

**IN THE WESTMINSTER MAGISTRATES' COURT  
BETWEEN:**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

**-v-**

**JULIAN PAUL ASSANGE**

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**AFFIDAVIT OF LINDSAY A. LEWIS**

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I, LINDSAY A. LEWIS, hereby declare under penalty of perjury the following:

1. I am an attorney licensed to practice law in New York State, and admitted to practice in a number of United States federal District Courts, Circuit Courts of Appeals, and the United States Supreme Court. I have been practicing criminal defense law continuously since my admission to the Bar, in 2008, and my practice has always been concentrated in that field. In addition, I have represented Mostafa Kamel Mostafa, an individual extradited to the U.S. from the United Kingdom -- who was tried and convicted in the U.S., and who has been housed since his extradition under Special Administrative Measures (“SAMs”) and in solitary confinement, both at the Metropolitan Correctional Center in New York City, and for the last five years at the administrative maximum security facility (hereinafter “ADX”) Florence -- by Criminal Justice Act appointment since October 2012, and as counsel specifically assigned to address Mr. Mostafa’s prison and medical issues since February 5, 2015. I was further appointed by the District Court for the Southern District of New York, January 14, 2020, to represent Mr. Mostafa in regard to any litigation pursuant to 28 U.S.C. §2241, challenging his conditions of confinement. I make this Statement in the context of the above-captioned extradition case.

2. This Statement is submitted in recognition of and compliance with United Kingdom Criminal Procedure Rules 33.2 and 33.3. I understand my duty to the Court under

those Rules, and am in compliance (as is this report) with them, and will continue such compliance.

## **I. Professional Credentials**

3. I practice criminal defense law in the state and federal courts, primarily in New York, but also involving cases in other jurisdictions. Throughout my career, my practice has included a wide range of matters, including terrorism, “white collar,” “organized crime,” drugs, sex offenses, cyber law, and capital eligible cases. I have served on the Board of Directors of the National Association of Criminal Defense Lawyers since 2016, and am currently in my second consecutive term on that Board. I also serve on the Board of Directors of the New York State Association of Criminal Defense Lawyers. In addition to my Board positions, I am Co-Chair of Women in Criminal Defense Committee for both the National and New York State Associations of Criminal Defense Lawyers, a Co-Chair for the National Association of Criminal Defense Lawyers’s *Amicus Curiae* Committee, and the Northeast Regional Delegate for the National Association of Criminal Defense Lawyers.

4. I am also an active member of the Federal Bar Council’s Sentencing and Alternatives to Incarceration Committee, and have been a Program Coordinator for that committee on panels with topics including the First Step Act and President Barack Obama’s Clemency Initiative. I have appeared as a speaker and panelist at legal, academic and other conferences, and I most recently spoke on the topic of the experiences of women in the U.S. prison system.

5. I am a 2003 graduate of Vassar College and a 2007 graduate of the Benjamin N. Cardozo School of Law. My complete credentials are listed in my *Curriculum Vitae*, a copy of which is attached hereto as Exhibit 1.

## **II. Relevant Professional Experience**

6. In the course of my career, I have been involved as defense counsel, either at the trial or appellate level, and also as a consultant, in a significant number of other cases in various federal courts across the U.S. I have also drafted or collaborated in the drafting of numerous expert reports and/or acted in a consulting capacity (on matters of U.S. federal criminal law) for

cases in the U.K. and Canada, and have represented individuals who have been extradited to the U.S. from other countries, including the U.K.

7. I have visited clients at each of the federal detention facilities in New York, including the Metropolitan Correctional Center in Manhattan (“MCC”), on countless occasions over the last twelve years, beginning in the summer of 2008. I have seen clients in not only the standard areas for legal visiting and segregated housing units, but also on 10-South, the most restrictive housing unit at MCC, designed to house inmates of the highest security level in solitary confinement, and also the unit in which Mr. Mostafa was housed for the duration of his pre-trial and trial confinement in the U.S. I have been present in these facilities during lockdowns and have been exposed to the gas sprayed in inmate units to subdue inmates during an incident, and the effects thereof.

8. I have also visited inmates at numerous other New York State jails and prisons, in New York City and other parts of the state, and, in the fall of 2019, I visited HM Wandsworth Prison in London.

### **III. Legal Representation of Mostafa Kamel Mostafa**

9. As noted previously, I have represented Mr. Mostafa since his extradition to the U.S. in October 2012, both as defense counsel in preparation for and during his criminal trial in the Southern District of New York, *United States v. Mostafa Kamel Mostafa*, Docket No. 04 Cr. 356 (KBF), for terrorism-related offenses, and as counsel specifically appointed to address and litigate Mr. Mostafa’s prison and medical needs. Most recently, in January of this year, I was appointed by the District Court for the Southern District of New York to represent Mr. Mostafa in regard to litigation pursuant to 28 U.S.C. §2241, challenging his conditions of confinement, as well.

10. In my capacity as Mr. Mostafa’s counsel, I visited him countless times during his pre-trial incarceration at the MCC in Manhattan, from late 2012 until early 2015. I am therefore familiar not only with the issues he faced during his pre-trial incarceration, but also with the conditions of his confinement therein. I am also familiar with the terms of the SAMs that were imposed on Mr. Mostafa, January 3, 2013, just after his extradition, and which have remained in place since, and I have been subject to the restrictions the SAMs impose, which dictate many aspects of my legal representation of Mr. Mostafa.

11. Following Mr. Mostafa's conviction, I no longer represented him in regard to his criminal case or subsequent appeals, but I have continued to represent him throughout sentencing, the Federal Bureau of Prisons (hereinafter "BoP") designation process, and since his ultimate designation to ADX Florence -- the administrative maximum facility, in Florence, Colorado -- in regard to any prison and medical issues, and therefore conditions of confinement issues that have arisen. In light of the fact that Mr. Mostafa is severely disabled -- he is a double-upper-arm amputee, blind in one eye, and suffers from diabetes, hypertension, and a skin condition, hyperhidrosis -- these issues have been many and designated counsel to represent Mr. Mostafa with regard to these issues has been necessary. Counsel to address Mr. Mostafa's prison issues has also been necessary given that Mr. Mostafa has been housed throughout his time in U.S. custody in the most restrictive prison conditions possible. Not only has he been subject to SAMs, which as discussed **post**, limit his contacts not just with the outside world, but also with his family, other inmates and even his attorneys, but he has also continuously been held in solitary confinement. The conditions of his confinement, in conjunction with his medical needs, have led to many issues regarding the accommodations he has been provided, and the lack thereof, and the level of care he has received.

12. Because Mr. Mostafa is being held pursuant to SAMs, my ability to discuss the issues he has encountered, conditions of his confinement and other matters related to his incarceration, that are relevant to Mr. Assange, is limited to what is in the public record and/or has *not* been conveyed to me directly by my client through legal mail or other communications. This impedes my ability to discuss his case in contexts such as this one, where the information I would otherwise disclose does not relate to national security or safety of the public or the ultimate purpose of the SAMs, but is relevant to another pending matter, and could be of use to the court in deciding that matter. It also prevents me from pursuing my client's interests to the fullest extent possible, because I must always be careful not to disclose any piece of information I am not permitted to. Given the consequences, I routinely err on the side extreme caution. Nonetheless, my direct knowledge of Mr. Mostafa's case, the circumstances of his incarceration in the U.S., and experience litigating on his behalf, is relevant to Mr. Assange's case, in particular in regard to the assertions the U.S. government has made in the context of his extradition.

#### **IV. Description of Materials Reviewed**

13. In preparing this Affirmation, I have reviewed materials provided to me by Mr. Assange's solicitors in the United Kingdom. Those materials included the Superseding Indictment in Mr. Assange's case in the District Court for the Eastern District of Virginia, the various declarations of Assistant United States Attorney Gordon D. Kromberg, Affidavits of Joel Sickler, and the Affidavit of Kellen Dwyer. I have also reviewed relevant statutes, regulations, and research materials (including case law) related to the issues discussed in this Statement, as well as the docket in Mr. Mostafa's case and related case materials. I also rely on my more than twelve years of experience practicing criminal defense law in the U.S. federal courts, during more than eight of which I have also represented Mr. Mostafa.

## **V. Relevant Issues**

14. This Statement addresses a number of aspects of my representation of Mr. Mostafa that are relevant to Mr. Assange's case, and in particular to the assertions the U.S. government has made in the context of his extradition, including:

- (1) the procedural history of Mr. Mostafa's case, both prior to and post extradition, and the assurances and representations that were made by the U.S. government to the English Courts and European Court of Human Rights during the extradition process;
- (2) the medical assessment and designation process Mr. Mostafa was subjected to following his U.S. conviction and sentencing, and prior to his ultimate designation to ADX Florence, to serve the life sentence imposed;
- (3) Mr. Mostafa's conditions of confinement pretrial and at ADX Florence, including his continuous incarceration throughout his time in U.S. custody, in solitary confinement;
- (4) Mr. Mostafa's detention pursuant to SAMs and the hardships he has suffered a result of that regime;
- (5) the quality of the medical treatment Mr. Mostafa has received while incarcerated at ADX Florence, and within the BoP;

- (6) Mr. Mostafa's experience with the BoP administrative remedy process, in particular in relation to his ability to challenge the conditions of his confinement; and,
- (7) Mr. Mostafa's efforts to challenge the conditions of his confinement in the U.S. courts.

**A. *Procedural History and Circumstances of Mr. Mostafa's United States Criminal Case***

15. Mr. Mostafa is currently serving a life sentence in U.S. BoP custody, following his October 5, 2012, extradition, from the United Kingdom to the U.S. to stand trial on a series of terrorism-related charges in the Southern District of New York, and subsequent May 19, 2014, conviction of those crimes.

