

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

Civil Action No. 17-cv-02493-RM-KMT

UMAR FAROUK ABDULMUTALLAB,

Plaintiff,

v.

JEFFERSON SESSIONS, Attorney General of the United States, in his official capacity,
FEDERAL BUREAU OF PRISONS, and
JOHN DOES 1 THROUGH 20, in their official capacities,

Defendants.

MOTION TO DISMISS AMENDED COMPLAINT [76]

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants Attorney General Jefferson Sessions, in his official capacity, and the Bureau of Prisons (“Defendants”) move to dismiss Claims 1-7 and 11-14 of the amended complaint. Defendants certify that, pursuant to Judge Moore’s Practice Standards, the parties conferred via email on January 30-31, 2018 and May 8, 2018 regarding the grounds for this motion. Plaintiff opposes the motion.

INTRODUCTION

Plaintiff Umar Farouk Abdulmutallab is an unrepentant terrorist, who attempted to blow up a commercial airliner and kill 289 people on board. He testified in court that he believes his participation in jihad against the United States is among the most virtuous deeds and that he is obligated and proud to kill in the name of God. He brings this civil action, challenging his conditions of confinement at the United States Penitentiary – Administrative Maximum, in Florence, Colorado (“ADX”). As detailed in this motion and an accompanying motion for partial

summary judgment, all 14 of these claims are subject to dismissal for lack of jurisdiction, failure to exhaust administrative remedies, and/or failure to state a claim.

In Claim 1, Plaintiff alleges his transfer to the ADX violates due process, but the Tenth Circuit has ruled that there is no protected liberty interest in transfer to the ADX. In Claims 2-5, Plaintiff challenges his Special Administrative Measures (“SAMs”) and argues that restrictions on his communications violate the law. But the Tenth Circuit and this Court have repeatedly upheld such restrictions in cases, like this one, where there is a rational relationship between the restrictions and the inmate’s offense as well as his statements declaring an obligation to participate in jihad. In Claims 6-7 and 11-13, Plaintiff challenges the BOP’s actions related to his hunger strikes in 2012 and 2015, seeking to bar the BOP from force-feeding him during any hypothetical future hunger strike. Plaintiff lacks standing to bring this claim for prospective relief based on years-old allegations. Moreover, as federal courts have repeatedly held, force-feeding a hunger-striking inmate is justified based on the government’s compelling interests in preserving inmate health and maintaining order and discipline. Finally, in Claim 14, Plaintiff challenges that his overall conditions of confinement violate the Eighth Amendment, but the Supreme Court and Tenth Circuit have rejected such overall conditions of confinement claims. For these reasons, as detailed further below, the Court should dismiss Claims 1-7 and 11-14.¹

FACTUAL BACKGROUND

Plaintiff Umar Farouk Abdulmutallab is a convicted terrorist, often referred to in the media as the “Underwear Bomber.” He is serving four terms of life imprisonment plus 50 years

¹ Defendants have separately moved for partial summary judgment for failure to exhaust administrative remedies with regard to Claims 1, 6, 8-10, and 12, as well as with respect to portions of Claims 2-5, 7, 11, 13, 14 and the allegations in paragraph 147.

for his convictions for attempting to use a weapon of mass destruction on a commercial airliner that landed in Detroit, Michigan, and attempting to murder 289 people on board. Dkt. 76 ¶ 1. As Plaintiff testified under oath at his plea colloquy, “in fulfillment of a religious obligation, I decided to participate in jihad against the United States.”² Ex. 1 at 25:25-26:2, *United States v. Abdulmutallab*, No. 10-cr-200005 (E.D. Mich.) (Dkt. 114, Plea Transcript). Plaintiff testified that “[t]he Koran obliges every able Muslim to participate in jihad and fight in the way of Allah, those who fight you, and kill them where you find them.” *Id.* at 26:2-4. Plaintiff further testified that “[p]articipation in jihad against the United States is considered among the most virtuous deeds in Islam and is highly encouraged in the Koran.” *Id.* at 27:1-3. Plaintiff admitted that he attempted to use a weapon of mass destruction—which he called “a blessed weapon”—in order to destroy a commercial airliner and kill those on board. *Id.* at 26:15-20, 25:18-25. He testified that “the U.S. should await a great calamity that will befall them through the hands of the mujahideen soon by God’s willing permission.” *Id.* at 29:9-11.

During his sentencing, when the government presented video evidence demonstrating the destructive nature of his explosive device, Plaintiff repeatedly interrupted with chants of “Allahu Akbar”—“God is great.” Ex. 2 at 42:10-43:2, *United States v. Abdulmutallab*, No. 10-cr-200005 (E.D. Mich.) (Dkt. 139, Sentencing Transcript). In his statement to the court, Plaintiff praised Osama Bin Laden and Anwar Al-Awlaki as “rightly guided” and proclaimed that they are “alive

² On a motion to dismiss, a court may consider documents incorporated by reference, documents referred to in the complaint that are central to the claims, and matters of which a court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010). Publicly filed court records, including court transcripts, are subject to judicial notice. *St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp.*, 605 F.2d 1169, 1172 (10th Cir. 1979); *United States v. Ahidley*, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007); *Trusdale v. Bell*, 85 F. App’x 691, 693 (10th Cir. 2003).

and shall be victorious by God's grace." *Id.* at 39:22-25. "The mujahedeen are proud to kill in the name of God, and that is exactly what God told us to do in the Koran." *Id.* at 40:9-10. As the district court summed up following Plaintiffs' various statements, "by his own words, defendant has shown that he continues to desire to harm the United States and its citizens, and that he views it as his religious obligation to do so." *Id.* at 54:18-20. The court stated that Plaintiff "poses a significant, ongoing threat to the safety of American citizens everywhere." *Id.* at 54:8-10.

Plaintiff is a federal prisoner who has been housed at the ADX since 2012. Dkt. 76 ¶ 4. In March 2012, the Attorney General imposed Special Administrative Measures ("SAMs") against Plaintiff pursuant to 28 C.F.R. § 501.3, after finding "there is a substantial risk that [Plaintiff's] 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 death or serious bodily injury to persons."³ Ex. 3, March 2012 SAMs at 3; *see also* Dkt. 76 ¶¶ 7, 119-20. The SAMs list numerous reasons for the restrictions, including that Plaintiff engaged in a martyrdom mission to destroy a passenger plane and kill those on board, an action for which he has yet to show any remorse; Plaintiff recorded a martyrdom video released by al Qaeda in which he exhorted others to the call of jihad; Plaintiff desires to harm the United States; Plaintiff made statements during his criminal proceeding and to government officials that he is proud to kill in the name of God and has a religious obligation to engage in jihad against the United States; there is a substantial risk that he will attempt to radicalize others, including fellow inmates, if his communications are

³ The Court may consider Plaintiff's SAMs on a motion to dismiss because they are referenced in the complaint, are central to the claims, and the authenticity of the documents is not in dispute. *Gee*, 627 F.3d at 1186; *Al-Owhali v. Mukasey*, No. 07-cv-02214-LTB-BNB, 2010 WL 5651033, at *10 n.3 (D. Colo. June 17, 2010), *adopted in relevant part*, 2011 WL 288523 (D. Colo. Jan. 27, 2011), *aff'd*, 687 F.3d 1236 (10th Cir. 2012).

not appropriately restricted; he remains loyal to al Qaeda; there is a substantial risk that, if given the opportunity, he will seek to facilitate additional terrorist acts; and he has a proclivity for violence. Ex. 3 at 2; Ex. 4, March 2018 SAMs Renewal at 2-3. The SAMs explain that when Plaintiff “was asked if [he] still had an obligation to commit jihad in light of the fact that his martyrdom mission failed, [he] replied that the obligation to jihad still existed.” Ex. 3 at 2; Ex. 4 at 2. The initial SAMs expired in March 2013 and have been renewed on an annual basis, with the latest renewal in March 2018. Dkt. 76 ¶ 123; Ex. 4. During that renewal, it was found that Plaintiff “has never expressed any regret or remorse for [his] conduct, but instead view[s] [his] crimes as compelled by religious duty” and “believes that [he] and others have a continuing obligation to carry out such crimes.” Ex. 4 at 3.

The SAMs allow Plaintiff to communicate through writing, calls, and personal visits with his immediate family, his list of authorized contacts (including his step-sisters, uncle, and step-mother), and his attorneys and related legal providers. Ex. 4 at ¶¶ 1.c, 2, 3. Plaintiff is allowed to communicate and visit with consular representatives, *id.* ¶ 11, as well as to communicate with the U.S. courts, federal judges, U.S. Attorney’s Offices, members of the U.S. Congress, the Bureau of Prisons, and federal law enforcement entities, *id.* ¶ 3.g. Plaintiff is permitted to communicate with non-terrorist inmates during predesignated times. *Id.* ¶ 1.c. Plaintiff is otherwise prohibited from communicating with other persons, but he may request additional approved contacts, who are evaluated “on a case-by-case basis.” *Id.* at 9 n.7. Plaintiff may access mass communications, including television, newspapers, books, and other publications so long as they do not facilitate criminal activity, harm national security, or harm the security, good order, or discipline of the institution. *Id.* ¶ 8-9. Plaintiff is not permitted to communicate with the media. *Id.* ¶ 4. The

Department of Justice found that such restrictions are reasonably necessary to prevent Plaintiff from committing, soliciting, or conspiring to engage in additional criminal activity, to prevent him from receiving and acting upon critically timed messages, and to prevent him from advocating or inciting terrorist, criminal, and/or violent offenses. *Id.* at 16-17.

Plaintiff brings this civil action with 14 claims challenging his conditions of confinement. In Count 1, Plaintiff alleges that his transfer to the ADX in 2012 violated due process. Dkt. 76 ¶¶ 284-88. In Counts 2-5, Plaintiff alleges his SAMs violate the First and Fifth Amendments. *Id.* ¶¶ 289-316. In Counts 6-7 and 11-13, Plaintiff alleges BOP's actions related to his hunger strikes in 2012 and 2015 violated the First, Fifth, and Eighth Amendments, as well as the Religious Freedom Restoration Act ("RFRA"). *Id.* ¶¶ 317-33, 359-83. In Counts 8-10, Plaintiff alleges that the BOP violated RFRA by denying group prayer with other inmates, regular access to an imam, and a halal diet. *Id.* ¶¶ 334-58. In Count 14, Plaintiff alleges that the overall conditions of his confinement constitute cruel and unusual punishment. *Id.* ¶¶ 384-95. Plaintiff seeks purely prospective declaratory and injunctive relief for the alleged violations. *Id.* Prayer for Relief.

STANDARDS OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(1)

The plaintiff bears the burden of establishing the Court's subject matter jurisdiction. *Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005). Federal Rule of Civil Procedure 12(b)(1) serves as the appropriate vehicle to challenge subject matter jurisdiction in a particular matter. *See, e.g., Satterfield v. Malloy*, 700 F.3d 1231, 1234 (10th Cir. 2012). When considering a Rule 12(b)(1) motion, a court may review evidence outside of the complaint. *Stuart v. Colorado Interstate Gas Co.*, 271 F.3d 1221, 1255 (10th Cir. 2001).

B. Federal Rule of Civil Procedure 12(b)(6)

In adjudicating a motion to dismiss pursuant to Rule 12(b)(6), a court must determine whether a complaint fails to state a claim upon which relief can be granted. Although a court must accept as true all well-pleaded factual allegations in a complaint, it need not credit allegations that are merely conclusory. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* This is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 678. Where the well-pleaded facts are “merely consistent with a defendant’s liability” or “mere possibility of misconduct,” the complaint fails to state a claim for relief that is plausible on its face, and the complaint must be dismissed. *Id.* 678-79.

ARGUMENT

I. The Tenth Circuit has repeatedly held that there is no protected liberty interest in a transfer to the ADX (Claim 1).

In Claim 1, Plaintiff alleges that his transfer to the ADX violated his procedural due process rights because he claims that he was not provided meaningful notice and or meaningful opportunity to be heard. Dkt. 76 ¶¶ 284-88. This claim has been repeatedly rejected because, as the Tenth Circuit has held, there is no protected liberty interest in the transfer to the ADX. *Rezaq v. Nalley*, 677 F.3d 1001, 1011 (10th Cir. 2012); *Gowadia v. Stearns*, 596 F. App’x 667, 673-74 (10th Cir. 2014); *Allmon v. Wiley*, 2011 WL 4501941, at *15 (D. Colo. Aug. 25, 2011), *adopted*, 2011 WL 4501937 (D. Colo. Sept. 27, 2011), *aff’d*, 483 F. App’x 430 (10th Cir. 2012).

