

Bureau of Investigation (“FBI”), President Bush designated him as an “enemy combatant” by executive order.¹²⁴ Al-Marri was transferred from the control of the Department of Justice to incommunicado solitary confinement in a Naval Consolidated Brig in Charleston, South Carolina. He remains in military custody in South Carolina.¹²⁵ To date, al-Marri has been detained for more than three years in solitary confinement.¹²⁶ In August 2005, al-Marri’s lawyers sued government officials claiming that military jailers subjected al-Marri to inhuman treatment, made threats against his family, and mistreated the Quran.¹²⁷ At the time of this submission, the question of whether President Bush has the authority to detain al-Marri, a non-U.S. citizen, as an “enemy combatant” without charge or due process is being appealed.

D. Torture and Abuse in the “Global War on Terrorism” (Articles 1, 16)

Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.

—Definition of torture provided by the Office of Legal Counsel, U.S. Department of Justice, August 2002.¹²⁸

1. Torture and Cruel, Inhuman or Degrading Treatment of Detainees at Guantánamo

Since the transfer of the first group of detainees to Guantánamo in early January 2002, credible reports of the use of torture and other cruel, inhuman or degrading treatment were received from various sources, including the news media, U.S. government officials, lawyers representing detainees in habeas litigation, accounts of former detainees, the ICRC and other non-governmental human rights organizations.

Internal documents of the Federal Bureau of Investigation obtained through the ACLU FOIA litigation show that as early as late 2002 the FBI had begun to document and complain internally about interrogation techniques used by the military on Guantánamo detainees. Although heavily redacted, the documents describe the harsh treatment of detainees as part of an approved list of interrogation methods which were referred to as “torture techniques.” FBI agents described specific instances of physical and psychological abuse, sexual humiliations, “torture techniques,” as well as inhuman and degrading conditions of confinement.

- Torture techniques: An email from an unnamed official to FBI officials describes an incident in which Defense Department interrogators at Guantánamo

¹²⁴ Complaint ¶¶ 22, 25, *Al-Marri v. Rumsfeld*, No. 2:05-cv-02259-HFF-RSC (D.S.C. filed Aug. 8, 2005), available at <http://hrw.org/us/us080905.pdf>.

¹²⁵ *Id.* at ¶¶ 25-28.

¹²⁶ *See id.* at ¶¶ 25, 34, 38.

¹²⁷ *Id.* at ¶¶ 69-72, 80. *See also* Eric Lichtblau, *Detainee at Brig in Charleston Accuses His Jailers of Abuse*, N.Y. TIMES, Aug. 9, 2005, at A13.

¹²⁸ Bybee, August 2002 Memorandum, *supra* note 2, at 1.

impersonated FBI agents while using “torture techniques” against a detainee. The email states:

- “Of concern, DOD [Department of Defense] interrogators impersonating Supervisory Special Agents of the FBI told a detainee that [redacted]. . . These tactics have produced no intelligence of a threat neutralization nature to date and CITF [FBI’s Criminal Investigation Task Force] believes that techniques have destroyed any chance of prosecuting this detainee. If this detainee is ever released or his story made public in any way, DOD interrogators will not be held accountable because these *torture techniques* were done by ‘FBI’ interrogators. The FBI will be left holding the bag before the public” (emphasis supplied) (Dec. 5, 2003).¹²⁹
- Sleep deprivation and use of dogs: “BAU [Behavioral Analysis Unit] personnel witnessed sleep deprivation, [redacted] and utilization of loud music/bright lights/growling dogs in the Detainee interview process by DOD representatives” (undated).¹³⁰
- DOD impersonating FBI: An FBI email regarding DOD personnel impersonating FBI officials during interrogations refers to a “ruse” and notes that “all of those [techniques] used in these scenarios” were approved by the Deputy Secretary of Defense (Jan. 21, 2004).¹³¹
- Violation of internal policies: A heavily redacted memorandum by the FBI Criminal Investigation Task Force discusses aggressive interrogation techniques approved by the Secretary of Defense. These techniques ran contrary to the FBI’s Criminal Investigation Task Force (“CITF”) policy regarding permissible law enforcement techniques for interrogations.
 - “The Secretary of Defense (Tab 2), Joint Chiefs of Staff, and Southern Command (Tab 3) authorities approved these techniques in early October 2002 and late November 2002. CITF policy precludes participation in these aggressive interrogation techniques and advocates proven rapport-building interview strategies consistent with a law enforcement mission.”
 - “All deployed CITF personnel are instructed to disengage, stand clear, and report any questionable interrogation techniques. Deployed FBI agents participate in CITF briefings and are in-line with CITF instructions. CITF maintains that its personnel will not utilize interrogation techniques or strategies.”¹³²

¹²⁹ Annex B6, E-mail from [name redacted] to Gary Bald, FBI; Frankie Battle, FBI; and Arthur Cummings, FBI (Dec. 5, 2003).

¹³⁰ Annex B7, Memorandum entitled “GTMO Issues for SAC [Special Agent in Charge] Wiley.”

¹³¹ Annex B8, E-mail from [name redacted] to [name redacted] (Jan.21, 2004).

¹³² Annex B9-13, Draft Memorandum from [name redacted], Assistant Legal Advisor, Criminal Investigation Task Force, Dept. of Defense (Jan. 15, 2003).

