

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

ZACHARY A. CHESSEY,
a.k.a. Abu Talhah Al-Amriki,
Plaintiff

v.

No. 13-cv-129-LO/IDD

FEDERAL BUREAU OF
INVESTIGATION and UNITED
STATES SECRET SERVICE,
Defendants.

SECOND AMENDED COMPLAINT FOR DECLARATORY,
INJUNCTIVE AND MONETARY RELIEF

I. INTRODUCTION⁽¹⁾

1. Plaintiff Zachary Adam Chesser, also known as "Abu Talhah Al-Amriki," brings this complaint against the defendant agencies for disclosing numerous records about him to his mother and her attorneys in the course of child custody proceedings. They did this (1) to coerce Chesser into upholding and maintaining a plea agreement entered in his criminal case and (2) to assist Chesser's mother in taking custody of his only child from him and his wife. Chesser seeks monetary damages pursuant to the Privacy Act of 1974 (Privacy Act), 5 U.S.C. § 552a et seq., and declaratory and injunctive relief to prevent future violations of this act.

II. VENUE, JURISDICTION AND CAUSE OF ACTION

2. This Court has jurisdiction pursuant to 5 U.S.C. § 552a(g)(5)

⁽¹⁾ Everything in this complaint can be obtained from sources outside the relevant child custody proceedings and/or the information was never subject to the gag order to begin with, so there is no need to seal this document.

and 28 U.S.C. § 1331.

3. Venue is appropriate in this district pursuant to 5 U.S.C. § 552a(g).

4. This action is brought pursuant to 5 U.S.C. § 702 for declaratory and injunctive relief.

5. This action is brought pursuant to 5 U.S.C. § 552a(g)(1)(D) for monetary damages.

III. PARTIES AND RELEVANT INDIVIDUALS

A. Plaintiff

6. Zachary A. Chesser is an adult citizen of the United States currently imprisoned in the Federal Bureau of Prisons.

B. Defendants

7. The Federal Bureau of Investigation is an agency pursuant to 5 U.S.C. § 552(a)(1). Address: unknown.

8. The United States Secret Service is an agency pursuant to 5 U.S.C. § 552(a)(1). Address: unknown.

C. Other Individuals

9. At all times relevant herein:

a. George Piro is the FBI special Agent in Charge of the Counterterrorism Division of the FBI's Washington Field Office (WFO).

b. Steven Hersem is the FBI Acting Assistant Special Agent in Charge

at the WFO.

- c. Paula Menges is an FBI Special Agent at the WFO
- d. Mary Brandt Kinder is an FBI Special Agent at the WFO.
- e. Sean Kingan is a Secret Service Special Agent at the WFO.
- f. Barbara Chesser is Zachary Chesser's mother and a prosecutor.
- g. Stacy L. Anderson is Barbara Chesser's domestic partner and a prosecutor.
- h. Laura Leibowitz is Barbara Chesser's attorney in child custody proceedings.
- i. Maryse Allen is Barbara Chesser's attorney in child custody proceedings.
- j. Lori Battistoni is the guardian ad litem of Zachary Chesser's son in custody proceedings.
- k. Zachary Chesser's son is the individual identified in Doc. 197.
- l. Proscovia Nzabanita is Zachary Chesser's wife and the mother of his son.
- m. Cecilia Nzabanita is Proscovia's mother.
- n. David Silek is Zachary Chesser's guardian ad litem in child custody proceedings until he was dismissed in 2012.
- o. Myron Teluk is Zachary Chesser's guardian ad litem following Silek.
- p. Aviva Stahl is a researcher with a British nongovernmental organization called "Cage Prisoners, Ltd."

10. Anderson and Barbara Chesser work within three blocks of the WFO.

11. The WFO has a branch in Manassas, Virginia.
12. Upon information and belief, Agent Menges was in charge of Zachary Chesser's criminal case until some point after he was sentenced.
13. Upon information and belief Agent Kinder took over Chesser's (all reference's to "Chesser" refer to Zachary Chesser) criminal case in 2011 after Menges.
14. Upon information and belief Kingan and Menges stopped working on Chesser's case when Kinder took over Chesser's criminal case.

IV. FACTUAL ALLEGATIONS

A. General Background

1. *Chesser's Criminal Case*
15. In July 2010, Chesser was arrested in Manassas, VA and charged with providing material support to terrorists. He was taken to the Alexandria Detention Center.
16. On or around September 1, 2010, the U.S. Attorney for the Eastern District of Virginia's Alexandria branch threatened to prosecute and imprison Proscovia Neabunita unless Chesser pled guilty to a three-count criminal information.
17. Chesser was afraid his son would not be raised by Muslims like him and his wife if Proscovia was imprisoned, as they had no other Muslim family members. Thus, Chesser resolved to plead guilty to protect his son.
18. On October 20, 2010, Chesser pled guilty to three charges.
19. Through surveillance of Chesser's communications and conversations

in person, Menges and Kirgan learned of Chesser's motivations in pleading guilty, i.e., that he was trying to protect his son.

20. In 2010, Chesser mentioned in the presence of Menges and Kirgan that he was contemplating a collateral attack on his plea agreement.

21. On February 24, 2011, Chesser was sentenced to 300 months in prison.

22. On May 2, 2011, Chesser was transferred to the Federal Bureau of Prisons (BOP) Communication Management Unit (CMU) at United States Penitentiary, Marion, Illinois (USP Marion) where all of his communications were monitored.

2. Proscovia Nzabanita's Criminal Case

23. On November 8, 2010, Proscovia Nzabanita pled guilty to making false statements to federal officials regarding Chesser.

24. As part of her plea, Nzabanita, a Ugandan national, agreed to relinquish her lawful status in the United States and leave the country within 120 days — by March 8, 2011.

3. The Custody Dispute Concerning Chesser's Son

25. On or around December 28, 2010, Barbara Chesser petitioned a Virginia court in Prince William County for custody of Chesser's son *pendente lite*.

26. Her grounds were that Proscovia Nzabanita had no where to go but Uganda, where her life was in danger.

27. The hearing for this petition was set for a date on or

around January 26, 2010, and was prior to Proscovia's sentencing whereupon she could leave the country.

28. At the hearing for this petition, Proscovia Nzabanita signed an agreement whereby her mother, Cecilia Nzabanita, who was then a resident of Bristow, VA, would share physical custody with her until she was safely settled in a foreign country. Chesser's son was to remain in the United States until his mother was safely settled. In exchange for this agreement, Barbara Chesser dropped her petition.

29. The agreement required the return of Chesser's son to his mother once she was safely settled.

30. Having obtained visas for herself and her son, Proscovia Nzabanita relocated and settled in Jordan where she remains to this day.

31. On July 13, 2011, Barbara Chesser filed an ex parte emergency application with the Virginia Court seeking temporary visitation with Chesser's son. Her application claimed Chesser's son was in imminent danger of being permanently removed to Jordan to join his mother in purported violation of the January 2010 agreement.

32. At the conclusion of this hearing, the court stripped Chesser and his wife of parental rights and gave legal custody jointly to Barbara Chesser and Cecilia Nzabanita.

33. On October 5, 2011, the Virginia court returned joint legal custody to Chesser's wife.

34. On that same day, Barbara Chesser petitioned for sole legal and physical custody of Chesser's son.

35. Her grounds were that Proscovia Nkabonita was allegedly in danger of being returned to Uganda and that she and Chesser had some plan to send their son to Jordan to stay with his mother.

36. On January 5, 2012, the court held a hearing on this petition. Based on the fear that someone would take Chesser's son to stay with his mother in Jordan, the court stripped Chesser and his wife of all custody rights and declared them unfit. It further granted legal custody of Chesser's son to Barbara Chesser and split physical custody between her and Cecilia Nkabonita. It also prohibited anyone from speaking to Chesser's son about Islam, taking him to a mosque or dressing him in Islamic clothing.

37. On an unknown date in Summer 2012, Barbara Chesser petitioned the Virginia court for a gag order against Chesser and his guardian *ad litem* based on Chesser and his guardian's discussions of the case with the public. The court granted this.

38. In November 2012, a trial *de novo* on the issue of custody was held. The Virginia court reaffirmed its declaration that Chesser and his wife were unfit. However, it gave Barbara Chesser sole legal and physical custody and only gave Cecilia Nkabonita visitation. The ruling was based on a fear Cecilia would take Chesser's son to his mother in Jordan.

39. Barbara Chesser has refused to allow Chesser or his wife to communicate with their son as a result of Chesser's activities raising awareness of ongoings in these custody proceedings.

4. Surveillance of Chesser and his Wife

40. Prior to his arrest, Chesser was monitored using a variety of methods under the Foreign Intelligence Surveillance Act (FISA).

41. After his arrest, the FBI and Secret Service continued to collect information on Chesser by monitoring his communications from jails and prisons.

42. They also gathered information on Chesser by using FISA surveillance of Proscovia Neabanita's communications after Chesser was arrested.

43. Both of these practices continue to this day.

44. Information gathered through FISA is initially classified.

45. The FBI and Secret Service store information gathered through monitoring of prison communications in a "system of records" as defined by the Privacy Act.

46. FISA intelligence which is electronically gathered is also stored in a system of records.

B. Counts

1. Count 1 - E-Mail to Barbara Chesser Regarding Planned Trip in January 2011

47. In January 2011, Chesser and his wife decided to send their son to Jordan prior to Proscorki's sentencing.

48. They planned to send him with the mother of Chesser's friend - a woman named Jaimie Smith - to take him to stay with her son and daughter-in-law who were staying in Jordan.

49. The purpose of this trip was to demonstrate their son would be safe regardless of what happened to his mother and to ensure that he would be with Muslims in a worst case scenario. Their friends in Jordan were Muslims from the United States.

50. The trip was scheduled for January 19, 2011.

51. On January 18, 2011, Agents Hersem and Piro drafted a memorandum raising concerns about how the trip could impact Chesser and his wife's plea agreements, ultimately concluding the trip was legal.

52. They stated they would not interfere with the trip.

53. This memorandum is the document at Document 16-1 in this case. ¹²³

54. On January 19, 2011, Agent Menges sent an email to Laura Leibowitz, Barbara Chesser's attorney, notifying her of Chesser and his wife's plans. She included Piro's memorandum and copied Agent Kirgan.

55. This email is the document at Document 16-2 in this case.

56. This email contained information from FBI records about Chesser.

57. These records were stored in an FBI system of records.

58. This disclosure was willful and intentional.

59. The information in this disclosure was gathered partially through FISA monitoring of Proscovia Neabaulta.

¹²³ An unsealed version is available in *Chesser v. Piro*, No. 3:13-456-JPG-PMF (Doc. 12)

60. Upon information and belief, this information was partially gathered from surveillance of Chesser's communications from the Alexandria Detention Center.

61. This information pertained to a minor child whom neither Leibowitz nor Barbara Chesser had any guardianship over at the time it was disclosed.

62. As a result of this disclosure, Chesser was forced to spend money — currently less than \$1000 — fighting evidence from it in child custody proceedings and mitigating its harm to him in the public.

63. This disclosure was not made with Chesser's consent.

64. This disclosure violated 5 U.S.C. § 552a(b).

2. *Count 2 - Calls to Barbara Chesser Regarding Planned Trip in January 2011.*

65. Upon information and belief, on January 19, 2011, Agent Kirgan, two unknown named FBI agents, a number of unknown named U.S. Marshals and four New York Police Department officers intercepted Chesser's son and Smith at JFK International Airport in New York and refused to let them travel to Jordan.

66. Upon information and belief, the FBI agents were Kinder and Menges.

67. Upon information and belief Kirgan called Barbara Chesser during this event to inform her of Chesser and his wife's plans and the developments at the airport.

68. Upon information and belief, at least one unknown named FBI agent also communicated this information to Barbara Chesser as well.

69. This is based on court records in child custody proceedings and a declaration from Jaimie Smith which her son emailed to Chesser, among other things.

70. This information was partially from the same sources under Count 1 above.

71. Upon information and belief, Kingan and the FBI agents documented the events in the airport in records later on.

72. Upon information and belief these records are kept in systems of records of the secret service, and the FBI.

73. These records are about Chesser.

74. These disclosures were willful and intentional.

75. As a result of these disclosures, Chesser was forced to spend money fighting their use in court and fighting the harm they caused him in the public. These expenditures are currently around \$100, mostly from emails and phonecalls.

76. Also, as a result of these disclosures, Stacy Anderson and/or Barbara Chesser emailed the Jordanian government in an effort to get Proscovia Nizabanita and her son's visas revoked.

77. This put them in danger of being forced to go to Uganda where Proscovia's life was in danger.

78. Upon information and belief, this email caused Jordanian secret police to detain and interrogate Proscovia Nzabanita in March 2011.

79. Upon information and belief, the email resulted in her being kicked out of a university she was attending.

80. Upon information and belief, the email resulted in Jordanian intelligence ordering Proscovia Nzabanita to leave the country and making several attempts to arrest her.

81. Upon information and belief, Proscovia Nzabanita was then advised to go into hiding by the United Nations and she spent a month as a fugitive until they declared her a refugee.

82. Upon information and belief, this has resulted in Proscovia Nzabanita being unable to work in Jordan. She lives entirely off of assistance from the United Nations and others.

83. Chesser and his wife share their funds when practical. Thus, this disclosure has damaged Chesser's household income in the amount of Proscovia's past and future earning potential which would have been no less than \$30,000 a year had she finished her degree and been able to work in Jordan. Proscovia is also a trained airplane mechanic and is fluent in Arabic and English and could teach English in Jordan were it not for the situation caused by these disclosures.

84. Proscovia would also have been sending her husband \$300 per month for his expenses in prison if she could work.

85. Chesser did not consent to these disclosures.

86. These disclosures by the defendant agencies violated 5 U.S.C. § 552a (b).

3. Count 3 - Call to Barbara Chesser Regarding Alleged Planned Trip in July 2011

87. Upon information and belief, on or around July 12, 2011, an unknown named female FBI agent called Barbara Chesser to inform her she had concluded Chesser and his wife had plans for their son to travel to Jordan to stay with his mother.

88. Upon information and belief, this agent also told Barbara Chesser Cecilia Nzaburita would be taking Chesser's son on this alleged trip.

89. Upon information and belief, this agent also told Barbara Chesser that Chesser's son had been attending a mosque while in Cecilia's care.

90. Upon information and belief, this agent also told Barbara Chesser that Chesser's son had worn Islamic clothing.

91. This is all based on court records in the custody proceedings.

92. Upon information and belief, this agent was Mary Kinder.

93. On July 12th and 13th of 2011, Agent Kinder emailed a Bureau of Prisons official named David Schiavonne about the custody proceedings regarding Chesser's son.

94. At this point, Barbara Chesser had no legal guardianship over Chesser's son.

95. Upon information and belief, this disclosure was partially based on information in Chesser's communications.

96. Upon information and belief, this disclosure was partially based on surveillance of Proscovia Neabanita using FISA.

97. This is based on court testimony and Chesser's knowledge of what he said and what was said to him.

98. The information disclosed on this occasion came from records about Chesser.

99. These records were stored in an FBI system of records.

100. This disclosure was willful and intentional.

101. This disclosure resulted in all future child custody proceedings regarding Chesser's son beginning on July 13, 2011.

102. Chesser has had to spend money — currently less than \$1000 — fighting the fruits of this disclosure in court and the harm it caused him in public.

103. Chesser did not consent to this disclosure.

104. This disclosure by the Defendant FBI violated 5 U.S.C. § 552a(b).

4. Count 4 - Disclosure to Lori Battistoni

105. In or around December 2011, Lori Battistoni called the FBI to verify the information Barbara Chesser claimed it disclosed.

106. Upon information and belief, an unknown FBI agent disclosed the same information described under Count 3 to Battistoni.

107. Upon information and belief, this agent was Mary Kinder.

108. Lori Battistoni used this information to argue Barbara Chesser should be given custody of Chesser's son.

109. As a result, Chesser had to spend money — currently less than \$1,000 — fighting the fruits of this disclosure in court and its harm to him in public.

110. This disclosure was willful and intentional.

111. Chesser did not consent to this disclosure.

112. This disclosure by the Defendant FBI violated 5 U.S.C. § 552a (b).

5. Court 5 - Disclosure of Draft Article

113. Following the January 5, 2012 ruling in the custody proceedings, Ariva Stahl began researching the events outlined in this complaint to publicize an article. She contacted Chesser, David Silek and Proscovia Nzabanita about the events.

114. David Silek sent Stahl a copy of the trial transcript from the January 5 ruling.

115. In or around July 2012, Barbara Chesser obtained a copy of an unpublished draft of this article by Ariva Stahl.

116. The draft was not the same as one Stahl sent Chesser.

117. Upon information and belief, the only way Barbara Chesser could have obtained this is if an FBI

employee disclosed it to her.

118. Upon information and belief, the draft was obtained through FISA surveillance, not monitoring Chesser's communications.

119. Barbara Chesser used this draft to obtain a gag order against Chesser, Silek and Neabanita.^[3]

120. This was also used by Barbara Chesser to get Silek kicked off the case.

121. As a result, Silek was replaced by Myron Teluk who refused to even communicate with Chesser.

122. Chesser was forced to spend money - currently less than \$1,000 - fighting the gag order and its harmful effects as well as trying to present his case in the Virginia courts pro se due to Teluk's ethic.

123. This resulted in Chesser having two appeals dismissed on technicalities because he had no access to Virginia law or rules and (as this Court is well aware) he had no legal acumen at the time.

124. This disclosure was of a record about Chesser.

125. It was stored in an FBI system of records.

126. This disclosure was willful and intentional.

127. This disclosure by the Defendant FBI violated 5 U.S.C. § 552a(b).

6. Count 6 - Discovery Disclosure

128. On an unknown date prior to or on November 26, 2012,

[3] Not that a Virginia court has any ability to enforce it against Neabanita.

an unknown FBI employee disclosed records about Chesser to an unknown individual from an FBI system of records for use in civil judicial proceedings.

129. The employee relied on § 552a(b)(7) of the Privacy Act, which allows disclosures in emergencies affecting the health or safety of an individual.

130. Upon information and belief, this disclosure was made to Barbara Chesser, Maryse Allen or Lori Battistoni for use in the child custody proceedings.

131. This is based on the fact that nobody else had a reason like this to request such information about Chesser.

132. On or around November 26, 2012, the FBI sent Chesser a notification of this disclosure which is found at Doc 1-1, p. 80, in this case.

133. Chesser has had to spend money — currently less than \$1,000 — trying to learn what was disclosed and to whom. Also, this information was most likely used against him in the custody proceedings.

134. There is no way disclosing these records could meet § 552a(b)(7)'s requirements as nothing Chesser was engaged in affected anyone's health or safety at that time.

135. § 552a(b)(7) is also inapplicable to the need to use information in litigation.

136. This disclosure was willful and intentional.

137. This disclosure by the Defendant, FBI, violated 5 U.S.C. § 552a(b).

V. CONCLUSION

138. The actions of the defendants were not substantially justified.

139. Chesser is suffering irreparable harm for which there is no adequate remedy at law.

VI. REQUEST FOR RELIEF

WHEREFORE, Chesser requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity;
2. Declare the defendants violated federal law as described above;
3. Enjoin the defendants from making any future illegal disclosures about Chesser and appoint an attorney to investigate and devise a means to ensure this will not occur easily;
4. Award Chesser actual damages no less than the following amounts:
 - a. \$1,000 and damages for future litigation costs against the FBI for Counts 1, 3, 4, 5 and 6; and
 - b. \$150,000 against both defendants for count 2;
5. Award Chesser his costs and reasonable attorney fees; and
6. Award all other proper relief.

VII. VERIFICATION

The undersigned states the foregoing to be true under penalty of perjury to the best of his knowledge and recollection.

Respectfully submitted,



ZACHARYA. CHESER

prose

Reg. No. 76715-083

USP Florence APMAX

PO Box 8500

Florence, CO 81226

July 6, 2015

Mailed: July 17, 2015

ZACHARY A. CHESSER
REG. NO. 76715-083
USP FLORENCE ADMAX
PO BOX 8500
FLORENCE, CO 81226
7-17-15
JCS



S. MARSHALL'S SERVICE

CLERK OF THE COURT
ALBERT BRYAN US COURTHOUSE
401 COURTHOUSE SQ
2nd Floor

Date: 07/07/2015
Time: 3:30:30 PM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

EXHIBIT 1

Start Date: 01/07/2015
End Date: 07/07/2015
Inmate Reg#: 76715083
Account Status: All
Institution: All

Date: 07/07/2015
Time: 3:30:30 PM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

CERTIFIED

JUL 07 2015

General Information

**FCC FLORENCE
TRUST FUND**

Inmate Reg#: 76715083
Inmate Name: CHESSER, ZACHARY ADAM
Current Site Name: Florence FCC
Housing Unit: FLM-F-A
Living Quarter: F01-101L
Arrived From: OKL
Transferred To:
Account Creation Date: 4/8/2011

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
FLX	01/08/2015 12:18:40 PM	19			Sales	(\$130.65)		\$11.02
FLX	01/09/2015 10:31:50 AM	2			Sales	\$102.90		\$113.92
FLX	01/15/2015 10:54:42 AM	24			Sales	(\$7.00)		\$106.92
FLX	01/18/2015 11:57:59 AM	TL0118			TRUL Withdrawal	(\$10.00)		\$96.92
FLX	01/18/2015 01:02:10 PM	TL0118			TRUL Withdrawal	(\$10.00)		\$86.92
FLX	01/18/2015 01:03:26 PM	TL0118			TRUL Withdrawal	\$3.90		\$90.82
FLX	01/21/2015 01:17:49 PM	TFN0121			Phone Withdrawal	(\$2.00)		\$88.82
FLX	01/22/2015 11:00:47 AM	20			Sales	(\$9.25)		\$79.57
FLX	01/25/2015 12:43:43 PM	TFN0125			Phone Withdrawal	(\$1.00)		\$78.57
FLX	01/28/2015 10:04:52 AM	TL0128			TRUL Withdrawal	(\$5.00)		\$73.57
FLX	01/29/2015 11:29:32 AM	40			Sales	(\$15.75)		\$57.82
FLX	02/02/2015 07:16:19 AM	PFLXD227	840		Initial PLRA Pymt	(\$17.33)		\$40.49
FLX	02/04/2015 04:30:16 AM	479-C			Books	\$6.50		\$46.99
FLX	02/04/2015 01:08:14 PM	TFN0204			Phone Withdrawal	(\$3.00)		\$43.99
FLX	02/04/2015 08:03:31 PM	33415035			Money Gram	\$100.00		\$143.99
FLX	02/04/2015 08:03:31 PM	MMARD076 - 1851			Debt Encumbrance		(\$20.00)	
FLX	02/04/2015 08:03:31 PM	PFLXD227 - 1852			Debt Encumbrance		(\$20.00)	
FLX	02/05/2015 11:04:22 AM	30			Sales	(\$6.10)		\$137.89
FLX	02/11/2015 12:34:23 PM	TFN0211			Phone Withdrawal	(\$15.00)		\$122.89
FLX	02/12/2015 11:49:07 AM	14			Sales	(\$22.10)		\$100.79
FLX	02/13/2015 07:32:35 PM	TL0213			TRUL Withdrawal	(\$15.00)		\$85.79
FLX	02/13/2015 07:33:29 PM	TL0213			TRUL Withdrawal	(\$5.00)		\$80.79
FLX	02/13/2015 07:34:25 PM	TL0213			TRUL Withdrawal	\$1.15		\$81.94

EXHIBIT 4

Date: 07/07/2015
Time: 3:30:30 PM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

EXHIBIT 1

General Information

Inmate Reg#:	76715083	Living Quarter:	F01-101L
Inmate Name:	CHESSER, ZACHARY ADAM	Arrived From:	OKL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-F-A	Account Creation Date:	4/8/2011

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
FLX	02/15/2015 07:39:54 PM	TL0215			TRUL Withdrawal	(\$2.00)		\$79.94
FLX	02/15/2015 07:40:46 PM	TL0215			TRUL Withdrawal	\$1.10		\$81.04
FLX	02/19/2015 10:18:36 AM	31			Sales	(\$4.90)		\$76.14
FLX	02/25/2015 12:28:54 PM	TFN0225			Phone Withdrawal	(\$30.00)		\$46.14
FLX	02/26/2015 10:51:10 AM	40			Sales	(\$6.10)		\$40.04
FLX	03/01/2015 12:10:54 AM	MMARD076 - 1851			Debt Encumbrance - Released		\$20.00	
FLX	03/01/2015 12:10:54 AM	PFLXD227 - 1852			Debt Encumbrance - Released		\$20.00	
FLX	03/01/2015 12:10:54 AM	PFLXD227	1019		PLRA Payment	(\$10.04)		\$30.00
FLX	03/01/2015 12:10:54 AM	MMARD076	1020		PLRA Payment	(\$20.00)		\$10.00
FLX	03/02/2015 12:10:36 PM	PJV00035			Photo Copies	(\$7.35)		\$2.65
FLX	03/11/2015 05:03:55 PM	33415070			Money Gram	\$120.00		\$122.65
FLX	03/11/2015 05:03:55 PM	MMARD076 - 2387			Debt Encumbrance		(\$24.00)	
FLX	03/11/2015 05:03:55 PM	PFLXD227 - 2388			Debt Encumbrance		(\$24.00)	
FLX	03/15/2015 02:08:59 PM	TL0315			TRUL Withdrawal	(\$5.00)		\$117.65
FLX	03/15/2015 02:40:21 PM	TL0315			TRUL Withdrawal	\$1.10		\$118.75
FLX	03/16/2015 11:51:56 AM	TL0316			TRUL Withdrawal	(\$15.00)		\$103.75
FLX	03/16/2015 11:52:49 AM	TL0316			TRUL Withdrawal	\$4.50		\$108.25
FLX	03/17/2015 10:55:12 AM	PJV00035			Photo Copies	(\$55.50)		\$52.75
FLX	03/17/2015 10:58:52 AM	PFLXD315 - 2472			Debt Encumbrance		(\$4.75)	
FLX	03/19/2015 10:45:03 AM	29			Sales	\$0.00		\$52.75

