

# **EXHIBIT 1**



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

**INSTITUTION SUPPLEMENT**

OPI            CMU Unit Manager  
NUMBER      THX-5321.07B

DATE           May 31, 2012

**Operation & Security of the Communication  
Management Unit (D-Unit, FCI Terre Haute)**

*Approved:*    Charles L. Lockett  
                      Complex Warden, FCC Terre Haute

J. Oliver  
Warden, FCI Terre Haute

I.    **PURPOSE AND SCOPE.**

This supplement establishes guidelines and procedures for operation and security of the Communication Management Unit (CMU) in D-Unit, FCI Terre Haute, Indiana.

The CMU is established to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communication with persons in the community in order to protect the safety, security, and orderly operation of Bureau facilities, and protect the public.

The CMU is a self-contained general population housing unit where inmates reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming within the confines of the CMU. Additionally, the unit contains a range of cells dedicated to segregated housing of those inmates in need of being placed in administrative detention or disciplinary segregation status. All National policies applicable to general population inmates apply with conditions specified within the supplement.

2.    **DIRECTIVES AFFECTED**

A.    **Directives Referenced**

P. S. 1330.16, Administrative Remedy Program (August 23, 2001)

B. Directives Rescinded

THX-5321.07A, Dated October 22, 2009

3. **ADMISSION & ORIENTATION / CLASSIFICATION AND REVIEWS:** The Unit Manager is responsible for administering the Admission and Orientation program (A&O) in compliance with national policy. The purpose of the program is to familiarize each inmate with the unit staff, unit procedures, expected behavior, and programs available. All items on the A&O checklist will be covered and utilized for verification of participation. As part of A&O, CMU inmates will receive a copy of this Institution Supplement and an A&O Handbook.

Classification and reviews of CMU inmates will occur according to national policy. Reviews for an inmate to be considered for transfer out of a CMU will take place during regularly scheduled Unit Team meetings and after the Unit Team has had ample time to monitor the inmate's institutional adjustment, program progress, responsibility, and to verify the inmate is not engaging in activities that warranted the initial CMU placement. Subsequent reviews will be conducted at six month intervals. A review for transfer from a CMU will be conducted in a manner consistent with sound correctional factors, including an assessment of the threat posed by the inmate, whether the inmate presents a risk of harm to others or to the orderly operation of the institution, and whether the inmate still requires the degree of security and monitoring afforded at a CMU. Inmates are expected to maintain clear conduct and have no sanctioned incident reports for the 12 months period to be recommended for transfer. After conducting the review, the Unit Team may recommend to the Warden for an inmate to be transferred out of the CMU. A record of each review conducted shall be kept in the inmate's central file.

Additionally, within five calendar days of arrival, CMU inmates will be provided a "**NOTICE TO INMATE OF TRANSFER TO COMMUNICATION MANAGEMENT UNIT**" form indicating the reasons for their placement in the unit. A blank copy of the form is included with this Institution Supplement as Attachment "A."

4. **CONTACT WITH PERSONS IN THE COMMUNITY:** The purpose of the CMU is to provide increased monitoring of communication of the inmates assigned to the unit. By operating a self-contained housing unit, staff may adequately regulate and monitor all communications between inmates and persons in the community. All contact between CMU inmates and persons in the community may occur according to national policy, with necessary adjustments indicated herein. **Under no circumstances will privileged attorney-client communication be monitored, as prohibited by national policy.**

**(a) Written General Correspondence.** Mail call is held Monday through Friday between the hours of 12:00 p.m.-1:00 p.m. Mail will only be given to the addressee.

All written correspondence, including hand written notes and Inmate Request to Staff, leaving the institution must be hand-delivered to unit management staff.

Mail leaving the institution must contain a return address which includes your name and register number. Legal and special mail will ordinarily be delivered by unit management staff. Outgoing special mail (i.e. attorney, federal courts, probation officers, etc.) should be sealed, and handed to unit management staff during mail call.

All incoming and outgoing written general correspondence must be reviewed by staff prior to delivery to the inmate or further processing to the post office.

**(b) Telephone Communication.** All telephone communication between inmates and persons in the community (except properly placed, unmonitored legal calls) will be:

- (1) Conducted using monitored ITS phone lines;
- (2) Live-monitored by staff;
- (3) Subject to recording by staff; and
- (4) Occur in English-only (by both the inmate and community) unless previously scheduled for and conducted through simultaneous translation monitoring.
- (5) Limited to two, fifteen (15) minute telephone calls per week scheduled in advance with the person and telephone number appearing on the schedule.
- (6) Scheduled Monday through Friday, excluding federal holidays, between the hours of 8:00 a.m. and 8:00 p.m., local time;
- (7) scheduled Sunday and federal holidays, between the hours of 8:00 a.m. and 2:30 p.m., local time.

Persons from whom an inmate requests placement on the approved telephone list must complete the "**Acknowledgment of Conditions for Telephone Contact with Inmates in CMU, FCI Terre Haute,**" form included with this Institution Supplement as Attachment "B," as proof of their acknowledgment and acceptance of these conditions. Monitored calls where either party speaks in non-English will be immediately terminated by the staff monitor unless previously scheduled and being conducted through simultaneous translation monitoring. In the event of terminated calls, inmates may be subject to disciplinary action, and the person may be removed from the inmate=s approved telephone list.

In no event will the frequency or duration of telephone calls placed by CMU inmates be limited to less than one telephone call per month (28 C.F.R. ' 540.100(b) of at least three minutes duration (28 C.F.R. ' 540.101(d). Unmonitored legal calls are not affected, and will continue to be managed according to national policy.

**(c) Visiting.** All visiting between inmates and persons in the community (except

properly scheduled, unmonitored legal visits) will be:

- (1) Conducted using non-contact facilities (i.e., secure partitioned rooms, telephone voice contact);
- (2) Live-monitored by staff;
- (3) Subject to recording by staff; and
- (4) Occur in English-only (by both the inmate and visitor) unless previously scheduled for and conducted through simultaneous translation monitoring;
- (5) Nonverbal communication (i.e. hand signals, sign language) may result in termination of the visit;
- (6) Each inmate is authorized eight (8) hours of visiting each month, scheduled in increments not exceeding four (4) hours;
- (7) Scheduled Sunday through Friday, excluding federal holidays between the hours of 8:30 a.m. and 2:30 p.m., local time.

Persons for whom an inmate requests placement on the approved visiting list must complete the "**Acknowledgment of Conditions for Visiting with Inmates in CMU, FCI Terre Haute,**" form included with this Institution Supplement as Attachment "C," as proof of acknowledgment and acceptance of the visiting conditions. Monitored visiting where either party speaks in non-English will be immediately terminated by the staff monitor unless previously scheduled and being conducted through simultaneous translation monitoring.

5. **HOUSING CONDITIONS / UNIT PROGRAMS / SERVICES:**

**(a) Cell Assignments.** CMU inmates will ordinarily be housed in cells with double bunk capability. Additionally, the unit contains a range of cells dedicated to segregated housing of those inmates in need of being placed in administrative detention or disciplinary segregation status. Cells numbered 8-13 are designated as segregation housing for CMU inmates placed in administrative detention status or disciplinary segregation status.

**(b) Health Services.** Health Services staff will provide sick call in the unit seven days a week. Medications will be delivered and/or administered in the unit twice daily. Inmates may request to be seen by a physician in the unit's private examination room. Specialized services may be provided in the institution's main health services units as needed, under conditions which ensure CMU inmates' lack of contact with non-CMU inmates.

**(c) Mental Health Services.** Psychology staff will provide CMU inmates an initial psychological assessment within 14 days of arrival in the unit. Mental health services thereafter will occur according to national policy. Inmates may request to be seen by a psychology staff member in the unit's private examination room.

**(d) Meals.** All inmate meals will be served and consumed in the unit dining area.

**(e) Education / Recreation Services.** National education policies will be implemented in CMU. Inmates will be permitted to leave their cells and recreate in the unit daily from 6:00am to 9:15pm, except during counts.

Leisure and law library services will be provided to inmates daily. Photocopies may be obtained by submitting a request to the institution librarian.

Inmates will be provided table games such as chess, checkers and cards. Hobby craft opportunities will also be provided.

Four televisions are available in the unit common areas for viewing. Movies will be shown using closed-circuit televisions.

The inside recreation rooms will contain various aerobic exercise equipment.

**(f) Religious Services.** Religious service opportunities will be provided in the unit. All communication with religious services providers from the community will be monitored as indicated in Section 4 of this Institution Supplement, depending on the means of communication used.

**(g) Personal Property.** Inmate personal property must be stored inside their assigned locker. Inmates are allowed to maintain up to three cubic feet of legal material in their cell. Temporary additional space for active litigation material may be requested from the Unit Manager.

**(h) Commissary / Trust Fund Operations.** Each inmate will be afforded the opportunity to purchase allowable items from the Commissary if funds are available in the inmate's commissary account. Commissary purchase forms will be issued on Tuesdays of each week, and after completion of the forms they will be forwarded to the commissary for processing by close-of-business on Wednesdays. The Commissary items will be delivered to the unit by commissary staff on Thursdays of each week. Any special purchases (personal radios, etc.) must be approved by the Unit Manager. Commissary items will be neatly stored in your assigned locker ONLY. Under no circumstances are commissary items to be stored on the floor. Items not contained in their original container are considered contraband and will be confiscated. Original containers are to be disposed of when empty and will not be used for other purposes.

**(i) Sanitation.** CMU inmates are responsible for sanitation of their living areas. Unit orderly job assignments will be made by members of the unit team. Inmate showers will be available daily. Clean, serviceable clothing will be issued to each inmate upon his arrival to the unit. Unit laundry service will be available for issued clothing on Mondays, Wednesday and Fridays for inmates in CMU SHU only. CMU inmates are responsible for laundering their own clothing. Barber services in CMU will be conducted within the unit. Inmates should submit an Inmate Request to Staff Member form at least one week in advance of the desired time for

a haircut.

**(j) Work Assignments.** Work assignments will include orderlies for unit sanitation, food service, laundry, and recreation, and will be assigned by members of the unit team.

6. **ADMINISTRATIVE REMEDY PROGRAM:** Inmates may appeal their transfer to the CMU, or any conditions of confinement, through the Bureau's Administrative Remedy Program, 28 C.F.R. §§ 542.10 through 542.19, and corresponding policy.

A member of the Unit Team will provide the inmate with the necessary form(s) upon request.

7. **RESPONSIBILITY:** The CMU Unit Manager is responsible for the annual update and review of this Institution Supplement.
8. **EFFECTIVE DATE:** This supplement is effective upon issuance.

**DISTRIBUTION:**

Warden  
Division Heads  
Department Heads  
Law Library  
Computer Services Manager  
President AFGE

THX-5321.07B  
Attachment A

**NOTICE TO INMATE OF TRANSFER TO COMMUNICATION MANAGEMENT UNIT**

**U.S. DEPARTMENT OF JUSTICE**

**FEDERAL BUREAU OF PRISONS**

Inmate Name (Last, First, Middle):	Register Number:
Warden (print and signature):	Institution:

**NOTICE:** This notice informs you of your transfer to a Federal Bureau of Prisons (Bureau) facility that allows greater management of your communication with persons in the community through more effective monitoring of your telephone use, written correspondence, and visiting. Your communication by these methods may be limited as necessary to allow effective monitoring. Your general conditions of confinement in this unit may also be restricted as necessary to provide greater management of your communications. Your transfer to this unit, by itself, will have no effect on the length of your incarceration. You will continue to earn good-conduct sentence credit in accordance with Bureau policy.

Your transfer to this facility under these conditions is based on the following specific information:

Based on this information, your transfer to this facility for greater communication management is necessary to the safe, secure, and orderly operation of Bureau institutions, or protection of the public. Your continued designation to this facility will be reviewed regularly by your Unit Team under circumstances providing you notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates.