Documents obtained through the ACLU FOIA contain many accounts of detainee abuse described by the FBI.

- Naked detainee shackled hand and foot and exposed to extreme temperatures: An FBI agent describes interrogations at Guantánamo and writes, “I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated or defecated on themselves and had been left there for eighteen to twenty-four hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. . . . On another occasion, the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconscious on the floor with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night.” (Aug. 2, 2004).¹³³
- Beaten unconscious: “A detainee in an interview with the FBI alleged that he had been beaten unconscious approximately three or four weeks ago when he was still at Camp X-Ray. According to the detainee, an unknown number of guards entered his cell, unprovoked, and started spitting and cursing at him. . . . [The detainee] rolled onto the his stomach to protect himself, detainee stated a soldier named [redacted] jumped on his back and started beating him in the face [redacted] then choked him until he passed out. [Redacted] stated that [redacted] was beating him because [redacted] was a Muslim.” (May 22, 2004).¹³⁴
- Use of “highly aggressive interrogation techniques” against Guantánamo detainees:
 - In late 2002, an FBI Special Agent (SA) observed a female “whispering in the detainee’s ears and caressing and applying lotion to his arms (this was during Ramadan when physical contact with a woman would have been particularly offensive to a Moslem man). On more than one occasion the detainee appeared to be grimacing with pain and [redacted] hands appeared to be making contact with the detainee. Although SA [redacted] could not see her hands at all times, he saw them moving towards the detainees’ lap. He also observed the detainee pulling away and against the restraints. . . . SA [redacted] asked what had happened to cause the detainee to grimace in pain. The marine said [redacted] grabbed detainee’s thumbs and bent them back, and grabbed his genitals. The marine also implied that this was less harsh than her treatment of others by indicating that he had seen her treatment of other detainees result in detainees curling into a fetal position on the floor crying in pain.”¹³⁵

¹³³ Annex B14, E-mail from [name redacted], Inspection Division, FBI to [name redacted], Inspection Division, FBI (Aug. 2, 2004).

¹³⁴ Annex B15-21, Transcript of interview with Camp X-Ray detainee (May 22, 2002).

¹³⁵ Annex B22-24, Letter from T.J. Harrington, Deputy Assistant Director, Counterterrorism Division, FBI to Major General Donald J. Ryder (July 14, 2004).

- In September or October 2002, FBI agents “observed canine used in aggressive manner to intimidate detainee.” In November 2002, FBI agents observed a detainee “after he had been subjected to intense isolation for over three months in a cell that was always flooded with light. By late November, the detainee was exhibited behavior consistent with extreme psychological trauma (talking to non-existing people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end).¹³⁶
- Sexual humiliation: A detainee interviewed in April 2003 by the FBI said “a female interrogator, after not getting cooperation from him, called four guards into the room. While the guards held him, she removed her blouse, embraced the detainee from behind and put her hand on his genitals. The interrogator was on her menstrual period and she wiped blood from her body on his face and head.”¹³⁷

In February 2006, a report was submitted to the U.N. by five experts of the Commission on Human Rights, including the chairperson of the Working Group on Arbitrary Detention and four Special Rapporteurs on torture; freedom of religion; independence of judges and lawyers; and on the right to physical and mental health. They concluded that interrogation techniques authorized by the Department of Defense amounted to degrading treatment in violation of Article 7 of the ICCPR and Article 16 of the Convention Against Torture, and “amounted to torture” as defined under Article 1 of the Convention when the victim experienced severe pain and suffering. The report also concluded that the widespread and prolonged use of solitary confinement under conditions of indefinite detention by the U.S. amounted to inhuman treatment.¹³⁸ The report found that reports of excessive violence during the force-feeding of detainees on hunger strike met the Convention’s definition of torture.¹³⁹

Three of the five U.N. experts, although not the Special Rapporteur on torture, were invited by the U.S. government to visit Guantánamo in 2005, but the invitation stipulated that the visit could not include “private interviews or visits with detainees.” The experts declined to visit the facility under such restrictions as it would undermine the “purpose of an objective and fair assessment of the situation of the detainees.”¹⁴⁰

Though conditions at Guantánamo might have improved due to domestic and international pressure, Guantánamo remains a place where the United States has blocked access by detainees to impartial and independent tribunals, and where detainees remain at high risk of torture and abuse and of transfer to countries where they may be tortured and abused.

¹³⁶ *Id.*

¹³⁷ Annex B25-27, Transcript of interview with Camp Delta detainee (April 21, 2003).

¹³⁸ U.N. Commission on Human Rights, *Situation of Detainees at Guantánamo Bay*, ¶ 87, U.N. Doc. E/CN.4/2006/120 (Feb. 15, 2006), available at http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/16_02_06_un_guantanamo.pdf.

¹³⁹ *Id.* at ¶ 88.

¹⁴⁰ *Id.* at ¶ 3.

2. Torture and Cruel, Inhuman or Degrading Treatment of Detainees in Afghanistan

The U.S. military has detained and continues to detain individuals at detention facilities throughout Afghanistan under control of the U.S. military. The torture and abuse of detainees in U.S. custody in Afghanistan has been widespread and systemic. It began soon after the commencement of military actions and has lasted well beyond the declared end of major combat in June 2002.

