

COMMUNICATIONS MANAGEMENT UNITS:
COMMENTS SUBMITTED TO THE FEDERAL BUREAU OF PRISONS

BOP DOCKET #1148-P
Communication Management Units

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 center for
constitutional
rights

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Introduction



In 2006, the Federal Bureau of Prisons (BOP or “Bureau”) secretly created the Communications Management Unit (CMU), a prison unit designed to isolate and segregate certain prisoners in the federal prison system from the rest of the BOP population. Currently, there are two CMUs, one located in Terre Haute, Indiana and the other in Marion, Illinois.

Individuals detained in the CMUs are mostly Muslim and are limited in their communications and contact to the outside world. This occurs without meaningful process or any disclosure of a legitimate reason for CMU designation, but rather in retaliation for their protected religious beliefs, unpopular political views, or lawful advocacy challenging rights violations in prison.

In March 2010, the Center for Constitutional Rights (CCR) filed a federal lawsuit challenging the policies, conditions and practices of the CMUs against Attorney General Eric Holder, federal Bureau of Prisons (BOP) officials, and the BOP itself. Just one week after CCR filed its lawsuit, the BOP opened up a period for public comment around the establishment of the CMUs.

In response to the call for public comment, CCR, CMU prisoners, their family members and friends, civil rights and civil liberties groups, legal providers, psychologists, former corrections officers, environmental advocacy organizations, criminal defense attorneys, community and faith-based organizations and concerned individuals came together to urge the federal Bureau of Prisons to close the experimental prison units.

The following selection of submitted comments represents the breadth of opposition to the CMUs. A full collection of comments is available on the Bureau’s website.¹

To learn more about the comments period and CCR’s work, please visit:

<http://www.ccrjustice.org/cmu-comments>.

¹ Please see: <http://www.regulations.gov/>.

Center for Constitutional Rights



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June 2, 2010

Ms. Sarah Qureshi
Office of General Counsel
Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534

Re: BOP Docket No. 1148-P
Communications Management Units

Dear Ms. Qureshi:

The Center for Constitutional Rights (CCR) submits these comments in response to the pending Notice of Proposed Rulemaking entitled “Communication Management Units.” CCR is a non-profit legal organization dedicated to protecting and advancing the rights enshrined in the United States Constitution and the Universal Declaration of Human Rights.

INTRODUCTION

CCR has been monitoring policies and conditions at the Communications Management Units (CMUs) since the first unit was opened at FCC Terre Haute in 2006. Over the past several years, we have communicated with a majority of the 60 plus prisoners at both CMUs. In April 2010, one week before publication of the BOP’s above-referenced proposed rule, CCR and co-counsel at Weil, Gotshal, & Manges LLP, filed a lawsuit, *Aref v. Holder*, 1:10-cv-00539 (D.D.C.), in the Federal District Court for the District of Columbia on behalf of five current and former CMU prisoners, and two of their spouses. The lawsuit alleges that practices and policies at the CMUs violate procedural and substantive due process, equal protection, the prohibition on cruel and unusual punishment, and the First Amendment.

CCR submits these comments to advise the Bureau of Prisons (BOP) of the discriminatory, arbitrary, and cruel way the CMUs currently function, and to urge the BOP to fundamentally rethink its plan to continue to segregate and isolate certain prisoners without proper procedural protections. CCR also urges the BOP to immediately cease restricting CMU prisoners’ ability to meaningfully communicate with

their family and friends without individualized security justifications that are both disclosed and properly reviewed.

Under the new rule proposed by the BOP, arbitrary, discriminatory and retaliatory transfers to the CMU will continue unchecked, without procedural protections or meaningful oversight. The proposed rule will continue to unjustifiably prevent CMU prisoners from maintaining relationships with their families, to the detriment of their mental and emotional health and their prospects for rehabilitation and successful reentry into free society. Their friends and family, including their young children, will continue to suffer and be harmed. Moreover, this cruel treatment will continue to serve no legitimate security need.

I. PRISONERS DESIGNATED TO THE CMU

The five incarcerated plaintiffs in *Aref v. Holder* are representative of the dozens of men who have been sent to the CMUs over the last three years. They fall into three broad categories: 1) Muslim men of Middle Eastern descent who were designated to the CMU shortly after sentencing; 2) Muslim men who are African American and were designated to the CMU from other BOP facilities; and 3) men who have been convicted of politically-motivated offenses and have spoken out about social justice issues while incarcerated at other BOP facilities. Not one of these individuals has received any meaningful explanation of why they have been designated to the CMU, nor have they been told if and how they can earn their way out. And yet, no *Aref* plaintiff has an even moderately significant disciplinary history; indeed, not one of them has a single communications-related infraction in the past decade. These facts lead to the inescapable conclusion that they were designated to the CMUs based on discriminatory and retaliatory criteria, rather than real evidence or necessity. In the following paragraphs, we describe the *Aref* plaintiffs to provide a fuller sense of who has been designated to the CMUs.

Yassin Aref is a 39-year-old refugee and published author from Iraqi Kurdistan who fled Saddam Hussein's regime in 1999. Aref moved to Albany, New York and served as an Imam of the Masjid-As-Salam Mosque. Following a controversial and well-publicized sting operation, Mr. Aref was convicted of money laundering, material support for terrorism, conspiracy, and making a false statement to the FBI. Although Mr. Aref is classified by the BOP as a low security inmate and has never received a disciplinary infraction, he was transferred to the Terre Haute CMU shortly after his conviction in May 2007. After 22 months at the Terre Haute CMU, Mr. Aref was transferred to the Marion CMU. He is married and has four children between the ages of four and 14.

Like Mr. Aref, **Kifah Jayyousi** is a Muslim man convicted of a crime related to terrorism. He is a 48-year-old American citizen of Jordanian descent from Detroit, Michigan, a veteran of the US Navy, and a former university professor. Despite the fact that his alleged criminal conduct was restricted to financial contributions to charities, and his sentencing judge found that he ceased involvement in any criminal conspiracy in 1998, Mr. Jayyousi was convicted of conspiracy to murder, kidnap and maim in a foreign

country and conspiracy to provide material support to terrorism in August 2007, and sentenced to 12 years and eight months imprisonment. Like Mr. Aref, Mr. Jayyousi has been classified by the BOP as a low security prisoner and has no communications-related disciplinary infractions. He was, however, transferred to the CMU at Terre Haute in June 2008. He is married, and has five children; the youngest is twelve. Mr. Jayyousi's wife, Hedaya, is also a plaintiff in the case.

While Mr. Jayyousi and Mr. Aref's convictions include allegations of material support, many prisoners in the CMU were convicted of crimes that bear no connection to terrorism. Most of them, too, are Muslim. **Avon Twitty**, for example, is a 55-year-old African American man from Washington, DC. In 1984, Mr. Twitty was sentenced to 20 years to life imprisonment on one count of murder while armed and three to ten years imprisonment for one count of carrying a pistol without a license. Despite the fact that Mr. Twitty has received no communications-related disciplinary infractions – and received only very minor disciplinary infractions overall – during his time in prison, he was transferred to the Terre Haute CMU in 2007. Mr. Twitty has been given no meaningful information about why he was designated to the CMU. After over 25 years in prison, Mr. Twitty will be released to a halfway house this August. He will re-enter free society without any release preparation, as the CMU offers none.

Former CMU prisoner **Royal Jones** has also never been given an explanation as to why he was designated to the CMU. Mr. Jones is a 42-year-old man from San Francisco, and he too is a practicing Muslim. In July 2006, Mr. Jones pleaded guilty to soliciting a crime of violence (bank robbery) and a probation violation relating to an earlier gun charge, and was sentenced to 94 months in prison. Despite the fact that Mr. Jones received no major disciplinary infractions, and absolutely no communications-related disciplinary infractions, he was transferred to the CMU at USP Marion in June 2008. Mr. Jones filed a *pro se* federal lawsuit about conditions in the CMU and was promised by CMU staff that he would be transferred if he withdrew it. Several months later, after withdrawing the lawsuit, Mr. Jones became the first prisoner ever granted a non-disciplinary transfer from the CMU. He was not given any official explanation for the transfer, but told he would be transferred back to the CMU if he again engaged in the activities that led to his designation. He has, however, never been told what those activities are.

Mr. Jones' designation to the CMU seems based on his litigation and advocacy. **Daniel McGowan**, another CMU prisoner and *Aref* plaintiff, was likewise designated based on speech and protected political beliefs. Mr. McGowan is a 36-year-old man from Queens, New York. In 2007, Mr. McGowan was sentenced to 7 years imprisonment for conspiracy and arson. Although he was a model inmate at the low security prison to which he was initially designated, and never received a disciplinary infraction, he was transferred to the Marion CMU in August 2008. Mr. McGowan's imprisonment resulted from his activities when associated with the Earth Liberation Front (ELF). Although he broke off ties with ELF long ago, he has continued to speak out about social justice issues and the rights of political prisoners and to communicate with law abiding activists

involved in these movements. Mr. McGowan's wife, Jenny Synan, is also a plaintiff in the case.

The five incarcerated plaintiffs in *Aref v. Holder* are representative of the CMU population overall. Most CMU prisoners are Muslim, and those who are not hold politically unpopular views. Many of them are classified as low security prisoners, and have received little or no discipline for prison rule violations. They are all being held under unnecessarily and disproportionately restrictive conditions of confinement. Now, the BOP seeks the authority to not only continue but actually *increase* these restrictions.

II. THE PROPOSED RULE ALLOWS THE BOP TO CONTINUE ARBITRARY, DISCRIMINATORY, AND RETALIATORY DESIGNATIONS TO THE CMU.

As set out in the BOP's proposed rule, criteria for designation to the CMU is incredibly broad (*see* proposed 28 C.F.R. § 540.201 (a)-(e)). Tens of thousands of federal prisoners are presumably eligible for transfer to the CMU based on prison infractions involving communications or association with terrorist organizations. In 2006, for example, BOP categorized 19,720 inmates within the federal system as "high-risk" based on gang, international or domestic terrorist association (*see* U.S. Dep't of Justice, Off. of the Inspector Gen., THE FEDERAL BUREAU OF PRISONS' MONITORING OF MAIL FOR HIGH-RISK INMATES (Sept. 2006)). In 2009, BOP Director Harley Lappin informed Congress that the BOP has custody of 1,200 international and domestic terrorists. And over 1,774 unauthorized cell phones were confiscated from federal prison camps and secure prisons in 2008 alone.

But the proposed rule goes even further than these broad categories. Under § 540.201 (e), a prisoner can be designated to the CMU without any proven or alleged connection to terrorism, or any prison rule violation, if "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" (emphasis supplied). As the threat need only be "potential," this provision apparently knows no bounds. The strikingly broad mandate that the BOP seeks in terms of its ability to designate prisoners to the CMU is cause for deep concern, particularly given the lack of process and oversight associated with designation, and the discriminatory and retaliatory ways in which CMU designation has so far been used.

A. CMU Designation Is Made Without Disclosure of its Basis or Opportunity for Challenge.

While tens of thousands of prisoners appear eligible for CMU designation, it is impossible to discern why or how those who have actually been designated to the CMU were selected. This is because, as it currently operates, designation to the CMU neither involves nor requires documentation or a paper trail, and is without a proper review or appeal mechanism. Unlike designation to other restrictive units or prisons within the BOP, there is simply no meaningful disclosure of facts or allegations associated with

CMU assignment. The proposed rule does nothing to improve this situation or introduce any transparency into the CMU designation process.

Instead, the proposed rule sets forth broad designation criteria, and indicates that the Assistant Director of the Correctional Programs Division has the authority to approve designations (*see* proposed 28 § 540.201, 540.202(a) & (b)). However, there is no requirement in the rule that the reason for CMU designation be documented or substantiated. This is a glaring omission. Compare, for example, the BOP's regulation controlling designation to a Control Unit. 28 C.F.R. 541.40 *et seq.* There, the BOP is required to set out written criteria for the referral and selection of a prisoner. BOP regulations require that the Warden submit a recommendation to the relevant regional director, and BOP's implementing program statement requires that recommendation to be in writing, accompanied by corroborating material such as investigative reports, up-to-date mental health information, and a detailed discussion of the relevant background material. The regulation also sets out specific factors the Warden must consider in making his/her recommendation.

Once a Warden recommends a prisoner for Control Unit placement, the prisoner is provided notice of the *specific* acts and evidence that provide the basis for placement, and is invited to be present at a pre-transfer hearing, during which the prisoner may, with the assistance of a staff representative, provide documentary evidence and call witnesses. 28 C.F.R. § 541.43. At the conclusion of the hearing, the hearing administrator must prepare a written decision that summarizes the hearing and all information upon which the decision is based and indicates the reason for the decision, including any specific act and the evidence on which the decision is based. 28 C.F.R. § 541.44. The prisoner is told of the decision, and is entitled to receive the written findings, barring a security need to withhold them.

This referral, documentation, notice and hearing process is important not just to guide a Warden's discretion, but also to provide a fair explanation to the prisoner of why he/she has been designated to a Control Unit, and to give meaning to the several layers of review and appeal set out in the rule. *See* 28 C.F.R. § 541.45 (Executive Panel Review and Appeal). Where deprivations of liberty far beyond the ordinary restrictions associated with incarceration are involved, such process is absolutely critical and indeed required by governing legal standards.

By contrast, there is no process to guide the Assistant Director's discretion in making CMU designations, and no requirement that he document or substantiate his decisions in any way. The BOP's proposed rule states that each inmate "will be provided an explanation of the decision in sufficient detail, unless providing specific information would jeopardize the safety, security, or orderly operation of the facility, or protection of the public." (*See* proposed 28 C.F.R. § 540.202 (c)(4)). But in practice, CMU prisoners receive no meaningful explanation of the reason for their designation, and there is no review or appeal process in place. And even if there were a real appeals process, there would be no record to review.

With the final decision for designation in the hands of one lone bureaucrat, who need not consider any specific criteria, nor document his decision or explain the evidence he relied on, it is no wonder that designations to the CMU, thus far, have been arbitrary at best, and rife with discrimination and retaliation at worst.

Mr. Twitty's designation to the CMU is a prime example. As of April 20, 2007, BOP records indicated that Mr. Twitty was doing well. A progress report stated that he received good work performance ratings, had good rapport with staff and inmates, and was not a management problem. He had not received a prison rule violation since 2005; indeed, that 2005 infraction – for failure to stand for count – was his only infraction in his entire time in BOP custody. At the same time, however, Mr. Twitty was involved in an ongoing dispute with BOP staff, as well as active civil litigation, over missing good time credits and program documentation.

Just one month after this positive progress report, and without prior notice, Mr. Twitty was abruptly transferred to the CMU at Terre Haute. The one-page notice of transfer he received shortly thereafter explained the reason for his transfer in two terse sentences:

Your current offense of conviction is Murder While Armed, 22 USC section 2101. Reliable evidence indicates your incarceration conduct has included recruitment and radicalization efforts of other inmates through extremist, violence oriented indoctrination methods to intimidate and coerce others.

When Mr. Twitty attempted to find out what “reliable evidence” existed, and what alleged behavior was objectionable, he was told only that he could file a Freedom of Information Act (FOIA) request. When he challenged his CMU placement through the administrative remedy process, as set out in § 540.202 (c)(6) of the proposed rule, he received only the same vague and unsubstantiated language about alleged recruitment and radicalization. He filed the FOIA request, as instructed, but the few documents released included no information substantiating or explaining his designation.

While Mr. Twitty remains completely unaware of the reason for his designation, he did receive, as a result of his FOIA request, his prior Warden's written request that Mr. Twitty be designated to the CMU. The Warden's request, written one month after Mr. Twitty's positive program review, indicated, without specification, that he was a management problem involved in recruitment and radicalization. It provided no explanation of what occurred within the intervening month to turn Mr. Twitty from a model prisoner to a dangerous radical. It did, however, erroneously state that Mr. Twitty received a disciplinary report for a serious assault at a prior prison. This error, advertent or not, went uncorrected, as BOP rules require no referral packet and allow for no meaningful review of CMU placement. Mr. Twitty remains at the CMU to this day despite repeated attempts to bring this error to the attention of prison staff and continued efforts to uncover any factual predicate to his designation. He has never been told which

criteria for CMU placement he meets, who he attempted to recruit or radicalize, when, or to what ends.

Other prisoners have also been designated to the CMU based on mistaken information. Mr. McGowan, too, was a model prisoner. He served the first year of his sentence at a low security facility and received no rule violations and positive program reviews. He did, however, speak out on social justice issues. Like Mr. Twitty and all other CMU prisoners, he too was never given the chance to discuss or oppose designation to the CMU. Instead, he was transferred to the Marion CMU and, like all other CMU prisoners, *then* received a one-page notice of transfer. Mr. McGowan's notice indicates that his designation was based on, among other things, his being "identified as a member and leader in the Earth Liberation Front (ELF) and Animal Liberation Front (ALF)," and because his offense conduct included teaching others how to commit crimes of arson.

Mr. McGowan was never a "leader" of ELF or ALF, and has not been a "member" of either organization for over seven years. Nor did he teach others to commit arson. Within one week of receiving this notice, Mr. McGowan attempted to use the Administrative Remedy process to challenge his transfer to the CMU and alert BOP staff to the inaccurate information in his notice of transfer. Eventually, Mr. McGowan was told that the source of the information was his Pre-Sentence Investigation Report (PSR). However, an inspection of Mr. McGowan's PSR reveals that it includes no statement that he taught others to commit arson. It does, however, include an allegation that several *other* named individuals, but not Mr. McGowan, trained others about arson. Moreover, Mr. McGowan's PSR indicates there is *no* evidence suggesting that he played a leadership role, in contrast to three of his co-conspirators, for whom the prosecution sought role enhancements and/or characterized as leaders. Mr. McGowan's repeated attempts to bring this discrepancy to the attention of the BOP have been fruitless, and he remains in the CMU. He too, has never been told which criteria for CMU placement led to his designation.

As these individual stories exemplify, the lack of transparency in CMU designations allows for abuse and error. Because there is no meaningful disclosure involved in the process, CMU designation can be based on erroneous information or assertions, or done in retaliation for protected advocacy and beliefs. The BOP should not adopt a rule that allows for arbitrary and baseless designations to a unit that so significantly curtails a prisoner's ability to maintain ties with the outside world. This is not only unsound and defenseless policy, but policy that infringes on the constitutional rights of CMU prisoners.

B. Once Designated to the CMU, Prisoners Have No Way to Either Challenge Their Designation or Earn Their Way Out.

Compounding this situation, the BOP's proposed rule does not set out what prisoners may do to earn their way out of the CMU, nor how long designation will last. In March 2010, Mr. Jones became the first CMU prisoner to be released into general population. He was given no explanation as to why he had earned redesignation, but

believes it was based on the BOP following through on its illegal and unethical promise to transfer him if he dropped his *pro se* suit challenging the constitutionality of the unit. Mr. Jones was told that he would be designated back to the CMU if he again engaged in the conduct that landed him there in the first place, but as he has no idea what that conduct was (his notice of transfer contained an identical allegation of “recruitment and radicalization” as Mr. Twitty’s), he does not know how to avoid redesignation.

For many others, it is apparent that CMU designation will last the duration of their sentence. Mr. Jayyousi and Mr. Aref, for example, were designated to the CMU immediately after sentencing, and their notices of transfer refer only to their conviction and offense conduct (some of which was not proven at trial) as explanation for that designation. Offense conduct cannot change. Thus, Mr. Jayyousi has been informed that he will serve his entire sentence, 12 years and 8 months, in the CMU. With one stroke of the pen, a single bureaucrat has made an unreviewable decision that Mr. Jayyousi will not be able to hug his children for over a decade.

Unlike designation to a Control Unit, there is no meaningful process by which ongoing confinement at a CMU is reviewed. For several years, there was not even a pretense of process. In October 2009, an undated, unsigned Notice to Inmates was posted at both the Terre Haute and Marion CMUs, detailing a new process by which the unit team would review inmates for continued CMU placement at program reviews. The Notice indicated that inmates will be provided with 48 hours notice prior to the review, are expected to attend, and could personally raise questions and concerns with the Unit Team regarding their placement in the CMU. The proposed rule apparently refers to this process, indicating that continued designation to the CMU will be “reviewed regularly.” (See proposed 28 C.F.R. § 540.202 (c)(5)).

But this purported review process is illusory. By its own description, the process does not serve as a review of, or opportunity to contest, the original reasons individual inmates were transferred to the CMU; rather, the Notice presumes that CMU designation was initially appropriate, indicating that the Unit Team will consider whether the original reasons for CMU placement *still* exist. Because designation is based on past conduct, such as offense conduct, rather than continuing conduct, nothing can change. Moreover, CMU prisoners have no way to meaningfully contest their ongoing placement in the CMU because the allegations underlying their designation have never been disclosed or reviewed.

Contrary to the notice, but consistent with past practice, the Unit Teams at both CMUs have continued to fail to review the propriety of CMU placement at program reviews, and continue to state that the responsibility for decisions about CMU placement occur at the Central rather than facility level. Each of the *Aref* plaintiffs has attended a program review since the Notice was posted. They were not provided with any information at the review regarding which of the stated criteria led to their CMU designation, nor were they provided with factual information underlying the designation. At Mr. Aref’s last review he was explicitly told that he was categorically ineligible for a transfer until he had spent 18 months at the Marion CMU (this despite the fact he had

already spent 22 months at the Terre Haute CMU). After Mr. McGowan's last review, his unit team and Warden recommended, based on his continued good behavior, that he be approved for a transfer from the CMU. That recommendation was overruled at the regional level without explanation.

Not only, then, are prisoners designated to the CMU without transparent process, they are held there indefinitely, without any meaningful way to contest their ongoing confinement, or demonstrate that they should not have been designated, or no longer require CMU placement. Again, the BOP should not adopt a rule that allows for arbitrary or baseless designations to a highly restrictive unit, and denies prisoners any real means of seeking redesignation to general population.

III. THE CMUS BURDEN PRISONERS' ABILITY TO MAINTAIN FAMILY RELATIONSHIPS WITHOUT ANY LEGITIMATE SECURITY NEED OR PENOLOGICAL PURPOSE.

The BOP's proposed rule will, without process or review, subject prisoners to uniquely restrictive conditions of confinement. Under the rule, CMU prisoners could be:

- Limited to one 3-page, double-sided letter per week to one recipient. Prisoners in general population in the BOP, by contrast, have almost unlimited general correspondence. *See* BOP Program Statement 5265.11 - Correspondence. Even prisoners in Control Units are provided correspondence privileges in accordance with the BOP's general correspondence rules. *See* BOP Program Statement 5212.07 - Control Unit Programs.
- Limited to one 15-minute phone call per month, to immediate family only. All other general population prisoners in the federal system get 300 minutes per month to call anyone on a list of 30 approved names.
- Limited to a single one-hour visit per month, with immediate family only. These visits must be non-contact in nature. At almost all federal prisons, prisoners may receive visits on any weekday evening or weekend with anyone on their approved list. There is not a single general population unit in the federal system with a blanket ban on contact visitation.

Prisoners at the CMUs are currently allowed more communication than set out in the proposed rule. Yet even under the current rules, CMU prisoners are unable to maintain essential family ties. Current restrictions are needlessly harming both CMU prisoners and their families; further restrictions would cause irreparable damage.

Mr. Aref, for example, has four young children, ages 4, 10, 12, and 14. He has not seen his children for two years, as they found the experience of non-contact visitation too traumatizing to repeat. Although he regularly writes them letters, this means of communication does not allow him to maintain any meaningful relationship with his 4-year-old, who cannot yet read or write. Under the proposed rule, Mr. Aref could only

write to each of his children once a month, and would be unable to correspond with anyone else. Moreover, the current ban on contact visits means that Mr. Aref will next embrace his 4-year-old daughter when she is 12.

The blanket ban on physical contact during visits is not only unique within the federal prison system, it is uniquely harmful. Psychological research shows a consistent correlation between quantity and quality of touch and relationship integrity.¹ Physical contact is a basic human need essential to one's mental health, and the maintenance of close family relationships, especially those between couples, and parents and children. With respect to young children, it is the *only* means of effective association. Physical contact in the context of prison visitation is of central importance, as non-contact visitation leads to emotional stress and interferes with the positive role visitation can play in maintaining family integrity. Given the comprehensive security measures that are already in place at the CMUs, there is simply no justification for a blanket and indefinite ban on contact visits. It serves only to harm CMU prisoners, their families, and their relationships with the outside world – relationships that will be pivotal in assuring their successful transition back to society upon release.

Similarly, under current CMU rules, Mr. Aref gets just two 15 minute calls a week which he uses to speak to his four children for just a few minutes each. Telephone access at its current level makes it largely untenable to maintain meaningful family bonds. But under the new rule, Mr. Aref could only speak to each of his children once every four months. Such limited contact would completely deprive Mr. Aref of playing a meaningful role in his children's lives, and preserving this central relationship.

Mr. Jayyousi has five children, a wife with whom he is very close, and elderly parents. Since he has been imprisoned in the CMU, the lack of contact visits has led one of his sons and his parents to cease all visitation. He currently splits his limited telephone time between all eight of these close family members, and thus has inadequate time to truly maintain contact with anyone. These already damaged family relationships would be completely – and pointlessly – destroyed by the limits the BOP proposes here.

The BOP should not adopt policies regarding telephone use and visitation that needlessly and cruelly harm family integrity. To do so is counterproductive, runs contrary to sound policy favoring the maintenance of community ties, and inflicts unconstitutional harms on CMU prisoners and their families alike.

¹ See generally, Matthew J. Hertenstein, Julie Verkamp, Alyssa M. Kerestes, Rachel M. Holmes, *The Communicative Functions of Touch in Humans, Nonhuman Primates, and Rats: A Review and Synthesis of the Empirical Research*, 132 GENETIC, SOC. & GEN. PSYCHOL. MONOGRAPHS 34 (2006) (available at http://www.depauw.edu/learn/lab/publications/documents/touch/2006_Touch_The%20communicative_functions_of_touch_in_humans.pdf); see also, JUDEE K. BURGOON, DAVID B. BULLER, & W. GILL WOODALL, *NONVERBAL COMMUNICATION: THE UNSPOKEN DIALOGUE*, McGraw-Hill (1996) (arguing that people rely more heavily on nonverbal communication, especially in times of stress, because nonverbal communication preceded language in evolution of the species, and thus has phylogenetic primacy).

IV. THE PROPOSED RULE CODIFIES A UNIT THAT VIOLATES FUNDAMENTAL CONSTITUTIONAL RIGHTS.

The proposed rule, along with the current CMUs it describes, violate procedural and substantive due process, freedom of speech, association, and religion, equal protection, and the prohibition on cruel and unusual punishment. A brief analysis of some of the operative law follows.

“Prison walls do not form a barrier separating prison inmates from the protections of the Constitution.” *Turner v. Safley*, 482 U.S. 78, 84 (1987). “A prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the correctional system.” *Pell v. Procunier*, 417 U.S. 817, 822 (1974); *accord Shaw v. Murphy*, 532 U.S. 223, 228 (2001) (“incarceration does not divest prisoners of all constitutional protections”). While First Amendment rights are necessarily abridged by incarceration, they are not extinguished. Thus, the Supreme Court has consistently required prison officials to prove that a regulation which infringes on First Amendment rights has a valid, rational connection to a legitimate governmental interest. *Turner*, 482 U.S. at 89-91.

CMU restrictions are without security or penological justification. First, as there is no process to guide CMU designation, there has been no showing that any individual in the CMU poses a danger to prison security or to the outside world that is any different or greater than that posed by any other convicted prisoner. Many CMU prisoners, including all the *Aref* plaintiffs, received phone calls, contact visits, and mail privileges at prior facilities without incident.

Furthermore, although the stated purpose of the CMUs is to allow for monitoring of communication, such monitoring need not include these harsh and harmful restrictions. It is unclear for example, why CMU prisoners, alone out of all federal prisoners in general population throughout the country, should be denied contact visitation. Contact visits can be monitored and recorded just as easily as non-contact visits by requiring, for example, that the prisoner and his visitor speak audibly, and by placing a tape recorder on the table in front of them. This solution presents minimal cost to the prison, and would substantially alleviate the intense psychological pain and injury prisoners and their family members (who frequently include young children) suffer when being forced to interact with their loved ones through plexiglass, without the chance to embrace, hold hands, or kiss goodbye.

That such unique restrictions are imposed without procedural protection is equally unconstitutional. Prisoners have a liberty interest in avoiding placement in a prison unit which “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995). Where a liberty interest exists, it may not be extinguished without sufficient procedural protections.

There are only two CMUs within the entire federal prison system, and they impose upon low and medium security prisoners communication restrictions more

onerous than those in effect at the highest “max” security prison in the federal system – ADX Florence. Thus, designation to the CMU cannot be constitutionally employed without meaningful process, to ensure that designation is appropriate for each individual inmate.

The need for such process is underscored where, as here, the composition of the units strongly suggest religious profiling, religious segregation, and retaliation. Of the first 17 prisoners transferred to the Terre Haute CMU, 15 were Muslim. According to the BOP’s response to a 2009 FOIA request, 26 of 36 prisoners in the Marion CMU were classified by the BOP as Muslim (making the unit 72% Muslim). And while the BOP only reported 14 of 63 prisoners at the Terre Haute CMU as Muslim (or practicing a religion related to Islam), an October 13, 2009 letter from the Associate Director of the DOJ Office of Information Policy, placed the number of Muslim prisoners at Terre Haute at 25. According to *Aref* Plaintiffs and other CMU prisoners’ self-reporting, 24 of 40 prisoners at Terre Haute in November 2009 were Muslim. This constitutes 65% of the CMU population.

These numbers represent a vast overrepresentation of Muslim prisoners at the two CMUs when compared to the overall population of BOP facilities. Of 150,000 prisoners in BOP facilities nationwide in 2004, approximately 9,000 prisoners (or 6% of the total prisoner population) sought Islamic religious services. *See* U.S. Dep’t of Justice, Off. of the Inspector Gen., A REVIEW OF THE FEDERAL BUREAU OF PRISONS’ SELECTION OF MUSLIM RELIGIOUS SERVICE PROVIDERS (2004), at 5. This encompasses prisoners who identify as Sunni and Shiite, or are affiliated with Nation of Islam and the Moorish Science Temple of America.

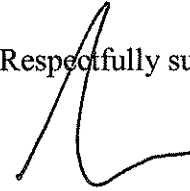
BOP statistics themselves demonstrate that the Marion CMU is 72% Muslim – a 1,200% overrepresentation compared against the national average. And reliable estimates suggest that the CMU at Terre Haute includes an overrepresentation of Muslim prisoners at a rate of over 1,000% of the national average. This discrepancy cannot be explained by any legitimate non-discriminatory reason. No Plaintiff in the *Aref* case has engaged in any behavior while incarcerated to indicate his communication requires monitoring or he otherwise poses a unique threat to prison security. Rather than being based on a legitimate and substantiated security need, their designations – and those of many Muslim prisoners at the CMUs – appear instead to be based on the discriminatory belief that Muslim prisoners are more likely than others to pose a threat to institution security. This violates the clear dictate that prison officials may not discriminate among different religions, and is troubling evidence of the forms of discrimination that can run rife when such designations are made without due process.

* * *

In sum, both current conditions at the CMU, as well as the considerably worse conditions catalogued in the above-referenced proposed rule, are ill-advised, harmful, and unnecessary. Moreover, they violate core constitutional principles and protections. We urge the BOP to abandon these overly harsh and needless regulations.

Thank you for your consideration of these comments. We would welcome the opportunity to speak with you, and we hope you will contact us to arrange a time to discuss these matters further.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alexis Agathocleous', written in a cursive style.

Alexis Agathocleous
Staff Attorney

A handwritten signature in black ink, appearing to read 'Rachel Meeropol', written in a cursive style.

Rachel Meeropol
Staff Attorney

Current and Former CMU Prisoners

Daniel G. McGowan
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Ms. Sarah Qureshi
Office of General Counsel
Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534

Re: BOP DOCKET #1148-P COMMUNICATION MANAGEMENT UNITS

Dear Ms. Qureshi:

As an individual imprisoned in the Communication Management Unit (CMU) at the United States Penitentiary at Marion, I feel a need to submit comments on the proposed rules for the CMU (BOP Docket #1148-P). Although this proposal is flawed on many levels, I will attempt to limit my comments to the extreme restrictions placed on our communication with the outside world and how they negatively impact our families. While there are numerous legal and civil rights objections to this proposal, I will leave those to be raised by the multitude of civil liberty and legal organizations.

While it is a welcome (albeit, minor) step to see the Bureau of Prisons (BOP) finally propose rules for the CMU (after operating them illegally for 3-plus years), this proposal is a huge step backward. Similar to the "Limited Communication for Terrorist Inmates" proposal (BOP Docket #1135-P) of 2006, these new rules would severely restrict the communications of prisoners in the CMU and would have a devastating impact on the wellbeing of our families.

Perusing the six page proposal, one might conclude that the BOP is proposing the creation of a new unit. However, this is not the case as there have been CMUs operating at FCI Terre Haute (Indiana) since January 2007 and at USP Marion since May 2008. As it stands; our communication is restricted in the following ways:

- Telephones: Until January 2010, we received just one 15 minute phone call a week. That number was increased to two calls a week after a lawsuit was filed by the ACLU in June 2009. Federal prisoners outside the CMU receive 300 minutes a month for phone calls—five times what we got. These calls must be scheduled one week in advance and are live-monitored by the BOP's "Counter-Terrorist Unit" (CTU) on the east coast. Maintaining healthy relationships with family is exceedingly difficult on a 15, or even two 15 minute phone calls a week. The stress of “who to call” and whether they will pick up or be home is always there.

- Visits: This is easily the cruelest and most trying aspect of life in the CMU. Unlike the majority of federal prisoners, our visits are non-contact and are behind an inch of glass. There is no embrace or holding hands; no chance at all to express your love for the people who are standing by you as you serve your sentence. The visit takes place in a dedicated room adjacent to the normal visiting room; you speak to your visitors through a phone and it is live-monitored. Despite the existence of technology that makes it easy to monitor verbal communications, the BOP insists on making our visits noncontact. Strip searches of prisoners, background checks of our visitors and searches of our visitors upon arrival make it so contact visits could easily be implemented, if the BOP saw fit to do so. It is aspects like these that have convinced me that the CMU is designed to punish and isolate the prisoners held here. Adding insult to injury, CMU prisoners receive only two four-hour visits per month. At the last prison I was held at, I was able to receive eight visits a month (roughly 56 hours). Because of this restriction, the distance of USP Marion from my residence in New York, and costs, my wife is only able to visit every five months or so. In restricting our visits in number and making them horribly uninviting, the BOP has contradicted its own policy on visits which states: "The Bureau of Prisons encourages visiting by family, friends and community groups to maintain the morale of the inmate and to develop closer relationships between the inmate and family members and others in the community." In light of the CMU, and these proposed rules, those are just empty words.
- Correspondence: Our mail is not currently limited in quantity, but all mail is scanned by unit staff and forwarded to the Counter-Terrorist Unit (CTU). There, it must be approved, and only then can it be delivered to us or our correspondents. This results in significant delays in mail delivery, especially if the letters are written in a language other than English. It is not uncommon for my wife to wait ten days to get a letter. Interesting to note is that at no point did any CMU prisoner consent to mail monitoring by the CTU nor does the Institutional Supplement for this prison or the admissions handbook mention this fact. Instead, a Freedom of Information Act (FOIA) request unearthed this secret.

These restrictions that I have noted (that are currently in place) are having a deleterious effect on CMU prisoners and especially our families and children. It is next to impossible to be meaningfully involved in the lives of our families with such restrictions. Every week, on the morning of my phone call to my wife, I set my alarm clock, write notes and ask my neighbors to remind me of my upcoming phone call. This is due to the limited number of calls and the fear that I will miss one and not speak to her for some time.

Although the phones are a logistical nightmare, the visits, by far, cause the most senseless suffering on our families. Many men in the CMU will never receive a visit from their families because they do not want to put them through the pain and frustration of seeing them behind glass. The feeling of joy I used to get from seeing my wife and being able to hug her at the start of our visit is impossible to describe. It helped us deal with the seven year sentence I am serving to be able to connect, even though we only saw each other a few times a year. This month, it will be two years since the last time I was able to hug my wife or even hold hands. It feels like torture.

There is a gulf that opens up between us and our visitors from the lack of physical contact. Men in the CMU with children have it even worse. It is impossible to explain to a small child why their father cannot hug them or why they cannot sit on his lap (when this was common at previous visits). Children blame themselves for this and suffer from a lack of contact with their fathers. Normal childhood development requires that children receive hugs, reassurances and love from their parents. The inch of glass between father and child prevents this healthy dynamic. Recently, when lamenting to a neighbor that I had not seen my wife in five months, he noted that he had not seen his children in eight years. The little girl who was learning how to crawl when he came to prison is now in 3rd grade. The little boy in grade school is graduating high school. These stories are all too common in the CMU.