An inmate has a “heavy burden” to establish that a prison restriction violates his due process rights. *Shaw v. Murphy*, 532 U.S. 223, 226 (2001). A prisoner must show two elements:

(1) he was deprived of a protected liberty or property interest; and, if so, (2) the procedures followed were constitutionally insufficient. *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011). Here, Plaintiff has failed to allege facts showing either element of a due process violation.⁴

A. Element not met: Deprivation of a protected liberty interest.

Prisoners retain “only a narrow range of protected liberty interests.” *Abbott v. McCotter*, 13 F.3d 1439, 1442 (10th Cir. 1994). “[T]he transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence.” *Hewitt v. Helms*, 459 U.S. 460, 468 (1982), *overruled in part on other grounds*, *Sandin v. Conner*, 515 U.S. 472 (1995). “[A] deprivation occasioned by prison conditions or a prison regulation does not reach protected liberty interest status and require procedural due process protection unless it imposes an ‘atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.’” *Steffey v. Orman*, 461 F.3d 1218, 1221 (10th Cir. 2006). The Tenth Circuit has developed a four-factor analysis for evaluating this question: (1) whether the conditions relate to and further the government’s legitimate interests in prison safety and national security; (2) whether the conditions are extreme; (3) whether the conditions increase the duration of the inmate’s confinement; and (4) whether the length of time the inmate will be subject to the conditions is indeterminate. *Rezaq*, 677 F.3d at 1012-13; *see also Estate of DiMarco v. Wyoming Dep’t of Corrs.*, 473 F.3d 1334, 1342-44 (10th

⁴ In addition, the relief Plaintiff seeks is unavailable. He seeks an injunction ordering the BOP to remove Plaintiff from the ADX. Dkt. 76 ¶ 5, Prayer for Relief. This remedy is improper for numerous reasons, not the least of which is that the proper remedy for a procedural due process violation is the process that is due, not the substantive grant of relief. *See, e.g., Codd v. Velger*, 429 U.S. 624, 627 (1977); *Davis v. Holder*, No. 12-cv-02122-REB-KMT, 2014 WL 1713429, at *9 (D. Colo. Apr. 23, 2014) (“[I]n the procedural due process context, the appropriate remedy is not damages, but ‘procedural protections as the particular situation demands.’”).

Cir. 2007). Applying these four factors, the Tenth Circuit and this Court have repeatedly held that the conditions of confinement at the ADX do not implicate a protected liberty interest.

Under the first factor, there is a reasonable connection between Plaintiff's incarceration at the ADX and the government's "uniquely federal penological interest in addressing national security risks by segregating inmates with ties to terrorist organizations." *Rezaq*, 677 F.3d at 1014. As the Tenth Circuit has held, there need only be a "reasonable relationship," and the BOP may properly consider the underlying nature of Plaintiff's crime in designating him to the ADX. *Gowadia*, 596 F. App'x at 673. Here, Plaintiff was convicted of a terrorist act in attempting to blow up a passenger plane with a weapon of mass destruction and murder 289 people on board. He testified that participating in jihad against the United States is among the most virtuous deeds, that he has an obligation and is proud to kill in the name of God, and that he remains loyal to al Qaeda leaders. Ex. 1 at 26-27; Ex. 2 at 39-40; Ex. 3, 4. This more than establishes a reasonable relationship between Plaintiff's crimes, his statements regarding an obligation to engage in jihad and desire to harm the United States, and his placement at the ADX.

Under the second factor, the Tenth Circuit "has already established that the conditions at ADX are not atypically 'extreme,'" including those conditions in the unit where Plaintiff is housed. *Gowadia*, 596 F. App'x at 673; *Rezaq*, 677 F.3d at 1015; *Allmon*, 2011 WL 4501941, at *15 ("[C]onditions of confinement in H Unit do not differ in any meaningful way from those in other ADX units and do not implicate a liberty interest."); *Ayyad v. Holder*, No. 05-cv-02342-WYD-MJW, 2014 WL 4747451, at *34-35 (D. Colo. Sept. 24, 2014) (concluding that conditions in H Unit are not extreme, are common to many high-security prisons, and that convicted terrorists "are the very types of inmate who are routinely subject to nonpunitive restrictive

confinement and who can reasonably expect to find themselves in such conditions”). Plaintiff can write and receive correspondence, receive visitors, make telephone calls, talk with others in the prison, access books and other publications, and obtain information by means of the mass media. “The conditions at ADX are comparable to those routinely imposed in the administrative segregation setting,” and are thus neither atypical nor extreme. *Rezaq*, 677 F.3d at 1015.

Under the third factor, Plaintiff’s placement at the ADX does not increase the duration of his confinement. *Rezaq*, 677 F.3d at 1016; *Gowadia*, 596 F. App’x at 673. Plaintiff is already serving four life sentences plus 50 years for his crimes.

Under the fourth factor, Plaintiff’s placement at the ADX, as a matter of law, is not considered “indeterminate.” Plaintiff’s allegation that there is no finite length to his placement is irrelevant because duration must be “considered in tandem with indeterminacy.” *Rezaq*, 677 F.3d at 1016. The Tenth Circuit holds that duration of conditions becomes atypical and significant only when an inmate does not receive “regular reevaluations” or periodic reviews of the conditions. *Id.* (holding no indeterminacy after 13 years at the ADX, even when those conditions are not of a “predictably finite” length, because of regular reevaluations); *see also Gambina v. Fed. Bureau of Prisons*, No. 10-cv-02376-MSK-KLM, 2013 WL 791428, *3 (D. Colo. Mar. 4, 2013) (holding inmate’s confinement in ADX since 1998 was not indeterminate because of regular, periodic reviews). Plaintiff receives the same twice-yearly Program Reviews as in *Rezaq* and *Gowadia*, plus he receives annual reviews to assess whether the SAMs should be renewed.⁵

⁵ The Special Security Unit Supplement describes the periodic Program Reviews, which occur at least every six months. Ex 5, Inst. Supp. FLM 5321.07(3)I, Special Security Unit (H-Unit), § IV. The Supplement further describes the annual SAMs review process. During that process, the inmate may submit written comments. *Id.* § III.B. Further, approximately 90 days before the SAM expires, BOP and FBI personnel meet with the inmate to discuss “information concerning

See Ex. 3, 4; Ex. 5 (detailing periodic Program Reviews); Dkt. 76 ¶ 123; 28 C.F.R. § 501.3(c).

Under Tenth Circuit precedent, this confinement is not considered indeterminate.

In sum, as the Tenth Circuit and this Court have previously held for inmates in similar circumstances, all four factors weigh in favor of no protected liberty interest. Plaintiff's procedural due process claim should therefore be dismissed.

B. Element not met: Lack of constitutionally sufficient process.

Because Plaintiff has no protected liberty interest in his transfer to the ADX, his procedural due process claim fails. The Court therefore need not reach the second element, whether the process afforded was constitutionally sufficient. But even if the Court examines this element, the process Plaintiff received satisfies any constitutional requirement in this context.

Once incarcerated, inmates are not entitled to full process, such as an adversary hearing or the right to present witnesses. The Supreme Court has explained that, “[w]here the inquiry draws more on the experience of prison administrators, and where the State’s interest implicates the safety of other inmates and prison personnel, the informal, nonadversary procedures set forth in *Greenholtz* [*v. Inmates of Neb. Penal & Correctional Complex*, 442 U.S. 1 (1979)] . . . and *Hewitt v. Helms*[, 459 U.S. 460 (1983)], . . . provide the appropriate model.” *Wilkinson v. Austin*, 545 U.S. 209, 228-29 (2005). Under those procedures, *some* notice and opportunity to be heard

possible renewal [or] modification of the SAM,” and “any other issues concerning the SAM.” *Id.* The information provided at the meeting by the inmate, along with the inmate’s written comments, are forwarded to the appropriate United States Attorney’s Office, the FBI or other relevant law enforcement agency, and the Office of Enforcement Operations in the criminal division of the United States Department of Justice for review in determining whether the SAMs should be renewed and/or modified. *Id.*

The Court may take judicial notice of the institution supplement. See *Matthews v. Wiley*, 744 F. Supp. 2d 1159, 1172 (D. Colo. 2010).

are constitutionally sufficient, even if significantly limited. *Hewitt*, 459 U.S. at 462, 464.

Likewise, officials need only “engage in some sort of periodic review of the confinement of such inmates. This review will not necessarily require that prison officials permit the submission of any additional evidence or statements.” *Id.* at 477 n.9.

Plaintiff acknowledges he received notice prior to the hearing on his ADX placement, and that he presented arguments at that hearing. Dkt. 76 ¶¶ 76, 79-84. While Plaintiff may disagree with the outcome, and may believe his arguments were not adequately taken into account, there is no dispute that Plaintiff had notice, was present at the hearing, and presented arguments. In addition, Plaintiff had the opportunity to file an Administrative Remedy regarding any perceived inadequacies with his hearing or placement at the ADX. 28 C.F.R. §§ 542.13-542.15. Finally, as described above, Plaintiff receives regular reevaluations both for his placement at the ADX and for his SAMs. Consequently, even if Plaintiff had a protected liberty interest, the BOP provided the “relaxed” procedures that more than satisfy due process in this particular context. *DiMarco*, 473 F.3d at 1344.

II. The SAMs are reasonably related to protecting national security and therefore do not violate the Constitution (Claims 2-5).

In Claims 2-5, Plaintiffs alleges that his SAMs violate his First and Fifth Amendment rights by restricting his communications and association with other persons. Dkt. 76 ¶¶ 289-316. As a remedy, Plaintiff seeks a “permanent injunction ordering Defendant Sessions to remove the SAMs” and “prohibiting Defendant Sessions or future Attorneys General from re-imposing SAMs.” *Id.* Prayer for Relief. As detailed below, the SAMs were imposed for legitimate penological reasons to protect national security and therefore do not violate the Constitution.

A. The SAMs do not violate the First Amendment (Claims 2-4).

Plaintiff alleges in Claims 2-4 that the SAMs violate his First Amendment rights by restricting his communications and his associations. Plaintiff fails to state a claim because he fails to allege facts, taken as true, that show there is no rational connection between the SAMs restrictions and the government's penological interest in protecting national security.

In *Turner v. Safley*, 482 U.S. 78 (1987), the Supreme Court established a deferential standard for reviewing restrictions on prisoners' constitutional rights, holding that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Id.* at 89. This deferential standard reflects the principle that "lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price v. Johnston*, 334 U.S. 266, 285 (1948), *overruled on other grounds*, *McCleskey v. Zant*, 499 U.S. 467 (1991); *see also Hudson v. Palmer*, 468 U.S. 517, 523 (1984) (recognizing that inmates retain only those First Amendment rights "not inconsistent with their status as prisoners or with the legitimate penological objectives").

Based on *Turner*, the Supreme Court has repeatedly held that First Amendment rights are appropriately curtailed in prison and that "freedom of association is among the rights least compatible with incarceration." *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003); *see also Jones v. N.C. Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125-26 (1977). *Turner* is satisfied if officials, in their judgment, believe that the restriction would advance the desired goal. *See Johnson v. California*, 543 U.S. 499, 513 (2005) (observing that *Turner* does not require proof a policy advanced the goal, but only that officials "might reasonably have thought" it would); *Beard v.*

Banks, 548 U.S. 521, 535 (2006) (upholding restriction even absent a showing that the restriction had “proven effective”). In conducting this analysis, courts “must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.” *Overton*, 539 U.S. at 132. “The burden, moreover, is not on the State to prove the validity of prison regulations but on the prisoner to disprove it.” *Id.*

In order to survive a motion to dismiss, a prisoner must account for the “core holding” of *Turner* and therefore has the burden to plead facts showing the *absence* of a rational connection between the challenged restriction and any legitimate penological interests. *Al-Owhali v. Holder*, 687 F.3d 1236, 1239 (10th Cir. 2012) (upholding dismissal of a First Amendment claim brought by a SAMs inmate). “Government conduct that would be unacceptable, even outrageous, in another setting may be acceptable, even necessary, in a prison.” *Gee*, 627 F.3d at 1186. Consequently, the complaint must show, through specific factual allegations, why the government’s justifications do not have a rational connection to the challenged restrictions. *Id.* This generally requires a prisoner to “recite facts that might well be unnecessary in other contexts to surmount a motion to dismiss.” *Al-Owhali*, 687 F.3d at 1240. It is plaintiff’s “burden to demonstrate that there is no legitimate, rational basis” for the restrictions. *Id.* at 1241.

The government has a well-established legitimate penological interest in protecting national security. *Rezaq*, 677 F.3d at 1014 (discussing the “uniquely federal penological interest in addressing national security risks”). While prison administrators are generally entitled to substantial deference, *Overton*, 539 U.S. at 132, that deference is even greater in the realm of national security. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-36 (2010); *see also*

Ziglar v. Abbasi, 137 S. Ct. 1843 (2017) (“courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs”); *Franklin v. Massachusetts*, 505 U.S. 788, 818 (1992) (judicial deference “pervades the area of national security”); *Citizens for Peace in Space v. City of Colo. Springs*, 477 F.3d 1212, 1221 (10th Cir. 2007) (acknowledging “special deference” in matters relating to national security “even when constitutional rights are invoked”). “[N]ational security and foreign policy concerns arise in connection with efforts to confront evolving threats in an area where information can be difficult to obtain and the impact of certain conduct difficult to assess.” *Humanitarian Law*, 561 U.S. at 34. “In this context, conclusions must often be based on informed judgment rather than concrete evidence, and that reality affects what we may reasonably insist on from the Government.” *Id.* at 34-35. A court must defer to the government’s predictive judgment in relation to national security because “it is not reasonably possible for an outside nonexpert body to review the substance of such a judgment.” *Dep’t of Navy v. Egan*, 484 U.S. 518, 529 (1988).

