

## Documents show new secretive US prison program isolating Muslim, Middle Eastern prisoners

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Filed by Jennifer Van Bergen

### Program in apparent violation of federal law

The US Department of Justice has implemented a secretive new prison program segregating "high-security-risk" Muslim and Middle Eastern prisoners and tightly restricting their communications with the outside world in apparent violation of federal law, according to documents obtained by RAW STORY.

Quietly implemented in December, the special "Communications Management Unit" (CMU) at a federal penitentiary in Indiana targeting Muslim and Middle-Eastern inmates was not implemented through the process required by federal law, which stipulates the public be notified of any new changes to prison programs and be given the opportunity to voice objections. Instead, the program appears to have been ordered and implemented by a senior official at the Department of Justice.

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In April of last year, the US Federal Bureau of Prisons -- part of the Department of Justice -- proposed a set of strict new regulations and, as required, there was a period of public comment. Human rights and civil liberties groups voiced strong concerns about the constitutionality of the proposed program.

The program [originally](#) proposed was said to be applicable only to terrorists and terrorist-related criminals. The American Civil

Liberties Union (ACLU), however, along with a coalition of other civil liberties groups, [objected](#) to the language of the regulation as too broad, and potentially applicable to non-terrorists and even to those not convicted of a crime but merely being held as "witnesses, detainees, or otherwise."

After pushback from civil rights groups, the program appeared to have been dropped by the Prisons Bureau, with coalition groups believing that they had made their case regarding Constitutional rights. Yet documents obtained by RAW STORY show that a similar program, the CMU, was surreptitiously implemented in December 2006.

Executive Director Howard Kieffer of Federal Defense Associates, a legal group based in California that assists inmates and lawyers of inmates on post-conviction defense matters, says the order for the program must have been issued by one of the offices which oversee the US Federal Bureau of Prisons.

Only three government offices have the authority to issue such changes in federal prison operations, and they all fall within the senior management of the Justice Department: the office of Harley Lappin, the Director of Prisons Bureau, the Office of Legal Counsel, or directly from the office of the US Attorney General, Alberto Gonzales.

The Public Affairs offices of the Department of Justice and the Attorney General referred all requests for comment to the Prisons Bureau. As of press time, Felice Ponce, an officer in the Prisons Bureau Office of Information, was unable to answer requests to confirm the existence of the program, provide details about it, or comment on it at all.

Those who had such information at the Bureau were all "out of pocket," Ponce said.

Documents obtained by RAW STORY show that the CMU program, instituted Dec. 11, 2006 -- shortly after the mid-term elections in which Democrats won both chambers of Congress -- is being implemented at Terre Haute Federal Correctional Institution in Indiana.

Under the CMU program, telephone communications must be conducted using monitored phone lines, be live-monitored by staff, are subject to recording, and must be in English only. All letters must be reviewed by staff prior to delivery or sending. Visits must be non-contact only, live-monitored, and subject to recording in English.

Keiffer asserts that the program, which purports to house high-risk inmates for the purpose of better monitoring their communications, "is not related to inmate security" at all.

The program "doesn't affect the highest security inmates who are still being kept in other high security prisons, where some may be allowed greater freedom in communications than the CMU inmates," he says. "It affects a class of inmates who would not garner as much sympathy as others and who have diminished support in the US."

"It is just like the detentions after 9/11," he adds. "It's profiling."

Calls placed to the FBI were not returned.

The CMU is in apparent violation of the Federal Administrative Procedures Act, which explicitly requires that all prison regulations be promulgated under that law. Courts have overturned programs that have violated this law "half a dozen times over the past ten years," Keiffer says.

One of the documents obtained by RAW STORY, titled "[Institution Supplement](#)," was issued by the Terre Haute facility and given to prisoners transferred into this new program. The document states that "all contact" between the inmates and "persons in the community" may only occur "according to national policy, with necessary adjustments indicated herein," indicating that the new program's contact rules are the same as normal prison rules except where "adjusted" in the Supplement.

Attorney Peter Goldberger, a Philadelphia-area specialist in criminal appeals and former law professor who has 30 years experience dealing with federal prisons and inmates, told RAW STORY that the Terre Haute Institution Supplement is officially a supplement to the Prison Bureau's national Program Statement on Inmate Discipline and Special Housing Units, published in the Code of Federal

Regulations and last amended in 2003.

Keiffer explains that an Institution Supplement cannot exist by itself without specific authorization. The CMU Institution Supplement states that it is "according to national policy." But Keiffer notes that the national Program Statement does not in fact authorize the CMU program. In order for the program to be properly authorized, it would have to address the particular program parameters, locations, specify the inmates to whom it applied, and would have to take into account the specific and unique features of that program. The already existing national Program Statement does not address the CMU program and thus does not authorize it.

Goldberger notes that "what's different" about the program, "is limitation of contact with friends, family and outsiders -- instead of 300 minutes of telephone time per month, it's one 15 minute call per week, which can be reduced in the Warden's discretion to a mere three minutes once a month."

"Instead of all-day visiting every week or every other week, it's only two hours at a time, twice a month, with no physical contact, presumably sitting on opposite sides of a plexiglas window," Goldberger continued.