Date: 07/07/2015
Time: 3:30:30 PMFederal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

EXHIBIT I

General Information

Inmate Reg#:	76715083	Living Quarter:	F01-101L
Inmate Name:	CHESSER, ZACHARY ADAM	Arrived From:	OKL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-F-A	Account Creation Date:	4/8/2011

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
FLX	04/01/2015 12:10:56 AM	MMARD076 - 2387			Debt Encumbrance - Released		\$24.00	_____
FLX	04/01/2015 12:10:56 AM	PFLXD227 - 2388			Debt Encumbrance - Released		\$24.00	_____
FLX	04/01/2015 12:10:56 AM	PFLXD227	1211		PLRA Payment	(\$14.00)		\$38.75
FLX	04/01/2015 12:10:56 AM	MMARD076	1212		PLRA Payment	(\$24.00)		\$14.75
FLX	04/02/2015 09:46:30 AM	PJV00038			Photo Copies	(\$4.50)		\$10.25
FLX	04/02/2015 11:25:39 AM	36			Sales	(\$3.50)		\$6.75
FLX	04/03/2015 05:04:02 AM	33415093			Money Gram	\$120.00		\$126.75
FLX	04/03/2015 05:04:02 AM	MMARD076 - 2740			Debt Encumbrance		(\$24.00)	_____
FLX	04/03/2015 05:04:02 AM	PFLXD227 - 2741			Debt Encumbrance		(\$24.00)	_____
FLX	04/03/2015 05:04:02 AM	PFLXD315 - 2742			Debt Encumbrance		(\$33.05)	_____
FLX	04/03/2015 05:04:02 AM	PFLXD316 - 2743			Debt Encumbrance		(\$38.95)	_____
FLX	04/04/2015 12:10:06 AM	PFLXD315 - 2742			Debt Encumbrance - Released		\$33.05	_____
FLX	04/04/2015 12:10:06 AM	PFLXD315 - 2472			Debt Encumbrance - Released		\$4.75	_____
FLX	04/04/2015 12:10:06 AM	PFLXD315			Photo Copies	(\$37.80)		\$88.95
FLX	04/07/2015 10:00:35 AM	PFLXD379 - 2809			Debt Encumbrance		(\$2.00)	_____
FLX	04/08/2015 05:03:47 AM	70180701			Lockbox - CD	\$200.00		\$288.95

Date: 07/07/2015
Time: 3:30:30 PMFederal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

EXHIBIT

General Information

Inmate Reg#:	76715083	Living Quarter:	F01-101L
Inmate Name:	CHESSER, ZACHARY ADAM	Arrived From:	OKL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-F-A	Account Creation Date:	4/8/2011

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
FLX	04/08/2015 05:03:47 AM	PFLXD379 - 2825			Debt Encumbrance		(\$1.75)	_____
FLX	04/08/2015 05:03:47 AM	PICD0315 - 2822			Debt Encumbrance		(\$2.00)	_____
FLX	04/08/2015 05:03:47 AM	PFLXD345 - 2823			Debt Encumbrance		(\$9.00)	_____
FLX	04/08/2015 05:03:47 AM	PFLXD316 - 2820			Debt Encumbrance		(\$12.35)	_____
FLX	04/08/2015 05:03:47 AM	PFLXD350 - 2824			Debt Encumbrance		(\$21.00)	_____
FLX	04/08/2015 05:03:47 AM	PFLXD317 - 2821			Debt Encumbrance		(\$23.70)	_____
FLX	04/08/2015 05:03:47 AM	MMARD076 - 2818			Debt Encumbrance		(\$40.00)	_____
FLX	04/08/2015 05:03:47 AM	PFLXD227 - 2819			Debt Encumbrance		(\$40.00)	_____
FLX	04/09/2015 12:10:08 AM	PFLXD316 - 2743			Debt Encumbrance - Released		\$38.95	_____
FLX	04/09/2015 12:10:08 AM	PFLXD317 - 2821			Debt Encumbrance - Released		\$23.70	_____
FLX	04/09/2015 12:10:08 AM	PFLXD350 - 2824			Debt Encumbrance - Released		\$21.00	_____
FLX	04/09/2015 12:10:08 AM	PFLXD316 - 2820			Debt Encumbrance - Released		\$12.35	_____
FLX	04/09/2015 12:10:08 AM	PFLXD345 - 2823			Debt Encumbrance - Released		\$9.00	_____

Date: 07/07/2015
Time: 3:30:30 PM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

EXHIBIT 1

General Information

Inmate Reg#:	76715083	Living Quarter:	F01-101L
Inmate Name:	CHESSER, ZACHARY ADAM	Arrived From:	OKL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-F-A	Account Creation Date:	4/8/2011

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
FLX	04/09/2015 12:10:08 AM	PFLXD379 - 2809			Debt Encumbrance - Released		\$2.00	_____
FLX	04/09/2015 12:10:08 AM	PICD0315 - 2822			Debt Encumbrance - Released		\$2.00	_____
FLX	04/09/2015 12:10:08 AM	PFLXD379 - 2825			Debt Encumbrance - Released		\$1.75	_____
FLX	04/09/2015 12:10:08 AM	PICD0315			Inmate Co-pay	(\$2.00)		\$211.95
FLX	04/09/2015 12:10:08 AM	PFLXD379			Photo Copies	(\$3.75)		\$178.20
FLX	04/09/2015 12:10:08 AM	PFLXD345			Photo Copies	(\$9.00)		\$202.95
FLX	04/09/2015 12:10:08 AM	PFLXD350			Photo Copies	(\$21.00)		\$181.95
FLX	04/09/2015 12:10:08 AM	PFLXD317			Photo Copies	(\$23.70)		\$213.95
FLX	04/09/2015 12:10:08 AM	PFLXD316			Photo Copies	(\$51.30)		\$237.65
FLX	04/16/2015 10:52:26 AM	39			Sales	(\$34.10)		\$144.10
FLX	04/23/2015 10:29:42 AM	18			Sales	(\$11.80)		\$132.30
FLX	04/30/2015 10:19:27 AM	23			Sales	(\$4.30)		\$128.00
FLX	05/01/2015 12:10:57 AM	MMARD076 - 2818			Debt Encumbrance - Released		\$40.00	_____
FLX	05/01/2015 12:10:57 AM	PFLXD227 - 2819			Debt Encumbrance - Released		\$40.00	_____
FLX	05/01/2015 12:10:57 AM	MMARD076 - 2740			Debt Encumbrance - Released		\$24.00	_____
FLX	05/01/2015 12:10:57 AM	PFLXD227 - 2741			Debt Encumbrance - Released		\$24.00	_____
FLX	05/01/2015 12:10:57 AM	PFLXD227	1464		PLRA Payment	(\$54.00)		\$74.00
FLX	05/01/2015 12:10:57 AM	MMARD076	1465		PLRA Payment	(\$64.00)		\$10.00
FLX	05/04/2015 12:44:58 PM	PJV00043			Photo Copies	(\$4.20)		\$5.80

Date: 07/07/2015
Time: 3:30:30 PM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

EXHIBIT 4

General Information

Inmate Reg#:	76715083	Living Quarter:	F01-101L
Inmate Name:	CHESSER, ZACHARY ADAM	Arrived From:	OKL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-F-A	Account Creation Date:	4/8/2011

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
FLX	05/07/2015 10:32:00 AM	23			Sales	(\$5.80)		\$0.00
FLX	05/11/2015 08:03:45 PM	33415131			Money Gram	\$70.00		\$70.00
FLX	05/11/2015 08:03:45 PM	MMARD076 - 3362			Debt Encumbrance		(\$14.00)	
FLX	05/11/2015 08:03:45 PM	PFLXD227 - 3363			Debt Encumbrance		(\$14.00)	
FLX	05/14/2015 10:10:05 AM	39			Sales	(\$29.20)		\$40.80
FLX	05/21/2015 09:46:10 AM	22			Sales	(\$10.10)		\$30.70
FLX	05/22/2015 09:52:48 AM	MMARD076 - 3362			Debt Encumbrance - Released		\$14.00	
FLX	05/28/2015 09:52:25 AM	25			Sales	(\$5.35)		\$25.35
FLX	05/31/2015 08:08:11 AM	TL0531			TRUL Withdrawal	(\$10.00)		\$15.35
FLX	05/31/2015 08:08:46 AM	TL0531			TRUL Withdrawal	\$0.65		\$16.00
FLX	05/31/2015 08:09:15 AM	TL0531			TRUL Withdrawal	(\$2.00)		\$14.00
FLX	06/01/2015 12:10:31 AM	PFLXD227 - 3363			Debt Encumbrance - Released		\$14.00	
FLX	06/01/2015 12:10:31 AM	PFLXD227	1616		PLRA Payment	(\$4.00)		\$10.00
FLX	06/02/2015 07:49:41 AM	TL0602			TRUL Withdrawal	\$11.35		\$21.35
FLX	06/04/2015 10:09:44 AM	15			Sales	(\$20.95)		\$0.40
FLX	06/08/2015 08:04:01 PM	33415159			Money Gram	\$80.00		\$80.40
FLX	06/08/2015 08:04:01 PM	PFLXD227 - 3760			Debt Encumbrance		(\$16.00)	
FLX	06/10/2015 09:18:19 AM	TFN0610			Phone Withdrawal	(\$15.00)		\$65.40
FLX	06/11/2015 10:17:50 AM	14			Sales	(\$25.55)		\$39.85
FLX	06/15/2015 08:04:01 PM	33415166			Money Gram	\$60.00		\$99.85

Date: 07/07/2015
Time: 3:30:30 PM

Federal Bureau of Prisons
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Inmate Statement
Sensitive But Unclassified

Facility: FLX

EXHIBIT 1

General Information

Inmate Reg#:	76715083	Living Quarter:	F01-101L
Inmate Name:	CHESSER, ZACHARY ADAM	Arrived From:	OKL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-F-A	Account Creation Date:	4/8/2011

Transaction Details

Alpha Code	Date Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
FLX	06/15/2015 08:04:01 PM	PFLXD227 - 4007			Debt Encumbrance		(\$12.00)	_____
FLX	06/16/2015 02:15:34 PM	PICP0615			Inmate Co-pay	(\$2.00)		\$97.85
FLX	06/17/2015 08:21:44 AM	PJV00047			Photo Copies	(\$6.90)		\$90.95
FLX	06/17/2015 08:22:31 AM	PJV00047			Photo Copies	(\$4.50)		\$86.45
FLX	06/18/2015 10:55:25 AM	52			Sales	(\$35.40)		\$51.05
FLX	06/24/2015 11:26:13 AM	TL0624			TRUL Withdrawal	(\$2.00)		\$49.05
FLX	06/24/2015 11:26:51 AM	TL0624			TRUL Withdrawal	\$2.00		\$51.05
FLX	06/25/2015 10:32:14 AM	22			Sales	(\$21.45)		\$29.60
FLX	06/29/2015 05:02:35 AM	70186403			Lockbox - CD	\$100.00		\$129.60
FLX	06/29/2015 05:02:35 AM	PFLXD227 - 4214			Debt Encumbrance		(\$20.00)	_____
FLX	07/01/2015 12:10:42 AM	PFLXD227 - 4214			Debt Encumbrance - Released		\$20.00	_____
FLX	07/01/2015 12:10:42 AM	PFLXD227 - 3760			Debt Encumbrance - Released		\$16.00	_____
FLX	07/01/2015 12:10:42 AM	PFLXD227 - 4007			Debt Encumbrance - Released		\$12.00	_____
FLX	07/01/2015 12:10:42 AM	PFLXD227	1776		PLRA Payment	(\$48.00)		\$81.60
FLX	07/01/2015 09:25:19 AM	TFN0701			Phone Withdrawal	(\$3.00)		\$78.60
	Institution Count:	126						
	Total Count:	126			Totals:	(\$63.07)	\$0.00	

Date: 07/07/2015
Time: 3:30:30 PM

Federal Bureau of Prisons
TRUFACS
Inmate Statement
Sensitive But Unclassified

Facility: FLX

EXHIBIT 1

General Information

Inmate Reg#:	76715083	Living Quarter:	F01-101L
Inmate Name:	CHESSER, ZACHARY ADAM	Arrived From:	OKL
Current Site Name:	Florence FCC	Transferred To:	
Housing Unit:	FLM-F-A	Account Creation Date:	4/8/2011

Current Balances

Alpha Code	Available Balance	Pre-Release Balance	Debt Encumbrance	SPO Encumbrance	Other Encumbrance	Outstanding Instruments	Administrative Holds	Account Balance
FLX	\$78.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$78.60
Totals:	\$78.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$78.60

Other Balances

National 6 Months Deposits	National 6 Months Withdrawals	National 6 Months Avg Daily Balance	Local Max. Balance -Prev. 30 Days	Average Balance-Prev. 30 Days	Commissary Restriction Start Date	Commissary Restriction End Date
\$850.00	\$913.07	\$72.43	\$129.60	\$64.70	N/A	N/A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ZACHARY A. CHESSEY,

Plaintiff,

v.

DIRECTOR, FEDERAL BUREAU
OF PRISONS,

Defendant.

Case No.

DECLARATION OF ZACHARY CHESSEY

I, Zachary A. Chesser, do hereby declare the following to be true and correct to the best of my knowledge under penalty of perjury pursuant to 28 U.S.C. § 1746:

Religious Exercise

1. I am a Sunni Muslim who follows the Hanbali school of jurisprudence according to the Salafi methodology. "Sunni" refers to the doctrinal path of the majority of Muslims (around 90% globally) who believe the leadership of the Islamic state was correctly passed to Abu Bakr following the death of the Prophet Muhammad (peace and blessings be upon him). The rest of Muslims are "Shiite" based on their belief that leadership was hereditary and should have passed to the Prophet's cousin 'Ali ibn Abi Talib. Neither Sunnis nor Shiites consider the Nation of Islam or Moorish Science Temple, two American religions loosely based on traditional Islam, to be Islamic sects. Also, the Bureau of Prisons (BOP) distinguishes between them and Islam as well.

Exhibit
A

2. In Sunni Islam, there are currently four major jurisprudential schools: Hanafi, Maliki, Shafii and Hanbali. A minor school, the Zaydi school, is technically Shiite, but their doctrinal beliefs are closer to Sunnis than other Shiite sects, so they have influence in Sunni jurisprudence. Many Muslims do not follow a school of jurisprudence, but most do. A sixth school, the Zahiris, is now extinct, but still has a heavy influence on comparative jurisprudence which far surpasses Zaydi influence. In general, these different schools fall under the same umbrella. They study one another's works, pray with one another and so on. One could draw an analogy between the nature of their differences and differences in American jurisprudential thought. Each school has an *imam* (leader), major scholars of the school (usually the students of the *imam*) and a number of lesser scholars who make up the body of the school's jurisprudential opinions. Differences between schools and within them are based on varying methods of interpretation and understandings of Islam's two main textual sources: the Quran and the Hadith.

3. The Quran is considered by all Muslims to be the unaltered word of Allah (God), while the Hadith are reports from the life of the Prophet (peace be upon him). Some Shiites use a different collection of Hadith

4. "Salafi" refers to a jurisprudential philosophy that blind following of scholars or schools is impermissible when one believes evidence contradicts them. "Taqlid" is the opposite approach which obligates blind following. Generally, all Sunnis fall under one of these two categories. Sunni Islam is decentralized, Shiites have a different approach in most sects which is based on a central hierarchy similar to Catholicism, Salafism can also refer to a doctrinal system, but that is unimportant here.

5. My religious beliefs are based on my studies. Prior to my July, 2010 arrest, after embracing Islam in 2008, I studied in lessons in mosques from Islamic scholars and by utilizing tools on the internet. Following my arrest, I continued studying from books and in classes with other prisoners when we thought we would not be caught. I have taught myself Arabic, memorized most of the Quran (Islam's holy book) and have studied dozens of texts on each jurisprudential school and other subjects. My wife, Proscovia Ntabaniba, resides in Jordan and studies Islam formally with Islamic Online University. She helps me with religious questions.

Religious Classes

6. All wellknown sects and schools of Islamic jurisprudence divide religious knowledge into (1) that which is obligatory on every individual to know and (2) that which is

obligatory for each community to know collectively. The latter obligation is fulfilled when enough Islamic scholars are present to deal with any issue which might arise according to Islamic principles. Becoming an Islamic scholar takes years and years of formal studies from dawn until dusk under qualified theologians who assess one's understanding before giving them *ijazah* (permission) to expound various religious texts or issue verdicts. If there are not sufficient Islamic scholars in a community, it becomes an individual obligation on the intelligent among them to pursue such qualifications.

7. To my knowledge, there are only seven qualified Islamic scholars incarcerated in the BOP: Abu Hajar Al-Iraqi, Abu Hamzah Al-Masri (Mostafa Kemal Mostafa), Sulayman Abu Ghayth, Umar 'Abd in-Rahman, Dr. Rafil Dhahir and Ibrahim Al-Muzayyin. (all spellings are phonetic approximations of their names as known in the Muslim community). Al-Iraqi is incarcerated at ADX-Florence in the Special Security Unit (SSU) due to the imposition of Special Administrative Measures (SAMs) and is thus held in solitary confinement. Al-Masri and Abu Ghayth were both recently convicted of terrorism-related charges in New York. Both were subjected to SAMs which means they should go to the SSU soon if they are not already

there. Umar 'Abd in-Rahman is subjected to SAME, but is held in a medical facility. My last knowledge of his whereabouts placed him in Butner, North Carolina. As of Spring, 2014, Dr. Dahir and Al-Muzayyin were in the general populations of regular BOP prisons.

8. Contractors and volunteers do not have enough access to inmates to provide sufficient lessons to make them scholars nor to fulfill their obligation for access to scholars. Further, such individuals are rarely scholars to begin with. Due to equitability issues and issues of resources, the BOP provides only a few fulltime Muslim chaplains in the entire system. While such individuals might be able to provide such education, the BOP does not require them to have any ijazahs or other such qualifications, and I have never seen one to know if they do or not, regardless of policy. Either way, even if all of them are scholars, they would not meet the needs of even a large percentage of the BOP's Muslims.

9. There are so few Islamic scholars in the BOP that I believe I have an individual obligation to become a qualified Islamic scholar.

10. While my own access to scholars to give me such qualifications is sparing, my personal studies out of their presence could expedite the process during periods of

access. My charges related to terrorism increase the likelihood of gaining such access before my release. Also, my wife is on her way to becoming a scholar herself which might open some opportunities for me down the road.

11. However, even in these studies, Islam requires one to take from others with more knowledge than oneself, even if they are not scholars, so long as they have sound understandings. This is due to the strong possibility of misunderstanding a text and developing heresies in the religion.

12. Similarly, Islam obligates those with more knowledge to teach those with less knowledge so that these obligations can be fulfilled. I have found myself in this position in the BOB, and it is so common virtually every Muslim would experience it from time to time. This obligation is in the Quran and Hadith.

13. Even when all of this falls from the category of an obligation, there is no dispute that it never stops being highly-encouraged for everyone. Further, it is always encouraged to gather for Islamic "remembrance" (*dhikr*) such as discussing religious issues, reading or relating Islamic stories, etc. Sufis believe this includes gathering for singing religious songs and repeating religious phrases such as the words "al-hamdu Lillah" ("all praise is Allah's"). Sufis are a mystical sect.

Prayer

14. Islamic prayer is made up of scripted units called "rak'ahs."

Each *rak'ah* consists of the following steps:

- (1) One says, "Allahu akbar (God is great)" while standing erect with their eyes toward the ground.
- (2) They silently utter one of a number of incantations found in the Hadith in Arabic. This is only in the first *rak'ah*.
- (3) They recite the opening chapter of the Quran, Al-Fatihah in Arabic. It translates as: "In the Name of Allah, the All-Merciful, the Bestower of Mercy (I recite); All praise is due to Allah, Lord of the Universe, the All-Merciful, the Bestower of Mercy, Master of the Day of Judgment. You alone do I worship, and You alone do I turn to for help, guide us to the Straight Path, the Path of those whom You have blessed, not of those upon whom is Your wrath nor of those who have gone astray."
- (4) They say, "Amin (amen)."
- (5) They recite any portion of the Quran they wish in Arabic. This is only in the first two *rak'ahs*.
- (6) They say, "Allahu akbar," and bow.
- (7) While bowing, they say one of the supplications found in the Hadith for bowing such as "Subhana Rabbi'l-'Azim (exalted is my Lord, the Magnificent)."
- (8) Then, they say, "sami' Allahu liman hamidah (Allah hears those who praise Him)," and they stand back up.
- (9) Then, they say, "Rabbana lakal-hamd (Our Lord, to You is all praise)," silently, and they may say another silent supplication from the Hadith for this position.
- (10) Then, they say "Allahu akbar," and prostrate on their forehead, hands, knees and feet.
- (11) Then, they say one of the scripted supplications from the Hadith for prostration, such as, "Subhana Rabbi'yal-'Ala (exalted is My Lord, the Most High)," silently, and they are free to make silent supplications of their own, some say in any language.
- (12) Then, they sit up and say "Allahu akbar."
- (13) Then, they say a scripted phrase seeking forgiveness from the Hadith, such as, "Rabbighfir li (My Lord, forgive me)."

(14) Then they repeat steps 10 and 11.

(15) Then, if it is the first rak'ah or the third rak'ah of a four-rak'ah prayer, they repeat these steps. Otherwise they repeat step twelve, and:

(16) While sitting, they say in Arabic what translates as, "Greetings to Allah, and the prayers and pure things. Peace be upon the Prophet, and Allah's Mercy and Blessings. Peace be upon the righteous slaves of Allah. I bear witness that there is no god (worthy of worship) except Allah, alone, with no partners, and I bear witness that Muhammad is His slave and Messenger," silently. Some permit nothing else. Some obligate step 18. Some permit silent supplications of any kind after this, while some only permit silent supplications from the Hadith.

(17) If it is the second rak'ah in a ~~three~~^{three} or greater rak'ah prayer, one stands up and repeats steps 1-15, except step 2. Otherwise, if it is the last rak'ah of the prayer, one...

(18) ... continues sitting and silently says in Arabic what translates as, "Allah, send prayers upon Muhammad and the family of Muhammad as You sent prayers on Abraham and the family of Abraham. Verily, You are praised, majestic. Allah, bless Muhammad and the family of Muhammad as You blessed Abraham and the family of Abraham. Verily, You are praised, majestic."

(19) Some then permit any supplication. Others only permit scripted supplications from the Hadith. Some obligate saying a supplication in Arabic which translates as, "O Allah, I seek refuge in You from the torment of the grave; and I seek refuge in You from the torment of Hell; and I seek refuge in You from the trials of life and death; and I seek refuge in You from the false Messiah^[17] before all of this. This is all silent."

(20) Then one turns their face to the right and left, saying "As-salamu 'alaykum wa rahmatullah (peace be upon you and the mercy of Allah," on each side. This ends the prayer

Each time one stands, a new rak'ah starts. One rak'ah can take as little as thirty seconds.

[17] Muslims, like Christians, believe that there will be a false messiah, or anti-Christ, at the end of times, whom Jesus will slay before ruling with justice on the Earth.

15. Excessive movements and speech unrelated to the prayer, even laughter, invalidate the prayer regardless of whether or not the prayer is congregative. Proseletyzing, passing objects and anything of that nature is forbidden.

16. All sane (as per an Islamic definition) Muslims who have reached puberty or turned fifteen are obligated to make five daily prayers with no dispute, although Twelver Shiites combine some and pray two prayers together. The only exception, also agreed upon by all scholars of all major schools and sects, is that menstruating women are not allowed to pray, although this is a very detailed subject. Missing a prayer without a valid excuse is considered one of the greatest sins in Islam. Zahiris and Hanbalis generally consider it an act of apostasy. The rest of the schools consider it one of the most abominable deeds, punishable by imprisonment or execution (in an Islamic state). The former is the stricter view. I am not sure which opinion I consider correct, but I have no doubt it is a major sin. These prayers are the second of Islam's five pillars. Twelvers have six pillars, but this is their second.