Based on this legitimate penological interest in protecting national security, the Tenth Circuit and this Court have repeatedly upheld SAMs restrictions nearly identical to the restrictions challenged here.⁶ *See, e.g., Gowadia*, 596 F. App’x at 673; *Al-Owhali*, 687 F.3d at 1241; *Nicholson v. Brennan*, No. 15-cv-01999-KLM, 2017 WL 4337896 (D. Colo. Sept. 28, 2017); *Salim v. Lynch*, No. 1:13-cv-03175-RM-CBS (D. Colo. Nov. 30, 2016) (Dkt. 95). As the Tenth Circuit concluded in *Gowadia*, there is “an obvious and reasonable relationship between

⁶ The SAMs restrictions here are similar to those restrictions in prior cases. *Compare* Ex. 3, 4; *with Nicholson v. Brennan*, No. 15-cv-01999-KLM (D. Colo.) (Dkt. 57-5); *Salim v. Lynch*, No. 13-cv-03175-RM-CBS (D. Colo.) (Dkt. 34-1); *Gowadia v. Stearns*, No. 13-cv-00077-KMT (D. Colo.) (Dkt. 43-2); *Al-Owhali v. Holder*, No. 07-cv-02214-LTB-BNB (D. Colo.) (Dkt. 51-1).

Gowadia’s crimes and the measures the BOP implemented to restrict his communications.” 596 F. App’x at 673. Similarly here, there is an “obvious and reasonable relationship” between Plaintiff’s crime, his statements under oath regarding his obligation to engage in jihad and desire to harm the United States, his martyrdom video encouraging others to answer the call of jihad, and the restrictions imposed in the SAMs.

Plaintiff is a terrorist who has testified that he has a religious obligation to engage in jihad against the United States. He was convicted of attempting to use a weapon of mass destruction—a “blessed weapon” in his words—to blow up a commercial airliner and kill 289 people on board. Ex. 1. He testified that he believes jihad against the United States is among the most virtuous deeds, that he is obliged to participate in jihad and proud to kill in the name of God, and that the United States should await a great calamity that will soon befall them at the hands of the mujahedeen. Ex. 1, 2. The district judge stated that “by his own words, defendant has shown that he continues to desire to harm the United States and its citizens, and that he views it as his religious obligation to do so” and that he “poses a significant, ongoing threat to the safety of American citizens everywhere.” Ex. 2 at 54:8-10, 54:18-20. The Attorney General found there is a substantial risk that Plaintiff’s communications or contacts with persons could result in death or serious bodily injury to persons. This finding was based on numerous reasons, including his crime; his martyrdom video released by al Qaeda where he exhorted others to engage in jihad; and his own statements during his criminal proceedings and to government officials indicating that he has an obligation to conduct jihad against the United States, a desire to harm the United States, loyalty to al Qaeda, and no remorse or regret for his crimes. Ex. 3 at 2-3; Ex. 4 at 2-3. Based on such actions and statements, the Attorney General concluded there is a likelihood that

Plaintiff would, if given the opportunity, attempt to radicalize others and attempt to advocate or incite terrorism and violence. Ex. 3 at 2-3, 16-17; Ex. 4 at 2-3, 16-17. For these reasons, the Attorney General implemented restrictions on Plaintiff's communications, which are rationally related to the government's legitimate penological interest in protecting national security.

Plaintiff challenges all of the restrictions in the SAMs and seeks a permanent injunction ordering them removed and barring any future Attorneys General from issuing new SAMs. Dkt. 76 ¶¶ 289-316, Prayer for Relief. Plaintiff repeatedly asserts that his rights are being violated. But nowhere in the complaint does he show, based on alleged facts (as opposed to conclusory assertions), that the government lacks any legitimate, rational basis for the restrictions.

Plaintiff's primary complaint appears to be that he is unable to communicate "with more than 7.5 billion people, the vast majority of people on the planet." Dkt. 76 ¶ 7. As noted above, the SAMs permit Plaintiff to communicate with his immediate family, his authorized contact list, his attorneys and related legal providers, his consular representatives, non-terrorist inmates, U.S. courts, federal judges, U.S. Attorney's Offices, members of the U.S. Congress, the Bureau of Prisons, and federal law enforcement entities. Ex. 4. Plaintiff is further permitted to request any additional contacts, which are evaluated on a case-by-case basis. *Id.* at 9 n.7. This process allows the government to evaluate each proposed new contact to ensure that Plaintiff's communications and visits with such persons would not threaten national security. There is an obvious, rational connection between this restriction and Plaintiff's crime, his prior attempt to exhort others to engage in jihad through his martyrdom video, and his voluminous statements asserting an obligation to engage in jihad and desire to harm the United States. The United States is permitted to proactively prevent Plaintiff from attempting to engage in, incite, or otherwise encourage

further terrorist attacks. The government is not required to permit Plaintiff's unfettered communications until such time as he may orchestrate another attack.

Plaintiff also complains that he is unable to communicate with the media. Dkt. 76 ¶ 153. But there is a clear rational connection between this restriction and the legitimate penological interest in preventing Plaintiff from using the media to advocate or incite terrorist, criminal, and/or violent offenses. Ex. 4 at 16-17. The SAMs specifically references that prior to his attempted bombing, Plaintiff recorded a video for al Qaeda in which he sought to incite others to engage in jihad, like he was about to do.⁷ *Id.* at 2.

Finally, Plaintiff challenges that he is not permitted to communicate with his nieces and nephews.⁸ Dkt. 76 ¶ 308. Plaintiff appears to argue that there is no legitimate penological interest for this restriction because most of his nieces and nephews are minors. *Id.* ¶ 140. But this allegation alone fails to demonstrate that there is no rational basis for the restriction. Children, of

⁷ Plaintiff also alleges that the SAMs restrict his access to books, but the SAMs provide that he "may have access to all books that do not facilitate criminal activity or present a substantial threat to national security or the security, discipline, or good order of the institution." Ex. 4 ¶ 9. This restriction is lawful. To the extent Plaintiff disagrees with any particular denial, he may file administrative remedies, and if still unhappy, he may then file suit for access to the book. But as detailed in the accompanying motion for partial summary judgment, Plaintiff has never exhausted any administrative remedies with respect to access to any particular reading materials.

Plaintiff likewise offers various allegations about access to attorneys. Plaintiff obviously has attorneys at this time. If he wishes to obtain other attorneys, he merely needs to notify his Unit Team, and he will be permitted to contact other lawyers. But such hypothetical issues are not presently before the Court. Again, if Plaintiff has particular issues regarding communications with his attorneys, he may file administrative remedies regarding such issues, and if that does not resolve his concern, he may then file suit on the limited question. But there is plainly a legitimate, rational basis for including attorney communication protocols within the SAMs. See *United States v. Stewart*, 590 F.3d 93, 100-08 (2d Cir. 2009).

⁸ As discussed in the accompanying motion for summary judgment, the Court should not reach this issue because Plaintiff did not first exhaust his administrative remedies related to his request to communicate with his nieces and nephews.

course, are highly vulnerable to influence. The government has a legitimate interest in preventing Plaintiff from attempting to inspire or otherwise recruit any of his young family members from following in his path and becoming a terrorist. Because there is a rational relationship between the SAMs restrictions and the government's legitimate penological interest in protecting national security, the restrictions do not violate the Constitution.

Besides conclusory assertions that the government has no rational justification for the restrictions, Plaintiff offers no facts that would eliminate the government's stated justifications in the SAMs. *See* Ex. 3, 4 (detailing justifications). He does not contest that he attempted to blow up an airliner based on a purported religious obligation to engage in jihad, or that he taped a video released by al Qaeda in which he exhorted other to engage in jihad, or that he made various statements in court and to government officials that he had a religious obligation to engage in jihad, is proud to kill in the name of god, and desires to harm the United States, among others. His new allegations in his Amended Complaint rebut none of the stated justifications.

First, Plaintiff alleges that he has not received any disciplinary charges for violence while incarcerated. Dkt. 76 ¶ 85. This is a complete red herring because the government has never justified the SAMs restrictions based on Plaintiff's violence in prison. *See* Ex. 3, 4. In any event, as Plaintiff's own allegations suggest, Plaintiff has no opportunity to engage in violence in the restrictive conditions at the ADX. This allegation is not sufficient to state a claim. *Al-Owhali*, 687 F.3d at 1241 (allegation that prisoner did not violate SAMs restrictions did not state a claim that SAMs restrictions were unconstitutional).

Second, Plaintiff alleges, in his Amended Complaint, that he no longer wishes to engage in jihad and wants to live in "peace and calm." Dkt. 76 ¶ 86. This too fails to state a claim for

numerous reasons. Plaintiff does not allege that he has ever told this information to any government officials, even though he admits he has opportunity to provide information each year while the SAMs are reevaluated. *Id.* ¶ 126. Without having apprised any officials of his supposed change of heart, it is impossible to suggest the officials lacked a rational justification.

More fundamentally, even if Plaintiff had told officials he will not engage in jihad in the future—which he does not allege—officials would not be obliged to believe him. Plaintiff misunderstands the relevant *Turner* standard, which does not focus on whether the challenged restrictions are actually necessary, but whether Defendants might rationally believe they advance the stated national security interests. *See Johnson*, 543 U.S. at 513 (*Turner* does not require proof that the policy advanced the stated goal, but only that the officials “might reasonably have thought” it would); *Sperry v. Werholtz*, 413 F. App’x 31, 40 (10th Cir. 2011) (“[I]t ‘does not matter whether we agree with’ the defendants or whether the policy ‘in fact advances’ the jail’s legitimate interests. The only question that we must answer is whether the defendants’ judgment was ‘rational,’ that is, whether the defendants might reasonably have thought that the policy would advance its interests.” (quoting *Amatel v. Reno*, 156 F.3d 192, 199 (D.C. Cir. 1998))); *Mauro v. Arpaio*, 188 F.3d 1054, 1060 (9th Cir. 1999) (same); *Bruscino v. Pugh*, No. 02-cv-02362-LTB-PAC, 2006 WL 980580, at *8 (D. Colo. Apr. 11, 2006) (same).

Just as officials are not required to remove cell locks simply because an inmate alleges he will not escape, officials are not required to remove restrictions when a convicted terrorist alleges he will not engage in jihad. Because officials cannot know with certainty Plaintiff’s true beliefs, they must exercise predictive judgment. Plaintiff lied in order to enter the United States to try blow up a plane kill and 289 people on board, and has said he has a religious obligation to

engage in jihad. Plaintiff offers no reason why any reasonable person might not rely on that history. The Supreme Court has emphasized that courts must grant substantial deference to the government’s predictive judgment and uphold the restrictions if there is any rational basis. *Overton*, 539 U.S. at 132; *Humanitarian Law Project*, 561 U.S. at 34-35. Plaintiff’s limited allegations cast no doubt on the fact that Defendants might reasonably believe that the SAMs restrictions advance their national security interests in light of Plaintiff’s crime, his martyrdom video imploring others to engage in jihad, and his numerous statements detailed above.⁹ As a result, he fails to state a claim.¹⁰

B. The SAMs do not violate Plaintiff’s substantive due process rights (Claim 5).

In claim 5, Plaintiff merely repeats his allegations regarding the SAMs and alleges that by prohibiting him “from communicating with all but a small group of narrowly defined family members,” the defendants are purportedly violating his substantive due process rights. Dkt. 76 ¶¶ 314-15. The Supreme Court and the Tenth Circuit have repeatedly rejected such duplicative claims. Because the Supreme Court has “always been reluctant to expand the concept of substantive due process,” it has repeatedly held that “where a particular Amendment provides an

⁹ Notably, Plaintiff does not allege that any of his actions were wrong, that he has remorse for his conduct, or that he disavowed any of his prior statements.

¹⁰ Plaintiff also alleges that there are other inmates, whom he believes committed similar crimes, that are not subject to SAMs restrictions. Dkt. 76, ¶¶ 129-38. But such allegations are irrelevant. The standard is not a least restrictive means test. Plaintiff’s personal views about other inmates do not cast doubt on whether there is a logical relationship between *him* and *his* restrictions. In any event, Defendants have a reasonable basis for believing that Plaintiff is dangerous to the national security of the United States because of his ties and allegiance to al Qaeda and his willingness to recruit others for al Qaeda, having taped a martyrdom video imploring others to engage in jihad. This type of predictive judgment regarding the relative dangers of various inmates is exactly the type of decision that mandates deference and is not subject to judicial scrutiny. *Block v. Rutherford*, 468 U.S. 576, 588 (1984) (“emphasiz[ing] that we are unwilling to substitute our judgment on these difficult and sensitive matters” relating to security).

explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.” *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 841 (1998) (internal quotations and citations omitted); *see also Conn v. Gabbert*, 526 U.S. 286, 293 (1999); *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (plurality); *Graham v. Connor*, 490 U. S. 386, 395 (1989); *Gehl Grp. v. Koby*, 63 F.3d 1528, 1539 (10th Cir. 1995) (same).