16. From the time of Mr. Mostafa's extradition in late 2012, through his trial, and until after his sentencing in early 2015, he was detained at the Metropolitan Correctional Center (hereinafter "MCC"), a pretrial detention facility located in lower Manhattan, where he was housed in solitary confinement. Since January 3, 2013, he has also been subject to SAMs. His conditions of confinement at the MCC and the issues he faced therein as a result of his pre-trial detention, and detention during trial, while in solitary confinement, and subject to SAMs, are discussed in detail **post**.

17. Following Mr. Mostafa's January 9, 2015, sentencing hearing, he was temporarily transferred from pre-trial custody at the MCC in New York, where he had been held since his extradition to the U.S., to the Federal Medical Center (hereinafter "FMC") Springfield, for evaluation and assessment as to whether he should be designated to serve his sentence at an FMC, or some other non-medical facility. He was ultimately designated to serve his sentence at ADX Florence, in the state of Colorado, and has been incarcerated there since October 8, 2015.

18. Since the time of Mr. Mostafa's sentencing, he has pursued a number of appeals and actions. Through his attorneys, Mr. Mostafa appealed his convictions and sentence to the Second Circuit Court of Appeals, which resulted in a October 23, 2018, Opinion reversing his convictions on Counts 7 and 8 of the Indictment against him, and affirming his convictions on the nine remaining counts of conviction. A motion for reconsideration, or reconsideration *en banc*, *i.e.*, by the full court, of that appeal, was filed by counsel December 6, 2018. The Second Circuit Court of Appeals denied that motion February 13, 2019.

19. Mr. Mostafa's counsel next filed a Petition for Certiorari to the U.S. Supreme Court, June 28, 2019, which was denied, October 7, 2019. During that same time frame, on April 29, 2019, Mr. Mostafa, himself, filed a motion to the district court *pro se*, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, requesting a new trial. The district court denied that motion August 2, 2019, and that decision is currently being appealed by his defense counsel.

20. While Mr. Mostafa maintains some limited means by which to further challenge his convictions in the U.S., such as through a petition to vacate his sentence, pursuant to 28 United States Code (hereinafter "U.S.C.") §2255, which must be filed within one year of the denial of his petition for certiorari to the Supreme Court, he has now largely exhausted his post-trial remedies.

21. Notably missing from this long list of post-trial motions and actions in the U.S. courts over the past six years since Mr. Mostafa's conviction, are those relating to Mr. Mostafa's conditions of confinement, which, as discussed **post**, are more difficult to challenge in the courts because they require that Mr. Mostafa first exhaust a series of administrative remedies, internally within the BoP, before he can involve counsel and pursue them through the U.S. court system. Mr. Mostafa, has, however, as of March 12, 2020, filed a Complaint, attached hereto as Exhibit 2, and, as of May 18, 2020, an Amended Complaint, attached hereto as Exhibit 3, both in the District Court for the District of Colorado, the jurisdiction in which he is housed, challenging the conditions of his confinement at ADX Florence and the SAMs that have been imposed on him. *See* Complaint, at 3. Among other things, Mr. Mostafa alleges in the Complaint and subsequent Amended Complaint, that he is housed in a cell which is not fitted for someone with his disabilities and which causes him bodily harm, and that he does not receive proper medical or dental care. *See id.*, at 9, 14, and 15. He also challenges the need for his continued confinement under SAM restrictions, and details how the SAMs negatively affect his ability to practice his religion and to be in contact with both his family and lawyers. *See* Amended Complaint, at 6-7. His Amended Complaint is currently pending before the court in Colorado.

**B. *The Extradition Proceedings In Mr. Mostafa's Case And the Assurances and Representations that Were Made by the U.S. Government to the English Courts and European Court of Human Rights In the Context of Mr. Mostafa's Extradition***

22. Underlying the more than eight years of process and procedure described **ante**, and Mr. Mostafa's designation to ADX Florence to serve his sentence under SAMs and in solitary confinement, were determinations by the English Courts and the European Court of Human Rights that Mr. Mostafa could be extradited to the U.S., because there was no real risk that his confinement conditions therein would violate Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"). As discussed **post**, the conditions under which Mr. Mostafa is imprisoned clearly violate Article 3. These decisions, which resulted in Mr. Mostafa's extradition to the U.S. in late 2012, were based upon representations, sworn statements and assurances made by the U.S. government during extradition proceedings in the English Courts and the European Court of Human Rights as to the conditions of confinement Mr. Mostafa would, and would not, experience while in U.S. custody.

23. Accordingly, an understanding of the extradition proceedings and assurances which led to Mr. Mostafa's extradition, as well as the subsequent positions and actions taken by the U.S. government, once Mr. Mostafa was in U.S. custody, is critical to a full understanding of his current circumstances, and is relevant to Mr. Assange's pending extradition proceedings as well.

*1. Extradition Proceedings in the City of Westminster Magistrate's Court in 2007*

24. While the U.S. government filed an Indictment against Mr. Mostafa April 19, 2004, and initially requested his extradition April 24, 2004, just three days before he was arrested and remanded into U.K. custody (where he remained until his extradition to the U.S.), extradition proceedings against Mr. Mostafa were delayed due to Mr. Mostafa's prosecution, conviction and sentence to a term of incarceration on charges in the U.K., and because of issues related to his medical condition. *See Mustafa Kamel Mustafa v. United States* [2008] EHC 1357, at ¶ 2, attached hereto as Exhibit 4.

25. Thus, Mr. Mostafa's extradition case was first heard in 2007, by Senior District Judge Tim Workman of the City of Westminster Magistrate's Court. Senior District Judge Workman thereafter issued an Order November 15, 2007, stating that he was "satisfied that the matters for which the United States of America seeks the defendant's extradition. . . would be compatible with the defendant's Convention Rights" and "proposing to send the matter to the Secretary of State for his decision on whether the defendant should be extradited to America."



See November 15, 2007, Order of Senior District Judge Tim Workman, in *United States of America v. Abu Hamza*, in the City of Westminster Magistrate's Court, at ¶¶ 47 & 48, attached hereto as Exhibit 5.

26. In reaching his decision that Mr. Mostafa's extradition would not be incompatible with the Convention, Senior District Judge Workman relied heavily upon a sworn statement by then ADX Warden R. Wiley, attached hereto as Exhibit 6. While Senior District Judge Workman concluded that the conditions of ADX Florence could, if "applied for a lengthy indefinite period . . . properly amount to inhuman and degrading treatment which would violate Article 3" of the Convention, *see id.*, at ¶ 43, he ultimately accepted the representations of Warden Wiley that this would not be the case with Mr. Mostafa. In so concluding, Senior District Judge Workman effectively rejected a report submitted by "an experienced United States Attorney," Bruce Malloy, which opined that "the defendant would be incarcerated at a supermax prison," in favor of Warden Wiley's account which he found "to be more accurate[,] given that Warden Wiley was "more closely associated with the penal institution." *Id.*, at ¶¶ 40, 43, 44.

27. In that regard, Warden Wiley had explained under oath, in his statement, that after consultation with the Chief of Health Programs, it would be "highly unlikely" for a person with Mr. Mostafa's conditions and disabilities – namely, "type 2 diabetes, raised blood pressure, psoriasis, loss of sight in one eye and bilateral amputation of both forearms," that "required assistance with the activities of daily living" -- to be placed in at ADX Florence. See Sworn Statement of Warden Wiley, at 3, ¶ 5.

28. Indeed, as Warden Wiley specifically stated in his sworn statement, "[i]f it is determined that [Mr. Mostafa] cannot manage his activities of daily living, it is highly unlikely that he would be placed at the ADX but, rather, at a medical center" *Id.* Warden Wiley then referenced Sheikh Rahman, emphasizing, "I am aware of at least one other high profile convicted international terrorist who, due to various medical concerns, is presently housed at a Bureau medical facility." *Id.*

29. As a result of Warden Wiley's sworn statements, Senior District Judge Workman determined that Mr. Mostafa would not be permanently housed at Florence ADX, stating that, on the basis of [Warden Wiley's] evidence I am satisfied that the defendant would not be detained in these conditions [i.e., ADX] indefinitely, that his undoubted ill health and physical disabilities would be considered and, at worst, he would only be accommodated in these conditions [i.e., ADX] for a relatively short period of

time. Whilst I find these conditions offensive to my sense of propriety in dealing with prisoners, I cannot conclude that, in the short term, the incarceration in a supermax prison would be incompatible with his Article 3 Rights.

See Order of Senior District Judge Tim Workman, at ¶ 44 (emphasis added) (Exhibit 3-).

## **2. Extradition Proceedings in the High Court in 2008**

30. On the appeal of Senior District Judge Workman's Order (as well as the Secretary of State for the Home Department's subsequent decision ordering Mr. Mostafa's extradition pursuant to section 93(4) of the Extradition Act of 2003), the High Court of Justice, Queen's Bench Division, addressed essentially the same issues as were before Judge Workman. However, the High Court more clearly laid out Mr. Mostafa's medical conditions and needs in the context of its decision, noting that the U.S. government had no dispute with the description of Mr. Mostafa's medical conditions and related needs, and it also scrutinized an additional report by Professor Andrew Coyle relating to the conditions at ADX. See *Mustafa Kamel Mustafa v. United States* [2008] EHC 1357 (hereinafter "High Court 2008 Opinion"), at ¶¶ 65-67 (Exhibit 4).