17. With no disagreement, these prayers consist of: Fajr, Zuhur, Asr, Maghrib and Isha. Fajr is two rak'ahs. It is prayed between the break of dawn and sunrise. It is permissible to shorten it, even below two minutes, but it is best to make it longer. It is a prayer in which steps three through five above are done ~~at~~ aloud. Zuhur is four rak'ahs. It is prayed between

the time the sun begins to descend until the time an object's shadow is equal to its length plus the length of its shadow at the time the sun started to descend. *Zhuhr* is a silent prayer. This prayer should be long, but it is permissible to shorten it to around four minutes. According to most, *Asr* starts as soon as *Zhuhr* ends, but one opinion in the Hanafi school requires an additional length of the object in the shadow. Its time extends until the sun turns yellow although one may pray it until sunset with an excuse. It resembles *Zhuhr* except that it is best not to make it so long. *Maghrib* begins as soon as the sun has totally set. It involves three rakahs which are supposed to be short. In the first two, steps three through five are said aloud. *Maghrib* should be prayed very soon after sunset, although some permit it until the time of *'Isha*. *'Isha* starts when the redness departs from the night sky, with minor disagreement, and lasts until the mid-point between *Maghrib* and *Fajr*, although a minority say until *Fajr*. It is like *Maghrib*, but it is a four-rakah prayer and it is better to delay it to the end of its time. I follow the majority in all of this. The timings are a condition for validity.

18. On Fridays, the *Zhuhr* prayer can be replaced by *Jumu'ah*, which involves a sermon followed by a prayer resembling *Fajr*. Most say its time is the same as *Zhuhr*'s, but I follow

an opinion saying it can be said earlier by about an hour.

19. Most Muslims, including myself, rely on calculation tables for prayer timings, although my experience is that usually *isha* is a bit late on these, possibly because it is more visual than geometric.

20. Congregate prayer, with no dispute, is identical to non-congregate prayer except for the following:

(1) Congregate prayers are led by an *imam* (leader) who stands:

(a) On the left shoulder-to-shoulder with the other individual if there are just two and they are of the same sex,

(b) In front and in the center if the *imam* is male and there are at least two other men or they are two but of the opposite sex,

(c) In the center of the first row if the *imam* is a woman leading women.

(2) Those praying behind an *imam* form rows standing shoulder-to-shoulder.

(3) Steps 1, 6, 8, 10, 12 and 20 are said aloud by the *imam*, in any prayer, to signal position changes.

(4) Steps 3 and 5 are never said aloud by ones following.

(5) There's a dispute if ones following say steps 3 and 5 at all in any prayer.

(6) One may not precede the *imam* in any step. Further, one follows the *imam* quickly, even if they did not finish a step, so long as they met its bare minimum requirements.

21. The criteria for choosing an *imam* are disputed with regard to order of importance but generally: (1) a woman cannot lead a man, although the extinct Tabari school allowed

it, as did the extremist Khawarij sect (non-Jihadists call Jihadists "Khawarij," if that explains "extremist"); (2) a person who sins in public cannot lead those who do not; (3) a heretic cannot lead the prayer; (4) one whose prayer is invalid cannot lead the prayer; (5) and there is dispute about the sick leading the healthy, children leading adults and things of that nature. Further, in terms of preference the one fulfilling the following characteristics is best: (1) the regular imam of a location, (2) memorizing the most Quran, (3) best compliance with rules of reciting the Quran, (4) best knowledge of jurisprudence, (5) age, (6) piety, (7) seniority in Islam and (8) acceptance of the congregation. There is no particular way of actually selecting this person. In the past, at the Communication Management Unit ("CMU") at United States Penitentiary Marion, Illinois ("USP Marion"), we voted. Other issues irrelevant to prison exist.

22. The imam of a prayer enjoys no special status outside of the prayer. However, similar characteristics are considered helpful in a community leader, so usually in a community with one prayer congregation the imam of prayer is a community imam as well.

23. All Muslims belonging to any major sect, school or methodology consider making the five daily prayers in congregation highly-recommended. Most Sunnis consider it an obligation of some form on adult Muslim men.

The Zahiris, some Hanbalis, such as Ibn Taymiyyah, and a few Shafii's, such as Ibn Khuzaymah, said there is no prayer for Muslim men unless in congregation. The majority of Hanbalis say it is not a condition of validity, but missing it is a sin. This is my position. The official opinion of the Shafii's and most later Hanafis is that it is a communal obligation. This means that if nobody does it, all are in sin, but if a group in the community does it, nobody is in sin. The Hanafis use the term "emphasized practice," but the majority opinion in their school is that an "emphasized practice" is obligatory. The Malikis and the early Hanafis generally consider it to be an "emphasized practice" with the meaning "highly-encouraged."

24. Most agree that this is only encouraged for women and that it is better for them to pray amongst themselves, although Islam, with some dispute, prohibits preventing them from attending mosques with men so long as they do not display their beauty.

25. Before my arrest, from 2008 to 2009, I would frequently walk four miles each way to attend these prayers in a mosque. Someone actually gave me a car out of sympathy. Following my incarceration, I have prayed every prayer possible in congregation, despite being written ~~four~~ incident reports and losing communication with my wife for eight months

as a result of a ban on religious gatherings enforced by the Bureau of Prisons ("BOP"). This occurred in the CMU at USP Marion. I continued this practice until it resulted in my being sent to the supermax ADX Florence where it is mostly impossible, and where the risk is so great that I could be kept in ADX Florence ~~just~~ for violating this policy, that I can no longer do it anyway.

26. Islam also ~~encourages~~ ^{obligates} or recommends a number of congregational prayers outside of the five obligatory prayers such as a short prayer when someone dies, lengthy prayers during the nights of the Islamic holy month Ramadan, two prayers ~~to~~ each year on Islam's two holidays called 'Id, prayers during an eclipse, prayers for rain during droughts and possibly a few others. My position is that the funeral and 'Id prayers are communal obligations while the rest are encouraged. With slight variations, these resemble the Fajr prayer, except the funeral prayer, which is extremely short and does not involve bowing and prostration.

Other Gatherings

27. It is encouraged in Islam to gather to celebrate weddings, births, and 'Id. Also, it is encouraged to simply gather as a community in general, which is a central theme of Islam. Prior to my arrival at the CMU, as I was informed by virtually every Muslim, almost

the entire community was written incident reports for a "congregational meal." It is not clear to me what makes a gathering religious under BOP policy, but these are the ones the policy has been enforced against to my knowledge. It is possible to interpret the policy as banning almost every deed in my religion, but this has not occurred.

Substantial Burden

28. When I arrived at the CMU at USP Marion in May, 2011, following my conviction, I was ordered not to pray with anyone by Milton Neumann, then a "Case Manager," and Henry Rivas, an intelligence research specialist. I ignored them and prayed with other Muslims, some of whom were convicted terrorists, some of whom were not. Most Muslims in the CMUs are convicted terrorists, including me.

29. From 2011 to 2012, I received four incident reports for praying in congregation in violation of BOP Program Statement PS 360.09 which prohibits all religious gatherings except one per week. My first was written on November 11, 2011, and I lost email for 30 days. My second was written on February 27, 2012, and I again lost email for 30 days. My third was written on June 28, 2012, and I lost email for 60 days. My fourth was written on September 17, 2012, and I lost email for 120 days. While staff admitted that they did not observe an actual prayer on the second and third occasions, they

only wrote the incident report due to such a suspicion and convicted me of being in "Unauthorized areas." During my time in the CMU, no one was ever written this type of incident report unless suspected of prayer. Further, my sanctions were progressively increased, because each incident related to prayer. Finally, as described below, the BOP used those two incident reports to say I refused to stop praying in congregation.

30. My wife, Proscovia Nzaburita, is a refugee from Uganda living in Jordan and cannot obtain a mailbox. The CMU dramatically restricted phone use, and I could barely afford international calls to begin with. As a result of these incident reports, I was almost totally unable to communicate with her for eight months.

31. On June 13, 2012, Unit Manager Steven Cardona observed me and a few other inmates praying at the same time in different cells individually. On suspicion we were praying together, he moved us all to new cells to break us apart. I was praying in congregation, although one inmate, Mohammed Saleh, was not. Normally, such a prayer is not acceptable, but we had to modify our prayers to avoid the ban. I was moved to the closest cell in the CMU to the guard's office and was not allowed to move for "security reasons," despite a broken sink, until February, 2013.

32. ~~On June 13, 2012, Unit Manager Steven Cardona observed me and a few other inmates praying at the same time in different cells individually.~~ In late 2012, I filed a lawsuit against the Director of the BOP, the Attorney General of the United States,

and the Warden, in their official and individual capacities, challenging the local implementation of PS360.09's restriction on religious gatherings insofar as it pertained to group prayer. Also, around this time, we developed a sophisticated security system to avoid detection which included lookouts, peepholes and more. In the first few months after I filed the suit, we were not caught despite dramatically increased patrols at the times of prayer. After the suit was screened, it appeared that guards relaxed their enforcement.

33. In August, 2013, two guards implemented a ban on the Islamic call to prayer following Inmate Michael Reed's complaints (it should be noted that Inmate Reed smoked a peace pipe and banged drums frequently as part of his religion and had just had a personal altercation with the person making the calls). I am not saying it is correct or wise, but I was tired of the prison randomly restricting my religious practices and decided assaulting Reed was easier than filing a lawsuit again, so that is what I did. I deliberately did not use strikes which could seriously hurt him, and he only wound up with a minor cut and a bruise.

34. While in the Special Housing Unit ("SHU"), awaiting a disciplinary hearing, Neumann and other staff members told me they were trying to send me to the other CMU out of FCI Terre Haute in Indiana. Group prayer is allowed at that CMU, due to a court injunction, so I tried

to ensure Freed would be safe at USP Marlon, in order to go to FCI Terre Haute. During this juncture, where I appeared to be leaving, Correctional Officer Massey wrote inmates Carlos Almonte and Rezwan Ferdous an incident report for praying in congregation. Massey, who frequently told me he refused to implement the policy on moral grounds before this, told me that following my placement in the SHU, Chaplain Robert Roloff ordered him to write the incident report. The incident report was later expunged and I remained at USP Marlon. It is my belief that the two incidents are connected and that not enforcing the policy was a legal strategy related to my suit.

35. In November, 2013, I had a hearing for a preliminary injunction. The defendants tried to argue that the ban was not enforced due to the lull in incident reports.

36. A few days later, I was sent to the SHU again and written incident reports for "possession of an unauthorized non-hazardous tool" and what later became "extortion." I dispute both of these allegations, but I was convicted of both incidents. As with my assault incident, the disciplinary officer did not think I deserved SHU time, so I simply received loss of privileges and "good time." However, I was not released and was informed I was being referred for transfer to the BOP's most secure facility, ADX Florence.

37. After considerable digging, in March, 2014, I received an administrative remedy response confirming my participation in unauthorized group prayer ~~was~~ being used against me. Then, at my hearing in April, 2014, the officer, F. Frandle, told me that the three main considerations which justified my transfer were (1) my participation in group prayer, (2) my incident report for extortion and (3) my incident report for possession of an unauthorized non-hazardous tool. Frandle recommended my transfer on these grounds and the BOP's North Central Regional Office, Grand Prairie Designation and Sentence Computation Center, and Central Office approved it. I appealed on May 9, 2014, but on June 2, 2014, I was transferred from USP Marion and arrived at ADX Florence on June 12, 2014.

38. My appeal was more than ~~seventy~~^{fifty} pages, of which only about three dealt with the use of group prayer (I still found it hard to believe it was ~~really~~ being used against me, because it sounds silly). However, the response I got almost ignored every possible justification for sending me to ADX Florence but the prayer, stating:

"You are being considered for ADX general population placement based on your blatant disregard and continued misconduct and refusal to adhere to institution rules. Specifically, on September 17, 2012, you received an incident report for participating in an unauthorized Meeting. On June 26, 2012 and February 27, 2012, you received an incident report for being in an Unauthorized Area. On November 3, 2011, you received an incident report for participating in an Unauthorized Meeting. All four of these disciplinary ~~reports~~ incident reports were the result of you engaging in group or congregational prayer outside of the appointed multi-purpose room and/or outside of a scheduled activity or program. This behavior is in direct

violation of USP Marion's Institution Supplement MAR-5360.09, Religious Beliefs and Practices, dated June 8, 2012. Additionally, records indicate you incurred your most recent incident report on December 4, 2013, for Extorting/Blackmail/Protecting. Further, a review of your discipline history revealed you incurred incident reports for Possessing a Non-Hazardous Tool and Assaulting without serious injury.

Your conduct requires greater security and controls than can be afforded while you are housed in a typical general population setting or in a CW. Your disciplinary history has shown a disregard for rules and regulations as you have repeatedly been found participating in group or congregational prayers outside of the appointed multi-purpose room and/or outside of a scheduled activity or program. Your refusal to adhere to institution rules demonstrates the fact you still pose a serious threat to institutional security, good order and the safety of others."

No other specific justification was offered besides this for my transfer. It is worth noting that MAR-5360.09 is the local version of PS360.09 which restricts religious gatherings nationally.

3a. I appealed this to the Central Office on all previously raised grounds and a number of new ones based on the response I received, but it did not address any of them and merely stated the justification for my transfer. It only provided one specific reason for my placement in ADX Florence: the prayer. They stated, "You have also [(this followed a generic justification for all ADX placement)] been identified as participating in, organizing and/or facilitating any group misconduct that adversely affected the orderly ~~running~~^{operation} of the institution. Based on the above, you were referred for ADX placement." There is nothing in my record this could refer to except the prayer.

40. I am currently at ADX Florence and it is virtually impossible to hold any kind of religious gathering. One of my neighbors appears to be Muslim, but he does not speak to anybody. My other neighbor, Christopher Gibson, is in ADX Florence for his role in numerous homicides in prison as a member of the Aryan Brotherhood. Most of those on my range are white supremacists and the rest are members (current or former) of violent prison gangs and are not Muslim. I speak daily with a Muslim on the floor above me through my shower drain, but this is physically painful, reeks of sewage and makes it very hard to hear. About once per month, I am able to meet up with another Muslim during recreation for about two hours in a place where we are physically separated and cannot see one another. However, I avoid classes and similar things because they are not worth being in ADX Florence over. I am being held indefinitely in solitary confinement. My wife, whom I used to receive emails from daily, has only been able to get two letters to me through her mother since I arrived. Her mother censors her emails and we have had trouble finding others to print them and mail them to me.

41. At USP Marion, I attended and taught classes, but we frequently had to employ inconvenient methods, such as sitting far apart and facing different directions, to avoid detection. Also, we had to avoid the daytime, because

more staff were present. Classes were frequently broken up by staff. Correctional Officer Gruber used to come by a class we had in one inmate's cell and just stand outside. We had to stop talking about Islam until he went away. Many inmates were too afraid to attend at all, so class-sizes were very small. It is very difficult to keep classes going with just two or three people as one absence causes cancellation. I never received an incident report for this, but classes are easier to hide. One need simply close the book and discuss another subject. It is much harder to disperse from a row in one of the various prayer positions.

42. Unfortunately, when I sent it for copies ADX Florence staff confiscated it, but the ^{documentary} referral of inmate Kevin James and eventual placement in ADX Florence was based almost entirely on his violation of P5360.0a. Page one records his statement that nobody told him religious classes were not allowed before referring him to ADX Florence. Page six mentions his entire federal disciplinary history: (1) an incident report for hemming his pants, (2) an incident report for cursing at a guard and (3) an incident report for praying in congregation in the CMU at FCI Terre Haute. The FCI Terre Haute policy was enjoined almost 18 months prior to this, by a federal court.

43. I was present on a number of occasions, due to my being James' neighbor in the SHU, when staff told him some

Inmates had written "kites" against James following his placement in the SHU as a victim of an assault. Supposedly, the "kites" said James was teaching some kind of extremism. I was also present on numerous occasions when Case Manager Burgess, Captain Garcia and others admitted they should not have referred James over unverified "kites," but that it was no longer in their hands.

44. I actually attended all of the classes and, not only were they not on "extremist" subjects, James was not even the teacher. We used James' cell because it was clean and the teacher's cell was too messy to fit a class inside. We were studying ritual purification (i.e. how to bathe before prayer with water) from a book called *'Umdat ul-Ahkam's* explanation, *Taysir ul-Allam*, and the meaning of Islamic monotheism from a book called *Fat'h ul-Majid*. These are very standard and mainstream texts taught around the world. I have both in my possession at ADX Florence even.

Compelling Governmental Interest

The Nature of Islamic Classes

45. While I am what people call a "Jihadist," I do not see classes as a useful forum for promoting my beliefs. For one, the difference between my beliefs and those of other Islamic sects — at least, insofar as they relate to the term "Jihadist" — revolve around two very specific and minor issues: (1) the

status of shariah law (i.e., is ruling by it a condition of faith— which is my belief — or simply an obligation?) and (2) what types of violence are permitted in Islam under regulations for war. These are very fine details in religious studies, but they happen to have a dramatic worldly effect. These issues are more easily dealt with in passing conversation as they do not justify a class. This is even more the reality in prison, because most Muslims have not been exposed to the counterarguments on such issues. Further, the gang culture which is so prevalent in prison is so violent, usually addressing the second point involves explaining what is forbidden, not what is allowed.

46. Second, if I am trying to "radicalize" somebody, I want that process to go under the radar. I would not advertise it by holding a class on jihad or what have you.

47. Third, the classes I have taught have all been from books which do not even address the issue of jihad and are by classical and non-jihadist authors, such as: *An Explanation of Al-Aqidat Al-Wasitiyyah* by Ibn Uthaymin, *The Evolution of Fight* by Bilal Phillips, *An Explanation of the Four Principles of Shirk* by Yasir Qadhi and similar works. Also, the classes I have attended in the CMU were on the books: *Fat'h ul-Bari* by Ibn Hajr from the sections on "faith" and "knowledge," *Tafsir ul-Qurtubi* by Al-Qurtubi — specifically, we were only covering the Arabic poetry from that book —

Alfiyyah by Ibn Malik (a classical poem covering Arabic grammar), *I'rāb ul-Qur'ān* ("Morphology of the Quran") (author unknown), and the two previously cited books. None of these are considered Jihadist. In fact, Ibn 'Uthaymin, Bilal Philips and Yasir Qadhi are noted opponents of Jihadists.

There are Other Ways to Promote Violent Ideas

48. The BOP allows inmates to gather for unsupervised secular activities like fitness, table games, television viewing, sports, conversation, eating and so on. I can sit at a table with a bunch of other Muslims and promote my views on jihad, verbally attack America, encourage violence, organize disruptions, etc. Unless a guard happens to hear me, there is nothing to stop me. However, if I take out a book on kindness toward one's parents and stop talking about jihad, a guard can just look over or observe me on a camera and write an incident report. Similarly, if I stop encouraging violence — not that I do — and we get up and pray together, a guard simply needs to see us and we are disciplined. Perhaps most absurd of all is the fact that I can eat meals with other inmates essentially whenever I want, but if prison officials conclude my intention was to celebrate the holiday 'id, for example, I can be disciplined.

49. White supremacist gangsters can study their philosophy. Communists can read Marx's works encouraging armed

rebellion to one another. A gangster can rap about drugs, homicide, and other such subjects to a cheering audience. A group of hardened convicts can discuss how "righteous" it is to carry out violence on informants and sex-offenders. However, if I want to pull out a book on Islam's position against racism, or the necessity of abiding by the law, or why drugs, homicide and other such activity are abominable, or why the "Penitentiary Code" amounts to apostasy in Islam — all of which I believe in, as a Jihadist — I cannot do so. In fact, were I to change my positions and desire to refute Jihadism with one of the many books on the subject, I cannot.

The Director's Policy Promotes Terrorism

50. Essentially the entire political argument of the Jihadist movement in favor of terrorism is that the West is at war with Islam. As one of the most influential Jihadist ideologues in the English language to this date, I always devoted a significant part of my platform to this topic. The argument is that, "while the West might be fighting Al-Qaeda, the Taliban and so on, the reality of their campaign is to target Islamic practices and prevent the emergence of an Islamic state." Usually, this involved poring over dozens of foreign policy and defense reports looking for odd slips on the part of the author and

scouring speeches of politicians for statements supporting this notion. As the Western platform is essentially the opposite, this is not easy. Perhaps the most famous gaffe was President Bush's terming the "War on Terror" a "crusade."

51. From this perspective, the Director's policy has a radicalizing effect. In fact, in all of my experience, I have never found an American policy so obviously targetting Islamic practices as PS360.09. As prayer in congregation is so central to our faith, I frequently write to the outside about this policy. My wife has informed me these articles have received thousands of views and hundreds of comments. I even received word that when I wrote about BOP expert Ammar Amonette's testimony against various Muslims over PS360.09, posts on a Jihadist forum called "Ansar" were calling him an apostate. Amonette testified Jihadists would be willing to kill him over my articles. This was not my intent at all, and I tried to be very clear I was not calling him an apostate, but the issue is very emotional for many Muslims. In my experience, the Director's policy serves the exact opposite ends from its goals, i.e. it promotes radicalism.

Security and Notification

52. I notified the Director of the BOP of my intent to file a motion for a temporary restraining order and preliminary injunction in this matter by mail on November 4, 2014.

53. The motion I filed seeking leave to proceed in forma pauperis is an accurate assessment of my finances. Thus, I can only afford a nominal security.

Executed on this 14th day of November, 2014 in Florence, Colorado.



Zachary A. Chesser

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UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF ILLINOIS

ZACHARY CHESSER,
Plaintiff,
v.
J.S. WALTON, et al.,
Defendants.

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No. 3:12-cv-01198-JPG-PMF
}

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE PHILIP M. FRAZIER
UNITED STATES MAGISTRATE JUDGE

November 19, 2013

REPORTED BY: Christine A. Dohack, RMR, CRR,
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Proceedings recorded by mechanical stenography, produced
by computer-aided transcription.



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I N D E X

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1 that's not at issue. I'm hearing the Government now
2 saying that that is an issue and it's -- I, I think there
3 is some confusion on their part because that's never been
4 the issue here, about whether he can pray.

5 THE COURT: I think congregational prayer is the
6 only -- that's the real issue here, isn't it? I mean,
7 obviously if the Government were successful, I guess, in
8 convincing me or anybody else that, well, there's no
9 requirement for five prayers a day of any kind, that that
10 would -- but I think that's going to be kind of a
11 difficult deal. We'll see.

12 MR. ASCHEMANN: And even if that were the case, it
13 still gets back to what his sincere beliefs are.

14 THE COURT: And it gets back to what -- as long as
15 his sincere beliefs as they might be rooted in some
16 objectively ascertainable tenets of the religion. And I
17 think -- well, we'll just say for right now that this is
18 something that is off the stipulation table.

19 Next. Does the Government contest that Mr.
20 Chesser sincerely believes that five communal prayers
21 daily are a central and necessary aspect of his faith?

22 MS. BOULDON: We do not challenge his sincere
23 religious beliefs.

24 THE COURT: And that that sincere religious belief
25 would require five daily communal prayers, along with

1 the necessity of five daily prayers. And I'm not talking
2 about congregational prayer, just the prayers themselves.
3 What is your understanding of what Islam requires of all
4 Muslims?

5 A. Right. All Muslims are required to pray five
6 times a day for the five prayers I mentioned earlier. And
7 there's no dispute among the four schools nor among
8 Sunnies or Shia or any sects that's well-known that
9 identifies itself as Muslim.

10 Q. All right. And let's talk about those prayers in
11 particular. Are those prayers in Arabic?

12 A. Yes. The -- all the out-loud portions have to be
13 in Arabic. If somebody can't understand Arabic, they can
14 say some of the silent portions in English.

15 Q. Are the prayers rote or formulaic?

16 A. The prayers are completely rote in terms of -- at
17 least everything that's recited out loud is completely
18 rote. There's only certain things that a person can say.
19 It's already recorded and written in books and people are
20 not allowed to deviate from that.

21 Q. So, when you say they're not allowed to deviate,
22 you can't ad lib at all in the prayer?

23 A. No, a person cannot ad lib at all.

24 Q. What's, what's the consequences if you were to ad
25 lib and, and change a prayer?

1 A. The prayer wouldn't count.

2 Q. Any other consequences?

3 A. If a person did it on purpose, it would be a sin
4 in the religion for them to do that. And there wouldn't
5 be any dispute among Muslims on that issue.

6 Q. All right. Now, going to your, your belief that
7 you are obligated to pray congregationally five times a
8 day, explain for the Court what that means to pray in
9 congregation.

10 A. Well, praying in congregation in Islam involves at
11 least two people. And one person, they recite out loud
12 certain rote recitations, some of them signal position
13 changes in the prayer, and some of them for certain
14 prayers is a rote recitation of different verses of the
15 Koran.

16 And the one who is leading the prayer will begin
17 the prayer while standing and then he'll bow, and then the
18 next -- the person following him or people following him
19 will also bow. Then he'll stand back up and prostrate,
20 and they'll follow him until they reach the end of the
21 prayer with the movements along those lines.

22 When the -- you have more than two people, when
23 there's just two people, the one leading the prayer stands
24 right next to the one who is following him. But when
25 there's three or more people, the one who is leading the

1 import?

