mohammed (JeM), a group which has been designated as a foreign terrorist organization.
- 2007 Initial CMU Designation Packet for Aref (Pottios Decl. Ex. A) at BOPCMU002938.
168. Aref received his notice within 24 hours of arriving at the CMU. Pls.' Resp. to Defs.' Requests for Admission (Ex. 42) at 2.
169. In 2007, Aref filed an administrative remedy challenging his placement in the CMU. In response, the warden denied Aref's request to be transferred, and the Regional Director affirmed this decision. Administrative Remedy for Yassin Aref (Ex. 20) at BOPCMU 075721; BOPCMU075719. The Regional Director explained that Aref's placement was based on his conviction and offense history. *Id.* at BOPCMU075719.

170. According to Aref's PSR, he was in contact with a person whom he believed to be a member of Jaish e Mohammed ("JeM"), a terrorist organization. Presentence Investigation Report and Addendum for Yassin Aref (Pls.' Ex. 55, filed under seal).
171. Mr. Nalley has explained that the fact that Aref was in contact with an individual he believed was a member of a terrorist organization in his judgment clearly demonstrated, along with the rest of his criminal history, that Aref was a security risk. Nalley Decl. ¶ 11.
172. Pursuant to BOP's review procedures, the unit team at Marion recommended in October 2010 in favor of Aref's release from the CMU. 2010 CMU Redesignation Packet for Aref (Pottios Decl. Ex. B) at BOPCMU003294-95.
173. The CTU disagreed with the unit team's recommendation based on sensitive law enforcement reporting from the National Joint Terrorism Task Force. Pottios Decl. Ex. B at BOPCMU003292-93.
174. The Regional Director denied the re-designation request, stating that Aref should remain in the CMU "pending outcome of investigation." Pottios Decl. Ex. B at BOPCMU005014-15; *see also* Nalley Decl. ¶ 13.
175. Subsequently, in March 2011, the unit team again recommended in favor of Aref's release from the CMU. 2011 CMU Redesignation Packet for Aref (Pottios Decl. Ex. C) at BOPCMU003280-81.
176. Because law enforcement concerns had abated, the CTU agreed with this recommendation. Pottios Decl. Ex. C. at BOPCMU003290-91.

177. Staff at the North Central Regional Office similarly recommended in favor of Aref's transfer out of the CMU, and Mr. Nalley ordered his release from the CMU in March 2011. Pottios Decl. Ex. C. at BOPCMU003298; Nalley Decl. ¶ 13;
178. On April 11, 2011, Aref was transferred out of the CMU to the general population at USP Marion. Miller Decl. ¶ 15.
179. Aref is currently incarcerated at FCI Loretto in Pennsylvania. *Id.*
180. Aref has been out of the CMU for over three years. *Id.*
181. Aref remains a low-security inmate. *Id.*
182. Jayyousi was convicted of conspiracy to murder, kidnap and maim in a foreign country, and conspiracy to provide material support to terrorism. Am. Compl., ECF. No. 86, ¶ 179.
183. Jayyousi was transferred to a CMU in June 2008. Am. Compl. ¶ 189.
184. Jayyousi was placed in the CMU based on his terrorism conviction and offense history as set forth in his Presentence Investigation Report. Nalley Decl. ¶ 10.
185. The Regional Director determined, in his professional judgment, that this information demonstrated that Jayyousi's communications posed a security threat risk and warranted CMU monitoring. Nalley Decl. ¶ 10.
186. Within 24 hours of his placement, Jayyousi receive a notice of inmate transfer. Ex. 42 at 2. His notice cited his convictions for terrorism as the reason for his designation to the CMU. Am. Compl. ¶187; Am. Compl., Ex. E.
187. Specifically, Jayyousi's notice stated the following:

Your current offenses of conviction are for Conspiracy to Commit Murder in a Foreign Country; Conspiracy to Kidnap , Maim, and Torture; and Providing Material Support to a Terrorist Organization. You acted in a criminal conspiracy to raise money to support mujahideen operations and

used religious training to recruit other individuals in furtherance of criminal acts in this country as well as many countries abroad. Your offense conduct included significant communication, association and assistance to al-Qaida, a group which has been designated as a foreign terrorist organization.