**OPPORTUNITY TO APPEAL TRANSFER DECISION** - You may appeal this transfer decision, or any conditions of your confinement, through the Bureau's Administrative Remedy Program, 28 C.F.R. §§ 542.10 through 542.19, and corresponding policy. A member of your Unit Team will provide you with the necessary form upon request.

**INSTRUCTIONS TO STAFF** - Provide the inmate a copy of this form and complete the following information documenting delivery.

Staff Member Name and Position (printed):	Staff Member (signature):	Date Issued:
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THX-5321.07B  
Attachment B

**Acknowledgment of Conditions for  
Telephone Contact with Inmates  
in D-Unit, FCI Terre Haute**

\_\_\_\_\_, \_\_\_\_\_, an inmate housed in D-Unit at the Federal  
(Inmate Name) (Reg. No.)

Correctional Institution (FCI), Terre Haute, Indiana, requests your name be placed on his approved telephone list.

As a condition of being placed on this inmate's approved telephone list, you agree to the following conditions:

- (1) All telephone communication between you and the inmate will be subject to monitoring and recording by Bureau of Prisons staff;
- (2) Your telephone conversation with the inmate will occur in English-only, unless previously scheduled for, and conducted through, simultaneous translation monitoring; and
- (3) Monitored calls where either party speaks in non-English will be immediately terminated by the staff monitor unless previously scheduled and being conducted through simultaneous translation monitoring. In such cases, inmates may be subject to disciplinary action, and you may be removed from the inmate's approved telephone list.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Phone Number

THX-5321.07B  
Attachment C

**Acknowledgment of Conditions for**  
**Visiting with Inmates in D-Unit,**  
**FCI Terre Haute**

\_\_\_\_\_, \_\_\_\_\_, an inmate housed in D-Unit at the Federal  
(Inmate Name) (Reg. No.)

Correctional Institution (FCI), Terre Haute, Indiana, requests your name be placed on his approved visiting list.

As a condition of being placed on this inmate's approved visiting list, you agree to the following conditions:

- (1) All communication between you and the inmate during the visit will be subject to monitoring and recording by Bureau of Prisons staff;
- (2) Your conversations with the inmate during the visit will occur in English-only, unless previously scheduled for, and conducted through, simultaneous translation monitoring; and
- (3) Monitored conversations where either party speaks in non-English will be immediately terminated by the staff monitor unless previously scheduled and being conducted through simultaneous translation monitoring. In such cases, inmates may be subject to disciplinary action, and you may be removed from the inmate's approved visiting list.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name

# **EXHIBIT 2**



U. S. Department of Justice  
Federal Bureau of Prisons  
USP Marion

## INSTITUTION SUPPLEMENT

OPI: Communication Management Unit Manager  
NUMBER: MAR-5321.07  
DATE: August 29, 2011

# Operation & Security of the Communication Management Unit (I Unit)

A handwritten signature in black ink, appearing to read "Wendy J. Roal".

Approved: Wendy J. Roal, Warden  
USP Marion

- I. **PURPOSE AND SCOPE.** This Institution Supplement establishes guidelines and procedures for the operation and security of the Communication Management Unit (CMU) in I Unit, at the United States Penitentiary, Marion, Illinois.

The CMU is established to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communication between inmates and persons in the community in order to protect the safety, security, and orderly operation of Bureau facilities, and to protect the public.

The CMU is a self-contained general population housing unit where inmates reside, eat, and participate in all educational, recreational, religious, unit management, and work programming within the confines of I Unit. Additionally, the unit contains a block of cells located on B Range which are dedicated to segregated housing for those inmates in need of being placed in administrative detention or disciplinary segregation status. All National policies applicable to general population inmates apply with conditions specified within the supplement.

## II. **SUMMARY OF CHANGES.**

- Removed the following from the Admission & Orientation / Classification section on page 3:

Paragraph 2:

Ordinarily, inmates will need to spend a minimum of 18 - 24 months in a CMU.

Paragraph 3:

after the inmate has spent a minimum of 18 months in the unit, but less than 24 months.

Inmates are expected to maintain clear conduct and have no sanctioned incident reports for the 18-24 months period to be recommended for transfer.

- Telephone Communication, Page 4:
  - (5) be limited to two 15-minute call per week;
  - (6) Monday through Friday, except federal holidays, telephone calls may be scheduled between the hours of 8:00 a.m. and 8:00 p.m., local time.
  - (7) Sunday and federal holidays, telephone calls may be scheduled between 8:00 a.m. and 2:30 p.m., local time.
- Removed the following paragraph from the Telephone Communication section, page 4:

Persons from whom an inmate requests placement on the approved telephone list must complete the "**Acknowledgment of Conditions for Telephone Contact with Inmates in the Communication Management Unit, USP Marion,**" form included with this institution supplement as Attachment "B", as proof of their acknowledgment and acceptance of these conditions.

- Visiting, on Page 4:
  - (6) be scheduled Monday through Friday, excluding federal holidays between the hours of 8:30 a.m. and 2:30 p.m. Each inmate is authorized eight hours of visiting each month.
  - (7) Visits may be scheduled in increments up to four (4) hours.
- Indigent Inmates, Page 6:
  - (j) **Indigent Inmates.** Hygiene items will be issued to indigent inmates only, as follows: These items will be supplied through the Laundry Department and issued by the unit team.

- 1 Toothbrush (monthly)
- 1 Razor (weekly)
- 1 Comb (quarterly)
- 1 Bar Soap (weekly)
- 1 Tooth Powder (weekly)
- 1 Shave Cream (weekly)

Additional items may be purchased by the inmate from the institution commissary. Inmate showers are available. Staff will make regular rounds within the unit to assure proper sanitation is being maintained.

- Removed attachment B: Acknowledgment of Conditions for Telephone Contact With Inmates in the Communication Management Unit, USP Marion, Illinois

III. **DIRECTIVES AFFECTED.**

a. **Directives Rescinded.**

MAR-5321.07C, Operation & Security of the Communication Management Unit (September 28, 2009)

b. **Directives Referenced.**

P.S. 1330.16, Administrative Remedy Program (August 23, 2001)

c. **Standards Referenced.**

American Correctional Association 4<sup>th</sup> Edition Standards for Adult Correctional Institution:

IV. **RESPONSIBILITY AND AUTHORITY.**

A. **ADMISSION & ORIENTATION / CLASSIFICATION AND REVIEWS:** The executive assistant is responsible for administering the Admission and Orientation Program (A&O). The purpose of the program is to familiarize each inmate with the unit staff, unit procedures, expected behavior, and programs available. All items on the A&O Checklist will be covered and the checklist will be utilized for verification of participation. As part of A&O, I Unit inmates will receive a copy of this Institution Supplement and an I Unit A&O Handbook. A&O has been recorded on a DVD and will be presented to each inmate in I unit.

Within five calendar days of arrival, I Unit inmates will be provided a "NOTICE TO INMATE OF TRANSFER TO COMMUNICATION MANAGEMENT UNIT" form indicating the reasons for their placement in the unit. A blank copy of the form is included with this Institution Supplement, Attachment "A".

Classification and reviews of I Unit inmates will occur according to national policy. Reviews for an inmate to be considered for transfer out of a CMU will commence with the first unit team meeting. Subsequent reviews will be conducted at six month intervals. A review for transfer from a CMU will be conducted in a manner consistent with sound correctional judgment and security threat management practices. The review will include a number of factors, including programming needs and if the original reasons for CMU placement still exist. After conducting the review, the unit team may recommend to the warden that an inmate be transferred out of the CMU. A record of each review conducted shall be kept in the inmate's central file.

B. **CONTACT WITH PERSONS IN THE COMMUNITY:** The purpose of the CMU is to provide increased monitoring of communication of the inmates assigned to it. By operating a self-contained housing unit, staff may adequately regulate and monitor all communications between inmates and persons in the community.

- (a) Written Correspondence.** Mail call is held Monday through Friday between the hours of 12:00 p.m. - 2:00 p.m. Inmates must be present to receive their mail. Mail leaving the institution must be hand-delivered to unit management staff. Mail leaving the institution must contain a return address which includes their name and register number. Legal and special mail will ordinarily be delivered by the case manager. Outgoing special mail (i.e., attorney, federal courts, probation officers, etc.) may be sealed and delivered to the unit management staff during mail call hours.
- (b) Telephone Communication.** All telephone communication between inmates and persons in the community (except properly placed, unmonitored legal calls) will:
- (1) be conducted using monitored ITS phone lines;
  - (2) be live-monitored by staff;
  - (3) be recorded;
  - (4) occur in English-only (by both the inmate and community call-recipient) unless previously scheduled for and conducted through simultaneous translation monitoring;
  - (5) be limited to two 15-minute calls per week;
  - (6) Monday through Friday, except federal holidays, telephone calls may be scheduled between the hours of 8:00 a.m. and 8:00 p.m., local time;
  - (7) Sunday and federal holidays, telephone calls may be scheduled between 8:00 a.m. and 2:30 p.m., local time.

Monitored calls, where either party speaks in non-English, will be immediately terminated by the staff monitor unless previously scheduled and conducted through simultaneous translation monitoring. In the event of terminated calls, inmates may be subject to disciplinary action, and the person may be removed from the inmate's approved telephone list.

- (c) Visiting.** All visiting between inmates and persons in the community (except properly scheduled, unmonitored legal visits) will:
- (1) be conducted in the main visiting room using non-contact facilities (i.e., secure partitioned rooms, telephone voice contact);
  - (2) be live-monitored;
  - (3) be subject to recording;
  - (4) occur in English-only (by both inmate and visitor) unless previously scheduled for and conducted through simultaneous translation monitoring;
  - (5) Nonverbal communication (i.e. hand signals, sign language) may result in termination of the visit;
  - (6) be scheduled Monday through Friday, excluding federal holidays between the hours of 8:30 a.m. and 2:30 p.m. Each inmate is authorized eight hours of visiting each month.
  - (7) Visits may be scheduled in increments up to four (4) hours.

Any violations may result in immediate termination of the visit. Persons for whom an inmate requests placement on the approved visiting list must complete the

**"Acknowledgment of Conditions for Visiting with Inmates in the Communication Management Unit, USP Marion,"** form included with this Institution Supplement as Attachment "B," as proof of their acknowledgment and acceptance of these conditions.

IV. **HOUSING CONDITIONS / UNIT PROGRAMS / SERVICES.**

- (a) **Cell Assignments:** Ordinarily, I-Unit inmates will be housed in single bunk cells. The unit contains a range of cells dedicated to segregated housing of those inmates in need of being placed in administrative detention or disciplinary segregation status. Cells I02-010L thru I02-016L are designated as segregation housing for I-Unit inmates placed in administrative detention status or disciplinary segregation status.
- (b) **Health Services:** Health Services staff will provide sick-call in the morning on Monday, Tuesday, Thursday and Friday in the unit examination room. Medications will be delivered and/or administered in the unit twice daily. In the event there are no medication(s) for delivery on the evening shift, staff will not conduct same in the unit. Inmates may request to be seen by a physician. Specialized services may be provided in the institution's main health services unit as needed.
- (c) **Mental Health Services:** Psychology staff will make regular rounds within the unit. Inmates may request to be seen by psychology staff, which will occur within the unit.
- (d) **Meals:** All inmate meals will be served and consumed on B range of I-Unit. Food from the food Service line may not be stored in inmate cells.
- (e) **Education/Recreation Services:** Inmates will ordinarily be permitted to leave their cells and participate in activities in the unit from 6:00 a.m. to 9:45 p.m., except during counts.
- A basic leisure and law library are located within the unit. Additional materials may be accessed by using the electronic law library. A photocopier has been provided for inmate use at their expense.
- Inmates will be provided table games such as chess, checkers and cards. Hobby craft opportunities will also be provided.
- Earphones will be utilized when playing radios at all times. Radios may be played on the recreation yard, walkways during off duty hours, and in individual inmate cells. Alteration of a radio is not permitted and will be confiscated as contraband.
- Televisions are available in the unit for viewing. The recreational areas contain various recreation activities to include handball, basketball courts, sit up benches, stationary bikes, stair-stepping machines, and walking.
- (f) **Religious Services.** Religious service opportunities will be provided in the unit.
- (g) **Ice Machine:** An ice machine is provided. This area must be kept clean at all times. Water drainage lines must remain unclogged and will not be used to dispose

of food items. The ice machine may be turned off for an indeterminate amount of time if contraband is found in this area.

