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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF,
KIFAH JAYYOUSI *et al.*,

Plaintiffs,

WILLIAM BARR, *et al.*,

Defendants,

Case No. 1:10-cv-00539-BJR

**ORDER DENYING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

This matter comes before the Court on remand from the D.C. Circuit for resolution of a single remaining procedural due process claim, brought by the sole remaining plaintiff in this case, Kifah Jayyousi. Over a decade ago, Jayyousi and a number of other now-dismissed plaintiffs initiated this action against the Federal Bureau of Prisons (“BOP”), several BOP officials, and the Attorney General (collectively “Defendants”). At the time, Jayyousi was a federal prisoner. Along with his fellow plaintiffs, he claimed, *inter alia*, that the process under which he was designated to a segregated unit known as the Communication Management Unit (“CMU”) within the federal prison system did not provide constitutionally guaranteed safeguards, in violation of his right to

1 due process. *See* First Am. Compl. (“FAC”), Dkt. No. 86.

2 On March 16, 2015, this Court held that “Plaintiffs do not possess a liberty interest that is
3 implicated in their designation to the CMUs,” and dismissed Plaintiffs’ due process claims. Mem.
4 Op. at 15, Dkt. No. 161. The Court also noted that “[b]ecause the Court finds that designation to
5 CMU does not infringe on Plaintiffs’ liberty interests, it does not reach the question of whether the
6 process Plaintiffs received upon designation to the CMUs was adequate.” *Id.* at 16. On appeal, the
7 D.C. Circuit reversed, finding that although the question “is admittedly a close call,” the indefinite
8 and atypical nature of the designation “pushes CMU designation over the . . . threshold” articulated
9 by the Supreme Court. *Aref v. Lynch*, 833 F.3d 242, 257 (D.C. Cir. 2016) (citing *Sandin v. Conner*,
10 515 U.S. 472, 473 (1995)). The circuit court remanded the case for further proceedings on whether
11 Plaintiffs had received the process they were due.

12 Before the Court, therefore, is a single issue that the Court did not have occasion to reach
13 in its March 16, 2015 ruling: whether Defendants followed constitutionally sufficient procedures
14 in designating Jayyousi to confinement in the CMU. Jayyousi claims, in sum, that Defendants
15 failed to provide him adequate notice of the transfer, an opportunity to rebut the grounds for the
16 designation, or meaningful periodic review of his placement in the CMU. Having reviewed the
17 briefs filed in support of and opposition to the motions, the exhibits attached thereto, the record of
18 the case, and the relevant legal authorities, the Court concludes that the process by which Jayyousi
19 was designated to the CMU was constitutionally adequate, and grants Defendants’ motion for
20 summary judgment, for the reasons that follow.

II. BACKGROUND

A. Communication Management Units (“CMUs”)

The BOP established CMUs at the Federal Correctional Institutions in Terra Haute, Indiana, and Marion, Illinois, in 2006 and 2008, respectively. Decl. of David Schiavone, ¶ 20, Dkt. No. 149. The CMUs were intended to address a perceived deficiency in the Department of Justice’s ability to monitor inmates with terrorism-related convictions and their communications with contacts outside of prison. *Id.* ¶ 2. Defendants have described the CMUs as “self-contained general population housing unit[s],” in which a prisoner is allowed to reside, eat, and participate in all activities within the unit, much as in general population. *Id.* ¶ 6. Once an inmate is transferred to a CMU, however, his communications with the outside world are highly restricted and closely monitored. For example, phone calls and visits are limited, and must be “conducted in English, live-monitored, and recorded by BOP.” *Aref v. Lynch*, 833 F.3d at 247.