2008 Initial CMU Designation Packet for Jayyousi (Pottios Decl. Ex. D) at BOPCMU003369.

188. In 2008, Jayyousi filed an administrative remedy challenging his placement in the CMU. In response, Deputy Regional Director Charles Lockett, acting in the capacity of the Regional Director of the North Central Regional Office, informed Jayyousi that his designation was deemed necessary in light of his terrorism conviction. Administrative Remedy – Kifah Jayyousi (Ex. 22) at BOPCMU75914.
189. Jayyousi has filed many more administrative remedies while incarcerated, both while in the CMU and in other units. *See, e.g.*, Jayyousi Administrative Remedies History (Ex. 25).
190. In 2010, Jayyousi requested transfer out of the CMU. The request was denied by the Warden, who described Jayyousi's offense conduct and noted that information from Jayyousi's Presentence Investigation Report "clearly defines association with terrorism." 2011 CMU Redesignation Packet for Jayyousi (Pottios Decl. Ex. E) at BOPCMU075917. Jayyousi appealed to the Regional Office, and, in response to the appeal, Charles Lockett, acting in the capacity of the Regional Director, informed Jayyousi that his continued placement in the CMU was based on the need to ensure additional monitoring of his communication as a result of his offense conduct and other verified information. Pottios Decl. Ex. E at BOPCMU 075925.

191. Lockett at times signed decisions on administrative remedies in the capacity of the Regional Director. Lockett Dep. (Ex. 15) 88:11-17.
192. On May 14, 2013, Jayyousi was transferred to the non-CMU general population at USP Marion. Miller Decl. ¶ 18.
193. Jayyousi's transfer out of the CMU was the result of BOP's periodic reviews of inmates' CMU placement. *See* 2013 CMU Redesignation Packet for Jayyousi (Pottios Decl. Attachment F) at BOPCMU067498.
194. At this time, Jayyousi's security level was temporarily increased from low to medium because USP Marion is a medium security facility. *See* Miller Dep. 24:13 – 22.
195. Jayyousi's prior CMU designation has no effect on his current security level; instead, Jayyousi has been classified as a medium security inmate due to his conviction and offense conduct associated with international terrorism. Miller Decl. ¶¶ 8, 18.
196. Once an inmate completes the CMU step-down process, the inmate's prior placement in a CMU has no impact on their security level nor any impact on where they will be housed. Miller ¶¶ 8, 18.
197. Jayyousi has been out of the CMU for over a year. Miller Decl. ¶ 18. He is currently housed at FCI Oxford, Wisconsin. *Id.*
198. McGowan was convicted of conspiracy and arson and sentenced to seven years in prison. Amend. Compl., ECF No. 83, ¶ 16.
199. McGowan was transferred to the CMU at USP Marion on August 22, 2008, and received a notice of transfer that stated that his designation was based on his crimes of conviction and offense conduct. Miller Decl. ¶ 10; 2008 Initial CMU Designation Packet for McGowan (Pottios Decl. Ex. G) at BOPCMU067482.

200. Specifically, McGowan's notice stated the following:

Your offense conduct included acts of arson, destruction of an energy facility, attempted arson, and conspiracy to commit arson. You have been identified as a member and leader in the Earth Liberation Front (ELF) and Animal Liberation Front (ALF), groups considered domestic terrorist organizations. Your offense conduct included communicating in code and teaching others how to commit crimes of arson. Your actions had the primary purpose to influence and affect the conduct of government, commerce, private business and others in the civilian population by means of force, violence, sabotage, destruction of property, intimidation and coercion. Your contact with persons in the community requires heightened controls and review.

Pottios Decl. Ex. E at BOPCMU067482. *See also* Nalley Dep. (Ex. 12) 204:25 - 205:1-4.

201. In 2008, McGowan filed an administrative remedy seeking to be transferred out of the CMU. In response, staff for the North Central Regional Office explained that McGowan's designation was based on his offense conduct and the fact that his offense conduct involved association with domestic terrorist organizations. Administrative Remedy – McGowan (Ex. 23) at BOPCMU 76020.

202. In March 2010, the unit team at USP Marion recommended that McGowan be transferred out of the CMU. 2010 CMU Redesignation Packet for McGowan (Pottios Decl. Ex. H) at BOPCMU003407-08. The CTU disagreed with this recommendation, based on sensitive law enforcement information. *Id.* at BOPCMU005030-31.

203. The Regional Director in April 2010 determined that consideration of McGowan's release from the CMU should be delayed 180 days pending new assessment of his ability to function in an open population without presenting a risk to institutional security. *Id.* at BOPCMU003419-20.