Personally, I felt the brunt of these visiting and phone regulations last winter when my mother died of cancer. Diagnosed in 2007, just two weeks after I came to prison, she had been unable to visit me due to her placement on an organ donor list (requiring she not travel more than three hours from NYC). While at a low-security prison in Minnesota, I did everything I could to receive a transfer closer to home: taking classes, working as a clerk, reading and writing to friends, receiving no disciplinary violations and having my security points lowered through good behavior. I submitted a transfer request in April 2007, but just 2 weeks later I was sent to the CMU.

Unfortunately, my mother's health took a turn for the worse. She was hospitalized on Thanksgiving 2009 and passed away, with my family by her side, in December 2009. Because of my placement at a CMU, it was an uphill and bureaucratic struggle to receive an emergency phone call. Whereas it would have been a simple affair at a normal prison—with me just calling my sister who was at my mother's side or receiving a call via the chaplain—that was not the case here. Many phone calls were made by my wife and sisters to coordinate this phone call. I kept thinking the whole time, "if I was just at a normal prison, this would not be an issue," as I had seen men just walk to the chaplain's office and request a call. I finally did get a call due to my family's persistence and the intervention of an Associate Warden, but the restrictions of the CMU baffled me (and common sense) every step of the way.

In its quest to make the Communication Management Unit legal (that is, to have a codified, national policy), the BOP has chosen to radically restrict our communication, making our current restrictions seem practically lenient. Citing a need to "ensure the

safety and security of the prison and public,” the proposed rule would tighten the screws in the following manner:

- Reduce the phone calls to one a month; only to immediate family;
- Reduce written correspondence to 1three page letter a week, to and from a single recipient; and
- Reduce visits to a single, one hour, non-contact visit per month.

If implemented as is, the proposed rule will greatly exacerbate all the previous factors I have outlined and would certainly constitute cruel and unusual punishment. The mere statement that this policy is not “punitive,” as the BOP alleges, does not make sense given how the policy would impose so much additional misery on the lives of CMU prisoners and their families.

A final point I wish to make is that the new proposed rule for the CMU ignores the question of due process. This was a perfect opportunity for the BOP to afford us this valuable constitutional right. In simple terms, we should be allowed a hearing before being sent to the CMU so that we may contest the evidence being used to designate us appropriate for this unit. However, no one residing at a CMU has ever received a hearing before they were sent here, or while they were here, or been given any chance to fight the claims made in their “Notice of Transfer to the CMU.” In my circumstance, there are numerous errors on this notice that are directly contradicted by my pre-sentence report (which was created by the US Federal Court staff). If given a chance, I would have brought up this discrepancy, and also challenged my continued placement here. The proposed rule ignores constitutional due process, instead stating "Upon arrival at the CMU, inmate will receive written notification from the Warden of the facility in which the CMU exists". No hearing. No chance to contest these allegations.

Instead, the BOP reminds us that we can pursue our defense via the Administrative Remedy process—a long, cumbersome and bureaucratic process that has not resulted in any prisoner being transferred from the CMU. My many appeals to be given a hearing, to contest the fraudulent allegations made in my notice and to be transferred have all been denied. Most recently, after completing 18 months of "clear conduct," I requested a transfer and after two months, it was denied. No reason was given whatsoever, making for a perplexing situation. If I do not know why I am being held at the CMU, and I am not given a chance to counter their rationale for keeping me here, I have to assume I will serve my entire sentence here. The CMU starts to feel more and more like a Kafkaesque joke the more it is examined.

The restrictions that are in place right now in both Communication Management Units are destroying our relationships with our families and communities by making communication so limited and arduous. If these rules go forward in their proposed form, all the factors I have described will only get worse, resulting in more broken families, damaged children, and alienated and isolated prisoners.

The CMU is an experiment in social isolation, and its continued operation is an injustice. Although this was a perfect chance to propose a sensible and just policy for the CMU, the Bureau of Prisons seems stuck in the mindset of the previous administration and is choosing punishment and misery over smart prison policies.

Sincerely,

Daniel G. McGowan

June 2, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

Below, please find my comments on the proposed Communications Management Unit (CMU) regulations.

- The rule states that “designation to the CMU is not punitive.” As an inmate who spent 2 years at CMU Terre Haute, the CMU is a completely punitive environment where, without justification, inmates are deprived of proper contact (phone & visits) with their families.
- The CMU intentionally lacks educational, job training, work, recreation, and religious programming.
- The CMU even lacks an outside yard in an attempt to keep inmates indoors at all times.
- CMU Terre Haute doesn’t equate or qualify as a general population. It is a restrictive unit with an assortment of punitive measures. Even exercise and recreation activities are restricted. A recent request for a crochet class was denied even though it’s available at the regular FCI and even at ADX.
- The published rule states that “CMU inmates continue to earn sentence credit in accordance with law and Bureau policy.” This is a misleading statement. CMU inmates are deprived from earning credit for a variety of programs that are intentionally not available to the CMU. One such program is the drug program.
- Although the proposed published rule gives no hint, both CMUs (Terre Haute and Marion) have a high concentration of Muslim and Arabic inmates who were particularly selected due to their ethnic and religious background and were secretly shuttled to the CMU from various locations around the country.
- Arab/Muslim inmates at the CMU are particularly discriminated against in violation of their constitutional rights and other US and international laws.

Religious discrimination against CMU inmates targets only Muslims and includes:

- No congregation prayers
 - No designated chapel space
 - Restricting individual prayer to cell area next to toilet
 - No recognition of religion fasting (except Ramadan)
 - No Arabic language study allowed even though Arabic is the Muslim liturgical language of worship
 - No religious studies allowed
- Unlike what is published in the proposed rule that the CMU is a “general population” and non-punitive unit, the CMU lacks many programs and includes many prohibitions:
 - No library
 - No drug programs
 - No job training
 - No career counseling
 - No UNICOR jobs
 - No recreation except cards/chess
 - No education programs except GED/ESL
 - Most importantly, the CMU does not prepare inmates for release back into society. On the contrary, it is a breeding ground to radicalize inmates due to the discrimination and abuse they face because they are Muslims or Arab/Asian-Americans.
 - Under “Designation Criteria” section A or “Inmate’s Current Offense”: This is a broad and general criteria and needs to be further defined and specified. For example, despite my conviction on terrorism-related charges, the Judge determined that my last involvement was 12 years ago, so despite having no contact, communication, involvement or association related to terrorism, I am being designated to the CMU. Furthermore, this criteria means that I will spend the balance of my sentence at the CMU with no hope of a transfer to a facility closer to my family. This is arbitrary, capricious and contrary to BOP transfer policies.
 - Under Section C of “Designation Procedure,” it states that a written notice will be given to inmates after arriving at the CMU. This effectively turns the designation and transfer into a secret kidnapping of the designated inmate. This was the experience of everyone who was secretly taken to the CMU without notice or a hearing. There has to be a due process hearing to give the inmate an opportunity to challenge the designation which is usually based on bogus information proven wrong at trial.

- CMU designation review mentioned under Section C(5) is both misleading and untrue. 6-month reviews by the Unit Team are nothing but a few minutes of reviewing a computer print-out that has nothing to do with the designation. No review resulted in any re-designation or transfer since the CMU's opened. I was told by the Unit Manager that I will spend the rest of my sentence (7 years) at the CMU with no chance of transfer. My written request for transfer was summarily denied by the Warden.
- Section 540.204 phone limitations to one 15-minute call per month is draconian, arbitrary, and capricious. If an inmate violates no policies, then why is s/he and their family getting punished like that? In general population, inmates receive 300 minutes per month, that is twenty times what's proposed here. How can I communicate with my wife, 5 children and two elderly parents in one 15-minute call per month? This is unjustified punishment and discrimination.
- Section 540.205 visitation, like phone restriction, proposed non-contact visits for CMU inmates which are punitive measures for both inmates and their families. Many of these inmates enjoyed contact visits for years at other BOP facilities before being transferred to CMU. As a result, many inmates stopped getting family visits due to the restrictive visitation measures which were shocking to those who visited, especially children. The BOP already has in place policies that worked for decades and inmates at the CMU should enjoy the same visitation privileges as those in general population.
- Even ADX supermax inmates get better mail, phone and visitation than what is proposed here for CMU inmates.
- After 2 years at the CMU, I can testify that this CMU is a complete failure. Inmates are being treated as enemy combatants just because they are Muslims, and even though most of them were convicted of crimes other than terrorism, they are being treated as terrorists. This has created a poisonous environment of discrimination and bigotry tolerated by the senior administration.
- The CMUs under the proposed rules are nothing but GITMO with a different zip code. The result will be a radicalized inmate population due to the abuse and religious discrimination they experience on a daily basis. It is obvious that these CMUs and the proposed rules were thrown together as a politically-correct solution to the huge problem of terrorism without any regard to the constitution, BOP policy or US and international law.
- I suggest improving the proposed rules as follows:
 - Create a structured, transparent, open and more specific designation process
 - Avoid targeting Muslim inmates

- Provide 300 minutes of telephone calls per month, the same number of minutes available to prisoners in general population.
- Provide contact visits similar to those available to general population prisoners
- Provide a clear policy for transferring out of the CMU (even ADX and SMU inmates have transfer programs to lower facilities available)
- Train CMU BOP staff to stop current practices of discrimination
- Include in the rules clear prohibition against ethnic and religious discrimination which is currently rampant in the CMU under the cover of security and proper operation of a safe facility.
- I suggest that you visit the two CMUs, review the mountain of administrative remedy files, the current law suits and other disciplinary cases, and at least get some input from staff who were here during the previous 3.5 years.

Thank you for your consideration.

Anonymous CMU Prisoner

Royal Gene Domingo Jones, Sr.
#04935-046
USP Marion
P.O. Box 1000
Marion, IL 62959

June 2, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

Below, please find my comments on the proposed Communications Management Unit (CMU) regulations.

I was housed in the USP Marion's Communications Management Unit (CMU) for approximately two years. I am also currently a Plaintiff in the pending law suit against the Attorney General, and the Federal Bureau of Prisons Director, Harley Lappin.

I want the record to adequately reflect the truest purpose and usage of the CMU. BOP personnel have created a unit, i.e. CMU, specifically to house Muslim prisoners. The proof that this is, and was, its intended purpose can be found in the Director of the BOP, Harley Lappin's testimony before Congress in 2009 when Director Lappin specifically informed Congress that he had created two new units, i.e. CMUs, identified as "Communications Management Units," and what they were created for, i.e. monitoring inmates' communications, and for whom they were created.

Director Lappin specifically redressed a concern that surrounded activities by Muslims prisoners within the custody of the Federal Bureau of Prisons. Because certain Muslim prisoners "don't require" higher security, Director Lappin informed Congress that the CMUs were specifically created for "these individuals" instead of placing them in the Supermax ADX. [BOP 2009 Budget Hearing Before Congress]. This request for additional funds was for 9 million dollars after Congress had already given Mr. Lappin 17 million dollars for the Counterterrorist Unit in West Virginia (CTU).

It was not until complaints that the CMU was discriminatory, and specifically after a Federal Judge commented in open court that “a unit with so many Muslims in it raises some eyebrows” that suddenly Mr. Lappin’s CMU began to take on a small percentage of non-Muslims.

When complaints to the Office of the Inspector General (OIG) were filed by this writer alleging the CMU was a “terrorist unit,” which Director Lappin informed Congress it was established for, the OIG instructed Lisa Hollingsworth, Warden at the United States Penitentiary, Marion, to respond to the allegation of this “secret terrorist unit.”

In response, Mrs. Hollingsworth told the OIG that no such unit existed, and that the CMU was simply a communications unit with nothing else attached to it, and specifically no consideration of religious association was considered. However, speaking privately with Mrs. Hollingsworth shortly after her OIG response, she stated that technically I was correct in that Mr. Lappin had told Congress that the CMU was for terrorists and her response to the OIG conflicted with his to Congress... Thus Mrs. Hollingsworth’s response interfered with a Federal Investigation that was being conducted by the OIG. When this complaint was brought to the Office of General Counsel for the BOP it was ignored.

As mentioned in the pending suit, *Aref, et al, v. Holder, et al*, Case no. 10-cv-00539 (RMU), the BOP has operated under the radar since 2006. The consequence has been complaints about the CMUs have been ignored, or downplayed. Federal prisoners, including U.S. citizens, have been tucked away from the public, media, friends, family, and associates.

In some cases some prisoners have been abused, threatened and neglected all under the watchful eyes of the bureau staff. Specifically, one Muslim prisoner was allowed to cut himself up with a razor over half a dozen times. He threatened to kill himself and expressed multiple signs of depression and mental illness. BOP officials transferred him to the Supermax ADX Colorado – a place Director Lappin testified before Congress that CMU prisoners didn’t need. However, another CMU prisoner displayed mental health issues, only threatened to do harm to himself and others and was transferred to another prison to undergo psychological treatment.

A gentleman by the name of Mr. Nettles, a 71-year-old man serving 120 years also resides in the CMU. Mr. Nettles does not shower for months on end. Letters written to the U.S. Department of Health and Human Services are “lost” in the mail. Staff, those specifically running the CMU On-Site and Administration Staff, i.e., Mrs. Hollingsworth, her associate Wardens and department staff heads, are all aware of the odor of urine on Mr. Nettles and have made *no* attempts to have him transferred to an institution where he could be taken better care of. The neglect expressed toward Mr. Nettles is not just a Constitutional wrong, but a moral wrong as this gentleman is an elderly and Mrs. Hollingsworth’s lack of concern for his well being is shameful. As a matter of fact, Regional Staff and National Staff have made visits to the CMU, including Director Lappin, and have personal knowledge as to Mr. Nettles’ treatment and state.

Furthermore, the CMU operates under the guidance of the CTU, a department created by Director Lappin to monitor terrorist activities within the BOP. What the BOP has failed to mention in its notice is the scrutiny for which CTU will place private citizens under. Though the BOP announces CMU inmates will be monitored in their communications it leaves out very serious and essential information in its notice.

The BOP has failed to inform the public that the public itself will be held under a microscope if it has contact with CMU prisoners. Thus, a long-lost relative recently making contact with his CMU brother, associate, etc. has to be investigated. His record, finances, associations, politics, and travel history are all examined. This information is then saved in a data bank and that individual is now considered officially an associate with the CMU prisoner, i.e., a terrorist, or an individual who is associated with terrorist or such organizations...

The extent of the intelligence gathering conducted by the CTU is *not* mentioned in this notice posted by the BOP. The BOP hasn't informed the public that in-coming and out-going mail is scanned and then sent via email to the CTU to be processed for approval. Financial, private, and confidential information is subjected to hackers since the correspondence are not inspected at the prison.

Congress was never informed that private citizens would be placed under such scrutiny, nor is such scrutiny mentioned in the BOP's notice.

The very fact the BOP has failed to mention so many specifics regarding the scrutiny and procedures of CMU, or CTU, and has further failed to explain a reviewing process of the progress of the CMU, in conjunction with the abuse, neglect, and treatment of some prisoners in the CMU, the public should request the OIG to conclude its investigations, publish its findings, and Director Lappin should be compelled to explain more specific information to Congress about the CMU and CTU and how they *really* run. Citizens have great concerns when they are scrutinized without their knowledge.

Because the BOP refuses to allow me a live interview with the media you may contact me via mail at the address above or through my attorney, Ms. Rachel Meeropol, 212-614-6432.

I request CMUs be terminated, and they were established in a discriminatory fashion and are a very bad idea.

Sincerely,

Royal Gene Domingo Jones, Sr.

Royal Jones is a CCR Plaintiff.

Adham Hassoun
72433-004
USP / CMU Marion
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June 2, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
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Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

These are my comments and objections to the unconstitutional proposed rule 28 C.F.R. §§ 540.200-540.205 Communication Management Units:

I object to § 540.203 “Written Correspondence Limitations”: The proposed rule for general correspondence limitations violates clearly established constitutional rights, Supreme court case law, and the BOP’s own rules and regulations. *See, e.g., Bell v. Wolfish*, 441 U.S. 520 (1979); *Thornburgh v. Abbott*, 490 U.S. 401 (1989); *Turner v. Safley*, 482 U.S. 78 (1986); *Procunier v. Martinez*, 416 U.S. 396 (1973); *Pell v. Procunier*, 438 U.S. 1 (1978).

I object to § 540.203(b), “Special Mail”: Any limitations or interference with the incoming or outgoing legal mail or imposing any requirement that the inmate seal the envelope in the presence of the staff or limiting legal mail to attorney of record only or creating any new restrictions with respect to legal mail will open the door to countless lawsuits and will waste the taxpayer’s money in a rule that will surely be found by the court to be unconstitutional because the law is clearly established that an inmate has the constitutional right to send and receive legal mail without any interference by prison officials. *See, e.g., Al-min v. Smith*, 511 F.3d 1317 (11th Cir. 2008); *Jones v. Brown*, 461 F.3d 353 (3rd Cir. 2006); *Davis v. Goord*, 320 F.3d 346 (2d Cir. 2003); *Walker v. Page*, 66 Fed. Appx. 52 (7th Cir. 2003); *Merriweather v. Zamora*, 569 F.3d 307 (6th Cir. 2009).

I object to § 540.204(a), “Telephone communication limitation”: Any implementation of the proposed limitations or restrictions on the monitored telephone communications, including limiting the phone calls to immediate family members only, requiring the communication to be English only, or limiting the calls to one call a month

or one call a week, will be challenged in the court under the 1st, 5th, and 8th Amendments and equal protection clause of the 5th Amendment. The CMU inmates should be allowed 300 minutes of phone calls a month.

I object to § 540.204(b), “Unmonitored telephone communication” limitations: Any implementation of this proposed limitation or restriction on unmonitored privileged communication, including the requirement proposed that the calls be limited to the attorney of record or allowing only urgent calls to the attorney, or requiring the inmate to show an impending deadline, or establishing that visiting or correspondence is insufficient to be allowed to make a legal call will be challenged in the court because such limitations are in violation of clearly established laws.

I object to § 540.205(a), proposed limitations and restrictions in visitations for CMU inmates: Any implementation of the proposed restrictions or limitations including limiting the visits to the immediate family members, limiting the frequency and duration or regular visiting or limiting the number of visitors or limiting the visitation to non-contact visits, or requiring the visits to be conducted in English only will surely be challenged in the court as unconstitutional and will open the flood gates for lawsuits in this matter. The CMU inmates should be allowed same visitation rights and privileges as inmates in other general population facilities and contact visits must be provided.

I object to § 540.205(b), proposed limitations and restrictions on attorney-client privileged visits: Imposing any restrictions on the attorney-client privileged visits will be challenged in the courts as unconstitutional.

The proposed restrictions are unconstitutional, violate international law and the treaties of the United States, and the BOP’s own rules and regulations, and such rules will place the U.S. in the same category as so-called outlaw governments who are criticized by the U.S. government for violating prisoner rights to freedom of speech, association and religion.

Respectfully submitted,

Adham Hassoun

cc: Center for Constitutional Rights

Noureddine Malki

63740-053

CMU inmate since september 2008

**RE: BOP DOCKET#1148-P (CMU) COMMUNICATION
MANAGEMENT UNITS**

I strongly object to any proposal to legalize CMU anywhere in the US. No one deserves to live under such harsh and extreme conditions. Inmates are treated like herded sick animals quarantined away from the rest of healthy animals in the farm and placed in an isolated stable marked for euthanasia. The CMU metaphor is clearly a reminiscence of the horrible concentration camps in Nazi Germany and more recently Slavic serbia. It is also a revival of what happened to 120,000 American Japanese during World War II when they were confined in concentration camps called internment for no clear political reason other than being Americans of Japanese descent.

The allegory here is that in a civilized world CMU must be banned because it represents a sinister move towards a new trend of political discrimination and prejudice against a certain group of people. It is a new modified form of concentration camp where inmates are stranded inside a unit that is totally isolated from the rest of the general population and where their communication to the outside world is drastically reduced to two phone calls a week. This is a brutal form of dictatorship that serves only the racist ideology of those who created it on purpose to bring this country back to the era of fascism. This misconstruction of law is in fact a new fabricated political product used by demagogues to score political points. It actually has nothing to do with the fight against terrorism because some people, including myself, have never been accused or convicted of terrorism. Even though this is a remnant of one of the Bush failed policies, it is still enforced illegally with malicious intentions to legalize it. It's appalling to learn that wicked attempts to add more restrictions to an already illegal CMU is taking roots in congress. It's like adding gasoline to a raging fire.

This clear violation of due process is not only a challenge to inmates and their families, but also an insult to democracy, to the republic, and to constitutional rights. Inmates in a CMU live under the constant staffer's discretion. Complaints are normally answered with threats of retaliation. Almost all incoming legal mail is routinely checked in complete disregard to the basic law that "legal mail should be open only in the presence of inmate". Given so much power over inmates a staffer can turn inmate's life into a miserable living hell. They are given authority to control everything and cause inmates to fight, and tell on each other to gain favoritism. A staffer in bad mood can confiscate inmate's commissary purchased items and turn them into contraband at any given time without respect to CFR and Program Statements and with almost guaranteed impunity. Inmates are told that they

can leave CMU if they achieve 18 month clear-conduct rule, yet when no prohibited act is ever committed fictitious incident reports are rampant to keep inmates inside CMU.

CMU staffs enjoy air conditioners in their rooms while inmates suffer 24 hours a day from heavy-duty noisy fans in their quarters. Inmates take in more noise than needed oxygen, and have difficulties breathing and adapting to sleeplessness and lack of concentration. Under these stressful conditions an inmate can quickly snap and lose his temper, and that's exactly what a wicked staffer is waiting for. It seems as if an open competition for the employee-of-year is the motivating factors the staffs embrace to keep the pressure on. Inmates already exhausted all administrative remedies and law suits are in courts to redress grievances. This political facade of discrimination must be destroyed to preserve and protect the bill of rights because there is a general fear that not only our 8th constitutional right has been violated and largely ignored, but also the constitution itself is now at risk of being permanently defaced.

Submitted on behalf of Nouredine Malki, a CMU Prisoner, by Halima Le Ray.

Comments Submitted by Current and Former CMU Prisoners

RULES UNIT

OFFICE OF GENERAL COUNSEL

BUREAU OF PRISONS.

320 FIRST STREET, NW

WASHINGTON, D.C. 20534

RE: COMMENTS AND/OR OBJECTIONS TO THE PROPOSED
 RULE FOR "COMMUNICATION MANAGEMENT UNITS"
 BOP DOCKET # 1148-P

1. THE PROPOSED RULES ARE UNCONSTITUTIONAL AND IN VIOLATION TO RIGHTS OF THE FIRST AMENDMENT, SEE BARALDINI V. MEESE 691 F.Supp 432 (D. DC 1988) ("THE BOP POLICY WAS UNCONSTITUTIONAL BECAUSE IT PUNISHED INMATES FOR THEIR 'RADICAL POLITICAL BELIEFS AND ALLEGED ASSOCIATIONS WITH REVOLUTIONARY POLITICAL ORGANIZATIONS'").
2. THESE RULES VIOLATES THE EQUAL PROTECTION CLAUSE AND PROGRAM STATEMENTS 1040. "NON-DISCRIMINATION TOWARDS INMATES:" BECAUSE THE RULE [DOES NOT] APPLY TO OTHER INMATES WHO ARE GANG LEADERS OR MEMBERS, DRUG DEALERS, AND OTHER INMATES WHO WERE CONVICTED OF USING THE TELEPHONE OR MAIL TO FURTHER CRIMINAL ACTIVITIES BUT THEY ARE NOT ALLEGED TERRORIST INMATES.
3. THESE RULES VIOLATES THE CUSTOMARY INT'L LAW AND THE TREATIES OF THE U.S INCLUDING THE INT'L CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, STANDARD, MINIMUM RULES FOR THE TREATMENT OF PRISONERS, BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS ETC.

4. THESE RULES VIOLATES THE FIFTH AMENDMENT B/C, IT DEPRIVE THE INMATE OF THE RIGHT TO ADVANCE WRITTEN NOTICE THAT ADVISE THE INMATE OF THE SPECIFIC ACT[S] OR OTHER EVIDENCE WHICH FORMS THE BASIS FOR RECOMMENDATION THAT THE INMATE BE PLACED UNDER LIMITED COMMUNICATION. THE RIGHT TO A HEARING, BEFORE IMPARTIAL COMMITTEE TO DETERMINE WHETHER OR NOT THERE IS SUFFICIENT AND RELIABLE EVIDENCE TO SUPPORT THE PLACEMENT OF INMATE UNDER LIMITED COMMUNICATION STATUS. THE RIGHT TO PRESENT DOCUMENTARY EVIDENCE AND WITNESS AT THE HEARING, THE RIGHT TO A FULL TIME STAFF MEMBER TO REPRESENT THE INMATE IF INMATE SO DESIRE, AND OTHER NECESSARY DUE PROCESS PROCEDURAL TO PROTECT INMATE'S RIGHTS. SEE WOLFE V. McDONNELL, 418 U.S. 539 (1974)
5. THESE PROPOSED RULES ARE UNCONSTITUTIONAL BECAUSE IT GIVES THE WARDEN THE AUTHORITY TO PLACE INMATE UNDER LIMITED COMMUNICATION STATUS, BECAUSE HE/SHE DISLIKES THE INMATE'S OR DESIRES TO PUNISH HIM FOR MISCONDUCT.
6. THESE PROPOSED RULES ARE UNNECESSARY, BECAUSE THERE ARE RULES IN THE BOOK THAT PROTECT THE NATIONAL SECURITY OF THE U.S AND GIVES THE ISOP THE AUTHORITY TO PUNISH THE INMATE FOR USING OF THE TELEPHONE OR MAIL OR VISIT TO FURTHER CRIMINAL ACTIVITY. SEE:
- 28 CFR § 501.2 NATIONAL SECURITY CASES.
 - 28 CFR § 501.3 PREVENTION OF ACTS OF VIOLENCE & TERRORISM. AND
 - 28 CFR § 541.13 PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE.

7. THESE PROPOSED RULES VIOLATES THE SUPREME COURT DECISIONS
IN BELL V. WOLFISH 441 U.S. 520 (1979).

- THORNTON V. ALSTOTT 490 U.S. 401, 415 (1989)

- PROCTOR V. MARTINEZ 416 U.S. 396, 415-16 (1973)

- PELL V. PROCTOR 438 U.S. 1 (1978).

8. THESE RULES VIOLATES THE BOP RULES & REGULATIONS,

SUCH AS: 28CFR § 540.10 TO 540.25

28CFR § 540.40 TO 540.52

28CFR § 540.60 TO 540.65

28CFR § 540.70 TO 540.105 &

28CFR § 540.12

(INMATE RIGHTS AND RESPONSIBILITIES).

9. THESE PROPOSED RULES ~~ARE~~ WILL OPEN THE DOOR FOR
COUNTLESS LAW SUITS AND WILL WASTE THE TAX MONEY
IN RULES, THAT SURELY ARE UNCONSTITUTIONAL.

10. THESE PROPOSED RULES MAY VIOLATES THE 8TH AMENDMENT
BECAUSE LIMITED COMMUNICATIONS AND VISITS HELP INMATES
TO HOLD IN CHECK SOME OF THE MORBIDITY AND HOPELESSNESS
PRODUCED BY PRISON LIFE AND ISOLATION, STIMULATES THEIR
MORE NATURAL AND HUMAN IMPULSES OTHERWISE MAY
MAKE CONTRIBUTION TO BETTER MENTAL ATTITUDE AND
REFORMATION.

11. THESE PROPOSED RULES ARE AGAINST THE DIGNITY OF U.S.A,
WHO SELF-CLAIMED ACROSS THE WORLD AS A CHAMPION OF
HUMAN RIGHTS.

RESPECTFULLY,



KHALID AWAN

#50959-054

USP MARION - CMU

P.O. BOX 1000

MARION, IL 62959

N O T I C E
Comments Submitted by Current and Former CMU Prisoners
AUTHORIZED BY UNDERSIGNED TO: Post On-Line/All Forms of
Public Media and by Federal Registry in opposition

FROM: Martin Shahawar Siraj
c/o In re
"MATIN S. SIRAJ"
FCI-THA -- "CMU"
PO BOX 33
TERRE HAUTE, IN 47808

Aggrieved,

TO: SARAH QURESHI & RULES UNIT
Office of General Counsel
Bureau of Prisons
320 First Street, NW
Washington, D.C.

Respondents.

OPPOSITION TO: NEW (ALREADY ACTIVELY, UNLAWFULLY IMPOSED) BUREAU OF
PRISONS RULE DISCLOSES POLICIES AND CONDITIONS IN EXPERIMENTAL
SEGREGATION UNITS [Docket No. 1148-P] BY AFFIDAVIT

Martin Shahawar Siraj, Aggrieved, Affiant herein, does here and now affirm and attest true, correct, certain and not misleading OPPOSITION to the Federal Bureau of Prisons (BOP) Proposed Rules Action. The proposed rules [regulations] (2d attempt), [BOP Docket No. 1148-P] RIN 1120-AB48, Communication Management Units (CMU) FR/Vol. 75, No. 65/Tuesday, April 6, 2010/Proposed Rules. This opposition and demand to avert the sanction of unlawful, illegal, discriminating, punitive, and political segregation of political, religious and ethnic people for undisclosed broad based unlawful and illegal purposes patently repugnant to the Constitution for the United States of America and protections afforded the People therein and through the Bill of Rights, 1791. December 2006, BOP, after being refused acceptance of establishing CMUs and not opening it up to public debate, after publication in the Federal Register. Without lawful nor legal sanction, BOP unlawfully and illegally proceeded to open a CMU in the old condemned Death Row building within the fenced perimeter of the Federal Correctional Institution (FCI) at Terre Haute, on Indiana, initially opening with several generally low/medium classified Muslim men, with no prior due process, subjecting them with abuses of suppression of all regular, ordinary telephone, post-mail and visitation, these all punitive sanctions against liberty, with the excuse of arbitrary and capricious labeling them as "terrorists" or "international terrorists" and further subjecting them without cause to an array of abuses much too lengthy to elaborate here, ALL without any due process nor meaningful opportunity for redress of any kind whatsoever. These crimes hidden from sight, already committed against numerous people, punishing indiscriminately the prisoners, their families and their communities, BOP now seeks to legitimize unlawful, illegal, criminal abuses, where no legitimate penological interests can possibly be served by such egregious abuses, nor can the integrity of the United States of America possibly be served by such blatant human rights abuses and acceptance of tolerating civil servants being allowed to generally operate their dirty business and hidden agenda without regard for the Constitution nor legitimate constitutionally sound laws of the United States of America and the laws of the controlling states united. Thus, Aggrieved-Affiant demands and affirms:

Be it affirmed, Aggrieved-Affiant is of age of maturity, sound mind, and does freely express with firsthand experience and isolation as an aggrieved victim of the abuses of the unlawful and illegal sequester of prisoners in the old Death Row building, secreted away, isolated, without legitimate due process within the double fenced perimeter of the FCI located adjacent to 4200 Federal Road North, near Terre Haute, on Indiana, called as an obvious cover-up, erroneously, "COMMUNICATION MANAGEMENT UNIT" (CMU) [more accurately Isolation and Suppression Unit], since delivered there Aggrieved was isolated and not allowed basic opportunity for legal remedies and relief without any pre-placement due process. [Here since ___/December/2006]

Be it affirmed, Aggrieved-Affiant has firsthand experienced immediate and continuous abuses, thefts of mail, impeding mail, refusal to allow mail to refusal to allow mail as to Aggrieved-Affiant's certified record keeper, Attorney-In-Fact, and Notary Public by "Special confidential Mail" or any other mail as well as an array of all imaginable forms of censorship, none of which is related to safety, security nor orderly operation of correctional facilities nor the protection of the public. These violations entirely predicted upon falsification of records, issuing bogus "Incident Reports" where no attempts nor prohibited acts have ever occurred, further for prejudicial, political biases and reasoning, a "dirty trick" of falsification, perjury of records by BOP staff and other accomplices, to load administrative files with prejudicial falsities to justify and further the abuses of prisoners who are being profiled wrongly for religious and/or political reasons. Nothing to do with institutional interests.

Be it affirmed careful review of BOP's 6 April, C.E. 2010 publication in the Federal Registry regarding CMU exposes a clear intent to entirely abrogate all legitimate protections of law where unregulated, unidentified officers, agents, or employees of the Federal Bureau of Prisons are to be given a boundless opportunity for enforcing political, religious discrimination and further undefined abuses, proliferate retaliation and human rights violations of any prisoners, families and communities as the unilateral agendas and means to abuse perceived alternative ideologies without the inconveniences of the constraints of law, are clearly intended by the published intent. Such long-standing, time honored protections of law as the rights of freedom of speech, freedom of expression, freedom of redress of grievances, freedom from loss of life, liberty, or property without due process, freedom from cruel and unusual punishment, the array of human rights violations replete in present lawless CMUs as being operated unlawfully and illegally, and an open door to an array of abuses not necessarily identifiable at present. This, all where no clearly defined, valid penological interests can reasonably even come close to justifying such tyrannical disregard for the law.

Be it affirmed, "The rule" proposed does not clarify existing Bureau practices with respect to the unlawful, illegal secreted CMUs, but rather is broadly ambiguous, leaving wide, undefined avenues for the broad based abuses of prisoners, their families and the community at large. The publication at this time, as sound litigation is proceeding against BOP and the US Department of Justice (DOJ) for the broad array of abuses, violations of laws of the United States, the protections of the Constitution and Bill of Rights, and violations of the international treaties on Human Rights, is a bold-faced admission of past, on-going, and now intent to continue an unbridled, unlawful, illegal system of human rights abuses absolutely repugnant to any standards of law common to legitimate civilized nations. This rubbish of published ploy, a shameful, willful attempt to justify past crimes and abuses as well as to open the door for even greater crimes and abuses in the future, perhaps on an even much greater scale as the result of allowing such the credibility of acceptance by a civilized people, is a reckless disregard for the limits of law and order that have made the United States of America. The colorful though not in any way convincing excuses proffered in the scandalous publication April 6, 2010, implying such authority as requested is already in existence, as if to excuse the violations of law and civilization that have already existed the result of BOP's unlawful, illegal opening and operating of CMUs at FCI Terre Haute, and USP Marion, Illinois and is therefore somehow legitimate and should therefore be sanctioned by a responsible people and their government, that such is merely "monitoring", that such low and medium prisoners are actually "terrorists", that such a lawless, abusive confinement is common as general population, that the limits are mere necessary measures not punitive, that such is essential to maintain the safety, security and legitimate operations of BOP institutions, that such crimes and abuses somehow serve the "greater protection of the public" (?corporation, or people?), none of which can possibly excuse nor pass muster in a country where the protections of law are absolutely crucial to the life, liberty and property rights of the "free" and lawful people. What is abundantly clear is, that BOP, its profit structure, economic concerns, hidden agenda(s) and total disregard for the equal protections of law for all people, are seeking sanction in the disgraceful, shameful publication of 6 April, C.E. 2010 in the Federal Register.

Be it affirmed, the Proposed Rules Action is a serious misrepresentation of the dark facts of the devastating effects that the unlawful, illegal operation witnessed by this Aggrieved-Affiant firsthand in CMU. At Terre Haute, an elderly (73 years) man who had been safely resident serving his sentence in general population for many years, where he was receiving medical services for his heart condition, was abruptly without due process transferred to CMU, where he had no emergency button, nor any way of summoning help in the cell where he was locked in from 9:00 pm to 6:00 am, and was told he could not continue receiving crucial heart medication. David died through the night a few months later. Personnel spoke up, "If you [administration] had told us, we would have given him proper attention." A clear admission David, without any penological interests, had his life cut short for lack of proper medical attention in an unlawful, illegal abusive environment called CMU.

Be it affirmed, the CMU close confinement, actually Administrative Detention, where there are few jobs, none with any significant opportunity for meaningful earning opportunities nor rehabilitative work skills development that would aid CMU prisoners to prepare for a successful return to their community and a productive life style. This has resulted in a conflict among seven men over one job in the food service effort. As the staff and administration were well aware of the conflict developing, they did nothing to intervene, as the conflict involved at least one litigant seeking relief via litigation. Further, the peaceful unit is not conducive to the justification for the unlawful, illegal, suppressive operation of CMU, and a conflict among prisoners tends to justify special operations. Result, five men, beat down one man. The lead litigant in an ACLU lawsuit, Mr. Royer, was immediately sent out of CMU and eventually sequestered at the maximum security facility in Florence, Colorado. Five, including the victim were confined in disciplinary segregation, where one remains as of this date confined

there for over eight months of isolation, as of this writ. One was transferred to CMU, USP Marion, and Two have been released from Disciplinary Segregation and remain in CMU Terre Haute, while the last has been transferred to an SMU (Special Management Unit). All for a situation promoted by staff and administration at CMU Terre Haute to justify the unit and their coveted assignment where the men live peacefully of their own self-discipline, despite the array of serious, continuous abuses suffered since they have been unlawfully and illegally sequestered and confined in CMU.

✓ Be it affirmed, terrorists and terrorism labels perpetrated arbitrarily by BOP or other actors undisclosed and unknown, a smokescreen, cover-up libel to justify the operation of CMUs, violating the protections of due process, equal treatment under the law, the Privacy Act in particular and an array of United States laws and constitutional protections, sets up victims, saddled with these gross misrepresentations in records, discrimination as against this Aggrieved-Affiant and the array of victims discriminated against by BOP and unidentified, unknown others. These records serve to saddle the victim of such abuses with a ruthless slander certain to impede the victim in prison, and the workplace, community, transportation, and such human activities as are prejudiced by such slanderous, inflammatory, abusive labeling as calling one a "terrorist" in official records.

