



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

January 12, 2017

Mr. Nils Melzer
Special Rapporteur on torture and other cruel,
Inhuman or degrading treatment or punishment
Office of the High Commissioner on Human Rights
Geneva, Switzerland

Dear Mr. Melzer:

This letter is in response to correspondence from Juan Méndez, in his capacity as Special Rapporteur on torture and other cruel, Inhuman or degrading treatment or punishment, dated October 31, 2016, inquiring about the confinement of Mr. Ahmed Abu Ali at the United States Penitentiary, Administrative Maximum Facility (ADX) in Florence, Colorado. The United States takes its obligations under the UN Convention Against Torture very seriously, and is committed to preventing torture and working with partners in the international community to make more effective the global fight against torture. We wish to reaffirm our strong support for your mandate, and hope the below information in response to your inquiry is useful.

Sincerely,

Keith M. Harper
Ambassador
U.S. Permanent Representative to the
UN Human Rights Council

OHCHR REGISTRY

17 JAN 2017

Recipients : SPB
 A. FURGER

Subject: U.S. response on the inquiry about the confinement of Mr. Ahmed Abu Ali at the United States Penitentiary, Administrative Maximum Facility in Florence, Colorado.

The philosophy of the U.S. Federal Bureau of Prisons (Bureau) is to house all inmates in the least restrictive environment, appropriate for each inmate, in order to allow for work and self-improvement opportunities. The conditions of confinement at the United States Penitentiary, Administrative Maximum Facility (ADX) were described at length in our November 30, 2011, communication to Mr. Méndez, as were the opportunities available to inmates for intellectual stimulation, human interaction, and medical and mental health care.

Mr. Ali is currently housed in the Special Security Unit at the ADX. The Special Security Unit and Program is designed for inmates who are subject to Special Administrative Measures (SAMs), which are restrictions on communications imposed by the Attorney General. *See* 28 C.F.R. §§ 501.2, 501.3. SAMs may be imposed to prevent disclosure of classified information that would pose a threat to national security if disclosed, or to protect against acts of terrorism and violence. SAMs include, but are not limited to, placing an inmate in administrative detention and restricting social visits, mail privileges, phone calls, and access to other inmates and to the media. SAMs permit inmates to receive reading materials.

Inmates housed in the Special Security Unit are reviewed annually by the Attorney General to determine if their SAMs status should be renewed or modified. The Attorney General's review includes an assessment of information provided by the prosecuting United States Attorney's Office and federal law enforcement officials. In the judgment of national security personnel in the U.S. Department of Justice, there remains a substantial risk that Mr. Ali's communications could result in harm to persons outside the prison. As described below, Mr. Ali has both a demonstrable proclivity for violence and the skill set required to carry out his violent agenda, even from the confines of prison.

Mr. Ali is an al-Qaeda operative and one of the few inmates confined in Bureau facilities who helped to execute successful al-Qaeda bombings overseas. He was an active member of the al-Faq'asi terrorist cell in Saudi Arabia, where he received

training in the use of weapons and explosives, document forgery, and communicating in code. That group of terrorists was responsible for the May 2003 bombings in Riyadh that killed 39 people, including nine Americans. *See United States v. Abu Ali*, 395 F. Supp. 2d 338, 344 (E.D. Va. 2005). In the words of the U.S. Court of Appeals for the Fourth Circuit:

[Mr. Ali] joined the al-Faq'asi terrorist cell in Saudi Arabia with the hopes of facilitating terrorist attacks in the United States. He researched international flights that might be suitable for hijacking and investigated the locations of nuclear power plants that could serve as potential targets for attack. He also participated in a course on explosives and plotted various ways and methods of assassinating the President of the United States.