204. The unit team at USP Marion again recommended McGowan for release from the CMU in August 2010. 2010 CMU Redesignation Packet for McGowan (transfer out) (Pottios

- Decl. Ex. I) at BOPCMU003399-40. The CTU again recommended against transfer, based in part on sensitive law enforcement information. *Id.* at BOPCMU003909-10.
205. Over the objections of the CTU, Mr. Nalley determined that McGowan was appropriate for release from the CMU. *Id.* at BOPCMU003417-18.
206. During his six-month step-down from the CMU, McGowan discussed in a telephone conversation with his wife certain CTU reports that had been released without authorization and published on an Internet website. 2011 CMU Initial Designation Packet for McGowan (Pottios Decl. Ex. J) at BOPCMU005024. After McGowan's wife expressed reluctance at her ability to mail the documents to McGowan, he instructed her to circumvent BOP's mail monitoring system by given the reports to his attorney, who would then give them to McGowan. *Id.* at BOPCMU005024-25.
207. When made aware of this incident, Mr. Nalley determined that McGowan should be transferred back into the CMU. *Id.* at BOPCMU003413-14.
208. Upon being placed in the CMU a second time, McGowan received a notice of transfer stating, in part, that his placement was based on his "incarceration conduct [which] included attempts to circumvent communication monitoring policies, specifically those governing attorney-client privileged correspondence." *Id.* at BOPCMU002871.
209. In December 2012, McGowan was transferred from the CMU to a Residential Reentry Center. Miller Decl. ¶ 13. The following June, he was released from BOP custody altogether. *Id.*
210. When asked what additional documents and witnesses he would have wanted BOP to consult when considering whether to place him in a CMU, Jayyousi stated that he would want BOP to consult his "courtroom documents and the [Presentence Investigation

Report]” and speak with “the judge and probation officer who prepared the [Presentence Investigation Report].” Jayyousi Dep. 106:19 – 107:7.

211. When asked what additional documents and witnesses he would have wanted BOP to consult when considering whether to place him in a CMU, Aref stated that he was able to provide BOP with all of the information he had in the administrative remedy process. Aref Dep. 186:3-22.

Undisputed Facts Regarding Jayyousi’s Retaliation Claim

212. On August 15, 2008, beginning at approximately 12:55 p.m., a group of Muslim inmates in the Terre Haute CMU, including Jayyousi, held a prayer meeting. Memorandum from John Bair Re: Jumma Prayer (Ex. 27) at BOPCMU004901. Beginning at roughly 1:15 p.m., Jayyousi made a speech to the other inmates in attendance. *Id.*
213. This statement was recorded and has been produced to Plaintiffs as BOPCMU076343.
214. During this statement, the parties have stipulated, that Jayyousi said the following:

My brothers in this place, as you are aware, this concentrated Muslim unit, this CMU, is a prison and is not a prison. Somebody told me [*unintelligible*] somebody who had been – who is not a Muslim – who has spent 25 years in prison. He said he has never seen any place like this. This is a very unique place, and even BOP employees – some of the COs and some of the officers – wonder, “Where did this place come from?”

It’s like a place that fell from [. . .]¹. Some evil created this place because it does not belong to anything that BOP has done in its past 300 year history, and you know what’s happening here. We are being observed, you are being studied, you are being watched. Other prisons are being watched, but in this place each one of you have been brought whether your case was started with a fabrication or the reason that brought you here was the fabricator. You were brought here because you are Muslim, and we have our response to that, has to be to stand firm, to stand strong, to stand steadfast. Yes, it is a hard place. Yes, [*Arabic*]. But you have to remember, you are being tested, and you are being tested by Allah, and you have to remember you are here because you are Muslim. Not because you are a criminal.

¹ The parties have been unable to agree as to what Jayyousi said at the end of this sentence. Based on their review of the audio of Jayyousi’s August 15, 2008 statement, Plaintiffs believe that the last words of this sentence are “the sky.” See Stipulation, ECF No. 142, ¶ 6 n.1.

Always remember, don't have a prison mentality. You are not here because you are a criminal; you are here because you are a Muslim. [Arabic]. The only reason they are upset is because we are believers. We believe in Allah. Somebody who is raised with his parents – with his family brothers and sisters, going to work, a good citizen – all of a sudden is plucked out of his family, and a huge case is fabricated. They turned a few good American citizens into a criminal. Because remember you are not the target, brother Smalls, brother Abu Salah, brother Mandhai, brother Awan. You are not the target, I am not the target. It is not U.S. versus Janyousi; it is U.S. versus Islam.

