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18 UNITED STATES DISTRICT COURT
19 FOR THE EASTERN DISTRICT OF WASHINGTON

20 SULEIMAN ABDULLAH SALIM,
21 MOHAMED AHMED BEN SOUD,
22 OBAIDULLAH (AS PERSONAL
23 REPRESENTATIVE OF GUL RAHMAN),

24 Plaintiffs,

25 v.

26 JAMES ELMER MITCHELL and JOHN
"BRUCE" JESSEN

Defendants.

No. 15-CV-0286 (JLQ)

PLAINTIFFS' STATEMENT
OF FACTS IN OPPOSITION
TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
AND RESPONSE TO
DEFENDANTS' STATEMENT
OF UNDISPUTED FACTS IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT

NOTE ON MOTION

CALENDAR:

July 28, 2017 AT 9:30 A.M.
Spokane, Washington

1 Plaintiffs Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud, and
2 Obaid Ullah (as personal representative of Gul Rahman), pursuant to Rule 56 of
3 the Federal Rules of Civil Procedure and Rules 7.1 and 56.1 of the Local Rules
4 for the United States District Court, Eastern District of Washington, file this
5 Statement of Facts in opposition to Defendants’ Motion for Summary Judgment.
6

7 **Plaintiffs’ Facts in Opposition**

- 8 1. When the CIA captured its first prisoner, Abu Zubaydah, the CIA
9 Counterterrorism Center had no experience or expertise on
10 interrogation. Deposition of Jose Rodriguez 46:23–48:4 (Watt Decl.,
11 Exh. A, cited hereinafter as “Rodriguez Dep.”).
- 12 2. Defendant Mitchell initially joined a three-person “behavioral team”
13 which recommended that Abu Zubaydah be kept naked in a cell lit by
14 halogen lamps for 24 hours per day, while being subjected constantly
15 to rock music or other noise. Am. Answer, ECF No. 77 ¶ 38; ECF No.
16 182-4 at U.S. Bates 001826–28; ECF No. 182-6 at U.S. Bates 002000.
- 17 3. Defendant Mitchell described to CIA officials at Langley that, in his
18 assessment, Abu Zubaydah was still using “resistance to interrogation
19 ploys,” and “wasn’t going to provide the information that they were
20 looking for using rapport-based approaches,” at least not in a timely
21 fashion. Deposition of James Elmer Mitchell 252:6–256:11 (Watt
22 Decl., Exh. B, cited hereinafter as “Mitchell Dep.”).
- 23 4. Jose Rodriguez, at the time, the head of the CIA’s Counterterrorism
24 Center, believed that Defendant Mitchell had “a good vision for what
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1 needed to be done,” which was “the recommendation from him to use
2 enhanced interrogation techniques.” Rodriguez believed Defendant
3 Mitchell had “tremendous expertise” from his SERE experience. Watt
4 Decl., Exh. A (Rodriguez Dep.) 37:3–38:13.

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6 5. Mr. Rodriguez “asked Dr. Mitchell if he would take charge of creating
7 and implementing a program.” Watt Decl., Exh. A (Rodriguez Dep.)
8 58:3–9.

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10 6. Defendant Mitchell agreed that, with Defendant Jessen’s assistance, he
11 would “put together a psychologically based interrogation program”
12 which he decided “would need to be based on what is called
13 ‘Pavlovian Classical Conditioning.’” Watt Decl., Exh. C (Mitchell
14 Manuscript) at MJ00022632.

15 7. On July 1, Defendant Mitchell participated in a meeting memorialized
16 in a CIA cable that laid out CIA lawyers’ guidance as to the legal
17 authorization process. CIA lawyers “emphasized” that no “method of
18 interrogation whatsoever” should be dismissed, “so long as the
19 interrogation team believes it will be effective.” The lawyers explained
20 that, “of course, HQS will need to document in advance the legal
21 analysis for such methods, to ensure that our officers are protected.”
22 The cable summarized, “In short, rule out nothing whatsoever that you
23 believe may be effective; rather, come on back and we will get you the
24 approvals.” ECF No. 176-24 at U.S. Bates 1160.

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26 8. Mr. Rodriguez described Defendant Mitchell as “the architect of the

1 CIA interrogation program.” Watt Decl., Exh. A (Rodriguez Dep.)
2 53:19–21. John Rizzo, who was the top lawyer overseeing the CIA
3 program described Defendants as “the original architects” of the
4 program. When Secretary of State Condoleezza Rice requested a direct
5 briefing in 2007 from the CIA program’s architects, Defendants were
6 the ones to meet with her in that role. Deposition of John Rizzo 68:14–
7 69:24 (Watt Decl., Exh. D, cited hereinafter as “Rizzo Dep.”).

- 9 9. Defendants’ program was based in part on their proposal that prisoners
10 be subjected to coercive methods until they reached a state of “learned
11 helplessness.” *See* Watt Decl., Exh. E at U.S. Bates 001618 (Mitchell’s
12 qualifications noting that sometimes the appropriate mental state for a
13 detainee is “learned helplessness”); Background Paper on CIA’s
14 Combined Use of Interrogation Techniques, ECF No. 177-29 at 2
15 (“The goal of interrogation is to create a state of learned helplessness .
16”); ECF No. 182-4 at U.S. Bates 001825–28 (noting that one of
17 the psychological states the interrogation process aimed to induce was
18 “learned helplessness.”); ECF No. 182-13 at U.S. Bates 002020
19 (noting that “psychological and physical pressures have been applied
20 to induce complete helplessness, compliance and cooperation from
21 [Abu Zubaydah].”); Watt Decl., Exh. D (Rizzo Dep.) 128:08–129:8;
22 Rodriguez Decl., ECF No. 175 ¶ 38 (“in working to achieve this goal,
23 the [use of EITs] could produce a range of mental states in the subject,
24 including, but not limited to, fear, learned helplessness, compliancy, or
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1 false hope.”).

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3 10. Defendants “designed a program for the CIA to get prisoners to talk”
4 and the CIA “would decide which prisoners to apply it to.” Watt Decl.,
5 Exh. A (Rodriguez Dep.) 244:9–12.

6 11. Defendants drew up a proposal that identified specific methods
7 designed to “instill fear and despair,” including methods aimed at
8 manipulating a prisoner’s being “very sensitive to situations that
9 reflect a loss of status or are potentially humiliating.” ECF No. 182-8
10 at U.S. Bates 001110–11; SOF X; *see also* Deposition of John Bruce
11 Jessen 114:20–115:11 (Watt Decl., Exh. F, cited hereinafter as “Jessen
12 Dep.”); Watt Decl., Exh. B (Mitchell Dep.) 262:5–21.

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14 12. Defendants based their list of coercive methods on techniques used in
15 training in the Department of Defense’s Survival, Evasion, Resistance,
16 and Escape (“SERE”) program. Watt Decl., Exh. B (Mitchell Dep.)
17 186:1–187:3.

18 13. “The techniques used in SERE school, based, in part, on Chinese
19 Communist techniques used during the Korean War to elicit false
20 confessions, include stripping students of their clothing, placing them
21 in stress positions, putting hoods over their heads, disrupting their
22 sleep, treating them like animals, subjecting them to loud music and
23 flashing lights, and exposing them to extreme temperatures.” S.
24 Comm. on Armed Servs., 110th Cong., 2d Sess., Report on Inquiry
25 into the Treatment of Detainees in U.S. Custody (Comm. Print 2008),
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1 ECF No. 182-9 (“SASC Report”) at xiii, xxvi.

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3 14. Defendant Jessen admitted that techniques used in SERE training were
4 based in part on coercive interrogation methods inflicted by enemies
5 on American soldiers in the Korean War. He testified that he didn’t
6 “know who determines what’s legal and illegal, but the techniques
7 were to represent what we thought our enemy might do if they weren’t
8 adhering to the Geneva Conventions.” Watt Decl., Exh. F (Jessen
9 Dep.) 57:3–14; 65:10–23.

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11 15. SERE training differed from Defendants’ proposal: Techniques were
12 used on volunteers, not on prisoners with serious injuries and open
13 wounds. Watt Decl., Exh. F (Jessen Dep.) 134:21–135:20. SERE
14 volunteers knew the start and end date of their training, and could end
15 it at any time, while prisoners were made to believe that their
16 interrogation could last for the rest of their natural lives. ECF No. 182-
17 9, SASC Report at 31; ECF No. 182-10 at U.S. Bates 001957–58.

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19 16. Waterboarding as carried out by Defendants was different from the
20 technique used in SERE training: it involved much larger volumes of
21 water, and Defendant Jessen or Defendant Mitchell acknowledged that
22 Defendants’ method was “different because it is ‘for real’ and is more
23 poignant and convincing.” ECF No. 176-25 at U.S. Bates 001376.

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25 17. Coercive methods were also used on detainees in the CIA program
26 with a higher frequency than permitted in the SERE program. Watt
Decl., Exh. F (Jessen Dep.) 156:14–24.

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18. Defendants knew the effect of their proposed methods might be different for prisoners than for volunteers. Watt Decl., Exh. F (Jessen Dep.) 127:11–24. But when Defendant Mitchell presented his proposal to the Director of the CIA and the head of CTC, he did not mention that fact. Watt Decl., Exh. B (Mitchell Dep.) 281:4–16. Nor did Defendants bring this critical difference to the attention of Mr. Rizzo. Watt Decl., Exh. D (Rizzo Dep.) 151:15–154:18.
19. Mr. Rizzo testified that CIA documents show that Defendants “made a representation about whether these techniques could cause severe mental or physical pain or suffering,” indicating that Defendants “did provide information that OLC considered in assessing the legality of the techniques.” Watt Decl., Exh. D (Rizzo Dep.) 44:7–47:3.
20. When the CIA “sought and obtained legal authorization” for the “enhanced interrogation technique program,” the approval “was based upon what [Mr. Rodriguez] had learned from Drs. Mitchell and Jessen with regard to the SERE program.” Watt Decl., Exh. A (Rodriguez Dep.) 97:14–23.
21. Defendants admit that on July 23, 2002, they provided to CIA lawyers their view of the necessity for and safety of their methods. A cable transmitted on that date discloses that certain CIA employees were concerned that the experience of SERE volunteer trainees might not be analogous to “a man forced through these processes and who will be made to believe this is the future course of the remainder of his life.”

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However, the CIA employees noted that that they “defer to experts”— i.e. Defendants. ECF No. 182-25 at CIA # 01771 (reprocessed). In response to this concern, Defendants wrote that Abu Zubaydah’s “demonstrated abilities” to resist interrogation, combined with “his current level of confidence, and his reluctance to provide threat information” supported their recommendation to use “absolutely convincing” methods as part of a strategy with “a high probability of overwhelming subject's ability to resist.” Defendants wrote that their “plan hinges on the use of an absolutely convincing technique. The waterboard meets this need.” Defs.’ Statement of Undisputed Facts (“SOF”), ECF No. 170 at ¶¶ 154–57; *see also* Watt Decl., Exh. G at U.S. Bates 001839–40 (“The waterboard technique remains the IC SERE psychologists’ recommended, absolutely convincing technique for the aggressive phase.”) Defendants did not acknowledge any difference between SERE volunteers and the use of their methods on prisoners.

22. In the same cable, Defendants, serving as “experts” as to the necessity and safety of their methods, referred CIA headquarters only to training data, and did not mention any studies on the use of coercion on prisoners rather than volunteers. They further asserted that the “fact that the waterboard overwhelms most people’s ability to resist is precisely why IC SERE psychologists think this procedure would be effective against the resistance strategies successfully employed by

1 subject to date.” ECF No. 182-25 at U.S. Bates 001770–71.

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3 23. Defendants’ representations were provided to CIA lawyers, who “then
4 provided information to the” Justice Department Office of Legal
5 Counsel (“OLC”). SOF ¶ 157.

6 24. Subsequently, at the end of July, OLC lawyer John Yoo provided a
7 memo and a briefing on Defendants’ methods to Attorney General
8 John Ashcroft, who concluded that “[w]ith respect to waterboarding . .
9 . . . Yoo’s position was aggressive, but defensible.” ECF No. 176-11
10 (OPR Report) at U.S. Bates 000647. By August 2, 2002, the Attorney
11 General approved the use of waterboarding. SOF ¶ 166.

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13 25. On August 3, 2002 Mr. Rizzo had a CIA cable transmitted to the
14 interrogation team, including Defendants, which confirmed that the
15 approval of Defendants’ methods was based on, *inter alia*, a
16 representation by “the SERE psychologists on the interrogation team
17 that the procedures described above should not rpt not produce severe
18 mental physical pain or suffering . . . nor would they be expected to
19 produce prolonged mental harm continuing for a period of months or
20 years (such as the creation of persistent posttraumatic stress disorder),
21 given the experience with these procedures and the subject’s resilience
22 to date.” SOF ¶ 168. Mr. Rizzo testified that Defendants were the
23 “SERE psychologists on the interrogation team” whose representations
24 as to safety formed a basis for the Department of Justice approval.
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26 Watt Decl., Ex. D (Rizzo Dep.) 44:15–45:3.

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26. Over the course of a nineteen-day “aggressive phase,” Defendants observed firsthand as Abu Zubaydah, vomited, “appeared despondent,” cried, “was visibly trembling,” displayed “despair and helplessness,” was “trembling and shaking,” “frantically pleaded” that “he had given everything he knew,” suffered “involuntary body (leg, chest, and arm) spasms, “continue to cry,” suffered “involuntary stomach and leg spasms,” became “distressed to the level that he was unable to effectively communicate,” “cried, begged, and pleaded; finally becoming hysterical.” ECF No. 183-11 at U.S. Bates 001758; ECF No. 182-15 at U.S. Bates 001801; ECF No. 182-16 at U.S. Bates 001804–1805; ECF No. 182-23 at U.S. Bates 001807–08; ECF No. 182-17 at U.S. Bates 001943–44; ECF No. 182-18 at U.S. Bates 001947; ECF No. 182-10 at U.S. Bates 001955–57; ECF No. 182-20 at U.S. Bates 001957–59; ECF No. 182-13 at U.S. Bates 002022; ECF No. 182-22 at U.S. Bates 002364; ECF No. 177-24 at U.S. Bates 002380.

27. Defendant Mitchell testified that when he heard Abu Zubaydah cry during Defendants’ infliction of their methods on him, “you know what I hear when someone is making a noise like that? I hear a clear airway, which is what we’re supposed to really monitor, because what mattered is whether or not he can breathe in the—in the moment. Do you know what I mean? Long-term there were some things that matter. But we’ve got a psychologist and a physician and other people out

1 there monitoring these things to be sure that they don't go too far."
2 Watt Decl., Exh. B (Mitchell Dep.) 300:11–24.
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4 28. After seventeen days of the “aggressive phase,” the interrogation team,
5 which included Defendants, wrote to CIA headquarters that “the
6 aggressive phase” of Abu Zubaydah’s interrogation “should be used as
7 a template for future interrogation of high value captives.” ECF No.
8 182-13 at U.S. Bates 002023.

9 29. After nineteen days of the “aggressive phase” Defendants and the rest
10 of the interrogation team issued the assessment that “...we have
11 successfully broken subject’s willingness to withhold threat and
12 intelligence information. He is presently in a state of complete
13 subjugation and total compliance.” ECF No. 182-12 at U.S. Bates
14 002382–83.
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16 30. Defendants’ methods became the basis for the CIA’s enhanced
17 interrogation program. Watt Decl., Exh. A (Rodriguez Dep.) 59:19–
18 60:25, 63:6–10.

19 31. Defendants participated in the program’s initial expansion, opining on
20 potential lessons from Abu Zubaydah’s interrogation for future
21 interrogations. Watt Decl., Exh. H at U.S. Bates 001611; Watt Decl.,
22 Exh. I at U.S. Bates 001891–92. Defendants’ contracts expanded after
23 Abu Zubaydah’s interrogation as well. For example, less than two
24 months after Abu Zubaydah’s interrogation, the value of Defendant
25 Jessen’s contract had doubled. Watt Decl., Exh. J at U.S. Bates
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2 000086, 000092, 000094.

3 32. Defendants “continued to consult on the EITs for years after Abu
4 Zubaydah.” Watt Decl., Exh. A (Rodriguez Dep.) 244:9–24.

5 33. By January 2003, the methods that Defendants had proposed and used
6 on Abu Zubaydah were standardized as the official “Enhanced
7 Interrogation Techniques” in the “enhanced interrogation program”
8 used on CIA prisoners, including the CIA prisoners at COBALT. ECF
9 No. 182-25 at U.S. Bates 001170–72; Watt Decl., Exh. D (Rizzo Dep.)
10 64:8–23.

11 34. With the exception of the “abdominal slap” technique, the
12 standardized “Enhanced Techniques” are the methods Defendants
13 proposed in July 2002. ECF No. 182-8 at U.S. Bates 001110–11. The
14 “abdominal slap” was a technique that Defendants used on Abu
15 Zubaydah in an interrogation that they claimed was successful. ECF
16 No. 77 ¶ 49.

17 35. Defendants were aware of a phenomenon called “abusive drift” in
18 which, once coercion was employed, interrogators would tend to
19 exceed approved limits, resulting in even more severe abuse of
20 prisoners. Watt Decl., Exh. F (Jessen Dep.) 35:24–36:17; Watt Decl.,
21 Exh. C (Mitchell Manuscript) at MJ00022633, MJ00022857.

22 36. “As initially proposed, sleep deprivation was to be induced by
23 shackling the subject in a standing position, with his feet chained to a
24 ring in the floor and his arms attached to a bar at head level, with very
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1 little room for movement.” ECF No. 176-11 (OPR Report) at U.S.
2 Bates 000643. “[D]etainees were typically shackled in a standing
3 position, naked except for a diaper.” *Id.* at U.S. Bates000733; Watt
4 Decl., Exh. F (Jessen Dep.) 228:20–229:2.
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6 37. Defendant Jessen was involved in using diapers, the “insult slap,” and
7 sleep deprivation—by chaining a detainee to an overhead bar while
8 nude or in a diaper—on Mr. Rahman at COBALT. According to
9 Defendant Jessen, Mr. Rahman was subjected to consistent sleep
10 deprivation for days, with Mr. Rahman “chained to the overhead bar in
11 his cell,” to induce “sleep deprivation right from the beginning.” ECF
12 No. 182-36 at U.S. Bates 001049, 001051. Defendant Jessen used an
13 “insult slap” on Mr. Rahman. Watt Decl., Exh. F (Jessen Dep.)
14 238:22–241:15, 211:7–15. During the weeks Mr. Rahman spent in the
15 CIA prison before his death, he was mostly naked or wearing a diaper.
16 Ladin Decl., Exh. S at U.S. Bates 001291. Defendant Jessen admitted
17 that Mr. Rahman’s diaper and clothes were removed at the
18 interrogators’ direction. *Id.* Defendant Mitchell was also present at an
19 interrogation of Mr. Rahman at COBALT. *Id.* at U.S. Bates 001290.
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21 38. Defendant Jessen observed other interrogators and guards using a
22 “hard takedown” on Mr. Rahman: a renditions team dragged Mr.
23 Rahman out of his cell, cut his clothes off, taped him, and put a hood
24 over his head. ECF No. 182-36 at U.S. Bates 1051. They slapped him
25 and punched him as they ran him up and down the long corridor
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1 adjacent to his cell. *Id.* When Mr. Rahman stumbled, the team dragged
2 him along the ground. Afterwards, Mr. Rahman had abrasions on his
3 head and leg and “crusty contusions on his face, leg, and hands.” *Id.*
4 Defendant Jessen told a CIA interrogator at COBALT that he had not
5 used the technique, but it was worth trying. *Id.* Defendant Jessen
6 suggested to the CIA interrogator that if you do a hard takedown, you
7 should “leverage that in some way.” Watt Decl., Exh. F (Jessen Dep.)
8 197:12–198:7. Defendant Jessen said an interrogator should speak to
9 the prisoner afterwards, to “give them something to think about.” ECF
10 No. 176-22 at U.S. Bates 001133.

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13 39. Defendant Jessen said the hard takedown was a “good technique, but
14 these kinds of things need to be written down and codified with a
15 stamp of approval or you’re going to be liable.” ECF No. 182-36 at
16 U.S. Bates 001049.

17 40. Days after Defendant Jessen observed that Mr. Rahman displayed
18 early signs of hypothermia, Defendant Jessen recommended that the
19 CIA “continue the environmental deprivations [Mr. Rahman] is
20 experiencing.” ECF No. 182-36 at U.S. Bates 001050; ECF No. 182-
21 40 at U.S. Bates 001057. Defendant Jessen provided an assessment
22 that Mr. Rahman was impervious to most of Defendants’ methods, and
23 that “it will be the consistent and persistent application of deprivations
24 (sleep loss and fatigue) and seemingly constant interrogations which
25 will be most effective in wearing down this subject’s resistance
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1 posture.” *Id.* at U.S. Bates 001057–58.

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3 41. Defendant Jessen believed that “the pressures that had been exerted on
4 [Mr. Rahman]” had succeeded in an “interrogation breakthrough, but
5 Rahman had not broken down” prior to his death. ECF No. 182-36 at
6 U.S. Bates 1053. According to Defendant Jessen, “Rahman appeared
7 to be healthy, fatigued, cold, and he knew how to use physical
8 problems or duress as a resistance tool.” *Id.*

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10 42. Four days after Defendant Jessen left COBALT, an interrogator
11 conducted only a brief question session with Mr. Rahman “based on
12 Jessen’s recommendation that Rahman be left alone and environmental
13 deprivations continued.” ECF No. 176-25 (OIG Report) at U.S. Bates
14 001312. Two days later, Mr. Rahman—deprived of food, sleep,
15 clothing, and warmth—died of hypothermia. *Id.* at U.S. Bates 001272–
16 73.

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18 43. Defendants “taught other interrogators how to use their techniques,”
19 by “train[ing] other CIA interrogators in the program.” Rizzo Dep.
20 67:11–17. Defendants admit they were “instrumental in training and
21 mentoring other CIA interrogators.” Watt Decl., Exh. L at U.S. Bates
22 001585–86. Defendant Mitchell was tasked with “supervis[ing] the
23 activity of medical and security elements” during the initial phase of
24 Abu Zubaydah’s interrogation. ECF No. 177-39 at U.S. Bates 1642.

25
26 44. After the program was investigated by the Senate Select Committee on
Intelligence, the CIA agreed with the Committee’s conclusion that the

1 Agency “allowed a conflict of interest to exist wherein the contractors
2 who helped design and employ the enhanced interrogation techniques
3 also were involved in assessing the fitness of detainees to be subjected
4 to such techniques and the effectiveness of those same techniques.”
5 Watt Decl., Exh. M (CIA Response) at 3.
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7 45. Defendants suggest that their conflict of interest was “not
8 problematic,” but the CIA’s official assessment is that “we agree that
9 CIA should have done more from the beginning of the program to
10 ensure there was no conflict of interest-real or potential-with regard to
11 the contractor psychologists who designed and executed the techniques
12 while also playing a role in evaluating their effectiveness, as well as
13 other closely-related tasks.” The CIA stated that it “has since taken
14 steps to ensure that our contracts do not have similar clauses with the
15 contractors grading their own work. Watt Decl., Exh. M (CIA
16 Response) at 10–11, 25; Watt Decl., Exh. D (Rizzo Dep.) 117:15–23.
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18 46. Mitchell, Jessen, and Associates received \$81 million in taxpayer
19 money. ECF No. 77 ¶ 68; Watt Decl., Exh. M (CIA Response) at 49.
20 The contract was a “sole source contract” ECF No. 183-9 at U.S. Bates
21 001629. Defendants formed the company to meet the CIA program’s
22 “growing demand for expert consultation, operational interrogation
23 and exploitation capabilities.” Watt Decl., Exh. L at U.S. Bates
24 001586.
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26 47. Defendants’ contracts were executed in the United States before they

1 traveled to a CIA black site. Watt Decl., Exh. C (Mitchell Manuscript)
2 at MJ00022597; Watt Decl., Exh. F (Jessen Dep.) 105:19–109:2.

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4 48. Defendants’ personal contracts specifically included work on the CIA
5 program performed in the United States, which was designated as
6 “consultation and recommendation for applying
7 methodology/CONUS,” with “CONUS” meaning within the
8 “Continental United States.” *See, e.g.*, Watts Decl., Exh. N at U.S.
9 Bates 000056; Watt Decl., Exh. A (Rodriguez Dep.) 34:10–12.
10 Defendants’ company likewise specified its own facility, located in
11 Spokane, Washington, as a location where “[w]ork under this effort
12 shall be performed.” Watt Decl., Exh. O at U.S. Bates 001607.

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14 49. It was at CIA headquarters in Langley that Defendants “put together
15 the list of techniques” that would serve as the basis of the CIA
16 program. Watt Decl., Exh. F (Jessen Dep.) 129:3–10.

17 50. Defendants’ own invoices reflect that they regularly billed the United
18 States government for “consultation” work on the CIA program that
19 they performed from the United States. *See, e.g.*, Ladin Decl., Exh. P
20 (redacted invoices) at MJ00023539, MJ00023543–63.

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22 51. Defendants met at Langley to evaluate which of their torture methods
23 they thought “were required for the conditioning process” and which
24 methods Defendants “now believed were completely unnecessary.”
25 Watt Decl., Exh. C (Mitchell Manuscript) at MJ00022862.

26 52. In 2007, Secretary of State Condoleezza Rice wanted a personal

1 briefing on the program from its original architects. Defendants,
2 accompanied by John Rizzo, met with the Secretary in the United
3 States. Watt Decl., Exh. D (Rizzo Dep.) 68:14–69:8. During the
4 discussion of sleep deprivation, the Secretary of State expressed
5 concern that Defendants’ method—which involved shackling a
6 prisoner’s hands to an overhead tether—evoked an image similar to
7 the prisoner abuse scandal that had taken place at Abu Ghraib. ECF
8 No. 183-11 at U.S. Bates 001175–76. Defendants “indicated the
9 possibility of devising alternative methods to deprive sleep,” and
10 resolved to “work on alternative methods for implementing sleep
11 deprivation EIT and propose courses of action.” *Id.* at U.S. Bates
12 001176–77.

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15 53. Defendants played additional leading roles in the program from the
16 United States, including “provid[ing] high-level briefings to the 7th
17 floor,” i.e., to CIA’s top management, as well as the production of
18 papers evaluating and justifying the use of “coercive physical
19 pressures” as part of interrogation. Watt Decl., Exh. Q at U.S. Bates
20 001909; Watt Decl., Exh. R at U.S. Bates 002285–2291.

21
22 54. Defendant Jessen testified that “HVDs were only the highest valued
23 people, like KSM, and Zubaydah and Nashiri and Gul Rahman.” Watt
24 Decl., Exh. F (Jessen Dep.) 201:1–13. Defendant Jessen admitted that,
25 at COBALT, Mr. Rahman “became the focus” of the “High Value
26 Target cell,” and that Defendant Jessen personally evaluated whether

1 “HVT [High Value Target] enhanced measures” should be used on Mr.
2 Rahman. ECF No. 175-18 at U.S. Bates 001057; Ladin Decl., Exh. S
3 at U.S. Bates 001289.
4

5 55. The CIA transferred numerous “high value detainees” from its own
6 custody to “military custody.” Ladin Decl., Exh. C (Mitchell
7 Manuscript) at MJ00022862.

8 56. In response to a letter from John Rizzo, the Office of Legal Counsel
9 provided advice to the CIA based on the CIA’s representation that
10 “once the CIA assesses that a detainee no longer possesses significant
11 intelligence value, the CIA seeks to move the detainee into alternative
12 detention arrangements.” ECF No. 176-9 at U.S. Bates 000289.

13 57. While at COBALT, Defendant Jessen personally requested permission
14 to apply “the following [moderate value target] interrogation pressures
15 . . . as deemed appropriate by [Jessen], . . . isolation, sleep
16 deprivation, sensory deprivation (sound masking), facial slap, body
17 slap, attention grasp, and stress positions” to a prisoner held there.
18 Ladin Decl., Exh. S at U.S. Bates 001287.
19

20 58. Defendant Jessen also used “enhanced interrogation techniques” and
21 “rough stuff” on another CIA detainee who was classified as a
22 “medium value detainee.” A contemporaneous CIA report states that
23 “Several medium value detainees have been detained and interrogated
24 at COBALT. For example . . . Ammar al-Baluchi. . . Although these
25 individuals were not planners, they had access to information of
26

1 particular interest, and the Agency used interrogation techniques at
2 COBALT to seek to obtain this information.” ECF No. 176-25 at U.S.
3 Bates 11392–11393. Defendant Jessen was “involved in Ammar al-
4 Baluchi’s enhanced interrogations.” After “[t]he rough stuff was over,”
5 Defendant Mitchell “help[ed] debriefers elicit his cooperation.” Ladin
6 Decl., Exh. C (Mitchell Manuscript) at MJ00022811. Many years later,
7 Defendant Mitchell wrote that al-Baluchi was a “high value detainee.”
8 *Id.* at MJ00022822.

