

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Case No. 1:06-cr-442-LAP

V.

SYED HASHMI

Defendant

Affirmation of Khurrum B. Wahid in Support of Emergency Motion to Prohibit Attorney General from Restricting Defense Counsel's Access to Defendant and Infringing on Defendants Constitutional Rights

Khurrum B. Wahid, pursuant to 28 U.S.C. § 1746, hereby affirms under the penalties of perjury the following:

1. On June 6, 2006 Mr. Hashmi was arrested in England. On or about May 25, 2007 Mr. Hashmi was extradited to the United States from England and arrested. On May 29, 2007 Mr. Hashmi was formally arraigned on a four-count indictment and was immediately placed in the Special Housing Unit (SHU) at MCC Manhattan by the Bureau of Prisons (BOP). In July of 2007 Mr. Hashmi retained present counsel.

2. Sometime in or about October of 2007 the BOP moved Mr. Hashmi into an even more restrictive section of the SHU at MCC Manhattan, although no new charges had been levied against Mr. Hashmi since his June arrival and no allegations had been raised that Mr. Hashmi had broken any rules of the detention facility.

3. In an effort to create an environment of sensory deprivation and social isolation, the BOP has placed Mr. Hashmi in solitary confinement in the most secure and restrictive section of the MCC, subject to virtually twenty-four (24) hour lock down, sporadically permitted to participate in one hour of exercise inside another small cage within the jail. The BOP refuses to allow Mr. Hashmi to interact with anyone; he is forbidden to even try to speak through his door to other inmates. The BOP has refused to permit Mr. Hashmi to have any access to natural air or sunlight. The BOP has also restricted Mr. Hashmi's contact with the outside world by denying Mr. Hashmi access to basic reading materials such as newspapers. Unlike other inmates, Mr. Hashmi is not permitted to have a radio or TV. Until November 2, 2007, Mr. Hashmi was permitted one non-contact family visit for approximately one hour per week.

4. Mr. Hashmi was informed that in order to fully participate in the discovery process his attorneys would have to be cleared to review classified information. Mr. Hashmi objected to this demand by the U.S. Attorney's Office and sought a motion schedule to allow the issue to be litigated. Briefs were filed by both the defense and the government with oral arguments on the use of the Classified Information Procedures Act set for November 13, 2007.

5. On Monday, November 5, 2007, 170 days after Mr. Hashmi had been placed at MCC Manhattan, after at least three attorneys from two separate law firms had met with Mr. Hashmi on numerous occasions, defense counsel was notified that Mr. Hashmi had now become subject to Special Administrative Measures (SAMs) that would affect his conditions of confinement and all communication between him and his counsel. Undersigned counsel was asked to sign the seventeen page SAMs and execute an acknowledgement and affirmation of receipt of the SAMs as a precondition to any further interaction with Mr. Hashmi (see attached Exhibit A). The

acknowledgement form requires counsel to affirm responsibilities in the SAMs document and agree to fully abide by the restrictions as outlined therein.

6. According to the BOP, defense counsel are currently barred from meeting or speaking with Mr. Hashmi until counsel execute the SAMs acknowledgment affirmation.

Dated this 13th day of November, 2007.

Respectfully submitted,

/S/

Khurram B. Wahid
KW9149
Counsel for Syed Hashmi
Wahid, Vizcaino & Maher LLP
122 E. 42nd Street, Suite 1616
New York, NY 10168
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U.S. Department of Justice



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 6, 2007

Khurrum B. Wahid, Esq.
Sean M. Maher, Esq.
Wahid, Vizcaino & Maher LLP
122 East 42nd Street, Suite 1616
New York, NY 10168

Re: United States v. Syed Hashmi
06 Cr. 442 (LAP)

Dear Mr. Wahid and Mr. Maher:

On October 29, 2007, the Acting Attorney General approved the initiation of Special Administrative Measures for your client. The Special Administrative Measures were then initiated by the Bureau of Prisons on November 2, 2007. Please find enclosed the Acting Attorney General's memorandum regarding the Special Administrative Measures, as well as two attorney affirmations. As paragraph 2(a) of the memorandum explains, please sign the affirmations to acknowledge your receipt of the memorandum and your agreement to abide by its provisions, and return them to our office.