31. In reviewing Professor Coyle's statement, the High Court observed that "a common thread" that ran through the report was the "potential adverse effect on the mental health of inmates of long term social isolation." *Id.* at ¶¶ 65-67. But, the High Court ultimately dismissed Professor Coyle's concerns on the basis that it trusted the U.S. government's commitment to properly treating Mr. Mostafa's medical and disability needs, stating that "unless [the] ADX Florence regime ignores appellant's medical condition, and his need for nursing assistance," there would not be a risk of isolation since a nursing assistant (such as the one Mr. Mostafa saw multiple times a day while in custody in the U.K.) would be assisting in Mr. Mostafa's activities of daily living. *Id.* In asserting as much, the High Court essentially affirmed Senior District Judge Workman's finding, in reliance on Warden Wiley's sworn statement, that there was little risk of Mr. Mostafa spending any significant time at ADX. See September 24, 2012, Decision of the European Court of Human Rights in *Case of Babar Ahmad and Others v. the United Kingdom*, attached hereto as Exhibit 7, at ¶ 40 (noting that "[o]n the question of the compatibility of detention at ADX Florence with Article 3, the High Court relied in particular on the understanding of the prison warden, Mr Robert Wiley, to the effect that if, after a full medical evaluation, it was determined that the fourth applicant [Mr. Mostafa] could not manage his activities

of daily living, it would be highly unlikely that he would be placed at ADX Florence rather than at a medical centre”).

32. The High Court, however, affirmed the decision to extradite Mr. Mostafa under the condition that *if* Mr. Mostafa were to be held in ADX “a full and objective medical evaluation of the appellant’s condition, and the effect of his disabilities on the ordinary daily living and his limited ability to cope with conditions at ADX Florence[,] would indeed be carried out.” High Court 2008 Opinion, at ¶ 69 (Exhibit 4).

33. The High Court also reiterated Senior District Judge Workman’s concerns with the conditions of confinement at supermax facilities. However, because it viewed the commitments and promises made by the U.S. government as assurance that Mr. Mostafa would not be incarcerated at ADX, or if he was, it would be for a very short period of time, the High Court left for another day the final decision as to whether the conditions of confinement in supermax prisons would be viewed as torture or ill treatment that violated Article 3 of the Human Rights Convention. *Id.*, at ¶70.

34. Nonetheless, the High Court made clear that such confinement, if permitted, “may well be” torture in violation of Article 3, and explained,

[n]aturally, the most dangerous criminals should expect to be incarcerated in the most secure conditions, but even allowing for a necessarily wide margin of appreciation between the views of different civilized countries about the conditions in which prisoners should be detained, confinement for years and years in what effectively amounts to isolation may well be held to be, if not torture, then ill treatment which contravenes Article 3.

*Id.*

### ***3. Extradition Proceedings in the European Court of Human Rights in 2012***

35. Following the High Court’s decision, Mr. Mostafa appealed his case to the European Court of Human Rights (hereinafter “ECtHR”). In that case, the Foreign and Commonwealth Office of the United Kingdom (hereinafter “FCO”) filed a submission on behalf of the U.S., attached hereto as Exhibit 8, repeating that there was no dispute about Mr. Mostafa’s medical condition, but asking, as a conduit for the U.S., that the ECtHR affirm the lower courts’ decision on the basis that “the likelihood is the applicant will not be detained in a ‘supermax’ detention at all” and that, if he was, “such detention would be for a relatively short period given

the extent and nature of the applicant's ill health and physical disabilities." *Id.*, at ¶ 29. The FCO also adopted as fact that if Mr. Mostafa were to be held at ADX Florence for any period of time, he would not suffer social isolation because he would receive care for his disabilities, and that, if held there, it would be for a "relatively short time pending a medical evaluation, and [he] would then be transferred to a medical centre." *Id.*, at ¶¶ 30, 31. As discussed in detail **post**, none of these representations have proven to be true. Armed with these statements by the FCO, the ECtHR denied Mr. Mostafa's appeal. *See* September 24, 2012, Decision of the European Court of Human Rights in *Case of Babar Ahmad and Others v. the United Kingdom*, (Exhibit 7). In doing so, however, the ECtHR acknowledged that a "comprehensive health and social care plan" and "regular daily support" would be necessary for Mr. Mostafa, but such a comprehensive plan with the necessary supports would be impossible at ADX Florence and that his amputations "alone would appear to make detention at ADX impossible". *Id.*, at ¶¶ 217.

#### ***4. Extradition Proceedings in the High Court in 2012***

36. In October 2012, Mr. Mostafa's extradition case came before the High Court a final time. In that case Mr. Mostafa requested judicial review and a stay of extradition on the basis that new evidence established he was "unfit to plead." *See Abu Hamza and Others v. SOS for the Home Department*, [2012] EWHC 2735 (Admin), attached hereto as Exhibit 9, at ¶¶ 1, 18.iii. The claim was based on several reports by Dr. Richard Taylor, a psychiatrist in the United Kingdom who evaluated Mr. Mostafa on a number of occasions and had concluded in his most recent, August 2012, report that Mr. Mostafa was "unfit to plead" because he would be unable to "follow legal proceedings" due to "problems with tension, concentration, and memory loss" that were the result of the fact that he "had developed clinical depression." *Id.*, at ¶ 131-134. Dr. Taylor also recommended an assessment by a neuropsychologist and possibly an MRI. *Id.*, at ¶ 134. Mr. Mostafa was then seen by a neuropsychologist who also recommended an MRI be performed. *Id.* The High Court evaluated whether it would be either "unjust and oppressive" or, alternatively, a violation of Mr. Mostafa's Convention Rights to order his extradition and concluded it would not. *Id.*, at ¶¶ 144, 145. The High Court thus refused to stay Mr. Mostafa's extradition, and he was thereafter extradited to the U.S. *Id.*, at ¶ 146.

37. Notably, in the 2012 case, the High Court did not even address the issue of detention at ADX Florence as to Mr. Mostafa, although it did for the other applicants, noting, once again, the belief -- clearly based on representations by the U.S. government during the extradition process -- that “Abu Hamza does not face a real risk of more than a very short term of detention there.” *Id.*, at ¶ 17.<sup>2</sup>

***5. The Various Positions Taken and Representations Made By the U.S. Government Post-Extradition and Post-Conviction in the Context of Mr. Mostafa’s Sentencing and The Designation Process***

38. From the time of Mr. Mostafa’s arrival in the U.S., whereby he was immediately placed in solitary confinement, shortly thereafter subjected to SAMs, and rarely, if ever, provided needed medical care or acceptable accommodations for his disabilities, it was clear that the U.S. government had no intention of abiding by the representations it made in extradition proceedings as to Mr. Mostafa’s conditions of confinement while in U.S. custody. However, the U.S. government’s change of position as to the long term plan for Mr. Mostafa, became evident after his conviction, during the sentencing proceedings in his case and the subsequent designation process.

39. By the time of Mr. Mostafa’s sentencing it was clear that Mr. Mostafa – who had received nursing care four to six times a day while in UK custody and had demonstrably continuously struggled to do his activities of daily living while in pre-trial custody in the U.S.<sup>3</sup> – could very well be designated to ADX Florence by the BoP. That became evident as a result of

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<sup>2</sup> Mr. Mostafa is occasionally referred to herein as “Abu Hamza” as he has been identified in court proceedings under that name at various points in time.

<sup>3</sup> One example in the public record of Mr. Mostafa’s inability to perform activities of daily living, and of his need for assistance in doing so, was recounted during his sentencing hearing, where his inability to cut his own nails, in light of his disabilities, was discussed. As explained by defense counsel, the BoP had determined, after Mr. Mostafa filed a formal complaint within the prison, that Mr. Mostafa would be seen by a podiatrist every four weeks who would cut his toe nails, because he could not accomplish the task himself, and without such nail trimming Mr. Mostafa suffered the risk of infection. *See* January 9, 2015, Sentencing Hearing Transcript in *United States v. Mostafa*, 04 Cr. 346 (KBF), Docket #474, at 39-40 (Exhibit 11). Notably, this was raised, not as an example of a task of daily living that Mr. Mostafa could not perform, but, to demonstrate the BoP’s inability to ensure that even this modest requirement could be met in a non-medical facility. At the time of Mr. Mostafa’s sentencing, he had gone nine weeks without the proper care. *Id.*

the BoP's own submission to the sentencing court, a letter signed by Jeffrey D. Allen, M.D., the Chief of Health Programs for the BoP, and Dominique Raia, Senior Counsel to the BOP, attached hereto as Exhibit 10, which left open the possibility for a permanent or extended designation to ADX Florence, and was in stark contrast to Warden Wiley's representations. *Id.*, at 1-2. It was also clear from representations by the U.S. government during Mr. Mostafa's sentencing hearing. *See, e.g.*, January 9, 2015, Sentencing Hearing Transcript in *United States v. Mostafa*, 04 Cr. 346 (KBF), Docket #474, at 31, attached hereto as Exhibit 11 (Assistant United States Attorney Edward Kim opined as to the ADX accommodations that would be provided "in the event that the BOP decides to designate the defendant to ADX"). Nonetheless, the U.S. government -- disregarding entirely the fact that Mr. Mostafa's designation to ADX Florence to serve a lengthy sentence was inconsistent with the representations the English Courts and European Court of Human Rights had relied upon in granting his extradition -- told the sentencing court that "[t]he BOP is well-equipped to make the appropriate designation, and that [the] issue [of designation] should have no bearing on this proceeding." *See* January 9, 2015, Sentencing Hearing Transcript in *United States v. Mostafa*, 04 Cr. 346 (KBF), Docket #474, at 31.

