EXHIBIT AA

HEARING OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE

ANNUAL WORLDWIDE THREAT ASSESSMENT

WITNESSES:

MR. MICHAEL McCONNELL, DIRECTOR OF NATIONAL INTELLIGENCE;

GENERAL MICHAEL HAYDEN, DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY;

MR. ROBERT MUELLER, DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;

LIEUTENANT GENERAL MICHAEL MAPLES, DIRECTOR OF THE DEFENSE INTELLIGENCE AGENCY;

MR. RANDALL FORT, ASSISTANT SECRETARY OF STATE FOR INTELLIGENCE AND RESEARCH

CHAIRED BY: SENATOR JOHN D. ROCKEFELLER, IV (D-WV)

LOCATION: 216 HART SENATE OFFICE BUILDING, WASHINGTON, D.C.

TIME: 10:00 A.M. EST
DATE: TUESDAY, FEBRUARY 5, 2008

SEN. ROCKEFELLER: This hearing will come to order. I would severely hope that there would be a couple other members. I think it would be courteous and in their interest and in the national interest if several of our members showed up. If they're a few minutes late, that's okay. If they don't show up, that's not so okay. And we might have something more to say about that.

In any event, we're presented with the full array of our national intelligence structure. And the intelligence community (sic) meets to hear from this community, intelligence community, about security threats facing our nation. It is appropriate that we begin this annual threat hearing and that we do it in public. We do it every year. Sometimes they've gone on for a long time. And what we've done this is time is to ask each of you, with the exception of the director, to hold your comments to five minutes, which will be very interesting in the case of the CIA, to see if that can actually be done. (Laughter.)

But anyway, you're the folks that keep us safe. We in Congress authorize and appropriate funds for what you do. The American people have a right to know where our resources are going insofar as that's appropriate, what intelligence officials consider to be the greatest threats, and what actions our government is taking to prevent those threats.

And as we've learned many times, our intelligence programs will only be successful if the American people are informed. It's a relative statement, but they have to feel that they're a part of this equation, and that's what helps us get appropriations and gets bills passed, hopefully, and makes the process work.

Today the committee will want to hear how our intelligence community assesses the immediate threats from terrorist organizations. We do

The Army Field Manual describes a subset of that universe. I've heard no one claim that the Army Field Manual exhausts all the tools that could or should be legitimately available to our republic to defend itself when it comes to questioning people who would intend our republic harm. What I would say is the Army Field Manual meets the needs of America's Army and, you know, give that to you in maybe three or four different senses.

It meets the needs of America's Army in terms of who's going to do it, which in the case of the Army Field Manual would be a relatively large population of relatively young men and women who've received good training but not exhaustive training in all potential situations. So the population of who's doing it is different than the population that would be working for me inside the CIA interrogation program.

The population of who they do it to would also be different. In the life of the CIA detention program we have held fewer than a hundred people. And only -- actually, fewer than a third of those people have had any techniques used against them -- enhanced techniques -- in the CIA program. America's Army literally today is holding over 20,000 detainees in Iraq alone. And so again there's a difference in terms of who's doing it, against whom you're doing it, and then finally in the circumstances under which you're doing the interrogation.

And I know there can be circumstances in military custody that are as protected and isolated and controlled as in our detention facilities, but in many instances that is not the case. These are interrogations against enemy soldiers, who almost always will be lawful combatants, in tactical situations, from whom you expect to get information of transient and tactical value. None of that applies to the detainees we hold, to the interrogators we have, or the information we are attempting to seek.

And so I would subscribe and support -- in fact, CIA had a chance to comment on the Army Field Manual during its development -- that the Army Field Manual does exactly what it does -- exactly what it needs to do for the United States Army. But on the face of it it would make no more sense to apply the Army's field manual to CIA -- the Army Field Manual on interrogations, then it would be to take the Army Field Manual on grooming and apply it to my agency, or the Army Field Manual on recruiting and apply it to my agency, or for that matter, take the Army Field Manual on sexual orientation and apply to my agency.

This was built to meet the needs of America's Army. We should not confine our universe of lawful interrogation to a subset of those techniques that were developed for one purpose.

SEN. ROCKEFELLER: I'm way over my time, I apologize to my colleagues.

And I call on the vice chairman.

SEN. BOND: Thank you very much, Mr. Chairman.

Following up on that, I'd like to ask Director Hayden for his comments because we've spoken about this issue and your belief that the CIA's program was essential.

Now the attorney general has publicly said that the CIA is no longer using waterboarding as one of its techniques.