2 A. Right. They can differ about its level of
3 obligation but all Muslims, even Shia Muslims, not just
4 the four schools of Sunni thought but all Muslims
5 basically agree that congregational prayer is at least a
6 recommended action.

7 Q. Well, if the prayers are scripted, then how do you
8 pass secret notes while you are praying?

9 A. Well, that's not a good time to pass secret notes.
10 It's a very inconvenient setting for that.

11 Q. So, if you're -- if you want to pass on terrorist
12 ideology or proselytize, how would you do that in the
13 context of rote prayers?

14 A. Yeah, I wouldn't be able to do that in a rote
15 prayer because it would invalidate my prayer.

16 Q. Now, your freedom of movement in the CMU was
17 touched on earlier. You can play checkers?

18 A. Play checkers.

19 Q. Describe for me some of the activities that are
20 available to you?

21 A. We can watch TV together or alone. We can play
22 board games, card games, basketball, volleyball, handball.
23 We can eat together. Sometimes people, we have education
24 classes that are sometimes attended by people. People do
25 artwork together. Just talk with each other.

1 recreational activity but right now it's mostly used for
2 painting. And a room that's used to store recreational
3 equipment.

4 Q. So, are you able to talk freely with other
5 prisoners?

6 A. Yeah, I am able to talk freely with other
7 prisoners about pretty much whatever I want to.

8 Q. Literally anything?

9 A. Yeah, literally anything. There's no...

10 Q. As long as you are not loud or confrontational?

11 A. Right, as long as I am not loud or
12 confrontational.

13 Q. Now, if you are playing checkers with another
14 inmate and you are talking about Jihad or, you know,
15 escaping, or God knows what else you would be talking
16 about, nothing good -- okay? And you decide to stop that
17 activity and pray together, would you be permitted to do
18 that?

19 A. No. They would not let us do that.

20 Q. When are you allowed to pray communally?

21 A. In a normal week, we are allowed to pray
22 communally on Friday from 1:00 p.m. to 3:00 p.m.

23 Q. And that's the Jumu'ah?

24 A. That's called Jumu'ah.

25 Q. And is there, is there a subsequent prayer service

1 following the Jumu'ah?

2 A. Sometimes during the, the sort of winter months
3 like right now, the Asr prayer comes in during the 1:00 to
4 3:00 time. So we make the Asr prayer in that time slot as
5 well, but we're not allowed to prayer Maghrib, for
6 example, after that because that never comes during that
7 time slot. And during Ramadan, for example, the holy
8 month in Islam, they give us -- all the prayers, we're out
9 of our cells, they let us pray those -- since I have been
10 in the CMU, they have let us pray those in congregation
11 during that month.

12 Q. Do you presently pray communally with other
13 prisoners outside the knowledge of, without the knowledge
14 of the prison knowing?

15 A. Yeah, we do it in secret. I believe they know
16 that we do it, but they find it difficult to write us
17 incident reports or perhaps this suit has caused them to
18 back off on writing us incident reports, but we do it in
19 sort of clandestine fashion for each of the prayers right
20 now.

21 Q. Has there been any security issues arise as a
22 result of your clandestine congregational prayer?

23 A. There is nothing I can imagine that arose as a
24 result of that.

25 Q. How many Muslims are in the CMU, approximately?

1 was describing when he actually assaulted an inmate for
2 what he perceived a slight to his views.

3 So, yes, the nonMuslim inmates are, are -- you
4 know, they do object to having prayer called in the cell
5 next to them at 4:00 in the morning, but there is an
6 element where they be quiet or they're at risk of assault.

7 Q. Well, you would agree though that this case is
8 really about Mr. Chesser and what he is permitted to do;
9 right?

10 A. Correct.

11 Q. And you wouldn't disagree with the idea that the
12 prayers that are recited are rote prayers?

13 A. No, I don't disagree that they are rote prayers.

14 Q. All right. So explain for the Court, if you
15 could, what dangers flow from rote prayers being recited.

16 A. I don't know that there is a danger from rote
17 prayers being recited, if that's what we know is going on.
18 That's why we would require supervision. We don't know
19 just -- if you have a prayer, we have to have an
20 understanding of what that content is of that meeting, and
21 that's what requires the staff supervision. Because you
22 can say we have a prayer going on, but it might not
23 necessarily be that.

24 Q. Now, you do have audio and video capabilities
25 inside the prison; correct?

1 Q. Well, if they're following the prayers as required
2 by their faith, how is that proselytizing anyone?

3 A. If we know that's what's going on.

4 Q. Well, I'm asking you to assume for the sake of
5 this exchange --

6 A. To assume that they're just reciting prayers by
7 rote, probably not. But what happens as the meeting is
8 gathering? What happens post meeting? Who is there to
9 ensure that everybody has access to the meeting? Who's to
10 -- that's, that's the issue. We have to have some staff
11 supervision there to, to ensure, number one, that, that if
12 there is a prayer, that all inmates that want to attend
13 the prayer can. And, and secondly, to ensure that nothing
14 additional is added to the prayer.

15 Q. Have you considered allowing just two inmates to
16 pray together?

17 A. I have. But the nature of the prayer as described
18 by Mr. Chessen is disruptive in itself to other nonMuslim
19 inmates. For instance, if they were to pray in a common
20 area where they are reciting by rote and other inmates are
21 watching television or participating in hobby craft or
22 just simply talking amongst each other, that may -- I
23 envision that that could be viewed as disrespectful to
24 those that are praying and, and certainly disruptive if
25 somebody's engaged in another sort of activity.

1 Q. But again, though, you are assuming a parade of
2 horribles that doesn't exist as long as they are following
3 -- they are just simply praying as they are requesting?

4 A. No. I am also certain that if a group of inmates
5 started praying when other inmates are around that aren't
6 involved in the prayer, I am also certain that there will
7 be problems.

8 Q. All right. But you heard the testimony that he's
9 been praying communally?

10 A. Yes, I did hear that.

11 Q. And you heard -- and is it your understanding that
12 he does so at his own risk?

13 A. He does so -- yes, he does at unauthorized --
14 having unauthorized gatherings. And he does at that risk.
15 They do it in a clandestine manner. It's very difficult
16 to catch inmates doing that, but we do hear from other
17 inmates that, you know, it does bother them when, when
18 those prayers are conducted around them.

19 Q. And you can identify these inmates?

20 A. Yes.

21 Q. All right. So, because after this, you appreciate
22 that when this hearing is over there's additional
23 discovery to be done?

24 A. Well, I would certainly, what I am citing now is
25 what I have heard from my staff that work in the units

1 that have heard from other inmates.

2 Q. So you don't have personal knowledge?

3 A. No, not direct knowledge.

4 Q. And --

5 A. I have knowledge from my staff.

6 Q. And how many bad things have resulted from the
7 clandestine group prayer?

8 A. None that I'm aware of.

9 Q. Okay.

10 MR. ASCHEMANN: I think that's all I have, Your
11 Honor. Thank you.

12 THE COURT: Miss Bouldon, do you have any
13 redirect?

14 MS. BOULDON: No, Your Honor.

15 THE COURT: I have a couple questions, Warden.

16 EXAMINATION:

17 BY THE COURT:

18 Q. What exactly does the staff chaplain do?

19 A. The staff chaplain oversees all the religious
20 activities for inmates at the institution; arranges for
21 accommodation for their beliefs and views that fit within
22 our security framework; and, and he also serves as a
23 direct counselor at times for inmates that are having
24 difficult periods of time in their life.

25 Q. So you have two staff chaplains. Is that for the

1 hugely burdensome.

2 Q. Is your biggest concern for security reason or
3 purposes is, is your biggest concern that there would be
4 some disruption between the Muslim inmates and the other
5 half or between the Muslim inmates themselves?

6 A. I would say both. For an example, we have one
7 inmate we got from Terre Haute that got into it with other
8 Muslims there because they, they differed on the belief of
9 how congregational prayer actually is to be honored while
10 somebody's incarcerated. This particular inmate believed
11 that while you were incarcerated that you weren't required
12 because of your situation, while other inmates differed.
13 And they had an issue and we had to have that inmate moved
14 to, moved to Marion.

15 Q. Do you ever have disputes between inmates over a
16 checker game or a card game? Any flare-ups there?

17 A. Certainly.

18 Q. Would you say that those are more or less frequent
19 than, than disputes or flare-ups that arise during
20 religious services?

21 A. I would say neither one is that common right now,
22 but I would say probably close to the same in regards to
23 CMU incidents.

24 Q. Have you ever had a dispute that turned ugly arise
25 during one of the Muslim services?

1 A. Not, not at Marion that I can recall.

2 Q. You have had disputes that got ugly between
3 participants in a card game or a checker game?

4 A. Sure.

5 Q. And yet you still have checkerboards out and cards
6 available?

7 A. Yes, we do, after we've -- whenever we have an
8 issue in the institution that -- the first thing we do is
9 we try to identify what the issue is. Is it a personal
10 issue between two inmates or is it a group-related issue
11 which would, would cause a larger security concern. So,
12 whenever we have an incident we very quickly try to
13 determine whether this is just a personal matter or
14 whether, whether this is going to spill over into groups
15 and cause further violence.

16 And it would depend. A card game, for instance,
17 if there was gambling and a member of a specific gang or
18 group didn't like what was going on and started an issue
19 with another group, we could have a wide scale issue very
20 rapidly. Or -- but if it's just a disagreement with two
21 individuals that may be isolated, then we just take care
22 of those two individuals and that's it.

23 Q. This may be outside your jurisdiction, but would
24 it make sense just to have a CMU comprised solely of
25 Muslim inmates? Surely that there are enough within the

1 Federal Bureau of Prisons to do that, and you would
2 thereby eliminate one of your major concerns for having
3 communal prayer.

4 A. It would on the surface but, you know, we have
5 looked at over the years with different groups of inmates
6 can't be on this particular institution or that particular
7 institution because of their affiliation. And what you
8 end up having is, you have a group that ends up
9 controlling a part of a institution or a, an institution
10 as a whole; a certain inmate from a certain geographic
11 location might not be able to walk a yard if he's from
12 Texas and it's primarily run from California inmates, is
13 an example.

14 So, we try to integrate inmates to level the
15 playing field, if you will. If we get too, too large of a
16 group one way or another, they end up dominating anything
17 that goes on in the institution.

18 Q. If you could, just take a, just take a moment and,
19 if you can -- and if you can't, just let me know -- tell
20 me your top three security concerns in order, with the
21 most concern being number one, of permitting Mr. Chesser
22 to do what he requests.

23 A. Well, first and foremost, I think my top concern
24 is making sure that if we are going to have a congregate
25 prayer, that that is what is actually going on. And to do

1 that, we have to have supervision. Because a lot, a lot
2 of the folks in that unit have a terrorist background,
3 have a violent background, promote violent Jihad. So, we
4 do want to ensure that we are not proselytizing other
5 inmates into that. So that's, that's one.

6 The second is that if we're going to have a
7 congregate prayer, that all inmates that want to attend
8 should be welcome to attend. So, right now having little
9 pockets of prayers here and there between individuals who
10 self-appoint leaders, who then -- we don't know that
11 everybody has equal access unless staff are monitoring
12 that.

13 And the other issue is, it would be a huge
14 accommodation to allow that, that many groups, groupings
15 for one group, the Islamic group, versus all the other
16 faith groups in the institution. And they, they would
17 certainly have issue with, with the fair and equitable
18 distribution of our resources and time.

19 For instance, I know we get requests to have
20 different groups to have study sessions here in different
21 areas of the institution. We just can't accommodate
22 because we don't have the staff to monitor or the places
23 to monitor.

24 So, the equitable distribution is, is one of our
25 other issues that, that we want to, to make sure that

1 we're fair with all inmate faith groups.

2 Q. Mr. Chesser, if he chose to, he can meet with and
3 talk with just any other inmate in CMU; is that right?

4 A. That is correct.

5 Q. And other than as your microphones and cameras
6 might pick up, you don't know what they're talking about?

7 A. Not generally.

8 Q. He could pass a message to another inmate if he,
9 if he desired to?

10 A. Yes, sir.

11 Q. So, any inmate who desired to recruit another
12 inmate into something illegal either immediately or down
13 the road could certainly run the risk of getting caught
14 but they have the opportunity to do that as things are
15 right now.

16 A. They do.

17 Q. Is there any way that you can think of that this
18 group prayer would facilitate that in any greater way than
19 he can do right now?

20 A. Well, it would bring together more inmates of a
21 like mind.

22 Q. He can find them anyway, can't he?

23 A. He can. He can. But we generally observe groups
24 of inmates throughout the institution, not just CMU. We
25 try to know who's grouping with who, and whether certain

1 groupings are of a concern or not of a concern, and that's
2 just something we do daily through observation, so.

3 Q. He knows who the other Muslims are.

4 A. He absolutely knows. And he absolutely knows who
5 are of like mind related to his instant offenses.

6 Q. He already knows that.

7 A. Yes, he does.

8 Q. So, he isn't going to learn anything in group
9 prayer that he doesn't already know.

10 A. No, but the danger of proselytizing somebody that,
11 that they may be trying to introduce into, into that
12 belief system.

13 Q. He could still do that.

14 A. He could.

15 Q. I mean, he knows who has a like mind and he also
16 knows who doesn't have a like mind so, if he wanted to
17 recruit somebody or try to influence them, he has the
18 ability to talk with them now.

19 A. He does.

20 Q. He could get caught and that wouldn't be good, but
21 -- or he could pass them messages or -- and how exactly
22 would this proselytizing go on during a group prayer?

23 A. We, we -- it shouldn't go on, if that's, if
24 that's --

25 Q. It shouldn't, but how could it go on?

1 A. How could it go on is if -- before, during, or
2 after the meeting, it's the grouping of the inmates. It's
3 not the actual prayer itself, it's the grouping of the
4 inmates, not the rote recital of the prayer, that's the
5 issue. It's, it's the gathering of the inmates that we
6 don't have the supervision of what's going on.

7 Q. If Mr. Chesser and five other Muslim inmates sat
8 down to play cards, say a game of Hearts -- all right?
9 That takes four of them, four of them sitting closer than
10 I am to you. Is that an illegal gathering?

11 A. No.

12 Q. And the reason it's -- even though you'd have,
13 say, three with Mr. Chesser's mindset and one who is a
14 newbie who might be fertile for recruitment into something
15 you wouldn't want -- and one other thing, is this
16 something that the prison doesn't want or that maybe other
17 groups of, within the country don't want? Is this a, is
18 this a BOP or a Homeland Security issue?

19 A. I'm certain it's BOP because our policy directs
20 the supervision of it. I may be mistaken, but I believe
21 part of the reason we do that is, we had an OIG report
22 that criticized our ability to monitor what goes on with
23 religious activity.

24 Q. What terrorist activity can an inmate like Mr.
25 Chesser possibly undertake?

1 A. For instance, one activity he did do, he tried to
2 organize a disruption of our institution staff by trying
3 to encourage others to essentially flood us with FOIA
4 requests which would tie up a lot of staff time. So not,
5 not place the bomb at the side of the road type issues but
6 other, other ways to disrupt and occupy staff time; he has
7 engaged in that activity.

8 Q. How does that differ from materially stopping up
9 the toilets, for example?

10 A. It's just a matter of what, what it costs in time
11 and money to, to handle the situation.

12 Q. But all those FOIA requests is something he could
13 do or he did do on his own; right?

14 A. No. He tried to solicit --

15 Q. Solicit.

16 A. -- from outside the prison to have essentially a
17 bombardment of FOIA requests on the Bureau of Prisons with
18 the intent to disrupt our operations.

19 Q. And you had, you had things in place that
20 intercepted those requests?

21 A. Yes. We intercepted the e-mail that he tried to
22 put out that requested that.

23 Q. So, you have means in place to intercept those
24 things?

25 A. We do.

1 A. No, that was split between the group. I mean,
2 there were Muslim inmates that said that was horrible.

3 Q. What about Baptists?

4 A. There are inmates of all groups that said it was
5 horrible, and there were inmates that were happy it
6 happened.

7 Q. Of all faiths?

8 A. I'm not sure about their faiths.

9 Q. What I'm saying, it goes back then to saying, is
10 there any concrete objective reason that you can offer
11 that would suggest that group prayer would not be
12 inclusive?

13 A. I think it would be inclusive if we monitored and
14 ensured that it was.

15 Q. Meaning the flipside of that is that you believe
16 that if it were not monitored it would not be inclusive?

17 A. Correct. And I -- that is correct. I don't know
18 that it would be.

19 Q. And then my question once again would be, do you
20 have anything concrete besides your -- and I respect your
21 intuition, obviously you have a lot of experience in your
22 work -- but do you have anything concrete that would
23 support your fear or belief, however you would want to
24 characterize it, that it would not be inclusive?

25 A. No, sir.

1 Q. Again, I think your distribution of assets that
2 you discussed, did I correctly understand that to mean
3 that other groups may want the same ability?

4 A. They, they would want additional times to meet and
5 to study and to, to have an equal time footing as the
6 Islamic group.

7 Q. And if that turned out to be a vital part of
8 somebody's religion, would that be a problem? I mean,
9 other than the assets that would have to be designated for
10 it. I know you've got scarce assets or resources on that.

11 A. It would be very resource intensive. We're pretty
12 stretched as it is to provide what we do provide.

13 THE COURT: I don't think I have any other
14 questions here. Warden, thank you very much for being
15 here.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Miss Bouldon, explain now.

18 MS. BOULDON: I'm ready to proceed. We can --

19 THE COURT: well, how much longer have we got or
20 do you want to take lunch?

21 MS. BOULDON: I would say roughly -- I can
22 probably keep it to three hours.

23 THE COURT: Three hours from here?

24 MS. BOULDON: Following lunch.

25 THE COURT: what do you have that's going to last

1 once in awhile you'll come across one that --

2 Q. Would it be fair to say that it's not man by its
3 dog kind of news for an inmate to disobey a direct order?

4 A. Correct.

5 Q. Or to be insolent or disrespectful?

6 A. Correct.

7 Q. All right. Did this particular inmate, did they
8 know him to be a Muslim?

9 A. What inmate are you referring to, sir?

10 Q. The one that had his pant legs rolled up and was
11 insolent and kept walking after he was ordered to stop,
12 was he known to be a Muslim?

13 A. Yes, sir.

14 Q. And did he give any indication or say anything to
15 the assistant warden and whoever else was there that would
16 make them believe that he was doing this because he was
17 above the rules now that he could have this congregational
18 prayer or that he, that somehow this was related to the
19 *walker Lindh* decision?

20 A. I don't think he gave anything verbal, sir, other
21 than just answering with a no, when given the order.

22 Q. So, there wasn't anything that tied the two
23 together that you could objectively identify?

24 A. No, sir, I don't believe so.

25 Q. And the other inmates, explain that one to me

1 again how the other inmates are -- are they complaining
2 that they can't get in and use the room there because the
3 Muslims are always in there praying?

4 A. The incident in particular, the Catholics were
5 going to have a mass.

6 Q. Okay.

7 A. And they had -- normally there was a room across
8 the hall which is also used as a -- it's a multipurpose
9 room. It's also used for ping pong and other activities.
10 And at times they will use that, the Catholic bishop will
11 come in and they'll use that over there. And since the
12 ruling, the room that the Muslims currently pray in daily,
13 they were going to use that because it's actually labeled
14 as a multipurpose religious worship room, religious
15 services worship room.

16 Two of the inmates approached me prior to their
17 service and said -- we had, you know, told them, make sure
18 you, you know, you guys clean up your area, and that you
19 don't leave anything behind.

20 well, we're not going to use it now, is what they
21 stated to me.

22 And I said, I don't understand.

23 And they said, well, just to save trouble, we
24 can't use it.

25 And I said, it's open to everybody, all religions.

1 would you say it is more attributable to kind of a "hey,
2 we won, we beat the man" type of attitude and that's how
3 it's being expressed?

4 A. I think that it is being expressed of, you know,
5 we tried this, we took it to court, we won, and it's just,
6 it's just simply our observation of an empowerment and
7 that really threatens our security.

8 Q. So the flipside, I guess, then would also
9 necessarily be true, logically speaking, is that if
10 expanding their religious practices consistent with
11 religion, not inventing new things to do but to expanding
12 their opportunity to practice their religion, if that
13 empowers them in a bad way, then restricting their
14 religious practices would put them under the thumb a
15 little bit more in a way that would be useful to you?

16 A. If -- we didn't have as many of these issues, not
17 at this, not at this number before, and they were content
18 with praying in their cell. They -- you know, they prayed
19 in their cell.

20 Q. Because that's all that was available?

21 A. Absolutely.

22 Q. So taking away, taking away the -- and I don't
23 want to put words in your mouth, but would it be fair to
24 say that it would be a useful mission for the BOP to take
25 away as many religious rights as possible and still be

1 running right along the edge of a constitutional
2 violation? would that be --

3 A. I wouldn't, I wouldn't agree with that statement.
4 You know, if they're content -- and I, and I have read the
5 depositions of the inmates involved and basically they're
6 stating that they were content with praying in their cell
7 or they prayed with a buddy and they were good with that.

8 Q. Do you know if inmates can visit each other in
9 their cells?

10 A. We -- at Terre Haute, an inmate can go to another
11 inmate -- now there are only one inmate assigned to a
12 cell, so we allow no more than two total bodies in a cell
13 at any one time. And they may be reading together, they
14 may be studying the Bible, but no more than two inmates
15 per cell.

16 Q. would you have allowed two inmates to pray
17 together in a cell before the *walker Lindh* decision?

18 A. Yes.

19 Q. Thank you very much.

20 A. You're welcome, sir.

21 THE COURT: Any followup? Anyone has any --

22 MS. BOULDON: Just -- can I have a second?

23 THE COURT: Sure.

24 (Pause.)

25 MS. BOULDON: Just one followup question.

1 A. Yeah, I was in Colorado Muslim Society of Denver.

2 Q. For how long?

3 A. For about 14 years.

4 Q. Okay. What is the nature of your work?

5 A. It's, it's complex because I have a lot of hats I
6 have to wear, so I have to, you know, obviously lead
7 services or preach, as well as like guidance for personal
8 counseling and community guidance. And sometime I have to
9 be like a religious judge over certain matters, you know,
10 which are, you know, Islamic law matters.

11 Q. And do you provide guidance for Muslim inmates?

12 A. Yeah, we have, we have an organization called
13 Muslim Chaplains of Virginia. We work with the state
14 prison system.

15 Q. So you have experience in giving guidance and
16 counseling to Muslims within the prison system?

17 A. Yeah, I've, I've done that on sort of part-time
18 basis for more than 25 years.

19 Q. And have you had occasion to counsel any prison
20 inmates regarding a requirement to pray five times a day
21 in congregation?

22 A. Yes, of course.

23 Q. And what would you advise that inmate?

24 A. Congregational prayer is something that is not
25 mandated but it is beneficial when it's possible to do

1 that. But Muslims, every aspect of Islamic religion is an
2 individual responsibility. And so people can pray
3 together on occasion or they can pray by themselves. They
4 don't have to pray in a congregation.

5 Q. And would you advise them that they would be
6 meeting that responsibility?

7 A. Yes. Every -- Islamic religion doesn't take, for
8 example, a clergy person to do most aspects of the
9 religion. People -- each individual does the entire
10 prayer by themselves. There's not any aspect of the
11 prayer that would require an Imam or a leader. So any
12 Muslim can lead, lead a prayer or be part of a prayer or
13 do a prayer by themselves completely, and it's absolutely
14 acceptable for them to do that before God.

15 Q. Are you familiar with the plaintiff?

16 A. By name.

17 Q. Have you received any threats from the plaintiff?

18 A. Well, I didn't know him before. And after I was
19 involved in another case, he did start posting things
20 online that were -- of course, when they use language that
21 implies that what you are doing is outside of Islam, as if
22 you are an apostate. And of course to Muslim extremists
23 that's a, basically a death, a death sentence, if you are
24 an apostate. And so when you, when you imply that
25 somebody is outside of Islamic teaching, that's a threat.

1 MS. BOULDON: Can I just have one minute to confer
2 with --

3 THE COURT: (Nonverbal response.)
4 (Off the record.)

5 MS. BOULDON: Just a few followup?

6 THE COURT: Sure.

7 Q. (BY MS. BOULDON) Mr. Imam -- Amonette -- I'm sorry
8 -- are you familiar with the Hanbali school?

9 A. Yes.

10 Q. And what are, what do you believe that the Hanbali
11 school requires in terms of five daily congregational prayers?

12 A. Well, people often, they believe that the Hanbali
13 school is stricter in some aspects. And in fact, the
14 different schools, each one of them is sometimes a little
15 bit stricter about one area, and so the Hanbali school is
16 sometimes more flexible, sometimes a little bit stricter
17 than others. And so, it is unique that it does require
18 that males perform the prayer in congregation if that's
19 possible, if that's available.

