

UNCLASSIFIED//FOR PUBLIC RELEASE
**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH MUBARAK
BIN 'ATTASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI

AE321(WBA)

**Defense Motion to Permit Telephonic Access
With Family Members**

Date Filed: 29 August 2014

1. Timeliness:

This filing is timely pursuant to Military Commissions Trial Judiciary Rule of Court 3.7(b) and Rule for Military Commissions (R.M.C.) 905.

2. Relief Sought:

Mr. bin 'Atash requests that the Military Commission order Joint Task Force Guantanamo (JTF-GTMO) and the Commander, Joint Detention Group (JDG) to provide Mr. bin 'Atash with telephonic access to his family.

3. Overview:

Mr. bin 'Atash, a pretrial detainee not convicted of any offense, has a right under the First and Fifth Amendments to place telephone calls to his family. Myriad federal courts from a variety of jurisdictions have recognized that, not only is telephonic contact with family mandated by the First Amendment, such telephonic contact actually serves important security interests. Confinement facilities may only place reasonable and narrowly tailored restrictions upon pretrial

detainees' First Amendment rights if those restrictions are reasonably related to legitimate penological objectives. If restrictions are arbitrary and purposeless, the Commission may infer that those restrictions are impermissible pretrial punishment. In the instant case, the complete denial of all telephonic contact with family for a detainee held far from home for over ten years is not related to any legitimate penological objectives. JTF-GTMO has the capability to support telephone calls by detainees, and in fact the confinement facility already facilitates phone and video calls for many detainees whom, like Mr. bin 'Atash, have been deemed unlawful enemy combatants. The Bureau of Prisons permits telephone calls by prison inmates, including individuals held on serious terrorism-related charges, subject only to reasonable restrictions including monitoring and limits on frequency and duration.

In addition to a First and Fifth Amendment right to place telephone calls to family, Mr. bin 'Atash has similar rights under international law. Assuming *arguendo* that Mr. bin 'Atash is only entitled to the minimum protections of Geneva Conventions Common Article 3, the Article prohibits "outrages upon personal dignity." The United States has affirmed its obligations under Common Article 3 and indicated that "[a]ll detainees shall be treated humanely and in accordance with U.S. law, the law of war, and applicable U.S. policy." Article 71 of the Geneva Convention Relative to the Treatment of Prisoners of War provides additional protection for prisoners held at a great distance from their homes without ready access to and contact with family members. In the instant case, the arbitrary and purposeless denial of all telephone contact with family for a pretrial detainee held for more than ten years in near-complete isolation constitutes an "outrage upon personal dignity." The importance of telephonic contact is further enhanced by the United States' failure to facilitate either family visits or timely written

correspondence. Attachment D, filed under seal, contains additional facts and argument in support of this motion.

4. Burden of Proof:

As the moving party, the defense bears the burden of persuasion; the standard of proof is a preponderance of the evidence. R.M.C. 905(c)(1).

5. Facts:

- a. Joint Task Force Guantanamo (JTF-GTMO) oversees all aspects of the detention of Mr. bin 'Atash. The Joint Detention Group (JDG) is a component of JTF-GTMO that controls the physical security of and access to Mr. bin 'Atash.
- b. JTF-GTMO and JDG do not permit Mr. bin 'Atash to make any telephone calls; the prohibition includes calls to counsel, friends, and family members.
- c. Mr. bin 'Atash has previously challenged the prohibition on telephone calls to counsel. AE183, Joint Defense Motion for Telephonic Access for Effective Assistance of Counsel.
- d. JTF-GTMO has the facilities to permit detainees to make telephone calls. Other detainees also held in indefinite detention at Guantanamo Bay as "unlawful enemy combatants" are permitted to make telephone call to family. Many detainees are also permitted to make video calls through "Skype."
- e. Mr. bin 'Atash has an extremely limited ability to send written correspondence to family members. Correspondence written by Mr. bin 'Atash is [REDACTED] by JTF-GTMO. After [REDACTED] JTF-GTMO, additional time elapses before the correspondence is mailed. The amount of time taken to [REDACTED] mail correspondence has varied wildly. Significant quantities of correspondence have taken over 200 days [REDACTED] (Attachment B). The average time required [REDACTED] since 2012 is over 120 days. Mr. bin 'Atash

also has a very limited ability to send Red Cross Messages (RCMs) to family members – these messages are restricted in frequency and length and suffer from delays similar to the delays experienced with normal outgoing mail.

f. Mr. bin ‘Atash has no ability to receive in-person visits from family at Guantanamo Bay.

g. The Department of Defense and the International Committee of the Red Cross (ICRC) recently instituted a “video message” program for Mr. bin ‘Atash and the six other “high value detainees” housed in Camp 7 at Guantanamo Bay. Each HVD will be permitted to send one video message to family members every three months. However, the messages are extremely limited and do not allow for any form of interactive communication.

Detainees are permitted to designate up to five viewers. The viewers are extensively vetted by the DoD using unknown criteria, and some viewers have been denied for inexplicable reasons. While taping the video message at Guantanamo Bay, detainees must remain seated and cannot move their hands. Detainees are restricted in those topics that they are able to discuss. For example, any matters pertaining to their legal cases are not permitted, even if the topic does not involve a discussion of sensitive or classified information.

h. Video messages are not a form of contemporaneous communication. The messages are taped in advance and streamed from Guantanamo Bay to ICRC offices over the internet. Viewers are permitted to watch the message only in the ICRC office and only two times before the message is destroyed. Viewers have reported that, because the messages are streamed over the internet, they are of extremely poor quality – at times indecipherable.

i. Because of the various restrictions imposed upon the video messages, some detainees find the messages to be a source of pressure and stress. Mr. bin ‘Atash equates the

restrictions upon the messages to a form of “mental torture.” To date, three of seven high value detainees have refused video messages due to the restrictions.

- j. Mr. bin ‘Atash was detained by the United States on 29 April 2003. Since that time, for more than ten years, he has had no telephonic or in-person access to any family members.
- k. The United States Department of Justice, Federal Bureau of Prisons (BOP) administers a system of federal confinement facilities throughout the United States. BOP Program Statement No. P5264.08 (11 February 2008) governs inmate access to telephones within the federal system. It is BOP’s policy that “the Bureau provides inmates with telephone access consistent with sound correctional management” because “[m]aintaining pro-social/legal contact with family and community ties is a valuable tool in the overall correctional process.” (Attachment C).
- l. BOP permits inmates to develop “call lists” with up to thirty telephone numbers. The Associate Warden of the facility may authorize that additional numbers be added to an inmate’s call list. Inmates have a right of appeal when telephone numbers are rejected from inclusion on their call lists. Ordinarily, phone calls are limited to fifteen minutes in duration, with a total of 300 minutes per calendar month. Inmates are normally afforded an extra 100 minutes during the holiday months of November and December.
- m. On 31 January 2014, the Commission released to the defense various working papers and reports on detention conditions at Guantanamo Bay, authored by the ICRC between 2006 and 2013. The documents were released to the defense under seal. The ICRC reports and working papers contain additional facts which support Mr. bin ‘Atash’s position with respect to the instant motion. Attachment D, filed under seal, contains a summary of

relevant facts from the various ICRC documents, as well as additional argument based upon those facts.