I'd like your views on -- from your professional perspective on why you think enhanced techniques are so critical in collecting intelligence and what you would say to those who think the Army Field Manual will be just as effective, because that provision that was added in conference is out of scope and when the conference comes, when the bill comes to the Senate, I intend to attempt to strike that.

What arguments, Director Hayden? Excuse me. I'm going to say -- I'm sorry. General Hayden's had the shot. Let me direct that to Director McConnell. My apologies. I want to get another view in the game.

MR. MCCONNELL: Senator Bond, I would associate myself with the comments just made by Director Hayden with regard to lawful techniques that could be used to protect the country under -- in the appropriate circumstances. You mentioned waterboarding. That is not currently in the program that we use. The question that's always asked, is that a lawful technique, and I think as you saw the reports or participated in the hearing that the attorney general participated in last week, if there was a reason to use such a technique, you would have to make a judgment on the circumstances and the situation regarding the specifics of the event, and if such a desire was generated on the part of -- in the interests of protecting the nation, General Hayden would have to first of all have a discussion with me and we would have a dialogue about whether we should go forward and seek legal opinion. Once we agreed to that, assuming we did, we would go to the attorney general who'd making a ruling on the specifics of the situation. At that point it would be taken to the president for a decision. If a decision was taken, then the appropriate committees of the Congress would be so notified.

So in managing the process there is a universe of lawful techniques. They should be considered in defense of the nation and appropriately administered, given that we would have to use such a technique.

GEN. HAYDEN: Can I add to that, Mr. Vice Chairman?

SEN. BOND: Please.

GEN. HAYDEN: Just to put this into scale -- and I know this is -- look, this is a very difficult issue not just for the committee, but for the Senate, for the government, for my agency and for the people in my agency and for the nation at large. But let me just try to frame the discussion by pointing out a few facts.

I mentioned just a minute or two ago that in the life of the CIA detention program we've detained fewer than a hundred people. Of the people detained, fewer than a third have had any of what we call the enhanced interrogation techniques used against them. Let me make it very clear and to state so officially in front of this committee that waterboarding has been used on only three detainees. It was used on Khalid Sheikh Mohammed, it was used on Abu Zubaydah, and it was used on Nashiri. The CIA has not used waterboarding for almost five years. We used it against these three high-value detainees because of the circumstances of the time.

Very critical to those circumstances was the belief that additional catastrophic attacks against the homeland were imminent. In addition to

that, my agency and our community writ large had limited knowledge about al Qaeda and its workings.

Those two realities have changed. None of us up here are going to make the claim -- and I'm sure we'll get this question before we're done this morning -- "Is America safe?" And we will answer, "It is safer, but it is not yet safe." So this will never get to zero. But the circumstances under which we're operating, we believe, are, frankly, different than they were in late 2001 and early 2002.

We also have much more extensive knowledge of al Qaeda. And I've told this to the committee in other sessions. Our most powerful tool in questioning any detainee is our knowledge, that we are able to bring that knowledge to bear.

SEN. BOND: General, excuse me for interrupting. In the eight seconds I have left, I wanted to fire off a question to you and Director Mueller. We're debating retroactive immunity. People keep telling me it's wrong. I used to be a lawyer. I believe that the private parties did nothing wrong. The committee approved 13-to-2 supporting civil liability reform. How important is the support of the private parties to your agencies in getting the operational successes?

MR. MUELLER: Well, I would say, in protecting the homeland it's absolutely essential. In this -- it's absolutely essential we have the support, willing support of communication carriers. In this day and age, our ability to gain intelligence on the plans, the plots of those who wish to attack us is dependent upon us obtaining information relating to cell phones, the Internet, e-mail, wire transfers, all of these areas. My concern is that if we do not have this immunity, we will not have that willing support of the communication carriers.

I know there has been some discussion of having the government substituted as a party, but I do think that that includes -- if that were passed, it would be a disincentive still to the communication carriers to give us the support we need to do our jobs. It would entail depositions. It would entail public hearings. And there would be a substantial disincentive to corporations, communication carriers, to assist us willingly at a time when we need it more than ever. And consequently, I strongly support the provision for giving immunities to -- immunity to the communication carriers so that we do have the support of those carriers and remove the disincentives. GEN. HAYDEN: Mr. Vice Chairman, I'd support it in two jobs, the current one and one -- job once removed at NSA, strongly support what Director Mueller has just stated with regard to carriers. But there are other relationships that we have that enable American intelligence that I'm more familiar with in my current job at the CIA.

And let me reinforce one thing that Director Mueller pointed out.

These are very fragile relationships. We lost industrial cooperation, at CIA, with partners on the mere revelation of the SWIFT program in public discourse. Not because they were doing anything related to that program whatsoever but just the fear that the vulnerability they would have to their smooth functioning of their business had caused people, who are otherwise patriotic and committed, to back away from their totally lawful cooperation with our agency.

