

Exhibit Q-1

Mohammed v. Holder

Civil Action No. 07-cv-02697-MSK-BNB

**Declaration of ADX Associate Warden
Louis J. Milusnic**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-cv-02697-MSK-BNB

KHALFAN KHAMIS MOHAMMED,

Plaintiff,

v.

ERIC HOLDER, the U.S. Attorney General,
HARLEY LAPPIN, Director of Federal Bureau of Prisons,
R. WILEY, ADX Warden,
HARRELL WATTS, Administrator of National Inmate Appeals, and
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

**DECLARATION OF ADX ASSOCIATE WARDEN
LOUIS J. MILUSNIC**

I, Louis J. Milusnic, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records reasonably relied upon by me in the course of my employment, hereby make the following declaration relating to the above-entitled matter.

I. Background

1. I am the Associate Warden at the United States Department of Justice, Federal Bureau of Prisons (“Bureau”) facility known as the United States Penitentiary - Administrative Maximum (“ADX”), Florence, Colorado. I have been employed with the Bureau, in positions of increasing responsibility, since January 1996. These positions have included Camp Administrator/Executive Assistant at the Federal Correctional

Institution in Texarkana, Texas; Chief of Designations at the Designation and Sentence Computation Center in Grand Prairie, Texas; and Associate Warden of the United States Penitentiary - High Security in Florence, Colorado. In May 2010, I was named Associate Warden at the ADX.

2. As part of my duties as Associate Warden at the ADX, I am responsible for planning, organizing, supervising, and evaluating diversified operations within the institution. These responsibilities cover a number of departments within the institution, including, but not limited to, Unit Management, Correctional Services, Computer Services, Legal Services, Education/Recreation, Psychology, and Case Management Coordinators/Inmate Systems Management.

3. I have knowledge of the operation of all units at the ADX, including, but not limited to, general population units and the Special Security Unit, also known as “H Unit.” Inmates with Special Administrative Measures, or SAMs, are housed in H Unit. Inmates with court-imposed communications restrictions are also sometimes housed in H Unit.

4. Plaintiff Khalfan Khamis Mohammed (“Plaintiff”), who is subject to SAMs, is incarcerated in H Unit at the ADX. Plaintiff’s SAMs were most recently renewed on December 9, 2010. *See* Notification of Extension of Special Administrative Measures, Exh. Q-2.¹

¹ I have reviewed the Bureau documents attached as exhibits to this declaration, and I hereby certify that they are true and correct copies of documents maintained in Bureau files.

5. Plaintiff recently lost non-legal telephone privileges for a period of one month after he circumvented the SAMs to speak by telephone with three persons with whom he was not authorized to have telephone contact. *See* December 7, 2010, Notification of Suspension of Non-Legal Telephone Privileges, Exh. Q-3. These unauthorized conversations occurred during telephone conversations with persons with whom Plaintiff is authorized to speak pursuant to the SAMs.

II. The ADX Special Security Unit (“H Unit”)

6. The ADX is the most secure prison in the federal system. It is designed to house inmates who require an uncommon level of security. The unique security and control procedures implemented to control these inmates are designed to enhance the safety of staff, inmates, and visitors. All inmates at the ADX are permitted non-contact visits (legal or social).

7. An inmate’s incarceration at the ADX does not impact the duration of his sentence; his parole eligibility, if applicable; or his good-time credits. An ADX inmate may be disciplined and receive a sanction of loss of good-time credits, in the same manner as an inmate in any other Bureau institution.

8. Inmates with SAMs are housed together in a single unit — H Unit — to ensure that they are not able to transmit unauthorized communications through other inmates who are not subject to similar communications restrictions.

9. Access to H Unit is no different from access to any other unit at ADX.

Access to all ADX housing units is limited to authorized personnel to ensure the safety and security of the institution.

10. Like all ADX inmates, H Unit inmates are single-celled. Each cell in H Unit has approximately 75.5 square feet of living space. H Unit cells have approximately the same amount of living space as the cells in the ADX general population units. Cells in H Unit are identical in size to the cells in the ADX Step-Down Program units.

11. Like the cells in the ADX Step-Down Program units, each cell in H Unit has a solid outer door with a window that looks out onto the range. The cell door is configured in a manner that allows sound to travel, permitting inmates to converse with persons passing by.

12. Like the cells in the ADX general population units and the ADX Step-Down Program units, each cell in H Unit has a window that looks outside, providing the inmate with natural lighting.

13. Like the cells in the ADX general population and ADX Step-Down Program units, each cell in H Unit has a light, which the inmate may turn on and off as needed. These lights have three settings (dim, medium, and bright). The inmate controls the setting of the lights from inside his cell. The inmate can turn the light completely off. The inmate is required to turn the light on when staff are interacting with him at the front of his cell.

14. Educational courses are available to H Unit inmates. These are the same

courses offered to ADX general population inmates and inmates in the ADX Step-Down Program units. H Unit inmates have access to a high-school equivalency course that leads to a “general education diploma,” a course on English as a second language, parenting and recreational courses, as well as a rotation of Adult Continuing Education classes. As of the date of this declaration, the Adult Continuing Education classes are entitled “Great Presidents” and “The Universe.”