6. Law and Argument:

I. Right to Telephonic Access to Family Members Guaranteed by First and Fifth Amendments to U.S. Constitution

In seeking to impose ever-harsher restrictions upon Mr. bin 'Atash and his co-accused's conditions of confinement, the Government frequently cites to the fact that prison officials are traditionally afforded "wide ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). However, the deference afforded to prison officials is not without limitation because "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." *Turner v. Safley*, 482 U.S. 78, 84 (1987).

Mr. bin 'Atash is not a convicted inmate. He is a pretrial detainee and, having not been convicted of any offense, he may not be "punished prior to an adjudication of guilt in accordance with due process of law." *Bell*, 441 U.S. at 535. Thus, while certain conditions of confinement with a nexus to institutional security, such as body and cell searches, may be authorized, other conditions that appear designed only to punish the detainee are not permissible. *Id.* at 539 ("[i]f a restriction or condition [upon a pretrial detainee] is not reasonably related to a legitimate goal – if it is arbitrary or purposeless – a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees...")

In *Turner v. Safley*, the Court expanded upon the line between acceptable institutional security measures and unconstitutional restrictions with specific regard to the more limited rights

afforded to post-trial prisoners. The Court found that restrictions are acceptable if they are “reasonably related” to legitimate penological objectives.” *Turner*, 482 U.S. at 87. In determining whether legitimate penological objectives exist, the Court propounded a four part test: whether there is a “valid, rational connection” between the regulation and a legitimate governmental interest, whether there are alternative means of exercising the right that remain open to the inmate, the impact of the accommodation of the constitutional right on guards and other inmates and on the allocation of prison resources, and the absence of ready alternatives to the restriction (or conversely, the existence of obvious, easy alternatives). *Id.* at 89-91. With specific regard to Mr. bin ‘Atash, when considering the relation of the restriction to a legitimate goal, legitimate penological objective, or legitimate governmental interest, one must be always mindful of the fact that Mr. bin ‘Atash is a pretrial detainee and not a convicted prisoner. For pretrial detention, the “legitimate penological interests” served by the restriction must “go beyond the traditional objectives of rehabilitation or punishment,” because the purpose of pretrial detention is not to rehabilitate or to punish. *United States v. El-Hage*, 213 F.3d 74, 81 (2nd Cir. 2000), *citing McGinnis v. Royster*, 410 U.S. 263, 273 (1973) (“it would hardly be appropriate for the State to undertake in the pretrial detention period programs to rehabilitate a man still clothed with a presumption of innocence.”).

Myriad courts from a variety of jurisdictions, when considering the issue of telephonic access to family members by both pretrial and post-trial detainees, have concluded that inmates and detainees have a First Amendment right of telephone access that is subject only to very limited restrictions (such as duration and monitoring) targeted at specific security concerns. *See e.g. Standberg v. City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986) (“[c]ourts have recognized detainees’ and prisoners’ first amendment right to telephone access”); *Washington v. Reno*, 35

F.3d 1093, 1100 (6th Cir. 1994) (“persons incarcerated in penal institutions retain their First Amendment rights to communicate with family and friends,” noting that subsequent to filing of complaint BOP regulations were changed to permit a minimum of thirty telephone numbers on inmate “call lists”); *Holloway v. Magness*, 666 F.3d 1076, 1079 (8th Cir. 2012) (“[f]ortunately, modern prison administrators believe that properly controlled inmate contacts with persons outside the prison walls such as family members serve important interests, including improved prison security and inmate rehabilitation, as well as the inmates’ First Amendment interests.”); *Johnson v. Galli*, 596 F.Supp. 135, 138 (“there are instance where the family of a detainee or inmate may live so far away [from the facility in question] as to make personal visitation impractical. The better view appears to be that there is no legitimate governmental purpose to be attained by not allowing reasonable access to the telephone, and that such use is protected by the First Amendment.”); *Hutchings v. Corum*, 501 F.Supp. 1276, 1296 (W.D. Mo. 1980) (“[i]t has been long held that inmates have the First Amendment rights to communicate with friends and relatives by means of visits, correspondence and telephone calls,” such communications are subject only to “rational limitations in the face of legitimate security interests of the penal institution.”); *Coronel v. State of Hawaii, Dept. of Corrections*, 1993 WL 147318 at 2 (9th Cir. 1993) (distinguishing First Amendment right to telephone access by pretrial detainees from more limited rights afforded to convicted felons).

When considering the instant request for Mr. bin ‘Atash to have telephonic access to family members whom he has not had meaningful contact with for over ten years, this Commission should follow established federal practice and the dictates of the Constitution. Courts have determined that telephonic access, subject only to reasonable, narrowly tailored limitations, is a First Amendment imperative. No legitimate governmental objectives in the

instant case justify JTF-GTMO's wholesale denial of telephonic access to Mr. bin 'Atash and other similarly situated pretrial detainees who have not been convicted of any offense. Analyzed under the *Turner* factors, the Government's denial of telephonic access fails the test.

Under the first *Turner* factor, the Government cannot articulate a valid, rational connection between the denial of telephone access and a legitimate governmental interest. In fact, courts and the Bureau of Prisons have adopted the reasoning that legitimate penological objectives and governmental interests are *advanced* by permitting communications with family. *See e.g. Procunier v. Martinez*, 416 U.S. 396, 412 (1974) ("the weight of professional opinion seems to be that inmate freedom to correspond with outsiders advances rather than retards the goal of rehabilitation..."); BOP Program Statement No. P5264.08, 11 February 2008 at 2 ("the Bureau provides inmates with telephone access consistent with sound correctional management."). To the extent that JTF-GTMO has a governmental interest in ensuring that phone calls to family do not jeopardize security, the facility may enact reasonable and narrowly tailored restrictions on telephone access, such as phone call monitoring of non-privileged communications, phone number verification, and reasonable limits on the amount and duration of telephone calls (such as the 300 minute per month limit established by BOP).

The BOP has successfully employed reasonable restrictions, rather than wholesale denial, even for pretrial detainees held in the federal system on the most serious of terrorism-related allegations. For example, Khalfan Khamis Mohammed was convicted on terrorism-related charges stemming from the U.S. embassy bombings in Africa, and he is currently housed at the United States Penitentiary-Administrative Maximum prison facility ("ADX") in Colorado. Because the BOP and FBI deemed that Mr. Mohammed's communications might direct or inspire attacks against the United States, the Government has imposed upon him harsh Special

Administrative Measures (SAMs) severely limiting his ability to communicate with the outside world. In addition, Mr. Mohammed is housed in the ADX's Special Security Unit – a prison within a prison, and the ADX's equivalent of Camp 7 at Guantanamo.