40. As set forth by defense counsel in Mr. Mostafa's Reply Sentencing Memorandum, in *United States v. Mostafa*, 04 Cr. 356 (KBF), Docket #462, at 3-4,

[i]ndeed, we have no doubt that Mr. Mostafa would never have been extradited to the United States by the United Kingdom had the United States disclosed the scope of the SAMs that were to be imposed, or been forthright regarding the potential for an extended and possibly permanent designation to Florence ADX. . . . [A] life sentence, coupled with the Government's request for complete deference to the BOP . . . will leave in place the very real possibility that each day in prison will amount to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

*Id.*

41. It is my position that this accurately represents not only the circumstances of Mr. Mostafa's extradition to the U.S., but also the realities of the conditions under which Mr. Mostafa now finds himself incarcerated. In addition, defense counsel argued to the sentencing court during sentencing proceedings that "this Court is required to take all actions in its power to ensure compliance with the representations of the Executive Branch in procuring the defendant's

extradition.” See Reply Sentencing Submission, at 10 (emphasis added); see also January 9, 2015, Sentencing Hearing Transcript in *United States v. Mostafa*, 04 Cr. 346 (KBF), Docket #474, at 28. Defense counsel elaborated that this, “includes ordering that Mr. Mostafa be designated to a Federal medical facility,” as opposed to merely making a recommendation as to designation, “and that accommodations be made to his conditions of confinement that take into consideration the needs of his physical disabilities and other health concerns.” *Id.* (“under the circumstances of this case where Mr. Mostafa was extradited from Europe after a hearing in both the English courts and the European Court of Human Rights, . . . under the law, your Honor has the authority to make an Order regarding his designation”). Nevertheless, the sentencing court declined to take this approach. *Id.*

42. Rather, the sentencing court took a hands off approach, and ultimately “decline[d] [even] to make a particular recommendation to the BOP[,]” as well as to issue an Order regarding designation. January 9, 2015, Sentencing Hearing Transcript in *United States v. Mostafa*, 04 Cr. 346 (KBF), Docket #474, at 85. Based on conversations with BoP personnel, the sentencing court simply concluded,

[i]t is clear that what needs to occur and what will occur . . . before any designation, the defendant would get a full medical evaluation, which is really handled, as I understand it from my communications with the BOP, by a group of people with different areas of expertise, including security and behavioral issues along with the medical issues, and that all together the appropriate designation will be arrived at, which might be ADX, it could be some other federal facility, not a medical facility, and it could be a medical facility.

*Id.*, at 47.

43. Indeed, the sentencing court refused to take control of the designation process and made such statements despite the court’s knowledge of Mr. Mostafa’s difficulties in managing his activities of daily living while in custody at the MCC, and the court’s determination during the hearing that Warden Wiley’s statement regarding the impact that Mr. Mostafa’s ability to “manage his activities of daily living” would have on his prison placement was “a *commitment* that if he can't do his activities of daily living, he will not be at the ADX.” See January 9, 2015, Sentencing Hearing Transcript in *United States v. Mostafa*, 04 Cr. 346 (KBF), Docket #474, at 34 (emphasis added). The sentencing court also acknowledged that the

“Wiley statement . . . [had been] transferred into the subsequent statements of [Judge] Workman’s opinion and then [Judge] Sullivan.” *Id.*, at 88.<sup>4</sup>

44. The sentencing court’s only concessions as to defense counsel’s requests were to recommend that the “BOP take into consideration” the evaluation of Mr. Mostafa by Dr. Benjamin Kligler, a medical doctor hired by defense counsel to assess Mr. Mostafa’s disabilities and related needs, and that “an occupational therapist having experience with double amputees be part of the BOP team which evaluates the defendant.” *See* Judgment in a Criminal Case, in *United States v. Mostafa*, 04 Cr. 356 (KBF), Docket #463, at 3, attached hereto as Exhibit 12.

45. As discussed in greater detail **post**, since Mr. Mostafa’s designation, and despite the representation of the government at his sentencing hearing that “in the event that the BOP decides to designate the defendant to ADX, he will be housed in an area that can accommodate his medical needs,” *see* Sentencing Hearing Transcript, at 31 (Exhibit 11) Mr. Mostafa has not been held in a cell that is appropriate to his disabilities, he has not been given necessary or even adequate accommodations for his needs, let alone his daily needs, he remains subject to SAMs without any stepdown or relaxation of restrictions, and he has continually been housed in solitary confinement without access to daily nursing care.

46. These circumstances, all of which are established in Mr. Mostafa’s public filings, are not consistent with the assurances that the U.S. government made, and which the High Court and the European Court of Human Rights relied on. As was explained by defense counsel at sentencing, this case – in regard to both the assurances made, and the change in position by the U.S. government as to the suitability of ADX Florence to accommodate Mr. Mostafa’s needs, that ultimately resulted in Mr. Mostafa’s designation to ADX Florence – “will put the United States in a position where it may damage their ability for later extraditions.” Counsel further noted, “[w]hile that is not my concern as Mr. M[o]stafa’s attorney, it should be a concern to the [sentencing] court and to the government.” *See* Sentencing Hearing Transcript, at 52-53. The

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<sup>4</sup> Although the sentencing court also opined during the sentencing hearing, at 88 of the Sentencing Hearing Transcript, that “no one said that there would be no housing ever under any circumstances at the ADX [Florence]” and that she believed the extradition proceedings did not “com[e] close to a certain commitment that Abu Hamza would not be housed at any particular facility or would be housed at a medical facility[.]” these assertions do not undermine her finding of a commitment not to place Mr. Mostafa at ADX Florence if he could not manage his activities of daily living, nor her determination that the courts that decided Mr. Mostafa’s extradition relied on Warden Wiley’s statement in regard to where and how Mr. Mostafa would be designated.



unreliable nature of the U.S. government's assurances should likewise be a concern for the Court and authorities in the U.K. in determining whether to extradite Mr. Assange to the U.S.

**C. *Mr. Mostafa's Medical Assessment and Evaluation at FMC Springfield Prior to His Designation to Serve His Life Sentence at ADX Florence***

47. Post-sentencing, Mr. Mostafa was temporarily placed at FMC Springfield, a federal medical center, for the purposes of evaluation. After Mr. Mostafa had been held at FMC Springfield for more than eight months, without any updates from the BoP as to whether an appropriate evaluation had been conducted, or any designation decision had been reached – and despite my efforts to obtain such information directly from FMC Springfield -- I wrote a letter to the sentencing court, October 7, 2015, attached hereto as Exhibit 13, requesting that

the Court (1) obtain an update from the . . . BoP [] as to the status of Mr. Mostafa's now eight-month long post-sentencing evaluation at FMC Springfield to determine his medical and prison needs, as well as the appropriate accommodations and designation facility to meet those needs; and (2) Order the BoP to release to counsel a copy of any Occupational Therapist Report that has been prepared in regard to Mr. Mostafa.

*Id.*

48. A footnote to my letter noted that such update should include both “information as to whether the BoP has adopted the Court's recommendations that it take Dr. Benjamin Kligler's Report into consideration, and that Mr. Mostafa's medical team include an Occupational Therapist with experience treating double arm amputees” and also a “time frame, if one exists, for the completion of the evaluation and transfer to the designation facility[,]” which counsel had learned, only informally at that point, was to be ADX Florence. *Id.*

49. The letter further noted that one reason for the requested updates was that “the Court's intervention is necessary to ensure that the BoP is honoring the various promises and representations made by the United States to the United Kingdom and the European Court of Human Rights . . . during the extradition proceedings that precipitated Mr. Mostafa's transfer to United States custody, and also to this Court during Mr. Mostafa's sentencing hearing.” *Id.* Another reason, as set forth in the letter, was that the prolonged evaluation and designation process was impeding counsel's ability to send Mr. Mostafa discovery necessary to his ability to

assist in the preparation of his appeal, given that the “logistical considerations and costs involved in providing Mr. Mostafa with his discovery at FMC Springfield . . . made defense counsel reluctant to provide Mr. Mostafa with his discovery there if he w[ould] shortly thereafter be moved to another facility (such as ADX Florence).” *Id.*

50. My letter also noted that I had included the request that the sentencing court Order the BoP to release to me a copy of any Occupational Therapist that had been prepared, because I had previously requested a copy of any Occupational Therapist’s Report as to Mr. Mostafa from FMC Springfield directly, but was informed by legal counsel for FMC Springfield, as well as by the Warden for that facility, that in order to receive the Report I would either have to go through the Freedom of Information Act request process, which could take months, or seek a copy via Court Order. *Id.*

51. In response to my letter, the government argued that such requests of the Sentencing court constituted an “invit[ation to] the Court to involve itself in the BOP's classification and designation process” and “the Government respectfully request[ed] that the Court reject this invitation” as “outside of the Court's post-sentencing jurisdiction.” *See* October 14, 2015, U.S. Government Response to Lindsay A. Lewis, Esq.’s October 7, 2015, Letter to the Sentencing Court, with October 14, 2015, Court Order, attached hereto as Exhibit 14. The government also noted that “in any event, the defendant fails to identify with any particularity any defect in the BOP's process.” However, without any transparency as to the process that was taking (or ostensibly had taken) place, or the requested updates, there was no way that I could possibly have identified, and thus, raised any such defects with the court at that time.

52. Nonetheless, the sentencing court “declined to involve itself in the issues raised in the defendant’s letter,” on the basis of “principally the reasons cited by the government.” *Id.* Mr. Mostafa was subsequently designated to ADX Florence to serve out his life sentence and transferred to that facility. As I recall, I was never provided any further information from the authorities at FMC Springfield, the sentencing court, or the U.S. government as to the evaluation process, including whether it had involved the recommendations of the sentencing court that an occupational therapist having experience with double amputees was to be part of the BoP team which evaluated the defendant, and that Dr. Kligler’s medical evaluation should be taken into consideration.