You have to keep that in mind, and the reason I say that is we need to never give up our faith. Never compromise our faith, and hey, if anyone of us compromised, you wouldn't be here, right, right? Some people compromise and still they send them to prison anyway. But we have to remember to not to betray our faith. And, uh, at the end of the day, this is why. And you have to take it as it is. We are all grown men. You have to take what you are taking in life.

And, if I could, look at John McCain. John McCain is a presidential candidate, and in two months he could be our president. Where was he [unintelligible] years ago? He was being tortured in a Vietnamese prison for many years with no hope, probably, of survival and he is handicapped, he is disabled, from that torture. But what happened? He stood fast. He stayed firm. He came through. If the people of [Arabic] are doing this, shouldn't we as believers do the same?

There is a famous story of, ah, of course, Nelson Mandela. Who can forget Nelson Mandela? He, 27 years – he was offered to get out of jail twice; he refused. He was offered in '76 and '85. He went in '62 and got out in '90. Offered twice. If someone comes and offers you, "Oh, you will get out, but, hey, we would like to, uh, recruit you, or ask you to help us get more people into the CMU – entrap more Muslims, and get them in jail, tarnish the image of Islam in America." Mandela refused them. Mandela refused to get out of jail twice. He was firm, he was strong in his beliefs. These are the people of the [Arabic]. He got out and was president of that country. Before he got out of jail, the system collapsed in South Africa, the system of [unintelligible] – everybody knows what that system is.

There was another story of Admiral Jim Stockdale. Admiral Jim Stockdale was the highest ranking U.S. officer to be captured in Vietnam. He was shot down. He was a three-star general, and they tortured him for eight years. If you can imagine, he lost basically his foot. He couldn't walk on his foot anymore, but Jim – Admiral Stockdale – was very strong in his beliefs, and he was very firm in protecting his country. All of the other prisoners were – some of them were weak – but he had these couple of points that were very famous among the prisoners, ah, that, that he was with. He said that if you want to survive a very bad situation like that – and we're not being tortured here except psychologically – but if you want to survive, he said, retain faith that you will prevail at the end regardless, regardless of the circumstances and the difficulties.

Retain faith. Keep faith in your heart that you are going to overcome this. You are gonna get out of this place. You will leave that gate no matter what the difficulties are 'cause you don't control that. Allah [*unintelligible*] controls that. And here is a man of [*Arabic*] [*unintelligible*]. And then deal and face your current situation. You have to stop whining, stop crying, stop feeling sorry for yourself because that's not going to get you anywhere just [*unintelligible*]. Okay, stop worrying about your family because Allah is taking care of them. It is hard, but it's the way which Allah created us. [*Arabic*]. You are, you are going to return to your lord to meet him with your hard work and the hardships that you have faced and done in this life. This is why we martyr, but [*Arabic*]. We created the human in hardship.

Life full of hardship. From the minute you are born, you feel pain. Pain from the minute you are born. From the minute you grow teeth, you feel pain. Some doctor said the growth of the baby tooth is more than someone hitting you with a knife. You feel pain every step of the way, all the way to death. [*Arabic*]. You have to brave this life. You have to face this life and remember that no matter what happens to us [*Arabic*]. Whatever happens to us is what Allah has preordained to us – to us, not against us, [*Arabic*]. But this hardship is good for us, but we have to be patient. We have to be patient. And, finally, [*Arabic*]. Is it better for the man to be established with wealth and power or better for him to be blessed by Allah? He said he would never reach power and wealth until he [*unintelligible*]. [*Arabic*].

Stipulation, ECF No. 142, ¶ 6.

215. This speech was observed by Senior Correctional Officer Jason Noblitt. *See* Memorandum from Jason Noblitt to T. Coleman Re: Jayyousi, Kifah (Ex. 28) at BOPCMU004868.
216. Shortly after Jayyousi gave this speech, Noblitt sent CMU staff members an email alerting them to the speech. 8/15/08 Email from Jason Noblitt to F. Timothy Coleman (Ex. 29) at BOPCMU060633.
217. Noblitt stated that Jayyousi had said he wanted “his fellow Muslims in the CMU to realize that this unit is the U.S. against Muslims not U.S. against criminals,” and “that staff here, mainly [correctional officers], believe this unit was placed here by something evil and we've expressed that to them.” Ex. 29 at BOPCMU060633.