9
10 59. There was no separate “enhanced interrogation techniques” program
11 apart from the methods that Defendants initially recommended for use
12 on Abu Zubaydah, which were later standardized throughout the CIA
13 program. Watt Decl., Exh. D (Rizzo Dep) 64:8-23; 101:20–102:15;
14 ECF No. 182-32 at U.S. Bates 001170-72.
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1 **PLAINTIFFS' RESPONSE TO**
2 **DEFENDANTS' STATEMENT OF UNDISPUTED FACTS**

3 Plaintiffs Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud, and
4 ObaidUllah (as personal representative of Gul Rahman), pursuant to Rule 56 of
5 the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules for the
6 United States District Court, Eastern District of Washington, file this Response to
7 Defendants' Statement of Undisputed Facts in Support of Their Motion for
8 Summary Judgment [ECF No. 170].
9

10
11 **I. DR. MITCHELL CONTRACTS WITH THE GOVERNMENT**

12 1. Drs. James Elmer Mitchell ("Dr. Mitchell") and John "Bruce"
13 Jessen ("Dr. Jessen") are psychologists. (Tompkins Decl. Exh. 1, Deposition of
14 James Elmer Mitchell ("Mitchell Tr.") at 23:5-9; Exh. 2, Deposition of Dr. John
15 Bruce Jessen ("Jessen Tr.") at 18:1-6.)

16 Undisputed.

17 2. On August 8, 2001, the United States Government ("U.S." or the
18 "Government") contracted with Dr. Mitchell as an independent contractor to
19 "identify reliable and valid methods of conducting cross-cultural psychological
20 assessments." (*Id.*, Exh. 7 at US Bates 000025.)

21 Undisputed.

22 3. The contract's term was September 1, 2001 until August 31, 2002.
23 (*Id.*, Ex. 7 at US Bates 000027).

24 Undisputed.

25 4. On September 11, 2001, Al-Qaida attacked the United States
26 resulting in the death of thousands of innocent American civilians. *See*
Defendants' Motion to Take Judicial Notice filed May 22, 2017, ECF No. 165.

1
2 Plaintiffs do not dispute the truth of the facts contained in paragraph 4.
3 However, in accordance with the Court's Order on Defendants' Motion to Take
4 Judicial Notice, Plaintiffs reserve the right to contest the admissibility of these
5 facts at trial. *See* ECF No. 189 (“[T]he question of if, and in what manner [the
6 9/11 facts] would be presented to a jury is a more complicated question which
7 would require Federal Rule of Evidence 403 balancing and other
8 considerations.”).

9
10 5. In response, the Department of Justice's (“DOJ”) Office of Legal
11 Counsel (“OLC”) conducted an extensive analysis of President George W.
12 Bush's authority to use “[f]orce” to “both retaliate for [the September 11]
13 attacks, and to prevent and deter future assaults on the Nation.” (Tompkins
14 Decl. Exh. 10 at US Bates 000560.)

15 Plaintiffs do not dispute that the referenced document, U.S Bates 000560,
16 contains the quotations in paragraph 5. However, Plaintiffs object to
17 Defendants' characterization of the cited document as “extensive” as subjective
18 and argumentative.

19
20 6. On September 17, 2001, President Bush signed a Memorandum of
21 Notification that expressly authorized the Central Intelligence Agency (“CIA”)
22 “to capture and detain individuals who pose a continuing, serious threat of
23 violence or death to U.S. Persons and interests or who are planning terrorist
24 activities” (“MON”). (*Id.*, Ex. 9 at US Bates 000289; Declaration of John Rizzo
25 (“Rizzo Decl.”) ¶ 4.)

26 Undisputed, except that Plaintiffs object to the extent that the cited
document constitutes hearsay.

7. Pursuant to the MON, the Director of the CIA directed the CIA's
Counterterrorism Center (“CTC”) to establish a program “to capture, detain, and
interrogate the highest-value al-Qa'ida operatives to obtain critical threat and
actionable intelligence.” (Tompkins Decl., Exh. 34 at US Bates 001631.)

Undisputed, except that contrary to Defendants Fact #7 asserting that the
program was “pursuant to the MON,” the MON does not include the word
“interrogate.”

1 8. One purpose of the program was to collect threat and actionable
2 intelligence. (*Id.*)

3 Undisputed.

4 9. CTC is the organization within the CIA that carries out covert
5 action, foreign intelligence operations, and counter-terrorism analysis.
6 (Tompkins Decl., Exh. 3, Rodriguez Tr. at 20:12-17.)

7 Undisputed.

8 10. The CIA, as part of this program, began building secret detention
9 facilities referred to as “black-sites.” (Rizzo Decl. ¶¶ 5-6.)

10 Undisputed.

11 11. On December 21, 2001, the U.S., specifically the CIA’s Office of
12 Technical Service (“OTS”), entered into another contract with Dr. Mitchell, this
13 time for him to provide “consultation and research on counterterrorism and
14 special ops.” (Declaration of Jose Rodriguez (“Rodriguez Decl.”), Exh. A at US
15 Bates 000037; Tompkins Decl. Ex. 3, Rodriguez Tr. at 23:19-24.)

16 Undisputed.

17 12. This contract’s term was January 1, 2002 until December 31, 2002.
18 (Rodriguez Decl., Ex. A at US Bates 000039.)

19 Undisputed.

20 21 13. The contract indicates that Dr. Mitchell was eligible for this
22 contract because he was “an expert in conducting applied research in high-risk
23 operational settings to provide consultation and research in the area of counter-
24 terrorism and cover action/covert influence operations.” (*Id.*, Exh. A at US
25 Bates 000042.)

26 Undisputed.

1 14. By June 13, 2002, Dr. Mitchell's contract was again expanded for
2 him to serve as a "consultant to CTC special programs." (Tompkins Decl., Ex. 8
3 at US Bates 000061-64.)

4 Undisputed, except that contrary to Defendants' Fact #14, the contract is
5 dated June 13, 2003, not 2002.

6 15. The daily rate Mitchell negotiated with the CIA was less than other
7 deployed psychologists were paid to do behavioral consultation on
8 interrogations at places like Gitmo. (Tompkins Decl., Ex. 1, Mitchell Tr. at
218:12-220:8.)

9 Contrary to Defendants' Fact # 15, which is supported only by Defendant
10 Mitchell's uncorroborated, self-serving, apparently hearsay-based testimony,
11 evidence in the record establishes that the rate Defendants were paid was higher
12 than others. The Senate Intelligence Committee Report states that the \$1800/
13 day that Defendants were paid was "four times" what other interrogators—who
14 were not authorized to use Defendants' methods—were paid. Watt Decl., Ex. T
(SSCI Report) at 66.

15 16. At the time, Dr. Mitchell had 13 years of experience in the U.S. Air
16 Force's ("USAF") Survival, Evasion, Resistance, and Escape ("SERE") training
program. (Tompkins Decl., Ex. 25 at US Bates 001352.)

17 Undisputed.

18 17. Dr. Mitchell was the SERE Psychologist for the USAF Survival
19 School from 1989 until 1996. In addition, for over six years, Dr. Mitchell was
20 part of a counterterrorism unit which relied on SERE training to protect
21 classified information. In both assignments, he was responsible for becoming
22 familiar with different ways that foreign and domestic enemy organizations
23 approached interrogations. (*Id.*, Ex. 1, Mitchell Tr. at 46:2-14; 58:19-20;
59:16-20; 129:2-3.)

24 Undisputed

25 18. Dr. Mitchell often collaborated with Dr. Jessen, who was at the
26 time employed by the Department of Defense ("DoD") and who had 19 years of
SERE experience. (Tompkins Decl., Ex. 25 at US Bates 001352.)

1
2 Undisputed

3 19. The SERE training program falls under the DoD Joint Personnel
4 Recovery Agency (“JPRA”). JPRA is responsible for SERE training, which is
5 offered by the U.S. Army, Navy, and Air Force to personnel who face the
6 greatest risk of being captured during military operations. SERE students are
7 taught how to survive in various terrain, evade and endure captivity, resist
8 interrogation in “hostile” areas, and conduct themselves to prevent harm to
9 themselves and fellow prisoners of war. (*Id.*, Exh. 25 at US Bates 001352; Exh.
10 34 at US Bates 001633; Exh. 2, Jessen Tr. at 62:22-63:2; Exh. 1, Mitchell Tr. at
11 58:5-13.)

12 Undisputed.

13 20. At SERE, Dr. Jessen monitored students for problems experienced
14 while going through the program. He also helped design advanced courses that
15 specifically prepared trainees for capture by terrorist groups. To create these
16 advanced courses, Dr. Jessen was required to know and understand the
17 techniques, tactics, and procedures of the various terrorist groups. (*Id.*, Exh. 2,
18 Jessen Tr. at 30:5-21, 34:3-35:11, 71:22-73:6.)

19 Undisputed.

20 21. Pursuant to the December 21, 2001 contract, Dr. Mitchell was
21 commissioned to review the “Manchester Manual” and other Al-Qa’ida
22 documents. The Manchester Manual had been stolen from the Army Special
23 Operations School at Fort Bragg and contained instructions for resistance to
24 interrogation. (*Id.*, Exh. 2, Jessen Tr. at 68:18-69:16, 76:14-24; Ex. 1, Mitchell
25 Tr. at 163:22-164:6; Ex. 20 at US Bates 001099.)

26 Undisputed, except for the clarification that the Manchester Manual was
found by U.K. police in Manchester, England, and Defendants themselves
describe the document as “captured Al Qaeda training manuals.” ECF No. 176-
23 (U.S. Bates #001149)

22. Dr. Mitchell asked if Dr. Jessen could help in this review, which the
CIA permitted. (Tompkins Decl. Exh. 2, Jessen Tr. at 68:18-69:16, 76:14-24.)

1 Undisputed.

2 23. After conducting the review, Drs. Mitchell and Jessen drafted a
3 paper on Al-Qaida’s resistance to interrogation techniques, titled “Recognizing
4 and Developing Countermeasures to Al-Qa’ida Resistance to Interrogation
5 Techniques: A Resistance Training Perspective” (the “Resistance Training
6 Perspective Paper”). (*Id.*, Exh. 25 at US Bates 001352; Exh. 23 at US Bates
001148-57; Exh. 2, Jessen Tr. at 69:17-23.)

7 Undisputed.

8 24. In the Resistance Training Perspective Paper, Drs. Mitchell and
9 Jessen identified ways to identify whether a subject was using the resistance
10 techniques articulated in the Manchester Manual during interrogations, and
11 identified countermeasures the interrogator could use to combat such resistance
12 techniques. None of the countermeasures consisted of coercive pressures—
13 physical or otherwise. (*Id.*, Exh. 2, Jessen Tr. at 77:16-78:12; Exh. 23 at US
Bates 001148-57; Exh. 20 at US Bates 001099.)

14 Undisputed, except that the truth of the analysis and conclusions of the
15 Paper is contradicted by evidence in the record that Defendants could not
16 reliably identify resistance techniques or countermeasures. For example,
17 Defendants assessed Abu Zubaydah as possibly resistant, but the record shows
18 that he did not in fact resist providing threat information because he did not have
19 any. ECF No. 182-13 (U.S. Bates #002020) (pronouncing the aggressive phase
a success because they “confidently assess[ed] that he [did] not possess
undisclosed threat information, or intelligence that could prevent a terrorist
event.”).

20
21 **II. ABU ZUBAYDAH IS CAPTURED**

22 **A. Zubaydah is Captured and Hospitalized**

23 25. Abu Zubaydah (“Zubaydah”) was captured by the U.S. on March
24 27, 2002. (*Id.*, Exh. 25 at US Bates 001351.)

25 Undisputed.

1 26. Zubaydah was the first so-called High-Value Detainee (“HVD”) to
2 be captured. (Rodriguez Decl. ¶ 15; Rizzo Decl. ¶ 7; Tompkins Decl. Exh. 4,
3 Deposition of John Rizzo (“Rizzo Tr.”) at 18:21-25, 19:1; Ex. 3, Rodriguez Tr.
4 at 146:15-24.)

5 Disputed to the extent that at the time Abu Zubaydah was captured, the
6 term “HVD” did not exist. Watt Decl., Exh. F (Jessen Dep.) 200:10–13.

7 27. HVD has a very specific meaning. An HVD is defined as an
8 enemy of the United States, in particular, someone who is believed to have
9 intelligence involving threats to the United States, its people, or its interests
10 overseas. (Tompkins Decl., Exh. 3, Rodriguez Tr. at 145:1-13, 145:5-9.)

11 Contrary to Defendants’ Fact #27, facts in the record establish that there
12 was not a specific or consistent meaning of HVD in the CIA program. At times,
13 the CIA told the Justice Department’s Office of Legal Counsel that to qualify as
14 an HVD, and thereby be eligible for application of “enhanced interrogation
15 techniques,” a prisoner had to be a “senior member” of al-Qa’ida or an
16 associated terrorist group with “knowledge of imminent terrorist threats” or
17 “direct involvement in planning and preparing” terrorist actions.” Watt Decl.,
18 Exh. T (SSCI Report) 425. On the other hand, other purported HVDs were
19 never suspected of having information on, or a role in, terrorist plotting. *Id.*

20 28. Zubaydah was injured during his capture; a number of bullets
21 caused a large leg wound. As a result, Zubaydah was provided with medical
22 care. (Rizzo Decl., Exh. L at US Bates 001850; Tompkins Decl., Exh. 25 at US
23 Bates 001352.)

24 Undisputed.

25 **B. Dr. Mitchell is Contacted**

26 29. In anticipation of Zubaydah’s release from the hospital, the CIA
and Federal Bureau of Investigation (“FBI”) assembled a team that would
formally interrogate Zubaydah at a different site. (Tompkins Decl., Ex. 25 at
US Bates 001352; Exh. 20 at US Bates 001099.)

Undisputed.

1 30. A CTC attorney recommended that Dr. Mitchell be made part of
2 the interrogation team. (*Id.*, Ex. 20 at US Bates 001099.)

3 Undisputed.

4 31. OTS had previously recommended Dr. Mitchell to CTC/LGL.
5 CTC decided to hire him to provide psychological consultation to CTC to
6 support its efforts to debrief and interrogate Zubaydah. (Rodriguez Decl. ¶¶ 12,
7 14; Tompkins Decl., Exh. 3, Rodriguez Tr. at 26:3-10, 32:18-20, 36:25-37:2.)

8 Undisputed.

9 32. The CIA thereafter asked Dr. Mitchell if he would deploy with the
10 interrogation team to observe Zubaydah's interrogations and help the CIA
11 psychologist that was tasked to develop countermeasures to Zubaydah's
12 resistance. Dr. Mitchell agreed to be part of the interrogation team. (Tompkins
13 Decl., Exh. 1, Mitchell Tr. at 214:2-11; 217:14-21.)

14 Undisputed.

15 33. Simply stated, the CIA determined it needed to do something
16 different from what had been done. (*Id.*, Exh. 3, Rodriguez Tr. at 37:3-23.)

17 Undisputed except to the extent that this statement purports to present a
18 uniform view within the CIA. The record shows that, to the contrary, CIA
19 officers were "concerned that future public revelation of the CTC Program is
20 inevitable and will seriously damage Agency officers' personal reputations as
21 well as the reputation and effectiveness of the Agency itself." ECF No. 176-25
22 (U.S. Bates #001441).

23 34. On April 1, 2002, a cable was sent from CIA Headquarters
24 ("HQS") to the black-site where Zubaydah was being held, GREEN. The cable
25 transmitted the paper Drs. Mitchell and Jessen had drafted entitled Recognizing
26 and Developing Countermeasures to Al-Qa'ida Resistance to Interrogation
Techniques: A Resistance Training Perspective. The information was sent "at
the request of CTC/OPS and ALEC . . . for _____ use with the interrogation of
Abu Zubaydah." (*Id.*, Exh. 49 at US Bates 002006-14; Exh. 3, Rodriguez Tr. at
182:15-21.)

1 Undisputed.

2 35. On April 3, 2002, Dr. Mitchell signed a proposed contract
3 modification to provide on-site “psychological consultation to CTC in
4 debriefing and interrogation operations for Quick Response Tasking.” (*Id.*, Exh.
5 21 at US Bates 001101.)

6 Undisputed.

7 36. On April 3, 2002, CTC met with several senior operational and
8 security individuals to develop an interrogation strategy for Zubaydah. The
9 strategy was then communicated to GREEN via cable. (Tompkins Decl., Exh.
10 45 at US Bates 001923025.)

11 Undisputed.

12 37. The cable stated that an “operational psychologist, ___ office of
13 security, ___ and an OTS/OAD ___ contract psychologist Mitchell who has
14 extensive military background in interrogation” would travel to GREEN to assist
15 in planning Zubaydah’s interrogation. (*Id.*, Exh. 45 at US Bates 001923-25.)

16 Undisputed.

17 38. The cable also indicated that the CIA expected the interrogation to
18 be difficult because Zubaydah had likely received counter-interrogation training.
19 (*Id.*, Exh. 45 at US Bates 001923-25; Rizzo Decl., Exh. D at US Bates 001608.)

20 Undisputed.

21 39. On April 4, 2002, Dr. Mitchell’s December 21, 2001, contract with
22 the CIA was modified to reflect CTC’s hiring him to provide additional services.
23 (Rodriguez Decl., Exh. B at US Bates 000047.)

24 Undisputed, except for clarification that the referenced contract indicates
25 that the purpose of the modification was to increase the contract value from
26 \$10,000 to \$101,600.

1 **III. PLANNING FOR ZUBAYDAH’S INTERROGATION –**
2 **APRIL 2002**

3 40. From the outset, the CIA established that the CIA’s Station
4 Representative was responsible for all activities at GREEN. (*Id.*, Exh. C at US
5 Bates 001779-82.)

6 Undisputed, except that the cited cable also indicates that various
7 individuals would assume a variety of roles in relation to Abu Zubaydah’s
8 interrogation at GREEN.

9 41. At GREEN, the Chief of Base reported to the Station
10 Representative, who reported to the Chief of Station, who reported back to
11 personnel at CIA Headquarters. (Mitchell Decl. ¶ 6.)

12 Undisputed.

13 42. In April 2002, Dr. Mitchell became part of the psychological team
14 monitoring Zubaydah’s interrogation. This team was led by a full-time CIA
15 officer who was a psychologist. (Rodriguez Decl. at ¶¶ 17, 22; Tompkins Decl.,
16 Exh. 41 at US Bates 001777-78; Exh. 3, Rodriguez Tr. at 149:19-23; Exh. 1,
17 Mitchell Tr. at 214:2-11, 217:14-21, 232:4-233:16.)

18 Undisputed.

19 43. Dr. Mitchell’s role was to observe the interrogation conducted by
20 the CIA and make recommendations to CTC as to how Zubaydah’s resistance to
21 interrogation could be overcome. (Rodriguez Decl. at ¶¶ 17, 22; Tompkins
22 Decl., Ex. 41 at US Bates 001777-78; Exh. 3, Rodriguez Tr. at 149:19-23; Exh.
23 1, Mitchell Tr. at 214:2-11, 217:14-21, 232:4-233:16.)

24 Undisputed.

25 44. While in this role, Dr. Mitchell reported directly to HQS and Jose
26 Rodriguez (“Rodriguez”), who was aware of Mitchell’s activities. (Rodriguez
Decl. ¶ 18)

 Undisputed.

1 45. Rodriguez was CTC's Chief Operating Officer from September
2 2001 – May 2002, when he became the Director of CTC. In these roles he had a
3 reporting channel to the Director of the CIA. (Rodriguez Decl. ¶ 4; Tompkins
4 Decl., Exh. 3, Rodriguez Tr. at 19:4-7, 20:6-11, 21:10-14.)

5 Undisputed.

6 46. On April 7, 2002, the three-member behavior interrogation team
7 (including Dr. Mitchell) viewed the holding compound and interrogation room
8 where Zubaydah would be transferred after he was released from the hospital.
9 They suggested several modifications to create an atmosphere that enhances the
10 strategic interrogation process. (Tompkins Decl., Exh. 48 at US Bates 0019999-
11 2000; Rizzo Decl., Exh. A at US Bates 001825-28.)

12 Undisputed, except that the terms “enhances” and “strategic” are
13 subjective opinion, not fact. The referenced cable speaks for itself: “deliberate
14 manipulation of the environment is intended to cause psychological
15 disorientation, and reduced psychological wherewithal for the interrogation, the
16 deliberate establishment of psychological dependence upon the interrogator as
17 well as an increased sense of learned helplessness,” and Defendant Mitchell
18 “recommended that Zubaydah not be provided with any amenities, his sleep be
19 disrupted and that noise be fed into Zubaydah’s cell.” Am. Answer, ECF No. 77
20 ¶ 34.

21 47. The CIA psychologist was in charge of the behavioral side of the
22 interrogation. (Tompkins Decl., Exh. 41 at US Bates 001777-78; Exh. 1,
23 Mitchell Tr. at 236:11-18.)

24 Undisputed, except to clarify that while the cited document states that
25 “one officer . . . is leading the psychological team assigned to the interrogation,”
26 it also states that “another psychologist, Dr. James E. Mitchell, a contractor with
extensive experience in interrogation techniques and resistance to these
techniques was also included on the team.”

48. The recommended modifications included painting the room white,
installing halogen lights in both the holding cell and the interrogation room,
installing a white curtain to partition off the holding cell from the interrogation
room, building a vestibule to provide added control of potential orientation cues,
the placement of short nap carpeting on the walls of the interrogation room and

1 the sanding of the holding cell bars. (Tompkins Decl., Exh. 48 at US Bates
2 001999-2000.)

3 Undisputed.

4
5 49. Around the same time, while Zubaydah was still in the hospital, he
6 was strategically permitted to establish a relationship of respect and tolerance
7 with his then interrogators so that he would be more willing to disclose
8 information that would be shameful or difficult. Despite these efforts, Zubaydah
9 provided only what was regarded as “disposable information” that confirmed
10 historical events and activities. (Rizzo Decl., Exh. A at US Bates 001825-28.)

11
12 Contrary to Defendants Fact #49, Defendant Mitchell’s assessment
13 (joined by others on the CIA team) that Abu Zubaydah was providing only
14 “disposable information,” is disputed because the record establishes that Abu
15 Zubaydah had already provided information on Jose Padilla and Khalid Sheikh
16 Mohamed. Watt Decl., Exh. A (Rodriguez Dep.) 246:13–247:4; ECF No. 176-
17 11 (U.S. Bates #000640). FBI agents involved in Abu Zubaydah’s interrogation
18 likewise noted that the CIA’s assessment (in which Defendant Mitchell was
19 involved) that Abu Zubaydah “is offering ‘throw away information’ and holding
20 back from providing threat information” was contradicted by the fact that FBI
21 agents had successfully elicited “critical information” from Abu Zubaydah
22 without resorting to torture. Watt Decl., Exh. T (SSCI Report) 27. As was
23 revealed once the CIA took control of the interrogation and it came to an end,
24 Defendant Mitchell’s assessment (joined by others in the CIA) that Abu
25 Zubaydah was withholding threat information was erroneous. *Id.* Cables during
26 the aggressive phase of Abu Zubaydah’s interrogation repeatedly confirm that
he had no threat information. ECF No. 182-13 (U.S. Bates #002020)
(pronouncing the aggressive phase a success because Defendants and the CIA
team “confidently assess[ed] that he [did] not possess undisclosed threat
information, or intelligence that could prevent a terrorist event.”).

23 50. As a result, CTC further developed the details of the contemplated
24 next stage of Zubaydah’s interrogation. According to Zubaydah’s then-existing
25 interrogation plan, he would be transported from the hospital to the interrogation
26 room at detention site GREEN in a state of pharmaceutical unconsciousness to
decrease security concerns and disorient him when he awakened. (*Id.*, Ex. A at
US Bates 001825-28; Tompkins Decl., Ex. 1, Mitchell Tr. at 223:11-224:17.)

1 Undisputed.

2 51. The physical environment in the interrogation room was meant to
3 further disorient Zubaydah and remove his ability to control the environment.
4 This was done through the use of bright (not physically harmful) lights in an all-
5 white environment, white noise produced by sound “masking equipment” (not
6 physically harmful), no natural light, and no routine schedule. Additionally,
7 Zubaydah was to be kept awake for one-two days, and interrogators were not to
8 respond to his requests or demands. (Tompkins Decl., Exh. 55 at US Bates
9 002169-72; Rizzo Decl. ¶ 10; Rodriguez Decl. ¶ 21.)

10 Contrary to Defendants’ Fact #51, the evidence cited does not establish
11 whether the methods described were or were not actually physically (let alone
12 psychologically) harmful, regardless of the description in the cable.

13 52. The goal of this stage of interrogation was to develop three
14 psychological conditions, one of them being helplessness, to enhance
15 Zubaydah’s cooperation and willingness to discuss vital intelligence. The
16 purpose was to reduce Zubaydah’s “sense of hope that his well-honed counter-
17 measure interrogation skills will help him from disclosing important
18 intelligence” by making it difficult for him to concentrate, plan or resist the
19 interrogation process. (Tompkins Decl., Exh. 55 at US Bates 002169-72;
20 Rodriguez Decl. ¶ 20.)

21 Contrary to Defendants’ Fact #52, the record shows that the stated goal of
22 this stage of interrogation was the development of “learned helplessness” and
23 not some other type of “helplessness.” ECF No. 182-4 (US Bates #001826).

24 **IV. HELPLESSNESS AND LEARNED HELPLESSNESS**

25 53. “Helplessness” as used by psychologists has two different
26 meanings. One meaning is the feeling of helplessness that occurs when people
are placed in a situation that they feel they cannot escape. When experiencing
helplessness, people often have a difficult time organizing and executing a
course of action. The goal of SERE training is to induce a feeling of
helplessness so that the trainee can learn how to continue to search for a way out
despite the helpless feeling. (Tompkins Decl., Exh. 1, Mitchell Tr. at 76:3-
77:20, 103:18-22.)

1 Contrary to Defendants' Fact #53, the record does not establish that
2 "helplessness" has two different meanings except from Defendant Mitchell's
3 self-serving and unsubstantiated testimony. The record establishes that the goal
4 of Defendants' methods was "learned helplessness" and not the type of
5 "helplessness" described in asserted Fact #53. Watt Decl., Exh. E (U.S. Bates
6 #001618) (Mitchell's qualifications noting that sometimes the appropriate
7 mental state for a detainee is "learned helplessness"); ECF No. 177-29
8 (Background Paper on CIA's Combined Use of Interrogation Techniques,
9 ACLU-RDI 4586) at p.2 ("The goal of interrogation is to create a state of
10 learned helplessness"); ECF No. 182-4 (US Bates #001826) (one of the
11 psychological states the methods aimed to induce was "learned helplessness.");
12 ECF No. 182-13 (U.S. Bates #002020) (noting that "psychological and physical
13 pressures have been applied to induce complete helplessness, compliance and
14 cooperation from [Abu Zubaydah].").

11 54. The other meaning is "learned helplessness" as discussed by Dr.
12 Martin Seligman ("Dr. Seligman"). This is a profound level of helplessness that
13 leads to a feeling of depression, passivity, and withdrawal. This level of
14 helplessness would be catastrophic in SERE training because the trainee would
15 no longer seek a solution. (Tompkins Decl., Ex. 1, Mitchell Tr. at 77:6-20,
16 273:23-274:6, 247:10-277:10.)

16 Undisputed, except that contrary to Defendants' Fact #54, and for the
17 reasons stated in response to Fact #53, the record does not establish that
18 "helplessness" has two different meanings.

19 55. Dr. Mitchell explained that the Army Field Manual used by the
20 U.S. today contains guidance about placing an interrogation subject into a
21 "temporary" situation they "perceive[] to be helpless," and then giving them a
22 way out of the situation by answering questions. Drs. Mitchell and Jessen
23 explained helplessness in the same way to the CIA. (Tompkins Decl., Ex. 1,
24 Mitchell Tr. at 76:3-79:5; 87:17-88:16; 97:6-100:24.)

23 Defendants' Fact #55 is disputed, because it relies upon their inaccurate
24 characterization of the Army Field Manual ("AFM") rather than the AFM itself.
25 In fact, the AFM operative in 2002-2003 describes and prohibits Defendants'
26 methods, including sleep deprivation, denial of food, imprisonment in extremely
confined spaces, and forcing individuals to maintain stress positions as torture.
Watt Decl., Exh. T at 1-8 to 1-9.

1
2 56. Drs. Mitchell and Jessen did not advocate for the use of “learned
3 helplessness.” (Tompkins Decl., Ex. 1, Mitchell Tr. at 76:3-79:5; 87:17-88:16;
4 97:6-100:24.)

5 Contrary to Defendants’ Fact #56, the record is clear that Defendants
6 advocated for the use of “learned helplessness.” Watt Decl., Exh. E (U.S. Bates
7 #001618) (Mitchell’s qualifications noting that sometimes the appropriate
8 mental state for a detainee is “learned helplessness”); ECF No. 177-29
9 (Background Paper on CIA’s Combined Use of Interrogation Techniques,
10 ACLU-RDI 4586) at p.2. (“The goal of interrogation is to create a state of
11 learned helplessness”); ECF No. 182-4 (US Bates #001826) (one of the
12 psychological states Defendants’ methods aimed to induce was “learned
13 helplessness.”). At the end of the program applied to Abu Zubaydah, in which
14 Defendants personally applied their methods, a cable noted that “psychological
15 and physical pressures have been applied to induce complete helplessness,
16 compliance and cooperation from the subject.” ECF No. 182-13 (U.S. Bates
17 #002020).