Even given Mr. Mohammed's high-security and high-risk status, he has been permitted to make telephone calls to immediate family since his arrival at the ADX in 2001, and he has been permitted phone calls with an additional four non-family members since 2010. *Mohammed v. Holder*, ___ F.Supp.2d.___, 2014 WL 2743935 at 4 (D. Colo. 2014). Indeed, Mr. Mohammed, a confessed member of Al Qaeda who waged a "jihad against America" and who was *convicted* of offenses including conspiracy to murder U.S. nationals and conspiracy to use weapons of mass destruction against U.S. nationals, is even permitted in-person visits with family members at the Nation's highest security civilian prison. In 2009, the FBI and BOP modified Mr. Mohammed's SAMs slightly, by prohibiting telephonic communication with his brother Nassor. Mr. Mohammed challenged the prohibition on telephone calls to Nassor, and the District Court for the District of Colorado, applying both *Turner* and the Administrative Procedures Act (APA), found the restriction to be "arbitrary and capricious." *Id.* at 13. The Court noted that, in making such a determination, it granted "full deference to the knowledge and experience of the FBI," but it nevertheless scrutinized the FBI's security-related explanation and found the explanation, with respect to Nassor, to be without merit. *Id.* at 9. The Court even went so far as to accept as fact that Mr. Mohammed would "still attempt to support and assist anti-U.S. terrorist organizations overseas in any way possible, were an opportunity to do so to present itself," but it still found that more reasonable restrictions such as real-time monitoring by linguists and analysts were adequate to account for security concerns. *Id.* at 5. In reaching its conclusion, the District Court noted that "granting Mr. Mohammed the maximum permissible opportunity to have contact with

his family (both immediate and extended) and friends serves important social and penological goals. Mr. Mohammed, obviously, retains a strong personal interest in preserving communications with his family and friends, notwithstanding his life sentence.” *Id.* at 6. The Court went on to overturn additional restrictions, including a prohibition on adding additional names to Mr. Mohammed’s approved contact list.

Mr. Mohammed’s example, which serves in stark contrast to the treatment of Mr. bin ‘Atash and his co-accused, is not unique. *See e.g. El-Hage*, 213 F.3d 74 (detainee charged with conspiring with members of al Qaeda to kill Americans, Court noted that revised Special Administrative Measures permitted an additional three phone calls to family per month with an additional seven minutes per phone call). There is no reason to believe that JTF-GTMO could not implement similar, more reasonable restrictions, particularly in light of the fact that the facility already allows telephone access and even video calls for many detainees held as unlawful enemy combatants. There is simply no justifiable explanation for why Mr. bin ‘Atash is treated so poorly compared to others charged with and even convicted of terrorism-related offenses in federal court.

In addition to a lack of a valid, rational and justifiable connection between complete telephone access with family and institutional security, under the second *Turner* factor there are no adequate alternative means for Mr. bin ‘Atash to exercise his right. Courts have found that telephone access is *itself* a right afforded by the First Amendment, particularly for pretrial detainees, and thus complete denial of telephone access is, *ipso facto*, a denial for which no alternative adequate means exist. Aside from the lack of telephone access, Mr. bin ‘Atash is not permitted to receive in-person visits from family members, and his ability to send meaningful written correspondence (including Red Cross Messages) is severely curtailed by limitations on

the amount of correspondence allowed and the time it takes JTF-GTMO [REDACTED] such correspondence (in some cases exceeding 200-300 days). While the DoD and ICRC have implemented a “video message” program, the messages are so restricted that multiple HVDs have chosen not to participate, and the messages are in any event not a substitute for contemporaneous communication. Under the third *Turner* factor, the impact of the accommodation of Mr. bin ‘Atash’s First Amendment rights would have no impact on the rights of guards or other inmates or on the allocation of prison resources. The confinement facility, as previously noted, is already equipped to handle detainee telephone access and already provides such access to many detainees without any adverse impact. Finally, under the fourth factor, ready alternatives to the complete bar on telephone access do exist in the form of limited access accompanied by restrictions such as those found in *Mohammed v. Holder* – real-time monitoring, limitations on frequency and duration, and other narrowly tailored limitations. In sum, each of the *Turner* factors in the instant case weigh in favor of permitting Mr. bin ‘Atash to exercise his First Amendment right to place telephone calls to family members.

II. Right to Telephonic Access to Family Guaranteed by International Law

In addition to his First Amendment right to telephonic access, Mr. bin ‘Atash also has a right under international law to place phone calls to family. The military commissions established by the Military Commissions Act of 2009 are international in character, being empowered to try “alien unprivileged enemy belligerents” for violations of the law of war. 10 U.S.C. §§ 948c, 948d. In *Hamdan v. Rumsfeld*, 548 U.S. 557, 629 (2006), the Supreme Court concluded, without addressing whether those similarly situated to Mr. bin ‘Atash should be afforded the greater protections of the complete Geneva Convention Relative to the Treatment of Prisoners of War, that at a minimum those detainees held at Guantanamo Bay should receive the

protections of Common Article 3 that are applicable to “non-international armed conflict.” The United States has agreed that it will “observe the requirements of the law of war, and shall apply, without regard to a detainee’s legal status, at a minimum the standards articulated in Common Article 3...” DoD Directive 2310.01E, Para. 4.2. It is the policy of the Department of Defense that “[a]ll detainees shall be treated humanely and in accordance with U.S. law, the law of war, and applicable U.S. policy.” *Id.* at Para 4.1.

International law generally recognizes that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State,” and as such it prohibits “arbitrary or unlawful interference” with the family. *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 (December 16, 1966) at Articles 17, 23 (ratified by the United States 8 June 1992). Common Article 3 to the Geneva Conventions, while not addressing specifically a detainee’s access to his family, does offer protection against “outrages upon personal dignity” – a protection that must be interpreted in light of the entire body of international law, including customary law. Specifically, customary international humanitarian law with respect to non-international armed conflicts recognizes that “persons deprived of their liberty must be allowed to receive visits from family members to the degree practicable.” ICRC, Customary IHL Database, Rule 126, available at http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule126. In practice, the ICRC facilitates thousands of these visits every year in various remote locations and conflict zones ranging from Colombia to Sri Lanka – for example, in 2002 alone the ICRC facilitated visits by 52,268 family members to 4,654 detainees. *Id.* Both customary IHL and treaty law also recognize the right of detainees in non-international armed conflicts to exchange written correspondence with family members. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-*

International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609 (June 8, 1977) at Article 5(2)(b); ICRC, Customary IHL Database, Rule 125, available at http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule125.