In this case, Plaintiff’s substantive due process claim concerning the communications limitations in his SAMs is entirely duplicative of his First Amendment claims (Claims 2-4). Plaintiff may not seek to gain additional protections through substantive due process. “[S]ubstantive due process does not provide additional protections where, as here, it would be duplicative of other constitutional claims in the lawsuit. Plaintiff’s claim will rise and fall on his First Amendment theory, not substantive due process.” *Walker v. Scherbarth*, No. 15-CV-00823-MJW, 2015 WL 5697366, at *4 (D. Colo. Sept. 29, 2015), *aff’d*, 676 F. App’x 815 (10th Cir. 2017); *see also Al-Owhali*, 2010 WL 5651033, at *9, *adopted in relevant part*, 2011 WL 288523, at *3 (rejecting substantive due process challenge to SAMs as duplicative).

In any event, Plaintiff falls short of alleging a substantive due process violation. In order to state a claim, Plaintiff must allege conduct “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *Cty. of Sacramento*, 523 U.S. at 847 & n.8. “The ultimate standard for determining whether there has been a substantive due process violation is whether the challenged government action shocks the conscience of federal judges.” *Hernandez v. Ridley*, 734 F.3d 1254, 1261 (10th Cir. 2013) (quoting *Moore v. Guthrie*, 438 F.3d 1036, 1040 (10th Cir. 2006)). This Court and the Tenth Circuit have upheld challenges to communications

restrictions in SAMs. *Gowadia*, 596 F. App'x at 673-74; *Al-Owhali*, 687 F.3d at 1240-43; *Nicholson*, 2017 WL 4337896, at *4-7; *Salim v. Lynch*, No. 1:13-cv-03175-RM-CBS (D. Colo. Nov. 30, 2016) (Dkt. 95); *Ayyad*, 2014 WL 4747451, at *29. The fact that similar restrictions have been upheld demonstrates that such restrictions for an unrepentant terrorist do not shock the conscience. Further, the restrictions are rationally related to legitimate penological interests, as described above, and are thus constitutional under *Turner*. Finally, the imposition of a SAMs does not implicate any protected liberty interest, thus further barring the claim. *Gowadia*, 596 F. App'x at 674; *Salim v. Lynch*, No. 1:13-cv-03175-RM-CBS (D. Colo. Nov. 30, 2016) (Dkt. 95); *Yousef v. United States*, No. 1:12-cv-02585-RPM, 2014 WL 1908711, at *5 (D. Colo. May 13, 2014). For all of these reasons, the substantive due process claim should be dismissed.

III. Plaintiff lacks standing to challenge the BOP's actions related to his hunger strikes in 2012 and 2015 and, in any event, the claims lack merit (Claims 6-7, 11-13).

In claims 6-7 and 11-13, Plaintiff challenges various BOP actions related to hunger strikes that he undertook in 2012 and 2015. Plaintiff seeks purely prospective relief, asking the Court to enjoin the BOP from force-feeding him or taking any other actions in response to any hypothetical future hunger strikes that he might undertake at some unspecified future date. Because Plaintiff did not face any certainly impending injury at the time he filed his complaint, he lacks standing to seek prospective relief. But even if he had standing, federal courts have uniformly ruled that force-feeding hunger-striking inmates is justified based on the government's compelling interests to preserve the inmate's health and to maintain prison order and discipline.

A. Plaintiff lacks standing to seek prospective declaratory and injunctive relief based on allegations of conduct in 2012 and 2015.

“Article III of the Constitution limits federal courts’ jurisdiction to certain ‘Cases’ and

‘Controversies.’” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013). “‘One element of the case-or-controversy requirement’ is that plaintiffs ‘must establish that they have standing to sue.’” *Id.* “To establish Article III standing, an injury must be “[1] concrete, particularized, and actual or imminent; [2] fairly traceable to the challenged action; and [3] redressable by a favorable ruling.” *Id.* at 409. The party invoking federal jurisdiction bears the burden of establishing standing. *Id.* at 411-12. In this case, the standing inquiry is “especially rigorous when reaching the merits of the dispute would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional.” *Id.* at 408.

Where, as here, a plaintiff seeks prospective relief, he must demonstrate that he is “immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical.”¹¹ *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983); *see also Facio v. Jones*, 929 F.2d 541, 544 (10th Cir. 1991) (same). The Supreme Court has “repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact,” *Amnesty Int’l*, 568 U.S. at 409 (emphasis in original; internal quotations omitted); *see also Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 n. 2 (1992).

Allegations of potential “injury at some indefinite future time” are insufficient because the Court has “insisted that the injury proceed with a high degree of immediacy.” *Defenders of Wildlife*, 504 U.S. at 564 n.2; *Sierra Club v. Robertson*, 28 F.3d 753, 758 (8th Cir. 1994) (“[T]he Court invariably has ‘insisted that the injury proceed with a high degree of immediacy.’”);

¹¹ The Supreme Court has emphasized that a plaintiff must demonstrate standing separately for each claim and for “each form of relief sought.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006); *Lyons*, 461 U.S. at 109.

Branton v. FCC, 993 F.2d 906, 910 (D.C. Cir. 1993) (same). “[W]ithout any description of concrete plans, or indeed even any specification of *when* the someday will be,” there can be no “finding of the ‘actual or imminent’ injury that our cases require.” *Defenders of Wildlife*, 504 U.S. at 564; *see also Colo. Outfitters Ass’n v. Hickenlooper*, 823 F.3d 537, 551 (10th Cir. 2016). It is likewise not enough to “observe that the challenged conduct is repeatable in the future” or “that the purportedly illegal practice is commonly used.” *Lebron v. Rumsfeld*, 670 F.3d 540, 561 (4th Cir. 2012) (citing *Golden v. Zwickler*, 394 U.S. 103, 109 (1969); *Lyons*, 461 U.S. at 106)).

In this case, Plaintiff alleges that he was force-fed after undertaking hunger strikes in August 2012, October 2012, and July 2015. Dkt. 76 ¶¶ 218, 231, 233. Based on these three allegations from years ago, Plaintiff brings various claims concerning the BOP’s actions during the hunger strikes, requesting purely prospective relief, including a “permanent injunction prohibiting Defendant BOP from force-feeding” him under any circumstances. *Id.* at Claims 6-7, 11-13, Prayer for Relief. Plaintiffs’ years-old allegations fail to meet his burden to demonstrate that he faced a certainly impending injury at the time he filed his initial complaint. At bottom, Plaintiff’s standing argument is based on speculation that he *may* undertake a hunger strike at some future unspecified time, and the BOP *may* force-feed him. Indeed, during his last two hunger strikes, medical staff determined that no intervention was necessary.¹² Ex. 6, Dkt. 76 ¶ 243. Plaintiff merely points to past conduct and suggests it is repeatable in the future, exactly

¹² Plaintiff omits any allegations regarding his October 2015 hunger strike; however, this Court may consider it in evaluating where Plaintiff has standing to sue. The medical records show that Plaintiff started a hunger strike in October 2015 because he was not receiving double-portion meals. Ex. 6. The medical staff determined that no intervention was necessary, even after missing 40 meals. *Id.* Likewise, Plaintiff alleges that he went on a hunger strike after filing his original complaint, but medical staff did not intervene. Dkt. 76 ¶ 243.

the type of claim that has been repeatedly rejected. As a result, Plaintiff lacks standing to bring any of his challenges concerning the BOP's alleged past acts in 2012 and 2015.

The Court should dismiss Claims 6-7 and 11-13 for lack of standing, but these principles apply with even greater force to two of Plaintiff's allegations. First, in Claim 6, Plaintiff alleges that in 2012, the BOP retaliated against him by placing him in a Special Housing Unit (Range 13). Dkt. 76 ¶¶ 317-26. An allegation that the BOP retaliated against Plaintiff more than five years ago is insufficient to establish a certainly impending future injury necessary for standing to obtain prospective relief, especially where Plaintiff does not allege this conduct repeated.

Likewise, these principles apply with even greater force to the extent Plaintiff relies on his conclusory assertion that medical staff ordered force-feeding in 2012 or 2015 without medical necessity, in contravention of BOP regulations. Such allegations do not give rise to a claim for certainly impending future injury. BOP regulations do not permit force-feeding without a physician determining that "an inmate's life or health will be threatened if treatment is not initiated immediately." 28 C.F.R. § 549.65. Plaintiff's claim therefore depends on a speculative chain of future events, culminating in Plaintiff's speculation that an unidentified BOP physician may deliberately violate BOP regulation and order him force-fed without medical necessity.¹³ Such a claim is wholly speculative and falls woefully short of meeting Plaintiff's burden to demonstrate a certainly impending future injury. For similar reasons, this claim is not ripe for judicial review. "A claim is not ripe for adjudication if it rests upon contingent future events that

¹³ Even if the Court were to accept Plaintiff's conclusory allegation that a prior physician ordered Plaintiff force-fed without medical necessity, the allegation does not support the inference that a different future physician will act in the same manner during some hypothetical future hunger strike. *Lyons*, 461 U.S. at 109 (past chokehold was not sufficient to demonstrate a real and immediate threat of a future chokehold necessary for standing).

may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300, 118 S. Ct. 1257, 1259, 140 L. Ed. 2d 406 (1998) (quotation marks omitted). Here, the entire allegation is based wholly on speculation as to events that may not occur. Because Plaintiff faces no certainly impending injury based on these allegations, and because this claim is entirely dependent on contingent future events, the Court lacks jurisdiction to hear this allegation.

B. Plaintiff also fails to state a claim that force-feeding violates his rights (Claims 7, 11, 13).

1. Force-feeding a hunger-striking inmate does not violate the Constitution (Claims 7, 13).

In Claims 7 and 13, Plaintiff alleges that force-feeding him while on a hunger strike will violate his constitutional rights by denying him the right to refuse medical treatment and constituting cruel and unusual punishment. The federal courts have repeatedly rejected this claim, holding that force-feeding inmates on a hunger strike does not violate the Constitution. *Aamer v. Obama*, 742 F.3d 1023, 1039-41 (D.C. Cir. 2014); *Owens v. Hinsley*, 635 F.3d 950, 955 (7th Cir. 2011); *Freeman v. Berge*, 441 F.3d 543, 546-47 (7th Cir. 2006); *In re Grand Jury Subpoena*, 150 F.3d 170, 172 (2d Cir. 1998); *Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992); *Garza v. Carlson*, 877 F.2d 14, 17 (8th Cir. 1989); *In re Soliman*, 134 F. Supp. 2d 1238 (N.D. Ala. 2001), *vacated as moot*, 296 F.3d 1237 (11th Cir. 2002); *see also Bezio v. Dorsey*, 989 N.E.2d 942, 950-51 (N.Y. 2013); *Laurie v. Senecal*, 666 A.2d 806, 809 (R.I. 1995); *Comm’r of Corr. v. Coleman*, 38 A.3d 84, 95-97 (Conn. 2012). In fact, various courts have held that *not* force-feeding inmates in need of care would violate the Eighth Amendment. *Owens*, 635 F.3d at 955 (holding officials have “a right and a duty to step in and force an inmate to take nourishment if a hunger strike has progressed to the point where continuation risks serious injury or death”).

BOP's regulations governing management of inmates engaging in hunger strikes "authorize medical officers to force-feed an inmate if they determine that the inmate's life or permanent health is in danger." *Martinez*, 977 F.2d at 423; *see* 28 C.F.R. §§ 549.60-66. The regulations provide that "[w]hen, as a result of inadequate intake or abnormal output, a physician determines that the inmate's life or health will be threatened if treatment is not initiated immediately," then "staff shall make reasonable efforts to convince the inmate to voluntarily accept treatment," but if such efforts fail, or in an emergency, "the physician may order that treatment be administered without the consent of the inmate." 28 C.F.R. § 549.65.

Under *Turner*, 482 U.S. at 89, the BOP's actions and regulations must be upheld if they are "reasonably related to legitimate penological interests." *Id.* As noted earlier, in undertaking such analysis, courts "must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them." *Overton*, 539 U.S. at 132. Again, the burden "is not on the State to prove the validity of prison regulations but on the prisoner to disprove it." *Id.*

Applying the *Turner* test, federal courts have uniformly held that force-feeding a hunger-striking inmate in need of care furthers "compelling government interests, such as the preservation of life, prevention of suicide, and enforcement of prison security, order, and discipline." *In re Grand Jury Subpoena*, 150 F.3d at 172; *see also Aamer*, 742 F.3d 1023, 1039 (recognizing interests in preserving lives and maintaining security and discipline); *Freeman*, 441 F.3d at 547 ("If prisoners were allowed to kill themselves, prisons would find it even more difficult than they do to maintain discipline, because of the effect of a suicide in agitating the

other. Prison officials who let prisoners starve themselves to death would also expose themselves to lawsuits by the prisoners' estates."); *Garza*, 877 F.2d at 17 (holding the "preservation of prisoners' health is certainly a legitimate objective"); *Wilson v. Hardy*, No. 11 C 6862, 2012 WL 400927, at *2 (N.D. Ill. Feb. 7, 2012) ("Correctional officers are responsible for the prisoner and they cannot allow him to take actions that would result in his own injury."); *Bezio*, 989 N.E.2d at 950 ("[T]here is virtually universal recognition among appellate courts that an inmate hunger strike can have a significant destabilizing impact on the institution[.]"). Accordingly, based on these established compelling interests, the federal courts have uniformly concluded that force-feeding a hunger-striking inmate does not violate the Constitution. This Court should rule likewise and dismiss Plaintiff's allegations in Claims 7 and 13 as well as his request to enjoin BOP from force-feeding him in the future.