Please feel free to contact us if you have any questions.

Very truly yours,

MICHAEL J. GARCIA
United States Attorney
Southern District of New York

By: _____
Edward C. O'Callaghan
Lisa A. Baroni
Brendan R. McGuire
Assistant United States Attorneys
(212) 637-2634 / 2405 / 2220

Enclosures

ATTORNEY AFFIRMATION

KHURRUM B. WAHID, pursuant to 28 U.S.C. § 1746, hereby affirms under the penalties of perjury the following:

I am counsel of record for inmate Syed Hashmi (USMS # 60011-054) and have received and read the "Notification of Special Administrative Measures," dated October 29, 2007. By signing this affirmation, I acknowledge my awareness and understanding of the SAM provisions and my agreement to abide by those provisions, particularly those that relate to contact between the inmate and his attorney and the attorney's staff. My signing of this affirmation does not serve as an endorsement of the SAM or the conditions of confinement, and does not serve to attest to any of the factors that may have served as a basis for the imposition of the SAM.

Khurrum B. Wahid

Dated: November , 2007
New York, New York

ATTORNEY AFFIRMATION

SEAN M. MAHER, pursuant to 28 U.S.C. § 1746, hereby affirms under the penalties of perjury the following:

I am counsel of record for inmate Syed Hashmi (USMS # 60011-054) and have received and read the "Notification of Special Administrative Measures," dated October 29, 2007. By signing this affirmation, I acknowledge my awareness and understanding of the SAM provisions and my agreement to abide by those provisions, particularly those that relate to contact between the inmate and his attorney and the attorney's staff. My signing of this affirmation does not serve as an endorsement of the SAM or the conditions of confinement, and does not serve to attest to any of the factors that may have served as a basis for the imposition of the SAM.

Sean M. Maher

Dated: November , 2007
New York, New York



Office of the Attorney General
Washington, D.C. 20530

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MEMORANDUM FOR HARLEY G. LAPPIN
DIRECTOR
FEDERAL BUREAU OF PRISONS

FROM: THE ACTING ATTORNEY GENERAL *RLC 10/29/07*

SUBJECT: Origination of Special Administrative Measures (SAM) Pursuant to 28 C.F.R. § 501.3 for Federal Bureau of Prisons Inmate Syed Hashmi

Bureau of Prisons (BOP) inmate Syed Hashmi a/k/a "Fahad" (Hashmi) is charged with four counts, including conspiring to provide material support to al Qaeda, conspiring to make a contribution of goods or services to al Qaeda, and two substantive counts related to the two conspiracies. Hashmi is currently housed with the BOP at the Metropolitan Correctional Center in New York (MCC New York), pending trial. The United States District Court for the Southern District of New York has not yet set a trial date.

Hashmi is a former member of the New York faction of an Islamic fundamentalist organization known as Al-Muhajiroun (ALM), which operates in, among other places, New York, London, and Pakistan. ALM members support an extremist pro-Islamic policy and promote the overthrow of Western society. Hashmi allowed co-conspirators to store gear in his apartment which was destined for al Qaeda's insurgency forces in Afghanistan. Hashmi also permitted his co-conspirator to use his cellular phone to contact other al Qaeda supporters, including Omar Khyam. Khyam had previously conspired with others to bomb soft targets in the United Kingdom. Hashmi was arrested at Heathrow Airport in the United Kingdom on June 6, 2006. Following his arrest, Hashmi made the following threats and statements: 1) we are going to kill U.S. and British soldiers; and 2) a particular Jihad leader would make the officers pay for what they were doing to him.