As widely documented in human rights and press reports, U.S. military personnel have subjected detainees in U.S. custody in Afghanistan to torture or other cruel, inhuman or degrading treatment. Some of the reported abuses include:

- Extreme physical abuse: Soldiers have severely beaten detainees, forced them into painful and contorted positions for hours or days on end, and dumped cold water over them in the middle of the winter. Beatings were for the specific purpose of making detainees more susceptible to interrogation.
- Sexual abuse and humiliation: Detainees were kept naked for prolonged periods in the presence of male and female soldiers and in front of other detainees. Soldiers, both male and female, subjected detainees to sexual taunts, knowing that such treatment would be particularly offensive and humiliating by Afghan cultural norms.
- Use of dogs: Interrogators used dogs to frighten and intimidate detainees.
- Sensory deprivation: Detainees were kept hooded or goggled, held in dark cells, and kept in isolation for prolonged periods.
- Sleep deprivation: Detainees were forced to stay awake for prolonged periods by methods such as shining bright lights, blaring loud music, shouting at them or beating them if they fell asleep.

The FOIA documents produced by the Department of Defense to the ACLU reveal widespread abuse of Afghan detainees. For example:

- A sworn statement by U.S. personnel in Task Force 202 Military Intelligence reported that a detainee's face was cut and swollen in several places consistent with repeated blows to the face. The detainee stated that guards had asked everybody to stand and when he couldn't, because his leg was numb, he was kicked by guards in the head and face. He was later assaulted by two or three guards on subsequent nights. The declarant had spoken to detainee about a week prior and had not noticed visible marks on his face at the time.¹⁴¹

Four Afghan victims of torture represented by the ACLU and Human Rights First ("HRF") have sued the U.S. Secretary of Defense for torture and abuse they suffered

¹⁴¹ Annex B28-29, Sworn statement of Military Intelligence Officer in Kandahar, Afghanistan (Feb. 18, 2002).

while in U.S. custody.¹⁴² The Afghans, all of whom were released without charge, allege that the torture and cruel, inhuman or degrading treatment included:¹⁴³

- Subjecting them to abusive and painful positions for several hours at a time during nightly interrogations, including: (1) hung upside down from the ceiling with a chain; (2) forced to hang by arms with a chain; (3) forced to kneel on a wooden pole handcuffed to ceiling; (4) forced to maintain “T” position for one hour; (5) forced to sit in a small space with no back support for six hours while wrists and legs were tied and eyes and ears were covered;¹⁴⁴
- Beaten and kicked;¹⁴⁵
- Sexual assaults, taunts and humiliation: stripped naked for lengthy periods of time; anally probed; stripped and doused repeatedly with water during interrogation; direct insults directed at detainee’s mother, wife, and sister;¹⁴⁶
- Threatened with transport to Guantánamo;¹⁴⁷
- Barking dogs used at close range;¹⁴⁸
- Sensory deprivation, including being forced to wear black, opaque goggles and earplugs that blocked all sound for long periods of time;¹⁴⁹
- Solitary confinement;¹⁵⁰
- Sleep deprivation;¹⁵¹
- Being kept outdoors for weeks with no protection from the elements and extreme weather; and¹⁵²
- Deprivation of water for prolonged periods of time.¹⁵³

3. Torture and Cruel, Inhuman or Degrading Treatment of Detainees in Iraq

The U.S. military has detained and continues to detain individuals at numerous detention facilities in Iraq, including but not limited to the notorious Abu Ghraib prison; the detention facility known as “Camp Cropper,” at the Baghdad international airport; a facility near the city of Umm Qasr known as Camp Bucca; facilities in or near the cities of Tikrit and Mosul; and numerous locations in or near the city of Baghdad, all under control of U.S. forces.

¹⁴² Amended Complaint, *Ali v. Pappas*, No. 05-cv-1377 (D.D.C. filed July 6, 2005) (hereinafter “Ali Amended Complaint”), available at http://www.aclu.org/images/general/asset_upload_file600_23378.pdf. This is a consolidated amended complaint against Secretary Donald Rumsfeld, Colonel Thomas Pappas, Brigadier General Karpinski, and Lt. Gen. Ricardo Sanchez on behalf of Afghan torture victims Mehboob Ahmad; Said Nabi Siddiqi; Mohammed Karim Shirullah; and Haji Abdul Rahman.

¹⁴³ Each allegation listed was experienced by at least one of the plaintiffs.

¹⁴⁴ Ali Amended Complaint, *supra* note 142, ¶174.

¹⁴⁵ *Id.* at ¶¶ 174, 178, 190, 195, 200, 205, 209.

¹⁴⁶ *Id.* at ¶¶ 174, 178, 195, 200.

¹⁴⁷ *Id.* at ¶¶ 21, 174, 186, 190, 195, 209.

¹⁴⁸ *Id.* at ¶ 174.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at ¶¶ 24, 182, 186, 195.

¹⁵¹ *Id.* at ¶¶ 178, 182, 186, 190, 200.

¹⁵² *Id.* at ¶¶ 174, 205.

¹⁵³ *Id.* at ¶¶ 17, 190, 195, 205 .

