

**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 FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendants Attorney General Jefferson Sessions, in his official capacity, and the Federal Bureau of Prisons (“Defendants”) move for partial summary judgment based on Plaintiff’s failure to exhaust his administrative remedies.

INTRODUCTION

The Prison Litigation Reform Act requires that an inmate exhaust all administrative remedies that are available before filing suit. Plaintiff Umar Farouk Abdulmutallab brings this action, alleging 14 claims challenging his conditions of confinement. Leaving aside the various flaws in his Amended Complaint, which are addressed in Defendants’ motion to dismiss, Plaintiff failed to exhaust his administrative remedies with respects 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. Accordingly, Defendants are entitled to partial summary judgment because Plaintiff has

failed to exhaust his administrative remedies with respect to these claims, or portions of claims, prior to filing this lawsuit.

STATEMENT OF UNDISPUTED MATERIAL FACTS

In accordance with Judge Moore’s Practice Standards, a Statement of Undisputed Material Facts is presented in Exhibit 1.

STANDARD OF REVIEW

A motion for summary judgment should be granted if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

ARGUMENT

The Prison Litigation Reform Act (“PLRA”) provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). The exhaustion requirement applies to all suits regarding prison life. *Porter v. Nussle*, 534 U.S. 516, 532 (2002); *Booth v. Churner*, 532 U.S. 731, 741 (2001). An inmate must exhaust all administrative remedies that are available to him before seeking judicial review of the decision. *See, e.g., United States v. Wilson*, 503 U.S. 329, 335-36 (1992); *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1236-37 (10th Cir. 2005). The Supreme Court has reaffirmed that “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (2007); *see also Ross v. Blake*, 136 S. Ct. 1850, 1856-57 (2016) (holding that the exhaustion requirement “suggests no limits on an inmate’s obligation to exhaust—irrespective of any ‘special circumstances’” and the “mandatory language means a

court may not excuse a failure to exhaust, even to take such circumstances into account”). The defendant bears the burden to demonstrate the affirmative defense of failure to exhaust administrative remedies. *See Jones*, 549 U.S. at 212.

The Bureau of Prisons (“BOP”) maintains a four-step administrative remedy program, which permits inmates to raise grievances. 28 C.F.R. §§ 542.10–542.19; *see also* Statement ¶ 25. In Step 1, the inmate must attempt informal resolution of his complaint with the appropriate BOP staff member by filing an Informal Resolution Form (“BP-8”). 28 C.F.R. § 542.13; *see also* Statement ¶ 23. Assuming no satisfactory resolution is achieved, the inmate must file an Administrative Remedy Request (“BP-9”) within 20 calendar days of the event giving rise to the grievance. 28 C.F.R. § 542.14; *see also* Statement ¶ 25. Any request filed after 20 calendar days of such event is untimely. *Id.* If the inmate is dissatisfied with the outcome at Step 2, he must file an appeal (“BP-10”) to the Regional Director within 20 days. 28 C.F.R. § 542.15(a); *see also* Statement ¶ 23. If the Step 3 appeal is unsuccessful, the inmate must file an appeal (“BP-11”) to the General Counsel of the BOP within 30 days. 28 C.F.R. § 542.15(a); *see also* Statement ¶ 25. The General Counsel has 40 days to respond to the BP-11 appeal, and may extend the response time by 20 days. 28 C.F.R. § 542.18. Any appeal at Step 2 or Step 3 is strictly limited to the issues raised in the BP-9 Administrative Remedy Request and may not be expanded to other issues. 28 C.F.R. § 542.15(b) (“An inmate may not raise in an Appeal issues not raised in the lower level filings.”); *see also* Statement ¶ 25.