SEN. BOND: Thank you.

My apologies, Mr. Chairman, but I thought that was important to get that in.

SEN. ROCKEFELLER: You bet, it's very important. I appreciate it.

And going on the early bird rule, as we always do, Senator Feinstein.

SEN. DIANNE FEINSTEIN (D-CA): Thank you very much, Mr. Chairman.

General Hayden, I wasn't going to discuss this but since it was raised, it is true that you have briefed the Intelligence Committee on the interrogation techniques which are called enhanced, which I call coercive. And they have changed and they have been reduced in number.

I'd like to ask this question. Who carries out these techniques? Are they government employees or contractors?

GEN. HAYDEN: At our facilities during this, we have a mix of both government employees and contractors. Everything is done under, as we've talked before, ma'am, under my authority and the authority of the agency. But the people at the locations are frequently a mix of both. We call them bluebaggers and greenbaggers.

SEN. FEINSTEIN: And where do you use only contractors?

GEN. HAYDEN: I'm not aware of any facility in which there were only contractors.

And this came up, and I know --

SEN. FEINSTEIN: (Off mike) -- anywhere in the world? GEN. HAYDEN: Oh, I mean, I'm talking about our detention facilities.

And I want to make something very clear because I don't think it was quite crystal clear in the discussion you had with Attorney General Mukasey. We are not outsourcing this. This is not where we would turn to Firm X, Y or Z and say, this is what we would like you to accomplish; go achieve that for us and come back when you're done. That is not what this is. This is a governmental activity under governmental direction and control, in which the participants may be both government employees and contractors, but it's not outsourced.

SEN. FEINSTEIN: I understand that.

GEN. HAYDEN: Okay, good.

SEN. FEINSTEIN: Is not the person that carries out the actual interrogation -- not the doctor or the psychologist or the supervisor or anybody else but the person that carries out the actual interrogation -- a contractor?

GEN. HAYDEN: Again there are times when the individuals involved are contractors, and there are times when the individuals involved have been government employees. It's been a mix, ma'am.

EXHIBIT
BB

Other Document #3

Document #3

(FOIA DOC 65)

PAGE 1

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~~TOP SECRET~~ [redacted]

The Director of Central Intelligence

Washington, D.C. 20505

[redacted]

4 June 2004

MEMORANDUM FOR: The National Security Advisor

SUBJECT: ~~(TS~~ [redacted]

[redacted]

A41-2

~~TOP SECRET~~ [redacted]

SUBJECT: ~~(TS~~ [redacted]

[redacted]

3. ~~(TS~~ [redacted] As you know, beginning in September 2002 the Justice Department authorized CIA in its discretion, to employ on selected HVDs [redacted] waterboard, [redacted] CIA has reserved use of these techniques to elicit ongoing threat information from the most hardcore, senior terrorist figures that have been captured--men such as Khalid Sheik Muhammad, Abu Zubaydeh, [redacted] key members of Congress have been briefed from the beginning--CIA informed the leadership of the Congressional Intelligence Committees of the existence and nature of the Program when it commenced in late 2002, in early 2003 when members of the leadership changed, and again in September 2003.

[redacted]

A47-3

Document #3

(FOIA DOC 65)

PAGE 4

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~~TOP SECRET~~ [redacted]

SUBJECT: ~~(TS~~ [redacted]

[redacted]

George J. Tenet

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A47-5

Document #3

(FOIA DOC 65)

PAGES 6-8

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Other Document #7

Document #7

(FOIA DOC 73)

PAGES 1 TO 23

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[redacted]

[redacted] CERTIFIED INTERROGATORS [redacted] HAVE EMPLOYED THE FOLLOWING STANDARD AND ENHANCED INTERROGATION METHODS WITH KHALID SHAYKH ((MUHAMMAD)) [redacted]

[redacted] THE WATERBOARD [redacted]

Document #7

(FOIA DOC 73)

PAGES 25 TO 43

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Other Document #25

Document #25

(FOIA DOC 64)

PAGES 1 TO 8

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[redacted]

- The use of the following techniques [redacted] in the interrogation of al-Qa'ida detainees by the CIA [redacted] the water board [redacted]

Other Document #29

Document #29

(FOIA DOC 90)

PAGES 1 TO 17

Denied in Full

[redacted]

These enhanced techniques include:

[redacted]

Water Board

[redacted]

AT-1042-18

Document #45

(FOIA DOC 92)

PAGES 1 TO 2

Denied in Full

[redacted]

[redacted]

Enhanced Techniques

Techniques [redacted] These include:

