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FOR JUSTICE

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October 20, 2008

Attorney General Michael B. Mukasey  
US Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530-2000

Re: Reimposition of Special Administrative Measures on Syed Fahad Hashmi,  
#60011-054

Dear Attorney General Mukasey,

The Brennan Center for Justice, an organization committed to both individual rights and a safe and free America, is gravely concerned about the Special Administrative Measures (“SAMs”) imposed on Syed Fahad Hashmi and the prospect of their renewal for another calendar year. We ask that you decline to extend the SAMs beyond their current expiration date of October 29, 2008, or, at a minimum, that you decline to extend their most extreme elements, and mitigate them to account for their effect on Mr. Hashmi.

Mr. Hashmi was arrested on June 6, 2006, in the United Kingdom, and extradited to the United States on May 25, 2007, based on allegations of material support of terrorism. He has been in pre-trial detention now for 28 months. His trial is not scheduled until the spring of 2009.

During the last twelve months of his pretrial confinement, Mr. Hashmi has been subject to a highly restrictive and de facto punitive regime of SAMs.<sup>1</sup> We are concerned that the cumulative psychological impact of the regulations is so great as to pose a threat to the mental health of any person.

Mr. Hashmi, we understand, has been in solitary confinement for the entirety of his time at the Metropolitan Correctional Center, isolation that the SAMs regime has both continued and intensified. The SAMs preclude contact with any visitor except for his attorneys and his immediate family. Permitted contact is severely circumscribed and subject to constant surveillance. His interaction with the outside world is severely limited in other ways. He may not interact with the media either directly or through a third party, nor may he listen to

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<sup>1</sup> SAMs are imposed pursuant to 28 C.F.R. § 501.3.

television or radio news programs. Even his newspapers are delivered on a 30-day delay when he is permitted to receive them at all. In addition to the restrictions on contact with the world beyond the detention center walls, Mr. Hashmi is forbidden from communicating, sharing a cell, or worshipping with fellow inmates. Indeed, the SAMs provide that he “shall be kept separated from other inmates as much as possible.”

The net effect of these measures has been to condemn Mr. Hashmi to a year of solitary confinement. The troubling consequence of the SAMs is thus extreme isolation with predictable psychological damage and inappropriately coercive effects.

Experts and courts alike repeatedly have recognized the devastating effects on an inmate’s mental health wreaked by extended solitary confinement. Indeed, the evidence that prolonged isolation can cause severe and irreversible mental harm is overwhelming.<sup>2</sup> Absent a lifting of or mitigation of the SAMs, Mr. Hashmi’s near-absolute isolation will likely continue for some time as he continues to await trial for many months yet.

Furthermore, we are concerned that the harsh measures thus far imposed on Mr. Hashmi’s pretrial detention may, whether intentionally or inadvertently, have the practical effect of pressuring him into accepting a plea-bargain to which he otherwise might not agree. SAMs are intended to address particularized safety-related concerns. It is highly inappropriate for SAMs to become, either intentionally or collaterally, a bargaining chip in plea negotiations because they provide the government with leverage unrelated to the scope of criminal liability that might be imposed at trial. Further, the SAMs may have the additional consequence of creating an incentive to plead guilty so as to secure a post-conviction imprisonment regime that does not include SAMs.<sup>3</sup>

Pursuant to existing regulations, a renewal of SAMs requires a finding that there continues to “be a substantial risk that [Mr. Hashmi’s] communications or contact with others could result in death or serious bodily injury to persons, or substantial damage to property that

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<sup>2</sup> See, e.g., *Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988) (“[T]he record shows, what anyway seems pretty obvious, that isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage, even if the isolation is not total.”); *Madrid v. Gomez*, 889 F. Supp. 1146, 1230 (N.D. Cal. 1995) (“Social science and clinical literature have consistently reported that when human beings are subjected to social isolation and reduced environmental stimulation, they may deteriorate mentally and in some cases develop psychiatric disturbances.”); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 913 (S.D. Tex. 1999) (finding “actual psychological harm” among prisoners deprived of human contact); *Koch v. Lewis*, 216 F. Supp. 2d 994, 1001 (D. Ariz. 2001) (noting that even the government’s expert “agreed that extended isolation... subjects the inmate to heightened psychological stressors and creates a risk for mental deterioration”). This conclusion finds support in the psychological literature. See also Craig Haney, *Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement*, 49 (1) *Crime & Delinquency* 124, 132 (2003) (finding that “there is not a single published study of solitary or supermax-like confinement . . . that failed to result in negative psychological effects”).

<sup>3</sup> Sam A. Schmidt & Joshua L. Dratel, *Turning the Tables: Using the Government’s Secrecy and Security Arsenal for the Benefit of the client in Terrorism Prosecutions*, 48 *N.Y.L. SCH. L. REV.* 69, 76 n.14 (2003).

would entail the risk of death or serious bodily injury to persons.”<sup>4</sup> The mere fact a defendant is alleged to have committed a crime that has terrorism connections, of course, is not and should not be the basis for such a finding. And there is a substantial question whether the facts of the offenses of which Mr. Hashmi alleges bespeak such a risk at all.

It is vital to recall that our Constitution compels the conclusion that Mr. Hashmi remains innocent of the allegations leveled against him until proven otherwise, and must be treated as such. Yet the SAMs create conditions of confinement that appear nothing if not punitive. Because of the severe nature of the SAMs imposed on Mr. Hashmi and their likely detrimental effect on his mental health we encourage you to consider carefully the decision whether their renewal is truly necessary.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Aziz Huq', with a long horizontal line extending to the right.

Aziz Huq  
Director, Liberty and National Security  
Project

cc: Sean Maher

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<sup>4</sup> 28 C.F.R. § 501.3(c).