In order to “properly exhaust,” the plaintiff prisoner must comply with all prison grievance procedures. *Jones*, 549 U.S. at 205; *see also Woodford v. Ngo*, 548 U.S. 81, 85 (2006) (holding the PLRA “demands compliance with an agency’s deadlines and other critical

procedural rules”). The grievance must further give sufficient notice to provide officials with “a fair opportunity to consider the grievance” and enable them to “tak[e] appropriate measures to resolve the complaint internally.” *Kikumura v. Osagie*, 461 F.3d 1269, 1283 (10th Cir. 2006) (internal quotation marks and citations omitted). A prisoner must exhaust all of his available administrative remedies *before* filing his civil action. *Jones*, 549 U.S. at 202; *Jernigan v. Stuchell*, 304 F.3d 1030, 1033 (10th Cir. 2002)).

As detailed in the accompanying exhibits, even though Plaintiff has filed 93 individual administrative remedy requests and appeals of those requests, he has not exhausted any administrative remedies with respects to Claims 1, 6, 8-10, and 12, as well as with respect to portions of Claims 2-5, 7, 11, 13, and 14 and the allegations in paragraph 147. Statement ¶¶ 2-24.

With respect to Claims 1, 6, 8-10, and 12, Plaintiff seeks to bring claims that he never exhausted through the BOP administrative remedy process. In Claim 1, Plaintiff alleges that his due process rights were violated in his transfer to the ADX in 2012, but he never filed any administrative remedies related to his transfer to the ADX or any purported inadequacies with the process he received. Statement ¶¶ 2-3. In Claims 9, 10, and 12, Plaintiff alleges that his rights under the Religious Freedom Restoration Act (“RFRA”) were violated because he was allegedly denied access to an imam, denied a halal diet, and force-fed a non-halal nutritional supplement. Statement ¶¶ 9, 11, 13. But again, Plaintiff never filed any administrative remedies related to such claims. Statement ¶¶ 10, 12, 14.

In Claim 6, Plaintiff alleges that following his hunger strikes in August 2012 and September 2012, the BOP retaliated against him by confining him in a Special Housing Unit in Range 13. Statement ¶ 5. But the only remedy request Plaintiff filed related to his 2012 hunger

strikes complained that he was segregated from his legal materials, medical items, and regular institutional supplies. Statement ¶ 6. Not only is this remedy substantially different from the claim that Plaintiff presents in his complaint, Plaintiff never exhausted this remedy. *Id.* After Plaintiff received a response from the Warden on November 2, 2012, he did not file an appeal at the regional or central office levels. *Id.* Thus, Plaintiff failed to exhaust the last two levels of the administrative remedy process and is therefore barred from bringing this claim. *Jernigan*, 304 F.3d at 1032 (“An inmate who begins the grievance process but does not complete it is barred from pursuing [his] claim under the PLRA for failure to exhaust his administrative remedies.”).

Plaintiff similarly failed to complete the administrative remedy process prior to filing suit with respect to Claim 8. In this claim, Plaintiff alleges that the BOP’s policies prohibiting congregational prayer within H-Unit violate RFRA because Plaintiff believes he is religiously obligated to perform group prayer five times daily and participate in Jum’ah services. Statement ¶ 7. Plaintiff filed an administrative remedy in which he requested to pray in congregation five times per day. Statement ¶ 8. Plaintiff received a response from the Warden on December 3, 2015, but he did not file an appeal at the regional or central office levels. *Id.* Again, because Plaintiff failed to exhaust the last two levels of the administrative remedy process, he is barred from bringing this claim. *Jernigan*, 304 F.3d at 1032.

With respect to Claims 2-5, Plaintiff contends that his Special Administrative Measures (“SAMs”) violate the Constitution and seeks a “permanent injunction ordering Defendant Sessions to remove the SAMs” and “prohibiting Defendant Sessions or future Attorneys General from re-imposing SAMs on [him].” Statement ¶ 15.

The Attorney General has promulgated regulations providing that an inmate may seek review of any restrictions imposed by a SAMs through the Administrative Remedy Program. 28 C.F.R. § 501.3; *see also Yousef v. Reno*, 254 F.3d 1214, 1222-23 (10th Cir. 2001) (holding that such remedies are available and must be exhausted before an inmate may bring suit). Defendants do not contest that Plaintiff has exhausted his overall facial challenge seeking to have the SAMs entirely removed.

