

HUMAN RIGHTS WATCH

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May 2, 2007

Mr. Harley G. Lapin
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320 First St., NW
Washington, DC 20534

Dear Mr. Lapin:

We want to thank you for providing us with an opportunity to visit the ADX, Florence earlier this month. We know that you and your staff spent much time coordinating and preparing for our visit and we are extremely appreciative of all your work. We also appreciate the written answers we received in March to the requests for data that we had sent to the BOP in December.

As you may know, we spent the entire day at the ADX on April 12, 2007. In the morning, we were shown a video about the prison, toured parts of the facility, and spoke with several staff members. In the afternoon, we met with several inmates in the D-Unit, a general population unit. Our tour took us to the D-Unit, the outside recreation areas for the general population and the J-Unit, the transitional K-Unit, the medical facilities, and the psychologists' offices. We were disappointed that we were not able to speak with inmates in the H-Unit subject to SAMS, although we understand that that decision was not made within the BOP. We were also not allowed to walk into the H-Unit and look at the cells – which apparently was a BOP decision. We find this difficult to understand given that a quick tour of the unit would not have posed a security risk nor violated the SAMS restrictions.

At the end of the day, we had an opportunity to debrief, ask questions, and share concerns with the Warden, the Regional Director, the Associate Warden, and the many other BOP staff who had joined us for the tour. We would like here to share some of our ongoing concerns and questions with you as well.

These comments also reflect input we received from inmates' attorneys and correspondence with several inmates themselves. We are not conveying all of the individual complaints, but only those commonly shared.

- **Placement at & Step-Down from the General Population at the ADX:** Many of the so-called “terrorism” inmates were sent to the general population at ADX immediately upon sentencing, based on the nature of their crimes. Others were moved there after 9/11 from other jails or prisons where they had been confined - in some cases for years without committing disciplinary infractions or posing security threats. That is, they did not “earn” their way into the ADX through misconduct in lower level facilities. Many of those inmates are now housed together on the D-Unit. According to BOP records provided to us, quite a few of the inmates on the D-Unit have not received a single incident report since their arrival at the D-Unit – including some who have been there 6, 8, or even 9 years. Others have received just minor citations for non-violent incidents, such as unauthorized use of mail or refusing an order.

Given their clear record of conduct, these inmates appear to be “eligible” for step-down under BOP’s own policy. Nevertheless, it appears that many, if not most, of them may never actually be placed in the program or otherwise be able to earn their way out of the general population at ADX, given the nature of the crime that led to their conviction. In a number of cases, the good conduct of inmates has been acknowledged, yet they have been denied step-down because the “reason for placement at ADX has not been sufficiently mitigated.” No matter how well they behave in prison, they cannot undo the past crimes that landed them in prison, generally, and then ADX, specifically.

Given that reality, there is an urgent need for new procedures and policies that would mitigate the harsh conditions of confinement for those who are likely spend many years (as some have already), and quite possibly the rest of their lives in the general population at the ADX. As you know, the confinement for prolonged periods of time under the conditions extant in the general population at the ADX is inconsistent with binding US human rights obligations under the Convention against Torture (CAT) and International Covenant on Civil and Political Rights (ICCPR). In fact, last year, both the UN Committee against Torture (the body responsible for monitoring compliance with the CAT) and the UN Human Rights Committee (the body responsible for monitoring compliance with the ICCPR) expressed strong concerns about the overly harsh conditions of confinement in maximum security detention centers and urged the United States to review and revise these conditions.

We note that the Bureau has recently instituted some changes in the conditions in the H-Unit in an effort to mitigate some of its unnecessarily harsh features for inmates who have not proved to be disciplinary problems while incarcerated. Inmates who progress to phase three of the recently implemented step-down program in the H-Unit are allowed to eat in groups and share common spaces for a certain period each week.

We think it should be possible to implement a similar program for inmates in the general population who demonstrate a record of good behavior, are not a threat to staff or other inmates, and yet who will not be stepped down for many years, if ever. Permitting such inmates the opportunity for group meals, group recreation, group prayer, and group therapy would alleviate the most damaging and punitive aspect of general population confinement – the extraordinary isolation and lack of ordinary social interaction. It would also provide an incentive for continued good behavior.

We urge the Bureau to create what is in essence two distinct categories of general population inmates at the ADX: those who earned their way based on conduct in prison and can therefore earn their way out based on prison conduct, and those who earned their way in based on the nature of their crime committed before incarceration and are not likely to be able to leave ADX for many years, no matter how good their conduct in prison. These two categories of inmates exist de facto in the general population at the ADX. We believe the BOP must now make new policies and programs to reflect this reality.