18 57. CIA officers often misused the term “learned helplessness” in
19 documents because they did not understand the distinction between helplessness
20 to induce cooperation—as is utilized in SERE—and “learned helplessness,” as
21 described by Dr. Seligman, which would inhibit cooperation. (Tompkins Decl.,
22 Ex. 2, Jessen Tr. at 161:20-164:9)

23 Contrary to Defendants’ Fact #57, the record shows that CIA officers used
24 the term “learned helplessness” in the sense that Defendants contemporaneously
25 used it. Both Mr. Rizzo and Mr. Rodriguez recalled Defendants’ describing
26 “learned helplessness” as a goal of the Abu Zubaydah interrogation. Watt Decl.,
Exh. D (Rizzo Tr.) 128:08–129:8; Watt Decl., Exh. V (Rodriguez Decl.) ¶ 38
 (“in working to achieve this goal, the [use of Defendants’ methods] could
produce a range of mental states in the subject, including, but not limited to,
fear, learned helplessness, compliancy, or false hope.”) This strategy was
ultimately adopted by the CIA. ECF No. 177-29 (Background Paper on CIA’s
Combined Use of Interrogation Techniques, ACLU-RDI 4586) at p.2. (“The
goal of interrogation is to create a state of learned helplessness”).

58. Drs. Mitchell and Jessen would correct the CIA whenever the term
“learned helplessness” was “used inappropriately.” (Tompkins Decl., Exh. 1,

1 Mitchell Tr. at 103:13-104:12; 108:1-20; 274:10-277:10; Tompkins Decl., Ex. 2,
2 Jessen Tr. at 160:13-163:22; 163:23-164:23; 166:21-167:11; 168:10-169:24.)

3 Contrary to Defendants' Fact #58, the record establishes that Defendants
4 supported the use of "learned helplessness" in the CIA program. In describing
5 his qualifications, Dr. Mitchell noted that "learned helplessness" is one of the
6 psychological states that interrogators should seek to induce in a detainee. Watt
7 Decl., Exh. E (U.S Bates #001618) (Mitchell's qualifications noting that
8 sometimes the appropriate mental state for a detainee is "learned helplessness").
9 Both Mr. Rizzo and Mr. Rodriguez recalled Defendants' describing "learned
10 helplessness" as a goal of the program applied to Abu Zubaydah. Watt Decl.,
11 Exh. D (Rizzo Tr.) 128:08–129:8; Watt Decl., Exh. V (Rodriguez Decl.) ¶ 38
12 ("in working to achieve this goal, the [use of Defendants' methods] could
13 produce a range of mental states in the subject, including, but not limited to,
14 fear, learned helplessness, compliancy, or false hope.") This strategy was
15 ultimately adopted by the CIA. ECF No. 177-29 (Background Paper on CIA's
16 Combined Use of Interrogation Techniques, ACLU-RDI 4586) at p.2. ("The
17 goal of interrogation is to create a state of learned helplessness").

14 V. INITIAL LEGAL APPROVAL OF NONTRADITIONAL 15 INTERROGATION TECHNIQUES

16 59. In or around early April 2002, attorneys and other personnel from
17 CTC met with John Rizzo ("Rizzo"), who was then the CIA's Chief Legal
18 Officer, to provide a briefing. During the briefing, CTC personnel told Rizzo
19 that CTC had "devised an interrogation plan for Zubaydah that contemplated the
20 use of certain nontraditional interrogation techniques." Following this meeting,
21 Rizzo assumed responsibility for determining the legality of the proposed
22 techniques and answering legal questions posed by Rodriguez and other CIA
23 personnel. (Rizzo Decl. ¶¶ 9, 11; Tompkins Decl., Exh. 4, Rizzo Tr. at 18:18-
24 25, 19:1-5; 170:10-15.)

25 Undisputed.

26 60. Rizzo subsequently instructed CTC attorneys (referred to herein as
"CTC/LGL") to research whether the contemplated proposed non-traditional
interrogation techniques were legal. (Rizzo Decl. ¶ 12; Tompkins Decl., Ex. 4,
Rizzo Tr. at 30:21-25, 31:5.)

1 Undisputed.

2 61. CTC/LGL preliminarily concluded that the techniques proposed by
3 CTC appeared to be lawful; however Rizzo also wanted to confer with the DOJ
4 to secure a written opinion regarding the techniques' legality. (Rizzo Decl. ¶¶
5 12-14; Tompkins Decl., Exh. 4, Rizzo Tr. at 28:23-25, 29:1, 31:8-10, 47:4-19,
6 49:16-25, 182:18-23.)

7 Contrary to Defendants' Fact #61, (1) it was the interrogation team at
8 GREEN, including Defendant Mitchell, not CTC, that proposed to subject Abu
9 Zubaydah to Defendants' methods. ECF No. 182-6 (U.S Bates #001999-2000);
10 ECF No. 182-4 (U.S Bates #001825-28); Am. Answer, ECF No. 77 ¶ 34; and
11 (2) the portions of the Rizzo transcript cited do not support Mr. Rizzo having
12 conferred with the Justice Department regarding these methods. They refer
13 instead to Mr. Rizzo's later discussions with the Justice Department regarding
14 the legality of Defendants' "enhanced interrogation techniques."

15 62. CTC/LGL sent a cable to GREEN in April 2002. The cable stated:
16 "At this time, none of the interrogation methods described by _____ [not Drs.
17 Mitchell or Jessen] nor any of the methods discussed at headquarters with the
18 interrogation team, would appear to violate these [legal] prohibitions; nor would
19 they appear to violate any of the additional provisions of the U.S. Federal (or
20 state) law that apply to the conduct of interrogations by USG personnel." The
21 legal provisions at issue included the Geneva Conventions and 18 U.S.C. §§
22 2340-2340B of the U.S. Code. But, the cable also stated that "a more detailed
23 response with any necessary legal fine-tuning" would be provided "next week,"
24 and advised that, going forward, the interrogation team should consult closely
25 with CTC/LGL regarding Zubaydah's interrogation. (Rizzo Decl. ¶ 12;
26 Tompkins Dec., Exh. 55 at US Bates 002169-72; Exh. 4, Rizzo Tr. at 31:13-17.)

27 Contrary to Defendants' Fact #62, the Rizzo declaration (¶ 12) states: "I
28 had my staff research whether these techniques were legal, and we concluded
29 that *most of them* were lawful." (emphasis added). Moreover, the cited cable
30 does not state that the methods complied with the Geneva Conventions; instead,
31 it made the claim that the "very restrictive provisions" of the Geneva
32 Convention did not apply.

33 63. On April 16, 2002, Rizzo met with the National Security Council's
34 ("NSC") Legal Advisor, John Bellinger ("Bellinger"), OLC Deputy Assistant

1 Attorney General John Yoo (“Yoo”), and two CTC attorneys. During the
2 meeting, Rizzo explained that the CIA had developed a strategy for Zubaydah’s
3 interrogation and he described the then-current strategy. (Rizzo Decl. ¶ 16-17;
Tompkins Decl., Exh. 4, Rizzo Tr. at 199:7-24.)

4 Undisputed.

5
6 64. CTC attorneys in attendance also outlined the effects of the
7 interrogation strategy. Specifically, CTC attorneys outlined the effects of
8 learned helplessness, citing the psychologist who had developed the theory for
9 them, who was not Drs. Mitchell and Jessen. (Rizzo Decl. ¶ 18; Tompkins
Decl., Exh. 4, Rizzo Tr. at 200:1-12; Exh. 11 at US Bates 000648-49.)

10 Contrary to Defendants’ Fact #64, the record indicates that “[a]t the [April
11 16, 2002] meeting, the CIA attorneys explained that the plan developed by CIA
12 psychologists relied on the theory of ‘learned helplessness’... To bring about
13 this condition, the CIA planned to disorient Abu Zubaydah ...”). ECF No. 176-
11 (OPR Report) at U.S. Bates 000647-48; Am. Answer, ECF No. 77 ¶ 34.

14 65. Rizzo asked that the OLC assess the legality of the interrogation
15 strategy and issue a memorandum opinion. (Rizzo Decl. ¶ 19)

16 Undisputed.

17 66. The CIA did not have a role in the OLC’s internal deliberations
18 about the legality of the interrogation strategy, except to respond to requests
19 from additional information. Rizzo’s office did provide the OLC with requested
20 information on a number of occasions. (Rizzo Decl. ¶ 21; Tompkins Decl., Exh.
21 4, Rizzo Tr. at 31:18-22, 33:10-14 (referencing a “back and forth” between OLC
and the CIA); Tompkins Decl., Exh. 34 at US Bates 001631.)

22 Contrary to Defendants’ Fact #66, then-National Security Council Legal
23 Adviser John Bellinger, stated that “there was ‘pressure’ from the CIA from the
24 outset to approve the program. . . . Bellinger believed that this kind of
25 presentation by the CIA ‘boxed in’ both the White House and the Department
26 [of Justice] by making it impossible to reject the CIA’s recommendations.
Bellinger concluded that [OLC attorney John] Yoo was ‘under pretty significant
pressure to come up with an answer that would justify [the program]’ and that,
over time, there was significant pressure on the Department to conclude that the

1 program was legal and could be continued” ECF No. 176-11 (OPR Report)
2 at U.S. Bates #00645–646.

3 **VI. IMPLEMENTING THE INITIAL PHASE OF ZUBAYDAH’S**
4 **INTERROGATION IN APRIL 2002**

5 67. In April 2002, the Zubaydah interrogation team followed the
6 interrogation plan that had been approved. (Tompkins Decl., Exh. 53 at US
7 Bates 002144.)

8 Undisputed.

9 68. The interrogation team was ultimately made up of two FBI Special
10 Agents, an interrogator from the CIA’s Office of Security, CIA psychologists,
11 substantive and reports officers, and medical personnel. (Tompkins Decl. Exh.
12 54 at US Bates 002167.)

13 Undisputed.

14 69. Dr. Mitchell was one of two SERE psychologists on the
15 interrogation team. Dr. Jessen was not the other SERE psychologist. (Tompkins
16 Decl., Exh. 29 at US Bates 001590; Exh. 2, Jessen Tr. at 102:22-103:4; Mitchell
17 Decl. ¶ 3.)

18 Undisputed.

19 70. In fact, at that time, Dr. Mitchell’s contract was expanded to “serve
20 as both a consultant to CTC special programs as well as conduct specialized
21 training as required.” (Tompkins Decl., Exh. 8 at US Bates 000061-64.)

22 Plaintiffs do not dispute that Dr. Mitchell’s role with CTC was expanded
23 at the time Abu Zubaydah was subjected to Defendants’ methods, but the cited
24 contract lists an effective date of June 13, 2003, a year after that time.

25 71. CTC’s primary interrogator was in charge of and responsible for all
26 aspects of Zubaydah’s interrogation. He or she was the leader of the
interrogation team and “in some respects the de facto chief of the CIA base
[“COB”]” where Zubaydah was being held, GREEN. (Rodriguez Decl., ¶ 19;
Exh. C at US Bates 001779-82; Tompkins Decl., Exh. 54 at US Bates 002167.)

1
2 Contrary to Defendants Fact # 71, to the extent the first sentence refers to
3 “all aspects,” the record shows that the CIA recognized the process and roles
4 and responsibilities in it as “fluid.” ECF No. 177-39 (U.S. Bates #001644). At
5 one point in June 2002, there was no COB (“HQS will identify an individual to
6 serve as chief of base”) and Defendant Mitchell supervised staff and
7 orchestrated the isolation phase of Abu Zubaydah’s interrogation. *Id.* at #001642

8
9 72. HQS provided all members of the interrogation team with legal and
10 policy guidance. (Tompkins Decl., Exh. 54 at US Bates 002167.)

11
12 Undisputed.

13
14 73. The interrogation team was specifically told that they were not
15 “limited to the use of traditional law enforcement methods” because Zubaydah
16 was “not entitled to the legal protections of the Geneva Conventions.” (*Id.*)

17
18 Undisputed.

19
20 74. This phase of Zubaydah’s interrogation began on or around April
21 17, 2002. (*Id.*, Exh. 53 at US Bates 002144.)

22
23 Undisputed.

24
25 75. “Based upon the collective judgment of the expert personnel
26 engaged in [the] interrogation,” the team employed “lawful” interrogation
methods to “maximize the psychological pressure upon [] Zubaydah (as
validated by the training methods employed for U.S. Special Forces).”
(Tompkins Decl., Exh. 54 at US Bates 002167.).

Contrary to Defendants’ Fact #75, whether the methods used were
“lawful” is a legal question that is inappropriate in a statement of facts and is not
established by the cited cable.

76. Dr. Mitchell and the other SERE trained psychologist (not Dr.
Jessen) assisted the team in identifying Zubaydah’s resistance methods and
strategies, assessing the impact of these methods and strategies on the
interrogators, and designing effective countermeasures. They also assessed,
targeted, and monitored Zubaydah’s psychological status, tendencies, and

1 vulnerabilities. (*Id.*, Exh. 29 at US Bates 001590; Exh. 2, Jessen Tr. at 102:22-
2 103:4; Mitchell Decl. ¶ 3.)

3 Undisputed.

4 77. Each interrogation session was carefully planned in advance.
5 Before each interrogation session, the entire team met as a group to develop the
6 strategy for each particular interrogation. During the meetings, the team would
7 prepare the requirements for the particular sessions; read and prepare reports
8 concerning Zubaydah, the intelligence process and the intelligence product; and
9 address any other matters that may have arisen. After each interrogation
10 session, the team reviewed the results of the session and began planning the next
11 session. (Tompkins Decl., Exh. 54 at US Bates 002168.)

12 Undisputed.

13 78. The interrogation team constantly updated HQS on the status of
14 Zubaydah's interrogation to ensure that the team was "always within both our
15 legal and moral requirements." (Rodriguez Decl. ¶ 24; Exh. E at US Bates
16 002001-05.)

17 Plaintiffs object to Defendants' Fact #78 as the phrase "constantly" is
18 subjective and argumentative, as is the phrase "within both our legal and moral
19 requirements."

20 79. In fact, after each interrogation, the interrogator would prepare a
21 formal interrogation report for HQS that set forth any intelligence produced
22 during the session. The interrogation team also prepared twice-daily situation
23 reports to HQS, and the FBI representatives provided a separate daily situation
24 report to FBI headquarters. (Tompkins Decl., Exh. 54 at US Bates 002168.)

25 Undisputed.

26 80. By the end of April 2002, the CIA officers involved in Zubaydah's
interrogation were requesting approval from HQS to potentially employ
additional interrogation tactics "to move Abu Zubaydah, subject, into more
forthcoming posture in regard to future terrorist attacks in [the Continental US]".
(*Id.*, Exh. 42 at US Bates 001821.)

1 Undisputed.

2 **VII. MAY 2002 ADJUSTMENT TO ZUBAYDAH'S**
3 **INTERROGATION**

4 81. On May 8, 2002, the interrogation team held an all-hands meeting
5 to review the strategy for Zubaydah's interrogation process and to make
6 adjustments as necessary based on Zubaydah's emerging resistance posture as
7 well as comments and input from both CIA and FBI Headquarters on potential
8 modifications to the proposed plan. (*Id.*, Exh. 47 at US Bates 001931.)

9 Contrary to Defendants' Fact #81, the record does not support that Abu
10 Zubaydah had an "emerging resistance posture" or that "adjustments" were
11 necessary. The record shows that Abu Zubaydah had already provided
12 information on Jose Padilla and Khalid Sheikh Mohamed. Watt Decl., Exh. A
13 (Rodriguez Dep.) 246:13–247:4; ECF No. 176-11 (OPR Report) at U.S. Bates
14 #000640. An FBI agent involved in Abu Zubaydah's interrogation noted that the
15 CIA's assessment (which Defendant Mitchell was involved in) that Abu
16 Zubaydah "is offering 'throw away information' and holding back from
17 providing threat information" was contradicted the fact that FBI agents had
18 successfully elicited "critical information" from Abu Zubaydah without
19 resorting to torture. Watt Decl., Exh. T (SSCI Report) at 27. As was revealed
20 once the CIA took control of the interrogation, Defendant Mitchell's assessment
21 (joined by others in the CIA) that Abu Zubaydah was withholding threat
22 information was erroneous. Cables during the aggressive phase of Abu
23 Zubaydah's interrogation repeatedly confirm that he had no threat information.
24 ECF No. 182-13 (U.S. Bates #002020) (pronouncing the aggressive phase a
25 success because they "confidently assess[ed] that he [did] not possess
26 undisclosed threat information, or intelligence that could prevent a terrorist
event.").

82. As a result, the team reviewed Zubaydah's day-to-day treatment
and his environment to assess what, if anything, could be adjusted further to
lower his resistance posture. "The team decided that the most important issue is
to interfere with subject's sleep in order to degrade his ability to maintain his
full mental capacities. The more we can tire him out, the more we can disrupt
his ability to predict what will happen to him and to think clearly." (*Id.*, Exh. 47
at US Bates 001934.)

1 Contrary to Defendants' Fact #82, the record does not support that "the
2 team" took steps "as a result of" Abu Zubaydah's "resistance posture." As set
3 forth in Plaintiffs' response to Defendants' Fact # 81 above, Defendant Mitchell
4 and others on the CIA erroneously assessed whether Abu Zubaydah was in fact
5 resistant.

6 83. The team also reiterated its commitment to "keep headquarters fully
7 informed on every step of the interrogation." (Tompkins Decl., Exh. 47 at US
8 Bates 001934.)

9 Undisputed.

10 84. Also in May 2002, HQS ordered the Zubaydah interrogation team
11 "to . . . press [Zubaydah] for threat related information." (*Id.*, Exh. 50 at US
12 Bates 002016.)

13 Undisputed.

14 85. HQS recognized that this required "an increase in the pressure of
15 the interrogations." HQS then proposed and approved certain techniques to
16 increase the pressure on Zubaydah. One such technique was the use of the
17 confinement box, which HQS noted had been discussed, but additional details
18 were still being worked on regarding the specifics of how the confinement box
19 should be implemented. (*Id.*)

20 Undisputed.

21 86. A follow-up cable from HQS provided detailed guidance regarding
22 the application of the confinement box. HQS indicated that "consultation with
23 OTS ____ (psychological), OMS (medical), and CTC/UBL (operational) have
24 determined that from a medical and psychological perspective, use of the box
25 with Abu Zubaydah is allowable." Specifically, OMS and OTS concluded that
26 "the box under the criteria outlined below will not inflict severe physical or
mental pain and suffering as defined under the U.S. criminal law." CTC/LGL
also concurred that the confinement box could be used. (*Id.*, Exh. 39 at US Bates
001767.)

Contrary to the second sentence of Defendants' Fact #86, the CIA's
Office of Medical Services ("OMS") does not appear to have concluded

1 anything as to whether Defendants’ methods, including the box, in fact caused
2 “severe physical or mental pain and suffering.” The record shows that in April
3 2005, OMS personnel wrote that “[s]imply put, OMS is not in the business of
4 saying what is acceptable in causing discomfort to other human beings, and will
5 not take on that burden. . . . OMS did not review or vet these techniques prior to
6 their introduction, but rather came into this program with the understanding of
7 your office and DOJ that they were already determined as legal, permitted and
8 safe.” Watt Decl., Exh. T (SSCI Report) at 420 n.2361. In addition, the assertion
9 that the confinement box would not inflict severe mental or physical pain and
10 suffering is subjective and an impermissible legal conclusion.

11
12 87. The specific restrictions imposed were the same as used in the
13 SERE program: the box could be used a maximum of 19 total hours in any 24
14 hour period, with a maximum of 8 continuous hours at any one time. (Tompkins
15 Decl., Exh. 39 at US Bates 001767.)

16
17 Contrary to Defendants’ Fact #87, the total time cited in the cable is 18
18 hours. Moreover, the implication that the “confinement box” method used on
19 Abu Zubaydah was identical the method used on volunteer members of the U.S.
20 military during SERE training is grossly misleading. SASC xxvi; ECF No. 176-
21 11 (OPR Report) U.S. Bates #000641-42.

22
23 88. HQS noted that in SERE, 5,000-6,000 U.S. Military personnel
24 undergo this training each year. And of those few that are unable to complete the
25 box training, it is usually because they have a preexisting condition that is
26 aggravated by the box. HQS also noted that “clearly, unlike the participants in
SERE training, AZ will not have provided his consent for the use of this—or
any other—technique.” Still, HQS concluded that the use of the box was
permissible. (*Id.*)

27
28 Plaintiffs clarify Defendants’ Fact #88, because the comparison of the
29 “confinement box” method authorized by HQS for use on Abu Zubaydah to the
30 use of the SERE “cramped confinement” technique is misleading. SASC xxvi;
31 ECF No. 176-11 (OPR Report) at U.S. Bates 000641-42. Moreover, in addition
32 to not consenting, Abu Zubaydah had a still healing gun-shot wound to the leg.
33 ECF No. 177-39 (U.S. Bates #001646 (reprocessed April 11, 2017) (as at June
34 2002 Abu Zubaydah’s leg wound had another 6-8 weeks to heal). Defendant
35 Jessen testified that no SERE recruit would be permitted to participate in SERE
36 training if they were wounded. Watt Decl., Exh. F (Jessen Tr.) 134:21-135:4

1 (“Q. Well, let me ask you: When you – when you were overseeing or
2 monitoring or involved in some way in the SERE program, did you ever see a
3 SERE trainee who was being subjected to interrogation pressures while they had
4 an open wound? A. No, I don’t think so.”).

5 **VIII. JUNE 2002 PLANNING FOR THE NEXT PHASE OF**
6 **ZUBAYDAH’S INTERROGATION**

7 89. In early June 2002, HQS held a meeting to discuss the next phase
8 of Zubaydah’s interrogation. The meeting was attended by CTC, CTC/UBL,
9 CTC/LGL, Security Officers, Dr. Mitchell, and representatives from OTS.
(Rodriguez Decl., Exh. F at US Bates 001642; Tompkins Decl., Exh. 24 at US
10 Bates 001159.)

11 Undisputed.

12 90. At the meeting, “all parties were in agreement that AZ is
13 withholding critical information, particularly on direct threats against U.S.
14 interests both domestically and overseas.” (Rodriguez Decl. ¶ 26; Exh. F at US
15 Bates 001642; Tompkins Decl., Exh. 24 at US Bates 001159.)

16 Plaintiffs do not dispute that the cable states this, but dispute that Abu
17 Zubaydah was actually withholding this information. FBI interrogators before
18 departing GREEN had expressed the same opinion. ECF No. 176-11 (OPR
19 Report) U.S. Bates #000640.

20 91. HQS believed that “the interrogations need[ed] to take a harder line
21 and move away from the current status, which resembles more of a debriefing.”
(Rodriguez Decl., Exh. F at US Bates 001642.)

22 Undisputed.

23 92. Rodriguez and others within CTC began considering whether other
24 potential interrogation techniques existed that could be used on Zubaydah to
25 secure the critical desired information. They knew they needed to “do something
26 different.” (Rodriguez Decl. ¶ 29; Tompkins Decl., Exh. 3, Rodriguez Tr. at
153:10-24.)

1 Contrary to the second sentence of Defendants’ Fact # 92, Mr.
2 Rodriguez’s belief that CTC “needed to ‘do something different’ does not
3 establish that CTC “knew” it needed to do something different. In fact, Mr.
4 Rodriguez and Defendant Mitchell were wrong in assessing that they needed to
5 “do something different” to extract threat information from Abu Zubaydah.
6 Their assessment that Abu Zubaydah was withholding threat information was
7 erroneous. Cables during the aggressive phase of Abu Zubaydah’s interrogation
8 repeatedly confirm that he had no threat information. ECF No. 182-13 (U.S.
Bates #002020) (pronouncing the aggressive phase a success because they
“confidently assess[ed] that he [did] not possess undisclosed threat information,
or intelligence that could prevent a terrorist event.”).

9 93. A variety of interrogation plans were shortly thereafter presented
10 and discussed. For example, an individual other than Defendants proposed an
11 “isolation option” that called for Zubaydah to be placed in pseudo-isolation for
12 three weeks with limited visits from medical and security personnel. (Rodriguez
13 Decl. ¶ 27; Exh. F at US Bates 001642; Tompkins Decl., Exh. 1, Mitchell Tr. at
14 249:4-9; Ex. 70 at US Bates 001642 (reprocessed to indicate “not Drs. Mitchell
and Jessen”).)

15 Undisputed, with the clarification that Defendant Mitchell was
16 responsible for fleshing out the details (“fill[ing] in any holes left by this cable”) and assisting in “orchestrating the isolation.” There was no COB and other
17 members of the team departed GREEN, leaving Mitchell behind to “monitor the
18 situation and carefully supervise the activity of medical and security elements.”
ECF No. 177-39 (U.S. Bates #001642–44).

19 94. HQS subsequently approved the isolation option. HQS also
20 approved the careful introduction of interrogation post-isolation. Specifically,
21 after the isolation phase, interrogators would be reintroduced into the scenario to
22 press Zubaydah “hard on direct threat information against U.S. interests and
23 return the situation to a full-fledged interrogation.” (Rodriguez Decl., Exh. F at
24 US Bates 001642-43; Tompkins Decl, Ex. 79 at US Bates 001642-43
(reprocessed).)

25 Undisputed, with the clarification that the interrogators referenced in the
26 cable are Defendants Mitchell and Jessen. ECF No. 177-39 (U.S. Bates #001642
(re-processed: April 11, 2017) (“the post-isolation phase will likely incorporate
the roll (sic.) of the ‘bad guy’ which has been played by Mitchell and facilitated

1 AZ's 'revelation' on 19 May."). In July 2002, Jessen replaced Mitchell. ECF
2 No. 176-24 (U.S. Bates #001160.)

3 95. The COB where Zubaydah was being detained was responsible for
4 all aspects of the interrogation, including making immediate decisions in
5 response to the fluid nature of the interrogation. (*Id.*, Exh. F at US Bates
6 001644; Tompkins Decl, Ex. 79 at US Bates 001644 (reprocessed).)

7 Contrary to Defendants' Fact #95, in June/July 2002, Mitchell assisted in
8 orchestrating this phase and supervised medical and security staff at GREEN
9 when "HQS [was] identify[ing] an individual to serve as chief of base." ECF
10 No. 177-39 (U.S. Bates #001642-44). Further, Plaintiffs object to the term
11 "responsible" to the extent it means "legal responsibility."

12 96. Zubaydah's isolation began on June 18, 2002. (Tompkins Decl.,
13 Exh. 38 at US Bates 001668.)

14 Undisputed.

15 97. Also in late June, Rodriguez asked Mitchell to consult with CTC to
16 consider what other potential interrogation techniques could be used upon
17 Zubaydah to overcome his resistance and secure the desired information. At the
18 time, Rodriguez was convinced that only the CIA—and not the FBI—could
19 effectively interrogate Zubaydah given the critical information sought to be
20 obtained. (Rodriguez Decl. ¶ 32-33.)

21 Undisputed.

22 **IX. JULY 2002 MEETINGS AT CIA HQS**

23 98. After Zubaydah's isolation began, the interrogation team, including
24 Mitchell, returned to CIA HQS for a meeting to "further refine tactics if subject
25 does not make significant progress during this period." (Tompkins Decl., Exh.
26 37 at US Bates 001665; Ex. 79 at US Bates 001643 (reprocessed); Rodriguez
Decl., Exh. F at US Bates 001643.)

Undisputed, with the clarification that Defendant Mitchell did not depart
GREEN with the full interrogation team. He remained behind to assist in
orchestrating the isolation phase. ECF No. 177-39 (U.S. Bates #001642).

1
2 99. The meeting occurred during the first week of July. Those present
3 included, CTC, CTC/COPS, CTC/UBL, CTC/LGL, AZ Interrogation Team
4 (including Mitchell), FBI Special Agents, FBI Officers, OTS/OAD, OMS, and
5 the Office of Security. (Tompkins Decl., Exh. 24 at US Bates 001158-59; Rizzo
6 Decl. ¶ 24.)

7
8 Undisputed.

9 100. All parties in attendance at the meeting agreed that Zubaydah was
10 “withholding critical information, particularly on direct threats against U.S.
11 interests both domestically and overseas and information about Al-Qa’ida
12 presence in the U.S.” (Tompkins Decl., Exh. 24 at US Bates 001158-59.)

13 Undisputed, with the clarification that the assessment that Abu Zubaydah
14 was withholding information on threats against the U.S. and its interests
15 domestically and overseas and information on Al-Qaida presence in the U.S.
16 was refuted by FBI interrogators and proven incorrect by Abu Zubaydah’s
17 subsequent interrogation. ECF No. 176-11 (OPR Report) at U.S. Bates #000640;
18 ECF No. 182-13 (U.S. Bates #002020) (confirming that the interrogation team
19 “confidently assess[ed] that [Zubaydah] does not possess undisclosed threat
20 information, or intelligence that could prevent a terrorist threat.”).

21 101. The major focus of the meeting was to consider the next phase of
22 Zubaydah’s interrogation, which “would be the last hard push in the
23 interrogations” and would concentrate on “pending terrorist attacks planned
24 against the United States or our interests overseas”. (Tompkins Decl., Exh. 24 at
25 US Bates 001159; Exh. 1, Mitchell Tr. at 251:6-253:4.)

26 Undisputed.

102. The CIA was looking to “change the dynamics of the
interrogations[.]” It believed that pressure upon Zubaydah must be increased,
was intent upon increasing such pressure to secure the desired information, and
was interested in learning what types of such pressure might be applied.
(Rodriguez Decl. ¶ 36.)

