



March 30, 2006

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Re: *General Allegation Regarding the United States Policy and Practice of Rendition*

Dear Mr. Toope,

We write on behalf of the American Civil Liberties Union Foundation (“ACLU”), a non-profit organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil and human rights.

Since September 11, 2001, the United States government has relied increasingly in its counterterrorism operations on a practice that has commonly become known as “rendition,” or “extraordinary rendition.”<sup>1</sup> While the circumstances of individual cases vary, the practice generally involves the abduction of persons either outside or inside the U.S. and their extrajudicial transfer either to U.S.-run detention facilities overseas or to the custody of foreign intelligence agencies. Following their abduction and detention, suspects are subjected to interrogation methods proscribed by United States and international law. Even when suspects are transferred to the custody of foreign agents under the rendition program, the United States often maintains a degree of control over their custody as well as the interrogation process itself.<sup>2</sup> Because those subjected to this practice are generally held *incommunicado* in secret facilities, we believe that the practice either facilitates or effects enforced disappearances as this term has been defined under the Declaration for the Protection of All Persons from Enforced or Involuntary Disappearance.<sup>3</sup>

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<sup>1</sup> See e.g.: Rajiv Chandrasekaran and Peter Finn, *U.S. Behind Secret Transfer of Terror Suspects*, WASH. POST, March 11, 2002, at A01; Dana Priest and Barton Gellman, *U.S. Decries Abuse but Defends Interrogations*, WASH. POST, Dec. 26, 2002, at A01.

<sup>2</sup> Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005; Brian Ross and Richard Esposito, *CIA's Harsh Interrogation Techniques Described*, ABC NEWS, Nov. 18, 2005.

<sup>3</sup> “Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international

## THE RENDITION PROGRAM

The United States' covert rendition program has been in existence for many years. The roots of the current practice can be traced as far back as 1995.<sup>4</sup> However, according to current and former government officials, both the nature and scope of the rendition program have been significantly altered by the Bush administration since the September 11<sup>th</sup> attacks. For example, whereas in the past the rendition program was theoretically aimed at rendering individuals to trial in the United States or a foreign country, now it appears to have as its primary objective the abduction, detention, and interrogation of individuals whom the United States suspects of involvement in terrorism.<sup>5</sup> Since September 11, 2001, an estimated 150 people have been abducted and imprisoned pursuant to the rendition program.<sup>6</sup>

Although many of the details of the current program remain shrouded in secrecy, investigative journalists based in the United States and overseas have uncovered significant information about the operation of the program. Senior U.S. officials, too, have spoken openly about the practice. For example, in public testimony before the 9/11 Commission of Inquiry in the United States, former CIA Director George J. Tenet described the rendition program as a key counterterrorism tool.<sup>7</sup>

Recent articles in the Washington Post have disclosed that six days after September 11, 2001, President Bush secretly authorized a range of covert CIA actions, including renditions.<sup>8</sup> The current rendition program reportedly divides terrorism suspects into two categories: those whom the CIA considers to be high-level suspects,

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law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life." Declaration on the Protection of all Persons from Enforced Disappearance, G.A. Res. 47/133, Art. 1, U.N. Doc A/RES/47/133 (December 18, 1992).

<sup>4</sup> *Transcript of Interview with Michael Scheuer*, FRONTLINE, July 21, 2005, available at <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/scheuer.html>; Anthony Shadid, *America Prepares The War on Terror; U.S., Egypt Raids Caught Militants*, BOSTON GLOBE, October 7, 2001; Andrew Higgins and Christopher Cooper, *CIA Backed Team Used Brutal Means to Crack Terror Cell*, WALL STREET JOURNAL, Nov. 21, 2001.

<sup>5</sup> The program was originally designed for "people against whom there were outstanding foreign arrest warrants" and required "case-by-case approval from the White House or the State or Justice Departments." Jane Mayer, *Outsourcing Torture*, THE NEW YORKER, Feb. 14, 2005; Douglas Jehl and David Johnston, *Rule Change Lets C.I.A. Freely Send Suspects Abroad to Jails*, NY TIMES, March 6, 2005.

<sup>6</sup> Mayer, *supra* note 5. This figure seems to be a conservative estimate particularly in light of statement made by the Egyptian Prime Minister, Ahmed Nazif, during a television interview where he indicated 60 or 70 terrorism suspects had been sent to Egypt by the United States. Transcript, NBC NEWS MEET THE PRESS (May 15, 2005), available at <http://www.msnbc.msn.com/id/7862265/>.

<sup>7</sup> Written Statement for the Record of George Tenet, Director Central Intelligence Before the National Commission on Terrorist Attacks Upon the United States (March 24, 2004); *see also*, Intelligence Policy Staff Statement No. 7, Commission on Terrorist Attacks Upon the United States, available at [http://www.9-11commission.gov/staff\\_statements/staff\\_statement\\_7.pdf](http://www.9-11commission.gov/staff_statements/staff_statement_7.pdf).

<sup>8</sup> Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, WASH. POST, Dec. 4, 2005, at A01; Priest, *supra* note 2.

and those whom it considers of lesser intelligence value.<sup>9</sup> High-level terrorism suspects are detained and interrogated by U.S. personnel at U.S.-run detention facilities outside the United States. Those of lesser intelligence value are transferred to the custody of foreign agents for detention and interrogation. In both cases, media reports, human rights investigations, and the accounts of victims indicate that the interrogation methods are employed fail to comport with U.S. and internationally recognized standards.<sup>10</sup>

The rationale behind the rendition program is to remove identified suspects from the protection and scrutiny of U.S. or international law. Memoranda prepared by the U.S. Department of Justice's Office of Legal Counsel have advanced the position that foreign nationals held at detention facilities outside U.S. sovereign territory are unprotected by federal or international laws.<sup>11</sup> Government lawyers, for example, have advanced this argument in *habeas corpus* proceedings brought on behalf of foreign nationals detained and interrogated at Guantánamo Bay, Cuba.<sup>12</sup>

In short, the rendition program serves two discrete functions: it permits agents of the United States to detain foreign nationals whom it considers terrorist suspects outside U.S. sovereign territory and without legal process; and it permits those agents, sometimes through counterparts in foreign intelligence agencies, to employ interrogation methods that would not be permissible under federal or international law.

There is now a substantial body of evidence that the United States renders certain terrorism suspects to secret facilities that it operates outside the United States. These facilities are known within the CIA as "black sites" and are operated with the cooperation of host countries. Suspects held at these "black site" facilities are held *incommunicado*, without charge or trial.<sup>13</sup>

There is a significant and growing body of evidence too that the CIA uses unlawful interrogation techniques on suspects detained in these facilities. Media reports indicate that in 2002, the CIA was specifically authorized to use "enhanced" interrogation techniques in their overseas interrogations.<sup>14</sup> The techniques include: grabbing a prisoner and shaking him; slapping; forcing a prisoner to stand with hands and feet shackled for

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<sup>9</sup> Priest, *supra* note 2.

<sup>10</sup> See, e.g., Ross and Esposito, *supra* note 2; Priest, *supra* note 2; Amnesty International Report 2005 (Egypt section), available at <http://web.amnesty.org/report2005/egy-summary-eng>.

<sup>11</sup> See Memorandum for William J. Haynes II, General Counsel, Department of Defense from John Yoo, Deputy Assistant Attorney General (Jan. 9, 2002), available at: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.09.pdf>; Memorandum for the President from Alberto R. Gonzales, White House Counsel (Jan. 25, 2002), available at: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.25.pdf>.

<sup>12</sup> See *In re Guantanamo Detainee Cases*, 355 F.Supp.2d 443, 448 (D.D.C. 2005).

<sup>13</sup> See, e.g. Human Rights Watch, *Statement on U.S. Secret Detention Facilities in Europe* (Nov. 7, 2005), available at: [http://hrw.org/english/docs/2005/11/07/usint11995\\_txt.htm](http://hrw.org/english/docs/2005/11/07/usint11995_txt.htm); Amnesty International, *United States of America / Yemen; Secret Detention in CIA "Black Sites"* (2005), available at: <http://web.amnesty.org/library/Index/ENGAMR511772005>; Priest, *supra* note 2.

<sup>14</sup> Ross and Esposito, *supra* note 2; see also, Douglas Birch, *Torture: security vs. values*, BALTIMORE SUN, Dec. 18, 2005; Dana Priest, *Covert CIA Program Withstands New Furor*, WASH. POST, Dec. 30, 2005, at A01.

long periods of time (at times in excess of 40 hours); forcing a prisoner to stand naked in a cold cell while dousing him with cold water; and “waterboarding,” which entails strapping a prisoner to a board, covering his face with cellophane, and pouring water over him to simulate drowning.<sup>15</sup> The CIA’s own Inspector General found that these techniques apparently violated the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment.<sup>16</sup>

In 2003, the ACLU sought information about the nature and scope of the rendition program, as well as the treatment of detainees in United States custody, through a United States Freedom of Information Act request (FOIA). Pursuant to a court order handed down in August 2004, the government has released over 100,000 pages of documents. Taken as a whole, these documents reveal that the use of torture and other cruel, inhuman and degrading treatment in detention facilities in Afghanistan, Guantánamo, and Iraq was widespread and systemic and that these techniques were authorized or condoned at the highest levels of government. Attached is a set of documents obtained through the FOIA that illustrate these findings (“Attachment 1”).

The ACLU specifically requested documents from the CIA that would shed light on the rendition program as well as on the treatment of detainees in the CIA’s custody and control. To date, the CIA has yet to release documents on these issues, claiming a blanket exemption from production of such documents on national security grounds.

The secrecy surrounding the CIA’s practices makes it difficult to determine who is currently being held at CIA-run “black sites.” Neither the International Committee of the Red Cross nor any other independent human rights organization has been afforded access to these facilities.

Media reports suggest, however, that at least 100 people are currently being held for interrogation in these “black sites.”<sup>17</sup> According to news reports and human rights investigations, “black site” facilities have been established at various times in Afghanistan, Guantánamo, Thailand, Romania, Ukraine, Serbia, Bulgaria, Poland, Jordan, Diego Garcia, and Macedonia.<sup>18</sup>

The ACLU currently represents Khaled El-Masri, a German citizen of Lebanese descent who was rendered from Macedonia and subjected to unlawful detention and interrogation, and is in contact with other rendition victims who are considering legal action. On December 6, 2005, the ACLU filed suit against George Tenet, former director

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<sup>15</sup> *Id.*

<sup>16</sup> Douglas Jehl, *Report Warned C.I.A. on Tactics In Interrogation*, N.Y. TIMES, Nov. 9, 2005, at A1.

<sup>17</sup> Priest, *supra* note 2; Alec Russell and Kate Connolly, *Rice to claim Euro backing for CIA prisons*, DAILY TELEGRAPH, Dec. 5, 2005.

<sup>18</sup> Priest, *supra* note 2; *Swiss probe leaked fax on alleged CIA prisons*, REUTERS, Jan. 11, 2006; Yossi Melman, *CIA Holding Al-Qaida suspects in secret Jordanian lockup*, HA ARETZ, Oct. 13, 2004; Simon Elegant and Andrew Perrin, *Asia’s Terror Threat*, TIME ASIA, Oct. 6, 2003; Human Rights Watch, *supra* note 13. In one facility operated by the CIA on the outskirts of Kabul, known as the “Salt-Pit,” one Afghan detainee reportedly froze to death after being stripped naked and chained to the floor and left overnight in his cell. Priest, *supra* note 2.

of the CIA, and the airline companies that facilitated Mr. El-Masri's rendition, for the injuries he suffered as a consequence of the rendition process, including prolonged arbitrary detention, torture, and other cruel, inhuman or degrading treatment. The complaint filed on behalf of Mr. El-Masri in United States District Court is attached marked 2.

### **Khaled El-Masri**

On December 31, 2003, Macedonian law enforcement officials detained Mr. El-Masri after he entered that country for a holiday. After twenty-three days of *incommunicado* detention and coercive interrogation by Macedonian officials in Skopje, Mr. El Masri, was handed over to U.S. agents who beat and drugged him before flying him to a CIA-run facility in Kabul, Afghanistan. Neither his family nor his friends were informed at any point of his detention.<sup>19</sup>

During the interrogations, Mr. El-Masri was threatened, insulted, and beaten.<sup>20</sup> Though CIA officials knew in March that they had had abducted the wrong man, Mr. El-Masri was not released until May 28, 2004.<sup>21</sup> Five months after his initial abduction, Mr. El-Masri was deposited at night, without explanation, on a hill in Albania, and he found his way back to Frankfurt with the assistance of Albanian law enforcement officers.<sup>22</sup>

Publicly available records as well as media reports indicate that U.S.-based aviation corporations and their personnel were engaged by the CIA to facilitate Mr. El-Masri's rendition.<sup>23</sup> These corporations include Premier Executive Transport Services, based in Boston, Massachusetts, the registered owners of the aircraft used to transport Mr. El-Masri from Skopje to Kabul, and Aero Contractors Limited, a corporation based in North Carolina.<sup>24</sup> Recent media reports also indicate that German intelligence officials were notified by the United States of Mr. El-Masri's rendition and that they participated in his prolonged arbitrary detention and inhumane interrogation.<sup>25</sup>

Given the circumstances of Mr. El-Masri's rendition, and in particular his transfer to a CIA-run facility as opposed to foreign intelligence agency, it would appear that the

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<sup>19</sup> Attachment 2, ¶¶ 23-32, 47.

<sup>20</sup> Attachment 2, ¶¶ 38, 70.

<sup>21</sup> Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, WASH. POST, Dec. 4, 2005, at A01; Lisa Myers and Aram Roston, *CIA accused of detaining innocent man*, MSNBC.COM, April 21, 2005; Attachment 2, ¶ 43.

<sup>22</sup> Attachment 2, ¶¶ 52-55.

<sup>23</sup> See Stephen Grey, *United States: trade in torture*, LE MONDE DIPLOMATIQUE, April 2005; Dana Priest, *Jet Is an Open Secret in Terror War*, WASH. POST, Dec. 27, 2004, at A01. The planes were linked to specific renditions, in part, by plane spotters, see Gerard Seanan and Giles Tremlett, *How planespotters turned into the scourge of the CIA*, GUARDIAN, Dec. 10, 2005.

<sup>24</sup> These companies were linked to Mr. El-Masri's abduction by the press, based on plane spotters logs, combined with the Federal Aviation Administration Aircraft Registry, available at <http://registry.faa.gov/aircraftinquiry/>.

<sup>25</sup> Don Van Natta Jr., *Germany Weighs if It Played Role in Seizure by U.S.*, N.Y. TIMES, Feb. 21, 2006; Geir Moulson, *Alleged kidnap victim claims he was visited by German at secret U.S. prison*, ASSOCIATED PRESS, Feb. 21, 2006.

CIA initially considered him to be a high-level suspect. The basis for this assumption, however, is not known.

To date, despite widespread media coverage in Germany and the United States, the CIA has refused to acknowledge its involvement in Mr. El-Masri's rendition.

### **Additional High-Level Terror Suspects in CIA Custody**

Human Rights Watch has observed that the Bush administration has announced the capture of several high-level terrorism suspects on the official White House website, yet the location of these suspects remains undisclosed. These suspects include: Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain), Ramzi bin al-Shibh, Khalid Sheikh Mohammed, Hambali (aka Riduan Isamuddin), and Ahmed Khalfan Ghailani.<sup>26</sup> We believe that they are currently being held in CIA black sites.