- **Placement in the General Population at the ADX:** We have previously told BOP of our concerns that inmates have been moved to the general population at the ADX without being given a specific reason which led to their placement in the ADX, let alone any chance to contest that placement. We do not know if BOP has changed its policies in response to the Supreme Court's ruling in *Wilkinson v. Austin*, 545 U.S. 209 (2005) which requires notice and an opportunity to rebut the basis for placement in such extremely restrictive environments. However, many of the inmates were moved to the ADX prior to *Wilkinson*. While we gather that inmates are subject to biannual placement reviews, the inmates we spoke to did not have an opportunity to contest the underlying reason for placement at the ADX and were simply provided a statement concluding that they were not eligible for step-down because the "reason for placement at the ADX has not been sufficiently mitigated." As the District Court of Colorado concluded in the case of *Aja v. US* (Civil Action 03-CV-10959-MSK-PAC), this conclusory statement, which fails to explain what the initial reason for placement was, denies inmates the opportunity to object to or appeal the denial of step-down, as required by *Wilkinson*. Inmates should be provided more detailed explanations of the basis for ongoing placement at the ADX and a meaningful opportunity to respond to or appeal the placement decision as is required by law.

BOP officials also explained to us that the conviction to confine certain inmates convicted of terrorism related crimes was based on information received from outside agencies (i.e. intelligence agencies). However, we do not know whether or how frequently the BOP itself communicates with these to determine whether the continued confinement within the ADX remains necessary. We believe the BOP has an affirmative obligation reach out to these outside agencies on a regular basis to determine whether continued detention at the ADX is still necessary.

- **Recreation:** While inmates in the general population at the ADX described a period last summer where they were rarely allowed any recreation at all, everyone we spoke to recognized that recreation opportunities have now been improved. Nonetheless, it appears as if inmates in the D-Unit still are not given the full amount of recreation provided for by BOP policy. While you have told us that BOP policy ensures that the D-Unit inmates are provided recreation on a daily basis, some have indicated they were generally allowed five periods of recreation each week – three periods of outdoor recreation and two periods of indoor recreation. As a result, inmates remain confined to their cells 24 hours a day at least two days a week – usually over the weekend.

We also have serious concerns about the inability of inmates to run around or do any form of real exercise. The cages where they are taken for outdoor recreation three times a week are barely long enough for one pull-up bar and about half as wide. The indoor recreation rooms are slightly bigger, but inmates are not even provided a ball to throw around. At least one inmate we spoke to has developed diabetes since being at the ADX – a disease that is at least in part attributable to lack of exercise. Others described health ailments that seem linked to the inability to engage in any sort of serious aerobic activity other than jumping jacks in place.

It seems that it would be feasible to, on a rotating basis, allow inmates to take their outdoor recreation in the areas outside the cages where they could actually run around and do something aerobic like shoot a basketball. Those with a record of good behavior could be allowed to take group recreation in that area – even just two at a time to start. These small changes would provide significant improvements in the conditions of confinement in a way that comports with international and moral obligations to respect the dignity of all persons, even those convicted of committing heinous crimes.

- **Mail:** Several inmates complained about the extremely long delay in receiving mail written in Arabic. At least one inmate stated that, as of April 12, he still had not received family letters sent from Egypt in January and February. As you can imagine, this is deeply troubling for inmates, who rely on such communications as their only real connection with family and the outside world. Others complained that letters they sent months ago still had not arrived at their intended destination, as far as they knew.

We recognize the need to translate all mail written in Arabic sent or received at the ADX, and we recognize that the process of translation can take time. To some extent, no doubt, the delays reflect a lack of an adequate number of personnel who can read in Arabic, and with time there will be more such personnel. Until then, a simple logging system that lets inmates know when mail has been received at the facility or actually mailed out will help allay inmate concerns.

- **Phones:** Several of the inmates were moved to the general population at the ADX from other locations (i.e. the DC jail) where they had regular access to the phone for relatively little cost. Phone cards at the DC jail cost inmates \$15 for 300 minutes of overseas calls. Once at the ADX, that cost increased to \$15 for each 15 minutes. Several inmates – including at least one Palestinian who is slated to be released and deported home within the next five or six years – described being unable to afford this cost and therefore rarely being able to call home and maintain contact with his family. If he is not able to maintain these connections, it will be very difficult for him to successfully reintegrate into society upon his return. The question of high charges for prison telephone calls is not unique to the ADX. We strongly encourage you to explore ways to make calls cheaper for inmates, by providing inmates the options of buying phone cards rather than relying on a single phone provider.

We were encouraged to hear that officials are moving to a total minutes system for phone calls, rather than the current one which limits the total number of calls to two per month. Several inmates complained that even if a call was cut off after a moment or two, they counted as one of the two permitted calls. This proposed change would eliminate this problem.