In its February 2004 report, the International Committee of the Red Cross found that “methods of physical and psychological coercion were used by military intelligence in a systemic way to gain confessions and extract information.”¹⁵⁴ The methods cited by the ICRC included:

- Hooding to disorient and prevent detainees from breathing freely;
- Being forced to remain for prolonged periods in painful stress positions;
- Being attached repeatedly over several days, for several hours each time, to the bars of cell doors naked or in positions causing physical pain;
- Being held naked in dark cells for several days;
- Being paraded naked, sometimes hooded or with women’s underwear over their heads;
- Sleep, food, and water deprivation;
- Prolonged exposure, while hooded, to the sun during the hottest time of day.¹⁵⁵

The Fay-Jones investigation into the misconduct of the 205th Military Intelligence Brigade in charge of Abu Ghraib prison found that interrogation techniques used in Guantánamo were brought to Iraq and Afghanistan. Those techniques included:

- Use of “sleep adjustment,” a technique of reversing sleep schedules from night to day;
- Forced nudity and “use of clothing” as an incentive for detainee cooperation;
- Abusing detainees with dogs;
- Isolation;
- Sensory deprivation;
- Placing detainees in excessively cold or hot cells with limited light or ventilation.¹⁵⁶

Many of the physical and psychological techniques cited by the ICRC were applied to Iraqi victims of torture represented by the ACLU and HRF in a lawsuit against Secretary of Defense Donald Rumsfeld and other military generals.¹⁵⁷ The five Iraqis, all of whom were released without charge, allege that the torture and abuse included the following techniques:

- Kicked and severely beaten with fists and guns by uniformed soldiers;¹⁵⁸
- Forced to run a gauntlet of ten to twenty soldiers while beaten with baton;¹⁵⁹

¹⁵⁴ *Report of the International Committee of the Red Cross on the treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during arrest, internment and interrogation* (Feb. 2004) (hereinafter “ICRC report”), available at http://www.globalsecurity.org/military/library/report/2004/icrc_report_iraq_feb2004.pdf.

¹⁵⁵ *Id.*

¹⁵⁶ Fay-Jones Report, *supra* note 52, at 10, 70.

¹⁵⁷ See generally Ali Amended Complaint, *supra* note 142. This complaint was filed on behalf of Iraqi torture victims Arkan Mohammed Ali; Thahe Mohammed Sabar; Sherzad Kamal Khalid; Ali H.; Najeeb Abbas Ahmed. *Id.*

¹⁵⁸ Ali Amended Complaint, *supra* note 142, at ¶¶ 174, 178, 190, 195, 200, 205, 209.

- Subjected to prolonged sensory and sleep deprivation;¹⁶⁰
- Deprived of food and water for long periods;¹⁶¹
- Restrained with tight hoods that restricted breathing and vision;¹⁶²
- Subjected to mock executions including threatening to run detainees down with a military vehicle; staging a mock firing squad; holding a gun to detainee's head; threatened with transfer to Guantánamo where detainees were told that soldiers were permitted to kill with impunity; brandishing guns and threats to shoot; approaching detainee with a sword and threatening to slaughter him. Thrusting detainee briefly into a cage of live lions previously owned by Saddam Hussain's son, Uday;¹⁶³
- Threatened with transfer to another country;¹⁶⁴
- Sexually assaulted by inserting fingers in anus and fondling of buttocks and penis in presence of male and female soldiers;¹⁶⁵
- Exposed to temperatures exceeding 120 Fahrenheit (50 degrees Celsius);¹⁶⁶ and
- Denied the use of toilet facilities for extended periods.¹⁶⁷

One fifty-nine-year-old detainee's medications for high blood pressure, heart disease and his eyeglasses were all confiscated; he was refused medical care when he suffered chest pains, and a possible stroke, while in custody.¹⁶⁸ Another detainee was repeatedly locked for several days in a wooden telephone booth-like box, sometimes after being stripped naked, with a hood over his head.¹⁶⁹

A seventeen-year-old detainee who had multiple gunshot wounds was refused medical treatment for several hours and his bullets were removed from his neck and back without anesthetic.¹⁷⁰ He was also not provided adequate medical care and pain medication after receiving a life-threatening shrapnel wound during a mortar attack while housed in an outdoor tent at Abu Ghraib.¹⁷¹

The FOIA documents produced by the Department of Defense to the ACLU also confirm the pattern of abuse of Iraqi detainees.

- Strangulation, beatings, and cover up of abuse:
 - The physical abuse of detainees in Iraq is described in an "Urgent Report" to FBI Director and various FBI officials from the Sacramento FBI office.

¹⁵⁹ *Id.* at ¶¶ 195, 200.

¹⁶⁰ *Id.* at ¶¶ 174, 178, 182, 186, 190, 200.

¹⁶¹ *Id.* at ¶¶ 17, 190, 195, 205.

¹⁶² *Id.* at ¶ 200.

¹⁶³ *Id.* at ¶¶ 190, 195.

¹⁶⁴ *Id.* at ¶¶ 21, 174,,186, 190, 195, 209.

¹⁶⁵ *Id.* at ¶¶ 178, 195.

¹⁶⁶ *Id.* at ¶ 21, 195.

¹⁶⁷ *Id.* at ¶¶ 178, 195, 200.

¹⁶⁸ *Id.* at ¶ 209.

¹⁶⁹ *Id.* at ¶¶ 17, 190.

¹⁷⁰ *Id.* at ¶¶ 204-205.

¹⁷¹ *Id.*

“The following information provides initial details from an individual [redacted] who observed serious physical abuses of civilian detainees in [redacted] Iraq during the period of [redacted]. . . . [redacted] observed numerous physical abuse incidents of Iraqi civilian detainees conducted in [redacted] Iraq. He described that such abuses included strangulation, beatings, placement of lit cigarettes into the detainees’ ear openings, and unauthorized interrogations.”