As of June 2008, when Jayyousi was designated to the CMU, there was no written policy outlining either the criteria or the process for designation. *See* Dep. of David Schiavone, 37:8-11, Pls.’ Ex. 36, Dkt. No. 138; 30(b)(6) Dep. of David Schiavone, 25:5-10, Pls.’ Ex. 12 (“Q. So is it accurate to say that prior to April 6th, 2010, the BOP did not have written documentation of CMU criteria available either to the public or for use for -- for internal BOP purposes? A. That would be accurate, yes.”). Instead, at that time, the BOP’s Counter Terrorism Unit (“CTU”) had the discretionary authority to identify and evaluate appropriate candidates, and to forward recommendations on to various officials for comment. *See* Schiavone Dep., 53:11-16; Schiavone Decl. ¶ 20. The recommendations ultimately reached the final decision-maker, the North Regional Director, who at the time of Jayyousi’s designation was Michael Nalley. Nalley was tasked with reviewing the recommendations and making the final determination, based largely on his

1 “experience and expertise.” *See* Schiavone 30(b)(6) Dep. at 89:23-90:4 (“The Regional Director
2 has to document a decision in order for it to be communicated for the designation to be made, but
3 the reasons, that would be up to the Regional Director is what he felt was pertinent to include in
4 that decision.”).

5 The BOP eventually articulated criteria for reviewing a CMU prisoner’s continued
6 designation in a policy memorandum dated Oct. 14, 2009. *See* Memorandum from D. Dodrill,
7 Assistant Director of the Correctional Programs Division (“Dodrill Memo”), Pls. Ex. 46. The
8 Dodrill Memo called for regular review of an inmate’s CMU placement to “determine whether
9 CMU designation remains necessary,” and outlined several factors for consideration, including,
10 relevant to Plaintiff Jayyousi’s claim, whether “[t]he inmate’s current offense(s) conviction, or
11 offense conduct, included association, communication, or involvement, related to international or
12 domestic terrorism.” *Id.* at 1-2. Although on its face the Dodrill memo pertained to *continued*
13 designation, Defendants have testified that the criteria outlined in that memo are the same as those
14 used for initial designation. *See* Schiavone Decl., ¶ 17. The BOP put criteria for initial CMU
15 designation in writing on April 6, 2010, when it issued a proposed rule for public notice and
16 comment. *See* 80 Fed. Reg. 3168 (Jan. 22, 2015), Pls.’ Ex. 15, at 196.¹

17 **B. Plaintiff Jayyousi’s Designation to the CMU**

18 In 2008, Jayyousi was sentenced to a 152-month term for conspiracy to murder, kidnap,
19 and maim in a foreign country and conspiracy to provide material support to terrorism. FAC ¶ 179.
20 He and his co-conspirators were found to have communicated in code and posed as a charitable
21 organization to further these goals. *See United States v. Jayyousi*, 657 F.3d 1085, 1091–92 (11th
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23 ¹ The final rule did not go into effect until February 23, 2015, almost a decade after the first CMU opened, and after Jayyousi had been transferred out. *See Aref*, 833 F.3d at 248, n.1. Because Plaintiff is challenging only the procedures under which he was designated, the final rule is not at issue in this case.

1 Cir. 2011). Although he was originally classified as a “low security” prisoner, he was transferred
2 to the Terre Haute CMU in June 2008. Decl. of Ralph Miller ¶ 16, Defs.’ Ex. 5.

3 Within several days of his placement in the CMU, Jayyousi received a Notice of Transfer,
4 outlining the basis for his designation. *See* Notice of Transfer, Pls.’ Ex. 60. The Notice stated:

5 Your current offenses of conviction are for Conspiracy to Commit Murder in a
6 Foreign Country; Conspiracy to Kidnap, Maim, and Torture; and Providing
7 Material Support to a Terrorist Organization. You acted in a criminal conspiracy to
8 raise money to support mujahideen operations and used religious training to recruit
9 other individuals in furtherance of criminal acts in this country as well as many
10 countries abroad. Your offense conduct included significant communication,
11 association and assistance to al-Qaida, a group which has been designated as a
12 foreign terrorist organization. *Id.*