Undisputed, with the clarification that it was Defendant Mitchell who
described to CIA officials at Langley that, in his assessment, Abu Zubaydah was

1 still using “resistance to interrogation ploys,” and “wasn’t going to provide the
2 information that they were looking for using rapport-based approaches,” in a
3 timely fashion. Watt Decl., Exh. B (Mitchell Dep.) 252:6–256:11.

4 103. During this meeting attendees suggested a variety of coercive
5 approaches. (Tompkins Decl., Exh. 20 at US Bates 001099.)

6 Undisputed.

7 104. Dr. Mitchell mentioned the potential use of various techniques that
8 had been used for years on trainees at SERE. These techniques included only:
9 (1) attention grasp; (2) walling; (3) facial hold; (4) facial slap/insult slap; (5)
10 cramped confinement; (6) wall standing; (7) stress positions; (8) sleep
11 deprivation; (9) water board; (10) use of diapers; (11) insects; and (12) mock
12 burial. (Rodriguez Decl. ¶ 37; Tompkins Decl., Exh. 3, Rodriguez Tr. at 41:3-6;
13 Exh. 1, Mitchell Tr. at 402:11-15.)

14 Contrary to Defendants’ Fact #104, diapers and insects were not “used for
15 years on trainees at SERE.” Watt Decl., Exh. W (U.S. Bates #001163).
16 Plaintiffs further clarify that the program Defendants designed and implemented
17 for the CIA differed from SERE in critical ways, as described elsewhere in the
18 Statement of Facts. *See* Pls.’ Resp. to Defs.’ Fact #127.

19 105. Mitchell mentioned these techniques because he understood that the
20 CIA had already decided to use coercive pressures on Zubaydah, and believed
21 that the CIA should consider using coercive techniques that had been shown
22 over the last 50 years to not cause the effects the CIA wanted to avoid—such as
23 severe pain and suffering. (Tompkins Decl., Exh. 1, Mitchell Tr. at 188:20-
24 189:7, 189:16-22, 192:6-18, 192:24-193:7.)

25 Contrary to Defendants’ Fact #105, there was no evidence that the
26 methods Defendants proposed would not cause prisoners “severe pain and
suffering.” Defendants knew the effect of their proposed methods might be
different when used on prisoners rather than on volunteers. Watt Decl., Exh. F
(Jessen Dep.) 127:11–24. Defendants knew they were stripping away the core
protections against traumatization in SERE. *See* SERE Psychology Handbook
 (“The training must include specific, practical actions to change the threatening
or horrifying situation for the better. Without such positive action learning,”
even “simulated terrifying or horrifying situations and stimuli can induce

1 feelings of helplessness that make the training itself traumatizing.”). There is no
2 “positive action learning” component in a real-world interrogation. Defendants
3 could not have considered the long-term effects of SERE, because no such
4 studies existed. Watt Decl., Exh. X (Morgan Dep.) 217:18-21 (“[T]o my
5 knowledge, there is no long-term outcome assessment with respect to SERE and
6 its impact on people.”); *id.* at 58:9-59:2 (citing the SERE portion); 234:20-236:5
7 (discussing positive action learning)

8
9 106. Dr. Mitchell thought when he proposed these techniques that they
10 could be applied safely. (Tompkins Decl., Exh. 1, Mitchell Tr. at 291:14-17.)

11
12 Contrary to Defendants’ Fact # 106, the record shows that no reasonable
13 professional psychologist would believe that Defendants’ methods could be
14 applied safely to prisoners subjected to those methods for weeks without any
15 control or indication as to when the abuse would stop. Watt Decl., Ex. X
16 (Morgan Tr.) 267:4-7 (“[T]he nature of the stress and the historic literature at the
17 time in 2002 would have any reasonable person in the science community going
18 these kinds of things could really cause psychological injury and harm to a
19 person.”); *Id.* (Morgan Tr.) 130:14-134:3 (discussing application of SERE
20 techniques in real world interrogations)

21
22 107. At this time Dr. Mitchell had no belief that he would become the
23 interrogator. (*Id.*, Exh. 1, Mitchell Tr. at 205:3-20, 258:1-7, 267:12-16, 278:2-
24 279:7; Exh. 2, Jessen Tr. at 113:23-114:19.)

25
26 Undisputed.

108. Mitchell explained that the particular goal of these techniques
would be to dislocate Zubaydah’s expectations and overcome his resistance and
thereby motivate him to provide the information the CIA was seeking. Mitchell
further explained that in working to achieve this goal, the interrogation could
produce a range of mental states in Zubaydah, including, but not limited to, fear,
helplessness, compliancy, or false hope. Mitchell explained that the mental state
that a particular subject might experience would vary based on a number of
factors, such as the circumstances of the interrogation and the subject’s abilities
and past experiences. (Rodriguez Decl. ¶ 38.)

Undisputed, except that contrary to Defendants’ Fact #108, Paragraph 38
of the Rodriguez Declaration lists “learned helplessness,” not “helplessness” as

1 the mental state that could result from Defendants’ methods. In their
2 memorandum proposing their methods, Defendants Mitchell and Jessen
3 explained that the goal of their program is to “instill fear and despair” in the
4 detainee. ECF No. 182-8 (U.S. Bates #001110).

5 109. Dr. Mitchell warned the CIA that it did not want to create learned
6 helplessness, as described by Dr. Seligman, in the detainee because it would
7 impair the ability of a person to provide intelligence. (Tompkins Decl., Exh. 1,
8 Mitchell Tr. at 76:3-77:21, 108:1-20.)

9 Contrary to Defendants’ Fact #109, Defendants advocated for learned
10 helplessness. According to Jose Rodriguez, “Dr. Mitchell further explained that
11 in working to achieve this goal, the interrogation could produce a range of
12 mental states in the subject, including, but not limited to, fear, learned
13 helplessness, compliancy, or false hope.” Watt Decl., Exh. V (Rodriguez Decl.)
14 ¶ 38. In describing his qualifications, Dr. Mitchell stated that “learned
15 helplessness” is one of the psychological states that interrogators should seek to
16 induce in a detainee. Watt Decl., Exh. E (U.S. Bates #001618). Mr. Rizzo also
17 recalled Defendants describing “learned helplessness” as a goal of the Abu
18 Zubaydah interrogation. Watt Decl., Exh. D (Rizzo Tr.) 128:08–129:8. This goal
19 was ultimately adopted by the CIA. ECF Doc. 177-29 at 2 (“The goal of
20 interrogation is to create a state of learned helplessness”). At the
21 conclusion of Abu Zubaydah’s interrogation, the interrogation team reported
22 that Defendants had induced “complete helplessness.” ECF No. 182-13 (U.S.
23 Bates #002020) (“psychological and physical pressures have been applied to
24 induce complete helplessness, compliance and cooperation from [Abu
25 Zubaydah].”).

26 110. Dr. Mitchell explained that to avoid learned helplessness, the
27 techniques could not be overused. He explained that once Zubaydah displays a
28 sense of helplessness he must be given a way out by answering a question. If
29 Zubaydah was not given a way out, then the learned helplessness as described
30 by Dr. Seligman could occur—in which case Zubaydah might be
31 psychologically unable to answer the question. (Tompkins Decl., Exh. 1,
32 Mitchell Tr. at 274:10-277:10.)

33 Contrary to Defendants’ Fact #110, the record shows Defendant Mitchell
34 advocated learned helplessness as described above in response to Defendants’
35 Fact #109. In addition, Defendants did not give Abu Zubaydah “a way out,”

1 because they continued to torture him even when he was cooperative so as to
2 assure themselves that they had induced “complete helplessness.” ECF No. 182-
3 13 (U.S. Bates #002020). Defendant Mitchell wrote in response to a question as
4 to why Defendants had waterboarded Abu Zubaydah so many times: “As for our
5 buddy, he capitulated the first [sic] time. We chose to expose him over and over
6 until we had a high degree of confidence he wouldn’t hold back. He said we
[sic] was ready to talk during the first exposure.” ECF No. 182-27 (U.S. Bates
#002581) (emphasis in original).

7 111. The purpose of the proposed interrogation techniques was to get
8 Zubaydah to answer the question and move him into a position where he would
9 cooperate so that the CIA could use social influence techniques to get more
10 details and information. (*Id.*, Exh. 1, Mitchell Tr. at 271:21-272:7; 274:10-
277:10.)

11 Contrary to Defendants’ Fact #111, Defendants stated their purpose: “the
12 objective of this operation is to achieve a high degree of confidence that subject
13 is not holding back.” ECF No. 182-25 (U.S. Bates #001771). Accordingly,
14 Defendants personally applied their techniques to “induce complete
15 helplessness,” and to “confidently assess” that Abu Zubaydah had no new
details or information. ECF No. 182-13 (U.S. Bates #002020).

16 112. At the time, CTC/LGL emphasized that the CIA “should not rule
17 out any method of interrogation whatsoever, so long as the interrogation team
18 believes it will be effective.” The interrogation team was specifically told to
19 “rule out nothing whatsoever that you believe may be effective; rather, come
back and we will get you the approvals.” (*Id.*, Exh. 24 at US Bates 001160.)

20 Undisputed.

21 113. Dr. Mitchell understood that the CIA was going to conduct its own
22 due diligence on the proposed techniques and make a determination about
23 whether they could be legally applied to Zubaydah. (*Id.*, Exh. 1, Mitchell Tr. at
190:2-10, 196:2-17.)

24 Undisputed, with the clarification that the CIA’s “due diligence” process
25 involved and relied on information Defendants Mitchell and Jessen provided.
26 When the CIA “sought and obtained legal authorization” for the “enhanced
interrogation technique program,” the approval “was based upon what [Mr.

1 Rodriguez] had learned from Drs. Mitchell and Jessen with regard to the SERE
2 program.” Watt Decl., Exh. A (Rodriguez Dep.) 97:14–24; Watt Decl., Exh. V
3 (Rodriguez Decl.) ¶ 38; Watt Decl., Exh. D (Rizzo Tr.) 177:1-7 (Defendants
4 were the only two SERE psychologists who provided the CIA legal staff with
information on the techniques).

5 114. At the conclusion of this meeting that occurred the first week of
6 July, Rodriguez, on behalf of CTC, asked Mitchell to consider working with the
7 CIA to use some or all of the techniques he had mentioned to interrogate
8 Zubaydah. (Rodriguez Decl. ¶ 39; Tompkins Decl., Exh. 3, Rodriguez Tr. at
55:6-56:1.)

9 Undisputed.

10 115. Dr. Mitchell requested that CTC hire Dr. Jessen to assist him with
11 CTC’s specific request to interrogate Zubaydah. (Rodriguez Decl. ¶ 40;
12 Tompkins Decl., Exh. 3, Rodriguez Tr. at 159:10-22.)

13 Undisputed, with the clarification that Defendant Mitchell agreed that,
14 with Defendant Jessen’s assistance, he would “put together a psychologically
15 based interrogation program” which he decided “would need to be based on
16 what is called ‘Pavlovian Classical Conditioning.’” Watt Decl., Exh. C (Mitchell
Manuscript) MJ00022632.

17 116. Rodriguez approved Dr. Mitchell’s request to hire Dr. Jessen.
18 (Rodriguez Decl. ¶ 41.)

19 Undisputed.

20 117. At the time, Dr. Jessen was working for the DoD. He received a
21 call from the CIA asking if he could come to CIA HQS. (Tompkins Decl., Exh.
22 2, Jessen Tr. at 105:19-106:23; Exh. 25 at US Bates 001352.)

23 Undisputed

24 118. Once Dr. Jessen received permission from his commander, he met
25 Dr. Mitchell and CIA officers at CIA HQS. Dr. Jessen was advised that Dr.
26 Mitchell had already been asked to help interrogate the detainee using

1 techniques from the SERE school. Dr. Jessen was then asked if he would assist.
2 (*Id.*, Exh. 2, Jessen Tr. at 105:19-106:23.)

3 Undisputed.

4 119. Once Dr. Jessen agreed to assist, he was heavily briefed by CIA
5 analysts about Zubaydah. (*Id.*, Exh. 2, Jessen Tr. at 110:11-111:12.)

6 Undisputed.

7
8 120. Dr. Jessen resigned from the DoD and was hired as an independent
9 contractor, effective July 22, 2002. Dr. Jessen's contract with the CIA obligated
10 him to "provide consultations and recommendations" for "applying research
11 methodology" and "advice" to the Zubaydah interrogation team. (Rodriguez
12 Decl. ¶ 41; Exh. H at US Bates 000086-95; Tompkins Decl., Exh. 2, Jessen Tr.
at 102:22-103:4, 108:14-20; Exh. 30 at US Bates 001592; Declaration of John
"Bruce" Jessen ("Jessen Decl.") ¶ 3.)

13 Undisputed.

14 121. By January 1, 2003, Dr. Jessen was serving as a "consultant to CTC
15 special programs." (Tompkins Decl., Exh. 75, at US Bates 000110-17.)

16 Undisputed, with the clarification that Defendant Jessen served as a
17 special consultant to CTC and also conducted "specialized training." ECF No.
18 177-35 (U.S. Bates #000116).

19 122. In the week that followed, Dr. Mitchell and Rodriguez had many
20 discussions at CIA HQS about the proposed interrogation techniques' usage and
21 efficacy. (Rodriguez Decl. ¶ 43.)

22 Undisputed.

23 123. On July 8, 2002, another meeting was held at CIA HQS to discuss
24 further Zubaydah's interrogation. In attendance were representatives from the
25 CIA's ALEC Station, OTS, OMS, CTC/LGL, an FBI Official, and the FBI
26 interrogators that had interrogated Zubaydah. Both Drs. Mitchell and Jessen, as
well as Rodriguez and Rizzo, were present at the meeting. (Rodriguez Decl. ¶

1 44; Exh. I at US Bates 001656; Rizzo Decl. ¶ 24; Tompkins Decl., Exh. 4, Rizzo
2 Tr. at 181:10-13; Exh. 1, Mitchell Tr. at 402:11-403:10.)

3 Undisputed.

4
5 124. During this meeting, “a series of approaches/methods that would be
6 employed [upon Zubaydah] in an ‘increased pressure phase’ were presented.”
7 The interrogation techniques previously mentioned by Dr. Mitchell were also
8 further discussed. (Rodriguez Decl., Exh. J at US Bates 001110; Exh. I at US
9 Bates 001657.)

10 Undisputed.

11 125. After the meeting, Rodriguez requested Drs. Mitchell and Jessen
12 provide him with a written list identifying the potential interrogation techniques
13 for the CIA to consider, describing how they could be implemented, and
14 identifying their intended effects upon Zubaydah. (Rodriguez Decl. ¶ 46;
15 Tompkins Decl., Exh. 3, Rodriguez Tr. at 59:1-10; Exh. 1, Mitchell Tr. at
16 266:12-17.)

17 Undisputed.

18 126. Rodriguez asked Dr. Mitchell to prepare this document because the
19 CIA was searching for a “new way of doing things, and this seemed like the
20 appropriate way to go,” but explained that the CIA needed more specific
21 information about the interrogation techniques Dr. Mitchell had mentioned.
22 (Tompkins Decl., Exh. 3, Rodriguez Tr. at 155:20-156:12.)

23 Undisputed.

24 127. Drs. Mitchell and Jessen drafted a list of certain techniques utilized
25 at the SERE school (the “July 2002 Memo”). The techniques had existed and
26 had been used at the SERE school for many years. Drs. Mitchell and Jessen did
not create or design the techniques, but simply transferred their knowledge of
the techniques used at SERE onto the list and provided it to Rodriguez. This was
the extent of Drs. Mitchell and Jessen’s involvement in the “design” or
“architecture” of the CIA’s program. (Tompkins Decl., Exh. 2, Jessen Tr. at
114:20-115:11, 117:14-118:9, 143:17-24; 154:4-8, 276:3-21; Exh. 1, Mitchell

1 Tr. at 185:11-186:19, 278:2-279:7, 317:10-19, 325:14-24, 326:19-327:14; Exh.
2 3, Rodriguez Tr. at 183:22-184:17.)

3 Contrary to Defendants' Fact #127, Defendants' program was not
4 "simply" a "transfer" of the SERE training experience and the methods and
5 process Defendants proposed were not the same as the SERE training program.
6 Unlike the purpose of SERE, Defendants claimed that their "psychologically-
7 based program" could be used to instill "fear and despair" in prisoners that
8 would render them compliant to an interrogator's demands for information. Watt
9 Decl., Exh. C (Mitchell Manuscript) at MJ00022632; ECF No. 182-8 (US Bates
10 #001109-10); Watt Decl., Exh. V (Rodriguez Decl.) ¶ 38; Watt Decl., Exh. A
11 (Rodriguez Tr.) 55: 19-56:1. Some of Defendants' methods had never been used
12 in the SERE program. Watt Decl., Exh. W (U.S. Bates Stamp #001163) (use of
13 diapers and insects); Watt Decl., Exh. D (Rizzo Tr.) 63:3-6 ("bug in a box" was
14 "tailored" for Abu Zubaydah). Defendants also designed a methodology for
15 applying the methods that differed from SERE. ECF No. 182-25 (U.S. Bates
16 #001771) (recommend using an escalating strategy that has a high probability of
17 overwhelming subject's ability to resist").

18 128. A reproduction of that list was sent in an email on July 9, 2002
19 bearing the subject "Description of Physical Pressures." In the list, Mitchell
20 reiterated that [t]he aim of using these techniques is to dislocate the subject's
21 expectations concerning how he is apt to be treated and instill fear and despair.
22 The intent is to elicit compliance by motivating him to provide the required
23 information, while avoiding permanent physical harm or profound and pervasive
24 personality change. (Rodriguez Decl. ¶ 47; Exh. J at US Bates 001109-10;
25 Tompkins Decl., Exh. 3, Rodriguez Tr. at 156:24-157:3.)

26 Contrary to Defendants' Fact #128, it was not only Defendant Mitchell
who wrote the list, but both Defendants working together. Watt Decl., Exh. F
(Jessen Dep.) 114:20-115:11; Watt Decl., Exh. B (Mitchell Dep.) 262:5-21.

129. The list contained a description of the proposed techniques and
their contemplated use. (Rodriguez Decl., Exh. J at US Bates 001109-10.)

Undisputed.

130. Dr. Mitchell provided this "suggested" list and the techniques
described therein solely for potential use during Zubaydah's interrogation.

1 (Tompkins Decl., Exh. 3, Rodriguez Tr. at 159:3-6, 175:15-19; Exh. 1, Mitchell
2 Tr. at 191:15-192:5, 265:20-266:3.)

3 Contrary to Defendants' Fact #130, Mr. Rodriguez asked Defendant
4 Mitchell to help the CIA to create an entire interrogation program using
5 Defendants' methods, not just to interrogate Abu Zubaydah. Watt Decl., Exh. A
6 (Rodriguez Tr.) 53:19-21; 55:19-56:1. Defendant Mitchell writes in his book
7 that he was aware of and involved in broader interrogation plans prior to the
8 conclusion of Zubaydah's interrogation. Watt Decl., Exh. C (Mitchell
9 Manuscript) at MJ00022626 ("I understood that because of this they were
10 considering using coercive physical pressure on high value detainees
withholding information"); *Id.* at MJ00022631 ("A day or so later
Rodriguez asked me if I would help put together an interrogation program using
EITs. I told him I would").

11 131. The techniques, which have later been referred to as Enhanced
12 Interrogation Techniques ("EITs") were exclusively: (1) attention grasp; (2)
13 walling; (3) facial hold; (4) facial slap/insult slap; (5) cramped confinement; (6)
14 wall standing; (7) stress positions; (8) sleep deprivation; (9) water board; (10)
15 use of diapers; (11) insects; and (12) mock burial. (Rodriguez Decl., Exh. I at
US Bates 001657-59; Rizzo Decl. ¶ 40; Exh. D at US Bates 001595.)

16 Undisputed.

17 132. The CIA thereafter sent out a cable, the date of which is redacted,
18 discussing the "Next Phase of the Abu Zubaydah Interrogation" that explained
19 that the increased pressure was "intended to press Abu Zubaydah on two areas
20 for which we are certain he is withholding information: 1) terrorist support
21 networks within the United States and 2) plans to conduct attacks within the
United States or against our interest overseas." (*Id.* at US Bates 001656-57).

22 Undisputed, except that the cable speaks for itself.

23 133. The cable further explained that "the 'increased pressure phase'
24 will follow a general strategy involving a menu of pre-approved techniques,"
25 and that the techniques were "designed to not/not cause severe physical harm."
26 It also explained that a "medical expert with SERE experience will be present
throughout their implementation." (*Id.* at US Bates 001657.)

1 Undisputed.

2 134. The cable also contained descriptions of the EITs consistent with
3 Dr. Mitchell's July 2002 Memo. (*Id.* at US Bates 001657-59; Tompkins Decl.,
4 Exh. 3, Rodriguez Tr. at 59:19-60:2.)

5 Undisputed, with the clarification that the cable's description of the
6 techniques is identical to the description in Defendant Mitchell's July 2002
7 Memo.

8 135. And the cable indicated that, according to CTC/LGL, only two of
9 the techniques—water board and mock burial—required Attorney General
10 approval because “[t]he remaining can be approved by CIA's legal staff.”
(Rodriguez Decl., Exh. I at US Bates 001657-59.)

11 Undisputed.

12 136. After this cable, the CIA held an additional meeting with the
13 Zubaydah interrogation team, including Drs. Mitchell and Jessen. At the
14 meeting the various facets of the next phase of Zubaydah's interrogation were
15 discussed. The “team emphasized current HQS thinking re: this phase in light of
16 the absolute need to gain critical threat information re: possible imminent
17 terrorist operations being planned against U.S. interests. In this connection the
18 team outlined the specific interrogation techniques to be implemented consistent
with the established legal guidance/parameters as discussed during 8 July HQS
meeting.” (Tompkins Decl., Exh. 43 at US Bates 001846.)

19 Undisputed.

20 137. The CIA—not Drs. Mitchell or Jessen—determined which of the
21 proposed methods of interrogation would be used on Zubaydah. (Rodriguez
22 Decl. ¶ 48.)

23 Contrary to Defendants' Fact #137, Defendants were given discretion “on
24 the type and frequency of pressures used against Abu Zubaydah.” ECF No. 177-
25 21 (U.S. Bates #002357). Defendants also participated in the decision as to
26 which of Defendants' methods would be used against Abu Zubaydah, ECF No.
175-9 (U.S. Bates #001657), and “led each interrogation of Abu Zubaydah . . .
where EITs were used.” ECF 176-25 (OIG) at U.S. Bates #001374

1
2 138. At this time, the Zubaydah interrogation team was “look[ing]
3 forward to receipt of the cable which details the techniques and the concurrent
4 authorities which CTC/LGL is working to obtain.” The “implementation of the
5 Post-Isolation phase [would] commence once we received HQS authorization.”
(Tompkins Decl., Exh. 43 at US Bates 001847.)

6 Undisputed.

7 **X. DOJ LEGAL APPROVAL TO USE EITS ON HVD**
8 **ZUBAYDAH**

9 139. The CIA, not Drs. Mitchell or Jessen, determined what approvals
10 from other parts of the United States Government were required before one or
11 more of the EITs could be applied to Zubaydah. (Rizzo Decl. ¶ 30; Tompkins(
Decl., Exh. 4, Rizzo Tr. at 170:3-6.)

12 Undisputed.

13
14 140. On July 13, 2002, Rizzo met with Yoo, Bellinger, Bellinger’s
15 deputy Bryan Cunningham, Assistant Attorney General for the Criminal
16 Division Michael Chertoff, OLC Acting Assistant Attorney General Daniel
17 Levin, and a CTC attorney from his office. (Rizzo Decl. ¶ 28; Exh. J at US Bates
1760-65.)

18 Undisputed.

19 141. During this meeting, Rizzo provided a full briefing about the
20 various EITs with particular emphasis on the water board and mock burial
21 process. Rizzo and his attorneys specifically indicated the following:

- 22 • The CIA and FBI staff employees engaged in the interrogation of []
23 Zubaydah are complemented by expert personnel who possess extensive
24 experience, gained within the Department of Defense, on the
25 psychological and physical methods of interrogation and the resistance
26 techniques employed as countermeasures to such interrogation.
- Although the interrogation process has produced a limited amount
of success to date, [] Zubaydah remains adroit at applying a host of
resistance techniques. He is the author of a seminal Al-Qa’ida manual on

1 resistance to interrogation methods, and that the Agency assesses he
2 continues to withhold critical, actionable information about the identities
3 of Al-Qa'ida personnel dispatched to the United States and about planned
4 Al-Qa'ida terrorist attacks. Simply stated, countless more Americans may
die unless we can persuade [Zubaydah] to tell us what he knows.

5 • The interrogation process previously had been briefed to the Office
6 of Legal Counsel (who subsequently briefed the Assistant Attorney
7 General for the Criminal Division), as well as to the Assistant to the
8 President for National Security Affairs, the Legal Advisor to the National
9 Security Council, and the White House Counsel. The process had been
thoroughly reviewed as well by CIA's Acting General Counsel and by the
Chief Legal Advisor to the Counterterrorist Center, and the interrogation
team remains authorized to employ all methods lawfully permitted.

10 • Nonetheless, the interrogation team now had concluded that the use
11 of more aggressive methods is required to persuade [] Zubaydah to
12 provide the critical information needed to safeguard the lives of
13 innumerable innocent men, women, and children within the United States
14 and abroad. In light of the exceptionally grave, lethal, and imminent risks
15 to the citizens of the United States, and the Agency's assessment that []
16 Zubaydah continues to withhold critical information that would permit the
17 United States to avert those risks, CIA had reviewed the team's proposals
and wished to secure concurrence from the NSC and the Department of
Justice. We also wished to present the proposals to the FBI Chief of Staff
so that the FBI could determine whether to participate in the next phase as
well.

18 • We emphasized that clearly it is not our intent to permit []
19 Zubaydah to die in the course of such activities, and that we would have
20 appropriately trained medical personnel on-site to ensure the availability
21 to emergency response should he suffer a potentially lethal consequence.
22 Nonetheless, we noted that the risk is ever-present that [] Zubaydah may
23 suffer a heart attack, stroke or other adverse event regardless of the
24 conditions of his detention and questioning; indeed, that potential is
always present whenever an individual is under detention.
(Rizzo Decl., Exh. J at US Bates 001761-62.)

25 Undisputed.

1 142. The CIA lawyers explained that the techniques were based upon the
2 SERE program. (Tompkins Decl., Exh. 3, Rodriguez Tr. at 96:21-25; Exh. 4,
3 Rizzo Tr. at 151:9-22.)

4 Undisputed.

5 143. Furthermore, during the meeting, Yoo expressed that he “was most
6 interested in the long term impact of each of the techniques CIA is proposing to
7 apply to AZ.” Yoo also “[i]nformally . . . agree[d] that the [proposed] techniques
8 . . . with the exception of the water board and mock burial, do not cause
9 prolonged mental harm and are not controversial.” (Rizzo Decl., Exh. G at US
10 Bates 001913.)

11 Undisputed.

12 144. As for the water board and mock burial, Yoo did not rule out the
13 techniques, but requested additional information. (*Id.*)

14 Undisputed.

15 145. Rizzo thereafter worked to provide OLC with more information and
16 to get all questions about the EITs answered. Specifically, HQS, at Rizzo’s
17 direction, requested that SERE psychologists “comment on the short and long
18 term psychological effects of the water board and mock burial and, if available,
19 statistics on what long term mental health issues resulted from using these
20 techniques in SERE training.” (Rizzo Decl. ¶ 41; Exh. G at US Bates 001913;
21 Exh. L at US Bates 001852; Tompkins Decl., Exh. 4, Rizzo Tr. at 173:10-11,
22 174:9-25.)

23 Undisputed, with the clarification that Mr. Rizzo testified that the only
24 “SERE psychologists he consulted with in the approval process were Defendants
25 Mitchell and Jessen. Watt Decl., Exh. D (Rizzo Tr.) 177:1-7 (Q. Do you recall
26 if there were SERE psychologists, other than Mitchell and Jessen, who provided
opinions to the CIA relating to these enhanced interrogation techniques? A. No,
to the best of my recollection the only SERE psychologists I knew that were
providing advice were Drs. Mitchell and Jessen.).

146. During this time, other medical professionals familiar with the
SERE program were at GREEN, including at times a third SERE psychologist.

1 Some of these individuals had undergone SERE training that was conducted by
2 the CIA when the CIA had its own SERE program, which had been discontinued
3 before Dr. Mitchell began working for the CIA. (Mitchell Decl. ¶¶ 4-5.)

4 Undisputed.

5 147. This information was needed so that Rizzo could provide it to OLC
6 to enable the CIA to “obtain the needed approvals.” (Rizzo Decl. ¶ 41; Exh. G at
7 US Bates 001913.)

8 Undisputed.

9 148. At the same time, HQS was conferring with JPRA—the
10 governmental agency within the DoD entrusted with overseeing and ensuring
11 the safety of all SERE programs—about the EITs. JPRA indicated that “the
12 water board and mock burial are no longer being used because they are
13 extremely effective, preventing the student from learning the fundamentals of
14 resistance in a measured way.” HQS was also conducting its own research on
15 the subject. (Rizzo Decl. ¶ 40; Exh. G at US Bates 001913-14; Tompkins Decl.,
16 Exh. 40 at US Bates 001771.)

