

Civil Liberties Defense Center

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Rules Unit, Office of General Counsel

Bureau of Prisons

320 First Street, NW

Washington, DC 20534

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

To Whom It May Concern:

The Civil Liberties Defense Center is a nonprofit organization focused on defending and upholding civil liberties through education, outreach, litigation, and legal support and assistance. The CLDC strives to preserve the strength and vitality of the Bill of Rights and the U.S. and state constitutions, as well as to protect freedom of expression. Pursuant to FOIA, our organization requested documents concerning the CMUs on December 18, 2008, in conjunction with the Center for Constitutional Rights and we have reviewed the documents provided with great concern for the US Constitution and the civil liberties of all who are subjected to the federal legal system. We strongly oppose the current BOP proposed rule and would instead urge complete closure of all CMUs for the reasons outlined below.

Our organization has worked with, and represented, many political activists who have been prosecuted and convicted for politically motivated crimes. Often, grave concerns regarding equal protection arise when a defendant is excessively punished based upon the political motivation of his/her crime. This is also true when the nature and quality of their imprisonment is based upon their political beliefs instead of their conduct while imprisoned. Our client Daniel McGowan and Andrew Stepanian are two such political prisoners that we believe are and/or were designated to this harsh and overly restrictive prison unit based upon their beliefs protected by the First Amendment as well as their refusal to cooperate with the FBI by informing on other political activists. Neither were violent offenders, neither had any disciplinary records while incarcerated and were in fact 'model' inmates, yet both were sent to CMUs in an attempt to silence their political message to the outside world. At the time of his hasty transfer in the dark of night, McGowan had 6 points, no disciplinary violations, positive work evaluations and ¼ of a masters program completed, along with 17 continuing education classes and 6 release preparation classes. By all accounts he was a model prisoner attempting to make beneficial use of his time in prison at the time he was transferred to the CMU in Marion, IL.

We believe the decisions to place these men in the CMU were discriminatory, retaliatory, and serve no legitimate penal interests. It is our opinion that their designation was made to chill both their rights and the rights of others who support them while imprisoned. This discriminatory bias has also resulted in an unjust number of Muslim inmates transferred to CMUs and is a disgrace to our nation's founding tenants. In fact, it appears that the transfer of white environmentalists to the CMU may have been an attempt by the BOP to disguise their discriminatory motivations; though unsuccessfully hides the fact that the overwhelming majority of inmates designated to CMUs are Muslims.

We are concerned about the illegal manner in which the existing CMUs were established in violation of federal law. It's interesting that after being sued, the BOP is now attempting to go back and comply with the law by offering this rulemaking process and public comment period after the fact. This does not change the fact that during the Bush administration, BOP secretly established these "terrorist facilities" without going through the legal process afforded to all Americans—those who fund such debacles with their taxes. Furthermore, this means that there were no regulations in place at the time these men and women were designated in order to determine in an impartial manner who would be sent

Comments Submitted by Civil Liberties Defense Center
to a CMU and why. This allows agency officials carte blanche to designate whoever they want, for whatever reason they want, and leaves the process fraught with abuse of discretion and no oversight—judicial or otherwise.

In addition, the CMU violates the due process rights of those individuals incarcerated there. The inmate is never informed of the reasons why they were shipped off to this black hole and they have no meaningful way to challenge their designation once they have arrived—how can you challenge a basis you were never provided? Furthermore, once designated to a CMU there is no way to “earn” your way out unlike other disciplinary designations within the BOP, and in general, there is no hearing process whatsoever. Thus, the inmate appears to have very little chance of ever getting out of the repressive structure of the CMU regardless of their conduct, criminal conviction, or length of sentence.

Being sent to a CMU clearly amounts to cruel and unusual punishment, particularly in the cases of McGowan and Stepanian. But for the political nature of their crimes, both men would have been sent to low-security prisons or camps. Instead, while at the CMU they were subjected to only four hours of non-contact visits per month (through glass and via phone). No physical contact with their loved ones, unlike regular federal inmates who receive approximately 56 hours of contact visits per month. It also means they have had 60 minutes of phone calls a month as compared to a normal inmate who receives 300 minutes. The “yard” at Marion includes 4 cages for their recreational opportunities compared to other units, and the educational opportunities within the CMU are simply disgraceful. It also means their mail is extremely monitored by the FBI and they are not allowed to have any contact with the media—clearly intending to completely silence those who are housed within what is now called “Little Guantanamo.” It is aptly named Little Guantanamo not only because the conditions are harsh and punitive, but also because if you are sent to a CMU you have no right to challenge the transfer, and even if you are a model prisoner, there is no way for you to “earn” your way out of a CMU. Once you are sent there, you are there for the duration of your sentence. Even in the harshest disciplinary units in the federal prison system, after one year of good behavior you can earn a transfer to a better prison. Not so with the Little Guantanamo system.

Even more concerning, in writing to our client Daniel McGowan, we have had our Attorney-Client Privileged mail opened and read by CMU guards in absolute violation of the 6th Amendment. In fact, one letter that was opened and read described our plans to assist with an upcoming federal lawsuit against the BOP on Mr. McGowan’s behalf. We’re sure the BOP enjoyed receiving a “heads up” on that confidential client correspondence. There are simply no mechanisms in place to protect attorney-client privilege in the CMU and there are NO exigent circumstances that would warrant a violation of our client’s Attorney-Client privilege. Clearly, those involved with the CMU system believe they are not bound by federal law or the Constitution.

It is our position that the BOP’s proposed rule remains unconstitutional and is a back door attempt to correct the unlawful creation of the CMU now that litigation has been filed to challenge it. We urge the BOP to reject this proposed rule and terminate the CMU designation immediately, thus restoring the constitutional rights of those subjected to it. Thank you. Sincerely,

Lauren C. Regan
Executive Director & Staff Attorney
Civil Liberties Defense Center