Beyond the protections of Common Article 3, the Geneva Convention Relative to the Treatment of Prisoners of War provides further protection aimed specifically at prisoners' contact with family members. Article 71 sets forth the minimum requirements for written correspondence (letters and cards), and provides that "[s]uch letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons." The Article further states that "[p]risoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams..."

In the instant case, the denial of all telephone access, in the context of Mr. bin 'Atash's ten years of confinement in foreign lands without any meaningful contact with members of his family, and in the absence of the in-person visits mandated by IHL, constitutes both a violation of Article 71 of the Geneva Convention Relative to the Treatment of Prisoners of War and an "outrage upon personal dignity" under Common Article 3 of the Geneva Conventions. With regard to Common Article 3, Mr. bin 'Atash's personal dignity has been degraded and violated to a severe degree by his inability to have any meaningful communication with his family members for more than ten years—in contravention of IHL which places a great emphasis upon the maintenance of family bonds through various modes of communication—causing him, at times, to give up writing to his family altogether. The United States is aware of Mr. bin 'Atash's status and has acknowledged that Mr. bin 'Atash is protected, at a minimum, by Common Article

3, but the Government has failed to take action to rectify the indignity perpetrated upon Mr. bin 'Atash by his near-complete isolation from family. With regard to Article 71, Mr. bin 'Atash's written correspondence with members of his family has not been conveyed "by the most rapid means at the disposal of the Detaining Power." Where the length of time taken [REDACTED] written correspondence has ranged from the single digits to more than 300 days, the only logical conclusion is that the Government possesses the means to quickly process correspondence but has chosen not to do so. Given the hurdles involved with written correspondence, and the fact that Mr. bin 'Atash and his co-accused are located "at a great distance from their homes," Article 71, drafted in 1949, contemplates that Mr. bin 'Atash should be permitted to send telegrams. As the use of the telegraph has been phased out, the telephone is the logical replacement in modern armed conflict for prisoners located far from family without adequate communications ability through ordinary postal routes.

For the foregoing reasons, as well as for those reasons set forth in under seal Attachment D to the instant motion, Mr. bin 'Atash requests that the Commission order JTF-GTMO and the Commander, JDG to provide Mr. bin 'Atash with telephonic access to his family.

7. Oral Argument: The defense requests oral argument.

8. Witnesses:

- A. COL John Bogdan, Commander, JDG
- B. The defense reserves the right to add to or amend this list.

9. Conference with Opposing Counsel: The Government opposes the relief sought herein.

10. Attachments:

- A. Certificate of Service
- B. Elapsed Days from Correspondence Written to Received Back from U.S. and Mailed
- C. Bureau of Prisons Program Statement No. P5264.08, 11 February 2008

- D. Facts and Argument Derived from Confidential ICRC Reports and Working Papers (AE108BB), *Filed Under Seal*
- E. Proposed Under Seal Order for Attachment D

//s//

CHERYL T. BORMANN
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//s//

JAMES E. HATCHER
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//s//

MICHAEL A. SCHWARTZ
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//s//

TODD M. SWENSEN
Capt, USAF
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Attachment A

CERTIFICATE OF SERVICE

I certify that on 29 Aug 14, I electronically filed the attached **Defense Motion to Permit Telephonic Access With Family Members** with the Trial Judiciary and served it on all counsel of record by e-mail.

//s//

CHERYL T. BORMANN

Learned Counsel

Attachment A

Attachment B

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ICRC Mail Processing for Walid bin 'Atash

August 2012-June 2013

ICRD RCM Number	Remarks/Content	Date of the RCM or date of collection of the RCM	Back from the authorities	Processing Time (days)
B001751	RCM	8/28/2012	2/4/2013	160
B001752	RCM	8/28/2012	2/4/2013	160
B003095	RCM	10/1/2012	2/4/2013	126
B004191	greeting card + 1 photo(30 pictures on P_Hold)	10/29/2012	2/4/2013	98
B004221	greeting card	10/29/2012	2/4/2013	98
B004483	greeting card	10/29/2012	2/4/2013	98
B004484	greeting card	10/29/2012	2/4/2013	98
B004928	greeting card	11/26/2012	2/4/2013	70
B005917	1 blank RCM + 3 pictures	11/26/2012	2/6/2013	72
B004907	greeting card	11/26/2012	3/1/2013	95
B004908	greeting card	11/26/2012	3/1/2013	95
B005514	greeting card	12/20/2012	3/1/2013	71
B001753	RCM	10/3/2012	3/5/2013	153
B003092	RCM	10/29/2012	3/26/2013	148
B004909	greeting card	11/26/2012	3/26/2013	120
B005013	greeting card	2/25/2013	3/26/2013	29
B005515	greeting card	2/25/2013	3/26/2013	29
B005516	greeting card	2/25/2013	3/26/2013	29
B004849		11/29/2012	4/26/2013	148
B005885	greeting card	1/28/2013	4/26/2013	88
B005886	greeting card	1/28/2013	4/26/2013	88
B002319		11/26/2012	5/17/2013	172
B004930		3/31/2013	6/13/2013	74
B005436	greeting card	3/31/2013	6/13/2013	74
B005752	RCM	12/27/2012	6/13/2013	168
B005754	RCM	1/31/2013	6/13/2013	133
B005893	greeting card	3/31/2013	6/13/2013	74
B005921	greeting card	4/29/2013	6/13/2013	45
B002315		3/18/2013	7/3/2013	107
B004929		2/25/2013	7/3/2013	128
B005014		4/1/2013	7/3/2013	93
B005755	RCM	2/4/2013	7/3/2013	149
B005920	greeting card	4/29/2013	7/3/2013	65
B005923	greeting card	4/29/2013	7/3/2013	65
B005204		5/30/2013	8/8/2013	70
B005758	RCM	3/4/2013	8/8/2013	157
B005994	greeting card	6/10/2013	8/8/2013	59
B004910		12/3/2012	8/15/2013	255
B005152		12/20/2012	8/15/2013	238
B005753	RCM	12/31/2012	8/15/2013	227
B002314		3/13/2013	8/28/2013	168
B004923		12/20/2012	8/28/2013	251
B005203	greeting card	2/4/2013	8/28/2013	205
B005437	greeting card	5/30/2013	8/28/2013	90
B005737	RCM		8/28/2013	
B005760	RCM	4/29/2013	8/28/2013	121
B005889	greeting card	5/30/2013	8/28/2013	90
B005932	greeting card	6/28/2013	8/28/2013	61
B001754	RCM	10/12/2012	In processing	

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ICRC Mail Processing for Walid bin 'Atash

