



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

August 26, 2022

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman,
or degrading treatment or punishment
Geneva, Switzerland

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention
Geneva, Switzerland

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the
enjoyment of the highest attainable standard of
physical and mental health
Geneva, Switzerland

Fionnuala Ni Aolain
Special Rapporteur on the promotion and protection
of human rights and fundamental freedoms while
countering terrorism
Geneva, Switzerland

Dear Special Procedures Mandate Holders:

Please find enclosed the U.S. response to your letter dated February 25, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Billingsley".

Kelly Billingsley
Deputy Permanent Representative
Human Rights

U.S. Response to Joint Communication Regarding Mr. Nizar Abdelaziz Trabelsi

Thank you for your letter dated February 25, 2022. We are grateful for the work you do across the globe to promote respect for human rights and for the opportunity to provide the information above concerning U.S. law, policy, and practice.

Nizar Abdelaziz Trabelsi is a Tunisian national who was arrested in Belgium on September 13, 2001, on several offenses under Belgian law, including terrorism charges, for attempting to commit a suicide attack on the Kleine Brogel military base, a NATO facility housing U.S. military personnel. Mr. Trabelsi was extradited to the United States in 2013.

On November 1, 2013, the Attorney General authorized the imposition of special administrative measures (SAM) on Mr. Trabelsi, and the SAM remain in effect against Mr. Trabelsi. Section 501.3 of Title 28, Code of Federal Regulations, provides that “[u]pon direction of the Attorney General, the Director, Bureau of Prisons, may authorize the Warden to implement special administrative measures that are reasonably necessary to protect persons against the risk of death or serious bodily injury.” 28 C.F.R. § 501.3(a). The decision to implement SAM is predicated on whether “there is a substantial risk that a prisoner’s communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons.” Id.

SAM are tailored, in accordance with 28 C.F.R. § 501.3, to be reasonably necessary to prevent the inmate from engaging in communications or contacts with others that would pose a “substantial risk” of causing “death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons.” The SAM may also “include housing the inmate in administrative detention and/or limiting certain privileges, including, but not limited to, correspondence, visiting, interviews with representatives of the news media, and use of the telephone, as is reasonably necessary to protect persons against the risk of acts of violence or terrorism.” Following a thorough review process, the Attorney General agreed with the recommendation of the Department of Justice’s Criminal Division, based on the request of the Department’s National Security Division, the United States Attorney for the District of Columbia, and the Federal Bureau of Investigation that Mr. Trabelsi’s communications, even while in custody, posed that substantial risk and that SAM would be reasonably necessary to mitigate such a threat. Because Mr. Trabelsi is a pre-trial inmate in the custody of the United States Marshals Service (USMS), the USMS Director implements the SAM. See 28 C.F.R. § 501.3(f).

Mr. Trabelsi’s SAM explicitly state that the inmate must comply with all usual USMS, Bureau of Prisons, and non-federal detention facility (DF) policies regarding restrictions, activities, privileges, and communications. Only when a SAM provision provides for a more restrictive condition of confinement does the SAM prevail over any specific policies and procedures of the USMS and DF. Furthermore, the SAM explicitly defer to the power of the USMS and the DF to manage the inmate.

SAM expire after one year and may be renewed. The procedures for imposition and renewal of SAM are set forth in the Department’s Justice Manual (JM). See JM 9-24.100*. The authority to renew SAM has been delegated to a Deputy Assistant Attorney General (DAAG) for the Department’s Criminal Division. Each year, at the time the SAM have been imposed on Mr. Trabelsi, the specific terms of the SAM have been detailed in writing, with a memorandum notifying Mr. Trabelsi of the reasons for imposing the SAM. The combined document, once authorized, has been sent each year to the requesting parties and

the USMS for implementation purposes and to facilitate it being made available to Mr. Trabelsi through the USMS and the facility at which he is held.

The procedures that have been followed throughout Mr. Trabelsi's case are consistent with the manner in which all SAM are reviewed, authorized, and implemented. The current SAM in effect against Mr. Trabelsi were authorized by a DAAG for the Criminal Division on October 26, 2021, and became effective on November 1, 2021.

The SAM are currently being litigated before the District Court in Washington, D.C.

The United States takes this opportunity to recall that the U.S. Constitution, along with federal and state laws, establishes standards of care to which all inmates in the United States are entitled, and which are consistent with the rights and protections recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment, as well as other principles of fair treatment of prisoners. U.S. courts have interpreted the Eighth and Fourteenth Amendments to the U.S. Constitution as prohibiting the use of solitary confinement under certain circumstances. Specifically, under the Eighth Amendment's prohibition against "cruel and unusual punishments," correctional facility administrators may not subject inmates to solitary confinement with deliberate indifference to the resulting serious harms, including suicides, suicide attempts, and serious self-injury. Under the Fourteenth Amendment's Due Process Clause, prisoners have a protected liberty interest in avoiding certain types of solitary confinement. They cannot be subjected to solitary confinement absent an administrative hearing and other procedures protective of their right to due process. For certain violent inmates, maximum security facilities may be necessary, however, to protect the safety of the community at large and of other members of the prison population.

The U.S. Constitution prohibits the use of solitary confinement in a manner that constitutes cruel and unusual punishment, and the United States remains committed to preventing abuses with regard to detention conditions, protecting prisoners from such abuses, and bringing to justice those who commit them. The Federal Bureau of Prisons' inmates are not deprived of human contact, recreation, environmental stimulation, or medical or mental health care. Many constitutional challenges to the abuse of prisoners in seclusion have also been tried successfully in courts, thereby strengthening the protection of prisoners from such abuses. With regard to state and local facilities, the Department of Justice's Civil Rights Division works tirelessly to enforce federal safeguards against the abuse of seclusion at the state and local levels.

*JM 9-24.100 -- <https://www.justice.gov/jm/jm-9-24000-requests-special-confinement-conditions>