**(h) Commissary/Trust Fund Operations.** Commissary purchase forms will be issued on Tuesday of each week by unit management staff. After completion of the forms, they will be hand delivered by staff to the commissary for processing by COB Wednesday. The commissary items will be delivered to the unit and handed out by commissary staff on Thursday of each week. Any special purchases (personal radios, etc.) must be approved by unit management staff. Commissary items will be neatly stored in your assigned locker ONLY. Under no circumstances are commissary items to be stored on the floor. Items not contained in their original container are considered contraband and will be confiscated. Original containers are to be disposed of when empty and will not be used for other purposes.

**(i) Sanitation/Personal Hygiene.** I-Unit inmates are responsible for sanitation of their living areas. Unit orderly job assignments will be made by the unit staff. Clean, serviceable clothing will be issued to each inmate upon his arrival to the unit. Laundry service is available in the unit. I-Unit inmates are responsible for laundering their own personal clothing. Barber services for I-Unit will be conducted as needed, all inmates are required to make their beds, clean their rooms, empty their trash containers and turn off their lights prior to leaving for work, on a daily basis. Daily inspections will be made by unit staff for cleanliness and sanitation of the unit.

**(j) Indigent Inmates.** Hygiene items, which are supplied through the Laundry Department and issued by the unit team, are as follows:

- 1 Toothbrush (monthly)
- 1 Razor (weekly)
- 1 Comb (quarterly)
- 1 Bar Soap (weekly)
- 1 Tooth Powder (weekly)
- 1 Shave Cream (weekly)

Additional items may be purchased by the inmate from the institution commissary. Inmate showers are available. Staff will make regular rounds within the unit to assure proper sanitation is being maintained.

**(k) Work Assignments.** All work assignments will be made by the unit team.

V. **ADMINISTRATIVE REMEDY PROGRAM:** You may appeal your transfer to I-Unit or any conditions of your confinement, through the Bureau's Administrative Remedy Program, 28 C.F.R. 542.10 through 542.19, and Program Statement 1330.16. Unit staff will provide you with the necessary form upon request.

VI. **EFFECTIVE DATE:** This supplement is effective upon issuance.

## NOTICE TO INMATE OF TRANSFER TO COMMUNICATION MANAGEMENT UNIT

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Inmate Name (Last, First, Middle):	Register Number:
Warden (print and signature): Wendy J. Roal, Warden	Institution: USP Marion, Illinois

NOTICE: This notice informs you of your transfer to a Federal Bureau of Prisons (Bureau) facility that allows greater management of your communication with persons in the community through more effective monitoring of your telephone use, written correspondence, and visiting. Your communication by these methods may be limited as necessary to allow effective monitoring. Your general conditions of confinement in this unit may also be restricted as necessary to provide greater management of your communications. Your transfer to this unit, by itself, will have no effect on the length of your incarceration. You will continue to earn good-conduct sentence credit in accordance with Bureau policy.

Your transfer to this facility under these conditions is based on the following specific information:

**Based on this information, your transfer to this facility for greater communication management is necessary to the safe, secure, and orderly operation of Bureau institutions, or protection of the public. Your continued designation to this facility will be reviewed regularly by your Unit Team under circumstances providing you notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates.**

**OPPORTUNITY TO APPEAL TRANSFER DECISION** - You may appeal this transfer decision, or any conditions of your confinement, through the Bureau's Administrative Remedy Program, 28 C.F.R. §§ 542.10 through 542.19, and corresponding policy. A member of your unit team will provide you with the necessary form upon request.

**INSTRUCTIONS TO STAFF** - Provide the inmate a copy of this form and complete the following information documenting delivery.

Staff Member Name and Position (printed):	Staff Member (signature):	Date Issued:
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**ACKNOWLEDGMENT OF CONDITIONS FOR VISITING  
WITH INMATES IN THE COMMUNICATION MANAGEMENT UNIT  
USP MARION, ILLINOIS**

\_\_\_\_\_, \_\_\_\_\_, an inmate housed in the CMU  
(Inmate Name) (Reg. No.)

at the United States Penitentiary, Marion, Illinois, requests your name be placed on his approved visiting list.

As a condition of being placed on this inmate's approved visiting list, you agree to the following conditions:

1. All communication between you and the inmate will be subject to monitoring and recording by Bureau of Prisons' staff;
2. Your conversations with the inmate during the visit will occur in English-only, unless previously scheduled for, and conducted through, simultaneous translation monitoring; and
3. Monitored conversations where either party speaks in non-English will be immediately terminated by the staff monitor unless previously scheduled and conducted through simultaneous translation monitoring. In such cases, inmates may be subject to disciplinary action, and you may be removed from the inmate's approved visiting list.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name

# **EXHIBIT 3**

*YASSIN MUHIDDIN AREF, et al., vs.*

*ERIC HOLDER et al,*

---

*Confidential*

*DEPOSITION OF MICHAEL NALLEY*

*October 25, 2013*

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1 SIS.

2 Then I was sword commander. Got  
3 promoted to captain in Boron, California. Left  
4 Boron, California, went to Washington, D.C. as an  
5 examiner for the Bureau of Prisons, an auditor for  
6 security and safety correctional services department.  
7 I left that job as an examiner and went to the  
8 southeast regional office in Atlanta, Georgia as the  
9 assistant discipline hearing administrator/DHO,  
10 discipline hearing officer.

11 Left Atlanta, Georgia, went to senior  
12 captain at the Federal Medical Center in Lexington,  
13 Kentucky. Left that job and went to -- promoted to  
14 the national DHA, discipline hearing administrator  
15 for the Bureau of Prisons.

16 Then I left that job and went to  
17 associate warden in Butner, North Caroline at the  
18 medical center. Left Butner, North Carolina. Went  
19 to Terre Haute, Indiana USP as associate warden.  
20 After that I was promoted to warden at FCI Raybrook,  
21 New York.

22 After a warden at FCI Raybrook I went  
23 to senior warden, senior executive service warden at  
24 the United States penitentiary in McCreary, brand new  
25 activation. After that activation I was selected as

1 regional director for the Federal Bureau of Prisons  
2 in North Central Region. And I retired out of that  
3 position.

4 Q. Can you tell me the dates that you  
5 served as regional director?

6 A. October 2004 to September the 30th,  
7 2011.

8 Q. Congratulations on your retirement.

9 A. Thank you.

10 Q. What do you do now?

11 A. I'm the managing director for  
12 Corrections Corporation of America, Division One,  
13 which I'm over the marshal, ICE, and Bureau of  
14 Contract Prisons, private prisons. I work out of the  
15 Kansas City area.

16 Q. Let's turn to your years as a regional  
17 director of the BOP. Can you describe your  
18 responsibilities in that position?

19 A. I was responsible for the north  
20 central region, responsible for 20 to 22 Federal  
21 prisons. A budget of almost -- it fluctuated in that  
22 tenure from approximately \$700 million to  
23 \$900 million. I had approximately 6700 employees. I  
24 was responsible for the wardens. They were the  
25 direct report to myself.

1 way to get at it. Can you describe for me a  
2 circumstance under which these kinds of limitations  
3 would be appropriate?

4 MR. CARTIER: Objection, hypothetical,  
5 speculative. You can answer.

6 A. Can I describe to you -- I'm sorry.  
7 Can I describe to you when these would be -- when  
8 these limitations would be appropriate?

9 Q. (By Mr. Agathocleous) That's right.

10 A. I'm not there, the unit team operating  
11 the unit. So I'm just speculating. To manage their  
12 communication I would say, their written, their  
13 verbal, their correspondence, I would assume.

14 Q. Do you believe that there could be a  
15 circumstance in which it would be appropriate to  
16 limit a prisoner's communications to the limit as  
17 described in this rule?

18 A. In the Federal Bureau Prisons as a  
19 whole, or in the communications management unit?

20 Q. Either.

21 A. There are some inmates that could  
22 require closer management and monitor their  
23 communications.

24 Q. Can you think of a circumstance in  
25 which it would be appropriate to impose the

1 limitations described in this proposed rule on the  
2 entire CMU?

3 A. All three rules?

4 Q. Yes.

5 A. Let me look at it again.

6 Q. No problem.

7 A. (Examines document.) All three of  
8 them that I'm looking at, the written correspondence,  
9 the telephone communication, and the visiting are a  
10 management of their communication for their written  
11 correspondence, their telephone calls they are  
12 making, and their visiting. So all of them could be  
13 utilized for the management of the communication  
14 management unit for inmates residing in that unit.

15 Q. My question though is taken together  
16 do you think it would be appropriate to impose these  
17 particular limitations on the entire CMU?

18 MR. CARTIER: I object, incomplete  
19 hypothetical, speculative, and I think asked and  
20 answered. You can answer.

21 A. It's a communication management unit.  
22 And if these rules come out and these are the rules  
23 to be utilized to manage the unit, then we'll utilize  
24 these rules to manage the unit.

25 Q. (By Mr. Agathocleous) And do you

1 think that would be appropriate?

2 A. If they are approved and they are set  
3 forth then they will be appropriate.

4 Q. Thank you. What is your understanding  
5 of the phrase general population unit?

6 A. General population is a unit where you  
7 have access to visiting, the law library, the leisure  
8 library, programs, education, religious programs,  
9 food service, recreation, indoor and outdoor, based  
10 on the climate weather.

11 Q. I've seen the BOP describe the CMU as  
12 a self-contained general population unit. And I  
13 believe that's a phrase you used earlier this  
14 morning. What does that mean?

15 A. It's a general population unit that is  
16 self-contained. By that they don't have access  
17 outside of that unit to the rest of the population.  
18 It's limited entrance and exit procedures in and out  
19 of that unit. However, the unit is afforded -- that  
20 unit has recreation, it has indoor and outdoor  
21 recreation, it has food service, it has visiting. It  
22 has leisure area, TV area, law library, leisure  
23 library. Almost all to the best of my memory are  
24 housed alone. They are single cells, which if you  
25 have to be in prison to have your own cell is a good

1 Q. Do you know why these particular  
2 criteria were selected?

3 A. To manage the communication unit, to  
4 manage the inmates assigned to that unit.

5 Q. This is Exhibit 36. This is a  
6 document previously marked as Exhibit 36.

7 A. (Examines document.) Okay.

8 Q. Do you recognize this document?

9 A. It looks familiar. I've seen it  
10 before.

11 Q. Can you describe what it is, just in  
12 broad terms what this document actually is?

13 A. It speaks of the communication  
14 management unit located at the correctional complex  
15 there in Terre Haute, Indiana. It talks about the  
16 unit being established to house inmates based on  
17 conviction, offense conduct, verified information.  
18 It gives examples but it's not the total list of  
19 examples. It says it's not all inclusive. It says  
20 that it has the capacity to hold 90 inmates, but that  
21 would be if you double-bunked the 90, two to a cell.  
22 It talks about the programs, it talks about the  
23 recreation, religious, the incoming and outgoing  
24 correspondence, the telephone. It's a cursory  
25 overview of the procedures and process at the CMU.