Be it affirmed the BOP's "Proposed Rules Action" fails to admit the description of BOPs active, though secreted practices of suppression and censorship of religious, political, lawful written and spoken communications with family, community and legal services pre-judicial, non-judicial and judicial. Such abuses, trespasses arbitrary, capricious policies with no legitimate purpose of necessarily ensuring the security, good order of BOP nor the general community.

✓ Be it affirmed, BOP substitutes force, where no regulatory authority exists to violate laws of the United States and protections of the Constitution for the United States of America and Bill of Rights. In particular an example is imposing on First Amendment protections with use of a mere commissary offering, BOP fancies as TRULINCS, a non-regulatory proffer stipulating to access to telephone, e-mails and "mailing labels". BOP refuses to allow access and use of post-office through the US Postal Service if one does not use the "mailing labels", property of TRULINCS which must be a pre-approved label (no recourse) by BOP, or unknown others making approval, effectively allowing GENSORSHIP as to whom one may send mail to, where no such requirement can legally nor lawfully be required in order to access the post-office with pre-paid/post-paid mail. This suppression, censorship, abusive scheme is a direct trespass on First Amendment protections where BOP controls unilaterally without due process nor any compelling penological necessity, access to the post-office via US Postal Service.

Be it affirmed Aggrieved-Affiant has witnessed and suffered an array of abuses, mental and physical torture as a result of having been subjected to the confinement in unlawful, illegal capricious, and often retaliatory environment for over three years operating under the pretense of CMU, and secretly known as the "Terrorist Unit" or "Counter Terrorism Unit" (CTU) and by Aggrieved and others as Guantanamo Bay Midwest. Abuses are rooted in secretly, without due process, without recourse, all victims of this abuse are labeled (libeled) with title "International Terrorist Associate"/"Terrorist" with no recourse nor review. A label that sorely injures and violates this Aggrieved and all victims at CMU, as well as our families and our communities. Abusive actions are doled out with arbitrary, capricious and retaliatory irregularity. In example:

Early on during my stay at CMU, I was having a lot of trouble with mood-swing issues. I was receiving PROZAC, which resulted in my actually having greater emotional control problems and I ended up having a conflict with another of the men in CMU. I was sanctioned with a #201 Disciplinary Code violation and sanctioned the maximum of over two months of disciplinary segregation, six months no telephone, and loss of 21 days of Good Credit Time.

Administrators and all staff are at all times violating the safety, security, good order and operations of the institution, as well as the interests of the public by their unlawful, illegal operation of their secret human rights grist-mill, CMU/CTU or whatever they choose to call it.

Be it affirmed Aggrieved-Affiant suffers constant psychological pressure, as a result, cannot get proper rest, maintain healthy habits nor focus even on simple tasks due to the constant duress and uncertainty that is leveled unlawfully, illegally and arbitrarily by administrators and staff who are operating outside of any regulatory authority under an undefined, secret scheme of activities resulting in the destruction of the human spirit and physical existence. Stress and duress exaggerated with friends and family. Never allowed to set foot off concrete floors on a blade of grass, nor outside of cages and one small building (old, condemned death row at FCI Terre Haute).

Be it affirmed this aggrieved has no rehabilitation opportunities. And due to psychological damage is unable to focus even on simple tasks of completing the GED program. At only 27 years this Aggrieved has not had the opportunity to prepare for vocational nor occupational necessities essential to functioning upon return to free society after 30 years of these inhumane abuses. This dark side of the human rights violative intent and purpose behind BOPs desire to justify and sanction CMUs or any such secret abusive situations MUST be opposed by myself and any of those people who share the planet earth and have any sense of human decency, and I and my entire family strongly oppose BOPs seedy efforts to justify gross and hideous human rights violations in CMUs or any other such secret violative environments of **torture**.

Done, NOTICED and AFFIRMED as attested true, correct, complete and not misleading as the truth, whole truth and nothing but the truth stands as stated hereinabove this ~~19th~~ day of May, 2010, and signed before witnesses hereunder "teste" where they (witnesses) know this Aggrieved-Affiant and witness the signing this same day.

Matin Shahawar Siraj
Aggrieved-Affiant in opposition

Rex Amel Dan: Jordan
teste

by: *Shela H. King*
teste *A. G. C.*

Patricia Byers
teste

-
- 1/ David Lane, age 73, Died of heart failure in CMU while locked in a cell alone all night.
- 2/ suppress, vb. To put a stop to, put down, or prohibit; to prevent (something) from being seen, heard, known, or discussed <the defendant tried to suppress the incriminating evidence>. — suppression, n. — suppressible, suppressive, adj. [Black's Law Law Dict., 8th, ed. p. 1481]
- 3/ censor, n. 1. Roman Law. (ital.) A Roman officer who acted as a census-taker, assessor, and reviewer of public morals. 2. A person who inspects publications, films, and the like for objectionable content. 3. In the armed forces, someone who reads letters and other communications and deletes material considered a security threat. — censorial, adj. — censorship, n. [Black's Law Dict, 8th, ed. p.237]

Family Members and Friends of CMU Prisoners

Jennifer Synan
Brooklyn, NY 11217

June 2, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management
Units**

To Whom It May Concern:

My husband, Daniel McGowan (#63794-053), is currently serving his seven-year sentence in the Communication Management Unit (CMU) at the United States Penitentiary in Marion, Illinois. I am writing to express my strong opposition to the extremely troubling proposed rule that was published in the Federal Register on April 6, 2010. For the last two years I have already experienced the devastating, heart-breaking effects of having a spouse in the CMU and cannot fathom how much more difficult our lives will be if the proposed rule moves forward.

As it stands, I was only able to visit my husband for a total of 20 hours in 2009. That is less than a day. I also have not been able to embrace him or even touch him for over two years. If the Bureau of Prisons (BOP) truly believes that maintaining strong ties with family and friends serves an important part in the rehabilitation of prisoners, I cannot understand how the rules of the CMU are in line with this general belief. In a statement to the United States Sentencing Commission, BOP Director Harley Lappin notes "...we know that maintaining family and community ties is very important to inmate reentry,"¹ and the BOP says on its website that it "encourages visiting to help inmates maintain morale and ties with family members, friends, and others in the community."² In addition, the proposed rule calls for the already minimal, non-contact visits to be reduced even more. It states that "the frequency and duration of regular visiting may also be limited to a one hour visit each calendar month." Yet the BOP states on their website, "By law, an inmate gets at least four hours of visiting time per month."³ Either way, the meager number of visits, as well as phone calls, that CMU prisoners are afforded and the ban on physical contact with loved ones during visits inflicts pointless suffering of the prisoners and their families alike.

¹ <http://www.ussc.gov/AGENDAS/20091119/Lappin.pdf> - Statement of Harley G. Lappin Director, Federal Bureau of Prisons before the United States Sentencing Commission Regional Hearing on the State of Federal Sentencing Western District of Texas Austin, Texas November 20, 2009

² http://www.bop.gov/inmate_programs/visiting.jsp

³ http://www.bop.gov/inmate_locator/visiting.jsp

Considering my husband had no prior infractions, communications-related or otherwise, at his previous institution (FCI Sandstone), his designation to this unit is cruel, punitive and seemingly politically motivated. He has not been told in any meaningful way why he was moved to the CMU, or what evidence was used to make that decision. There has been no hearing to challenge his designation nor is there a legitimate review process to transfer out. The CMU fails to follow any due process.

Overall, without question, the CMUs have a devastating effect on the prisoners and their families and violate basic constitutional protections.

I strongly urge the BOP to abandon this proposed rule. I truly hope the BOP will take my thoughts and concerns into account when making its decision.

Thank you for your time and consideration.

Sincerely,

Jennifer Synan

cc: Center for Constitutional Rights

STEPHEN F. DOWNS, Esq.
Selkirk, NY. 12158

May 16, 2010

To Whom It May Concern;

Below are my comments about the Communication Management Units (CMU), in response to the requests for public comments:

1. The assigning of prisoners to the CMU appears to be completely arbitrary. One of my clients, Yassin Aref, was assigned to a CMU first in Terre Haute and then in Marion Ohio, while his co-defendant Mohammed Hossain was not assigned to any CMU. Both of the defendants were convicted in a sting conducted by the FBI and neither defendant had any connection whatsoever with any terrorists. The reason given for assigning Yassin Aref to a CMU was that he provided material support for a terrorist organization – JEM. However, during the sting Aref repeatedly told the FBI informant who was secretly tape recording the conversation that he (Aref) did not know anything about JEM except what he had heard on the television. After the convictions, the government prosecutors made the following statement at a press conference about Aref:

*“Did he [Aref] actually himself engage in terrorist acts? Well we didn’t have the evidence of that, but he had the ideology... Our investigation was concerned with what he was going to do here and in order to **preempt** any, anything else, we decided to take the steps that we did take...”*

Assuming that the purpose of a CMU is to prevent prisoners from communicating with criminal elements outside the prison, there was absolutely no reason to believe that Aref knew any terrorists or would have any reason to communicate with them. His assignment to a CMU appears to have been completely arbitrary and not based on any showing that he was a threat to communicate with any bad elements.

2. The CMUs, being situated in the middle of the country, are very difficult to access from the East and West Coasts. It is very hard for families of prisoners to stay in touch with the inmates. It was impossible for the family of Aref (a wife and 4 young children) to visit him because they had no money or transportation and a drive from Albany to the CMUs and back would take a total of 4 days.

Eventually I (being one of Aref’s lawyers), drove the Aref family twice to the CMU in Terre Haute. However, the case manager was very uncooperative and made visits very difficult. On one occasion, I drove the children 2 days to see their father, and less than

one hour into a 4 hour scheduled visitation (through a Plexiglas window and on a telephone) the guards abruptly terminated the visit because they claimed I had brought a secret recording device into the visit – a pen. This was the kind of petty vindictive harassment that the guards at Terre Haute used to discourage visits. (By contrast, the guards at Marion were considerate and helpful)

3. The CMUs appear to have been designed to prevent communication with the outside world rather than manage it. The one telephone call a week is very difficult for families to adjust to. Children have school, and parents have to work or tend the house. It is hard for the whole family to be present at the allotted time when the inmate calls. Then all of the business of the family has to be discussed in 15 minutes. This is virtually impossible in a large family with many children. Inevitably some of the children are left out and their concerns are not heard. This is devastating to them. Inmates are placed in the position of having to either call their families, or other persons who are important in their lives. For example, if the business of the family requires that the husband (inmate) call a friend to ask for help on some family issue, the family must forgo the next weekly call, and it will take 2 weeks to get an answer, assuming that the inmate was able to get through to his friend. This puts a great burden on the families of the inmates.

4. The CMUs actively discourage visits by friends of the inmates. In the case of Aref, the only persons who have ever been approved for visits are two of the lawyers who represented him (myself and Kathy Manley). None of the many people who knew him before he was convicted have been approved, and none of the many people who have come to know him after he was convicted have been approved. The decision seems arbitrary and although many people have written to the CMU, sometimes repeatedly, there has never been a change in this policy. As a result there is a great deal of pressure on the two lawyers to provide some visitation for the family, although as pointed out, the guards at Terre Haute went out of their way to cut short one of the visits in an obvious attempt to discourage any visits at all.

5. Finally it should be noted that most of the inmates assigned to the CMUs are Muslims who have been preemptively prosecuted by the government because of suspicions that they might engage in criminal acts in the future. The preemptive program by its very nature (convicting Muslims of contrived crimes to preempt them from possibly committing real crimes in the future), is illegal, and results in many innocent Muslims being sent to jail for long periods of time. There is something extraordinarily cynical about locking innocent Muslims up in a CMU to try to convince the public that these people are real terrorists. The government well knows that most of them are not real terrorists at all, and were convicted of contrived crimes only because the government was suspicious that they might become involved in criminal activity in the future. The idea of treating a religious minority in such an illegal and discriminatory manner is shocking to anyone who believes in the Bill of Rights.

The CMUs as presently established and administered, are illegally established, and serve no purpose except to scare the American public into believing that the government has caught many real terrorists. They are arbitrary, vindictive and harsh, discriminate against a religious minority (Muslims), and are a disgrace to the American system of justice.

Sincerely,

Stephen F. Downs

Susan G. Synan
Kingwood, Texas 77339

May 30, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

Dear Sir:

I felt it was important to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, **and I am upset** by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

Below are some of the following issues that are not only of concern to me, but are very unsettling.

The first issue of lack of due process is very upsetting to me in that it has to do with injustice. Pursuing justice is what our country stands for. This is very bothersome for me. I don't believe this is the way our legal system should work. **I don't see the pursuit of justice around these issues, but I do believe things can change. Hopefully, letters like these will bring about positive change and renew our faith in our Country's pursuit of justice.**

***Lack of due process at the CMU:** None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*

Overrepresentation of Muslim and political prisoners at the CMU: Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

This next issue is also critical in importance. The extreme limits on visits for family members, especially spouses, is so unnatural. The concept that a spouse cannot even touch hands or experience a brief hug seems so unhealthy and cruel. Humans need some physical contact to maintain some shred of emotional balance. Verbal contact is also vital to normal balance. Ideally, prisoners returning to society, have had some rehabilitation. I think this type of isolation and extreme limits negatively affects rehabilitation and certainly hurts the family unit now and later. ***The family unit is the backbone of our society.***

Destructive effect of the CMU on families: The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones including children during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.

Conditions at the CMU amount to cruel and unusual punishment: The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Susan G. Synan

cc: Center for Constitutional Rights

Please do not implement the proposed restrictions of communications at the Communications Management Units. Please consider eliminating the Communications Management Units altogether.

The proposed restrictions should not be implemented for these reasons:

- ***The fundamental illogic of the new regulations:*** *Communications restrictions were relaxed at the beginning of 2010. The proposed new regulations reduce communications even below the restrictions of 2009. There have been no actions or incidents that would suggest that the 2010 practices are inappropriate and need to be rolled back. In light of the changes for 2010, the proposed new regulations simply do not make any logical sense.*
- ***Lack of due process at the CMU:*** *None of the CMU prisoners have been told why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*
- ***Destructive effect of the CMU on families:*** *The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.*
- ***Conditions at the CMU amount to cruel and unusual punishment:*** *The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

-Joe Synan

May 26, 2010

Ms. Sarah Qureshi
Rules Unit
Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

Dear Ms. Qureshi:

We are writing to express our concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. Our father, Kifah Jayyousi, was transferred to the CMU at Terre Haute in June 2007. We have not hugged him since.

Here are our comments for your consideration.

* * *

A DESCRIPTION OF WHAT IT'S LIKE TO VISIT MY DAD:

The air is sticky and hot. The room is small and claustrophobic. The object that separates me and my father is a thick, voice absorbing glass window. I hold the cold, black telephone to my ear as I listen to my father telling me that everything will be okay. But the thing that hurts the most is that I can hear him but I can never touch him. I haven't hugged, kissed, or held my dad since December of 2007. Not even on Eid, the Islamic holiday. But only because they claim "they don't have enough security." Even I know that that is so low. Why would a father, especially mine, harm his daughter in any way? I only talk to him once a week for 3 minutes and when I hear his voice I forget everything, but only because I know I have a limited time to talk to my *own* father. I remember everything the second I hand the phone to my sister. I recently won first place in science fair in the entire 9th grade, but I couldn't call him to tell him when I wanted to, I had to wait until the next call. Do I get to contact him when I want to? Yes, I can email him, but only when I know my email will reach him in more than 2 days. Before, when my father was in the FDC in Florida, we only got 2 hours of visitation. You think that's worse? No, it isn't, but only because I got to hold his hand and hug him the entire time we were there. I also got to buy snacks from the vending machines close by and share it with him. My best memories are the ones when I got to sit with him, and taste the sweet chocolate on my lips that he was also enjoying at the same time. This experience has shattered my life especially that I am a teenager. I usually went to him with my hard

Math problems, and now I cannot even take my homework with me because it is “too dangerous.” If the visiting room is that small, I wonder how small my dad’s cell is. We have to travel for 7 hours, in an uncomfortable car ride, just to see my dad for 4 hours. What does that tell you? We tried to move him here but they refused. The look on his face and the look on mine, take one look and you’d know what we have been through. Do you want to know what the worst sound I have ever heard is? The sound of the officers keys rattling as he tells us that our time is over on visitation days. I want to sit in my dad’s lap again and I want his warm smile to be visible, not checkered with the lines that are on the glass window. I was a young child when I first went to court, I don’t want to be an old teenager when I see my dad suffer like the way he does everyday.

A POEM I WROTE ABOUT MY EXPERIENCES

Remembering

I remember.

The way you swung me on your back and ran across the living room.

The way you and I went to the gym and worked out together.

The way you helped me with all my homework.

The way we sat together pretzel style on the carpet.

The way you were proud of me everyday.

The way your grin stretches wide across your face.

The way you were always there when I needed you.

The way your barbeque tasted the best.

The way you ate all the leftovers.

The way your hug was the last touch I felt before I went to sleep.

I remember.

When I sat in court and watched you the whole time.

When they told you you couldn’t turn around and smile at your own daughters.

When you had to wear the black tracker on your ankle.

When it beeped every time you sat pretzel style on the carpet.

When it always seemed like you were saying goodbye.

When your hugs seemed like they were your last.

When I thought you were going to downtown Miami on a regular court day.

When the hug you gave me before you left was actually your last.

When I noticed the look of pain flash in your eyes for a second.

When I found out you weren’t coming back.

When Mom held your briefcase and you weren’t standing beside her.

When I realized you were gone.

When they stole you away.

I remember.

-Sara Jayyousi

* * *

**A COMPARISON OF WHAT IT WAS LIKE TO VISIT MY FATHER
WHEN WE HAD CONTACT VISITS AS COMPARED TO NOW THAT HE'S AT THE CMU**

I walk into the visitation room and see my dad, I run and hug him, and sit down with him and talk for a while, when I'm hungry, I ask my mom for money and we go to the vending machines located right in front of our table, I get chips for my dad, and soda for myself. I hurry back to the table and give my dad his soda, we eat and tell each other jokes, and when I need to use the bathroom, I can just simply walk across the room to the restrooms located 3 tables down from our table. The heating and air conditioning environment is perfect. It's never too hot, or never too cold, the tables are big and the chairs are comfortable, just keep in mind that this is maximum security...

I walk into the room seeing my dad; I sit down on the small, thin uncomfortable chair. With the lack of air, I feel like falling on the floor. In the summer, the room is hotter than it is outside, and in the winter, it's freezing. The only way to hear my dad behind the glass is with one phone, everyone gets a 5 minute turn using the phone because of the time limit for the visit. When someone needs to use the bathroom, the visit is over, and when someone is hungry, they have to deal with it, I find myself getting up and walking around because of the uncomfortable chair. Four ants are scanning the floor, and five cobwebs are in the corners of the room. The room is about the size of an average bathroom; the only reason that keeps us from complaining to my dad is that we want him to know that no matter what, we are happy, and we are okay. Keep in mind that this is a minimum security.

-Maryam Jayyousi

* * *

We thank you for your consideration of our above stated comments.

Sincerely,

Sara and Maryam Jayyousi
Daughters of CMU inmate, Kifah Jayyousi

cc: Center for Constitutional Rights

Sarah Jayyousi
Carlsbad, CA 92009

May 29, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

My brother has been a prisoner and I have only been able to speak with him once per year. His phone calls are very limited and he wants to stay in touch with his wife, children and parents, and has not been able to call me due to the limit placed on the phone calls. My young nieces ranging in age from middle school to high school children are forced to see their father behind a glass and are unable to hold his hands, hug him or kiss him goodbye. This is truly an injustice and punishment of family members and innocent children.

***Lack of due process at the CMU:** None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*

***Overrepresentation of Muslim and political prisoners at the CMU:** Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim.*

Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

***Destructive effect of the CMU on families:** The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.*

***Conditions at the CMU amount to cruel and unusual punishment:** The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Sarah Jayyousi
Carlsbad, CA 92009

cc: Center for Constitutional Rights

Dr. Abdolhamid Karimi
Carlsbad, CA 92009

May 29, 2010

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Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

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I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

My brother in law has been a prisoner and I have not been able to speak with him for several years. His phone calls are very limited and he wants to stay in touch with his wife, children and parents, and has not been able to call me or my wife due to the limit placed on the phone calls. His young children are forced to see their father behind a glass and are unable to hold his hands, hug him or kiss him goodbye. They are only able to visit him infrequently due to the limitations on visitations. This is truly an injustice and punishment of family members and innocent children. My wife is very saddened not only by the loss of her brother, but also by not having phone contacts with him, and by watching his wife and children suffer. This is truly cruel and unconstitutional.

As a psychologist, I learned that punishment is most effective when it is applied in moderation. When punishment is too strong, it is more likely to produce undesirable behavior. Treating the prisoners harshly, violating their constitutional rights, and punishing their family members will not produce any positive results and will create a whole system of injustice.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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Sincerely,

Dr. Abdolhamid Karimi
Carlsbad, CA 92009

cc: Center for Constitutional Rights

Wael Jayyousi
Detroit, MI 48209

May 29, 2010

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Bureau of Prisons (BOP)
320 First Street, NW
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I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

My son has been a prisoner and I have had extremely limited contacts with him. Phone calls are very limited and I have not been able to see him for years due to distance and also due to my health condition. Because of my physical limitations, I am unable to travel and phone calls are the only contacts I have with him. Further limiting the phone contacts puts a strain on the family and negatively impacts our emotional health. It's important that we maintain regular phone contacts to help us maintain a good relationship, and assure him of our health condition. Please reconsider the proposal to further limit our contacts. I am in my 70s and emotionally suffer because of the situation with my son. Please help us maintain our phone contacts as we both desperately need to stay in touch.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Wael Jayyousi

cc: Center for Constitutional Rights

Istiklal Ameri
Detroit, MI 48209

May 29, 2010

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I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

My son has been a prisoner and I have had extremely limited contacts with him. I have been in and out of the hospital for several weeks and have been too weak to visit him. I have not seen him in years and rely on phone calls to help me stay in touch with him. I am in my 60s and physically weak and my heart aches due to not seeing my son and having very infrequent contact with him. I am also unable to use Email system and I have not learned to use the computer. Phone calls are the only contacts I have with my son and even those are very limited. He also has to stay in touch with his children and wife and because of the limitations on phone calls I get to speak with him very infrequently. Please reconsider the limitations on visitations with his family and phone calls as it is crucial for the family to stay in regular contact with him. Please consider my request as it comes from the heart and it is the humane thing to do. I desperately miss my son and need to have contacts with him to emotionally support him and to assure him that I am alive and well.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU

designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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Sabrina Jayyousi
Detroit, MI 48209

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I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

My brother has been a prisoner for several years and I desperately miss him. I have not been able to visit him due to the long distance and due to having responsibilities as a single mother and as a primary care taker for my sick parents. Phone calls are the only contacts I have with him and I need those to stay in touch with him and make sure that he is in good health. I also use the phone calls to assure him that his sick parents are being well taken care of by me. Please reconsider this proposal to limit the phone call. It is important for families to stay in touch and it is the humane thing to do. It is unnecessary to place undue hardship on the family by further limiting the few phone calls that we have. Please consider my request and help families stay in touch.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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Sabrine Jayyousi

cc: Center for Constitutional Rights

Thaer Jayyousi
Detroit, MI 48209

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My brother has been a prisoner for several years and I desperately miss him. I have not been able to visit him frequently due to the long distance and my responsibilities in care taking for our sick parents. My parents have not been able to visit due to their failing health and we rely on his phone calls to help us stay in touch. Please reconsider the proposal to further limit the phone calls and visitations. It is very important for the family to stay in contact with him to provide him with emotional support, and to assure him of our well being. Please do the humane thing and allow the phone calls to be consistent along with the visitation. Thank you for considering this request and for doing the right thing to keep families together and in regular contact with each other.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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Sincerely,

Thaer Jayyousi

cc: Center for Constitutional Rights

Halima Le Ray - MALKI

92700 Colombes

France.

May, the 24th 2010

Rules Unit, Office of General Counsel

Bureau of Prisons (BOP)

320 First Street, NW

Washington, DC 20534

Re: BOP Docket #1148-P

Communication Management Units

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I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

My brother Nouredine Malki 63740-053 is unjustly in jail since 2005. He is in the Marion super max jail. He is innocent and I am sure of it, He is open minded he served America during Iraq war and saved American soldiers lives. He was first at NY where we could with my sister visit him once a year. Since he is at Marion, he is allowed to give one call a week to his wife. He has no visit. He is already under sever restriction, He is considered as terrorist or murderer when he can have the same right as general population until his case is over.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

Overrepresentation of Muslim and political prisoners at the CMU: Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

Destructive effect of the CMU on families: The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.

Conditions at the CMU amount to cruel and unusual punishment: The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Halima Le Ray MALKI

May 25, 2010

Rules Unit
Office of General Counsel
Bureau of Prisons
320 First St, NW
Washington DC 20534

Subject: BOP Docket No. 1148-P

We write in opposition to the Proposed Rule Making.

The Proposed Rule Making states, §540.202 (c) (3), “Designation to the CMU is not punitive”. Any time an inmate is moved from a less restrictive environment to a more restrictive environment the action, by definition, is punitive in nature and is subject to the due process procedures set forth at 28 CFR 541. Identifying the movement from less restrictive to more restrictive as being punitive is already codified at §541.40 as is the due process required at §541.43

The Proposed Rule Making at §540.202 (c) (4), requires that inmates be “provided an explanation in sufficient detail, unless providing specific information would jeopardize the safety, security, or orderly operation of the facility, or protection of the public”. None of the inmates have been told why they were designated to the CMU so the exception cited above must be routinely used to deny an explanation of the designation. At §540.202 (c) (6), the inmate is given the opportunity to challenge the CMU designation decision, and any aspect of confinement therein, through the Bureau’s administrative remedy program. If an inmate is given no reason for designation the the CMU how can the inmate present any meaningful challenge to the designation? This clearly deprives the inmate of the right to due process.

Seven specific instances from 1987 through 2005 are cited as justifying the proposed draconian restrictions on Written correspondence; Telephone communication; and Visiting set forth at Proposed §540.203 through §540.205. These examples would have us believe that all inmates designated to or housed in CMU’s are intent on plotting grave crimes or waging jihad to change the world order. This one size fits all approach ignores the fact that many of the crimes committed by CMU inmates occurred long ago and the inmates committed no further crimes. The use of these examples suggests that the Bureau of Prisons has none involving present inmates of CMU’s in spite of the liberal communication opportunities that currently exist. None of the examples cited to support the proposed rulemaking involved physical contact visits with a spouse or minor children. They will needlessly tear families apart as well as inflicting pointless suffering on both inmates and their families. These limitations fail to take into account that the inmates in

CMU's are not serving life sentences but will return to their families and communities. The proposed restrictions will create yet another unnecessary and difficult adjustment process. These restrictions, for this category of inmate, may well be interpreted as being in violation of the 8th Amendment to the U.S. Constitution.

The criteria for selecting inmates for designation to a CMU are remarkably similar to those set forth at §541 Subpart D - Control Unit Programs. So similar in fact that the CMU appears to be a specialized form of Control Unit designed in a manner to deny due process to inmates designated to a CMU. There are only three significant differences between them:

- 1) The inmate not being told why the designation to a CMU is being made.
- 2) The lack of due process afforded inmates designated to a CMU compared to carefully defined due process for inmates designated to a Control Unit.
- 3) The much greater restriction on Correspondence and Visiting imposed upon inmates in the CMU compared to those in Control Units.

For all of the reasons set forth above, if The Bureau of Prisons is to continue operating Communication Management Units it must afford all inmates presently assigned to a CMU the full due process required by 28 CFR 541 for inmates designated to a Control Unit including valid reasons for greater restrictions on Written correspondence; Telephone communication and Visiting tailored to each individual inmate's circumstances. Should the Bureau of Prisons decline to do this, the CMU's must be abolished and all inmates currently housed in CMU's must be returned to the custody level they were in prior to their designation to a CMU.

Sincerely,

D. John Luers

Judy A. Luers

Brad Taylor
NY, NY 10036

May 17, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To whom it may concern:

I'm writing to comment on the proposed escalation of anti-inmate rules to be instituted at the unwise and inhumane "Communications Management Units" of the federal prison system. My friend Daniel McGowan is held – and singled out for extraordinary punishment - at the CMU at Marion, Ill. The CMUs punish inmates by depriving them of privileges available to other inmates of federal prisons. My comments come, in part, out of my concern for Daniel's well-being, but of even graver concern is the unfairness to all CMU-segregated inmates, driven, as it is, by bigotry and animus.

Daniel, like other prisoners scapegoated to the infamous CMUs, has never been informed, practically or legally, by the BOP, as to why he has been singled out for punitive abuse – a clear denial of Constitutionally guaranteed due process. Like other CMU inmates, Daniel's privileges of visitation, telephone time, correspondence and literature are harshly reduced and proposed BOP regulations would intensify these deprivations cruelly and toward no practical purpose whatsoever. Like other CMU inmates, Daniel is prohibited from ever physically touching his family, friends, loved-ones during visits – a reprehensible and malicious form of persecution – again, devoid of practical purpose.

But unlike 70% of CMU prisoners, Daniel is a non-Muslim white American. That Daniel is being singled out for persecution because of hatred for his political views held by leadership in the BOP or elsewhere in the criminal justice system, and that his and other whites' confinement in CMUs functions largely to deflect public criticism of the CMUs as racist, xenophobic and bigoted with regard to religion appears certain – since Daniel has never been disciplined for any untoward activities in prison. There is no basis in deed for particular abuse. And the large majority of the prisoners in the CMUs, both in Marion and in Terre Haute, are Muslim people of color, a fact irreconcilable with the demographic prevalence of these communities in society and with these peoples' broad profiles as moral and upright citizens – no less, or more, than anyone else.

Daniel is in prison following his acceptance of a plea deal connected to alleged involvement in a project to destroy dangerously harmful genetically-modified cash crops to protect the environment. He shouldn't be in prison at all. For him to be singled out,

castigated and attacked in ways that harm not only him, but everyone in his family, is intolerable and wrong.

Imprisonment in a CMU is cruel and unusual punishment in the most classical sense. These facilities are fundamentally unconstitutional and should be abolished immediately – for reasons of the most basic societal sanity and decency, but also because they produce not the slightest benefit in terms of public safety, or any other good whatsoever to justify their existence. An escalation of the inhuman and horrible repression in these units must, urgently, be stopped.

Respectfully,

Brad Taylor – father, family member, business owner, media producer, citizen

Cc: Center for Constitutional Rights

Lack of due process at the CMU: None of the CMU prisoners have been told why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

- **Destructive effect of the CMU on families:** The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.
- **Conditions at the CMU amount to cruel and unusual punishment:** The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.
- **No consideration for good behavior and complying with the existing communication rules at the CMU.**

There is absolutely no recognition and rewards for a CMU's good behavior and following the rules.

And in summary. these conditions have unjustifiably interfered with the men's ability to maintain relationships with their loved ones – relationships that are the key to their successful transition back to society. **The CMU COMMUNICATION PRACTICES ARE IMMORAL, MIS-QUIDED AND ILLEGAL.**

Please make appropriate changes ASAP.

Sincerely,

Michael D. Burke
San Antonio, TX 78209

Jenny Esquivel
Sacramento, CA

May 27, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern,

I am writing in regards to the proposed regulations for Communications Management Units within the BOP (BOP Docket No. 1148-P). It is perhaps telling that these regulations are being proposed now - after the CMUs have been in existence for more than three years – less than one month after a lawsuit concerning the CMUs was filed against the Attorney General and the BOP itself. The BOP's last-minute effort to legitimize these illegal units is an absurd spectacle of trying to save face. Unfortunately, the BOP seems to be attempting to use this as an opportunity to make the outrageous restrictions already placed on prisoners even more draconian.

There are numerous problems with the CMUs, many of which are currently being litigated. These include things like the lack of due process within the CMUs, the overrepresentation of Muslim and political prisoners at the CMUs, and the conditions those living within the CMUs must endure (which amount to cruel and unusual punishment). Due process is supposedly a basic tenet of our legal system. By denying people within the CMUs any hearings to challenge their designation to a CMU, or refusing to show them any evidence on which that decision was based, is antithetical to the very system the BOP was purportedly designed to enforce. Perhaps in a further cruel, paradoxical twist many of the folks caged at the CMUs are there for political transgressions. If being thrown in an illegal prison without due process and then being forcibly cut off from everyone you love doesn't make one question the integrity of a political system, I'm not quite sure what will.

The overrepresentation of Muslim and political prisoners at the CMUs is incredibly alarming. The BOP claims that one's placement at the CMU is not in and of itself punitive. But these claims are laughable when one examines the makeup of the population at the CMUs. The proposal states that "Past behaviors of terrorist inmates provide sufficient grounds to suggest a substantial risk that they may inspire or incite terrorist-related activity, especially if communicated to groups willing to engage in or to provide equipment or logistics to facilitate terrorist-related activity." The BOP already monitors communications between inmates and the community. There is no reason to

create separate units with inhumane regulations to “protect” the public. This is a clear attempt to silence voices within specific political movements (including voices pushing for change within the prison system) – voices that carry the dangerous power to “inspire.”

As someone who has a loved one in prison, the piece of the CMU puzzle that I feel the most in my gut are the restrictions on communications with family and friends. It is hard enough for people in prison to maintain meaningful human connections with people on the outside. These are the kinds of connections that the BOP itself has long held up as key to a prisoner's “successful” transition back into society. The regulations in place now at CMUs destroy the last threads holding together families and friends. The new regulations the BOP is proposing are even worse. These regulations would effectively cut off all communication between the prisoners and their loved ones. How does one choose between a phone call to a son, or a phone call to a daughter? Or a dying mother? These are the kinds of choices that destroy a person's sanity – or their humanity. This is the very definition of cruelty.

Let's not get too mired in the details here. The bottom line is, these units are not only an affront to civil liberties, they defy what it means to be human. They strip human beings of their chances for human connection, to be close to the people they love. They destroy families. They destroy people.

It is my sincerest wish that not only will this new proposal be denied, but that the CMUs which are already in existence will be abolished.

Sincerely,
Jenny Esquivel

My husband Zvonko Busic (a Croatian Catholic) was one of the first prisoners to be sent to the CMU unit, in December 2008. At the time, he was the only non-Muslim prisoner, so it was obvious that he was sent only to avoid lawsuits for religious discrimination within the BOP, as he had been a model inmate in his previous institution and, in the staff's opinion, did not deserve to have been transferred. In fact, they were shocked. He arrived there from Allenwood, where we had had contact visits in a large visiting room, could speak in his native language, Croatian, and had ample time to speak on the telephone as well. (I live in Croatia, so this was important)

In the CMU, we were not allowed any physical contact whatsoever, and everything written was censored, as well as everything spoken (only English). He was therefore unable to speak to or receive mail from his family, none of whom knew English. We had fifteen minutes a week to speak on the phone, so were unable to accomplish anything whatsoever except to exchange a few terse greetings.

It was a horrendous experience, on every level. First, there was no security concern justifying these conditions; second, it was enhanced punishment without any due process whatsoever; third, it was totally arbitrary. Some who might have belonged there were not there, and others who didn't were. The criteria were inexplicable.

Fortunately, my husband was finally released, after 32 years, after being held two years longer than was legal in our case, and was able to rejoin his family. I am a writer, so I decided to write about what it meant to be separated under such conditions, to wait for a loved one's return, to have every word censored, etc. My second book, "Your Blood and Mine" is composed of letters written to him, comments to the censor, etc....

Julienne Eden Busic

Rules Unit, Office of General Counsel
Bureau of Prisons
320 First Street, NW
Washington, DC 20534

May 5, 2010

RE: BOP DOCKET #1148-P COMMUNICATION MANAGEMENT UNITS

I am writing to express my disapproval of the Communications Management Units (CMUs) that the Bureau of Prisons has quietly established in the federal prison system beginning four years ago.

Most of the people consigned to these CMUs are Muslim, out of proportion to the general prison population, indicating a racial bias to this system. There is a lack of due process -- people are not told why they are being sent to the CMU, and there is no meaningful review process to make a case for their transfer out of the CMU.

The person I know who is imprisoned in a CMU has only just been able to increase his phone calls to twice a week and his personal visits to twice a month. How can someone maintain family ties and a necessary social network with such limited contact (which, again, represents an *increase* from his original allotment)? Furthermore, physical contact is completely banned, which is detrimental to the prisoner's well-being while serving no security-related purpose.

In the analysis of the Center for Constitutional Rights, "Many CMU prisoners have neither significant disciplinary records nor any communications-related infractions. However, bias, political scapegoating, religious profiling and racism keep them locked inside these special units."

It has come time for these secretive and unjustifiable units -- which are really embodiments of cruel and unusual punishment -- to be dismantled.

Sincerely,
Anonymous

May 17, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons
320 First Street, NW.
Washington, D.C. 20534

Re: BOP DOCKET #1148-P COMMUNICATION MANAGEMENT UNITS

To whom it may concern:

I offer the following comments about the CMUs during the public comment period.