Plaintiff's complaint, however, also appears to contain a narrower claim that he did not exhaust—seeking permission to communicate with his 13 nieces and nephews. Statement ¶ 15. Plaintiff was told that if he wanted to add any additional approved contacts, he would need to make a request with full contact information for each individual that he wished to be added to his approved contact list. Statement ¶ 16. This obligation is consistent with the SAMs, which state that Plaintiff is permitted to make requests for specific additional contacts, which are considered on a case-by-case basis. Statement ¶ 17. 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. Plaintiff made several administrative remedy requests to add additional family contacts, including, for example, two of his sisters. Statement ¶ 18. Plaintiff, however, never filed any administrative remedies regarding communications with his 13 nieces and nephews. Statement ¶ 19. Because Plaintiff failed to exhaust his administrative

remedies regarding communications with these individuals, he cannot bring any claim challenging this issue or seeking to have his SAMs modified to allow such contacts.¹

In paragraph 147, Plaintiff alleges that, whether due to SAMs or other factors, the BOP restricted his access to certain books, identifying two books that he claims were never delivered to him. Statement ¶ 23. This allegation must be dismissed for failure to exhaust because Plaintiff has not exhausted any administrative remedy requests alleging that the BOP has denied him access to these two books or any other specific reading materials. Statement ¶ 24.

In Claims 7, 11, and 13, Plaintiff alleges that force-feeding him while on a hunger strike violates the Constitution and RFRA, and he seeks a “permanent injunction prohibiting Defendant BOP from force-feeding” him. Statement ¶ 20. Defendants again do not contest that Plaintiff has exhausted his overall facial challenge to the BOP’s force-feeding regulations. However, parts of his allegations appear to challenge that he was force-fed in 2012 and 2015 without medical necessity, for purposes of retaliation, and/or without following the BOP’s procedures on force-feeding. *Id.* Such complaints were never exhausted through any level of the BOP administrative remedy process. Statement ¶ 22. Under the BOP’s regulations, any such allegations needed to have been raised in an administrative remedy filed within 20 calendar days of the force-feeding

¹ To the extent Plaintiff argues that he notified other governmental entities of his desire to communicate with his nieces and nephews, that is insufficient under PLRA because he failed to exhaust the available administrative remedy process. The PLRA demands that *all* available administrative remedies must be exhausted prior to filing suit. 42 U.S.C. § 1997e(a); *Porter*, 534 U.S. at 988 (holding that “[a]ll ‘available’ remedies must now be exhausted,” even if such remedies do “not meet federal standards,” are not plain, speedy, or effective, and even if “the prisoner seeks relief not available in grievance proceedings”); *Yousef*, 254 F.3d at 1221 (holding that raising issues regarding SAMs restrictions through a letter to the Attorney General did not have any impact on inmate’s obligation to exhaust his administrative remedies).

event giving rise to the grievance. 28 C.F.R. § 542.14. The only remedy request that Plaintiff filed regarding any of the BOP's actions in response to his hunger strikes in 2012 and 2015 complained that he was segregated from his legal materials, medical items, and regular institutional supplies while on a hunger strike. Statement ¶ 21. And Plaintiff never exhausted this remedy after receiving a response from the Warden. *Id.*

Plaintiff is therefore barred from bringing any claims alleging that he was force-fed without medical necessity, for purposes of retaliation, and/or without following the BOP's procedures. Plaintiff plainly never raised any such allegations within 20 calendar days after he was force-fed in 2012 and 2015. As a result, any such grievance is untimely and subject to dismissal with prejudice. *Kikumara*, 461 F.3d at 1290.

Finally, in Claim 14, Plaintiff alleges that all of his allegations throughout his complaint combine to constitute an Eighth Amendment violation. To the extent Plaintiff relies on allegations that he did not exhaust, as described above, Plaintiff is barred from relying on such allegations as part of this amorphous claim. For example, where Plaintiff failed to exhaust his various religious liberty allegations, he cannot raise such allegations either as a distinct claim or under a combination theory. Claim 14 is therefore barred to the extent it is dependent on allegations that Plaintiff did not exhaust.

