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Recipients: SPD
(enclosure)

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The Permanent Mission of the United States of America presents its compliments to the Office of the High Commissioner for Human Rights and to Mr. Juan Méndez, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The United States thanks the Special Rapporteur for his November 29, 2011 letter regarding Messrs. Syed Fahad Hashmi, Zaid Safarini, and "other individuals suspected or convicted of terrorism-related offenses." We understand that this letter was sent just prior to the Special Rapporteur's receipt of our November 30, 2011 response to the Special Rapporteur's letter on solitary confinement, dated September 16, 2011. Because the Special Rapporteur's most recent letter raises a variety of issues, some of which were also raised in a previous letter and addressed in our previous response, we focus here on the alleged use of Special Administrative Measures (SAMs) on Messrs. Hashmi, Safarini, and other individuals housed in federal facilities.

Title 28 of the Code of Federal Regulations (CFR), Part 501, authorizes the Director of the Federal Bureau of Prisons (Director), upon the direction of the Attorney General, to impose Special Administrative Measures (SAMs) on a sentenced inmate or an inmate being held pending a criminal trial. The SAMs place various restrictions on the inmate's conditions of confinement. The SAMs may include, but are not limited to, placing an inmate in administrative detention and restricting social visits, mail privileges, phone calls, access to other inmates, and access to the media. *See* 28 CFR. §§501.2(a), 501.3(a).

SAMs can only be implemented in two well-defined and limited circumstances. One basis is if the measures are reasonably necessary to prevent disclosure of classified information, *i.e.*, that the unauthorized disclosure of such information would pose a threat to the national security, and that there is a danger that the inmate will disclose such information (national security cases). *See* 28 CFR § 501.2(a). The other basis is that there is substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons (acts of violence and terrorism cases). *See* 28 CFR § 501.3(a).

SAMs for national security cases are based upon written certification to the Attorney General by the head of a member agency of the United States intelligence community that the criteria for imposing such measures have been met. *See* 28 CFR § 501.2(a). SAMs for acts of violence and terrorism cases can be implemented only after written notification to the Director by the Attorney General or, at the Attorney General's direction, by the head of a federal law enforcement or intelligence agency, that the criteria for imposing such measures have been met. *See* 28 CFR § 501.3(a).

SAMs are imposed for limited periods of time, subject to renewal. In a national security case, an inmate may initially be placed on SAMs for a period of time as determined by the Director, up to one year. *See* 28 CFR § 501.2(c). In acts-of-violence or terrorism cases, SAMs may be imposed on an inmate for up to 120 days or, with the approval of the Attorney General, a longer

DIPLOMATIC NOTE

period of time not to exceed one year. *See* 28 CFR § 501.3 (c). SAMs in both types of cases may be extended in increments not to exceed one year at a time if the Attorney General and the Director receive written certifications from the head of a federal law enforcement or intelligence agency as appropriate, that there is a continuing need and basis for the imposition of the SAMs. *See* 28 CFR §§ 501.2(c), 501.3(c).

Inmates under SAMs are afforded due process. The affected inmate, as soon as practicable, is provided written notification of the restrictions imposed and the basis for these restrictions. The notice's description of the basis for the SAMs may be limited in the interest of prison security or safety or to protect against acts of violence or terrorism. The inmate signs for and receives a copy of the notification. *See* 28 CFR §§ 501.2(b), 501.3(b). The inmate may seek review or modification of any special restrictions through the Federal Bureau of Prisons' Administrative Remedy Program. *See* 28 CFR §§ 501.2(d), 501.3(e). Inmates with SAMs continue to have privileged communications with their attorneys, except in certain narrow circumstances. *See* 28 C.F.R. 501.3(d).

SAMs are subject to strict controls, as their implementation may occur only upon written notification by the Attorney General, or at his or her direction, by the head of a federal law enforcement or intelligence agency. It is not the intention of the Bureau of Prisons that the restrictions imposed in these special cases routinely include complete curtailment of privileges, including all means of access, but rather the SAMs are meant to allow the imposition of appropriate limitations, as needed. *See, e.g.*, 60 FR 53490; 61 FR 25120; 62 FR 33730 – 33731.

As of December 2011, the inmate population of the Bureau of Prisons was approximately 218,000. Out of these inmates, currently, there are 45 inmates with SAMs. The Administrative Maximum Facility in Florence, Colorado houses 33 inmates with SAMs. SAMs were never imposed for Zaid Safarini.

The Permanent Mission of the United States of America thanks the Special Rapporteur for his dedicated work and avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

The Permanent Mission of the
United States of America, Geneva,

February 17, 2012.

