



Foreign &
Commonwealth
Office

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Mr T.L. Early
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By E-transmission

Dear Sir

Application Nos. 24027/07, 11949/08 and 36742/08
BABAR AHMAD & OTHERS v UNITED KINGDOM
Application Nos. 66911/09 and 67354/09
BARY and AL FAWWAZ v UNITED KINGDOM

I write further to my letter of 6 October 2011 and the letter in response from the Court, dated 7 October 2011.

As the Court is aware, the UK Government has sought to obtain information from the United States authorities in response to a series of questions posed by the Judge Rapporteur concerning the operation of the Step Down and Special Security Unit Programs at ADX Florence, Colorado, USA. By those questions, the Judge Rapporteur indicated that the Court sought 'meaningful assistance' as to:

- i. how long an inmate is likely to spend at ADX [Florence] before being admitted to the Step Down or Special Security Unit Program;
- ii. how long an inmate is likely to spend in each phase of the respective programs; and
- iii. how long an inmate is likely to spend in either program before transfer out of ADX.

In order to answer these questions, the US authorities (the Federal Bureau of Prisons) have, at the request of the United Kingdom Government, conducted a detailed statistical analysis of a random sample of thirty inmates selected from the General Population and/or each phase of the Step Down Program: see letter, dated 24 October 2011, attached. Having done so, and

with the caveats and restrictions set out in the attached letter from the US DoJ, the answers to the Judge Rapporteur's questions are, with respect to the Step Down Program, as follows:

- i. How long an inmate is likely to spend at ADX [Florence] before being admitted to the Step Down or Special Security Unit Program?

Answer: 3 years.

- ii. How long is an inmate likely to spend in each phase of the respective programs?

Answer:

Intermediate phase: 9 months

Transitional phase: 11 months

Pre-Transfer phase: 9 months

- iii. How long an inmate is likely to spend in either program before transfer out of ADX?

Answer: 3 years in the General Population followed by 2 years 5 months 'progressing' through the Step Down Program.

Insofar as the Special Security Unit is concerned, the US DoJ has explained that the US authorities are unable to provide similar information on account of *inter alia* security concerns and on-going litigation in the US: see letter attached. Accordingly, insofar as those procedures are concerned, the UK Government relies on its earlier observations: see most recently *Observations*, dated 27 September 2011, Parts 2 & 3.

Yours faithfully



Derek Walton
(Agent for the Government of
the United Kingdom)

**U.S. Department of Justice****Criminal Division**

Washington, D.C. 20530

October 24, 2011

Mr. Julian Gibbs
Home Office
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2 Marsham Street
London, England SW1P 4DF

Re: Extradition of Babar Ahmad, Haroon Aswat, Syed Talha Ahsan, and
Mustafa Kamel Mustafa (Abu Hamza)

**Applications no.: 24027/07 Ahmad and Aswat v. the United Kingdom
11949/08 Ahsan v. the United Kingdom
36742/08 Mustafa (abu Hamza) v. the United Kingdom (No. 2)**

Dear Mr. Gibbs:

This is in response to your letter posed by the Judge Rapporteur at the European Court of Human Rights (ECtHR) (see letters to the UK Government dated 9 September 2011, 29 September 2011, and 6 October 2011) and further to my last letter addressing these issues, dated 26 September 2011.

The following responsive information was provided by officials at the Federal Bureau of Prisons (BOP). According to BOP officials, the information that the ECtHR is seeking is not maintained by the BOP in the ordinary course of business. The BOP receives requests for this information in criminal and civil litigation. In each instance, the BOP objects to the request, arguing, among other things, (1) the BOP does not maintain the information in the form requested, in the ordinary course of the agency's business; (2) the compilation, assimilation, and synthesization of voluminous records to provide the information in the form sought would cause the agency to expend substantial time and resources, incurring undue expense; (3) the information sought is confidential and privileged (5 U.S.C. § 552(b)(7)(E)); and (4) such information bears on the function and security of the United States' most secure penal institution. The courts routinely sustain the objection finding (1) the request to be oppressive and requiring excessive amounts of research and compilation of data at great expense that has no direct bearing on the matters at issue; and (2) the disclosure of the information would compromise the integrity of the Step-Down Program, the Special Administrative Measures (SAMs) program, and the Special Security Unit Program, in detriment to the Department of

Justice's various law enforcement missions. See, e.g., Rezaq v. Nalley, No. 07-cv-02483-LTB-KLM (D. Colo.); Saleh, et al. v. Federal Bureau of Prisons, Nos. 05-cv-02467-PAB-KLM, 06-cv-01747-PAB-KLM, 07-cv-00021-PAB-KLM (D. Colo.); Ayyad, et al. v. Holder, Nos. 05-cv-2342-WYD-MJW, 05-cv-02653-WYD-MJW (D. Colo.); USA v. Basciano, No. 05-cr-060 (E.D.N.Y.); USA v. Breeden, 3:03-cr-00013-SGW (W.D. Va.); USA v. Sahakian, et al., No. 1:03-cr-00180-009 (S.D. Ill.); USA v. Nyaminani, No. cr-02-256 (D.C. Cir.); USA v. Lee, No. 97-cr-243 (E.D. Ark.); USA v. Johnson, No. 96-cr-379 (N.D. Ill.).

Nevertheless, in an effort to cooperate with the ECtHR and without waiving the above-stated objections, BOP officials again reviewed the request to determine what responsive information could be gathered and provided without being oppressive and unduly burdensome and compromising the integrity of the Step-Down Program, the SAMs program, and the Special Security Unit program. They determined, without waiving the objection stated above, that BOP staff could randomly select thirty (30) inmates who are currently in the General Population and/or three phases of the Step-Down Program (Program) and conduct an extensive manual review of computerized records for each of the thirty inmates to provide information responsive to the request. This would result in a review of close to 10% of the inmates currently housed in the General Population and Program units.