20 But none of the schools require persons who are
21 prisoners or who are not free, none of them are required
22 to do that. The problem is that when you read about a
23 requirement, what it may seem to an American is that that
24 means that your religion is not acceptable if you don't do
25 that. But in the Hanbali school, if you pray as an

1 individual, your prayer is 100 percent acceptable to God.
2 But if you are ignoring a congregation when it's available
3 to you, you might be committing a sin.

4 Q. Okay. And would prison be one of those situations
5 that would make five-day --

6 A. Yes, all, all the Muslim schools excuse people who
7 are in different circumstances from obligations such as
8 congregational prayer, and so there is nobody who requires
9 that of prisoners and so that's something that happens in
10 America, that's not something that would happen in most
11 Muslim societies. They would be allowed to go out of
12 their cells and pray in a congregation.

13 MS. BOULDON: No further questions.

14 THE COURT: Mr. Aschemann?

15 MR. ASCHEMANN: Just a couple.

16 CROSS-EXAMINATION

17 BY MR. ASCHEMANN:

18 Q. You testified that group prayer is beneficial and
19 possible. That's a quote. Do you recall saying that?

20 A. Yes.

21 Q. would you say that group prayer is an exercise of
22 religion?

23 A. In, in political Islam, group prayer is a
24 demonstration of power and authority. And the main
25 religious leaders of modern 20th Century Islamic thought

INCIDENT REPORT CDFRM

0288
DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Part I - Incident Report

2229590

1. Institution: USP MARION			
2. Inmate's Name Chesser, Zachary	3. Register Number 76715-083	4. Date of Incident 11/03/2011	5. Time 6:05 pm
6. Place of Incident Programs Education Room	7. Assignment CMU Ord.	8. Unit I Unit	
9. Incident Participation in an unauthorized meeting or gathering		10. Prohibited Act Code(s) 315	

11. Description Of Incident (Date: 11/03/2011 Time: 6:05 pm Staff became aware of incident)
 On the above date and time this officer was conducting rounds in the I Unit programs area. As I made my round of the programs area I observed I/M Chesser #76715-083 with a group of other I/M's in prayer. The I/M's were Shah #42799-054, Elgabrowny #28054-054, Elashi #29687-177, Saleh #34853-054, Finton #17031-026 and Sadequee #15240-006. The I/M's were located in the education room with the lights shut off. I/M Shah was leading the others in the prayer.

12. Typed Name/Signature of Reporting Employee S.O. G. Fozzard		13. Date And Time 11/3/2011 6:35 pm	
14. Incident Report Delivered to Above Inmate By (Type Name/Signature)		15. Date Incident Report Delivered 11-4-11	16. Time Incident Report Delivered 0940

Part II - Committee Action

17. Comments of Inmate to Committee Regarding Above Incident
It shouldn't be a rule. I say its wrong that its a rule.

18. A. It is the finding of the committee that you: <input checked="" type="checkbox"/> Committed the Prohibited Act as charged. <input type="checkbox"/> Did not Commit a Prohibited Act. <input checked="" type="checkbox"/> Committed Prohibited Act Code(s) <u>315</u>	B. <input type="checkbox"/> The Committee is referring the Charge(s) to the DHO for further Hearing. C. <input type="checkbox"/> The Committee advised the inmate of its finding and of the right to file an appeal within 20 calendar days.
---	---

19. Committee Decision is Based on Specific Evidence as Follows:
Based on the written account of the incident by reporting staff

20. Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act)
Loss of Email for 30 days thro 12/7/11

21. Date And Time Of Action 11/7/11 1338 (The UDC Chairman's signature certifies who sat on the UDC and that the completed report accurately reflects the UDC proceedings.)

Newman Chairman (Typed Name/Signature) H. P. [Signature] Member (Typed Name) [Signature] Member (Typed Name)

Exhibit C

INSTRUCTIONS: All items outside heavy rule are for staff use only. Begin entries with the number 1 and work up. Entries not completed will be voided by staff. Page 1
 DISTRIBUTE: ORIGINAL-Central File record; COPY-1- DHO; COPY-2- Inmate After UDC Action; COPY-3- Inmate within 24 hours of Part I Preparation.

052. INCIDENT REPORT CDFRM

DEPARTMENT OF JUSTICE

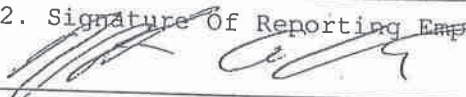
FEDERAL BUREAU OF PRISONS

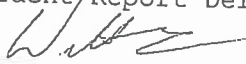
1. Name Of Institution: United States Penitentiary, Marion, Illinois 2273277
 Part I - Incident Report

2. Name Of Inmate CHESSEY, Zachary	3. Register Number 76715-083	4. Date Of Incident 02/27/2012	5. Time 06:00 AM
6. Place Of Incident I Unit 03-13	7. Assignment ORD	8. Unit I Unit	

9. Incident
 PARTICIPATING IN AN UNAUTHORIZED MEETING OR GATHERING
 BEING IN AN UNAUTHORIZED AREA
 10. Code
 315,
 316

11. On the above date and approximately 6:00am after opening the cells for the morning, this CO heard inmate Shah 42799-054 praying at a loud tone that could be heard from the end of the range. Inmate Shah lives in cell 03-13. This Co then closed cell 03-13 due to the number 2 officer was not in the unit. Inmate Shah was warned previously for this incident in January 2012 by this CO. When this CO warned inmate Shah there were other inmates in the cell. This Co then confronted inmate Shah in his cell, stating that they were being loud during the prayer and that there should be no other inmates in the cell. Inmate Hampton-L 34854-054, lives in cell 03-18 and inmate Chessser 76715-083, lives in cell 03-011 were both in the cell with prayer rugs.

12. Signature Of Reporting Employee  Date And Time
 02-27-2012
 7:35 a.m.
 13. Name And Title (Printed)
 H. Clark S/O

14. Incident Report Delivered To Above Inmate By 
 15. Date Incident Report Delivered
 2-27-12
 16. Time Incident Report Delivered
 2:00 p

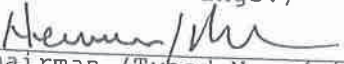
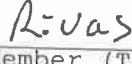
Part II - Committee Action

17. Comments Of Inmate To Committee Regarding Above Incident if you check the cameras no one brought prayer rugs. Plus the CO did not announce he was shutting the cell which is dangerous to inmates

18. A. It Is The Finding Of The Committee That You:
 Committed The Following Prohibited Act. 316
 ___ Did Not Commit A Prohibited Act.
 B. ___ The Committee Is Referring The Charge(s) To The DHO For Further Hearing.
 C. The Committee Advised The Inmate Of Its Finding And Of The Right To File An Appeal Within 15 Calendar Days.

19. Committee Decision Is Based On The Following Information: This I/R meets the requirements for a code 315. However, it does meet the requirement of a code 316 based on the officer's written account of the incident. The UDC does not believe

20. Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act)
 LP Email for 30 days

21. Date And Time Of Action 3/1/12 1345
 His Name Certifies Who Sat On The UDC And That The Completed Report Accurately Reflects The UDC Proceedings.)
 Chairman (Typed Name/signature)
 Rivas Member (Typed Name)
 Member (Typed Name)

Record Copy - Central File Record; Copy - DHO; Copy - Inmate After UDC Action; Copy - Inmate Within 24 Hours Of Part I Preparation
 (This Form May Be Replicated Via WP)
 Replaces BP-288(52) Of Jan 88 Page 12

Part III - Investigation

22. Date And Time Investigation Began

INCIDENT REPORT CDFRM

2320695

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Part I - Incident Report

Institution:			
2. Inmate's Name CHESSER, Zachary	3. Register Number 76715-083	4. Date of Incident 06-26-2012	5. Time 8:36 p.m.
6. Place of Incident I UNIT 03 RANGE	7. Assignment CMU ORD	8. Unit I	
9. Incident PARTICIPATING IN AN UNAUTHORIZED MEETING OR GATHERING BEING IN AN UNAUTHORIZED AREA		10. Prohibited Act Code(s) 315 316	

11. Description Of Incident (Date:06-28-12 Time:08:15 AM Staff became aware of incident)
 A review of a video camera from the Nice Vision of I Unit, 03-Range Rear view camera revealed that on June 26, 2012, at approximately 8:36 p.m., you CHESSER, Zachary #76715-083) gathered and entered cell #14 of I Unit 03-Range along with several other inmates for the purpose of participating in a congregational prayer, congregational prayer are authorized in the Program Area (Chapel/Dining Hall) as indicated by policy. Inmate Chesser entered cell #14 at approximately 8:36 p.m., and exited it at approximately 8:43 p.m. This prayer time is according with the Islamic prayer scheduled see attached. Inmate Chesser, Z., cell assignment is 101-001L.

12. Typed Name/Signature of Reporting Employee H. RIVAS, I.R.S.	13. Date And Time 06-28-2012 08:35 A.M.
14. Incident Report Delivered to Above Inmate By (Type Name/Signature) <i>[Signature]</i>	15. Date Incident Report Delivered 6-28-12
	16. Time Incident Report Delivered 8:55

Part II - Committee Action

1. Comments of Inmate to Committee Regarding Above Incident
 As far as a 315 there is no proof it was prayer time. As far as a 316 I was in empty cell not another inmates cell. I am the C-Range orderly so it is not unauthorized for me to be in the cell.

8. A. It is the finding of the committee that you:

Committed the Prohibited Act as charged.
 Did not Commit a Prohibited Act.
 Committed Prohibited Act Code(s) 315

B. The Committee is referring the Charge(s) to the DHO for further Hearing.
 C. The Committee advised the inmate of its finding and of the right to file an appeal within 20 calendar days.

Committee Decision is Based on Specific Evidence as Follows:
 based on the written report of reporting staff and the inmates own admission entering the cell.

Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act)
 Loss of email for 60 days based on Progressive Sanctions as having been found guilty of the same infraction in March 2012.

Date And Time Of Action 7/2/12 1328 (The UDC Chairman's signature certifies who on the UDC and that the completed report accurately reflects the UDC proceedings.)

[Signature]
 Chairman (Typed Name/Signature)

[Signature]
 Member (Typed Name)

[Signature]
 Member (Typed Name)

INCIDENT REPORT CDFRM

BP-A0288
 AUG 11

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Part I - Incident Report

1. Institution: USP MARION			
2. Inmate's Name Chesser, Zachary	3. Register Number 76715-083	4. Date of Incident 09/17/2012	5. Time 7:17 pm
6. Place of Incident Programs Education Room	7. Assignment CMU Ord.	8. Unit I Unit	
9. Incident Participation in an unauthorized meeting or gathering		10. Prohibited Act Code(s) 315	
11. Description Of Incident (Date: <u>09/17/2012</u> Time: <u>7:17 pm</u> Staff became aware of incident) On the above date and time this officer was conducting rounds in the I Unit programs area. As I made my round of the Library area I observed I/M Chesser #76715-083 with a group of other I/M's in prayer. The I/M's were Elashi #29687-177, Khallafall, F #34856-054, Finton, M #17031-026. The I/M's were located in the education room with the lights shut off. The above I/M's were in a line shoulder to shoulder with I/M Sherif A. # 15682-171 directly in front of them. I/M Sherif was leading the others in prayer. These I/M's have been previously told that group prayer is no allowed unless authorized by Religious Services.			
12. Typed Name/Signature of Reporting Employee S.O. G. Fozzard		13. Date And Time 9/17/2012 7:58 pm	
14. Incident Report Delivered to Above Inmate By (Type Name/Signature) <i>S. M. Patterson / mpt</i>	15. Date Incident Report Delivered <i>9/18/12</i>	16. Time Incident Report Delivered <i>7:39 am</i>	

Part II - Committee Action

17. Comments of Inmate to Committee Regarding Above Incident

18. A. It is the finding of the committee that you:
 Committed the Prohibited Act as charged.
 Did not Commit a Prohibited Act.
 Committed Prohibited Act Code(s) _____

B. The Committee is referring the Charge(s) to the DHO for further Hearing.
 C. The Committee advised the inmate of its finding and of the right to file an appeal within 20 calendar days.

19. Committee Decision is Based on Specific Evidence as Follows:

20. Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act)

21. Date And Time Of Action _____ (The UDC Chairman's signature certifies who sat on the UDC and that the completed report accurately reflects the UDC proceedings.)

Page 4

Chairman (Typed Name/Signature) _____ Member (Typed Name) _____ Member (Typed Name) _____

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 DISTRIBUTE: ORIGINAL-Central File record: COPY-1- DHO: COPY-2- Inmate After UDC Action: COPY-3- Inmate within 24 hours of Part I Preparation.



1. Name Of Institution: United States Penitentiary, Marion, Illinois
Part I - Incident Report

2. Name Of Inmate AMAWI, MOHAMMAD	3. Register Number 30547-160	4. Date Of Incident 05/11/2010	5. Time 1:50 PM
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6. Place Of Incident I Unit	7. Assignment UNASSG	8. Unit I Unit
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9. Incident PARTICIPATING IN AN UNAUTHORIZED MEETING OR GATHERING	10. Code 315
--	-----------------

11. Description Of Incident (Date: 05/11/10 Time: 1:50 PM Staff become aware of incident) On May 11, 2009, at approximately 1:50 p.m., while doing rounds on the outside recreational yard, I became aware that inmate Amawi, Mohammad Register Number ~~32590-177~~ 30547,166 was gathered along with 2 other inmates (Abdulqader, M. #32590-177, and Sherif, A. #15682-171), praying together on one of the recreational yard. As per institution and national policy inmates are authorized to pray in group on Friday in B Range.

12. Signature Of Reporting Employee 	Date And Time 05-11-10 3:52 p.m.	13. Name And Title (Printed) T. Smith, S.O.S.
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14. Incident Report Delivered To Above Inmate By <u>LT. P Barber</u>	15. Date Incident Report Delivered <u>5/11/10</u>	16. time Incident Report Delivered <u>7:06pm</u>
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Part II - Committee Action

17. Comments Of Inmate To Committee Regarding Above Incident

18. A. It Is The Finding Of The Committee That You: ____ Committed The Following Prohibited Act. ____ Did Not Commit A Prohibited Act.	B. _____ The Committee Is Referring The Charge(s) To The DHO For Further Hearing. C. _____ The Committee Advised The Inmate Of Its Finding And Of The Right To File An Appeal Within 15 Calendar Days.
--	---

19. Committee Decision Is Based On The Following Information

20. Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act)

21. Date And Time Of Action _____ (The UDC Chairman's Signature Next To His Name Certifies Who Sat On The UDC And That The Completed Report Accurately Reflects The UDC Proceedings.)

Chairman (Typed Name/signature)	Member (Typed Name)	Member (Typed Name)
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Record Copy - Central File Record; Copy - DHO; Copy - Inmate After UDC Action; Copy - Inmate Within 24 Hours Of Part I Preparation (This Form May Be Replicated Via WP) Replaces BP-288(52) Of Jan 88

Part III - Investigation

22. Date And Time Investigation Began

Exhibit
D

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: Chesser, Zachary A 76715-083 1 USP Marion
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST

The evidence of retaliation is as follows (see shot for argument): 1. Fozzard is the only C.O. who has given out "shots" for group prayer in the period I have been in the CMU. 2. This was his first day back in I-Unit since I had his name published in a Senate report criticizing the BOP. Staff at USP Marion have copies of this report, 3. He mentioned something or other about embassies when he asked for our names. The shots coincided with the embassy attacks, and the attacks were sparked over inmate Khalafallah's case. The timing is too coincidental. Therefore the shot should be thrown out. It was also delivered late.

I am also appealing the punishment, because CM Newman wrongly included two shots for being in an unauthorized location as identical shots. I was not convicted of praying in those two shots, but was only accused of it. Staff admitted they had no proof I was praying.

09/26/12
 DATE

Lastly, it is ridiculous that you are banning us from prayer, and it is an evil, oppressive, bigoted, hill billy kind of policy.

[Signature]
 SIGNATURE OF REQUESTER

Part B- RESPONSE

RECEIVED BY ADMIN
 CLERK
 2012 OCT -2 PM 3:38

Exhibit
 E

DATE _____ WARDEN OR REGIONAL DIRECTOR _____

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE CASE NUMBER: 707177-A

CASE NUMBER: _____

Part C- RECEIPT

Return to: 15h/21A LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: UNC Appeal

10/2/12
 DATE

[Signature]
 RECIPIENT'S SIGNATURE (STAFF MEMBER) Page 1

**U.S. Department of Justice
Federal Bureau of Prisons**

**Administrative Remedy
Part B - Response**

Admin Remedy Number: 707177-F1

This is in response to your Request for Administrative Remedy received October 2, 2012, wherein you appeal an incident report you were found guilty of by the Unit Discipline Committee (UDC). You state the UDC utilized progressive sanctions in error because this incident report was not related to previous incident reports. Additionally, you state the incident report was written in retaliation and you state it is ridiculous that you are banned from conducting group prayer five times a day. For relief you request the shot be thrown out.

A review of your grievance reveals you were found guilty of Code 315, Participation in an Unauthorized Meeting or Gathering on September 21, 2012. Specifically, a staff member observed you and several other inmates standing in a line, shoulder to shoulder, while another inmate was in front of the group leading you in prayer. You were previously found guilty by the UDC of a code 316, Being in an Unauthorized Area, on July 2, 2012, and March 1, 2012. Specifically, you and several other inmates were observed entering a cell together. While staff could not prove you and the other inmates were gathered in unauthorized prayer, correctional experience and sound correctional judgment leads staff to believe you were congregating in unauthorized prayer.. Program Statement 5270.08, Inmate Discipline and Special Housing Units, specifically states, "The Unit Discipline Committee or Discipline Hearing Officer may impose increased sanctions for repeated, frequent offenses." Therefore, as these three documented prohibited behaviors were very closely related, increased sanctions are appropriate to deter you from further disruptive behavior.

As to your allegation the incident report was written in retaliation, staff members are acting well within the scope of their duties when writing incident reports for observed prohibited behavior. I find no merit in your claim.

In regard to your claim it is ridiculous to prohibit group prayer, P.S. 5360.09, Religious Beliefs and Practices, states, "The level of scheduled activities is expected to be commensurate with the institution's mission/need. Authorized congregate service will be made available for all inmates weekly with the exception of those detained in any Special Housing Unit (SHUs). Additionally, it states, "Congregate prayer consisting of groups of two or more inmates is authorized in the chapel areas only during scheduled activities and programs."

All congregate religious activities will only take place the food service/chapel area in accordance with the posted Religious Services Activity schedule which works in conjunction with all other activities scheduled in the program area of I Unit. Therefore, you will not be allowed to congregate for prayer any time other than the established time which is each Friday at 1:00 p.m.

I find the UDC hearing and the sanctions imposed are within the parameters of policy. You provide no evidence to suggest your due process rights have been violated. The incident report will not be expunged and your sanctions will remain in effect.

Accordingly, your Request for Administrative Remedy is denied. In the event you are not satisfied with this response and wish to appeal, you may do so within 20 calendar days of this response by submitting a BP-230(13) to the Regional Director, Federal Bureau of Prisons, North Central Regional Office, Gateway Complex, Tower II, 8th Floor, 400 State Avenue, Kansas City, Kansas 66101-2492.

10-18-12
Date



J. S. Walton, Warden

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IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF ILLINOIS

ZACHARY CHESSER,)
)
Plaintiff,)
vs.) Civil No. 3:12-cv-01198-JPG-PMF
J.S. WALTON, et al.,)
Defendants.)

DEPOSITION OF J.S. WALTON
On Behalf of Plaintiff

October 28, 2013

Exhibit
F

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IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF ILLINOIS

ZACHARY CHESSER,)
)
Plaintiff,) Civil No. 3:12-cv-01198-JPG-PMF
vs.)
J.S. WALTON, et al.,)
Defendants.)

DEPOSITION OF J.S. WALTON, to be used in an action pending in the District Court of the United States, for the Southern District of Illinois, wherein Plaintiff ZACHARY CHESSER is Plaintiff and Defendants, J.S. WALTON, et al. are Defendants, pursuant to Notice, under the provisions of Rule 26 and 30 of the Rules of Civil Procedure; taken on the 28th day of October, A.D., 2013, United States Penitentiary Marion, 4500 Prison Road, Marion, Illinois, before ROBIN L. STRANIMEIER, a Certified Shorthand Reporter within and for the State of Illinois.

1 APPEARANCES OF COUNSEL:

2 Plaintiff was represented by:

3 ASCHEMANN KELLER LLC

4 Dale J. Aschemann, Esq.

5 108 North Monroe Street

6 Marion, IL 62959-2326

7 (618)998-9988

8

9 Defendants were represented by:

10 U.S. Department of Justice

11 United States Attorney

12 Paula K. Bouldon, Esq.

13 Special Assistant United States Attorney

14 Nine Executive Drive

15 Fairview Heights, IL 62208

16 (618)628-3700

17

18 Katherine Siereveld, Esq.

19 Bureau of Prisons

20 4200 Bureau Road North

21 Terre Haute, IN 47802

22 (812)238-3476

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I N D E X

WITNESS: J.S. WALTON

	Page
Direct Examination by Mr. Aschemann	5

E X H I B I T S

	Page
(No exhibits were marked. No exhibits attached.)	

1 you'll be calling to suggest that his religious beliefs
2 aren't sincerely held?

3 A. Not that I'm aware of.

4 Q. Are you aware whether Mr. Chesser engages in
5 group prayer daily even now?

6 A. I am aware that sometimes they attempt to have
7 unauthorized congregate prayer. We hear it through other
8 inmates. It's something that's very difficult to catch
9 in progress. So I'm aware that they do attempt it at
10 times. Any time that we have the opportunity or know
11 that it's occurring we do stop it.

12 Q. Are you familiar with the Friday Jumu'ah
13 service?

14 A. I am.

15 Q. Can you maybe in your own terms explain to me
16 what you understand that to be?

17 A. Jumu'ah is a prayer and it is the authorized
18 weekly gathering for Muslim inmates, whether they're in
19 CMU or in general population. And Jumu'ah also has a
20 teaching component, a sermon if you will, a portion as
21 well as their prayer.

22 Q. Are you familiar with the term "Salat"?

23 A. I've heard it. I believe it means to make
24 prayer or something along that line. I'm not sure
25 exactly.

1 Q. Well, you're aware that -- well, I don't want
2 to put words in your mouth. Are you aware that Muslims
3 generally pray five times daily?

4 A. Yes.

5 Q. All right. And --

6 A. We don't stop them from praying. We don't stop
7 any inmate from praying. We only have set -- congregational
8 prayer is only allowed during set times when we have the
9 capability to monitor them. But an inmate can pray
10 however many times they want.

11 Q. Well, let me give you an example. If two
12 inmates are playing checkers and -- which I assume is an
13 authorized activity?

14 A. Uh-huh.

15 Q. -- and instead of -- they put their checkers
16 aside and decide to pray together during one of the five
17 times, whatever time it might be, there's no problem with
18 that?

19 A. Well, there is because that then becomes
20 congregational prayer. It changes an activity that is
21 expected and is allowed for to, an activity that we would
22 want to closely monitor.

23 Q. What is the danger of unmonitored congregational
24 prayer.

25 A. Well, one of the biggest dangers is, is it's an

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C E R T I F I C A T E

I, ROBIN L. STRANIMEIER, a shorthand reporter and a notary public, do hereby certify that the foregoing witness,

J.S. WALTON,

was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the testimony given by the foregoing witness.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 30th day of October, A.D., 2013.

ROBIN L. STRANIMEIER, CSR
#084-004700

ADX GENERAL POPULATION HEARING ADMINISTRATOR'S REPORT		
Inmate's Name	Register Number	Institution
Zachary CHESSER	76715-083	USP Marion

1. Notice of Hearing	The Notice of Hearing on Referral for Transfer to the General Population at the ADX in Florence, Colorado, which outlines the basis for the placement recommendation was given to the inmate on April 7, 2014, at 1:05 p.m.. The hearing was held on April 9, 2014, via telephonic hearing.
2. Attendance	The inmate was advised in the Notice of General Population Hearing form of the opportunity to be present during the hearing.
✓	The inmate was present during the hearing.
	The inmate was not present during the hearing for the following reason(s): N/A
3. Inmate's Statement	The inmate was advised in the Notice of General Population Hearing form of the opportunity to make a statement during the hearing, pertaining to the referral for his placement in the ADX General Population (ADX-GP). The information below was confirmed during the hearing.
	The inmate did not make a statement during the hearing for the following reason(s): N/A
✓	The inmate made the following statement during the hearing: I would like to note that my sentencing judge made the recommendation that I not be sentenced to the ADX, it's on page 2 of my Judgment and Commitment. I would also like you to know that the encryption code was only instructions on how to use a code key. I didn't use or communicate in code. There is no way to use a code at the CMU, everything is monitored. Inmate CHESSER also stated, "My incident reports don't warrant a medium security to a maximum level. The criteria for the ADX seems to have a catch all and there doesn't seem to be any other place for me to go. I didn't assault staff like others and they were sent to SMU's. Other inmates have worse acts that are not referred to a SMU, CMU or ADX. I don't agree with the referral, I think I can be managed at the CMU. There is really not much difference between that and the ADX, I would think it would be easier to use things like code at the ADX versus the CMU.
4. Presentation of Documentary Evidence	The inmate was advised in the Notice of General Population Hearing form of the opportunity to submit documentary information. The information below was confirmed during the hearing.
	The inmate did not present any documentary evidence.
✓	The inmate presented the following documentary evidence: (Inmate CHESSER mixes numerous issues regarding his incident reports throughout his written statement.) HAND WRITTEN STATEMENT: Inmate submitted a 28 page written statement. The handwritten statement was that he has been referred to the ADX based on his conviction and six incident reports, but that he does not pose the type of threat which would justify placement in the ADX. That while his criminal history is notorious, it does not require protective custody. CHESSER writes that why he believes his criminal conviction and incident reports do not warrant placement in the ADX. CHESSER writes that his judgment and commitment recommends he not be placed in the ADX. CHESSER writes that placement in the ADX would substantially burden him in practicing his religious faith.