Illegality of CMUs

1. The existence of the CMUs, which were designed to hold mostly Muslims of Middle Eastern descent with terror-related convictions and segregate them from the general prison population, is akin to religious apartheid. I have not been able to find in American history (except pre-Revolution) any precedent for governmentally sanctioned segregation of a group based on religion. The closest historical precedents are the presidential order interning Japanese-American citizens during World War II, and the segregation in all ways of African Americans prior to the Civil Rights Act of 1964—much of that segregation being officially supported by the U.S. government's Jim Crow laws of the time. Thus I believe that the CMUs are illegal because they are in direct opposition to the Civil Rights Act of 1964. In addition, Title VI of that act prevents discrimination by government agencies that receive federal funding (BOP is a government agency that receives federal funding).

In 1988, Japanese-Americans received an official governmental apology for their internment via legislation, which stated that government actions were based on "race prejudice, war hysteria, and a failure of political leadership." Perhaps the same terms can apply to 2006, when the Terre Haute CMU was created in violation of the Administrative Procedures Act (APA) without the opportunity for notice and public comment. The way to remedy the CMU's illegal segregation of Muslims is to close both CMUs immediately and relocate prisoners into other existing prisons.

2. In addition, the CMUs also prohibit the free expression of religion, thus violating the First Amendment. One standing rule at both CMUs is that Muslims are not allowed to pray in a group. Since the CMUs are overwhelmingly Muslim by design, this prohibition of group prayer directly interferes with the Muslim religious requirement to pray in a group. Why segregate Muslims and then prevent them from practicing their religion? In addition, at Terre Haute, there is no provision for fasting during the month of Ramadan, another requirement for observant Muslims; during this time, food can be eaten only before dawn and after sunset. Although in 2009 during Ramadan, several prisoners requested that they be allowed to store their meals in a refrigerator in the CMU kitchen

(with no extra work for prison staff) until their daily fasting period was over, their request was denied.

Designation to CMU

1. Prisoner Yassin Aref was originally designated to the Terre Haute CMU in May 2007. However, his co-defendant, a Muslim convicted at the same time and for many more of the same charges as Aref, including material support for terrorism, was never designated to a CMU, rather to USP Fairton in New Jersey, a medium-security facility, where he remains. Why do some prisoners go to CMUs and others not, and on what basis is the designation made?

2. Aref's CMU designation reads:

Your current offense of conviction includes 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.

But Aref's "significant communication, association and assistance" to JEM (a Pakistani *mujahideen* group fighting against India for Kashmiri independence) is **false**. Aref was convicted via a fictitious sting operation, thus his supposed association with JEM was deliberately fabricated by the FBI and the government informant as part of the sting plot. Aref never showed any sympathy whatsoever for JEM; the opposite is true. In the sting tapes, Aref could be heard stating that he knew who the group was only from television, but advised the government informant (masquerading as a jihadist) **not** to support them, rather to help women and children. The FBI and the U.S. Attorney's Office readily and publicly acknowledged that there was no evidence that Aref actually had any relationship with JEM in the past or in the present, since all the details of the sting operation were fiction created by the FBI. Indeed, they acknowledged that no terrorist activity actually took place. (Aref's supposed association with JEM also strains credulity: he is an Iraqi Kurd, has maintained a strong, lifelong ethnic identity as a Kurd, and worked for an organization in Syria that helped Kurdish refugees. Why would he support a Pakistani group?) For Aref to be designated to a CMU on the strength of a piece of fiction is at least erroneous, and at best an official lie deliberately told.

Prisoners are given no viable means to challenge their designation to a CMU, nor is there a review process for them to earn their way out of a CMU. This amounts to lack of due process.

Aref's sentencing judge officially recommended to BOP that he be incarcerated as close to home as possible (Albany, New York) because he was the sole support of his wife and four young children. BOP disregarded this recommendation. Aref was 900 miles from home in Terre Haute, Indiana, and is over 1,000 miles from home in Marion, Illinois, making it extraordinarily difficult for his family, or anyone else, to visit.

No Contact Visits by Family Members

1. I believe that the policy of no contact visits for family members (which includes children) violates the Eighth Amendment, which prohibits cruel and unusual punishment. There is no discernable reason for prohibiting family contact visits. The ban by both

CMUs on such visits, whereby a young child must speak to his or her father on a telephone, through a Plexiglas window, without being able to so much as touch him after traveling 1,000 miles to see him, incarcerates the children as well as the prisoners. A child requires physical contact with a parent; a parent requires physical contact with a child. This is a basic principle of human interaction and a family relationship. Not only do children grow up without their parent; they are expected to be satisfied with two fifteen-minute phone calls per week (one per week at Terre Haute), which are not nearly enough to hold a family together. Letters are no substitute for a parent's responsibilities; e-mail is scrutinized to make sure no "terrorist communication" is being transmitted to one's eight-year-old child; and a two-day trip on even a twice-yearly basis is financially and logistically out of reach for a working-class family. Is BOP in the business of destroying families and keeping children away from their parents just so "security" can be maintained? To prohibit contact visits because BOP apparently cannot figure out how to perform simple security on a child begs belief.

2. The following is a short creative writing assignment that Yassin Aref recently completed for the College Guild, a college-level, non-credit, correspondence study program for prisoners. His assignment was to write fictional diary entries from the points of view of several different people. One of the points of view he chose was that of a security officer at a prison. I have permission from Aref to reproduce this piece in any way I see fit.

During his 2006 trial, Aref's own diary entries and a poem (from the 1990s) were instrumental in convincing the jury that he was a terrorist. I have taught creative writing for thirty years in various capacities, and I still cannot believe that art—the deliberate creation of an individual's imagination—was cynically used as **fact** by the U.S. government to convict him of a serious (and spurious) crime. It's fine for the FBI to fabricate a sting plot, but it's damning for the defendant to exercise the free privilege of art? So perhaps there's some "poetic justice" in the reversal of presenting Aref's clearly fictional diary entry, written by a fictional prison officer, to express his emotions about no contact visits. While the basis for this piece is fact—an incident that occurred when his family visited him at Terre Haute in 2008, corroborated by an eyewitness—Aref has used the medium of art deliberately, as it should be used, to present not fact but feelings.

Q-14b entry from an officer's diary

I was working in the special unit, it was visiting day, and I was assigned to the visiting room. I was sure there would be no contact visits, so I thought there would not be much for me to do. I picked up a book to busy myself with while I was watching and supervising. It was 8:00 a.m. and they brought the first prisoner. I know him, he's really nice and a very polite man, but why he is in such a unit I don't know. He took his seat behind the glass, then they brought his family in, his wife and four young children, their ages were between 4 and 12. As soon as the second-youngest son (6 years old) saw his dad, he started crying and saying, "I want to go in there, I want to hug my daddy, Daddy I want to come in there!" Everyone started crying, but it was my duty to keep the area quiet, so I asked the children's mother to keep them quiet or I would cancel the visit. She started begging her son to be quiet and asking me to be patient: "We drove for

two days, we came 1,000 miles, for two years we have been collecting money for this visit, please do not cancel, he's just a child!" I really understood their situation, but I had a duty as an officer, too.

For the entire visit, this poor mother tried to keep her children quiet, but all the children were crying to see their dad. I watched them and asked myself, why is this man not allowed to see his children? Why is it too dangerous? What will happen if we allow his children to hug him? How this will jeopardize our security? Many more questions came to my mind, and I tried to find some answers for them, but many times we can't make any sense of our system and rules.

Then their time came to an end and the children started to kiss the window, and their father from the other side was crying and kissing the window too. The last thing everyone said was, "I love you and I will see you again."

But what are those children's feelings since, and why should they experience this, and how this will affect them forever? I am not sure whether such a visit is a privilege or a torture.

Difficulty in Others Visiting

1. In February 2010, a group of Aref's friends and supporters wrote to the warden at Marion CMU requesting permission to visit Aref. CMU visiting regulations say that the only people who can visit are those who had a relationship with the prisoner prior to his incarceration. That leaves out the majority of Aref's friends and supporters (including me), who only came to know him after his conviction. However, the regulations state that "Exceptions to this rule must be approved by the warden." (Institution Supplement MAR-5267.08B) A request for the warden to grant us exceptions is why we wrote to her; she responded by saying that we as individuals should follow the guidelines in the supplement for visitors. Below are excerpts from our letter to her:

...Since the beginning of his sentence in May 2007 at the CMU in Terre Haute, Indiana to date at Marion (he was transferred from Terre Haute to Marion in March 2009), Yassin has had a total of four [now five] visits. Three of them were at Terre Haute: one from his lawyers alone; another from his lawyers, who brought with them two of Yassin's four children; and a third from his lawyers, who brought all four children and Yassin's wife. At Marion, Yassin has had one visit from his lawyers alone (this past summer) [2009], and they will visit him again shortly, in February [2010]. In just under three years, this averages about two visits per year—but these were all legal visits, and only two were from his family...So far, only his lawyers and his family have been approved to visit him.

... all of Yassin's immediate family is in the Kurdish region of Iraq, so there is no possibility of them coming to visit him at the present time; one of his brothers is not even on his approved e-mail list, though Yassin has repeatedly requested this. The only family members in the U.S., his wife's cousins, live in Seattle, but it would be a long and expensive trip for them to come to Illinois.

...Yassin has friends in the Albany area, primarily mosque members whom he knew before his conviction and who could apply to visit him. But the Albany mosque's working-class members have neither the money nor time away

from their jobs to make the two-day trip to Marion and back; if they had either, they would have applied to visit him by now. In addition, some of them converted to Islam in prison, and so have criminal records; this could make them ineligible for visits. The rest are frankly afraid to apply for visits, since the entire Muslim community in the Capital District was terrorized by the case that ultimately put Yassin and his co-defendant in prison. We are sure you'll agree that being Muslim in America in 2010 unfortunately requires Muslims to remain as quiet and unobtrusive as possible. So that leaves us, his friends and supporters who met him and came to his aid during and after his 2006 trial, as potential visitors.

...For any prisoner to maintain his mental health, it is necessary for him to have in-person visits, so he does not feel abandoned by the outside world. Thus the possibility of our visits over the next eight years would be an important component of his continued mental health. Visits would give him something to look forward to within the isolation of the CMU. And visits would also allow us some necessary respite from the difficult tasks we have to undertake on his behalf.

From Albany, New York, Marion is a round trip of four days and 2,000 miles. But what's the alternative? To allow his isolation to continue for the remaining eight years of his sentence?

2. Why do the CMUs make it so difficult for prisoners to have visitors? If the purpose of a CMU is to monitor all communications by prisoners, why focus so much energy on monitoring their visitors? Why not just have us comply with standard security procedures that are applicable for all visitors to any medium-security federal prison? Don't the prison officials and the monitors in Washington already know all about our backgrounds, having checked us out thoroughly so that we are allowed to e-mail, send postal mail, and talk to a prisoner on the phone? If we can do that, why can't we visit him? Together with the no-contact-visit-for-families rule, I can only conclude that the hidden purpose of the CMUs is not only to isolate these prisoners from the world, but also to block the world from them. How is this anything other than cruel and unusual punishment?

Jeanne Finley
Albany, NY 12203

I have been one of Yassin Aref's attorneys since his arrest in 2004, and I have continued to advocate on his behalf, because I believe he is innocent. I visited him four times since he was placed in the CMU, twice at Terre Haute and twice at Marion.

In the summer of 2008 attorney Stephen Downs and I drove to Terre Haute with Yassin's wife, Zuhur, and four children. This was the only time Yassin saw his wife or two daughters since he was designated to the CMU in 2007. (Steve Downs had driven Yassin's two sons for a visit in 2007, but the visit was cut short arbitrarily and abusively after only about 15 minutes, allegedly because Steve had a pen with him.) In 2008, I was permitted an attorney visit where I was in the same room with Yassin, whereas his wife and four young children were forced to share a tiny room and speak to him through glass, sharing a single telephone between the five of them. Afterward Zuhur was very upset that I had been allowed a contact visit with her husband while, despite having driven two days to get there, neither she nor the children had been able to touch him or speak to him in person. That visit was so traumatic for Zuhur and the children that Yassin very reluctantly agreed that it was not worth it for them to visit again under those circumstances.

According to the Notice of Transfer to the CMU, Yassin was placed in the CMU because he was said to have communicated with Jaish-e-Mohammed (JEM), a designated terrorist group. However, his case was a sting operation which admittedly had no actual connection with JEM, and when Yassin pointed out that it was proven that he never even tried to communicate with JEM, the BOP eventually changed its rationale to simply say that the designation was based on his conviction, with no specific facts alleged.

The Proposed Rule does nothing to improve the unconstitutional and illegal nature of the CMUs. In fact, the Proposed Rule makes things worse because it allows for telephone calls to be reduced from one per week to one per month; allows for limiting written correspondence to three sheets a week per recipient; allows for limiting visits to one per month; and allows for limiting visits to immediate family and approved attorneys (ie not even friends who knew the person before incarceration.) And it allows a CMU designation based on the wildly vague and generic catchall provision on page 3 of the Proposed Rule (top of second column) - that there is "any other evidence of a potential threat." This allows for far too much discretion in the hands of BOP officials. Moreover, unlike disciplinary units, there is no real mechanism for ever getting out of the CMU – how could there be, when the designation can be based only on the offense of conviction? The CMUs need to be shut down.

-Kathy Manley

Hedaya Jayyousi
Detroit Michigan
48210

Tuesday, June 01, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

My husband Kifah Jayyousi is an inmate in the FCI (CMU) Terre Haute, Indiana. The new rules that the BOP are trying to change will limit the visits to one hour during each month and our phone calls to 15 minute calls each month come to me as a shock because my sons and daughters and me are already tortured enough through the current CMU rules. One of which is allowing us to see him through netted glass during our visits. His elder parents can't visit him because they are sick and they can't travel the long distance. The only contact they have with Kifah is through the phone call. I can't even imagine it being 15 minute a month how ten people including my family and his parents family is going to fit though one 15 minute call a month. Please discontinue this unjust inhumane decision, which in my opinion the people that brought it up don't think of themselves as a father, mother, sister, daughter, son, husband, or wife perspective and doesn't have any mercy in their heart.

***Lack of due process at the CMU:** None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*

Overrepresentation of Muslim and political prisoners at the CMU: Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

Destructive effect of the CMU on families: The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.

Conditions at the CMU amount to cruel and unusual punishment: The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Hedaya Jayyousi

cc: Center for Constitutional Rights

Kareem Jayyousi
Detroit Michigan
48210

Tuesday, June 01, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

Kifah Jayyousi is my father and an inmate in the FCI (CMU) Terre Haute, Indiana. I sacrifice my visits and my phone calls so my grandma, grandpa, my sisters, and my mother can speak to him and see him. It already is tough for them to talk to him imagine how much harder it will be if you limit everything even more? That doesn't even make any sense. You will put more pain then what is already there on me and my family. I really hope that you will rethink your decision.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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Sincerely,

Kareem Jayyousi

cc: Center for Constitutional Rights

Maryam Jayyousi
Detroit Michigan
48210

Tuesday, June 01, 2010

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Bureau of Prisons (BOP)
320 First Street, NW
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I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

Kifah Jayyousi is my father and an inmate in the FCI (CMU) Terre Haute, Indiana. Do you think its normal to see your father through glass? Do you think its normal to talk to him through a phone once per a month? Do you think its normal to see your father for an hour a month? If you do then that's ok you can go on and proceed with your decision to cut down on everything just because you aren't willing to spend some money. Just know that you are preventing a girl like me from seeing her father, think about how many others are in the same situation as me. Think about how many relationships you are separating. Think about the pain you will cause us. Just think.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

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Sincerely,

Maryam Jayyousi

cc: Center for Constitutional Rights

Mohammed Jayyousi
Detroit MI
48210

Tuesday, June 01, 2010

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Bureau of Prisons (BOP)
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I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

My father is in the FCI (CMU) institution in Terre Haute, Indiana. I was informed a few days ago that the visiting times and hours along with call times and hours will soon change. I find this to be very absurd and unjust. It is not fair for me to see my father for an hour per a month. Me and my family live in Michigan and we drive 16 hours in total for one chance of seeing him, I don't see how you think its logic to travel 16 hours to see him for an hour each month. You don't even understand how much this will put me through as a son, or what it will but my father through. You don't want to spend a few extra dollars for more visits but you will be willing to have the American government spend even more on our depression pills and mental health. It is not normal for me to see him as it is. Please rethink your decision.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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Mohammed Jayyousi

cc: Center for Constitutional Rights

Reem Jayyousi
Detroit MI
48210

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320 First Street, NW
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I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

I am the daughter of Kifah Jayyousi, one of the inmates in FCI (CMU) Terre Haute Indiana. I find it very disappointing that people are willing to separate me away from my father because you aren't willing to spread an extra dollar. I couldn't even imagine me being away from my father in visits. Yes I did say away, that glass that separates us might be an inch or two thick for you but for us its miles and miles thick. Life is already tough on me, I can barley even see my father because of the long distance and its conflict with college. This is truly unjust! He is my father not my friend or neighbor he has a HUGE impact on me and my family's life. He already is away from me, please don't take him any farther then he already is. The current rules are already limited and they already are harder then they should be. I shouldn't be begging you to see my own father longer this should already be a givin option to begin with. Please don't change the rules it will destroy me, my sisters, my brothers, and my mother. It will destroy us all.

***Lack of due process at the CMU:** None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU*

designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

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I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Reem Jayyousi

cc: Center for Constitutional Rights

To whom it may concern:

I write to you today to express my concerns about the proposed rules for Communication Management Units (Document ID BOP-2010-0006-0001.)

To begin with, I am very concerned that all prisoners have due process and be told why they are being held. Furthermore, it is imperative that they be told why they are being held in a particular unit. It's absolutely unjust that such information is routinely withheld from CMU prisoners. I see no evidence of a case review process for CMU prisoners, which should be implemented in order for them to know what they can do to change their status as CMU inmates. Because the conditions in these units are so harsh, it is imperative that cases of inmates be regularly reviewed by non-biased parties.

It concerns me very deeply that such a high percentage of CMU inmates are Muslim. That this is the case immediately brings the proposed rules into question. Such a long history our country has of isolating large groups of people based on their ethnicity and/or religious culture—let us work to change this historical pattern. Rules for the CMUs need to be reviewed and overseen not only by the Federal Bureau of Prisons, but by leaders in anti-racist policy, organizational psychologists attuned to the prevalence of racism in our judicial systems, and experts on patterns in racial profiling. A team of thoughtful people must be assembled to review regulations any time human beings are placed behind bars, let alone when these prisoners are being cut off so seriously from their family and friends.

Our strategies for managing the communication of prisoners will be judged by future generations. I implore you to choose to be on the right side of history with your decisions regarding the Communication Management Units. It is of great importance that decisions regarding the CMUs be made with care and integrity.

Regards,
Laurel Smith
Olympia, WA

June 7, 2010

**RE: Communications Management Units
[BOP Docket No. 1148-P]**

RIN 1120-AB48
28 CFR Part 540

Dear Bureau of Prisons,

My name is Lynne Jackson and I am an American citizen and live in Albany, New York. I am writing to you to object to the proposed Communications Management Units. These Communications Management Units are cruel, and should be shut down.

As a citizen of this country, I believe in the constitution and the Bill of Rights, including the 8th amendment. The 8th ammendment states in full:

Excessive bail shall not be required, nor excessive fines imposed, ***nor cruel and unusual punishments inflicted.*** [emphasis added]

The proposed CMU regulations violate the eighth amendment. It is cruel and unusual punishment to:

- 1) Send a person to the CMU because of the crime he committed with no reasonable appeal process to get out
- 2) Restrict a prisoner's communication with family members to one hour a month and one 15-minute phone call per week.

Yassin Aref was convicted of material support of terrorism after a highly publicized, and highly controversial trial in Albany, New York and is currently incarcerated at the Marion CMU. He was a victim of an FBI sting. No evidence was ever produced that he had any ties at all to terrorism. He is a Kurdish refugee, having survived Saddam Hussein's Anfal or extermination of the Kurds. Please see the attached article (reprinted on albanyweblog.com) published in the *Daily Gazette* the day after Mr. Aref's conviction and written by Carl Strock.

Mr. Strock summarizes the sentiments of many people in the Albany community — that Mr. Aref is quite innocent. Mr. Strock sums up exactly what happened to Mr. Aref:

The time may come when Congress will pass a resolution apologizing to you and others like you who got swept up in the fear that followed 9/11, just as it passed a resolution apologizing to the Japanese-Americans who got swept up in the fear that followed Pearl Harbor, but that will probably come too late to do you any practical good. Your lives will have inched away by then, and your children will be long grown. . .

It is just your great misfortune that you were who you were at this time and in this place, that you were brown-skinned, bearded Muslim men speaking in foreign

accents, in Albany, after the attacks of 9/11. The local FBI office needed to prove itself in the new War on Terror, and you were it. As simple as that.

Mr. Aref has never had any disciplinary problems while at either of the Communication Management Units he has been in. Currently, Mr. Aref is permitted two, 15 minute phone calls per week. He was the only wageearner for his family (a wife and four young children). Currently, his family cannot afford a telephone. Mr. Aref has many relatives and friends. He was much loved by people in his community, and is now much-missed. For one of his weekly phone calls, he schedules to call his two sons and 4-year-old daughter at their school, and, on occasion, relatives in Iraq. On vary rare occasions, he schedules to call friends.

For the other weekly phone call, he calls my cell phone when I am visiting his wife and children. Weekly, I get to see how his family tries to keep up a relationship with Mr. Aref on just one, 15-minute phone call. His children simply love him. His 14-year old daughter wants nothing more than to speak to her daddy on the phone. It is a struggle to allow each child a few minutes to speak to their father. And, of course, his wife is always anxious to speak to her husband. There is simply not enough time for Mr. Aref to speak to each family member. The worse part of the phone call is that no one ever knows when the phone will go dead, and so, no goodbys are ever said. The call is ended at the whim of the prison. Though his calls make his children very happy, the way the calls end are quite distressing. Also, the very time limit of 15 minutes causes discord between family members, because they all want so much to speak to Mr. Aref.

The current policy of allowing prisoners at the CMUs two 15-minute phone calls a week is bad enough, and causes much pain to the families of prisoners. To further restrict the calls to once a month is cruel and serves no security purpose whatsoever.

The Marion CMU is 1000 miles from Albany, New York. Though at sentencing, the Judge requested that Mr. Aref be incarcerated close to home for his family's sake, he was, instead, sent to a CMU. His wife and daughters have only seen him once in the three years since his sentencing. There is no easy public transit to the Marion CMU and travel is time-consuming and expensive. And, there is the ultimate cruelty that once the family has made the trip, they can only speak to Mr. Aref through glass.

Not allowing Mr. Aref to sit with his family and touch them while they are visiting is simply cruel. There is no need for "public safety" that could possibly justify not allowing Mr. Aref to hold his four-year old daughter.

It is a complete mystery as to why Mr. Aref was sent to a CMU. No ties to terrorism were ever produced at trial. Carl Strock, writing for the *Daily Gazette*, wrote eloquently on this very issue in a column published in October, 2007. (See the complete article, reprinted in albanyweblog.com)

Mr. Strock summed it up well, when he said:

The most damaging thing he could get Yassin to say was, "I believe if you know

them, you trust them and you believe they are doing right, and you believe they are fearing Allah, and you believe they are working for Allah, I believe it is wise for you to help if you can.”

And for that he is now confined as someone whose offense included “significant communication, association and assistance” to this JEM outfit. Can you imagine?

Mr. Aref has a defined sentence. After suffering for 15 years in the CMU, Mr. Aref will be released. This brings up the question — what is the purpose of prison? Is the purpose to rehabilitate the prisoner? Surely, since Mr. Aref will be released at the end of his sentence, that rehabilitation must be one of the goals.

Rehabilitation must include supporting Mr. Aref’s relationship with his family. Since it is clearly obvious to anyone who knows that Mr. Aref will go back to his family after his incarceration, it serves the public good to encourage his relationship with his family. But, with the proposed policy of one call a month, and only a one hour visit a month, these new rules will only work to destroy family relationships.

On page 17326, second paragraph from the end, the new proposed rules state:
The Bureau allows communication with these individuals to help inmates maintain family ties . . .

This is a lie. These regulations would only serve to attempt to limit relationships with family. The Communications Management Units seek to severely isolate prisoners from the outside world. This type of isolation is very bad for a person’s psyche. This type of isolation does not prepare a prisoner to go back into society, as the majority of prisoners at the CMUs will do some day. I suggest you read the excellent article entitled “*HELLHOLE, The United States holds tens of thousands of inmates in long-term solitary confinement. Is this torture?*” by Atul Gawande published in the *New Yorker* on March 30, 2009. It explains in excruciating detail what happens to us as humans when we are isolated from other humans.

Though the regulations proposed for the CMUs are not quite as severe as solitary confinement, they come so close as that they can be considered cruel and unusual punishment.

Much is written in these new, proposed rules about “security”. The Communication Management Units make the United States less secure. The CMUs primarily house Muslims and people who are considered “domestic terrorists”. These prisons are illegal because they segregate people based on their religion or political beliefs. The United States has this magnificent document — the Constitution and the Bill of Rights — which clearly states our highest ideals of equal protection, rights before trial, freedom of religion and freedom of speech. We set the high standards of how all people should be treated. But, when we engage in cruelty, when we target a specific population of people because of their religion, the United States is just seen as a big, hypocritical bully. Just

like another third world, banana republic. Why should people respect our laws if we violate them by creating such cruel prisons like the CMUs?

Some people in the media call the CMUs “Little Guantamos” (see article from *Democracy Now!* “*Little Guantamo*”—*Secretive “CMU” Prisons Designed to Restrict Communication of Jailed Muslims and Activists with Outside World*). Guantanamo is considered world-wide to be a place of torture and cruelty. Where almost all of the prisoners are innocent, yet they were tortured anyway, and kept in unimaginably cruel circumstances. Where *Habeas corpus* did not exist. The Communication Management Units are only a step or two away from Guantanamo, the “Little Guantamos”. This is not the America I grew up in. An America that takes out its anger on innocent people. Muslims in our country are being targeted and preemptively prosecuted and then sent to these extremely restrictive prisons — the “Little Gitmos”. This sets a terrible example for the world. We have changed from a nation of laws to a big bully.

Examine closely the cases of the Muslims and others incarcerated at the CMUs. Many are there because of an FBI sting operation. Think of all the big, so-called “terrorist” plots supposedly foiled by the FBI in the past nine years or so. Almost all of the plots were created by the FBI.

Look at one of the newest cases — the Newburgh 4 from Newburgh, NY. A year ago, these men were arrested with an incredible amount of media hoopla that the FBI had foiled an attack. In court, on Friday, May 28, I heard with my own ears, the judge in that case say “This is the unterrorism case.” The prosecutor even admitted that the men had no ties to terrorism.

I believe if a special prosecutor was appointed to review these cases, most, if not all, of these men would be freed. The Inspector General of the Department of Justice, in a July 10, 2009 report on U.S. surveillance programs recommended “that Department of Justice carefully consider whether it must re-examine past [terrorism] cases to see whether potentially discoverable but undisclosed Rule 16 or Brady material was collected under the President’s Surveillance Program, and take appropriate steps to ensure that it has complied with its discovery obligations in such cases” (report p. 19). On April 5, 2010, the Albany Common Council passed a resolution asking that this review take place.

The Communication Management Units are illegal. They constitute cruel and unusual punishment. They should be shut down immediately.

Sincerely,
Lynne Jackson

May 24 - 2010

Comments Submitted by Family Members and Friends of CMU Prisoners

Naden/Lean, LLC

A PROFESSIONAL SERVICES COMPANY OF
CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS

Att. Rachel Memoropol.

Mrs. Edna Booze
600 Light St. Apt 316th

Balt. Md 21230

410 234 0776

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Dear Sir - B.O.P. Docket - No. - 1148-P
 To whom it may concern, My name is Edna Booze I am Grandmother of Patrick A. Beasly, whom is here in Tenn. State, Dist. ID. No. #43310-037. I been visiting with my Grandson ever since he been there. I am 79 yrs old, Dietabel, Arthritis etc, But I visit + it means so much to me I do. I sad to know that they did not Acknowledge the blanket ban on Contact Visits just a Hug or Hand Shake would mean so much to Kids of Patrick + me. Its been 5 yrs. since we contact and it Hurts. Kids love + miss their daddy, As much as me, myself do. We wanted love to Have a Hug or Hand Shake. I pray you do take this in to great Considering Care for Kids + Me. I will certainly pray on it + Hopefully, God will see it through + you. I pray this goes through + Happy Kids + family on visits will be able to Have grace of a Hug. Amen + thanks for taking time to read my letter + I pray to Hear from someone, I thank you again. Amen.

Sincerely
 (Grandmother) Edna Booze

P.S. Hope Hear from someone of Grand Kids.
 Thank you for your help.
 Spoke to Mrs Rachel Memoropol - May 17 - 2010

Community and Faith-Based Organizations

BOP Docket No. 1148-P
RIN 1120-AB48

75 Fed. Reg. 17324-17329 (Apr. 6, 2010)

“Communication Management Units”

Comments of:

American-Arab Anti-Discrimination Committee (ADC)

Arab American Institute (AAI)

Asian Law Caucus

Council on American-Islamic Relations (CAIR)

Desis Rising Up and Moving (DRUM)

South Asian Americans Leading Together (SAALT)

Muslim Advocates

Muslim American Society (MAS)

Muslim Bar Association of New York

Muslim Legal Fund of America

Muslim Public Affairs Council (MPAC)

Open Society Institute (OSI)

Sikh Coalition

Introduction

On April 6, 2010, the Bureau of Prisons proposed new regulations allowing for the designation of certain inmates to Communications Management Units (CMUs) in which contact with the outside world is severely restricted and in which general conditions of confinement may be limited.¹ Under the regulation's vague standards, an individual may be sent to a CMU "if evidence exists" that the inmate's conviction or offense conduct included "association, communication, or involvement related to international or domestic terrorism." 28 CFR 540.201(a). An inmate may also be designated to a CMU under other overly broad and vague criteria involving communications-related infractions. 28 CFR 540.201(b-e).

The regulations are unclear as to who retains initial designation authority but note that the Bureau Assistant Director, Correctional Programs Division, has authority to approve CMU designations. 28 CFR 540.202(b). The regulation provides that the designation will be "reviewed regularly" but lacks detail as to the timing and nature of the review process. 28 CFR 540.202(c)(5).

Inmate communications in CMUs may be limited to the following:

- 1) one 3-page letter per calendar week, to and from a single recipient;
- 2) one 15-minute telephone call per month to an immediate family member only; and
- 3) one non-contact, hour long visitation each month limited to immediate family members only. 28 CFR 540.203(a); 28 CFR 540.240(a); 28 CFR 205(a). In spite of these severe restrictions, the Bureau maintains that designation to a CMU is "not punitive." 28 CFR 540.202(c)(3).

In April 2006, the Bureau proposed a regulation entitled "Limited Communication for Terrorist Inmates" that contained communications-related restrictions similar to those in practice at CMUs. However, the Bureau never published a final rule after receiving comments and instead, chose to create CMUs through initially non-public Institution Supplements issued in 2006 and 2008 for the Federal Correctional Institution in Terre Haute and the United States Penitentiary in Marion, respectively.

On April 1, 2010, the Center for Constitutional Rights filed a lawsuit entitled *Aref v. Holder* claiming that the Bureau violated the Administrative Procedures Act by creating two CMUs in secret and without going through proper rulemaking procedures.² The suit also challenges the CMUs on procedural and substantive due process grounds as well as under equal protection and the First Amendment.³

The suit, brought on behalf of several CMU inmates, asserts that not a single plaintiff has been disciplined for a communications-related infraction in the last decade.⁴ The lawsuit alleges that more than two-thirds of CMU inmates are Muslims which over-represents the Bureau's total

¹ 75 Fed. Reg. 17324 (Apr. 6, 2010), BOP Docket No. 1148-P.

² Complaint at 3, *Aref v. Holder* (D.D.C. April 1, 2010) (1:10-cv-00539).

³ *Id.* at 5.

⁴ *Id.* at 3.

Muslim population by over 1000%.⁵ The complaint goes on to state that media scrutiny has resulted in the movement of some non-Muslims – referred to by certain guards as “balancers” -- to the CMUs.⁶ Indeed, two of the lawsuit’s plaintiffs who have been incarcerated in CMUs are Muslims whose underlying convictions bear no relation to acts of terrorism.⁷ Yet, plaintiffs assert that CMUs are known as “terrorist units” and that the stigma of “terrorist” attaches to many of the inmates housed there.⁸

Given these facts, it is clear that the Bureau’s proposed regulations perpetuate post-9/11 targeting of, and discrimination toward Muslims in the name of counterterrorism and national security. The overly broad and vague criteria by which inmates get designated, the lack of process for designation and review, and the high proportion of Muslim inmates in CMUs suggest that individuals are sent to CMUs for illegitimate and discriminatory reasons. CMUs serve to stigmatize Muslim inmates and indeed, further the prejudice felt by the outside Muslim community as a whole. Such profiling that subjects Muslims to specialized and heightened scrutiny without justification alienates the community and may breed mistrust of government.

Finally, the regulations raise serious questions about potential violations of the free exercise clause of the First Amendment. Certain restrictions in place at CMUs inhibit religious practice and the lack of procedural protections for CMU designation may chill religious conduct. For all of these reasons, the proposed regulations should be withdrawn thereby ceasing operation of the CMUs.

The regulations perpetuate post-9/11 hostility toward Muslims by unfairly targeting and discriminating against Muslim inmates

Following 9/11, Muslims and those perceived to be Muslim including Arabs, South Asians, and Sikhs have faced increased animus from the public at large. A nationwide poll conducted in September 2009 found that “[n]early six-in-ten adults (58%) say that Muslims are subject to a lot of discrimination, far more than say the same about Jews, evangelical Christians, atheists or Mormons.”⁹ John Brennan, Deputy National Security Adviser for Homeland Security and Counterterrorism, reflected in a speech in February 2010 that Muslims have been targeted by “inexcusable ignorance and prejudice here in the United States, Europe, and elsewhere” and that there has been a rise in “scapegoating and fearmongering.”¹⁰ He recognized that some in the public have a “distorted” view of Islam because many people only hear about the religion in the context of terrorism.¹¹

Sentiment against Muslims and those perceived to be Muslim has at times, led to physical acts of violence. As a result, the Civil Rights Division of the U.S. Department of Justice established an

⁵ *Id.* at 3-4.

⁶ *Id.* at 30.

⁷ *Id.* at 6-8.

⁸ *Id.* at 21.

⁹ The Pew Forum, *Muslims Widely Seen as Facing Discrimination at* <http://pewforum.org/Muslim/Muslims-Widely-Seen-As-Facing-Discrimination.aspx> (September 9, 2009).

¹⁰ John Brennan Speaks on National Security at NYU at <http://www.whitehouse.gov/photos-and-video/video/john-brennan-speaks-national-security-nyu> (February 13, 2010).

¹¹ *Id.*

Initiative to Combat Post 9/11 Backlash that has investigated “over 800 incidents since 9/11 involving violence, threats, vandalism and arson against Arab-Americans, Muslims, Sikhs, South-Asian Americans and other individuals perceived to be of Middle Eastern origin.”¹²

Top U.S. government officials recognize that many federal policies have fueled anti-Muslim sentiment. In his speech, John Brennan also said, “in spirit of candor, we must also acknowledge that over the years, the actions of our own government have at times perpetuated [ignorance, prejudice, and discrimination toward Muslims]” and went on to cite specific examples of such government actions including “violations of the Patriot Act, surveillance that has been excessive, policies perceived as profiling, [and] over inclusive no-fly lists.”¹³ Indeed, a number of other government policies reflect this underlying prejudice by subjecting Muslims to specialized and unwarranted scrutiny. The Bureau’s current administration of CMUs is one such policy.

At the same time that government officials recognize the existence of anti-Muslim prejudice and the policies that in part sustain it, they also seek to combat it. During President Obama’s historic June 2009 speech in Cairo, he said, “I consider it part of my responsibility as President of the United States to fight against negative stereotypes of Islam wherever they appear.”¹⁴ John Brennan said that combating stereotypes against Muslims is a “matter of national security.”¹⁵ That recognition clearly demonstrates why the Bureau should change course with respect to CMUs by withdrawing the proposed regulations that allow for the targeting of Muslim inmates.

As written, the regulations provide very little information as to the type or quantity of evidence that would result in a CMU designation. They similarly fail to explain why current Bureau regulations that allow for the monitoring of inmate communications including 28 CFR 540.12, 28 CFR 540.14, 28 CFR 540.100 *et seq.*, and 28 CFR 540.40 *et seq.* are insufficient. In practice, that such a high proportion of the CMU population is Muslim, that some of the Muslim CMU prisoners do not have underlying terrorism convictions, and that some of the CMU population has no communications-related disciplinary history strongly suggests that CMUs are impermissibly used to target Muslim prisoners. Additionally, the unclear timing and nature of the review process and lack of procedural protections afforded to CMU designees further counsels against adoption of these regulations. Lastly, the stigma of “terrorist units” that attaches to CMUs mimics the pervasive and widely recognized stigma faced by Muslims and those perceived to be Muslim in the larger community. Such prejudice should be terminated, not perpetuated, in keeping with directives from the very highest levels of government. For all of these reasons, the regulations establishing CMUs should be withdrawn.

