



WESTMINSTER MAGISTRATES' COURT

_____)
 UNITED STATES OF AMERICA,)
)
)
 v.)
)
 JULIAN PAUL ASSANGE,)
 Defendant)
)
 _____)

**AFFIDAVIT OF
JOEL A. SICKLER**

I, Joel A. Sickler, hereby declare under penalty of perjury the following:

1. I have been asked by defendant’s Counsel to provide further information regarding the custodial life of Julian Assange if he was to be extradited to the United States. This affidavit follows one dated 15 January 2020.
2. I have worked in the field of sentencing and prisoner advocacy for nearly 40 years and currently head the Justice Advocacy Group, LLC, a criminal defense litigation support firm based in Alexandria, Virginia. I have worked consistently since 1980 on federal sentencing and federal prison-related matters and have experience as a correctional counselor in the District of Columbia's Department of Corrections and with prior tenure as Director of Client Services at the National Center on Institutions & Alternatives in Washington, DC.
3. I have visited 51 federal prisons and have advised clients with inmate matters in 86 of the United States Bureau of Prison’s (“BOP”) 122 institutions. Prior to the abolishment of

parole, I represented hundreds of federal inmates before the U.S. Parole Commission. Based on more than three decades of experience assisting clients who have been committed to the care and custody of the BOP, I have extensive knowledge of the BOP and its stated mission, services, policies, program statements, regulations, institutions, and standard practices.

4. I have experience with the William Truesdale Detention Center (also known as the Alexandria Detention Center) in Alexandria, Virginia, where the Government concedes is the likely pre-trial location for Mr. Assange were he to be extradited to the United States.¹ I have visited this location on many occasions for multiple clients. In addition, I have experience dealing with BOP inmates that have been given Special Administrative Measures (“SAMs”) and those inmates that have been incarcerated in Communication Management Units (“CMUs”), both of which the Government admits are likely for Mr. Assange. Further, I have gained knowledge throughout my career with inmates that have been sentenced to the highest-level prisons in the United States: United States Penitentiaries (“USPs”) and the nation’s most stringent prison, Administrative Maximum-Security United States Penitentiary (“ADX”), locations to which the Government has said may house Mr. Assange.
5. I have reviewed and am thoroughly familiar with the following Program Statement of the Federal Bureau of Prisons: *Inmate Security Designation & Custody Classification* (P.S. 5100.08, September 12, 2006). I have spoken on numerous occasions with personnel at the Bureau’s Designation and Sentence Computation Center (“DSCC”)² and regional and central

¹ See, Affidavit of Gordon Romberg, at 33.

² The DSCC is an office within the BOP’s Office Complex located in Grand Prairie, Texas. All facility designations or assignments and inter-facility transfers are processed and made by the DSCC.

office officials in the correctional programs administration when seeking clarification about a specific policy/program statement.

6. I have additionally conferred with defense counsel about Mr. Assange and reviewed case materials regarding the defendant's case including his medical records. I have reviewed all materials regarding the charges, potential sentencing guidelines, likely placement of Mr. Assange prior to trial, likelihood of Mr. Assange being held in a solitary-like pre-trial detention, incarceration subsequent to any potential conviction, the significant likelihood of Mr. Assange being assigned additional security measures that are very similar to what is known colloquially as "solitary confinement", and post custodial detention of no known length. I have reviewed the filings of the United States Government in this matter. I have conferred with my colleagues at the Justice Advocacy Group, including medical professionals with whom I work. I have specifically consulted with my colleagues on conditions at various United States Penitentiaries and the nation's strictest prison, ADX.
7. This affidavit serves as a follow up to my previous communication with this Court. This is respectfully submitted to the Court to allow Your Honor to review the case with the benefit of my 40 years of experience in the American prison system.

I. JULIAN ASSANGE WILL BE HELD IN SOLITARY-LIKE CONFINEMENT FOR THE DURATION OF HIS PRE-TRIAL INCARCERATION IN AMERICA; SHOULD MR. ASSANGE BE CONVICTED AT TRIAL, HIS INCARCERATION WOULD BE IN A FEDERAL PRISON SYSTEM THAT IS BOTH

**OVERCROWDED AND UNDERSTAFFED PUTTING HIS HEALTH AND
SAFETY AT SIGNIFICANT RISK**

Pre-Trial

8. The United States Government in seeking the extradition, prosecution, and incarceration of Mr. Assange creates two different regimes to which Mr. Assange would be subject to. First, as I detailed for the Court in my previous affidavit dated 15 January 2020 (and conceded by the Government), Mr. Assange would be taken to the Truesdale Center in Alexandria, Virginia. In my previous affidavit I explained to the Court that nearly certainly Mr. Assange would be held in the jail's version of a Special Housing Unit ("SHU") and likely be kept in solitary confinement.³ He will be confined to a small cell for nearly every minute of the day, with virtually no communications with other inmates, extremely limited ability to exercise, no access to fresh air, and limited ability to communicate with his attorneys as he prepares for his defense. I base this conclusion on years observing the Truesdale Center. His placement in solitary confinement, is extremely likely based on three significant characteristics of Mr. Assange. First, he is an extremely high profile federal inmate accused of "espionage" in

³ The term "solitary confinement" is used as a generality throughout the American prison system. It has different meanings at different levels of government and incarceration systems. Sometimes referred to as "solitary confinement" sometimes as a SHU, other times as CMU designation. For purposes here, I use the terms to indicate the severe segregation of Mr. Assange from a general population of a prison. As described below, especially at ADX, the nature of "solitary confinement" is really a term of action, or lack thereof. His inability to communicate generally; the strict limitations on interaction with other human beings; inability to move freely about a facility; limitations on basic human conditioning such as showering and self-care; on-going monitoring of person and communications; limitations on incoming materials including letters and phone calls. While the terms are often interchanged, I use the term "solitary confinement" in a descriptive sense – that from the moment Mr. Assange enters the custody of the United States Marshals' Office (who would be tasked with bringing him to the United States) to any possible post-sentence deportation, he will, in my view, never find himself outside of the strictest oversight that the American penal system has.

a city (Alexandria, VA) run facility.⁴ There is simply no situation where the local Sheriff, who runs the Truesdale Center, would place Mr. Assange in a general population where his safety could be said to be at significant risk; second, in my experience, a high profile foreign national who has fought extradition for years facing national security charges is unlikely to be placed in any situation short of the highest possible security in order to prevent any escape (not that in any way does Mr. Assange represent that risk; however there is no possibility that the local officials would even risk that); and third, as is clear from my review of his medical condition, Mr. Assange may be considered to be a risk to himself, and there is, again, little possibility that the local officials at Truesdale would ever allow such a person to put themselves at risk, therefore all but guaranteeing him placed in solitary for his own perceived protection.

9. Mr. Assange will have no immediate ability to challenge the conditions of his incarceration; and as I will further explain below, in the current environment, Mr. Assange will not be able to have access to any visitors at all, as the facility to which he has been assigned is not allowing visits as a result of the Covid 19 situation.⁵

Post-Conviction

⁴ Two examples prove the point. Two other extremely high profile defendants were recently placed in solitary confinement at the Truesdale Center: Chelsea Manning, who was sent to Truesdale for contempt of court (see, <https://www.wral.com/chelsea-mannings-health-threatened-by-solitary-confinement-in-virginia-jail-her-support-group-says/18279734/>) and Maria Butina, who was convicted of being a foreign agent (see, <https://www.courthousenews.com/butina-asks-judge-to-free-her-from-solitary-confinement/>). In the case of Ms. Manning, like Mr. Assange, they were both considered to be threats to their own safety. Ms. Manning did attempt to take her own life (see, <https://www.theguardian.com/us-news/2020/mar/11/chelsea-manning-suicide-attempt-hospital>)

⁵ See, <https://www.alexandriava.gov/sheriff/info/default.aspx?id=4182>. The Truesdale Center, as outlined in my previous affidavits, is run by the Sheriff's Office of the City of Alexandria, Virginia. Mr. Assange, a federal prisoner, would be held there under a contract with the facility, but would be overseen by local Sheriff's Officers who run the center. He would almost certainly be held in solitary confinement by the local officials.