[redacted]

Waterboard

[redacted]

[redacted]

CT3 15-3

Document #45

(FOIA DOC 92)

PAGES 4 TO 7

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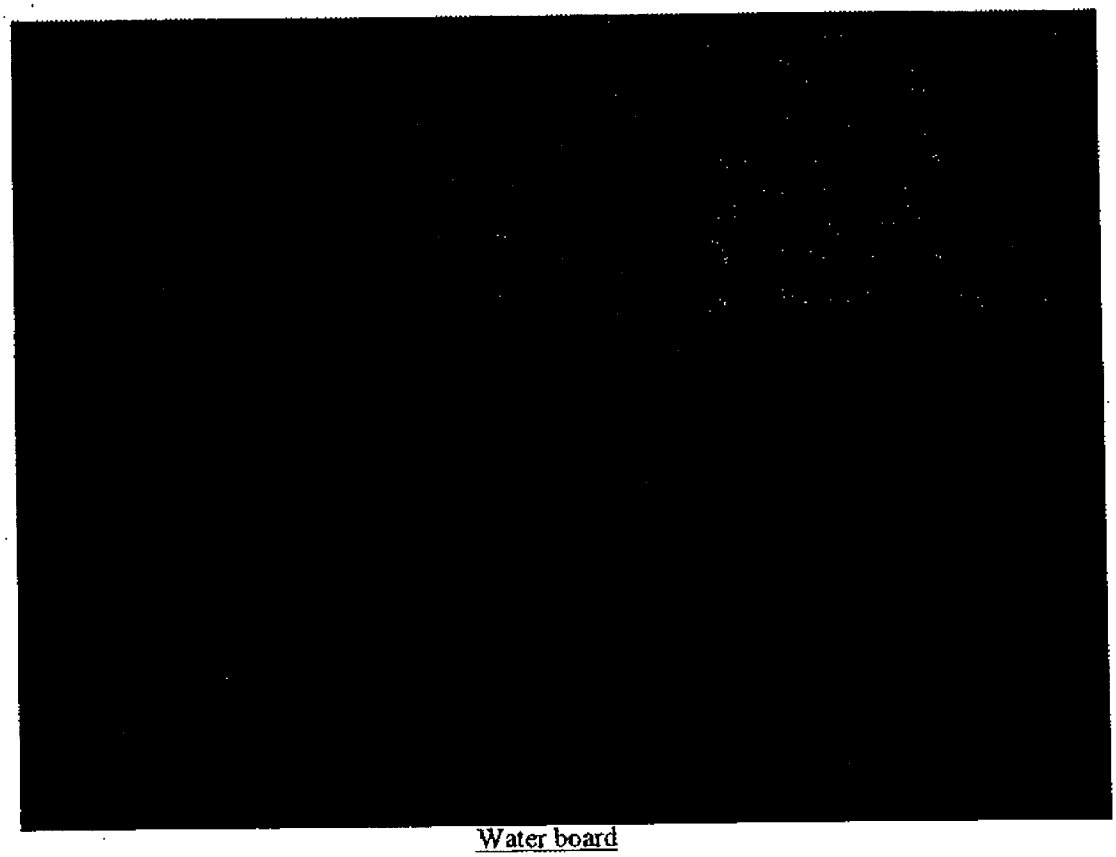
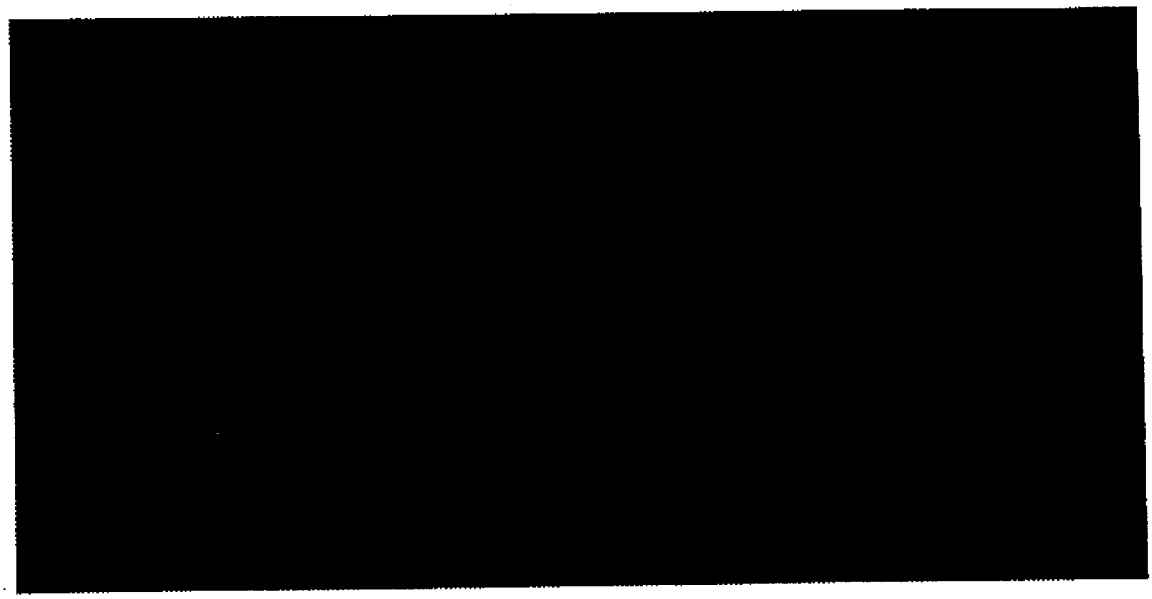
[redacted]



