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Eric H. Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington DC 20530-0001
USA

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Dear Attorney General

RE: SPECIAL HOUSING UNIT IN THE METROPOLITAN CORRECTIONAL CENTRE, NEW YORK

I am writing about the federal pre-trial Special Housing Unit (SHU) on the 10th Floor South of the Metropolitan Correctional Center (MCC), New York (known as 10 South). For reasons outlined below, we are concerned that conditions in the unit fall short of international standards for humane treatment.

Amnesty International understands that the unit comprises some six individual cells and is used to house high security detainees awaiting trial in the 2nd Judicial Circuit, primarily individuals placed under Special Administrative Measures (SAMs). We are told that detainees in the unit are confined to small, solitary cells for 23 or 24 hours a day and are not allowed any contact, including speaking, with other inmates. The outside window in each cell is reportedly glazed over so that there is no view and very little natural light. All meals are taken in the cells, which are reported to be small and furnished only with a poured concrete bed, shower and toilet, with no table or chair with a backrest. Furthermore, we are told, prisoners in the unit must exercise, alone, in a small, ill-equipped interior room and are deprived of any exercise in the open air, contrary to the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners.

While such conditions would appear unacceptably harsh if applied in any case for more than a minimal period, we are concerned that some federal detainees have been held for months or years in the above conditions while awaiting trial.

Last year we wrote to you about the treatment of Syed Hashmi, a US citizen with no previous convictions or arrest history, who was held for nearly three years in MCC10 South before pleading guilty to one count of providing material support to al-Qaida. As well as being confined to his cell for 23/24 hours a day throughout his pre-trial detention, severe restrictions were imposed on his contact with the outside world under the SAMs regulations. He was allowed social visits and correspondence only with his elderly parents and brother. The visits – which were permitted at most twice a month - took place behind a screen in a non-contact setting and he was only allowed to see each parent or his brother separately, which further limited his contact with them. Furthermore, we are told, his parents would sometimes arrive at the facility to be told that they could not visit him because a translator or monitor was not available (one of the SAMs conditions was that all social visits had to be monitored and conversations translated if not in English; we understand his mother spoke only Urdu). He was also denied contact visits with his attorneys. Syed Hashmi reportedly had limited and delayed access to reading material and no access to news oriented radio or TV news programs.

Others confined to the unit have been held in similar conditions. Oussama Kassir, a Swedish national accused of attempting to establish a jihad training camp in the USA and operating web-sites promoting terrorism, spent pre-trial detention of more than 18 months confined to his cell for virtually 24 hours a day, with only sporadic access to any out-of-cell exercise, no access to radio or TV for the first eight

months and restricted and delayed access to printed materials and newspapers. He received no social visits and was denied phone calls to his family for seven months. Visits with his attorney were non-contact. He was also reportedly under constant surveillance by guards, including female staff, who were able to observe him while he was showering or using the bathroom. His lawyer has described to Amnesty International how it was hard for him to endure his isolation and how he was disturbed and constantly upset about his conditions during attorney visits, which made it difficult to focus on his defence. At one point during his pre-trial detention Oussama Kassir went on hunger strike for several weeks and was force fed with a nasal tube, a procedure he described to a court as being extremely painful.

Other harsh measures have been reported, including severe punishment for violations of SAMs conditions. Oussama Kassir was denied telephone calls with his family for four months for greeting another prisoner once in Arabic, as he was being escorted down a hallway, in breach of a SAMs regulation that bars any contact with other inmates. Syed Hashmi received a 90 day suspension of family visits for an incident in which guards said he was doing "martial arts" in his cell, although Syed Hashmi claimed he was merely exercising.

Amnesty International is aware that security in 10 South was significantly tightened following an incident in November 2000 in which two detainees sharing a cell, who were awaiting trial on terrorism related charges, attacked and seriously injured a guard in an apparently pre-conceived plan. We understand that the increased security measures include a ban on double-celling in the unit and a requirement that any inmate moving outside his cell be escorted by three custody officers while handcuffed from behind. We fully recognize that the authorities have a responsibility to take all reasonable measures to protect staff and safeguard against wider threats to security. However, all such measures, as well as general detention conditions, must be compatible with states' obligation under international law and standards to treat all prisoners humanely.