218. Later that same day, this e-mail was forwarded to a number of BOP officials, including David Schiavone, Senior Intelligence Analyst at the BOP Counter Terrorism Unit, and Leslie Smith, Chief of the Counter Terrorism Unit. 8/15/08 Email from Stewart Rowles to David Schiavone, et al, Re: Fwd: Jayyousi at THA CMU (Ex. 30) at BOPCMU060624; 8/15/08 Email from David Schiavone to Stewart Rowles, et al (Ex. 31) at BOPCMU062376.
219. Schiavone expressed concerns about Jayyousi's speech, stating that "someone should have a serious conversation with Jayyousi." Ex. 31 at BOPCMU062376.
220. On August 19, 2008, Jayyousi's speech had been transcribed, and Schiavone sent the transcript as an attachment to an email to several BOP officials, including Smith. Ex. 27 at BOPCMU004901; 8/19/08 Email from David Schiavone to Joyce Lane-Lewis, et al (Ex. 32) at BOPCMU060641; 8/19/08 Email from David Schiavone to Leslie Smith (Ex. 33) at BOPCMU067500.
221. Summarizing portions of the speech that raised concerns, Schiavone noted that Jayyousi claimed "Muslim inmates were sent to [the] CMU because they are Muslim and not criminals," that "they must stand together as Muslims in response to being sent to [the] CMU," that "cases against Muslim inmates are fabricated, intended to destroy good U.S. citizens and to tear them away from their families," that "Muslims should not compromise their faith by cooperating with the government," that "Muslim inmates in the CMU are being tortured psychologically," and that "Muslims martyr to serve Allah and meet hardships in their lives." Ex. 32 at BOPCMU060641.
222. In the attached transcript to the email, Schiavone highlighted the passages of the speech raising security concerns, which were consistent with the summary in the body of his

email. *See* Memorandum from John Bair re: Jumah Prayer (Ex. 34) at BOPCMU067504-67506 (sent as attachment to Ex. 32).

223. That same day, Brian Jett, the Warden at the Terre Haute facility, forwarded Schiavone's email to Michael Nalley, BOP's Regional Director. 8/19/08 Email from Brian Jett to Michael Nalley Re: Fwd: Jayyousi's Comments from Jumah Prayer (Ex. 35) at BOPCMU060623.
224. Warden Jett wrote that he was going to have Timothy Coleman, an Intelligence Research Specialist responsible for gathering intelligence information in the Terre Haute CMU, issue Jayyousi an incident report and that he would sanction his phone. Ex. 35 at BOPCMU060623.
225. In response to the warden's direction, on August 20, 2008, Mr. Coleman issued an incident report to Jayyousi for "encouraging a group demonstration." 8/20/08 Incident Report for Kifah Jayyousi (Ex. 36) at BOPCMU004260-61.
226. Consistent with his past practice, Mr. Coleman requested Mr. Schiavone's assistance in drafting the report. Coleman Dep. (Ex. 14) 42:2 – 44:9.
227. Mr. Coleman testified that he did so because he thought Mr. Schiavone was a good writer and that he wanted the report to be clear. *Id.* at 42:2-7.
228. The statements summarized in the incident report were consistent with those Mr. Schiavone had previously identified as areas of concern in his August 19 email. *Compare* Ex. 36 at BOPCMU004260-61 *with* Ex. 32 at BOPCMU 60641 *and* Ex. 34 at BOPCMU067504-67506.

229. The statements in the incident report were also consistent with the portions of the CTU's March 22, 2011 memorandum that discussed Jayyousi's speech. Pottios Decl. Ex. E at BOPCMU004614.
230. The UDC did not find that Jayyousi had encouraged a group demonstration. Instead, the UDC sanctioned Jayyousi for the lesser charge of "conduct which disrupts the orderly running of the institution" and ordered that his phone, visiting and email privileges be suspended for 30 days. Ex. 37 at BOPCMU004262; *see also* 11/10/08 Memo from Michael Nalley to B.R. Jett Re: Kifah Jayyousi, Register Number 39551-039, Administrative Remedy 50791-R1 (Ex. 38) at BOPCMU004263 (discussing UDC's finding).
231. Jayyousi appealed the UDC's finding by filing an administrative remedy, 10/7/08 Regional Administrative Remedy Appeal by Kifah Jayyousi (Ex. 39) at BOPCMU004258, and the Regional Director's office expunged the incident report due to a "procedural error," because the institution had not included the relevant portions of Jayyousi's transcript in the body of the report, Ex. 38 at BOPCMU004263; *see also* Schiavone (Fact) Dep. 252:13 – 253:12.
232. On December 15, 2008, Mr. Coleman then issued Jayyousi a second incident report, which included an excerpt of Jayyousi's speech. 12/15/08 Incident Report to Kifah Jayyousi re: Jumah Prayer (Ex. 40) at BOPCMU004246-47); Schiavone (Fact) Dep. 252:13 – 253:2.
233. The excerpts of the speech in the second incident report were consistent with the statements Schiavone flagged and highlighted in his August 19, 2008 email to BOP staff,

including Mr. Smith. *See* Ex. 32 at BOPCMU060641; Ex. 32 at BOPCMU067504-67506.

