

visitors, most regularly his cousin El-Gabrowni, and also Abouhalima, Salameh, and Ayyad. During these visits, as well as subsequent visits once Nosair was at Attica, Nosair suggested numerous terrorist operations, including the murders of the judge who sentenced him and of Dov Hikind, a New York City Assemblyman, and chided his visitors for doing nothing to further the jihad against the oppressors. Nosair also tape recorded messages while in custody * * * *United States v. Rahman*, 189 F.3d 88, 105–06 (2d Cir. 1999). Imprisoned, Sheikh Abdel Rahman had urged his followers to wage jihad to obtain his release. Violent attacks and murders followed. *United States v. Sattar*, 314 F.Supp.2d 279, 288–89 (S.D.N.Y. 2004).

To minimize the risk of terrorist-related communication being sent to or from inmates in Bureau custody, this regulation allows the Bureau, upon request from FBI or other Federal law enforcement agency or if Bureau of Prisons information indicates a similar need to impose communication restrictions, to limit the communication of inmates, individually identified under this regulation, to immediate family members, U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other Federal law enforcement entities, verified consular officers of the inmate's country if the inmate is a national of a foreign country, and the inmate's attorney. The Bureau allows communication with these individuals to help inmates maintain family ties, and to protect inmates' access to courts and other government officials in order to raise issues related to their incarceration or their conditions of confinement, while minimizing the threat to the safety and security of the institution and protecting the public and national security.

The proposed regulation provides that the initial decision regarding whether an inmate's communication will be limited will be made when FBI or another Federal law enforcement agency makes a request to the Bureau to have an inmate's communication limited, or if Bureau of Prisons information indicates a similar need to impose communication restrictions.

Upon receiving such a request from the FBI or other Federal law enforcement agency, the Warden of the facility where the inmate is housed will consider whether such limitations are necessary to ensure the safety and security of the institution; protection of the public; or national security.

If the Warden deems such limitations necessary, that inmate's

communications will be so limited after approval by the Regional Director and the Assistant Director, Correctional Programs Division.

The Warden is in the unique position of having access to a wide variety of information regarding an inmate's past and present activity and propensities, and can analyze the totality of an inmate's circumstances to determine whether to limit communications. The Warden will also be aware of national security concerns, and can assess the propensity of inmates to act in a way that presents a national security risk, such as attempting to recruit others, based on available information.

Currently, there are several Bureau regulations which underscore the Warden's authority and unique ability to make determinations and take action to ensure protection of the public. For instance, in the Bureau's Federal regulations in volume 28 of the Code of Federal Regulations:

- Sections 524.70–524.76, regarding the Central Inmate Monitoring (CIM) System, allows the Warden to evaluate and determine whether certain inmates present special needs for management and therefore require a higher level of review for transfers, temporary releases, or community activities, not to preclude such inmates from such activities where otherwise eligible, but to provide necessary protection to all concerned. Section 540.14(d) states that the Warden may reject correspondence sent by or to an inmate if it is determined detrimental to the security, good order, or discipline of the institution, to the protection of the public, or if it might facilitate criminal activity.

- Section 540.15 allows the Warden to place an inmate on restricted general correspondence for several reasons, including if the inmate is a security risk, threatens a government official, or otherwise attempts to commit illegal activities.

- Section 540.100(a) states that inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. More specifically, § 540.101(a)(3) allows the Associate Warden to deny placement of a telephone number on an inmate's telephone list if she/he determines that there is a threat to the public. § 540.102 allows for monitoring of inmate telephone calls, also to protect the public.

- Section 545.23(d) provides that, when making inmate work assignments, Wardens must consider the institution's security and operational needs, and [the assignment] should be consistent with the safekeeping of the inmate and protection of the public.

- Section 570.35(a) requires the Warden to make a determination regarding whether granting an inmate a furlough if the presence of that inmate in the community could attract undue public attention or create unusual concern.

When applied to individual inmates under this regulation, the Bureau will actively monitor the frequency, volume, and content of their limited communications, except those to/from the inmate's attorney or a verified consular officer. To effectively and efficiently allow monitoring and review of these inmates' communications with immediate family members, those communications may be limited in frequency and volume as follows:

- Written correspondence may be limited to three pieces of paper, double-sided, once per week to and from a single recipient;
- Telephone communication may be limited to a single completed call per calendar month for up to 15 minutes; and
- Visiting may be limited to one hour each calendar month.

Absent abuse or violations by the inmate, this regulation does not limit the frequency or volume of written communication with U.S. courts, Federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other Federal law enforcement entities, verified consular officers of the inmate's country if the inmate is a national of a foreign country, and the inmate's attorney.

By limiting the frequency and volume of the communication to/from inmates identified under this regulation, we will reduce the amount of communication requiring monitoring and review. Reducing the volume of communications will help ensure the Bureau's ability to provide heightened scrutiny in reviewing communications, and thereby reducing the terrorism threat to the public and national security.

Inmates may incur additional limitations on their communications as the direct result of abusing or violating individualized communication limits imposed under this subsection, but additional limitations will occur only to the extent possible under this regulation and according to the procedures in this subsection. Unmonitored communications with verified attorneys and consular officers may be further limited in the form of monitoring only as provided in part 501 and 28 CFR part 543. Inmates may also be subject to disciplinary action or criminal prosecution for abusing or violating limits imposed under this subsection.

Executive Order 12866

This regulation falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.