Based upon information provided to me of Hashmi's proclivity for violence, I find that there is substantial risk that his communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of serious bodily injury to persons. Therefore, I am requesting that you, pursuant to 28 C.F.R. § 501.3, implement Special Administrative Measures (SAM) to restrict Hashmi's access to the

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Pursuant to 28 C.F.R. § 501.3

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mail, the media, the telephone, and visitors. Implementation of this SAM will commence immediately upon notice to the inmate, and the SAM will be in effect for one year from the date of my approval, subject to my further direction.

1. **General Provisions:**

- a. **Adherence to Usual United States Marshals Service (USMS), Bureau of Prisons (BOP) and Detention Facility (DF) Policy Requirements** - In addition to the below-listed SAM, the inmate must comply with all usual USMS, BOP, and non-BOP DF policies regarding restrictions, activities, privileges, communications, etc. If there is a conflict between USMS/BOP/DF policies and the SAM, as set forth herein, where the SAM is more restrictive than usual USMS/BOP/DF policies, then the SAM shall control. If usual USMS/BOP/DF policies are more restrictive than the SAM, then USMS/BOP/DF policies shall control.
- b. **Interim SAM Modification Authority** - During the term of this directive, the Director, Office of Enforcement Operations (OEO), Criminal Division, may modify the inmate's SAM as long as any SAM modification authorized by OEO:
 - i. Does not create a more restrictive SAM;
 - ii. Is not in conflict with the request of the U.S. Attorney for the Southern District of New York (USA/SDNY), Federal Bureau of Investigation (FBI), or USMS/BOP/DF, or applicable regulations; and
 - iii. Is not objected to by the USA/SDNY, FBI, or USMS/BOP/DF.
- c. **Inmate Communications Prohibitions** - The inmate is limited, within USMS/BOP/DF's reasonable efforts and existing confinement conditions, from having contact (including passing or receiving any oral, written or recorded communications) with any other inmate, visitor, attorney, or anyone else except as outlined and allowed by this document that could reasonably foreseeably result in the inmate communicating information (sending or receiving) that could circumvent the SAM's intent of significantly limiting the inmate's ability to communicate (send or receive) information relating to terrorist information.

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- d. **Use of Interpreters/Translators by USMS/BOP/DF** - Translator approval requirement:
- i. USMS/BOP/DF may use Department of Justice (DOJ) approved translators as necessary for the purpose of facilitating communication with the inmate.
 - ii. No person shall act as a translator without prior written clearance/approval from USMS/BOP/DF, which shall only be granted after consultation with the FBI and USA/SDNY.
 - iii. Translators utilized by USMS/BOP/DF shall not be allowed to engage in, or overhear, unmonitored conversations with the inmate. Translators shall not be alone with the inmate, either in a room or on a telephone or other communications medium.

2. **Attorney/Client Provisions:**

- a. **Attorney¹ Affirmation of Receipt of the SAM Restrictions Document** - The inmate's attorney (or counsel) – individually by each if more than one – must sign an affirmation acknowledging receipt of the SAM restrictions document. By signing the affirmation, the attorney acknowledges his/her awareness and understanding of the SAM provisions and his/her agreement to abide by these provisions, particularly those that relate to contact between the inmate and his attorney and the attorney's staff. The signing of the affirmation does not serve as an endorsement of the SAM or the conditions of confinement, and does not serve to attest to any of the factors set forth in the conclusions supporting the SAM. However, in signing the affirmation, the inmate's attorney, and precleared staff, acknowledge the restriction that they will not forward third-party messages to or from the inmate.

¹The term "attorney" refers to the inmate's attorney of record, who has been verified and documented by the USA/SDNY, and who has received and acknowledged receipt of the SAM restrictions document. As used in this document, "attorney" also refers to more than one attorney where the inmate is represented by two or more attorneys, and the provisions of this document shall be fully applicable to each such attorney in his/her individual capacity.