1 Q. Do you know who authored this  
2 document?

3 A. I believe someone in CPD, Correctional  
4 Programs Division in Washington, D.C.

5 Q. When did you first see this document?

6 A. The best of my memory I would say  
7 somewhere in 2006.

8 Q. Does this document -- earlier you  
9 testified that there were some criteria that you used  
10 to make your decisions about CMU placement. Are  
11 these the criteria you were referring to?

12 A. This is the guidelines. The criteria  
13 -- depend on what you mean by criteria.

14 Q. Did you rely on this document to make  
15 your decisions?

16 A. I relied on this document and other  
17 documents in the packet to make the decision for the  
18 submittal.

19 Q. Do you mean other documents in the  
20 referral packet specific to a particular inmate?

21 A. Yes, sir, for the individual.

22 Q. But more broadly, when you were  
23 figuring out criteria to use for all of the referrals  
24 you were getting did you use this document to help  
25 you make those decisions?

1 A. Did I look at this for examples of the  
2 document that the inmates that I was looking at on an  
3 individual case were properly placed?

4 Q. That sounds about what I'm asking,  
5 yes.

6 A. Yes. This was part of it.

7 Q. Did you rely on any other documents  
8 that laid out broad criteria like this?

9 MR. CARTIER: Object. Vague as to  
10 time period.

11 A. I don't remember. This one here is  
12 very familiar.

13 Q. (By Mr. Agathocleous) We were talking  
14 about Exhibit 36, right?

15 A. Yes, sir, Exhibit 36.

16 Q. Let's take a look at this bullet point  
17 list that appears on this. Do you see the first  
18 bullet point mentions inmates who have been convicted  
19 of or associated with international or domestic  
20 terrorism. Can you explain what associated with  
21 terrorism means?

22 A. My opinion of associated? Affiliated,  
23 a member of.

24 Q. Does it mean in your mind actual  
25 direct or indirect connection to a terrorist?

1 my position as regional director given it to the  
2 deputy regional director to send out to the wardens  
3 who were responsible for placement, posting of the  
4 notice as requested by Mr. Dodrill.

5 Q. Do you know if this ultimately was  
6 posted at the CMUs?

7 A. I don't know.

8 Q. Has there been any further change to  
9 the criteria listed in paragraph 2 of this document,  
10 Exhibit 40, since this document was created?

11 A. I don't know.

12 MR. AGATHOCLEOUS: Let's take a  
13 one-minute break.

14 THE WITNESS: Can we take a few  
15 minutes?

16 MR. AGATHOCLEOUS: Sure thing.

17 (Recess.)

18 Q. (By Mr. Agathocleous) Let's continue.  
19 I want to talk now about the referral packets. Am I  
20 correct that a referral packet would come to the NCRO  
21 when a prisoner was nominated for CMU placement?

22 A. I received a referral packet after  
23 submission and reviewed by subject matter experts.

24 Q. Do you know what office actually put  
25 together those packets?

1 A. For the CMU inmates?

2 Q. Yes.

3 A. There's different roles played by  
4 different -- the involvement, you would have the  
5 correctional programs, correctional services,  
6 psychology would review it.

7 Q. But my question is who put them  
8 together.

9 A. It would probably be correctional  
10 programs and CTU together, or individually.

11 Q. What office or offices had considered  
12 the referral before it got to the NCRO?

13 MR. CARTIER: Objection, lack of  
14 foundation, calls for speculation to the extent it's  
15 asking about things you weren't involved in. But you  
16 can answer.

17 A. Who looked at them before I got them?  
18 Is that what you're saying?

19 Q. (By Mr. Agathocleous) Yes.

20 A. I don't know. I know what I reviewed  
21 in the documentation, what was before me. CTU was  
22 involved and correctional programs was involved.

23 Q. It's my understanding that the central  
24 office now reviews CMU referrals. Was that the case  
25 when you were regional director?

1 A. I relied on the entire packet. I read  
2 the entire packet. I had some of those packets for  
3 three or four or five days to digest them.

4 Q. Did you provide any guidance to your  
5 staff as to what to include in that narrative section  
6 on that form?

7 A. Guidance in what way?

8 Q. Did you explain to them, for example,  
9 the kinds of information you wanted to see summarized  
10 there?

11 A. If I didn't see something that I  
12 needed I would either go through the deputy or I  
13 would call that person and say you're missing this or  
14 you're missing that. What are you trying to say. I  
15 don't understand what you're trying to say. I would  
16 make a better informed decision.

17 Q. So that would be in response to  
18 something that already arrived on your desk?

19 A. That's correct.

20 Q. Did you have any conversations before  
21 this process started about this is the kind of thing  
22 I want to see in these forms?

23 A. I don't remember.

24 Q. What was the purpose of the other  
25 levels who reviewed that appears on those forms?

1 A. What was the purpose?

2 Q. Yes.

3 A. One was correctional programs. They  
4 reviewed it for programming. They reviewed the  
5 packet. The other one was correctional services,  
6 focused probably on safety, security review of the  
7 packet in its entirety. Mental health, look and see  
8 if there were any mental health issues. It's called  
9 the chief psychologist, I believe. The executive  
10 assistant review the packet as a whole. And the  
11 deputy reviewed the packet as a whole. And then I  
12 reviewed the packet from -- with all the  
13 documentation and material before I made a decision.

14 Q. But what was the purpose of having all  
15 these different levels of review?

16 A. To insure that the subject matter  
17 experts in those specific areas reviewed the contents  
18 of the material and then made their recommendation to  
19 myself.

20 Q. Did you give weight to any -- more or  
21 less weight to any particular professionals  
22 recommendations?

23 A. No.

24 Q. Did you ever consult with the CTU  
25 before making your decision?

1 where the CTU had recommended it?

2 A. Typically the information in there was  
3 what I needed to make the decision. But there may  
4 have been a couple times where I disagreed with them.

5 Q. How often would you say that happened?

6 A. I couldn't put a number on it. I do  
7 remember slightly that I may have disagreed with them  
8 on a couple.

9 Q. If you disagreed did the CTU ever  
10 object to your ultimate decision?

11 A. Object in what way?

12 Q. For example, was there any  
13 circumstance in which the CTU overrode your decision?

14 A. Not that I'm aware of.

15 Q. In your mind was there any  
16 circumstances in which the CTU was authorized to  
17 override your decision?

18 A. Authorized by who?

19 Q. I don't know. That's what I'm asking.

20 A. That's what I'm wondering. I'm trying  
21 to think who could authorize them to override my  
22 decision. I was the ultimate decision-maker for  
23 placement there.

24 Q. Do you ever recall a circumstance in  
25 which you decided not to assign a prisoner to the CMU

1 Q. Why not provide the prisoner with a  
2 copy of this before they arrive at the CMU?

3 A. That they were going to the CMU?

4 Q. Yes.

5 A. One thing it would be in my opinion it  
6 would be a security concern because they would know  
7 which CMU they were going to, Terre Haute or Marion.  
8 And they would have the availability, maybe the  
9 opportunity, maybe the wherewithal, maybe the funding  
10 to interfere with that transfer process. It would be  
11 a security concern if they knew they were going to  
12 Marion and someone was waiting on them, an  
13 opportunity could present itself to try to prevent  
14 that.

15 Q. Were CMU inmates given any documents  
16 other than this notice of transfer to explain why  
17 they had been designated to a CMU?

18 A. I don't know.

19 Q. Do you know if any documents from the  
20 referral packets that you reviewed were given to the  
21 inmates?

22 A. I don't know.

23 Q. Were CMU prisoners provided with a  
24 verbal explanation of why they had been sent to a  
25 CMU?

1 A. I'm not sure on a case-by-case basis.  
2 But if they asked I'm sure at the program review time  
3 with the unit team would tell them why they were  
4 there.

5 Q. Were the inmates told anything about  
6 who was involved in the decision-making process?

7 A. I don't know.

8 Q. I want to talk a little bit about  
9 designations to some of the other units we talked  
10 about earlier, namely ADX and the SMU. Am I correct  
11 in thinking that ADX and SMU use a sort of similar  
12 nomination and referral process to sort of pick which  
13 prisoners are going to be sent there?

14 A. I don't recall the criteria for the  
15 SMU.

16 Q. Less the criteria of the actual  
17 process?

18 A. I don't recall the -- I don't remember  
19 the process for the SMU. It came towards the end of  
20 my career. I honestly don't remember this.

21 Q. How about ADX?

22 A. I do remember the ADX process.  
23 Inmates who were placed in the ADX I approved the  
24 placement for the ADX. Once placed they were  
25 reviewed, their placement in the control unit.

1 A. They could send me marked sensitive,  
2 to whom it may concern, or regional director,  
3 sensitive information.

4 Q. The ways you just described that a  
5 prisoner could sort of reach out to you and request  
6 transfer out of the CMU, would that prompt a CMU  
7 referral form to be filled out?

8 A. If they requested it?

9 Q. Yes.

10 A. No.

11 Q. Was the central office involved in the  
12 process of considering a prisoner for transfer out of  
13 the CMU?

14 A. Who in central office?

15 Q. Anyone at all at the central office?

16 A. I don't remember.

17 Q. It's my understanding that the central  
18 office now does review CMU transfer requests that get  
19 to the CTU. So was that not the case when you were  
20 regional director?

21 A. Can you say that again? They are  
22 doing what now?

23 MR. AGATHOCLEOUS: Can you read back?

24 (Whereupon, the requested portion of  
25 the record was read by the reporter.)

1 six months?

2 A. Normal stay, initial stay six months,  
3 yes, sir.

4 Q. Does that mean that a CMU prisoner was  
5 considered for transfer after spending six months  
6 there?

7 A. Could be.

8 Q. Could be, or always was, or what  
9 circumstances?

10 A. Could be. They could be considered  
11 for transfer at any time.

12 Q. But as a matter of policy was a  
13 prisoner considered for transfer out after six  
14 months?

15 A. I'm not familiar with whether there's  
16 a policy that states that or not.

17 Q. How about as a matter of practice?

18 A. I don't recall. If you've got maybe a  
19 specific one we can take a look at, a particular  
20 packet or folder and see if it happened in six months  
21 that would help.

22 Q. What were you basing your testimony on  
23 when you indicated six months?

24 A. Normally they are there for 180 days.  
25 That's what I was basing it on.

1 A. No.

2 Q. Does that conflict with your  
3 understanding of what was happening?

4 A. I'm not aware of that statement you  
5 just made.

6 Q. I would like to mark the following  
7 document as Exhibit 118.

8 (Nalley Exhibit 118 was  
9 marked for identification.)

10 Q. (By Mr. Agathocleous) This is a  
11 program statement dated September 12th, 2006. And  
12 the subject of the program statement is inmate  
13 security designations and custody classification.  
14 Can you turn to the last page of that document of  
15 Exhibit 118? On the last page you'll see a section  
16 called nearer release transfers. In that section --  
17 take your time to review it. But it explains that a  
18 prisoner may be considered for a nearer release  
19 transfer after 18 months of clear conduct. Does that  
20 accurately describe to you the policy?

21 A. It states that they can, after  
22 inmates, may be, may, may be considered. Could be.

23 MR. AGATHOCLEOUS: Just to make it  
24 clear for the record, this is not a complete copy of  
25 the program statement. What I've done is included

1 the page about nearer transfer releases and then also  
2 the page of contents.

3 Q. (By Mr. Agathocleous) So was this  
4 type of transfer available to CMU prisoners?

5 A. I don't know.

6 Q. Do you believe that anyone was  
7 considering nearer release transfer requests from CMU  
8 prisoners?

9 A. Inmates in CMU were there for a  
10 purpose, to manage their communication. So the  
11 nearer release transfer, I don't know if it played a  
12 role in transferring them or considering them for  
13 transfer to nearer their release residence. I don't  
14 know.