### **Maher Arar**

Mr. Arar, a Canadian-Syrian national, was transiting through John F. Kennedy airport in New York City on September 26, 2002 on his way home to Canada after a family holiday with his wife and children in Tunisia, when he was arrested and detained by U.S. Immigration officials. Following his arrest, Mr. Arar was detained and coercively interrogated in the United States for eleven days before being flown to Syria, via Jordan where he was imprisoned and interrogated for a year. United States officials did not inform his family that they were rendering him to Syria, and indeed from October 8, 2002 to October 22, 2002, they refused to acknowledge his whereabouts to his family. In Syria, Mr. Arar was beaten with a shredded electrical cable, punched, and kicked while being interrogated.<sup>27</sup>

Due to the intervention of Canadian officials and pressure on the Canadian government by his wife and Canadian public, Mr. Arar was eventually released from Syrian custody and returned to Canada on October 5, 2003. No charges were ever brought against him in Syria or Canada.<sup>28</sup>

After Mr. Arar's return, in an interview with a U.S. television network, the Syrian Ambassador to the United States stated that the Syrian government had taken Mr. Arar as a favor to the Americans and that throughout his detention and interrogation, there was

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<sup>26</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, Dec. 1, 2005, available at <http://hrw.org/english/docs/2005/11/30/usdom12109.htm> (cites George W. Bush's Record of Achievement, *Winning the War on Terror*, <http://www.whitehouse.gov/infocus/achievement/chap1.html>).

<sup>27</sup> *Maher Arar: Timeline*, CBC NEWS, Feb. 17, 2006, available at <http://www.cbc.ca/news/background/arar/>; Maher Arar, *Maher's Story*, available at <http://www.maherarar.ca/mahers%20story.php>; see also Steven Toope, Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar, October 14, 2005.

<sup>28</sup> *Id.*

close cooperation between Syrian security agents and their American counterparts.<sup>29</sup>

### **Other States' Cooperation in the U.S. Rendition Program**

The United States does not operate alone in effecting its rendition program. The cooperation of other countries in the program is vital to its success, and their involvement is now beyond dispute.<sup>30</sup>

Recently, both the Council of Europe and the European Parliament have initiated investigations into European cooperation with the CIA's practice of extraordinary rendition and secret detention of terrorism suspects on European soil.<sup>31</sup> In December 2005, Senator Dick Marty, the leader of the Council of Europe's investigation, announced that the "the information gathered to date reinforced the credibility of the allegations concerning the transport and temporary detention of detainees -- outside all judicial procedure -- in European countries."<sup>32</sup>

In addition to these inter-governmental investigations, numerous national investigations have recently been commenced to explore various nations' complicity in the program. Poland and Romania have begun investigations into the existence of black sites in their respective countries.<sup>33</sup> In addition, Germany is likely to conduct a full

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<sup>29</sup> *His Year in Hell*, CBS NEWS, Jan. 21, 2004, transcript available at <http://www.cbsnews.com/stories/2004/01/21/60II/printable594974.shtml>.

<sup>30</sup> See, e.g., Mats Melin, Sweden's Chief Parliamentary Ombudsman, *A review of the enforcement by the Security Police of a Government decision to expel two Egyptian citizens* (March 22, 2005), available at [http://www.jo.se/Page.aspx?MenuId=106&MainMenuId=106&Language=en&ObjectClass=DynamX\\_SFS\\_Decision&Id=1662](http://www.jo.se/Page.aspx?MenuId=106&MainMenuId=106&Language=en&ObjectClass=DynamX_SFS_Decision&Id=1662) (Melin condemns Swedish security police for their cooperation with U.S. agents in the rendition of two Egyptian asylum seekers back to Egypt, where there was a strong likelihood of torture. "At Bromma airport the [Swedish] security police already failed to maintain control of the enforcement, thereby allowing American officials free hands to exercise public authority on Swedish territory... The way in which the [Swedish] Security Police dealt with this case was characterised throughout by passivity - from the acceptance of the offer of the use of an American aircraft until completion of the enforcement. One example that can be mentioned is the failure of the Security Police to ask for information about what the security check demanded by the Americans would involve.") *Id.* at ¶ 2.1; Council of Europe, *Alleged secret detentions in Council of Europe member states, Information Memorandum II* (Jan. 22, 2006), available at [http://assembly.coe.int/CommitteeDocs/2006/20060124\\_Jdoc032006\\_E.pdf](http://assembly.coe.int/CommitteeDocs/2006/20060124_Jdoc032006_E.pdf) ("Rendition" affecting Europe seems to have concerned more than a hundred persons in recent years. Hundreds of CIA-chartered flights have passed through numerous European countries. It is highly unlikely that European governments, or at least their intelligence services, were unaware." *Id.* at ¶66); see generally, Press Release, Deputy Prime Minister Issues Terms of Reference for the Public Inquiry into the Maher Arar Matter (Feb. 5, 2004), available at <http://www.ararcommission.ca/eng/window01.htm> ("On January 28, 2004, the Deputy Prime Minister announced that Mr. Justice Dennis R. O'Connor would undertake a public inquiry into the actions of Canadian officials dealing with the deportation and detention of Mr. Maher Arar...").

<sup>31</sup> *European Parliament sets up committee to study CIA prison claims*, AGENCE FRANCE PRESSE, Jan. 18, 2006; Council of Europe, *Report by the Secretary General on the use of his powers under Article 52 of the European Convention on Human Rights*, 4-5 (FEB. 28, 2006).

<sup>32</sup> Council of Europe, *supra* note 30.

<sup>33</sup> Council of Europe, *Alleged secret detentions in Council of Europe member states, Information Memorandum II supra* note 30 at ¶26-27.

parliamentary probe into the German government's role in Mr. El-Masri's rendition.<sup>34</sup>

## RENDITION VIOLATES INTERNATIONAL AND DOMESTIC LAW

Despite government assertions to the contrary, the U.S. rendition program violates numerous express and implicit provisions of international treaty and customary international law binding on the United States, as well as its own domestic laws and policies.

For instance, by authorizing CIA agents to abduct suspects and transfer them to *incommunicado* detention in overseas prisons, the United States violates express provisions of the International Covenant on Civil and Political Rights (ICCPR), including, *inter alia*, Arts. 9 (right to be free from arbitrary arrest and detention, including a right to judicial review for the basis of detention) and 14 (right to a fair trial).<sup>35</sup>

The interrogation techniques that the CIA has been authorized to use on suspects, in particular the so-called "enhanced" techniques, violates Art. 7 (right to be free from torture and other cruel, inhuman or degrading treatment) of the ICCPR as well as Arts. 2 (right to be free from torture) and 16 (right to be free from cruel, inhuman or degrading treatment) of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>36</sup>

In rendering suspects it considers to be of lesser intelligence value to foreign powers such as Egypt and Syria "where there are substantial grounds for believing that [they] would be in danger of being subjected to torture," the United States violates Art. 3 of the CAT.<sup>37</sup>

The rendition program also violates U.S. domestic policies and laws prohibiting torture and transfers to countries where there is a substantial risk of such treatment. For example, in 1998, in partial fulfillment of its obligations under the CAT, the United States enacted domestic legislation prohibiting the transfer of any persons, wherever they were held, whether inside or outside the United States, to a country where they would be subject to torture. In relevant part, the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) provides:

It shall be the policy of the United States not to expel, extradite, or otherwise

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<sup>34</sup> *German opposition to demand probe into Iraq spy scandal, CIA abductions*, AGENCE FRANCE PRESSE, March 10, 2006.

<sup>35</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, (March 23, 1976).

<sup>36</sup> *Id.*; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51, (June 26, 1987); *see generally* Initial Report of the United States of America to the Committee Against Torture, U.N. Doc. CAT/C/28/Add.5 (1999), *available at* [http://www.unhcr.ch/tbs/doc.nsf/0/fd58acc3c4d77447802568cf0030f212/\\$FILE/G0040656.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/fd58acc3c4d77447802568cf0030f212/$FILE/G0040656.pdf);

Second Periodic Report of the United States of America to the Committee Against Torture United States, U.N. Doc CAT/C/48/Add.3 (2005), *available at* <http://www.state.gov/documents/organization/62175.pdf>.

<sup>37</sup> *Id.*

effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.<sup>38</sup>

The United States has also enacted a number of laws that prohibit torture and cruel, inhuman or degrading treatment wherever it occurs. The statute 18 U.S.C. § 2340A criminalizes torture perpetrated by U.S. nationals outside the United States. The Alien Tort Claims Act (ATCA), 28 U.S.C.A. § 1350 provides civil remedies for non-U.S. nationals for violations of customary international law, including the norms prohibiting torture and other cruel, inhuman or degrading treatment wherever they occur. The ATS also incorporates remedies for violation of the norm prohibiting enforced disappearances. In 1992, the Torture Victim Protection Act, 28 U.S.C.A. § 1350 (Note) expanded the scope of the ATCA, by permitting U.S. citizens too to seek civil remedies for summary execution and torture. More recently, Congress codified the prohibition on cruel, inhuman, and degrading treatment in 42 U.S.C.A. § 2000dd.

Finally, the U.S. Constitution also prohibits the use of torture and other cruel, inhuman or degrading treatment. The Fifth Amendment's due process clause, applicable to interrogation procedures, prohibits actions taken under color of law (acting with government authority) that are "so brutal and offensive to human dignity" that they "shock the conscience."<sup>39</sup> The Eighth Amendment's prohibition on cruel and unusual punishment protects convicted persons as well as those held in pretrial detention.<sup>40</sup> The U.S. Supreme Court has held that the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."<sup>41</sup> Its prohibitions include: disproportionate punishments, non-physical forms of cruel and unusual punishment, and wanton or unnecessary infliction of pain.<sup>42</sup>

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<sup>38</sup> Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, Title XXII, § 1242(a); *see generally*, CONGRESSIONAL RESEARCH SERVICE, RENDITIONS: CONSTRAINTS IMPOSED BY LAWS ON TORTURE (Sept. 22, 2005), available at <http://www.fas.org/sgp/crs/natsec/RL32890.pdf>.

<sup>39</sup> *Rochin v. California*, 342 U.S. 165, 172 (1942) (finding the illegal break-in of the petitioner's home by government agents, struggle to open his mouth, and forcible extraction of his stomach's contents to retrieve pills "shocked the conscience" and violated Rochin's due process rights).

<sup>40</sup> *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983); *County of Sacramento v. Lewis*, 523 U.S. 833, 849-50 (1998) (affirming that due process rights of pretrial detainees are "at least as great as the Eighth Amendment protections available to a convicted prisoner").

<sup>41</sup> *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

<sup>42</sup> *Weems v. United States*, 217 U.S. 349 (1910) (prohibiting disproportionate punishment); *Trop*, 356 U.S. 86 (prohibiting non-physical forms of cruel and unusual punishment); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947) (prohibiting wanton and unnecessary infliction of pain). The following cases, although not exhaustive, illustrate how U.S. courts have found certain conditions to be torture, cruel and unusual treatment. *E.g. Hope v. Pelzer*, 536 U.S. 730 (2002) (finding "gratuitous infliction of 'wanton and necessary'" pain when officers made inmate take his shirt off, attached him to a hitching post in the sun for seven hours, given no bathroom break, given water only once or twice and at least one guard taunted Hope for being thirsty); *Hudson v. McMillan*, 503 U.S. 1 (1992) (Eighth Amendment violation found when prison officials handcuffed and shackled prisoner and beat him after an argument, resulting in bruises, swelling, loosened teeth and cracked dental plate); *Rhodes v. Chapman*, 453 U.S. 337, 341 (1981) (finding that the deprivation of essential human needs, including food, constitutes cruel and unusual punishment); *Estelle v. Gamble*, 429 U.S. 97 (1976) (failure to provide essential medical treatment constitutes cruel and

## REQUESTS TO THE CHAIRMAN-RAPPORTEUR

In light of the above information we make the following requests:

1. that this letter form the basis of a General Allegation against the United States to the Working Group on Enforced or Involuntary Disappearances;
2. that pursuant to this General Allegation you conduct a full investigation into the allegations made herein;
3. that you treat the attached list of individuals (Attachment 3) who may be secretly detained by the CIA or by foreign agents at the request of the United States as an urgent appeal to discover the individuals' fates and whereabouts;
4. that you request the U.S. government to provide you with information relating to the policy and practice of rendition, including *inter alia* any legal memoranda that may have been drafted justifying the practice. To the extent that this information is lawfully classified, we recommend that you request to view it under a protective order.

Sincerely,

Steven Watt  
Ben Wizner  
American Civil Liberties Union  
Foundation  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004

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unusual punishment); *Simpson v. Socialist People's Libyan Arab Jamahriya*, 326 F.3d 230, 234 (D.C. Cir. 2003) (to assess whether an act is cruel or degrading treatment a court must look at the victims' suffering which depends upon the totality of circumstances. "The term torture is 'usually reserved for extreme, deliberate and unusually cruel practices, for example . . . tying up or hanging in positions that cause extreme pain'"); *Abebe-Jiri v. Negewo*, 72 F.3d 844 (11th Cir. 1996) (finding that the victim suffered "severe pain" constituting torture when she was hung from a pole, naked and with her arms and legs bound, and was severely beaten); *Doe v. Qi*, 349 F.Supp.2d 1258, 1318 (N.D. Cal. 2004) (finding that a victim who had been "beaten and hung from pipes for three days, handcuffed to other prisoners and not allowed to sleep" had been tortured); *Jama v. U.S. I.N.S.*, 22 F.Supp.2d 353, 358 (D.N.J. 1998) (detainees, awaiting asylum determination, not permitted to sleep under bright lights twenty-four hours a day, lived in filth and constant smell of human waste, being packed in rooms with twenty to forty detainees, beaten, deprived of privacy, subjected to degrading comments from guards and sexual abuse); *Mehinovic v. Vuckovic*, 198 F.Supp.2d 1322, 1346 (N.D. Ga. 2002) (finding that a victim who was beaten, kicked in the face and torso, and subjected to a "long nightmarish beating" that included "being hit while hanging upside down from a rope until he almost lost consciousness"; the "threat of imminent death; or the threat that another person will imminently be subjected to death, [or] severe physical pain and suffering" can constitute mental torture).

cc: Steven J. Toope, President  
The Pierre Elliott Trudeau Foundation  
1514 Doctor Penfield Avenue, 2nd Floor  
Montreal, Quebec H3G 1B9  
Canada  
Fax: (514) 938-0046

# **ATTACHMENT #1**

American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 1004-2400  
T/212.549.2500  
F/212.549.2651



UN COMMISSION ON HUMAN RIGHTS  
Sixty-first session, March 14 – April 22, 2005  
Item 11(a) of the provisional agenda

### TORTURE AND DETENTION

Written Statement

by the **American Civil Liberties Union**, a non-governmental organization in special consultative status

Members of the Commission:

The American Civil Liberties Union (ACLU) respectfully urges the Commission to address the abuse and torture of prisoners by the United States in Afghanistan, Iraq, and at other US-controlled detention centers around the world. Since the Commission's 60<sup>th</sup> Session, overwhelming evidence has come to light that prisoners held by the United States are being subjected to torture and other forms of cruel, inhuman, or degrading treatment. Historically, the United States has assumed a leadership role in identifying and condemning other countries that violate human rights norms. The evidence that the United States is itself violating those norms is therefore a matter of particular concern.