15 Undisputed.

16 149. JPRA concluded that no long-term psychological effects resulted
17 from use of the EITs. (Rizzo Decl. ¶ 40; Exh. D at US Bates 001595; Tompkins
18 Decl., Exh. 4, Rizzo Tr. at 172:8-24.)

19 Contrary to Defendants’ Fact #149, JPRA conducted no assessment of the
20 long-term psychological effects resulting from the use of the methods on
21 prisoners. The JPRA SERE psychologist tasked with researching the issue
22 addressed only the long-term psychological impact of SERE training techniques
23 on SERE students, not the use of torture methods on prisoners:

24 Dr. Ogrisseg said that he was surprised when he found out later
25 that Lt Col. Baumgartner had forwarded his memo to the
26 General Counsel’s office along with a list of the physical and
psychological techniques used in SERE school. Dr. Ogrisseg
said that his analysis was produced with students in mind, not
detainees. He stated that the conclusions in his memo were not

1 applicable to the offensive use of SERE techniques against real
2 world detainees and he would not stand by the conclusions in
3 his memo if they were applied to the use of SERE resistance
4 training techniques on detainees.

5 Watt Decl., Exh. Y (SASC Report) at 30.

6 150. During the EIT assessment and approval process, Rizzo ensured
7 that a memorandum prepared by OTS titled “Psychological Terms Employed in
8 the Statutory Prohibition on Torture” was provided to the OLC. The OTS Memo
9 discussed the proposed EITs and explained that the EITs may impact detainees
10 differently than they impact volunteers in the SERE school, stating:

11 However, while the interrogation techniques mentioned
12 above (attention grasp, walking, facial hold, facial slap
13 (insult slap), cramped confinement, wall standing, stress
14 positions, sleep deprivation, waterboard, and mock
15 burial) are administered to student volunteers in the U.S.
16 in a harmless way, with no measurable impact on the
17 psyche of the volunteer, we do not believe we can assure
18 the same here for a man forced through these processes
19 and who will be made to believe this is the future course
20 of the remainder of his life. While CIA will make every
21 effort possible to ensure that the subject is not
22 permanently physically or mentally harmed, some level
23 of risk still exists. The intent of the process is to make the
24 subject very disturbed, but with the presumption that he
25 will recover.

26 (Rizzo Decl. ¶ 38; Tompkins Decl., Exh. 11 at US Bates 000661-62.)

Undisputed.

151. Rizzo wanted to ensure that the CIA was not overselling the
significance of the EITs use during SERE training and to clarify that the
experience of Zubaydah exposed to the proposed EITs might not be identical to
the experience of SERE trainees. (Rizzo Decl. ¶ 39; Tompkins Decl., Exh., 4,
Rizzo at Tr. 33:1-14; Exh. 11 at US Bates 000661-62.)

Undisputed.

1 152. On July 17, 2002, Rodriguez and Rizzo were informed that
2 National Security Advisor Condoleezza Rice had approved use of the EITs upon
3 Zubaydah pending DOJ approval of the techniques. (Rizzo Decl. ¶ 33; Exh. J at
4 US Bates 001761; Rodriguez Decl. ¶ 51.)

5 Undisputed.

6 153. On July 23, 2002, a cable was sent to HQS with additional
7 information stating:

8 A bottom line in considering the new measures proposed for use at ____
9 is that subject is being held in solitary confinement, against his will,
10 without legal representation, as an enemy of our country, our society and
11 our people. Therefore, while the techniques described in HQS meetings
12 and below are administered to student volunteers in the U.S. in a harmless
13 way, with no measurable impact on the psyche of the volunteer, we do not
14 believe we can assure the same here for a man forced through these
15 processes and who will be made to believe this is the future course of the
16 remainder of his life. Station, ____ COB and ____ Personnel will make
17 every effort possible to insure [sic] that subject is not permanently
18 physically or mentally harmed but we should not say at the outset of this
19 process that there is no risk.

20 (Tompkins Decl., Exh. 40 at US Bates 001770-71.)

21 Undisputed.

22 154. The cable went on to provide comments from the Zubaydah
23 interrogation team members to help HQS. The comments were:

24 IC SERE Psychologists Feedback: Our assumption is the objective of this
25 operation is to achieve a high degree of confidence that subject is not
26 holding back actionable information concerning threats to the United
States beyond that which subject has already provided. Given his
demonstrated abilities, his current level of confidence, and his reluctance
to provide threat information – again beyond that which he has already
provided – IC SERE psychologists recommend using an escalating
interrogation strategy that has a high probability of overwhelming
subject’s ability to resist. To accomplish this, the escalation must

1 culminate with pressure which is absolutely convincing. We propose to
2 employ the pressures/techniques identified at HQS (minus the mock
3 burial . . .) in concerted fashion to overwhelm subject’s ability to resist by
4 leading him to believe that he cannot predict or control what happens to
5 him. The plan is to rapidly overwhelm subject, while still allowing him
6 the option to choose to cooperate at any stage as the pressure is being
7 ratcheted up. The plan hinges on the use of an absolutely convincing
8 technique. The waterboard meets this need. Without the waterboard, the
9 remaining pressures would constitute a 50 percent solution and their
effectiveness would dissipate progressively over time as subject figures
out that he will not be physically beaten and as he adapts to cramped
confinement.

10 (Tompkins Decl., Exh. 40 at US Bates 001771.)

11 Undisputed.

12
13 155. The IC SERE psychologists—in this case Drs. Mitchell and
14 Jessen—were not aware of specific statistics regarding long term mental health
15 outcomes or consequences from use of the water board in training, but knew that
16 the Navy and JPRA had not reported any significant long term mental health
17 consequences from its use. They suggested that additional information could be
obtained from two specific individuals: a JPRA SERE psychologist and a West
Coast Navy SERE school psychologist. (*Id.* at US Bates 001771-72.)

18 Defendants’ Fact #155 is misleading, because Defendants knew the effect
19 of their proposed methods might be different for prisoners than for volunteers.
20 Watt Decl., Exh. F (Jessen Dep.) 127:11–24. But when Defendant Mitchell
21 presented his proposal to the Director of the CIA and the head of CTC, he did
22 not mention that fact. Watt Decl., Exh. B (Mitchell Dep.) 281:4–16. Nor did
23 Defendants bring this difference to the attention of Mr. Rizzo. Watt Decl., Exh.
24 D (Rizzo Dep) 151:15–154:18. Further, the comment that “JPRA had not
25 reported any significant long term mental health consequences” ignores the fact
that no long term studies had been conducted. Watt Decl., Exh. X (Morgan
Dep.) 217:18-21 (“[T]o my knowledge, there is no long-term outcome
assessment with respect to SERE and its impact on people.”).

26 156. Still, the IC SERE psychologists—again Drs. Mitchell and
Jessen— noted that “any physical pressure applied to extremes can cause severe

1 mental pain or suffering. Hooding, the use of loud music, sleep deprivation,
2 controlling darkness and light, slapping, walling, or the use of stress positions
3 taken to extreme can have the same outcome. The safety of any technique lies
4 primarily in how it is applied and monitored.” (*Id.* at US Bates 001772.)

5 Undisputed.

6 157. The information provided by Drs. Mitchell and Jessen and others
7 about the EITs was provided to CIA lawyers. The CIA lawyers then provided
8 information to the OLC in an iterative process that went “back and forth.” Drs.
9 Mitchell and Jessen had no direct contact with the OLC. (Tompkins Decl., Exh.
10 4, Rizzo Tr. at 35:22-38:25.)

11 Undisputed.

12 158. On July 24, 2002, Yoo called Rizzo and advised that United States
13 Attorney General John Ashcroft had authorized him to inform Rizzo that the
14 first six EITs (attention grasp, walling, facial hold, facial slap, cramped
15 confinement, and wall standing) were lawful and could be used on Zubaydah.
16 (Rizzo Decl. ¶ 34; Tompkins Decl., Exh. 11 at US Bates 000660.)

17 Undisputed.

18 159. On July 25, 2002, Rizzo had word of such approval sent by cable to
19 the facility where Zubaydah was being held, GREEN. (Rizzo Decl. ¶ 35;
20 Rodriguez Decl. ¶ 53; Exh. K at US Bates 001162-66, Tompkins Decl., Exh. 11
21 at US Bates 000660.)

22 Undisputed.

23 160. The approval cable stated, “this cable provides formal authorization
24 to proceed with portions of the next phase of the interrogation of Abu
25 Zubaydah.” It further explained that “it was not intended, however, that Abu
26 Zubaydah actually suffer severe physical or mental pain” from the interrogation
27 techniques. (Rodriguez Decl., Exh. K at US Bates 001162-63.)

28 Undisputed.

29 161. The cable explained the approval as follows:

1
2 We have secured formal approval from the acting General Counsel to
3 employ the confinement box, as described in ref, in the course of the
4 interrogation of Abu Zubaydah. We also have secured formal approval
5 from the Attorney General to employ the following techniques, . . . the
6 attention grasp, walling, facial hold, facial slap (insult slap), cramped
7 confinement, wall standing, stress positions, sleep deprivation, use of
8 diapers, and use of harmless insects. We note that these techniques are
9 used on U.S. military personnel during SERE training (with the exception
10 of diapers and real insects . . .).

11 (*Id.* at US Bates 001163-64.)

12 Undisputed.

13 162. The cable further specified that “a medical expert with SERE
14 experience will be present throughout the implementation” of the techniques.
15 And it provided instructions on how each approved interrogation technique was
16 to be applied. (Rodriguez Decl., Exh. K at US Bates 001164; Rizzo Decl. ¶ 36.)

17 Contrary to the second sentence in Defendants’ Fact #162, the cable did
18 not “provide[] instructions on how each” method would be applied; instead it
19 reproduced Defendants’ description of the methods and their application from
20 Defendants’ July 9, 2002 Memo, “Description of Physical Pressure.” ECF No.
21 182-8 (U.S. Bates #1109).

22 163. At this time, the CIA was still waiting for “final justice department
23 approval for the use of the water board and/or the use of mock burial as part of a
24 threat and rescue scenario.” The CIA “defer[red] to _____ as to whether to
25 await that approval before commencing the next phase of the interrogation.”
26 (Rodriguez Decl., Exh. K at US Bates 001164.)

Undisputed.

164. Around this time, the OLC advised the CIA that approval of the
remaining EITs would be delayed if the “mock burial” technique remained part
of the EITs. As a result, the CIA withdrew its request for approval of the “mock
burial” technique. (Rizzo Decl. ¶ 37; Rodriguez Decl. ¶ 55; Tompkins Decl.,

1 Exh. 4, Rizzo Tr. at 55:12-22, 56:4-25, 57:1-2; Exh. 3, Rodriguez Tr. at 69:18-
2 24.)

3 Undisputed.

4 165. On August 1, 2002, Rizzo received a formal, confidential
5 memorandum from OLC Assistant Attorney General Jay S. Bybee (the “Bybee
6 Memo”). The memorandum concluded that ten of the EITs that the CIA had
7 proposed (attention grasp, walling, facial hold, facial slap, cramped
8 confinement, wall standing, stress positions, sleep deprivation, insects placed in
9 a confinement box, and the water board) did not violate the prohibition against
torture established by 18 U.S.C. § 2340A. (Rizzo Decl. ¶ 42; Exh. I at US Bates
000178-95.)

10 Undisputed.

11 166. By August 2, 2002, the Zubaydah interrogation team learned that
12 the Attorney General had approved all of the remaining EITs (as mock burial
13 had been abandoned), including the water board, “but that final approval is in
14 the hands of the policy makers.” (Tompkins Decl., Exh. 36 at US Bates, 001653-
15 54)

16 Undisputed.

17 167. On August 3, 2002, Rizzo had the August 1, 2002 Bybee Memo
18 converted into a cable that was sent to GREEN, the black-site where Zubaydah
19 was being detained, authorizing the EITs. The cable, explained that

20 the legal conclusions are predicated upon the determinations by the
21 interrogation team that ‘Abu Zubaydah continues to withhold critical
22 threat information,’ including the identities of Al-Qa’ida operatives in the
23 United States, that in ‘order to persuade him to provide’ those identities,
24 the use of more aggressive techniques is required, and that the use of those
25 techniques will not engender lasting and severe mental or physical harm.

26 (Rizzo Decl. ¶ 44; Exh. J at US Bates 001761; Tompkins Decl., Exh. 4, Rizzo
Tr., at 44:1-3; Exh. 11 at US Bates 000672-73.)

1 Undisputed, with the clarification that Mr. Rizzo did not convert the
2 August 1, 2002 classified Bybee Memo into a cable and send it to GREEN.
3 Instead, Mr. Rizzo authored the cable and in part “quoted verbatim the language
4 from Yoo’s July 13, 2002 letter to Rizzo in which he advised the CIA that
5 specific intent to cause severe mental pain and suffering would be negated by a
6 showing of good faith, and that due diligence to meet the good faith standard
7 ‘might include such actions as surveying professional literature, consulting with
8 experts, or evidence gained from past experience.’” The cable listed other
9 factors, paraphrasing the classified Bybee Memo, not quoting it verbatim. ECF
10 No. 176-11 (OPR Report) at U.S. Bates #000673.

11 168. The legal conclusion further turned on the following factors:

12 • The absence of any specific intent to inflict severe physical or
13 mental pain or suffering. In a letter dated 13 July 2002, OLC advised CIA
14 that ‘specific intent can be negated by a showing of good faith if, for
15 example, efforts were made to determine what long-term impact, if any,
16 specific conduct would have and it was learned that the conduct would not
17 result in prolonged mental harm, any actions taken relying on that advice
18 would have to undertake [sic] in good faith. Due diligence to meet this
19 standard might include such actions as surveying professional literature,
20 consulting with experts, or evidence gained from past experience.

21 • We understand from OTS _____, OMS, and the SERE psychologists
22 on the interrogation team that the procedures described above should not
23 rpt not produce severe mental physical pain or suffering; for example, no
24 severe physical injury (such as the loss of a limb or organ) or death should
25 result from the procedures; nor would they be expected to produce
26 prolonged mental harm continuing for a period of months or years (such
as the creation of persistent posttraumatic stress disorder), given the
experience with these procedures and the subject’s resilience to date.

(Rizzo Decl., Exh. J at US Bates 001763-64.)

Undisputed, except that Defendants’ Fact #168 is misleading without the
clarification that the legal conclusions in the Bybee Memo, including with
regard to specific intent, were criticized by the Justice Department’s Office of
Professional Responsibility as seriously flawed. ECF No. 176-11 (OPR Report)
at U.S. Bates 000766 – 000833.

1
2 Moreover, the OLC's conclusion on the severity of physical injuries and
3 the prolonged mental harm resulting from application of the Defendants'
4 methods was predicated on misleading advice provided by Defendants.
5 Defendants knew the effect of their proposed methods might be different for
6 prisoners than for volunteers. Watt Decl., Exh. F (Jessen Dep.) 127:11–24. But
7 when Defendant Mitchell presented his proposal to the Director of the CIA and
8 the head of CTC, he did not mention that fact. Watt Decl., Exh. B (Mitchell
9 Dep.) 281:4–16. Nor did Defendants bring this difference to the attention of Mr.
10 Rizzo. Watt Decl., Exh. D (Rizzo Dep) 151:15–154:18. Instead, they suggested
11 that CIA look only to data collected about volunteers. As the Senate Armed
12 Services Committee found, using SERE volunteer data was misleading and
13 dangerous:

14 The use of techniques in interrogations derived from
15 SERE resistance training created a serious risk of
16 physical and psychological harm to detainees. The SERE
17 schools employ strict controls to reduce the risk of
18 physical and psychological harm to students during
19 training. Those controls include medical and
20 psychological screening for students, interventions by
21 trained psychologists during training, and code words to
22 ensure that students can stop the application of a
23 technique at any time should the need arise. Those same
24 controls are not present in real world interrogations.”

25 Watt Decl., Exh. Y (SASC Report) at xxvi.

26 169. The cable contained detailed guidance concerning the approved
usage of the water board. (Rizzo Decl. ¶ 44; Exh. J at US Bates 001763-64.)

Undisputed.

170. The cable confirmed that should any member of the team
interrogating Zubaydah (including appropriately trained medical personnel) or
any on-site personnel request that Zubaydah's interrogation be halted, all
members of the interrogation team as well as CIA HQS would be consulted. It
also confirmed that the final decision to halt or recommence EIT use would lie
exclusively with HQS, or if HQS was unavailable, the CIA's Chief of Base (at

1 GREEN) and Senior CTC Officer. (Rizzo Decl. ¶ 46; Exh. J at US Bates
2 001764; Tompkins Decl., Exh. 4, Rizzo Tr. at 60:10-25; Rodriguez Decl. ¶¶ 58-
3 61.)

4 Undisputed.

5 171. The DOJ's determination of the EITs' legality and the related
6 (modified and approved) Zubaydah interrogation plan was promptly conveyed
7 to Drs. Mitchell and Jessen verbally by the COB at GREEN. (Rodriguez Decl. ¶
8 62; Tompkins Decl., Exh. 2, Jessen Tr. at 150:2-14.)

9 Undisputed.

10 172. The COB explained to Drs. Mitchell and Jessen the upper and
11 lower limits of what the DOJ had determined was permissible. (Tompkins Decl.,
12 Exh. 2, Jessen Tr. at 149:19-150:14.)

13 Undisputed.

14 173. Drs. Mitchell and Jessen relied upon the DOJ's legality assessment.
15 (Tompkins Decl., Exh. 2, Jessen Tr. at 148:6-149:7, 181:3-6, 184:1-7, 212:10-
16 11, 215:21-216:8, 251:10-252:6; Tompkins Decl., Exh. 46 at US Bates 001927.)

17 Defendants' Fact #173 is misleading and requires clarification to the
18 extent that it does not account for Defendants' knowledge that the DOJ's
19 legality assessment was biased and based on their own misleading advice.
20 Defendants were aware that the CIA lawyers' guidance was that they should
21 "rule out nothing whatsoever that you believe may be effective; rather, come on
22 back and we will get you the approvals." ECF No. 176-24 (U.S. Bates #001160).
23 Defendants knew that the process was documented in advance "to ensure that
24 our officers are protected," *Id.* Moreover, Defendants were aware that OLC was
25 relying on Defendants' own omissions. They knew the effect of their proposed
26 methods might be different for prisoners than for volunteers. Watt Decl., Exh. F
(Jessen Dep.) 127:11-24. But when Defendant Mitchell presented his proposal
to the Director of the CIA and the head of CTC, he did not mention that fact.
Watt Decl., Exh. B (Mitchell Dep.) 281:4-16. Nor did Defendants bring this
critical difference to the attention of Mr. Rizzo. Watt Decl., Exh. D (Rizzo
Dep.) 151:15-154:18. Instead, they suggested that CIA look only to data
collected about volunteers

1
2 174. As Attorney General Eric Holder explained in an April, 16, 2009,
3 press release, “[i]t would be unfair to prosecute dedicated men and women
4 working to protect America for conduct that was sanctioned in advance by the
5 Justice Department.” And according to Rizzo, this protection should further
6 extend to “contractors retained by the [CIA] to help carry out the terrorist
7 interrogation program described in the OLC opinions in question.”

8 (Tompkins Decl., Exh. 68 at MJ00023566-68.)

9 Plaintiffs object to Defendants’ Fact # 174 because it contains hearsay and
10 opinions, not any fact.

11 175. The CIA consulted with SERE psychologists and interrogators
12 other than Defendants regarding detainee interrogations. (Tompkins Decl., Exh.
13 30 at US 001591-93; Mitchell Decl. ¶¶ 3-5.)

14 Undisputed, except with the clarification that Mr. Rizzo testified that the
15 only SERE psychologists that he consulted about “enhanced interrogation
16 techniques” were Defendants Mitchell and Jessen. Watt Decl., Exh. D (Rizzo
17 Tr.) 177:1-7.

18 **XI. APPLICATION OF THE EITS TO ZUBAYDAH**

19 176. The CIA determined what was done to Zubaydah, how it would be
20 done, and when it would be done. (Tompkins Decl., Exh. 3, Rodriguez Tr. at
21 174:24-175:3, 175:21-25.)

22 Contrary to Defendants’ Fact #176, Defendants determined what was to be done
23 to Abu Zubaydah, how it would be done, and when it would be done, and
24 secured CIA approval for their plan. It was Defendants who drew up a proposal
25 that identified specific methods designed to “instill fear and despair,” including
26 methods aimed at manipulating prisoners who were “very sensitive to situations
that reflect a loss of status or are potentially humiliating.” ECF No. 182-8 (U.S.
Bates 1110–1111); Watt Decl., Exh. F (Jessen Dep.) 114:20–115:11; Watt Decl.,
Exh. B (Mitchell Dep.) 262:5–21. It was Defendants who implemented the
methods they had selected over nineteen days, as described in CIA cables. ECF
No. 182-15 (U.S. Bates #001801), ECF No. 182-16 (U.S. Bates #001804–1805),
ECF No. 182-23 (U.S. Bates #001807–08), ECF No. 182-17 (U.S. Bates

1 #001943–44), ECF No.182-18 (U.S. Bates #001947), ECF No. 182-10 (U.S.
2 Bates #001955–59), ECF No. 182-20 (U.S. Bates #001957–59), ECF No. 182-
3 13 (U.S. Bates #002022), ECF No. 182-22 (U.S. Bates #002364), ECF No. 177-
4 24 (U.S. Bates #002380). Defendants exercised their own judgment and applied
5 personal standards as to what techniques should be used on Abu Zubaydah and
6 how they should be used. *See, e.g.*, Watt Decl., Exh. C (Mitchell Manuscript) at
7 MJ00022659-MJ00022661; *See also* ECF No. 177-21 (U.S. Bates #002357)
8 (affording discretion to interrogation team “on the type and frequency of
9 pressures used against Abu Zubaydah.”).

10 177. The CIA, through HQS, the CTC and the COB of GREEN,
11 maintained complete operational control over Drs. Mitchell and Jessen while
12 they interrogated Zubaydah, whether using EITs or otherwise. (Rodriguez Decl.
13 ¶ 68; Exh. Q at US Bates 001891; Exh. P at US Bates 001916; Tompkins Exh.
14 31 at US Bates 001594.)

15 Contrary to Defendants’ Fact # 177, and for the reasons set forth in
16 opposition to Defendants’ Fact #176, Defendants determined what was to be
17 done to Abu Zubaydah, how it would be done, when it would be done, and
18 secured CIA approval for their plan.

19 178. Drs. Mitchell and Jessen reported directly to GREEN’s COB. (*Id.*)

20 Undisputed.

21 179. GREEN’s COB, in turn, reported to Rodriguez, who was keenly
22 aware of, and approved of, all of Drs. Mitchell and Jessen’s activities.
23 (Rodriguez Decl. ¶ 69.)

24 Undisputed.

25 180. GREEN’s COB was responsible for ensuring that all on-site staff
26 and support, including Drs. Mitchell and Jessen, complied with all applicable
regulations, guidelines, standard operating procedures and the applicable,
approved interrogation plan. (Rodriguez Decl. ¶ 69; Exh. P at US Bates 001921;
Tompkins Decl., Exh. 32 at US Bates 001625.)

Undisputed.

1 181. The Zubaydah interrogation team did not apply any EITs to
2 Zubaydah until it received express HQS approval. Rather, they stood ready to
3 initiate the next phase of the interrogation process if they “received the
4 appropriate approvals/authorities and related _____ cables outlining the specific
5 techniques to be used during upcoming phase.” (Tompkins Decl., Exh. 46 at US
6 Bates 001927; Exh. 4, Rizzo Tr. at 60:10-25.)

7 Undisputed.

8 182. The Zubaydah interrogation team prepared for Zubaydah’s
9 forthcoming interrogation and developed “protocols for [a] large confinement
10 box and [wound] dressing changes during the next phase of interrogation.”
11 (Tompkins Decl., Exh. 56 at US Bates 002215-16.)

12 Defendants’ Fact #182 is not supported by the document cited.

13 183. The Zubaydah interrogation team also talked through the
14 interrogation strategy and then conducted multiple walk-throughs with security
15 staff and OMS, during which they choreographed using the large and small
16 confinement boxes, the water board, and emergency medical procedures.
17 (Tompkins Decl., Exh. 35 at US Bates 001651-52; Exh. 36 at US Bates 001653-
18 54.)

19 Undisputed, except that Defendants’ Fact #183 is misleading without the
20 clarification that it was Defendants Mitchell and Jessen who led the process and
21 conducted the walk through rehearsal with security staff, while other members
22 of the team observed. ECF No. 176-35 (U.S. Bates #001652).

23 184. On August 4, 2002, all members of the Zubaydah interrogation
24 team “read and reviewed HQS[’s] formal approval cable to proceed with the
25 next phase of interrogations.” (Rizzo Decl. ¶ 47; Exh. K at US Bates 001755-56;
26 Rodriguez Decl. ¶ 63.)

Undisputed.

185. Then, before commencing Zubaydah’s interrogation, in accordance
with the new plan, the team again reviewed the procedural steps of the
interrogation to ensure that everyone understood their respective roles and did
not have any concerns. (Rizzo Decl., Exh. K at US Bates 001755-56.)

1
2 Undisputed.

3 186. Zubaydah’s subsequent interrogation using EITs was conducted
4 entirely at the behest of, and within the control of, HQS and CTC. (Rodriguez
5 Decl. ¶ 65.)

6 Undisputed, except to the use of “entirely,” which is misleading without
7 the clarification that Defendants Mitchell and Jessen personally conducted Abu
8 Zubaydah’s interrogation using the methods that they had designed, proposed
9 and developed. *See, e.g.*, ECF No. 174-11 (U.S. Bates #001755-001759)
10 (describing Defendants’ involvement in the initial cycle of Abu Zubaydah’s
11 interrogation). Defendants applied their techniques in accordance with their
12 “psychologically-based” theory of interrogation and exercised their own
13 judgment and applied personal standards as to what techniques should be used
14 with Abu Zubaydah and how they should be used. *See, e.g.*, Watt Decl., Exh. C
(Mitchell Manuscript) at MJ00022659-MJ00022661; ECF No. 177-21 (U.S.
15 Bates #002357) (affording discretion to interrogation team “on the type and
16 frequency of pressures used against Abu Zubaydah.”)

17 187. The first session of the so-called Aggressive Phase commenced on
18 August 4, 2002 at 11:50 Hours. The session “went exactly as expected and
19 discussed/scripted” during the team meetings. (Rizzo Decl., Exh. K at US Bates
20 001755-56.)

21 Undisputed.

22 188. EITs were applied to Zubaydah in varying combinations on the
23 first day and then the days thereafter. (Tompkins Decl., Exh. 51 at US Bates
24 002020- 21.)

25 Undisputed, except that Defendants’ Fact #188 is misleading without the
26 clarification that it was Defendants who used their methods on Abu Zubaydah.
See Pls.’ Resp. to Defs.’ Fact #176.

189. GREEN’s COB provided HQS, and specifically Rodriguez, with
detailed correspondence regarding interrogations on both a daily and as needed
basis. (Rodriguez Decl. ¶ 71.)

1 Undisputed.

2 **XII. HQS CONTINUES EITS AFTER DRS. MITCHELL AND**
3 **JESSENT WANT TO STOP**

4 190. After six days of applying EITs to Zubaydah, on August 11, 2002,
5 the interrogation team sent HQS an update indicating that the team collectively
6 thought it was highly unlikely Zubaydah had actionable new information about
7 current threats to the United States. On the other hand, the team thought that
8 Zubaydah was withholding information about his involvement in past
operations. (Tompkins Decl., Exh. 57 at US Bates 002341.)

9 Undisputed.

10 191. In a matter of days, Drs. Mitchell and Jessen specifically
11 recommended that EITs, including the water board not be used on Zubaydah
12 anymore. Rodriguez was aware of this recommendation. (Rodriguez Decl. ¶ 72;
13 Tompkins Decl., Exh. 3, Rodriguez Tr. at 113:6-13; Exh. 2, Jessen Tr. at
14 147:18- 148:5; Exh. 1, Mitchell Tr. at 294:16-22, 295:11-296:10.)

15 Undisputed.

16 192. In a cable, Zubaydah's interrogation team specifically indicated that
17 they did not recommend escalating the pressure on Zubaydah because they did
18 not want to risk "going beyond legal authorities." (Tompkins Decl., Exh. 57 at
US Bates 002341.)

19 Undisputed

20 193. The interrogation team also requested that HQS send someone to
21 observe the interrogations during the week of August 12, 2002, so that the HQS
22 team could obtain an 'on-the-ground appreciation for the tactics/techniques
23 being used as a way of assuring HQS that techniques are being applied to the
24 letter/intent of the law, allow HQS team the opportunity to discuss team
25 concerns regarding positive/negative impact of increased psychological pressure
26 to achieve our goals re: actionable threat information, and reinforce team request
for clarification of the end game strategy re: subject.' (Tompkins Decl., Exh. 57
at US Bates 002341.)

1 Undisputed

2 194. HQS nevertheless demanded that Drs. Mitchell and Jessen continue
3 to apply the water board to Zubaydah. (*Id.*, Exh. 2, Jessen Tr. at 147:18 148:5.)

4 Undisputed, with the clarifications that (1) the word “demand” is
5 Defendants’ self-serving characterization, and (2) it was Defendants who had
6 previously claimed Abu Zubaydah was a skilled resistor, ECF No. 182-25 (U. S.
7 Bates #001771); Watt Decl., Exh. B (Mitchell Dep.) 252:24–253:21—and CIA
8 Headquarters thought Abu Zubaydah might still be withholding information and
9 Defendants’ previously advocated methods might extract new information from
10 Abu Zubaydah. Watt Decl., Exh. C (Mitchell Manuscript) at MJ00022666.