United States v. Abu Ali, 528 F.3d 210, 265 (4th Cir. 2008). Mr. Ali was tried by a jury, with all the due process protections and fair trial guarantees accorded to any individual accused of a crime in the United States, and was convicted of conspiracy to commit these "heinous and potentially catastrophic crimes . . . against the United States citizenry," including conspiracy to assassinate former President George W. Bush and conspiracy to commit air piracy and destroy aircraft. *United States v. Abu Ali*, 410 F. App'x 673, 675-76 (4th Cir. 2011). He was also convicted of multiple counts of conspiracy to provide material support, services, and resources to al-Qaeda. *See id.*

Critically, Mr. Ali expressed no remorse and accepted no responsibility for these crimes, but rather proclaimed himself, "willing to be a martyr for this cause." *See id.* at 676. He has not shown remorse or disavowed his violent jihadist ideology since he has been in prison. In the assessment of U.S. national security personnel who monitor Mr. Ali's communications, he remains a prominent figure among international terrorists who, if given the opportunity, would use his influence to inspire other operatives and violent extremists to commit acts of violence against the United States and its citizens. The fact that Mr. Ali is skilled in communicating in code heightens the concern that his communications could lead to the deaths of innocent people outside the prison. *See United States v. Abu Ali*, 528 F.3d at 236-37 (describing Abu Ali's coded communications with his al-Qaeda co-conspirators in Saudi Arabia). Mr. Ali's SAMs address these concerns by limiting the scope of

his contacts outside the prison and requiring that each of his incoming and outgoing communications (except those with attorneys, which are protected as confidential by law) be monitored by the Federal Bureau of Investigation.

While housed in the Special Security Unit, Mr. Ali participates in a three-phase Special Security Unit Program (SSU Program), designed especially for SAMs inmates. The purpose of the SSU Program is to confine inmates with SAMs under close controls, while providing them with opportunities to demonstrate progressively responsible behavior and participate in programs in a safe, secure environment. The SSU Program balances the interests of providing inmates with programming opportunities and increased privileges with the interests of ensuring institutional and national security. The success of Mr. Ali's participation in the SSU Program provides information that can be considered in the evaluation of whether SAMs continue to be necessary.

Mr. Ali is currently in Phase 3 of the SSU Program. In Phase 3, Mr. Ali is allowed to be in unit common areas with other SSU Program inmates in groups of up to four. He has the ability to have physical contact with other inmates in the range area outside his cell, seven days a week. He spends one-and-a-half hours per day on the range with up to three other inmates. The inmates in Phase 3 eat one meal together daily and engage in recreational activities together daily, including watching television, reading, and playing cards. Mr. Ali may shower at any time he is on the range. In addition, he has access to an expanded art and hobby craft supply list and a further expanded commissary list, which means that he may purchase and use a wider range of materials for his own recreation. He is permitted four 15-minute telephone calls per month.

Mr. Ali also has access to mental health treatment services. In May 2014, the Bureau revised its mental health treatment policy (found at https://www.bop.gov/policy/progstat/5310_16.pdf) in part to ensure appropriate mental health services for those inmates in restrictive housing (i.e., the ADX). These revisions codified a number of best practices for inmates placed in the ADX. These include ensuring baseline mental health services for all inmates in restrictive housing, regardless of mental health care level; providing enhanced mental health screening, to ensure that seriously mentally ill (SMI) inmates are diverted from

restrictive housing; and incorporating an enhanced review of mental health issues into the Bureau's disciplinary processes.

In addition to these policies, the Bureau has also enhanced its mental health services to inmates at the ADX, which include Mr. Ali. Specifically, the Bureau increased the mental health staffing at the ADX by hiring three additional full-time psychologists, one psychiatric nurse, and one psychology technician. One of the three additional full-time psychologist positions is dedicated to facilitating trauma-related psychological programming. The Bureau has also hired a full-time social worker for the Federal Correctional Complex (FCC) at Florence, of which the ADX is a part, whose priority is those inmates housed at the ADX and who provides reentry planning services within one year of release of an inmate, as appropriate. The Bureau also added a Deputy Chief Psychologist for the FCC at Florence.

Group therapy is available, and subject matters include criminal thinking, emotional self-regulation, seeking safety, anger management, basic cognitive skills, and drug abuse issues. In addition, the ADX has locations available for private psychological and psychiatric counseling sessions in each housing unit.