**D. *Mr. Mostafa's Conditions of Confinement While in U.S. Custody***

**1. *Mr. Mostafa's Pre-Trial Confinement and Confinement During His Trial at the Metropolitan Correctional Center In Manhattan***

53. As would be the case with any inmate who is incarcerated in solitary confinement and subjected to SAMs, Mr. Mostafa's conditions of pre-trial incarceration, and in particular his isolation from the outside world, which included defense counsel in many respects, vastly impeded his ability to assist in the preparation of his case.<sup>5</sup> Indeed, for Mr. Mostafa, these issues began as soon as Mr. Mostafa arrived in the U.S, at the MCC in New York.

54. For instance, between October 2012, when Mr. Mostafa was extradited to the U.S. and January 2013, Mr. Mostafa was only able to have two legal calls with counsel, despite my numerous attempts to schedule regular legal calls with Mr. Mostafa through the MCC legal department. *See* January 14, 2013, letter from Lindsay A. Lewis, Esq. to the Honorable Katherine B. Forrest, attached hereto as Exhibit 15. This was notable as, unlike inmates who were not detained in isolation, M. Mostafa was unable to reach counsel by phone in any other manner, even just to request a legal visit.

55. As a result of the SAMs imposed Mr. Mostafa was also unable to communicate with his legal team over e-mail, which is otherwise a source of regular legal communication for pre-trial inmates. Nor were regular legal visits assured, both because inmates under SAMs are housed in a special unit at the MCC which limits the number of legal visitors permitted on the unit, where the visits are held, and due to other standard issues at detention centers, like

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<sup>5</sup> As described in *Center for Constitutional Rights and Lowenstein International Human Rights Clinic*, "The Darkest Corner," September 2017, available at <https://bit.ly/3i0WuT4>, at 16,

SAMs deprive defendants of the ability to participate in their own defense. One attorney described how these measures "dehumanize defendants and create a situation where they cannot exist in a defiant posture [to] fight the case," and ultimately "eliminate them as participants in their defense." This is particularly problematic, the attorney said, with respect to a defendant's right to testify: "The first time [a defendant] talk[s] to anyone besides me after two and a half years in solitary confinement is the jury. There is no way to prepare [him] for it. It really discourages the client from testifying.

lockdowns. As my March 7, 2013, letter to the Honorable Katherine B. Forrest, of the District Court for the Southern District of New York, explained, although “the MCC legal department represented to the Court that counsel could visit Mr. Mostafa anytime from 8 a.m. to 8 p.m., that is not the case. In actual practice, counsel can be turned away from the MCC and prevented from visiting a client for a number of reasons, which are often beyond the control of MCC and certainly beyond counsel’s control.” See March 7, 2013 letter to Honorable Katherine B. Forrest from Lindsay A. Lewis, Esq., attached hereto as Exhibit 16.

56. Efforts to effectively communicate with Mr. Mostafa as well as to deal with issues regarding his accommodations and conditions of confinement also took valuable time away from the case itself, and the preparation of the client’s defense. Such issues at times directly impacted Mr. Mostafa’s own ability to participate in his defense, such as when Mr. Mostafa was unable to view discovery in his case because the computer provided by the government, on which he was to do so, did not comport with his disabilities. *Id.* Fixing these issues and communicating with both MCC and Judge Forrest proved to be draining for both counsel and Mr. Mostafa, and at times, entirely unfruitful. Notably, in the more than two years Mr. Mostafa was detained at the MCC, and despite repeated complaints, he was never provided with an appropriate toilet, shower, or sink to accommodate his disabilities. Nor were many of his other medical and disability needs ever adequately addressed.

57. During Mr. Mostafa sentencing hearing, Mr. Mostafa, himself, described to the court his conditions of pre-trial confinement, in light of the lack of appropriate accommodations and the toll it had taken. As he explained therein, and is captured in the public record of that hearing,

the pretrial period in MCC has . . . never been even mentioned in any of the human rights courts or the appeals. They are all talking about ADX Max [Florence] and the posttrial [conditions of confinement]. The pretrial trial period has had a detriment[al] effect [o]n my ability to defend myself and to function. [For] [t]wo and a half years nearly now I [have been] . . . coerced to do things no disabled [person] w[ould] ever [typically] be asked to do. In fact, the specialist service and doctors w[ould] say to the disabled [person in a typical situation], [“w]e know you can do that, but we don't want you to do it, because of the long-term effect, and it could cause this and it could cause that.[”] That is not the default [at MCC]. For two and a half years I have been coerced to do

things which no disabled are supposed to do it, and nobody can report that because the cuts, they heal themselves and, thank God, there is no infection. But the problem is, this is torture. At the end of the day, when the cuts happen, when the pain happens, when the anxiety happens, that is torture.

See January 9, 2015, Sentencing Hearing Transcript in *United States v. Mostafa*, 04 Cr. 346 (KBF), Docket #474, at 63 (Exhibit 11).

## **2. Mr. Mostafa's Conditions of Confinement At ADX Florence**

### **a. Conditions of Confinement Generally at ADX Florence**

58. ADX Florence was built in 1994 specifically as an “expedient” method for controlling federal prisoners with life sentences through solitary confinement. Mark Binelli, “Inside America’s Toughest Federal Prison,” *New York Times*, March 26, 2015, (hereinafter “America’s Toughest Prison,”) available at [nyti.ms/1D1rbRa](http://nyti.ms/1D1rbRa). Inmates are detained in

12-by-7 foot cells with thick concrete walls and double sets of sliding metal doors (with solid exteriors, so prisoners can’t see one another). A single window, about three feet high but only four inches wide, offers a notched glimpse of sky and little else. Each cell has a sink-toilet combo and an automated shower, and prisoners sleep on concrete slabs topped with thin mattresses.

*Id.*

59. The supermax was conceived of to “isolate and control” inmates by routinely denying them the ability to converse for days, weeks, or months at a time and denying them fresh air or even a view of the outdoors. Andrew Cohen, “How America’s Most Famous Federal Prison Faced a Dirty Secret,” The Marshall Project, December 6, 2015, available at [bit.ly/2Yzzymr](http://bit.ly/2Yzzymr). As the former warden of ADX Robert Hood described the prison, “[t]his place is not designed for humanity....When it’s 23 hours a day in a room with a slit of a window where you can’t even see the Rocky Mountains — let’s be candid here. It’s not designed for rehabilitation. Period. End of story.” *Id.* As a result, people incarcerated at ADX Florence are disproportionately mentally ill, and often physically ill as well. See *America’s Toughest Prison*.

60. Those inmates in the four “general population” units spend at least 22 hours per day alone in their cells. As outlined in the Complaint in *Cunningham v. Fed. Bureau of Prisons*, a class action lawsuit initiated several years ago in the District of Colorado by inmates at ADX

Florence, the only relief from this solitary confinement comes a few days a week, when “they may be able to see and speak with a limited number of other prisoners during shared recreation periods lasting two hours.” *Cunningham v. Fed. Bureau of Prisons*, No. 12 Cv. 1570 (RPM) (MEH), 2016 WL 8786871, (D. Colo. Dec. 29, 2016), *aff'd*, 709 F. App'x 886 (10th Cir. 2017), Complaint, at ¶ 25. However, as discussed in greater detail **post**, such communications are not permitted for prisoners who are also detained under SAMs, as the conditions of the SAMs themselves prevent contact with the outside world, but also, critically, with other inmates – even in the already limited moments when human contact might be possible at ADX Florence.

61. The physical and psychological effects of long-term solitary confinement are well-known. Indeed, an investigation by the Center for Constitutional Rights found that, “[i]n one study of pathology among solitary prisoners, every symptom of psychological distress measured was present in more than half of the prisoners interviewed, and some symptoms were present in nearly all. There is ‘not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasting for longer than 10 days . . . failed to result in negative psychological effects.’” Center for Constitutional Rights and Lowenstein International Human Rights Clinic, “The Darkest Corner,” September 2017, (hereinafter “Darkest Corner”) available at <https://bit.ly/3i0WuT4>, at 11.

62. In ADX Florence specifically, the Complaint in *Cunningham* alleged that “[a]fter years of isolation, with no direct, unrestrained contact with other human beings, many prisoners experience a fundamental loss of even basic social skills and adaptive behaviors, and predictably find themselves paranoid about the motives and intentions of others.” *Cunningham* Complaint, at ¶ 29. This, however, is not the first time that such a conclusion about the effects of solitary confinement has been drawn. In 1890, the Supreme Court found that of the inmates housed in solitary confinement in Colorado’s death row, “a considerable number of the prisoners fell, after even a short confinement, into a semifatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide, while those who stood the ordeal better were not generally reformed.” *In re Medley*, 134 U. S. 160, 168 (1890). The Supreme Court has since continued to acknowledge the dangers of solitary confinement. *See, e.g., Davis v. Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring), (noting the “human toll wrought by extended terms of isolation.”), *Ruiz v. Texas*, 137 S. Ct.

1246, 1247 (Mar. 7, 2017) (Breyer, J., dissenting from denial of certiorari) (“prolonged solitary confinement “raises serious constitutional questions.”).

63. In a policy statement from 1995, the BoP claimed that,

[a]ll Bureau facilities employ psychologists skilled in the screening, diagnosis, and treatment of mental disorders. Although the Bureau concentrates mental health resources at some institutions, all institutions, regardless of care level, are expected to provide services for inmates with mental illness.

Bureau of Prisons Program Statement, “Treatment and Care of Inmates With Mental Illness,” available at [bit.ly/2BKIUDS](http://bit.ly/2BKIUDS).

64. These psychologists are supposed to ensure that mentally ill inmates are never designated to ADX Florence. As the BoP’s procedures for transferring prisoners to ADX Florence state, prisoners “currently diagnosed as suffering from serious psychiatric illnesses should not be referred for placement at... ADX.” BoP Program Statement 5100.08, “Prisoner Security Designation and Custody Clarification,” Chapter 7, p.18. *See also Cunningham Complaint*, at ¶ 44.