10. In my experience, it is generally accepted by practitioners in prison management that the American prison system – local, state, and federal -- is well known to be overcrowded. Nearly every facility that I have visited the last 15 years has significant issues with overcrowding. As of December 31, 2019, BOP highest security prisons – like those that the Government concedes will be locations to which Mr. Assange would be sent -- were at 113% of capacity.⁶ Medium security prisons were at 120% of capacity.⁷ Low security facilities were at 117% of capacity.⁸ Per the BOP, “[a] one percentage point increase in a facility’s inmate population over its rated capacity corresponds with an increase in the prison’s annual serious assault rate by 4.09 per 5,000 inmates.”⁹

11. To deal with this overcrowding, the BOP has resorted to double and triple-bunking inmates in cells built for one or two people.¹⁰ These inmates must contend with more crowded bathrooms, reductions in shower times, shortened meal times, longer waits for food, waiting lists for already extremely limited education and drug treatment programs, limited meaningful work opportunities, limited recreational activities, and much longer waits for medical care.¹¹ The combination of confined, crowded living spaces and a reduction in common spaces and programming opportunities inevitably leads to tensions and “a higher risk of violence and

⁶ Federal Bureau of Prisons, Program Fact Sheet (Dec. 31, 2019), available at https://www.bop.gov/about/statistics/docs/program_fact_sheet_20191219.pdf. See also, Kromberg at 39.

⁷ Id.

⁸ Id.

⁹ Matthew Harwood, Panel: Prison Overcrowding Jeopardizes Guard and Inmate Safety, SECURITY MANAGEMENT (Jul. 21, 2009), available at <http://bit.ly/20s0Kw6>.

¹⁰ US Government Accountability Office, Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure (Sept. 2012), available at <https://www.gao.gov/assets/650/648123.pdf>.

¹¹ Id.

more potential victims.”¹² I have spoken recently with one client who told me that the crowding in a facility designed for 162 people having twice as many inmates.

12. Former BOP Director Charles E. Samuels, Jr. testified before the US Congress that overcrowding “strains facilities’ infrastructure like water, sewage, and power systems, sometimes to the breaking point [Exhibit 1].¹³ Inmate frustration and anger, in turn, are catalysts for violence which poses real risks to the lives of staff and offenders.”¹⁴ The tensions only increase during lockdowns, when entire tiers of people can be confined to their cells, sometimes for days at a time, usually related to a violent incident or the discovery of significant contraband.¹⁵

13. These staff shortages will especially affect inmates like Mr. Assange. For example, in a facility where Mr. Assange could be sent, his needs, as explained in my previous affidavit, will likely become more acute. Security staff shortages are so severe throughout the BOP that every day prisons use nurses, physical therapists and other medical staffers, teachers, plumbers, laundry workers, secretaries, civilian kitchen workers and even religious staffers to provide security, a practice that has been going on for years [Exhibit 2].¹⁶ Some prisons use dozens of these civilian workers every day to patrol the prisons.¹⁷ Mr. Assange would be an extremely high profile inmate. Even in the most secure institutions to which Mr. Assange

¹² US Government Accountability Office, Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure (Sept. 2012), available at <https://www.gao.gov/assets/650/648123.pdf>.

¹³ Joe Davidson, Too many inmates, too few correctional officers: A lethal recipe in federal prisons, WASHINGTON POST (Sep. 1, 2015), available at https://www.washingtonpost.com/news/federal-eye/wp/2015/09/01/too-many-inmates-too-fewcorrectional-officers-a-lethal-recipe-in-federal-prisons/?utm_term=.9614882a6831.

¹⁴ Id.

¹⁵ Id.

¹⁶ Kevin Johnson, Nurses thrust into guard duty at federal prisons, USA TODAY (Apr. 26, 2016), available at <http://www.usatoday.com/story/news/nation/2016/04/26/nurses-federal-prisonspublic-health-service-security/83517298/>.

¹⁷ Id.

could be sent, his safety is at risk. Because of the severe shortage of staff – security and medical – Mr. Assange is at even greater risk. And while his solitary condition-like life would, logically, have him interacting with nearly no other inmate, the strain on the staff because of the overcrowding does cause, in my experience, a reduction in the attention and time spent monitoring inmates like Mr. Assange, putting his health and safety at risk.

14. As recently as 2018, The New York Times reported the number of correctional officer vacancies increased almost 64 percent – to nearly 12 percent of all correctional officer positions [Exhibit 3].¹⁸ Overall in the BOP, the incarcerated person to correctional officer ratio is currently 9.3 to 1,¹⁹ more than double the 3.6 to 1 ratio in the UK.²⁰

II. THE MENTAL AND PHYSICAL HEALTH CARE THAT MR. ASSANGE WILL RECEIVE – LIKE THOSE OF ALL FEDERAL INMATES – IS HIGHLY LIKELY TO FAIL TO MEET HIS CLEAR NEEDS

15. In my previous affidavit to this Court, I outlined the failures in the American prison system for inmates’ mental and physical health. I must respectfully disagree with the Kromberg’s claims in relation to health care in prison. The Government, in their affidavit seeking Mr. Assange’s extradition, simply says, that the BOP must “provide full medical care to prison-

¹⁸ Danielle Ivory and Caitlin Dickerson Safety Concerns Grow as Inmates Are Guarded by Teachers and Secretaries, NEW YORK TIMES (June 17, 2018) <https://www.nytimes.com/2018/06/17/us/prisons-safety-substitute-guards.html>.

¹⁹ See, https://www.bop.gov/about/statistics/docs/program_fact_sheet_201907.pdf

²⁰ Hannes Munzinger, Fewer prison officers and more assaults: how UK prison staffing has changed, GUARDIAN (Nov. 18, 2016), available at <https://www.theguardian.com/society/datablog/2016/nov/18/fewer-prison-officers-and-moreassaults-how-uk-prison-staffing-has-changed>.

ers.”²¹ However, all my experience finds this to be untrue. For example, a 2014 report commissioned by the BOP found profound failings in the provision of mental health care for inmates in restrictive housing – the exact housing where the Government admits is likely for Mr. Assange.²² The report relied on independent psychiatrists reviewing records and interviewing incarcerated people. The reviewers “disagreed with the BOP diagnosis in nearly two thirds of the cases reviewed.”²³ The review further indicated that the treatment being offered by the BOP was insufficient or inappropriate in over half of the cases reviewed.” Medications were prescribed in doses inadequate to treat the targeted conditions, and there was often little or no follow up to ensure the medications were working.²⁴ One inmate reported he had not seen a health care provider about his medications in two years.²⁵ The review found numerous incarcerated people exhibiting symptoms of serious mental illness were not diagnosed by medical staff, and thus were not receiving treatment.²⁶ Psychologists had caseloads so great that they had to “prioritize psychiatric review to only a handful of the least stable mentally ill inmates on their caseloads.”²⁷ Psychiatrists were often available on a limited basis by teleconference only, and even then “the hours provided are so limited that the referral system is delayed and insufficient to meet the health needs of the inmates.”²⁸

16. These failures are a direct result of understaffing of medical positions. In March 2016, the US Department of Justice reported that 17% of the medical care positions in the BOP were

²¹ Kromberg, at 36

²² Report Commissioned by BOP, CNA, Federal Bureau of Prisons: Special Housing Unit Review and Assessment (Dec. 2014), available at https://www.bop.gov/resources/news/pdfs/CNA-SHURReportFinal_123014_2.pdf.

²³ Id. at 117.

²⁴ Id. at 125.

²⁵ Id.

²⁶ Id. at 121-22.

²⁷ Id. at 123.

²⁸ Id. at 125.

vacant, and that only 24 of 97 BOP institutions had a medical staffing vacancy rate of 10% or less, the minimum acceptable threshold established by BOP policy [Exhibit 4].²⁹ 20 BOP institutions had a medical staff vacancy rate of 25% or more, and 3 institutions had a vacancy rate of 40% or more.³⁰ As of October 2015, the BOP had filled only 28 of 49 (57%) of its authorized fulltime psychiatrist positions nationwide.³¹ The BOP's former Assistant Director for Health Services and Medical Director, who oversaw the BOP's provision of medical care until his retirement in October 2015, described the staffing as "crisis level."³² By 2017, nothing had improved: 18% of BOP's authorized medical positions were vacant.³³

17. These statistics are matched by my experiences and those of my clients. A recently released client told me of the inability to get even basic health needs met. He spoke to me about inmates with broken bones that go untreated; lack of inhalers for asthma patients; no anti-depression medications available; and a large growth on an inmate's face not being removed. The Government seeks this Court to take its word that the health care is proper. Based on my experience, I respectfully disagree.