15 Q. You don't know if this kind of release  
16 was available to a CMU prisoner, is that right?

17 A. I don't know.

18 Q. Do you remember ever considering a  
19 nearer release transfer request?

20 A. I don't remember.

21 Q. Do you believe that you had the  
22 authority to grant a nearer release transfer request  
23 for a CMU prisoner?

24 A. I don't know. I honestly don't know.

25 Q. As a general matter is this kind of

1 Q. Could someone at central office  
2 authorize the transfer?

3 A. It would go to the office of general  
4 counsel. If they felt that there was some  
5 information that would negate a transfer I'm sure an  
6 open discussion would take place and a decision would  
7 be made.

8 Q. Who would have the authority to make  
9 that decision?

10 A. The decision would come back to me,  
11 but recommended from them.

12 Q. Did the central office have the  
13 authority to instruct you to transfer someone out of  
14 the CMU even if you disagreed?

15 A. They could put it in -- they could  
16 grant the 11. They have the authority to grant the  
17 11.

18 Q. If they granted the 11 would that  
19 basically force your hand?

20 A. It would start a conversation, a  
21 discussion with them to make a determination whether  
22 that inmate was suited for transfer out of the CMU.

23 Q. If the central office granted the  
24 BP-11 would there be any circumstance in which you  
25 could refuse to transfer the prisoner out of the CMU?

1 A. That would be a case-by-case basis. I  
2 can't say that blanket across. I would have to look  
3 at it individually.

4 Q. Was there any policy about a  
5 circumstance in which the central office granted a  
6 transfer request but you disagreed with that?

7 A. Is there a policy?

8 Q. Yes.

9 A. I don't know.

10 Q. My understanding is that you did  
11 review such requests, is that correct?

12 A. What requests?

13 Q. Administrative remedy requests for  
14 transfer.

15 A. If I saw an administrative remedy and  
16 it came to me personally, and the request spoke of  
17 the transfer, and I reviewed it and I signed it, then  
18 I reviewed it.

19 Q. Did you ever grant a transfer out of  
20 the CMU based on administrative remedy request?

21 A. I don't remember.

22 Q. Did you ever consider doing so?

23 A. I don't remember that.

24 Q. When you received that kind of request  
25 through the administrative remedy program what would

1 Q. Would you have looked at any other  
2 documents beyond the referral packet?

3 A. No. If it was in the referral packet  
4 that's what I used to base my decision on.

5 Q. Did you conduct any independent  
6 investigation into Mr. Aref before reaching your  
7 decision?

8 A. I don't remember.

9 Q. What was the basis of your ultimate  
10 decision?

11 A. I approved him for the communication  
12 management unit based on his current offense as  
13 outlined here, his offense conduct, where it states  
14 here that he conspired, attempted to conspire use of  
15 weapons of mass destruction within the U.S., and  
16 conspiracy to provide material, support, resources to  
17 foreign terrorists.

18 The offense where involved Aref  
19 significant communication. Communication would be  
20 one of the key words for me for the communication  
21 management unit. His association and his assistance  
22 to Jaish-e-Mohammed, a foreign terrorist  
23 organization.

24 It states here he was also involved in  
25 a scheme to transport a SAM, a surface to air missile

1 to New York by use by terrorists. And he has been  
2 linked to individuals affiliated with Al-Qaeda.  
3 That's part of what I looked at.

4 Here, correctional program says  
5 recommended CMU based on communication with terrorist  
6 organization. The correctional services  
7 administrator concurs with the placement, and the  
8 others concur with the placement, the exec and the  
9 deputy.

10 Q. We've seen the phrase significant  
11 communication, association, and assistance to JeM on  
12 several of these documents. What do you understand  
13 significant communication to mean?

14 A. In my opinion he's communicating  
15 significantly with this terrorist organization. That  
16 means he has communication with them, he's linked to  
17 them by association, involvement, and he's provided  
18 assistance to them.

19 Q. So does significant communication  
20 imply either direct or indirect communication with  
21 someone in JeM?

22 A. I don't know. I would have to look at  
23 the packet to see exactly. Can I take a minute and  
24 look back here and see what they said?

25 Q. Sure.

1 A. I disagree with that.

2 Q. Can you say why?

3 A. Because in his mind from what I read  
4 from the PSR here, based on my sound correctional  
5 judgment, he thought it was the terrorist.

6 Q. Fair enough. But my question to you  
7 is in actuality Mr. Aref never had any contact with  
8 anyone in JeM, but he did have contact with someone  
9 who was pretending to be in JeM?

10 A. You could say that. But in actuality  
11 I believe that he believed from reading the PSR that  
12 he was in contact with someone from JeM, even though  
13 it was someone who was a confidential informant or  
14 confidential witness, whatever you want to call them.  
15 He thought in his mind from reading this here that  
16 they were JeM.

17 Q. I understand that. I'm asking you  
18 whether he actually was in touch with someone from  
19 JeM irrespective of what he thought?

20 A. I don't know. All I can see is what I  
21 see here. What I see is that he thought that the  
22 confidential -- do we call him informant or witness?

23 MR. CARTIER: CW.

24 A. Call him CW. He thought the CW was a  
25 member -- a terrorist member of the JeM, therefore he

1 thought he was dealing with the terrorists.

2 Q. (By Mr. Agathocleous) So is the  
3 statement that Mr. Aref's conduct included  
4 significant communication, association, and  
5 assistance to JeM accurate?

6 A. I believe it is.

7 Q. Why?

8 A. Because he thought in his mind that he  
9 was dealing with JeM. He thought it was a terrorist.  
10 He did not know that it was not a terrorist until the  
11 outcome of the sentencing and the conviction.

12 Q. So might a more accurate description  
13 be that Mr. Aref's offense involved the fact that he  
14 believed he was communicating, assisting, and  
15 associating with JeM?

16 A. No.

17 Q. Why not?

18 A. Because again -- I'll state it again.  
19 He thinks that he is dealing with a terrorist. If he  
20 thinks it and believes it then he is dealing with a  
21 terrorist. If he's not the real terrorist it's not  
22 mine to say.

23 Q. Is it your testimony that there is no  
24 difference between assisting an actual terrorist and  
25 assisting someone who you think is a terrorist?

1 A. If you think it's a terrorist, they  
2 act like a terrorist, you're dealing with them, then  
3 you're dealing with a terrorist.

4 Q. Even if that person is cooperating  
5 with the United States government?

6 A. How would you know that?

7 Q. The PSR.

8 A. How would Aref know that at the time  
9 he was doing it?

10 Q. I'm asking you what you knew.

11 A. I'm speculating. I'm not going to  
12 speculate on that answer. I'm going to tell you in  
13 my opinion that if Mr. Aref, from the documentation I  
14 reviewed, the PSR, it appears that he thinks that he  
15 is dealing with a terrorist.

16 Q. Then he actually is?

17 A. If he thinks he is dealing with a  
18 terrorist -- you would have to ask him.

19 Q. Let's go back to the CTU memo dated  
20 March 28th, 2007. On page 1 in the third paragraph  
21 the memo indicates that Mr. Aref's name and former  
22 telephone number were found in three different  
23 suspected Ansar-al-Islam camps in Iraq. Do you  
24 believe that's an accurate statement?

25 A. I have no reason to doubt it.

1 Q. Let me save us some time.

2 A. That's great.

3 Q. Is it your testimony that the phrase  
4 used in this notice of transfer could conceivably  
5 refer to the allegation that Mr. Aref's name and  
6 former telephone number were found in three different  
7 suspected Ansar-al-Islam camps in Iraq?

8 A. Let me take a moment here to take a  
9 look and see where they are listed at in this PSR to  
10 tie to help my memory.

11 MR. CARTIER: Let's go off the record.

12 (Recess.)

13 Q. (By Mr. Agathocleous) Let's back up.  
14 Is it fair to say that the description on the notice  
15 to inmate does refer to Mr. Aref's alleged  
16 communication, association, and assistance to JeM,  
17 but does not refer to the allegation that his name  
18 and telephone number were found in three  
19 Ansar-al-Islam camps in Iraq?

20 A. That's correct.

21 Q. Why was that information excluded from  
22 this notice?

23 A. In my opinion there's enough  
24 information in this notice to justify his placement  
25 in the communication management unit.

1 Q. Do you think it's important for a CMU  
2 prisoner to know all the reasons that he was  
3 transferred to the CMU?

4 A. I think they can ask and that they  
5 receive the ample notice. Do they not have a copy of  
6 this PSR, correct? I believe they get a copy of the  
7 PSR. And it outlines all the way through here, it  
8 talks about their current offense, their conviction,  
9 their conduct. So it's going to list in here about  
10 the phone numbers in these three camps in Iraq.

11 Q. But the PSR isn't going to tell you  
12 that these are the reasons that you were sent to a  
13 CMU, is it?

14 A. I think there's enough information in  
15 here to justify his transfer to the CMU unit for  
16 communication management based on his current offense  
17 of conviction.

18 Q. If Mr. Aref wanted to challenge his  
19 CMU transfer, how could he do that if he wasn't aware  
20 of all the reasons that that transfer was based on?

21 A. He could probably file for it under  
22 FOIA. He could probably -- administrative remedy.  
23 If he felt it wasn't detailed enough he could ask his  
24 unit team during their program review.

25 Q. Let's go back to the first part of

1           A.       I considered it at the time. But then  
2 on the 26th they come back -- they, CTU, with a memo  
3 that's not recommending or concurring with the  
4 recommendation.

5           Q.       So is it fair to say that your  
6 decision was based at least principally on the new  
7 information you learned from the CTU?

8           A.       If it's law enforcement sensitive  
9 information and they are recommending -- and I see  
10 that it is here, I can't see for sure because it's  
11 redacted, that I would have concurred with that  
12 recommendation and extended it for six months.

13          Q.       Was it based solely on that new  
14 information given that the CTU had originally  
15 recommended in favor of transfer?

16          A.       I'm not sure.

17          Q.       Take a look at the paragraph on the  
18 CMU referral form dated 11/3/2010, the comments from  
19 the correctional programs. If you look six lines  
20 down there's a sentence there that says Aref was in  
21 constant contact with known terrorist sympathies, and  
22 his phone number was found in three different  
23 suspected Ansar-al-Islam camps in Iraq. Did you  
24 believe that statement was accurate?

25          A.       I look at all of the statements from

1 correctional programs, the administrator, psychology,  
2 all the subject matter experts. I can consider them  
3 individually or collectively. And I don't remember  
4 if I relied on that statement when making that  
5 decision. I would have. Part of my decision would  
6 have been based on new law enforcement sensitive  
7 information.

8 Q. What's your understanding of the  
9 phrase Aref was in constant contact with known  
10 terrorists. It says sympathies. I think it means  
11 sympathizers. But what's your understanding of  
12 constant contact?

13 A. I didn't write it. So I don't know  
14 what he meant by that.

15 Q. As you read that what's your  
16 understanding of it?

17 A. It would be up to the interpretation  
18 of the individual reading it. Constant. What does  
19 constant mean? Daily? Weekly? Hourly? Monthly?  
20 Yearly? Regularly?

21 Q. Now you're deposing yourself. Can you  
22 answer that question that you just posed?

23 A. It depends. I would have to go back  
24 through and read the entire PSR again and look and  
25 see what kind of contact he had, and make notes and

1 McGowan remains of interest to law enforcement  
2 agencies due to his strong ties to individuals in  
3 groups associated with domestic terrorism, anarchism,  
4 and other anti-government actions and activities.  
5 And there is a law enforcement interest that's been  
6 redacted there that's sensitive.