To the extent Plaintiff refocuses his challenge on his conclusory assertion that BOP medical staff ordered him force-fed without medical necessity during any past hunger strike, that claim fails for numerous reasons. First, past medical judgment from multiple years ago cannot serve as the basis to establish standing for future prospective relief. As explained earlier, Plaintiff may not obtain prospective relief based on speculation as to the medical judgment that may be exercised at some hypothetical time by some unidentified physician in the future. Second, in any event, disagreements with medical judgment do not rise to the level of a constitutional violation. *Green v. Branson*, 108 F.3d 1296, 1303 (10th Cir. 1997); *Sherman v. Klenke*, 653 F. App'x 580, 588 (10th Cir. 2016) (explaining courts do not sit as "a medical review board" and where there is a "disagreement with considered medical judgment, we will not second guess the doctors"). Third, Plaintiff's conclusory allegations without any specific facts, including any allegations as

to the state of mind of the BOP physician(s), is not sufficient to state a constitutional claim. Under *Iqbal*, Plaintiff is required to allege specific facts, and not just his personal belief that medical intervention was unnecessary. Fourth, Plaintiff never exhausted this claim, as explained in the motion for partial summary judgment. In sum, Plaintiff's conclusory assertion that medical intervention was unnecessary during any prior hunger strike fails to save his claims.

2. Force-feeding Plaintiff during a hunger strike does not violate RFRA (Claim 11).

In Claim 11, Plaintiff alleges that force-feeding him violates RFRA. Plaintiff alleges that he undertook hunger strikes in August 2012, October 2012, and July 2015 to protest harassment and that he was prohibited from communicating with his sister. Dkt. 76 ¶¶ 218, 231, 233. Plaintiff alleges that he hunger strikes to protest what he believes to be “unconstitutional and illegal conditions of confinement.” *Id.* ¶ 216. Plaintiff alleges that force-feeding him “imposes a substantial burden on his exercise of religion because hunger-striking is the only way [Plaintiff] can show Allah that he does not tolerate and accept Defendants and other inmates continually insulting his religion.” *Id.* ¶ 364. This claim must be rejected because force-feeding is the least restrictive means to further the government's compelling interests.

Even assuming Plaintiff's hunger striking is motivated by a sincerely held religious belief, the BOP's well-established compelling interests justify force-feeding a hunger-striking inmate. Under RFRA, even if a government action substantially burdens a person's free exercise of religion, that action must be upheld where the government “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(b). In conducting this analysis, “[c]ourts should continue to give ‘due deference to

the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.” *Werner v. McCotter*, 49 F.3d 1476, 1479-80 (10th Cir. 1995) (quoting S. Rep. No. 111, 103d Cong., 1st Sess. 9-11, reprinted in 1993 U.S.C.C.A.N. 1892, 1900) (superseded by statute on other grounds).

In this case, both prongs of the test are met. As discussed previously, there are well-established compelling government interests when a hunger-striking inmate’s health is in jeopardy. These interests include “the preservation of life, prevention of suicide, and enforcement of prison security, order, and discipline.”¹⁴ *In re Grand Jury Subpoena*, 150 F.3d at 172; 139 Cong. Rec. S14,468 (daily ed. Oct. 27, 1993) (statement of Sen. Hatch) (“[P]rison officials clearly have a compelling interest in maintaining order, safety, security, and discipline. The sponsors of this bill have emphasized this point repeatedly.”) (cited approvingly in *Kikumura v. Hurley*, 242 F.3d 950, 962 (10th Cir. 2001)); *Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005) (“prison security is a compelling state interest” and “deference is due to institutional

¹⁴ The compelling nature of the interest is further demonstrated by the fact that, under the Eighth Amendment, prison officials have “a duty to step in and force an inmate to take nourishment if a hunger strike has progressed to the point where continuation risks serious injury or death.” *Owens*, 635 F.3d at 955; *see also, e.g., Anderson v. Colo. Dep’t of Corr.*, No. 16-cv-02113-CMA-MJW, 2017 WL 6033681, at *8 (D. Colo. Sept. 27, 2017) (quoting *Owens* approvingly); *Aamer v. Obama*, 953 F. Supp. 2d 213, 221 (D.D.C. 2013) (“Numerous courts have recognized the Government’s affirmative duty to prevent suicide and to provide life-saving nutritional and medical care to persons in custody.”). The Tenth Circuit and other courts have repeatedly analyzed Eighth Amendment claims for inadequate medical care during a hunger strike, recognizing that where a medical provider believes care and nourishment are required to prevent serious harm, care must be provided even when refused by a hunger-striking inmate. *Williams v. Miller*, 696 F. App’x 862, 869 (10th Cir. 2017); *Austin v. Tennis*, 381 F. App’x 128, 133 (3d Cir. 2010); *Anderson*, 2017 WL 6033681, at *8. That the Constitution mandates care in these circumstances clearly establishes that the government’s interest here is of the highest order.

officials' expertise in this area"). Given the uniform acknowledgement of these interests, including in the context of hunger-striking inmates, there can be no doubt that the government has compelling interests in preserving inmate health and maintaining order and discipline.

Under the second prong, the government must show that "it lacks other means of achieving its desired goal." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2780 (2014). "[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it." *United States v. Playboy Ent. Group, Inc.*, 529 U.S. 803, 815 (2000). The government "need not refute every conceivable alternative, but [it] 'must refute the alternative schemes offered by the challenger.'" *Newland v. Sebelius*, 881 F. Supp. 2d 1287, 1298 (D. Colo. 2012) (quoting *United States v. Wilgus*, 638 F.3d 1274, 1289 (10th Cir. 2011)).

Here, there are no less restrictive alternatives that would achieve the government's desired goals. The government has compelling interests in both preserving the health of the inmate and maintaining order and discipline. When a hunger-striking inmate is in need of medical care and refuses to voluntarily accept such care, the BOP has determined, based on its substantial expertise, to "authoriz[e] medical officers to force-feed an inmate if they determine that the inmate's life or permanent health is in danger." *Martinez*, 977 F.2d at 423; *see also* 28 C.F.R. § 549.65. This approach achieves both of the government's compelling interests.

Neither of the other two potential alternatives achieves both compelling interests. First, if the government allows the inmate to continue hunger striking without care, that would place the inmate at serious risk of harm or death. As discussed above, this is not a viable alternative. Allowing the inmate to harm himself would plainly not achieve either of the government's

compelling interests, both because the inmate's health would be placed in serious jeopardy and because it would disrupt the order and discipline of the prison. *Freeman*, 441 F.3d at 547.

Alternatively, if the government simply acceded to the inmate's demands (hoping the inmate would voluntarily end the hunger strike), that alternative would destroy the government's compelling interest in maintaining order and discipline. Giving in to demands will "lead other inmates to 'copy the same tactic, manipulating the system to get a change in conditions.'" *Aamer*, 742 F.3d at 1040 ((quoting *Bezio*, 989 N.E.2d at 951)). Obviously, if the BOP were

required to accede to demands during every hunger strike, that would severely harm order and discipline, leading to never-ending hunger strikes by prisoners seeking to rewrite the rules.

Rodriguez v. Briley, 403 F.3d 952, 953 (7th Cir. 2005) (explaining that "[a] prisoner cannot force the prison to change its rules by going on a hunger strike"); *Dep't of Homeland Sec. v. Ayvazian*, No. 15-23213-CIV, 2015 WL 5315206, at *4 (S.D. Fla. Sept. 11, 2015) (explaining that hunger striking inmates present the agency with three options: (1) allow them to die, (2) force-feed them, or (3) submit to their demands and concluding that "[o]ptions 1 and 3 are not reasonable" leaving the agency "with the single option of involuntarily administering nutrients and hydration"—"the only viable response"). Because force-feeding is the only alternative that would achieve both of the government's compelling interests, it is the least restrictive means.

The Court should therefore dismiss Plaintiff's RFRA claim.

IV. The Supreme Court and Tenth Circuit have rejected "overall condition" claims under the Eighth Amendment (Claim 14).

In his final claim, Plaintiff alleges that all of his conditions of confinement—the "totality of circumstances"—combine to constitute cruel and unusual punishment. Dkt. 76 ¶¶ 384-95.

Both the Supreme Court and the Tenth Circuit have rejected such a challenge. "Nothing so

amorphous as ‘overall conditions’ can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists.” *Wilson v. Seiter*, 501 U.S. 294, 305 (1991). Under the Eighth Amendment, conditions may only be analyzed in combination “when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise—for example, a low cell temperature at night combined with a failure to issue blankets.” *Id.* at 304 Thus, in order to state a claim, “a plaintiff must allege an ‘unquestioned and serious deprivation of basic human needs,’ such as ‘food, warmth, or exercise.’” *Gowadia*, 596 F. App’x at 674 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981) and *Wilson*, 501 U.S. at 304). Based on this precedent, the Tenth Circuit and this Court have repeatedly held that conditions at the ADX, as alleged by Plaintiff and other inmates, do not violate the Eighth Amendment. *Gowadia*, 596 F. App’x at 674; *Hill v. Pugh*, 75 F. App’x 715, 721 (10th Cir. 2003); *Ajaj v. United States*, 293 F. App’x 575, 582–84 (10th Cir. 2008); *Davis v. Fed. Bureau of Prisons*, No. 15-CV-0884-WJM-MJW, 2016 WL 1156755, at *6 (D. Colo. Mar. 24, 2016); *McMillan v. Wiley*, 813 F. Supp. 2d 1238, 1250-51 (D. Colo. 2011).

Plaintiff fails to allege that he was denied any basic human need, such as food, warmth, or exercise. Instead, Plaintiff alleges exactly the amorphous claim that the Supreme Court held insufficient, making a conclusory assertion that his various conditions of confinement somehow combine to deny Plaintiff the minimal civilized measures of life’s necessities. Dkt. 76 ¶ 392. As a result, this claim must be dismissed under established law.

Plaintiff’s suggestion that his conditions combine to deny social interaction is meritless. Dkt. 76 ¶ 392. To begin with, the Tenth Circuit has never determined that a lack of social interaction could rise to an Eighth Amendment violation. *Silverstein v. Fed. Bureau of Prisons*,

559 F. App'x 739, 755-56 (10th Cir. 2014). More importantly, the Tenth Circuit has held that even if such claim could theoretically exist, Plaintiff's allegations, which demonstrate that he has some social interaction, cannot meet the standard. *Id.* Indeed, in *Silverstein*, the Tenth Circuit held that housing an inmate at Range 13 for three years—which Plaintiff alleges is far more isolated and involves far less social contact than his conditions in H-Unit, Dkt. 76 ¶ 33—does not violate the Eighth Amendment. 559 F. App'x at 755-56. Nor is there any basis to Plaintiff's suggestion that force-feeding him while on a hunger strike or allegedly denying him halal meals combines to deprive him of social stimuli. Plaintiff is simply lumping his claims together in exactly the fashion that the Supreme Court held to be impermissible. In light of the precedent holding that Plaintiff's conditions do not violate the Eighth Amendment, the Court must dismiss this claim.

CONCLUSION

For the foregoing reasons, the Court should dismiss Claims 1-7 and 11-14.

Dated May 11, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2018, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to the following email addresses:

gjohnson@johnsonklein.com
arandolph@johnsonklein.com

s/ David Z. Moskowitz
Office of the U.S. Attorney



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

March 19, 2012

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MEMORANDUM FOR CHARLES E. SAMUELS, JR.
DIRECTOR
FEDERAL BUREAU OF PRISONS

FROM:  THE ATTORNEY GENERAL

SUBJECT: Origination of Special Administrative Measures Pursuant to 28 C.F.R. § 501.3
for Federal Bureau of Prisons Inmate Umar Farouk Abdulmutallab

On October 12, 2011, Federal Bureau of Prisons (BOP) inmate Umar Farouk Abdulmutallab pleaded guilty to one count of conspiracy to commit an act of terrorism transcending national boundaries, in violation of 18 U.S.C. § 2332b(a)(1) and (2), one count of attempted murder, in violation of 18 U.S.C. § 1113, one count of willfully placing a destructive device in proximity to a civil aircraft, in violation of 18 U.S.C. § 32(a)(2), one count of attempted use of a weapon of mass destruction, in violation of 18 U.S.C. § 2332a(a)(2), one count of willfully attempting to destroy and wreck a civil aircraft, in violation of 18 U.S.C. § 32(a)(1) and (8), and three counts of possessing or using a destructive device in furtherance of or during a crime of violence, in violation of 18 U.S.C. § 924(c), all in connection with the attempted Christmas Day bombing of a passenger airplane bound for Detroit in December 2009. As detailed in the attached request from the United States Attorney's Office for the Eastern District of Michigan (USAO/EDMI), Abdulmutallab has been in custody since his arrest on or about December 25, 2009. On February 16, 2012, Abdulmutallab was sentenced to life in prison without the possibility of parole. He is currently housed with the BOP in the Special Housing Unit at FCC Florence. It is anticipated that he will be transferred to ADX Florence in the near future.

Abdulmutallab, a twenty-five-year old man from a wealthy Nigerian family, became interested in the online teachings of Anwar al-Awlaki (a United States-born radical imam affiliated with al Qaeda) while studying at University College in London, where he earned an engineering degree in 2008. In the summer of 2009, he traveled to Yemen, made contact with Awlaki, stayed in his home, and received training at an al Qaeda camp in Yemen. Abdulmutallab made clear to Awlaki his willingness to conduct a martyrdom operation or any other terrorist act that he might be asked to undertake.