18. This is especially true in mental health. A recently released client of mine reported that at no time could an inmate at his facility get treatment for on-going mental health issues. The mental health professional would occasionally walk the grounds of the prison and ask inmates how they were doing. That was the extent of their mental health review. A 2017 DOJ

²⁹ US Department of Justice, Office of Inspector General, Review of the Federal Bureau of Prisons' Medical Staffing Challenges (Mar. 2016), i, available at <https://oig.justice.gov/reports/2016/e1602.pdf>.

³⁰ Id. at 2.

³¹ Joe Davidson, Staff shortages, solitary confinement increase risks for federal prisoners and public, WASHINGTON POST (July 14, 2017), available at https://www.washingtonpost.com/news/powerpost/wp/2017/07/14/staff-shortages-solitaryconfinement-increase-risks-for-federal-prisoners-and-public/?utm_term=.512ad6251b68.

³² US Department of Justice, Office of Inspector General, Review of the Federal Bureau of Prisons' Medical Staffing Challenges, at i.

³³ US Government Accountability of Bureau of Prisons: Better Planning and Evaluation Could Help Ensure Effective Use of Retention Incentives (Dec. 2017), available at <https://www.gao.gov/assets/690/688804.pdf>.

report stated: “The BOP cannot accurately determine the number of inmates who have mental illness because institution staff do not always document mental disorders.” **[Exhibit 5]**³⁴ The BOP’s FY 2014 data estimates that approximately 12 percent of inmates have a history of mental illness; however, in 2015, the BOP’s Chief Psychiatrist estimated, based on discussions with institutions’ Psychology Services staffs, that approximately 40 percent of inmates have mental illness, excluding inmates with only personality disorder diagnoses.³⁵ Similarly, one institution’s Deputy Chief Psychologist estimated that 50 percent of that institution’s inmates may have Antisocial Personality Disorder; nevertheless, we found that this disorder was documented for only about 3.3 percent of the BOP’s total inmate population.³⁶ Because mental health staffs do not always document inmates’ mental disorders, the BOP is unable to ensure that it is providing appropriate care to them.³⁷

19. In November 2018, the Marshall Project, a prominent criminal justice Non-Governmental Organization (“NGO”), published the results of a major investigation into the quality of mental health care in the BOP **[Exhibit 6]**.³⁸ Building on the 2017 Department of Justice report, the investigation further demonstrated how a system that on paper should deliver high quality mental health care profoundly fails in practice. The Marshall Project reported that in 2014, the BOP adopted a new policy promising more in-depth care and oversight of treatment.³⁹

³⁴ US Department of Justice, Office of Inspector General, Review of the Federal Bureau of Prisons’ Use of Restrictive Housing for Inmates with Mental Illness, July 2017, at ii, <https://oig.justice.gov/reports/2017/e1705.pdf>.

³⁵ Id.

³⁶ Id.

³⁷ US Department of Justice, Office of Inspector General, Review of the Federal Bureau of Prisons’ Use of Restrictive Housing for Inmates with Mental Illness at 34.

³⁸ Christie Thompson and Taylor Elizabeth Eldridge, ‘No One to Talk You Down’: Inside federal prisons’ dangerous failure to treat inmates with mental-health disorders, WASHINGTON POST (Nov. 21, 2018), available at <https://www.washingtonpost.com/news/national/wp/2018/11/21/feature/federal-prisons-were-told-to-improve-inmates-access-to-mental-health-care-theyve-failed-miserably/>.

³⁹ Id.

However: data obtained by the Marshall Project through a Freedom of Information Act request shows that instead of expanding treatment, the BOP has lowered the number of inmates designated for higher care levels by more than 35 percent. Increasingly, prison staff are determining that prisoners — some with long histories of psychiatric problems — don't require any routine care at all. For an inmate like Mr. Assange, with a clear and demonstrated history of mental health issues, this environment is a nightmare.

20. The report found that as of February 2018, the BOP classified just 3 percent of people incarcerated in its prisons as having a mental illness serious enough to require regular treatment. This is occurring even though the BOP itself states 23% of incarcerated people have a diagnosed mental illness. For sake of comparison, California provides mental health care for a “serious mental disorder” to more than 30% of people incarcerated in its state prisons, while New York and Texas provide mental health treatment to roughly 20% of incarcerated people.
21. The precipitous decline in mental health treatment by the BOP appears linked to understaffing: the BOP has failed to increase staffing levels since it mandated more intense mental health treatment. BOP medical personnel seem to have responded by downgrading people as no longer needing care to try to reduce caseloads. A former BOP psychologist stated: “You doubled the workload and kept the resources the same. You don't have to be Einstein to see how that's going to work.” The steep drop in mental health treatment is having serious consequences. While the numbers vary prison to prison, the combined number of suicides, suicide attempts and self-inflicted injuries increased 18 percent from 2015 through 2017.⁴⁰ For Mr. Assange, whose demonstrated mental health issues are well known to this Court, placing

⁴⁰ Id.

him into this environment carries a very high risk. It is sadly my experience with some of my clients who also had mental health issues that the lack of care for their issues often has resulted in catastrophic outcomes.

22. Specifically, in his opinion to this Court, Dr. Kopelman has stated that Mr. Assange is suffering from Recurrent Depressive Disorder, with mood-congruent psychotic symptoms (hallucination); signs consistent with a diagnosis of post-traumatic stress disorder (“PTSD”); Generalized Anxiety Disorder; as well the possibility of Asperger’s Syndrome/Autism Spectrum Disorder (“ASD”). It is the issue of ASD that I wish to provide further information to the Court.

23. Common signs of autism in adults include: finding it hard to understand what others are thinking or feeling, getting very anxious about social situations, finding it hard to make friends or preferring to be on your own, seeming blunt, rude or not interested in others without meaning to, finding it hard to say how you feel, taking things very literally (for example, one may not understand sarcasm or phrases like "break a leg"), not understanding social norms (such as not speaking over someone or avoiding eye contact, getting too close to other people or getting very upset if someone touches or gets too close to you).⁴¹ These are the very behavior issues that I have found place inmates at the most risk while in prison, regardless if they have been diagnosed with ASD. That is especially true of a penitentiary, the toughest prison in the American penal system.

24. It is now agreed that the overall incidence of ASD in incarcerated individuals is greater than seen in the general non-prison community. In the event that the legal system diverts indi-

⁴¹ See, <https://www.nhs.uk/conditions/autism/signs/adults/>

viduals with ASD who become involved in criminal proceedings into mental-health treatment, there is still the question of finding appropriate, effective services for them.⁴²

25. The BOP has created its self-termed “Skills Program” which “is designed for inmates with significant cognitive limitations and psychological difficulties that create adaptive problems in prison and in the community.”⁴³ This program is, however, likely to be one in which Mr. Assange will never be allowed to participate.

26. Maureen Baird, former Warden for the federal prisons in Danbury, Connecticut, Marion, Illinois, and the Metropolitan Correctional Center in New York has written, “The Skills Program offered at FCI Coleman, FL...and FCI Danbury, CT... is a Residential Treatment Program which is focused on inmates with intellectual/cognitive disabilities and social deficiencies. The Program is designed to assist inmates with improving their institutional adjustment, so they may positively program and function in a general population setting. Participation in the Program is strictly done on a voluntary basis and participants need to qualify for placement at a low or medium security facility.”⁴⁴

27. Sadly, this program is only at those two BOP facilities: FCI Coleman and FCI Danbury.

Depending on his sentence, it is highly unlikely that Mr. Assange would be eligible to go to either of those places as Coleman is a Medium security facility and Danbury a Low security facility. The program specifically excludes inmates, regardless of the severity of their ASD, if they are sentenced to a penitentiary, which I would argue is the exact place where an in-

⁴² See, <https://www.researchgate.net/publication/>

⁴³ See, https://www.bop.gov/policy/progstat/5330_011.pdf

⁴⁴ See, <https://alanellis.com/wp-content/uploads/2019/10/BOP-Skills-Program-by-Maureen-Baird.pdf> (Emphasis added)

mate with ASD would have the most challenges, and where, based on the likelihood of his sentence, is where Mr. Assange would be sent.