The regulations raise serious concerns under the First Amendment and the Religious Freedom Restoration Act

As a legal matter, the proposed regulations establishing CMUs raise serious First Amendment concerns. In relevant part, the First Amendment reads “Congress shall make no law respecting

¹² Enforcement and Outreach Following the September 11 Terrorist Attacks at <http://www.justice.gov/crt/legalinfo/discrimupdate.php> (last modified February 2, 2010).

¹³ See *supra* note 10.

¹⁴ Remarks by the President on a New Beginning at <http://www.whitehouse.gov/the-press-office/remarks-president-cairo-university-6-04-09> (June 4, 2009).

¹⁵ See *supra* note 10.

an establishment of religion, or prohibiting the free exercise thereof.”¹⁶ The free exercise clause applies beyond Congress to the federal government as a whole.¹⁷

In 1993, Congress passed the Religious Freedom Restoration Act (RFRA) with the explicit finding that “laws ‘neutral’ toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise.” 42 U.S.C. § 2000bb(a)(2). RFRA was passed to set the standard for free exercise challenges and its legislative history makes clear that prisoner claims are covered by the statute.¹⁸

In relevant part, RFRA says:

(a) Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person --

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. §2000bb-1.

Given the composition of CMUs, the proposed regulations as applied raise serious First Amendment and RFRA concerns. Although the regulations are neutral on their face, they can in practice substantially burden religious practice. A lawsuit brought by the American Civil Liberties Union claims that the CMU at Terre Haute violates RFRA by only allowing for one hour of congregative prayer a week even though prisoners may engage in a number of other congregative activities.¹⁹ The suit maintains that prisoners engage in a variety of group activities including recreation, watching television, playing cards, or conversing and that although the a multi-purpose room is generally vacant and is the room used for congregative Friday prayer, the Warden has prohibited use of the room for group prayer during all other times.²⁰ The suit seeks an injunction allowing Muslim prisoners within the CMU to engage in group prayer for the five daily prayers.²¹

The opaque nature of the designation process and its limited review raises further concerns. Inmates may hesitate to practice their religion for fear of being sent to a CMU. Although the Bureau maintains that CMUs are not “punitive,” their highly restrictive nature makes clear why inmates would want to avoid CMU designation. Without an explanation of why current authority to regulate inmate communication is insufficient, the Bureau fails to demonstrate that there is a compelling interest in sending Muslim prisoners to CMUs and that such action is the least restrictive means of fulfilling such an interest. Because the operation of CMUs raises

¹⁶ U.S. Const. amend. I.

¹⁷ See *Shrum v. City of Coweta*, 449 F.3d 1132, 1140 (10th Cir. 2006) (“The First Amendment applies to exercises of executive authority no less than it does to the passage of legislation.”).

¹⁸ *Henderson v. Kennedy*, 253 F.3d 12, 15 (D.C. Cir. 2001); *Bryant v. Gomez*, 46 F.3d 948, 949 n.1 (9th Cir. 1994).

¹⁹ Complaint at 1, *Arnaout v. Warden* (S.D. Ind. Terre Haute Division June 16, 2009)(2:09-CV-215).

²⁰ *Id.* at 3-4.

²¹ *Id.* at 5.

serious First Amendment concerns, the proposed regulations are ill-conceived and should be withdrawn.

Conclusion

CMUs are known to primarily house Muslim inmates. The proposed regulations offer vague evidentiary standards and criteria by which individuals get designated to CMUs. Furthermore, inmates are offered few procedural protections to challenge their designations or to have periodic reviews of their status. Such a system perpetuates anti-Muslim sentiment that has been growing since the events of September 11, 2001. Officials at the highest level of government have recognized the existence of pervasive anti-Muslim animus and its partial foundation in U.S. government policies. They have also pledged to work against it and for that reason CMUs and their targeting of Muslim inmates should not continue. In addition, operation of CMUs raises serious First Amendment questions by potentially burdening the free exercise of religion to an impermissible degree. For all of these reasons, the proposed regulations establishing and describing CMUs should be withdrawn and the CMUs should cease to operate.

Dear Federal Bureau of Prisons,

The Long Island Progressive Coalition is a community based organization dedicated to promoting sustainable development, revitalizing local communities, enhancing human dignity, creating effective democracy, and achieving economic, racial and social justice.

We are writing to express our concerns over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the Bureau of Prisons (BOP) in Terre Haute, Indiana and Marion, Illinois.

As an organization we strive to bring about transparency within the government and, while we appreciate this opportunity to comment, it would have been ideal to have a public comment period before the actual establishment of the CMUs.

The CMUs have been confining a vast majority of Muslims, while taking in the occasional political prisoner on charges related to environmental issues. Our organizational Bill of Rights acknowledges respect for individual differences and supports an environment that is not toxic to people or animals. There is no need to separate prisoners based on their alleged convictions.

The isolation and secrecy imposed by the CMU is of the utmost concern to us. This runs counter to our principles of enhancing human dignity and creating effective democracy in our quest for racial and social justice.

We hope that the BOP will take the above concerns into account in the decision whether to adopt this proposed rule. We thank you for your consideration of our above stated concerns.

Sincerely,

Lisa Tyson
Director
Long Island Progressive Coalition



May 12, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

Lack of due process at the CMU: *None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*

Overrepresentation of Muslim and political prisoners at the CMU: *Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.*

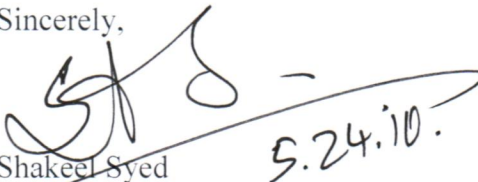
Destructive effect of the CMU on families: *The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones –*

including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.

Conditions at the CMU amount to cruel and unusual punishment: *The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

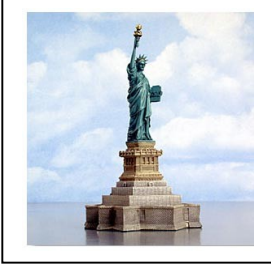
Sincerely,



Shakeel Syed
Executive Director

5.24.10.

cc: Center for Constitutional Rights



Friends of Human Rights

P.O. Box 290136

Tampa, Florida, U.S.A. 33687

(813) 215-3403

melvau@earthlink.net

friendshumanrights@yahoo.com

www.friendshumanrights.org

May 18, 2010

To whom it may concern:

We are writing in response to the requests for public comments about the Communication Management Units (CMU):

First, most of the people in the CMUs are Muslims who have not committed any crime. Rather, they have been preemptively prosecuted because the government thinks they might do something in the future. Imprisoning people for something they may do in the future is illegal, and obviously results in many innocent people being incarcerated.

For example, after the conviction of Yassin Aref, the government prosecutors made the following statement at a press conference:

*“Did he [Aref] actually himself engage in terrorist acts? Well we didn’t have the evidence of that, but he had the ideology...Our investigation was concerned with what he was going to do here and in order to **preempt** any, anything else, we decided to take the steps that we did take...”*

Second, any contact with the outside world is extremely limited (four hours per month of visitation and one 15-minute phone call a week). Most (if not all) of the prisoners have families, and many of them have young children. Because the CMU’s are located in the middle of the country, it can be very difficult for the families to stay in touch with the inmates. Families who are able to visit do so through a Plexiglas window and via a telephone. Thus, assignment to a CMR becomes an extreme hardship for both the family and the inmate. In addition, visits from friends are actively discouraged.

The government knows full well that these people are not terrorists, and thus, it seems that the purpose of the CMUs is to convince the American public that the government is successful at capturing real terrorists.

It is shameful to be treating a religious minority, or anyone else in this illegal and discriminatory manner that is clearly contrary to the Bill of Rights.

Respectfully,
Melva Underbakke, Ph.D.

Concerned Individuals

Chesa Boudin
183 Dwight Street, Apt 4
New Haven, CT, 06511

6/1/2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

While the CMUs are troubling on a range of fronts, I will focus my comments on their destructive impact on children and families of the inmates. First some background on my perspective and experience. Both of my parents were incarcerated in maximum security prisons in New York State from the time I was 14 months old. My mother served 22 years before release on parole and my father remains incarcerated to this day. Thus, what follows is based on my personal experience growing up with incarcerated parents and the rigors of prison security as a barrier to my family development. It is also based on more than a decade of research, publishing, consulting, and lecturing on issues of parental

incarceration. I have been invited to speak at conferences including: The National Community Sentencing Association conference; The Federal Resource Center for Children of Prisoners' One day Institute, Sponsored by the Child Welfare League of America; The North American Conference on Fathers Behind Bars and on the Street; The Fifth North American Conference on the Family & Corrections, and many more.

When judges sentence convicts to prison, and when prison administrators determine visitation policies, minor children are often left behind. This is not an obscure issue but rather has significant, daily ramifications for an entire generation of American youth. As incarceration rates have spiraled by over 500 percent in the last thirty years,¹ so have the number of children who lose their parent or parents to the prison system.² In fact, in the United States there are more children with incarcerated parents than there are people in prison.³ Incarcerating parents of minor children is not just an issue for those sentenced to prison: it also generates third party harms for the children, for their caregivers, for the welfare apparatus of the state, for the prison system, and for the law.⁴ More specifically, parental incarceration implicates myriad legal issues related to

¹ The Sentencing Project, News, Incarceration, <http://www.sentencingproject.org/template/page.cfm?id=107> (last visited Bureau of Justice Statistics Correctional Population Trends Chart, BUREAU OF JUSTICE STATISTICS, *available at* <http://bjs.ojp.usdoj.gov/content/glance/corr2.cfm>).

² LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, PARENTS IN PRISON AND THEIR MINOR CHILDREN 1 (Aug. 2008), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

³ *Id.* at 1.

⁴ See generally RENNY GOLDEN, WAR ON THE FAMILY: MOTHERS IN PRISON AND THE FAMILIES THEY LEAVE BEHIND (2005) (analyzing collateral impacts of mass incarceration); CHILDREN WITH PARENTS IN PRISON: CHILD WELFARE POLICY, PROGRAM, & PRACTICAL ISSUES (Cynthia Seymour & Creasie Finney Hairston, eds., 2001) (discussing permanency planning, best interests of the child, and child welfare policy); BARBARA BLOOM & DAVID STEINHART, WHY PUNISH THE CHILDREN? (1993) (considering the roles and responsibilities of child welfare agencies, corrections, caregivers, and incarcerated mothers).

custody,⁵ communication,⁶ visitation,⁷ conditions of confinement,⁸ international standards,⁹ and more.¹⁰

As in the rest of the prison system, inmates in the CMUs have children who are innocent of any crime but who suffer when they are deprived of a relationship with their parents. Indeed, most children with incarcerated parents demonstrate a range of developmental and behavioral problems associated with the separation from their parents;¹¹ I was no exception. For me, building a relationship with my parents in prison was an essential part of overcoming my early childhood challenges. I benefited from frequent letters, phone calls and visits with both of my parents. In fact there were *no limits* on the number of phone calls or letters I was allowed to receive. Contact visits were allowed from 830am until 330pm 365 days per year. In addition, as long as my parents maintained a clean disciplinary record, we were allowed overnight visits through the Family Reunion Program.¹² These mechanisms of communication were a crucial part of my development, ability to build self-confidence, succeed in school, and move forward

⁵ See, e.g., *Santosky v. Kramer*, 455 U.S. 745 (1982) (requiring a clear and convincing standard of evidence before terminating petitioners' parental rights); Mariely Downey, *Losing More than Time: Incarcerated Mothers and the Adoption and Safe Families Act of 1997*, 9 BUFF. WOMEN'S L.J. 41, 45 (2000) (detailing the impact of the Adoption and Safe Families Act on termination of parental rights of the incarcerated).

⁶ See, e.g., *Walton v. New York State Dept. of Correctional Servs.*, 13 N.Y.3d 475, (2009) (upholding New York State Department of Correctional Services prison phone policies).

⁷ See, e.g., *Overton v. Bazzetta*, 539 U.S. 126 (2003) (upholding department of corrections policies severely limiting prison visitation by children of inmates).

⁸ See, e.g., *Block v. Rutherford*, 468 U.S. 576 (1984) (challenging conditions of confinement of pretrial detainees, including access to contact visits from children).

⁹ See, e.g., African Charter on the Rights and Welfare of the Child (1999), art. 30 ("States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children... and shall in particular: a. ensure that a non-custodial sentence will always be first considered when sentencing such mothers; b. establish and promote measures alternatives to institutional confinement for the treatment of such mothers").

¹⁰ See generally Tanya Krupat, *Invisibility and Children's Rights: The Consequences of Parental Incarceration*, 29 WOMEN'S RIGHTS L. REP. 39 (2007) (describing the challenges children with incarcerated parents face, and arguing for a children's bill of rights).

¹¹ See generally NELL BERNSTEIN, *ALL ALONE IN THE WORLD* (2007) (detailing the plight of children with incarcerated parents); CHILDREN OF INCARCERATED PARENTS (Katherine Gabel & Denise Johnston, eds., 1995) (providing guidance to social workers, caregivers, and others who work with children of incarcerated parents).

¹² As early as 1980 the New York Department of Correctional Services published findings suggesting that the program decreased recidivism rates as much as sixty-seven percent. D. G. MacDonald & D. Kelly, *Follow-Up Survey of Post-Release Criminal Behavior of Participants in Family Reunion Program*, NATIONAL INSTITUTE OF JUSTICE (1980).

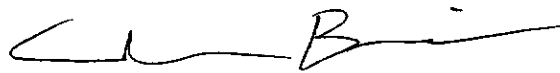
with my life. Given the right conditions, most children can benefit from a relationship with their incarcerated parents.¹³

The CMUs, however, deny children any meaningful relationship with their incarcerated parents. Improving prison conditions and communication for families of prisoners is necessary for the healthy development of children with incarcerated parents. I urge the BOP to abandon the CMUs altogether or to at least allow for regular and direct communication, contact and visitation with families and children of inmates.

I have been luckier than most children with incarcerated parents will be. As a society our challenge is to make the criminal justice system work so that innocent children do not need to get lucky to come out as healthy, productive members of their communities. If we are to address the needs of the innocent children left behind, we must consider prisoners' continuing role as parents.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,



Chesa Boudin
Yale Law School
127 Wall Street
New Haven, CT, 06511

cc: Center for Constitutional Rights

¹³ Denise Johnston, *Parent-Child Visitation in the Jail or Prison*, in CHILDREN OF INCARCERATED PARENTS, *supra* note 11, at 138; CHILDREN WITH PARENTS IN PRISON, *supra* note 11, at 13. Note also, that visitation with children and family members is strongly correlated with reduced recidivism rates for inmates. Christy A. Visher & Jeremy Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, 29 ANN. REV. SOC. 89, 100 (2003).

David Capone
Schenectady, NY 12304

May 27, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have heard about the proposed rule that was published in the Federal Register on April 6, 2010, and as a faith-based U.S. citizen I am troubled by the conditions and policies proposed in that rule. **I urge the BOP to abandon this proposed rule.**

The process of herding Muslim prisoners into two locations is reminiscent of what happened in America of interring people of Japanese descent after the bombing of Pearl Harbor. In 1988 however, Congress recognizing the illegality and inhumane behavior passed and President Ronald Reagan signed legislation which apologized for the internment on behalf of the U.S. Government stating that government actions were based on "race prejudice, war hysteria, and a failure of political leadership". I suspect some future President will apologize for our present mistreatment of Muslims.

In particular I urge that the blanket ban on physical contact be removed. It is commonly known that psychologists say that the lack of physical touch is extremely harmful to the overall well being of the human species. Why then would the BOP adopt such a cruel policy or practice? Surely if there is some security issue there are ways to monitor such concerns.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

David Capone

cc: Center for Constitutional Rights

Brendan Wheeler
Brooklyn, NY 11206

24 May 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

Unlike other BOP facilities, the CMUs have a lack of due process. The inmates have no real review process by which they can be transferred out of the CMU. This is especially troubling given the fact that it isn't clear why they are in the unit in the first place. Given that the inmates are over sixty percent Muslim and many inmates have political cases and/or are politically outspoken individuals, the CMU units under the proposed rules are not only unjust to the CMU inmates, the rules also amount to discrimination against Muslims and "political prisoners" in BOP custody.

I can personally attest that the current restrictions on communication for CMU inmates serve to curtail the inmate's connection to family and community. It is a well documented fact that communication with family and community are crucial for an inmate's successful rehabilitation to life in society, not to mention the general well-being of inmate and family alike. The current restrictions are unjust and serve no purpose and the proposed restrictions are even more restrictive.

I trust you will take the above concerns into consideration regarding the proposed rule. Thank you for your concern and for the action you will take.

Sincerely,
Brendan Wheeler

I write in strong opposition to the proposed rule. Having been jailed for 159 days myself under harsh, restrictive conditions, I speak from experience when I say that the proposed rule constitutes cruel and unusual punishment. It is enough to keep men and women confined under the extreme conditions found in a maximum security prison. The social and psychological blows of living under those conditions are all that is necessary to punish society's wrongdoers. Anything at all along the lines that the proposed rule contemplates--which amounts to cutting prisoners off from nearly all outside communication--adds utterly unnecessary and inhumane blows to what are already awful, degrading circumstances. Moreover, what is the purpose of the rule? What good will it possibly do? Do we not want persons, when they leave prison, to be able to function effectively in society? Do we want them to return to prison? Is there any danger to society in placing a couple of monitored phone calls, sending and receiving monitored mail, and the like? The proposed rule helps ensure that precisely those sorts of nonsensical, excessively punitive results will be realized if the rule is put into place. The United States is better than this rule. Humanity, decency, and good sense require that the current CMU rules remain in effect.

(under the name James Scarce)

Rik Scarce
Associate Professor of Sociology
Department of Sociology, Anthropology, and Social Work
221 Tisch Learning Center
Skidmore College
Saratoga Springs, New York 12866-1632

I am very concerned at the new rules the BOP has proposed for the CMUs, which are already very restrictive prison facilities with questionable legal standing. Prisoners at the CMUs cannot challenge their designation and their behavior has no bearing on their assignment to these detention centers. Without any legal recourse or means of earning an improved situation, they are punished through extreme limitations on their contact with family and friends. No-contact visits, extremely brief phone calls, the proposed mere 3 pages of letters (the primary means of communication with those outside), and the proposed limitation of visitors to immediate family members would be devastating for these prisoners whose communication is already severely limited. These rules would harm relationships and certainly cannot be helpful in assisting prisoners in their transition back to society. Additionally, the extreme overrepresentation of Muslims at the CMUs demonstrates a disturbing example of discrimination. The CMUs should allow communication comparable to that of other prison facilities, rather than further limiting it. They should offer inmates a clear and accessible means of working to transfer out of the facilities, and they should absolutely not exist to further discrimination against minorities.

Leah Todd

By definition, dehumanize means to deprive of human qualities. The current restrictions on CMU prisoners are already clearly intended to dehumanize prisoners. To be deprived of the ability to feel affection or touch from another human being while they are locked up is dehumanizing. To severely limit and monitor all communication with family and friends on the outside of prison is dehumanizing. To only allow eight hours of visits per month from loved ones is dehumanizing. If a further restriction of communication is accepted, dehumanization is no longer an acceptable way to describe this desire and intent. This looks and feels distinctly like barbarism. Punitive and reactionary policies never change people's behavior, they only fuel people's anger and frustration and create riper conditions for negative backlash.

I witness this tendency as a teacher. When you have trouble maintaining an environment in your classroom that is conducive to effective student learning due to students that are continually acting out, one option you have, as a teacher, is to send that student to the dean. This can often happen before the teacher tries to understand what is at the root of the child's behavior. Many times the tendency to throw a student out of your class becomes a replacement for dealing with the issues that are underlying a student's behavior. The act of sending a student to the dean becomes nothing more than retribution and never compels that student to change the behavior; it only creates animosity and backlash toward the teacher. This only makes the job of creating healthy classroom environments more challenging and often only serves as a temporary breather from challenging students. It does not positively affect the classroom in the long term. In the same way, punitive policies like those being proposed by the BoP will not meaningfully address any positive long-term change. Positive long-term change can only begin when we examine the role of prisons in our society.

Kevin D'Amato

The Criminal Injustice system has caused me much heartbreak since they started to de-institutionalize the mentally ill into the institutions of prisons instead of improving the Psychiatric Hospitals.

I respect the human rights of all human beings. I expect my government to follow the principles of the Constitution of the United states which forbids cruel and unusual punishment and punishment that does not fit the crime. I read recently that Jim Webb, a Democrat from Virginia says "America's criminal justice system is a national disgrace...We are wasting billions of dollars and diminishing millions of lives. We need to fix the system."He is sponsoring the National Criminal Justice Commission. It must include the issue of CMU's. The Commission would carry out a comprehensive review of the criminal justice system, and make reform recommendations to improve public safety, cost effectiveness, overall prison administration, AND FAIRNESS IN THE IMPLEMENTATION OF THE CRIMINAL JUSTICE SYSTEM. I hope that this will include all prisoners and not discriminate against Muslim men and people who suffer the horror of being afflicted with a mental illness.

Thank You,
Jeanne DeSocio

Anne Lamb
Bronx, NY 10467

May 16, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana, Marion, Illinois and Coleman, Florida. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

For instance, Tom Manning #10373-016 was moved from Hazelton to Cumberland and then to USP Coleman I D Unit, which he then found out was a CMU. Perhaps this was a deliberate and cruel response to his request for medical attention. He has not received the medical care needed for a growth in his groin area, lump under his left nipple or the growth under his shoulder blade. Tom had an ultrasound that seemed to indicate that he does not have cancer; however cancer could not be ruled out and he needs a biopsy. An outside doctor who reviewed Tom's records urgently recommended a biopsy to check for cancer in these areas.

Overrepresentation of Muslim and political prisoners at the CMU: Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are political prisoners such as Tom Manning #10373-016 (in USP Coleman I D Unit, which is a CMU) and Daniel McGowan #63794-053 (in the Marion CMU). In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

Destructive effect of the CMU on families: The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering on the prisoners and their families alike. This is a human rights violation and probably violates international law on the treatment of prisoners.

Conditions at the CMU amount to cruel and unusual punishment: The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel, serves no legitimate purpose and amounts to psychological torture.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Anne Lamb

cc: Center for Constitutional Rights

Restricting communication prevents prisoners from maintaining relationships with family and friends and is unethical. People should always be allowed visits with their loved ones. Allowing the prison staff to open all mail raises questions about prisoners' access to privileged communication with their lawyers. Lastly, communication restriction prevent prisoners who are abused from contacting the media to make those abuses public. Secrecy in prisons isn't okay.

-Anonymous

Communication Management Units should be closed as they violate basic human rights and due process. The inmates currently held in the two CMUs in the U.S. are denied contact with friends and family, privileged communication with legal counsel and other constitutionally protected due process rights. These men, who are disproportionately Muslim and political activists, have not be charged with substantive violent crimes, yet they are labeled as terrorists and kept in secretive, restrictive political prisons for years. As federal prosecutors have failed to establish a compelling reason for such draconian treatment, CMU incarceration amounts to cruel and unusual punishment. The prisoners held in CMUs must be matriculated into the general prison population and the CMUs must be closed for violating prisoners' rights.

Lucy Goodrum
Reading, VT 05062

To whom it may concern:

I am against changing the rules in the CMU to anything more isolating and restrictive. This doesn't serve the public, and only makes the inmates bitter and angry. How does that help anyone? Do you really think giving an inmate fewer phone calls is a deterrent to him being in prison in the first place? No, it is just punitive.

Restricting the rights of people in a CMU more than they are already restricted serves no rehabilitative purpose and it hurts the credibility of our "fair & humane" justice system.

CMUs are in themselves questionable. It is quite obvious they are a place to shut away Muslims, with a few "whites" in there to avoid the semblance of discrimination. To further restrict the rights of these inmates, whose rights seem to me to already be trampled on, is cruel and unusual punishment.

Alexandra Paul

I am vehemently opposed to CMUs. They are secretive in nature and deny prisoners due process in that they are unable to appeal their assignment to a CMU, nor is there a review process by which inmates can earn their way out of a CMU.

Inmates in CMUs experience extremely limited communication with loved ones and family over the telephone, and are denied any physical contact in their rare visits, even with their children. The new regulations are even more restrictive, with only one phone call allowed per month (with immediate family only), and only ONE 3-page letter in or out. How is any inmate able to have a thriving relationship with family with these punitive restrictions? I can't even imagine what an inmate with no family would go through!

I am also very concerned that the population of CMUs is exclusively either Muslim or political prisoners. Designation to CMUs appears to be solely retaliatory. All of the concerns a CMU is intended to address can be addressed through proper monitoring at any federal facility that already exists.

CMUs amount to cruel and unusual punishment and should be dissolved immediately.

Shelley Cater
Portland, Oregon

Document ID: BOP-2010-0006-0001: Communication Management Units

CMU prisons are something to which I am 100% opposed. These types of prisons unfairly single out people, especially Muslims. I've read that over two-thirds of the CMU population is Muslim, even though Muslims represent only 6 percent of the general federal prison population.

Having people only correspond in English is unfair to those who do not speak English, and cuts people off from their basic human needs, like the ability to speak with their families and loved ones. Not allowing people basic human rights like to hold their husbands' hands is ridiculous. If a person is searched before visitation, I don't understand why this kind of simple, human contact should not be allowed.

Political prisons like CMUs have no place in a democracy. Singling out prisoners because of their political beliefs sets a dangerous precedent and does not represent democratic values. Not allowing communication between prisoners and their friends and social movements in the outside world violates that person's right to free speech.

CMUs violate basic Due Process rights. Individuals detained in CMUs instead of standard BOP prisons should absolutely be told WHY they are being singled out to be housed in such a facility. There should be a significant way for a prisoner to appeal this decision, or at least have this decision process reviewed, and currently there is not. If a person is transferred from general population to a CMU facility, it needs to be public record the reason why the person was moved. To transfer a prisoner based on that person's Constitutionally protected religious beliefs is not only morally wrong, it is illegal.

Prisoners should not be secluded away from the public simply because of their political beliefs. This country was founded on the Peoples' ability to speak freely of their beliefs, to prevent government tyranny that was so prevalent in the past. If you silence the people who speak of change, is there really freedom in America?

Jessica Johnson

I am writing today to express my opposition to Central Management Units (CMU's) within our prison systems. Until recently, I wasn't even aware there were such places. The very existence of "secret" prisons are unconstitutional and violate a prisoner's rights. They are not even allowed to appeal transfers or to get an explanation about why they are there. Being kept in isolation is inhumane. Why do they not have the ability and the right to appeal to the courts? It is cruel and unusual treatment not allowing the prisoner's the ability to communicate with family members, and friends. The lack of physical contact takes a toll on families and further punishes the inmate emotionally. There are no specific reasons given for this abusive treatment.

These men and women are political prisoner's and are locked away for crimes that the government wants to keep from the public. They are not even told why they are being kept at these facilities and most have no prior history of communications violations or disciplinary problems of any kind. So why are they there? Why hasn't the government until now, allowed the public to voice their opposition, support or opinions about this topic? The public should have had a say before these places were allowed to be opened. In a democracy prisoner's still have the right to due process. I strongly oppose secret prisons and they should be closed.

Sincerely,

Lisa Wilson

Please do not implement the proposed restrictions of communications at the Communications Management Units. Please consider eliminating the Communications Management Units altogether.

The proposed restrictions should not be implemented for these reasons:

- ***The fundamental illogic of the new regulations:*** *Communications restrictions were relaxed at the beginning of 2010. The proposed new regulations reduce communications even below the restrictions of 2009. There have been no actions or incidents that would suggest that the 2010 practices are inappropriate and need to be rolled back. In light of the changes for 2010, the proposed new regulations simply do not make any logical sense.*
- ***Lack of due process at the CMU:*** *None of the CMU prisoners have been told why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*
- ***Destructive effect of the CMU on families:*** *The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.*
- ***Conditions at the CMU amount to cruel and unusual punishment:*** *The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

Gina Harrell

I write from the position of having corresponded with and visited prisoners in federal and state prisons for about 12 years. I want to address my deep concerns about the so-called Communications Management Units (CMU's) that were set up in the last three years by the Bureau of Prisons.

In addition to the fact that they were established without public comment, I believe the CMU's violate international human rights standards that prohibit cruel and unusual punishment of incarcerated persons.

My first concern is the rigid confinement of non-threatening prisoners to a unit closed off from the general prisoner population. The sequestration of these prisoners clearly is punitive, despite the rule's statement to the contrary.

My second concern is the designation of prisoners to CMU's, even though the prisoners have not been convicted as terrorists and they have posed no current threat to prison rules.

My third concern is that telephone communication with immediate relatives is limited to 15 minutes a month. This clearly is punitive and cruel.

My fourth concern is that visiting privileges are severely restricted and may be limited to one hour per month with a family member. Non-contact with a loved one is also clearly punitive and cruel.

Finally, I am concerned that the two CMU's are located in the Midwest, so that families that live on either coast are extremely limited in their ability to visit.

In summary, I am totally opposed to the CMU's for various reasons. These CMU's present us with cruel and unusual punishment of non-violent, non-threatening persons. I believe they should be abolished.

Thomas Washburn

To whom it may concern:

RE: BoP Docket # 1148-P, Communication Management Units

I was recently made aware of the existence of the Communication Management Units and the new rules you intend to impose on the inmates. I would like to make it known that I believe these rules are arbitrarily harsh and unnecessary. Further, I believe they are nothing short of cruel. I hope that reason wins out and these punitive, unjust rule changes are discarded.

Sincerely,

Steven Young

Comment Tracking Number: 80af82c3

Donald George Yeo
Chapel Hill NC 27516
USA

919 932 2823

These proposed regulations are more of what I would find in the gulags in Stalin's Russia than what I expect to find in the USA.

These regulations clearly constitute cruel and unusual punishment, with a complete disregard for due process. To completely isolate someone from their friends and family for no reason. These regulations would clearly hurt families and make an inmates return to society more difficult. To turn a United States prison into a secret penal colony with no contact with the outside world is clearly a horrible, inhumane idea. Please don't do this. I expect better from my government.

I am opposed to the existence of the prisons within prisons you call Communications Management Units, and it's no wonder they have never before been open to public comment; they violate basic human rights. It's known that the prisoners housed in CMUs have been selected not based on the severity of their crimes, perceived threats to the public, or behavior while in prison, but on their race and/or political beliefs. This drastic form of social isolation is dehumanizing and damaging to mental health, and the inferior medical facilities put physical health at risk. The lack of due process is un-American and the lack of transparency is frightening. CMUs must be shut down, not made permanent.

Faith Gundran

Shame of a nation.

Martin Luther King, Jr. once said if one wanted to know the measure of a society, just look at how it treats its prisoners. What does it say about a government to dehumanize persons already in the custody of the prison system. People would not even keep their beloved pets in the isolation of these CMUs.

dequi kioni-sadiki

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I would like to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am extremely troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs.

I believe that the CMUs have been used to disproportionately confine and punish political prisoners and Muslims and violate basic constitutional protections. I write to urge the BOP to abandon this proposed rule.

As a Sociologist who specializes in criminology, I find a number of issues at the CMU particularly concerning to me. First and foremost, I find that there is a lack of due process at the CMUs. Not one of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. In addition, these prisoners have received no hearing to challenge their CMU designation and it appears that there is no meaningful review process for prisoners to earn their way out of the CMU. I believe that this lack of transparency deprives prisoners of their due process rights.

What I also find troubling is the overrepresentation of Muslim and political prisoners at the CMUs. I believe that because there is no oversight procedure regarding who gets sent to the CMU and why, there has been an unchecked and unfair pattern of Muslim prisoners and politically active prisoners being sent to the CMU. The statistics that have been reported are somewhere between 65% and 72% of prisoners at the CMU are Muslim.

Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

In addition to these concerns, I believe that the CMUs have a destructive effect on families of those incarcerated. The few phone calls and limited visits that CMU prisoners receive, and the extreme policy of banning physical contact with loved ones, including children, during visits tears families apart and inflicts pointless suffering on the prisoners and their families alike. This policy and the conditions at the CMUs are abhorrent. They amount to cruel and unusual punishment. The isolation experienced by CMU prisoners,

and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

In closing, I hope that the BOP will take my concerns into account as it decides whether to adopt this proposed rule. Thank you.

Sincerely,
Dr. Anthony Silvaggio
Arcata, CA 95518

cc: Center for Constitutional Rights

Dear reviewers of Communications Management Unit policies,

As a concerned citizen very worried about the erosion of our democracy, I'm writing today with my personal observations of the effects of these Communications Management units and a request that they be shut down immediately. Living in an upstate community where an FBI sting operation entrapped two Muslim men who were then convicted of non-violent crimes, I've had a chance to see the detrimental effects of such units on not only the prisoners but on their families and communities as well.

Here are some of the things that I've learned about these units. First, by having only two such units prisoners are located far from their families and support communities which means that children and other loved ones can't easily visit them. Then when they are able to visit, the visits can be terminated for arbitrary "offenses" like having a pen in the visiting room. The restriction on physical contact has led to severe emotional hardship for growing children and of course for wives or other loved ones.

In the case of the prisoner that I know most about, the limitations on religious observance, reading materials, people allowed to contact him by telephone, and the ability to read and study in his own languages all deprive him of the ability to pursue his lifelong intellectual and spiritual interests as an imam and scholar. This is a form of cruel and unusual punishment and is not based on any threat that any of these activities would pose to the prison staff, to his community and family or to the United States. Rather it seems to be a form of psychological and emotional deprivation based on his ethnicity and political views. This theme appears to be carried out against the other mainly Muslim and political activist prisoners housed in the CMU's with no clear rules or reasons for why they are placed there or treated in this harsh and illegal way.

Indeed, the effects of all these restrictions serve instead to decrease the potential of his very bright and talented children to develop their gifts in verbal expression, scientific thinking and mathematical ability that could ultimately contribute to the benefit of our country and of the world. This prisoner and others like him (God willing) will return to his community but will have to overcome the intellectual and sensory deprivation that he is now subjected to. At the same time the BOP severely limits his phone communication and his visitors' list, depriving his community and his friends of the opportunity to interact with him.

Does any of this treatment make us "safer" or is it a form of selective punishment meted out to arbitrarily selected prisoners to add to the suffering that imprisonment already imposes on those separated from their families and communities?

Please close the CMU's immediately!

Mickie Lynn

I am opposed to isolating prisoners in CMUs. I am concerned that these units constitute cruel and unusual punishment, and it is further disturbing that prisoners could be placed in such environments without due process and opportunities to challenge these decisions. The overrepresentation of Muslims and political prisoners in these units suggests they would be used as political tools rather than legitimate and ethical corrections measures. Further, these CMUs would be destructive to families. While providing no benefit to society, these units would erode the moral footings on which our nation and liberty precariously stand.

Sincerely,
Jesse Miller

R. Ruth Linden, Ph.D.
San Francisco, CA 94133

6 June 2010

Rules Unit, Office of General Counsel
Bureau of Prisons
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010 and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me:

- ***Lack of due process at the CMU:*** *None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*
- ***Overrepresentation of Muslim and political prisoners at the CMU:*** *Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65% and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.*

- ***Destructive effect of the CMU on families:*** *The meager number of phone calls and visits that CMU prisoners receive and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.*
- ***Conditions at the CMU amount to cruel and unusual punishment:*** *The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

R. Ruth Linden, Ph.D.

cc: Center for Constitutional Rights

June 6, 2010

Sarah Qureshi
Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

Re: BOP Docket #1148-P, Communication Management Units

Dear Ms. Qureshi:

I am responding to the Federal Register notice regarding the operations of the two Communications Management Units (CMUs) being run by the BOP in Terre Haute, Indiana and Marion, Illinois.

It is offensive that the BOP is seeking to use the regulatory process to legitimize and institutionalize the existence and practices of the CMUs which were unlawfully established under the prior Administration in a wave of reactionary hysteria following the events of 9/11. The proposed regulations are arbitrary, capricious, and inhumane. To date, the implementation of CMUs have been shown to be racially-biased against Muslims.

The position asserted that the proposed regulations are not punitive in and of themselves would be laughable if it weren't so heinous. In fact, the CMUs represent a form of double sentencing wherein a BOP bureaucrat has considerable discretion in dictating without meaningful oversight, review or appeal the conditions of an inmate's confinement. They infringe upon an inmate's Constitutional protections of free speech and due process, and against cruel and unusual punishment, not to mention that they fly in the face of basic human rights accords. They represent an attempt to codify torture by limiting physical, verbal and written contact between an inmate and his/her loved ones and where the evidentiary standard for imposing such measures is at best a moving target. The regulations should be summarily rejected in their entirety.

