

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
AMERICAN CIVIL LIBERTIES UNION, et al., :
 :
 :
 : Plaintiffs, : ELECTRONICALLY FILED
 :
 : v. : 04 Civ. 4151 (AKH)
 :
 : DEPARTMENT OF DEFENSE, et al., :
 :
 : Defendants. :
----- X
AMERICAN CIVIL LIBERTIES UNION, et al., :
 :
 : Plaintiffs, :
 :
 : v. : 05 Civ. 9620 (AKH)
 :
 : DEPARTMENT OF JUSTICE, AND ITS :
 : COMPONENT OFFICE OF LEGAL COUNSEL, :
 :
 : Defendants. :
----- X

DECLARATION OF PETER M. SKINNER

PETER M. SKINNER, pursuant to 28 U.S.C. § 1746, declares the following:

1. I am an Assistant United States Attorney in the office of Michael J. Garcia, United States Attorney for the Southern District of New York, attorney for Defendants. I have been assigned to defend this case and am fully familiar with the facts pertaining to this matter. I submit this declaration in support of the Central Intelligence Agency’s Memorandum of Law in Opposition to Plaintiffs’ Motion for Contempt and Sanctions.

2. Attached as Exhibit A is a Statement to Employees by Director of the Central Intelligence Agency, General Michael Hayden, on the Taping of Early Detainee Interrogations, dated December 6, 2007.

3. Attached as Exhibit B is a Department of Justice Press Release, dated December 8, 2007.

4. Attached as Exhibit C is a Letter from Kenneth A. Wainstein, Assistant Attorney General, National Security Division, U.S. Department of Justice, to John A. Rizzo, Acting General Counsel, Central Intelligence Agency, dated December 8, 2007.

5. Attached as Exhibit D is a Department of Justice Press Release, dated January 2, 2008.

6. Attached as Exhibit E is a Memorandum and Order in Abdah v. Bush, 04-01254 (HHK) (D.D.C. January 9, 2008).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
January 10, 2008

S/
PETER M. SKINNER

Central Intelligence Agency
The Work of a Nation. The Center of Intelligence

Search 

Press Releases & Statements

Director's Statement on the Taping of Early Detainee Interrogations

Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on the Taping of Early Detainee Interrogations

December 6, 2007

The press has learned that back in 2002, during the initial stage of our terrorist detention program, CIA videotaped interrogations, and destroyed the tapes in 2005. I understand that the Agency did so only after it was determined they were no longer of intelligence value and not relevant to any internal, legislative, or judicial inquiries—including the trial of Zacarias Moussaoui. The decision to destroy the tapes was made within CIA itself. The leaders of our oversight committees in Congress were informed of the videos years ago and of the Agency's intention to dispose of the material. Our oversight committees also have been told that the videos were, in fact, destroyed.

If past public commentary on the Agency's detention program is any guide, we may see misinterpretations of the facts in the days ahead. With that in mind, I want you to have some background now.

CIA's terrorist detention and interrogation program began after the capture of Abu Zubaydah in March 2002. Zubaydah, who had extensive knowledge of al-Qa'ida personnel and operations, had been seriously wounded in a firefight. When President Bush officially acknowledged in September 2006 the existence of CIA's counter-terror initiative, he talked about Zubaydah, noting that this terrorist survived solely because of medical treatment arranged by CIA. Under normal questioning, Zubaydah became defiant and evasive. It was clear, in the President's words, that "Zubaydah had more information that could save innocent lives, but he stopped talking."

That made imperative the use of other means to obtain the information—means that were lawful, safe, and effective. To meet that need, CIA designed specific, appropriate interrogation procedures. Before they were used, they were reviewed and approved by the Department of Justice and by other elements of the Executive Branch. Even with the great care taken and detailed preparations made, the fact remains that this effort was new, and the Agency was determined that it proceed in accord with established legal and policy guidelines. So, on its own, CIA began to videotape interrogations.

The tapes were meant chiefly as an additional, internal check on the program in its early stages. At one point, it was thought the tapes could serve as a backstop to guarantee that other methods of documenting the interrogations—and the crucial information they produced—were accurate and complete. The Agency soon determined that its documentary reporting was full and exacting,

removing any need for tapes. Indeed, videotaping stopped in 2002.

As part of the rigorous review that has defined the detention program, the Office of General Counsel examined the tapes and determined that they showed lawful methods of questioning. The Office of Inspector General also examined the tapes in 2003 as part of its look at the Agency's detention and interrogation practices. Beyond their lack of intelligence value—as the interrogation sessions had already been exhaustively detailed in written channels—and the absence of any legal or internal reason to keep them, the tapes posed a serious security risk. Were they ever to leak, they would permit identification of your CIA colleagues who had served in the program, exposing them and their families to retaliation from al-Qa'ida and its sympathizers.