13 Jayyousi challenged the designation through BOP’s administrative appeal process,
14 claiming that information contained in his Notice of Transfer was inaccurate. *See* Regional
15 Administrative Remedy Appeal, Pls.’ Ex. 61. Nalley denied the appeal and informed Jayyousi that
16 his placement in the CMU was deemed necessary in light of his terrorism convictions, and stated
17 “you maintained significant communication and association with foreign terrorist organizations.”
18 *Id.*

19 Over the next five years, Jayyousi’s CMU designation was subject to a number of periodic
20 reviews, approximately every six months. His requests for transfer were denied, until May 14,
21 2013, when his request was approved by the Regional Director without explanation. *Id.* He was
22 then transferred to the general prison population, where he remained until his release from prison
23 in September 2017. Miller Decl. ¶ 18. Jayyousi is currently serving a 20-year term of supervised
release. Sposato Decl. ¶¶ 3-4, Dkt. No. 184, Ex. 2.

1 **C. Procedural History**²

2 In April 2010, Jayyousi, along with eight other federal prisoners who had been placed in
3 CMUs, filed this action. Plaintiffs argued, among other things, that designation to the CMUs took
4 place without due process, in violation of their Fifth Amendment rights. By 2014, the Court had
5 dismissed all plaintiffs but Jayyousi and Yassin Aref from the case. In 2015, this Court granted
6 Defendants' motion for summary judgment and dismissed these two remaining Plaintiffs,
7 concluding among other things that they lacked a liberty interest sufficient to trigger due process
8 protections under the Fifth Amendment. *See* Mem. Op., Dkt. No. 161. Plaintiffs appealed to the
9 D.C. Circuit, which reversed the dismissal of the due process claim, holding that federal prisoners
10 "have a liberty interest in avoiding transfer into the CMU." *Aref v. Lynch*, 833 F.3d at 268, 257
11 (designation triggers liberty interest because "it is exercised selectively; the duration is indefinite
12 and could be permanent; the deprivations—while not extreme—necessarily increase in severity
13 over time."). Noting that the record on appeal was incomplete regarding what process Plaintiffs
14 were due and actually afforded, the circuit court remanded Plaintiffs' claims to this Court to
15 determine "whether the government's procedures comport with due process as applied to
16 appellants." *Id.* at 268-69.

17 In September 2017, Jayyousi was released from BOP custody, and Defendants filed a
18 motion to dismiss, contending that his procedural due process claim was therefore moot.³ Plaintiff
19 responded that his claims continued to present a live controversy, as one of the remedies he sought

21 ² This case has a long and complex procedural history, much of which is not directly relevant to the issues presented
22 in these motions. That history is laid out in more detail in the Court's November 1, 2019 Order Granting in Part and
23 Denying in Part Defendants' Motion to Dismiss, Dkt. No. 189, pp. 2-4.

³ Defendants also sought dismissal of Jayyousi's one remaining co-Plaintiff Aref, who had also been released from
BOP custody, but had been deported from the U.S., presumably to Iraq. The Court granted Defendants' motion as to
Aref, concluding that his "claims of future harm by the existence of the CMU-related records are simply too remote
and speculative to maintain a live controversy as to him." Order at 12, Dkt. No. 189.

1 was expungement from his record of any reference to his designation to the CMU. This Court
2 agreed, and denied Defendants’ Motion to Dismiss, ruling that Jayyousi’s claim was not moot
3 because he “alleges sufficient ongoing consequences from the continued existence of the CMU-
4 related documents [in his record] such that his request for expungement constitutes a live
5 controversy.” Order at 11, Dkt. No. 189.

6 The Court has observed, and the parties agree, that Jayyousi’s challenge is to the actual
7 procedures that were used in both his initial and his continuing designation to the CMU—not to
8 Defendants’ designation policy and procedures generally in place at the time, and not to the new
9 rules as they exist today. *See* Trans. of Feb.14, 2019 Status Conf., Dkt. No. 188, 6:1-3; 9:16-18.
10 On this question, the parties agree that briefing is complete. *See* Nov. 4, 2019 Minute Order (giving
11 parties opportunity to submit additional briefing, which neither party did).