- “[Redacted] was providing this information to the FBI based on his knowledge that [redacted] were in engaged in a cover-up of these abuses. He stated these cover-up efforts included [redacted]. . . .” (June 25, 2004).¹⁷²
- Beaten and doused with cold water: In an email to unnamed FBI officials, allegations of abuse at Abu Ghraib are noted: “They tortured me and cuffed me in an act called the scorpion, and pouring cold water on me They tortured me from morning until the morning of the next day, and when I fell down from the severing torture I fell on the barbed wires, and then they dragged me from my feet and I was wounded and, and they punched me on my stomach” (June 29, 2004).¹⁷³
- Physical torture of student and his family members in Mosul, Iraq: In December of 2003, coalition forces placed bags over the high school student and his family members’ heads, beat them all day, doused them with cold water at night, made them sit up and down, and denied them food and water. A soldier pushed the student into the wall and kicked him in the face, breaking his jaw and teeth.¹⁷⁴
- Pouring peroxide on open wounds and hitting with ax handle: In a 2004 document, a civilian contractor recounts in a sworn statement that he witnessed Marines pouring peroxide and water over the open wounds of an Iraqi prisoner. The contractor also saw Marines place bags over the prisoners’ heads and strike them in the head with pick axes’ handles in an effort to obtain information.¹⁷⁵
- Torture and abuse of numerous detainees by interrogators in Al-Azimiyah Palace, Baghdad from December 2003 to May 2004: Detainees were forced to wear women’s underwear on their head, and were electrocuted, burned with cigarettes,

¹⁷² Annex B30-32, Report from [name redacted] Supervisory Special Agent, FBI to Bruce J. Gebhardt, Deputy Director, FBI; Cassandra Chandler, Executive Assistant Director, FBI; John Pistole, Executive Assistant Director; FBI; Grant Ashley, Assistant Director, FBI; Gary Bald, Assistant Director; Arthur Cummings, SC, FBI (June 25, 2004).

¹⁷³ Annex B33-34. E-mail from [name redacted], Inspection Division, FBI to M.C. Briese, Counterterrorism Division, FBI and [redacted], Counterterrorism Division, FBI (June 29, 2004).

¹⁷⁴ Annex B35-44, Excerpt from Investigative Report (full record *available at* http://www.aclu.org/torturefoia/released/032505/1081_1180.pdf).

¹⁷⁵ Annex B45, Excerpt from Army Criminal Investigation Division Report of Investigation Number 0052-04-CID342 (May 11, 2004) (full record *available at* <http://www.aclu.org/projects/foiasearch/pdf/DOD043457.pdf>).

sodomized with wine bottles and wooden sticks, subjected to extreme physical exercise during temperatures of 150 degrees Fahrenheit (65.5 degrees Celsius) to the point of collapse, and sustained chest wounds from “battery cables” attached to their chests. According to a contractor at Abu Ghraib who screened detainees coming from Azimiyah Palace, 90 incidents of abuse took place there. .¹⁷⁶

- Bruising, burning and punching: Detainees in the custody of Special Operations Task Force 6-26 (TF 6-26) in Baghdad were bruised, had burn marks on their backs and complained of kidney pain. Defense Intelligence Agency (DIA) personnel witnessed TF 6-26 officers “punch a prisoner in the face to the point where [he] needed medical attention.” The DIA personnel were ordered to leave the room, and pictures they took of the injuries were immediately confiscated. They were also threatened by TF 6-26 personnel and “ordered not to talk to anyone in the US.”¹⁷⁷
- Rape: An e-mail notes the initiation of an FBI investigation into the alleged rape of a juvenile male detainee at Abu Ghraib prison in Iraq.¹⁷⁸

Beatings and mock execution: Documents describing detainee abuse by Taskforce Ironhorse Soldiers reveal that on August 20, 2003, “when [a detainee] was not forthcoming with information [soldiers] punched him with a closed fist in the stomach and torso, and on the side of head When the interrogation did not reveal the information the group was seeking, LTC [Redacted] took the detainee outside to the nearest clearing barrel and after shooting a warning shot, placed his 9mm weapon near the detainee’s head and fired off a round” (see DOD043354).¹⁷⁹ Other documents show mock executions of detained boys by members of the 1st Armored Division. In one instance, a Lieutenant took a 13 years old boy, put a gun to his head, whispered something in his ear, and then shot to the right of the boy’s head.¹⁸⁰

4. Deaths in U.S. Custody in Iraq and Afghanistan

At the time of this submission, about one hundred detainees are known to have died in U.S. military and CIA custody. This estimate is based on government autopsy reports produced to the ACLU, reports by human rights organizations, and reports in the press.¹⁸¹

¹⁷⁶ Annex B46, Excerpt from Army Criminal Investigation Command Report of Investigation Number 0106-04-CID259-80185 (full record *available at* <http://www.aclu.org/projects/foiasearch/pdf/DODDOACID005487.pdf>).

¹⁷⁷ Annex B47-48, Memorandum from Under Secretary of Defense for Intelligence (June 25, 2004).