Exhibit
G

ADX GENERAL POPULATION HEARING ADMINISTRATOR'S REPORT		
Inmate's Name	Register Number	Institution
Zachary CHESSER	76715-083	USP Marion

	<p>Inmate CHESSER further writes that the referral is retaliatory and discriminative toward Muslim inmates and had a three page chart listing other inmates, incidents and status.</p> <p>15 handwritten affidavits. Inmate Almonte attest that CHESSER calmed him down and prevented him from retaliating against inmate Bond. Inmate Amawi attest that he told CHESSER he was going to assault Bond and that when Bond returned to, he did assault him. Amawi, further stated his discipline history is worse than CHESSER's. Inmate Saleh, attest that CHESSER is a peaceful inmate who keeps to himself. Inmate Elashi attest he has never had an issue with CHESSER and he appears to be of good character. Inmate Kalafalla attest that he has had no problems with CHESSER and that CHESSER spends most of his time studying. Inmate Nosair attest that he has never had an issue with inmate CHESSER and not aware of any threat to CHESSER by other inmates or staff. Inmate Shnewer attest that CHESSER spends most of his time studying and has not been a security concern at the CMU. Inmate Miller attest that he has been at the CMU and would know if there was a threat against CHESSER or if CHESSER was a threat to anyone else and he has not heard of any issues. Inmate Amin Shah attest he is not aware of any issues with CHESSER and that he personally has no problem with inmate CHESSER. Inmate Defreitas attest that inmate CHESSER has spent six months teaching him English and Math and that if returned to the unit, there would be no issues. Inmate Mohamed attest that according to his knowledge of CHESSER, he was a person who studies, works out and was respectful. Inmate Arbabsian attest that since his placement in CMU he has not had any issues with inmate CHESSER. Inmate Cox attest that while he does not know CHESSER well, he has had no issues with him. Inmate Omar attest since his arrival at CMU and never had any issues with CHESSER or anyone else in the unit. Inmate Azeem attest he is not aware of anyone with issues with CHESSER and he doesn't have any problems with CHESSER.</p>
	The inmate asked to present documentary evidence, but was denied for the following reason(s): N/A
5.	Finding
	The inmate does not appear to meet the criteria for placement in the ADX-GP for the following reason(s): N/A
✓	The inmate meets the following criteria for placement in the ADX-GP:
✓	The inmate's conduct within correctional institutions creates a risk to institution security, good order, and the safety of staff, inmates, others, and/or the public safety.
✓	As a result of the inmate's status either before or after incarceration, he may not be safely housed in the general population of a regular correctional institution.
6.	Information Utilized
<u>Pre-Sentence Investigation Report Information</u>	
<p>The inmate was convicted of Communicating Threats, Soliciting Others to Threaten Violence and Attempting to Provide Material Support to a Designated Terrorist Organization. On October 20, 2010, Inmate CHESSER plead guilty to the charges which stipulated the following:</p>	

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Anwar Al-Awlaki is a dual citizen of the United States and Yemen, and an Islamic lecturer and spiritual leader who was formerly affiliated with the Dar al-Hijra Mosque in Falls Church, Virginia. Pursuant to a Presidential Executive Order, Al-Awlaki was designated by the United States a 'Specially Designated Global Terrorist' on July 12, 2010, because of his position as a leader of 'al Qa'ida of the Arabian Peninsula' ('AQAP'), a Yemen-based terrorist group that had claimed responsibility for numerous terrorist acts against United States, Saudi, Korean and Yemeni targets since its inception in January 2009. Al-Shabaab, also known as Shabaab, Harakat Shabaab al-Mujahidin, Mujahidin al-Shabaab Movement, 'The Youth,' Mujahideen Youth Movement, Mujahidin Youth Movement, and other names and variations (hereinafter, 'al-Shabaab'), is the militant wing of the Somalia Council of Islamic Courts that has gained control of parts of Somalia by using guerrilla warfare and terrorist tactics against the Transitional Federal Government (TFG) of Somalia and its allies, and African Union peacekeepers. On February 29, 2008, the United States Government designated al-Shabaab as a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act.

As a result of that designation, it was unlawful for United States citizens and persons subject to the jurisdiction of the United States to provide material support or resources to al-Shabaab. In or about December 2009, the defendant, ZACHARY ADAM CHESSER, also known as Abu Talhah al-Amrikee and Abuu Talxah al-Amrikii (hereinafter, 'CHESSER'), began to operate his own blog, titled "themujahidblog.com," describing it as 'dedicated to those who give their blood for [Islam].' CHESSER described the purpose of the blog as 'primarily devoted to spreading knowledge regarding Jihad and the Mujahideen.' RevolutionMuslim.com is a website which contained Islamic postings and information supportive of violent jihad. CHESSER was an administrator of that website, and, as such, made postings to the site, responded to inquiries from other users, and reviewed and permitted postings on the site from others. 'Ansar Al Jihad Network' is a website which contained Islamic postings and information. CHESSER posted numerous articles and comments on this website concerning violent jihad. 'Al Fallujah Islamic Forums,' also known 'Al-Faloja,' is a website which contained Islamic postings and information. CHESSER posted on that website numerous articles, comments, and other material concerning violent jihad. 'AlQimmah' is a website which contained Islamic postings and information in support of al-Shabaab, and was the official web forum for al-Shabaab. The home page includes information [that] is written in Somali, but contains a link to the website's 'English Section.' CHESSER posted on the AlQimmah website numerous articles, comments, and other material concerning violent jihad. On or about May 13, 2009, CHESSER established a youtube.com website known as 'AlQuranWaAlaHadeeth.' On or about December 14, 2009, CHESSER produced and uploaded to his AlQuranWaAlaHadeeth youtube.com website a video titled 'Lion or Mouse,' which depicted various Islamic references which were supportive of violent jihad. On or about January 9, 2010, CHESSER posted a message to his themujahidblog.com website, titled 'How to Help the Mujahideen,' which concluded, 'and perhaps most importantly, we have to actually go and fight against the disbelievers.' Between approximately January 20, 2010 and January 22, 2010, CHESSER uploaded to his

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AlQuranWaAlaHadeeth youtube.com website a recording of a lecture made by Anwar Al-Awlaki espousing participation in violent jihad. On or about February 12, 2010, CHESSER established a youtube.com website known as 'AQWAHProductions.' On or about February 2, 2010, CHESSER posted a video on his AlQuranWaAlaHadeeth Youtube.com website, of an attack by an improvised explosive device ('IED') on a military vehicle. The video showed a close up shot of an individual mixing an explosive and a close up shot of an IED being buried in the ground. The video then cut to a long-range shot of a winding mountain road. The camera focused on a spot in the road as two military vehicles approached. When the first vehicle reached the spot, an IED detonated. The detonation of the IED was replayed in the video several times. On or about February 9, 2010, CHESSER posted a total of six videos, titled 'The Mujahideen are Calling You,' onto his AlQuranWaAlaHadeeth Youtube.com website. Those videos documented scenes from Afghanistan, and included footage showing United States Army helicopters in flight. On or about March 7, 2010, CHESSER posted on his themujahidblog.com website an article titled 'Open Source Jihad,' which discussed a strategy mujahideen could use to elude capture and death while maintaining relevance and striking capability. On or about May 19, 2010, CHESSER said that he brought a knife to a meeting with another individual to discuss training for violent jihad, in case such individual turned out to be an undercover government agent. On or about June 4, 2010, CHESSER posted on the Al Fallujah Islamic Forums website a link titled '200 plus books on various beneficial subjects,' which he further described therein as 'books on Jihad, Islam and Warfare,' and which, under a section titled 'Preparation,' contained, among other items, four sections of what CHESSER described as the 'Al Qaeda Manual,' setting forth instructions concerning such subjects as 'Communications,' 'Transportation,' 'Security,' 'Weapons Acquisition and Storage,' 'Guidelines for Beating and Killing Hostages,' and 'Espionage,' all in support of violent jihad. "18. On or about June 8, 2010, CHESSER posted on the Al Fallujah Islamic Forums website a link to a video, which video CHESSER made, and which was titled 'America Tuta Fika,' which featured images of mujahideen in Somalia and a song sung by CHESSER, titled 'America Tuta Fika,' translated into English as "America We Are Coming." On or about June 17, 2010, CHESSER posted an article titled 'Counter Counter Terrorism # 12 - Actually Leaving for Jihad' on the Ansar Al Jihad Network website, in which he stated that the 'number one most important thing in countering the efforts of the kuffar is for you to leave for jihaad in the Path of Allah.' The article included information concerning traveling to participate in violent jihad, including raising money, obtaining travel documents, selecting a destination, purchasing airline tickets, and 'keeping a low profile.' On or about an unknown date, but some time before June 24, 2010, CHESSER drafted a one-page document titled 'How to Destroy the West,' which listed a number of points concerning violent jihad methods, including 'attacks' on 'personelle' [sic], 'put[ting] out a message to the Muslims to go buy guns and kill soldiers,' and '[filling] a tanker with explosives and Ricin.' On or about June 30, 2010, CHESSER posted to his AQWAHProductions youtube.com website a four part video titled 'al-Shabaab-Preparation for the Battle-No Peace Without Islam,' which depicted multiple training scenarios involving mujahideen in Somalia engaged in, among other activities, firearms exercises, physical fitness routines, and the creation of improvised explosive devices.

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Between on or about April 15, 2010, and July 21, 2010, CHESSER, with intent that another person engage in conduct constituting a felony that has as an element the use, threatened use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, knowingly and unlawfully solicited and endeavored to persuade others to intimidate, injure, and kill individuals in California referred to herein as 'MS' and 'TP' for writing and directing an episode of South Park that he found insulting, and an individual in Florida referred to herein as 'JG' for participating in a group on Facebook that he found insulting, in violation of 18 U.S.C. § 373, § 2332b and 18 U.S.C. § 2261A(1). During that same period, CHESSER knowingly and unlawfully transmitted in interstate and foreign commerce communications containing threats to injure TP, MS, and JG, in violation of 18 U.S.C. § 875(c). On or about April 15, 2010, using the screen name Abu Talhah Al-Amrikee, CHESSER posted on the RevolutionMuslim.com and themujahidblog.com websites the following statements, photos, and audio clips: CHESSER's assertion that the South Park episode 'went beyond showing Muhammad, but it outright insulted him. CHESSER posted a photograph which depicted a murdered, partially decapitated, Theodoor 'Theo' van Gogh, with two knives impaled in his torso, CHESSER's statement that 'We have to warn (MS and TP) that what they are doing is stupid and they will probably wind up like Theo Van Gogh for airing this show. This is not a threat, but a warning of the likely reality of what will likely happen to them. Maybe they have not listened to this lecture before.', audio clips of a sermon by Anwar Al-Awlaki, titled 'The Dust Will Never Settle Down,' calling for the assassination of anyone who has 'defamed' Muhammad, saying, 'Harming Allah and his messenger is a reason to encourage Muslims to kill whoever does that.', the addresses of Comedy Central in New York, a production company associated with South Park in Los Angeles, California, and a link to a 2009 Huffington Post article that gave details of a residence shared by TP and MS in Colorado; and CHESSER's statement that his readers should 'pay them a visit.' On or about April 18, 2010, CHESSER produced and posted on the RevolutionMuslim.com website, his AIQuranWaAlaHadeeth youtube.com website, and his themujahidblog.com website, a video titled 'Defense of the Prophet Campaign.' The video was narrated by CHESSER, and contained: Statements by CHESSER regarding the South Park episode that featured a character in a bear costume, who various other characters stated was Muhammad; the audio of a speech by Anwar Al-Awlaki, explaining the Islamic justification for killing those who insult or defame Muhammad, and Photographs of TP, MS, van Gogh, Hirsi Ali, and others who have been publically targeted for death for insulting Muhammad and/or Islam, including Salman Rushdie, Geert Wilders, Kurt Westergaard, and Lars Vilks. On or about April 18, 2010, CHESSER posted the video titled 'Defense of the Prophet Campaign' to the AIQuranWaAlaHadeeth youtube.com and AIQimmah websites. On or about April 22, 2010, CHESSER responded to inquiries about the possibility that TP and MS. could be murdered by stating, 'It's not a threat, but it really is a likely outcome. They're going to be basically on a list in the back of the minds of a large number of Muslims. It's just the reality.' On or about April 22, 2010, CHESSER uploaded to the Ansar Al-Jihad network and to the Revolution.com website a posting titled 'Clarifying the South Park Response and Calling on Others to Join in the Defense

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of the Prophet Muhammad (Peace Be Upon Him) - RevolutionMuslim.com.' The post explained the Islamic law requiring the killing of those who curse Muhammad, and closed with the statement that, 'As Osama bin Laden said with regard to the cartoons of Denmark, 'If there is no check in the freedom of your words, then let your hearts be open to the freedom of our actions.' On or about May 15, 2010, CHESSER posted to the AlQimmah website a news article he titled 'Home of Lars Vilks Firebombed – Kafir News' regarding the firebombing of the home of Lars Vilks that day, as well as an attack on him at a lecture earlier that week. On or about June 20, 2010, CHESSER posted to the AlQimmah website audio clips of a sermon by Anwar Al-Awlaki, titled 'The Dust Will Never Settle Down,' calling for the assassination of anyone who has 'defamed' Muhammad, saying, 'Harming Allah and his messenger is a reason to encourage Muslims to kill whoever does that.' As a result of the controversy surrounding CHESSER's postings regarding the South Park episode, a newspaper cartoonist from Seattle, Washington, suggested that members of the public draw the prophet Muhammad on May 20, 2010, a day to be called 'Everyone Draw Muhammad Day,' to water down the pool of targets and defend free speech. A number of social networking sites, including Facebook.com, hosted groups supportive of 'Everyone Draw Muhammad Day.' On or about May 18, 2010, CHESSER posted on the web forum Ansar AlJihad Network a posting titled 'Tracking Those Participating In Everyone Draw Muhammad Day - salaa Allahu 'alayhi wa salam,' in the same thread of messages that included the "Defense of the Prophet Campaign and the related postings described above. The 'Tracking Those Participating In Everyone Draw Muhammad Day' message consists of photos, names, addresses, and other personally identifying information that CHESSER obtained from Facebook for private citizens who apparently expressed a desire to participate in 'Everyone Draw Muhammad Day.' These included JG, as well as a teenager in Mississippi and a young man from Texas depicted in a photo with his parents and a brother, along with the address of his 'possible church/school.' At the conclusion of the post is Chesser's statement, 'Just a place to start.' In light of the recent history of attacks and attempted attacks against individuals alleged to have defamed or insulted Islam or its prophet, the postings on the internet by CHESSER objectively constituted messages to an audience that likely included individuals around the world who Were inclined to engage in violent jihad against what they believed to be the enemies of Islam; understood the messages to constitute requests to attack MS, TP, and JG; and could potentially be willing and capable to attack MS, TP, and JG in response to those messages.

Between on or about January 19, 2010, and July 10, 2010, CHESSER knowingly and unlawfully distributed information pertaining to the manufacture and use of explosives, destructive devices, and weapons of mass destruction, with the intent that such information be used by mujahideen around the world. As more particularly described below, CHESSER posted on various websites links to detailed information on the construction and use of explosives devices, and tactics associated therewith, in support of violent jihad and against civilians, law enforcement authorities, and military forces of the United States and its allies in America and overseas. Between on or about June 8, 2010, and July 21, 2010, CHESSER, with intent that other persons engage in conduct constituting a felony that has as an element the

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use, attempted use or threatened use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, knowingly and unlawfully solicited and endeavored to persuade others to engage in such conduct. In particular, CHESSER urged others to leave suspicious packages that looked like package bombs in public places but that were otherwise harmless, to desensitize the public and law enforcement authorities to the threat of actual package bombs, as described below, in violation of 18 U.S.C. § 1992(a)(2), (a)(9), & (a)(10); and 18 U.S.C. § 1038. On or about January 19, 2010, CHESSER posted a link on his themujahidblog.com website to the entire United States Transportation Security Administration manual titled, 'Aviation Security Screening Management Standard Operating Procedures.' This link remained accessible on themujahidblog.com until approximately mid-April 2010. That manual set forth standard operating procedures used at airports located in the United States regarding the screening and inspection of individuals, accessible property, and checked baggage to deter, detect, and prevent the carriage of any unauthorized explosive, incendiary, or weapon onboard an aircraft or into a secure area. On or about June 4, 2010, CHESSER posted on the Al Fallujah Islamic Forums website a link titled '200 plus books on various beneficial subjects,' which he further described as 'books on Jihad, Islam and Warfare,' and in which, under a section titled 'Preparation,' he included a book, titled 'Guerilla Air Defense, Antiaircraft Weapons and Techniques for Guerrilla Forces' containing, among other items, information on the construction of antiaircraft missiles, and tactics, techniques and weapons for targeting aircraft, including jet airplanes and helicopters. On or about June 8, 2010, CHESSER posted to the AlQimmah website and to the Al Fallujah Islamic Forums website a link to an article titled 'Jihadi Calls for 'Suspicious Bags' To Be Left Throughout DC and NYC,' with the statement that 'it should be noted that the article mentions that this type of thing has actually been successful.' The article reported that an internal FBI report warned federal, state, and local authorities to be alert for a potential new tool in the jihadi terror arsenal - the placing of suspicious, but harmless, bags in public places to inspire fear, disrupt public transportation and tie up police and bomb squads. On or about June 9, 2010, CHESSER posted on the AlQimmah website a link to 200 books on Jihad, Islam and Warfare,' and in which, under a section titled 'Preparation,' he included a book, titled 'Guerilla Air Defense, Antiaircraft Weapons and Techniques for Guerrilla Forces' containing, among other items, information on the construction of antiaircraft missiles, and tactics, techniques and weapons for targeting aircraft, including jet airplanes and helicopters. On or about June 15, 2010, CHESSER posted a message on the Al Fallujah Islamic Forums website titled 'Desensitizing Federal Agents,' in which CHESSER explained how conducting 'fake' operations, by leaving suspicious packages resembling (but which were not, in fact) bombs in public places, so as to 'desensitize' law enforcement officials in their efforts to detect and disarm explosive devices, would be of great benefit to the mujahideen. In that message CHESSER explained that, after law enforcement had become sufficiently 'desensitized' to the possible danger of such packages, a real explosive then could be substituted, which, having been discovered by a law enforcement officer, could explode. CHESSER ended his message with the words, 'Boom! No more kuffar.'

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From a date unknown until July 10, 2010, CHESSER did knowingly and unlawfully provide and attempt to provide material support and resources, as that term is defined in Title 18, United States Code, Section 2339A(b), to wit, personnel, both individually and through recruitment of other personnel, publicity, and training, to a foreign terrorist organization, namely al-Shabaab, by attempting to travel to Somalia to provide support for, and at the direction of, al-Shabaab; and by posting material related to violent jihad, and its tactics, on the internet for, and at the instruction of, al-Shabaab. In order to provide, and attempt to provide, material support and resources to a foreign terrorist organization, as alleged above, CHESSER took the following actions, among others: In November 2009, CHESSER attempted to leave the United States and travel to Somalia for the purpose of joining al-Shabaab and engaging in violent jihad. He ultimately postponed his trip because his wife could not obtain her passport from her mother, who possessed the passport but refused to release it to her because she feared that her daughter would use it to travel to Somalia. Subsequently, CHESSER's wife gave birth to a child, and she could not travel. On or about May 13, 2010, CHESSER posted on the AIQimmah website Parts 1 – 7 of the Counter Counter Terrorism series, made as separate posts tandem to each other. On or about May 30, 2010, CHESSER posted on the AIQimmah website a video titled 'Do the Mujahidiin in Somalia Really Kill Civilians?' On or about May 31, 2010, CHESSER posted on the AIQimmah website a video entitled 'Raid on The HQ of Apostasy – The Rule Is Only For Allah,' showing an attack by Al-Shabaab on government building in Mogadishu. On June 6, 2010, CHESSER instructed his wife falsely to deny knowledge of his planned travel to Somalia to join al-Shabaab if she was questioned about him by law enforcement authorities, and instead to assert that he went to Uganda to pick up her birth certificate. On or about June 29, 2010, CHESSER posted on the AIQimmah website a link to 200 books on Jihad, Islam and Warfare,' including four sections of what CHESSER described as the 'Al Qaeda Manual,' setting forth instructions concerning such subjects as 'Communications,' 'Transportation,' 'Security,' 'Weapons Acquisition and Storage,' 'Guidelines for Beating and Killing Hostages,' and 'Espionage,' all in support of violent jihad. On or about June 9, 2010, CHESSER posted on the AIQimmah website a video entitled "Munaafiq Of Parliament Exposes AMISOM As True Killer Of Non-Combatants In Somalia," regarding the killing and mishandling of civilians by African Union troops in Somalia. On or about June 15, 2010, CHESSER posted on the AIQimmah website a video titled 'Hizbul Islam Merges with Al-Shabaab in Beledweyne Alxamdulillah,' regarding the merger of Al-Shabaab with another organization. On or about July 9, 2010, CHESSER and his wife left their home in Falls Church, Virginia and drove with their infant son to a hotel in Maryland where they spent the night, in preparation for CHESSER's bringing his son with him on a flight to Uganda to make it appear less likely that CHESSER was actually continuing on to Somalia to join al-Shabaab and engage in violent jihad. CHESSER brought with him a video camera with which he intended to make production quality Video's for al-Shabaab's propaganda campaign. On or about July 10, 2010, CHESSER and his wife drove with their infant son from their hotel in Maryland to John F. Kennedy International Airport in New York, where CHESSER attempted to board a flight with service to Uganda with his infant son, so that CHESSER could ultimately make his way to Somalia, join al-Shabaab and engage in violent jihad.

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Institution Misconduct

On December 5, 2013, inmate CHESSER received an incident report for conduct which disrupts the orderly running of an institution most like threatening another with bodily harm and conduct which disrupts the orderly running of an institution most like extortion. CHESSER submitted an electronic message to staff stating a specific inmate would not be safe if returned to the Marion CMU or Terre Haute CMU; however if another specific inmate's transfer the Florence ADX was cancelled, CHESSER would work to ensure the inmate's safety at Marion CMU.

On December 5, 2013, inmate CHESSER received an incident report for anything not authorized, when staff discovered encoding papers with instructions for the cypher key to communicate in code.

On August 14, 2013, inmate CHESSER received an incident report for assaulting any person. Inmate CHESSER was observed by staff being held in a bear hug by another inmate and called for assistance. Staff review of surveillance video found CHESSER exited his cell and walked down range to the other inmate's cell and rushes into the cell. The inmates were seen exiting the cell and the investigation revealed inmate CHESSER assaulted the other inmate over a religious issue.


On September 17, 2012, inmate CHESSER received an incident report for participating in an unauthorized meeting or gathering. Inmate CHESSER was observed participating in an unauthorized group pray in the educational room.

On June 28, 2012, inmate CHESSER received an incident report for being in an unauthorized area. Specifically, on June 6, 2012, inmate CHESSER was observed with several other inmates entering a cell they were not assigned to at Marion CMU.

On November 3, 2011, inmate CHESSER received an incident report for participating in an unauthorized meeting or gathering. CHESSER was observed with a group of inmates conducting prayer in the education room by staff.

7.	Recommendation
	The inmate does not meet the criteria for placement in the ADX-GP.
✓	The inmate meets the criteria for placement in the ADX-GP.
8.	Appeal Rights
<p>Upon receipt of the decision regarding your placement, you have 30 days to appeal the decision through the Administrative Remedy Program. Your appeal must be submitted on the appropriate form (Regional Administrative Remedy Appeal BP-10) and must be sent to the Chief, Designation & Sentence Computation Center, Grand Prairie Complex, U.S. Armed Forces Reserve Complex, 346 Marine Forces Drive, Grand Prairie, Texas</p>	

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75051.		
F. Frandle		April 10, 2014
Hearing Administrator's Name	Signature	Date
9. Delivery of Hearing Administrator's Report to Inmate		
Inmate's Signature		Date
The inmate refused to sign for a copy of the General Population Hearing Administrator's Report. I have personally delivered a copy of the report to the above mentioned inmate.		
Staff Name (Printed)	Signature	Date

Administrative Remedy Number 780153-R1
Part B - Response

This is in response to your Administrative Remedy Appeal, wherein you contest being designated to the general population of the Administrative Maximum Penitentiary (ADX) in Florence, Colorado. You contend that the decision was retaliatory, illegal, and violates Bureau of Prisons (Bureau) policy. First, you claim that your rights to participate in congregational prayer and the consequential incident reports were in direct violation of the Religious Freedom Restoration Act. Second, you indicate that a senate report was used against you without being disclosed to you. You claim this is a violation of your procedural due process rights. You believe that the use of this report was retaliatory for your criticism of Communication Management Unit (CMU) staff and Bureau staff in charge of ADX referrals. Third, you oppose the opinion that your conduct creates a risk to institutional security and good order; hence, surmising that you cannot be safely housed in the general population of a regular correctional facility. Thereby, you assert that your transfer to the ADX is illegal, and violates Bureau policy, because there are other facilities able to house you. You request review and reversal of the ADX placement decision.