III. MR ASSANGE’S LIFE AND HEALTH WILL BE AT DIRECT AND IMMEDIATE RISK AND HIS ABILITY TO SEE COUNSEL LIKELY LIMITED AS A RESULT OF THE CORONAVIRIS PANDEMIC

28. The United States is amid a pandemic due to COVID-19. On March 13, 2020, President Trump declared a national emergency. That same day, the Bureau of Prisons (which reports directly to President Trump through the Attorney General) released a COVID-19 Action Plan.⁴⁵ This plan was the first response to the outbreak; and it makes the incarceration of Mr. Assange even more risky than it would be in the absence of the epidemic. In addition, the new guidelines end all visits to Mr. Assange, and dramatically limit the ability of Mr. Assange’s attorneys to meet with him to prepare his defense. The Truesdale Center is still limiting the ability of all visitors, including counsel, to visit. This creates an extraordinary situation for Mr. Assange. On March 20, 2020, a unanimous panel of The United States Court of Appeals in addressing COVID-19 and its impact on prisons, wrote, “Present information strongly suggests, however, that it may be grave and enduring.”⁴⁶

29. In my experience, and those of the hundreds of my clients who have served time in jails and prisons, the greatest fear is becoming ill. This is for two reasons: one, the overcrowded con-

⁴⁵ See, www.bop.gov/resources/news/20200313_covid-19.jsp

⁴⁶ See, *Federal Defenders of New York v Bureau of Prisons*, Docket 19-1778 (2nd Cir 2020) http://www.ca2.uscourts.gov/decisions/isysquery/c482308b-6d09-4d95-b76f-d7bb33330e49/1/doc/19-1778_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/c482308b-6d09-4d95-b76f-d7bb33330e49/1/hilite/

ditions at most United States prisons creates an environment where a communicable disease, like COVID-19, becomes a potential death sentence; and two, the significantly substandard medical care in federal prisons – bad in a normal environment – makes survival or recovery even more difficult. In short, placing an inmate like Mr. Assange, into the environment of a high security federal prison, is essentially sentencing Mr. Assange to a significantly higher risk of getting the disease, with a significantly lower chance of effective prevention and treatment. *The New York Times*, referring to the BOP, wrote, “The bureau said the densely packed nature of prisons “creates a risk of infection and transmission for inmates and staff.”⁴⁷ The story matched reports that I am receiving from numerous of my clients currently in federal prisons: little or no soap and cleaning supplies (in some prisons they charge inmates for soap); no hand sanitizer (BOP considers hand sanitizer to be contraband punishable with additional time in solitary confinement); As *The Times* writes, “In other countries where the pandemic is more widespread, both prisoners and guards have fallen sick. The coronavirus swept through Chinese prisons in late February, with reports of more than 500 cases spreading across at least four facilities in three provinces.”

30. Mr. Assange will be living in a very tightly packed environment, even in a solitary environment, like ADX. Currently there are 374 inmates located there.⁴⁸ In other high security institutions, inmates are housed, in multi layered bunk type housing, with inches, not feet, separating each inmate. This is far below the United States Centers for Disease Control directive for at a minimum six feet of distance between people.⁴⁹ On the contrary, Mr. Assan-

⁴⁷ See, “‘We Are Not a Hospital’: A Prison Braces for the Coronavirus, *The New York Times*, March 17, 2020, <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html>.

⁴⁸ See, <https://www.bop.gov/locations/institutions/flm/>.

⁴⁹ See, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>

ge will be surrounded by inmates and officers and other personnel with nowhere to distance himself and no ability to prevent the spread of the virus. In fact, the former Warden of ADX said recently about the Corona virus in that facility, “Some staff are thinking, ‘Gimme a break. Time to call in sick. Time to think of my family first,’”⁵⁰ The same article spoke of inmates being “trapped inside cells.” This is the situation the Government seeks to send Mr. Assange.

31. If Mr. Assange were to begin to show the known symptoms of the virus, he would first have to wait to be seen by a member of the facilities medical staff. After that wait, he would need to be tested, which, as has been widely reported, has become nearly impossible for non-inmate citizens, never mind inmates. In fact, the Chief Judge of the very federal district court that the Government wishes to send Mr. Assange wrote, “...that testing centers within our District have temporarily shut down and/or cut back their hours in recent days due to a supply shortage of approved tests.”⁵¹ That Chief Judge, Mark S. Davis, is a highly respected jurist and lifelong Virginian, appointed by President George Bush, who has served as a judge at both the state and federal levels in Virginia.⁵²

32. In short, Mr. Assange, by being sent to the United States prison system, will essentially be placed in an area of the highest risk of acquiring the virus, having little to no medical care to prevent or treat it; and not have the ability to meet with his lawyers to prepare for his case. One of my other clients wrote me recently about the situation in the Brooklyn MDC (similar facility to those where Mr. Assange would be housed). He wrote, “[t]hey are not giving us

⁵⁰ See, “Fearing outbreaks and riots, nation’s prison and jail wardens scramble to respond to coronavirus threat *Prisoners are literally trapped inside cells as the virus spreads, experts say*”, ABCNews, March 19, 2020, <https://abcnews.go.com/Health/fearing-outbreaks-riots-nations-prison-jail-wardens-scramble/story?id=69676840>

⁵¹ See, <http://www.vaed.uscourts.gov/notices/2020-07%20-%20Court%20Operations.pdf>.

⁵² See, <https://www.fjc.gov/node/1392711>

soap, hand sanitizer or any of the special hygiene items that the Central Office Ordered them to provide us with. Sadly, they were out of the antibacterial liquid soap at commissary as well, so we could not even purchase that. To make matters worse, the ventilation system here is connects to the entire building, so a person with COVID19 who is sick in a cell in the next Unit will cause the virus to travel through the vents to our cells. COVID19 lives in the air on its own for 24 hours. It lives on surfaces from 2 days to 2 weeks or more. We are also forced to continue to work on all floors in the building and to interact with the officers in their immediate proximity (inches from them). The officers are not being tested, and travel to and from their homes and families daily (several via public transportation). This is all a recipe for certain disaster. It is not a question of if I get COVID19, it is only a question of when.” This is a humanitarian disaster in America’s prisons. And this disaster is where the Government is asking this Court to send Mr. Assange.

33. Additionally, both the federal Bureau of Prisons, and the Corrections department of the Commonwealth of Virginia, and the Sheriff’s Office of the City of Alexandria, have ended nearly all in person visits.⁵³ While there are now video visits, some of my clients are hesitant to speak freely over the video conference for fear – rightly or wrongly – that those conversations could be monitored. Therefore, Mr. Assange’s case may be continued for a significant period of time; in the interim he may be prevented from seeing his attorneys in person for periods of time.⁵⁴

⁵³ See, <https://www.vadoc.virginia.gov/news-press-releases/2020/covid-19-updates/>; See also, https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp

⁵⁴ This is especially true as states, including Virginia, are experiencing, as of this writing, an increase in the number of cases and are returning to more strict limitations.

34. At the same time one arm of the government of the United States (the Virginia based United States Attorney's Office) is seeking to put Mr. Assange into a situation that a different arm of the government (BOP) calls a health risk, yet a different arm of the government (and that of the state and local governments) are affirmatively seeking to remove inmates from jails and prisons. There are hundreds of inmates that have been released by judges to avoid them becoming positive with COVID-19. For example, in Ohio, Judge Brendan Sheehan, presiding Judge of Cuyahoga County Court of Common Pleas, in the county that includes Cleveland, the state's largest city, said, "We know that eventually that virus is going to hit our jail... our jail will not be able to operate, and everything will be crippled," as he began releasing 300 inmates from jail.⁵⁵ In Virginia, Commonwealth Attorneys (the state level equivalent of the United States Attorney) are releasing inmates because of the virus.⁵⁶ As of April 1, 2020, there are more than 55 cases in the very small community where Mr. Assange will be immediately sent were he to be extradited.⁵⁷

35. Most recently, Judge Alison Nathan of the United States District Court, sitting in New York, ordered a defendant released on bail from federal prison in Manhattan precisely because of the effect that COVID19 is having on the prison system. Judge Nathan, a highly respected jurist who also worked as an Associate White House Counsel and Special Counsel in the Office of the Attorney General of New York, wrote that the current environment at the prison

⁵⁵ See, Ohio Judges Are Releasing People From Jails to Fight Coronavirus. It's a Good Idea. "Continued incarceration will be a death sentence." *Mother Jones*, March 16, 2020, <https://www.motherjones.com/coronavirus-updates/2020/03/ohio-judges-are-releasing-people-from-jails-to-fight-coronavirus-its-a-good-idea/>. See also, *Coronavirus: County jail inmates ordered released in Autauga, Elmore, Chilton counties, Montgomery Advertiser (Alabama)*, <https://www.montgomeryadvertiser.com/story/news/crime/2020/03/18/county-jail-inmates-ordered-released-autauga-elmore-chilton-counties/2871087001/>;