12 III. LEGAL STANDARD

13 Summary Judgment is appropriate where “there is no genuine dispute as to any material
14 fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A fact is
15 ‘material’ if it might affect the outcome of the case.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
16 242, 248 (1986). A dispute of material fact is genuine only if there is sufficient evidence for a
17 reasonable fact finder to find for the non-moving party. *See Anderson*, 477 U.S. at 248. A movant
18 is entitled to judgment “as a matter of law” where the nonmoving party “has failed to make a
19 sufficient showing on an essential element of her case with respect to which she has the burden of
20 proof.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The movant “bears the initial
21 responsibility of informing the district court of the basis for its motion, and identifying those
22 portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together
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1 with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material
2 fact.” *Id.* (internal quotation marks omitted).

3 IV. DISCUSSION

4 A. Jayyousi’s Procedural Due Process Claim

5 The Fifth Amendment to the Constitution guarantees that no individual is “deprived of life,
6 liberty, or property, without due process of law.” U.S. CONST. amend. V. Assessment of an
7 alleged procedural due process violation comprises two steps. First, a court must determine
8 whether the government’s conduct in question impairs a liberty interest protected by the Due
9 Process Clause. *See Sandin v. Conner*, 515 U.S. 472, 484 (1995). Because the circuit court has
10 already determined it does in this case, the Court turns to the second step: determining what process
11 is due, and whether such process has been afforded. *See Wilkinson v. Austin*, 545 U.S. 209 (2005).

12 In a prison context, “the requirements of due process are flexible and [call] for such
13 procedural protections as the particular situation demands.” *Wilkinson*, 545 U.S. at 224 (alteration
14 in original, internal quotation marks omitted). In evaluating the sufficiency of the process afforded
15 in this context, courts balance the three concerns outlined by the Supreme Court in *Mathews v.*
16 *Eldridge*: First, the private interest that will be affected by the official action; second, the risk of
17 an erroneous deprivation of such interest through the procedures used; and finally, the
18 Government’s interest, including the function involved and the fiscal and administrative burdens
19 that the additional or substitute procedural requirement would entail. 424 U.S. 319, 335 (1976).

20 In balancing these three competing considerations, the Court is mindful of the D.C.
21 Circuit’s admonition that Jayyousi is “challenging fundamentally predictive judgments in an area
22 where administrators are given broad discretion and the government’s legitimate interests in
23 maintaining CMUs must be accorded substantial weight. Because the cardinal principle in due

1 process analysis is flexibility—*i.e.*, attention to relevant context and consideration of competing
2 interests—only minimal process is likely due.” *Aref v. Lynch*, 833 F.3d at 258. The Court now
3 turns to whether that “minimal process” was given.

4 *1. Private Interest Affected by Official Action*

5 The first *Mathews* factor calls upon the Court to consider “the private interest that will be
6 affected by the official action.” *Wilkinson*, 545 U.S. at 224 (quoting *Mathews*, 424 U.S. at 335).
7 The Court begins with the premise that Jayyousi’s “private interest is considerably lessened
8 because of his status as an inmate.” *Isby v. Brown*, 856 F.3d 508, 525 (7th Cir. 2017) (citing *Hewitt*
9 *v. Helms*, 459 U.S. 460, 473 (1983)). “The private interest at stake here, while more than minimal,
10 must be evaluated, nonetheless, within the context of the prison system and its attendant
11 curtailment of liberties.” *Wilkinson*, 545 U.S. at 225. Furthermore, although the D.C. Circuit
12 determined that this lawsuit does implicate a cognizable liberty interest sufficient to trigger a due
13 process analysis, it must be noted that “CMU confinement involves significantly less deprivation
14 than administrative segregation,” more commonly known as solitary confinement. *Aref v. Lynch*,
15 833 F.3d at 256, 257 (“Whether a liberty interest exists here is admittedly a close call.”). This is
16 because, among other things, “CMU inmates are allowed in common spaces with other CMU
17 inmates for sixteen hours a day. They have access to educational and professional opportunities,
18 can keep as many possessions as inmates in the general population, and have no added restrictions
19 on exercise.” *Id.*