These decisions were made years ago. But it is my responsibility, as Director today, to explain to you what was done, and why. What matters here is that it was done in line with the law. Over the course of its life, the Agency's interrogation program has been of great value to our country. It has helped disrupt terrorist operations and save lives. It was built on a solid foundation of legal review. It has been conducted with careful supervision. If the story of these tapes is told fairly, it will underscore those facts.

Mike Hayden

- Privacy
- Copyright
- Site Policies
- USA.gov
- FOIA
- DNI.gov
- NoFEAR Act



Department of Justice

FOR IMMEDIATE RELEASE
SATURDAY, DECEMBER 8, 2007
WWW.USDOJ.GOV

OPA
(202) 514-2007
TDD (202) 514-1888

Statement from Brian Roehrkasse, Director of Public Affairs, Regarding Preliminary Inquiry into Interrogation Video Destruction

"The Department of Justice and the CIA announced today that the Justice Department's National Security Division initiated a preliminary inquiry in conjunction with the CIA's Office of Inspector General regarding the destruction of the interrogation videos described in CIA Director Mike Hayden's message to employees on December 6.

"A preliminary inquiry is a procedure the Department of Justice uses regularly to gather the initial facts needed to determine whether there is sufficient predication to warrant a full investigation."

Attached is the letter from Assistant Attorney General for National Security Ken Wainstein to CIA Acting General Counsel John Rizzo regarding the preliminary inquiry.

Attachment

###

07-991



U.S. Department of Justice

National Security Division

Assistant Attorney General

Washington, D.C. 20530

December 8, 2007

John A. Rizzo
Acting General Counsel
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Rizzo:

I am writing this letter to confirm our discussions over the past several days regarding the destruction of videotapes of interrogations conducted by the Central Intelligence Agency (CIA). Consistent with these discussions, the Department of Justice will conduct a preliminary inquiry into the facts to determine whether further investigation is warranted. I understand that you have undertaken to preserve any records or other documentation that would facilitate this inquiry. The Department will conduct this inquiry in conjunction with the CIA's Office of Inspector General (OIG).

My colleagues and I would like to meet with your Office and OIG early next week regarding this inquiry. Based on our recent discussions, I understand that your Office has already reviewed the circumstances surrounding the destruction of the videotapes, as well as the existence of any pending relevant investigations or other preservation obligations at the time the destruction occurred. As a first step in our inquiry, I ask that you provide us the substance of that review at the meeting.

Thank you for your cooperation with the Department in this matter. Please feel free to contact me if you have any questions.

Sincerely,

Kenneth L. Wainstein
Assistant Attorney General
National Security Division

cc: John L. Helgerson
Inspector General
Central Intelligence Agency



Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, JANUARY 2, 2008
WWW.USDOJ.GOV

OPA
(202) 514-2007
TDD (202) 514-1888

Statement by Attorney General Michael B. Mukasey Regarding the Opening of an Investigation Into the Destruction of Videotapes by CIA Personnel

“Following a preliminary inquiry into the destruction by CIA personnel of videotapes of detainee interrogations, the Department’s National Security Division has recommended, and I have concluded, that there is a basis for initiating a criminal investigation of this matter, and I have taken steps to begin that investigation as outlined below.

“This preliminary inquiry was conducted jointly by the Department’s National Security Division and the CIA’s Office of Inspector General. It was opened on December 8, 2007, following disclosure by CIA Director Michael Hayden on December 6, 2007, that the tapes had been destroyed. A preliminary inquiry is a procedure the Department of Justice uses regularly to gather the initial facts needed to determine whether there is sufficient predication to warrant a criminal investigation of a potential felony or misdemeanor violation. The opening of an investigation does not mean that criminal charges will necessarily follow.

“An investigation of this kind, relating to the CIA, would ordinarily be conducted under the supervision of the United States Attorney for the Eastern District of Virginia, the District in which the CIA headquarters are located. However, in an abundance of caution and on the request of the United States Attorney for the Eastern District of Virginia, in accordance with Department of Justice policy, his office has been recused from the investigation of this matter, in order to avoid any possible appearance of a conflict with other matters handled by that office.

“As a result, I have asked John Durham, the First Assistant United States Attorney in the United States Attorney’s Office for the District of Connecticut, to serve as Acting United States Attorney for the Eastern District of Virginia for purposes of this matter. Mr. Durham is a widely respected and experienced career prosecutor who has supervised a wide range of complex investigations in the past, and I am grateful to him for his willingness to serve in this capacity. As the Acting United States Attorney for purposes of this investigation, Mr. Durham will report to the Deputy Attorney General, as do all United States Attorneys in the ordinary course. I have also directed the FBI to conduct the investigation under Mr. Durham’s supervision.