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At Awlaki's request, Abdulmutallab agreed to carry out a martyrdom mission by bombing an aircraft over the United States. He was subsequently trained in the operation of a bomb built into a pair of underwear. On December 6, 2009, Abdulmutallab was given that bomb. In a portion of a martyrdom video that he recorded prior to departing Yemen for his suicide mission and subsequently released by al Qaeda, Abdulmutallab, who is praised in the video as a hero, exhorts "Muslim brothers in the Arabian Peninsula" to "answer the call of Jihad, because the enemy is in your land, along with their Jewish and Christian armies."

After leaving Yemen, Abdulmutallab traveled to Ghana, where he purchased a nonstop round-trip ticket from Amsterdam to Detroit on Northwest-Delta Flight 253 for December 25, 2009. On December 24, 2009, Abdulmutallab traveled from Ghana to Nigeria, and then to Amsterdam. At the airport in Amsterdam, he was able to clear airport security and permitted to board the Detroit-bound plane. As the aircraft began its descent into Detroit, Abdulmutallab detonated the bomb, which did not function as intended. Passengers and flight attendants were able to put out the fire with extinguishers and subdue Abdulmutallab.

After the plane landed, Customs and Border Protection officers took Abdulmutallab into custody. At the time of his arrest, he told the officers that he was acting on behalf of al Qaeda and had intended to "bring the plane down" over the United States. Later, at the hospital where he received medical care for his burns, he provided the Federal Bureau of Investigation (FBI) with extensive details about the explosive device, the bombmaker, and how and when he had been radicalized. When asked if he still had an obligation to commit jihad in light of the fact that his martyrdom mission had failed, Abdulmutallab replied that the obligation to jihad still existed.

On December 15, 2010, Abdulmutallab was charged with eight counts of terrorism-related offenses, as set forth above. On October 12, 2011, he entered a plea of guilty to all counts without the benefit of a plea agreement. On February 16, 2012, he was sentenced to life in prison without the possibility of parole. He showed no remorse at either court hearing.

Based on the information set forth above, the USAO/EDMI believes that imposition of Special Administrative Measures (SAM) is appropriate and that there is evidence of a substantial risk that Abdulmutallab's communications or contacts could result in death or serious bodily injury to others. As described in the attached request, Abdulmutallab attempted to destroy a passenger plane and its passengers in flight, an action for which he has yet to show any remorse. He remains a committed terrorist who continues to harbor the desire to harm the United States. If his communications and contacts with others are not appropriately restricted, there is a substantial risk that he will make every effort to radicalize others, including fellow inmates who may be released from prison at a later time. In addition, it is apparent that Abdulmutallab remains loyal to al Qaeda. There is a substantial risk that, given the opportunity, he will

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communicate with al Qaeda members and seek to facilitate additional terrorist acts. The FBI concurs in this request.

Based upon information provided to me of Abdulmutallab'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 SAM to restrict Abdulmutallab's access to the mail, the media, the telephone, and visitors. Implementation of the 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), BOP, and Detention Facility (DF) Policy Requirements** - In addition to the below-listed SAM, the inmate must comply with all usual BOP¹ policies regarding restrictions, activities, privileges, communications, etc. If there is a conflict between BOP policies and the SAM, as set forth herein, where the SAM is more restrictive than usual BOP policies, then the SAM shall control. If usual BOP policies are more restrictive than the SAM, then BOP 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 USAO/EDMI, FBI, or BOP, or applicable regulations; and
 - iii. Is not objected to by the USAO/EDMI, FBI, or BOP.

¹ While Abdulmutallab is currently in the BOP's custody, in the event of a transfer to any other BOP/USMS facility or other DF, any provisions of the SAM referencing the BOP will apply equally to those entities.

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- c. **Inmate Communications Prohibitions** - The inmate is limited, within the BOP'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 (sending or receiving) information that could circumvent the SAM's intent of significantly limiting the inmate's ability to communicate (send or receive) threatening or other terrorism-related information.
- d. **Use of Interpreters/Translators by BOP** - Interpreter/Translator: ("Interpreter") approval requirement:
 - i. The BOP may use Department of Justice (DOJ) approved interpreters as necessary for the purpose of facilitating communication with the inmate.
 - ii. No person shall act as an interpreter without prior written clearance/approval from the BOP, which shall only be granted after consultation with the FBI and USAO/EDMI.
 - iii. Interpreters utilized by the BOP shall not be allowed to engage in, or overhear, unmonitored conversations with the inmate. Interpreters shall not be alone with the inmate, either in a room or on a telephone or other communications medium.

2. **Attorney-Client Provisions:**

- a. **Attorney² 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

² The term "attorney" refers to the inmate's attorney of record, who has been verified and documented by the USAO/EDMI, 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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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 precleared³ staff members acknowledge the restriction that they will not forward third-party messages to or from the inmate.

- i. The USAO/EDMI shall present, or forward, the attorney affirmation of receipt of the SAM restrictions document to the inmate's attorney.
- ii. After initiation of the 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 USAO/EDMI.
- iii. The USAO/EDMI 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 BOP.

b. Attorney Use of Interpreters -

- i. Necessity Requirement - No interpreter shall be utilized unless absolutely necessary where the inmate does not speak a common language with the attorney. Any interpreter shall be precleared.⁴

³ "Prcleared," when used with regard to an attorney's staff, or "precleared staff member," refers to a co-counsel, paralegal, or investigator who is actively assisting the inmate's attorney with the inmate's post-sentencing proceedings, who has submitted to a background check by the FBI and USAO/EDMI, who has successfully been cleared by the FBI and USAO/EDMI, 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.

⁴ "Prcleared," when used with regard to an interpreter, refers to an interpreter who is actively assisting the inmate's attorney with the inmate's post-sentencing proceedings, who has

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- ii. **Attorney Immediate Presence Requirement** - Any use of an interpreter 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** - Attorney-client privileged visits may be contact or non-contact, at the discretion of the BOP.
- d. **Attorney May Disseminate Inmate Conversations** - The inmate's attorney may disseminate the contents of the inmate's communication to third parties for the sole purpose of providing necessary legal services related to the inmate's post-sentencing proceedings – 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) May Meet With Client** - The inmate's attorney's precleared paralegal(s) may meet with the inmate without the need for the inmate's attorney to be present. An investigator or interpreter/translator may not meet alone with the inmate. These meetings may be contact or non-contact, at the discretion of the BOP.
- f. **Simultaneous Multiple Legal Visitors** - The inmate may have multiple legal visitors provided that at least one of the multiple legal visitors is the inmate's attorney or precleared paralegal. These meetings may be contact or non-contact, at the discretion of the BOP.
- g. **Legally Privileged Telephone Calls** - The following rules refer to all legally privileged telephone calls or communications:

submitted to a background check by the FBI and USAO/EDMI, who has successfully been cleared by the FBI and USAO/EDMI, 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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- 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 BOP staff member and the telephone handed to the inmate only after the BOP staff member confirms that 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.⁵
 - (b) Will be patched through, or in any manner forwarded or transmitted to a third party.

⁵ For purposes of the SAM, "third party" does not include officials of the BOP, 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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- (c) Shall be divulged in any manner to a third party, except as otherwise provided in Section 2.d. above.
 - (d) Shall be in any manner recorded or preserved.⁶ The inmate's attorney may make written notes of attorney/client-privileged communications.
 - (4) If the BOP, FBI or USAO/EDMI 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** - During a visit, the inmate's attorney may provide the inmate with, or review with the inmate, documents related to his post-sentencing proceedings and/or material prepared by the inmate's attorney related to such proceedings, so long as any of the foregoing documents are translated, if translation is necessary, by a precleared translator. Any documents not related to the inmate's post-sentencing proceedings 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 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 USAO/EDMI and FBI.
 - ii. The USAO/EDMI 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 may be obtained from the USAO/EDMI without the need to formally seek approval for an amendment to the SAM.

⁶ Except by the BOP, 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**⁷ - 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.

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-legally Privileged Telephone Contacts -**

- i. The inmate is limited to non-legally privileged telephone calls with his immediate family members.⁸
- ii. The quantity and duration of the inmate's non-legally privileged telephone calls with his immediate family members shall be set by the BOP, with a minimum of one call per month.

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.
- 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.

⁷ "Legal mail" is defined as properly marked correspondence (marked "Legal Mail") addressed to or from the inmate's attorney. All other mail, including that otherwise defined by the BOP as Special Mail, shall be processed as "non-legal mail."

⁸ The inmate's "immediate family members" are defined as the inmate's (BOP- or FBI-verifiable) spouse, children, parents, and siblings. Requests for additional non-legal contacts may be submitted and will be considered on a case-by-case basis.

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- iv. Shall be in any manner recorded or preserved.⁹

All telephone calls shall be in English unless a fluent FBI- or BOP-approved interpreter is available to contemporaneously monitor the telephone call. Arranging for an interpreter may require at least fourteen (14) days' advance notice.

- c. **Telephone SAM Restriction Notifications** - For all non-legally privileged telephone calls to the inmate's immediate family member(s):

- i. The BOP shall inform the inmate of the telephone SAM restrictions prior to each telephone call.
- ii. The BOP shall verbally inform the inmate's immediate family member(s) on the opposite end of the inmate's telephone communication of the SAM restrictions. The BOP is only required to notify the inmate's communication recipient in English.
- iii. The BOP 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.
- iii. A copy of each inmate/immediate family member telephone call recording shall be provided by the BOP on a single, individual cassette tape or compact disk (per call) for forwarding to the FBI. These recordings shall be forwarded on a call-by-call basis as soon as practicable.

⁹ Except by the BOP, FBI, DOJ, or other duly authorized federal authorities.

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- 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 the BOP. 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 BOP and FBI in advance.
 - ii. **English Requirement** - All communications during non-legal inmate visits will be in English unless a fluent FBI- or BOP-approved interpreter is readily available to contemporaneously monitor the communication/visit.
 - iii. **Visit Criteria** - All non-legal visits shall be:
 - (1) Contemporaneously monitored by the BOP 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 BOP facility where the inmate is housed.
 - (3) Without any physical contact. All such meetings shall be non-contact to protect against harm to visitors or staff.
 - (4) Limited to one adult visitor at a time. However, the FBI-verified children of the inmate may visit with a pre-approved adult visitor.

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- g. **Non-legal Mail** - Non-legal mail is 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. Attorneys' Offices, members of U.S. Congress, BOP, or other federal law enforcement entities.
- i. **General correspondence with limitations:** Correspondence is restricted to immediate family members. The volume and frequency of outgoing general correspondence with immediate family members may be limited to three pieces of paper (not larger than 8½" x 11"), double-sided, once per calendar week to a single recipient, at the discretion of the BOP. The identity and family member relationship to the inmate will be confirmed by the BOP and FBI.
- ii. **General correspondence without limitations:** There is no volume or frequency limitation on correspondence to/from U.S. courts, federal judges, U.S. Attorneys' Offices, members of U.S. Congress, BOP, and other federal law enforcement entities, 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 shall 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.
 - (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 shall be forwarded to the BOP for delivery to the inmate (incoming), or directly to the addressee (outgoing).

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- iv. The federal government shall forward the inmate's non-legal mail to the BOP for delivery to the inmate or directly to the addressee after a review and analysis period of:
 - (1) A reasonable time not to exceed fourteen (14) business days for mail that is written entirely in the English language.
 - (2) A reasonable time not to exceed sixty (60) business days for any mail that includes writing in any language other than English, to allow for translation.
 - (3) 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.
- v. **Mail Seizure** - If outgoing/incoming mail is determined by the BOP 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:**

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

5. **Religious Visitation:**

- a. The inmate shall not be allowed to engage in group prayer with other inmates.
- b. If an FBI- and/or BOP-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 BOP.

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Pursuant to 28 C.F.R. § 501.3

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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 BOP'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. **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 the BOP's reasonable efforts and existing confinement conditions, from communicating with any other inmate while in the cellblock area.

8. **Commissary Privileges:**

The BOP shall restrict access to commissary items or any other objects determined by the BOP to be capable of being converted into dangerous instruments.

9. **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. **Publications/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 BOP, in consultation with the USAO/EDMI.

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- ii. Sections of the publication/newspaper that 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 publications/newspapers prior to distribution to the inmate.
 - iii. If restricted by BOP rules, access to a publication shall be denied. If acceptable, upon delivery, the BOP will review the publication and make the initial determination. If the FBI's expertise on national security or intelligence matters is required, the publication will be forwarded to the FBI for review. The BOP shall also forward the publication to the FBI if translations are needed to make that determination. (In these cases, the FBI shall respond to the BOP within fourteen (14) business days.) The inmate shall then have access to the remaining portions of the publications/newspapers deemed acceptable, in accordance with BOP policy.
 - iv. In order to avoid passing messages/information from inmate to inmate, the inmate shall be allowed to share institutionally purchased publications/newspapers with other SAM inmates only after each publication/newspaper is physically screened by staff to ensure that messages cannot be passed between the SAM inmates. Publications/newspapers individually purchased by the inmate may not be shared with any other inmate.
- b. **Television and Radio** - The inmate is authorized to have television and radio viewing and listening privileges, in accordance with standard and applicable BOP policies and procedures.
 - c. **Termination or Limitation** - If the BOP determines that mass communications are being used as a vehicle to send messages to the inmate relating to the furtherance of terrorist or criminal activities, the inmate's access may be limited or terminated for a period of time to be determined by the BOP.