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- i. The USA/SDNY shall present, or forward, the attorney affirmation of receipt of the SAM restrictions document to the inmate's attorney.
 - ii. After initiation of SAM and prior to the inmate's attorney being permitted to have attorney/client-privileged contact with the inmate, the inmate's attorney shall execute a document affirming receipt of the SAM restrictions document and return the original to the USA/SDNY.
 - iii. The USA/SDNY shall maintain the original of the SAM acknowledgment document and forward a copy of the signed document to OEO in Washington, D.C. and the USMS/BOP/DF.
- b. **Attorney Use of Interpreters/Translators -**
- i. Necessity Requirement - No interpreter/translator (translator) shall be utilized unless absolutely necessary where the inmate does not speak a common language with the attorney. Any translator shall be precleared.²
 - ii. Attorney Immediate Presence Requirement - Any use of a translator by the attorney shall be in the physical and immediate presence of the attorney - in the same room. The attorney shall not patch through telephone calls, or any other communications, to or from the inmate.
 - iii. Translation of Inmate's Correspondence - An attorney of record may only allow a federally approved translator to translate the inmate's correspondence as necessary for attorney/client privileged communication.
- c. **Attorney/Client Privileged Visits -** May be contact or non-contact, at the discretion of the USMS/BOP/DF.
- d. **Attorney May Disseminate Inmate Conversations -** The inmate's attorney may disseminate the contents of the inmate's communication to third parties for the

²"Prcleared" refers to a translator, who is actively assisting the inmate's attorney with the inmate's defense, who has submitted to a background check by the FBI and USA/SDNY, who has successfully been cleared by the FBI and USA/SDNY, and who has received a copy of the inmate's SAM and has agreed - as evidenced by his/her signature - to adhere to the SAM restrictions and requirements.

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sole purpose of preparing the inmate's defense – and not for any other reason – on the understanding that any such dissemination shall be made solely by the inmate's attorney, and not by the attorney's staff.

- e. **Unaccompanied Attorney's Precleared Paralegal(s)³ May Meet With Client** - The inmate's attorney's precleared paralegal(s) may meet with the inmate without the necessity of the inmate's attorney being present. An investigator or translator may not meet alone with the inmate. These meetings may be contact or non-contact, at the discretion of the USMS/BOP/DF.
- f. **Simultaneous Multiple Legal Visitors** - The inmate may have multiple legal visitors provided that at least one of the multiple legal visitors consists of the inmate's attorney or precleared paralegal. These meetings may be contact or non-contact, at the discretion of the USMS/BOP/DF.
- g. **Legally Privileged Telephone Calls** - The following rules refer to all legally-privileged telephone calls or communications:
 - i. **Inmate's Attorney's Precleared Staff May Participate in Inmate Telephone Calls** - The inmate's attorney's precleared staff are permitted to communicate directly with the inmate by telephone, provided that the inmate's attorney is physically present and participating in the legal call as well.
 - ii. **Inmate's Initiation of Legally-Privileged Telephone Calls** - Inmate initiated telephone communications with his attorney or precleared staff are to be placed by a USMS/BOP/DF staff member and the telephone handed over to the inmate only after the USMS/BOP/DF staff member confirms that

³"Prcleared" when used with regard to an attorney's staff, or "precleared staff member," refers to a co-counsel, paralegal, or an investigator who is actively assisting the inmate's attorney with the inmate's defense, who has submitted to a background check by the FBI and USA/SDNY, who has successfully been cleared by the FBI and USA/SDNY, and who has received a copy of the inmate's SAM and has agreed – as evidenced by his/her signature – to adhere to the SAM restrictions and requirements. As used in this document, "staff member" also refers to more than one staff member, and the provisions of this document shall be fully applicable to each such staff member in his/her individual capacity. A "paralegal" will also be governed by any additional DF rules and regulations concerning paralegals.

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the person on the other end of the line is the inmate's attorney. This privilege is contingent upon the following additional restrictions:

- (1) The inmate's attorney will not allow any non-precleared person to communicate with the inmate, or to take part in and/or listen to or overhear any communications with the inmate.
- (2) The inmate's attorney must instruct his/her staff that:
 - (a) The inmate's attorney and precleared staff are the only persons allowed to engage in communications with the inmate.
 - (b) The attorney's staff (including the attorney) are not to patch through, forward, transmit, or send the inmate's communications to third parties.
- (3) No telephone call/communication, or portion thereof, except as specifically authorized by this document:
 - (a) Is to be overheard by a third party.⁴
 - (b) Will be patched through, or in any manner forwarded or transmitted to a third party.
 - (c) Shall be divulged in any manner to a third party, except as otherwise provided in Section 2(d).