“Earlier today, the Department provided notice of these developments to Director Hayden and the leadership of the Judiciary and Intelligence Committees of the Congress.”

###

08-001

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>MAHMOAD ABDAH, et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>GEORGE W. BUSH, et al.,</p> <p>Respondents.</p>

Civil Action 04-01254 (HHK)

MEMORANDUM AND ORDER

Petitioners in this action are detainees at Guantánamo Bay, Cuba, who seek a Writ of Habeas Corpus. Before the court is petitioners’ motion entitled “Emergency Motion for Inquiry into Respondents’ Compliance with Document Preservation Order” [# 219]. By this motion, petitioners seek a judicial inquiry into whether respondents have complied with this court’s document preservation order of June 10, 2005 (“2005 Order”). Upon consideration of the motion, the opposition thereto, the record of this case, and the oral argument of counsel at a hearing, the court concludes that the motion should be denied.

I.

The document preservation order that is the subject of the instant motion, in pertinent part, directs respondents to “preserve and maintain all evidence and information regarding the torture, mistreatment, and abuse of detainees *now at the United States Naval Base at Guantánamo Bay, Cuba.*” 2005 Order 2 (emphasis supplied). Petitioners seek a judicial inquiry into whether respondents have complied with the order following the recent revelation that in 2005 the Central Intelligence Agency (“CIA”) destroyed videotapes documenting the interrogation of two suspected Al Qaeda operatives in the CIA’s custody. Petitioners assert that

this revelation “raises grave concerns about the government’s compliance with the preservation order . . . [that] warrant the Court’s immediate attention.” Mot. 1.

Other than the revelation itself that the CIA has destroyed videotapes documenting “harsh interrogation[s]”¹ of persons in the custody of the CIA, petitioners offer nothing to support their assertion that a judicial inquiry regarding this court’s 2005 Order is warranted. The 2005 Order prohibits respondents from destroying evidence regarding any torture, mistreatment, or abuse of detainees that occurred at Guantánamo Bay. Petitioners do not assert that the destroyed tapes depict interrogations that occurred at Guantánamo Bay and respondents have represented to the court that the interrogations depicted on the tapes did not occur there. To the contrary, the videotapes were recorded in their entirety in 2002 before either of the suspected Al Qaeda operatives shown on the tapes had been at Guantánamo Bay. Further, following their capture, neither suspect was in contact with any other detainee during the time when the tapes were made. Therefore, petitioners’ motion will be denied.²

The court’s decision to deny petitioners’ motion is also influenced by the assurances of the Department of Justice that its preliminary inquiry – now a criminal investigation – into the

¹ Dan Eggen & Joby Warrick, *CIA Destroyed Videos Showing Interrogation*, Washington Post, Dec. 7, 2002, at A1.

² At oral argument, counsel for petitioners asked the court to construe their motion “as going beyond a potential violation of this protective order.” Hr’g Tr. 7:13-7:15, Dec. 21, 2007. Specifically, petitioners’s counsel asked the court to construe the motion as also requesting a judicial inquiry into whether the government complied with its independent obligation to preserve all evidence. The court declines to do so. The rules of this court require that “each motion shall include or be accompanied by a statement of the specific points of law and authority that support the motion, including where appropriate a concise statement of facts.” LCVr 7(a). The purpose of the rule is to ensure that the nonmovant and the court are provided notice of what is sought and the legal basis for the motion. Any motion by either side must comply with the rules of this court.

destruction of videotapes by the CIA will include the issue of whether their destruction “was inconsistent with or violated any legal obligations, including those arising out of civil matters such as [this court’s] Order of June 2005.” *Id.* at 23:10-23:14. The Department of Justice also informed the court that “if the National Security Division concludes that there was a violation of this court’s order, we would so advise the court.” *Id.* at 25:6-25:8.

Petitioners argue that the court should not place much stock in the assurances of the Department of Justice. There is no reason to disregard the Department of Justice’s assurances. It is well established that, “in the absence of clear evidence to the contrary, courts presume that [public officers] . . . properly discharge[] their official duties.” *United States v. Mezzanatto*, 513 U.S. 196, 210 (1995) (quoting *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14-15 (1926)). In a matter such as this, this presumption is especially warranted with respect to the newly-appointed Attorney General and Department of Justice lawyers. Petitioners have not presented anything to rebut this presumption. Nor have petitioners presented anything to cause this court to question whether the Department of Justice will follow the facts wherever they may lead and live up to the assurances it made to this court.

II.

For the foregoing reasons, it is this 9th day of January, 2008, hereby

ORDERED that Petitioners’ Emergency Motion for Inquiry into Respondents’ Compliance with Document Preservation Order [# 219] is **DENIED**.

Henry H. Kennedy, Jr.
United States District Judge