⁵⁶ See, https://www.dailyprogress.com/news/local/local-jail-begins-home-release-of-certain-inmates/article_222b4d32-4577-512c-8d1c-39e154c3a322.html

⁵⁷ See, <https://www.alexandriava.gov/Coronavirus>

was “unprecedented and extraordinarily dangerous,” and “inmates may be at a heightened risk of contracting COVID-19...” Judge Nathan continued, “Though the BOP has admirably put transmission mitigation measures in place... in the event of an outbreak at the Metropolitan Correctional Center (“MCC”) (where the Defendant is currently being detained), substantial medical and security challenges would almost certainly arise.”⁵⁸ Judge Nathan cites Professor Joseph Bick, MD, the Chief Medical Executive for California Medical Facility on behalf of the California Department of Corrections and Rehabilitation, who wrote that in jails “[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise.”⁵⁹

36. Judge Nathan further found, as other courts have observed (see above), that the current limitations on the ability of defendants housed at the MCC to speak to counsel was a “compelling” reason not to keep the defendant imprisoned. She wrote, “The spread of COVID-19 throughout...the country has compelled the BOP to suspend all visits – including legal visits except as allowed on a case-by-case basis – until further notice... This suspension impacts the Defendant’s ability to prepare his defenses...”⁶⁰ To be clear, sending Mr. Assange to prison in Alexandria, Virginia and potentially later to ADX will result in the exact situation that Judge Nathan referred to as a compelling reason NOT to detain a defendant.

37. Mr. Assange, unlike Mr. Stephens (the defendant freed by Judge Nathan), he will not be given the chance for bail. No one in this case believes the Government is going to consent to

⁵⁸ See, *United States v. Dante Stephens*, 1:13-cr-00095-AJN (March 18, 2020.)

⁵⁹ *Id.*, citing, Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases* 1047, 1047 (Oct. 2007)

⁶⁰ *Id.* Internal citations omitted.

granting of Mr. Assange bail after they have spent years trying to get him into custody in the United States through extradition proceedings. It is exceptionally rare for foreign nationals who have been extradited to be given bail. Sending Mr. Assange to the Truesdale facility in Alexandria will leave him there, for an indefinite period of time.

38. Taken together, Judges and policy makers have made the determination to reduce the number of inmates in prisons throughout the country because of the growing deadly virus' impact on prisoners and staff. All of the conversations that I have had with current and former inmates lead me to conclude that placing Mr. Assange in prison for a lengthy period of time will greatly increase his risk of being infected by COVID-19 and greatly reduce and likely. Finally, the Attorney General himself has called for releasing inmates to home confinement because of the threat the virus has on inmates⁶¹. At every level of American government, there is a realization that the current virus is especially deadly. I have had numerous clients released precisely because of the deadly environment that is the American prison system. Even the United States Attorney General is seeking to reduce that risk. Except in this case, where notwithstanding the clear and present risk to the life and health of Mr. Assange, they seek to place him in one of the areas that are specifically being emptied because of the virus.

IV. THE GOVERNMENT CONCEDES THERE IS THE POSSIBILITY THEY WILL IMPOSE THE STRICTEST MEASURES AGAINST MR. ASSANGE THAT HAVE

⁶¹ See, [US AG Barr Seeks to Expand Home Confinement to Halt Coronavirus Spread in Federal Prisons](https://www.law.com/newyorklawjournal/2020/03/26/us-ag-barr-seeks-to-expand-home-confinement-to-halt-coronavirus-spread-in-federal-prisons/?slreturn=2020030114305), <https://www.law.com/newyorklawjournal/2020/03/26/us-ag-barr-seeks-to-expand-home-confinement-to-halt-coronavirus-spread-in-federal-prisons/?slreturn=2020030114305>

BEEN CALLED “THE DARKEST CORNER” OF THE AMERICAN PRISON SYSTEM

- SAMs

39. I have been practicing in prison advocacy for nearly four decades. In its affidavit, the Government addresses the question of imposing SAMs, the strictest of measures on Mr. Assange. The Government writes, “It is possible that Assange would be subjected to special administrative measures (“SAMs”) during pretrial detention and, if he is convicted, during any period of incarceration.”⁶² A report published in 2017 by The Center for Constitutional Rights in conjunction with the Allard K. Lowenstein International Human Rights Clinic describes SAMs as “the darkest corner of the U.S federal prison system, combining the brutality and isolation of maximum-security units with additional restrictions that deny individuals almost any connection to the human world.” **[Exhibit 7]**.⁶³ For inmates under SAMs, near total isolation lasts at least a year and typically far longer.⁶⁴ A 2013 count showed that eighty-two percent of prisoners placed under SAMs were under these restrictions for more than a year.⁶⁵ Of those prisoners, thirteen had lived under SAMs for more than a decade.⁶⁶

40. The nature of SAMs is to prevent information nearly completely from an inmate to anyone, including their own counsel. Family members and attorneys in touch with SAMs prisoners can be prosecuted and incarcerated for repeating anything the inmate told them—from ac-

⁶² See, Kromberg at pg 38, p 95

⁶³ Allard K. Lowenstein International Human Rights Clinic and The Center for Constitutional Rights, “The Darkest Corner: Special Administrative Measures and Extreme Isolation in the Federal Bureau of Prisons”, September 2017, p 1, https://ccrjustice.org/sites/default/files/attach/2017/09/SAMs%20Report.Final_.pdf.

⁶⁴ Id. p 11

⁶⁵ Id.

⁶⁶ Id.

counts as trivial as what the prisoner had for breakfast to ones as substantive as abuses at the hands of guards [Exhibit 8].⁶⁷

41. But for Mr. Assange, the threat is even more immediate. Because the Government has specifically said he may be under SAMs even before he is tried or convicted, his lawyers themselves become targets of review and potential prosecution every time they meet with Mr. Assange making it exceedingly onerous to prepare his defence. I have found that the fear of themselves being incarcerated for violating SAMs leads attorneys to self-censor.⁶⁸ As one attorney stated: “The lines are not clearly drawn, so it ends up sort of amplifying the fear because it’s hard to know whether you’re going to say something that is going to sort of trip someone’s wire. The consequences of [violating SAMs] are so significant and frightening that most lawyers err on the side of caution even with things that would be beneficial to their clients.”⁶⁹

42. Those consequences include criminal prosecution. Defence attorney Lynne Stewart was sentenced to a decade in prison for revealing her client’s statements to the press, in violation of his SAMs.⁷⁰ Stewart’s prosecution “has had a chilling effect on lawyers throughout the country; many will not take these terror cases, and those who do operate with excessive caution about what they can say in public and about whom they consult for legal strategy.”⁷¹

⁶⁷ Aviva Stahl, “Force-Feeding Is Cruel, Painful, and Degrading—and American Prisons Won’t Stop”, *The Nation*, 4 June 2019. <https://www.thenation.com/article/archive/force-feeding-prison-supermax-torture/>

⁶⁸ Allard K. Lowenstein International Human Rights Clinic and The Center for Constitutional Rights, “The Darkest Corner: Special Administrative Measures and Extreme Isolation in the Federal Bureau of Prisons”, September 2017, p18, https://ccrjustice.org/sites/default/files/attach/2017/09/SAMs%20Report.Final_.pdf.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

V. PLACEMENT IN A COMMUNICATIONS MANAGEMENT UNIT WILL EFFECTIVELY PREVENT ALL COMMUNICATION BETWEEN MR. ASSANGE AND ANYONE ELSE; LIKELY INCLUDING COUNSEL

43. Even if not under a SAMs regime, life in a federal prison for any inmate is one of constant monitoring. Even my clients who serve time in lower level facilities than would Mr. Assange report one of the most difficult aspects of their incarceration is the dramatic level of monitoring that takes place. For every inmate, regardless of their offense or level of incarceration the oversight is profound: each piece of mail is examined; there is a strict limit on the number of contacts (often below 25) an inmate may have; each of those contacts is reviewed prior to the ability for an inmate to contact them; each phone call is monitored in real time; each email is reviewed in real time; books can only be sent from certain sources and can be rejected for distribution to the inmate; each visitor to an inmate undergoes a background check; each visit is monitored; each locker in which an inmate places their things can be searched at any time for any reason; religious services are monitored. That level of oversight and monitoring effects all inmates. However, the Bureau of Prisons has created an extreme level of monitoring that has caused much debate in the corrections management and civil liberties communities – Contact Management Units (CMUs).
44. CMUs are a prison within a prison. They are highly restrictive federal prison units that segregate certain prisoners from the general prison population and the outside world, closely monitoring and controlling these prisoners’ communications. The Center for Constitutional

Rights has described the CMUs as “an experiment in social isolation.” [Exhibit 9].⁷² The Department of Justice writes of a CMU, “Written correspondence may be limited to six...pieces of paper, double-sided, once per week to and from a single recipient (in addition, electronic messaging may be limited to two messages...per calendar week, to and from a single recipient at the discretion of the Warden); Telephone communication may be limited to three completed calls...per calendar month for up to 15 minutes; and Visiting may be limited to four one-hour visits (expanded from the proposed rule limitation of one one-hour visit) each calendar month.”⁷³

45. In the case of CMU prisoners, BOP fully exercises its monitoring authority. In a CMU, every communication made by a prisoner, except with an attorney, is actively monitored.⁷⁴ In practicality, BOP also records all conversations among prisoners that occur in CMUs through cameras and listening devices.

