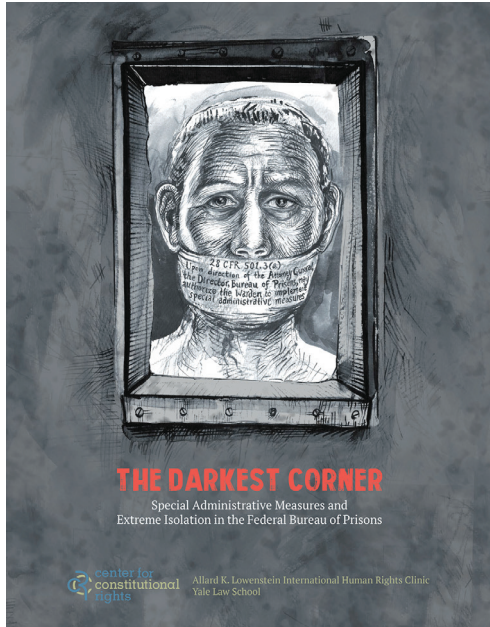


The Darkest Corner: Special Administrative Measures and Extreme Isolation in the Federal Bureau of Prisons



Executive Summary

Prisoners, psychologists, and human rights advocates have long attested to the horrors of solitary confinement: cramped concrete cells, sensory deprivation, and overwhelming social isolation.¹ Scientific consensus that such conditions cause permanent harm led the former United Nations (“U.N.”) Special Rapporteur on Torture to declare that “any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment.”² The practice has prompted hearings before the U.S. Senate, and at the state level, many corrections leaders have recognized that long-term isolation is unnecessary and even counterproductive.³

Yet amid growing recognition of these harms, the federal government has been expanding its use of a lesser known and more extreme form of isolation: Special Administrative Measures (“SAMs”). SAMs are the darkest corner of the U.S. federal prison system, combining the brutality and isolation of maximum-security units with additional restrictions that deny individuals almost any connection to the human world. Those restrictions include gag orders on prisoners, their family members, and their attorneys, effectively shielding this extreme use of government power from public view.

SAMs deny prisoners the narrow avenues of indirect communication – through sink drains or air vents – available to prisoners in solitary confinement. They prohibit social contact with anyone except for a few immediate family members, and heavily regulate even those contacts. And they further prohibit prisoners from connecting to the social world via current media and news, limiting prisoners’ access to information to outdated, government-approved materials. Even a prisoner’s communications with his lawyer – which are supposed to be protected by attorney-client privilege – can be subject to monitoring by the FBI.

The U.S. Attorney General has sole discretion to impose SAMs, and a prisoner lacks the most basic procedural protections to allow him to contest the SAMs designation. Indeed, prisoners may be left in the dark as to *why* they have been subjected to SAMs, because the Attorney General’s justification often cites little more than the prisoner’s charges or conviction. Many prisoners remain under these conditions indefinitely, for years or in some cases even decades.⁴ And court challenges are difficult. For convicted prisoners in particular, the regulations operate to obstruct their access to counsel, impeding the act of filing a challenge. And even when prisoners can bring challenges, courts routinely rule against them, accepting the government’s vague national security justifications.⁵

The imposition of SAMs extends beyond convicted prisoners. Federal prosecutors regularly request that the Attorney General place defendants under these punishing conditions while they await trial, before they have been convicted of any crime. In numerous cases, the Attorney General recommends lifting SAMs after

the defendant pleads guilty. This practice erodes defendants' presumption of innocence and serves as a tool to coerce them into cooperating with the government and pleading guilty. Indeed, the Central Intelligence Agency ("CIA") for years relied on the torture of isolation and sensory deprivation as a tool to elicit what it termed "learned helplessness" in detainees suspected of terrorism. For those defendants who do fight their charges at trial, SAMs infect the entire proceeding, limiting prisoners' capacity to participate in their defense and hindering their attorneys' abilities to investigate and zealously advocate.

In addition to shrinking the entirety of the prisoner's world to the four corners of his prison cell, SAMs prevent anyone else from understanding what happens within. Prisoners under SAMs are prohibited from communicating with anyone except a few pre-approved individuals – their attorneys and immediate family members – and SAMs prohibit those individuals from repeating the prisoner's words to anyone else. There is also an explicit prohibition on all forms of communication with the media. In effect, the regulations silence those most qualified to attest to the harms of SAMs. The Department of Justice ("DOJ") further shrouds SAMs under a veil of secrecy by concealing *who* is subject to these conditions and *why*. Indeed, the DOJ and Federal Bureau of Prisons ("BOP") consistently ignore or deny Freedom of Information Act ("FOIA") requests seeking basic information about prisoners under SAMs. The psychological and physiological harms are thus hidden from public oversight and democratic accountability.