234. After the UDC forwarded the incident report for review to a Disciplinary Hearing Officer (“DHO”), the DHO found that the charge was not supported, writing he “did not find that any other inmates acted on the sermon which caused a disruption in the unit or at the meeting.” 1/29/09 Disciplinary Hearing Officer Report (Ex. 42) at BOPCMU004245.

235. The DHO did not make any other specific comments about the contents of the speech. Ex. 42 at BOPCMU004245.

Undisputed Facts Regarding the CTU’s March 2011 Recommendation to Keep Jayyousi in CMU

236. Jayyousi was initially designated to the Terre Haute CMU in June 2008. Pottios Decl. Ex. E at BOPCMU004618-19. On October 1, 2010, Jayyousi was transferred to the CMU at USP Marion. *Id.* at BOPCMU004610-11.

237. On February 22, 2011, as a result of a routine program review, the CMU unit manager and warden at the Marion CMU sent a memo to Mr. Nalley, recommending that Jayyousi be transferred out of the CMU based on his clear institution conduct. Pottios Decl. Ex. E at BOPCMU004610-11.

238. The institution’s recommendation was sent to the CTU. Schiavone (Fact) Dep. (Ex. 9) 218:10 – 219:18.

239. At the CTU, Mr. Schiavone drafted a memorandum for Mr. Smith’s review, which recommended that Jayyousi remain in the CMU. Schiavone (Fact) Dep. 219:8-18; *see also* Pottios Decl. Ex. E at BOPCMU004613-4615.

240. After Mr. Smith approved and signed the memorandum, it was forwarded to the Regional Director. *See* Pottios Decl. Ex. E at BOPCMU004613-14.

241. Asked why the memo included Jayyousi's statements from August 2008, Mr. Smith testified that the memo includes the chronological history of the inmate in the CMU. Smith Dep. 287:16 - 288:4.
242. The CTU's March 22, 2011 memorandum began by explaining that Jayyousi had been placed in the CMU because of his terrorism-related convictions – specifically, Conspiracy to Murder, Kidnap and Maim Persons in a Foreign Country; Conspiracy to Provide Material Support for Terrorism; and Material Support to Terrorists. Pottios Decl. Ex. E. at BOPCMU004613.
243. The memo also discussed his offense conduct, which the CTU understood to include his participation in a conspiracy to provide various forms of support, including money, physical assets and recruits, to terrorist and mujahideen groups in various overseas conflicts. Pottios Decl. Ex. E at BOPCMU004613-14. The information about Jayyousi's participation in the conspiracy was detailed in his Presentence Investigation Report. Pottios Decl. Ex. E at BOPCMU004621.
244. The CTU memo stated that Jayyousi and his co-defendants "have extensive influence to radicalize and recruit others." Pottios Decl. Ex. E at BOPCMU004614.
245. The Memorandum then discussed a portion of Jayyousi August 15, 2008 speech. The CTU's summary was based on a transcript of Jayyousi's speech prepared by a CTU intelligence analyst from an audio recording. Pottios Decl. Ex. E at BOPCMU004901-03. The CTU memorandum summarized the statements as follows:

[I]nmate Jayyousi claimed that inmates were sent to CMU because they were Muslim, and not that they were criminals. Inmate Jayyousi purported that the unit was created by something evil, and not even the staff understood or accepted the purpose of the unit. Inmate Jayyousi directed Muslim inmates to stand together in response to being sent to CMU, that Muslims should not compromise their faith by cooperating

with the government and Muslims should martyr themselves to serve Allah and meet hardships in their lives. Claiming Muslim inmates in CMU are being tortured psychologically, inmate Jayyousi further purported that criminal cases against Muslims inmates were fabricated, intended to destroy good U.S. citizens and to tear them away from their families.²