⁴For purposes of the SAM, "third party" does not include officials of the USMS/BOP/DF, FBI, DOJ, or other duly authorized federal authorities when acting in connection with their official duties. This section does not allow monitoring of attorney/client privileged communications.

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- (d) Shall be in any manner recorded or preserved.⁵ The inmate's attorney may make written notes of attorney/client -privileged communications.
- (4) If USMS/BOP/DF, FBI or USA/SDNY determines that the inmate has used or is using the opportunity to make a legal call to speak with another inmate or for any other non-legal reason that would circumvent the intent of the SAM, the inmate's ability to contact his attorney by telephone may be suspended or eliminated.
- h. **Documents Provided by Attorney to Inmate** - The inmate's attorney may provide his/her client with or review with the inmate, documents related to his defense, including discovery materials, court papers (including indictments, court orders, motions, etc.), and/or material prepared by the inmate's attorney, so long as any of the foregoing documents are translated, if translation is necessary, by a precleared translator. Any document not related to the inmate's defense must be sent to the inmate via general correspondence and will be subject to the mail provisions of subparagraphs 2 (I) and 3(g). Documents previously reviewed and cleared for receipt by the inmate, and already in the inmate's possession at the outset of the visit, may be discussed or reviewed by the inmate and the inmate's attorney during the visit.
 - i. None of the materials provided may include inflammatory materials, materials inciting to violence or military training materials, or materials that may be used to pass messages from inmate to inmate, unless such materials have been precleared by the USA/SDNY and the FBI.
 - ii. The USA/SDNY may authorize additional documents to be presented to the inmate. If any document not listed or described above needs to be transmitted to the inmate, consent for the transmission of the document can be obtained from the USA/SDNY without the need to formally seek approval for an amendment to the SAM.

⁵Except by USMS/BOP/DF, FBI, DOJ or other duly authorized federal authorities. This section does not allow monitoring of attorney/client privileged communications.

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- i. **Legal Mail** - The inmate's attorney may not send, communicate, distribute, or divulge the inmate's mail, or any portion of its contents (legal or otherwise), to third parties.⁶
 - i. In signing the SAM acknowledgment document, the inmate's attorney and precleared staff will acknowledge the restriction that only inmate case-related documents will be presented to the inmate, and that neither the attorney nor his/her staff will forward third-party mail to or from the inmate.
3. **Inmate's Non-legal Contacts:**
- a. **Non-legal Telephone Contacts -**
 - i. The inmate is limited to non-legal telephone calls with his immediate family members.⁷
 - ii. The quantity and duration of the inmate's non-legal telephone calls with his immediate family members shall be set by the USMS/BOP/DF, with a minimum of one (1) call per month, unless otherwise agreed upon by USMS/BOP/DF, FBI and USA/SDNY to allow more calls.
 - b. **Rules for Telephone Calls** - For all non-legally privileged telephone calls or communications, no telephone call/communication, or portion thereof:
 - i. Is to be overheard by a third party.⁸

⁶Legal mail is defined as properly marked correspondence (marked "Legal Mail") addressed to or from the inmate's attorney of record. All other mail, including that otherwise defined by the USMS/BOP/DF as Special Mail, shall be processed as "non-legal mail."

⁷The inmate's "immediate family members" are defined as the inmate's (USMS/BOP/DF, FBI-verifiable) spouse, natural children, parents, and siblings.

⁸For purposes of the SAM, "third party" does not include officials of the USMS/BOP/DF, FBI, DOJ, or other duly authorized federal authorities when monitoring in connection with their

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- ii. Is to be patched through, or in any manner forwarded or transmitted, to a third party.
- iii. Shall be divulged in any manner to a third party.
- iv. Shall be in any manner recorded or preserved.⁹

All telephone calls shall be in English unless a fluent FBI, USMS/BOP/DF approved translator is available to contemporaneously monitor the telephone call. Arranging for a translator may require at least fourteen (14) days advance notice.