Amnesty International is concerned that the conditions in MCC 10 South fall short of the USA's obligations in this regard and that the combined effects of prolonged confinement to sparse cells with little natural light, no outdoor exercise and extreme social isolation amount to cruel, inhuman or degrading treatment. The conditions also appear incompatible with the presumption of innocence in the case of untried prisoners who have not committed offences within the institution and whose detention should not be a form of punishment. As noted by the American Bar Association in its Standards on Treatment of Prisoners, "For a prisoner not serving a sentence for a crime, the purpose of imprisonment should be to ensure appearance of the prisoner at trial and to safeguard the public, not to punish" (Standard 23-1.1.(e)).

The USA has ratified the Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR), both of which affirm the absolute prohibition of torture or cruel, inhuman or degrading treatment. Article 10 of the ICCPR states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person", a standard described by the UN Human Rights Committee as a "fundamental and universally applicable rule" (General Comment 21/44, 1992). The Committee has noted that prolonged solitary confinement may amount to torture or other ill-treatment prohibited under Article 7 of the ICCPR (General Comment 20/44, 1992). The UN Committee against Torture has made similar statements, with particular reference to the use of solitary confinement during pre-trial detention.

There is evidence that prolonged isolation, confinement to a small space and lack of exercise can cause serious psychological and physical harm. Several attorneys who have represented prisoners in 10 South have described the negative impact of their pre-trial conditions on their clients' state of mind, and we are concerned that such conditions may impair a defendant's ability to assist in his or her defence and thus the right to a fair trial.

Attorneys have also expressed concern that the non-contact visiting conditions made it difficult to communicate with their clients, particularly when dealing with large amounts of evidentiary materials. One lawyer has described how, out of boxes of defence papers, he had to hold up one page at a time against the dividing glass screen for his client to read. Although a limited number of papers can be handed to prisoners by guards, and detainees can keep a certain amount of legal documentation in

their cells, this does not allay our concern that the visiting conditions may unduly hamper the ability of attorneys to discuss the case with their clients while going through materials. Syed Hashmi's attorney told us that he repeatedly asked if they could meet in a room in the unit which had facility for either contact visits or where he could pass documents directly to his client through bars. Although SAMs regulations allow attorney contact visits at the discretion of the federal authorities, these requests were denied and Syed Hashmi had no contact visits with his attorney throughout his three years of pre-trial detention. We understand that only very general security grounds were given for this denial.

We are further concerned that attempts by MCC prisoners on 10 South to raise their pre-trial conditions through administrative procedures or the courts have not provided a remedy. We are aware that the US government has argued that prisoners are required under the Prison Litigation Reform Act to exhaust administrative remedies before filing complaints with the courts. However, we have been told that such remedies in practice have been ineffective in the case of detainees held in the MCC SHU. In cases which have come before the courts, usually in the form of challenges to pre-trial SAMs conditions, judges have denied relief on the ground that restrictions are "reasonably related" to a "legitimate penological objective" relating to institutional security.

Amnesty International understands that access to 10 South is allowed only under strict conditions. However, it is important that facilities used to isolate prisoners are subject to adequate scrutiny, including, we believe, from independent, outside bodies. In this regard, we would like to request permission for an Amnesty International delegate to visit the MCC 10 South to see first-hand conditions in the unit, with an opportunity where possible to speak to staff and inmates.

In the meantime, we urge you to review the conditions in the MCC 10 South and ensure that all prisoners, including those deemed to be a security risk, are held in humane conditions and treated in accordance with international standards. We urge, in particular, that detainees provided with adequate exercise and family visits, better conditions both inside and outside of their cells, access to natural light and fresh air and are afforded access to their attorneys under conditions which do not impede the preparation of their defence.

We also urge that all prisoners subjected to SAMs, whether convicted or awaiting trial, are held in humane conditions which include adequate opportunity for regular family contact, exercise and out-of-cell time, and that prisoners have a meaningful opportunity to have their SAMs conditions reviewed with a view to alleviating conditions of long-term isolation.

We look forward to hearing from you regarding the concerns raised and our request to visit MCC 10 South.

Yours sincerely

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