11 195. In a cable, HQS ordered:

12 1. Action Required: Please stay the course, medical situation permitting,
13 and be certain you have our support.

14 2. Much appreciate ref detailed, timely reporting of your work at
15 _____. We read carefully the week’s interrogation results, and your
16 recently submitted preliminary analysis of the interrogation situation.

17 We see this point as still early in the phase two process, and while the
18 work is difficult, we see some positive trends. You are succeeding in
19 placing effective interrogation stress on Abu Zubaydah in keeping with
20 the interrogation guidelines. Abu Zubaydah is feeling the increased
21 pressure. Most importantly, he has begun to share disseminable
22 information – at the end of the week. While the value of this information
23 is modest, it is verifiable and can be used as the basis for future
24 interrogations. It may clear the way for more significant progress. The
25 bottom line, in our view is that ref developments are encouraging and
26 more than justify staying the course. Our assessment remains that Abu
Zubaydah is in possession of critical information.

3. Because of this, we believe that the aggressive phase must continue.

4. We know this is a very difficult assignment. Your task is unique,
stressful on the participants, as well as terribly important and sensitive.
You are doing this work far from home and your colleagues. Don’t let this
distance lead you to think that you have anything but our complete
support.

(Tompkins Decl., Exh. 58 at US Bates 002344.)

1 Undisputed, except with respect to Defendants' characterization of a cable
2 that asks them to "[p]lease stay the course" as an "order." The cable speaks for
3 itself.

4 196. HQS further remarked that the interrogation team's reporting was
5 "excellent" and scheduled a videoconference to view the application of EITs to
6 Zubaydah on August 13, 2002. (Tompkins Decl., Exh. 58 at US Bates 002344.)

7 Undisputed

8 197. On August 11, 2002, the interrogation team again told HQS that
9 they did not think Zubaydah possessed any further information about new or
10 current threats against the United States. (*Id.*, Exh. 59 at US Bates 002346.)

11 Undisputed.

12 198. On August 13, 2002, HQS acknowledged that the interrogation
13 team believed that Zubaydah had no additional information on current threats.
14 Still, HQS ordered that the interrogation continue and provided additional
15 information for use in the ongoing interrogation. (*Id.*, Exh. 60 at US Bates
16 002351.)

17 Contrary to the second sentence of Defendants' Fact #198, the cited cable
18 does not contain any "order."

19 199. After watching a videoconference during which EITs were applied
20 to Zubaydah on August 13, 2002, HQS directed the interrogation team to
21 "continue with the aggressive interrogation strategy for the next 2-3 weeks." At
22 the time, "the HQS consensus" was that Zubaydah possessed additional
23 information that was "critical to saving American lives." (*Id.*, Exh. 61 at US
24 Bates 002356.)

25 Undisputed.

26 200. In particular, CTC analysts remained concerned that Zubaydah was
not "compliant" because when Zubaydah was captured, the CIA had discovered
tapes that Zubaydah had pre-recorded to celebrate another major attack on the
U.S. CTC feared that another attack had been planned and Zubaydah was not

1 providing the information about that planned attack. (*Id.*, Exh. 3, Rodriguez Tr.
2 at 114:19-115:1, 176:14-177:3.)

3 Defendants' Fact #200 is misleading and requires clarification that
4 Defendant Mitchell explained that a key reason CTC remained concerned that
5 Abu Zubaydah was not "compliant" was because Defendant Mitchell had told
6 Jose Rodriguez that it would take 30 days of the use of Defendants' methods
7 before Defendant Mitchell would "believe a person subjected to EITs 'either
8 didn't have the information or was going to take it to the grave with them.'" Watt Decl., Exh. C (Mitchell Manuscript) at MJ00022666. Defendant Mitchell
9 added that his representation about a 30-day timeline had now "come back to
10 haunt us." *Id.*

11 201. HQS directed the interrogation team to continue water boarding
12 Zubaydah and apply all the "pressures we have the legal authorities to bring to
13 bear" and reassured them: "rest assured that every action the _____ team has
14 taken with Abu Zubaydah falls well within these legal parameters." (Tompkins
15 Decl., Exh. 61 at US Bates 002357; Exh. 3, Rodriguez Tr. at 176:6-13;
16 Tompkins Decl., Ex. 2, Jessen Tr. at 147:18-148:5.)

17 Undisputed, with the clarification that the cited cable does not mention
18 waterboarding, and states: "As has been the case since the start of the process,
19 the [] team may use its discretion on the type and frequency of the pressures
20 used against Abu Zubaydah --- As long as the stress remains on him to be
21 compliant and to produce actionable intelligence." ECF No. 177-21 (U.S Bates
22 #002357).

23 202. HQS ordered the interrogation team to continue to use "pressures
24 ... against Abu Zubaydah" so that "stress remains on him to be compliant and to
25 produce actionable information." (*Id.*, Exh. 61 at US Bates 002357.)

26 Undisputed, except for the characterization of the cable as an "order;" that
the cable speaks for itself: "As has been the case since the start of the process,
the [] team may use its discretion on the type and frequency of the pressures
used against Abu Zubaydah --- As long as the stress remains on him to be
compliant and to produce actionable intelligence."

203. Drs. Mitchell and Jessen were "responsible for ensuring that Abu
Zubaydah remain[ed] compliant through the pressures while _____ [] head[ed]

1 up the substantive interrogations.” Meanwhile, the CIA’s ALEC station
2 supported the interrogation through focused requirements and immediate
3 feedback on Zubaydah’s disclosures. There was also someone present from the
4 CIA at Zubaydah’s interrogations to provide legal and operational guidance.
(*Id.*)

5 Undisputed.

6 204. On August 16, 2002, in response to the interrogation team’s request
7 that HQS view the interrogations on-the-ground, a HQS team arrived at GREEN
8 to discuss the general strategy for the current phase of Zubaydah’s interrogation.
(*Id.*, Exh. 62 at US Bates 002367.)

9 Undisputed.

10
11 205. The HQS team participated in the daily strategy meeting about
12 Zubaydah’s interrogations and then became actively involved in Zubaydah’s
13 interrogation. (Tompkins Decl., Exh. 62 at US Bates 002367; Exh. 63 at US
Bates 002373; Rodriguez Decl. ¶ 73.)

14 Undisputed, except for the characterization of the “HQS” team’s
15 participation as “active.” Mr. Rodriguez state: “arrangements were made
16 to enable ... representative of HQS and the CTC, to observe the use of
17 EITs, including the water board, upon Abu Zubaydah.” Watt Decl., Exh.
18 V (Rodriguez Decl.) ¶ 73. It was Defendants who continued to apply their
methods on Abu Zubaydah. ECF No. 177-23 (U.S Bates #002377-78).

19 206. On August 19, 2002, the water board was applied to Zubaydah
20 while CTC/LGL and GREEN’s COB observed. During the technique, Zubaydah
21 was instructed that “revealing the requested information would stop the
22 procedure.” (Tompkins Decl., Exh. 64 at US Bates 002380; Exh. 1, Mitchell Tr.
at 296:13- 297:9.)

23 Undisputed, with the clarification that it was Defendants who applied the
24 water board. ECF No. 177-24 (U.S. Bates #002380).

25 207. The aggressive phase of Zubaydah’s interrogation ended on August
26 23, 2002—after 19 days of interrogation using EITs—because HQS viewed

1 Zubaydah as being “in a state of complete subjugation and total compliance.”
2 (Tompkins Decl., Exh. 65 at US Bates 002382; Rodriguez Decl. ¶ 74.)

3 Contrary to Defendants’ Fact #207, it was the interrogation team that
4 viewed Abu Zubaydah as being “in a state of complete subjugation and total
5 compliance.” The cable that Defendants cite was sent “for HQS review,” *from*
6 the interrogation team that included Defendants, and was not sent from HQS.

7 208. HQS indicated that “the aggressive phase at _____ should be used
8 as a template for future interrogation of High Value Captives. Psychologists
9 familiar with interrogation, exploitation and resistance to interrogation should
10 shape compliance of high value captives prior to debriefing by substantive
11 experts.” (Tompkins Decl., Exh. 51 at US Bates 002023.)

12 Contrary to Defendants’ Fact #208, it was Defendants, not HQS, who
13 wrote that the aggressive phase “should be used as a template.” The cable
14 Defendants cite was sent *to* HQS *from* the interrogation team at GREEN, and
15 Defendants Mitchell and Jessen are its authors. ECF No. 182-13 (U.S. Bates
16 #002019, 002023 (re-processed: April 11, 2017)); Watt Decl., Exh. T (SSCI
17 Report) at 46.

18 **XIII. EITS ARE EXPANDED FOR USE ON OTHER HVDS**

19 209. Within a few months of the August 1, 2002 Bybee Memo, the OLC
20 confirmed that EITs could be used on other HVDs. (Rizzo Decl. ¶ 50; Tompkins
21 Decl., Exh. 4, Rizzo Tr. at 62:9-12; Rodriguez Decl. ¶ 76.)

22 Undisputed.

23 210. EITs—the specific techniques Dr. Mitchell listed in the July 2002
24 Memo—were contemplated for use only on HVDs. (Tompkins Decl., Exh. 3,
25 Rodriguez Tr. at 76:20-77:1, 165:7-20, 184:19-25, 186:17-20; Exh. 4, Rizzo Tr.
26 at 62:13-25, 63:17, 65:5-15.)

Contrary to Defendants’ Fact #210, the contemporaneous record does not
support that Defendants’ methods were contemplated for use only on “HVDs.”
Defendant Jessen testified that “The term HVD, you know, that didn’t exist
when we started.” Watt Decl., Exh. F (Jessen Dep.) 200:11–13. The guidelines
standardizing the use of Defendants’ methods make no mention of a restriction

1 for use only on “HVDs.” ECF 182-13 (U.S. Bates #001170-74) (Guidelines on
2 Interrogations, January 2003). Defendant Jessen personally requested
3 permission to apply “the following [moderate value target] interrogation
4 pressures . . . as deemed appropriate by [Jessen] . . . isolation, sleep deprivation,
5 sensory deprivation (sound masking), facial slap, body slap, attention grasp, and
6 stress positions” to a prisoner at COBALT. Watt Decl., Exh. S (U.S. Bates
7 #001287).

8 211. Drs. Mitchell and Jessen were contracted to support the CTC with
9 regard to HVDs. (Tompkins Decl. Exh., 3, Rodriguez Tr. at 182:2-7; DDO
10 Death Investigation, Exh. 22 at US Bates 001124 (describing Jessen as
11 “involved in the use of enhanced interrogation techniques with high value
12 targets”).

13 Contrary to Defendants Fact #211, Defendant Jessen “stated that his
14 duties at CIA have involved the interrogation of high and medium value terrorist
15 targets.” ECF No. 181-36 (U.S. Bates #001047–48). Defendants’ contracts and
16 their job descriptions do not indicate a role limited only to “HVDs.” *See, e.g.*,
17 Watt Decl., Exh. N (U.S. Bates #000047, 000061-64); Watt Decl., Exh. J (U.S.
18 Bates # 00086; 000092; 000094); U.S. Bates 001592 (job description). The
19 record establishes that Defendants were contracted to help design, test, and
20 implement an interrogation program for the CIA using their methods. ECF 176-
21 25 (OIG) at U.S. Bates #001352 (Mitchell and Jessen “developed a list of new
22 and more aggressive EITs that they recommended for use in interrogations.”)

23 212. Rodriguez described the results Drs. Mitchell and Jessen achieved
24 as “incredible”—providing the CIA with “intelligence . . . that we didn’t have
25 before.” (Tompkins Decl., Exh. 3, Rodriguez Tr. at 134:2-10.)

26 Contrary to Defendants’ Fact #212, Rodriguez’s subjective opinion of
Defendants’ results is undercut by the CIA’s own assessment that:

We do want to add, however, that in hindsight, we believe that assertions the Agency made to the effect that the information it acquired could not have been obtained some other way were sincerely believed but were also inherently speculative. Although it is indeed impossible for us to imagine how the same counterterrorism results could have been achieved without any information from

1 detainees, we also believe-as we note above--that it is
2 unknowable whether, without enhanced techniques, CIA
3 or non--CIA interrogators could have acquired the same
4 information from those detainees.

5 Watt Decl., Exh. M (CIA Response) at 15 (Recommendations).

6 213. According to Dr. Mitchell's "Contract Performance Report" for the
7 period January 1, 2003, to December 31, 2003, Dr. Mitchell's performance was
8 "Exceptional," and he "consistently met the highest standards of professionalism
9 and competence." (Tompkins Decl., Exh. 78 at US Bates 001911.)

10 Undisputed.

11 214. Rodriguez also testified that Defendants' evaluation of the EITs'
12 effectiveness was "not problematic" because the CIA "also played a role in
13 assessing their effectiveness." (Tompkins Decl., Exh. 3, Rodriguez Tr. at 132:2-
14 9.)

15 Contrary to Defendants' Fact # 214, the CIA's own assessment was that:

16 CIA should have done more from the beginning of the
17 program to ensure there was no conflict of interest-real or
18 potential-with regard to the contractor psychologists who
19 designed and executed the techniques while also playing
20 a role in evaluating their effectiveness, as well as other
21 closely-related tasks.

22 Watt Decl., Exh. M (CIA Response) at 25 (Findings and Conclusions).

23 The CIA stated that it "has since taken steps to ensure
24 that our contracts do not have similar clauses with the
25 contractors grading their own work." *Id.* at 10-11
26 (Recommendations).

Mr. Rizzo agrees with this criticism.

Watt Decl., Exh. D (Rizzo Dep.) 117:15-23.

1 215. During their time working for the CIA in 2002 through January
2 2003, Drs. Mitchell and Jessen spent at least 80% of their time deployed outside
3 the U.S. In fact, during this timeframe, Dr. Jessen spent 98% of his time
4 deployed outside the U.S. (Mitchell Decl. ¶ 9; Jessen Decl. ¶ 4.)

5 Plaintiffs have no basis to dispute or not dispute these calculations
6 because Defendants have not produced any documents that would confirm their
7 estimates in 2017 of time spent in 2002.

8 **XIV. APPROVAL PROCESS FOR EITS**

9 216. Dr. Mitchell and Jessen did not decide to whom (*i.e.*, which HVDs)
10 the EITs would be applied. (Tompkins Decl., Exh. 3, Rodriguez Tr. at 125:23-
11 126:3, 174:6-10; Tompkins Decl., Exh. 34 at US Bates 001631-32.)

12 Plaintiffs object to Defendants Fact #216 to the extent it claims that
13 “HVDs” were the only prisoners to whom their methods would be applied. The
14 guidelines standardizing the use of those methods make no mention of a
15 restriction to use only on “HVDs.” ECF No. 182-32 (U.S. Bates #001170-74)
16 (Guidelines on Interrogations, January 2003). Defendant Jessen personally
17 requested permission to apply “the following [moderate value target]
18 interrogation pressures . . . as deemed appropriate by [Jessen], . . . isolation,
19 sleep deprivation, sensory deprivation (sound masking), facial slap, body slap,
20 attention grasp, and stress positions” to a prisoner at COBALT. Watt Decl., Exh.
21 S (U.S. Bates #001287).

22 217. Before EITs could be applied to any detainee, the CIA had to grant
23 specific legal approval. (*Id.*, Exh. 3, Rodriguez Tr. at 167:15-19, 169:4-8; Exh.
24 4, Rizzo Tr. at 60:10-25, 85:1-12, 187:2-25, 188:1-7.)

25 Contrary to Defendants’ Fact #217, Defendant Jessen himself applied an
26 “EIT” to Mr. Rahman without “specific legal approval” from the CIA. As part
of his assessment of Mr. Rahman, Defendant Jessen used one of the methods
that Defendants had proposed for use on Abu Zubaydah—a facial slap—“to
determine how he would respond.” Defendant Jessen concluded that Mr.
Rahman “was impervious to it,” and assessed that Mr. Rahman would not be
“profoundly and permanently affected” by the use of any of the methods
Defendants had proposed for use on Abu Zubaydah. Watt Decl., Exh. F (Jessen
Dep.) 238:22–241:15, 211:7–15.

1
2 218. The CIA advised Drs. Mitchell and Jessen, and all other CIA
3 officers involved in the EIT Program (*i.e.*, the program wherein EITs were
4 applied to Zubaydah and other HVDs), that EITs were not authorized for use
without specific and prior HQS approval. (*Id.*, Exh. 30 at US Bates 001593.)

5 Contrary to Defendants' Fact #218, the CIA program was not limited to
6 HVDs, and was not applied "without specific and prior HQS approval" for, *inter*
7 *alia*, the reasons stated in Plaintiffs' objection to Defendants' Fact #217.

8 219. It was important to "fully document in advance any decision to
9 employ any [EITs]" and the criteria that were employed in making those
10 decisions. (*Id.*, Exh. 52 at US Bates 002030.)

11 Undisputed.

12 220. The use of specific EITs would be authorized only where, "in light
13 of the specific interrogator's experience with those procedures and the specific
14 detainee's own characteristics", the techniques would not cause severe physical
15 injury, death, or prolonged mental harm continuing for a period of months or
16 years. (Tompkins Decl., Exh. 52 at US Bates 002029; Tompkins Decl., Exh. 1,
17 Mitchell Tr. at 158:17-159:1; 409:21-410:3.)

18 Contrary to Defendants' Fact #220, the CIA had no way of authorizing
19 "specific EITs" on the basis that they "would not cause . . . prolonged mental
20 harm continuing for a period of months or years." The CIA itself acknowledged
21 that:

22 While it would "make every effort possible to ensure that
23 subject is not permanently physically or mentally harmed but
24 we should not say at the outset of this process that there is no
25 risk."

26 ECF No. 182-25 (U.S. Bates #001771).

The CIA's "presumption" that prisoners would recover was
based in part on studies proposed by Defendants for CIA
consideration of members of the U.S. military who had
volunteered to undergo SERE training - though Defendants

1 knew the effect of their methods might be different for
2 prisoners than for volunteers.

3 Watt Decl., Exh. F (Jessen Dep.) 127:11–24.

4 221. All cables from a black-site were reviewed by the Chief of Base
5 prior to being sent to HQS. (*Id.*, Exh. 2, Jessen Tr. at 143:5-13.)

6 Undisputed.

7
8 222. Rodriguez explained that cables requesting approval for the
9 application of EITs would go to multiple people in the chain of command at CIA
10 HQS, including Rodriguez, who had to approve any such requests. (*Id.*, Exh. 3,
Rodriguez Tr. at 167:16-19, 167:20-168:3.)

11 Undisputed.

12 223. For certain techniques, specifically water boarding, the Director of
13 the CIA would also have to approve, in advance, usage of the technique. (*Id.*,
14 Exh. 3, Rodriguez Tr. at 166:17-167:7.)

15 Undisputed.

16 224. The CIA put this detailed approval process in place because the
17 CIA considered EITs serious and did not want them applied without approval of
18 the “highest levels of the agency.” (*Id.*, Exh. 3, Rodriguez Tr. at 167:7-14.)

19 Undisputed.

20 225. Drs. Mitchell and Jessen understood that they were the only
21 individuals authorized to administer EITs until around November-December
22 2002. (Mitchell Decl. ¶ 10; Jessen Decl. ¶ 5.)

23 Undisputed.

24 226. The CIA conducted training in “High-Value Target” interrogation
25 techniques in late 2002. The training was designed, developed, and conducted
26 by individuals other than Drs. Mitchell and Jessen from CTC, and Drs. Mitchell
and Jessen played no role in the interrogation training. Individuals from JPRA

1 were instructors at this training. (Tompkins Decl., Exh. 66 at US Bates 002595-
2 663; Exh. 67 at US Bates at 2667.)

3 Undisputed.

4
5 227. Although this approval process was in place starting in 2002, on
6 January 31, 2003, CIA Director Tenet, upon the advice of the CIA's then-
7 General Counsel Scott Muller, sent formalized guidelines for interrogations of
8 detainees held pursuant to the MON to all CIA black-sites ("Guidelines"). The
9 CTC/LGL Department drafted these guidelines. (Rizzo Decl. ¶ 51; Exh. L at US
10 Bates 001856; Exh. N at US Bates 001170-74; Tompkins Decl., Exh. 4, Rizzo
11 Tr. at 63:18-22, 81:4-19, 186:4-21; Exh. 3, Rodriguez Tr. at 170:17-171:9)

12 Undisputed.

13 228. The Guidelines distinguished between "Standard Techniques" and
14 "Enhanced Techniques." Standard Techniques were determined by HQS and
15 included isolation, sleep deprivation (up to 72 hours), reduced diet, loud music,
16 and the use of diapers. Whenever feasible, Standard Techniques required
17 advanced approval, and "required _____ in cable traffic." (Rizzo Decl., Exh.
18 N at US Bates 001171-72; Tompkins Decl., Exh. 4, Rizzo Tr. at 189:6-24.)

19 Undisputed.

20 229. "Enhanced Techniques" also were determined by HQS and
21 included the attention grasp, walling, facial hold, facial slap, abdominal slap,
22 cramped confinement, wall standing, stress positions, sleep deprivation (beyond
23 72 hours), use of diapers for prolonged periods, use of harmless insects, and the
24 water board. "Enhanced Techniques" required advanced approval. They also
25 could only be used "with appropriate medical and psychological participation[.]"
26 And the participating medical personnel was selected by HQS. (Rizzo Decl.,
Exh. N at US Bates 001170-74; Tompkins Decl., Exh. 4, Rizzo Tr. at 190:13-25,
191:1-21; Exh. 3, Rodriguez Tr. at 80:15-20.)

Undisputed.

230. The Guidelines were sent to all CIA locations, including COBALT,
and all CIA personnel involved in interrogations or detentions was required to
review and acknowledge them. (Rizzo Decl. ¶ 56; Exh. L at US Bates 001856.)

1
2 Undisputed.

3 231. Drs. Mitchell and Jessen were not aware that the Guidelines were
4 sent to COBALT in January 2003. (Mitchell Decl. ¶ 12; Jessen Decl. ¶ 8.)

5 Undisputed.

6 **XV. PROCEDURE FOR APPLICATION OF EITS**

7
8 232. Drs. Mitchell and Jessen were under the direct operational
9 supervision of the Chief and Deputy Chief of the CIA's Rendition, Detention
10 and Interrogation Group ("RDI"), who determined how, when, where, for how
11 long, and in what capacity, Drs. Mitchell and Jessen were deployed. (Tompkins
12 Decl., Exh. 31 at US Bates 001594.)

13 Undisputed.

14 233. The COB at each black-site was responsible for the overall
15 management and supervisory duties of an interrogation team, including Drs.
16 Mitchell and Jessen, and for the specific interrogation plan. (Rodriguez Decl. ¶
17 77-78; Tompkins Decl., Exh. 33 at US Bates 001628.)

18 Undisputed.

19 234. Drs. Mitchell and Jessen reported to the COB. All communications
20 between the field and HQS flowed through the COB up the chain to the Chief of
21 Station, then to CTC, and then to the Director of the CIA. (Tompkins Decl.,
22 Exh. 2, Jessen Tr. at 151:12-23.)

23 Undisputed.

24 235. As independent contractors, Drs. Mitchell and Jessen did not make
25 decisions. The CIA hires independent contractors who are subject matter
26 experts. Drs. Mitchell and Jessen gave the CIA knowledge that it did not possess
and made recommendations, but the ultimate decision makers were always the
CIA staff and CTC leadership.

Q: Were they – did you tell them that they were not, that they were

1 not the ones to decide who the enhanced interrogation techniques
2 would be used on? A: They were contractors, independent
3 contractors. Everybody knows that independent contractors don't
4 make decisions, that the staff people are the ones making decisions.
(Tompkins Decl., Exh. 3, Rodriguez Tr. at 126:6-17, 160:15-19;
5 Tompkins Decl., Exh. 1, Mitchell Tr. at 248:21-23, 253:22-257:19.)

6 Undisputed.

7 236. Rodriguez testified that Drs. Mitchell and Jessen acted under the
8 direction of the CIA. (*Id.*, Exh. 3, Rodriguez Tr. at 181:19-25, 250:5-19; Exh. 33
9 at US Bates 001628.)

10 Undisputed.

11 237. More specifically, Drs. Mitchell's and Jessen's responsibilities
12 included only the following:

- 13 a. Conduct psychological interrogation assessment of a detainee and
14 report the findings of the assessment to HQS;
15 b. Assist the interrogation team in developing an interrogation plan
16 based upon the PIA;
17 c. Monitor the psychological progress of the detainee during the
18 interrogation process;
19 d. Assist the team interrogation with planning the transition of a
20 detainee towards debriefing;
21 e. Act as a member of the interrogation team providing psychological
22 advice to the interrogators and the team leader; and
23 f. Act as an active member of the interrogation team with "hands-on"
24 the detainee during the interrogation process.

(Tompkins Decl., Exh. 30 at US Bates 001592.)

25 Contrary to Defendants' Fact #237, the record shows that Defendants'
26 role was far broader: "Drs. Mitchell and Jessen played a significant and
formative role in the development of CTC's detention and interrogation
program." ECF No. 183-9 (U.S. Bates #001629). Defendants were involved in
training other interrogators in how to use their methods. Watt Decl., Exh. D
(Rizzo Dep.) 67:11-17. Defendants were also involved in developing and

1 refining the program at various times, including personally advising and
2 recommending specific coercion methods to CIA Director George Tenet
3 Secretary of State Rice. Watt Decl., Exh. C (Mitchell Manuscript) at
4 MJ00022637 (“Less than a week later after CTC had decided to move ahead
5 with efforts to incorporate SERE interrogation techniques into the CIA’s
6 interrogation program, Jose asked me to accompany him to go see CIA Direct,
7 George Tenet.”); ECF No. 183-11 (U.S. Bates #001175-77) (memorializing
8 June 6, 2007 meeting between Defendants, Rizzo and Secretary of State Rice
9 concerning the interrogation program and Defendants’ sleep deprivation
10 method).

11 238. Interrogation plans, or changes to an interrogation plan, were
12 approved by the COB and then approved by all of his or her superiors. (*Id.*, Exh.
13 2, Jessen Tr. at 151:12-23; Tompkins Decl., Exh. 3, Rodriguez Tr. at 246:2-12
14 (stating the CIA “were the ones that provided [Drs. Mitchell and Jessen] the
15 plan. We were the ones that told them, look, we can use these interrogation
16 techniques on these [specific] individuals”); Tompkins Decl., Exh. 73 at
17 MJ000022623.)

18 Undisputed.

19 239. “Prior to an interrogation team using EITs, the Site Manager, in
20 coordination with the interrogation team, formulate[d] an interrogation plan,
21 submit[ed] the plan to HQS for approval by the [Director], and approval
22 authority must be submitted to the Site prior to any methods being used. A
23 detailed interrogation after action report [was] submitted at the conclusion of
24 each interrogation session.” (Tompkins Decl., Exh. 34 at US Bates 001635.)

25 Undisputed.

26 240. Interrogation decisions were made by the “interrogation team,”
which itself was required to “consult closely with CTC/LGL as to the specific
means and methods envisioned” to “ensur[e] the fullest possible acquisition of
critical intelligence and the full legal protection of our officers.” (Tompkins
Decl., Exh. 55 at US Bates 002171.)

Undisputed.

1 241. The interrogation process entailed an ongoing “discussion,” with
2 CIA cables refining the proposed interrogation plan and “request[ing] HQS
3 concurrence.” (Tompkins Decl., Exh. 50 at US Bates 002018; Tompkins Decl.,
4 Exh. 40 at US Bates 001770-72, Tompkins Decl., Exh. 51 at US Bates 002019;
Tompkins Decl., Exh. 1, Mitchell Tr. at 248:14-17.)

5 Undisputed.

6 242. The CIA maintained control over whether any EIT was used upon
7 an HVD, including Zubaydah, and under what circumstances. Indeed, CTC was
8 “[c]learly ... in charge of the operation,” and was also “providing the legal
9 oversight.” (Tompkins Decl., Exh. 30 at US Bates 001593; Exh. 31 at US Bates
10 001594; Exh. 3, Rodriguez Tr. at 181:4-13; Exh. 4, Rizzo Tr. at 192:23-25,
11 193:1-17; Exh. 69, Exhibit 20 to the Mitchell Tr.; Rodriguez Decl. ¶ 78; Exh. Q
at US Bates 001891; Tompkins Decl., Exh. 34 at US Bates 001635-36.)

12 Contrary to Defendants’ fact #242, the CIA recognized that the
13 interrogation process was “fluid” (U.S. Bates 001644) and that interrogators had
14 “discretion on the type and frequency” of the methods used on detainees. ECF
No. 177-21 (U.S. Bates #002357).

15 243. The purpose of the EITs was to get the detainee to cooperate and
16 talk. They were applied starting with the least intrusive, and throughout the
17 interrogation, the detainee was constantly asked if they would cooperate.
(Tompkins Decl., Exh. 2, Jessen Tr. at 122:14-123:16, 124:1-11, 126:10-14.)

18 Contrary to Defendants’ Fact #243, Defendants contemporaneously stated
19 that the purpose of their methods was “to instill fear and despair” in order to
20 obtain information. ECF No. 182-8 (U.S. Bates #001110).