With regard to information regarding inmates housed in the Special Security Unit, however, BOP officials determined that, for the objections mentioned above, they will not be able to provide any additional information. Moreover, there is still open and active civil litigation on many of the issues surrounding the management of those inmates with SAMs at the ADX. A request for such information was made in those matters. BOP officials objected to the request for the reasons stated above, and the objection was sustained.

Accordingly, BOP staff proceeded with the random selection and extensive review of 30 inmates housed in the General Population and Program units at the ADX. Of those 30 inmates randomly selected, 10 are currently in the General Population; seven are currently in the Intermediate phase; six are currently in the Transitional phase; and seven are currently in the Pre-Transfer phase. The results of the review are as follows:

Inmate	General Population	Intermediate	Transitional	Pre-Transfer	PRIOR SAM(Y/N)
1	7 years, 10 months*	1 month*			N
2	8 months				N
3	5 years, 10 months				N
4	1 year, 6 months				N
5	5 years, 11 months				N
6	7 months				N
7	3 years, 6 months				N
8	3 years, 5 months				N
9	3 years, 2 months				Y
10	4 years, 7 months				N
11	5 years	6 months			N
12	2.5 years	1 month			N
13	2 years	1 month			N
14	3 years, 2 months*	1 year, 2 months*			N
15	2 years, 8 months*	2 years, 10 months*	5 months*		N
16	3.5 years	1 month			N
17	3 years	1 month			N
18	4 years*	1 year*	1 year, 1 month*		N
19	4 years*	1 year*	1 year*		N
20	3 years, 2 months*	1 year*	11 months*		N
21	1 year, 7 months	6 months	6 months		N
22	4 years	6 months	6 months		N
23	2.5 years	7 months	4 months		N
24	3 years	2 years	8 months	1 year	N
25	4 years, 4 months*	1 year*	1 year, 4 months*	8 months	N
26	1 year, 4 months	6 months	7 months	1 year	N
27	1 year, 6 months	6 months	7 months	1 year	Y
28	2 years*	1 year*	1 year*	5 months	N
29	3 years	6 months	7 months	1 year	N
30			3 years	6 months	N

Based on the above random sample, the average time an inmate is in a General Population Unit before being placed into the Intermediate phase of the Program is three years; the average time an inmate is in the Intermediate phase of the Program before being placed into the Transitional phase is nine months; and the average time an inmate is in the Transitional phase before being placed into the Pre-Transfer phase is 11 months. Six of the seven inmates currently in the Pre-Transfer phase are awaiting redesignation and transfer to another institution. Based on the above random sample, the average time an inmate must wait in the Pre-Transfer phase to be approved for transfer and to begin to await redesignation is nine months. Accordingly, based on the random sample, the average time it takes an inmate to advance through the General Population and each of the phases of the Program before being approved for transfer is five years, five months.

There are a number of variables which impact the averages from the random sample:

- a. Seven of the 30 inmates randomly selected failed the Program and were returned to the General Population to start the Program over. Those seven inmates are identified above with a "*" by the amount of time they spent in General Population and/or a particular phase of the Program. The amount of time indicated for these inmates reflects the total amount of time they spent in the General Population and/or applicable Program phases. In addition, each of the seven inmates spent time in the Special Housing Unit following his removal from the Program and prior to his return to the General Population. The time in Special Housing Unit was included in the total for his time in the General Population. Each of these raised the overall average of time spent in the General Population and applicable Program phases of this random sample. Six of these seven inmates have begun their second time through the phases of the Program. Two of those six inmates are in the Pre-Transfer phase of the Program. Two of those six inmates are in Transitional phase of the Program. The remaining two of those six inmates are currently in the Intermediate Phase of the Program.
- b. Six of the 30 inmates randomly selected were away from the ADX on writs and temporary transfers to BOP medical facilities ranging from one to two years. The time on writ and temporary transfer was not subtracted from the total time spent in the General Population and, if applicable, the Program phases. This raised the overall average time spent in the General Population and applicable Program phases of this random sample.
- c. Other issues also impacted the amount of time spent by the inmates randomly selected in the General Population and, if applicable, the Program phases. These issues include, but are not limited to: disciplinary reports received by the inmate while at the ADX; poor interactions with staff at the ADX; poor interactions with other inmates at the ADX; refusal to follow programming recommendations of his Unit Team; poor overall institutional adjustment including, but not limited to, personal hygiene and cell sanitation; the reason(s) the inmate was designated to the ADX; the inmate's criminal history; the

inmate's involvement with criminal organizations, if any, and the potential safety and security threat(s) implicated by such involvement; the inmate's overall adjustment during his history of confinement; the institution's safety and security needs, including the safety and security of staff; the safety and security needs of the inmate; the safety and security needs of other inmates; the safety and security needs of the public.

- d. Two of the 30 inmates randomly selected did have SAMs and were housed in the Special Security Unit when they first arrived at the ADX. One of those two inmates is currently in the Pre-Transfer phase of the Program. This inmate was housed in the Special Security Unit for six months. He was removed from the Special Security Unit when his SAM was vacated by the Attorney General. He was then placed into a General Population Unit at the ADX. He is awaiting redesignation and transfer to another institution. The other inmate who initially had SAM when he arrived at the ADX and who is currently housed in the General Population at the ADX, was housed in the Special Security Unit for 13 months. He too was removed from the Special Security Unit when his SAM was vacated by the Attorney General.

If you have any further questions on these cases, please do not hesitate to contact us.

Sincerely,

Mary Ellen Warlow
Director

By:



Lystra G. Blake
Associate Director