

Center For Constitutional Rights

Criminal Justice Issues and Prisoners' Rights

<https://ccrjustice.org/home/blog/2015/10/28/challenging-secretive-us-prisons>

Public Facing Advocacy Writing

The CCR blog

Today we have filed an [appeal](#) to the D.C. Circuit in [Aref v. Holder](#), marking the latest chapter in an eight-year challenge to the Bureau of Prisons (BOP) secretive Communications Management Units (CMU). CCR began investigating the CMUs in 2007, when we received several letters from people in prison who had been abruptly transferred to a CMU with little explanation, and no process. There was nothing about the CMUs on the BOPs website, and no regulation to explain their existence. Initially, all prisoners transferred to the Unit were Muslim. Many had non-violent terrorism related convictions, like material support, but others were in prison for more common crimes. The next wave of prisoner transfers included people with radical politics, like CCRs client [Daniel McGowan](#), an environmental activist, and our former client Avon Twitty, a jailhouse lawyer who had doggedly filed against the BOPs unfair policies for years on his own and others behalf. What they had in common: the BOP wanted to limit their ability to communicate with the outside world, and with the rest of the prison population, and they wanted to be able to do it without having to explain why.

After years of trying to figure out who was in the unit, and why, we filed *Aref v. Holder*, in 2010, claiming that the CMUs violated prisoners due process rights. Prisoners in the units face strict restrictions on all forms of communication with the outside world, including a prohibition on all contact visits, and are segregated from other prisoners. After years of discovery, we were able to present to the district court a detailed and disturbing picture of who was being subjected to these restrictions, and how.

The units were opened without written criteria or procedures. Prisoners are given a one-page Notice of Transfer shortly after being sent to the CMU, but the notice reflects only some of the reasons that a prisoner *may* have been recommended for CMU placement, the actual decision-maker does not document his reasons. The explanation that is provided is frequently factually erroneously, or so vague as to be incomprehensible. Prisoners are told they can appeal their transfer using the BOPs internal complaint procedures, but not a single person has ever gained release from a CMU through this process. Prisoners are told they will be reviewed for potential transfer from the unit, but for the first three years the CMUs existed, the BOP didnt even have a process in place to complete such reviews, so no one was transferred. As you would expect, without a fair process in place, dozens of prisoners were transferred to the units for discriminatory or retaliatory reasons. Most shockingly, 101 of 178 total CMU designations are of Muslim prisoners, though Muslims represent only 6% of the prison population.

Despite our clear evidence of broken process, on March 16, 2015 the district court granted summary judgment for defendants, holding that conditions in the CMUs were not so bad as to require *any process at all* prior to a prisoner being sent there. This means that even arbitrary or dysfunctional procedures could be used to decide who goes to a CMU, without offending the Constitution. The law required the court to compare CMU conditions to the way the BOP uses administrative segregation. Administrative segregation is solitary by another name prisoners are locked down in their cells 23 hours a day, with very limited phone calls and visits, for administrative reasons they are being investigated for a disciplinary offense, or have just been transferred from one prison to another. Administrative segregation is harsh, but it is short-lived and it carries no stigma, on average a prisoner only spends a week or two in such conditions. In contrast, prisoners are designated to the CMUs for years at a time; our clients each spent 3 to 5 years in a CMU. Thats three to five years without a single chance to hug your child, or hold your wifes hand, without a single phone call lasting more than 15 minutes at a time, and interrupted by days of silence, and all the time knowing that every word you do speak or write is being documented by terrorism analysts at the BOPs Counter-Terrorism Unit. Today, we shared that reality with the appellate court, and urged them to reverse the district court.

In many ways, our case has already proven successful. The very first prisoner, one of our former clients, was transferred out of a CMU to a general population unit days before we filed our case in 2010, in clear response to that filing. Today, transfers are commonplace. Initially, the CMUs operated in complete secrecy. Today, because of our litigation, journalists like Will Potter can share [information](#) about the CMUs publicly, ensuring that they will not operate without scrutiny. But just as public and legal pressure forced the BOP to make some important changes; if the pressure ends the BOP can go back to sending anyone they want to a CMU, for any reason, and without explanation, for years on end. For that reason, we continue to fight.

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