246. The CTU's summary in the March 22, 2011 memo is virtually identical to the description that Coleman used in his August 20, 2008 incident report, Ex. 36 at BOPCMU004246-47, and is also consistent with the statements Schiavone flagged as security concerns in his August 19, 2009 e-mail, *see* Ex. 32 at BOPCMU060641; Ex. 34 at BOPCMU067504-67506.
247. According to the memorandum, Jayyousi's comments "encouraged activities which would lead to a group demonstration and are detrimental to the security, good order, or discipline of the institution." Pottios Decl. Ex. E at BOPCMU004614. The memorandum also stated that Jayyousi's comments "were aimed at inciting and radicalizing the Muslim inmate population in [the Terre Haute] CMU." *Id.*
248. While the memorandum acknowledged that the CMU unit team at Marion recommended in favor of Jayyousi's release, the CTU explained that the four months Jayyousi had been at the Marion CMU was not long enough for staff there to adequately evaluate the risk posed by his communications. Pottios Decl. Ex. E at BOPCMU004614-15; Smith Dep. 262:14 - 263:17; Schiavone (Fact) Dep. 220:7-20.

² The summary of Jayyousi's August 2008 speech was identical to the description that Coleman had used in his August 20 incident – indicating that, in drafting the memorandum, Schiavone was relying on those same portions of Jayyousi's speech that he had highlighted in his August 19 e-mail and that Coleman had relied on in the incident report. Pottios Decl. Ex. E at BOPCMU004614.

249. The memo also noted that staff at the Terre Haute CMU, where Jayyousi had been housed for more than two years, had not recommended in favor of his release due to his institutional behavior. Pottios Decl. Ex. E at BOPCMU4615.
250. The CTU's memorandum concluded by referencing information received from the National Joint Terrorism Task Force's regarding Jayyousi's possible release, which was based on sensitive law enforcement information. Pottios Decl. Ex. E BOPCMU004615. Smith Decl. ¶ 13.
251. At his deposition, Mr. Smith was asked to review a transcript of Jayyousi's August 15, 2008 speech and identify any security concerns. Mr. Smith stated that Jayyousi's claim that Muslim inmates were placed in the CMU because of their religion and not for any legitimate purpose raised a security concern. Smith Dep. 280:2-10. According to Smith, this statement appeared to be an attempt to incite the inmates in an effort to further radicalize the population. *See id.*
252. Mr. Smith testified that Jayyousi's statement to inmates about "why we martyr" also raised security concerns. Smith Dep. 283:2-18. Smith stated that "[t]o me, that's a very significant statement coming from him. His ability to recruit and radicalize—he's the rock star." *Id.* at 283:5-8. Smith also described Jayyousi as "one of the more influential terrorists I have in custody," adding that "[t]his is not your average inmate." *Id.* at 258:9-14. According to Smith, "[w]hen Jayyousi is talking about [martyrdom] with his documented history," that caused him have "serious concern[s]." Smith Dep. 283:11-18.
253. Mr. Smith further testified that he would have recommended that Jayyousi remain in the CMU based on the NJTTF information alone, Smith Decl. ¶ 13; Smith Dep. 296:3-19,

300:22 - 301:22, and that this information was unrelated to Jayyousi's August 15, 2008 speech, Smith Decl. ¶ 13; Smith Dep. 288:5-13.

254. Mr. Schiavone testified that he believed Jayyousi's August 15, 2008 speech to be an attempt "to incite other inmates, to radicalize them to a like mindset." Schiavone (Fact) Dep. 230:17 – 231:2. Schiavone testified that he believed that the purpose of Jayyousi's statements were to "elevate inmate Jayyousi to a position where he would have authority among other inmates." *Id.* According to Schiavone, when an inmate "attempts to assume a position of leadership over other inmates, it's a very significant security concern" because it could lead to "circumventing the authority of the institution." *Id.*
255. Terre Haute Warden Brian Jett believed that Jayyousi's August 15, 2008 speech raised security concerns. Ex. 35 at BOPCMU60623. Jett ordered Timothy Coleman, Intelligence Research Specialist, to issue Jayyousi an incident report. *Id.*
256. Coleman testified that, based on the content of the August 15, 2008 speech, Jayyousi appeared as if he "was trying to stir the inmates up." Coleman Dep. 31:16-24. Based on his institutional experience, Coleman was concerned that Jayyousi's statements could lead to "having those inmates rise up against staff." *Id.*
257. Timothy Coleman issued Jayyousi a second incident report. 12/15/08 Incident Report for Kifah Jayyousi (Ex. 40) at BOPCMU004246-47.
258. Upon review, a Discipline Hearing Officer (DHO) concluded that the charge of encouraging a group demonstration was not supported. 1/29/09 Discipline Hearing Officer Report for Kifah Jayyousi (Ex. 41) at BOPCMU004244-45. The DHO was not asked to address Mr. Smith's concern that the speech demonstrated Jayyousi's possible

efforts to recruit and radicalize other inmates and that such a demonstration supported keeping Jayyousi in the CMU. *Id.*

259. Terre Haute CMU staff never recommended in favor of releasing Jayyousi from the CMU. Pottios Decl. Ex. E at BOPCMU004615.