"And all letters, except to lawyers, courts, and Congress, will be read and copied, with weeks of delay, instead of cursorily inspected and sent right on," he adds. "It's a totally new and different program."

Director of the Center for National Security Studies in Washington, D.C. Kate Martin told RAW STORY that restrictions of inmate communications must be narrowly tailored to serve a specific identifiable need of the government. Martin said that there was a clear rationale for restricting communications of those who had previously handled classified information -- for example a former CIA agent who had passed secrets to a foreign government. But with individuals who never possessed classified information, she said, that rationale doesn't exist.

The government must show that the inmates had been plotting terrorist crimes from their cells or some similar scenario, Martin said. Without that, the restriction of communication of a group of prisoners raises a suspicion that it is actually an effort by the government to deny information to the press and public about what it is doing.

## **Who's in the program?**

The federal penitentiary where the most dangerous criminals are held, including the Unabomber and the Millennium Bomber, is the maximum security prison known as ADMax at Florence, Colorado. The CMU is not being implemented there, however; instead it is being implemented in Terre Haute Federal Correctional Institution in Indiana.

The CMU is said to be targeting terrorists or suspected terrorists, but many being held are not considered high risk or even convicted of violent crimes.

According to a letter obtained by RAW STORY, sent by CMU inmate Dr. Rafil Dhafir to one of his supporters, the current unit has at present only 16 prisoners, but is expected to have 60-70 more added soon. Dhafir writes that the CMU "is still not fully understood. The staff here is struggling to make sense of the whole situation," and says that the prisoners are "so far treated with great respect and good accommodation" but "with the new system we will have absolutely no privacy." The letter [has been posted](#) on a support site for Dhafir.

Dr. Dhafir was convicted for violating US sanctions against Iraq, because he had sent humanitarian aid to the country during the restricted period. Dhafir was not charged with any terrorism related activities or a violent offense.

Also in CMU detention are also five of the "Lackawanna Six," a group of six American citizens who traveled to Afghanistan before Sept. 11, 2001 and were indicted for giving material support to Al Qaeda. Yahya Goba, one of the group's members -- who turns up as a government witness in numerous cases -- is not in the system, although he was sentenced to ten years along with the other Lackawanna defendants.

## Unconstitutional?

Howard Keiffer believes that the program not only violates federal law but the Constitution as well, saying it abridges the prisoners' right to freedom of expression and association. These inmates are "not able to communicate like other inmates," he said.

James Landrith, Jr., who heads "The Multiracial Activist," an on-line journal that covers social and civil liberties issues relating to multi-racialism, says the new program sets a "very, very bad precedent."

Landrith says it's "interesting that this administration is trying to push these things through covertly" -- things he views as unconstitutional restrictions -- "while you have a sitting Vice President who could be charged in the short-term future with having been involved in outing a CIA agent."

He added that the program "makes it very very hard for someone to mount a real defense or appeal when they can't talk to anyone on the outside."

Some say the program smacks of racial or religious profiling.

Paul Wright, the editor of *Prison Legal News*, told RAW STORY that "segregating prisoners based on their race, national origin or language directly contradicts the recent US supreme court ruling in *Johnson v. California* which held that the racial segregation of prisoners was illegal."

*Johnson v. California*, a 2005 U.S. Supreme Court decision, involved the segregation of African-American inmates. While the Court noted in [its decision](#) that it did not decide whether the segregation violated the equal protection clause of the Constitution, it nonetheless "explicitly reaffirm[ed] that the 'necessities of prison security and discipline,' are a compelling government interest justifying only those uses of race that are narrowly tailored to address those necessities."

Race, national or ethnic origin, one's status as an alien, or any innate or immutable characteristic that a person has no power to change must be scrutinized by courts under the same standard: only a compelling government interest and a narrowly tailored program is held to be constitutional.

Religious discrimination is prohibited by Prison Bureau [regulations](#). The regulation states that Bureau "staff shall not discriminate against inmates on the basis of race, religion, national origin, sex, disability, or political belief. This includes the making of administrative decisions and providing access to work, housing and programs."

Director of the Human and Civil Rights Division of the Muslim American Society Freedom Foundation Ibrahim Ramey says his group is "deeply concerned about the violation of civil rights of incarcerated Muslims" who are targeted by the program.

"The removal and concentration of Muslims" Ramey says, is a "violation of the concept of innocent until proven guilty."

Though the inmates have been convicted, Ramey believes the CMU appears to be "a precursor to a program of segregation of people by religion in federal detention facilities."

"You don't segregate all Jews or all Christians," he adds.

Most of RAW STORY's calls and emails to inmates' attorneys or former attorneys were not returned. Several refused to comment. One attorney who represented one of the inmates at trial commented that "the new facility creates hardships for the family because of the distance and restrictions on visitation and phone use, but overall the staff are treating the inmates very well; they are very professional in their handling of the inmates."

*Jennifer Van Bergen is the author of [The Twilight of Democracy: The Bush Plan for America](#), dubbed a "primer for citizenship." Her book [Archetypes for Writers: Using the Power of Your Subconscious](#) will be out in March 2007.*

*Muriel Kane provided research assistance for this article.*

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