The Bureau identified a need for the ADX to effectively manage inmates who by the nature of the offense conduct, criminal history, and/or discipline history while incarcerated pose a significant threat to the safety of staff, inmates, and the public. You are being considered for ADX general population placement based on your blatant disregard and continued misconduct and refusal to adhere to institution rules. Specifically, on September 17, 2012, you received an incident report for Participating in an Unauthorized Meeting. On June 26, 2012, and February 27, 2012, you received an incident report for Being in an Unauthorized Area. On November 3, 2011, you received an incident report for Participating in an Unauthorized Meeting. All four of these disciplinary incident reports were the result of you engaging in group or congregate prayer outside of the appointed multi-purpose room and/or outside of a scheduled activity or program. This behavior is in direct violation of USP Marion's Institution Supplement, MAR-5360.09, Religious Beliefs and Practices, dated June 8, 2012. Additionally, records indicate you incurred your most recent incident report on December 4, 2013, for Extorting/Blackmail/Protecting. Further, a review of your discipline history revealed you incurred incident reports for Possessing a Non-Hazardous Tool and Assaulting without Serious Injury.

In regards to your allegation that a senate report was used against you as a retaliatory means for your criticism of CMU staff and Bureau staff in charge of ADX referrals is unsubstantiated. Thus, there was no violation of your procedural due process rights, as you believe.

Furthermore, you oppose the opinion that your conduct creates a risk to institutional security and good order; precluding your placement in general population at a regular correctional facility.

Exhibit
H

Administrative Remedy Number 780153-R1
Part B - Response
Page 2

On the contrary, a review of your instant offense, criminal history, incident report history, and investigative reports unequivocally prove otherwise. Therefore, your belief that the decision was retaliatory, illegal, and violates Bureau policy is counterfactual. The Bureau will retain the authority to select the place of your imprisonment.

Your conduct requires greater security and controls than can be afforded while you are housed in a typical general population setting or in a CMU. Your disciplinary history has shown a disregard for rules and regulations as you have repeatedly been found participating in group or congregate prayer outside of the appointed multi-purpose room and/or outside of a scheduled activity or program. Your refusal to adhere to institution rules demonstrates the fact you still pose a serious threat to institutional security, good order, and the safety of others.

A review of your records indicates you received Notice of Hearing on Referral for Transfer to the General Population at the ADX on April 7, 2014. The initial hearing was conducted on April 9, 2014, you appeared at the hearing via telephone and made an oral statement. Additionally, you submitted a 28-page handwritten statement. Your medical records were reviewed and determined to be appropriate for designation to the general population at the ADX. There is no evidence to support your claim that your consideration to the general population at the ADX was retaliatory or violates Bureau policy. The Hearing Administrator's findings and the Regional Director's recommendation were reviewed by the Designation and Sentence Computation Center, and the Assistant Director, Correctional Programs Division, Central Office. Accordingly, you were appropriately assigned to the ADX such that greater management of your interactions would ensure the safety, security, or orderly operation of Bureau facilities and protection of the public.

We concur with the decision and find your placement appropriate and consistent with the requirements of Program Statement 5100.08, Security Designation and Custody Classification Manual. You have not demonstrated otherwise. Your appeal is denied.

You have the right to appeal the BP-10 response within thirty days from the date on the BP-10 response using the Central Office Administrative Remedy Appeal (BP-11) form. Your appeal should be sent to Office of General Counsel, HOLC Building, 320 First Street, N.W., Washington, DC 20534.

5-29-2014
Date



Jose A. Santana, Chief
Designation and Sentence Computation Center

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-229(13) including any attachments must be submitted with this appeal.

From: Chesser, Zachary A. 76715-0X3 I USP Mankon
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL This is an appeal of my ADX General Population Decision. First, I appeal this on every ground raised in my written statement which I submitted at my hearing which is attached as Exhibit A. Second, in addition to violating RFRA as mentioned in exhibit A, the fact that my engagement in congregational prayer is being used against me means that any ruling enjoining the conduct described in my lawsuit Chesser v. Walton, which seeks an enjoinder of the ban on congregational prayer, will mean my transfer to ADX is illegal. F. Frandle, the hearing administrator, said my engagement in congregational prayer represented 1/3 of the basis for my recommendation. Also, all of my 315/316 incident reports, which represent 4/7 of the incident reports used against me, have to do with group prayer. I am currently writing on a preliminary injunction in Chesser v. Walton. If that ruling is granted, it would encompass my ADX transfer. At that point, the BOP (Charles Sawek is a defendant) will have to return me to a CMU general population or be in contempt of court. For more information, you can contact my lawyer Dale Aschermann at (616) 988-0988 or DaleA@guantanamo.org. Third, a Senate Report was used against me without it being disclosed to me and without my any information as to how it was being used. This report is a public document and failing to disclose to me this information violates my procedural due process rights. Also, I believe that its use is retaliatory for my criticism of CMU staff and BOP staff in charge of ADX referrals which are 5/9/14 attached documents; my transfer is illegal and also violates other facilities able to house me. Thus, it should be reversed.

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DATE reversed. SIGNATURE OF REQUESTER

Part B - RESPONSE

Received
MAY 19 2015 11:52

DATE REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE CASE NUMBER: 780153-R1

Part C - RECEIPT

CASE NUMBER: 780153-R1

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE SIGNATURE, RECIPIENT OF REGIONAL APPEAL

Written Statement of Zachary Adam
Chesser in Defense of Referral for
Transfer to ADX Florence General
Population

Personal Safety

Introduction

I have been referred for transfer to ADX Florence General Population on the grounds that my "conduct creates a risk to institution security and good order, poses a risk to the safety of staff, inmates or others, or to the public safety," and that "[a]s a result of [my] status, either before or after incarceration, [I] may not be safely housed in the general population of a regular correctional institution."

The entire basis for this conclusion is allegedly my Pre-Sentence Investigation Report (PSR) and six incident reports I have received since my arrest four years ago.

This referral should be denied on grounds that I do not pose the type of threat which justifies placement in ADX Florence (hereinafter ADX), there is no threat to my safety whatsoever and this referral is violative of a number of statutory and constitutional laws.

There is no issue preventing me from being safe in any facility in the United States. Neither my PSR nor my disciplinary raise any personal security concerns.

PSR: My criminal history is notorious, but it is not the type of notoriety which justifies protective custody. I do not have a sex-offense nor do I have any victims listed in my PSR (MS, TP and JA are not considered victims). Rather, I have a role of the mill terrorism case.

In fact, my terrorism associations are with a rebel militia in Somalia with no history of targeting Americans. There are dozens of Bureau of Prisons (BOP) inmates who were associated with the Somali group Al-Shabab, but none of them, to my knowledge, have needed protective custody. Moreover a number of these are more deeply tied to Al-Shabab than I was. Also, even the ones who testified against others did not need protective custody, so placing me in protective custody in ADX makes little sense. I did not testify against anyone.

Also, my other noteworthy convictions offer no unique concerns. My effective

co-defendant, Jesse Morton, is more notorious than I am and he is allegedly the president of the organization I was involved in (Revolution Muslim). He is currently housed either in a medium or low security facility in Pennsylvania. If Morton is safe somewhere, I would be more safe, so these other charges do not justify protective custody.

There are hundreds of terrorists safely housed throughout the BOP in every type of facility from camps to penitentiaries. In the case of Muslims, not only are they safe, but they are usually the leaders of the Muslims in these prisons. Many of these individuals are far more notorious than myself and include members of the Fort Dix case, the Blind Sheikh case, the first World Trade Center bombing case, the Millennium Bombing case and others.

Moreover, I am currently housed in a Communication Management Unit (CMU) which is almost 50 percent full with other Muslim terrorists. Many are more notorious than myself.

Placing me in ADX over fears of my case notoriety would be completely irrational.

Discipline: I only have two incident reports which could theoretically pose any kind of security concern regarding myself. My

incident report for extortion and my assault.

Extortion- the referral notice erroneously states that I received an incident report for conduct which disrupts the orderly running of an institution most like threatening another with bodily harm and .. extortion. "This was later changed to simple extortion on appeal to the region.

This is significant because it removes the possibility of a conflict between me and Walter Bond, as there is no evidence that I was the one causing such a threat as is described in the original incident report. I was allegedly trying to extort staff, not Inmate Bond.

Moreover, only two inmates are aware that I received this incident report: Carle Almonte and Mohammad Arwa, both of whom provided affidavits on my behalf (see attached). Inmate Bond is not even aware of this matter to begin with, so even if it would bother him, he is not aware of it to begin with.

The evidence also shows that I was actually helping Bond not using him for extortion. This is evidenced by my peaceful resolution of a violent conflict Bond was involved in. The fact that I prevented Bond from being the victim

of a gang assault and the fact that Bond was actually assaulted by someone else.

The issue surrounding Walter Bond began when he attacked a Muslim inmate named Rezwon Ferdous (see Affidavit for Carlos Almaraz # 1). Seconds after the fight began, I ran out of my cell and physically dragged inmate Bond away from inmate Ferdous. Bond yelled something at Ferdous, so I forcefully ordered him to calm down.

Our CMU is roughly 60-percent Muslim, so had I desired, I could have seriously harmed Bond, but instead I did the right thing and peacefully ended a violent conflict. Unfortunately, when I told the Disciplinary Hearing Officer (although if I truly intended to harm Bond, I could have done it then, he misunderstood my comment to be in reference to Bond's continued safety. What I meant was that it made no sense that I would save Bond from a likely 5cm-1 (or worse) fight and then two weeks later be threatening his safety. Camera footage of the peaceful role I played in this incident should be available as it occurred in plain view.

Also, after Bond returned to his cell range, a number of Muslims

were to learn of my message, he would not interpret it as threatening him. Rather, he would probably be asking me to be a witness when he sued the staff responsible for releasing him to a unit wherein they knew he was going to be assaulted.

Assault - my assault was against a non-affiliated white man in his fifties who believes he is a Native American (see, United States v. Michael Howard Reed) who is also a prison informant. In a CMU, or any other facility, Reed is not likely to be able to pose a threat to my safety. Reed has a history of being assaulted without responding.

Alternative - even if it was determined that I am unsafe in any facility Bond or Reed is in, all one has to do is send Bond somewhere else or swap me with Reed. In fact, sending Bond to another facility would have been appropriate from the beginning as he was not safe in the CMU.

¹¹ Of course the BOP cannot confirm this, but it should at least take it into consideration in its non-public analysis.

begin to gather and some were planning on assaulting Inmate Bond. I also dispelled that situation by telling others it was not worth it (see Affidavit for Carlos Almaraz, # 1).

When I went to the DHO, I told him that I was not the threat referenced in my electronic message to staff. Rather, I was informing staff of an existing threat to Walter Bond's safety posed by other inmates. I was unable to produce clear evidence of this at my hearing, but since then, I have gathered clear evidence on this point.

First of all, just as I claimed, when Walter Bond was released from the Special Housing Unit (SHU), inmate Mohammad Awwi immediately assaulted him (see Affidavit for Mohammad Awwi, # 4). This proves there was another threat to Bond as I was in the SHU at the time, having been convicted of this incident report. Obviously, Awwi would not have given me an affidavit saying he planned to assault Bond prior to actually assaulting him.

I will address how this disproves my incident report later. What is important here is, that even if Bond

CMU: I am perfectly safe in the CMUs. As one can see, the majority of the unit in USP Marion has written affidavits stating that they have no knowledge of any problems with my return to the unit. These people represent all groups in the unit.

Terrorism

I have three charges in my PSR which are arguably related to terrorism: (1) Soliciting Others to Threaten Violence, (2) Attempting to Provide Material Support to a Designated Terrorist Organization, & (3) Distribution of Information Pertaining to the Manufacture and Use of Explosives.

Soliciting Others to Threaten Violence: While this is vaguely related to terrorism, it is on the bottom rung of the terrorism ladder. In fact, were it my only conviction, I would be housed in a camp. Essentially this charge is related to a brief article, and another passing comment I made, that leaving empty packages in public places could trick law enforcement.

In other words, this is basically a charge for a terroristic hoax. While that might be the worst end of the hoax spectrum, at the end of the day a hoax is a hoax and is not a legitimate consideration for ADX placement.

Material Support: In truth, this is my most problematic conviction. I pled guilty to attempting to join Al-Shabab and aid their media department. This is the charge which has resulted in my communications problems and is apparently what the BOP uses to consider me more dangerous than my co-defendant, Morton.

However, this does not justify ADX placement. Unlike other terrorists who have been housed in ADX, I have no terroristic training, nor was I in direct contact with any organization, nor did my role involve violence, nor did I even succeed in leaving the country. Rather, I was just some 20-year old kid who tried to fly off to Somalia with a \$40 video camera. Other than that, I was a website guy.

Additionally, my attempt to provide material support preceded any actual terrorist attack by Al-Shabab (albeit by one day). Further, Al-Shabab has not attacked a single American target to this day.

The BOP is currently housing dozens of Al-Shabab affiliated inmates, most of whom provided actual material support to them. Some of these were recruiters from Minnesota whose efforts led to the recruitment of 26 Americans to fight with Al-Shabab. These individuals proceeded to kill hundreds of people in Somalia and Kenya. Others sent thousands of dollars to Al-Shabab over a number of years. Finally at least four individuals actually fought in Al-Shabab. Only ~~one~~ of these prisoners, Carlos Almonte and Muhammad Alessa, are even held in a CMU. The rest are in regular prisons.

There are also dozens of BOP prisoners who were actually involved in terrorist plots and conspiracies to commit mass murder. Almost all of these, except those who nearly succeeded, are housed in regular facilities or CMUs. It is absurd to view someone who made a botched

attempt to make movies for Al-Shabab as more dangerous than someone who made a botched attempt to blow up hundreds of civilians. That simply does not pass for anyone of sound logic.

I am not sure how this even justifies holding me in a CMU, because numerous inmates with ties to Somalia who were in direct contact with Al-Shabab are housed in regular facilities. I am not able to contact Al-Shabab even from a camp, because I do not know how to do it.

Regardless, the CMU is perfectly able to prevent me from any of this anyway. They do not even let me get e-mails about how I cut up candy for a religious celebration past that, much less e-mails about Jihad and terrorism.

Distribution of Explosives Information: To be perfectly honest, I did not even know the document I uploaded had explosives information in it. I never read it.

Based on my PSR, however, it does not sound as though the types of explosives in it are even possible to make in prison. In fact, it

is not likely that anyone can manufacture them without advanced machinery and military grade ordnance.

I have no bombmaking knowledge at all, so whatever threat I may have posed by downloading and re-uploading this document, it is totally neutralized by my incarceration. Thus, this charge does not warrant placement in ADX.

Additionally, a fact which demonstrates the reduced severity of this charge is that I am not actually convicted of it. It is simply extraneous information in my PSR.

South Park

My notoriety does not actually stem from my terrorism convictions. Rather, it stems from a veiled threat I made against a television show called South Park. These charges are definitely not worth considering for ADX placement. In fact, they could not even be used to justify housing me in a medium security facility as opposed to a low or a camp.

The BOP is currently housing my

co-defendant Jesse Morton in either a medium, low or camp-level prison, and he is convicted of all of the same charges as me and more. He even admitted to a conspiracy to murder someone over this issue. Also, he is allegedly tied to 30% of all homegrown terrorism cases in the United States. He pled guilty to influencing me, Joseph Cohen, Sumir Khan (a member of Al-Qaeda in the Arabian Peninsula (AQAP) killed by the U.S. in 2011), Anwar al-Awlaki (a leader of AQAP considered the most dangerous terrorist until he was killed in 2011 with Khan), Galeen LaRosa, Carlos Almaro, Muhammad Akbar, Rezaan Farooq, and others. There is no logical way to say he is low security while I am one of the 400 semi-old most dangerous prisoners in America.

Summary

There are legitimate security concerns stemming from my charges. However, these are not addressed any better in ADX than in a CMU. Not one single thing I would be prevented from by placement in ADX is not already addressed by housing me in a CMU.

I will address the legality of this issue elsewhere, but it almost goes without saying that this is a bizarre reason to send someone to ADX. I completely fail to see how congregational prayer is somehow more dangerous than congregational sports, meals, television watching or table games. In fact, it is less dangerous and promotes prison security. I have hundreds of pages of court testimony from USP Marion and FCI Terre Haute staff, and not one time was anyone able to explain how group prayer was more threatening than checkers, despite numerous requests to do so.

I have no intention to stop praying in congregation so long as it is physically possible even if the BOP threatens to execute me. If the BOP seriously wants to physically prevent me from doing this by deeming me worthy of ADX, then so be it. I will have my day in court and the BOP can count on paying me a hefty sum of money for irrationally and inhumanely deeming me one of the most dangerous prisoners in the world and subjugating me to years of isolation over my

Judge's Recommendation

If nothing else, the fact that my own judge and even my prosecutor recommended that I not be sent to ADX ought to prove my point. No one in the BOP knows more about my case than they did, but they went out of their way to try to keep the BOP from sending me to ADX (see Judgment in a Criminal Case Sheet 2). Obviously, the judge and prosecutor thought that the BOP might misconstrue the severity of my case, so they took proactive measures to prevent this.

Group Prayer

In my Notice, the BOP cites three out of my four incident reports for engaging in group prayer/being suspected of engaging in group prayer. My incident report for being in an unauthorized location was only upheld on suspicion that I was engaging in group prayer, as I was otherwise authorized to be in that location as I was assigned to clean it.

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religious practices. I seriously implore you to go find any child, any innocent young soul, one whose heart is not corrupted by some unforgiving bureaucracy, and ask them if this is right or wrong. The leaders of Communist China would likely be appalled by this catastrophic violation of freedom and human dignity.

Contraband

First of all, 'possession of anything unauthorized' is something which literally every prisoner in the BOP engages in. A prisoner could receive one thousand incident reports for contraband and nobody would bat an eye. This simply does not warrant ADX consideration.

Second, I possessed handwritten instructions I came up with for a code, which is not even 'unauthorized.' I read a Wired Magazine article on an old code, so I decided to play with one as a brain teaser. No BOP policy prohibits this at all. Only sending codes is banned. I did not even try to hide the instructions. They were all

kept together ~~in~~ in a clear plastic folder in plain view. Why should I hide something which is not prohibited?

Writing an incident report for this was inappropriate. The proper course would have been mere confiscation if it raised any concerns.

It should be noted that there is no evidence I ever tried to communicate in code. Moreover, sending "MRPGSSIA" or something like that from the CMU would be stupid and it would never get out. The cypher I wrote up was simple and easily recognizable.

Even if I was prone to sending codes, the CMU more than adequately handles that concern.

Assault

An assault is an assault, so there is not a whole lot to say here. However, there are a few mitigating factors:

1. The other inmate only suffered two bruises and a small nick on his forehead. This is because I deliberately avoided anything which could cause a serious injury.

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Six. If such minor incidents justified ADX placement, hardly any inmate would be spared.

Extortion

This is the only thing I just completely did not do at all whatsoever. I was trying to prevent an act of violence from occurring, but here I am facing ADX over my efforts. At the time of my DHO hearing, the evidence could have pointed in either direction, but since then, the evidence has developed dramatically in my favor.

1. Ambiguity:

The statement used to convict me of extortion was decidedly ambiguous. It contained (1) information that Walter Bond's safety was in jeopardy and (2) that if staff dropped Kevin James's referral to ADX, I could potentially remove this threat. What supports the claim that the message was ambiguous is that staff originally wrote a Code #2001 for conduct that like bodily threats and

2. I stopped prior to the arrival of guards when an inmate intervened.

3. I made every effort to ensure Bond's safety in the unit so that he would not have to be transferred.

4. This is my only act of violence in my 4-year incarceration.

5. Shortly thereafter I broke up another fight which indicates that I am not prone to repeat my actions.

6. The DHO did not even assign disciplinary segregation (DS) as a sanction.

7. I took responsibility for my acts at the DHO hearing, and only argued over whether or not it was a fight.

ADX is for people who murder people or try to murder them. It is not for someone who had a single minor scuffle. Inmates frequently catch stabbings and do not get referred to ADX. However, I am being referred over a one-on-one fist fight which resulted in injuries. Children stop crying over when they turn

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extortion. After appeal, the Agency expunged the portion about threats and converted it to standard extortion.

The statement can be interpreted in three ways: (1) a good intentioned effort to prevent violence and a difficult situation regarding Inmate Bond, (2) a selfish attempt to trade information for some reward, or (3) extortion.

The statement can only be read as extortion if I was purporting to be part of the cause of a threat to Bond's safety. Even with no other background, most probably my statement was not meant in that way. I offered no indication that I was part of the threat and I even cast a great deal of doubt on my ability to help remove it. If I was extorting someone, I would not cast suspicion on my ability to end the threat I was using to achieve my objectives.

If I was not purporting to be contributing to the threat, but I was only willing to try to dispel it in exchange for James's release, that is not extortion at all. Rather, it is like when a security company tells a store owner he lives in a bad neighborhood so he ought to hire their services. In more familiar terms, it

is also synonymous to when an informant trades information for stamps.

Finally, if my intent was to prevent an act of violence by others and dropping James's referral was a cause of that, not a condition for my services, then this was actually a selfless act on my part. This could be the case if others who posed a threat to Bond were attached to Inmate James.

The evidence below will support this conclusion. I did not expect staff to interpret my statement as extortion and I only kept it ambiguous to balance between preventing violence and informing on others.

2. Peaceful Resolution:

As detailed before, Bond was taken to the SHU for attacking a Muslim inmate. I peacefully stopped that incident and then prevented others from attacking Bond (see Affidavit of Carlos Almonte).

It is not reasonable to think that a few days after saving Bond from a trip to the hospital, I was suddenly threatening his safety for no reason.

3. Knowledge of Plans to Assault Bond:

Inmates Mohammed Amawi and Carlos Almonte, as well as others, told me they planned to assault Bond if he was released from the SHU (see Affidavit for Mohammad Amawi ¶2 and Affidavit for Carlos Almonte ¶3). In fact, numerous other Muslim inmates besides myself informed staff Bond was not safe in the unit (see, ¶¶ 1 and 2 of the above affidavits).

Amawi was a neighbor of James (see Affidavit for Mohammad Amawi, ¶ 3) and Almonte specifically told me he would only let Bond out if James's referral were dropped (see Affidavit for Carlos Almonte, ¶4).

Based on the above, I formulated my conclusion that there was a threat to Bond's safety and that dropping James's referral might eliminate that threat. This alone is sufficient proof to say I most probably was not trying to extort ~~the~~ staff, but was instead trying to prevent unnecessary hardship from a difficult transfer situation as well as a potential act of violence.

4. Assault on Bond:

About a month after I was taken to the SHU and after I was already convicted of this matter by the DHO, inmate Amawi actually did assault inmate Bond. Minutes after Bond was released from the SHU Amawi challenged him to a fight. Bond refused, so Amawi assaulted him (see Affidavit for Mohammad Amawi ¶4).

Nobody can argue that there was not another threat to Bond's safety, because that threat materialized. In light of this, my words have to be interpreted as other than extortion. The only evidence at all that I was engaging in extortion is an ambiguous statement which is open to multiple interpretations. There is no external evidence for an extortion interpretation, but the other two have plenty of external evidence to suggest they are the correct interpretations.

5. Electronic Message:

Quite frankly, the mere fact that I sent the message electronically from my computer account is indicative of my

good intent. If my intent was extortion, I would not send a written message with my name attached.

6. My Background:

Extortion simply does not fit my persona and background. I am an educated young man whose mother is a prosecutor and whose father is an economist with a Ph.D from one of the best schools in the country. I grew up in Fairfax County, Virginia, which is the wealthiest and best educated county in all of America. I am convicted of political/religious charges. I am close with my family. I completed a college course recently from the CMU.

It should at least raise eyebrows that I have extortion in my jacket.

7. No Investigation:

Literally, all staff had to do to determine whether or not my statement was meant as extortion was to ask me what I meant. If I refused to clarify that I was not a threat to Bond, they could have accused me of extortion. However, they just threw me in the SHU

and here I am now facing years in isolation.

Conclusion:

There is a great deal of evidence that I was trying to improve prison security not extort staff. Maybe I did not do a great job of it, but I am very uncomfortable and distrusting of how staff might use such statements. It turns out that my suspicions were justified as I am now being referred for the worst punishment available to the BOP for a good-faith effort to help out.