Undisputed Facts Regarding The Regional Director March 2011 Decision To Deny Jayyousi's Request For Re-Designation from CMU

260. On March 23, 2011, after receiving the CTU's recommendation, accompanying designation packet as well as the recommendations of his staff, Mr. Nalley decided to retain Jayyousi in the CMU.³ Pottios Decl. Ex. E at BOPCMU004619. Nalley Dep. (Ex. 12) 183:10-22.

261. At his deposition, Mr. Nalley did not remember anything about Jayyousi's speech from August 15, 2008, or whether it played any role in his decision. Nalley Dep. 192:5 – 193:25; Nalley Decl. ¶14. Instead, he testified that “[o]nce I get and CTU says law enforcement sensitive reporting then I denied it.” Nalley Dep. 192:22-24.

262. Mr. Nalley has confirmed that sensitive law enforcement information from the NJTTF would have led to his decision to keep Jayyousi in the CMU in the absence of any additional information. Nalley Decl. ¶ 14; Nalley Dep. at 191:14 – 192:14.

263. Two years later, on March 8, 2013, the CMU's unit manager and warden again recommended that Jayyousi be transferred out of the CMU. 2013 CMU Redesignation Packet for Jayyousi (transfer out) (Pottios Decl. Ex. F) at BOPCMU067483-84; BOPCMU067479-81.

³ The packet of materials Nalley reviewed before making the decision included both the warden's and Smith's recommendation memoranda, the transcript of Jayyousi's speech, the original August 20 incident report issued in response to the speech (including the attached memorandum highlighting passages of concern), and the intelligence summary highlighting those same passages. Pottios Decl. Attachment F.

264. By this time, the law enforcements concerns relating to Jayyousi had been resolved. *See* Smith Dep. 301:3-22.
265. The CTU sent a memorandum, dated April 22, 2013, to the new Regional Director, Paul Laird, concurring with the unit team's recommendation to release Jayyousi from the CMU. Pottios Decl. Attachment F at BOPCMU067479-81.
266. The CTU's April 22 memo included the same description of Jayyousi's August 15, 2008 statements as the CTU's March 2011 memo. *Compare* Pottios Decl. Attachment F at BOPCMU067480 *with* Pottios Decl. Attachment E at BOPCMU004614.
267. The CTU's April 2013 memo was signed by Mr. Schiavone, but Mr. Schiavone consulted with Mr. Smith and Mr. Smith agreed with the recommendation. Smith Dep. 299:15 - 300:2.
268. Asked what had changed between the CTU's March 2011 memo recommending against transfer, and its April 2013 memo concurring with Jayyousi's release, Mr. Smith said it was the "[s]ensitive law enforcement information." Smith Dep. 301:2-7; Smith Decl. ¶ 13.
269. Without divulging the contents of the privileged information, Mr. Smith explained that the sensitive law enforcement issue had been resolved by the time of the CTU's 2013 recommendation, and that this change explained the difference in the CTU's position. *Id.* Smith Dep. 301:2-12; Smith Decl. ¶ 13.
270. After reviewing the CTU's memo and the comments of his staff, the new Regional Director, Paul Laird, ordered Jayyousi's release from the CMU on April 10, 2013. Pottios Decl. Attachment F at BOPCMU067498.

271. Plaintiffs will not be returned to a CMU based solely on their prior convictions and offense history. Smith Decl. ¶ 14. Indeed, BOP released the Plaintiffs from a CMU despite this history. *Id.* Therefore, some newly obtained information would have to be presented to the CTU indicating that the plaintiffs' communications pose a security risk before the CTU would consider recommending in favor of their placement back to a CMU. *Id.*

272. There are no current plans for the CTU to recommend that Aref and Jayyousi be placed back in a CMU. Smith Decl. ¶ 14.

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Respectfully submitted,

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