10. **Access to Books:**

The inmate may have access to all books that do not facilitate criminal activity or present a substantial threat to national security or the security, discipline, or good order of the institution. This initial determination is to be made by the BOP and, if the BOP

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determines that the FBI's expertise on national security or intelligence matters is required, the book(s) will be forwarded to the FBI for review. In conducting its analysis, the FBI will determine whether the book advocates or promotes acts of terrorism or violence and/or whether access to the book by this particular inmate would pose a substantial threat to national security.

In order to avoid passing messages/information from inmate to inmate, the inmate shall be allowed to share institutionally purchased books with other SAM inmates only after each book is physically screened by staff to ensure that messages cannot be passed between the SAM inmates. Books individually purchased by the inmate may not be shared with any other inmate.

11. **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 shall continue in effect, without need for any additional DOJ authorization.

12. **Inmate's Consular Contacts:**

The inmate, who is a citizen of a foreign country, shall be allowed Consular communications and visits, consistent with BOP policy. The Consular contacts shall comply with the U.S. Department of State (DOS) Consular notification and access requirements.¹⁰ Prior to permitting any Consular contact, the FBI will verify the Consular representative's credentials with the DOS.

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,

¹⁰ See Consular Notification and Access, Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them, DOS. The DOS contact is the Consular Notification and Outreach Division, Office of Policy Coordination and Public Affairs, DOS, telephone (202) 647-4110 or http://www.travel.state.gov/law/consular/consular_753.html.

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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 are reasonably necessary because of the high probability of calls to co-conspirators to arrange terrorist or criminal activities.

With respect to mail privileges, the SAM are reasonably necessary to prevent the inmate from receiving or passing along critically-timed messages. Although 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 to assist in, violent and/or terrorist activities. Under these procedures, 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.

To the extent that the use of an interpreter is necessary, the government has the right to ensure that the interpreter 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 a violent or 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. Although 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 that furthers terrorist, violent and/or criminal activities.

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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, 1301 New York Avenue, N.W., JCK Building, Room 1200, Washington, D.C. 20530-0001; telephone (202) 514-6809; and facsimile (202) 616-8256.

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**U.S. Department of Justice
Federal Bureau of Prisons**

Federal Correctional Complex

- ☒ *Administrative Maximum Security Institution*
- ☐ *High Security Institution*
- ☐ *Medium Security Institution*
- ☐ *Minimum Security Institution*

Office of the Warden

Florence, CO 81226

March 27, 2018

NOTICE TO: UMAR ABDULMUTALLAB, REG. NO. 44107-039

FROM: 
P. Klein, Acting Warden

SUBJECT: **Notification of Extension of Special Administrative Measures (SAM)**

SUMMARY

The United States Attorney for the Eastern District of Michigan (USA/EDMI) and the Federal Bureau of Investigation (FBI) request that the Special Administrative Measures (SAM) be renewed. You were convicted of various terrorism-related crimes in connection with the attempted Christmas Day bombing of a passenger airplane bound for Detroit in December 2009. Based upon the information provided by the USA/EDMI and the FBI, pursuant to 28 C.F.R. § 501.3, there continues to be a substantial risk that your 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, we will continue to implement the SAM to restrict your access to the mail, the telephone, visitors, other inmates, and the media. The SAM will commence immediately upon expiration of the prior SAM authorization period and will be in effect for a period of one year, subject to further direction.

PROCEDURAL HISTORY

On October 12, 2011, you pled guilty to conspiracy to commit an act of terrorism transcending national boundaries, attempted murder, willfully placing a destructive device in proximity to a civil aircraft, attempted use of a weapon of mass destruction, willfully attempting to destroy and wreck a civil aircraft, and possessing or using a destructive device in furtherance of or during a crime of violence. On February 16, 2012, you were sentenced to a term of imprisonment of life without the possibility of parole. You are currently housed with the Federal Bureau of Prisons (BOP) at ADX Florence. Because of your proclivity for violence, the Attorney General placed you under SAM.

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FACTUAL BACKGROUND

A. Abdulmutallab's Criminal Conduct

You, a man from a wealthy Nigerian family, became interested in the online teachings of Anwar al-Awlaki, a United States-born radical imam and operational leader of al Qaeda in the Arabian Peninsula (AQAP), while studying at University College in London, where you earned an engineering degree in 2008. In the summer of 2009, you traveled to Yemen, made contact with al-Awlaki, stayed in his home, and received training at an al Qaeda camp in Yemen. You made clear to al-Awlaki your willingness to conduct a martyrdom operation or any other terrorist act that you might be asked to undertake.

At al-Awlaki's request, you agreed to carry out a martyrdom mission by bombing an aircraft over the United States. You were subsequently trained in the operation of a bomb built into a pair of underwear. On December 6, 2009, you were given that bomb. In a portion of a martyrdom video recorded prior to your departure for Yemen for your suicide mission that was subsequently released by al Qaeda, you, who was praised in the video as a hero, exhorts the "Muslim brothers in the Arabian Peninsula" to "answer the call of Jihad, because the enemy is in your land, along with their Jewish and Christian armies."

After leaving Yemen, you traveled to Ghana, Nigeria, and then to Amsterdam. At the airport in Amsterdam, you were able to clear airport security and permitted to board the Detroit-bound plane. During the flight, you fasted as a part of a purification ritual prior to your "martyrdom mission" and spent a significant amount of time in the bathroom at the end of the flight, praying and preparing to die. After returning to your seat, and as the aircraft began its descent into Detroit, you detonated the bomb. Nearby passengers heard a loud noise and then saw smoke and fire coming from your lap. Although you had detonated the bomb, it did not function as intended. Subsequent investigation by the FBI revealed that the bomb concealed in your underwear consisted of Triacetone Triperoxide (TATP) and Pentaerythritol Tetranitrate (PETN), both of which are highly explosive. The TATP exploded, resulting in a large fireball around you, but the PETN, which was the main charge, did not explode. Passengers and flight attendants were able to put out the fire with extinguishers and subdue you.

After the plane landed, Customs and Border Protection officers took you into custody. At the time of your arrest, you told the officers that you were acting on behalf of al Qaeda and that you had intended to "bring the plane down" over the United States. You later provided the FBI with extensive details about the explosive device, the bombmaker, and how and when you had been radicalized. When asked if you still had an obligation to commit jihad in light of the fact that your martyrdom mission had failed, you replied that the obligation to jihad still existed.

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On December 15, 2010, you were charged in a superseding indictment with eight counts of terrorism-related offenses, as described above. On October 12, 2011, the second day of trial, you entered a plea of guilty to all counts of the superseding indictment without the benefit of a plea agreement. You showed no remorse during the plea proceedings and stated that you had “[a]ttempted to use an explosive device which in the U.S. law is a weapon of mass destruction, [but] which I call a blessed weapon...” You continued, “The United States should be warned that if they continue and persist in promoting the blasphemy of Muhammad and the prophets... [and] the U.S. continues to kill and support those who kill Muslims, then the U.S. should await a great calamity that will befall them through the hands of the mujahideen soon by God’s willing permission.” On February 16, 2012, you were sentenced to multiple consecutive life sentences, plus a consecutive fifty years in prison. During sentencing, you shouted “God is great” after each clip of a video showing an FBI mockup of your explosive device being detonated. You also stated that you and others should be “proud to kill in the name of God.”

B. Abdulmutallab’s Post-Arrest Conduct

Your conduct and your statements throughout the criminal proceedings reveal an abiding commitment to violence against the United States as a religious obligation. You only failed in your suicide mission because of a technical problem with the bomb. You have never expressed any regret or remorse for your conduct, but instead view your crimes as compelled by religious duty. Further, you believe that you and others have a continuing obligation to carry out such crimes. According to the USA/EDMI, there is no reason to believe that in the time since you were sentenced, you have renounced these deeply held beliefs. The USA/EDMI believes that in light of your belief that jihad is the sacred duty of all Muslims, it is likely that if you were able to freely communicate, you would exhort others to commit violent acts to fulfill that duty.

CONCLUSION

Based upon information provided of your proclivity for violence, particularly your continuing commitment to jihad; your conduct under SAM that demonstrates your willingness and ability to cause death or injury to others; and your past violation of the SAM that demonstrates your willingness and ability to cause death or injury to others, it was found that there is substantial risk that your 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. Accordingly, we will continue to implement the SAM set forth below in order to restrict your access to the mail, the telephone, visitors, other inmates, and the media.

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1) **General Provisions**

- a) **Adherence to Usual United States Marshals Service (USMS), BOP, and Detention Facility (DF) Policy Requirements** – In addition to the below-listed SAM, you 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 are 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 your 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 USA/EDMI, FBI, USMS/BOP/DF, or applicable regulations; and
 - iii) Is not objected to by the USA/EDMI, FBI, or USMS/BOP/DF.
- c) **Inmate Communication Prohibitions** –
 - i) You are limited, within the 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 you communicating (sending or receiving) information that could circumvent the SAM's intent of significantly limiting your ability to communicate (send or receive) threatening or other terrorism-related information.
 - ii) The USMS/BOP/DF may permit you to communicate with other non-terrorism SAM inmates orally only during certain predesignated times, the place and duration to be set by the USMS/BOP/DF. You shall not have any physical contact with other inmates during this predesignated time, and all such predesignated sessions may be monitored and/or recorded. Upon request of the FBI, a copy of the recordings will be provided by the USMS/BOP/DF to the FBI to be analyzed for indications that you are attempting to pass messages soliciting or encouraging acts of terrorism, violence or other crimes.

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- d) **Use of Interpreters/Translators by the USMS/BOP/DF – Interpreter/translator approval requirement:**
- i) The USMS/BOP/DF may use Department of Justice (DOJ) approved interpreters/translators as necessary for the purpose of facilitating communication with you.
 - ii) No person shall act as an interpreter/translator without prior written clearance/approval from the USMS/BOP/DF, which shall only be granted after consultation with the FBI and USA/EDMI.
 - iii) Interpreters/translators utilized by the USMS/BOP/DF shall not be allowed to engage in, or overhear, unmonitored conversations with you. Interpreters/translators shall not be alone with you, 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 –** Your 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 or her awareness and understanding of the SAM provisions and his or her agreement to abide by these provisions, particularly those that relate to contact between you and your 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, your attorney and precleared staff² acknowledge the restriction that they will not forward third-party messages to or from you.

¹ The term "attorney" refers to the inmate's attorney of record, who has been verified and documented by the USA/EDMI, 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 or her individual capacity.

² "Prcleared" when used with regard to an attorney's staff, or "precleared staff member," refers to a co-counsel, paralegal, or investigator who is actively assisting the inmate's attorney with the inmate's post-sentencing proceedings, who has submitted to a background check by the FBI and USA/EDMI, who has successfully been cleared by the FBI and USA/EDMI, and who has received a copy of the inmate's SAM and has agreed – as evidenced by his or 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 or her individual capacity.

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- i) The USA/EDMI shall present, or forward, the attorney affirmation of receipt of the SAM restrictions document to your attorney.
 - ii) After initiation of the SAM and prior to your attorney being permitted to have attorney-client privileged contact with you, your attorney shall execute a document affirming receipt of the SAM restrictions document and return the original to the USA/EDMI.
 - iii) The USA/EDMI 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 shall be utilized unless absolutely necessary where you do not speak a common language with the attorney. Any interpreter/translator shall be precleared.³
 - ii) **Attorney Immediate Presence Requirement** – Any use of an interpreter/translator by the attorney shall be in the physical and immediate presence of the attorney – i.e., in the same room. The attorney shall not patch through telephone calls, or any other communications, to or from you.
 - iii) **Translation of Inmate's Correspondence** – An attorney of record may only allow a precleared interpreter/translator to translate your correspondence as necessary for attorney-client privileged communication.
- c) **Attorney-Client Privileged Visits** – Attorney-client privileged visits may be contact or non-contact, at the discretion of the USMS/BOP/DF.
- d) **Attorney May Disseminate Inmate Conversations** – Your attorney may disseminate the contents of your communications to third parties for the sole purpose of providing necessary legal services related to your post-sentencing proceedings – and not for any other reason – on the understanding that any

³ "Prcleared," when used with regard to an interpreter/translator, refers to an interpreter/translator who is actively assisting the inmate's attorney with the inmate's post-sentencing proceedings, who has submitted to a background check by the FBI and USA/EDMI, who has successfully been cleared by the FBI and USA/EDMI, and who has received a copy of the inmate's SAM and has agreed – as evidenced by his or her signature – to adhere to the SAM restrictions and requirements.

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such dissemination shall be made solely by your attorney, and not by the attorney's staff.