Since the terrorist attacks of September 11, 2001, the United States government has detained thousands of foreign citizens in connection with the "war on terror." The United States holds approximately 400 prisoners in Afghanistan and over 7,000 in Iraq.<sup>1</sup> It holds a further 550 prisoners at the Guantánamo Bay Naval Base in Cuba.<sup>2</sup> Reportedly, it holds numerous other prisoners at secret detention centers – detention centers to which even the International Committee of the Red Cross (ICRC) has been denied access.<sup>3</sup>

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<sup>1</sup> Jackie Spinner, *U.S. Prisons in Iraq Nearly Full With Rise in Insurgent Arrests*, Washington Post (January 21, 2005); Carlotta Gall, *81 Afghans Freed by U.S.*, New York Times (January 17, 2005).

<sup>2</sup> Esther Schrader, *Judge Grants Captives Access to U.S. Courts*, Los Angeles Times (February 1, 2005).

<sup>3</sup> Human Rights Watch, *The United States' 'Disappeared'* (October 2004).

The United States has subjected many of these prisoners to torture and to other forms of cruel, inhuman, or degrading treatment. Through litigation under the Freedom of Information Act, the ACLU and other non-governmental organizations have obtained thousands of official government documents concerning the detention, treatment, and confinement of prisoners apprehended by the U.S. after September 11, 2001.<sup>4</sup> The documents, which corroborate previous reports and testimonies, establish beyond any doubt that prisoners are being abused and even tortured. The documents also show that the abuse and torture of prisoners is not aberrational or localized but rather systemic and widespread.

The records show that U.S. forces conducted mock executions (including of juveniles), soaked a prisoner's hands in alcohol and set them alight, subjected prisoners to electric shock, and shot prisoners who were handcuffed or behind bars. The records also include credible allegations that U.S. forces forcibly sodomized an elderly Iraqi woman with a bottle, raped a juvenile male detainee, and routinely used sexual abuse and assault as a means of humiliating both male and female detainees. The official government documents suggest that literally hundreds of prisoners in U.S. custody have been subjected to torture or other forms of cruel, inhuman, or degrading treatment.

In one official document, a law enforcement officer who was stationed at Guantánamo Bay Naval Base states that he saw detainees "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 18 [to] 24 hours or more." The officer states that on one occasion a detainee was found "almost unconscious on the floor with a pile of hair next to him." The detainee "had apparently been literally pulling his own hair out throughout the night." The account of another law enforcement officer who witnessed interrogations at Guantánamo expressly accuses interrogators of using "torture techniques."<sup>5</sup>

The documents indicate that prisoners in Iraq and Afghanistan have been subjected to equally harsh treatment. One document contains an interview with an individual who screened prisoners who had been held at Al-Adamiya Palace, a detention center in Baghdad. The screener notes that many detainees would arrive with the marks of abuse. "Some would have broken shoulders, others came on crutches." Still others were abused even more severely. "They were abused with cigarette burns, and electric shocks." The screener estimated that there were "about 90" incidents of abuse at Al-Adamiya alone.

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<sup>4</sup> The request under the Freedom of Information Act ("Act") was filed in October 2003 by the ACLU, the Center for Constitutional Rights, Physicians for Human Rights, Veterans for Common Sense, and Veterans for Peace. Since September 2004, when the ACLU and its allies obtained a judicial order enforcing their rights under the Act, the U.S. government has released over 25,000 pages concerning the detention, treatment and confinement of prisoners in U.S. custody. Most of the records are available on the ACLU's website at [www.aclu.org/torturefoia](http://www.aclu.org/torturefoia).

<sup>5</sup> The section of the account that describes the torture techniques has been redacted by the government.

The ICRC documented 50 credible allegations of torture and other abuse at Camp Cropper, the site of another U.S. detention facility in Baghdad. Among the “illustrative” cases reported by the ICRC was an incident in which U.S. military interrogators hooded and restrained a detainee with flexi-cuffs, threatened to torture and kill him, urinated on him, kicked him in the head, lower back and groin, force-fed him a baseball which was tied into his mouth, and deprived him of sleep for four consecutive days. When the detainee said he would report the abuse to the ICRC, interrogators beat him again.<sup>6</sup>

The violations of basic human rights described above have been permitted, sanctioned, and in some cases directly ordered by high-level government officials. For example:

- In January 2002, the President’s chief legal advisor produced a legal memorandum stating that the war on terrorism is “a new kind of war” that “renders obsolete [the] Geneva [Conventions’] strict limitations on questioning of enemy prisoners.” In February 2002, President Bush decreed that neither al Qaeda nor Taliban prisoners were entitled to the protections of the Geneva Conventions.
- In August 2002, the U.S. Justice Department’s Office of Legal Counsel produced a legal memorandum stating that the infliction of physical pain on a prisoner does not constitute torture under U.S. law or the Convention Against Torture unless it inflicts pain “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” This memorandum was not rescinded until December 2004.
- In January 2003, the Secretary of Defense commissioned a military report concerning the interrogation of prisoners. When the report was completed, it asserted the necessity of interrogating prisoners “in a manner beyond that which may be applied to a prisoner of war who is subject to the Geneva Conventions.” In April 2003, the Secretary of Defense adopted many of the report’s recommendations and approved the use of numerous interrogation techniques that resulted in abuse and torture.

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<sup>6</sup> Report of the International Committee of the Red Cross (ICRC) 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) ¶ 34. In November 2004, the *New York Times* reported that an ICRC inspection team that spent most of June of 2004 at U.S. Naval Base at Guantánamo Bay reported the use of psychological and sometimes physical coercion on the prisoners held there. The ICRC characterized the interrogation methods used by the U.S. military as “tantamount to torture.” Neil A. Lewis, *Red Cross Finds Detainee Abuse in Guantánamo*, *New York Times* (Nov. 30, 2004).

Despite the involvement of high-level civilian and military officials in the unlawful conduct described above, thus far only a handful of low-ranking soldiers have been held accountable. The government has refused to authorize any independent investigation of the abuses and no high-level official has been charged with any criminal activity in relation to the abuses. Indeed, some of the officials who were involved in developing the policies that led to the abuse and torture of prisoners have been nominated and confirmed to higher government posts.

The violations of basic human rights described above demand immediate action by the Commission. Accordingly:

- We urge the Commission to reaffirm the absolute and non-derogable nature of the prohibition of torture and to reaffirm that no justification or exceptional circumstances whatsoever, whether a state of war, a threat of war, or any other public emergency may be invoked to justify the violation of this prohibition.
- We urge the Commission to call upon the United States to take effective measures to prevent acts of torture and other cruel, inhuman, or degrading treatment in all places under its control and jurisdiction, to ensure that all such acts are thoroughly and impartially investigated, and to hold accountable those officials who encouraged, ordered, sanctioned, or permitted such acts.
- We strongly support the letter sent in June 2004 by special rapporteurs/representatives, independent experts, and chairpersons of the working groups of the special procedures of the Commission on Human Rights requesting that the United States permit them to “visit, together and at the earliest possible date, those persons arrested, detained or tried on grounds of alleged terrorism or other violations in Iraq, Afghanistan, the Guantánamo Bay military base and elsewhere.” (E/CN.4/2005/5, annex I, sect. A.)

**Selected Documents Obtained by the ACLU Concerning the Abuse of Prisoners by  
U.S. Forces in Iraq, Afghanistan, and at Guantánamo Bay Naval Base<sup>1</sup>**

<u>Pages</u>	<u>Date of Record</u>	<u>Description of Record</u>
1	Aug. 2, 2004	E-mail from FBI agent who witnessed Defense Department interrogations conducted at Guantánamo Bay
2-5	June 6, 2004	Summary of interviews concerning abuse of prisoners at Al-Azimiyah Palace in Baghdad. These pages are excerpted from a much longer investigative file.
6	May 22, 2002	Translated statement of prisoner held at Guantánamo Bay who alleges that he was beaten unconscious by guards
7	Dec. 18, 2003	Statement of prisoner in Mosul who alleges that a U.S. soldier kicked him in the face, breaking his teeth and jaw
8-9	Dec. 31, 2003	Cover memorandum from commander's investigation into above incident
10	Dec. 5, 2003	E-mail from FBI agent relating use of "torture techniques" by Defense Department interrogators at Guantánamo Bay
11	Jan. 21, 2004	E-mail from FBI agent stating that certain methods used by Defense Department interrogators were approved by the Deputy Secretary of Defense
12-13	June 25, 2004	Urgent Report from FBI field office in Sacramento, California, relating account of soldier who witnessed abuse in Iraq
14-15	June 25, 2004	Memorandum from Defense Intelligence Agency concerning abuse by Special Forces in Baghdad
16	May 10, 2004	E-mail from senior FBI official regarding ineffectiveness of methods used by Defense Department interrogators (version 1: obtained through litigation)
17	May 10, 2004	E-mail from senior FBI official regarding ineffectiveness of methods used by Defense Department interrogators (version 2: released subsequently)

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<sup>1</sup> These documents were obtained through *ACLU et al. v. Department of Defense*, litigation under the U.S. Freedom of Information Act. The other plaintiffs in the lawsuit are the Center for Constitutional Rights, Physicians for Human Rights, Veterans for Common Sense, and Veterans for Peace. The litigation is ongoing.

b6 -1  
b7C -1

From [redacted] (INSD) (FBI) b6 -1  
To Caproni, Valerie E. (OGC) (FBI) b7C -1  
cc  
Subject FW GTMO

SENSITIVE BUT UNCLASSIFIED  
NON-RECORD

Here is the second summary. One more to go  
-----Original Message-----

From [redacted] (BS) (FBI) b6 -1  
Sent Monday, August 02, 2004 10:46 AM b7C -1  
To [redacted] (INSD) (FBI)  
Subject RE GTMO

SENSITIVE BUT UNCLASSIFIED  
NON-RECORD

Mr [redacted] b6 -1  
b7C -1

As requested, here is a brief summary of what I observed at GTMO

On a couple of occasions, 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 18, 24 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. When I asked the MP's what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved. 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. On another occasion, not only was the temperature unbearably hot, but extremely loud rap music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.

Any questions, feel free to call or ask via email [redacted] b2 -1  
b6 -1  
b7C -1

-----Original Message-----  
From [redacted] (INSD) (FBI) b6 -1  
Sent Thursday, July 29, 2004 10:58 AM b7C -1  
To [redacted] (BS) (FBI)  
Subject RE GTMO

SENSITIVE BUT UNCLASSIFIED  
NON-RECORD

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

DATE: 11-09-2004  
CLASSIFIED BY: 61579BRH/PC/ASU/BA/SV/ALS  
REASON: 1.4 (C)  
DECLASSIFY ON: 11-09-2024

~~SECRET~~

DETAINEES-1760

1760

5053

AGENT'S INVESTIGATION REPORT

0106-04-CID259-80185

CID Regulation 195-1

Page 1 of 12

Basis for Investigation: This investigation was initiated based on notification from the 22<sup>nd</sup> MP Battalion, of possible detainee abuse in various locations.

On 6 May 04, Mr. [redacted] CACI, 1<sup>st</sup> Cavalry Division Interrogation Facility, Baghdad, IZ, was interviewed by [redacted] (NFI) and stated the MPs were not following instructions on the treatment of one of his sources and would harass him. He heard [redacted] shaved the beard of a detainee. Mr. [redacted] stated he heard there was possible abuse at Azimiyah Palace (NFI), where 5<sup>th</sup> Group conducted their interrogations. Mr. [redacted] related he never witnessed any abuse occur; however, he heard [redacted] (NFI) describe a technique where he would circle the detainee's nipple with a cigarette but never touch it. He said [redacted] was currently at the Tikrit Division Interrogation Cell (NFI).

On 7 May 04, Mr. [redacted] CACI, 1<sup>st</sup> Cavalry Division Interrogation Facility, Baghdad, IZ, was interviewed by [redacted] (NFI) and stated he overheard [redacted] (NFI) say he shaved a detainee's beard and put women's red underwear on him. Mr. [redacted] also stated he heard a detainee was shot in the head with a rubber bullet. Mr. [redacted] related he heard unidentified individuals tell the MPs to "soften up" the detainees. Mr. [redacted] further related certain individuals took copious notes and may have more information. He identified them as [redacted] (NFI) and [redacted] (NFI) both located at Abu Ghraib Prison, Baghdad, IZ.

About 1130, 12 May 04, SA [redacted] interviewed Mr. [redacted] CACI, 1<sup>st</sup> CAV Division Interrogation Facility (DIF), Baghdad, IZ, who re-interated his initial statement. Mr. [redacted] stated he worked in approximately three sections, while at Abu G. Prison, which was the screening section, Interrogating with Tiger Teams, and the Detainee Assessment Board. Mr. [redacted] worked at the Abu G. Prison between Sep 03 and Apr 04. Mr. [redacted] never seen any detainee abuse, but stated he saw the results of abuse, which the detainees would describe to him during the initial screening phase, i.e. wounds to their chest possibly from battery cables being connected to their chest, electrocuting, cigarette burns, wine bottle placed in their anus. When Mr. [redacted] questioned the detainees about who abused them, they stated U.S. soldiers and [redacted], but unsure of the incident location. The detainees, while bags over their head described the U.S. soldiers only by observing the typical desert combat boots and pants, but did not provide any further details. When Mr. [redacted] abused them he would remove the bag from their head. The detainees never described Mr. [redacted]. Apparently, Mr. [redacted] would wear different types of clothing to include military clothing. Mr. [redacted] re-interated Ms. [redacted] (NFI) took notes on what she observed and heard, while at the Abu Prison. Mr. [redacted] suspected a Task Force was working with Mr. [redacted] at a Palace, unknown location, but could not provide any details. Mr. [redacted] also mentioned Ms. [redacted] roommate, Ms. [redacted] translator, Abu G. Prison, would

SA [redacted] 79<sup>th</sup> MP DET Forward (CID)  
Special Agent [redacted] Baghdad, Iraq APO AE 09342  
Signature: \_\_\_\_\_ Date: 6 Jun 04 Exhibit: \_\_\_\_\_  
DODDOACID-005494

CID Form 94 LAW ENFORCEMENT SENSITIVE  
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Law Enforcement Sensitive Exhibit 08

AGENT'S INVESTIGATION REPORT

0106-04-CID259-80185

CID Regulation 195-1

Page 2 of 12

possibly have further details of possible detainee abuse. Mr. [redacted] stated a medical doctor, Abu G. Prison conducted physical exams on the detainees, usually on the second day of in-processing, so the medical unit would possibly have copies of their treatment records, revealing any injuries. No further details were provided to this office

About 1138, 12 May 04, SA [redacted] interviewed Mr. [redacted] who stated he was interviewed by MAJ [redacted] who discussed possible abuse allegations which he [redacted] related he had no first hand knowledge of. He stated Mr. [redacted] statement he overheard could have been taken out of context because he did hear the whole conversation. He stated SPC [redacted] (NFI) was the person who gave specific orders to the MPs to not harass his source. Mr. [redacted] related Mr. [redacted] possibly shaved the detainee's beard for several reasons to include identification purposes or sanitary purposes. He was unaware of women's underwear being placed on the detainee. Mr. [redacted] stated Mr. [redacted] Linguist, CACI, 1st Cavalry Division, APO AE 09342, interviewed a detainee who alleged he was abused while at AL-Azimiyah Palace.