August 2012-June 2013

B005759	RCM	3/4/2013	Inprocessing	
B005913	greeting card	1/28/2013	UNKOWN TO US AUTH.	
B001754	RCM	10/12/2012	In processing	
B002314		3/13/2013	8/28/2013	168
B002315		3/18/2013	7/3/2013	107
B002316		5/30/2013	10/11/2013	134
B004910		12/3/2012	8/15/2013	255
B004923		12/20/2012	8/28/2013	251
B004929		2/25/2013	7/3/2013	128
B005014		4/1/2013	7/3/2013	93
B005152		12/20/2012	8/15/2013	238
B005203		2/4/2013	8/28/2013	205
B005204		5/30/2013	8/8/2013	70
B005437	greeting card	5/30/2013	8/28/2013	90
B005737	RCM		8/28/2013	
B005753	RCM	12/21/2012	8/15/2013	237
B005755	RCM	2/4/2013	7/3/2013	149
B005758	RCM	3/4/2013	8/8/2013	157
B005759	RCM	3/4/2013	10/11/2013	221
B005760	RCM	4/29/2013	8/28/2013	121
B005880	greeting card	5/13/2013	10/11/2013	151
B005889	greeting card	5/30/2013	8/28/2013	90
B005920	greeting card	4/29/2013	7/3/2013	65
B005923	greeting card	4/29/2013	7/3/2013	65
B005932	greeting card	6/28/2013	8/28/2013	61
B005994	greeting card	6/10/2013	8/8/2013	59

Attachment C



Program Statement

OPI: CPD/CPB
NUMBER: P5264.08
DATE: 1/24/2008
SUBJECT: Inmate Telephone
Regulations

"CORRECTED COPY 2/11/2008"

Boxed Bold - Federal Regulation

Regular Type - Implementing Information

1. PURPOSE AND SCOPE

§ 540.100 Purpose and Scope.

a. The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. However, limitations and conditions may be imposed upon an inmate's telephone privileges to ensure that these are consistent with other aspects of the Bureau's correctional management responsibilities. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).

This Program Statement provides national policy and procedure regarding inmate telephone privileges within Bureau of Prisons (BOP) institutions and contract facilities.

Maintaining pro-social/legal contact with family and community ties is a valuable tool in the overall correctional process. With this objective in mind, the Bureau provides inmates with several means of maintaining such contacts. Primary among these

is written correspondence, supplemented by telephone and visiting privileges.

Although there is no constitutional right for inmates to have unrestricted telephone communication, particularly when alternate methods of communication are readily available, the Bureau provides inmates with telephone access consistent with sound correctional management.

2. **SUMMARY OF CHANGES.** This Program Statement incorporates the following changes:

- References to the Washington v. Reno settlement agreement have been deleted;
- The provision allowing a special extended time frame of 120 days for inmates to file Administrative Remedies related to the telephone charges or credits has been deleted;
- The number of times inmates are allowed to submit proposed changes to their telephone list has been changed from three times per month to once per calendar month; and,
- The requirement that staff forward copies of Institution Supplements to the Central Office, Office of the General Counsel, Litigation Branch has been deleted.
- Adds guidance for inmate use of non-ITS telephones.
- Removes the language requiring Unit staff to approve inmates telephone number request form.
- Provides guidance for inmates administering their own phone lists via TRULINCS.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. All inmates will be afforded the opportunity to maintain family and community contact via the telephone consistent with institution and community safety;

b. Inmates will be responsible for the expense of telephone use; and,

c. All institutions will establish monitoring procedures to preserve the institution's security, orderly management and safety of the community.

4. DIRECTIVES AFFECTED

a. Directive Rescinded

P5264.07 Telephone Regulations for Inmates (1/31/02)

b. Directives Referenced

P1315.07 Inmate Legal Activities (11/5/99)
P1330.16 Administrative Remedy Program (12/31/07)
P1480.05 News Media Contacts (9/21/00)
P4500.05 Trust Fund/Deposit Fund Manual (1/22/07)
P5100.08 Security Designation and Custody Classification Manual (9/12/06)
P5265.11 Correspondence (7/9/99)
P5267.08 Visiting Regulations (5/11/06)
P5270.07 Inmate Discipline and Special Housing Units (12/29/87)
P5360.09 Religious Beliefs and Practices (12/31/04)
P5380.08 Inmate Financial Responsibility Program (8/15/05)
P7331.04 Pretrial Inmates (1/31/03)

c. Rules cited and/or referenced in this Program Statement are contained in 28 CFR part 540, subparts A-B, D, E, and I; 28 CFR part 541, subparts A-B; 28 CFR part 542, subpart B; 28 CFR part 543, subpart B, 28 CFR part 545, subpart B, 28 CFR part 548, and 28 CFR part 551, subpart J.

5. STANDARDS REFERENCED

a. American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4497, 4-4271, 4-4272, and 4-4273

b. American Correctional Association 4th Edition Standards for Adult Local Detention Facilities: 4-ALDF-6A-02, 4-ALDF-6A-05, 4-ALDF-2A-65, 4-ALDF-2A-66, 4-ALDF-5B-11, and 4-ALDF-5B-12

c. American Correctional Association 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-5D-01

6. **INSTITUTION SUPPLEMENT.** A local Institution Supplement is required and must include the following information:

- a. The maximum length of telephone calls, ordinarily 15 minutes;
- b. The minimum time frames between completed calls and the maximum number of incomplete call attempts per day;
- c. Telephone access procedures for inmates on "days off" or "evening shift," workers;
- d. Establish procedures for those inmates who exhaust the 300 minutes per calendar month limitation to receive additional minutes for good cause;
- e. Establish procedures when a staff assisted call may be made for good cause, including procedures for Pretrial and Holdover inmates.

The institution will involve the Regional Correctional Programs Administrator in developing the Institution Supplement.

7. PRETRIAL, HOLDOVER, AND/OR DETAINEE PROCEDURES. The procedures contained in this Program Statement apply only to institutions where individual Phone Access Codes (PAC) are utilized.

a. **Pretrial Inmates.** The Public Safety Factor (PSF) Serious Telephone Abuse applies to sentenced inmates and therefore, does not apply to pretrial inmates. However, if institution staff receive information about a pretrial inmate that may jeopardize the security and safety of the institution or community, staff will follow the procedures outlined in Section 13 of this Program Statement.

b. **Holdover Inmates.** Inmates with the PSF Serious Telephone Abuse will not be permitted access to the Inmate Telephone System (ITS), except as provided in § 540.101(e) or § 540.105©.

c. **Detainee Inmates.** A detainee of the Immigration and Customs Enforcement (ICE), denoted by the Admission/Release Status (ARS) code of A-INS, who has completed a federal sentence, may have a PSF of Serious Telephone Abuse. The detainee will not be permitted access to ITS, except as provided in § 540.101(e) or § 540.105(c). If institution staff receive information about an immigration detainee that may jeopardize the security and safety of the institution or community, staff will follow the procedures outlined in Section 13 of this Program Statement.

8. **PROCEDURES.** The Bureau's Inmate Telephone System is a calling system that is available in all institutions operated by the BOP.