- c. **Telephone SAM Restriction Notifications** - For all non-legal telephone calls to the inmate's immediate family member(s):
 - i. USMS/BOP/DF shall inform the inmate of the telephone SAM restrictions prior to each telephone call.
 - ii. USMS/BOP/DF shall verbally inform the inmate's immediate family member(s) on the opposite end of the inmate's telephone communication of the telephone SAM. USMS/BOP/DF is only required to notify the inmate's communication recipient in English.
 - iii. USMS/BOP/DF shall document each such telephone notification.
- d. **Family Call Monitoring** - All calls with the inmate's immediate family member(s) shall be:
 - i. Contemporaneously monitored by the FBI.
 - ii. Contemporaneously recorded (as directed by the FBI) in a manner that allows such telephone calls to be analyzed for indications the call is being used to pass messages soliciting or encouraging acts of violence or other crimes, or to otherwise attempt to circumvent the SAM.

official duties. This section does not allow monitoring of attorney/client communications.

⁹Except by USMS/BOP/DF, FBI, DOJ, or other duly authorized federal authorities.

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- iii. A copy of each inmate/immediate family member telephone call recording shall be provided by USMS/BOP/DF on a single, individual cassette tape (per call) for forwarding to the FBI. These recordings shall be forwarded on a call-by-call basis as soon as practicable.

- e. **Improper Communications** - If telephone call monitoring or analysis reveals that any call or portion of a call involving the inmate contains any indication of a discussion of illegal activity, the soliciting of or encouraging of acts of violence or terrorism, or actual or attempted circumvention of the SAM, the inmate shall not be permitted any further calls to his immediate family members for a period of time to be determined by USMS/BOP/DF. If contemporaneous monitoring reveals such inappropriate activity, the telephone call may be immediately terminated.

- f. **Non-legal Visits** -
 - i. **Limited Visitors** - The inmate shall be permitted to visit only with his immediate family members. The visitor's identity and family member relationship to the inmate will be confirmed by the USMS/BOP/DF and FBI in advance.

 - ii. **English Requirement** - All communications during non-legal inmate visits will be in English unless a fluent FBI, USMS/BOP/DF approved translator is readily available to contemporaneously monitor the communication/visit.

 - iii. **Visit Criteria** - All non-legal visits shall be:
 - (1) Contemporaneously monitored by USMS/BOP/DF and/or FBI, in a manner that allows such visits to be analyzed for indications the visit is being used to pass messages soliciting or encouraging acts of violence or other crimes, or to otherwise attempt to circumvent the SAM.

 - (2) Permitted only with a minimum of fourteen (14) calendar days advance written notice to the USMS/BOP/DF facility where the inmate is housed.

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- (3) Without any physical contact. All such meetings shall be non-contact to protect against harm to visitors or staff should the inmate attempt to take hostages.
 - (4) Limited to one (1) adult visitor at a time. However, FBI-verified children of the inmate may visit with a pre-approved adult visitor.
- g. **Non-legal Mail** - Any mail not clearly and properly addressed to/from the inmate's attorney and marked "Legal Mail" (incoming or outgoing). Non-legal mail is limited to only the inmate's immediate family, U.S. courts, federal judges, U.S. Attorney's Offices, members of U.S. Congress, BOP, other federal law enforcement entities, and, if the inmate is a citizen of a foreign country, a verified consular representative of that country.
- i. **General correspondence with limitations:** correspondence is restricted to only immediate family members. Volume and frequency of outgoing general correspondence with immediate family members may be limited to three pieces of paper (not larger than 8 ½ x 11), double-sided, once per calendar week to a single recipient, at the discretion of the USMS/BOP/DF. The identity and family member relationship to the inmate will be confirmed by USMS/BOP/DF and FBI.
 - ii. **General correspondence without limitations:** correspondence to U.S. courts, federal judges, U.S. Attorney's Offices, members of U.S. Congress, BOP, and other federal law enforcement entities. There is no volume nor frequency limitation on mail to/from these parties unless there is evidence of abuse of these privileges, threatening correspondence is detected, circumvention of the SAM is detected, or the quantity to be processed becomes unreasonable to the extent that efficient processing to protect the security, good order or discipline of the institution, the public or national security may be jeopardized .
 - iii. All non-legal mail will be:
 - (1) **Copied** - Shall be copied (including the surface of the envelope) by the warden, or his/her designee, of the facility in which the inmate is housed.