About 1230, 12 May 04, SA [redacted] interviewed Mr. [redacted] who stated he was the primary interviewer for Mr. [redacted] Military Police Number [redacted]. Mr. [redacted] related Mr. [redacted] was captured on 4 Apr 04 and was brought to their Detention Interrogation Facility (DIF) on 29 Apr 04. He related Mr. [redacted] alleged he was taken to the Al-Azimiyah Palace and was struck in the face several times by whom he believed to be an Iraqi named [redacted]. He said he believed the man to be Iraqi by his dialect and appearance. He stated he was wearing a bag over his head during the interrogations but [redacted] removed his hood once and looked at Mr. [redacted]. He knew his name to be [redacted] because he heard another man he believed to be Iraqi call him that once. Mr. [redacted] told Mr. [redacted] burned him with cigarettes on the foot three times and struck him on the left side of his head so many times he bled from his ear. Mr. [redacted] stated he had no bruising on his face or fresh burn marks on him to substantiate such allegations and was given a medical exam when he was received. He related Mr. [redacted] was in Al-Azimiyah Palace for approximately 18 days. He related Mr. [redacted] was a Major in the old Iraqi Army and was incarcerated twice for dereliction of duty and spent a year in prison under the Old Iraqi regime. Mr. [redacted] stated Mr. [redacted] had trouble discerning his current incarceration from when he was incarcerated under the old regime. Mr. [redacted] further stated Mr. [redacted] had a heart attack on 4 May 04. Mr. [redacted] stated he coordinated with two individuals at Al-Azimiyah Palace, [redacted] (NFI) and [redacted] (NFI) who came to the DIF location and positively identified Mr. [redacted] as the person they interviewed and brought the interrogation reports which verified the interviews. Mr. [redacted] related the men said they refuted the allegations made by Mr. [redacted] and Mr. [redacted] could not explain his story when confronted by Mr. [redacted] with the reports. He related Mr. [redacted] just gave him a look

DODDOACID-005495

SA [redacted] 78th MP DET Forward (CID)  
Special Agent, Baghdad, Iraq APO AE 09342  
Signature: \_\_\_\_\_ Date: 6 Jun 04 Exhibit: \_\_\_\_\_

LAW ENFORCEMENT SENSITIVE

CID Form 94

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Law Enforcement Sensitive

Exhibit - 1

09

he described as he was just caught in a lie. Mr. [redacted] provided this office with a photograph and medical evaluation of Mr. [redacted] (See documents)

About 1328, 12 May 04, SA [redacted] reviewed the medical records on file of Mr. [redacted] which reflected an incident when Mr. [redacted] faked a heart attack. Nothing else remarkable was seen.

About 0930, 15 May 04, SA [redacted] and SA [redacted] interviewed Mr. [redacted] AKA [redacted], Interpreter, 1st Cavalry Division DIF, Titan Corporation, APO AE 09342 who stated he was the interpreter for Mr. [redacted] when Mr. [redacted] was interviewed. He reiterated what Mr. [redacted] stated in that Mr. [redacted] related a man he claimed to be an Iraqi abused him when he was detained at the Al-Azimiyah Palace. Mr. [redacted] stated the man's name could also have been [redacted]. Mr. [redacted] related he was not familiar with [redacted] and has not heard anyone mention his name. Mr. [redacted] further related this was the only detainee he talked to which mentioned being abused in the Al-Azimiyah Palace. Mr. [redacted] stated sometime in Aug 03, while he was working in Abu Ghraib Prison, he witnessed a female soldier he believed to be U.S. Army Military Police, make a detainee jump up and down and then roll left to right on the ground in what he believed to be a 150 degree Fahrenheit temperature clothed in only his underwear. He stated this went on for about twenty minutes and the detainee was at the point where he collapsed several times and when the detainee attempted to drink water he would vomit. Mr. [redacted] related he knew the female soldier's first name as [redacted] (NFI) and she always worked with an interpreter named [redacted] (NFI) who was also employed by Titan Corporation. Mr. [redacted] stated Mr. [redacted] would know exactly who [redacted] was and would be able to give more details on this incident and possibly other incidents.

About 0900, 20 May 04, this office received the final Information Report from the Baghdad Correctional Confinement Facility (BCCF), Abu Ghraib, IZ, APO AE 09342. The report included the AIR from SA [redacted] which detailed the interviews of Ms. [redacted] Ms. [redacted] and Mr. [redacted] (See AIR for details)

About 1015, 20 May 04, SA [redacted] and SA [redacted] this office interviewed Mr. [redacted] date of birth [redacted] Place of Birth [redacted] (NFI) with assistance from Mr. [redacted] Linguist, Titan Corporation, 1st CAV Detention Interrogation Facility (DIF), Baghdad International Airport (BIAP), Baghdad, IZ, who reiterated his previous statement he provided to Mr. [redacted] on a prior interview. Mr. [redacted] also provided additional details. Mr. [redacted] described [redacted] (Iraqi interrogator) as a white male, combed, gray hair, no mustache, light, white beard, who wore a white t-shirt, brown trouser, sneakers, and rubber gloves. Mr. [redacted] stated after he was apprehended from his

SA [redacted]  
Special Agent, [redacted]  
Signature: [redacted]

78th MP DET Forward (CID)  
Baghdad, Iraq APO AE 09342  
Date: 6 Jun 04 Exhibit:

DODDOACID-005496

LAW ENFORCEMENT SENSITIVE

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CID Form 94

Exhibit 1. 10



b6 -1  
b7C -1

5/22/02

265A MW 099102 translated by

[redacted] stated he had been beaten unconscious approximately three or four weeks ago when he was still at Camp X-Ray. Admittedly [redacted] was unknown number of guards entered his cell, unprovoked, and started spitting and cursing at him. The guards called him a "son of a bitch," and a "bastard," then told him he was crazy.

b6 -3,4  
b7C -3,4  
b7D -1  
b7F -1

[redacted] rolled onto his stomach to protect himself. [redacted] 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] is a Muslim, and [redacted] is Christian. [redacted] indicated there was a female guard named [redacted] who was also beating him and grabbed his head and beat it into the cell floor.

b6 -2,3,4  
b7C -2,3,4  
b7D -1  
b7F -1

[redacted] stated that all the soldiers were aware of his [redacted] and he was taken to the hospital following the beating where he received an IV and treatment for his facial wounds. [redacted] claimed [redacted] who is a tall African American male, visited him at the hospital and told the doctors to immediately return him to the camp. [redacted] reported the aforementioned incident to two Red Cross representatives at Camp Delta, who he identified as [redacted] and [redacted]. [redacted] stated he did not do anything to cause the guards to enter his cell, and did everything they instructed him to do. [redacted] had what appeared to be a recent wound on the bridge of his nose.

b6 -2,3,4,5  
b7C -2,3,4,5  
b7D -1  
b7F -1

[redacted] stated that he was put in an isolation cell after he was involved in a dispute over food given to him. [redacted] stated that he is unable to eat certain foods, and was placed in isolation after arguing with a guard.

b6 -3,4  
b7C -3,4  
b7D -1  
b7F -1

[redacted]

b6 -3,4  
b7C -3,4  
b7D -1  
b7F -1

[redacted]

b6 -3,4,5  
b7C -3,4,5  
b7D -1  
b7F -1

[redacted]

b6 -3,4,5  
b7C -3,4,5  
b7D -1  
b7F -1

216

The following is an exact transcription of the statement of [REDACTED]

By the Name of God, the Most Merciful and Gracious,

My name is [REDACTED] a student in high school. On Wednesday 10/12/2003, me and my family were sleeping at home when we heard a knocking at door. Then, soldiers from coalition forces entered the house and commenced searching our house. (It was 5 in the morning). After that, they tied my brother and father and my hands and took us to their quarters. There, they put bags on our heads and took us to a room which contains a vocal device (so big recorders) and rised its voice so loudly and started torturing us with many kinds of torture like stand and sit down, pour cold water on our bodies at night and beat us during the day and didn't give us food and even water except one time for two days. (The period of our torture).

During the time of torture, the bag was on my head, when one of the soldiers drew me till I came near the wall, then he kicked me a very strong kick on my face even my teeth were broken. Also my down jaw brake (several fractures). After I are injured, they took me to another room and told me to say that I've fallen down and no one beated me. Then, they transferred me from Mosul to Baghdad without treatment of my wounds.

Now, for eight day, I am in the hospital for remedy. I am from a poor family. I have two brothers, one is a child and the other is 25 years old, but he is very sick. He suffers from three disease that are kidney, stoniach, and windpipe. He is incapable to work. I also have 5 sisters. I used to work as a carrier of pebbles and sand after my duration in school. My father is an old man. The coalition forces took him with my brother and I don't know where are they, or in which detation they are. I hope to release so I can go to my school because it's my last year in high school. Also, to work and help survive my family (my mother and sisters).

Be so kind to review my case

[REDACTED]  
18/12/2003

001185



b(6)

DEPARTMENT OF THE ARMY  
OFFICE OF THE STAFF JUDGE ADVOCATE  
HEADQUARTERS, 101ST AIRBORNE DIVISION (AIR ASSAULT)  
MOSUL, IRAQ APO AE 09325

REPLY TO  
ATTENTION OF

AFZB-JA-CAL

31 December 2003

MEMORANDUM FOR RECORD

SUBJECT: AR15-6 Investigation Into the Broken Jaw Injury of [REDACTED]

1. On 19 December 2003, at 0900 hours I was notified that I would soon be appointed as the investigating officer in an AR15-6 investigation into the broken jaw injury of a detainee named [REDACTED] detainee #0672753, to determine the cause of his injury while in the custody of the 2<sup>nd</sup> BCT holding facility. My instructions were to determine if the injury was the result of intentional acts by coalition forces and to develop all the factors surrounding the injury.
2. The exact cause of the broken jaw injury to [REDACTED] is blunt trauma to his lower mandible. How exactly he sustained this blunt trauma is uncertain. Two explanations that have been offered by the parties involved are that he either fell directly onto his face while trying to get up, or he was struck by a US soldier while he was bent over, see Findings for a complete discussion.
3. What factors contributed to his injury?
  - A. Safety of the detainees was not a priority.
    1. [REDACTED] was harassed and exercised without stopping for at least three hours, while he was flex-cuffed and while he had a sand bag over his head.
    2. The guards who were on duty were infantry enlisted personnel that were either told to keep the prisoners awake, silent, and moving, or were not given any guidance at all and just followed the lead of the guards they were joining or replacing.
    3. All the guards on duty at the brigade holding area (BHA) were yelling at the detainees and were making them do flutter kicks and knee benders.
    4. Some BHA personnel were striking the detainees with water bottles.
    5. There is evidence that suggests the 311th MI personnel and/or translators engaged in physical torture of the detainees.

001198

b(6)

B. The atmosphere in the detainee holding room was tense, emotional, and encouraged the guards to engage in abusive, out of control behavior.

1. The guards who were guarding the detainees in the holding room were not properly briefed or properly trained on handling detainees, and were shown abusive behavior toward the detainees by the MI personnel and the interpreters.

2. The noise level was tremendous. A stereo with approximately three-foot floor speakers was blasting music. The guards were encouraged to yell at the detainees and they beat against metal doors and probably empty ammunition cans.

3. The detainees had sand bags over their heads that were marked with different crimes, leading the guards to believe that the particular detainee committed that particular crime. [REDACTED] bag was labeled "IED", a particularly hated crime by infantry soldiers patrolling the streets.

4. The MI personnel were abusive to the detainees and these personnel set the example for the inexperienced guards.

C. There were not enough US personnel on duty.

1. There were too few personnel on duty from 311<sup>th</sup> MI when the detainees arrived, resulting in [REDACTED] not being interrogated prior to the incident.

2. [REDACTED] was one of approximately seventy detainees brought in that night as a result of Operation Reindeer Games. If he had been interrogated it would have been determined that he was not the target and should have been released after questioning.

3. Many of the guards made statements to the effect that they did not know what the other guards in the room were doing or where they were when the incident occurred. More guards would have allowed the guards to supervise each other.

001199

b6 -1  
b7C -1

b6 -1 From: [redacted]  
b7C -1 To: Bald, Gary, BATTLE, FRANKIE, CUMMINGS, ARTHUR, ...  
Date: Fri, Dec 5, 2003 9:53 AM  
Subject: Fwd: Impersonating FBI at GTMO

b6 -1 Frank [redacted]  
b7C -1

I am forwarding this EC up the CTD chain of command. MLDU requested this information be documented to protect the FBI. MLDU has had a long standing and documented position against use of some of DOD's interrogation practices, however, we were not aware of these latest techniques until recently.

b2 -3 Of concern, DOD interrogators impersonating Supervisory Special Agents of the FBI told a detainee that  
b6 -4 [redacted] These same interrogation teams then [redacted]  
b7C -4 [redacted] The detainee was also told by this interrogation team  
b7E -1 [redacted]  
b7F -1 [redacted]

These tactics have produced no intelligence of a threat neutralization nature to date and CITF 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 the "FBI" interrogators. The FBI will left holding the bag before the public.

b6 -1 SSA [redacted]  
b7C -1 CTD/MLDU

CC: [redacted]

b6 -1  
b7C -1

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11-05-2004 BY 61578/UCB/STC/DAW/415

DETAINEES-3168

b6 -1  
b7C -1

From: [redacted]  
To: [redacted]  
Date: 1/21/04 5:15PM  
Subject: Fwd: Re: Impersonating FBI

b2 -3  
b7E -1  
When I was in the unit in December, I thought we agreed to take everything out of the EC that doesn't specifically pertain to the "impersonation" issue. All of that other information (including our suggestion that the detainee was threatened [redacted] is still in there, which I think is totally inappropriate.

b2 -3  
b7E -1  
Regarding the "impersonation", I'm still not sure what our issue is here. It's fairly clear to me that the "FBI Agent" wasn't successful in gaining the detainees cooperation. Thereafter, (months later) [redacted] carried the day with his ruse regarding [redacted] Once again, this technique, and all of those used in these scenarios, was approved by the Dep Sec Def. Additionally, the techniques specifically called into question in the EC were employed months after, and in a different environment from, the "FBI Agent" ruse.

I would request that Spike Bowman, or his designee, review this information and provide us with a definitive opinion before we make an issue of it

Thanks,  
[redacted]  
b6 -1  
b7C -1

CC: [redacted] b6 -1  
b7C -1

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 12-03-2004 BY 61579DMH/BCE/gjg 04-CV-4151

DETAINEE-3832

4631

b6 -1  
b7C -1

URGENT REPORT

DATE: JUNE 25, 2004  
TO: THE DIRECTOR  
CC: Deputy Director Bruce J. Gebhardt  
EAD Cassandra Chandler  
EAD John Pistole  
AD Grant Ashley  
AD Gary Bald  
SC Arthur Cummings

b6 -1  
b7C -1

[redacted]  
UC [redacted]  
SSA [redacted]  
CT Watch  
SIOC

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11-04-2004 BY 61579 DMF/PLJ/LAC/0406/1151

FROM: SACRAMENTO DIVISION

FOR FURTHER INFORMATION CONTACT: ASAC David A. Picard (Main Office) b2 -1

PREPARER OF URGENT REPORT: SSA [redacted] b2 -1  
[redacted] b6 -1  
[redacted] b7C -1

PURPOSE: 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] IT IS BEING FURNISHED TO THE DIRECTOR BASED UPON POTENTIAL SIGNIFICANT PUBLIC, MEDIA AND CONGRESSIONAL INTEREST WHICH MAY GENERATE CALLS TO THE DIRECTOR.

b7A -1  
b6 -3  
b7C -3  
b7D -1

SUBJECT: PRELIMINARY STATEMENTS MADE BY [redacted] TO SACRAMENTO SPECIAL AGENTS [redacted] AND [redacted]

b7A -1  
b6 -1,3  
b7C -1,3  
b7D -1

DESCRIPTION OF MATTER:

[redacted]

b7A -1  
b6 -5  
b7C -5

[redacted] was advised that the Sacramento Field Office was not aware of any such report.