The ADX also provides psychiatry services. Psychiatric assessment, treatment, and consultation generally are provided by the institution's psychiatrist, contract psychiatrist, or psychiatric mid-level provider (such as a psychiatric nurse practitioner). All ADX inmates may receive psychotropic medications as clinically indicated. In July 2015, the ADX implemented a local policy that provides that inmates receiving psychiatric medications at the ADX will be seen by a psychiatrist, physician, or psychiatric nurse every 90 days, or more often if clinically indicated, for, at a minimum, the first year of their ADX placement. The ADX local policy also implements procedures to ensure that Health Services notifies the psychiatrist, psychiatric mid-level provider, psychiatric nurse, or physician and Psychology Services of inmates who refuse or consistently miss doses of their prescribed psychotropic medications. When in-person psychiatry services are not available at the facility, tele-psychiatry is provided, in private sessions without the presence of correctional officers.

In addition to private and group counseling and treatment, ADX inmates ordinarily have access to in-cell therapeutic and recreational activities, including access to programming through closed-circuit television (e.g., Psychology Services programs), hobby craft provided by Recreational Services or available through a Special Purchase Order, puzzles provided by Recreational Services, and leisure reading materials. Inmates are also encouraged to engage in yoga, relaxation techniques, meditation, deep breathing exercises, mindfulness exercises, and grounding techniques. A variety of educational and religious in-cell programming is also made available to inmates. ADX psychologists make weekly rounds in each unit.

Bureau policy provides that inmates with a serious mental illness will be excluded from the ADX unless extraordinary security concerns exist that cannot be handled elsewhere. Seriously mentally ill inmates who must remain at the ADX due to extraordinary security issues have an individualized treatment program and are provided with at least ten, and as many as 20, hours of out-of-cell time per week, consistent with their individualized treatment plan. In particular, those inmates are eligible for placement in other programs or facilities, if appropriate.

Finally, the ADX has developed procedures for heightened review of inmate requests related to mental health issues and referrals for mental health services. In particular, those requests are expedited and resolved by a member of Psychology Services.

To avoid deterioration of an inmate's mental health while in the ADX, Bureau policy requires that staff provide ongoing support to all segregated inmates. This ongoing support includes the following: (1) during rounds, all staff make themselves available for brief conversations that demonstrate concern and their availability to provide assistance; (2) inmates are removed from their cells for private or extended interviews with Psychology and Psychiatry Services staff as a standard procedure; (3) in-cell activities (e.g., books, puzzles, games, audio/video entertainment, and programming, where applicable) are provided to inmates; (4) and close attention is paid to the importance of out-of-cell, unstructured recreation time specific to inmates' needs and encouraging inmates to take advantage of out-of-cell activities.

There are occasions when the Bureau has no choice but to segregate inmates from the general population, typically when it is the only way to ensure the safety of inmates, staff, and the public and the orderly operation of the facility. The Bureau believes strongly that this practice should be used rarely, applied fairly, and subjected to reasonable constraints. The Bureau believes these best practices include housing inmates in the least restrictive settings necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public; and ensuring that restrictions on an inmate's housing serve a specific penological purpose and are imposed for no longer than necessary to achieve that purpose. When Bureau officials determine that an inmate must be segregated from the general population, that inmate is housed in safe, humane conditions that, ideally, prepare the individual for reintegration into both the general prison population and society at large. This is occurring in Mr. Ali's situation.

The Bureau's restrictive housing conditions, which include the ADX, are applied with regard to basic standards of decency. The Bureau ensures that the practice of restrictive housing is used only as necessary—and never as a default solution. In recent years, the Bureau has succeeded in safely reducing the number of inmates in restrictive housing. Over the past four years, the total number of inmates in the Bureau's restrictive housing units has declined by nearly a quarter. Currently, out of the 154,513 inmates housed in Bureau facilities, 8,768 inmates (approximately 5.7%) are housed in Special Housing Units. Updated statistics are available on the Bureau's website, www.bop.gov. The Bureau has also developed a range of progressive alternatives to restrictive housing—all while supporting and enhancing staff and inmate safety, and continues to lead in this development.

The Bureau's efforts to implement the recommendations and guiding principles found in the January 2016 U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing (<https://www.justice.gov/restrictivehousing>) for all correctional systems and the Bureau, specifically, is ongoing