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- (2) **Forwarded** - Shall be forwarded, in copy form, to the location designated by the FBI.
- (3) **Analyzed** - After government analysis and approval, if appropriate, the inmate's incoming/outgoing non-legal mail will be forwarded to the USMS/BOP/DF for delivery to the inmate (incoming); or directly to the addressee (outgoing).

The federal government will forward the inmate's non-legal mail to the USMS/BOP/DF for delivery to the inmate or directly to the addressee after a review and analysis period of:

- (a) A reasonable time not to exceed fourteen (14) business days for mail which is written entirely in the English language.
 - (b) A reasonable time not to exceed sixty (60) business days for any mail which includes writing in any language other than English, to allow for translation.
 - (c) A reasonable time not to exceed sixty (60) business days for any mail where the Federal Government has reasonable suspicion to believe that a code was used, to allow for decoding.
- iv. **Mail Seizure** - If outgoing/incoming mail is determined by USMS/BOP/DF or FBI to contain overt or covert discussions of or requests for illegal activities, the soliciting or encouraging of acts of violence or terrorism, or actual or attempted circumvention of the SAM, the mail shall not be delivered/forwarded to the intended recipient but referred to the FBI for appropriate action. The inmate shall be notified in writing of the seizure of any mail.

4. **Communication With News Media:**

- a. The inmate will not be permitted to talk with, meet with, correspond with, or otherwise communicate with any member, or representative, of the news media, in person, by telephone, by furnishing a recorded message, through the mail, through his attorney, through a third party, or otherwise.

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5. **No Group Prayer:**

- a. The inmate shall not be allowed to engage in group prayer with other inmates.
- b. If an FBI and/or USMS/BOP/DF approved religious representative is to be present for prayer with the inmate, the prayer shall be conducted as part of a contact or non-contact visit, at the discretion of the USMS/BOP/DF.

6. **No Communal Cells and No Communication Between Cells:**

- a. The inmate shall not be allowed to share a cell with another inmate.
- b. The inmate shall be limited within the USMS/BOP/DF's reasonable efforts and existing confinement conditions, from communicating with any other inmate by making statements audible to other inmates or by sending notes to other inmates.

7. **Recording Conversations Between Cells:**

- a. USMS/BOP/DF, FBI are hereby authorized to place microphones in the hallways and elsewhere outside the inmate's cell to record any statements made by the inmate to other inmates or staff.
- b. The Notice of SAM given to the inmate shall notify the inmate that he is subject to such recording

8. **Cellblock Procedures:**

- a. The inmate shall be kept separated from other inmates as much as possible while in the cellblock area.
- b. The inmate shall be limited, within USMS/BOP/DF's reasonable efforts and existing confinement conditions, from communicating with any other inmate while in the cellblock area.

9. **Commissary Privileges:**

- a. The USMS/BOP/DF shall restrict access to commissary items or any other objects

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determined by USMS/BOP/DF to be capable of being converted into dangerous instruments.