21 244. During the HVD interrogations, the CIA required a medical doctor
22 be present in the room when any EITs were being used to make sure that no
23 harm came to the detainee and that if there was a medical emergency, there
24 would be someone that could treat it. (*Id.*, Exh. 3, Rodriguez Tr. at 170:6-16.)

25 Defendants’ Fact #244 is incorrect and misleading without the
26 clarification that there is no evidence that a medical doctor had any way of
discerning, while Defendants’ methods were being used, whether any long-term
mental harm, such as post-traumatic stress disorder (PTSD), might result from

1 the infliction of Defendants' methods. Watt Decl., Exh. X (Morgan Dep.) 26:5-
2 22 (PTSD only diagnosable 30-day after a Criterion-A traumatic event).

3 **XVI. MVD/LVD PROGRAM IS DEVELOPED SEPARATELY**

4 245. Drs. Mitchell and Jessen were initially contracted for Zubaydah's
5 interrogation. Only after Zubaydah's interrogation did they learn that the CIA
6 had interrogation efforts at other locations. (Tompkins Decl., Exh. 2, Jessen Tr.
7 at 138:1-11, 139:14-22; Exh. 4, Rizzo Tr. at 180:1-2.)

8 Contrary to Defendants' Fact #245, during Abu Zubaydah's interrogation
9 Defendants advocated for their methods to be used as a "template" for other
10 interrogations. ECF No. 182-13 (U.S. Bates #002023) ("The aggressive phase []
11 should be used as a template for future interrogation of high value captives.")
12 From the outset, Defendant Mitchell agreed to "help put together an
13 interrogation program using EITs."); Watt Decl., Exh. C (Mitchell Manuscript)
14 at MJ00022631 (Defendant Mitchell: "A day or so later Rodriguez asked me if I
15 would help put together an interrogation program using EITs. I told him I
16 would . . ."); Watt Decl., Exh. A (Rodriguez Tr.) 53:19-21 ("Q. So you agree
17 that Dr. Mitchell was the architect of the CIA interrogation program? A. Yes.").

18 246. In fact, they did not find out that interrogations were going on at
19 other locations until they arrived at those locations. (*Id.*, Exh. 2, Jessen Tr. at
20 267:21-268:6; 269:12-13; 270:2-4; Exh. 4, Rizzo Tr. at 204:3-10; Rodriguez
21 Decl. ¶¶ 95-96.)

22 Defendants' Fact #246 is misleading to the extent it implies that
23 Defendants were unaware that other interrogations were part of the CIA
24 program, even if they were unaware of specific other locations. *See*, January
25 2003 interrogation Guidelines sent by the Director of the CIA governed
26 interrogations of all CIA prisoners and were and directed to "all agency
personnel who are engaged in these activities." ECF No. 182-32 (U.S. Bates
#001170-71). During Abu Zubaydah's torture, Defendants urged that it be used
as a template, and immediately afterwards consulted on expansion of the
program. ECF No. 182-13 (U.S. Bates #002023).

247. Drs. Mitchell and Jessen were not involved in developing any
interrogation program used at other locations and they did not provide

1 suggestions for any such program. (Tompkins Decl., Exh. 2, Jessen Tr. at
2 267:21-268:6; Exh. 4, Rizzo Tr. at 203:20-204:10; Rodriguez Decl. ¶¶ 95-96.)

3 Defendants' Fact #247 is misleading to the extent it suggests that there
4 were separate interrogation programs used at different CIA black-site locations.
5 There was no separate program apart from the methods that Defendants had
6 initially recommended for Abu Zubaydah and which were later standardized
7 throughout the CIA program. Watt Decl., Exh. D (Rizzo Dep.) 101:20–102:15;
8 ECF No. 182-32 (U.S. Bates #001170–72); Watt Decl., Exh. D (Rizzo Dep.)
9 64:8–23. The CIA Guidelines were sent to COBALT. ECF No. 182-32 (U.S.
10 Bates #001170–74); ECF No. 176-25 (OIG) at U.S. Bates# 001394 (“The Site
11 Manager [Cobalt] received a copy of the DCI’s Interrogation Guidelines in
12 January 2003 and certified that he had read them.”); ECF No. 183-9 (U.S. Bates
13 #001629) (“Drs. Mitchell and Jessen played a significant and formative role in
14 the development of CTC’s detention and interrogation program”).

15 248. The interrogation program was compartmentalized and Drs.
16 Mitchell and Jessen did not have access to information outside their
17 assignments. They did not know what the CIA was doing elsewhere or to whom
18 the CIA was doing it. (Tompkins Decl., Exh. 2, Jessen Tr. at 200:10-24, 267:21-
19 268:6, 278:1-7.)

20 Contrary to Defendants' Fact #248, Defendants were sent the same
21 standardized guidelines that were sent to all interrogators at all CIA prisons.
22 Those guidelines made clear that Defendants' program had been standardized
23 throughout CIA prisons. *See* ECF No. 182-32 (U.S. Bates #001170-74)
24 (addressing “the conduct of interrogations of persons who are detained” using
25 Defendants' methods, with no mention of different programs). Defendants were
26 involved in training other interrogators in using their methods, Watt Decl., Exh.
D (Rizzo Decl.) 67:11–17. Defendants were also involved in developing and
refining the program at various times, including personally advising on and
recommending their coercive methods to CIA Director George Tenet and
Secretary of State Rice. Watt Decl., Exh. C (Mitchell Manuscript) at
MJ00022637 (“Less than a week later after CTC had decided to move ahead
with efforts to incorporate SERE interrogation techniques into the CIA’s
interrogation program, Jose asked me to accompany him to go see CIA Direct,
George Tenet.”); ECF No. 183-11 (U.S. Bates #001175-77) (memorializing
June 6, 2007 meeting between Defendants, Rizzo and Secretary of State Rice).

1 The record also specifically refutes the second sentence of Defendants’
2 Fact #248. For example, Defendant Jessen was sent to COBALT on an
3 assignment to evaluate a different detainee (who he describes as a “medium
4 value detainee”), when he came in contact with Mr. Rahman. Watt Decl., Exh.
5 F (Jessen Dep.) 200:19-24 (“[A]nd in fact, they did use that term because the
6 individual they had sent me there to talk to, not Gul Rahman, but another
7 person, they – when I got there, they identified him as a MVD.”). Around the
8 same time, Defendant Mitchell also participated in Mr. Rahman’s interrogation
9 at COBALT. See Watt Decl., Exh. C (Mitchell Manuscript) MJ00022683-84.

10 249. A medium-value detainee (“MVD”) is defined as an enemy of the
11 U.S.: someone involved in war against the U. S. but who may not have the level
12 of intelligence that represents an immediate threat to our country. (*Id.*, Exh. 3,
13 Rodriguez Tr. at 145:14-21, 145:5-9.)

14 Undisputed.

15 250. A low-value detainee (“LVD”) is also defined as an enemy of the U.S.,
16 but is a lesser combatant, a facilitator person who is not as dangerous as
17 a MVD. (*Id.*, Exh. 3, Rodriguez Tr. at 145:25-146:4, 145:5-9.)

18 Undisputed.

19 251. The CIA started classifying detainees as HVD, MVD, and LVD after
20 Zubaydah—the first HVD—was captured. (*Id.*, Exh. 3, Rodriguez Tr. at
21 146:15-23.)

22 Undisputed.

23 252. A detainee was categorized upon capture. (Tompkins Decl., Exh. 3,
24 Rodriguez Tr. at 164:6-15.)

25 Contrary to Defendants’ Fact #252, detainees’ categorizations could
26 change after capture and also after interrogation. For example, a
contemporaneous CIA report states that:

Several medium value detainees have been detained and
interrogated at COBALT. For example . . . Ammar al-Baluchi. .
. . Although these individuals were not planners, they had access

1 to information of particular interest, and the Agency used
2 interrogation techniques at COBALT to seek to obtain this
3 information.”

4 ECF 176-25 (OIG) at U.S. Bates #001392-93 (Re-processed: Apr. 11, 2017).

5 Defendant Jessen was “involved in Ammar al-Baluchi’s enhanced
6 interrogations.” After “[t]he rough stuff was over,” Defendant Mitchell
7 “help[ed] debriefers elicit his cooperation.” Watt Decl., Exh. C (Mitchell
8 Manuscript) at MJ00022811. Years later, Defendant Mitchell wrote that al-
Baluchi was a “high value detainee.” *Id.* at MJ00022822.

9 **XVII. COBALT**

10 253. CTC approved the funding to establish a detention facility known as
11 COBALT in June 2002. COBALT was not designed to house HVDs.
12 (Rodriguez Decl., Exh. S at US Bates 001275; Tompkins Decl., Exh. 4,
13 Rizzo Tr. at 85:16-22.)

14 Contrary to Defendants’ Fact #253, a contemporaneous CIA report states
15 that “COBALT functions as a detention, debriefing, and interrogation facility for
16 high and medium value targets.” ECF No. 176-25 (OIG) at U.S Bates #001343
17 (Re-processed: April 11, 2017)U.S. Bates 001343. COBALT was also described
18 as “designed to hold 12 high-profile detainees, with the capacity of holding up to
19 20. The Station viewed the proposed facility as a way to maximize its efforts to
exploit priority targets for intelligence and imminent threat information.” *Id.* at
U.S Bates #001387.

20 254. COBALT was not in the United States. (Tompkins Decl., Exh. 25 at US
21 Bates 001372.)

22 Undisputed.

23 255. CIA Staff Officer (also known as the COB) was sent to COBALT in
24 approximately August 2002, about one month before it was operational.
25 (Tompkins Decl., Exh. 22 at US Bates 001113, 001116, 001123;
Rodriguez Decl., Exh. S at US Bates 001276; Jessen Decl. ¶ 7.)

26 Undisputed.

1 256. COBALT's COB was responsible for the final construction details of
2 COBALT. (Tompkins Decl., Exh. 22 at US Bates 001123.)

3 Undisputed.

4 257. The COB also was the COBALT "site manager" responsible for
5 detainee affairs, including coordinating interrogations and renditions at
6 COBALT and devising the operational procedures for COBALT.
7 (Tompkins Decl., Exh. 22 at US Bates 001123-24.)

8 Undisputed.

9 258. When detainees arrived at COBALT, it was the COB's responsibility to
10 interrogate them. (Rodriguez Decl., Exh. S at US Bates 001289,
11 001282.)

12 Undisputed.

13 259. Before his deployment, the COB had been briefed on the CIA's
14 prohibition against torture, being vigilant to ensure there is no torture,
15 and the fact that it was permissible to use certain tactics in debriefing
16 that cannot injure, threaten with death, or induce lasting physical
17 damage to the detainees. (Rodriguez Decl., Exh. S at US Bates 001283.)

18 Undisputed.

19 260. Yet, COB had no formal instruction relating to interrogations until April
20 2003, although he had spent four days as a trainee during SERE training.
21 The SERE training provided the COB with some understanding as to
22 how prisoners would react to various handling, treatment, and
23 interrogation methods. (Rodriguez Decl., Exh. S at US Bates 001282;
24 Tompkins Decl., Exh. 22 at US Bates 001114.)

25 Undisputed, with the clarification that in January 2003, the COB at
26 COBALT acknowledged that he had received and read the Interrogation
Guidelines, which contained Defendants' methods. ECF No. 176-25 (OIG) at
U.S. Bates #001394 ("The Site Manager [COBALT] received a copy of the
DCI's Interrogation Guidelines in January 2003 and certified that he had read
them.")

1 261. From Mid-2002 through November 2002, COBALT's guidance on what
2 could be done during interrogations was based entirely on a cable
3 drafted by a CTC officer in July 2002 while interrogating a particularly
4 obstinate detainee. That officer proposed the use of darkness, sleep
5 deprivation, solitary confinement, and noise. CIA HQS approved that
6 proposal because no permanent harm would result from any of the
7 proposed measures. (Tompkins Decl., Exh. 25 at US Bates 001391;
8 Rodriguez Decl., Exh. S at US Bates 001284-85.)

9 Contrary to Defendant's Fact #261, Defendant Jessen himself offered
10 guidance on and proposed the use of Defendants' methods at COBALT. While
11 at COBALT, Defendant Jessen personally requested permission to apply "the
12 following [moderate value target] interrogation pressures . . . as deemed
13 appropriate by [Jessen], . . . isolation, sleep deprivation, sensory deprivation
14 (sound masking), facial slap, body slap, attention grasp, and stress positions" to
15 a prisoner held there. Watt Decl., Exh. S (U.S. Bates #001287). In addition,
16 Plaintiffs object to Defendants' Fact #261 to the extent that Defendants claim
17 the CIA accurately determined that "no permanent harm would result from any
18 of the proposed measures." No evidence supports the accuracy of any such
19 determination.

20 262. The COB decided that the detainees in COBALT would remain in
21 darkness because there was only one light switch for all the lights in the
22 cell area. "Faced with the choice to keep them on all the time or off all
23 the time, he chose the latter." (Tompkins Decl., Exh. 18 at US Bates
24 001082; Exh. 22 at US Bates 001126.)

25 Undisputed.

26 263. The COB also decided to play loud music at COBALT. When he arrived
at COBALT, the COB determined that detainees could be heard from
adjoining cells, so noise masking was necessary. The COB purchased
the stereo. (Tompkins Decl., Exh. 18 at US Bates 001082-83; Exh. 22 at
US Bates 001114, 001126.)

Undisputed.

264. The individuals managing COBALT, including the COB, reported to the
CIA every other day or when issues arose. Someone from Station

1 management visited COBALT about once a month. (Rodriguez Decl.,
2 Exh. S at US Bates 001283.)

3 Undisputed.

4 265. The interrogation methods used at COBALT were different than the
5 EITs:

- 6 a. When detainees first arrived at COBALT, the COB suggested and
7 participated in a “mock execution” in an attempt to shake up the
8 detainees. The COB also discharged a firearm while an officer lay
9 on the floor and chicken blood was splattered on the wall
10 (Rodriguez Decl., Exh. S at US Bates 001324-25.)
- 11 b. A technique referred to as “water dousing” was utilized in which
12 the detainee is laid down on a plastic sheet or towel and water is
13 poured on the detainee from a container while the interrogator
14 questions the detainee. Water is applied so as not to enter the nose
15 or mouth and interrogators were not supposed to cover the
16 detainee’s face with a cloth. Water dousing was proposed by
17 someone other than Drs. Mitchell and Jessen in March 2003.
18 (Tompkins Decl., Exh. 70 at MJ00008347.)

19 Contrary to Defendants’ assertion in Fact #265 that the methods used at
20 COBALT were “different than the EITs,” the record establishes that the methods
21 initially included both “EITs” and other methods. At COBALT, in January
22 2003, the CIA included all of Defendants’ methods in the Interrogation
23 Guidelines. ECF No. 182-32 (U.S. Bates #001170-74); ECF No. 176-25 (OIG)
24 at U.S. Bates #001394. CIA records confirm that interrogators subjected
25 Plaintiffs to Defendants’ methods at COBALT. ECF No. 183-2 (U.S. Bates
26 #001567 (Salim), 001577 (Gul Rahman), 001580 (Ben Soud)).

23 **XVIII. SULEIMAN ABDULLAH SALIM**

24 266. In or around 1994, Suleiman Abdulla Salim (“Salim”) traveled to a
25 training camp in Afghanistan that was operated by an organization
26 known as Harkati Hansar, which the U.S. government considered a
terrorist training camp. (Tompkins Decl., Exh. 5, Deposition of

1 Suleiman Abdullah Salim (“Salim Tr.”) at 114:3-4, 114:19-20, 116:3-24,
2 120:10-11; Exh. 26 at US Bates 1534).

3 Plaintiffs object to Defendants’ Fact #266 on the grounds of relevance,
4 undue prejudice, hearsay (US Bates #1534 paraphrases “custodial debriefing
5 sessions”), and as information elicited under torture (US Bates #1534 contains
6 information elicited during a period in which Mr. Salim was repeatedly
7 tortured). Watt Decl., Exh. Z (Salim Tr.) 154:5 – 159:1, 163:15 – 165:13, 165:21
8 - 168:12, 170:24 – 171:10; ECF No. 183-3 (U.S Bates #1609).

9 Without waiving those objections, Plaintiffs object that Defendants’ Fact
10 #266 is misleading without clarification: Mr. Salim testified that he was present
11 in Harkati Ansar camp “between 1993 or 1994,” as a result of a
12 misapprehension. At the time, Mr. Salim had a severe drug problem, and had
13 been lead to believe that he could attend a mosque in Pakistan where he would
14 receive education and assistance through prayer to help him stop using drugs.
15 When Mr. Salim arrived in Pakistan, he was told that he would have to travel to
16 Afghanistan instead. Once at the camp, Mr. Salim received one-day of
17 “training” in firing a rifle. He refused to participate in any further training, but
18 had to remain in the camp until he was provided with a ticket home. Watt Decl.,
19 Exh. Z (Salim Tr.) at 24:13-17, 43:7-10, 114:21 - 115:23, 118:23 – 119:1,
20 125:17 – 126:5, 126:15 – 128:14, 139:20 – 141:1.

21 267. Salim was at the Harkati Hansar camp with Fahid Mohamed Ally
22 Msalam. Msalam was considered by the U.S. government to be a 1998
23 East African embassy bombing fugitive. (*Id.*, Exh. 5, Salim Tr. at
24 120:10-11, 142:24-143; Exh. 26 at US Bates 1534-1535.).

25 Plaintiffs object to Defendants’ Fact #267 on the grounds of relevance,
26 undue prejudice, hearsay (US Bates 1534-35 paraphrases “custodial debriefing
sessions”) and as information elicited under torture (US Bates 1534 contains
contains information elicited during a period in which Mr. Salim was repeatedly
tortured (Watt Decl., Exh. Z (Salim Tr.) 154:5 – 159:1, 163:15 – 165:13, 165:21
- 168:12, 170:24 – 171:10; ECF No. 183-3 (U.S Bates #1609)).

Without waiving those objections, Plaintiffs further object that
Defendants’ Fact #266 is misleading without clarification: Mr. Salim knew Mr.
Msalam as “Fahid Mohamed” and was not aware of Mr. Mohamed’s purported
affiliation with any al Qaeda activities. Mr. Salim did not travel to the camp in

1 Afghanistan with Mr. Mohamed; Mr. Mohamed was already there when Mr.
2 Salim arrived. Mr. Salim only saw Mr. Mohamed on a few occasions while he
3 was at the camp. They spoke only about Mr. Salim's desire to return home.
(Salim Tr. 43:7-10, 41:9-11, 128:6-14, 140:15 – 142:3.)

4
5 268. In 2003, Salim was arrested in Mogadishu, Somalia. He was taken to
6 COBALT shortly after his arrest. Salim was detained at COBALT for
7 approximately two months. (*Id.*, Exh. 5, Salim Tr. at 65:10-16, 93:19 –
8 94:10, 95:22 – 96:1.)

9
10 Undisputed.

11 269. At COBALT, Salim was interrogated by CIA agents. Salim alleges that
12 CIA agents beat him in connection with the interrogation sessions,
13 including punching and kicking. (*Id.*, Exh. 5, Salim Tr. at 153:5-9,
14 153:22, 154:5-8, 158:22-24, 165:6-14).

15 Undisputed, with the clarification that CIA interrogators punched and
16 kicked Mr. Salim as part of Defendants' "walling" method. Watt Decl., Exh. Z
17 (Salim Tr.) 158:22-159:1, 165:6-166:9. ("tying a cloth around my neck and,
18 then, they were punching me on the wall."); ("they tied a cloth on my neck and
19 they were punching me[.]")("they were putting me down and kicking me).

20 270. Salim asserts that he underwent the following interrogation techniques
21 during his detention at COBALT: being put in a box; being stripped
22 naked and having light shined in his face; being put on the ground in a
23 plastic bag while water was poured on him; having his rectal area
24 knocked with a plastic water jug; being tied to a table and spun around;
25 being placed in boxes—one vertically oriented and one horizontally
26 oriented; being tied or handcuffed to a wall; being handcuffed while
naked; receiving an injection that rendered him unconscious, and having
a cloth tied around his neck being punched while against a wall, and
being hung from a pipe. He was not water-boarded. (Tompkins Decl.,
Exh. 5, Salim Tr. at 157:15 – 159:1, 166:20 – 168:12, 170:24 – 171:10;
Rizzo Decl., Exh. O at US Bates 001609.)

Undisputed, with the clarification that CIA records confirm Mr. Salim
was subjected to the following of Defendants' methods: sleep deprivation, water
dousing, cramped confinement, facial slap, attention grasp, belly slap, and

1 walling. ECF No. 183-2 (U.S. Bates #001567). Mr. Salim was also subjected to
2 interrogation techniques that approximated Defendants’ waterboarding
3 technique, ECF 181 (Salim Decl.) ¶¶ 10, 14, and their sleep deprivation method,
4 Watt Decl., Exh. Z (Salim Tr.) 166:20-24; Watt Decl., Exh. F (Jessen Dep.)
228:20–229:2; ECF No. 176-11 (OPR Report) at 126, 36 n.35.

5 271. Documents produced by the CIA indicate that the interrogation
6 techniques to which Salim was subjected included sleep deprivation,
7 nudity, attention grasp, abdominal slap, facial slap, cramped
8 confinement, water dousing, and walling. (Rizzo Decl., Exh. O at U.S.
Bates 1609)

9 Undisputed.

10 272. Salim does not know Defendants and was never in the same room as
11 Defendants. (Tompkins Decl., Exh. 5, Salim Tr. at 173:10-18; 241:12 –
12 242:7; Exh. 71, Salim Interrogatories, Rog. 1.)

13 Undisputed.

14 273. In or around March 2004, Salim was transferred from CIA custody to
15 DoD custody at Bagram Air Force Base in Afghanistan. This transfer
16 was made at the CIA’s request. The CIA would only have relinquished
17 custody in this way for MVDs. (Tompkins Decl., Exh. 5, Salim Tr. at
18 96:2 – 97:3; Exh. 3, Rodriguez Tr. at 188:18 – 189:14; Exh. 27 at US
Bates 1542-44.).

19 Contrary to the third sentence of Fact #273, the CIA transferred numerous
20 “high value detainees” from its own custody to military custody. Watt Decl.,
21 Exh. C (Mitchell Manuscript) at MJ00022862.

22 **XIX. MOHAMED AHMED BEN SOUD**

23 274. Mohamed Ahmed Ben Soud (“Ben Soud”) was part of the Libyan
24 Islamic Fighting Group (“LIFG”). (Tompkins Dec., Exh. 6, Deposition
25 of Mohamed Ahmed Ben Soud (“Soud Tr.”) at 22:17-22, 24:8-23, 43:5-
12).

26 Undisputed.

1
2 275. Through his dealings with LIFG, Soud had meetings with Abu Faraj al-
3 Libi, who Ben Soud knew was a member of Al-Qa'ida. (Tompkins
4 Decl., Exh. 6, Soud Tr. at 100:20 – 103:8).

5 Plaintiffs object to Defendants' Fact #275 on the grounds of relevance and
6 undue prejudice.

7 Without waiving those objections, Plaintiffs further object that
8 Defendants' Fact #275 is misleading without clarification: Mr. Ben Soud knew
9 of Mr. al-Libi as a Libyan also in Afghanistan. They interacted on a small
10 number of occasions when they met at a location known for socializing among
11 Libyan nationals living abroad. On occasions when they spoke, Mr. Ben Soud
12 specifically told Mr. al-Libi of Mr. Ben Soud's opposition to al Qaeda, which
13 had a different mission from LIFG. Watt Decl., Exh. AA (Ben Soud Dep.)
14 102:5 – 104:18.

15 276. After September 11, 2001, members of LIFG started cooperating with
16 Al-Qa'ida. *Id.*, Exh. 6, Soud Tr. at 116:19 – 117:13.

17 Plaintiffs object to Defendants Fact #276 because it is misleading,
18 irrelevant, and unduly prejudicial. Mr. Ben Soud testified that in 2002, he
19 became aware that four members of LIFG began cooperating with al-Qaeda
20 after September 11, 2001. Watt Decl., Exh. AA (Ben Soud Dep.) 116:19 –
21 117:23, 118:23 – 119:3. The actions of these four individuals say nothing about
22 Mr. Ben Soud.

23 277. Ben Soud was captured in Pakistan on April 3, 2003. (*Id.*, Exh. 6, Soud
24 Tr. at 97:6-9, 122:9 – 124:4, 132:6-12, 134:15 – 135:13, 156:11-18.).

25 Undisputed.

26 278. Ben Soud was transferred to CIA custody about two weeks after his
capture and taken to COBALT, where he remained a little over one year.
(*Id.*, Exh. 6, Soud Tr. at 161:21 – 162:16, 184:16-24.).

Undisputed.

1 279. In the first weeks of his detention at COBALT, Ben Soud was kept in
2 darkness, with loud music playing. He also claims to have undergone
3 the following: being shackled to a chained ring in the wall, being thrown
4 against a wall, being deprived of food, having ice water poured on him,
5 being slammed and punched, having his jaw forcibly held, being forced
6 to walk on his broken leg, and being hung by his hands. He was not
7 water-boarded. (*Id.*, Exh. 6, Soud Tr. at 214:22 – 215:21.).

8 Undisputed, except that contrary to the last sentence of Defendants’ Fact
9 #279, Mr. Ben Soud was subjected to cramped confinement, as well as abuse
10 that approximated Defendants’ waterboarding method, ECF 180 (Ben Soud
11 Decl.) ¶ 13. In addition, the hanging by the hands was part of Defendants’ “sleep
12 deprivation” method. OPR, U.S. Bates 00643) (“As initially proposed, sleep
13 deprivation was to be induced by shackling the subject in a standing position,
14 with his feet chained to a ring in the floor and his arms attached to a bar at head
15 level, with very little room for movement.”).

16 280. Documents produced by the CIA state that the interrogation techniques
17 to which Ben Soud experienced [*sic*] included sleep deprivation, nudity,
18 dietary manipulation, facial hold, attention grasp, abdominal slap, facial
19 slap, stress positions, cramped confinement, water dousing and walling.
20 (*Rizzo Decl.*, Exh. D. at US Bates 1609.).

21 Undisputed.

22 281. Drs. Mitchell and Jessen did not interact with Ben Soud—in
23 interrogations or otherwise—at COBALT. (*Tompkins Decl.*, Exh. 6,
24 Soud Tr. at 298:16 – 299:15; Exh. 72, Soud Interrogatory Answer 1.).

25 Undisputed.

26 282. Ben Soud was released to Libyan officials on August 22, 2004. (*Id.*,
Exh. 6, Soud Tr. at 97:6-9, 122:9 – 124:4.).

Undisputed

1 **XX. PLAINTIFF GUL RAHMAN'S CAPTURE AND**
2 **INTERROGATION**

3 283. Gul Rahman (“Rahman”) was a suspected Afghan extremist associated
4 with the Hezbi Islami Gulbuddin organization and identified by CTC as
5 being close with individuals who were members of Al-Qa’ida. Rahman
6 was considered an Al Qa’ida facilitator and during his captivity admitted
7 to fighting in the jihad. (Rodriguez Decl., Exh. S at US Bates 001271,
8 001277, 001279; Tompkins Decl., Exh. 3, Rodriguez Tr. at 196:7-24;
9 Exh. 17 at US Bates 001076.)

10 Plaintiffs object to Defendants’ Fact #283 on the grounds of relevance,
11 undue prejudice, hearsay, and as information elicited under torture. For example,
12 with regard to Rahman’s alleged admission, set forth in Fact #283, the report
13 Defendants cite in support of their purported fact, ECF 182-35 (U.S. Bates
14 #001076) states that:

15 Rahman spent the days since his last session with station
16 officers in cold conditions with minimal food and sleep.
17 Rahman appeared somewhat incoherent for portions of
18 this session ... Rahman made several admissions and
19 statements during the [] November session that are
20 worthy of note. However, it must be taken into
21 consideration that Rahman was somewhat confused due
22 to fatigue and dehydration for portions of this interview.

23 Further, contrary to Fact #283, Mr. ObaidUllah testified that Mr. Rahman
24 had nothing to do with al Qa’ida and that the information that the CIA had on
25 Mr. Rahman was so flawed the agency even had his home province wrong.
26 Watt Decl., Exh. BB (ObaidUllah Dep.) at 118:4-122:18.

27 284. Rahman was captured in Pakistan during an early morning raid in
28 October 2002. (Rodriguez Decl., Exh. S at US Bates 001271, 1277.)

29 Undisputed

30 285. A fellow-detainee where Rahman was originally detained identified
31 Rahman. This precipitated Rahman’s transfer to COBALT so that
32 “HVTI interrogators can quickly outline and implement an interrogation

1 plan.” The CIA thought Rahman had a high level of information and
2 Secretary of Defense Donald Rumsfeld asked for frequent updates.
3 (Rodriguez Decl., Exh. S at US Bates 001278; Tompkins Decl., Exh. 2,
4 Jessen Tr. at 205:1-7; Exh. 13 at US Bates 001055.)

5 Undisputed, with the clarification that Watt Decl., Exh. S (U.S. Bates
6 001278), which Defendants cite in support states that “Secretary of Defense
7 Donald Rumsfeld had requested an update” with regard to Rahman, not
8 “frequent” updates.