Water board



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CT2 15-8

Document #45

(FOIA DOC 92)

PAGES 9 TO 11

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Other Document #65

Document #65

(FOIA DOC 86)

PAGES 1 TO 9

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[redacted]

[redacted]

[redacted] these techniques are: [redacted]

Water-board [redacted]

[redacted]

[redacted]

0000991

[redacted]

OT-215-10

Document #65

(FOIA DOC 86)

PAGES 11 TO 13

Denied in Full

[redacted]

[redacted]

[redacted]

Water Board

[redacted]

[redacted]

OT 215-14

Document #65

(FOIA DOC 86)

PAGES 15 TO 38

Denied in Full

Document #65

(FOIA DOC 86)

PAGES 19 TO 37

Denied in Full

Other Document #45

Other Document #67

[redacted]

[redacted] These techniques are:

Water-board[redacted]

(10)

ATC10-1

Document #67

(FOIA DOC 40)

PAGES 2 TO 4

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[redacted] Water Board

[redacted]

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ATTACH

Other Document #85

Document #85

(FOIA DOC 4)

PAGE 1

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[redacted]

[redacted]

[redacted] **Permissible Interrogation Techniques**

Unless otherwise approved by Headquarters, CIA officers [redacted] may use only Permissible Interrogation Techniques, which comprise the (a) Standard Techniques and (b) Enhanced Techniques.

[redacted]

Enhanced Techniques [redacted] the water board; [redacted]

[redacted]

[redacted]

CTCL 334-1

[redacted]

[redacted] In each instance the use of Enhanced Techniques must be approved by Headquarters in advance, [redacted]

[redacted]

[redacted]

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[redacted]

Document #85

(FOIA DOC 4)

PAGES 4 TO 8

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Other Document #87

Document #87

(FOIA DOC 8)

PAGES 1 TO 13

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[redacted]