CONCLUSION

In sum, the Court should award summary judgment in favor of Defendants with respects to Claims 1, 6, 8-10, and 12, as well as with respect to portions of Claims 2-5, 7, 11, 13, and 14 and the allegations in paragraph 147, because Plaintiff failed to exhaust his administrative remedies prior to filing suit as required by the Prison Litigation Reform Act.

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

EXHIBIT 1
STATEMENT OF UNDISPUTED MATERIAL FACTS

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response/Additional Facts and Supporting Evidence	Moving Party's Reply and Supporting Evidence
1. Plaintiff Umar Farouk Abdulmutallab is incarcerated at the United States Penitentiary – Administrative Maximum (“ADX”) in Florence, Colorado, following 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, 4; Ex. 2, Shelton Decl. ¶ 8 & Attach. 1.		
2. Since Plaintiff's incarceration, he has filed 93 individual administrative remedies and appeals of those remedies. Ex. 2, Shelton Decl. ¶ 9 & Attach. 3.		
3. In Claim 1, Plaintiff alleges that his transfer to the ADX in 2012 violated his due process rights. Dkt. 76 ¶¶ 284-88.		
4. Plaintiff has not filed any administrative remedies related to his transfer to the ADX or any purported inadequacies with the process he received. Ex. 2, Shelton Decl. ¶ 12 & Attach. 3.		
5. In Claim 6, Plaintiff alleges that following his hunger strikes in August 2012 and September 2012, the Bureau of Prisons (“BOP”) retaliated against him by confining him in a Special Housing Unit at Range 13. Dkt. 76 ¶¶ 222, 232, 317-26.		

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response/Additional Facts and Supporting Evidence	Moving Party's Reply and Supporting Evidence
6. Plaintiff filed one remedy request related to his 2012 hunger strikes in which he complained that he was segregated from his legal materials, medical items, and regular institutional supplies. Plaintiff received a response from the Warden on November 2, 2012. Plaintiff did not file an appeal at the regional or central office levels. Ex. 2, Shelton Decl. ¶ 14 & Attach. 5.		
7. In Claim 8, Plaintiff alleges that BOP's policies prohibiting congregational prayer within H-Unit violate RFRA because Plaintiff believes he is religiously obligated to perform group prayer five times daily and participate in Jum'ah services. Dkt. 76 ¶¶ 334-42.		
8. Plaintiff filed one administrative remedy wherein he requested to pray in congregation five times per day. Plaintiff received a response from the Warden on December 3, 2015. Plaintiff did not file an appeal at the regional or central office levels. Ex. 2, Shelton Decl. ¶ 15 & Attach. 6.		
9. In Claim 9, Plaintiff alleges that the BOP has violated RFRA by failing to provide regular access to an imam. Dkt. 76 ¶¶ 343-50.		

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response/Additional Facts and Supporting Evidence	Moving Party's Reply and Supporting Evidence
10. Plaintiff has not filed any administrative remedies related to access to an imam. Ex. 2, Shelton Decl. ¶ 16 & Attach. 3.		
11. In Claim 10, Plaintiff alleges that the BOP has violated RFRA by denying him a halal diet. Dkt. 76 ¶¶ 351-58.		
12. Plaintiff has not filed any administrative remedies related to a halal diet. Ex. 2, Shelton Decl. ¶ 17 & Attach. 3.		
13. In Claim 12, Plaintiff alleges that the BOP has violated RFRA by force-feeding him with a non-halal nutritional supplement during hunger strikes in 2012 and 2015. Dkt. 76 ¶¶ 369-76.		
14. Plaintiff has not filed any administrative remedies related to a non-halal nutritional supplement. Ex. 2, Shelton Decl. ¶ 18 & Attach. 3.		