To ensure the safety and security of the institution and community, inmates must place all personal telephone calls through the ITS and must not circumvent it via call forwarding, including automatic electronic forwarding or any similar telephone function. Additionally toll-free or credit card calls are not authorized, examples include telephone calls to 1-800, 1-888, 1-877, 1-866, 1-900, 1-976, or to credit card access numbers.

a. **Warden's Authority.**

b. Except as provided in this rule, the Warden shall permit an inmate who has not been restricted from telephone use as the result of a specific institutional disciplinary sanction to make at least one telephone call each month.

Wardens are responsible for implementing and maintaining an inmate telephone program within their institution. In establishing an institution telephone program, Wardens should consider such variables as the size and complexity of the institution. The Warden has the authority to restrict or suspend temporarily an inmate's regular telephone privilege when there is reasonable suspicion that the inmate has acted in a way that would indicate a threat to the institution's good order or security. Wardens may restrict telephone privileges only in accordance with Section 13 of this Program Statement.

Reasonable suspicion exists when facts and circumstances indicate that the inmate is engaged in, or attempting to engage in, criminal or other prohibited behavior using the telephone. The Warden has the authority to restrict or suspend temporarily an inmate's regular telephone privilege when there is a reasonable suspicion that the inmate has acted in a way that threatens the safety, security, or good order of the institution, or the protection of the public. Reasonable suspicion may be based on reliable, confidential information gathered through intelligence that identifies the inmate in question. In determining reasonable suspicion, the available information should reasonably lead a person with correctional experience to suspect the inmate is engaged in criminal or other prohibited behavior using the telephone system.

b. **Telephone List Preparation and Submission.**

§ 540.101. Procedures.

a. Telephone List Preparation. An inmate telephone call shall ordinarily be made to a number identified on the inmate's official telephone list. This list ordinarily may contain up to 30 numbers. The Associate Warden may authorize the placement of additional numbers on an inmate's telephone list based on the inmate's individual situation, e.g., size of family.

(1) During the admission and orientation process, an inmate who chooses to have telephone privileges shall prepare a proposed telephone list. At the time of submission, the inmate shall acknowledge that, to the best of the inmate's knowledge, the person or persons on the list are agreeable to receiving the inmate's telephone call and that the proposed calls are to be made for a purpose allowable under Bureau policy or institution guidelines.

(2) Except as provided in paragraph (a) (3) of this section, telephone numbers requested by an inmate ordinarily will be placed on the inmate's telephone list. When an inmate requests the placement of numbers for persons other than for immediate family or those persons already approved for the inmate's visiting list, staff ordinarily will notify those persons in writing that their numbers have been placed on the inmate's telephone list. The notice advises the recipient that the recipient's number will be removed from the list if the recipient makes a written request to the institution, or upon the written request of the inmate, or as provided in paragraph (a) (3) of this section.

(3) The Associate Warden may deny placement of a telephone number on an inmate's telephone list if the Associate Warden determines that there is a threat to institution security or good order, or a threat to the public. Any disapproval must be documented in writing to both the inmate and the proposed recipient. As with concerns about any correctional issue, including any portion of these telephone regulations, an inmate may appeal the denial through the administrative remedy procedure (see 28 CFR part 542). The Associate Warden will notify the denied recipient that he or she may appeal the denial by writing to the Warden within 15 days of the receipt of the denial.

Inmates with access to TRULINCS workstations which provide access to telephone list updates shall generate and maintain their lists using TRULINCS. These inmates will not be required to submit a Telephone Number request form (BP-505). All other inmates shall follow the process below.

An inmate who wishes to have telephone privileges must submit a Telephone Number Request form (BP-505) to unit staff. Their telephone list ordinarily may contain up to 30 telephone numbers.

Inmates may submit telephone numbers for any person they choose, including numbers for courts, elected officials and members of the news media. Attorneys may be included on an inmate's telephone list with the understanding that such calls are subject to monitoring.

Unit staff shall sign the Telephone Number Request form verifying the identity of the inmate that has hand delivered the form to the staff member. Once an inmate submits a list, it will be processed within seven calendar days.

Once unit staff sign the BP-505, it must be forwarded to ITS staff in a secure manner and within the time frames established by this Program Statement. At no time will the BP-505 be returned to the inmate or handled by another inmate.

This time frame may be extended if the total number of changes is so large that unit staff or ITS staff cannot process them and still perform their normal duties.

c. Telephone List Modifications.

b. Telephone List Update. Each Warden shall establish procedures to allow an inmate the opportunity to submit telephone list changes on at least a quarterly basis.

An inmate may submit proposed changes to his or her telephone list once per calendar month, unless staff determine that the inmate has a demonstrated need for more prompt communication.

In determining if a more frequent change is to be permitted due to a demonstrated need for prompt communication, staff must rely on their professional judgment and evaluate each request on a case-by-case basis.

Placing additional numbers (above 30) on an inmate's telephone list is within the Associate Warden's discretion. While 30 numbers should meet the need of most inmates, there may be isolated situations when additional numbers may be warranted.

For example, an inmate who has a large family may wish to place additional family members on the telephone list. Additional numbers may also be warranted for an inmate who wishes to place both work and home telephone numbers for his or her spouse and children.

c. Telephone Access Codes. An inmate may not possess another inmate's telephone access code number. An inmate may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff.

d. **Call Blocking.** The Associate Warden has authority to block a number on an inmate account in a case-by-case determination. In such cases, the Associate Warden or designee must notify the inmate of an administrative block, ordinarily within five calendar days following the denial or removal of the number.

For security reasons, the Associate Warden also has the authority to block telephone numbers from being called by all inmates at their institution. Examples of numbers blocked institution wide include, but are not limited to gambling lines, etc.

Requests for BOP-wide blocking of telephone numbers shall be approved by the Chief, Intelligence Section or his/her designee.

Telephone numbers for Victims and Witnesses (as defined in 28 C.F.R. § 151-151 a. & b.) that have requested notification regarding an inmate at a Bureau facility will be blocked at the facility where the inmate is housed.

e. **Call Blocking by Recipient.** In ITS, the call recipient has the capability through his or her home telephone to deny and/or block further telephone calls from the inmate. A voice prompt will direct the called party through the process. This capability is available for direct-dial and collect calls from an inmate.

Once the recipient blocks a telephone number, the recipient can unblock the number only when he or she sends a written request for reinstatement. To ensure the called party's identity, the request for reinstatement must include a copy of a recent telephone bill. Trust Fund staff will process this request expeditiously.

In the event that staff receive a telephonic request from a call recipient to have his/her telephone number blocked from an inmate's telephone list, unit staff may request that the ITS

technician place a temporary suspension, not to exceed 20 calendar days, on an inmate calling that specific telephone number. Unit staff should take reasonable steps to verify the identity of the person making the request (e.g., by calling the number to be blocked). The call recipient should be informed that the blocking of the number is temporary, and that he or she must submit a prompt written request to make it permanent.