DETAINEES-1609

1609  
4910

b6 -1  
b7C -1

URGENT REPORT

[redacted]  
[redacted] came into the Sacramento Field Office and provided the following:

b7A -1  
b6 -3  
b7C -3  
b7D -1

[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.

b7A -1  
b6 -3,4  
b7C -3,4  
b7D -1

[redacted]

[redacted] was providing this information to the FBI based on his knowledge that [redacted] were engaged in a cover-up of these abuses. He stated these cover-up efforts included [redacted]

b7A -1  
b6 -3,4  
b7C -3,4  
b7D -1

[redacted]

[redacted]

b7A -1  
b6 -3,4  
b7C -3,4  
b7D -1

[redacted]

b7A -1  
b6 -3,4,5  
b7C -3,4,5  
b7D -1

[redacted]

[redacted] advised that an individual did, in fact, make a complaint with Sacramento FBI Office concerning Iraqi prisoner abuse.

b7A -1  
b6 -3,4,5  
b7C -3,4,5  
b7D -1

[redacted]

b7A -1  
b6 -3  
b7C -3  
b7D -1

DETAINEES-1610

1610

4911

INFO MEMO

~~S~~-0517/DR

June 25, 2004

FOR: UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE

FROM: L. E. Jacoby, Vice Admiral, USN, Director, Defense Intelligence Agency

Subject: ~~(S//NF)~~ Alleged Detainee Abuse by TF 62-6 Personnel

~~(S//NF)~~ During the afternoon of 24 June 2004, we were notified that DIA personnel serving with TF 6-26 in Baghdad had informed their ISG seniors of the following:

- ~~(S//NF)~~ Two DIA, Directorate for Human Intelligence (DIA/DH) interrogators/debriefers assigned to support TF 6-26 (SOF) have observed:
  - Prisoners arriving at the Temporary Detention Facility in Baghdad with burn marks on their backs. Some have bruises, and some have complained of kidney pain.
  - One of the two DIA/DH interrogators/debriefers witnessed TF 6-26 officers punch a prisoner in the face to the point the individual needed medical attention. This record of treatment was not recorded by TF 6-26 personnel. In this instance, the debriefer was ordered to leave the room.
  - One DIA/DH interrogator/debriefer took pictures of the injuries and showed them to his TF 62-6 supervisor, who immediately confiscated them.
- ~~(S//NF)~~ TF 6-26 personnel have taken the following actions with regards to DIA/DH interrogators/debriefers:
  - Confiscated vehicle keys
  - Instructed them not to leave the compound without specific permission, even to get a haircut at the PX
  - Threatened them

~~Classified by Multiple Sources~~  
~~Source Marked off~~  
~~Declassify on 26 June 2028~~

- Informed them that their e-mails were being screened
- Ordered them not to talk to anyone in the US
- ~~(S//NF)~~ The two DH strategic debriefers assigned to TF 62-6 reported the above information to the Operations Officer. He immediately contacted DIA IG Forward and asked that both individuals be interviewed. The IG representative made the recommendation that VADM Church's group be immediately apprised in order to get this into official IG channels as the issue fell directly under its charter. The Church IG Team senior investigating officer is conducting interviews of the interrogators/debriefers today. The DIA IG was informed and concurred with this course of action.
- ~~(S//NF)~~ The ISG Operations Officer contacted and briefed the Director of the ISG, who was in Qatar attending a Commander's Conference. The ISG Director informed the Deputy Commander for Detainee Affairs, MNF-I. He subsequently contacted the Commander of TF 6-26 and directed him to investigate this situation. In turn the TF 6-26 Commander informed his superior, the Commander JSOC. The Commander, CENTCOM has also been informed of this situation.
- ~~(S//NF)~~ The two interrogators/debriefers were directed to return to the ISG compound at Camp Slayer due to these events.



(b)(3)

~~SECRET~~

[redacted] (IR) (FBI) b6 -1  
 [redacted] b7C -1

From: [redacted] Div13) (FBI)  
 Sent: Monday, May 10, 2004 12:26 PM b6 -1  
 To: HARRINGTON, T J. (Div13) (FBI) b7C -1  
 Cc: BATTLE, FRANKIE (Div13) (FBI) [redacted] (IR) (FBI) [redacted]  
 (Div13) (FBI) [redacted] (Div13) (FBI) [redacted] (Div13) (FBI);  
 CUMMINGS, ARTHUR M. (Div13) (FBI)

Subject: Instructions to GTMO interrogators.

~~SECRET//ORCON,NOFORN~~  
RECORD 315N-MM-C99102

TJ,

I will have to do some digging into old files [redacted]  
 [redacted] We did advise each supervisor that went to GTMO to stay in line with Bureau policy and not  
 deviate from that [redacted] I went to  
 GTMO with [redacted] early on and we discussed the effectiveness [redacted] with  
 the SSA. We (BAU and ITOS1) had also met with General's Dunlevey & Miller explaining our position (Law b5 -1  
 Enforcement techniques) vs. DoD. Both agreed the Bureau has their way of doing business and DoD has their b6 -1,2  
 marching orders from the Sec Def. Although the two techniques differed drastically, both Generals believed they b7C -1,2  
 had a job to accomplish. It was our mission to gather critical intelligence and evidence [redacted]  
 [redacted] in furtherance of FBI cases. In my weekly meetings with DOJ we often discussed [redacted]  
 techniques and how they were not effective or producing Intel that was reliable. [redacted] (SES), [redacted]  
 [redacted] (SES), [redacted] (now SES [redacted] at the time) and [redacted] (SES Appointee) all from DOJ  
 Criminal Division attended meetings with FBI. We all agreed [redacted] were going to be an issue in the military  
 commission cases. I know [redacted] brought this to the attention of [redacted]

b5 -1  
b6 -1,4,5  
b7C -1,4,5  
b7D -1  
b7E -1

One specific example was [redacted] Once the Bureau provide DoD with the findings [redacted]  
 [redacted] they wanted to pursue expeditiously their methods to get "more out of him" [redacted] we  
 were given a so called deadline to use our traditional methods. Once our timeline [redacted] was  
 up [redacted] took the reigns. We stepped out of the picture and [redacted] ran the operation [redacted] FBI did not  
 participate at the direction of myself [redacted] and BAU UC [redacted] We would receive IRs on the results  
 of the process. (S)

I went to GTMO on one occasion to specifically address the information coming from [redacted]  
 [redacted] We (DoD 3 Star Geoff Miller, FBI, CITF [redacted] etc) had a VTC with the Pentagon Detainee Policy Committee.  
 During this VTC I voiced concerns that the intel produced was nothing more than what FBI got using simple  
 investigative techniques (following the trail of the detainee in and out of the US compared to the trail of [redacted]  
 [redacted] was  
 providing [redacted] portion of the briefing. [redacted] was present at the Pentagon side of  
 the VTC. After allowing [redacted] to produce nothing, I finally voiced my opinion concerning the b1  
 information. The conversations were somewhat heated. [redacted] agreed with me. [redacted] finally admitted the b5 -1  
 information was the same info the Bureau obtained. It still did not prevent them from continuing the [redacted] b6 -1,2,5  
 methods". DOJ was with me at GTMO [redacted] during that time. b7C -1,2,5

Bottom line is FBI personnel have not been involved in any methods of interrogation that deviate from our policy.  
 The specific guidance we have given has always been no Miranda, otherwise, follow FBI/DOJ policy just as you  
 would in your field office. Use common sense. Utilize our methods that are proven (Reed school, etc).

If you would like to call me to discuss this on the telephone I can be reached at [redacted] b2 -1

-----Original Message-----

~~SECRET~~

9/26/2004

DATE: 09/26/2004  
 CLASSIFIED BY: 61899DMH/SCW/edc:04-09-15  
 REASON: 1.1.2, 1.4.5  
 DECLASSIFY ON: 19-09-2024

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 WHERE SHOWN OTHERWISE

DETAINEES-2709

3131

Message

Page 1 of 3

[redacted] (IR) (FBI) b6 -1

From: [redacted] (Div13) (FBI) b7c -1

Sent: Monday, May 10, 2004 12:28 PM

To: HARRINGTON, T J. (Div13) (FBI)

Cc: BATTLE, FRANKIE (Div13) (FBI); [redacted] (IR) (FBI); [redacted] (Div13) (FBI); [redacted] (Div13) (FBI); CUMMINGS, ARTHUR M. (Div13) (FBI) b6 -1 b7c -1

Subject: Instructions to GTMO interrogators.

~~SECRET//ORCON,NOFORN~~  
 RECORD 315N-WM-C89102

TJ,

I will have to do some digging into old files (to see if we specifically told our personnel, in writing, to not deviate from Bureau policy). We did advise each supervisor that went to GTMO to stay in line with Bureau policy and not deviate from that (as well as made them aware of some of the issues regarding DoD techniques). I went to GTMO with Andy Arana early on and we discussed the effectiveness (or lack thereof) of the DoD techniques with the SSA. We (BAU and ITOS1) had also met with General's Dunlevey & Miller explaining our position (Law Enforcement techniques) vs. DoD. Both agreed the Bureau has their way of doing business and DoD has their marching orders from the Sec Def. Although the two techniques differed drastically, both Generals believed they had a job to accomplish. It was our mission to gather critical intelligence and evidence (that could be use in a DoD court of law) in furtherance of FBI cases. In my weekly meetings with DOJ we often discussed DoD techniques and how they were not effective or producing intel that was reliable. Bruce Swartz (SES), Dave Nahmias (SES), Laura Parsky (now SES, GS16 at the time) and Alice Fisher (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed DoD tactics were going to be an issue in the military commission cases. I know Mr. Swartz brought this to the attention of DoD OGC.

One specific example was [redacted]. Once the Bureau provide DoD with the findings [redacted] and other connections to [redacted] (et al) they wanted to pursue expeditiously their methods to get "more out of him" [redacted]. We were given a so called deadlines to use our traditional methods. Once our timeline (that DoD put into place) was up, DoD took the reigns. We stepped out of the picture and DoD ran the operation against [redacted]. FBI did not participate at the direction of myself, Andy Arana, and BAU UC [redacted]. We would receive IIRs on the results of the process. (S)

I went to GTMO on one occasion to specifically address the information coming from the IIRs produced by DoD re [redacted]. We (DoD 3 Star Geoff Miller, FBI, CITE [redacted] etc) had a VTC with the Pentagon Detainee Policy Committee. During this VTC I voiced concerns that the intel produced was nothing more than what FBI got using simple investigative techniques (following the trail of the detainee in and out of the US compared to the trail of [redacted] based on classified info from the Pentabomb investigation). Lt Col [redacted] was providing the DoD portion of the briefing. [redacted] was present at the Pentagon side of the VTC. After allowing DoD (Lt Col [redacted]) to produce nothing, I finally voiced my opinion concerning the information. The conversations were somewhat heated. [redacted] agreed with me. DoD finally admitted the information was the same info the Bureau obtained. It still did not prevent them from continuing the DoD methods. DOJ was with me at GTMO (Dave Nahmias) during that time.

Bottom line is FBI personnel have not been involved in any methods of interrogation that deviate from our policy. The specific guidance we have given has always been no Miranda, otherwise, follow FBI/DOJ policy just as you would in your field office. Use common sense. Utilize our methods that are proven (Reed school, etc).

If you would like to call me to discuss this on the telephone I can be reached at [redacted] b2 -1

-----Original Message-----

DETAINEES-2709

## **ATTACHMENT #2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

KHALED EL-MASRI, )  
 )  
 Plaintiff, )  
 ) Civil Action No.  
 v. )  
 )  
 GEORGE J. TENET; PREMIER EXECUTIVE )  
 TRANSPORT SERVICES, INC.; KEELER AND )  
 TATE MANAGEMENT LLC; AERO )  
 CONTRACTORS LIMITED; DOES 1-20, )  
 )  
 Defendants. )

**COMPLAINT**

**INTRODUCTION**

1. On December 31, 2003, Khaled El-Masri, a German citizen of Lebanese descent, was forcibly abducted while on holiday in Macedonia, detained incommunicado, handed over to United States agents, then beaten, drugged, and transported to a secret prison in Afghanistan, where he was subjected to inhumane conditions and coercive interrogation and was detained without charge or public disclosure for several months. Five months after his abduction, Mr. El-Masri was deposited at night, without explanation, on a hill in Albania.

2. Not long after Mr. El-Masri was flown to Afghanistan, Central Intelligence Agency (“CIA”) officials realized that they had abducted, detained, and interrogated an innocent man. Defendant George Tenet, former director of the CIA, was notified about the mistake, yet Mr. El-Masri’s unlawful detention and inhumane treatment continued for two additional months.

3. Mr. El-Masri’s abduction, detention, and interrogation without legal process were carried out pursuant to an unlawful policy and practice devised and implemented by defendant Tenet known as “extraordinary rendition”: the clandestine abduction and detention outside the

United States of persons suspected of involvement in terrorist activities, and their subsequent interrogation using methods impermissible under U.S. and international laws. The current Director of Central Intelligence, Porter Goss, has described this practice in congressional testimony as “a ‘kinetic’ solution on foreign soil.”

4. Mr. El-Masri brings this action against Mr. Tenet, who promulgated this unlawful policy and who directed the agents and subordinates who carried out the unlawful acts described herein; against current and former employees of the Central Intelligence Agency who participated directly in Mr. El-Masri’s abduction, detention, and interrogation; and against the aviation corporations that supplied the aircraft and personnel used in the unlawful transfer, knowing that they were to be used in Mr. El-Masri’s secret detention and interrogation in Afghanistan, thereby conspiring in and aiding and abetting the violation of Mr. El-Masri’s rights under the United States Constitution and the law of nations, including his right to be free from prolonged arbitrary detention, torture and other cruel, inhuman, or degrading treatment.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1332 (diversity jurisdiction); 28 U.S.C. § 1350 (Alien Tort Statute); and directly under the United States Constitution. This case arises under the Fifth Amendment to the United States Constitution and the Alien Tort Statute.

6. Venue is proper pursuant to 18 U.S.C. § 1391(b)(2) and (c).

#### **PARTIES**

7. Plaintiff Khaled El-Masri is a German citizen who resides near Neu-Ulm, Germany. Mr. El-Masri was born in Kuwait on June 29, 1963, to Lebanese parents. He moved to Germany in 1985 and became a citizen in 1995. He married in 1996 and has five young children.

8. Defendant George Tenet was Director of the Central Intelligence Agency throughout the period during which the events described herein occurred. Defendant Tenet is sued in his individual capacity.

9. Defendant Premier Executive Transport Services, Inc. (“PETS”) is a corporation doing business in Massachusetts, with corporate headquarters in Dedham, MA. PETS was the owner of a Boeing business jet, 737-7ET, formerly registered with the Federal Aviation Authority (“FAA”) as N313P and now as N4476S, when the jet was used to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan. On or around November 14, 2004, Federal Aviation Authority records show that PETS sold the Boeing business jet, to defendant Keeler and Tate Management LLC.

10. Defendant Keeler and Tate Management LLC (“KTM”) is a corporation doing business in Nevada, with corporate headquarters in Reno. Defendant KTM is the current owner of a Boeing business jet, now registered with the FAA as N4476S, which was used to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan. Defendant KTM is corporate successor to defendant PETS.

11. Defendant Aero Contractors Limited (“ACL”) is a corporation doing business in North Carolina, with corporate headquarters at Johnston County Airport, North Carolina. Defendant ACL was contracted by defendant PETS to operate the above-mentioned Boeing business jet, and specifically to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan.