Sincerely,

James McCabe
New York, NY

Comment Tracking Number: 80afd010

Erika Hedin
Washington, DC 20001

June 6, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me. The conditions at the CMU are counter to the process of rehabilitating inmates. Inmates need the support and aid of contact with their loved ones, the conditions at the CMU serve the purpose of cutting those ties when they are needed most. Furthermore, the lack of due process at the CMU causes prisoners and families to lose any hope in earning their way out of the CMU or understanding why they have been placed in these inhumane conditions. This is also counterproductive to the process of rehabilitation because it causes families and inmates to lose faith in the democratic system. The purpose of prison is supposed to be to rehabilitate inmates—the CMU is not meeting this purpose.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Erika Hedin

cc: Center for Constitutional Rights

Iman Monzer Shurrab
Cairo, Egypt

2010-06-06

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

Overrepresentation of Muslim and political prisoners at the CMU: Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

Destructive effect of the CMU on families: *The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.*

Conditions at the CMU amount to cruel and unusual punishment: *The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Iman Monzer Shurrab

cc: Center for Constitutional Rights

Please do not implement the proposed restrictions of communications at the Communications Management Units. Please consider eliminating the Communications Management Units altogether.

The proposed restrictions should not be implemented for these reasons:

- **The fundamental illogic of the new regulations:** Communications restrictions were relaxed at the beginning of 2010. The proposed new regulations reduce communications even below the restrictions of 2009. There have been no actions or incidents that would suggest that the 2010 practices are inappropriate and need to be rolled back. In light of the changes for 2010, the proposed new regulations simply do not make any logical sense.
- **Lack of due process at the CMU:** None of the CMU prisoners have been told why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.
- **Destructive effect of the CMU on families:** The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.
- **Conditions at the CMU amount to cruel and unusual punishment:** The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

Chuck & Jane Skillman

**Re: BOP Docket #1148-P
Communication Management Units.**

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

In addition, I wish to voice my opinion that the conditions at the CMU amount to cruel and unusual punishment. The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Margaret Seely, NYC

Dear BOP,

I'm writing to let you know that I'm opposed to the establishing of two CMU's designed to isolate and segregate prisoners in the federal prison system from the rest of the BOP population.

These CMU's are against a person's constitutional rights, the prisoners are denied hearings to challenge their CMU designation, and denied review process to earn their way out of the CMU.

These CMU's also discriminate, with no oversight procedure of who gets sent to the CMU. Discrimination is obvious, with population between 65-72% Muslim, and others have been politically active.

The CMU prisoners are also denied contact with their families, with very limited phone calls and visits, and especially cruel the ban on physically touching their loved ones, including their own children, this is terrible and shows no humanity as far as the decision makers of these CMU's.

If people are denied their constitutional rights then American is no better than any other communist country.

Please don't stop these CMU's immediately!

Sincerely,
Marilyn J Wilson

Connie E. Schaefer
Longmont, CO 80501

June 4, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

Loss of due process rights – in terms of due process at CMU. Prisoners were not given any meaningful reasons for being designated to the CMU – or given any evidence that was used to make the decision. They can't challenge the decision at any hearing – because there is no hearing. They have no meaningful review process to earn their way out of the CMU.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Connie E. Schaefer

cc: Center for Constitutional Rights

Ruth Selby
Brooklyn, NY 11218

June 4, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

The lack of due process at the CMU violates our democratic principles. The procedures implemented are those we object to when used by other countries. For example, none of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

The government may claim these measures are a protection against terrorism and now hold mainly Muslim and political prisoners at the CMU, but if these practices are allowed to continue, all persons are in danger of being summarily held in isolation with no hearing. Because there is no oversight procedure of who gets sent to the CMU and why, everyone is in danger of being confined in this way. In fact, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison are already held in these restrictive conditions.

Conditions at the CMU amount to cruel and unusual punishment: The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Ruth Selby

cc: Center for Constitutional Rights

3 June 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and the conditions at, the Communications Management Units (CMUs) in Terre Haute, Indiana and Marion, Illinois. I am troubled by existing practices at the CMUs and the proposed rules do not do enough to reform them.

CMU prisoners are not told in any meaningful way why they are assigned to the CMU or what evidence was used to make that decision. They receive no hearing to challenge their CMU designation and there is no meaningful review process to allow them to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights. The new rules do not correct this and do not provide oversight in case of abuses of the processes.

Muslim and politically active individuals have been assigned to the CMU even when there are no specific allegations of actual or potential inappropriate communications. Because there is no effective oversight procedure of assignment to the CMU, designation to the CMU is both discriminatory and retaliatory. The new rules do not correct this and do not provide oversight in case of abuses of the processes.

The meager number of phone calls and visits that CMU prisoners are permitted and the blanket ban on physical contact with loved ones – including children during visits tears families apart and inflicts pointless suffering on the prisoners and their families alike. The new rules do not correct this; for example there are simple ways to monitor conversations during visits without imposing a physical barrier.

The CMU's violate human rights standards that prohibit cruel and unusual punishment of incarcerated persons and the new rules do not rectify this.

I thank you for your consideration.

Sincerely,

Sandra Maliga

cc: Center for Constitutional Rights

"I support the abolition of Communications Management Units (CMUs). CMUs deny prisoners due process, target prisoners based on political beliefs, alienate prisoners from their families, and are cruel and unusual punishment. Stand for justice by closing down CMUs."

Brandon Becker

I am writing to express my concern over the Communications Management Units (CMUs) run by the BoP. Until recently, I wasn't even aware that CMUs existed. Such "secret" prisons are unconstitutional and violate a prisoner's rights. The general public has not been informed about the creation of these prison units, nor was our response to this inhumane system invited by the BoP before it was put into practice. I am particularly concerned about the following issues:

Lack of due process: CMU prisoners are not informed about what evidence was used to make the designation to the CMU. They receive no hearing to challenge that designation, and there is no meaningful review process to earn a way out of the CMU. This lack of transparency deprives prisoners of due process rights.

Overrepresentation of Muslim and political prisoners: Between 65 and 72% of prisoners at the CMU are Muslim. Others are political prisoners, such as environmental activists or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

Destructive effect on families: The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones during visits inflicts pointless suffering on the prisoners and their families alike.

Conditions amount to cruel and unusual punishment: The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

CMUs should be closed because they violate basic human rights and due process. Federal prosecutors have failed to establish a compelling reason for CMU incarceration. If the CMUs are not closed, at the very least the proposed new regulations should be rejected as unconstitutional and inhumane.

Mary Cato, Arlington, TX

"The isolation of prisoners in Communication Management Units amounts to cruel and unusual punishment; it serves no purpose to psychologically destroy them through the emotional starvation of severing contact with their families and the outside world. It is also politically biased, religiously biased and racist; the majority of inmates placed in such units are Muslims and political prisoners. There is no oversight regarding which prisoners are placed in CMUs and why, and there is no process to appeal the decision.

"For all of these reasons, the BOP should stop isolating prisoners in CMUs."

Dave Duncan

I am writing to condemn the treatment and state of the detained CMU prisoners, in hopes of highlighting the injustices taking place in our distinguished country. In hopes of making my comment as concise as possible, I plan on bringing into light a few reasons for my denunciation of the states of CMU prisoners. In a time when Muslims are continuously being with accusations of affiliation with “terrorist groups”, it is becoming more relevant to see these Muslims in prisons around the U.S. This faulty pattern of an overwhelming representation of Muslims in CMU’s (somewhere around 65%-72% of those detained in CMUs are Muslim) is significant evidence that racial profiling and discrimination is being incorporated in their arrest. These same prisoners are denied rights as prisoners stated in the Constitution, refusing them a review process to challenge their arrest and abundant reason for their arrest in the first place. The prisoners are also denied adequate communication with their families, subjecting them to complete isolation from the outside world and people the prisoners are deeply fond of. Finally, these prisoners also face unreasonable, cruel punishment, lacking any sensible reasoning. I urge the Federal Bureau of Prisons to reevaluate the treatment of CMU prisoners and the reason for their arrest.

Nisreen Omar Mobayed

Joshua Raisler Cohn
Jamaica Plain MA 02130

June 2, 2010

Ms. Sarah Qureshi
Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

Re: BOP Docket #1148-P Communication Management Units

Ms. Qureshi:

I am writing to express my deep concern and strong opposition to the establishment of, and conditions at, the Communications Management Units (CMUs) that have already been opened and are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read and reviewed the proposed rule that was published in the Federal Register on April 6, 2010. I have followed creation and operation of the CMU's since they were first opened, without a proper notice and comment period, almost four years ago. I correspond with prisoners who are housed in the units, have read their writings, and have communicated with their families. I have also reviewed most of the documents files by the BOP, the ACLU and CCR in the three ongoing lawsuits challenging various aspects of the CMU. My opposition is directed at both the proposed policies and conditions, as well as to the existing and ongoing practices within the CMUs. I strongly urge the BOP to abandon this proposed rule.

I graduated from law school a few days ago. The proposed CMU rule and its current operation fly in the face several basic principles of law that I have been taught are core tenants, maybe even the bedrock of our legal system.

There are several specific areas of concern I have about the proposed rule.

CMUs target Muslim and Arab Prisoners.

The population of the CMUs is overwhelmingly Muslim, and this appears to be by design. Of the first 17 prisoners designated to the CMU, I believe 15 were Arab and 16 were Muslim. While the numbers have changed some, the population still appears to be over 65% Muslim prisoners, compared with a much lower representation on the overall BOP population (about 6%). These prisoners are not singled out for acts that occurred during their incarceration, and in fact many of the Muslim prisoners have no history of violation *any* prison communication rule, including those housed in other units and other prisoner prior to being designated into the CMU. The lack of oversight procedure into who is sent to a CMU makes the disproportionate representation of

Muslim prisoner even more troubling. Without specific allegations of wrongdoing by the prisoners, their designation to the CMU is both discriminatory and retaliatory.

CMUs destroy family and community connections.

I have a young child, and as a parent I have learned in new ways the importance of touch and the critical value of physically sharing space as ways to maintain and build strong relationships. These opportunities are denied to CMU prisoners with an unjustified and blanket ban on contact visits. Such a ban exists for no other group of prisoners in the BOP, and this proposed rule does not justify such a severe restriction. All CMU visits are live monitored anyway, so the increased cost and personnel time involved in supervising contact visits would be negligible. Allowing contact visits would provide a significant benefit to CMU prisoners, and would allow them to foster a sense of closeness and familiarity with their loved ones, and especially with their young children. It breaks my heart to think of young children who are denied the opportunity to touch one of their parents for so many years.

CMU prisoners do not pose any threat that would justify this blanket ban, and it is unconscionable to impose such a ban. This policy serves as addition punishment, beyond the term of years already imposed by the courts, on prisoners, their families, and their communities.

The BOP proposed rule will also curtail the already limited phone access that CMU prisoners have. The rule would limit prisoners to one 15 minutes phone call a month, and one visit a month, both limited to immediate family members. This rule would prevent me from visiting with a CMU prisoner who I have known for years, but who is not immediate family. The shocking limitations on phone access would further disrupt the ability of CMU prisoners to communicate with their families and loved ones.

Lack of Due Process.

CMU prisoners receive no meaningful explanation of why they were designated to the CMU, or what evidence was used to come to that decision. They were not offered a live hearing in which to challenge this designation, unlike other classification decisions. They are denied a meaningful review process of their designation, and unlike other specialized BOP units, there is no opportunity for CMU prisoners to work their way down, earning increased privileges and access based on their behavior conforming to BOP rules.

In the United States, due process is an enshrined right. It is not something that comes and goes based on defendant's charges, or they type of a prisoner's conviction. It is something that we all carry with us, that everyone is entitled to, these rights must be protected and upheld.

The CMU conditions are cruel and unusual punishment. There is no need for the destruction that these conditions impose, and will continue to impose, on CMU prisoners and their families.

Comments Submitted by Concerned Individuals

I respectfully ask that you take the above concerns into account while deciding whether to adopt, or to abandon this proposed rule. I urge you to abandon the proposal.

For a just and sustainable future,

Joshua Raisler Cohn

cc: Center for Constitutional Rights

Kevin Van Meter
Portland, OR 97217

2 June 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

Re: BOP Docket #1148-P

Communication Management Units

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule published in the Federal Register on April 6, 2010, and I am troubled by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

- **Lack of due process at the CMU:** None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.
- **Overrepresentation of Muslim and political prisoners at the CMU:**
- Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active

prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

- **Destructive effect of the CMU on families:** The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones including children during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.
- **Conditions at the CMU amount to cruel and unusual punishment:** The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Kevin Van Meter

Christy Pardew
Jamaica Plain, Massachusetts 02130

June 2, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing today to express my deep concerns over the Communications Management Units that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have concerns both about the establishment of these units and the current conditions there – both for prisoners and their families.

The Communication Management Units (CMUs) are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I strongly urge the Bureau of Prisons to do the right thing and abandon this proposed rule.

As a parent of a young child, I feel I must emphasize the destructive effect that CMUs have on families. The small number of phone calls that CMU prisoners are able to make and the ban on all physical contact with loved ones – even children – during visits makes the CMU an even more destructive tool for our society than regular prisons are. There seems to be no point to these rules outside of inflicting more suffering on the prisoners and their families. These type of repressive rules do not lend themselves to rehabilitative efforts on behalf of the prisoners, their families or the CMU system.

I am confused as to how these prisoners ended up at the CMU – but I'm sure I'm not nearly as confused as they and their families are. None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights, a fundamental facet of the US criminal legal system.

Another confusing aspect of the CMU to me is the overrepresentation of Muslim and political prisoners in these units. To me, a member of the general public, it certainly seems as if these special units were created in secret especially to house Muslim and political prisoners. From what I've read, it seems that somewhere between 65-72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

I believe that the concerns about conditions that I have laid out in this letter amount to the CMU being a tool of cruel and unusual punishment, and I strongly urge all BOP staff to take these serious concerns into consideration as you decide the fate of the proposed rule.

Thank you,

Christy Pardew

cc: Center for Constitutional Rights

Farah Fosse
Washington, DC 20001

June 2, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

The lack of due process at the CMUs, the over-representation of Muslims and political prisoners, and the destructive effects on families and friends are of particular concern to me. I believe that the CMU conditions, and even more so the proposed conditions, are tantamount to **cruel and unusual punishment** given that the CMU prisoners are almost completely isolated from society, not to mention friends and family.

Of particular concern to me are the following issues with the current CMUs which I believe will be exacerbated by the proposed regulations:

Lack of due process at the CMU: CMU prisoners have not been told why they are designated to the CMU and by what process that decision was made. Equally, there is no process to challenge this designation or to earn their way out. This lack of transparency and process deprives prisoners of their due process rights.

Overrepresentation of Muslim and political prisoners at the CMU: The overrepresentation of Muslim and political prisoners coupled with lack of transparency and due process points to discrimination and retaliation.

Destructive effect of the CMU on families: The extremely limited number of phone calls and visits is tantamount to isolation and amounts to cruel and unusual punishment. This isolation runs counter to any sort of rehabilitative process the prison system purports to maintain and severely limits the possibilities of prisoners to reintegrate into society.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Farah Fosse

cc: Center for Constitutional Rights

Karoline Knable

Washington, DC 20001

2 June 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

Re: BOP Docket #1148-P

Communication Management Units

To Whom It May Concern:

Hello! The Communications Management Units (CMUs) in your oversight caught my attention shortly after their known start-up. At that time, I was outraged and disgusted that such a facility could exist within the United States. Currently the conditions at the CMUs are reprehensible at best. The proposed rule that was published in the Federal Register on April 6, 2010 is an abhorrent violation of basic constitutional rights and human needs, and I strongly urge the BOP to abandon this proposed rule and cease the operation of CMUs immediately.

It is incomprehensible how such a blatant attack on families and constitutionally protected freedoms could fly in a self-proclaimed democracy. The CMUs currently destroy families in dramatic ways that have unforeseen consequences. Not to mention that the further restrictions proposed on communications within the CMUs come off as nothing shy of cruel and unusual punishment.

Specifically, I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

Overrepresentation of Muslim and political prisoners at the CMU: Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

Destructive effect of the CMU on families: The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.

Conditions at the CMU amount to cruel and unusual punishment: The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.

Please halt further development of the proposed rule for the CMUs and the continued operation of the CMUs.

Sincerely,

Karoline Knable

Craig Hughes
Washington, DC
20010

2 June 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule published in the Federal Register on April 6, 2010, and I am troubled by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

- ***Lack of due process at the CMU:*** *None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*
- ***Overrepresentation of Muslim and political prisoners at the CMU:*** *Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific*

allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

- ***Destructive effect of the CMU on families:*** *The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.*
- ***Conditions at the CMU amount to cruel and unusual punishment:*** *The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Craig Hughes, MA, MSW

cc: Center for Constitutional Rights

To: Regulations.gov
RE: Proposed RULES on [Communication Management Units \(Document ID BOP-2010-0006-0001\)](#)
From: Zulfar Shaker
San Diego, CA 92111

Date: June 2, 2010

The issue of prisoners not being told why they are being relocated to CMUs is unfair and lacks due process. It seems unconstitutional that they are in this unit without being told why they were selected to be placed there over other prisoners. As citizens of the United States of America, there are laws and regulations in place to prevent such abuse against any particular group (ethnicity, race or religion). Therefore, CMUs are unconstitutional and should be removed from the entire system of imprisonment the US government maintains.

Moreover this indefinite prisoner placement into these CMUs prevents prisoners in maintaining regular communication with family and friends as other prisoners do. By being transferred into these CMUs, it is isolating them and really amounting to cruel punishment! There really is no productivity with imprisoning inmates like this, especially when prisoners have been on proper behavior and not caused any problems while incarcerated.

Thank you,
* *Zulfar Shaker*

Marianne Maeckelbergh
New York, NY 10023

June 2, 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

Re: BOP Docket #1148-P Communication Management Units

To Whom It May Concern:

I have recently become aware of the proposed rule published in the Federal Register on April 6, 2010, and I am writing to encourage the BOP not to pass this rule under any circumstances.

The extreme deprivation to which prisoners in the CMUs would be subjected as a result of this law (only one hour of visits and only one phone call per month and only one letter per week) can in no way be justified in the name of national security. The only possible result is a process of dehumanization of the prisoners, which can in turn only have negative consequences for national security and society in general. The aim of prisons should be at least partially to rehabilitate the prisoners, and studies carried out on prisoner rehabilitation have shown that human contact and especially maintaining contact with family and friends is a crucial part of the rehabilitation process and the post-prison reintegration process. If the aim is to safeguard national security, then the task of the BOP must be to ensure that those leaving the prison system are as well adjusted as possible and that prisoners are able to maintain not only extended family networks but also friend networks so as to have the best possible chances for reintegration.

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule.

Thank you for your time and consideration.

Sincerely,

Marianne Maeckelbergh, PhD
Lecturer Cultural Anthropology and Development Sociology
Leiden University

cc: Center for Constitutional Rights

William Brandon Jourdan
Brooklyn, NY 11211

6/1/10

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to voice my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) that are being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am troubled not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

Lack of due process at the CMU: None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.

Overrepresentation of Muslim and political prisoners at the CMU: Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

***Destructive effect of the CMU on families:** The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.*

***Conditions at the CMU amount to cruel and unusual punishment:** The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "William Brandon Jourdan". The signature is fluid and cursive, with a large, stylized initial "W" and "J".

William Brandon Jourdan

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

June 2, 2010

Re: BOP Docket #1148-P
Communication Management Units

To Whom It May Concern:

The Bureau of Prisons has been operating the Communications Management Unit (CMU) in Terre Haute, Indiana since 2006, and one in Marion, Illinois since 2008. While we applaud BOP for finally issuing proposed rules to govern CMUs, we are troubled by the extent to which the proposed rules violate Constitutional protections, unnecessarily harm families and allow for the continued disproportionate confinement of Muslim and political prisoners.

1. Use of Secret Evidence and Lack of Due Process:

Under the proposed rules, an inmate will be transferred to a CMU at the sole discretion of the Bureau's Assistant Director, Correctional Programs Division, and that "the inmate will be provided an explanation of the decision in sufficient detail, unless providing specific information would jeopardize the safety, security, or orderly operation of the facility, or protection of the public." We strongly object to the ability of the BOP to use secret evidence which the prisoner will not be allowed to explain or dispute. We are aware that under current practice, prisoners have not been given meaningful explanations for their transfer to CMUs, nor have they been granted hearings to challenge their designation.

2. Lack of oversight:

Because there is no oversight of the procedures that determine who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory. The rules do not correct or address this problem.

3. Communications restrictions are unnecessarily stringent

The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike. We believe that BOP staff can adequately monitor more than one letter per week, and one visit and one (15 minute) phone call per month.

We urged the BOP to take the above concerns into account as it decides whether to adopt this proposed rule.

Sincerely,

Sue	Udry	Silver Spring,	MD
Kevin	Martin	Silver Spring,	MD
E.	Ochmanek	Boston,	MA
Martha	Shelley	Portland,	OR
Dave	Kunes	Silver Spring,	MD
Dorothy Shays	Dangerfield	Beacon,	NY
Dan	Bessie	Tiburon,	CA
Lillian	Schulz	Tigard,	OR
Frank	Kolwicz	Monmouth,	OR
Lorraine	Faford	Vancouver,	WA
Larry	Maxwell	Montross,	VA
Christopher	Benjamin	Largo,	FL
Allan	Taylor	Delray Beach,	FL
Donald	Goldhamer	Oak Park,	IL
Eric	Schwing	Richmond,	VA
Dave	Mitchell	Madison,	WI
Alice	Zachmann	Mankato,	MN
Joan	Abruzzo	Bayside,	NY
Chuck	Lapine	Chevy Chase,	MD
John	Lamperti	Hanover,	NH
Richard	Rohde	Hamilton,	VA
JANICE	GOLDEN	Rockland,	MA
James	Miles	W. Palm Beach,	FL
Thomas	Hill	Albuquerque,	NM
Sandy	Hester	Claremont,	CA
Wilma	Ralls	Rohnert Park,	CA
P.	Jolly		MN
Ineke	Deruyter	Portland,	OR
Evelyn	Stern	Los Angeles,	CA
Bernie and Marcia	Altman	Kelso,	WA
Oliver	Swift	White Plains,	NY
Rhita	Lippitz	Evanston,	IL
Cristy	Murray	Oregon City,	OR
Rich	Gillock	Costa Mesa,	CA
Deborah	Goodman	Brookline,	MA

Comments Submitted by Concerned Individuals

John	Nettleton	Portland,	OR
Alice Anne	Martineau	Mountain View,	CA
Harry	Kershner	Portland,	OR
Marge	Wood	Austin	TX
Rose & Ronald	Lernberg	El Cerrito,	CA
Mary Anne	Joyce	Portland,	OR
Martha	Shelley	Portland,	OR
Joan	Engelhaupt	Manhattan Beach,	CA
Gale	Schmidt	Portland,	OR
Hazel	Westly	Portland,	OR
Marvin	Gatch	Denver,	CO
John	Nettleton	Portland,	OR
Evelyn	Haas	Philladelphia,	PA
Loch	Phillipps	Brooklyn,	NY
Anne	Weigers	Austin,	TX
Paul & Jeanette	Johnson	Santa Cruz,	CA

Regarding the Federal Bureau of Prisons' (BOP) establishment of two Communications Management Units (CMUs) designed to isolate and segregate certain prisoners in the federal prison system from the rest of the BOP population, which the BOP proposes to make permanent, I submit the following comments today, June 2, 2010:

The CMUs deprive prisoners of their due process rights in the following ways: 1) the prisoners are not given any information as to why this is their designation, such as what evidence was used in making the determination; 2) prisoners are not permitted a hearing to challenge being assigned to a CMU; 3) there is no review process or way to earn a way out of assignment to a CMU.

CMUs are discriminatory and retaliatory, with between 65 and 72% of these prisoners being Muslim and many others being environment and animal rights activists. There is no oversight procedure of who gets sent to a CMU, which increases the tendency for bias against these groups.

The CMUs wreak havoc unnecessarily on prisoners and their families, including children, due to the meager phone contact and written correspondence permitted and the total ban on all physical contact. The isolation maintained by the CMUs is cruel and unusual punishment and can only result in having a destructive effect on the prisoners, their families and on society at large, as well.

For these reasons, I am opposed to the continuation of the CMUs.

Thanks again,

Elizabeth Tobier

To whom it may concern:

I am writing to protest the unjust nature of the Communication Management Units and to demand that they be reformed if not completely shut down. The prisoners are treated without due process and are intentionally being isolated from contact with family members in a manner that serves no legitimate purpose. Many of these prisoners present with no threat of harming themselves or others and yet are denied basic contact in the form of phone calls and family visits. The restrictions keep mounting and limitations on length/frequency of phone calls and visits are destroying both the health and well-being of the prisoners and their families. In addition, in many cases, the prisoners are shuffled around and sequestered without notice or explanation as to why or where they are being moved. Legal counsel and family members of these prisoners are among the last to be notified of these changes and ultimately find out second-hand rather than being informed directly through the CMU administration. Please take appropriate actions to correct these injustices and return these prisoners' their constitutional rights to due process.

Sincerely,
Huda Sharif Battikhi
Concerned Citizen
San Diego, California
United States of America

Comment Tracking Number: 80afa292

Comments Submitted by Concerned Individuals

Re: BOP Docket #1148-P
Communication Management Units

- CMUs are Un-American.
- There's no due process.
- Most prisoners are Muslims or political prisoners.
- Prison is supposed to rehabilitate not destroy people and families.

Hetty Oppman
Bronxville, NY 10708

Santa Barbara, CA 93105
6.2.2010

Rules Unit, Office of General Counsel
Bureau of Prisons
320 First St., NW
Washington, DC 20534

In re: BOP Docket #1148-P Communication Management Units

The conditions at the Communications Management Units (CMUs) that are **run** by the BOP in Terre Haute, Indiana and Marion, Illinois, are appalling. I have read the proposed rule that was published in the Federal Register on April 6, 2010, and I am alarmed not only by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. They are needlessly punitive, unfairly applied, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

First I am concerned by the lack of due process. None of these prisoners have been told why they were assigned to the CMU, and they have not received any hearings to challenge this designation, nor is there any meaningful review of their cases. This lack of transparency deprives them of their right to due process.

Then there is a discriminatory pattern in the assignment of prisoners to CMUs. Between 65 and 72% of them are Muslim and many others have been politically active. The lack of an oversight procedure in the designation process means that this bias remains unchecked.

Finally, it is cruel to limit so drastically the number of phone calls and visits that the prisoners may receive and to prohibit physical contact with loved ones who do manage to visit. This is unnecessarily punitive and hurts the families as well, especially the children. In sum, the conditions of isolation at the CMUs constitute cruel and unusual punishment.

I urge you in the strongest terms to eliminate this proposed rule. In a civil and just society there is no place for such discriminatory treatment of prisoners.

Yours truly,

Mrs. Susan Shields

Copies to CCR
 Congresswoman Lois Capps

I write to express my opposition to the proposed rule establishing the Communication Management Units. A prefatory objection is to the post-facto issuance of these regulations - years after the units at Terre Haute and Marion were established. This failure on the part of the BOP to promulgate rules in a timely manner and allow required public comment should be reason enough to reject the proposed rules.

Specifically, as established, the CMUs violate due process. I have been in correspondence with three prisoners at these units, and none were given clear reasons for being placed there, nor the opportunity to challenge allegations that may have been made to result in this placement. Second, the units impose undue restrictions on visitation and communication with family and others outside the prison system.

In the three cases I am personally familiar with, there was no evidence that normal visiting, correspondence and telephone calls had been abused in any way warranting the exceptional monitoring of communications and even prohibition on contact visits experienced by the men in the CMUs. The prohibition on contact visits is especially destructive of the family ties the prisoner may have, and need to support them on their eventual return to the community. Third, I am persuaded by the known religious affiliation of the majority of prisoners in past or presently assigned to the CMUs that placement reflects a religious bias, and that Muslim men are disproportionately and unjustly singled out for placement here. Two of the three prisoners I am in contact with are devout Muslims, yet neither had any disciplinary violations in their previous place of confinement, nor were these Muslim men convicted on charges related to terrorism or threats against the government. In sum, the cumulative effect of the proposed rules, and the Communication Management Units that would be created under these rules amount to cruel and unusual punishment, and should be rejected.

Jack Cohen-Joppa

In response to the requests for public comments regarding the Communication Management Units (CMU), my comments follow:

a) The assigning of prisoners to the CMU appears to be completely arbitrary and based on suspicions and not facts. Some prisoners held in the CMU are treated as terrorists although they have not been convicted of terrorist crimes.

b) The CMUs are located in the middle of the country and therefore are very difficult for those family members on the East and West Coasts to access. The burden and strain on those families is inhumane. Additionally the reported actions of CMU staff indicate a deliberate attempt to discourage and obstruct both family and attorney visits.

c) The CMUs appear to have been designed to prevent communication not monitor it. Children of inmates are especially hurt by the severe restrictions on contact with their parents. The psychological and emotional injury to these children is life-long and cruel (fcnetwork.org/wp/wp-content/uploads/fact-sheet.pdf) (www.childrenofinmates.org/Issues_and_Facts.aspx). Due to the amplified nature of the communication restrictions, the harm done to these children can only be expected to be more damaging than what is suffered by children of inmates in other prison units.

d) Finally, most of the inmates assigned to the CMUs are Muslims preemptively prosecuted by the government because of suspicions that they might engage in future criminal acts. The preemptive, discriminatory and suppositional nature of these prosecutions motivated is immoral and unjust. The result is that many innocent people are being sent to prison for long periods of time. The government knows well that most of these people are not terrorists and they have been convicted of contrived crimes primarily to appear tough on terrorists. Treating anyone in such a manner is shocking to anyone who believes in the fundamental values of this country.

The CMUs as presently establish and administered, are abhorrent, an insult to justice and serve no purpose except to delude the American public into believing that the government has incarcerated many terrorists (albeit a sham). They are arbitrary, vindictive, harsh, discriminatory, and are a disgrace to the American system of justice.

Sincerely,
Thomas Giacobbi, LMSW

Sarah Hughes
Portland, OR
97217

2 June 2010

Rules Unit, Office of General Counsel
Bureau of Prisons (BOP)
320 First Street, NW
Washington, DC 20534

**Re: BOP Docket #1148-P
Communication Management Units**

To Whom It May Concern:

I am writing to express my concern over the establishment of, and conditions at, the Communications Management Units (CMUs) being run by the BOP in Terre Haute, Indiana and Marion, Illinois. I have read the proposed rule published in the Federal Register on April 6, 2010, and I am troubled by the conditions and policies proposed in that rule, but also by existing practices at the CMUs. The CMUs are needlessly destructive to families, have been used to disproportionately confine Muslim and political prisoners, and violate basic constitutional protections. I urge the BOP to abandon this proposed rule.

I would like to highlight the following issue(s) at the CMU that are of particular concern to me.

- ***Lack of due process at the CMU:*** *None of the CMU prisoners have been told in any meaningful way why they were designated to the CMU, or what evidence was used to make that decision. They have received no hearing to challenge their CMU designation. Likewise, there is no meaningful review process to earn their way out of the CMU. This lack of transparency deprives prisoners of their due process rights.*
- ***Overrepresentation of Muslim and political prisoners at the CMU:*** *Because there is no oversight procedure of who gets sent to the CMU and why, there has been an unchecked pattern of Muslim prisoners and politically active prisoners being sent to the CMU. Somewhere between 65 and 72% of prisoners at the CMU are Muslim. Others are, and have been, politically active individuals, such as environmental activists, or individuals who have advocated for themselves while in prison. In the absence of specific*

allegations of wrongdoing, their designation to the CMU is both discriminatory and retaliatory.

- ***Destructive effect of the CMU on families:*** *The meager number of phone calls and visits that CMU prisoners receive, and the blanket ban on physical contact with loved ones – including children – during visits tears families apart and inflicts pointless suffering of the prisoners and their families alike.*
- ***Conditions at the CMU amount to cruel and unusual punishment:*** *The isolation experienced by CMU prisoners, and the ways in which they are prevented from maintaining their family ties, is cruel and serves no legitimate purpose.*

I hope that the BOP will take the above concerns into account as it decides whether to adopt this proposed rule. I thank you for your consideration of my above stated concerns.

Sincerely,

Sarah Hughes

cc: Center for Constitutional Rights

**Comments Submitted by members of the NYU
Postdoctoral Program in Psychotherapy and
Psychoanalysis**

May 25, 2010

Rules Unit
Office of General Counsel
Bureau of Prisons
320 First Street, NW.,
Washington, DC 20534
ATTN: Sarah Qureshi

Dear Ms. Qureshi: **Re: BOP Docket No. 1148-P**

We the undersigned, all members of the NYU Postdoctoral Program in Psychotherapy and Psychoanalysis, are writing in response to your proposed new rule, BOP Docket No. 1148-P regarding limitations on communication and visitation for those prisoners incarcerated in Communication Management Units. Many of us have extensive experience working in institutional as well as private settings. We are strenuously opposed to the new regulation.

The new regulation limiting telephone contact to one 15 minute call per week to one person; mail communication to one three page double spaced letter per month; and visitation to one, non-contact visit of no more than an hour per month with immediate family members, fails to take adequate account of the research, some of it notably robust, that exists on the impact of conditions of incarceration on readiness for release, recidivism, or family relationships, themselves significant for prisoner adjustment post-release.

Research indicates not only that visitation significantly reduces recidivism (Bales & Mears, 2008) but that more visits contribute to a significant decline in the likelihood of repeat offending. (“For each additional visit an inmate received, the odds of recidivism declined by 3.8 percent” Bales & Mears, 2008, p. 306.) Maruna and Toch (2005), as well as others, have emphasized the importance of visitation for prison management and increasing the post-release success of inmates. “Visitations offer inmates the only face-to face opportunities they have to preserve or restore relationships that have been severed by imprisonment” (Maruna & Toch, 2005, p. 167).

It is important as well that appropriate consideration be given to the impact on the children of inmates of these restrictions on communication. According to now outdated and therefore likely undercounted reports, “it was estimated in 1999 that over 1.5 million children had a parent behind bars” (Nesmith & Ruhland, 2008, p. 1120). Other reports indicate that as many as 10 million children in the United States have “a parent involved in the criminal justice system” (Arditti, 2005). Family relationships are critical to a child’s development. Thus policies that impact the parent-child relationship such as “no contact visitation,” telephone communication as restrictive as one 15 minute phone call to one person per week, severely hamper the potential for anything approximating “normal” familial relationships including the inability of the imprisoned parent to experience him/herself as either effective or involved in the parenting role. Without any opportunity

for contact with the incarcerated parent, with the pat-downs, searches and metal detection required for entry into the visiting areas, the child's exposure to frightening even traumatogenic conditions make visiting problematic at best with no potential for relief from such states via the kinds of physical contact that children need in order to feel safe and soothed.

Children must deal with the shame and stigma of a parent's imprisonment with little if any social support. When conditions of visitation and parent contact are as restrictive as those proposed in the new regulations they serve only to distance the child from the parent, thus effectively diminishing the potential for a meaningful parent-child bond. A number of jurisdictions have incorporated family-friendly visiting areas including play areas and toys for children to good effect for children, prisoners and correctional officers for whom behavioral control of those imprisoned is made less problematic when visits are successful for all involved (c.f. Bilchik, et al., 2001).

The proposed regulations impose restrictions on contact between the prisoner and the outside world that create significant psychological and emotional harm for all involved. It is difficult to comprehend what makes such practices necessary other than to compound the already severe punishment those imprisoned are receiving.

References:

- Arditti, J.A. (2005) "Families and incarceration: An ecological approach." *Families in Society*, Apr – June, , 86 (2), 251-260.
- Bales, W.D. & Mears, D.P. (2008) "Inmate social ties and the transition to Society: Does visitation reduce recidivism? *Journal of research in crime and delinquency*, 45 (3), 287-321.
- Bilchik, S., Seymour, C. & Kreisher, K. (2001). "Parents in prison." *Corrections Today*, 63, 108-114.
- Maruna, S. & Toch. H. (2005). "The Impact of Imprisonment on the Desistance Process." In Travis, J. & Vischer, C. (Eds.) *Prisoner Reentry and Crime in America*, New York: Cambridge University Press pp. 139-78.
- Nesmith, A & E. Ruhland (2008) Children of incarcerated parents: Challenges And resiliency, in their own words. *Children and Youth Services Review*, 30 (2008) 1119–1130.

Respectfully submitted,

Nina K. Thomas, Ph.D., ABPP – Adjunct Clinical Associate Professor, NYU
Postdoctoral Program in Psychotherapy and Psychoanalysis
Judie Alpert, Ph.D. - Professor, NYU
Alanne Baerson, Ph.D.
Kathy Bacon Greenberg, Ph.D.
Steve Botticelli, Ph.D.
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Barry P. Cohen, Ph.D.

Semra Coskuntuna, Ph.D.

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Postdoctoral Program in Psychotherapy and Psychoanalysis

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Jonathan Eger, Psy.D.

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Professor Albert Einstein College of Medicine

Jane Tucker, Ph.D., - Adjunct Clinical Assistant Professor, NYU Postdoctoral
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Barbara Waxenberg, Ph.D.

Joan Yager, Ph.D.

NYU Brennan Center and Former Corrections Officers

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June 2, 2010

Ms. Sarah Qureshi
Office of General Counsel
Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534

Re: BOP Docket No. 1148-P

Dear Ms. Qureshi:

Raul S. Banasco, Steve J. Martin, Ron McAndrew, and the Brennan Center for Justice at New York University School of Law submit these comments in response to the pending Notice of Proposed Rulemaking titled *Communication Management Units*, issued by the Federal Bureau of Prisons (BOP).¹ We believe that modifications to the proposed rule would substantially improve Communication Management Units (CMUs), making them both more effective and less harsh.

