ACLU FOUNDATION
AMERICAN CIVIL LIBERTIES UNION of KANSAS

13 February 2018

Commander Watson
Joint Regional Correctional Facility
831 Sabalu Road
Fort Leavenworth, KS 66027

Re: MCC SOP 310 - Prohibition on Sex Offender Inmate Correspondence with Minor Children
Our File No.:1-0008580

Dear Commander Watson:

The American Civil Liberties Union of Kansas (ACLU-KS) has learned of Military Correctional Complex Standard Operating Procedure 310 (hereafter "SOP 310"), which regulates "Sex Offender Contact with Minor Children." In pertinent part, SOP 310 provides that "[i]t is the policy of the MCC for inmates who committed sexual offenses with minor children not have written, telephonic, or in-person contact with any minor child without prior approval by the USDB Deputy Commandant or JRCF Deputy to the Commander, as applicable." SOP 310, ¶ 2. Although SOP 310 permits JRCF and USDB inmates "to request an exception to policy to have contact with their minor biological or adopted child/children," SOP 310, ¶ 1, it also provides that "[i]nmates requesting contact must have completed Sex Offender Treatment (SOT) group," SOP 310 ¶ 8(a).

The ACLU-KS first learned of this policy from JRCF inmate Michael J. Guinn, #96245. Mr. Guinn has been incarcerated at the JRCF since September 2017, and he has three minor daughters, ages 10, 6, and 5. As I understand the facts of Mr. Guinn's criminal case, he was not accused of victimizing his daughters. Moreover, the mother of his daughters wants her children to be able to communicate with their father in order to continue their important familial relationship. As explained below, SOP 310 is unconstitutional at least as applied to prisoners who have not exhausted their appeals.[1]

[1] The ACLU-KS also believes SOP 310 is unconstitutional as applied to convicted prisoners whose biological children were not the inmate's victims and where the custodial parent supports communication and visitation because less restrictive policies (for instance, a ban limited to minor victims and imposing special monitoring of communication and visitation) would fully address the prison administration's legitimate penological interests. *See Wirsching v. Colo.*, 360 F.3d 1191, 1201 (10th Cir. 2004) (upholding ban on visitation between sex offender inmate and biological children but noting that "Had Mr. Wirsching offered evidence as to the feasibility and minimum institutional effect of a less restrictive visitation policy, this would be a closer case.").

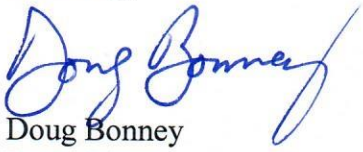
Mr. Guinn has sought an exception to SOP 310. On 3 October 2017, Mr. Guinn filed Inmate Visitation Request forms asking for authorization for his daughters to visit him at the JRCF. The DIA Visitation Clerk disapproved that request on 10 October 2017. In a No Contact Order dated 20 October 2017, Timothy J. Callahan, Deputy to the Commander, directed Mr. Guinn "not to attempt to have written, telephonic or visitation contact with [Guinn's three minor daughters, E.G., S.G., and A.G.]. This order is inclusive of all written and verbal communication, whether it is direct, indirect or through a third party, as well as visitation." Beginning in late September 2017, Mr. Guinn filed MCC Form 510's seeking an exception to SOP 310 and protesting the unconstitutionality of SOP 310. Deputy to the Commander Callahan denied the requested exception and the protest against SOP 310. Mr. Guinn's conviction is currently on direct appeal.

SOP 310 violates the Fifth Amendment right against self-incrimination.

Under the Fifth Amendment to the United States Constitution, "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. "The privilege against self-incrimination does not terminate at the jail house door, but the fact of a valid conviction and the ensuing restrictions on liberty are essential to the Fifth Amendment analysis." *McKune v. Lile*, 536 U.S. 24, 36 (2002). Sex offender treatment programs typically require participants to admit their offenses in order to participate in and to complete such programs, and Mr. Guinn has advised me that the SOT program in place at the JRCF includes such a requirement. Because Mr. Guinn's direct appeal is still in progress, there has been no "valid conviction" in his case at this point so that the Fifth Amendment prohibits the federal government – in this case the United States Army – from requiring him to admit to criminal conduct in order to communicate and visit with his minor children. *See Reinhardt v. Kopcow*, 66 F. Supp. 3d 1348, 1357 (D. Colo. 2014) (plaintiff stated a claim under the Fifth Amendment upon which relief could be granted where direct appeal still in progress). Because Mr. Guinn's conviction is not final and valid, the Fifth Amendment prohibits the Army from requiring him to participate in the SOT and to admit guilt as a precondition to communicating with and visiting with his non-victim daughters, especially where the children's biological mother and custodial parent supports such communication and visitation.

I urge you to permit Mr. Guinn to communicate with his children and to allow those children to visit him at the JCRF.

Sincerely,



Doug Bonney
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Because Mr. Guinn has not exhausted his direct appeals, however, this letter will only address the Fifth Amendment violation.