20 Accordingly, the weight of the interest in this case must be assessed as something less than
21 that in *Wilkinson* and other solitary confinement cases, in which inmates are subjected to “extreme
22 isolation,” and deprived “of almost any environmental or sensory stimuli and of almost all human
23 contact.” *Id.*; *see also Incumaa v. Stirling*, 791 F.3d 517 (2015) (involving designation to

1 segregated unit in which plaintiff confined to cell 24 hours a day, subjected to strip searches, served
2 smaller portions of food than inmates in the general population, and denied educational
3 opportunities and mental health treatment).

4 *2. Risk of Erroneous Deprivation*

5 The second factor to be weighed under *Mathews v. Eldridge* is “the risk of an erroneous
6 placement under the procedures” that BOP used in designating Plaintiff to the CMU and “the
7 probable value, if any, of additional or alternative procedural safeguards” to reduce the risk.
8 *Wilkinson*, 545 U.S. at 225 (citing *Mathews*, 424 U.S. at 335). The three traditional hallmarks of
9 fair process in this context include “notice of the factual basis” for the deprivation; “a fair
10 opportunity for rebuttal”; and periodic review of the exigency of ongoing confinement. *Wilkinson*,
11 545 U.S. at 225. The record reveals that Jayyousi was accorded all three.

12 *a. Notice of Transfer*

13 It is undisputed that Jayyousi received a Notice of Transfer within hours of his designation
14 to the CMU. *See* Notice of Transfer, Pls.’ Ex. 61. That Notice included the “factual basis” of his
15 designation: specifically, that he had “acted in a criminal conspiracy to raise money to support
16 mujahideen operations and used religious training to recruit other individuals in furtherance of
17 criminal acts,” and that his “offense conduct included significant communication, association and
18 assistance to al-Qaida, a group which has been designated as a foreign terrorist organization.” *Id.*
19 at 1. Regional Director Nalley confirmed that these facts formed the basis of his decision to
20 designate Jayyousi to the CMU, and under standards later memorialized in the Dodrill Memo,
21 these facts met the criteria for CMU designation. *See* Decl. of Michael Nalley, Defs.’ Ex. 2, ¶ 10
22 (Jayyousi’s Notice of Transfer “accurately summarized the reasons why I ordered [his] placement
23 in a CMU.”); Dodrill Memo, Pls.’ Ex. 46 at 1-2 (one factor in designation was whether “[t]he

1 inmate’s current offense(s) conviction, or offense conduct, included association, communication,
2 or involvement, related to international or domestic terrorism”). Plaintiff complains that the Notice
3 contained some, but perhaps not all, of the reasons for his designation. The standard in this context,
4 however, is not so exacting. As the Supreme Court has held, the Due Process Clause requires that
5 “[a]n inmate must *merely receive some notice* of the charges against him.” *Hewitt*, 459 U.S. at 476
6 (emphasis added). That the “some notice” standard was met here can hardly be denied.

7 *b. Opportunity for Rebuttal*

8 Defendants also provided Jayyousi an opportunity to rebut his designation, which he
9 availed himself of within weeks of his transfer. *See* Regional Administrative Remedy Appeal
10 (“Admin. App.”), Pls.’ Ex. 61. In the context of a prisoner contesting an administrative
11 segregation, all that is required is that the inmate be given “an opportunity to present his views to
12 the prison official charged with deciding whether to transfer him,” and that “the the decisionmaker
13 reviews the charges and then-available evidence against the prisoner.” *Hewitt*, 459 U.S. at 476. In
14 his appeal, Jayyousi claimed “the information used as a basis for my transfer to CMU [is] not
15 correct.” Admin. App. at 11. The record reveals that in response to the appeal, Defendants
16 reviewed available information related to Jayyousi’s terrorism-associated conviction, and found it
17 sufficient to support CMU placement. As the written Response to the appeal noted, Jayyousi’s
18 designation was made in reliance on, among other things, the terrorism enhancement associated
19 with his sentencing, and the presentence report, which “clearly define[d his] association with
20 terrorism.” *Id.* at 12. The appeal was reviewed and denied by the warden, by acting North Regional
21 Director Charles Lockett, and by administrator of National Inmate Appeals, who determined that
22 Jayyousi had been “appropriately designated to the CMU.” *Id.* at 5, 9. Lockett’s written Response
23 referred to Jayyousi’s offense conduct, including conspiracy to provide support to terrorism and