65. The reality, however, is that many inmates with mental illness, were, and still are referred for placement at ADX Florence. Mr. Mostafa is no exception. Indeed, despite reports revealed during the 2012 High Court extradition hearing that Mr. Mostafa suffered from depression and required further evaluation, he was ultimately designated to serve his sentence at ADX Florence.

66. As discussed above, in June 2012, thirteen inmates brought a class action lawsuit against the BoP alleging a longtime pattern of abuse and neglect of mentally ill inmates at the ADX Florence facility. *See Cunningham v. Fed. Bureau of Prisons*, No. 12 Cv. 1570 (RPM) (MEH), 2016 WL 8786871, (D. Colo. Dec. 29, 2016), *aff'd*, 709 F. App’x 886 (10th Cir. 2017).

67. The *Cunningham* inmate plaintiffs demanded implementation of a constitutionally adequate program of mental health diagnosis and treatment, alleging that

[d]espite its policies, the BOP regularly assigns prisoners with serious mental illnesses to ADX. That fact results from the BOP’s routine disregard of its own prior mental health evaluations of prisoners it wishes to send to ADX and its woefully inadequate mental health screening evaluations when prisoners are transferred to ADX.

*Cunningham* Complaint, at ¶ 4.

68. Moreover, the *Cunningham* litigation established that even those inmates who do not arrive at ADX Florence with pre-existing mental illness are likely to develop mental illness as a direct result of their isolated incarceration at the facility. As the *Cunningham* Complaint explains,

[a]s early as the 1960s electroencephalography (EEG) examinations demonstrated the slowing of brain waves of prisoners confined in isolation for longer than a week. A landmark study in the 1970s showed that subjects in solitary confinement often experienced impaired functioning of the brain waves associated with the ability to control emotions and key cognitive functions. Similarly, a 2011 study demonstrated that after only a week of solitary confinement, prisoners showed decreased EEG activity, indicative of increased stress, anxiety, and depression.

*Cunningham* Complaint, at ¶ 42. Thus, for the BoP to adequately address the problem of mental illness at ADX Florence, where inmates are generally housed for years at a time in isolation, and to preclude inmates with mental illness from suffering solitary confinement, they would essentially need to transfer all inmates out of solitary confinement who have been there for more than a short while.

69. Over the course of four years of negotiations, the *Cunningham* plaintiffs reached a settlement with the BoP through which almost 100 inmates were transferred out of solitary confinement and into other BoP facilities. See Andrew Cohen, “How America’s Most Famous Federal Prison Faced a Dirty Secret,” *The Marshall Project*, December 6, 2015, available at [bit.ly/2Yzzymr](http://bit.ly/2Yzzymr).

70. The settlement is also lauded as a success by many because of its potential to lead to the humane treatment of mentally ill inmates within the BoP system. For example, under the settlement, inmates are to have screenings with mental health professionals “before an inmate is transferred [to ADX Florence], another when the inmate arrives, and another after the prisoner has been there a while.” *Id.* And, “[i]f mental illness is detected, prison officials will either transfer the prisoner to a more suitable facility or treat the prisoner at ADX-Florence ‘if his security needs cannot be managed anywhere else’ in the federal prison system.” *Id.* Thus, the *Cunningham* settlement is celebrated, most notably, for its ability to improve the lives of



mentally ill inmates by enabling them to leave ADX Florence, *not* by meaningfully improving conditions within ADX Florence for the mentally ill.

71. The reality that the *Cunningham* settlement most benefits those who are eligible to leave the facility in favor of placement at another institution with better resources for mental illness, is exemplified by the District of Columbia’s Corrections Information Council’s October 31, 2018, “USP Florence Administrative Maximum Security (ADX) Inspection Report,” (hereinafter “CIC Report”), available at [bit.ly/3fxU9gS](http://bit.ly/3fxU9gS) . Pursuant to the CIC Report, there are three available options within the BoP for an ADX Florence inmate who is mentally ill: transfer to one of two secure mental health units, located at USP Atlanta, in Georgia, and USP Allenwood, in Pennsylvania, or, if these are both unavailable to the inmate because of security concerns, the Steps Toward Awareness, Growth, and Emotional Strength Program (hereinafter “STAGES”) Unit at ADX Florence. *CIC Report*, at 14.

72. The *CIC Report* finds that STAGES is “a residential treatment program designed to reduce disruptive behavior of incarcerated men with mental illness, borderline personality disorder and a history of self-harm, to enable them to move to general population.” *CIC Report*, at 14. This is done, primarily, through, “a modified therapeutic community.” See U.S. Department of Justice, “Report and Recommendations Concerning the Use of Restrictive Housing,” January 2016, available at [bit.ly/2CgUtSN](http://bit.ly/2CgUtSN), at 26. While in group therapy, many of the inmates are nonetheless kept in cages, as shown in the picture below.



See [bop.gov/resources/news/20160324\\_secure\\_stages.jsp](http://bop.gov/resources/news/20160324_secure_stages.jsp).

73. However, even the inferior option of placement in group therapy through the STAGES program, as opposed to a transfer to one of the BoP facilities with a secure mental

health unit, is not likely available to an inmate housed at ADX Florence under SAMs, because unlike other inmates in restricted units at the facility, there are strict guidelines regarding who SAMs inmates may, and may not, communicate with. As *Darkest Corner* reports, “SAMs prisoners are generally prohibited from communicating with other prisoners within the cellblock.” *Darkest Corner* at 5. Thus, there is reason to conclude that such restrictions would prevent inmates held under SAMs from participating in group therapy, and thus the STAGES program.

74. Moreover, inmates held under SAMs, like Mr. Mostafa, are housed in a special secure unit of ADX known as H-Unit which may result in still further limitations on an inmate’s ability to benefit from any remaining available mental illness treatment options. If held under SAMs, and designated to ADX Florence, Mr. Assange would in all likelihood wind up in this unit as well.

75. According to the *CIC Report*, if an inmate cannot participate in group therapy at ADX Florence, “Psychology Services offers limited individual therapy. When individual therapy is required, inmates can be brought out of their cells to the room on the unit used for legal visits. Staff reported that individual therapy is offered once per week on Fridays, and only up to five patients can be seen on one day.” *CIC Report*, at 17. One inmate that the CIC spoke with said that, “[m]ental health makes rounds, but does not pull you out of cell. They will not stop at my cell.” *CIC Report*, at 17. Accordingly, given the restrictions on SAMs inmates and the more stringent environment posed by the H-Unit, which vastly limits the ability of an inmate to leave their cell and to communicate with others, there is no guarantee that an inmate housed in the H-Unit would be eligible for individual therapy, due to security concerns and/or the logistics of providing therapy to such an inmate could cause ADX Florence staff to simply overlook them. Also, communications with a therapist would presumably be monitored if an inmate is housed under SAMs, as other SAMs inmate communications are, and this could dilute the quality and effectiveness of the care, particularly if an inmate is unwilling or afraid to speak freely under such conditions.

***b. Mr. Mostafa’s Conditions of Confinement at ADX Florence***

76. Mr. Mostafa, who is incarcerated at ADX Florence under SAMs, described his conditions of incarceration in his recent Complaint (Exhibit 2). As he explained therein, he has

been housed in one of the two cells designed for wheelchair-bound inmates in H-Unit for the entirety of his confinement at ADX – notably, not the disability from which he suffers and entirely incompatible with his needs. See *Mostafa v. Barr*, 1:20 Cv. 694 (PAB) (NYW) (S.D. Col. March 12, 2020) ECF # 1, at 11 (hereinafter “Complaint”) (Exhibit 2). Cell 300, in which Mr. Mostafa was housed for two and a half years, is a “modified large store room” that has no window and thus no natural light. *Id.* When another inmate, who required an accessible cell, was transferred into to the prison, an additional accessible cell -- that likewise did not take into account Mr. Mostafa’s specific disabilities -- was constructed. *Id.* Neither cell in which Mr. Mostafa is confined has a proper toilet for his disabilities, nor a shower or sink with continuous water, which he also requires. *Id.*, at 12. When he was held in cell 300, however, prison staff welded sharp round metal discs to the faucets, “to make it easy” for him but the discs cut into his stumps and caused bleeding. *Id.* Because he lacks a proper toilet, he is unable to clean himself properly, and he states that his hygiene has suffered. *Id.* He also states that he does not have a table that he is able to eat or write at, and that the safety railings in his cell are designed for someone in a wheelchair, and are at waist level, rather than designed for a partially sighted amputee. *Id.*, at 21. All of these problems are exacerbated by Mr. Mostafa’s poor vision, which makes ambulating in a small and dark cell without any windows especially onerous. *Id.*, at 22-23.

77. Additionally, since 2018, prison officials have routinely moved Mr. Mostafa between cell 300 and cell 511. *Id.* at 11. This move is extremely difficult for Mr. Mostafa physically, given that as a double-arm amputee, it is difficult for Mr. Mostafa to collect all his belongings and move them. *Id.*, at 12. This struggle is in addition to the psychological stress, which Mr. Mostafa describes. In his words, he experiences “an enormous daily stress, anxiety, fear of injury . . . and helplessness.” *Id.*, at 10.

78. Indeed, all of the struggles that Mr. Mostafa faces are compounded by the fact that he spends his entire day, each day in solitary confinement. As discussed *ante*, the stress and anxiety Mr. Mostafa experiences on a daily basis are common symptoms of solitary confinement. Moreover, despite the obvious effects of prolonged solitary confinement on mental health, and Mr. Mostafa’s documented psychiatric history, counsel does not have reason to conclude that he has received sufficient, or perhaps any, mental health care while at ADX Florence.