The lack of transparency surrounding SAMs makes these measures ripe for discriminatory use against "disfavored" populations. Interviews, publicly available information, and FOIA documents obtained through litigation reveal that the federal government has leveraged SAMs predominantly against Muslims. While the government refuses to reveal the religious identities of people under SAMs,⁶ publicly available evidence makes two facts clear: the use of SAMs has increased dramatically since September 11, 2001, and a disproportionately high number of SAMs prisoners are Muslim. In November 2001, there were only sixteen individuals under SAMs;⁷ by 2009 there were thirty,⁸ and, as of June 8, 2017 there were fifty-one.⁹ SAMs represent the extreme end of a spectrum of discriminatory "counterterrorism" measures targeting Muslims since 9/11, including abusive conditions of confinement and lack of due process at Communication Management Units ("CMUs"),¹⁰ indefinite detention and the military commissions system at Guantánamo Bay,¹¹ suspicionless surveillance,¹² sweeping immigration roundups,¹³ coerced informancy and entrapment,¹⁴ placement on various administrative watch lists,¹⁵ and criminal convictions based on overbroad interpretations of material support and conspiracy statutes.¹⁶ The widespread use of these tools is particularly troubling now, under an administration that has openly discriminated against Muslims and a President who has specifically advocated for the use of torture.¹⁷ Particularly in light of the Trump Administration's open animosity towards other groups, including immigrants and protestors, there is a risk that these tools will be used to target other marginalized groups in the future.

The imposition of SAMs raises serious concerns under U.S. and international law. SAMs eviscerate fair trial protections and the presumption of innocence. They infringe on the rights to free speech and association, religious freedom, family unity, due process, and equal protection under the Constitution and international law. And, not least, they constitute inhumane treatment that may rise to the level of torture. So, while many on both sides of the aisle have criticized President Trump for vowing to "bring back" torture,¹⁸ the torture of SAMs and its underlying conditions of solitary confinement never went away.

This report aims to shed light onto this darkest corner of the U.S. federal prison system. The report necessarily fails to represent the views of the people who are most intimately familiar with SAMs – those who have been subjected to them. Nonetheless, the available information reveals that the severity of SAMs, their increasing use, their lack of procedural protections, and their potential discriminatory application pose urgent concerns for our democracy.

To read the full report, visit <https://ccrjustice.org/sams-report>.

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- 1 See, e.g., HELL IS A VERY SMALL PLACE: VOICES FROM SOLITARY CONFINEMENT (Jean Casella et al. eds., 2016); Reginald Dwayne Betts, *Only Once I Thought About Suicide*, 125 YALE L.J. F. 22 (2016), <http://www.yalelawjournal.org/forum/only-once-i-thought-about-suicide>; Shane Bauer, *Solitary in Iran Nearly Broke Me. Then I Went Inside America's Prisons*, MOTHER JONES (2012), <http://www.motherjones.com/politics/2012/10/solitary-confinement-shane-bauer>.
 - 2 Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment*, 76, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Méndez) [hereinafter *Special Rapporteur on Torture 2011 Report*].
 - 3 For an overview of the national debate about solitary confinement, see THE LIMAN PROGRAM, TIME IN CELL: THE ASCA-LIMAN 2014 NATIONAL SURVEY OF ADMINISTRATIVE SEGREGATION IN PRISON 1-2 (2014), https://law.yale.edu/system/files/area/center/liman/document/asca-liman_administrativesegregationreport.pdf. For statements from corrections officials, see *infra* Part V.
 - 4 DEP'T OF JUSTICE, FEDERAL BUREAU OF PRISONS, SPECIAL ADMINISTRATIVE MEASURES, at BOP000089-95 (2013) [hereinafter BOP FOIA DOCUMENTS] (appended to this Report) (listing dates when SAMs were first imposed on prisoners currently confined under SAMs, the earliest of which date back to 1996). As described further in Section II, *infra*, the authors acquired these documents as a result of FOIA litigation in *Human Rights Watch v. Dep't of Justice Federal Bureau of Prisons*, No. 13-CV-7360, 2015 WL 5459713 (S.D.N.Y. Sept. 16, 2015).
 - 5 See, e.g., *United States v. Mohamed*, 103 F. Supp. 3d 281, 287-88 (E.D.N.Y. 2015); *United States v. El-Hage*, 213 F.3d 74, 81 (2d Cir. 2000).
 - 6 See Declaration of Jonathan Manes in Support of Cross Motion for Summary Judgment, Ex. O 2, *Human Rights Watch v. Dep't of Justice Federal Bureau of Prisons*, No. 13-CV-7360, 2015 WL 5459713 [hereinafter Manes Decl.] (Plaintiff in a FOIA suit agreeing not to challenge the government's withholding of information that would reveal the religion of prisoners under SAMs).
 - 7 *Preserving Our Freedoms While Defending Against Terrorism: Hearing Before the S. Comm. on the Judiciary*, 107th Cong. 14 (2001) (statement of Hon. Michael Chertoff, Ass't Att'y Gen., Criminal Div., Dep't of Justice).
 - 8 HUMAN RIGHTS WATCH & COLUMBIA LAW SCHOOL HUMAN RIGHTS INSTITUTE, ILLUSION OF JUSTICE: HUMAN RIGHTS ABUSES IN US TERRORISM PROSECUTIONS 143 (2014), <https://www.hrw.org/report/2014/07/21/illusion-justice/human-rights-abuses-us-terrorism-prosecutions> [hereinafter ILLUSION OF JUSTICE].
 - 9 See Letter from Jennifer A.H. Hodge, Director, Office of Enforcement Operations, D.O.J. Criminal Division, to Hope Metcalf, (June 8, 2017) [on file with authors].
 - 10 See CENTER FOR CONSTITUTIONAL RIGHTS, COMMUNICATION MANAGEMENT UNITS 2 (2014), https://ccrjustice.org/sites/default/files/assets/CCR_CMU_2014Documents-20140709.pdf.
 - 11 See, e.g., Inter-Am. Comm'n Hum. Rts., *Towards the Closure of Guantanamo*, Report No. 20/15, OAS/Ser.L/V/II (2015), <http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf>.
 - 12 See *Hassan v. City of New York*, 804 F.3d 277, 306-07 (3d Cir. 2015) (finding that New Jersey Muslims subject to NYPD suspicionless surveillance program stated valid claim of religious discrimination); *Stipulation of Settlement and Order, Raza v. City of New York*, No. 1:13-cv-03448 (E.D.N.Y. Mar. 20, 2017) (proposed settlement agreement in response to challenge to NYPD suspicionless surveillance program targeting Muslim communities in New York City).