IDENTITY AND INTEREST OF THE COMMENTERS

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. Our work ranges from voting rights to campaign finance reform, from racial justice in criminal law to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector. The Brennan Center advocates for national security policies that respect the rule of law, constitutional and human rights, and fundamental freedoms.

Raul Banasco began his career in the juvenile justice/corrections field in 1986 with the New York State Juvenile Justice Department. In 1988, he joined the Florida State Department of Corrections (FDOC) as a Correctional Officer at the Central Florida Reception Center. During his 19 years with FDOC, he served as a Correctional Officer, Classification Officer, Probation Officer, Probation Supervisor,

¹ 75 Fed. Reg. 17324 (Apr. 6, 2010), BOP Docket No. 1148-P.

Classification Supervisor, Assistant Warden of Operations and Programs, Warden and Director of Staff Development of over 28,000 employees throughout the State of Florida both for Institutions and Probation & Parole services. In October 2006, he was appointed by Orlando's Mayor Richard Crotty to be the Major at the Orange County Corrections Department in Orlando, Florida. As the Major, he was responsible for daily operations of 4,200 inmates and 600 certified and civilian staff. In September 2008, he was appointed to the position of Deputy Chief of the Osceola County Corrections Department.

Steve J. Martin is a career corrections professional currently engaged in private practice as a corrections consultant. He is actively involved in a variety of roles as a consulting expert, federal court monitor and court appointed expert in 15 states, Puerto Rico and the Virgin Islands. He served as a corrections expert for the U.S. Department of Justice, Civil Rights Division, for approximately 15 years. He has worked as a consultant in more than forty states and has visited or inspected more than 700 confinement facilities in the U.S., Guam, Saipan, Jamaica, Puerto Rico, and the Virgin Islands. He has served or currently serves as a federal court monitor in three prison systems and four large metropolitan jail systems. During more than thirty-seven years in the criminal justice field, he has worked as a correctional officer, probation and parole officer and prosecutor. He is the former General Counsel/Chief of Staff of the Texas prison system and has served gubernatorial appointments in Texas on both a sentencing commission and a council for mentally impaired offenders. He has appeared/testified before a large variety of oversight entities including the U.S. Congress. He has extensive experience in the development of correctional standards, policies, procedures and guidelines for confinement operations across the United States.

Ron McAndrew began his more than 20-year career with the Florida Department of Corrections in 1979 as a Correctional Officer at Dade Correctional Institution. From 1992 to 1996, he served as Warden of Gulf Correctional Institution, a facility consisting of five units and housing 3300 inmates. From 1996 to 1998, he served as Warden of Florida State Prison, supervising all aspects of the facility, including the execution of inmates on Florida's death row, as ordered by the Governor. From 1998 to 2001, he served as Warden of Central Florida Reception Center, overseeing a population of approximately 3000 inmates. Upon retirement from the Florida Department of Corrections, Mr. McAndrew served as Interim Director of Corrections for Orange County, Florida.

INTRODUCTION AND SUMMARY

Corrections officials can – and should – limit inmates’ communications as necessary to preserve order in prisons, to protect the safety of inmates and staff, and to block communications that could facilitate crime. Overly restrictive limitations, however, are counterproductive. As detailed below, they make prisons more dangerous, increase recidivism, and harm inmates and their families.

We believe that the proposed rule would impose overly harsh restrictions on CMU inmates, and we recommend several revisions that would improve the rule. Our recommendations flow from two basic principles. First, prisons must always preserve security, but inmates must be accorded meaningful opportunities for contact with the outside world, consistent with measures sufficient to maintain security. Second, procedures should ensure that BOP sends inmates to a CMU only when their communications create genuine risks.

In keeping with these principles, we recommend the following revisions to the proposed rule, each discussed below in greater detail:

- Refine the standard for CMU designation.
- Increase phone, visitation, and correspondence opportunities for CMU inmates.
- Authorize contact visits between CMU inmates and family members, consistent with BOP policies that apply to most inmates, unless specific evidence shows a risk that inmates will abuse contact visits.
- Allow inmates to challenge initial CMU designation through meaningful hearings.
- Establish clear mechanisms for challenges to ongoing CMU placement.

BOP can implement such changes without compromising the stated purpose of the proposed rule which, according to the Notice of Proposed Rulemaking (NPRM), is to facilitate total monitoring of certain inmates’ communications.² BOP could make the recommended changes while still operating the CMUs to monitor all communications of designated inmates.³

² 75 Fed. Reg. at 17325.

³ The proposed rule would not entail monitoring or limitation of attorney-client communications. Proposed 28 C.F.R. §§ 540.203(c); 540.204(b); 540.205(b).

THE EFFECT OF EXCESSIVE RESTRICTIONS ON COMMUNICATION

BOP should avoid overbroad restrictions on communications between inmates and family members. While imprisonment does not deprive a prisoner of all constitutional entitlements, it permits greater restriction of inmates' constitutional rights than the rights of people who are not incarcerated. Consequently, the dangers that particular inmates pose sometimes require corrections officials to restrict those inmates' communications as necessary to maintain safety and order. At the same time, overly harsh restrictions on communications can undermine prison order, cause higher rates of recidivism, and exact a high cost on inmates and their families.

Cutting off communication between inmates and their families makes our streets and our prisons less safe. Time and again, empirical research has shown that inmates who maintain strong connections with their families are less likely to make criminal activity a way of life. "Inmates who maintain family ties are less likely to accept norms and behavior patterns of hardened criminals and become part of a prison subculture."⁴ As a result, preserving lines of communication between inmates and family promotes order and security in prison. The positive effects of family connections also continue after release from prison: "With remarkable consistency, studies have shown that family contact during incarceration is associated with lower recidivism rates."⁵

Severe restrictions on communication also take a harsh toll on inmates and their families. More than half of inmates in American prisons have children, and 80% of those parents stay in touch with their children while incarcerated.⁶ Blocking communication increases the pain that spouses, children, and parents feel when they lose a member of their family to the penal system. Letters, visits, and telephone calls create a lifeline between inmates and their families.

⁴ Shirley R. Klein et al., *Inmate Family Functioning*, 46 INT'L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 95, 99 (2002) (citations omitted).

⁵ Nancy G. La Vinge, et al., *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 J. OF CONTEMP. CRIM. JUST. 314, 316 (2005) (citations omitted); see also Rebecca L. Naser & Christy A. Visher, *Family Members Experiences with Incarceration and Reentry*, 7 W. CRIMINOLOGY REV. 20, 21 (2006) ("[A] remarkably consistent association has been found between family contact during incarceration and lower recidivism rates.") (citations omitted).

⁶ Nasser & Visher, *supra* n.5 at 20-21.

RECOMMENDATIONS

Recommendation #1

Refine the Standard for CMU Designation

In recognition of the extreme isolation that CMUs entail, the standard for designation must limit the CMU population to prisoners whose communications pose a genuine threat. Such a standard should reflect the basic purpose of CMUs – monitoring the communications of prisoners likely to use communications in furtherance of serious conduct that is illegal or prohibited. As written, the criteria in the proposed rule – any one of which would permit placement in a CMU – are overbroad.

We propose the following standard in place of the current proposed section on designation criteria:

Sec. 540.201 Designation criteria.

(a) An inmate may be designated to a Communication Management Unit if the Bureau establishes, by a preponderance of the evidence:

(1) a substantial likelihood that the inmate will use communications with non-inmates in furtherance of serious illegal conduct; or

(2) a recurring pattern of behavior in which the inmate violates rules governing inmate communications.

(b) The Bureau may continue an inmate's placement in a Communication Management Unit when:

(1) in the case of an inmate designated to a Communication Management Unit under Section (a)(1), there remains a substantial likelihood that the inmate will use communications with non-inmates in furtherance of serious illegal conduct; or

(2) in the case of an inmate designated to a Communication Management Unit under Section (a)(2), a substantial likelihood exists that the inmate will continue to violate the rules regarding inmate communications.

As written, each of the criteria proposed by the Bureau is overbroad. Proposed Section 540.201(a) would allow CMU placement based on an offense or offense conduct that “included association, communication, or involvement, related to international or domestic terrorism.”⁷ The failure to define “related to international or domestic terrorism,” combined with the fact that inmates could face CMU placement

⁷ Proposed § 540.201(a).

based on offenses or offense conduct that involve mere “association” or “communication” renders the subsection susceptible to overbroad interpretation. Consider, for example, an individual who stole from a convenience store with an accomplice who attended a mosque that was also frequented by suspected terrorists. Under the proposed standard, mere “association” or “communication” with the accomplice arguably could suffice for CMU placement.

Proposed Section 540.201(b) would permit CMU placement where a prisoner’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.”⁸ The provision defines neither how great the “propensity” must be nor the quantum of proof necessary to “indicate[]” such a propensity. Moreover, the offense of conviction or offense conduct alone may “indicate[] ... [t]he propensity,” meaning that prisoners convicted 30 years ago – and never charged with disciplinary violations while in prison – could land in a CMU now and remain there indefinitely based on actions they took decades in the past.

Proposed Section 540.201(c) would permit BOP to place in a CMU any prisoner who “has attempted, or indicates a propensity, to contact victims of the inmate’s current offense(s) of conviction.”⁹ The “indicates a propensity” language suffers from the same infirmity as the previous subsection. The “has attempted” language suggests that a prisoner may be placed in a CMU indefinitely for a single attempted communication. Furthermore, the provision fails to specify whether the contemplated contact must be prohibited, or even unwanted.

Proposed Section 540.201(d) would empower BOP to send prisoners to the CMU if they “committed prohibited activity related to misuse/abuse of approved communication methods while incarcerated.”¹⁰ The standard, which does not specify whether the “misuse/abuse” must be serious or recurring, would sweep in a prisoner who commits a trifling violation. Such placement, moreover, could be indefinite. The standard does not require that the Bureau justify ongoing placement by showing a continuing risk of abuse.

Finally, Proposed Section 540.201(e), a catch-all provision, would enable BOP to place prisoners in a CMU where “[t]here 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.”¹¹ This remarkably low bar – “any ... evidence” – would permit CMU placement even when the evidence lacks credibility or is contradicted by more

⁸ Proposed § 540.201(b).

⁹ Proposed § 540.201(c).

¹⁰ Proposed § 540.201(d).

¹¹ Proposed § 540.201(e).

compelling evidence. Moreover, the vagueness of the contemplated harm would place few meaningful limits on prison officials' discretion to deem an inmate a "threat." For example, an inmate who had an unusually large number of visitors could be deemed a threat to the "orderly operation of prison facilities" due to the minor disruption caused by the visits.

These criteria would empower BOP to send prisoners to a CMU without sufficient justification. BOP should revise the proposed rule to eschew vague and minimal standards, to ensure that placement in a CMU occurs only on the basis of serious risks, and to allow for transfer out of a CMU if such risks dissipate over time.

Recommendation # 2: Increase Phone, Visitation, and Correspondence Opportunities for CMU Inmates

There is some ambiguity as to whether the restrictions in the proposed rule set a minimum standard for communications by CMU prisoners or establish a norm that will apply to all CMU prisoners, except those subject to discipline¹² – but to the extent the limitations are meant to establish a norm that will apply to ordinary CMU prisoners, they are too restrictive. The proposed rule would allow inmates to make a single fifteen-minute telephone call and to receive a single hour-long visit per month.¹³ CMU inmates would be limited to one double-sided three-page letter per week.¹⁴ These limitations would all but eliminate CMU inmates' contact with the outside world, leading to the adverse effects on inmates, families, and prison order described above.

The restrictions depart dramatically from those that apply to other BOP prisoners. BOP generally allows prisoners at least 300 minutes of telephone calls per

¹² The NPRM characterizes the limitations on communication in the proposed rule as a minimum standard, but then throws that description into question by stating that BOP can depart *below* the purported floors. Specifically, the NPRM describes the regulations as "a floor of limited communication, beneath which the Bureau cannot restrict *unless precipitated by the inmate's violation of imposed limitations.*" 75 Fed. Reg. at 17325 (emphasis added). The NPRM also states that CMUs may have cells for administrative and disciplinary segregation, Proposed 28 C.F.R. § 540.200(b), which presumably also entail restrictions beneath the "floors."

The so-called "floors," then, may actually describe the level of communications that BOP will authorize for most CMU inmates. After all, inmates who have neither broken rules nor been placed in administrative or disciplinary segregation are *ordinary* CMU inmates. As the rule is written, the restrictions could actually operate as ceilings, applicable to all or most CMU inmates, except those subject to disciplinary measures resulting in even greater restrictions.

¹³ Proposed 28 C.F.R. §§ 540.204(a) & 540.205(a).

¹⁴ Proposed 28 C.F.R. § 540.203(a).

month.¹⁵ General population inmates at Federal Correctional Institution (FCI) Terre Haute (which also includes one of the CMUs) are allowed up to seven visits per month.¹⁶ BOP does not ordinarily limit the amount of correspondence that general population inmates may send and receive.¹⁷

The restrictions will also leave CMU prisoners with almost nothing to lose. The threat of losing communication privileges helps incentivize good behavior by inmates. If the norms are set at the proposed levels, correctional officers will have virtually no options for punishment, other than complete elimination of an inmate's contact with the outside world.

Although the current restrictions that apply to most CMU prisoners (described in Institution Supplements issued for the two facilities that contain CMUs) allow more communication than the restrictions contemplated by the proposed rule, the current limitations also fall well below the standards for most prisoners and do not allow sufficient communication. At present, BOP apparently limits CMU inmates to two fifteen-minute telephone calls per month and four two-hour visits a month. While it is possible that communication at the general-population level may be impracticable for CMU inmates, the divergence between these allowances and those contemplated in the proposed rule is simply too great.

The primary purpose of CMUs is to monitor – not limit – prisoners' communications. BOP should increase CMU prisoners' opportunities for communications to the greatest extent practicable. In no way would increased communications conflict with the goal of the proposed rule – achieving “total monitoring” of the communications of designated inmates.¹⁸ Monitoring a greater number of communications could require more staff time and require BOP to hire additional officers, but the investment would be well worth it, given that preventing communication increases recidivism and prison disorder, while harming inmates and their families.

Recommendation # 3: Authorize Contact Visits Between CMU Inmates and Family Members, Consistent with BOP Policies that Apply to Most Inmates, Unless Specific Evidence Shows A Risk that Inmates Will Abuse Contact Visits

The proposed rule would permit only non-contact visits – visits that occur across telephones and through a sheet of glass.¹⁹ This provision would prevent

¹⁵ BOP Program Statement 5264.08, at 9.

¹⁶ Institution Supplement THX-5267.08C § V.E.

¹⁷ *See generally* BOP Program Statement 5265.11.

¹⁸ 75 Fed. Reg. at 17328.

¹⁹ Proposed § 540.205(a).

inmates from hugging, kissing, or even shaking hands with family members and friends during their entire period of incarceration in a CMU. The final rule should authorize contact visits, in keeping with general BOP policy, except when specific evidence shows a risk that inmates will abuse such visits. Under BOP policy, most inmates are allowed to sit in the same room as their visitors, and “[i]n most cases, handshakes, hugs, and kisses (in good taste) are allowed at the beginning and end of a visit.”²⁰

We acknowledge the force of arguments that *unmonitored* contact visits could jeopardize security by allowing weapons, narcotics, and other dangerous contraband to enter prisons. Monitored contact visits, however, do not pose the same risk and should be permitted, except for the most dangerous inmates, and the proposed rule already requires monitoring of all visits.²¹ While the appropriateness of strip searches after contact visits is beyond the scope of these comments, both institutions that have CMUs routinely conduct strip searches of general population inmates after contact visits.²² Except in the case of the most dangerous inmates, monitored contact visits followed by strip searches all but eliminate the risk posed by contact visits.

Recommendation # 4: Allow Inmates To Challenge Initial CMU Designation Through Meaningful Hearings

The proposed rule would deny inmates a meaningful opportunity to challenge CMU designation. In modifying the rule, BOP should look to one of its own models – the regulations governing placement in control units, which house inmates thought to pose a threat to prison order.²³ Current BOP regulations grant meaningful procedures to inmates placed in control units, and the Bureau should extend similar processes to CMU prisoners.

Under BOP regulations, an inmate has the right to the following procedures before placement in a control unit:

²⁰ See Visiting Room Procedures: General Information, available at www.bop.gov/in-mate_locator/procedures.jsp.

²¹ Proposed 28 C.F.R. § 540.205(a)(1).

²² Institution Supplement THX-5267.08C, § VI.F (“All inmates at the USP and FCI will be strip searched before going into the Visiting Room and when coming out.”); Institution Supplement MAR-5267.08C, § 18B (“USP inmates will be ... visually search[ed] when exiting the visiting room.”); 28 C.F.R. 552.11(c) (defining a “visual search” as “a visual inspection of all body surfaces and body cavities”). And the Supreme Court has upheld BOP’s policy of strip searching inmates, without requiring any level of suspicion, after such visits. *Bell v. Wolfish*, 441 U.S. 520, 558-560 (1979).

²³ 28 C.F.R. § 541.40(a).

- A live hearing.²⁴
- Twenty-four hour advance notice of the charges and the acts or evidence in issue.²⁵
- Representation by a staff member at the hearing. The staff member has the right to interview witnesses prior to the hearing.²⁶
- The right to call witnesses and present documentary evidence at the hearing.²⁷
- A written decision issued by the hearing administrator.²⁸
- The right to appeal the hearing administrator’s decision to an executive panel.²⁹

These procedures for control units stand in stark contrast to the limited process contemplated before CMU placement. Under the proposed rule, the Assistant Director for the Correctional Programs Division approves CMU designations without giving inmates any input into the decision.³⁰ BOP then transports the inmate hundreds if not thousands of miles, prepares a CMU cell, and begins integrating the inmate into the new environment – all before giving the inmate the chance to challenge CMU designation.³¹ In practice, allowing challenges to occur only after a CMU placement will make CMU designation a *fait accompli*, creating strong incentives not to send inmates back to the less restrictive facilities from which they came.

Even after arrival, an inmate can challenge CMU placement only through BOP’s administrative remedy program,³² a purely written process that bears no resemblance to the control unit procedures. An inmate has no right to a live hearing, no right to call witnesses, and no right to representation by a staff member. Rather,

²⁴ 28 C.F.R. § 541.43(b).

²⁵ 28 C.F.R. § 541.43(b).

²⁶ 28 C.F.R. § 541.43(b)(2).

²⁷ 28 C.F.R. § 541.43(b)(4).

²⁸ 28 C.F.R. § 541.44(a).

²⁹ 28 C.F.R. § 541.45.

³⁰ Proposed 28 C.F.R. § 541.202(b).

³¹ Proposed 28 C.F.R. § 540.202(c) (“*Upon arrival at the designated CMU, inmates will receive written notice from the facility’s Warden...*”) (emphasis added).

³² Proposed 28 C.F.R. § 540.202(c)(6).

the inmate is limited to completing a grievance form challenging CMU placement, and further forms necessary to appeal any unfavorable initial decision to regional directors and, ultimately, BOP's Office of General Counsel.³³ To our knowledge, these bare bones procedures (which BOP began applying to CMUs several years before opening the current notice and comment process) have never resulted in a reversal of CMU placement.

Nor is that surprising. Not only does review occur after inmates arrive at the CMUs, but most of the decisionmakers in the administrative remedy process are subordinate to the Assistant Director for the Correctional Programs Division, who approves the designation in the first place. Surely wardens and regional directors will not, in practice, overrule a decision by one of BOP's highest-ranking officials. For CMU prisoners, this renders the first two steps of the administrative remedy process meaningless. Nor is it clear that even the final authority in the administrative remedy process – BOP's General Counsel – has the power to overrule the Assistant Director.

The thin procedures contemplated by the proposed rule will land inmates in CMUs whose presence there is unjustified, and leave them with no meaningful way to challenge their designation. The lack of procedures may also reinforce in inmates a sense that they are being treated unfairly, making such inmates more difficult for correctional officers to manage.

BOP should revise the rule to allow CMU placement only after an inmate has a live hearing before an official with clear decisionmaking authority. We recommend that the Bureau, in revising the rule, look to its own procedures for control unit placement.

Recommendation # 5: Establish Clear Mechanisms for Challenges to Ongoing CMU Placement

BOP's obligation to avoid housing inmates in CMUs without sound reason continues after the initial placement. An inmate may reach a point where a less restrictive unit becomes appropriate, and BOP must ensure that mechanisms for ongoing review allow transfer to occur at that stage. Creating a real possibility for transfer to a less restrictive unit also gives inmates an incentive to improve their behavior.

The proposed rule, however, relies on an informal process that fails to provide for clear transfer authority. In refining the rule, BOP should allow CMU inmates to challenge ongoing CMU designation by periodically making their case to officials with the power to order a transfer.

Under the proposed rule, review must occur "regularly" and follow the "Bureau's policy on Classification and Program Review of Inmates," which refers to

³³ 28 C.F.R. §§ 542.14 & 542.15.

BOP Program Statement 5322.12. Not only does the proposed rule fail to define the term “regularly,” but it involves only officials at the institution level, such as the unit manager, case manager, and correctional counselor, in the classification review process.³⁴ The proposed rule fails to specify when – if ever – such officials can override the original placement decision by the Assistant Director for the Correctional Programs Division. In practice, we suspect that institution-level officials generally will not attempt to reverse decisions by the Assistant Director.

The final rule should contain clear mechanisms for ongoing review of CMU placement and provide unambiguous authority to transfer inmates out of CMUs. Consistent with the control unit regulations, the final rule should require review every 30 days.³⁵

Thank you for your consideration of these comments. We would welcome the opportunity to speak with you, and we hope you will contact us, through the Brennan Center, to arrange a time to discuss these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Shapiro". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David M. Shapiro
Counsel, Liberty and National Security Project

Raul J. Banasco

Steve J. Martin

Ron McAndrew

³⁴ BOP Program Statement 5322.12.

³⁵ 28 C.F.R. § 541.49(a).

**American Civil Liberties Union and Civil Rights and
Liberties Organizations**



June 2, 2010

Sarah Qureshi
Rules Unit
Office of General Counsel
Bureau of Prisons
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Re: BOP Docket No. 1148-P

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PRACTICE LIMITED TO
FEDERAL COURTS

Dear Ms. Qureshi:

The American Civil Liberties Union and the undersigned organizations submit these comments in response to the pending Notice of Proposed Rulemaking titled *Communication Management Units*, issued by the Federal Bureau of Prisons (BOP).¹

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization with more than 500,000 members, dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. The ACLU's National Prison Project, founded in 1972, seeks to promote constitutional conditions of confinement in prisons, jails, juvenile facilities, and immigration detention facilities throughout the nation.

The ACLU and a broad coalition of civil rights organizations filed comments in response to the Bureau of Prisons' regulation on Limited Communication for Terrorist Inmates, proposed in April 2006 but never finalized.² The ACLU National Prison Project and the ACLU of Indiana currently represent the plaintiff in *Sabri Benkahla v. Federal Bureau of Prisons*, No. 2:09-cv-00025-WTL-DML (S.D. Ind. Jun. 18, 2009), a challenge to the Bureau's establishment of a Communications Management Unit (CMU) at FCC-Terre Haute. Mr. Benkahla, despite being found not guilty of all terrorism-related charges against him and praised by his sentencing judge as a "model citizen[]" and "not a terrorist," has been held at the Terre Haute CMU since October 2007.

¹ Communication Management Unit, 75 Fed. Reg. 17,324 (proposed Apr. 6, 2010) (to be codified at 28 C.F.R. pt. 540).

² Limited Communication for Terrorist Inmates, 71 Fed. Reg. 16,520 (proposed Apr. 3, 2006) (to be codified at 28 C.F.R. pt. 540) [hereinafter Limited Communication].

Introduction

On April 6, 2010, the Bureau of Prisons proposed a new regulation governing “Communication Management Units” (hereinafter “the proposed regulation”). In fact, the Bureau has long been operating two CMUs without regulatory authority: one at the Federal Correctional Complex, Terre Haute, Indiana (established December 2006) and one at the United States Penitentiary, Marion, Illinois (established March 2008). The proposed regulation would authorize severe restrictions on the ability of persons confined in CMUs to communicate with the outside world.

The proposed regulation provides that the Bureau’s Assistant Director, Correctional Programs Division may decide, without external review, to transfer a person in Bureau custody to a CMU. Once there, the prisoner’s communications with the outside world are all but eliminated. More specifically, the prisoner may communicate only as follows:

- One fifteen-minute telephone call per month, with “immediate family members only.”
- One one-hour non-contact visit per month, with “immediate family members.”
- Written correspondence is limited to three pieces of paper (double-sided), once per week, to and from a single recipient, “at the discretion of the Warden.”

Proposed 28 C.F.R. §§ 540.203(a), 540.204(a), 540.205(a).³ There is no provision for visiting or telephone contact with friends, relatives other than immediate family, clergy, or members of the news media. Nor is there any

³ The proposed regulation states that visiting and telephone calls are limited to “immediate family members;” no such limitation appears in the section regarding written correspondence. Because the stated purpose of the regulation is to “limit ... the communication of CMU inmates to immediate family members,” Communication Management Unit, 75 Fed. Reg. at 17,326, it is unclear whether this omission is an oversight and the proposed regulation is intended to limit correspondence, as well as visiting and telephone calls, to immediate family members.

Consistent with the language of the proposed regulation as set forth in the NPRM, these Comments assume that correspondence would not be limited to immediate family members in every case, although the provision that correspondence is permitted only “at the discretion of the Warden” would allow such a limitation to be imposed in individual cases. Obviously the constitutional and other concerns set forth in these Comments would be even more serious if the proposed regulation were in all cases to bar correspondence with all persons other than members of a prisoner’s immediate family.

provision for prisoners who are foreign nationals to visit or communicate by telephone with consular officials.⁴

The proposed regulation is substantially similar to a regulation on Limited Communication for Terrorist Inmates, proposed by the Bureau in April 2006 but never finalized.⁵ That regulation suffered from numerous constitutional infirmities, and a broad coalition of civil rights organizations urged that it be withdrawn. However, the 2006 proposed regulation was limited in scope – the Bureau justified it as necessary to “minimize the risk of terrorist-related communication being sent to or from inmates in Bureau custody,” and the regulation was accordingly limited in its application to persons with “an identifiable link to terrorist-related activity,” Limited Communication, 71 Fed. Reg. at 16,522-23.

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By contrast, the 2010 proposed regulation contains no such limitation. While the NPRM purports to quote “an Al Qaeda training manual” and raises the specter of “imprisoned terrorists communicating with their followers regarding future terrorist activity” – language copied verbatim from the 2006 NPRM⁶ – the 2010 proposed regulation itself is in no way limited to persons with proven or even suspected terrorist ties. Rather, the criteria for CMU placement are so broad as to apply potentially to almost any person in Bureau custody.

The proposed regulation’s severe restrictions on communications with the news media and with most family members are unprecedented and almost certainly unconstitutional. The ban on confidential communication with consular officials violates US treaty obligations. Moreover, these restrictions will be imposed by prison officials, with no outside review, applying criteria that are so vague as to provide no meaningful limits on official discretion. Finally, the proposed regulation is completely unnecessary, as existing law allows the Bureau to monitor the mail, telephone calls, and visits of persons in its custody. Such monitoring fully accommodates legitimate security concerns without trenching so heavily on the rights of prisoners and those in the outside world who wish to communicate with them.

For all of these reasons, the proposed regulation should be withdrawn, and the Bureau should immediately cease to operate CMUs.

⁴ Separate provision is made for communication with counsel and certain federal officials. Proposed 28 C.F.R. §§ 540.203(c), 540.204(b), 540.205(b).

⁵ Limited Communication, 71 Fed. Reg. 16,520.

⁶ Compare Limited Communication, 71 Fed. Reg. at 16,521, with Communications Management Unit, 75 Fed. Reg. at 17,326.

The proposed regulation applies to persons who have not been charged with any crime.

The proposed regulation applies not only to convicted prisoners, but to “[a]ny inmate (as defined in 28 CFR § 500.1(c)) meeting the criteria prescribed by this subpart.” Proposed 28 C.F.R. § 540.200(d). Section 500.1(c) in turn defines “inmate” as “all persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities,” including “persons held as witnesses, detainees, or otherwise.” The proposed regulation may accordingly be applied to persons who have not been convicted of, or even charged with, any crime. Thus, while these Comments use the term “prisoner” for ease of reference, the proposed regulation’s reach is in fact far broader than convicted prisoners, extending even to witnesses, pretrial detainees clothed with the presumption of innocence, and civil immigration detainees who are not charged with any crime.

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The proposed regulation severely burdens the First Amendment rights both of prisoners and of non-prisoners who wish to communicate with them.

At the outset it must be clearly understood that the proposed regulation, by barring prisoners from communicating with virtually all persons in the outside world, severely burdens the First Amendment rights of innocent third parties. The Supreme Court has long recognized that restrictions on prisoners' communications implicate the First Amendment rights of those free persons who wish to communicate with them:

Communication by letter is not accomplished by the act of writing words on paper. Rather, it is effected only when the letter is read by the addressee. Both parties to the correspondence have an interest in securing that result, and censorship of the communication between them necessarily impinges on the interest of each. Whatever the status of a prisoner's claim to uncensored correspondence with an outsider, it is plain that the latter's interest is grounded in the First Amendment's guarantee of freedom of speech. And this does not depend on whether the nonprisoner correspondent is the author or intended recipient of a particular letter, for the addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendments a protection against unjustified governmental interference with the intended communication. We do not deal here with difficult questions of the so-called 'right to hear' and third-party standing but with a particular means of communication in which the interests of both parties are inextricably meshed. The wife of a prison inmate who is not permitted to read all that her husband wanted to say to her has suffered an abridgment of her interest in communicating with him as plain as that which results from censorship of her letter to him. *In either event, censorship of prisoner mail works a consequential restriction on the First and Fourteenth Amendments rights of those who are not prisoners.*

Procunier v. Martinez, 416 U.S. 396, 408-09 (1974) (emphasis added), *overruled in part on other grounds*, *Thornburgh v. Abbott*, 490 U.S. 401 (1989).

The proposed regulation's limitations on communication with clergy and other religious communications violate the Religious Freedom Restoration Act.

Congress has made clear its intent to provide ample protection for the religious rights of prisoners. The Religious Freedom Restoration Act of 1993 (RFRA) provides that government may substantially burden a person's exercise of religion only if it demonstrates that the burden is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that interest.⁷ RFRA was held to protect prisoners,⁸ an interpretation Congress did not overturn. Indeed, when the Supreme Court invalidated RFRA in its application to states and localities,⁹ Congress responded by enacting the Religious Land Use and Institutionalized Persons Act,¹⁰ which, *inter alia*, specifically restores the protections of RFRA to state and local prisoners.

RFRA's application to persons in federal custody is unaffected by the Court's decision in *City of Boerne* and has never been in doubt.¹¹ Accordingly, the Bureau has the burden of justifying any policy that substantially burdens prisoners' exercise of religion under the compelling governmental interest/least restrictive means test.

There are many prisoners whose religious beliefs require communication with clergy, or other communications of a religious nature with persons in the outside world. The proposed regulation allows such communications in writing only "at the discretion of the Warden," and imposes a ban on all such communications via telephone or personal visit. It is highly unlikely that this absolute ban, which takes no account of the content of the individual communication or the identity of the prisoner's interlocutor, will be found to be the least restrictive means of furthering a compelling governmental interest. Accordingly, in such cases, the regulation will run afoul of the Religious Freedom Restoration Act.

⁷ 42 U.S.C. § 2000bb-1 (2006).

⁸ *See, e.g., Small v. Lehman*, 98 F.3d 762, 766 (3d Cir. 1996); *Ochs v. Thalacker*, 90 F.3d 293 (8th Cir. 1996); *Hicks v. Garner*, 69 F.3d 22 (5th Cir. 1995).

⁹ *City of Boerne v. Flores*, 521 U.S. 507 (1997).

¹⁰ 42 U.S.C. § 2000cc (2006).

¹¹ *See, e.g., O'Bryan v. Bureau of Prisons*, 349 F.3d 399, 401 (7th Cir. 2003); *Kikumura v. Hurley*, 242 F.3d 950, 960 (10th Cir. 2001).

The proposed regulation's ban on visiting and telephone contact with consular officials violates US treaty obligations.

In 1969, the United States ratified the Vienna Convention on Consular Relations, Article 36 of which provides:

Article 36 - Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

* * *

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. ...

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Although more than one-quarter of the Bureau's prisoners are foreign nationals,¹² the proposed regulation makes no provision for compliance with the Vienna Convention's requirements that consular officials be allowed to converse with and visit such prisoners. While the 2006 proposed regulation on Limited Communication for Terrorist Inmates provided for confidential mail, telephone, and in-person communication with consular officials for prisoners who are foreign nationals, 71 Fed. Reg. at 16,524, these provisions have been deleted from the 2010 proposed regulation.

Violation of US treaty obligations under the Vienna Convention has resulted in substantial disruption in both law enforcement and foreign relations. In *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31), the International Court of Justice (ICJ) ruled in a case brought by the government of Mexico that the United States had violated Article 36 of the Vienna Convention by failing to inform 51 named Mexican nationals of their Vienna Convention rights. The ICJ accordingly ruled that those named individuals were entitled to review and reconsideration of their US state court convictions and sentences. The Bureau should not promulgate a rule that ensures that similar treaty violations will occur in the future.

The proposed regulation severely restricts prisoners from communicating with the news media.

"The constitutional guarantee of a free press assures the maintenance of our political system and an open society, and secures the paramount public interest in

¹² FED. BUREAU OF PRISONS, U.S. DEP'T OF JUSTICE, STATE OF THE BUREAU 2008: THE BUREAU'S CORE VALUES 2 (2009), available at <http://www.bop.gov/news/PDFs/sob08.pdf>.

a free flow of information to the people concerning public officials.” *Pell v. Procunier*, 417 U.S. 817, 832 (1974) (internal quotation marks, citations omitted) (prison case). But now the government proposes to completely bar a class of persons from communicating with the news media via personal visit and telephone, and leaves open the possibility that they will be barred from communicating via letter as well.

The Supreme Court has consistently assumed that communications between prisoners and members of the news media enjoy constitutional protection. See *Houchins v. KOED, Inc.*, 438 U.S. 1, 15 (1978) (“[News organizations] have a First Amendment right to receive letters from inmates criticizing jail officials and reporting on conditions”) (plurality opinion). When the Court has sustained limitations on certain forms of media access to correctional facilities, it has always emphasized that alternative means of communication between prisoners and the press remained open and unrestricted. See, e.g., *Saxbe v. Washington Post Co.*, 417 U.S. 843, 847 (1974) (upholding restrictions on media interviews with prisoners) (“In addition, newsmen and inmates are permitted virtually unlimited written correspondence with each other. Outgoing correspondence from inmates to press representatives is neither censored nor inspected. Incoming mail from press representatives is inspected only for contraband or statements inciting illegal action”); *Pell*, 417 U.S. at 824 (same) (“Thus, it is clear that the medium of written correspondence affords inmates an open and substantially unimpeded channel for communication with persons outside the prison, including representatives of the news media”); see also *Hammer v. Ashcroft*, 570 F.3d 798, 804 (7th Cir. 2009) (en banc) (“It was important to both decisions [*Saxbe* and *Pell*] that all prisoners could correspond freely with reporters, even though face-to-face interviews were impossible”).

On those few occasions when prison officials attempted to restrict prisoners’ written communications with the news media, the restrictions were held to be unconstitutional. See, e.g., *Owen v. Lash*, 682 F.2d 648, 650-53 (7th Cir. 1982) (ban on correspondence with newspaper reporter was unconstitutional); *Mujahid v. Sumner*, 807 F. Supp. 1505, 1509-11 (D. Haw. 1992) (ban on correspondence with members of the press unless they had been friends before the prisoner’s incarceration was unconstitutional), *aff’d*, 996 F.2d 1226 (9th Cir. 1993); cf. *Abu-Jamal v. Price*, 154 F.3d 128, 136 (3d Cir. 1998) (enjoining application of rule against “engaging in a business or profession” to prisoners writing for publication); *Jordan v. Pugh*, 504 F.Supp.2d 1109 (D. Colo. 2007) (Bureau of Prisons rule barring prisoners from publishing under a byline violates First Amendment).

Under the proposed regulation, prisoners in the CMU are completely barred from communicating with the news media by telephone or via personal visits. Although they are not categorically barred from writing to news reporters, the regulation provides that such correspondence is allowed only “at the discretion of the Warden.” Thus, the regulation allows for the possibility that CMU prisoners

will be barred from communicating with the news media in any form – a result that is almost certainly unconstitutional under existing case law.¹³

The proposed regulation imposes a total ban on visiting and telephone communication with most family members.

The Supreme Court has long recognized a right to intimate family association. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see also M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) (noting the importance of associational rights including choices about marriage, family life and the upbringing of children); *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977) (plurality opinion) (collecting cases regarding the constitutional protection afforded choices in matters of marriage and family life). Moreover, the Court has declined invitations to hold that this right is extinguished by incarceration. *See Overton v. Bazzetta*, 539 U.S. 126, 131-32 (2003) (“We do not hold, and we do not imply, that any right to intimate association is altogether terminated by incarceration or is always irrelevant to claims made by prisoners”).