Copies of written documentation, blocking or unblocking a telephone number (at the recipient's request or the Associate Warden's discretion) must be forwarded to Trust Fund staff in the Financial Management office.

f. Limitations on Inmate Telephone Calls.

d. Placement and Duration of Telephone Call. The placement and duration of any telephone call is subject to availability of inmate funds. Ordinarily, an inmate who has sufficient funds is allowed at least three minutes for a telephone call. The Warden may limit the maximum length of telephone calling based on the situation at that institution (e.g., institution population or usage demand).

e. Exception. The Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates who are new arrivals to the institution, including new commitments and transfers; inmates confined at Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers; pretrial inmates; inmates in holdover status; inmates who are without funds (see § 540.105(b)); and in cases of family emergencies.

The Warden will establish the maximum length of telephone calls, ordinarily 15 minutes. A warning tone ordinarily will be provided approximately one minute before the call is disconnected. This applies to both debit and collect telephone calls. The Warden determines the interval waiting period between completed telephone calls.

Inmates with ITS accounts are limited to 300 minutes per calendar month. This applies to all inmates with an ITS account in Bureau institutions, and may be used for any combination of collect or direct-dial calls at the inmate's discretion. Ordinarily, the inmates will be allowed an extra 100 minutes per month in November and December.

Inmates who exhaust their 300 minute limitation may be provided additional minutes, at the Warden's discretion, for good cause.

The 300 minutes per calendar month limitation does not apply to an inmate's ability to place unmonitored legal telephone calls.

g. **Hours of Telephone Operation.** The hours of telephone operation begin at 6:00 AM and end no later than 11:30 PM. Inmate telephones will not be available from at least 11:30 PM to 6:00 AM. Inmate access to telephones will normally be limited during the following times, Monday through Friday, not including holidays:

7:30 am until 10:30 am; and,
12:30 pm until after 4:00 pm count.

Inmates are expected to be at their work assignments and must not use the telephone during their work hours. For inmates who work varied work shifts, at local discretion, institutions may leave one telephone per unit available for inmates on "days off," or "evening shift" such as food service workers, UNICOR workers, etc. Staff are encouraged to take disciplinary action if an inmate leaves his or her work assignment to place a telephone call(s) without the appropriate institution staff member's prior approval.

These restrictions should not be imposed in Pretrial/Holdover institutions or Pretrial/Holdover Units where inmates are not required to work and generally have more need for telephone access during the day to prepare for trial.

h. **Complaints.** As with any complaint regarding any correctional issue, an inmate may use procedures outlined in the Program Statement on the Administrative Remedy Program to resolve disputes concerning their telephone privileges, e.g. lists, access, accounts, and services.

9. **MONITORING OF INMATE TELEPHONE CALLS.**

§ 540.102 Monitoring of Inmate Telephone Calls.

The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

As part of the admission and orientation process, inmates will be advised of the procedures for placing monitored and unmonitored telephone calls.

The notification to inmates will be documented on the Acknowledgment of Inmate form (BP-408) and then filed in the inmate Central File.

In addition, a notice will be placed, in both Spanish and English, at all monitored telephone locations within the institution advising the user that all conversations from that telephone are subject to monitoring and that using the telephone constitutes consent to this monitoring. A notice will advise inmates to contact their unit team to request an unmonitored attorney telephone call. The SIS must ensure that the notice(s) is placed at all monitored telephone locations within the institution.

Requests for information (e.g., subpoenas) on monitored calls should be processed in accordance with the Program Statement Recorded Inmate Telephone Conversations, Requests for Production. The Bureau does not allow inmates to send or receive facsimile communications.

10. INMATE TELEPHONE CALLS TO ATTORNEYS.

§ 540.103 Inmate Telephone Calls to Attorneys.

The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

The Bureau provides each inmate with several methods to maintain confidential contact with his or her attorney. For example:

- inmate-attorney correspondence is covered under the special mail provisions;
- private inmate-attorney visits are provided; and,
- the inmate is afforded the opportunity to place an occasional unmonitored call to his or her attorney.

Based on these provisions, frequent confidential inmate-attorney calls should be allowed only when an inmate demonstrates that communication with his or her attorney by other means is not adequate. For example, when the inmate or the inmate's attorney can demonstrate an imminent court deadline (see the Program Statements Inmate Correspondence or Inmate Legal Activities).

Staff are to make reasonable efforts to verify unmonitored calls placed on an inmate's behalf are to an attorney's office. Inmates are responsible for the expense of unmonitored attorney telephone calls. When possible, it is preferred that inmates place unmonitored legal calls collect. Third-party or three-way calls are not authorized.

11. **INMATE USE OF NON-ITS TELEPHONES (Non-attorney calls).** On rare occasion, during times of crisis, staff designated by the Warden may find the need to allow inmates to place telephone calls outside the Inmate Telephone System. These calls should be placed on telephones that are set to record the conversation and shall follow the guidelines detailed below.

a. **Additional monitored non-ITS telephones must be operated as follows:**

(1) Inmates using the telephones must have read and signed the Acknowledgment of Inmate form (BP-408) indicating their understanding that telephone calls on that device are subject to monitoring;

(2) A notice must be placed, in both English and Spanish, above or near the telephone indicating that all calls are subject to monitoring, and that using the telephone constitutes consent to such monitoring. The notice should also indicate that the telephone is for inmate use only. Staff are not permitted to use the telephone because staff telephone calls may not be monitored;

(3) The telephone must be placed in a secure area (e.g., a locked office);

(4) The telephone must be set to record telephone calls;

(5) Staff coordinating the call shall notify the SIS staff in writing via email that telephone call was placed and shall include the following; and

- The date/time, telephone number, and name of the person being called
- The name and register number of the inmate placing the call
- A brief reason for the call.

(6) SIS staff shall be responsible for inputting this data into the recording system to ensure the call recording can identify the inmate on the telephone. This data must be entered within seven calendar days.

b. Institutional Authorization Procedures for Additional Monitored Non-ITS Telephones (Non-ITS)

PS 5360, expressly provides for an additional monitored inmate telephone located in the Chapel area. As such, the procedures in this document for authorizing that single telephone do not apply. These procedures apply, rather, to additional monitored inmate telephones beyond the single additional telephone permitted by the religious policy (e.g., telephones located in the Lieutenant's office, the Unit Team office).

The following procedures must be followed when requesting additional monitored inmate telephones:

(1) The Warden shall send a request to the Regional Director for consideration and identify the extraordinary reasons justifying the need for additional telephones; and

(2) If approved by the Regional Director, written notification of approval shall be provided to the Warden and the Administration Division's Trust Fund Branch (TFB) staff for processing.

12. RESPONSIBILITY FOR INMATE MISUSE OF TELEPHONES.**§ 540.104 Responsibility for inmate misuse of telephones.**

The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See part 541, subpart B)

Inmates violating this policy may be subject to disciplinary action pursuant to 28 CFR part 541, subpart B, and the policy on Inmate Discipline.