7 Q. Are you saying the contents of that  
8 one paragraph that you just read from were the sole  
9 basis for your decision that Mr. McGowan should  
10 remain --

11 A. As I review it today and to the best  
12 of my memory, I would have denied it based on the law  
13 enforcement sensitive information.

14 Q. Okay. Can you turn back to the CMU  
15 referral form dated March 24th, 2010?

16 A. Back in?

17 Q. Forward. The next page. Take a look  
18 at the correctional program summary at the top of the  
19 CMU referral form. A portion of that refers to the  
20 paragraph you just indicated in the CTU memo, but  
21 there's a whole lot of other information in that  
22 comments section. Did you base your decision on any  
23 of that other information on this form?

24 A. Let me read it. (Examines document.)  
25 When I read this in here it says that McGowan

1 continues to correspond with numerous associates of  
2 these groups, including those who are subject to  
3 local state and federal investigations, as well as  
4 criminal charges. He continues to provide guidance,  
5 leadership, direction, activities, etcetera, all way  
6 through here. His correspondence has been rejected  
7 based on advocating criminal activity. He's still  
8 maintaining ties with them, communicating is what  
9 this tells me. Then the law enforcement sensitive.

10 Q. So those were all the reasons you  
11 relied upon?

12 A. Some of them. May not be all of them.

13 Q. Let's look at those then. Let's start  
14 with the language you read that indicates that  
15 Mr. McGowan continues to correspond with numerous  
16 associates of these groups. Did you look into the  
17 contents of that correspondence?

18 A. I could have. If it's documented in  
19 this packet, if it's in here.

20 MR. CARTIER: The clarification is  
21 what you remember.

22 A. I don't remember.

23 Q. (By Mr. Agathocleous) As I indicated  
24 earlier, these attorneys have indicated that these  
25 are the materials that you had when you considered

1 the CMU referral. Are the contents of that  
2 correspondence included in these materials?

3 A. I don't know. I would have to go back  
4 and read and look for it, research it.

5 Q. Does it matter what the content of the  
6 correspondence was, or was it just the fact that  
7 McGowan was corresponding with associates of these  
8 groups?

9 A. He in the past communicated in code.  
10 So I wouldn't know if he was continuing to continue  
11 in code. It's listed that he had coded communication  
12 on his PSR. It's listed here in the comments. So  
13 his correspondence could be communicating in code  
14 again. In my opinion, my sound correctional  
15 judgment.

16 Q. Does it matter if he did or did not  
17 communicate in code, or just that he could have been?

18 A. I don't know if he did communicate in  
19 code. I'm not an expert in code communication.

20 Q. In that phrase it says he continues to  
21 correspond with numerous sorts of these groups. What  
22 does these groups refer to?

23 A. These groups, ALF, ELF, using coded  
24 communications, the Earth Liberation Front of  
25 America, Animal Liberation Front.

1 Q. On the actual referral form?

2 A. I can't remember.

3 Q. Did you ever write down the reasons  
4 that you based your decisions on?

5 A. For the placement?

6 Q. Correct.

7 A. On the referral sheet?

8 Q. Or anywhere?

9 A. No. Whatever is on the sheet is what  
10 it is. I didn't write it outside.

11 Q. Is there any way sitting here today  
12 that we can determine what reasons you relied on to  
13 make your decision?

14 A. I made my decision based on the  
15 documentation, the PSR, the offense, the conduct of  
16 the offense, good sound correctional judgment being  
17 the regional director, managing the communication  
18 management unit, understanding the limited capacity,  
19 understanding that the inmates assigned to that unit  
20 were going to have their communication managed.

21 Q. But specific to an individual inmate  
22 is there any way for us to know as we sit here today  
23 the specific reasons you decided to rely on in making  
24 your decision?

25 A. I thought you asked me that throughout

1 the entire deposition on why I made that decision.

2 Q. I'm not asking you the reasons why you  
3 made the decision. I heard you respond to my  
4 adversary's question saying that relying upon it  
5 doesn't necessarily mean you agreed with it?

6 A. That's correct.

7 Q. You made your own independent judgment  
8 based on your own professional judgment?

9 A. Correct. But I also utilized the  
10 criteria for the placement in there that's outlined  
11 in the 2006 Word Perfect documentation from John  
12 Vanyur, and probably followed up with a similar one  
13 in 2009 documentation.

14 Q. Let's say a particular inmate you were  
15 given ten different reasons why they might be sent to  
16 the CMU, but you only thought two of them were  
17 relevant. Did you document those two reasons that  
18 you used to make your decision anywhere at all?

19 A. No.

20 MR. CARTIER: I have a couple more  
21 questions.

22 EXAMINATION

23 BY MR. CARTIER:

24 Q. Alexis just asked you essentially how  
25 can we know what your reasons were for making your

1 decisions with respect to CMU placement. And we've  
2 spent today, among other things, asking you what your  
3 reasons were for placing Yassin Aref, Kifah Jayyousi  
4 and Daniel McGowan into the CMU. In your view is  
5 that the appropriate way to learn what your reasons  
6 were for placing those individuals in the CMU?

7 A. From your questions today?

8 Q. Yes.

9 A. Yes.

10 MR. CARTIER: Done.

11 MR. AGATHOCLEOUS: I'm done.

12 (Deposition concluded at 4:34 p.m.)  
13  
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# **EXHIBIT 4**



# Program Statement

OPI: CPD/CPB  
NUMBER: P5264.08  
DATE: 1/24/2008  
SUBJECT: Inmate Telephone  
Regulations

"CORRECTED COPY 2/11/2008"

**Boxed Bold - Federal Regulation**

Regular Type - Implementing Information

## 1. PURPOSE AND SCOPE

### § 540.100 Purpose and Scope.

a. The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. However, limitations and conditions may be imposed upon an inmate's telephone privileges to ensure that these are consistent with other aspects of the Bureau's correctional management responsibilities. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).

This Program Statement provides national policy and procedure regarding inmate telephone privileges within Bureau of Prisons (BOP) institutions and contract facilities.

Maintaining pro-social/legal contact with family and community ties is a valuable tool in the overall correctional process. With this objective in mind, the Bureau provides inmates with several means of maintaining such contacts. Primary among these

is written correspondence, supplemented by telephone and visiting privileges.

Although there is no constitutional right for inmates to have unrestricted telephone communication, particularly when alternate methods of communication are readily available, the Bureau provides inmates with telephone access consistent with sound correctional management.

2. **SUMMARY OF CHANGES.** This Program Statement incorporates the following changes:

- # References to the Washington v. Reno settlement agreement have been deleted;
- # The provision allowing a special extended time frame of 120 days for inmates to file Administrative Remedies related to the telephone charges or credits has been deleted;
- # The number of times inmates are allowed to submit proposed changes to their telephone list has been changed from three times per month to once per calendar month; and,
- # The requirement that staff forward copies of Institution Supplements to the Central Office, Office of the General Counsel, Litigation Branch has been deleted.
- # Adds guidance for inmate use of non-ITS telephones.
- # Removes the language requiring Unit staff to approve inmates telephone number request form.
- # Provides guidance for inmates administering their own phone lists via TRULINCS.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. All inmates will be afforded the opportunity to maintain family and community contact via the telephone consistent with institution and community safety;

b. Inmates will be responsible for the expense of telephone use; and,

c. All institutions will establish monitoring procedures to preserve the institution's security, orderly management and safety of the community.

**4. DIRECTIVES AFFECTED**

**a. Directive Rescinded**

P5264.07 Telephone Regulations for Inmates (1/31/02)

**b. Directives Referenced**

P1315.07 Inmate Legal Activities (11/5/99)  
P1330.16 Administrative Remedy Program (12/31/07)  
P1480.05 News Media Contacts (9/21/00)  
P4500.05 Trust Fund/Deposit Fund Manual (1/22/07)  
P5100.08 Security Designation and Custody Classification Manual (9/12/06) P5265.11 Correspondence (7/9/99)  
P5267.08 Visiting Regulations (5/11/06)  
P5270.07 Inmate Discipline and Special Housing Units (12/29/87)  
P5360.09 Religious Beliefs and Practices (12/31/04)  
P5380.08 Inmate Financial Responsibility Program (8/15/05)  
P7331.04 Pretrial Inmates (1/31/03)

c. Rules cited and/or referenced in this Program Statement are contained in 28 CFR part 540, subparts A-B, D, E, and I; 28 CFR part 541, subparts A-B; 28 CFR part 542, subpart B; 28 CFR part 543, subpart B, 28 CFR part 545, subpart B, 28 CFR part 548, and 28 CFR part 551, subpart J.

**5. STANDARDS REFERENCED**

a. American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4497, 4-4271, 4-4272, and 4-4273

b. American Correctional Association 4th Edition Standards for Adult Local Detention Facilities: 4-ALDF-6A-02, 4-ALDF-6A-05, 4-ALDF-2A-65, 4-ALDF-2A-66, 4-ALDF-5B-11, and 4-ALDF-5B-12

c. American Correctional Association 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-5D-01

**6. INSTITUTION SUPPLEMENT.** A local Institution Supplement is required and must include the following information:

- a. The maximum length of telephone calls, ordinarily 15 minutes;
- b. The minimum time frames between completed calls and the maximum number of incomplete call attempts per day;
- c. Telephone access procedures for inmates on "days off" or "evening shift," workers;
- d. Establish procedures for those inmates who exhaust the 300 minutes per calendar month limitation to receive additional minutes for good cause;
- e. Establish procedures when a staff assisted call may be made for good cause, including procedures for Pretrial and Holdover inmates.

The institution will involve the Regional Correctional Programs Administrator in developing the Institution Supplement.

**7. PRETRIAL, HOLDOVER, AND/OR DETAINEE PROCEDURES.** The procedures contained in this Program Statement apply only to institutions where individual Phone Access Codes (PAC) are utilized.

a. **Pretrial Inmates.** The Public Safety Factor (PSF) Serious Telephone Abuse applies to sentenced inmates and therefore, does not apply to pretrial inmates. However, if institution staff receive information about a pretrial inmate that may jeopardize the security and safety of the institution or community, staff will follow the procedures outlined in Section 13 of this Program Statement.

b. **Holdover Inmates.** Inmates with the PSF Serious Telephone Abuse will not be permitted access to the Inmate Telephone System (ITS), except as provided in § 540.101(e) or § 540.105<sup>©</sup>.

c. **Detainee Inmates.** A detainee of the Immigration and Customs Enforcement (ICE), denoted by the Admission/Release Status (ARS) code of A-INS, who has completed a federal sentence, may have a PSF of Serious Telephone Abuse. The detainee will not be permitted access to ITS, except as provided in § 540.101(e) or § 540.105(c). If institution staff receive information about an immigration detainee that may jeopardize the security and safety of the institution or community, staff will follow the procedures outlined in Section 13 of this Program Statement.

8. **PROCEDURES.** The Bureau's Inmate Telephone System is a calling system that is available in all institutions operated by the BOP.

To ensure the safety and security of the institution and community, inmates must place all personal telephone calls through the ITS and must not circumvent it via call forwarding, including automatic electronic forwarding or any similar telephone function. Additionally toll-free or credit card calls are not authorized, examples include telephone calls to 1-800, 1-888, 1-877, 1-866, 1-900, 1-976, or to credit card access numbers.

a. **Warden's Authority.**

b. **Except as provided in this rule, the Warden shall permit an inmate who has not been restricted from telephone use as the result of a specific institutional disciplinary sanction to make at least one telephone call each month.**

Wardens are responsible for implementing and maintaining an inmate telephone program within their institution. In establishing an institution telephone program, Wardens should consider such variables as the size and complexity of the institution. The Warden has the authority to restrict or suspend temporarily an inmate's regular telephone privilege when there is reasonable suspicion that the inmate has acted in a way that would indicate a threat to the institution's good order or security. Wardens may restrict telephone privileges only in accordance with Section 13 of this Program Statement.