9 286. Dr. Jessen arrived at COBALT in early November 2002 to conduct an
10 evaluation of a specific detainee to determine if EITs should be
11 considered. The specific detainee was not Rahman. (Tompkins Decl.,
12 Exh. 22 US Bates 001124; Exh. 12 at US Bates 001048; Exh. 4, Rizzo
13 Tr. at 103:24-25, 104:1-5; Rodriguez Decl., Exh. S at US Bates 001289.)

14 Undisputed.

15 287. While Dr. Jessen was there, Rahman arrived at COBALT. (Tompkins
16 Decl., Exh. 18 at US Bates 001087.)

17 Undisputed.

18 288. It was the COB’s responsibility to monitor COBALT. Dr. Jessen was
19 “not in charge.” (Tompkins Decl., Exh. 2, Jessen Tr. at 184:16-185:2;
20 Exh. 18 US Bates 001082 (CIA Staff Officer (also known as COB)
21 states, “he was placed in charge of detainee affairs”); Rodriguez Decl.,
22 Exh. S at US Bates 001285.)

23 Undisputed, except that Defendants’ Fact #288 is misleading without the
24 clarifications that Defendant Jessen was sent to COBALT to evaluate prisoners
25 for the application of Defendants’ methods. At COBALT, Defendant Jessen
26 conducted such evaluations of prisoners, observed and participated in
interrogations, made recommendations to COBALT staff regarding the use of
specific methods and the running of the facility generally, and drew up
interrogation plans for specific detainees, which he sent to CIA headquarters.
The COBALT COB specifically asked Defendant Jessen for suggestions on the
use of Defendants’ methods; Defendant Jessen stated that he made such
suggestions as “the guy with all the tricks.” Watt Decl., Exh. S (U.S. Bates

1 #001289); ECF No. 181-36 (U.S. Bates #1051-52), ECF No. 181-24 (U.S. Bates
2 #1124).

3 289. COBALT's COB asked Dr. Jessen to help assess how the COB could
4 interrogate Rahman to get him to provide information. (Rodriguez Decl.,
5 Exh. S at U.S. Bates 001289; Tompkins Decl., Exh. 2, Jessen Tr. at
6 184:16-185:2, 207:1-7, 209:17-23, 240:16-241:10.)

7 Undisputed, with the clarification that Defendant Jessen's consultation
8 with the COBALT COB regarding Mr. Rahman began at the outset of Mr.
9 Rahman's detention at there—Defendant Jessen stated that he may have been
10 present to observe Rahman's first interrogation session and consulted with the
11 COB about "approaches" before and after. ECF No. 181-36 (U.S. Bates
12 #001048).

13 290. It was the COB's responsibility to propose interrogation techniques to
14 CTC for pre-approval. (Rodriguez Decl., Exh. S at U.S. Bates 001331.)

15 Disputed to the extent that Defendants' Fact #290 is misleading without
16 the clarifications included in Plaintiffs' responses to Defendants' Fact ##s 288,
17 289, and 291. In addition, it was Defendant Jessen who personally requested
18 permission to apply "the following [moderate value target] interrogation
19 pressures . . . as deemed appropriate by [Jessen], . . . isolation, sleep
20 deprivation, sensory deprivation (sound masking), facial slap, body slap,
21 attention grasp, and stress positions" to a prisoner held there. Watt Decl., Exh. S
22 (U.S. Bates #001287). Moreover, with respect to Mr. Rahman, cable traffic in
23 the record does not show Defendant Jessen or COB proposing any methods to
24 CTC before they were both involved in using a range of Defendants' methods
25 on Mr. Rahman, including: the use of diapers, the "insult slap," and Defendants'
26 sleep deprivation method—chaining a detainee to an overhead bar while nude or
in a diaper. *Id.* at U.S. Bates 001291. According to Defendant Jessen, Mr.
Rahman was subjected to consistent sleep deprivation for days, "chained to the
overhead bar in his cell," to induce "sleep deprivation right from the beginning."
ECF No. 181-36 (U.S. Bates #001049, 001051).

291. Dr. Jessen observed the CIA interrogating Rahman twice and consulted
about the interrogations. COBALT's COB told Dr. Jessen that the CIA
wanted Dr. Jessen to assess whether EITs should be used on Rahman.

1 (Tompkins Decl., Exh. 2, Jessen Tr. at 184:16-185:2, 207:1-7, 240:16-
2 241:10; Exh. 12 at US Bates 001048.)

3 Plaintiffs do not dispute that Defendant Jessen consulted about the
4 interrogation of Mr. Rahman, or was asked to assess whether Defendants'
5 methods should be used on Mr. Rahman, as clarified in Plaintiffs' Responses to
6 Defendants' Fact ##s 288, 289, 290. Plaintiffs dispute that the cited records
7 support the contention that Defendant Jessen only observed the CIA
8 interrogating Rahman twice. The document ECF No. 181-36, U.S Bates 001048
9 states: "Jessen stated that he may have been there from the start of Rahman's
10 interrogations, but he didn't begin interrogating until later because he was
11 working with the other prisoners." Jessen admitted to personally interrogating
12 Mr. Rahman between two and four times, and "[a] cable reported that Jessen
13 was involved in six interrogation sessions with Rahman." Watt Decl., Exh. S
14 (U.S. Bates #001293).

12 292. Dr. Jessen and the COB then interrogated Rahman over a 48-hour
13 period, during which they assessed Rahman's resistance techniques, and
14 concluded psychological and physiological pressures were unlikely to
15 make Rahman divulge information. (Rodriguez Decl., Exh. S at US
16 Bates 001297-98; Tompkins Decl., Exh. 16 at US Bates 001072-74;
17 Exh. 12 at US Bates 001049.)

17 Undisputed, with the clarification that it was Defendant Jessen who
18 assessed Mr. Rahman, and made recommendations as to how interrogations of
19 Mr. Rahman should proceed. It was Defendant Jessen who concluded that the
20 CIA should focus on "physical and psychological deprivation to wear him
21 down." ECF No. 181-36 (U.S Bates #001049). Defendant Jessen stated
22 "Hitting him isn't going to do any good. You have to wear him down physically
23 and psychologically." (*Id.*). Defendant Jessen authored a cable to CIA
24 Headquarters from COBALT recommending that Mr. Rahman be subjected to
25 continuing "environmental deprivations" and interrogations to last 18 out of 24
26 hours per day. Watt Decl., Exh. S (U.S. Bates 001299).

24 293. During one of the sessions, to assess Rahman's resistance posture, Dr.
25 Jessen used the least intrusive EIT, the facial slap, to see how Rahman
26 would respond. (Tompkins Decl., Exh. 2, Jessen Tr. at 211:7-13,
214:15-215:2; Exh. 12 at US Bates 001049.)

1 Undisputed.

2 294. Dr. Jessen was authorized by COBALT's COB to apply the facial slap
3 because it was the only way Dr. Jessen could determine if Rahman
4 would respond to EITs. (*Id.*, Exh. 2, Jessen Tr. at 211:7-13, 212:10-11,
5 214:15-215:2; 215:20-216:8.)

6 Contrary to Defendants' Fact #294, the record evidence does not specify
7 that COBALT's COB provided any authorization specifically for Jessen to use
8 the facial slap, or that Jessen believed his authorization was limited to the facial
9 slap of Mr. Rahman, as opposed to a general authorization to apply Defendants'
10 methods. Defendant Jessen's testified that other methods should also be used.
11 ECF No. 181-36 (U.S Bates #001051) ("someone like Rahman . . . if you want
12 to see if it's going to work you're going to have to use a considerable amount
13 controlled threat [*sic*], the inducement of psychological threat, not just physical
14 pain. This is done by screaming and yelling, making threats, slapping, walling,
15 and hard takedowns.").

13 295. Dr. Jessen determined that Rahman was an excellent resister. He was
14 strong, centered, and focused. (*Id.*, Jessen Tr. at 204:5-24.)

15 Undisputed.

16 296. According to Dr. Jessen, the use of physical pressures on a man like
17 Rahman would only irritate him or push him further away from
18 cooperating. As such, Dr. Jessen recommended that EITs not be used on
19 Rahman. (*Id.*, Exh. 2, Jessen Tr. at 205:1-7, 215:20-216:8, 242:18-22.)

20 Contrary to Defendants' Fact #296, Defendant Jessen recommended
21 "deprivations" which included Defendants' sleep deprivation method, and Mr.
22 Rahman was chained by the arms to an overhead bar in his cell for this purpose.
23 Watt Decl., Exh. F (Jessen Tr.) at 242:23 – 243:6; ECF No. 181-36 (U.S Bates
24 #1051). Mr. Rahman was also subjected to Defendants' other methods and
25 subjected to nudity and the use of diapers. Watt Decl., Exh. S (U.S Bates
26 #1297); ECF No. 182-8 (U.S. Bates 1110-1111), ECF 175-9 (U.S. Bates 1658-
59).

26 297. Dr. Jessen recommended to COBALT's COB that he should continue to
interrogate Rahman very frequently to keep him off balance and that he

1 should continue with authorized deprivations. (*Id.*, Exh. 2, Jessen Tr. at
2 242:23-243:6.)

3 Undisputed, with the clarification that Defendant Jessen recommended
4 that Mr. Rahman be interrogated 18 hours out of each day and that he be
5 subjected to continuing “environmental deprivations.” Watt Decl., Exh. S (U.S.
6 Bates #001299). Defendant Jessen was aware that Rahman had been deprived
7 of sleep and clothing. ECF No. 181-36 (U.S. Bates #001051). Defendant Jessen
8 was aware that Rahman was cold, that COBALT was cold, and that the
temperature was worse at night and when a detainee was rendered immobile. *Id.*
at U.S. Bates 001053.

9 298. COBALT’s COB relayed much of the information Dr. Jessen had told
10 him to HQS in a cable. The COB wrote all such cables and Dr. Jessen
11 did not review them prior to their issuance. (Tompkins Decl., Exh. 16 at
12 US Bates 001072-74; Exh. 2, Jessen Tr. at 206:21-24, 233:6-12.)

13 Contrary to Defendants’ Fact #298, the COB did not author every cable
14 sent from COBALT. Defendant Jessen authored at least one cable to CIA
15 Headquarters from COBALT regarding Mr. Rahman and setting out a proposed
16 interrogation plan for pre-approval. Watt Decl., Exh. S (U.S. Bates #001299).
17 In addition, *id.* at U.S. Bates 001288 states that a CIA staff officer at COBALT
said that Defendant Jessen drafted all cables detailing Mr. Rahman’s
interrogation.

18 299. The cables to HQS also indicated that two unauthorized techniques had
19 been used on Rahman: the cold shower and rough treatment (or hard
20 takedown). (Tompkins Decl., Exh. 16 at US Bates 001072-74;
Rodriguez Decl., Exh. S at US Bates 001272.)

21 Undisputed.

22
23 300. Dr. Jessen observed use of these techniques and advised COBALT’s
24 COB that he should not use unauthorized techniques—but Dr. Jessen
25 had no power at that time to make the COB stop using those techniques.
26 As soon as Jessen was able to raise the issue to CTC, he did. (Tompkins
Decl., Exh. 2, Jessen Tr. at 184:1-185:2; 193:10-14; 242:9-243:25; Exh.
12 at US Bates 001050- 51; Rodriguez Decl. ¶ 114.)

1 Contrary to Defendants’ Fact #300, Defendant Jessen in fact encouraged
2 the use of unauthorized techniques (*e.g.*, the hard takedown) on Mr. Rahman.
3 Defendant Jessen stated that the hard takedown was the sort of “controlled
4 threat” necessary to apply to a “tough” detainee to determine what interrogation
5 techniques might yield compliance. ECF No. 181-36 (U.S. Bates #001051).
6 Defendant Jessen provided advice to COBALT personnel on how to make the
7 technique more effective, suggesting that “after something like this is done,
8 interrogators should speak to the prisoner to ‘give them something to think
9 about.’” ECF No. 181-24 (U.S. Bates #001133).

10 301. COBALT’s COB used the hard takedown often in interrogations at
11 COBALT as “part of the atmospherics.” (Rodriguez Decl., Exh. S at US
12 Bates 001308.)

13 Undisputed, with the clarification that the cited record, states that the hard
14 takedown was performed for “shock and psychological impact” and that
15 Defendant Jessen considered it a useful way to make a detainee “uncomfortable
16 and experience a lack of control.”

17 302. COBALT’s COB ordered the hard takedown on Rahman so that
18 Rahman would think he was being brought to a different cell. (*Id.*)

19 Undisputed.

20 303. Dr. Jessen specifically told COBALT’s COB that he did not use the hard
21 takedown and that even if it was effective at dislocating Rahman’s
22 expectations, for that to be useful, Rahman would have to be
23 interviewed after it was implemented instead of being placed back in his
24 cell alone, which is what COBALT’s COB did with Rahman. (Tompkins
25 Decl., Exh. 2, Jessen Tr. at 197:12-198:7, 217:17-218:9; Exh. 12 at US
26 Bates 001050-51.)

Contrary to Defendants’ Fact #303, Defendant Jessen did not discourage
the use of the hard takedown method, but instead stated he saw “value” in it “in
order to make Rahman uncomfortable and experience a lack of control.” Watt
Decl., Ex. S at U.S. Bates #1308. The record does not indicate that Defendant
Jessen said that a prisoner should then be “interviewed,” but shows that
Defendant Jessen advised COBALT staff to speak with Mr. Rahman after using

1 the hard takedown on him, to “give him something to think about.” ECF No.
2 181-24 (U.S. Bates #001133).

3 304. Dr. Jessen also did not participate in Rahman’s cold showers, which
4 were ordered by COBALT’s COB. Moreover, on one instance, Dr.
5 Jessen asked the guards to give Rahman a blanket after a cold-shower.
6 (Tompkins Decl., Exh. 12 at US Bates 001050-51; Exh. 2, Jessen Tr. at
7 212:4-14; Exh. 22 at US Bates 001132; Rodriguez Decl., Exh. S at US
8 Bates 001305.)

9 Contrary to the first sentence in Defendants’ Fact #304, the record
10 citations do not support that the COBALT COB ordered Mr. Rahman’s cold
11 shower. The record shows that Defendant Jessen observed Mr. Rahman’s cold
12 shower and did not intervene, despite knowing that the cold shower method had
13 not been authorized. Watt Decl., Exh. S (U.S. Bates #1305); ECF No. 176-11
14 (US Bates #001132); Watt Decl., Exh. F (Jessen Dep.) 243:10-12.

15 305. Dr. Mitchell arrived at COBALT with another HVD while in route to a
16 different black-site for another operation. (Tompkins Decl., Exh. 15 at
17 US Bates 001067; Exh. 28 at US Bates 001548; Rodriguez Decl. ¶ 105.)

18 Undisputed.

19 306. After COBALT’s COB reported on the status of Rahman’s
20 interrogations, HQS asked Drs. Mitchell or Jessen to “administer a
21 mental health status exam and provide an assessment on interrogation
22 measures required to render [Rahman] compliant” before they departed
23 COBALT. (Tompkins Decl., Exh. 15 at US Bates 001066.)

24 Undisputed.

25 307. HQS directed Drs. Mitchell or Jessen to “send your evaluation to HQS
26 where determination of courses of action will be made.” (*Id.*, Exh. 15 at
US Bates 001067.)

Undisputed.

1 308. Dr. Mitchell did not interrogate Rahman or observe the application of
2 any EITs on Rahman, although Dr. Mitchell did observe one custodial
3 debriefing of Rahman. (*Id.*, Exh. 1, Mitchell Tr. at 318:21-319:14.)

4 Contrary to Defendant's Fact # 308, Defendant Mitchell himself stated
5 he observed an interrogation, not a custodial debriefing. Watt Decl., Exh. S
6 (U.S. Bates #001290). This characterization was reinforced by others at
7 COBALT. *Id.* at U.S. Bates #001293 ("The only other person ___ remembered
8 being present during one of Rahman's interrogations was Mitchell.").

9 309. Dr. Jessen conducted the HQS-requested mental status examination and
10 recommended a continued interrogation plan for Rahman. The result of
11 the examination was sent to HQS in a cable that stated:

12 Because of his remarkable physical and psychological
13 resilience and determination to persist in his effective
14 resistance posture employing enhanced interrogation
15 measures is not the first or best option to yield positive
16 interrogation results. In fact, with such individuals,
17 increasing physical pressures often bolsters their resistance.
18 The most effective interrogation plan for Gul Rahman is to
19 continue the environmental deprivations he is experiencing
20 and institute a concentrated interrogation regimen. This
21 regimen would ideally consist of repeated and seemingly
22 constant interrogations (18 coordinated out of 24 hours per
23 day). These interrogation sessions should be coordinated and
24 present with same set of key subject areas. . . . It will be
25 important to manage the deprivations so as to allow the
26 subject adequate rest and nourishment so he remains
coherent and capable of providing accurate information. The
station physician should collaborate with the interrogation
team to achieve this optimum balance.

(Rodriguez Decl., Exh. R at US Bates 001057-58; Exh. S at U.S. Bates 001299.)

Undisputed, with the clarification that ECF No. 175-18, U.S. Bates
001057 also states:

Interrogators should have the flexibility and insight to

1 deviate with the subject when he begins to move in a
2 desired direction. It will be the consistent and persistent
3 application of deprivations (sleep loss and fatigue) and
4 seemingly constant interrogations which will be most
effective in wearing downb [*sic*] this subject's resistance.

5 310. Others at the CIA concurred with Dr. Jessen's assessment. (Tompkins
6 Decl., Exh. 44 at U.S Bates 001865-70.)

7 Undisputed.

8 311. After Jessen conducted Rahman's mental status examination of Rahman,
9 Drs. Mitchell and Jessen departed COBALT. (Tompkins Decl., Exh. 28
10 at US Bates 001548; Rodriguez Decl. ¶ 116.)

11 Undisputed.

12 312. Neither Drs. Mitchell nor Jessen ever returned to COBALT. (Tompkins
13 Decl., Exh, 1, Mitchell Tr. at 319:18-22; Exh. 2, Jessen Tr. at 201:14-
14 21.)

15 Undisputed.

16 313. At the time of their departure, Rahman had been detained for 10 days.
17 (Rodriguez Decl., Exh. S at U.S Bates 001307.)

18 Undisputed.

19 314. Before departing, both Drs. Mitchell and Jessen tried to secure medical
20 attention for Rahman. They each asked for a doctor to examine Rahman
21 multiple times, but their request was refused. (Tompkins Decl., Exh. 2,
22 Jessen Tr. at 213:23-214:10, 236:22-237:1; Rodriguez Decl. ¶ 106.)

23 Contrary to Defendants' Fact #314, COBALT's Physician's Assistant told
24 CIA Inspector General investigators that "no one ever requested that he examine
25 Rahman, his hands, or any other detainee." Watt Decl., Exh. X (U.S. Bates
26 #001290). The record shows that after leaving COBALT, Defendant "Jessen
said the atmosphere of the facility was excellent for the type of prisoners kept

1 there – ‘nasty, but safe’” and that “he did not see any ‘hiccups’ in security or
2 prisoner safety.” ECF No. 182-34 (U.S. Bates #001124).

3 315. Additionally, the physician’s assistant at COBALT did not attend to
4 Rahman in the same manner and with the same standard of care as other
5 detainees. (Rodriguez Decl., Exh. S at US Bates 001274-75, 001332.)

6 Undisputed

7 316. During his time at COBALT, Dr. Jessen did not deny Rahman clothing.
8 But he did witness the COB use clothing to try to manipulate and
9 motivate Rahman. (Tompkins Decl., Exh. 2, Jessen Tr. at 212:4-14; Exh.
10 12 at US Bates 001050.)

11 Contrary to Defendants’ Fact #316, Defendant Jessen admitted that
12 “Rahman would have lost his clothes and diaper at our direction,” referring to
13 himself and Mr. Rahman’s other interrogators, and added that “The guards were
14 not doing things on their own.” ECF No. 181-36 (U.S. Bates #001052).

15 317. On two occasions, Dr. Jessen requested additional clothing for Rahman
16 because he was cold. (*Id.*, Exh. 2, Jessen Tr. at 218:13-19.)

17 Plaintiffs do not dispute that Defendant Jessen testified to this fact.

18 318. Before departing, Dr. Jessen also told COBALT’s COB that he needed
19 to establish written operational procedures for COBALT regarding how
20 often detainees get water, the temperature of the facility, and how loud
21 the noise will be. (*Id.*, Exh. 12 at US Bates 001052.)

22 Undisputed.

23 319. Dr. Jessen also told COBALT’s COB he was concerned Rahman was
24 cold and shivering, could be “hypothermic,” and told the guards to get
25 him blankets and insulation. (*Id.*, Exh. 2, Jessen Tr. at 195:11-197:11.)

26 Undisputed.

1 320. After leaving COBALT, Dr. Jessen advised the most senior person in
2 the CTC about his concerns with COBALT and Rahman. (Tompkins
3 Decl., Exh. 2, Jessen Tr. at 193:10-14; Rodriguez Decl. ¶ 114.)

4 Undisputed that this was the deposition testimony of Defendant Jessen.
5 Plaintiffs object to Rodriguez Decl. ¶ 114 as hearsay, as it suggests the basis of
6 Mr. Rodriguez' knowledge is the statements of others ("It is also my
7 understanding that. . .").

8 321. Besides this brief time at COBALT, Dr. Jessen or Dr. Mitchell never
9 interacted with any other MVDs, including Plaintiffs. (Tompkins Decl.,
10 Exh. 2, Jessen Tr. at 201:14-21; Mitchell Decl. ¶ 11.)

11 Contrary to Defendants' Fact #321, there is no evidence that Plaintiffs
12 were classified as MVDs, and the evidence cited in Fact #321 says nothing
13 about Plaintiffs' status. In addition, Defendant Jessen also used "enhanced
14 interrogation techniques" and "rough stuff" on another CIA detainee who was
15 contemporaneously classified as a "medium value detainee." ECF No. 176-25
16 (U.S. Bates #001392-001393); Watt Decl., Exh. C (Mitchell Manuscript) at
17 MJ00022811. Defendant Jessen admitted that "his duties at CIA have involved
18 the interrogation of high and medium value terrorist targets." ECF No. 181-36
19 (U.S. Bates #001047-001048).

20 **XXI. GUL RAHMAN'S DEATH**

21 322. Several days after Drs. Mitchell and Jessen left COBALT, Rahman
22 allegedly threatened the guards and threw his food and waste bucket at
23 the guards. As a result, COBALT's COB approved or directed the
24 guards to shackle Rahman's hands and feet and connect the shackles
25 with a short-chain. This position forced Rahman to sit bare-bottomed on
26 the concrete floor of his cell. (Rodriguez Decl., Exh. S at US Bates
001273, 001299, 001315, 001331; Tompkins Decl., Exh. 14 at US Bates
001062-63.)

Undisputed.

323. The temperature in COBALT at the time was near freezing. (Rodriguez
Decl., Exh. S at US Bates 001274.)

1 Undisputed.

2 324. On a late November morning, Rahman was found dead in his cell.
3 (Rodriguez Decl., Exh. S at US Bates 001299; Tompkins Decl., Exh. 14
4 at US Bates 001062.)

5 Undisputed.

6 325. At the time, Rahman was wearing only a sweatshirt, sitting
7 barebottomed on the concrete floor of his cell. (Rodriguez Decl., Exh. S
8 at US Bates 001273, 001299-1300.)

9 Undisputed.

10 326. After Rahman's death, the CIA's Office of the Inspector General
11 ("OIG") conducted an investigation into the cause of Rahman's death.
12 (Rizzo Decl. ¶ 72; Rodriguez Decl., Exh. S at US Bates 001271,
13 001320.)

14 Undisputed

15 327. The OIG conducted interviews and the pathologist performed an autopsy
16 of Rahman, which indicated that his death was caused by hypothermia.
17 (Rodriguez Decl., Exh. S at US Bates 001273, 001323.)

18 Undisputed.

19 328. The OIG concluded that HQS would not have approved several of the
20 interrogation techniques employed by COBALT's COB, including cold
21 showers, cold conditions, hard takedowns, and the short chain position.
22 (Rodriguez Decl., Exh. S at US Bates 001331.)

23 Undisputed.

24 329. Rodriguez, head of CTC, never authorized EITs to be used on Rahman.
25 (Tompkins Decl., Exh. 3, Rodriguez Tr. at 172:14-22.)

26 Undisputed.

1 330. The OIG investigation concluded that Rahman died of hypothermia
2 because COBALT's COB ordered Rahman to be short chained such that
3 he was compelled to sit on the concrete floor of his cell clothed in only a
4 sweatshirt. (Rizzo Decl. ¶ 73; Rodriguez Decl., Exh. S at US Bates
001267-1334 at ¶ 173.)

5 Undisputed.

6 331. The OIG investigation further found that an individual other than Drs.
7 Mitchell or Jessen was responsible for not providing adequate
8 supervision of COBALT's COB and the activities at COBALT. (Rizzo
9 Decl. ¶ 74; Rodriguez Decl., Exh. S at US Bates 001267-1334 at ¶ 180.)

10 Undisputed.

11 332. The DOJ was apprised of the circumstances surrounding Rahman's
12 death. And, in 2005, the DOJ declined to prosecute anyone in
13 connection with Rahman's death. Then, in 2012, after a year-long
14 special criminal investigation into Rahman's death was conducted by
15 Assistant United States Attorney John Durham, the DOJ again declined
16 to prosecute anyone in connection with Rahman's death. (Rizzo Decl. ¶
17 75; Rodriguez Decl., Exh. S at US Bates 001273-74.)

18 Undisputed.

19 **XXII. RENDITION**

20 333. Drs. Mitchell and Jessen were not asked to provide any
21 recommendations relating to the capture or rendition of any CIA
22 detainee, including Zubaydah, nor did they. (Rodriguez Decl. ¶ 82.)

23 Undisputed.

24 334. Likewise, Drs. Mitchell and Jessen did not participate in the capture or
25 rendition of any CIA detainee—including Plaintiffs. (Rodriguez Decl. ¶
26 83; Tompkins Decl., Exh. 3, Rodriguez Tr. at 214:8-11.)

Undisputed.

1 335. The CIA's capture and rendition program methodology was based on
2 detainee handling procedures used by the U.S. military and the U.S.
3 Marshals Service. (Tompkins Decl., Exh. 34 at US Bates 001633.)

4 Undisputed.

5 **XXIII. MITCHELL, JESSEN & ASSOCIATES**

6 336. In March of 2005, Drs. Mitchell and Jessen formed *Mitchell, Jessen &*
7 *Associates* ("MJA") to provide "qualified interrogators, detainee security
8 officers for CIA detention sites, and curriculum development and
9 training services for the RDI program." From 2005 through 2009, MJA
10 was paid approximately \$72 million. (Tompkins Decl., Exh. 76 at US
Bates 001906; Tompkins Decl., Exh. 77 at US Bates 001908-10.)

11 Undisputed except that contrary to the second sentence of Defendants'
12 Fact # 336, Mitchell, Jessen, and Associates received \$81 million in taxpayer
13 money, as Defendants admitted. ECF No. 77 (Defs' Amended Answer) ¶ 68;
Watt Decl., Exh. M (CIA Response) at 49.

14 337. Dr. Mitchell's profit percentage from MJA was in the "small single
15 digits." (Tompkins Decl., Exh. 73 at MJ00022930.)

16 Undisputed.

17 **XXIV. FACTS RELATED TO INTERNATIONAL LAW**

18 338. The U.S. is engaged in a "non-international armed conflict" with Al-
19 Qaida, and it is that conflict in which the Defendants' alleged conduct
20 occurred. (Declaration of Professor Julian G. Ku ("Ku Decl."), Exh. 2 at
21 p. 5.)

22 Plaintiffs dispute Defendants' Fact # 338 as irrelevant and overly broad,
23 but do not dispute that the U.S. was engaged in a non-international armed
24 conflict in Afghanistan at the time of Defendants' alleged conduct.

25 339. Common Article 3 to the Geneva Conventions of August 12, 1949
26 applies to non-international armed conflicts. (Ku Decl., Exh. 2 at p. 5.)

1 Undisputed.

2 340. A majority of nation states have not enacted laws prohibiting human
3 experimentation in non-international armed conflicts. (Ku Decl., Exh. 3
4 at p. 7.)

5 Defendants' Fact # 340 is misleading to the extent it suggests that states
6 must enact specific laws prohibiting human experimentation in non-international
7 armed conflicts for the prohibition to be an international law norm. A majority
8 of states have ratified the four Geneva Conventions. Article 3 common to all
9 four Conventions is part of customary international law, and, prohibits human
10 experimentation in non-international armed conflicts. Heller Decl., Exh. B at pp.
11 7-9

12 **XXV. RELEVANT PROCEDURAL HISTORY**

13 341. On April 22, 2016, the Court held oral argument on Defendants' Motion
14 to Dismiss, ECF No. 27, in Spokane, Washington.

15 Undisputed.

16 342. During that oral argument, the Court and counsel for the parties
17 discussed Plaintiffs' allegations concerning aiding and abetting liability;
18 specifically, the Court observed that "no one would ever be convicted of
19 aiding and abetting by setting forth, here's options that you can utilize"
20 if they were not also deciding who would be subjected to the program.
(Tompkins Decl., Exh. 74 April 22, 2016, Tr. at 60:9-62:24.)

21 Undisputed.

1
2 DATED: June 12, 2017

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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on the 12th day of June, 2017, I caused to be
4 electronically filed and served the foregoing with the Clerk of the Court using
5 the CM/ECF system, which will send notification of such filing to the
6 following:
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