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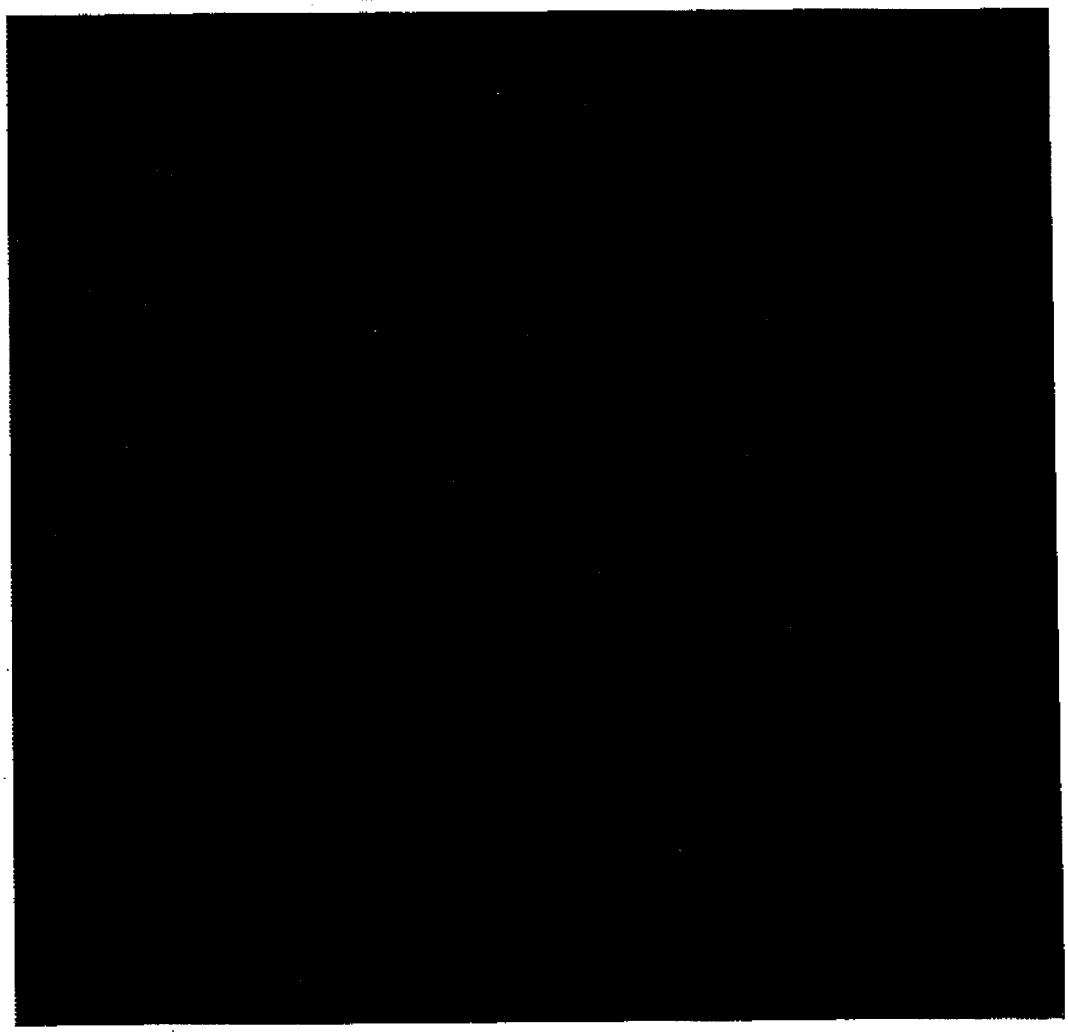
[redacted]



These techniques are: [redacted]

[redacted] water-board [redacted]

[redacted]

[redacted]

Document #87

(FOIA DOC 8)

PAGES 15 TO 17

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[redacted]

Water board

[redacted]

0000090

[redacted]

Document #87

(FOIA DOC 8)

PAGES 19 TO 22

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Other Document #101

[redacted]

~~00100~~

[redacted]

00101

Water board

[redacted]

~~23~~ 22

0000139

Document #101

(FOIA DOC 22)

PAGES 2 TO 3

Denied in Full

Other Document #103

[redacted]

~~00102~~

[redacted]

00103

[redacted]

Waterboard

[redacted]

(38) (24)

0000143

[redacted]

Other Document #119

Document #119

(FOIA DOC 84)

PAGES 1 TO 13

Denied in Full

[redacted]

[redacted]

These techniques are: [redacted]

Water-board [redacted]

[redacted]

[redacted]

0000915

[redacted]

ATTACH-14

Document #119

(FOIA DOC 84)

PAGES 15 TO 42

Denied in Full

Other Document #129

[redacted]

00128

00129

MEMORANDUM FOR: Deputy Director for Operations
Director, DCI Counterterrorist Center
Senior Deputy General Counsel

FROM: Deputy Director of Central Intelligence

SUBJECT: [redacted] Interrogation of Abu Zubaydah

[redacted]

enhanced interrogation

methods include

[redacted]

water

board

[redacted]

(119)

(127)

[redacted]

0001386

[redacted]

Document #129

(FOIA DOC 114)

PAGE 2

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[redacted]

[redacted]

[redacted] Approval. Accordingly, in view of the grave danger to the United States and its citizens, [redacted] I have approved the implementation of the enhanced interrogation techniques described above.

[redacted]

Other Document #131

~~00130~~

00131

[redacted]

[redacted]

Successful raid and capture of Abu Zubaydah [redacted]

[redacted]

116

~~129~~

[redacted]

0001390

Document #131

(FOIA DOC 116)

PAGES 2 TO 5

Denied in Full

[redacted]

Zubaydah subjected

to

the water board.

water board,

used

Zubaydah subjected to [redacted] waterboard, [redacted]

Document #131

(FOIA DOC 116)

PAGE 7

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[redacted]

[redacted]

briefs HPSCI Chairman and Ranking Minority Member on Abu Zubaydah interrogations

[redacted]

0001397

[redacted]

[redacted]

interrogation of Nashiri. Waterboard

used

[redacted]

0001398

[redacted]

[redacted]

OGC attorney [redacted] reviews videotapes

[redacted]

0001399

CT 2-2

Other Document #169

Document #169

(FOIA DOC 169)

PAGES 1 TO 13

Denied in Full

[redacted]

These techniques are: [redacted] water-board [redacted]