Reasonable suspicion exists when facts and circumstances indicate that the inmate is engaged in, or attempting to engage in, criminal or other prohibited behavior using the telephone. The Warden has the authority to restrict or suspend temporarily an inmate's regular telephone privilege when there is a reasonable suspicion that the inmate has acted in a way that threatens the safety, security, or good order of the institution, or the protection of the public. Reasonable suspicion may be based on reliable, confidential information gathered through intelligence that identifies the inmate in question. In determining reasonable suspicion, the available information should reasonably lead a person with correctional experience to suspect the inmate is engaged in criminal or other prohibited behavior using the telephone system.

b. **Telephone List Preparation and Submission.**

§ 540.101. Procedures.

a. Telephone List Preparation. An inmate telephone call shall ordinarily be made to a number identified on the inmate's official telephone list. This list ordinarily may contain up to 30 numbers. The Associate Warden may authorize the placement of additional numbers on an inmate's telephone list based on the inmate's individual situation, e.g., size of family.

(1) During the admission and orientation process, an inmate who chooses to have telephone privileges shall prepare a proposed telephone list. At the time of submission, the inmate shall acknowledge that, to the best of the inmate's knowledge, the person or persons on the list are agreeable to receiving the inmate's telephone call and that the proposed calls are to be made for a purpose allowable under Bureau policy or institution guidelines.

(2) Except as provided in paragraph (a)(3) of this section, telephone numbers requested by an inmate ordinarily will be placed on the inmate's telephone list. When an inmate requests the placement of numbers for persons other than for immediate family or those persons already approved for the inmate's visiting list, staff ordinarily will notify those persons in writing that their numbers have been placed on the inmate's telephone list. The notice advises the recipient that the recipient's number will be removed from the list if the recipient makes a written request to the institution, or upon the written request of the inmate, or as provided in paragraph (a)(3) of this section.

(3) The Associate Warden may deny placement of a telephone number on an inmate's telephone list if the Associate Warden determines that there is a threat to institution security or good order, or a threat to the public. Any disapproval must be documented in writing to both the inmate and the proposed recipient. As with concerns about any correctional issue, including any portion of these telephone regulations, an inmate may appeal the denial through the administrative remedy procedure (see 28 CFR part 542). The Associate Warden will notify the denied recipient that he or she may appeal the denial by writing to the Warden within 15 days of the receipt of the denial.

Inmates with access to TRULINCS workstations which provide access to telephone list updates shall generate and maintain their lists using TRULINCS. These inmates will not be required to submit a Telephone Number request form (BP-505). All other inmates shall follow the process below.

An inmate who wishes to have telephone privileges must submit a Telephone Number Request form (BP-505) to unit staff. Their telephone list ordinarily may contain up to 30 telephone numbers.

Inmates may submit telephone numbers for any person they choose, including numbers for courts, elected officials and members of the news media. Attorneys may be included on an inmate's telephone list with the understanding that such calls are subject to monitoring.

Unit staff shall sign the Telephone Number Request form verifying the identity of the inmate that has hand delivered the form to the staff member. Once an inmate submits a list, it will be processed within seven calendar days.

Once unit staff sign the BP-505, it must be forwarded to ITS staff in a secure manner and within the time frames established by this Program Statement. At no time will the BP-505 be returned to the inmate or handled by another inmate.

This time frame may be extended if the total number of changes is so large that unit staff or ITS staff cannot process them and still perform their normal duties.

**c. Telephone List Modifications.**

**b. Telephone List Update. Each Warden shall establish procedures to allow an inmate the opportunity to submit telephone list changes on at least a quarterly basis.**

An inmate may submit proposed changes to his or her telephone list once per calendar month, unless staff determine that the inmate has a demonstrated need for more prompt communication.

In determining if a more frequent change is to be permitted due to a demonstrated need for prompt communication, staff must rely on their professional judgment and evaluate each request on a case-by-case basis.

Placing additional numbers (above 30) on an inmate's telephone list is within the Associate Warden's discretion. While 30 numbers should meet the need of most inmates, there may be isolated situations when additional numbers may be warranted.

For example, an inmate who has a large family may wish to place additional family members on the telephone list. Additional numbers may also be warranted for an inmate who wishes to place both work and home telephone numbers for his or her spouse and children.

**c. Telephone Access Codes. An inmate may not possess another inmate's telephone access code number. An inmate may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff.**

**d. Call Blocking.** The Associate Warden has authority to block a number on an inmate account in a case-by-case determination. In such cases, the Associate Warden or designee must notify the inmate of an administrative block, ordinarily within five calendar days following the denial or removal of the number.

For security reasons, the Associate Warden also has the authority to block telephone numbers from being called by all inmates at their institution. Examples of numbers blocked institution wide include, but are not limited to gambling lines, etc.

Requests for BOP-wide blocking of telephone numbers shall be approved by the Chief, Intelligence Section or his/her designee.

Telephone numbers for Victims and Witnesses (as defined in 28 C.F.R. § 151-151 a. & b.) that have requested notification regarding an inmate at a Bureau facility will be blocked at the facility where the inmate is housed.

**e. Call Blocking by Recipient.** In ITS, the call recipient has the capability through his or her home telephone to deny and/or block further telephone calls from the inmate. A voice prompt will direct the called party through the process. This capability is available for direct-dial and collect calls from an inmate.

Once the recipient blocks a telephone number, the recipient can unblock the number only when he or she sends a written request for reinstatement. To ensure the called party's identity, the request for reinstatement must include a copy of a recent telephone bill. Trust Fund staff will process this request expeditiously.

In the event that staff receive a telephonic request from a call recipient to have his/her telephone number blocked from an inmate's telephone list, unit staff may request that the ITS

technician place a temporary suspension, not to exceed 20 calendar days, on an inmate calling that specific telephone number. Unit staff should take reasonable steps to verify the identity of the person making the request (e.g., by calling the number to be blocked). The call recipient should be informed that the blocking of the number is temporary, and that he or she must submit a prompt written request to make it permanent.

Copies of written documentation, blocking or unblocking a telephone number (at the recipient's request or the Associate Warden's discretion) must be forwarded to Trust Fund staff in the Financial Management office.

**f. Limitations on Inmate Telephone Calls.**

**d. Placement and Duration of Telephone Call.** The placement and duration of any telephone call is subject to availability of inmate funds. Ordinarily, an inmate who has sufficient funds is allowed at least three minutes for a telephone call. The Warden may limit the maximum length of telephone calling based on the situation at that institution (e.g., institution population or usage demand).

**e. Exception.** The Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates who are new arrivals to the institution, including new commitments and transfers; inmates confined at Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers; pretrial inmates; inmates in holdover status; inmates who are without funds (see § 540.105(b)); and in cases of family emergencies.

The Warden will establish the maximum length of telephone calls, ordinarily 15 minutes. A warning tone ordinarily will be provided approximately one minute before the call is disconnected. This applies to both debit and collect telephone calls. The Warden determines the interval waiting period between completed telephone calls.

Inmates with ITS accounts are limited to 300 minutes per calendar month. This applies to all inmates with an ITS account in Bureau institutions, and may be used for any combination of collect or direct-dial calls at the inmate's discretion. Ordinarily, the inmates will be allowed an extra 100 minutes per month in November and December.

Inmates who exhaust their 300 minute limitation may be provided additional minutes, at the Warden's discretion, for good cause.

The 300 minutes per calendar month limitation does not apply to an inmate's ability to place unmonitored legal telephone calls.

g. **Hours of Telephone Operation.** The hours of telephone operation begin at 6:00 AM and end no later than 11:30 PM. Inmate telephones will not be available from at least 11:30 PM to 6:00 AM. Inmate access to telephones will normally be limited during the following times, Monday through Friday, not including holidays:

7:30 am until 10:30 am; and,  
12:30 pm until after 4:00 pm count.

Inmates are expected to be at their work assignments and must not use the telephone during their work hours. For inmates who work varied work shifts, at local discretion, institutions may leave one telephone per unit available for inmates on "days off," or "evening shift" such as food service workers, UNICOR workers, etc. Staff are encouraged to take disciplinary action if an inmate leaves his or her work assignment to place a telephone call(s) without the appropriate institution staff member's prior approval.

These restrictions should not be imposed in Pretrial/Holdover institutions or Pretrial/Holdover Units where inmates are not required to work and generally have more need for telephone access during the day to prepare for trial.

h. **Complaints.** As with any complaint regarding any correctional issue, an inmate may use procedures outlined in the Program Statement on the Administrative Remedy Program to resolve disputes concerning their telephone privileges, e.g. lists, access, accounts, and services.

9. **MONITORING OF INMATE TELEPHONE CALLS.**

**§ 540.102 Monitoring of Inmate Telephone Calls.**

The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

As part of the admission and orientation process, inmates will be advised of the procedures for placing monitored and unmonitored telephone calls.

The notification to inmates will be documented on the Acknowledgment of Inmate form (BP-408) and then filed in the inmate Central File.

In addition, a notice will be placed, in both Spanish and English, at all monitored telephone locations within the institution advising the user that all conversations from that telephone are subject to monitoring and that using the telephone constitutes consent to this monitoring. A notice will advise inmates to contact their unit team to request an unmonitored attorney telephone call. The SIS must ensure that the notice(s) is placed at all monitored telephone locations within the institution.

Requests for information (e.g., subpoenas) on monitored calls should be processed in accordance with the Program Statement Recorded Inmate Telephone Conversations, Requests for Production. The Bureau does not allow inmates to send or receive facsimile communications.

**10. INMATE TELEPHONE CALLS TO ATTORNEYS.**

**§ 540.103 Inmate Telephone Calls to Attorneys.**

**The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.**

The Bureau provides each inmate with several methods to maintain confidential contact with his or her attorney. For example:

- # inmate-attorney correspondence is covered under the special mail provisions;
- # private inmate-attorney visits are provided; and,
- # the inmate is afforded the opportunity to place an occasional unmonitored call to his or her attorney.

Based on these provisions, frequent confidential inmate-attorney calls should be allowed only when an inmate demonstrates that communication with his or her attorney by other means is not adequate. For example, when the inmate or the inmate's attorney can demonstrate an imminent court deadline (see the Program Statements Inmate Correspondence or Inmate Legal Activities).

Staff are to make reasonable efforts to verify unmonitored calls placed on an inmate's behalf are to an attorney's office. Inmates are responsible for the expense of unmonitored attorney telephone calls. When possible, it is preferred that inmates place unmonitored legal calls collect. Third-party or three-way calls are not authorized.

11. **INMATE USE OF NON-ITS TELEPHONES (Non-attorney calls).** On rare occasion, during times of crisis, staff designated by the Warden may find the need to allow inmates to place telephone calls outside the Inmate Telephone System. These calls should be placed on telephones that are set to record the conversation and shall follow the guidelines detailed below.

**a. Additional monitored non-ITS telephones must be operated as follows:**

(1) Inmates using the telephones must have read and signed the Acknowledgment of Inmate form (BP-408) indicating their understanding that telephone calls on that device are subject to monitoring;

(2) A notice must be placed, in both English and Spanish, above or near the telephone indicating that all calls are subject to monitoring, and that using the telephone constitutes consent to such monitoring. The notice should also indicate that the telephone is for inmate use only. Staff are not permitted to use the telephone because staff telephone calls may not be monitored;

(3) The telephone must be placed in a secure area (e.g., a locked office);

(4) The telephone must be set to record telephone calls;

(5) Staff coordinating the call shall notify the SIS staff in writing via email that telephone call was placed and shall include the following; and

# The date/time, telephone number, and name of the person being called

# The name and register number of the inmate placing the call

# A brief reason for the call.

(6) SIS staff shall be responsible for inputting this data into the recording system to ensure the call recording can identify the inmate on the telephone. This data must be entered within seven calendar days.