¹⁷⁸ Annex B51, E-mail from Chris Zwecker, Criminal Investigation Division, FBI to Robert Mueller, Director, FBI; Bruce J. Gebhardt, Deputy Director, FBI; and Valerie Caproni, Office of General Counsel, FBI.

¹⁷⁹ Annex B-53, Staff Judge Advocate Memorandum.

¹⁸⁰ Annex B56-62, Charge Sheets and related documents regarding Uniform Code of Military Justice violations.

¹⁸¹ *Prisoner Deaths in U.S. Custody*, ASSOCIATED PRESS, Mar. 16, 2005; *see also* Human Rights First, *Command Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan* § 1 (Feb. 2006), *available at* <http://www.humanrightsfirst.info/pdf/06221-etn-hrf-dic-rep-web.pdf>.

The government has publicly acknowledged that at least twenty-seven have been investigated as homicides.¹⁸²

According to U.S. army autopsy reports of forty-four detainees produced to the ACLU, twenty-one appear to be homicides. Eight of the homicides appear to be the direct result of abusive techniques used on detainees, in some instances, by the CIA, Navy Seals and Military Intelligence personnel. The autopsy reports list the cause of deaths as “strangulation,” “hypothermia,” “asphyxiation,” and “blunt force injuries.” (See Annex A for chart of detainee deaths and prosecutions). A large number of the so-called “natural deaths” were attributed in the autopsy reports to “Arteriosclerotic Cardiovascular Disease”—coronary heart disease. But rarely did the government undertake any investigation into events preceding the person’s collapse to determine what circumstances may have induced or exacerbated the heart attack.

5. Ghost Detainees and Secret Detention Facilities

The fact that [the alleged prisons] are secret, assuming there are such sites . . . some people say the test of your principles is what you do when no-one is looking. The president has insisted that whether in public or private, the same principles will apply.

—Stephen Hadley, U.S. National Security Adviser, in response to news reports of overseas secret CIA detention facilities.¹⁸³

The United States has kept the names of some prisoners in Iraq and Afghanistan off the official detainee list and hidden from the ICRC.¹⁸⁴ A U.S. Army investigation into the abuse of detainees at Abu Ghraib prison in Iraq sharply criticized the practice of keeping “ghost detainees.”¹⁸⁵

The Navy Inspector General Vice Admiral Church’s investigation of Department of Defense detainee operations and interrogation techniques reported thirty cases of “ghost detainees” who were held under “oral, ad hoc agreements” and that were “the result, in part, of the lack of any specific, coordinated interagency guidance.”¹⁸⁶ Official documents obtained pursuant to the ACLU FOIA litigation confirmed the existence of a

¹⁸² U.S. Army, Criminal Investigation Division, *Army Criminal Investigators Outline 27 Confirmed or Suspected Detainee Homicides for Operation Iraqi Freedom, Operation Enduring Freedom* (Mar. 25, 2005), available at <http://www.cid.army.mil/Documents/OIF-OEF%20Homicides.pdf>.

¹⁸³ Demetri Sevastopulo, Guy Dinmore, Caroline Daniel and Jan Cienski, *Evidence CIA has secret jails in Europe*, FINANCIAL TIMES, Nov. 2, 2005.

¹⁸⁴ Stephanie Nebehay, *ICRC in Intense Talks with US Over Detainee Access*, REUTERS, Dec. 9, 2005.

¹⁸⁵ U.S. Dep’t of Defense, *Article 15-6 Investigation of the 800th Military Police Brigade*, “Regarding Part Two of the Investigation” ¶ 33 (March 2004) (hereinafter “Taguba Report”), available at <http://www.globalsecurity.org/intell/library/reports/2004/800-mp-bde.htm>. The Taguba Report is an investigative report on alleged abuses at U.S. military prisons in Abu Ghraib and Camp Bucca, Iraq.

¹⁸⁶ U.S. Dep’t of Defense, *Review of DoD Detention Operations and Detainee Interrogation Techniques, Executive Summary*, at 18 (Mar. 2005) (hereinafter “Church Report”), available at <http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf>.

memorandum of understanding between the U.S. military and the CIA on “Ghost Detainees.”¹⁸⁷

In congressional testimony, Gen. Paul Kern, the senior officer who oversaw the U.S. Army inquiry (Fay-Jones investigation), told the Senate Armed Services Committee, “The number [of ghost detainees] is in the dozens, to perhaps up to 100.”¹⁸⁸ Another Army investigator, Maj. Gen. George Fay, put the figure at “two dozen or so.”¹⁸⁹ Both officers said they could not give a precise number because no records were kept and because the CIA refused to provide information to the investigators.¹⁹⁰

Documents released through the ACLU FOIA litigation refer to a sworn statement by a soldier regarding the death of an OGA detainee. “The OGA then packed the detainee in ice and placed him in a local taxi. The taxi driver was paid to take the body away. . . . [redacted] allowed OGA to house their detainees at the AG facility in ‘ghost cells’ in block 1A. Witnessed a detainee wearing only pink underwear.”¹⁹¹ An Army report into intelligence activities at Abu Ghraib refers to the same November 2003 case, in which a detainee was brought to the prison by CIA employees but never formally registered with military guards. He died at the site and his body was removed after being wrapped in plastic and packed in ice.¹⁹²

The National Commission on Terrorist Attacks upon the United States report (“the 9/11 Commission”) also reported that some detainees are held in secret locations and have been subjected to torture and abuse.¹⁹³

Secret detention facilities are illegal under international law. With no independent oversight, such undisclosed detention centers, inaccessible even to the ICRC, leave detainees vulnerable to torture and abuse. The U.S. national security adviser has insisted that, according to the President, the “same principles” will apply whether in public or

¹⁸⁷ Press Release, ACLU, *Newly Released Army Documents Point to Agreement Between Defense Department and CIA on ‘Ghost’ Detainees* (Mar. 10, 2005), available at <http://www.aclu.org/SafeandFree/safeandfree.cfm?id=17692&c=206>; Annex B63-69, Sworn Statement of [officer name redacted] taken in Baghdad, Iraq (May 23, 2004). The officer “recommended that a Memorandum of Understanding be written up . . . to establish procedures for a ghost detainee.” *Id.* at 67.