### ***3. The Quality of the Medical Treatment Mr. Mostafa Has Received While Incarcerated at ADX Florence***

79. Mr. Mostafa's experiences pursuing medical treatment at ADX Florence and generally within the BoP are relevant to Mr. Assange's case, just as they are relevant in the case of any inmate who has a medical issue, or requires medical care while confined in the BoP. Indeed, in addition to his well-known disabilities, Mr. Mostafa also has a host of other medical issues for which he requires care and treatment. As the High Court described in Mr. Mostafa's 2008 case regarding his extradition, Mr. Mostafa suffers from,

'type 2' diabetes and raised blood pressure, for both of which he is prescribed appropriate medication, extensive psoriasis, hyperhidrosis (excessive sweating provoked by a neurological condition) which requires him to shower and change his clothes at least twice daily, blindness in the right eye, with poor vision in the left, and bilateral traumatic amputation of the distal third of both forearms for which prostheses are fitted. The stumps in both arms are subject to regular outbreaks of infection, which have been increasing in severity.

*See Mustafa Kamel Mustafa (Otherwise Abu Hamza) v. the Government of the United States and the Secretary of State for the Home Department*, Case No. CO/1748/2008, [2008] EWHC 1357 (Admin), High Court of the United Kingdom, Queens Bench Division, Order, dated, June 20, 2008, at ¶7 (Exhibit 4).

80. As discussed **ante**, many assurances were made to Mr. Mostafa prior to his extradition to the U.S. regarding the standard of medical care he would be afforded to meet his needs. Those standards have yet to be met, and a failure to accommodate Mr. Mostafa's medical needs is an issue of constitutional significance.

81. Indeed, the Eighth Amendment to the U.S. Constitution affords inmates protections against cruel and unusual punishment, and this has been explicitly applied to people incarcerated with physical disabilities and to medical care. See, e.g., *Shariff v. Coombe*, 655 F.Supp.2d 274 (SDNY 2009), (the Eighth Amendment extends to conditions of confinement and the effect those conditions have on disabled prisoners.); *Knop v. Johnson*, 667 F.Supp. 467, 479 (W.D.Mich. 1987) (“[e]xposing an inmate to a situation where he may be forced to defecate or urinate in his own cell without the presence of proper toilet facilities or a washbasin violates the basic human dignity the Eighth Amendment protects.”); *Johnson v. Wright*, 234 F.Supp.2d 352,

360 (SDNY 2002), quoting, *Hathaway v. Coughlin*, 37 F.3d 63, 68 (2d Cir. 1994), (the mere “fact that a [prisoner] received regular medical care does not preclude a finding of deliberate indifference where the ‘course of treatment was largely ineffective and [prison officials] declined to do anything more to attempt to improve [the prisoner’s] situation.’ ”); *Oliver v. Deen*, 77 F.3d 156 (7th Cir. 1996) (prison officials must ensure that inmates receive adequate food, clothing, shelter, protection and medical care); *Whitnack v. Douglas County*, 16 F.3d 954 (8th Cir. 1994) (reasonably adequate sanitation and ability to eliminate and dispose of one’s bodily wastes without unreasonably risking contamination are basic identifiable human needs of prisoner protected by Eighth Amendment); *King v. Frank*, 371 F.Supp.2d 977 (W.D.Wisc.2005) (condition of inmate’s confinement violates Eighth Amendment’s prohibition against cruel and unusual punishment if it denies inmate civilized measure of life’s necessities); *Estelle v. Gamble*, supra, 429 U.S. 97 (1976) (deliberate indifference to prisoners’ serious medical needs constitutes cruel and unusual punishment); *LaFaut v. Smith*, 834 F.2d 389 (4th Cir. 1987) (prison officials violated Eighth Amendment by failing to provide disabled inmate with needed physical therapy and adequate access to facilities).

82. The Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 also recognize that the need to accommodate disabled persons extends not merely to those that are at liberty but to incarcerated persons as well. See *Pennsylvania Dep’t of Corrections v. Yeskey*, 524 U.S. 206 (1998) (ADA); *Onishea v. Hopper*, 171 F.3d 1289 (11th Cir. 1999) (Rehabilitation Act); *Bonner v. Lewis*, 857 F.2d 559 (9th Cir.1988) (Rehabilitation Act); *Kaufman v. Carter*, 952 F.Supp. 520, 523-24 (W.D.Mich. 1996) (failure to provide accommodations so that bilateral amputee could gain equal access to bathrooms and showers while incarcerated implicated Rehabilitation Act, the ADA, and the Eighth Amendment).

83. Along these lines, 42 U.S.C. § 12182(b)(2)(A)(ii) explains that, for purposes of the ADA, discrimination in public accommodations includes:

a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.”

84. Accordingly, Mr. Mostafa should be protected from discrimination as a result of his disabilities. As a federal inmate, he should receive modifications to mitigate practices which are unreasonably difficult for him, and which do not affect the national security of the United States. However, at ADX Florence arbitrary policies preclude Mr. Mostafa from receiving adequate medical care, and bureaucratic indifference makes fighting these conditions onerous and near impossible.

85. For example, as a double-arm amputee, Mr. Mostafa has trouble brushing his teeth. *See* Complaint, at 14. As he explains in his Amended Complaint, “the most painful physical pain (non stop) is the ADX policy of not allowing any dental work or replace damaged work done prior to ADX, such as but not limited to: bridges, crowns, implants, etc[.]” *Mostafa v. Barr*, 1:20 Cv. 694 (PAB) (NYW) (S.D. Col. May 18, 2020), ECF # 9, at 16 (“Amended Complaint”), attached hereto as Exhibit 3. These problems are related to his other health concerns, and ADX Florence should provide some reasonable accommodation, which is all Mr. Mostafa asks for. As Mr. Mostafa’s Amended Complaint elaborates “all ADX dentist repeatedly explained to plaintiff . . . [is] that ADX policy afford[s] no repair ... not even allowed more than once a year cleaning nor plaintiff allowed electric/flossing brush to clean his teeth[.]” Amended Complaint, at 16.

86. While the prison has denied his requests and delayed any relief, Mr. Mostafa reports that the problems with his teeth have been exacerbated. Amended Complaint, at 16. Because of his double arm amputations, and the lack of any assistance from prison staff with his daily needs, Mr. Mostafa is only able to open pouches of food by ripping them with his teeth. Over the course of the years he has been incarcerated, he reports that the nerves in his teeth have become severely damaged and he has lost several teeth. Amended Complaint, at 16.

87. Mr. Mostafa’s health has also suffered in other ways as a result of neglect by prison staff. For example, Mr. Mostafa is unable to cut his own toenails, apply prescribed cream to his body to treat his skin conditions, or clean his cell. *See* Complaint, at 15-16. These small tasks, which other inmates do not need assistance with, are impossible for Mr. Mostafa to accomplish safely on his own without special attachments for his prosthetics. As a result, Mr. Mostafa experiences frequent bleeding in his feet from sharp or overgrown toenails, “injur[y] and bleeding” when he is made to clean his cell, and his skin conditions have gone untreated. Complaint at 15-16.

88. The consistent lack of attention paid by prison staff to Mr. Mostafa's needs demonstrates that the staff at ADX Florence is unable to, or at least unwilling to, accommodate inmates with disabilities or to adequately attend to medical issues. Despite promises by the BoP made to the English extradition courts to the contrary, Mr. Mostafa suffers daily from the conditions of his confinement and his lack of proper and necessary medical care.

**E. *Mr. Mostafa's Detention Pursuant To SAMs Throughout His Time in U.S. Custody***

89. Despite the fact that prior to his extradition to the U.S., Mr. Mostafa had been incarcerated at HMP Belmarsh for many years as a standard risk, high profile inmate, in the general population (with access to other inmates as well as his family), he has been incarcerated under SAMs since just after his arrival in the U.S., and continuously, for the last nearly eight years. In order to best understand the conditions of confinement Mr. Mostafa has faced, and currently faces at ADX Florence, as a result of the fact that SAMs have been imposed in his case, and also the conditions that Mr. Assange would likely face if subjected to SAMs while in U.S. custody, a general overview of the SAMs regime is instructive.

90. *The Center for Constitutional Rights'* comprehensive study of SAMs found that while SAMs can vary between prisoners, "the standard regulations severely restrict or altogether prohibit contact with other human beings, including other prisoners and visitors." *Center for Constitutional Rights and Lowenstein International Human Rights Clinic*, "The Darkest Corner," September 2017, available at <https://bit.ly/3i0WuT4>, at 5 (hereinafter "Darkest Corner"), attached hereto as Exhibit 16. Inmates subject to SAMs at ADX are "allowed only ten hours total outside of their cell per week, like general population prisoners. But this time is also spent alone, either in a small indoor room or in a cage hardly bigger than their cell. For many prisoners, the cage is too small to run or do anything but walk a few steps in each direction." *Darkest Corner*, at 6. Thus, most inmates under SAMs spend all day, every day, completely alone, and often for many years at a time.

91. SAMs also severely limit an inmate's ability to stay in contact with family. For example, "[c]alls can only be made to approved 'immediate family members' and may be limited to one fifteen-minute call per month." *Id.* In Mr. Mostafa's case, as he notes in his Complaint in the District of Colorado, not even all of his children, or even his young grandchildren have been

approved. *See* Complaint, at 30 (“four of the plaintiff’s sons are excluded from any communications, and all but one of all grandchildren are also excluded from any contacts (the oldest is 6 years old)”).