**b. Institutional Authorization Procedures for Additional Monitored Non-ITS Telephones (Non-ITS)**

PS 5360, expressly provides for an additional monitored inmate telephone located in the Chapel area. As such, the procedures in this document for authorizing that single telephone do not apply. These procedures apply, rather, to additional monitored inmate telephones beyond the single additional telephone permitted by the religious policy (e.g., telephones located in the Lieutenant's office, the Unit Team office).

The following procedures must be followed when requesting additional monitored inmate telephones:

(1) The Warden shall send a request to the Regional Director for consideration and identify the extraordinary reasons justifying the need for additional telephones; and

(2) If approved by the Regional Director, written notification of approval shall be provided to the Warden and the Administration Division's Trust Fund Branch (TFB) staff for processing.

**12. RESPONSIBILITY FOR INMATE MISUSE OF TELEPHONES.**

**§ 540.104 Responsibility for inmate misuse of telephones.**

**The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See part 541, subpart B)**

Inmates violating this policy may be subject to disciplinary action pursuant to 28 CFR part 541, subpart B, and the policy on Inmate Discipline.

**§540.105 Expenses of Inmate Telephone Use.**

a. An inmate is responsible for the expenses of inmate telephone use. Such expenses may include a fee for replacement of an inmate's telephone access code that is used in an institution which has implemented debit billing for inmate calls. Each inmate is responsible for staying aware of his or her account balance through the automated process provided by the system. Third party billing and electronic transfer of a call to a third party are prohibited.

b. The Warden shall provide at least one collect call each month for an inmate who is without funds. An inmate without funds is defined as an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days. The Warden may increase the number of collect calls based upon local institution conditions (e.g., institution population, staff resources, and usage demand). To prevent abuses of this provision (e.g., inmate shows a pattern of depleting his or her commissary funds prior to placing collect calls), the Warden may impose restrictions on the provisions of this paragraph b.

c. The Warden may direct the government to bear the expense of inmate telephone use or allow a call to be made collect under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.

13. **TELEPHONE RESTRICTIONS IMPOSED BY THE WARDEN.** Inmates may be subject to telephone restrictions imposed by the Warden to protect the safety, security, and good order of the institution, as well as to protect the public. Telephone restrictions imposed under the authority of this section are separate and apart from telephone restrictions imposed by the UDC or DHO following formal and completed inmate discipline proceedings.

Inmates with telephone restrictions are still entitled to place at least one telephone call per month, unless also under a sanction of telephone restriction the UDC or DHO imposed.

a. **Authorized Circumstances.** Inmates may be subject to telephone restrictions under this section in the following two circumstances:

(1) Public Safety Factor (PSF). An inmate whose current offense, prior history, or threat characteristics indicate a propensity to abuse telephone privileges will be assigned the PSF - Serious Telephone Abuse. If an inmate is assigned the PSF for Serious Telephone Abuse (see the Security Designation and Custody Classification Manual), a telephone restriction is authorized. Telephone restrictions imposed under these circumstances are discretionary and necessary to ensure the institution's safety, security, good order and/or to protect the public. When deemed necessary, the inmate's Unit Manager will ordinarily recommend this type of restriction to the Warden for final decision making.

Upon his/her initial commitment or redesignation, an inmate with a PSF for Serious Telephone Abuse will not be authorized use of the ITS until classified by the unit team. Inmates identified at their initial classification as requiring telephone restrictions will not be permitted access to the ITS until after the final review by the Warden.

(2) Pending Investigation or Disciplinary Action for Possible Telephone Abuse. If an inmate is pending an investigation or disciplinary action for possible telephone abuse, a partial or total telephone restriction is authorized. Telephone restrictions imposed under these circumstances are discretionary and necessary to ensure the institution's safety, security, or good order, and/or to protect the public. When deemed necessary, the Special Investigative Supervisor's office will ordinarily recommend this type of restriction. Any telephone restriction recommended by the SIS office may only be imposed with the Warden's approval, in accordance with the procedures outlined in this section.

**b. Procedures for Imposing or Removing Telephone Restrictions.** The following procedures must be followed when imposing, removing, or renewing, a telephone restriction under this section:

(1) The appropriate staff member recommends a telephone restriction to the Warden by completing the Request for Telephone Restriction form (BP-740.052). The recommending staff member should describe briefly the reason for recommending a telephone restriction, as well as the extent of the proposed restriction.

For example, staff may recommend reducing an inmate's telephone use to 100 minutes per month rather than a total restriction, if such a restriction would sufficiently protect the safety, security, or good order of the institution, or protect the public;

(2) The Warden will review the recommendation and either approve, modify, or deny the restriction. If the Warden approves a restriction, such decision must be based on the conclusion that it is necessary to protect the institution's safety, security, or good order, or to protect the public;

(3) If the Warden approves a telephone restriction, a copy of the completed form should be provided to the inmate, the Trust Fund Office, and placed in Section 3 of the inmate's Central File;

(4) Telephone restrictions imposed by the Warden due to a PSF for Serious Telephone Abuse must be reviewed at least every six months, ordinarily in conjunction with the inmate's Program Review, to determine if the restriction should continue or be modified. A decision to continue a current telephone restriction imposed under this section requires no further action, but must be documented in the Program Review Report.

Any proposed change to a current telephone restriction must be made according to these procedures, and requires the Warden's approval. If appropriate, an inmate's telephone privileges can be gradually restored, based on demonstrated responsibility documented by the inmate's Unit Team or other staff;

(5) Telephone restrictions imposed pending an investigation or pending disciplinary action for possible telephone abuse are limited to a period of 30 days. If an additional 30 day period is required to complete either the investigation or disciplinary process, the Warden must re-authorize the restriction using these procedures. Specifically, the Warden's approval must be obtained on another Request for Telephone Restriction form (BP-740.052). Unless re-authorized in this manner, Trust Fund staff will obtain the Warden's approval for reinstatement or continued restrictions every 30 days.

Each subsequent restriction period is limited to 30 days. Staff should make every effort to complete investigations and disciplinary proceedings for possible telephone abuse within the first 30 day period of the telephone restriction;

(6) Inmates with telephone restrictions under this section are still entitled to place at least one telephone call per month, unless also under a sanction of telephone restriction the UDC or DHO imposed following formal, and completed, inmate discipline proceedings. Ordinarily, such telephone calls are placed through the inmate telephone system, not by staff; and,

# **EXHIBIT 5**



U. S. Department of Justice

Federal Bureau of Prisons

USP Marion

## INSTITUTION SUPPLEMENT

OPI: Correctional Services

NUMBER: 5267.08C

DATE: April 9, 2010

## Visiting Regulations

*Approved:* Lisa J. W. Hollingsworth, Warden

USP Marion

I. PURPOSE AND SCOPE. To establish guidelines for the implementation of the national Program Statement on Inmate Visiting Regulations.

II. SUMMARY OF CHANGES.

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III. **DIRECTIVES AFFECTED.**

A. **Directives Rescinded.**

IS MAR-5267.08B, Visiting Regulations (March 26, 2009)

**Directives Referenced.**

PS 5267.08, Visiting Regulations (May 11, 2006)

PS 5510.12, Searching, Detaining, or Arresting Persons other than Inmates (January 15, 2008)

PS 5500.11, Correctional Services Manual (October 10, 2003)

PS 5500.12, Correctional Services Procedures Manual (October 10, 2003)

B. **Standards Referenced.**

American Correctional Association 4<sup>th</sup> Edition Standards for Adult Correctional

Institution: 4-4156, 4-4267, 4-4498, 4-4499-1, 4-4499, 4-4500, 4-4501, 4-4503 and 4-4504 are referenced.

IV. **LIMITATIONS**

A. A maximum of five adult visitors per inmate will be allowed in the visiting areas at any given time. Any children 15 years of age and younger will not be counted in the above-mentioned limit and must be accompanied by an approved adult visitor.

B. If the designated visiting areas become overcrowded, factors such as the distance a visitor has traveled, frequency of visits, relationship of visitors to inmate and frequency of visits received by the inmate will be considered when determining who will be allowed to visit. The #1 visiting room officer, in coordination with the operations lieutenant, will have discretion in matters concerning who may visit if overcrowding occurs.

**V. VISITING SCHEDULE AND ATTIRE**

- A. Visiting hours for the USP will be from 5:00 p.m. to 8:00 p.m. on Friday and 8:30 a.m. to 3:00 p.m. on Saturday, Sunday and federal holidays. Visiting hours for the SCP will be from 5:00 p.m. to 8:00 p.m. on Friday and 8:00 a.m. to 3:00 p.m. on Saturday, Sunday and federal holidays. If the holiday falls on a Friday, the normal Friday evening visiting hours will be followed. No inmate visitors will be processed into the visiting room after 7:00 p.m. on Fridays or 1:30 p.m. on the weekends. All federal holidays will be observed as visiting days.

Federal holidays are:

New Year's Day	January 1
Dr. Martin Luther King's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

- B. Visitors entering for the purpose of visiting inmates at the USP or SPC will not be allowed visiting privileges unless they are properly attired. The following attire for visitors will **not** be permitted:

1. Sweat pants
2. Spandex attire
3. Halter tops, tank tops or sleeveless shirts
4. Crop tops or strapless garments
5. Brassiere-less (females)
6. Dresses, shorts, and skirts that are shorter than knee length (knee length is permitted)
7. Clothing displaying obscene gestures, language or disruptive symbols
8. Flip-flop/thong sandals (exception for young children - use discretion)
9. Revealing or tight-fitting clothing
10. Bathing suits or bare midriffs
11. Camouflage or combat military type clothing (except military personnel)
12. Khaki clothing for USP visitors or OD green clothing for camp visitors

13. Hooded garments or hats

In the event a visitor is wearing any of the above articles of clothing, the visitor will not be processed.

C. Inmates receiving visits are permitted to wear or bring only the following items to the visiting areas:

1. **SOCIAL VISITS** - Only undergarments, institution issued clothes, handkerchief, prescription eyeglasses and a plain wedding band (if married) will be worn or carried into the visiting areas. Inmates may wear their personal shoes. However, the inmate's personal shoes will be searched and a zip tie will be attached to the shoe by visiting room staff prior to the inmate entering the visiting room. Upon the conclusion of the inmates visit, the inmate shoes shall be visually inspected and searched with a handheld metal detector. The zip tie shall be removed by visiting room staff. Kufis, Native American headbands, or yarmulke will be allowed in the visiting areas. Other types of headgear must be approved by the captain and institution chaplain in advance of visiting.
2. **LEGAL VISITS** - In addition to the items permitted for social visits, legal materials (subject to inspection for contraband) may be permitted if the visit is with an attorney.
3. **RELIGIOUS VISITS** - In addition to the items permitted for social visits, a religious book (Bible, Koran, etc.) of the denomination approved for the visit is permitted. Any other religious item must be approved by the institution chaplain and the captain.

VI. **POINTS** Each inmate will receive 12 points per month for visiting. Each inmate will be charged one (1) point per weekday visit and two (2) points per weekend day or holiday visit.

VII. **PETS** Visitors are strictly prohibited from bringing pets on institution grounds except for dogs that assist persons with disabilities. In this circumstance, the visitor must provide the front lobby officer with certification that the dog is trained for that purpose. Any questions regarding the admittance of a visitor with an assist dog should be directed to the captain or the operations lieutenant during weekends or holidays.

VIII. **ATTORNEY VISITS** Attorney visits will take place in the specially designated area for that purpose. If all attorney visiting facilities are in use and another attorney arrives, he or she may wait until a regular attorney visiting area is available or utilize the