- e) **Unaccompanied Attorney's Precleared Paralegal(s) May Meet With Client** – Your attorney's precleared paralegal(s) may meet with you without the need for your attorney to be present. These meetings may be contact or non-contact, at the discretion of the USMS/BOP/DF.
- f) **Simultaneous Multiple Legal Visitors** – You may have multiple legal visitors provided that at least one of the multiple legal visitors is your attorney or precleared paralegal. These meetings may be contact or non-contact, at the discretion of the USMS/BOP/DF. An investigator or interpreter/translator may not meet alone with you.
- 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** – Your attorney's precleared staff are permitted to communicate directly with you by telephone, provided that your attorney is physically present and participating in the legal call as well.
 - ii) **Inmate's Initiation of Legally Privileged Telephone Calls** – Your initiated telephone communications with your attorney or precleared staff are to be placed by a USMS/BOP/DF staff member and the telephone handed over to you only after the USMS/BOP/DF staff member confirms that the person on the other end of the line is your attorney. This privilege is contingent upon the following additional restrictions:
 - (1) Your attorney will not allow any non-precleared person to communicate with you, or to take part in and/or listen to or overhear any communications with you.
 - (2) Your attorney must instruct his or her staff that:
 - (a) Your attorney and precleared staff are the only persons allowed to engage in communications with you.
 - (b) Your attorney's staff (including the attorney) are not to patch through, forward, transmit, or send your calls, or any other communications, to third parties.

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- (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. above.
 - (d) Shall be in any manner recorded or preserved.⁵ Your attorney may make written notes of attorney-client privileged communications.
 - (4) If the USMS/BOP/DF, FBI, or USA/EDMI determines that you have used or are 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, your ability to contact your attorney by telephone may be suspended or eliminated.
- h) **Documents Provided by Attorney to Inmate** – During a visit, your attorney may provide you with, or review with you, documents related to your post-sentencing proceedings and/or material prepared by your attorney related to such proceedings, so long as any of the foregoing documents are translated, if translation is necessary, by a precleared interpreter/translator. Any document not related to your post-sentencing proceedings must be sent to you 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 you, and already in your possession at the outset of the visit, may be discussed or reviewed by you and your attorney during the visit.
- i) None of the materials provided may include inflammatory materials, materials inciting violence, 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/EDMI and FBI.

⁴ For 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.

⁵ Except by the 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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- ii) The USA/EDMI may authorize additional documents to be presented to you. If any document not listed or described above needs to be transmitted to you, consent for the transmission of the document may be obtained from the USA/EDMI without the need to formally seek approval for an amendment to the SAM.
- i) **Legal Mail**⁶ – Your attorney may not send, communicate, distribute, or divulge your mail (legal or otherwise), or any portion of its contents, to third parties, except when disclosure of the contents is necessary for the sole purpose of providing necessary legal services related to your post-sentencing proceedings – and not for any other reason. In signing the SAM acknowledgment document, your attorney and precleared staff will acknowledge the restriction that only your case-related documents will be presented to you, and that your attorney and his or her staff are strictly prohibited from forwarding third-party mail to or from you.

3) **Inmate's Non-legal Contacts**

a) **Non-legally Privileged Telephone Contacts –**

- i) You are authorized to have non-legally privileged telephone calls with your immediate family members, as well as the following persons: your step-sisters, Saadatu Modibbo Mutallab and Huriyya Nurul-Ain Lawal; your uncle, Mouftah Baba Ahmed (aka Muhammad Al Mouftah Al-Khair, aka Abuja Baba Ahmed, aka Muhammad Al-Mouftah Al-Khair Baba Ahmed); and your step-mother, Jiddah Bariratu Mutallab (hereinafter referred to as the additional authorized contacts).⁷
- ii) The quantity and duration of your non-legally privileged telephone calls with your immediate family members, as well as the additional authorized contacts identified in 3(a)(1) above, shall be set by the USMS/BOP/DF, with a minimum of one call per month.

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.

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

⁷ The inmate's "immediate family members" are defined as the inmate's (USMS/BOP/DF- or FBI-verifiable) spouse, children, parents, and siblings. Requests for additional non-legal contacts may be submitted and will be considered on a case-by-case basis.

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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.⁸

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

- c) **Telephone SAM Restriction Notifications** – For all non-legally privileged telephone calls to your immediate family member(s), as well as the additional authorized contacts identified in 3(a)(i) above:
 - i) The USMS/BOP/DF shall inform you of the telephone SAM restrictions prior to each telephone call.
 - ii) The USMS/BOP/DF shall verbally inform your immediate family member(s), as well as the additional authorized contacts identified in 3(a)(i) above, on the opposite end of your telephone communication of the SAM restrictions. The USMS/BOP/DF is only required to notify your communication recipient in English.
 - iii) The USMS/BOP/DF shall document each such telephone notification.
- d) **Family Call Monitoring** – All calls with your immediate family member(s), as well as the additional authorized contacts identified in 3(a)(i) above, 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.
 - iii) A copy of each telephone call recording involving an inmate/immediate family member, as well as the additional authorized contacts identified in 3(a)(i) above, shall be provided by the USMS/BOP/DF to the FBI. These

⁸ Except by the USMS/BOP/DF, FBI, DOJ, or other duly authorized federal authorities.

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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 you 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, you shall not be permitted any further calls to your immediate family members, as well as the additional authorized contacts identified in 3(a)(i) above, for a period of time to be determined by the USMS/BOP/DF. If contemporaneous monitoring reveals such inappropriate activity, the telephone call may be immediately terminated.
- f) **Non-legal Visits** –
 - i) **Limited Visitors** – You shall be permitted to visit only with your immediate family members, as well as the additional authorized contacts identified in 3(a)(i) above. The visitor's identity and family member relationship to you 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 USMS/BOP/DF- or FBI-approved interpreter/translator is readily available to contemporaneously monitor the communication/visit. Arranging for an interpreter/translator may require at least fourteen (14) days' advance notice.
 - iii) **Visit Criteria** – All non-legal visits shall be:
 - (1) Contemporaneously monitored by the 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 you are housed.
 - (3) Without any physical contact. All such meetings shall be non-contact to protect against harm to visitors or staff.

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- (4) Two of your immediate family members may be allowed to visit simultaneously, provided that only one person at a time would be able to speak to you. In addition, each speaker will be required to identify him or herself prior to engaging in conversation with you. Your FBI-verified children may visit with a pre-approved adult visitor.
- g) **Non-legal Mail** – Non-legal mail is any mail not clearly and properly addressed to/from your attorney and marked “Legal Mail” (incoming or outgoing). In addition to non-legal mail from your attorney, as discussed in subparagraph 2.h., non-legal mail is only authorized with your immediate family, as well as the additional authorized contacts identified in 3(a)(i) above, U.S. courts, federal judges, U.S. Attorneys’ Offices, members of U.S. Congress, the BOP, or other federal law enforcement entities.
 - i) **General correspondence with limitations** – Correspondence is only authorized with immediate family members, as well as the additional authorized contacts identified in 3(a)(i) above. The volume and frequency of outgoing general correspondence with immediate family members, as well as the additional authorized contacts identified in 3(a)(i) above, may be limited to three pieces of paper (not larger than 8 ½” by 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 you will be confirmed by the USMS/BOP/DF and FBI.
 - ii) **General correspondence without limitations** – There is no volume or frequency limitation on correspondence to/from U.S. courts, federal judges, U.S. Attorneys’ Offices, members of U.S. Congress, the BOP, and other federal law enforcement entities, 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 shall be –
 - (1) **Copied** – Shall be copied (including the surface of the envelope) by the warden, or his or her designee, of the facility in which you are housed.
 - (2) **Forwarded** – Shall be forwarded, in copy form, to the location designated by the FBI.

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- (3) **Analyzed** – After government analysis and approval, if appropriate, your incoming/outgoing non-legal mail shall be forwarded to the USMS/BOP/DF for delivery to you (incoming), or directly to the addressee (outgoing).
 - iv) The federal government shall forward your non-legal mail to the USMS/BOP/DF for delivery to you or directly to the addressee after a review and analysis period of:
 - (1) A reasonable time not to exceed fourteen (14) business days for mail that is written entirely in the English language.
 - (2) A reasonable time not to exceed sixty (60) business days for any mail that includes writing in any language other than English, to allow for translation.
 - (3) 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.
 - v) **Mail Seizure** – If outgoing/incoming mail is determined by the 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. You shall be notified in writing of the seizure of any mail.
- 4) **Communication with News Media** – You shall not be permitted to speak, meet, correspond, or otherwise communicate with any member or representative of the news media in person; by telephone; by furnishing a recorded message; through the mail, your attorney, or a third party; or otherwise.
- 5) **Religious Visitation**
- a) You shall not be allowed to engage in group prayer with other inmates.
 - b) If a USMS/BOP/DF- and/or FBI-approved religious representative is to be present for prayer with you, the prayer shall be conducted as part of a contact or non-contact visit, at the discretion of the USMS/BOP/DF.

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6) **No Communal Cells and No Communication Between Cells**

- a) You shall not be allowed to share a cell with another inmate.
- b) You 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, except as permitted in Section 1.c, above.

7) **Cellblock Procedures**

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

8) **Access to Mass Communications** – To prevent you from receiving and acting upon critically timed information or information coded in a potentially undetectable manner, your access to materials of mass communication is restricted as follows:

a) **Publications/Newspapers** –

- i) You 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 USMS/BOP/DF, in consultation with the USA/EDMI. You may correspond with the publishing company regarding technical aspects of the publication, i.e., availability of particular volumes, billing questions, etc. The review of this correspondence will be in accordance with section 8(a)(iii), below.
- ii) Sections of any publication/newspaper that 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 publications/newspapers prior to distribution to you.
- iii) If restricted by the USMS/BOP/DF rules, access to a publication will be denied. If acceptable, upon delivery, the USMS/BOP/DF will review the publication and make the initial determination. If the FBI's expertise is required, the publication will be forwarded to the FBI for review. The USMS/BOP/DF will also forward the publication to the FBI if translations

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are needed to make that determination. (In these cases, the FBI shall respond to the USMS/BOP/DF within fourteen (14) business days.) You shall then have access to the remaining portions of the publications/newspapers deemed acceptable, in accordance with USMS/BOP/DF policy.

iv) In order to avoid passing messages/information from inmate to inmate, you shall be allowed to share institutionally purchased publications/newspapers with other SAM inmates only after each publication/newspaper is physically screened by staff to ensure that messages cannot be passed between the SAM inmates. Publications/newspapers individually purchased by you may not be shared with any other inmate.

b) **Television and Radio** – You are authorized to have television and radio viewing and listening privileges, in accordance with standard and applicable USMS/BOP/DF policies and procedures.

c) **Termination or Limitation** – If the USMS/BOP/DF determines that mass communications are being used as a vehicle to send messages to you relating to the furtherance of terrorist or criminal activities, your access may be limited or terminated for a period of time to be determined by the USMS/BOP/DF.

9) **Access to Books**

a) You may have access to all books that do not facilitate criminal activity or present a substantial threat to national security or the security, discipline, or good order of the institution. This initial determination is to be made by the USMS/BOP/DF and, if the USMS/BOP/DF determines that the FBI's expertise is required, the book(s) will be forwarded to the FBI for review. In conducting its analysis, the FBI will determine whether the book advocates or promotes acts of terrorism or violence and/or whether access to the book by you would pose a substantial threat to national security.

b) In order to avoid passing messages/information from inmate to inmate, you shall be allowed to share institutionally purchased books with other SAM inmates only after each book is physically screened by staff to ensure that messages cannot be passed between the SAM inmates. Books individually purchased by you may not be shared with any other inmate.

10) **Transfer of Custody** – In the event that you are transferred to or from the custody of the USMS, BOP, or any other DF, the SAM provisions authorized for you shall continue in effect, without need for any additional DOJ authorization.

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- 11) **Inmate's Consular Contacts** – You, a citizen of a foreign country, shall be allowed Consular communications and visits, consistent with USMS/BOP/DF policy. The Consular contacts shall comply with the U.S. Department of State (DOS) Consular notification and access requirements.⁹ Prior to permitting any Consular contact, the FBI will verify the Consular representative's credentials with the DOS.

CONCLUSION

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

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

With respect to mail privileges, the SAM are necessary to prevent you from receiving or passing along critically timed messages. Although eliminating your mail privileges entirely may be an excessive measure except in the most egregious of circumstances, it is believed 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 to assist in, violent and/or terrorist activities. Under these procedures, you can relate personal news to family members, even if delayed, but you may find it difficult or unwise to pass along restricted information.

To the extent that the use of an interpreter/translator is necessary, the government has the right to ensure that the interpreter/translator given access to you 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 you

⁹ See Consular Notification and Access, Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them, DOS. The DOS contact is the Consular Notification and Outreach Division, Office of Policy Coordination and Public Affairs, DOS, telephone (202) 485-7703 or http://www.travel.state.gov/law/consular/consular_753.html.

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advocate terrorist, criminal, and/or violent offenses, or if you make statements designed to incite such acts. Based upon your past behavior, it would be unwise to wait until after you solicit or attempt to arrange a violent or terrorist act to justify such media restrictions.

The SAM's limitations on access to mass communications are reasonably necessary to prevent you 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. It is believed that limiting and/or delaying media access may interrupt communication patterns you may develop with the outside world, and ensure that the media is not used to communicate information that furthers terrorist, violent, and/or criminal activities.

These conditions are imposed by the USMS/BOP/DF at the request of the Attorney General, through his designated agent, the Deputy Assistant Attorney General.

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Declined to Sign
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