15. H Unit inmates have access to programs that are offered to ADX general population and Step-Down Program inmates, including wellness programs, weekly leisure games via the ADX closed circuit television system, weekend “brain teaser” games, arts and crafts, a weekly movie program, and special holiday activities.

III. The Special Security Unit Program for SAMs inmates

A. The Program permits increased communications privileges.

16. The SAMs inmates incarcerated in H Unit have the opportunity to participate in a three-phase program called the Special Security Unit Program (“Program”), designed especially for SAMs inmates. The Program is the Special Security Unit counterpart to the Step-Down Program for ADX general population inmates. SAMs inmates are not eligible for the Step-Down Program for ADX general population inmates, nor are ADX general population inmates eligible for the Program for H Unit inmates.

17. The purpose of the Program is to confine inmates with SAMs under close controls, while providing them opportunities to demonstrate progressively responsible behavior and participate in programs in a safe, secure environment. The Program

balances the interests of providing inmates with programming opportunities and increased privileges with the interests of ensuring institutional and national security.

18. The success of the inmate's participation in the Program provides information that can be considered in the evaluation of whether SAMs continue to be warranted for that inmate.

19. Phase One is the baseline phase of the Program, in which all H Unit inmates are initially assigned. Plaintiff is in Phase One of the Program. He was removed from Phase Two in December 2009 and was returned to Phase One after he engaged in a group demonstration (hunger strike), which is a violation of Bureau rules. An inmate in Phase One may be permitted two non-legal telephone calls per month, access to a commissary list and art and hobby craft items, and escorted shower time on the inmate's range three times each week. Inmates in Phase One have access to ten hours of out-of-cell recreation per week, as explained in more detail below.

20. In Phase Two, an inmate may be permitted three non-legal telephone calls per month and access to an expanded commissary list and additional art and hobby craft items. The inmate is permitted to go to the shower, unescorted, five times each week. Inmates in Phase Two have access to ten hours of out-of-cell recreation per week, as explained in more detail below.

21. Phase Three provides the first opportunity for SAMs inmates to function in an environment where they are permitted to have physical contact with others. Visits remain non-contact. Phase Three inmates spend a minimum of one and one-half hours

per day on the range in a group of as many as four inmates, five days a week. The inmates are not restrained or escorted by Bureau staff while on the range. The inmates in Phase Three eat one meal together and engage in recreational activities, including watching television, reading, and playing cards. Phase Three inmates may shower at any time they are on the range. In addition, Phase Three inmates have access to a further expanded commissary list, as well as the expanded art and hobby craft list referenced in paragraph 20, above.

B. H Unit inmates receive regular reviews to determine their placement in the Program.

22. Ordinarily, an inmate is eligible for consideration for advancement to the next phase of the Program if he meets four eligibility factors, including a minimum of twelve months of clear conduct, active participation in and completion of all programs recommended by his Unit Team, positive behavior and respectful conduct towards staff and other inmates, and positive overall institutional adjustment.

23. An inmate who meets these minimum eligibility factors is then considered for advancement by a Program Screening Committee, consisting of the ADX Warden, Associate Warden, Captain, Special Investigative Agent, Case Management Coordinator, Unit Manager, Psychologist, and the Supervisory Attorney in the ADX legal department. The Supervisory Attorney does not participate in substantive decisions concerning the inmate's participation in a particular phase of the Program.

24. The Program Screening Committee evaluates whether the inmate can safely function with additional privileges without posing a risk to institutional security and good

order; the safety and security of staff, inmates or others; and public safety. The Program Screening Committee conducts an evaluation of the inmate, considering all factors the Committee deems relevant. The factors the Program Screening Committee can evaluate include, but are not limited to: the inmate's conduct while housed at the ADX; his participation in and completion of programs recommended by his Unit Team; his behavior and conduct towards, and interaction with, staff and other inmates; his overall institutional adjustment; his criminal history and involvement with criminal organizations, and the potential safety and security threats implicated by his involvement with those organizations; and the safety and security needs of staff, the inmate, other inmates, and the public.

25. An inmate is evaluated for possible advancement in the Program at least two times per year, at his six-month program reviews. The inmate may present issues concerning his advancement through the phases of the Program at these reviews, at which time the inmate is encouraged to ask questions and discuss concerns.

26. If an inmate is not advanced to the next phase of the Program, that decision does not preclude the Program Screening Committee from exercising its discretion to advance the inmate at a future review. The inmate may appeal decisions concerning his participation in phases of the Program, including his removal from the Program for disciplinary or security reasons, through the Bureau's Administrative Remedy Program.

C. Inmates have been selected to participate in Phase Three of the Program.

27. There must be a careful assessment of whether a SAMs inmate can function

in a less-restrictive setting that permits physical contact without jeopardizing national or institutional security interests.

28. In September 2010, four H Unit inmates were selected to participate in Phase Three. These inmates are the first H Unit inmates to advance to Phase Three of the Program.

29. The SAMs for these inmates were modified to allow them to have physical contact with other inmates in a group setting.