92. Mail is similarly restricted to those approved family members, “with the frequency limited to three 8.5 x 11 pieces of paper “once per week to a single recipient, at the discretion” of the BoP. This mail must also be “copied and analyzed by the FBI before it is delivered.” *Id.* This restriction poses significant hardship, especially on an inmate like Mr. Mostafa, who is only practically able to communicate with approved family members by phone or through letters (SAMs inmates are not permitted access to the prison inmate email system, which impedes both legal and social contact). He must thus choose between family members since he is not permitted to write to all of them each week, and, as he notes in his Complaint in the District of Colorado, due to the delays posed by the inspection of mail to and from Mr. Mostafa, “[t]he real cycle of a letter and its answer is 6 months. 60 working days to send and 60 to receive [--]weekend and holidays not counted [--] thus only two meaningful letters per a year for a successful informative mail.” Complaint at 30. Likewise, all calls and visits are contemporaneously monitored and recorded by the FBI. *Darkest Corner*, at 6.

93. Among inmates, communication is completely prohibited, and this includes restriction of communal prayer. Inmates cannot communicate with the media, and cannot read or view any publication that is not approved by the BoP. *Id.*

94. Communications are further restricted for anyone who has contact with an inmate subjected to SAMs. As discussed briefly *ante*, and explained in *Darkest Corner*, “[t]he government imposes what amounts to a ‘gag order’ on the few people who can contact the prisoner – that is, the prisoner’s attorney and authorized immediate family members – prohibiting them from conveying any message from the prisoner to a third person.” *Id.*, at 5. In practical terms, these restrictions serve the underlying purpose of the SAMs, such as those in Mr. Mostafa’s case which are intended to prevent the dissemination of any communications by the inmate that might result in death or serious bodily injury to person, or damage to property. But they also restrict communications for no legitimate purpose whatsoever, such as when the communications at issue have no possible chance of causing the ills that the SAMs are intended to prevent, and the disclosure of which could otherwise be beneficial or useful.

95. SAMs also guarantee a particularly harsh living environment for an inmate. For



instance, “SAMs prisoners at ADX are held in a separate section of the prison called the Special Security Unit (“SSU”) or H-Unit. These prisoners are confined to cells that measure less than eight by ten feet, requiring them to eat their meals within an arm’s length of their toilet.” *Id.*, at 6. Mr. Mostafa specifically is housed in a 16 foot by 8 foot cell that has only one small window which is blocked by the shower. *See* Complaint at 11. As a result, his cell is dark and completely devoid of sunlight.

96. Nor are the restrictions of SAMs a short-term problem for those inmates on whom SAMs are imposed. “A 2013 count showed that eighty-two percent of prisoners placed under SAMs were under these restrictions for more than a year. Of those prisoners, thirteen had lived under SAMs for more than a decade.” *Darkest Corner*, at 11. Moreover, the Attorney General need not justify an imposition of SAMs or their renewal. *See, e.g.*, Aviva Stahl, “Extreme Isolation for U.S. Prisoners Shields ‘Torture’ From Public View and Accountability,” *The Intercept*, October 23, 2017, available at [bit.ly/3g6B9pE](https://bit.ly/3g6B9pE) (stating “there are essentially no checks on the attorney general’s power to impose the onerous restrictions, nor evidentiary standards she is required to meet in order to do so.”) Indeed, in Mr. Mostafa’s case, SAMs have been imposed for eight consecutive years, and have not been relaxed in any manner. And, in fact, SAMs were re-imposed for the current year as of January 3, 2020.

97. The fact that these restrictions have been consistently maintained over the course of more than seven years, and Mr. Mostafa is now in his eighth year under SAMs, is significant given that the government asserts, in imposing the SAMs, that these are the least restrictive measures that can be tolerated in light of the risks that the inmate presents. In my opinion they are not, in that they are designed to prevent even contacts and communications that have no chance of leading to, or connection to, criminal activity or terrorist activity and that do not pose any risk of harm to any person or property.

98. It is also my opinion that any SAMs violations that have been alleged against Mr. Mostafa should not prevent the SAMs from being relaxed pursuant to the stepdown process that the government spoke of during Mr. Mostafa’s extradition proceedings in the ECtHR, and which exist at ADX Florence. Indeed, the isolated instances of minor, or even essentially administrative, non-compliance over the span of many years that are alleged in Mr. Mostafa’s case do not appear to compromise national security in any manner or run the risk of causing any harm.

99. Indeed, one such violation, which Mr. Mostafa raised in the public record in the context of his Complaint in the District of Colorado, *see* Complaint, at 31, was that he had allegedly improperly tried to convey, in a letter to one of his sons, his love to his one year old grandson, who Mr. Mostafa is not permitted to speak to. It was, according to Mr. Mostafa, viewed as “an attempt to contact [a] third party (the plaintiff[‘s] one year old grandson).” *Id.* Such a violation does not go to the purpose of SAMs, which is to prevent the client from committing, soliciting or conspiring to engage in future criminal conduct, and namely terrorist activities which could result in death or serious bodily injuries. All such restrictions do is to impede an emotional connection between an already severely isolated inmate and his family. In fact, such contact should be encouraged and fostered for the good of the inmate and his family members. Nor should such a violation, even if proven, be used as a basis to renew the SAMs.

100. But, challenging the SAMs is difficult, for counsel, and particularly so for inmates. As Mr. Mostafa explained to the sentencing court on the record during his sentencing hearing, “more than two-thirds of my letters to [my family members]. . . have been trashed, and I can't prove it because the [MCC staff did] not give me a receipt [for each documenting] . . . the date [I submitted the letters to be sent].” *See* January 9, 2015, Sentencing Hearing Transcript in *United States v. Mostafa*, 04 Cr. 346 (KBF), Docket #474, at 67 (Exhibit 11). He also noted that he had “exhausted all [his administrative] remedies from the regional to the central [office] to the MCC itself. . . all the remedies [through to] the central office” without any recourse from the BoP. *Id.* He also commented, more generally, with regard to the SAMs that have been imposed on him, “the problem is, when they are administrated, they are loose. They are not watertight. There is bullying, and the more you complain, the more you get bullied.” *Id.*

101. There is no reason to conclude that SAMs imposed on Mr. Assange would be any less arbitrary, oppressive, or difficult to challenge, should the U.S. government determine, in its apparently unbridled discretion, that they are appropriate in his case.

**F. *Mr. Mostafa’s Experiences with the BoP Administrative Remedy Process And Efforts To Challenge the Conditions of His Confinement Both Within the BoP and In the U.S. Courts***

102. The U.S. federal statute that governs challenges to an inmate’s conditions of

confinement is 28 U.S.C. §2241. Under this statute, if a detainee wishes to challenge the conditions of his confinement, the BOP's conduct, or, the SAMs that have been imposed in his case, he must do so collaterally in the district in which he is confined. *See Jiminian v. Nash*, 245 F.3d 144, 146 (2d Cir. 2001) ("[a] motion pursuant to § 2241 generally challenges the execution of a federal prisoner's sentence, including such matters as ... computation of a prisoner's sentence by prison officials, prison disciplinary actions, prison transfers, type of detention and prison conditions." (internal citation omitted)); *see also Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (noting that a federal prisoner seeking to challenge his custody must "name his warden as respondent and file the petition in the district of confinement").

103. But, even for Mr. Mostafa, whom I have been appointed as counsel to represent in litigation pursuant to 28 U.S.C. §2241, it is not as simple as just initiating a case in the court. In fact, I only recently asked the court to appoint me to litigate Mr. Mostafa's conditions of confinement in the U.S. courts, despite awareness for years that such issues with his confinement exist, because an action cannot be brought in the U.S. federal district court until *after* the inmate has exhausted the administrative remedy process within the BoP. Indeed, Mr. Mostafa, himself, has only just this year, in his eighth year of confinement in the U.S., filed an action in court raising confinement conditions and his SAMs. *See* Complaint and Amended Complaint (Exhibits 2 & 3).

104. Inherent to the administrative remedy process are long timelines that inevitably lead to delay in exhaustion and the ability to pursue a matter in court. The process is particularly unforgiving when the matter at hand is urgent or time sensitive. As *Darkest Corner* explains,

exhausting the [administrative remedy process] requires prisoners to (1) raise the issue of concern informally with BOP staff, (2) wait for the staff's response, (3) obtain and file a Remedy Form, (4) wait for the prison's response to the request, (5) obtain and file a Regional Appeal Form, (6) wait for the BOP Regional Office's response, and (7) obtain and submit a Central Office Appeal Form. BOP officials may return without response any filing that fails to adhere to extensive regulations concerning form and timing. Attorneys may not submit these complicated requests or appeals on the prisoner's behalf.

*Darkest Corner*, at 19. BOP's Program Statement 1330.18 discusses ARP in detail. *See* [https://www.bop.gov/policy/progstat/1330\\_018.pdf](https://www.bop.gov/policy/progstat/1330_018.pdf).

105. In Mr. Mostafa's case this last requirement, that the inmate submit his requests himself, has been particularly challenging and has resulted in hardship for Mr. Mostafa. As he notes in the context of his recent Complaint to the District Court for the District of Colorado, at 30, "[m]ost of the time plaintiff's remedy paperwork is rejected or returned because he can not press the pen hard enough to fill the four pages, no photo copies allowed to be sent as replacement, no carbon papers is provided no help and no consideration for his disability though it is well known and repeatedly mentioned to prevent rejection." *Id.*

106. In addition, Mr. Mostafa's transfer from one BoP facility to another, despite the fact that his conditions of confinement issues and SAMs are essentially, if not entirely, the same in each facility, has also long-delayed his ability to litigate his confinement conditions and the SAMs that were imposed, in court. Under the administrative remedy process, in the event of an inmate's transfer to a new facility, the process must begin anew, even if the issues remain unchanged. Thus, "while the [administrative remedy process] ostensibly affords prisoners an opportunity to redress issues related to their confinement, in practice it can prevent courts from conducting any substantive review of SAMs [and other confinement] conditions." *Darkest Corner*, at 19.

Dated: 17 July 2020  
New York, New York



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