[redacted]

These techniques are: [redacted]

[redacted] water-board [redacted]

[redacted]

OT 903-14

Document #169

(FOIA DOC 169)

PAGES 15 TO 17

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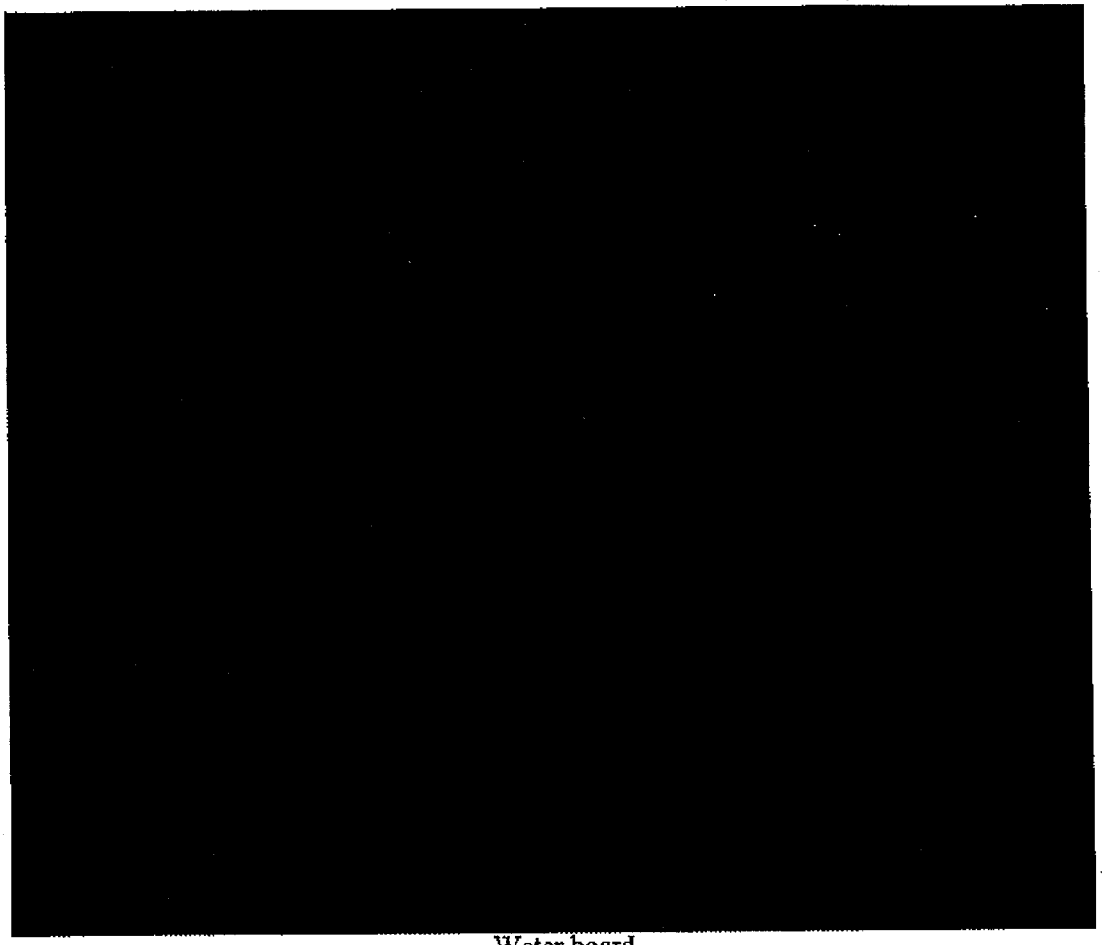
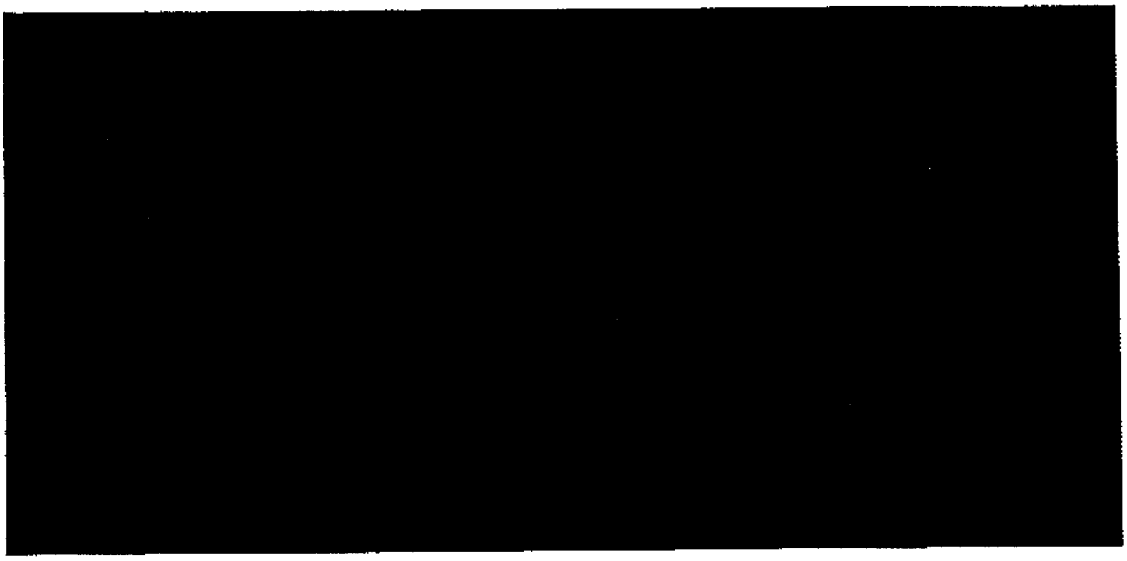