- 13 See, e.g., *Turkmen v. Ashcroft*, 589 F.3d 542 (2d. Cir. 2009) (challenge to sweeping round ups and abusive detention of Muslim, Arab, and South Asian non-citizens with no individualized suspicion of terrorism-related activity).
- 14 See Eric Lichtblau, *F.B.I. Steps Up Use of Stings in ISIS Cases*, N.Y. TIMES (June 7, 2016), https://www.nytimes.com/2016/06/08/us/fbi-isis-terrorism-stings.html?_r=0; Paul Harris, *Fake terror plots, paid informants: the tactics of FBI 'entrapment' questioned*, THE GUARDIAN (Nov. 16, 2011), <https://www.theguardian.com/world/2011/nov/16/fbi-entrapment-fake-terror-plots>.
- 15 See, e.g., *Tanvir v. Lynch*, 128 F. Supp. 3d 756 (S.D.N.Y. 2015) (challenge to plaintiffs' placement on No-Fly List after refusing to serve as FBI informants due to their seriously held religious beliefs); *Latif v. Holder*, 28 F. Supp. 3d 1134 (D. Or. 2014) (finding that Department of Homeland Security's process for redressing erroneous placement of airline passengers on the "No-Fly List" carried a high risk of erroneous deprivation of constitutionally-protected liberty interests).
- 16 See Amna Akbar, *How Tarek Mehanna Went to Prison for a Thought Crime*, THE NATION (Dec. 31, 2013), <https://www.thenation.com/article/how-tarek-mehanna-went-prison-thought-crime>.
- 17 See, e.g., Jeremy Diamond, *Trump on torture: 'We have to beat the savages,'* CNN (Mar. 6, 2016), <http://www.cnn.com/2016/03/06/politics/donald-trump-torture>; Mark Hensch, *Trump won't rule out database, special ID for Muslims in US*, THE HILL (Nov. 19, 2015), <http://thehill.com/blogs/ballot-box/presidential-races/260727-trump-wont-rule-out-database-special-id-for-muslims>; Jenna Johnson & Abigail Hauslohner, *'I think Islam hates us': A timeline of Trump's comments about Islam and Muslims*, WASHINGTON POST (May 20, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/05/20/i-think-islam-hates-us-a-timeline-of-trumps-comments-about-islam-and-muslims>; Adam Serwer, *Jeff Sessions's Fear of Muslim Immigrants*, THE ATLANTIC (Feb. 8, 2017), <https://www.theatlantic.com/politics/archive/2017/02/jeff-sessions-has-long-feared-muslim-immigrants/516069>.
- 18 See Vincent Charles Keating, *Will Donald Trump Bring Back Torture?*, THE WIRE (Jan. 21, 2017), <https://thewire.in/101638/will-donald-trump-bring-back-torture>.