Discipline

Simply put, even with my convictions and even if no other mitigating factors existed, my conduct does not justify ADX placement. As is shown in the attached chart of CMU inmate incidents, a CMU is more than capable of housing me. Some inmates on the chart are obviously far more problematic than me while others are on roughly the same level. Particular attention should be paid

to Mohammad Amawi who has an almost identical CMU history to me except that instead of using Bond for an alleged extortion, he assaulted him. He has virtually the same charges as me and a far worse overall disciplinary history. However, the BOP is able to house him in a CMU. (see, also, Affidavit of Mohammad Amawi, ¶¶ 5-8).

BERA/1st Amendment

It is part of my sincerely held religious beliefs that group prayer is obligatory in my religion. Sending me to ADX over it substantially burdens my ability to engage in it by physically stopping me and subjecting me to extreme emotional pain. The government neither has a compelling nor a neutral interest which is furthered on any national level by doing this. ADX offers me no alternatives to engage in worship. It is not the least restrictive means of anything except preventing extreme acts of violence much less furthering a compelling governmental interest under these circumstances. Thus, using my engagement in group prayer to send me to ADX is violative of the First Amendment

and the Religious Freedom Restoration Act (RFRA). I currently have a lawsuit over this very issue.

Retaliation

As the attached chart shows, I am being treated very differently than other similar inmates. I have two lawsuits against the very people who referred me to ADX and my referral came just two weeks after I had Warden Walton and others in court for a preliminary injunction. My lawyer eviscerated him and other witnesses such as Robert Roloff and Leslie Smith. This is a very clear case of retaliation.

Discrimination

The CMUs have only ever referred Muslims (as defined by the BOP) to ADX, but very rarely did a Muslim do something as serious as the other inmates in the attached chart. Rather, some held classes (dimes), established libraries (Al-Man), went on hunger strike (Ajaj) and other minor things. Even one inmate without a terrorism case (Moore), was victimized by

this policy. Treating inmates different on grounds of their religion violates the implied Equal Protection Clause of the Fifth Amendment. Also, as I am clearly being singled out, it violates this clause, as it discriminates against an individual.

Conclusion

There is little evidence to say I deserve ADX. Many facilities, particularly the CMUs, are fully capable of safely housing me.

Zachary Clesser
#76715-083

Affidavit (for Carlos Almonte)

I, C. Almonte 61800-050, swear under the penalty of perjury that the following is true:

- 1) On the day Walter Bond # 37096-013 attacked Rezaan Fardeen # 94133-058, I was upset & wanted to retaliate against Bond, but Zachary Chesser # 76715-083 calmed me down & prevented me from doing so.
- 2) I told the Captain, Garcia at USP Marion that Bond would not be safe at Marion, I did not want Bond coming out of the SHU.
- 3) Chesser knew I was contemplating attacking Bond if he was released.
- 4) I was a close friend of Kevin James before he was taken to the SHU & had expressed in front of Chesser that only James' release from SHU would let me go over Bond's aggression.

Sworn as true,


C. Almonte 61800-050
Date: 7/2/14

Affidavit (for Mohammed Amawi)


I, Mohammed Amawi (BOP # 30547/60), swear under the penalty of perjury that the following is true:

1. I was present, and I witnessed on more than one occasion members of the Muslim Community telling the Captain of USP Marion that inmate Walter Bond would not be safe if released from the SHU following his attack on a Muslim inmate.
2. I mentioned to inmate Zachary Chesser # 76715-083 that I personally will assault Walter Bond if he was released from the SHU for reasons of things in the past.
3. I was the neighbor of inmate Kevin James during the time he was in the SHU & before he was taken to the SHU, and I had a good relation with him.
4. When inmate Bond was released from the SHU, I immediately challenged him to a fight & eventually assaulted him in public. I was later convicted of this.
5. The case I was convicted of and I'm in prison because of is a terrorism case, and I'm being housed in USP Marion CMU, and my charges are similar to inmate Chesser's.
6. Prior to arriving in the CMU, I received incident reports for almost everything in the Coderi (assault of staff, threatening, all kind of Coderi 100's, 200's, 300's, and 400's). I assaulted Warden's, Captains, guards and others, threatened them, destroyed property, etc.
7. After arriving in the CMU, I calmed down a bit (cause I was less mistreated & I was no longer in the SHU) & I was given my phone & visits (so I should say some of them back), but I was still concerned

→ Of two assaults, I was written two threatening staff reports, inscience, contraband, praying in congregation, and others.

8. My disciplinary record in CMU is similar to Chesser's, except that in addition to receiving incident report like the ones Chesser have, I have more on top of that. Also instead of having an assault and an extortion violation, I have two assaults, because instead of using Walter Bond in an alleged extortion, I actually assaulted him.

Sworn as true


Mohammed Amawi
4/2/14

I Mohammed Saleh #34853-054 state as follow under the penalty of perjury:

I have no problem or I know any inmate have problem with Zachary Chesser #76715-08 to my knowledge inmate chesser is very peaceful and always keep a good relationship with all inmates and good rap with staff.

I stated this statement under the penalty of perjury according to my knowledge and the best of my ability according to 1746.

Mohammed Saleh
#34853-054

Affidavite

I, Ghassan Elashi #29687-177 states that I have known Zachary Chesser since he came to CMU Marion. I have never had any conflict or dispute with him. He appears to have good character. Most of his time was spent in reading and studying. I see no reason of moving him to a higher security prison.

Ghassan Elashi
4-7-2014

I. Ferris Khalafalla #34856-054

I got to know, Zachary Chesser # 76-715-083 when I came to CMU Marion. I had NO problem with him, he have been very good, usually ~~spending~~ most of time studying. I am unaware of any issue affecting ~~him~~ his safety in CMU, and I don't why he can't be let back to CMU.

4/8/14


- AFFIDAVIT -

I, El-Sayyid A. Nosair, Reg. # 35074-054, duly swear under the penalty of perjury under the laws of the United States of America, 28 U.S.C. §1746, that the following facts stated are true and correct to the best of my personal knowledge, understanding, and belief:

That during the time inmate Zachary Chesser, Reg. # 76715-083, spent in C.M.U., I have never had any problem with him nor I am aware of any issues which could put his safety in danger whether by inmates or staff in the Communication Management Unit at USP Marion. Executed on April 08, 2014, under signature and seal

Nosair (Seal)
El-Sayyid A. Nosair
Reg. # 35074-054
USP Marion / CMU-08
P.O. Box 1000
Marion, IL 62959

I, Mohamed Seneviratne state that I've known Zachary Chesser since his housing in ~~CMU~~ CMU Maroon. I had never had a problem with him. I don't know of any security concerns, concerning him. Zachary usually spends the vast majority of his time studying. I don't know of any justification to move him to a higher level security facility.


Mohamed Seneviratne
61283066

AFFIDAVIT/DECLARATION

I, Robert E. Miller, Jr., swear under penalty of perjury, per 28 USC §1746, that the following is true, correct and declared without intent to mislead:

1. I am in a unit with approximately 40 men, there is almost no violence and in the 7 months I've been in the unit not one person has received even a black eye. It is the safest unit that I have been in the entire time I've been in the BOP system (12 yrs.);
2. In CMU everyone knows everyone else's business and if Zachary Chesser #76715-083 were under threat or a threat to another inmate I believe that I would know it and I have not heard such at any point;
3. I, personally, have zero problems with Mr. Chesser.

signed true on 09/07/2014
Robert E. Miller, Jr.

Affidavit

I, Wali Khan Amin Shah, swear under penalty of perjury that the following is true to the best of my knowledge and recollection :-

1. I am unaware of any issue affecting inmate Zachary Chesser #76715-083's Safety in the C.M.U in USP Marion.
2. I have no problem with the above inmate myself and don't object to his release to the Unit.

Wali Khan Amin Shah
42799-054
4-7-2014

Affidavit


I am Russell DeFreitas 64347-053, I know inmate Zachary Chesser for 6 months. In that 6 months he has taught me English & Math & I'm very grateful for what he has done for me. I have no problems with him, he's very respectful w/ good manners. If released back to this unit I'm sure he will have good relations w/ everyone here.

Respectfully,



12-8-14

I, Ahmed Sherif Mohamed #15682171 would like to make it clear to whoever it may concern, that according to my knowledge of Chesser, he was a person who focus on studying, working out and was respectful, and i don't think that if released, he would pose a threat to the community over here

Ahmed Sherif Mohamed
 #15682-171

Affidavite

I'm Mansour Arabbsian at cmu
I know Zachary chessen since I looked at in cmu and I had good experience with him and never had a problem with him and always he was respectable to me.

Mansour Arabbsian
65807-054

April 8 2014

Affidavit

While I do not know Zachary Chesser well, I have never had any trouble at all with him. We get along just fine, and as far as I know he runs his business.

I don't see any reason why he should not be in I unit CMC.

Francis Cox 16179-006

Francis Cox

Affidavite of REZAR Omar

I am Rezag Omar # 20267-016 Federal inmate in the CMC Marion. I knew Zachary chessa since his arrival to the CMC in Marion prison. I testify that I never had any problems with Zachary, and I never know any one in the unit had problems with him. If he allowed to be in the CMC-unit again, I am sure he will have good relation with all inmates in the unit.

Respectfully,

REZAR Omar

April 8, 2014

I, Mikael Y. Azeem, 38669-C86,

Swear under the penalty of perjury that the following is true.

I am unaware of any issue affecting Zachary Chesser # 76715-0835 safety in the Communication Management Unit (CMU) in USP Maxwell, Illinois. Also, I have no problem with him myself.



 Mikael Y. Azeem
 38669-C86
 4/7/2014

Chart of Incidents in the CMU

Name	Terrorism	Incidents in CMU	Name	Terrorism Case	Incidents in CMU
Ewilsizer	Yes	100-series write-ups for destroying cameras; other major and minor incident reports, involved in a gang assault on another inmate with 4 others using weapons (sent to SHU)	Lucas	No	Repeated threats to public, assault, assault on staff
Infante	Yes	Beat an inmate with a lock in the same gang assault as Ewilsizer, other writeups (sent to SHU)	Aendelmann	No	Repeated threats to staff and general public, refuses to work, take breathalizer, or undergo urine test, destruction of government property
Miller	No (Sovereign Movement)	Extortion, multiple 100 + 200 series shots for involvement in illegal court filings	Mandhai	Yes	Numerous minor incidents, 2+ fights, assault
Janner, Harris, Neal	No (Sovereign Movement)	All received multiple 100 + 200 series shots for illegal court filings which jeopardize court security	Amawi	Yes	Numerous minor incidents, congregating prayer, 2 assaults contraband
Tarcia	No (Sovereign)	Assaulted staff; stabbed an inmate 17 times. (only referred to SHU)	Elmewer	Yes	Numerous 200-series and 300-series incident reports, including some violence.
Egan	No (Vice Lord)	Gang assault, assault with weapons, extortion	Roman	No (Latin King)	Two fights (one in each CMU) and other minor incidents
Friedman	No	Alcohol beat up female lieutenant	Boyer	Yes	Shortly after arriving in Maxwell CMU from ADX (he actually went to ADX from a CMU for leading a gang assault with weapons) then he returned to a CMU he assaulted an inmate and forced staff to keep them in the SHU
			Carr	No (was in CMU for radicalization)	Assaulted inmate with weapons and 4 other inmates (sent to general population after assault)
			Houri	Yes	Involved in same assault as Carr

- * Spellings are approximations
- + Amawi's terrorism charges are the same as mine with some additions (see Affidavit of Mohammad Amawi)
- + Amawi's incident reports are almost identical to mine, except that they are a bit worse (see Affidavit of Mohammad Amawi)
- + Shrewer had three co-defendants sent to ADX directly from the county jail. He was the mastermind of the plot to attack Fort Dix in New Jersey.

3

AO 318B (Rev. 12/03) (VAED rev. 2) Judgment to a Criminal Case Page 2 of 6
Sheet 2 - Imprisonment

Defendant's Name: ZACHARY ADAM CHESSER
Case Number: 1:10CR00395-001

IMPRISONMENT

The defendant is hereby committed into the custody of the United States Bureau of Prisons to be imprisoned for a total term of: THREE HUNDRED (300) MONTHS, which consists of a term of imprisonment of SIXTY (60) MONTHS as to Count 1, ONE HUNDRED TWENTY (120) MONTHS as to Count 2, and ONE HUNDRED TWENTY (120) MONTHS as to Count 3, all counts to run consecutively to one another, with credit for time served.

The defendant is remanded into the custody of the United States Marshal.

The Court makes the following recommendation to the Bureau of Prisons:

- 1) that the defendant be designated to an institution with a security classification lower than Administrative Maximum (ADX).

RETURN

I have executed this judgment as follows: _____

Defendant delivered on _____ to _____

at _____ with a certified copy of this Judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

UNITED STATES DISTRICT COURT
 Eastern District of Virginia
 Alexandria Division



UNITED STATES OF AMERICA
 v.
 ZACHARY ADAM CHESSER
 Defendant.

Case Number: 1:10CR00395-001
 USM Number: 76715-063
 Defendant's Attorney:
 Michael Nachmannoff, Esq., and Brian Mizer,
 Esq.

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Counts 1, 2, and 3 of the Criminal Information.

The defendant is adjudicated guilty of these offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
18 U.S.C. § 875(c)	Communicating Threats	Felony	07-21-2010	1
18 U.S.C. § 373	Soliciting Others to Threaten Violence	Felony	07-21-2010	2
18 U.S.C. § 2339H	Provide Material Support to Terrorists	Felony	07-10-2010	3

As pronounced on February 24, 2011, the defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 24th day of February, 2011.

Liam O'Grady
 United States District Judge

A TRUE COPY, TESTE:
 CLERK, U.S. DISTRICT COURT

BY _____
 DEPUTY CLERK

Defendant's Name: ZACHARY ADAM CHESSER
 Case Number: 1:10CR00395-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: THREE (3) YEARS as to each of Counts 1, 2, and 3, to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess or use a controlled substance. Unless mandatory drug testing is waived, the defendant shall submit to one drug test within 15 days of release from custody and periodic drug tests thereafter, as determined by the Court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court as well as with any special conditions of supervision.

- 1) the defendant shall not leave the judicial district without the permission of the Court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days before any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or as an agent of a law enforcement agency without the permission of the Court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: ZACHARY ADAM CHESSER
 Case Number: 1:10CR00395-001

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

- 1) The defendant shall comply with the requirements of the Computer Monitoring Program as administered by the Probation Office. The defendant shall consent to the installation of computer monitoring software on any computer to which the defendant has access. Installation shall be performed by the probation officer. The software may restrict and/or record any and all activity on the computer, including the capture of keystrokes, application information, internet use history, email correspondence, and chat conversations. A notice will be placed on the computer at the time of installation to warn others of the existence of the monitoring software. The defendant shall also notify others of the existence of the monitoring software. The defendant shall not remove, tamper with, reverse engineer, or in any way circumvent the software. The costs of the monitoring shall be paid by the defendant.

Defendant's Name: ZACHARY ADAM CHESSER
 Case Number: 1:10CR00395-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

<u>Count</u>	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
1	\$100.00	\$0.00	\$0.00
2	\$100.00	\$0.00	\$0.00
3	\$100.00	\$0.00	\$0.00
TOTALS:	\$300.00	\$0.00	\$0.00

No fines have been imposed in this case.
 The Court waives the cost of prosecution, incarceration, and supervised release.

Defendant's Name: ZACHARY ADAM CHESSER
Case Number: 1:10CR00395-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment shall be due in full immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment or fine by the United States.

Central Office Administrative Remedy Appeal

Federal Bureau of Prisons

6/17/14

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-229(13) and BP-230(13), including any attachments must be submitted with this appeal.

From: Chesser, Zachary A. 76715-003 ADX Florence
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL

This appeal has been delayed by my transfer and lack of access to my property which has prevented me from obtaining an attachment.
First, this is appealed for every reason I have previously raised in this process.
Second, the region's response indicates that the main reason I have been placed in the highest security prison in the country is my frequent engagement in congregational prayer. To be frank, this is an absurd justification. There are hundreds of inmates who have been convicted of stabbings, life-altering beatings, burning people with boiling oil, rape, selling drugs and other far more serious (at least if we agree to be national, if we are being inspected, outside the point) offenses than praying. Honestly, I do not see how prayer harms security at all. Also, it is illegal as previously explained.
Third, the region ignored my main issue with the Senate Report, which was that I was not informed of it nor given the chance to defend against it. That violates my procedural due process rights.
Fourth, similarly, the region claims investigative reports were used against me. I have no idea what they say. I was not informed of them until I received the regional response. Such also violates my procedural due process rights.
I am requesting to be placed in a CWU or other less restrictive facility.

[Signature]
SIGNATURE OF REQUESTER

DATE

Part B - RESPONSE

RECEIVED

JUN 30 2014

Administrative Remedy Office
Federal Bureau of Prisons

DATE

ORIGINAL: RETURN TO INMATE

RECEIPT

GENERAL COUNSEL

CASE NUMBER: 780153

CASE NUMBER:

Exhibit
I

Print to: LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT

SUBJECT:

DATE

SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL

Administrative Remedy No. 7801-53-A2
Part B - Response

This is in response to your Central Office Administrative Remedy Appeal where you appeal your ADX/GP placement and transfer. You argue your placement is not justified and illegal. You also state you were not given the chance to defend against documentation used to support this placement and allege due process violations. You request to be returned to a Communication Management Unit or other less restrictive facility.

The Regional Director adequately addressed the issues raised in your appeal and we concur with the response provided. Program Statement 5100.08 Security Designation and Custody Classification Manual provides policy and procedure regarding the Bureau of Prisons (BOP) inmate classification system. The classification of inmates is necessary to place each inmate in the most appropriate security level institution that also meets their program needs and is consistent with the BOP's mission to protect society. The above policy provides procedures and criteria for ADX referrals, hearings and transfers. The BOP designates inmates to an ADX when they have demonstrated an inability to function in a less restrictive environment without being a threat to others or the secure and orderly operation of an institution. This enhances the BOP's ability to manage some of the most disruptive and problematic inmates in the system.

A review of records reveals you have engaged in activity and conduct that creates a risk to institution security and good order and poses a risk to the safety of staff, inmates or others and to public safety. You have also been identified as participating in, organizing and/or facilitating any group misconduct that adversely affected the orderly operation of the institution. Based on the above, you were referred for ADX placement. You received notice of the ADX referral hearing on April 7, 2014. You appeared in-person at the April 9, 2014, hearing and provided oral and written statements on your behalf. Full consideration was given to all documentation received and you were made aware of the information being considered. In addition, you received a mental health assessment prior to the hearing and it was determined you were capable of functioning adequately in an ADX environment. We concur with this decision and find you meet eligibility criteria for ADX/GP placement. You have been afforded the opportunity to appeal this placement and there is no indication your due process rights were violated. Accordingly, your appeal is denied.

August 13, 2014
Date

Mary J. Hill
Acting Administrator
National Inmate Appeals *AME*

MAY 1994
U.S. DEPARTMENT OF JUSTICE



FEDERAL BUREAU OF PRISONS

Exhibit 5

1. Name Of Institution: UNITED STATES PENITENTIARY MARION, IL.
Part I - Incident Report

2. Name Of Inmate SHNEWER, Mohamad	3. Register Number 61283-066	4. Date Of Incident 11-29-2010	5. Time 5:15 p.m.
6. Place Of Incident I unit	7. Assignment in A&O inassy inassy	8. Unit I unit	
9. Incident Participation in An Unauthorized Meeting or Gathering			10. Code 315

11. Description Of Incident (Date: 12-02-10 Time: 3:00 p.m. Staff become aware of incident) A review of the NICE Vision 03-range rear camera revealed that on November 29, 2010, at approximately 5:15pm you (Shnewer, Mohamad #61283-066) gathered with several other inmates for the purpose of participating in a congregational meal. Congregational meals are authorized only on B-range as indicated by policy.

12. Signature Of Reporting Employee 	Date And Time 12-02-2010 3:09pm	13. Name And Title (Printed) M. Neumann, CSW
14. Incident Report Delivered To Above Inmate By 	15. Date Incident Report Delivered 12-3-10	16. time Incident Report Delivered 7:49am

Part II - Committee Action

17. Comments Of Inmate To Committee Regarding Above Incident

18. A. It Is The Finding Of The Committee That You: _____ Committed The Following Prohibited Act. _____ Did Not Commit A Prohibited Act.	B. _____ The Committee Is Referring The Charge(s) To The DHO For Further Hearing. C. _____ The Committee Advised The Inmate Of Its Finding And Of The Right To File An Appeal Within 15 Calendar Days.
--	---

19. Committee Decision Is Based On The Following Information

20. Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act)

21. Date And Time Of Action _____ (The UDC Chairman's Signature Next To His Name Certifies Who Sat On The UDC And That The Completed Report Accurately Reflects The UDC Proceedings.)

Chairman (Typed Name/signature) _____ Member (Typed Name) _____ Member (Typed Name) _____

Record Copy - Central File Record; Copy - DHO; Copy - Inmate After UDC Action; Copy - Inmate Within 24 Hours Of Part I Preparation
(This Form May Be Replicated Via WP)

Replaces BP-288(52) Of Jan 88

Exhibit 5

BP-A0288

INCIDENT REPORT CDFRM

JUN 10

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Part I - Incident Report

1. Institution: USP MARION			
2. Inmate's Name SHNEWER, MOHAMAD	3. Register Number 61283-066	4. Date of Incident 05/11/2012	5. Time 12:05 PM
6. Place of Incident I-UNIT (CMU)	7. Assignment CMU ORDERLY	8. Unit I UNIT	
9. Incident REFUSING TO OBEY AN ORDER		10. Prohibited Act Code(s) 307	

11. Description Of Incident (Date: 05/16/2012 Time: 8:00 AM Staff became aware of incident)

ON THE ABOVE DATE AND TIME, WHILE REVIEWING INMATE EMAIL MESSAGES IN THE TRULINCS SYSTEM, STAFF BECAME AWARE THAT INMATE MOHAMAD SHNEWER KNOWINGLY AND INTENTIONALLY DISOBEYED A STAFF ORDER. SPECIFICALLY, ON MAY 11, 2012, INMATE SHNEWER STATED IN AN OUTGOING EMAIL MESSAGE TO ABU IBRAHIM "AS FOR YOUR LAST EMAIL INQUIRING ABOUT THE ADMINISTRATION ORDERING US NOT TO MAKE SALATUL FAJR. YES, IT WAS THE ADMINISTRATION AND THEY WANTED US TO STOP PRAYING FAJR BECAUSE IT CAME IN TO EARLY AND WAS BOTHERING INMATES SLEEP. SINCE WHEN DOES THE BOP CARE SO MUCH ABOUT INMATES SLEEP ONE MAY ASK? BY ALLAH THE ONLY REASON IS THEIR HATRED OF THIS GREAT RELIGION AND ITS PEOPLE. ALHAMDULILLAH, WE HAVE NOT STOPPED OUR SALAT."

INMATES WERE NOT TOLD TO STOP PRAYING FAJR, BUT INSTRUCTED TO STOP MAKING THE PREPRATORY CALL TO PRAYER WHICH INVOLVES SHOUTING TO OTHER MUSLIM INMATES THROUGHOUT THE UNIT THAT IT WAS TIME FOR PRAYER. SHNEWER'S ADMISSION OF "WE" MAKES HIM AN IDENTIFIABLE PARTICIPANT IN THE PROHIBITED ACTION AND AS SUCH, IS GUILTY OF DISOBEYING STAFF ORDERS.

12. Typed Name/Signature of Reporting Employee T. CAPALDO <i>[Signature]</i>		13. Date And Time 5/16/2012 1:17 PM	
14. Incident Report Delivered to Above Inmate By (Type Name/Signature) <i>[Signature]</i>		15. Date Incident Report Delivered 5/16/12	16. Time Incident Report Delivered 3:00/A

Part II - Committee Action

17. Comments of Inmate to Committee Regarding Above Incident

18. A. It is the finding of the committee that you: <input type="checkbox"/> Committed the Prohibited Act as charged. <input type="checkbox"/> Did not Commit a Prohibited Act. <input type="checkbox"/> Committed Prohibited Act Code(s) _____	B. <input type="checkbox"/> The Committee is referring the Charge(s) to the DHO for further Hearing. C. <input type="checkbox"/> The Committee advised the inmate of its finding and of the right to file an appeal within 20 calendar days.
--	---

19. Committee Decision is Based on Specific Evidence as Follows:

20. Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act)

21. Date And Time Of Action _____ (The UDC Chairman's signature certifies who sat on the UDC and that the completed report accurately reflects the UDC proceedings.)

Chairman (Typed Name/Signature) _____ Member (Typed Name) _____ Member (Typed Name) _____

INSTRUCTIONS: All items outside heavy rule are for staff use only. Begin entries with the number 1 and work up. Entries not completed will be voided by staff.
 DISTRIBUTE: ORIGINAL-Central File record; COPY-1- DHO; COPY-2- Inmate After UDC Action; COPY-3- Inmate within 24 hours of Part I Preparation.

Exhibit 6