1 terrorists, and communication with foreign terrorist organizations. *Id.* The process by which
2 Jayyousi appealed his designation provided him a chance to “present his views.” The
3 decisionmakers reviewed the charges and “then-available evidence.” This process was
4 constitutionally sufficient. *Hewitt*, 459 U.S. at 476.

5 *c. Periodic Review*

6 Finally, the Court concludes that Defendants’ “periodic review” of Jayyousi’s designation
7 to the CMU met the standard for the “informal and nonadversary” and “minimal procedural
8 process” required by the Constitution. *Isby*, 856 F.3d at 525, citing *Westefer v. Neal*, 682 F.3d 679,
9 684–86 (7th Cir. 2012); *Black v. Parke*, 4 F.3d 442, 448 (6th Cir. 1993). As courts have made
10 clear, while periodic review is constitutionally required to “keep[] administrative segregation from
11 becoming a pretext for indefinite confinement,” “broad discretionary authority is necessary
12 because the administration of a prison is at best an extraordinarily difficult undertaking.” *Hewitt*,
13 459 U.S. at 467, 477 n.9 (“[Periodic] review will not necessarily require that prison officials permit
14 the submission of any additional evidence or statements. The decision whether a prisoner remains
15 a security risk will be based on facts relating to a particular prisoner . . . and on the officials’
16 general knowledge of prison conditions and tensions, which are singularly unsuited for ‘proof’ in
17 any highly structured manner.”). Because “‘a prison’s internal security is . . . a matter normally left
18 to the discretion of prison administrators,’ . . . elaborate procedural safeguards like an adversary
19 proceeding [are] unnecessary.” *Isby*, 856 F.3d at 525 (quoting *Hewitt* at 474–75). As noted *supra*
20 § IV.A.1., these relevant precedents arise in the context of a far more restrictive administrative
21 segregation, in which “[i]ncarceration . . . is synonymous with extreme isolation.” *Wilkinson*, 545
22 U.S. at 214; *see also, e.g., Westefer*, 682 F.3d at 682 (“Inmates are kept in almost constant
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1 isolation.”); *Isby*, 856 F.3d at 515 (“solitary confinement” inmate kept in “prolonged and isolated
2 detainment.”).

3 Here, as outlined in the Dodrill Memo, designation to the CMU was subject to review every
4 six months. Pls.’ Ex. 46; *see also* Schiavone Decl. ¶¶ 28-32. That memo outlined fairly specifically
5 both the criteria and the procedures by which a CMU inmate’s designation would be reviewed,
6 directing staff to provide inmates with “at least” 48 hours notice before a review, to allow inmates
7 to “personally raise questions and concerns with the Unit Team regarding their placement in the
8 CMU,” and to determine whether the placement remained necessary, relying on “sound
9 correctional judgement and security threat management practices.” *Id.* at 1. According to the
10 program review policy, and procedures laid out in the Dodrill Memo, Defendants were obligated
11 to conduct a twice-yearly process involving multiple levels of review, beginning with an interview
12 and information-gathering conducted by the unit team. After that,

13 [t]he Unit Team staff will forward their recommendations to the Warden. With the
14 concurrence of the Warden, recommendations will then be forwarded to the
15 Bureau’s Counter Terrorism Unit (CTU) for review of individual inmate cases. The
16 CTU will forward the final recommendation to the Regional Director, North
17 Central Region, for further review and consideration. The Regional Director, North
18 Central Region, has final authority to approve an inmate’s re-designation from a
19 CMU.