¹⁸⁸ *Investigation of the 205th Military Intelligence Brigade at Abu Ghraib Prison, Iraq: Before the Senate Armed Services Committee*, 108th Congress (Sept. 9, 2004) (statement of General Paul J. Kern) (hereinafter “Gen. Kern Statement”).

¹⁸⁹ *Investigation of the 205th Military Intelligence Brigade at Abu Ghraib Prison, Iraq: Before the Senate Armed Services Committee*, 108th Congress (Sept. 9, 2004) (statement of General George R. Fay).

¹⁹⁰ Gen. Kern Statement, *supra* note 188 (General Kern noted “[i]t’s a very difficult question for us to answer, Mr. Chairman, because we don’t have the documentation. What you see in our report is during the interviews of people reporting to us what happened without documentation.”).

¹⁹¹ Annex B70-71, Sworn Statement of Counterintelligence Agent (June 4, 2004).

¹⁹² Fay-Jones Report, *supra* note 52 at 53-54.

¹⁹³ The 9/11 Commission relied “heavily on information obtained from captured al Qaeda members,” but was not allowed direct access to them. Instead, Commission members were instructed to submit their questions for use by third parties during interrogation sessions. The commission was “authorized” to identify ten alleged al-Qaeda detainees “whose custody had been confirmed officially by the U.S. government. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* at 146 (2004), available at <http://www.9-11commission.gov/report/911Report.pdf>.

private. The President's February 2002 memorandum, which remains in force, limits the obligation to provide humane treatment exclusively to the armed forces and not to the CIA and other government agencies. It also omits references to persons rendered to other countries for interrogation.¹⁹⁴

In December 2005, the *Washington Post* reported that President Bush, shortly after September 11, 2001, authorized the largest CIA covert operation known by its initials GST.¹⁹⁵ GST includes programs that authorized the CIA to capture al-Qaeda suspects with help from foreign intelligence services, to maintain secret prisons abroad, to use interrogation techniques that violate international law, and to maintain aircraft to move detainees around the globe.

An earlier *Washington Post* Article, citing current and former U.S. intelligence officials and foreign sources, reported that approximately two dozen suspected terrorists were sent by the CIA to secret prison facilities, known as "black sites," in Afghanistan, Eastern Europe, Thailand, and Guantánamo.¹⁹⁶ The centers in Thailand and Guantánamo reportedly closed in 2003 and 2004 respectively.¹⁹⁷ Following this news report, the CIA reportedly transferred detainees from Europe to secret CIA prisons located elsewhere.¹⁹⁸

A Pentagon review of Department of Defense interrogation operations acknowledged that "the CIA has independent operations in Afghanistan."¹⁹⁹ A reported CIA detention facility known as the Salt Pit, an abandoned brick factory north of Kabul, has been the site of the death of an Afghan detainee who was allegedly stripped, chained to the floor, assaulted, and left in a cell overnight without blankets. He died of hypothermia.²⁰⁰

Allegations of mistreatment of disappeared persons have been reported in the press. According to the *New York Times*, for instance, C.I.A. interrogators "used graduated levels of force [against Khalid Shaikh Muhammad, a suspected al-Qaeda member], including a technique known as 'water boarding,' in which a prisoner is strapped down, forcibly pushed under water and made to believe he might drown."²⁰¹ Muhammad's two

¹⁹⁴ President Bush, Feb. 2002 Memorandum, *supra* note 42 (The memorandum states "as a matter of policy, the United States Armed Forces shall continue to treat detainees humanely.").

¹⁹⁵ Dana Priest, *Covert CIA Program Withstands New Furor*, WASH. POST, Dec. 30, 2005.

¹⁹⁶ Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005.

¹⁹⁷ *Id.*

¹⁹⁸ Priest, *Covert CIA Program Withstands New Furor*, *supra* note 195.

¹⁹⁹ Dep't of Defense, *Department of Defense Briefing on Detention Operations and Interrogation Techniques* (Mar. 10, 2005), available at <http://www.pentagon.mil/transcripts/2005/tr20050310-2262.html>; see also Schlesinger Report *supra* note 53, at 70 (noting that the CIA conducted interrogations in Department of Defense facilities in Iraq and were "allowed to operated under different rules.").

²⁰⁰ Dana Priest, *CIA Avoids Scrutiny of Detainee Treatment*, WASH. POST, Mar. 3, 2005, at A1. The Salt Pit has reportedly been shut down, with the CIA using another facility. The death in custody was referred for investigation but no one has been charged yet. Priest, *CIA Holds Terror Suspects in Secret Prisons*, *supra* note 196.