12. Plaintiff does not know the true names and capacities of defendants sued herein as Does 1-20, inclusive, and therefore sues these defendants by such fictitious names and capacities. Does 1-10 are current or former employees of the Central Intelligence Agency who directed or

participated in the unlawful seizure, transport, detention, and interrogation of plaintiff. Does 11-20 are current or former employees of defendant corporations who directed or participated in the unlawful transport of plaintiff for the purpose of detaining and interrogating plaintiff outside the law. Plaintiff will amend this complaint to allege the true names and capacities of Doe defendants when ascertained. Each Doe defendant is responsible in some manner for the occurrence of the unlawful actions herein alleged and that the injuries suffered by plaintiff were proximately caused by the conduct of such defendants.

### **LEGAL FRAMEWORK**

13. Plaintiff's constitutional claims arise under the Fifth Amendment to the United States Constitution, which prohibits any person acting under color of U.S. law from subjecting or allowing the subjection of any person in U.S. custody or control to conduct that shocks the conscience, or from depriving any person of liberty in the absence of legal process. Defendants' violations of plaintiff's due process rights give rise to a cause of action for damages under the Fifth Amendment pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

14. The Alien Tort Statute (ATS), 28 U.S.C. § 1350, adopted in 1789, permits aliens to bring suit in United States courts for violations of the law of nations or a treaty of the United States. The ATS recognizes as federal common law those international norms that have definite content and acceptance among civilized nations. *Sosa v. Alvarez Machain*, 542 U.S. 692 (2004).

15. The acts described herein, constituting prolonged arbitrary detention, torture and other cruel, inhuman, or degrading treatment, are within the body of acts that violate such definite and accepted international norms, as codified in numerous conventions, declarations, and other international instruments, including, *inter alia*:

- the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987;
- the Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc. A/810 at 71 (1948);
- the International Convention on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976;
- the Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, *entered into force* Oct. 21, 1950; and
- the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, *entered into force* Oct. 21, 1950.

Accordingly, the challenged conduct falls within the body of acts deemed actionable under the federal common law by the United States Supreme Court in *Sosa v. Alvarez Machain*, 542 U.S. 692 (2004).

### **EXTRAORDINARY RENDITION POLICY**

16. On information and belief, beginning in the early 1990s and continuing to this day, the Central Intelligence Agency (“CIA”), together with other U.S. government agencies, has developed an intelligence-gathering program involving the transfer of foreign nationals suspected of involvement in terrorism to detention and interrogation in countries where, in the CIA’s view, federal and international legal safeguards do not apply.

17. Suspects are detained and interrogated either by U.S. personnel at U.S.-run detention facilities outside U.S. sovereign territory or, alternatively, are handed over to the custody of foreign agents for interrogation. In both instances, interrogation methods are employed that do not comport with federal and internationally recognized standards. This program is commonly known as “extraordinary rendition.”

18. During the September 11 Commission of Inquiry, defendant Tenet, then Director of Central Intelligence, described “rendition to justice” as a key counterterrorism tool and testified

that, in an unspecified period before September 11, 2001, the United States had undertaken 70 such renditions.

19. On information and belief, since the September 11, 2001 attacks, the use of this policy and practice by the United States has expanded considerably. Extraordinary rendition has become a routine means of abducting and detaining foreign nationals suspected of involvement in terrorism. On information and belief, defendant Tenet was one of the persons primarily responsible for the expansion of the program and for devising the specific methods employed in its implementation.

20. Pursuant to the policy, foreign nationals suspected of terrorism have been transported to U.S.-run detention and interrogation facilities in Jordan, Iraq, Egypt, Diego Garcia, Afghanistan, Guantánamo, and elsewhere. Memoranda prepared by the U.S. Department of Justice's Office of Legal Counsel have consistently advanced the position that foreign nationals held at such facilities, outside U.S. sovereign territory, are unprotected by federal or international laws. Government lawyers have advanced the same argument in habeas corpus proceedings brought on behalf of foreign nationals detained and interrogated at Guantánamo Bay, Cuba.

21. On information and belief, the "extraordinary rendition" program serves two discrete functions: it permits agents of the United States to detain foreign nationals that it considers terrorist suspects outside U.S. sovereign territory and without legal process; and it permits those agents, primarily through counterparts in foreign intelligence agencies, to employ interrogation methods on suspects that would not be permissible under federal or international law as a means of obtaining information from suspects.

## FACTUAL ALLEGATIONS

### Abduction and Detention in Macedonia

22. Plaintiff Khaled El-Masri was born in Kuwait in 1963, and raised in Lebanon. He fled Lebanon in 1985 to escape the civil war in that country, and settled in Germany, where he became a citizen in 1995. He attended high school for three years before leaving to become a carpenter. He has since been employed as a truck driver and a car salesman, but has been unemployed since the conclusion of the events described below. Mr. El-Masri is married and has five young children.

23. On December 31, 2003, Mr. El-Masri boarded a bus in Ulm, Germany, intending to visit Skopje, Macedonia, for a brief holiday. Mr. El-Masri's journey was uneventful, passing through several European border inspections without incident, until the bus crossed the Serbian border into Macedonia. There, Macedonian law enforcement officials confiscated Mr. El-Masri's passport and detained him for several hours. He was thereafter transferred by armed plainclothes officers to a hotel in Skopje.

24. Mr. El-Masri was detained in the hotel for 23 days, guarded at all hours by rotating shifts of armed Macedonian officers. The curtains were closed day and night, and Mr. El-Masri was never permitted to leave the room. His frequent requests to see a lawyer, translator, or German consular official, or to contact his wife, were denied. When he once moved toward the door and stated that he intended to leave, three of his captors pointed pistols at his head and threatened to shoot him.

25. Mr. El-Masri was interrogated repeatedly by Macedonian agents throughout the course of his detention. The interrogations were conducted in English, despite Mr. El-Masri's limited English proficiency. He was questioned about what he did in Ulm, the persons with

whom he associated there, and the persons who attended his mosque, the Ulm Multicultural Center and Mosque. Mr. El-Masri's interrogators pressed him continuously about a meeting he allegedly had in Jalalabad, Afghanistan with an Egyptian man, and about possible Norwegian contacts. Mr. El-Masri responded that he had never been to Jalalabad and knew no one from Norway.

26. On the seventh day of his confinement, a man who appeared to be in charge of the interrogators proposed to Mr. El-Masri that if he confessed his involvement with Al Qaeda, he would be returned to Germany. Mr. El-Masri refused. On the thirteenth day of his confinement, Mr. El-Masri commenced a hunger strike to protest his continued unlawful detention, and he did not eat again during the remaining ten days of detention in Macedonia.

#### Transfer to Airport and Flight to Afghanistan

27. On January 23, 2004, seven or eight Macedonian men dressed in civilian clothes whom Mr. El-Masri had not seen before entered the hotel room. The men recorded a 15-minute video of Mr. El-Masri. They instructed him to say that he had been treated well, had not been harmed in any way, and would shortly to be flown back to Germany. The men then handcuffed and blindfolded him and placed him in a car.

28. After a drive of approximately one hour, the car came to a halt, and Mr. El-Masri could hear the sound of airplanes. He was removed from the vehicle, still handcuffed and blindfolded, and was led to a building. Inside, he was told that he would be medically examined. Instead, he was beaten severely from all sides with fists and what felt like a thick stick. His clothes were sliced from his body with scissors or a knife, leaving him in his underwear. He was told to remove his underwear and he refused. He was beaten again, and his underwear was forcibly removed. He heard the sound of pictures being taken. He was thrown to the floor. His

hands were pulled back and a boot was placed on his back. He then felt a firm object being forced into his anus.

29. Mr. El-Masri was pulled from the floor and dragged to a corner of the room. His blindfold was removed. A flash went off and temporarily blinded him. When he recovered his sight, he saw seven or eight men dressed in black and wearing black ski masks. One of the men placed him in a diaper. He was then dressed in a dark blue short-sleeved track suit, and placed in a belt with chains that attached to his wrists and ankles. The men put earmuffs and eye pads on him, blindfolded him, and hooded him.

30. Mr. El-Masri was marched to a waiting plane, with the shackles cutting into his ankles. Once inside, he was thrown to the floor face down and his legs and arms were spread-eagled and secured to the sides of the plane. He felt an injection in his shoulder, and became lightheaded. He felt a second injection that rendered him nearly unconscious.

31. On information and belief, the men dressed in black clothing and ski masks were members of a CIA “black renditions” team, operating pursuant to unlawful CIA policies and at the direction of defendant Tenet.

32. Mr. El-Masri was dimly aware of the plane landing and taking off again. When the plane landed for the final time, he was unchained and taken off the plane. It was warmer outside than it had been in Macedonia, and Mr. El-Masri realized that he had not been returned to Germany. He believed he might be in Guantánamo, or possibly Iraq. He learned later that he was in Afghanistan.

33. Aviation documents show that a Boeing business jet owned by defendant PETS and operated by defendant ACL, then registered by the FAA as N313P, took off from Palma, Majorca, Spain on January 23, 2004, and landed at the Skopje airport at 8:51 p.m. that evening.

The jet left Skopje more than three hours later, flying to Baghdad and then on to Kabul, the Afghan capital. On Sunday, January 25, the jet left Kabul, flying to Timisoara, Romania.

#### Detention and Interrogation in Afghanistan

34. Mr. El-Masri was removed from the plane and shoved into the back of a waiting vehicle. The car drove for about ten minutes. Mr. El-Masri was then dragged from the vehicle, pushed into a building, thrown to the floor, and kicked and beaten on the head and the small of his back. He was left in a small, dirty, concrete cell. When he adjusted his eyes to the light, he saw that the walls were covered in crude Arabic, Urdu, and Farsi writing. The cell did not contain a bed. It was cold, but Mr. El-Masri had been provided only one dirty, military-style blanket and some old, torn clothes bundled into a thin pillow. Through a window at the top of the cell, Mr. El-Masri saw a red, setting sun, and realized that he had been traveling for 24 hours.

35. On information and belief, the prison to which Mr. El-Masri was transferred was a CIA-run facility known as the “Salt Pit,” an abandoned brick factory north of the Kabul business district that was used by the CIA for detention of some high-level terror suspects.

36. Mr. El-Masri was thirsty. Through the small, barred window of his cell, Mr. El-Masri saw a man dressed in Afghan clothing. He shouted to the man for water, and the man pointed to a bottle of putrid water in the corner of the cell. Mr. El-Masri asked for fresh water, but was told he could drink from the bottle or go thirsty.

37. That night, Mr. El-Masri was removed from his cell and transferred to an interrogation room. There were six or eight men dressed in the same black clothing and ski masks as the men in the Macedonian airport, as well as a masked doctor who spoke American-accented English and a translator who spoke Arabic with a Palestinian accent. Mr. El-Masri was stripped naked, photographed, and medically examined by one of the masked men. Blood and

urine samples were taken. Mr. El-Masri complained to the man who seemed to be a doctor about the unhygienic water and poor conditions in his cell. The man responded that the Afghans were responsible for the conditions of his confinement. Then Mr. El-Masri was returned to his cell, where he would be detained in a single-person cell, with no reading or writing materials, and without once being permitted outside to breathe fresh air, for more than four months.

38. On his second night in the Salt Pit, Mr. El-Masri was woken by masked men and once again brought to the interrogation room. Again, six or eight masked, black-clad men were in the room. Mr. El-Masri was interrogated by a masked man who spoke Arabic with a South Lebanese accent. The man asked him if he knew why he had been detained; Mr. El-Masri said he did not. The man then stated that Mr. El-Masri was in a country with no laws, and that no one knew where he was, and asked whether Mr. El-Masri understood what that meant.

39. Mr. El-Masri was interrogated about whether he had taken a trip to Jalalabad using a false passport; whether he had attended Palestinian training camps; whether he was acquainted with September 11 conspirators Mohammed Atta and Ramzi Binalshibh; and whether he associated with alleged extremists in Ulm, Germany. Mr. El-Masri, who has never knowingly associated with any terrorist or terrorist organization, answered these questions truthfully, just as he had in Macedonia. Mr. El-Masri asked why he had been transported to Afghanistan, when he was a German citizen with no ties to that country. His interrogator did not answer.

40. In all, Mr. El-Masri was interrogated on three or four occasions, each time by the same man, and each time at night. His interrogations were accompanied by threats, insults, pushing, and shoving. Two men who participated in the interrogations identified themselves as Americans. Mr. El-Masri repeatedly demanded that he be permitted to meet with a representative of the German government, but these requests were ignored.

41. In March, Mr. El-Masri and several other inmates with whom he communicated through cell walls commenced a hunger strike to protest their continued confinement without charges. After 27 days without food, Mr. El-Masri was given an audience with two unmasked Americans, one of whom was the prison director and the second an even higher official whom other inmates referred to as “the Boss.” The Afghan prison director was also present, along with the translator with the Palestinian accent. Mr. El-Masri insisted that the Americans either release him, bring him before a court, allow him access to a German official, or watch him starve to death. The American prison director replied that he could not release Mr. El-Masri without permission from Washington, but stated that Mr. El-Masri should not be detained in the prison. Mr. El-Masri was returned to his cell, where he continued his hunger strike.

42. Mr. El-Masri’s health deteriorated on a daily basis. He received no medical treatment during his confinement, despite repeated requests.

43. On information and belief, CIA officials at the “Salt Pit” believed early on that they had detained the wrong person. In March, Mr. El-Masri’s passport was examined by CIA officials in Langley, Virginia and determined to be valid. Defendant Tenet was notified in April that the CIA had detained the wrong person. By early May, Condoleezza Rice, then the President’s National Security Advisor, had been informed that the CIA was detaining an innocent German citizen. Nonetheless, Mr. El-Masri was detained in the “Salt Pit” until May 28.

44. On the thirty-seventh day of his hunger strike, hooded men entered Mr. El-Masri’s cell, dragged him from his bed, and bound his hands and feet. They dragged him into the interrogation room, sat him on a chair, and tied him to it. A feeding tube was then forced through his nose to his stomach and a liquid was poured through it. After this procedure, Mr. El-Masri was given some canned food as well as some books to read. Mr. El-Masri was weighed.

Since the time of his seizure in December of 2003, Mr. El-Masri had lost more than sixty pounds.

45. Following his force-feeding, Mr. El-Masri became extremely ill and suffered very severe pain. A doctor visited Mr. El-Masri's cell in the middle of the night and administered medication, but Mr. El-Masri remained bedridden for several days.

46. Around the beginning of May, the prison director brought Mr. El-Masri to the interrogation room, where he met an American who identified himself as a psychologist, accompanied by a female interpreter with a Syrian accent. The psychologist told Mr. El-Masri that he had traveled from Washington D.C. to check on him and ask him some questions. At the conclusion of the conversation, the man promised that Mr. El-Masri would be released from the facility very soon.

47. Soon thereafter, Mr. El-Masri was visited by a German speaker who identified himself only as "Sam." "Sam" was accompanied by the American prison director and an American translator. Mr. El-Masri asked "Sam" whether he was a representative of the German government, and whether the German government knew that Mr. El-Masri was being held in Afghanistan, but "Sam," after consulting with the Americans, declined to answer. He asked "Sam" whether his wife knew where he was; "Sam" replied that she did not. "Sam" then proceeded to ask Mr. El-Masri many of the same questions he had previously been asked regarding his alleged associations with extremists in Neu Ulm, Germany.

48. "Sam" visited Mr. El-Masri three more times. In late May, Mr. El-Masri received a visit from "Sam," the American prison director, and an American doctor. He was informed that he would be released in eight days. "Sam" warned him that, as a condition of his release, he was

never to mention what had happened to him, because the Americans were determined to keep the affair a secret.