Moving Party’s Undisputed Material Facts and Supporting Evidence	Opposing Party’s Response/Additional Facts and Supporting Evidence	Moving Party’s Reply and Supporting Evidence
15. In Claims 2-5, Plaintiff alleges that his Special Administrative Measures (“SAMs”) violate the Constitution and seeks a “permanent injunction ordering Defendant Sessions to remove the SAMs” and “prohibiting Defendant Sessions or future Attorneys General from re-imposing SAMs on [him].” Part of Plaintiff’s claim appears to challenge that he is not permitted to communicate with his 13 nieces and nephews. Dkt. 76 ¶¶ 289-316, Prayer for Relief; <i>id.</i> ¶¶ 14, 140, 292, 308.		
16. Plaintiff was told that if he wanted to communicate with any additional individuals, he would need to make a request with full contact information for each individual that he wished to be added to his approved contact list. Ex. 2, Shelton Decl. ¶ 13 & Attach. 4.		
17. The SAMs state that Plaintiff is permitted to make requests for specific additional contacts, which are considered on a case-by-case basis. Ex. 3, SAMs March 2018 Renewal at 10 n.7.		

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response/Additional Facts and Supporting Evidence	Moving Party's Reply and Supporting Evidence
18. Plaintiff made several administrative remedy requests to add additional family contacts, including, for example, two of his sisters. Ex. 2, Shelton Decl. ¶ 13 & Attach. 5.		
19. Plaintiff never filed any administrative remedies regarding communications with his 13 nieces and nephews. Ex. 2, Shelton Decl. ¶ 13 & Attach. 3.		
20. In Claims 7, 11, and 13, Plaintiff alleges that force-feeding him while on a hunger strike violates the Constitution and RFRA seeks a “permanent injunction prohibiting Defendant BOP from force-feeding” him. Part of Plaintiff’s claim appears to challenge that he was force-fed in 2012 and 2015 without medical necessity, for purposes of retaliation, and/or without following the BOP’s procedures on force-feeding. Dkt. 76 ¶¶ 327-33, 359-68, 377-83, Prayer for Relief; <i>id.</i> ¶¶ 257, 380.		

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response/Additional Facts and Supporting Evidence	Moving Party's Reply and Supporting Evidence
21. Plaintiff filed a single administrative remedy related to his 2012 hunger strikes on October 11, 2012, in which he complained that he was segregated from his legal materials, medical items, and regular institutional supplies while on a hunger strike. On November 2, 2012, Plaintiff received a response from the Warden but did not file an appeal at the regional or central office levels. Ex. 2, Shelton Decl. ¶ 19 & Attach. 6.		
22. Plaintiff did not file any other remedy requests complaining about any actions taken in response to his hunger strikes in 2012 or 2015 and has not filed any remedy requests alleging that he was force-fed without medical necessity, for purposes of retaliation, and/or without following the BOP's procedures on force-feeding. Ex. 2, Shelton Decl. ¶ 19 & Attach. 3, 8.		
23. In paragraph 147, Plaintiff alleges that, whether due to SAMs or other factors, the BOP has restricted his access to certain books, identifying two books that he claims were never delivered to him. Dkt. 76 ¶ 147.		

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response/Additional Facts and Supporting Evidence	Moving Party's Reply and Supporting Evidence
24. Plaintiff has not exhausted any remedy requests alleging that he was denied access to these two books or any other specific reading materials. Ex. 2, Shelton Decl. ¶ 20 & Attach. 3.		
25. BOP has a four-tiered Administrative Remedy Program for inmate grievances. The first step is informal resolution with prison staff. The second step is the filing of a formal Request for Administrative Remedy (also known as a BP-9) at the institution in which the inmate is incarcerated. An administrative remedy at this level, and subsequent levels, is assigned a Remedy ID number and tracked in SENTRY. The third step is an appeal to the Regional Director, by filing a Regional Office Administrative Remedy Appeal (also known as a BP-10). The fourth step is an appeal to the Director, National Inmate Appeals, in the Office of the General Counsel in Washington D.C., by filing a Central Office Administrative Remedy Appeal (also known as a BP-11). An inmate may not assert in an appeal an issue he did not raise in a lower-level filing. Ex. 2, Shelton Decl. ¶ 3; 28 C.F.R. §§ 542.10–542.19.		



**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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