46. Prisoners in the isolation units are barred even from contact with other prisoners in the general population.⁷⁵ In addition to the stigma of being placed in what is widely known as the “terrorist” unit, individuals detained in the CMU have limited access to educational and other opportunities, including programs that facilitate reintegration and employment efforts upon their release.⁷⁶

⁷² Center for Constitutional Rights, “CMUs: The Federal Prison System’s Experiment in Social Isolation”, 31 March 2010, <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/cmus-federal-prison-system-s-experiment>.

⁷³ See, <https://www.federalregister.gov/documents/2015/01/22/2015-01024/communications-management-units>. See also, <https://www.law.cornell.edu/cfr/text/28/part-540/subpart-J> (The Federal Regulations for Communications Management Units)

⁷⁴ Id.

⁷⁵ Center for Constitutional Rights, “CMUs: The Federal Prison System’s Experiment in Social Isolation”, 31 March 2010, <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/cmus-federal-prison-system-s-experiment>.

⁷⁶ Id.

47. For any inmate, and many of my clients, the level of monitoring of their lives can – and often does – cause distress leading to significant levels of depression. In my experience, those inmates who are placed in CMUs experience this exponentially. And, as I show below, the near complete lack of process means an inmate in a CMU is highly unlikely to leave it; and has no idea for how long they will remain. This level of treatment is far more Reading Gaol, than a modern efficient prison system.⁷⁷

VI. CONTRARY TO THE GOVERNMENT’S CONTENTION, A POST-CONVICTION DESIGNATION OF MR. ASSANGE TO COMMUNICATIONS MANAGEMENT UNITS AND SUBJECTING HIM TO SPECIAL ADMINISTRATIVE MEASURES IS THE EQUIVALENT OF SOLITARY CONFINEMENT IN MY EXPERIENCE WITH NO MEANINGFUL ABILITY TO CHALLENGE SUCH CONDITIONS

48. Repeatedly throughout its affidavit, the Government says that decisions to place Mr. Assange in CMUs and to subject him to SAMs “are not punitive,”⁷⁸ but the results are very punitive indeed. Were Mr. Assange to be given a SAM, or sentenced to a CMU, his time in federal prison in the United States would be a de facto sentence of solitary confinement.⁷⁹

⁷⁷ See, Wilde, Oscar. Ballad of the Reading Gaol. Wilde writes presciently of an American CMU, “He does not sit with silent men, who watch him night and day; Who watch him when he tries to weep, And when he tries to pray”

⁷⁸ See, Kromberg, at 38.

⁷⁹ I have been made aware of the European Court of Human Rights (“ECtHR”) decision in Ahmad v. United Kingdom (2010) and generally aware of the standard set down by that Court for illegal solitary confinement. In the ten years since that decision, however, in practice the regulations subsequently enacted by the United States Department of Justice, I believe that the current structure of CMUs has become far more akin to solitary confinement which troubled that Court than at the time of the decision. See, <https://www.law.cornell.edu/cfr/text/28/part-540/subpart-J>. The current regime of CMUs takes into consideration past behavior, not just that behavior while in custody; it has

49. From my experience, the regime the Government lays out in its affidavit is simply not the reality in the American prison system. The Government states that a detainee's placement in a CMU or under SAMs can be easily challenged and regularly subject to review. I have found neither to be correct in practice. The Government makes the process for challenging their imposition sound almost routine. And they are correct – in that they are almost always routinely denied. Both the administrative process within the prison and the challenging process through the federal court system is exceeding difficult. Federal courts historically have given the BOP great latitude in their decision making and unless it can be established that the inmate is being held in conditions that are unconstitutional (i.e., cruel and unusual), they take hands off approach.

Special Administrative Measures (SAMS)

50. The nearly certain denial of appeals to initial implementation of SAMs and courts' consistent deference to BOP arguments that SAMs are necessary based on broad and vague allegations of "national security interests" has limited meaningful judicial review of the purported justifications for SAMs.⁸⁰

51. My clients have found this to be a circular argument. The prison level implantation is appealed to a BOP review, which nearly always confirms the prison level decision; the courts are incentivized to nearly always support the agency decision. My clients have not found this to be anywhere close to a due process. There is, in my experience, a collective administrative view that no process is actually and practically due.

extremely limited on-going monitoring of the reasoning behind the placement, and Congress has specifically made clear that decision making by the BOP on placements are beyond judicial review.

⁸⁰ Id.

52. For example, *The Nation*, a widely respected public policy journal here found about another inmate given a SAM assignment, “Each year around the middle of March, [inmate] Salameh received a letter stating that his SAMs had been renewed.”⁸¹ Despite minor adjustments to the restrictions, there never seemed to be a clear way to get them removed. He filed hundreds of requests and approached guards informally, asking them to intervene. “I received the Special Administrative Measures (SAMs) extension for the third time without any due process or any hearing by [a] Disinterested Committee,” he wrote in an administrative remedy dated July 2007. “These SAMs restrictions are unjustified, unfair, illegal, inhumane, oppressive [and] unconstitutional.” The BOP’s Central Office responded in October, “You may object to the provisions of the SAMs, but as you were appropriately advised, the Bureau merely informs you of the requirements of the SAMs, and ensures the measures are followed,” adding that they would remain in place “until the Attorney General determines it is no longer necessary.”⁸²

53. In the very federal court district where Mr. Assange could be placed if he is sentenced to ADX in Colorado, found that the due process of SAMs failed the very basics of fairness. An inmate at the same facility mounted a challenge to the SAMs restrictions in Denver’s federal court, arguing that they are extreme, punitive and unnecessary. Senior U.S. District Judge Richard Matsch found that the decision-making in the SAMs process is so cloaked in the se-

⁸¹ Aviva Stahl, “Force-Feeding Is Cruel, Painful, and Degrading—and American Prisons Won’t Stop”, *The Nation*, 4 June 2019. <https://www.thenation.com/article/archive/force-feeding-prison-supermax-torture/>.

⁸² *Id.*

crecy of the executive branch that it “is offensive to traditional values of fairness and transparency.” [Exhibit 10].⁸³

Communication Management Units (CMUs)

54. The Government also readily admits that Mr. Assange could be assigned to a Communications Management Unit. As I wrote in my previous affidavit, 18 U.S.C. § 3621(b) sets forth the criteria that the BOP must generally consider in deciding where to house prisoners; including any statement by the court that imposed the sentence [Exhibit 11].⁸⁴ In fact, Congress recently affirmed this by making clear that the designation of a location for an inmate is not even reviewable by any Court in the United States, including the Supreme Court. It wrote, “Notwithstanding any other provision of law, a designation [by the BOP] of a place of imprisonment...is not reviewable by any court.”⁸⁵

55. Extremely limited procedural protections accompany CMU placement.⁸⁶ There is no requirement that the BOP’s Assistant Director of Correctional Programs (prior to 2015 this was the Regional Director), who determines which prisoners shall be sent to CMUs, document his reason(s) for doing so [Exhibit 12].⁸⁷ A prisoner receives a Notice of Transfer with the rationale for CMU designation only after being transferred.⁸⁸ Upon arrival at a CMU, an in-

⁸³ Alan Prendergast, “At the Federal Supermax, When Does Isolation Become Torture?”, Westword, 3 July 2018, <https://www.westword.com/news/h-unit-at-colorados-federal-supermax-is-a-special-sort-of-hell-10496356>. Emphasis added here.

⁸⁴ David Shapiro, “How terror transformed federal prison communication management units”, 44 *Columbia Human Rights Law Review*, 2012, p 81.