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The proposed regulation provides that the affected prisoners will be cut off from *all* visiting and telephone communication with family members, except for “immediate family members.” The only definition of “immediate family” that appears in 28 C.F.R. Part 540 is found in § 540.44(a), and defines the term to include only spouses, parents (including step-parents and foster parents), siblings, and children. In light of the proposed regulation’s failure to define this central term, these Comments assume that the definition in § 540.44(a) will govern.

Even with these immediate family members, communication is limited to one 15-minute telephone call per month; one one-hour non-contact visit per month; and one three-page letter per week. Proposed 28 C.F.R. §§ 540.203(a), 540.204(a), 540.205(a). The proposed regulation’s provision that telephone conversations and visits may be required to be conducted in English, or simultaneously translated by an approved interpreter, will mean that some prisoners are unable to enjoy even the extremely limited communication permitted.

Once again, this blanket ban on all visiting and telephone contact with grandparents, grandchildren, aunts, uncles, cousins, and other relatives, and severe restrictions on the ability to communicate by letter, is unprecedented. In *Bazzetta*, the Supreme Court upheld various restrictions on prison visiting, including a two-year ban on all visits for prisoners who engaged in certain misconduct. The Court noted that, even for those prisoners denied all visiting, alternatives were available; “they and other inmates may communicate with persons outside the prison by letter and telephone.” *Bazzetta*, 539 U.S. at 135.

¹³ By contrast, prisoners on the federal death row are permitted unlimited, uncensored correspondence, as well as telephone contact, with the news media. *Hammer*, 570 F.3d at 799-800.

Those alternatives are not available under the proposed regulation.

The regulation's severe limitation on contact with relatives other than members of the nuclear family is almost certainly unconstitutional. "Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition." *Moore*, 431 U.S. at 504 (holding that constitution was implicated by ordinance that prevented a grandmother from living with her grandchild). Moreover, these restrictions are likely to fall with disproportionate weight upon members of racial and ethnic minorities.¹⁴

The proposed regulation is vague and overbroad, and contains no meaningful standards.

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As already noted, the proposed regulation may be applied to persons who have not been convicted of, or even charged with, any crime. And unlike the 2006 proposed regulation, which was limited to persons having "an identifiable link to terrorist-related activity,"¹⁵ the regulation as currently proposed is so broad that it could be applied to virtually any person in Bureau custody.

Under the proposed regulation:

Inmates may be designated to a CMU if evidence of the following criteria exists:

- (a) The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;
- (b) 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;
- (c) The inmate has attempted, or indicates a propensity, to contact victims of the inmate's current offense(s) of conviction;

¹⁴ See Ken Bryson & Lynn M. Casper, U.S. Dep't of Commerce, Economics and Statistic Administration, *Coresident Grandparents and Grandchildren 5* (1999), available at <http://www.census.gov/prod/99pubs/p23-198.pdf> (Black children are more likely than others to be raised by grandparents).

¹⁵ Limited Communication, 71 Fed. Reg. at 16,523.

(d) The inmate committed prohibited activity related to misuse/abuse of approved communication methods while incarcerated; or

(e) 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.¹⁶

Under paragraph (d) (“prohibited activity related to misuse/abuse of approved communication methods while incarcerated”), a prisoner can become eligible for CMU transfer based on a single trivial act of misconduct. The Bureau’s disciplinary code defines “unauthorized use of mail” and “use of telephone for abuses other than criminal activity” as infractions of “low moderate” severity -- the least serious of the four categories of infractions. Examples of the latter infraction include “exceeding the 15-minute time limit for telephone calls” and “using the telephone in an unauthorized area.”¹⁷ But under the proposed regulation, either of these infractions could subject a prisoner to CMU placement.

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More fundamentally, the fact that a prisoner could face indefinite assignment to a CMU based not upon past behavior, but rather as a result of some unspecified “potential threat” or “propensity” to engage in future misconduct, inspires little confidence that the regulation will be applied in an intelligible and evenhanded matter. Rather, such vague, standardless language invites arbitrary, inconsistent, and discriminatory application.

Unfortunately, there is a well-known pattern of retaliation against prisoners who complain about conditions of confinement, file grievances, or engage in litigation against correctional officials.¹⁸ Such retaliation not infrequently takes the form of

¹⁶ Communication Management Unit, 75 Fed. Reg. at 17,328 (Proposed 28 C.F.R. § 540.201).

¹⁷ 28 C.F.R. § 541.13, Table 3.

¹⁸ See *Haynes v. Stephenson*, 588 F.3d 1152 (8th Cir. 2009) (upholding damages award where officer wrote disciplinary report against prisoner for statements made in a grievance, resulting in six days in segregation before dismissal and return to regular housing); *Dannenberg v. Valadez*, 338 F.3d 1070, 1071-72 (9th Cir. 2003) (noting jury verdict for plaintiff on claim of retaliation for assisting another prisoner with litigation); *Walker v. Bain*, 257 F.3d 660, 663-64 (6th Cir. 2001) (noting jury verdict for plaintiff whose legal papers were confiscated in retaliation for filing grievances); *Gomez v. Vernon*, 255 F.3d 1118 (9th Cir. 2001) (affirming injunction protecting prisoners who were the subject of retaliation for filing grievances and for litigation); *Hines v. Gomez*, 108 F.3d 265 (9th Cir. 1997) (affirming jury verdict for plaintiff subjected to retaliation for filing grievances); *Cassels v. Stalder*, 342 F.Supp.2d 555, 564-67 (M.D. La. 2004) (striking down disciplinary conviction for “spreading rumors” of prisoner whose mother had

transferring the prisoner to segregation or other restricted housing unit.¹⁹ The proposed regulation's overbreadth and its failure to include objective, intelligible standards pose a grave risk that prisoners will be sent to CMUs not for terrorist or criminal activity but because they annoy or embarrass prison staff with lawsuits, communications with the news media, or other protected expressive activity.

The proposed regulation is unnecessary, as current law allows monitoring of prisoners' communications for criminal activity.

Existing Bureau regulations allow prison officials to control and limit prisoners' correspondence, telephone calls, and visits, and to monitor those communications to detect and prevent possible criminal activity. For example, prison staff must approve a prisoner's visitor lists; they may conduct background checks for that purpose, and may disapprove any visitor. 28 C.F.R. § 540.51(b). Visiting areas may be monitored. 28 C.F.R. § 540.51(h). Prison officials may deny placement of a given telephone number on a prisoner's telephone list if they determine that there is a threat to security. 28 C.F.R. § 540.101(a)(3). Telephone calls are also monitored. 28 C.F.R. § 540.102. Prison officials have the authority to open and read all non-privileged prisoner mail. 28 C.F.R. §§ 540.12, 540.14.

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publicized his medical care complaint on the Internet); *Atkinson v. Way*, 2004 WL 1631377 (D. Del., July 19, 2004) (upholding jury verdict for plaintiff subjected to retaliation for filing lawsuit); *Tate v. Dragovich*, 2003 WL 21978141 (E.D. Pa., Aug. 14, 2003) (upholding jury verdict against prison official who retaliated against plaintiff for filing grievances); *Hunter v. Heath*, 95 F.Supp.2d 1140 (D. Or. 2000) (noting prisoner's acknowledged firing from legal assistant job for sending "kyte" (officially sanctioned informal complaint) to the Superintendent of Security concerning the confiscation of a prisoner's legal papers), *rev'd on other grounds*, 26 Fed.Appx. 754, 2002 WL 112564 (9th Cir. 2002); *Maurer v. Patterson*, 197 F.R.D. 244 (S.D.N.Y. 2000) (upholding jury verdict for plaintiff who was subjected to retaliatory disciplinary charge for complaining about operation of grievance program); *Gaston v. Coughlin*, 81 F.Supp.2d 381 (N.D.N.Y. 1999) (awarding damages for trumped-up disciplinary charge made in retaliation for prisoner's complaining about state law violations in mess hall work hours), *motion for reconsideration denied*, 102 F.Supp.2d 81 (N.D.N.Y. 2000); *Almutt v. Cleary*, 27 F.Supp.2d 395, 397-98 (W.D.N.Y. 1998) (noting jury verdict for plaintiff who was subject to verbal harassment, assault, and false disciplinary charges in retaliation for his work as an Inmate Grievance Resolution Committee representative).

¹⁹ See, e.g., *Pearson v. Welborn*, 471 F.3d 732, 734 (7th Cir. 2006) (prisoner retained in "supermax" prison as a result of false and retaliatory disciplinary charge); *Royal v. Kautzky*, 375 F.3d 720, 722-24 (8th Cir. 2004) (prisoner placed in segregation for complaining about inadequate medical care); *Trobaugh v. Hall*, 176 F.3d 1087 (8th Cir. 1999) (directing award of compensatory damages to prisoner placed in isolation for filing grievances).

The NPRM offers no explanation why these existing methods do not fully accommodate legitimate security needs. If the volume of prisoner mail, telephone calls, or visits is too great to permit effective monitoring, Bureau officials may impose reasonable limits on those activities. *See, e.g.*, 28 C.F.R. § 540.40 ("The Warden may restrict inmate visiting when necessary to ensure the security and good order of the institution"). Such across-the-board limits would trench far less heavily on First Amendment rights than singling out a disfavored class of prisoners for a virtually complete ban on communications with the news media and with most family members. *See Crofton v. Roe*, 170 F.3d 957, 960 (9th Cir. 1999) (complete ban on gift subscriptions was not rationally related to government interest in efficiency of prison operations, as prison could instead limit the number of subscriptions prisoners could receive).

Indeed, there already exist specific provisions for limiting the communications of prisoners who are suspected of terrorist activity: the Special Administrative Measures (SAMs) set forth in 28 C.F.R. Part 501. The SAMs suffer from many of the same constitutional infirmities as the proposed regulation, and the undersigned organizations do not endorse them, but they do provide additional safeguards not present here. As explained in the NPRM:

Under 28 CFR part 501, SAMs are imposed after approval by the Attorney General and are generally based on information from the FBI and the U.S. Attorney's Office (USAO), but are typically not based solely on information from internal Bureau of Prisons sources. Unlike 28 CFR part 501, the proposed regulations allow the Bureau to impose communication limits based on evidence from FBI or other Federal law enforcement agency, or if Bureau of Prisons information indicates a similar need to impose communication restrictions, *evidence which does not rise to the same degree of potential risk to national security or risk of acts of violence or terrorism which would warrant the Attorney General's intervention by issuance of a SAM.*

Communication Management Unit, 75 Fed. Reg. at 17,325 (emphasis added). This admission that the proposed regulation will dilute the standard for imposing these extraordinary restrictions on communication is troubling, particularly in the absence of any claim that the SAMs have proven inadequate to serve legitimate security needs.

Conclusion

The proposed regulation is poorly conceived, almost certainly unconstitutional, and entirely unnecessary. It should be withdrawn, and the Bureau should immediately cease to operate CMUs.

Very truly yours,

David C. Fathi, Director
National Prison Project
of the ACLU Foundation

Laura W. Murphy, Director
Washington Legislative Office
ACLU

Philip Fornaci, Director
DC Prisoners' Project
Washington Lawyers' Committee for Civil Rights & Urban Affairs

National Association of Criminal Defense Lawyers

Alvin J. Bronstein, President
Penal Reform International/The Americas

John Boston, Project Director
Prisoners' Rights Project
New York Legal Aid Society

Alan Mills, Legal Director
Belinda Belcher, Executive Director
Uptown People's Law Center

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Civil Rights Clinic
University of Denver College of Law



June 7, 2010

Ms. Sarah Qureshi
Office of General Counsel
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534

Re: BOP Docket No. 1148-P
Communication Management Units

Dear Ms. Qureshi:

The Civil Rights Clinic (“CRC”) at the University of Denver Sturm College of Law, on behalf of its clients Omar Rezaq, Mohammed Saleh, El-Sayyid Nosair, and Ibrahim Elgabrownny, comments on the Bureau of Prisons’ (“Bureau” or “BOP”) proposal to amend 28 C.F.R. Part 540 – “Contact with Persons in the Community” to add “Subpart J – Communication Management Housing Units.” BOP Docket No. 1148-P, 75 Fed. Reg. 17324 (Apr. 6, 2010).

Mr. Rezaq, Mr. Saleh, Mr. Nosair and Mr. Elgabrownny are all Muslim men of Middle Eastern descent. Three of them (Mr. Rezaq, Mr. Saleh and Mr. Nosair) are currently held in solitary confinement in the USP - Florence Administrative Maximum prison (ADX), the Bureau’s only “supermax” facility. After being held in isolation in the ADX for seven years and successfully completing the ADX “Step-Down Program,” Mr. Elgabrownny recently was transferred to a Communication Management Unit (CMU) last year, with no notice or opportunity to be heard. Given that our other three clients share similar religious and ethnic backgrounds and crimes of conviction, the CRC fears that the same fate awaits them, if and when the Bureau decides they no longer require supermax confinement.¹

I. THE CMUs ARE UNNECESSARY BECAUSE THE BUREAU ALREADY MONITORS AND RESTRICTS PRISONERS’ COMMUNICATIONS VIA EXISTING LAW.

As a threshold matter, the CRC asserts that CMUs are unnecessary because existing law permits the Bureau to monitor and restrict prisoners’ communications when

¹ Indeed, the Notice of Proposed Rulemaking mentions Mr. Nosair and Mr. Elgabrownny by name (75 Fed. Reg. at 17326), as did a prior proposed regulation entitled “Limited Communication for Terrorist Inmates” that the Bureau submitted for notice and comment in 2006 but never finalized. See Limited Communication, 71 Fed. Reg. 16520. This leads to the almost inescapable conclusion that as early as 2006, the Bureau had already predetermined that if Mr. Nosair and Mr. Elgabrownny were ever to be released from the ADX, they would be sent to a CMU.

the Government deems it necessary to do so. In its Notice, the Bureau itself points to four regulations that give the BOP considerable authority to limit prisoner communications: (1) 28 C.F.R. § 540.12 (authorizing wardens to establish and exercise controls to protect individuals, security, discipline and good order of the institution); (2) 28 C.F.R. § 540.14(a) (requiring that institution staff shall open and inspect all incoming general correspondence); (3) 28 C.F.R. § 540.100 (authorizing limitations on inmates' phone privileges consistent with ensuring security or good order of institution or protection of the public and authorizing wardens to establish procedures that enable monitoring of telephone conversations); and (4) 28 C.F.R. § 540.40 (authorizing wardens to limit inmate visiting when necessary to ensure security and good order of the institution). In addition to these (and other) BOP regulations, federal criminal law provides that "upon motion by the Director of the Bureau of Prisons or a United States attorney," the court may issue an order prohibiting the prisoner from associating or communicating with a specified person, other than his attorney, "upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise." 18 U.S.C. § 3582(d).

Given the extensive measures already available to and used by the Bureau to monitor and restrict prisoners' communications, the creation of the CMUs is unnecessary. Additionally, as described below, the conditions of confinement in the CMUs go further than required to achieve the Bureau's stated goals, and in so doing, inflict consequential constitutional harms. The CRC therefore urges the Bureau to dismantle the CMUs and to rely instead on existing law that provides the Bureau with more narrowly tailored means to achieve its stated goals, without the extraordinary attendant harms that the CMUs impose.

II. AS SET FORTH IN THE PROPOSED REGULATIONS, MANY OF THE CONDITIONS OF CONFINEMENT IN THE CMUs VIOLATE THE CONSTITUTION.

Should the Bureau decide to maintain the CMUs, however, the CRC supports the Bureau's efforts to establish clear regulations that will govern these highly restrictive units. As other commenters have noted (and some litigants have asserted), in creating and operating the two existing CMUs at Terre Haute and Marion via Institution Supplements, the Bureau arguably has created substantive rules that required notice-and-comment rulemaking of the kind it has now put forth via these proposed rules. The CRC believes that by submitting the proposed CMU regulations for comment, the Bureau has the potential to better safeguard the constitutional rights of both prisoners and the free persons who communicate with them, without unduly infringing upon the legitimate penological interests of the Bureau. As currently drafted, however, the proposed regulations suffer serious constitutional infirmities. In availing itself of the administrative process, we urge the Bureau to address these issues.

As set forth in the proposed regulations, the conditions of confinement in the CMUs are extremely restrictive. The Bureau describes CMUs as "general population

housing unit[s] where inmates will ordinarily reside, eat and participate in educational, recreation, religious, visiting, unit management and work programming within the confines of the CMU.” See proposed 28 C.F.R. § 540.200(b). However, both the proposed regulations and the current operation of the CMUs make plain that that these units are not “general population” units in any regularly-understood meaning of that term.

While the Notice states that the proposed regulation “will not extinguish the monitored communication” of CMU prisoners, a review of the regulation itself makes plain that the restrictions it authorizes come very close to doing just that. CMU prisoners are limited to one six-page letter per week to a single recipient, one call per month that can be limited to three minutes in duration, and a single non-contact visit per month that can be limited to one hour. See proposed 28 C.F.R. §§ 540.203 – 540.205. CMU prisoners may communicate only with immediate family members, and if there is no translator available, the Bureau requires them to speak only in English during visits and phone calls. During visits, CMU inmates may not touch, hug, kiss, shake hands, or have any physical contact whatsoever with their children, wives, siblings or parents.

A. First Amendment Issues

As currently drafted, the communication restrictions placed on CMU inmates impermissibly infringe on the First Amendment rights of both CMU inmates and those who wish to communicate with them. Although it is a generally accepted principle that the rights of prisoners are inherently more limited than free persons, constitutional protection does not stop at the prison gate. *Wilkinson v. Austin*, 545 U.S. 209, 225 (2005). Even when a regulation restricting speech is rationally related to a legitimate penological interest, the Supreme Court has required consideration of alternative means for exercising First Amendment rights, and whether there are alternatives to the regulation that can accommodate the rights without undermining the penological interests. See *Turner v. Safley*, 482 U.S. 78, 89-91 (1987).²

Communication with family. The CMU regulations impose extreme restrictions on inmates’ communications with their family members. Family association is a long recognized fundamental right. See *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996); *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977); *Meyer v. Neb.*, 262 U.S. 390 (1923). Prisoner-family association is inherently limited by incarceration, yet its recognition and preservation is of particular concern as it can often be the primary source of strength and rehabilitation for many prisoners facing lengthy periods of incarceration.³

² Restrictions on *outgoing*, non-legal mail are governed by *Procunier v. Martinez*, which requires the Bureau to demonstrate that the restriction must further an important governmental objective and the restriction must be no greater than necessary to achieve that objective. 416 U.S. 396, 413-14 (1974). As existing BOP’s regulations provide obvious examples of less restrictive means to achieve the Bureau’s objective, the proposed regulation regarding written correspondence violates the *Martinez* standard. See proposed 28 C.F.R. § 540.203.

³ Indeed, in its other regulations, the Bureau itself “encourages visiting by family, friends and community groups to maintain the morale of the inmate and to develop closer relationships between the inmate and family members of others in the community.” 28 C.F.R. § 540.40.

The proposed CMU regulations further limit already restricted communications to prisoners with only particular classifications of family members, having a disparately negative impact on unmarried prisoners, those with no children, or those whose age or circumstance means that they have no surviving parents. Moreover, many prisoners rely on contact and support from extended family members, particularly Muslim inmates of Middle Eastern descent, for whom the concept of nuclear family is much more extensive than in the United States, yet most of these family members are categorically excluded from talking with or visiting CMU prisoners. In order for relatives of prisoners housed in CMUs to avail themselves of their right to speak with their relatives, and for the prisoners in turn to receive the salubrious effect of such communication, the proposed regulations should be amended to allow for increased family communication.

Communication with media representatives. Additionally, because the proposed regulations prohibit prisoners from communicating, by telephone or visit, with anyone other than immediate family, this includes a ban on communication with representatives of the media. While the proposed regulations do not prohibit CMU prisoners from writing to representatives of the news media, they are prohibited from doing so via special mail. See proposed 28 C.F.R. § 540.203(b)(1). Additionally, because CMU prisoners are limited to one letter per week to a single recipient, writing to a news media representative means having to forego a letter to a spouse, child or other family member. The effect of these restrictions is that the First Amendment rights of non-prisoners—including media representatives and the public at large—to receive the information and ideas attending those communications are also abridged. Moreover, representatives of the press do not receive and are unable to report and publish that information to readers and the public, who in turn remain uninformed about, *inter alia*, the conditions of confinement in the CMUs.⁴ This is particularly troubling given the secrecy and lack of

⁴ See *Phelps v. Wichita Eagle-Beacon*, 886 F.2d 1262, 1271 (10th Cir. 1989) (the right to publish and to exercise “editorial discretion concerning what to publish” is protected); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (“The choice of material to go into a newspaper...constitutes the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees on a free press...”); *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 441 (1957) (an essential element of the liberty of free press is freedom from all censorship over what shall be published).

The liberty of free press also affects the rights of non-inmates to receive and read the information published or reported, see *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972) (“Freedom of [speech and press] . . . necessarily protects the right to receive”) (quoting *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943)); *Bd. of Educ., Island Trees Union Free Sch. Dist. v. PICO*, 457 U.S. 853, 866-67 (1982); *Am. Comm’n Ass’n v. Douds*, 339 U.S. 382, 395 (1950) (“[T]he public has a right to every man’s views”). First Amendment protection is afforded “to the communication, to its source and to its recipients both.” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976). Censorship of inmate mail has been determined to infringe on the First Amendment rights of non-inmates recipients. *Id.* at 757 (citing *Procunier v. Martinez*, 416 U.S. 396, 408-09 (1984)). These public rights are equally and likewise chilled by the proposed CMU regulations.

information surrounding the creation and operations of the CMUs to date.⁵ This limitation is at odds with other Bureau regulations and policy in which the Bureau “recognizes the desirability of establishing a policy that affords the public information about its operations via the news media” and acknowledges that the intent of the rules regarding Contact with News Media is to “insure a better informed public.” See 28 C.F.R. § 540.60.

Communication with attorneys. The restrictions contained in the proposed regulations also may impermissibly interfere with the attorney-client relationship. As drafted, the proposed regulations allow the Bureau to restrict the frequency and volume of legal mail if the “quantity to be processed becomes unreasonable.” See proposed 28 C.F.R. § 540.203(c). Additionally, the proposed regulation authorizes prison staff not only to inspect incoming legal mail for contraband, but also to review and assess attorney-client correspondence “to ensure its qualification as privileged communication.” Proposed 28 C.F.R. §540.203(b)(2).

Interference with attorney-client consultation or invasion of its confidentiality is a violation of the First Amendment. See e.g., *Poole v. County of Otero*, 271 F.3d 955, 961 (10th Cir. 2001) (“First Amendment rights of association and free speech extend to the right to retain and consult with an attorney”); see also, *Denius v. Dunlap*, 209 F.3d 944 (7th Cir. 2000) (because maintenance of confidentiality in attorney-client communications is vital to the ability of an attorney to effectively counsel her client, interference with this confidentiality impedes the client’s First Amendment right to obtain legal advice); *Sallier v. Brooks*, 343 F.3d 868, 874 (6th Cir. 2003) (“[W]hen the incoming mail is “legal mail,” we have heightened concern with allowing prison officials unfettered discretion to open and read an inmate’s mail because a prison’s security needs do not automatically trump a prisoner’s First Amendment right to receive mail, especially correspondence that impacts upon or has import for the prisoner’s legal rights, the attorney-client privilege, or the right of access to the courts.”). Because of their effect on the attorney-client relationship, the CRC urges the Bureau to remove these provisions from its proposed regulations.

B. Fifth Amendment/Procedural Due Process Concerns

As described above, the CMUs are designed to subject inmates to extreme communications restrictions, and such limitations should be protected from the risk of erroneous deprivation by the inclusion of adequate procedural safeguards. CMU prisoners are permitted significantly less communication than prisoners in general population units in other BOP facilities, even in comparison to those inmates who are held in maximum-security facilities. CMU inmates’ written correspondence, telephone communications and visitation opportunities are subject to extraordinary limitations.

⁵ As Justice Kennedy observed in his 2003 speech to the American Bar Association, our prisons “are the concern and responsibility of . . . every citizen. This is your justice system; these are your prisons. . . . As a people, we should know what happens after the prisoner is taken away.” Anthony M. Kennedy, Assoc. Justice, U.S. Supreme Court, *Speech at the American Bar Association Annual Meeting*, Aug. 9, 2003 (rev’d Aug. 14, 2003).

Additionally, the Bureau's requirement that all CMU prisoners be confined in a segregated unit limits not only their communications, but also other aspects of their daily lives. For example, prisoners in the CMUs are not able to hold UNICOR jobs or work in other areas of the prison where they would have the opportunity to develop employment skills. Many educational programs available to prisoners in the regular general population units are denied to CMU prisoners by virtue of their being isolated in the CMUs.

The Supreme Court has held that, when a liberty interest is threatened by imposing certain conditions, inmates must: 1) receive notice of the factual basis relied upon for their placements; 2) be given an opportunity to object and be heard before the decision is made; 3) be provided a statement of the reasons for the decision; 4) receive an appeal, or multiple levels of review and 5) continue to receive periodic meaningful reviews assessing the on-going basis for the placement. *Wilkinson v. Austin*, 545 U.S. at 226. The Bureau's proposed regulations for the CMUs fail to provide the minimum bedrock procedural safeguards that the Constitution requires.

First, pursuant to proposed regulation 28 C.F.R. § 540.210, the criteria for placement in a CMU are so general as to appear almost wholly devoid of meaning, allowing for the risk that prisoners could be designated to the CMUs for discriminatory or retaliatory reasons. Additionally, given that the proposed regulations allow a prisoner to be transferred to a CMU based solely on his crime of conviction, a prisoner could have served years in less restrictive conditions without receiving a single incident report and without having misused or abused communications, and still be transferred to a CMU merely because of a crime he committed years or even decades prior.⁶ See proposed 28 C.F.R. § 540.201. Indeed, this is exactly what happened to Ibrahim Elgabrownly, who was transferred to a CMU after years of good conduct and positive institutional adjustment. Pursuant to the Bureau's own policy on custody classification, Mr. Elgabrownly is scored as a "low" security inmate. See P.S. 5100.08, *Security Designation and Custody Classification*, (Sept. 12, 2006). The only explanation Mr. Elgabrownly has ever been given regarding the reason for his transfer to the CMU is his crime of conviction. Mr. Elgabrownly's situation illustrates the inherent problems in the lack of specific criteria for designation and reinforces the need for adequate safeguards to protect against erroneous or unnecessary placement.

Additionally, the proposed regulations do not require that prisoners receive prior notice of CMU placement and an opportunity to object and be heard before the decision is made. See proposed 28 C.F.R. § 540.202(c). CMU prisoners do not receive notice of their placements until *after* the decision has been made, at which point they have already been transferred from their prior facility. In addition, the only opportunity a prisoner has to object to placement is through the Bureau's administrative remedy program, which fails to provide inmates with a meaningful opportunity to be heard before the decision is

⁶ Surprisingly, the Bureau does not even require proof of misconduct, allowing that prisoners can be designated to a CMU if their crime of conviction "*indicates a propensity to encourage, coordinate, facilitate or otherwise act in furtherance of illegal activity through communication with persons in the community.*" Proposed 28 C.F.R. § 540.201(b) (emphasis added).

made. *See Sattar v. Gonzales*, No. 07-CV-02698, 2008 WL 5712727, at *4 (D. Colo. Nov. 3, 2008). Also, the proposed designation procedures make clear that the decision to place a prisoner in a CMU is made by the Bureau's Assistant Director of Correctional Programs, who is a senior-level official in the Bureau's Central Office. The suggestion, therefore, that a prisoner has a multi-level review of the CMU designation available to him via the administrative remedy program rings false when two of the three levels of review are conducted by persons in positions subordinate to the original decisionmaker.

Equally troubling is the fact that the proposed CMU regulations fail to sufficiently detail the process and criteria by which inmates may earn their way out of a CMU, thus enabling indeterminate placement. The proposed regulations fail to provide the criteria a prisoner must satisfy in order to be transferred to a less restrictive facility. This omission will perpetuate unconstitutional denials of due process for inmates housed in CMUs.

As currently drafted, neither prisoners nor the public has meaningful notice of CMU operations or criteria for designation to or release from these units. Particularly given that the BOP has identified the purpose of the CMU regulations as "establish[ing] specific parameters for Bureau staff when operating CMUs while putting inmates and the public on notice of CMU operation," we urge the Bureau to further define and delimit its criteria for placement in and transfer out of the CMUs.

III. THE TRANSFER OF PRISONERS FROM THE ADX TO A CMU IS OF PARTICULAR CONCERN.

Finally, we urge that designation to the CMU facility is particularly illogical for inmates who are eligible to transfer out of the Bureau's ADX facility. This concern is grounded in the fact that inmates leaving the ADX will have just completed that facility's Step-Down Program, the primary mechanism for inmates to achieve transfer out of the ADX. The Step-Down Program is designed as a multiple-tiered process that, by the Bureau's description, prepares prisoners for a less restrictive environment. To successfully complete the Step-Down process only to then be placed in a *more* restrictive environment, based solely on their crime of conviction, is both illogical and unfair to prisoners who have proven themselves capable of complying with Bureau rules and regulations. Moreover, these prisoners have ultimately proven themselves to be capable of serving their sentences in true open population settings, as would be available in U.S. penitentiaries.

Conditions of confinement at the ADX are the most restrictive in the Bureau. Prisoners in the "general population" of the ADX have no contact whatsoever with other inmates or visitors and all interactions with staff occur either through a steel door or while shackled and guarded by multiple correctional staff. As part of the restrictive confinement at ADX, inmates also have their phone calls, visits, and mail (other than with attorneys) one hundred percent monitored. If these prisoners violate the restrictions on phone, mail and visiting privileges, they are forced to demonstrate their ability to function in a less secure prison by beginning the Step-Down process over. The ADX's Step-Down Program is at least a three-year process of progression through increasingly

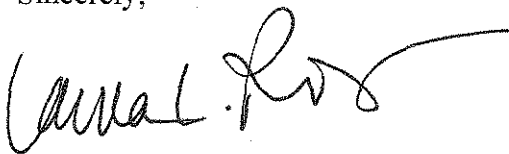
less-restrictive units within the ADX facility. By the time a prisoner achieves transfer out of the ADX through this program, he would have spent the past year, or likely more, in the final phase of Step-Down, a much less restrictive setting akin to the conditions in a true general population penitentiary. During their time in the last phase of the Step-Down Program, ADX inmates do not have page limits on their written correspondence and have 300 minutes of phone privileges per month, which they may use at any time they are out of their cells.

Sending prisoners from the ADX to a CMU puts them through a lengthy and grueling exercise in futility. Successful completion of the Step-Down Program requires consistent and steadfast adherence to institutional rules and behavioral expectations. An inmate's ability to meet these expectations and complete the Step-Down Program should therefore be rewarded by transfer to a facility offering at least the same levels of communication and human interaction as is afforded them in the last phase of the Step-Down Program. As a result, it is illogical to place an inmate directly from the ADX into a CMU without an individualized determination that communications monitoring is necessary due to prior communication-related infractions.

IV. CONCLUSION

Thank you for your consideration of these comments. If the BOP is amenable, we would appreciate the opportunity to further discuss these concerns with Bureau staff.

Sincerely,



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Jennifer Berg, Student Attorney
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June 3, 2010

Rules Unit, Office of General Counsel

Bureau of Prisons

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Washington, DC 20534

Re: Public Comment: BOP Docket #1148-P, Communication Management Units

To Whom It May Concern:

The Civil Liberties Defense Center is a nonprofit organization focused on defending and upholding civil liberties through education, outreach, litigation, and legal support and assistance. The CLDC strives to preserve the strength and vitality of the Bill of Rights and the U.S. and state constitutions, as well as to protect freedom of expression. Pursuant to FOIA, our organization requested documents concerning the CMUs on December 18, 2008, in conjunction with the Center for Constitutional Rights and we have reviewed the documents provided with great concern for the US Constitution and the civil liberties of all who are subjected to the federal legal system. We strongly oppose the current BOP proposed rule and would instead urge complete closure of all CMUs for the reasons outlined below.

Our organization has worked with, and represented, many political activists who have been prosecuted and convicted for politically motivated crimes. Often, grave concerns regarding equal protection arise when a defendant is excessively punished based upon the political motivation of his/her crime. This is also true when the nature and quality of their imprisonment is based upon their political beliefs instead of their conduct while imprisoned. Our client Daniel McGowan and Andrew Stepanian are two such political prisoners that we believe are and/or were designated to this harsh and overly restrictive prison unit based upon their beliefs protected by the First Amendment as well as their refusal to cooperate with the FBI by informing on other political activists. Neither were violent offenders, neither had any disciplinary records while incarcerated and were in fact 'model' inmates, yet both were sent to CMUs in an attempt to silence their political message to the outside world. At the time of his hasty transfer in the dark of night, McGowan had 6 points, no disciplinary violations, positive work evaluations and ¼ of a masters program completed, along with 17 continuing education classes and 6 release preparation classes. By all accounts he was a model prisoner attempting to make beneficial use of his time in prison at the time he was transferred to the CMU in Marion, IL.

We believe the decisions to place these men in the CMU were discriminatory, retaliatory, and serve no legitimate penal interests. It is our opinion that their designation was made to chill both their rights and the rights of others who support them while imprisoned. This discriminatory bias has also resulted in an unjust number of Muslim inmates transferred to CMUs and is a disgrace to our nation's founding tenants. In fact, it appears that the transfer of white environmentalists to the CMU may have been an attempt by the BOP to disguise their discriminatory motivations; though unsuccessfully hides the fact that the overwhelming majority of inmates designated to CMUs are Muslims.

We are concerned about the illegal manner in which the existing CMUs were established in violation of federal law. It's interesting that after being sued, the BOP is now attempting to go back and comply with the law by offering this rulemaking process and public comment period after the fact. This does not change the fact that during the Bush administration, BOP secretly established these "terrorist facilities" without going through the legal process afforded to all Americans—those who fund such debacles with their taxes. Furthermore, this means that there were no regulations in place at the time these men and women were designated in order to determine in an impartial manner who would be sent

Comments Submitted by Civil Liberties Defense Center
to a CMU and why. This allows agency officials carte blanche to designate whoever they want, for whatever reason they want, and leaves the process fraught with abuse of discretion and no oversight—judicial or otherwise.

In addition, the CMU violates the due process rights of those individuals incarcerated there. The inmate is never informed of the reasons why they were shipped off to this black hole and they have no meaningful way to challenge their designation once they have arrived—how can you challenge a basis you were never provided? Furthermore, once designated to a CMU there is no way to “earn” your way out unlike other disciplinary designations within the BOP, and in general, there is no hearing process whatsoever. Thus, the inmate appears to have very little chance of ever getting out of the repressive structure of the CMU regardless of their conduct, criminal conviction, or length of sentence.

Being sent to a CMU clearly amounts to cruel and unusual punishment, particularly in the cases of McGowan and Stepanian. But for the political nature of their crimes, both men would have been sent to low-security prisons or camps. Instead, while at the CMU they were subjected to only four hours of non-contact visits per month (through glass and via phone). No physical contact with their loved ones, unlike regular federal inmates who receive approximately 56 hours of contact visits per month. It also means they have had 60 minutes of phone calls a month as compared to a normal inmate who receives 300 minutes. The “yard” at Marion includes 4 cages for their recreational opportunities compared to other units, and the educational opportunities within the CMU are simply disgraceful. It also means their mail is extremely monitored by the FBI and they are not allowed to have any contact with the media—clearly intending to completely silence those who are housed within what is now called “Little Guantanamo.” It is aptly named Little Guantanamo not only because the conditions are harsh and punitive, but also because if you are sent to a CMU you have no right to challenge the transfer, and even if you are a model prisoner, there is no way for you to “earn” your way out of a CMU. Once you are sent there, you are there for the duration of your sentence. Even in the harshest disciplinary units in the federal prison system, after one year of good behavior you can earn a transfer to a better prison. Not so with the Little Guantanamo system.

Even more concerning, in writing to our client Daniel McGowan, we have had our Attorney-Client Privileged mail opened and read by CMU guards in absolute violation of the 6th Amendment. In fact, one letter that was opened and read described our plans to assist with an upcoming federal lawsuit against the BOP on Mr. McGowan’s behalf. We’re sure the BOP enjoyed receiving a “heads up” on that confidential client correspondence. There are simply no mechanisms in place to protect attorney-client privilege in the CMU and there are NO exigent circumstances that would warrant a violation of our client’s Attorney-Client privilege. Clearly, those involved with the CMU system believe they are not bound by federal law or the Constitution.

It is our position that the BOP’s proposed rule remains unconstitutional and is a back door attempt to correct the unlawful creation of the CMU now that litigation has been filed to challenge it. We urge the BOP to reject this proposed rule and terminate the CMU designation immediately, thus restoring the constitutional rights of those subjected to it. Thank you. Sincerely,

Lauren C. Regan
Executive Director & Staff Attorney
Civil Liberties Defense Center