§540.105 Expenses of Inmate Telephone Use.

a. An inmate is responsible for the expenses of inmate telephone use. Such expenses may include a fee for replacement of an inmate's telephone access code that is used in an institution which has implemented debit billing for inmate calls. Each inmate is responsible for staying aware of his or her account balance through the automated process provided by the system. Third party billing and electronic transfer of a call to a third party are prohibited.

b. The Warden shall provide at least one collect call each month for an inmate who is without funds. An inmate without funds is defined as an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days. The Warden may increase the number of collect calls based upon local institution conditions (e.g., institution population, staff resources, and usage demand). To prevent abuses of this provision (e.g., inmate shows a pattern of depleting his or her commissary funds prior to placing collect calls), the Warden may impose restrictions on the provisions of this paragraph b.

c. The Warden may direct the government to bear the expense of inmate telephone use or allow a call to be made collect under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.

13. **TELEPHONE RESTRICTIONS IMPOSED BY THE WARDEN.** Inmates may be subject to telephone restrictions imposed by the Warden to protect the safety, security, and good order of the institution, as well as to protect the public. Telephone restrictions imposed under the authority of this section are separate and apart from telephone restrictions imposed by the UDC or DHO following formal and completed inmate discipline proceedings.

Inmates with telephone restrictions are still entitled to place at least one telephone call per month, unless also under a sanction of telephone restriction the UDC or DHO imposed.

a. **Authorized Circumstances.** Inmates may be subject to telephone restrictions under this section in the following two circumstances:

(1) Public Safety Factor (PSF). An inmate whose current offense, prior history, or threat characteristics indicate a propensity to abuse telephone privileges will be assigned the PSF - Serious Telephone Abuse. If an inmate is assigned the PSF for Serious Telephone Abuse (see the Security Designation and Custody Classification Manual), a telephone restriction is authorized. Telephone restrictions imposed under these circumstances are discretionary and necessary to ensure the institution's safety, security, good order and/or to protect the public. When deemed necessary, the inmate's Unit Manager will ordinarily recommend this type of restriction to the Warden for final decision making.

Upon his/her initial commitment or redesignation, an inmate with a PSF for Serious Telephone Abuse will not be authorized use of the ITS until classified by the unit team. Inmates identified at their initial classification as requiring telephone restrictions will not be permitted access to the ITS until after the final review by the Warden.

(2) Pending Investigation or Disciplinary Action for Possible Telephone Abuse. If an inmate is pending an investigation or disciplinary action for possible telephone abuse, a partial or total telephone restriction is authorized. Telephone restrictions imposed under these circumstances are discretionary and necessary to ensure the institution's safety, security, or good order, and/or to protect the public. When deemed necessary, the Special Investigative Supervisor's office will ordinarily recommend this type of restriction. Any telephone restriction recommended by the SIS office may only be imposed with the Warden's approval, in accordance with the procedures outlined in this section.

b. Procedures for Imposing or Removing Telephone Restrictions. The following procedures must be followed when imposing, removing, or renewing, a telephone restriction under this section:

(1) The appropriate staff member recommends a telephone restriction to the Warden by completing the Request for Telephone Restriction form (BP-740.052). The recommending staff member should describe briefly the reason for recommending a telephone restriction, as well as the extent of the proposed restriction.

For example, staff may recommend reducing an inmate's telephone use to 100 minutes per month rather than a total restriction, if such a restriction would sufficiently protect the safety, security, or good order of the institution, or protect the public;

(2) The Warden will review the recommendation and either approve, modify, or deny the restriction. If the Warden approves a restriction, such decision must be based on the conclusion that it is necessary to protect the institution's safety, security, or good order, or to protect the public;

(3) If the Warden approves a telephone restriction, a copy of the completed form should be provided to the inmate, the Trust Fund Office, and placed in Section 3 of the inmate's Central File;

(4) Telephone restrictions imposed by the Warden due to a PSF for Serious Telephone Abuse must be reviewed at least every six months, ordinarily in conjunction with the inmate's Program Review, to determine if the restriction should continue or be modified. A decision to continue a current telephone restriction imposed under this section requires no further action, but must be documented in the Program Review Report.

Any proposed change to a current telephone restriction must be made according to these procedures, and requires the Warden's approval. If appropriate, an inmate's telephone privileges can be gradually restored, based on demonstrated responsibility documented by the inmate's Unit Team or other staff;

(5) Telephone restrictions imposed pending an investigation or pending disciplinary action for possible telephone abuse are limited to a period of 30 days. If an additional 30 day period is required to complete either the investigation or disciplinary process, the Warden must re-authorize the restriction using these procedures. Specifically, the Warden's approval must be obtained on another Request for Telephone Restriction form (BP-740.052). Unless re-authorized in this manner, Trust Fund staff will obtain the Warden's approval for reinstatement or continued restrictions every 30 days.

Each subsequent restriction period is limited to 30 days. Staff should make every effort to complete investigations and disciplinary proceedings for possible telephone abuse within the first 30 day period of the telephone restriction;

(6) Inmates with telephone restrictions under this section are still entitled to place at least one telephone call per month, unless also under a sanction of telephone restriction the UDC or DHO imposed following formal, and completed, inmate discipline proceedings. Ordinarily, such telephone calls are placed through the inmate telephone system, not by staff; and,

(7) Inmates may challenge telephone restrictions imposed under this section through the Administrative Remedy Program.

/s/

Harley G. Lappin
Director

Attachment D

Under Seal Placeholder

United States v. KSM et al.

APPELLATE EXHIBIT 321 (WBA)

(Pages 41-50)

UNDER SEAL

Defense Motion

**APPELLATE EXHIBIT 321 (WBA) is located in
the original record of trial.**

**POC: Chief, Office of Court Administration
Office of Military Commissions**

United States v. KSM et al.

APPELLATE EXHIBIT 321 (WBA)

Attachment E

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD,
WALID MUHAMMAD SALIH MUBARAK
BIN 'ATASH,
RAMZI BIN AL SHIBH,
ALI ABDUL AZIZ ALI,
MUSTAFA AHMED ADAM
AL HAWSAWI

AE _____

**Order to Seal Attachment D of
AE 321(WBA)**

Date Filed: _____

Upon consideration of the submissions of Mr. bin 'Atash contained in the defense's motion for an order to seal Attachment D of AE 321(WBA) Defense Motion to Permit Telephonic Access With Family Members, this Commission finds that an order sealing Attachment D of AE321(WBA) is necessary to protect privileged information from being disclosed to parties outside the privilege. Accordingly, pursuant to Rule 3, paragraph 5n of the Rules of court, this commission hereby orders that Attachment D of AE321(WBA) is sealed.

So ORDERED this _____ 2014.

JAMES L. POHL
COL, JA, USA
Military Judge