⁸⁵ See 18 USC 3621 (b)

⁸⁶ David Shapiro, “How terror transformed federal prison communication management units”, 44 *Columbia Human Rights Law Review*, 2012, p 89.

⁸⁷ Centre for Constitutional Rights, “Communications Management Units: New documents detail due process violations”, 9 July 2014, https://ccrjustice.org/sites/default/files/assets/CCR_CMU_2014Documents-20140709.pdf; Rachel Meeropol, “Communication Management Units: The Role of Duration and Selectivity in the Sandin v. Conner Liberty Interest Test”, *CJLR*, 2017, p44, <https://escholarship.org/uc/item/8kr5p5sm>.

⁸⁸ Id.

mate can challenge CMU placement only through BOP's Administrative Remedy Program, a purely written process.⁸⁹ An inmate has no right to a live hearing, no right to call witnesses or present evidence, and no right to representation of any kind.⁹⁰ Prisoners are not told why they have been transferred to a CMU until after they arrive.⁹¹ Without complete information about the reasons for their CMU designation, prisoners are unable to rebut those reasons.⁹²

56. While BOP policy states that prisoners can appeal their CMU placement (through the Administrative Remedy Process), it is a cumbersome and lengthy process. Lower-level staff members working in a CMU first make a recommendation to the warden of the institution where the prisoner is incarcerated. The warden then decides whether to forward the recommendation to BOP's Counterterrorism Unit, a division with functions that include "identifying inmates involved in terrorist activities" and monitoring "terrorist inmate communications." The Counterterrorism Unit then forwards its own recommendation to the Assistant Director of Correctional Programs "for further review and consideration." That Assistant Director "has final authority to approve an inmate's re-designation from a CMU."⁹³

57. This is the reality for my clients. This is not a possible example of due process; and I have found this lack of transparency and process serves to further harm the mental health of inmates.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Centre for Constitutional Rights, "Communications Management Units: New documents detail due process violations", 9 July 2014, https://ccrjustice.org/sites/default/files/assets/CCR_CMU_2014Documents-20140709.pdf.

⁹² Id.

⁹³ Id.

VII. THE GOVERNMENT SPECIFICALLY RAISES THE POSSIBILITY OF SENDING MR. ASSANGE TO A SUPER MAXIMUM FACILITY THAT WAS DESCRIBED BY ITS OWN FORMER WARDEN AS A “FATE WORSE THAN DEATH” THAT WAS “NOT BUILT FOR HUMANITY”

58. The Government raises the possibility of sending Mr. Assange to ADX. As mentioned before, outside of Florence, Colorado ADX is America’s strictest prison.⁹⁴ Officially known as Administrative Maximum-Security United States Penitentiary (“ADX”); it is most known by its shorthand name, “Supermax.” This is a facility is the most feared by inmates and is where the most violent offenders in the nation are sent. Currently home to Mexican drug lord Joaquin “El Chapo” Guzman, Unabomber Ted Kaczynski, Oklahoma City bomb conspirator Terry Nichols, and the mastermind behind the first World Trade Center bombing Ramzi Yousef. And this is where the Government, according to its own affidavit, sees as a potential prison placement for Mr. Assange. It is my understanding that the United States Attorney’s Office that is prosecuting this case with the Department of Justice has said that Mr. Assange would be subject to a sentence of up to 175 years in prison. I believe, based on my understanding of the case, that this is a not unlikely proposition. There is no way for anyone to accurately tell this Court what Mr. Assange’s sentence would be; that is the sole discretion of the trial judge. A sentence roughly exceeding his natural life is a real possibility.

59. In my decades in the system, Supermax is the only facility I have ever seen the very people within the BOP criticize its very existence. As mentioned above, Robert Hood, the Warden

⁹⁴ Florence, CO, a city of under 4,000 residents, is situated at the base of the Rocky Mountains (elevation 5,000) approximately two hours south of Denver.

of Supermax from 2002-2005 says, “This is not built for humanity. I think that being there, day by day, its worse than death.” **[Exhibit 13]**.⁹⁵ During Hood’s more than 20 years working for the BOP, he worked at nine institutions and served as a warden or associate warden at four.⁹⁶

60. Should Mr. Assange be sent to ADX he will almost certainly spend all his time in ADX in solitary. It is that solitary structure that differentiates most of ADX from the Penitentiary on the same property. While conditions at a penitentiary are severe, nothing compares to the near permanent solitary life of an inmate at ADX. Most inmates at ADX are kept in their cells 22 or 23 hours a day with any limited recreation time being alone in individual cages. The cells in the housing units at Florence ADX are arranged in a “linear design” down one side of a hallway (called the “unit range”), which prevents inmates from seeing each other. The cells measure approximately seven by twelve feet, with a poured concrete bed, desk, and stool, and a stainless-steel combination sink and toilet, as well as a shower with an automatic shut-off. The beds have handles for attaching four-point restraints. Each cell has a single, narrow window, approximately 42 inches tall by four inches wide, angled to allow inmates to see only the sky. All cells have solid exterior doors with a closable slot and an interior cell door **[Exhibit 14]**.⁹⁷

⁹⁵ See, Colorado’s Supermax prison now occupied by El Chapo is “worse than death,” ex-warden said, Canon City Daily Record, July 27, 2019, <https://www.canoncitydailyrecord.com/2019/07/27/supermax-el-chapo-escape-mentally-ill/> See also, <https://www.afsc.org/resource/solitary-confinement-facts>

⁹⁶ Id.

⁹⁷ Description from: USP Florence Administrative Maximum Security (ADX) Inspection Report, <https://cic.dc.gov/sites/default/files/dc/sites/cic/publication/attachments/Florence%20ADMAX%20Inspection%20Report%20and%20BOP%20Response%20-%2010.31.18.pdf>, citing Office of the Inspector General, U.S. Department of Justice, Review of the Federal Bureau of Prisons’ Use of Restrictive Housing for Inmates with Mental Illness (July 2017), p. 16. <https://oig.justice.gov/reports/2017/e1705.pdf>.

61. My research and experience tells me that Mr. Assange will be nearly certain to be housed in one of three housing areas at ADX: first, “Range 13” is a four-cell wing of the Special Housing Unit (or “SHU”)...It is the most restrictive and most isolated area within Florence ADX. The U.S. Department of Justice, Office of the Inspector General reported a psychologist at Florence ADX describing solitary confinement on Range 13, saying, “You have no contact, you don’t speak to anybody, and it’s a form of torture on some level.”⁹⁸; second, “The Control Unit (Bravo Unit) is the most secure housing unit. Inmates are referred to the unit based on behavioral incidents and are provided an opportunity for a hearing prior to placement.⁹⁹ Inmates in the Control Unit are isolated at all times, including recreation, and remain in their cells for 23 to 24 hours a day. Inmate’s behavior and compliance with the institutional and unit rules are assessed monthly. If an inmate does not maintain clear conduct for an entire month, then the inmate does not receive time served for any days in that month. The Control Unit has 78 cells; or third, “The Special Security Unit (Hotel Unit, or H Unit) is for inmates who have “special administrative measures” (SAMs) imposed on them. According to staff, SAMs restrictions always come from judicial orders. Typically, the judicial orders result from incidents where individuals threaten a witness or present a communication concern, such as being a leader of a gang or involvement in terrorism.”¹⁰⁰ I believe, strongly, that giv-

⁹⁸ Id.

⁹⁹ Id, citing, Federal Bureau of Prisons, U.S. Department of Justice, Program Statement No. 5212.07, Control Unit Programs (Feb. 20, 2001), http://www.bop.gov/policy/progstat/5212_007.pdf.

¹⁰⁰ Id, citing, 28 C.F.R. § 501.3(a) (2010), “Upon direction of the Attorney General, the Director, Bureau of Prisons, may authorize the Warden to implement special administrative measures that are reasonably necessary to protect persons against the risk of death or serious bodily injury. These procedures may be implemented upon written notification to the Director, Bureau of Prisons, by the Attorney General or, at the Attorney General's direction, by the head of a federal law enforcement agency, or the head of a member agency of the United States intelligence community, that there is a 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

en the Government’s admission of the possibility of SAMs being implemented against Mr. Assange, if this were to occur he is highly likely to spend the rest of his life in the H Unit.