10. **Access to Mass Communications:**

To prevent the inmate from receiving and acting upon critically-timed information or information coded in a potentially undetectable manner, the inmate's access to materials of mass communication is restricted as follows:

a. **Periodicals/Newspapers -**

- i. The inmate may have access to publications determined not to facilitate criminal activity or be detrimental to national security; the security, good order or discipline of the institution; or the protection of the public. This determination is to be made by the FBI, in consultation with the USMS/BOP/DF and USA/SDNY.
- ii. Sections of the periodical/newspaper which offer a forum for information to be passed by unknown and/or unverified individuals, including but not limited to classified advertisements and letters to the editor, should be removed from the periodicals/newspapers prior to distribution to the inmate.
- iii. The inmate shall then have access to the remaining portions of the periodicals/newspapers in accordance with USMS/BOP/DF policy, after a delay of at least thirty (30) days. In accordance with subparagraph 3(g), above, the FBI will review the remaining portions of the publications prior to distribution to the inmate and be responsible for any translations required.
- iv. In order to avoid passing messages/information from inmate to inmate, the inmate shall not be allowed to share the publication(s) with any other inmates.

- b. **Television and Radio -** The inmate is restricted from access to channels/stations which primarily broadcast news, but is permitted access to all other radio and television channels/stations, in accordance with USMS/BOP/DF policies.

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Pursuant to 28 C.F.R. § 501.3

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c. **Termination or Limitation** - If the USMS/BOP/DF determines that the mass communications are being used to send messages to the inmate relating to the furtherance of terrorist activities, the inmate's access may be limited or terminated for a period of time to be determined by the USMS/BOP/DF.

11. **Frequent Cell Searches:**

a. USMS/BOP/DF is hereby directed to search the inmate's cell frequently and to take appropriate disciplinary action for any infractions.

12. **Transfer of Custody:**

In the event that the inmate is transferred to or from the custody of the USMS, BOP or any other DF, the SAM provisions authorized for this inmate will continue in effect, without need for any additional DOJ authorization.

CONCLUSION

The SAM set forth herein, especially as they relate to attorney/client-privileged communications and family contact, are reasonably necessary to prevent the inmate from committing, soliciting, or conspiring to commit additional criminal activity. Moreover, these measures are the least restrictive that can be tolerated in light of the ability of this inmate to aid knowingly or inadvertently, in plans that create a substantial risk that the inmate's communications or contacts with persons could result in death or serious bodily injury to persons.

With respect to telephone privileges, the SAM is reasonably necessary because of the high probability of calls to co-conspirators to arrange terrorist activities.

The SAM, with respect to mail privileges, is reasonably necessary to prevent the inmate from receiving or passing along critically-timed messages. While I recognize that eliminating the inmate's mail privileges entirely may be an excessive measure except in the most egregious of circumstances, I believe that delaying mail delivery and allowing authorized personnel to examine a copy of the mail, is sufficient at this time to adequately ensure that the mail is not used to deliver requests for, or assist in, violent and/or terrorist activities. Under this procedure, the inmate can relate personal news to family members, even if delayed, but he may find it difficult or unwise to pass along restricted information in light of these procedures.

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To the extent that the use of a translator is necessary, the government has the right to make sure that the translator given access to the inmate is worthy of trust.

The SAM's prohibition of contact with the media is reasonably necessary. Communication with the media could pose a substantial risk to public safety if the inmate advocates violent and/or terrorist offenses, or if he makes statements designed to incite such acts. Based upon the inmate's past behavior, I believe that it would be unwise to wait until after the inmate solicits or attempts to arrange another violent terrorist act to justify such media restrictions.

The SAM's limitations on access to newspapers, publications, television and radio are reasonably necessary to prevent the inmate from receiving and acting upon critically-timed messages. Such messages may be placed in advertisements or communicated through other means, such as the television and/or radio. While I recognize that eliminating the inmate's access to such media may be an excessive measure except in the most egregious of circumstances, I believe that limiting and/or delaying such access may interrupt communication patterns the inmate may develop with the outside world, and ensure that the media is not used to communicate information which furthers terrorist, violent and/or criminal activities.

SAM CONTACT INFORMATION

Any questions that you or your staff may have about this memorandum or the SAM directed herein should be directed to the Office of Enforcement Operations, Criminal Division, U.S. Department of Justice, 10th and Constitution Avenues, N.W., JCK Building, Room 1200, Washington, DC, 20530-0001; telephone (202) 514-6809; and facsimile (202) 616-8256.

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