²⁰¹ James Risen, David Johnson, Neil A. Lewis, *Harsh C.I.A. Methods Cited in Top Qaeda Interrogations*, N.Y. TIMES, May 13, 2004.

young sons were also taken into custody and there have been reports that the CIA is holding them as an inducement to make him talk.²⁰²

It was also reported that, as an interrogation device, U.S. officials initially withheld painkillers from Abu Zubayda, a suspected al-Qaeda member, who had been shot during his capture.²⁰³ Tactics used by the CIA, according to the *Washington Post*, include “feigning suffocation, ‘stress positions,’ light and noise bombardment, sleep deprivation, and making captives think they are being interrogated by another government.”²⁰⁴

In November 2005, the news media, citing unnamed CIA officials, reported on harsh interrogation techniques authorized by top CIA officials, which led to questionable confessions and deaths of detainees.²⁰⁵ According to CIA sources six “Enhanced Interrogation Techniques,” instituted in mid-March 2002, were used on a dozen top al-Qaeda targets, incarcerated in isolation at secret locations on military bases in regions from Asia to Eastern Europe.²⁰⁶

- Attention Grab: The interrogator forcefully grabs the shirt-front of the prisoner and shakes him.
- Attention Slap: An open-handed slap aimed at causing pain and triggering fear.
- Belly Slap: A hard open-handed slap to the stomach. The aim is to cause pain, but not internal injury. Doctors consulted advised against using a punch, which could cause lasting internal damage.
- Long Time Standing: This technique is described as among the most effective. Prisoners are forced to stand, handcuffed and with their feet shackled to an eye bolt in the floor for more than forty hours. Exhaustion and sleep deprivation are effective in yielding confessions.
- Cold Cell: The prisoner is left to stand naked in a cell kept near 50 degrees. Throughout the time in the cell the prisoner is doused with cold water.
- Water Boarding: The prisoner is bound to an inclined board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoner’s face and water is poured over him. Unavoidably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring the treatment to a halt.²⁰⁷

²⁰² Olga Craig, *CIA holds young sons of captured al-Qaeda chief*, SUNDAY TELEGRAPH (Mar. 9, 2003), at 2.

²⁰³ Dana Priest, *CIA Puts Harsh Tactics on Hold: Memo on Methods of Interrogation Had Wide Review*, WASH. POST, June 27, 2004, at A1.

²⁰⁴ *Id.*

²⁰⁵ Brian Ross and Richard Esposito, *CIA’s Harsh Interrogation Techniques Described*, ABC NEWS, Nov. 18, 2005.

²⁰⁶ *Id.*

²⁰⁷ *Id.* See also Dana Priest, *CIA Puts Harsh Tactics on Hold*, WASH. POST, June 27, 2004; James Risén, David Johnston and Neil A. Lewis, *Harsh CIA Methods Cited in Top Qaeda Interrogations*, N.Y. TIMES, May 13, 2004.

A classified report prepared in 2004 by CIA Inspector General John L. Helgerson found these techniques appeared to constitute cruel, inhuman or degrading treatment under the Convention Against Torture.²⁰⁸ CIA Director Porter Goss, however, countered that CIA interrogators use “‘unique’ methods to obtain ‘vital’ information from prisoners, but strictly obey laws against torture.”²⁰⁹ The ACLU has sought CIA documents through FOIA and is currently litigating the issue, but the CIA has insisted that releasing evidence of alleged criminal acts by CIA agents would jeopardize national security.

The United States government has failed to revoke measures or directives authorizing “disappearances” and to end the use of secret detention facilities in violation of the Convention.

E. Torture and Abuse in the United States (Articles 1, 16)

Since the United States’ last report to this committee, the ACLU and other organizations have continued to document instances of torture and abuse of prisoners and detainees in prisons and jails. Prisoners and detainees have been beaten, shot at, kicked, shocked with electrical stun guns, repeatedly pepper-sprayed, held in solitary confinement for up to twenty-four hours a day under 24-hour surveillance, and restrained in chairs for hours during which time prisoners have defecated on themselves. Prisoners have also been raped and sexually assaulted by correctional officers and other inmates, and denied immediate medical assistance, resulting in the death of some prisoners.

More than 2.1 million persons are incarcerated in prisons and jails in the United States. The number of prisoners has increased six-fold since 1970. According to the U.S. Bureau of Justice Statistics, the U.S. rate of incarceration in 2004, 724 prisoners per 100,000 persons, is the highest reported in the world. As of 2004, 41% of these prisoners were African-American and 19% were Hispanic.²¹⁰ Overcrowding, budget cuts affecting services and rehabilitation programs for prisoners, and inadequate correctional staff to maintain safety and security leave prisoners vulnerable to abuse by each other as well as by staff.

Below is a sample of cases in which the ACLU has been involved since 1999. These cases demonstrate that persons in confinement have been subjected to abuse and torture in violation of U.S. obligations under the Convention.

²⁰⁸ Douglas Jehl, *Report Warned on CIA’s Tactics in Interrogation*, N.Y. TIMES, Nov. 9, 2005.

²⁰⁹ *CIA Methods Not Torture*, REUTERS, Nov. 1, 2005.

²¹⁰ The Sentencing Project, *Facts About Prisons and Prisoners* (Oct. 2005), available at <http://www.sentencingproject.org/pdfs/1035.pdf>.