62. The BOP does not set an upper limit on the amount of time a person can spend in isolation. One man with mental illness spent 19 years in ADX before he was finally transferred out.¹⁰¹ Based on the most recent data available, from November 2013, on average people spent 1,376 consecutive days or about 45 months in ADX.¹⁰² People with mental illness spent an average of 17 months longer.¹⁰³ Amnesty International’s 2014 report describes how the formal review process in fact leaves very little opportunity to prisoners to leave ADX or extra-restrictive programmes within ADX [**Exhibit 15**].¹⁰⁴ There are few examples of inmates being able to “step down” from solitary conditions at ADX. My research and experience tell me that while there is a *process*, there is little hope for the inmate to succeed in that process.

Mental Healthcare at ADX

63. My experience has informed me that the former Warden’s view of Supermax to be correct; a place ill fit for humans, where isolation and desolation become the unending pattern of life. Recently, a group of inmates at ADX filed suit against the Bureau of Prisons for a systemic failure to care for their mental health needs.

bodily injury to persons.” <https://www.gpo.gov/fdsys/pkg/CFR-2010-title28-vol2/pdf/CFR-2010-title28-vol2-sec501-3.pdf>.

¹⁰¹ US Department of Justice, Office of Inspector General, Review of the Federal Bureau of Prisons’ Use of Restrictive Housing for Inmates with Mental Illness (July 2017), at 18, available at <https://oig.justice.gov/reports/2017/e1705.pdf>

¹⁰² Id. at 29.

¹⁰³ Id.

¹⁰⁴ Amnesty International, “Entombed: Isolation In the US Federal Prison System”, 2014, p 21-24 <https://www.amnestyusa.org/reports/entombed-isolation-in-the-us-federal-prison-system/>.

64. The lawsuit filed by inmates of ADX is chilling to read.¹⁰⁵ According to the Second Amended Complaint, the BOP specifically said those inmates with mental illness should not be housed at ADX. Nonetheless they are. The complaint reads, “The BOP’s deliberate indifference to the proper diagnosis and treatment of ADX prisoners with mental illness resulted in horrible consequences. Many prisoners at ADX interminably wailed, screamed, and banged on the walls of their cells. Some mutilated their bodies with razors, shards of glass, sharpened chicken bones, writing utensils, and whatever other objects they could obtain. A number of swallowed razor blades, nail clippers, parts of radios and televisions, broken glass, and other dangerous objects. Others carried on delusional conversations with voices they heard in their heads, oblivious to reality and to the danger that such behavior might pose to themselves and anyone who interacts with them. Still others spread feces and other human waste and body fluids throughout their cells, threw it at the correctional staff, and otherwise created health hazards at ADX. Suicide attempts were common; many have been successful.”¹⁰⁶

65. The suit shows the near complete lack of mental health care for the inmates of ADX. While the settlement included a number of proposed changes to the mental health care at ADX and resulted in the transfer of a number of inmates out of ADX, it remains largely unknown as to the status and effectiveness of the programmes agreed to in the settlement. In 2016 one of the inmate/plaintiffs in the case, John Powers, told the court of benefits from the settlement¹⁰⁷, however the following year in 2017 the DC Corrections Information Council conducted an

¹⁰⁵ See, *Cunningham et al v. Bureau of Prisons*, No. 12-cv-01570-RPM USDC Co. For the full docket of materials, see, <https://ecf.cod.uscourts.gov/cgi-bin/HistDocQry.pl?133868>

¹⁰⁶ *Id.*, Second Amended Complaint. See, <https://www.clearinghouse.net/chDocs/public/PC-CO-0019-0002.pdf>

¹⁰⁷ See, *Cunningham et al v. BOP*, 1:12-cv-01570, letter from John Jay Powers, filed 9/22/16.

on-site inspection of Florence ADX and in their subsequent report they listed a remaining number of serious issues with mental health services.¹⁰⁸ Their report describes the available mental health services as being primarily “treatment through self-help packets and information provided by video to inmates who have TVs in their cells.” Additionally, limited individual psychological therapy was available and “inmates participate in therapy sessions in the gymnasium... The participants are separated into individual cages, in front of which is a psychologist. Inmates from the Control Unit are separated by an empty cage. Two correctional officers remain in the room. During group sessions, inmates remain shackled with their hands in front of them.”¹⁰⁹ The report also documents a number of inmates experiencing difficulties with accessing the necessary medication they needed for psychological disorders and being taken off medication.¹¹⁰ The rates of self-harm at ADX are alarmingly high “between March 2016 and February 2017, the rate of documented instances of inmates’ “Threatening Bodily Harm” was 8.7/100 inmates, as compared to the overall BOP rate of 0.9/100 inmates between June 2016 and May 2017.” The report documents concern that when inmates self-harm or attempt suicide it is not taken seriously and rather treated as merely “attention seeking”.¹¹¹

66. While the United States Court of Appeals for the Tenth Circuit upheld the settlement with Cunningham and his fellow inmates, just three years later, that same Court would find that the health care in ADX failed to meet basic standards of care for inmates. In February of this

¹⁰⁸ See, USP Florence Administrative Maximum Security (ADX) Inspection Report, <https://cic.dc.gov/sites/default/files/dc/sites/cic/publication/attachments/Florence%20ADMAX%20Inspection%20Report%20and%20BOP%20Response%20-%2010.31.18.pdf>

¹⁰⁹ Id. at 17

¹¹⁰ Id. at 18

¹¹¹ Id at 19

year, in a different case, the Court found that ADX had not measurably changed in terms of health care generally. The Court wrote of the medical treatment of inmate Seifullah Chapman, “Medical Professionals provided Mr. Chapman with care “dramatically short of medically acceptable standards of care, even for prisoners.”¹¹² In that case, the medical treatment was based on his physical needs; however, his underlying complaint shows a lack of his health treatment generally.¹¹³ In fact, my experience informs me that a lack of physical health care always matches a lack of mental health care. For Mr. Assange, his physical and mental health needs are going to be subject to the care that just weeks ago was determined to be well below what is acceptable care for inmates.

67. Even taking into account any improvements at Florence ADX in mental health care, the fact remains that Mr. Assange will be held in solitary confinement at ADX for a prolonged period with little hope of challenging those conditions. The detrimental effect of solitary confinement on an individual’s mental health has been well documented. I would respectfully point the court to two scholarly articles. First, “Solitary Confinement As a Prison Health Issue” **[Exhibit 16]**¹¹⁴ and “Psychological Distress in Solitary Confinement: Symptoms, Severity and Surveillance in the United States 2017-2018” **[Exhibit 17]**¹¹⁵. These are recent examples of the true detriment that solitary conditions in ADX would have on Mr. Assange.

¹¹² See, Chapman v. Santini et al, Ct.App. 10, No. 18-1117, February 13, 2020. See also, <https://theappeal.org/vacated-case-prison-conditions/>

¹¹³ See, Chapman v. Bureau of Prisons, DColo, Case 1:15-cv-00279-DDD-KLM.

¹¹⁴ Sharon Shalev “Solitary confinement as a prison health issue” (WHO Guide to Prisons and Health) 2014 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3073610

¹¹⁵ Reitner et al “Psychological Distress in Solitary Confinement: Symptoms, Severity and Surveillance in the United States 2017-2018”, American Journal of Public Health 2020.

V. CONCLUSION

68. It's with good and honest intention the above information is presented to the Court. I've spent nearly four decades involved in this type of work that has shown starkly the realities of the prison system, particularly for someone in Mr. Assange's position.

/s/ Joel A. Sickler

Joel A. Sickler

*Founder
Justice Advocacy Group, LLC
Alexandria, VA*

Dated: July 16th, 2020

Statement of Truth:

- (i) I understand that my duty is to help the court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.
- (ii) I confirm that I have not entered any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
- (iii) I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
- (iv) I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
- (v) I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
- (vi) I have shown the sources of all information I have used.

(vii) I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.

(viii) I have endeavored to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.

(ix) I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.

(x) I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification.

(xi) I understand that:

a. my report will form the evidence to be given under oath or affirmation;

b. the court may at any stage direct a discussion to take place between experts;

c. the court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with the reasons;

d. I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert.

e. I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.

(xii) I have read Part 19 of the Criminal Procedure Rules and I have complied with its requirements.

(xiii) I confirm that I have acted in accordance with the code of practice or conduct for experts of my discipline, namely the General Medical Council.

(xiv) I confirm that the contents of this report are true to the best of my knowledge and belief and that I make this report knowing that, if it is tendered in evidence, I would be liable to prosecution if I have willfully stated anything which I know to be false or that I do not believe to be true.

Joel A. Sickler

Joel A. Sickler

June 20, 2020