30. Additions have been made to one range of the Special Security Unit where Phase Three inmates are allowed to gather outside their cells. These additions include the installation of a new flat screen television and a table where the inmates can eat together.

31. Plaintiff was not advanced to Phase Three in September 2010. As previously noted, he was removed from Phase Two and placed in Phase One in December 2009 because he engaged in a group demonstration (hunger strike), which is a violation of Bureau rules.

32. Plaintiff will be reviewed again by the Program Screening Committee at his next six-month review to determine whether he is appropriate for placement in Phase Two at that time. His next six-month review will occur in approximately early February 2011.

D. Recreation opportunities for SAMs inmates have expanded to equal those in ADX general population units.

33. Inmates in Phase Three receive a minimum of 10.5 hours of out-of-cell recreation per week. Inmates in Phase One and Phase Two receive a minimum of ten

hours of out-of-cell recreation per week, which is exactly the same amount of recreation provided to ADX general population unit inmates. Out-of-cell recreation for both H Unit inmates and ADX general population inmates occurs with up to five other inmates in secure, single recreation areas, grouped together on a large recreation yard.

34. The ten hours of out-of-cell recreation for inmates in Phase One and Phase Two reflects an increase over the five hours of out-of-cell recreation provided to H Unit inmates prior to September 2009. An increase in the amount of recreation for H Unit inmates was implemented following a comprehensive evaluation of institutional safety and security. The management challenges posed by these inmates are very real, as are the dangers they pose to staff, other inmates, and the public. The expanded recreation time reflects the Bureau's core values (Correctional Excellence, Respect, and Integrity) through a continual review of the operating procedures to determine if gradual modification is necessary, first and foremost to reflect sound security practices, and only then to safely expand inmate access to programs.

35. Recreation logs for H Unit from August 6, 2009, to January 1, 2011, show that recreation has been cancelled only three times during that seventeen-month period, one morning because of weather conditions, and two days when institutional security reasons required that it be cancelled. When recreation is cancelled, it is cancelled for the entire institution.

E. Expanded opportunities for SAMs inmates to communicate with others and to receive information

36. The current ADX Warden has imposed no limitation on the number or length of letters a SAMs inmate can send to his approved non-legal correspondents.

37. H Unit inmates have access to a new computerized law library, including access to LexisNexis. Inmates may use the law library for two-hour periods of time. Additional time in the law library is made available for inmates who have pending court deadlines.

38. Books in the Religious Services library for H Unit inmates are available for check-out. Book check-out logs show that Plaintiff has checked out at least six books from the Religious Services library since January 1, 2010.

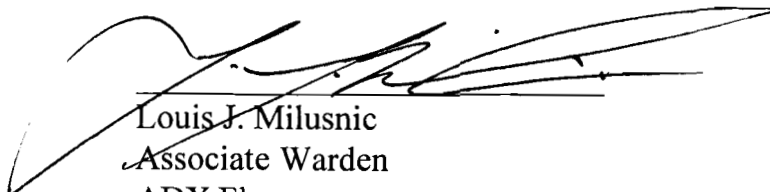
39. Since the Bureau assumed responsibility for reviewing and approving publication requests for SAMs inmates in July 2009, no publication request from Plaintiff has been rejected. Plaintiff regularly receives the Swahili-language version of *Awake* magazine.

40. Plaintiff, like all ADX inmates, has a black-and-white television in his cell. The prohibition on access to television and radio networks that transmit news in real time was removed from Plaintiff's December 9, 2010, SAMs. Before the December 9, 2010, SAMs, Plaintiff had access to more than fifty television and radio networks, including ABC, CBS, NBC and FOX. He can now view the same television networks as inmates in the ADX general population and Step-Down Program Units. He has access to sixty television networks, including CNN and CNN Headline News, MSNBC and the Fox

News Channel. He can also view the Learning Channel, ABC Family, Cartoon Network, Turner Network Television, Fox Sports Net - Rocky Mountain, VH1, Arts & Entertainment, Animal Planet, ESPN, ESPN2, Comedy Central, Spike TV, Country Music Television, E! Entertainment, Nickelodeon, Lifetime, the History Channel, USA, MTV, American Movie Classics, C-SPAN2, Disney Channel, Syfy Channel, CNBC, Food Network, Hallmark Channel, Oxygen, Travel Channel, ION Television, Discovery channel, truTV, the Weather Channel, TV Land, Turner Classic Movies, FX, Home & Garden, Telefutera, Altitude Sports & Entertainment, ABC, Eternal Word Television Network, Home Shopping Network, C-SPAN, UNV, CW (34) - Denver, Trinity Broadcasting Network, TBS Superstation, NBC, BYU Television, BET, NBC, PBS, FOX, TV Guide Channel, CBS and CW (57) - Colorado Springs. He can view closed circuit institutional programming, including programming by the ADX Religious Services, Education, Recreation and Psychology departments. He can access seven FM radio channels and two digital music channels. One of the television channels is utilized to provide bulletins to the inmates showing the date and current time.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on this 12 day of January, 2011, in Florence, Colorado.



Louis J. Milusnic
Associate Warden
ADX Florence