#### Release from the Salt Pit and Flight to Albania

49. On May 27, the American doctor visited Mr. El-Masri's cell. He instructed Mr. El-Masri not to eat or drink anything, as the next day he would be transported back to Germany, and during the transit back, he would not be permitted to use the bathroom. The next morning, the doctor and the American prison director arrived in his cell. Mr. El-Masri was blindfolded and cuffed, led out of his cell, and driven for about ten minutes. He was then locked in what seemed to be a shipping container until he heard the sound of an aircraft arriving.

50. Mr. El-Masri was released from the shipping container, and his belongings were returned to him. He was told to change back into the clothes he had worn in Macedonia, and was given two new t-shirts. He was then driven to the waiting plane, blindfolded and ear-muffled, and led onto the plane, where he was chained to his seat.

51. The man named "Sam" accompanied Mr. El-Masri on the plane. Mr. El-Masri also heard the muffled voices of two or three Americans. Shortly after take-off, Mr. El-Masri asked "Sam" if he could have the earmuffs removed; "Sam" obliged, after consulting with the Americans. Sam informed Mr. El-Masri that Germany had a new President. He said that the plane would land in a European country other than Germany, because the Americans did not want to leave clear traces of their involvement in Mr. El-Masri's ordeal, but that Mr. El-Masri would eventually continue on to Germany. Mr. El-Masri feared that he would not be returned home, but rather taken to another country and executed.

52. When the plane landed, Mr. El-Masri, still blindfolded, was taken off the plane and placed in the back seat of a vehicle. He was not told where he was. He was driven in the vehicle

up and down mountains, on paved and unpaved roads, for more than three hours. The vehicle came to a halt, and Mr. El-Masri was aware of the men in the car getting out and closing the doors, and then of men climbing into the vehicle. All of the men had Slavic-sounding accents but said very little.

53. The vehicle proceeded to drive for another three hours, again up and down mountains and on paved and unpaved roads. Eventually, the vehicle was brought to a halt. Mr. El-Masri was taken from the car, and his blindfold was removed. His captors gave him his belongings and passport, removed his handcuffs, and directed him to walk down the path without turning back. It was dark, and the road was deserted. Mr. El-Masri believed he would be shot in the back and left to die.

54. Mr. El-Masri rounded a corner and came across three armed men. They immediately asked for his passport. They saw that his German passport had no visa in it, and asked him why he was in Albania without legal permission. Mr. El-Masri replied that he had no idea where he was. He was told that he was near the borders with Macedonia and Serbia. The men led Mr. El-Masri to a small building with an Albanian flag, and he was presented to a superior officer. The officer observed Mr. El-Masri's long hair and long beard and told him he looked like a terrorist. Mr. El-Masri asked to be taken to the German embassy, but the man told him he would be taken to the airport instead.

#### Return to Germany

55. Mr. El-Masri was driven to the Mother Theresa Airport in Tirana, arriving at about 6:00 a.m. One of the Albanian guards took his passport and 320 Euros from his wallet and went into the airport building. When he returned, he instructed Mr. El-Masri to go through a door, where he was met by a person who guided him through customs and immigration control without

inspection. Only after he boarded the plane and it was airborne did Mr. El-Masri finally believe he was returning to Germany.

56. The plane landed at Frankfurt International Airport at 8:40am. Mr. El-Masri was by then about forty pounds lighter than when he had left Germany, his hair was long and unkempt, and he had not shaved since his arrival in Macedonia. From Frankfurt he traveled to Ulm, and from there to his home outside the city. His house was empty and clearly had been so for some time. He proceeded to the Cultural Center in Neu Ulm and asked after his wife and children. He was told that his family had relocated to Lebanon when he failed to return from his holiday in Macedonia.

57. In June 2004, having been notified by Mr. El-Masri's German lawyer, the Office of the Prosecuting Magistrate in Munich, Germany opened an investigation into Mr. El-Masri's allegations that he had been unlawfully abducted, detained, and interrogated in Macedonia and Afghanistan. German officials easily corroborated Mr. El-Masri's account that he had traveled to Macedonia and had been detained shortly after entering that country. To evaluate Mr. El-Masri's account of his detention in Afghanistan, German authorities conducted scientific tests, including radioactive isotope analysis of Mr. El-Masri's hair. Those tests were consistent with Mr. El-Masri's account that he had spent time in a South Asian country and had been deprived of food for an extended period.

58. Mr. El-Masri was and remains deeply traumatized by his treatment during the course of his seizure and detention. He was repeatedly beaten and threatened; had an object forced into his anus; was denied access to counsel, consular officials, or his family; was roughly interrogated on numerous occasions; and was secretly detained in squalid conditions for nearly half a year

without charge or explanation. He suffered physical injuries, pain and suffering, and severe mental anguish, as well as loss of income and livelihood.

### **DEFENDANT CORPORATIONS**

59. On information and belief, U.S.-based, private aviation corporations, including defendants PETS, KTM and ACL, have played and continue to play an integral role in the implementation of the “extraordinary rendition” policy. Defendants PETS, KTM and ACL have authorized the use of aircraft owned by them to transfer terrorist suspects to detention and interrogation in countries where the corporations know or reasonably should know that the suspects will be subjected to prolonged arbitrary detention, torture, and other forms of cruel, inhuman, or degrading treatment. Defendants PETS, KTM and ACL have also furnished staff and other resources to operate the aircraft, knowing that that purpose of the transport is the transfer of suspects to countries known to practice prolonged arbitrary detention, torture, and other forms of cruel, inhuman, or degrading treatment, particularly on terrorist suspects.

60. On information and belief, defendants PETS and ACL entered into an agreement with defendant Tenet to provide an aircraft and crew to transport Mr. El-Masri to detention and interrogation in Afghanistan.

61. In entering into this unlawful agreement, defendants PETS and ACL knew or reasonably should have known that Mr. El-Masri would be subjected to prolonged arbitrary detention, torture and cruel, inhuman, or degrading treatment in violation of federal and international laws during his transport to Afghanistan and while he was detained and interrogated there.

62. On information and belief, the terms of the agreement included flying the aircraft registered by the FAA as N313P from Palma, Majorca, Spain, to Skopje, Macedonia, where Mr.

El-Masri would be picked up, and from there to Afghanistan, where Mr. El-Masri would be detained and interrogated in the CIA's "Salt Pit" detention facility.

63. On information and belief, on or around November 14, 2004, defendant PETS transferred the Boeing business jet aircraft, then registered with the FAA as N313P, to defendant KTM. The transfer occurred shortly after media reports identified the N313P aircraft's involvement in the extraordinary rendition program. That aircraft is now registered with the FAA as N4476S. On information and belief, PETS continues to exist as a corporate entity but no longer possesses any assets.

64. On information and belief, the transfer of the aircraft to KTM was fraudulent in that it was done in order to avoid detection and potential liability for defendant PETS' unlawful acts. In the alternative, on information and belief, KTM's business is merely a continuation of PETS' transportation business. On information and belief, despite the transfer of the aircraft, there remains a continuity of business operations, management, personnel, and assets between the two corporations. KTM continues in the same business as its predecessor PETS.

## **CAUSES OF ACTION**

### **First Cause of Action: Violation of Due Process**

65. Defendants Tenet and Does 1-10 violated plaintiff's rights under the Due Process Clause of the Fifth Amendment to the Constitution, which prohibits any person acting under color of U.S. law from (a) subjecting or allowing the subjection of any person in U.S. custody or control to conduct that "shocks the conscience," or (b) depriving any person of liberty in the absence of legal process.

66. Defendants' violations of plaintiff's due process rights give rise to a cause of action for damages under the Fifth Amendment pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

67. Defendant Tenet is liable for the violation of plaintiff's due process rights because he had actual and constructive knowledge that his subordinates were violating the constitutional rights of plaintiff, and had actual and constructive knowledge that it was highly likely that these constitutional violations would occur as a result of his actions. Despite this knowledge, defendant Tenet acted with reckless and deliberate indifference to his subordinates' unconstitutional actions. Through his actions and failures to act, defendant Tenet expressly and tacitly authorized his subordinates' unlawful conduct.

68. Defendants Does 1-10 are liable for the violation of plaintiff's due process rights because, pursuant to defendant Tenet's orders, they directly participated in subjecting plaintiff to conduct that shocks the conscience, and directly participated in the deprivation of plaintiff's liberty in the absence of legal process.

69. Defendants acted under color of official authority in violating plaintiff's due process rights.

70. Defendants' actions were a proximate cause of the violation of plaintiff's substantive due process rights. Plaintiff was a foreseeable victim of these acts.

71. Defendants' violation of plaintiff's due process rights caused plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

72. Defendants' violation of plaintiff's due process rights was deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

**Second Cause of Action: Prolonged Arbitrary Detention**

73. Defendants subjected plaintiff to prolonged arbitrary detention by detaining plaintiff without a warrant, probable cause, articulable suspicion, or notice of charges, and by failing to accord plaintiff due process or any legal, consular, or familial protection and support.

Defendants' prolonged arbitrary detention of plaintiff violates customary international law. The prohibition against prolonged arbitrary detention is a "specific, universal, and obligatory" norm of customary international law cognizable under the Alien Tort Statute.

74. Defendant Tenet is liable for the prolonged arbitrary detention of plaintiff because he ordered, directed, condoned, or ratified the actions of his agents in detaining plaintiff, and because he promulgated the policy of "extraordinary rendition" which authorizes the use of prolonged arbitrary detention.

75. Defendants Does 1-10 are liable for the prolonged arbitrary detention of plaintiff because, pursuant to defendant Tenet's orders, they directly participated in plaintiff's prolonged arbitrary detention in Macedonia and Afghanistan.

76. Defendant Premier Executive Transport Services, Defendant Keeler and Tate Management, defendant Aero Contractors Limited, and defendants Does 11-20 are liable for the prolonged arbitrary detention of plaintiff because they conspired together with defendant Tenet and other U.S government officials to subject plaintiff to prolonged arbitrary detention. Specifically, each defendant conspired together by entering into an agreement to subject plaintiff

to prolonged arbitrary detention and each defendant participated in or committed a wrongful act in furtherance of said conspiracy which resulted in injuries to plaintiff.

77. Further or in the alternative, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited are liable for the prolonged arbitrary detention of plaintiff because they aided and abetted plaintiff's prolonged arbitrary detention. Specifically, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited knew or reasonably should have known that the aircraft and personnel they were supplying would be used to transport plaintiff to prolonged arbitrary detention in Afghanistan. In addition, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited provided substantial assistance to defendant Tenet and other U.S. government officials in plaintiff's prolonged arbitrary detention by, *inter alia*: (1) supplying aircraft and operating staff to said government officials, and (2) authorizing the use of said aircraft and crew to abduct plaintiff in Macedonia and thereafter to transport him to detention and interrogation in Afghanistan.

78. Defendants Does 11-20 are liable for the prolonged arbitrary detention of plaintiff because they aided and abetted defendant Tenet and other U.S. government officials in the prolonged arbitrary detention of plaintiff. Specifically, defendants Does 11-20 knew or reasonably should have known that the aircraft they were supplying or operating would be used to transport plaintiff to prolonged arbitrary detention in Afghanistan. In addition, defendants Does 11-20 provided substantial assistance to defendant Tenet and other U.S. government officials to enable them to subject plaintiff to prolonged arbitrary detention in Afghanistan by

*inter alia* (1) operating the aircraft (2) participating in plaintiff's abduction in Macedonia and (3) transporting plaintiff to detention and interrogation in Afghanistan.

79. Defendants acted under color of official authority in subjecting plaintiffs to prolonged arbitrary detention.

80. Defendants' actions were a proximate cause of plaintiff's prolonged arbitrary detention. Plaintiff was a foreseeable victim of these acts.

81. Defendants' prolonged arbitrary detention of plaintiff caused plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

82. Defendants' prolonged arbitrary detention of plaintiff was deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

**Third Cause of Action: Torture and other Cruel, Inhuman, or Degrading Treatment**

83. Defendants subjected plaintiff to torture and other cruel, inhuman or degrading treatment in violation of customary international law. As an intended result of this treatment, plaintiff was placed in great fear for his life and physical safety, and suffered severe physical and psychological pain and suffering. The prohibition against torture and other cruel, inhuman or degrading treatment is a "specific, universal, and obligatory" norm of customary international law cognizable under the Alien Tort Statute.

84. Defendant Tenet is liable for the torture and other cruel, inhuman or degrading treatment of plaintiff because he ordered, directed, condoned, or ratified the actions of his agents in subjecting plaintiff to such treatment, and because he promulgated the policy of "extraordinary rendition" which authorizes such treatment.

85. Defendants Does 1-10 are liable for the torture and other cruel, inhuman or degrading treatment of plaintiff because, pursuant to defendant Tenet's orders, they directly participated in such treatment of plaintiff in Macedonia and Afghanistan.

86. Defendant Premier Executive Transport Services, defendant Keeler and Tate Management, defendant Aero Contractors Limited, and defendants Does 11-20 are liable for the torture and other cruel, inhuman or degrading treatment of plaintiff because they conspired together with defendant Tenet and other U.S. government officials to subject plaintiff to such treatment. Specifically, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, defendant Aero Contractors Limited, and defendants Does 11-20 conspired together by entering into an agreement, the direct consequence of which were the acts of cruel, inhuman or degrading treatment suffered by plaintiff. Each defendant participated in or committed a wrongful act in furtherance of said conspiracy, which resulted in the injuries to plaintiff.

87. Further or in the alternative, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited are liable for the torture and other cruel, inhuman, or degrading treatment of plaintiff because they aided and abetted defendant Tenet and other U.S. government officials in subjecting plaintiff to such treatment. Specifically, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited knew or reasonably should have known that the aircraft and crew which they provided to defendant Tenet and other U.S. government officials would be used to abduct plaintiff in Macedonia and to transport him to detention and interrogation in Afghanistan, where he would be subjected to acts of cruel, inhuman or degrading treatment. Even with this knowledge, defendant Premier Executive

Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited, authorized the use of their aircraft and operating staff to abduct plaintiff in Macedonia and transport him to detention and interrogation in Afghanistan. In addition, defendant Premier Executive Transport Services, defendant Keeler and Tate Management, and defendant Aero Contractors Limited provided substantial assistance to defendant Tenet and other U.S. government officials in subjecting plaintiff to cruel, inhuman or degrading treatment in Macedonia and Afghanistan. Such assistance included, *inter alia*: (1) supply of an aircraft and operating staff, and (2) authorization for the use of said aircraft and staff to abduct, detain, and interrogate plaintiff in Macedonia and Afghanistan.

88. Defendants Does 11-20 are liable for the torture and other cruel, inhuman, or degrading treatment of plaintiff because they aided and abetted defendant Tenet and other U.S. government officials in subjecting plaintiff to such treatment. Specifically, defendants Does 11-20 knew or reasonably should have known that the aircraft they were supplying or operating would be used to abduct plaintiff in Macedonia and to transport him to detention and interrogation in Afghanistan, where he would be subjected to acts of cruel, inhuman or degrading treatment. In addition, defendants Does 11-20 provided substantial assistance to defendant Tenet and other U.S. government officials to enable them to subject plaintiff to acts of cruel, inhuman or degrading by *inter alia* (1) operating the aircraft (2) participating in plaintiff's abduction in Macedonia and (3) transporting plaintiff to detention and interrogation in Afghanistan.

89. Defendants acted under color of official authority in subjecting plaintiff to torture and other cruel, inhuman or degrading treatment.