We also question the limitation of fifteen minutes of phone time for inmates in the general population who have good conduct records. Some of the inmates in D-Unit, as you know, were permitted far more minutes in the prisons and jails where they were confined prior to their move to the ADX following 9/11 based on the nature of their crime. The BOP should consider increasing the total allotted phone time for those with records of good behavior who will nonetheless be unlikely to be moved out of ADX any time in the near future.

- **Mental Health:** We remain extremely concerned about the effects of long-term isolation and highly limited exercise on the mental health of inmates in the general population at the ADX. Several of the inmates have described feelings of depression, anxiety, and paranoia after spending so many hours, days and, in many cases, years with little or no opportunity for normal human interaction. Talking while exercising in cages and yelling through vents is not sufficient interaction to counteract the near-total isolation in their cells.

Line staff who bring meals, or take inmates to recreation, or engage in other routine work do not converse regularly, if at all, with the inmates. Despite staff claims of biweekly visits by clinical psychologists, several inmates said that they had not spoken to a psychologist in many months, that psychologists rushed down the ranges on their walk-through, and that in any event, conversations with the psychology staff was cell-front and brief. As is well-documented by mental health experts, psychological treatment requires an ongoing therapeutic relationship,

privacy, and trust – not something that can be accomplished in a rushed cell-front visit.

We are also deeply concerned that the psychiatrist does his evaluations from afar - via closed circuit TV. After the initial video meeting, the periodic review of inmates' mental health can be quite short. We urge you to retain a psychiatrist who would visit and meet with the inmates in person, on a more frequent basis, and for at least 30 minutes a session. Moreover, this same psychiatrist should monitor medications and their possible side effects.

We are also disturbed by repeated reports of seriously mentally ill inmates who continue to be housed in the general population at the ADX. Several inmates described at least one inmate, Victor Alvarez, as having “lost his sanity.” One inmate described the nightmare of being placed in a cell next to him, where he was continually exposed to his rambling ranting, and often kept awake at night as a result. The BOP should not permit the confinement of seriously mentally ill inmates in the ADX. As you may know, there have been at least ten lawsuits challenging the prolonged confinement of mentally ill inmates in super-maximum security facilities or their equivalent. Each of those cases has resulted in a settlement or a court ruling to restrict the placement of such inmates in those facilities because of the documented adverse impact on their illness. We urge you to investigate whether persons with serious mental illnesses are confined in the ADX and to implement policies that preclude such confinement for these vulnerable inmates.

- **Hunger Strikes/Forced Feeding:** We have heard from inmates that inmates on hunger strikes have been retaliated against by moving them to “dry cells” where they are denied mattresses, clothing, and basic hygiene goods like toothpaste, toothbrushes, toilet paper, and soap. We request that you investigate whether or not this did in fact happen and that you make clear that such retaliatory treatment of inmates is unauthorized and a violation of BOP policy. We also remain concerned by reports that forced feeding and the use of restraint chairs is done in a punitive manner that is unnecessarily painful. During our tour, staff assured us that inmates were placed in restraints for just several minutes before and after the feeding took place, that all nose tubes were carefully inserted, and that the tubes were the standard and approved size. We ask you to investigate to ascertain whether this was the case and to take steps to reinforce the message that unduly harsh and punitive forced feeding violates BOP policy.

- **Religion:** We are encouraged to hear that a full-time imam will be on staff within the next two months. We are also encouraged to learn that the BOP is creating a centrally determined list of approved books in Arabic, including religious texts, and that these will shortly be available to the ADX library and other prisons.

- **Library:** As stated above, we are encouraged to hear that BOP will soon be making Arabic texts available to inmates. However, we are concerned about an insufficient number of basic texts. Two inmates have described making repeated requests for the Bible, and then told that it was currently unavailable. Another inmate who has only limited English-reading ability told us that he was allowed to keep an Arabic-English dictionary for just fifteen days before being required to return it to the rotating library. We ask that basic texts – like dictionaries and religious books – should be made available for everyone who wants or needs them.

- **TV Programming:** We were very impressed by the educational programming available via TV for the inmates, and several inmates proudly described working toward, or getting, their GED. We were also heartened to see the range of stations and options available, including Spanish-language channels. We urge you to make Al Hora, the US-backed Arabic station, available for the inmates as well. Just as you have recognized that the need to make Spanish channels available for the significant Mexican population in the prison, the same is true for the Arabic-speaking population.

- **Mice and snakes:** Inmates we interviewed said that there are mice problems on the D-Unit. Indeed, we were told that the day before our visit mice traps were removed from it. We also were told that a snake came into the room of one inmate which an officer had to kill. Inmates should be housed in sanitary conditions, free from rodents and reptiles.

We thank you again for arranging our visit to the ADX, for providing us detailed responses to many of our earlier questions, and for listening to our concerns. We look forward to hearing your responses to our concerns and would be more than happy to meet with you in person if BOP thinks such a meeting will be useful.

Thank you again,



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Executive Director, U.S. Program



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