17 Inmates denied re-designation from a CMU will be notified in writing by the Unit
18 Team of the reason(s) for continued CMU designation. Inmates not satisfied with
19 the re-designation decision, or any other aspect of confinement in the CMU, can
20 appeal the decision or situation through the administrative remedy program.

20 Dodrill Memo at 2. That administrative remedy program, as outlined *supra* § IV.A.2.b., affords an
21 inmate an additional round of appeals. The procedural safeguards of this process are at least as
22 procedurally adequate as those evaluated in *Wilkinson*, which the Supreme Court held met the
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1 standard for the “informal and nonadversary periodic review” required by the Constitution. 545
2 U.S. at 217 (approving a three-tiered review conducted annually).

3 It is undisputed that Jayyousi’s designation was reviewed in December 2008, within
4 approximately six months of his original designation, and again on June 18, 2009, on December
5 14, 2009, on May 21, 2010, and so on, approximately every six months, until he was released, in
6 conjunction with the periodic review process, in May 2013. *See, e.g.*, Pls.’ Exs. 127, 128.
7 Plaintiff’s critique demands too much of the review process; the Constitution requires only
8 “minimal procedure” at this stage, and does not require that an inmate be given a review in any
9 “formal” or “structured manner.” *Hewitt*, 459 U.S. at 477 n.9. It is precisely in this context that
10 courts are repeatedly reminded both that prison officials must be given broad discretion and
11 “flexibility,” and that “only minimal process is likely due.” *Aref v. Lynch*, 833 F.3d at 258. The
12 Court concludes that these reviews were constitutionally adequate as applied to Jayyousi.

13 Given the three levels of safeguards that Defendants provided in designating and confining
14 Plaintiff to the CMU—notice, opportunity for rebuttal, and periodic review—the Court concludes
15 that the risks of erroneous deprivation in Jayyousi’s case were minimal.

16 3. *Government’s Interest; and Burdens and Value of Additional Process*

17 The final factor to be weighed under *Mathews* is the government’s interest, including “the
18 fiscal and administrative burdens that the additional or substitute procedural requirement would
19 entail.” *Wilkinson*, 545 U.S. at 225. As the D.C. Circuit prescribed in remanding this case, “the
20 government’s legitimate interests in maintaining CMUs must be accorded substantial weight.”
21 *Aref v. Lynch*, 833 F.3d at 242. This admonition has been repeatedly emphasized in other cases.
22 *See, e.g., Isby v. Brown*, 856 F.3d at 526 (“[T]he government’s interests . . . are substantial.
23 Maintaining institutional security and safety are crucial considerations in the management of a

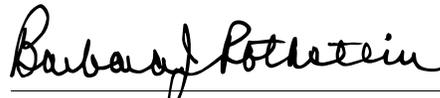
1 prison, and, to the extent that an inmate continues to pose a threat to himself or others, ongoing
2 segregation may well be justified.”) (citing *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)); *see also*
3 *Wilkinson*, 545 U.S. at 227 (“In the context of prison management, [the government’s] interest is
4 a dominant consideration.”). Under the circumstances presented by Jayyousi’s challenge to the
5 CMU designation process, it cannot be denied that the government’s interest in this case is
6 “substantial.”

7 **V. CONCLUSION**

8 Having weighed the three factors outlined in *Mathews* and successive precedents, the Court
9 concludes that the balance of interests favors upholding the constitutionality of the process as it
10 was applied to the Plaintiff in this case. For the foregoing reasons, the Court concludes that
11 Defendants did not violate Jayyousi’s procedural due process rights in designating and confining
12 him to the CMU, and hereby DENIES Plaintiff’s motion for summary judgment, GRANTS
13 Defendants’ motion for summary judgment, and dismisses this case.

14 **IT IS SO ORDERED.**

15 DATED this 13th day of October, 2020.

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19 Barbara Jacobs Rothstein
20 U.S. District Court Judge
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