90. Defendants' actions were a proximate cause of the torture and other cruel, inhuman or degrading treatment suffered by plaintiff. Plaintiff was a foreseeable victim of these acts.

91. Defendants' torture and other cruel, inhuman or degrading treatment of plaintiff caused plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

92. Defendants' torture and other cruel, inhuman or degrading treatment of plaintiff was deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court grant the following relief:

- A. for compensatory damages in an amount to be proven at trial, but in an amount over \$75,000;
- B. for punitive and exemplary damages in an amount to be proven at trial;
- C. for reasonable attorneys' fees and costs of suit; and
- D. for such other relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

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Dated: December 6, 2005

\* Pro Hac Vice Admission Pending

# **ATTACHMENT #3**

## THE FOLLOWING INDIVIDUALS MAY BE DETAINED BY THE CIA OR BY FOREIGN AGENTS AT THE REQUEST OF THE UNITED STATES

**Jamil Qasim Saeed Mohammed** was a Yemeni microbiology student at the University of Karachi in Pakistan. He is now in his early 30s. Mohammed was suspected of involvement in the USS Cole bombing. Pakistani intelligence agents reportedly arrested him outside of his apartment before delivering him into U.S. custody. He was last seen October 23, 2001, when he was being placed on board a Gulfstream V jet (registration N379P) at Karachi airport in Pakistan. Airport workers at the Karachi airport noticed the jet because an official had refused to let it depart without paying a fee. Amnesty International has repeatedly asked the United States for the Mohammed's whereabouts, but has received no answer.<sup>1</sup>

**Hassan Mustafa Osama Nasr (aka "Abu Omar")** is an Egyptian cleric who was kidnapped in Milan, Italy on February 17, 2003. An unnamed witness saw him pushed into a van on his way to a mosque. An Italian judge has issued arrest warrants for alleged CIA operatives believed to be responsible for the abduction. Abu Omar was flown to Egypt and imprisoned. He was briefly released and phoned his family, but on May 12, 2004, he was re-arrested. Though Italian prosecutors and the Justice Ministry formally requested information about Abu Omar's whereabouts, they received no answer.<sup>2</sup>

**Ibn Al-Shaykh al-Libi** is a Libyan who was reportedly arrested on November 11, 2001 by Pakistani officials after fleeing fighting in Tora Bora mountains in Afghanistan. Al-Libi allegedly led one of the Al-Qaeda's largest training camps. Newspaper reports indicate that he was transferred into US custody in January 2002 and interrogated on the USS Bataan. The Bush administration reportedly relied on al-Libi's statements made during interrogation in their case for linking al-Qaeda to Saddam Hussein. Though his arrest was widely reported, the United States has not officially acknowledged that Ibn Al-Shaykh al-Libi is in their custody.<sup>3</sup>

**Abdul Aziz** is a suspected senior level al-Qaeda member who was reportedly arrested on December 14, 2001. A "spokesman for the U.S. Embassy in Islamabad produced a chart with the names of senior al-Qaeda members," which indicated that Abdul Aziz had been detained.<sup>4</sup>

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<sup>1</sup> Amnesty International, *UK: CIA rendition flights used UK airfields* (Dec. 15, 2005), available at <http://web.amnesty.org/library/Index/ENGEUR450592005?open&of=ENG-GBR>; Rajiv Chandrasekaran and Peter Finn, *U.S. Behind Secret Transfer of Terror Suspects*, WASH. POST, March 11, 2002; Alissa Rubin, "Pakistan Hands Over Man in Terror Probe," *Los Angeles Times*, October 28, 2001; Kamran Khan and Rajiv Chandrasekaran, *Cole Suspect Turned Over By Pakistan*, WASH. POST, Oct. 28, 2001; Rajiv Chandrasekaran & Peter Finn, *U.S. Behind Secret Transfer of Terror Suspects*, WASH. POST, Mar. 11, 2002, at A1.

<sup>2</sup> *A Cleric's Journey*, WASH. POST, Dec. 6, 2005.

<sup>3</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody* (Dec. 1, 2005), available at [http://hrw.org/english/docs/2005/11/30/usdom12109\\_txt.htm](http://hrw.org/english/docs/2005/11/30/usdom12109_txt.htm); Human Rights Watch, *The United States' "Disappeared;" The CIA's Long-Term "Ghost Detainees"* 24-25 (October 2004), available at <http://www.hrw.org/backgrounder/usa/us1004/us1004.pdf>.

<sup>4</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, *supra* note 3.

**Abu Faisal** was also listed as detained on the chart produced by the U.S. Embassy. He was reportedly arrested on December 12, 2001.<sup>5</sup>

**Abu Zubaydah (also known as Abu Zubaida; Zain al-Abidin Muhahhad Husain)** is a Palestinian, who was born in Saudi Arabia. He was reportedly arrested in March 2002 in Faisalabad, Pakistan. The Bush administration believes he is Osama bin Laden's field commander and announced his capture as a victory in the war on terror. His whereabouts and location are unknown.<sup>6</sup>

**Abdul Rahim al-Sharqawi (aka Riyadh the facilitator)**, who may be Yemeni, was reportedly arrested in January 2002. He is a suspected al-Qaeda member and could be held in Guantanamo Bay.<sup>7</sup>

**Abd al-Hadi al-Iraqi** is probably Iraqi and was reportedly arrested in 2002. He is suspected of operating terrorist training camps. Though there are conflicting reports as to whether he was captured, several newspapers say that he was sent to Guantánamo Bay.<sup>8</sup>

**Muhammed al-Darbi** is a Yemeni national who was reportedly arrested in August 2002 in Yemen. He is suspected of belonging to al-Qaeda. In December 2002, the Washington Post reported that he was still under CIA control.<sup>9</sup>

**Ramzi bin al-Shibh** (also spelled: Ramzi Binalshibh) is a Yemeni who was arrested on September 13, 2002 in Karachi, Pakistan. He is a suspected conspirator in the September 11<sup>th</sup> attacks. A Pakistani government spokesperson announced that they had placed Ramzi in U.S. custody and that he "must have been flown out of Pakistan." The administration has noted Ramzi's capture as an accomplishment in the war on terror, but has not disclosed his location.<sup>10</sup>

**Abd al-Rahim al-Nashiri (or Abdulrahim Mohammad Abda al-Nasheri, aka Abu Bilal al-Makki or Mullah Ahmad Belal)** is either Saudi or Yemeni and was born in Mecca, Saudi Arabia. He was reportedly arrested in November 2002 in the United Arab Emirates. He is suspected of being al-Qaeda's chief of operations, responsible for bombing of the USS Cole and the US Embassies in Kenya and Tanzania. He was held briefly in Afghanistan after his arrest and was transferred to an undisclosed location. The United States has acknowledged his capture.<sup>11</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; Human Rights Watch, *The United States' "Disappeared;" The CIA's Long-Term "Ghost Detainees,"* *supra* note 3, at 25-27.

<sup>7</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody,* *supra* note 3.

<sup>8</sup> *Id.*; Paul Harris and Burhan Wazir, *Distant voices tell of life for Britons caged in Camp Delta*, OBSERVER, Nov. 2, 2002, at 3; Tony Winton, *Afghan POWs chained to seats - WAR ON TERROR: NO ESCAPE*, DAILY TELEGRAPH, Jan. 2, 2002, at 12.

<sup>9</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody,* *supra* note 3.

<sup>10</sup> *Id.*; Human Rights Watch, *The United States' "Disappeared" The CIA's Long-Term "Ghost Detainees,"* at 31-32; Reuters, *US secrets suspects out of Pakistan*, THE AUSTRALIAN, Sept. 18, 2002, at 9.

<sup>11</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody,* *supra* note 3; Human Rights Watch, *The United States' "Disappeared" The CIA's Long-Term "Ghost Detainees,"* at 32-34.

**Mohammed Omar Abdel-Rahman (aka Asadullah)** is an Egyptian who was reportedly arrested in February 13, 2003 in Quetta, Pakistan by Pakistani and U.S agents. He is the son of Sheikh Omar Abdel-Rahman, who was convicted of involvement in the first World Trade Center bombing. He is considered a “senior facilitator” for Al-Qaeda. His fate and whereabouts are unknown.<sup>12</sup>

**Mustafa al-Hawsawi (aka al-Hisawi)** is a Saudi suspected of financing al Qaeda. He was reportedly arrested on March 1, 2003 in Rawalpindi, Pakistan. A leaked memo indicated he is U.S. custody and that he was transferred from Pakistan to a secure location.<sup>13</sup>

**Khalid Sheikh Mohammed** a Kuwaiti (with Pakistani parents) was reportedly arrested in March 1, 2003 in Rawalpindi, Pakistan along with Mustafa al-Hawsawi. Khalid Sheikh Mohammed is suspected of planning the Sept.11 attacks, the murder of Daniel Pearl and the USS Cole attack. His initial interrogation was reportedly conducted by Pakistan’s Inter-Service Intelligence and he was later transferred into U.S. custody. Though the United States announced his capture, his current location is unknown.<sup>14</sup>

**Majid Khan** is a Pakistani terrorism suspect who was reportedly arrested in March or April 2003 in Pakistan. He is linked to Khalid Sheikh Mohammad and a plot to blow up gas stations in the United States. During Uzair Paracha’s trial for material support of terrorism, United States prosecutors indicated that Majid Khan was in United States custody. His current whereabouts are unknown.<sup>15</sup>

**Yassir al-Jazeera (aka al-Jaziri)** is a suspected al-Qaeda member who may be Moroccan, Algerian, or Palestinian. He was reportedly arrested on March 15, 2003 in Pakistan.<sup>16</sup>

**Ali Abdul Aziz Ali (aka Ammar al Baluchi)** is a Pakistani who was reportedly arrested in April 29, 2003 in Karachi, Pakistan. He allegedly helped finance the September 11 attacks and may have been involved in the Jakarta Marriot bombing, as well as Jose Padilla’s travel to the United States. We believe Baluchi is in United States custody because statements he made to United States interrogators were introduced during Uzair Paracha’s trial.<sup>17</sup>

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<sup>12</sup> Human Rights Watch, *List of “Ghost Prisoners” Possibly in CIA Custody*, *supra* note 3; Eunice Moscoso, *Arrests strike terror lifeline; FBI, CIA “moving rapidly to exploit” seized data*, ATLANTA-JOURNAL CONSTITUTION, March 5, 2003, at 1a; Richard Sisk, *Condi Answers Europe on Torture Charges*, DAILY NEWS, Dec. 6, 2005, at 45.

<sup>13</sup> Human Rights Watch, *List of “Ghost Prisoners” Possibly in CIA Custody*, *supra* note 3; Human Rights Watch, *The United States’ “Disappeared” The CIA’s Long-Term “Ghost Detainees,”* at 35-36.

<sup>14</sup> Human Rights Watch, *List of “Ghost Prisoners” Possibly in CIA Custody*, *supra* note 3; Human Rights Watch, *The United States’ “Disappeared” The CIA’s Long-Term “Ghost Detainees,”* at 36-38.

<sup>15</sup> Human Rights Watch, *List of “Ghost Prisoners” Possibly in CIA Custody*, *supra* note 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

**Waleed Mohammed bin Attash (aka Tawfiq bin Attash or Tawfiq Attash Khallad)** was born in Saudi Arabia (but is of Yemeni descent) and was reportedly arrested on April 29, 2003 in Karachi, Pakistan by Pakistani officials. He is suspected of involvement in the Sept. 11 attacks and the bombing of the USS Cole. The United States announced his capture, but his whereabouts are unknown.<sup>18</sup>

**Adil al-Jazeera** is an Algerian suspected al-Qaeda member. He was a longtime resident of Afghanistan, but was reportedly arrested on June 17, 2003 outside Peshawar, Pakistan. Human Rights Watch reports that he may have been transferred to Guantánamo.<sup>19</sup>

**Hambali (aka Riduan Isamuddin)** is an Indonesian who was reportedly arrested in August 11, 2003 in Thailand. He is allegedly part of Jemaah Islamiyah and a suspect in the planning of the Bali nightclub and Jakarta Marriot bombings, as well support of the September 11 attacks. His capture was announced by the Bush administration. In October 2003, Time magazine reported that Hambali was being held at Diego Garcia on an American-British airbase. His current location is unknown.<sup>20</sup>

**Mohamad Farik Amin (aka Zubair)** is a Malaysian who was reportedly arrested in August 11, 2003 in Thailand along with Hambali. He is a suspected member of al Qaeda and was allegedly Hambali's aid.<sup>21</sup>

**Mohamad Nazir bin Lep (aka Lillie, or Li-Li)** is a Malaysian who was reportedly arrested on August 11, 2003 along with Hambali and Zubair in Thailand.<sup>22</sup>

**Tariq Mahmood** is a British-born Pakistani (with dual nationality) who was reportedly arrested in October 2003 in Islamabad, Pakistan. He is suspected of ties to al-Qaeda. While Pakistani officials originally confirmed that Mahmood was arrested, they have since refused to disclose his location to solicitors acting on his behalf. His current location is unknown, but he may be held at Guantanamo.<sup>23</sup>

**Hassan Ghul** is a Pakistani who was reportedly captured on January 23, 2004, in the Kurdish highlands of Iraq. Ghul is alleged to be Zarqawi's courier to bin Laden and is also suspected of ties to Khalid Sheikh Mohammad. President Bush announced Ghul's capture in January 26, 2004, but his current location is unknown.<sup>24</sup>

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<sup>18</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, *supra* note 3; Human Rights Watch, *The United States' "Disappeared" The CIA's Long-Term "Ghost Detainees," supra* note 3, at 39.

<sup>19</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, *supra* note 3.

<sup>20</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, *supra* note 3; Simon Elegant and Andrew Perrin, *Asia's Terror Threat*, Time, Oct. 6, 2003.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, *supra* note 3; Amardeep Basseyy, *Mystery of "Lost" Muslims; Families Bid to Trace Terror Suspects in Pakistan as City MP Short*; SUNDAY MERCURY, Feb. 29, 2004, at 10; Press Association, *British Prisoners at Guantanamo*, GUARDIAN UNLIMITED, Feb. 19, 2004.

<sup>24</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, *supra* note 3.

**Musaad Aruchi (aka Musab al-Baluchi, al-Balochi, al-Baloshi)**, who is probably Pakistani was reportedly arrested on June 12, 2004 in Karachi, Pakistan. Pakistani intelligence officials claimed they handed Aruchi over to the United States and the CIA took him to a secret location.<sup>25</sup>

**Mohammed Naeem Noor Khan (aka Abu Talaha)** is a Pakistani computer engineer who was arrested on July 13, 2004 in Pakistan by Pakistani authorities. He was probably placed in United States custody. The United States may also be sharing custody with Pakistan.<sup>26</sup>

**Ahmed Khalfan Ghailani** is a Tanzanian who was reportedly arrested in July 24, 2004 in Pakistan. United States authorities indicted him in 1998 for involvement in the US embassy bombings in Kenya and Tanzania. His arrest was announced by the Bush administration.<sup>27</sup>

**Abu Faraj al-Libi** is a Libyan who was arrested on May 4, 2005 in the North Western Frontier Province in Pakistan. He is suspected of leading al-Qaeda operations, including two assassination attempts on Perez Musharraf. According to news reports, al-Libi was taken directly from Pakistan to the United States.<sup>28</sup>

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<sup>25</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, *supra* note 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*; *Profile: Ahmed Khalfan Ghailani*, BBC NEWS, July 30, 2004.

<sup>28</sup> Human Rights Watch, *List of "Ghost Prisoners" Possibly in CIA Custody*, *supra* note 3.