Water board



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(FOIA DOC 169)

PAGES 19 TO 22

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Interview Report #103

[redacted]

103

5 September 2003 [redacted]

INTERVIEW REPORT

INTERVIEWEE: Scott W. Muller

[redacted]

(U) [redacted] Review of Interrogations for Counterterrorism Purposes

[redacted]

9000574

[redacted]

[redacted]

I118-1

INTERVIEWEE: Scott W. Muller

[redacted]

5. ~~(TS~~ [redacted] got a report from the OGC Attorney who had reviewed the videotapes. [redacted]

9000575

[redacted]

[redacted] the Agency approved the use of the waterboard on Khalid Shaykh Muhammad (KSM), [redacted] Al-Nashiri had been waterboarded [redacted] he pays attention to the use of the waterboard because it is controversial.

[redacted]

9000576

[redacted]

I 118-3

[redacted]

[redacted]

detainees have undergone

the waterboard.

[redacted]

9000577

[redacted]

I 118-4

Document #103

(FOIA DOC 103)

PAGES 5 TO 25

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Cable #333

[redacted]

333

[redacted]

AFTER UNDERGOING APPROVED TECHNIQUES INCLUDING THE WATER BOARD, ((ABU ZUBAYDAH))

[redacted]

INTERROGATION SESSIONS INVOLVED USE OF THE WATER BOARD.

[redacted]

7001039

[redacted]

05649-1

Document #333

(FOIA DOC 333)

PAGE 2

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~~TOP SECRET~~ [redacted]

SPECIAL REVIEW

~~(TS~~ [redacted] COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001 – OCTOBER 2003)

[redacted]

7 May 2004

[redacted]

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[redacted]

[redacted]

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[redacted]

SPECIAL REVIEW

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SPECIAL REVIEW

PAGES 1 TO 14

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[redacted]

Enhanced Interrogation Techniques

[redacted]

he waterboard technique

[redacted]

~~TOP SECRET~~ [redacted]

DOJ LEGAL ANALYSIS

36. ~~(TS~~ [redacted] The ensuing legal opinions focus on the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (Torture Convention),[15] especially as implemented in the U.S. criminal code, 18 U.S.C. 2340-2340A.

37. (U//FOUO) The Torture Convention specifically prohibits "torture," which it defines in Article 1 as:

> any act by which *severe* pain or suffering, whether physical or mental, is *intentionally* inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction. [Emphasis added.]

Article 4 of the Torture Convention provides that states party to the Convention are to ensure that all acts of "torture" are offenses under their criminal laws. Article 16 additionally provides that each state party "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to acts of torture as defined in Article 1."

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[15] (U//FOUO) Adopted 10 December 1984, S. Treaty Doc. No. 100-20 (1988) 1465 U.N.T.S. 85 (entered into force 26 June 1987). The Torture Convention entered into force for the United States on 20 November 1994.

38. (U//FOUO) The Torture Convention applies to the United States only in accordance with the reservations and understandings made by the United States at the time of ratification.[16] As explained to the Senate by the Executive Branch prior to ratification:

> Article 16 is arguably broader than existing U.S. law. The phrase "cruel, inhuman or degrading treatment or punishment" is a standard formula in international instruments and is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. To the extent the phrase has been interpreted in the context of those agreements, "cruel" and "inhuman" treatment or punishment appears to be roughly equivalent to the treatment or punishment barred in the United States by the Fifth, Eighth and Fourteenth Amendments. "Degrading" treatment or punishment, however, has been interpreted as potentially including treatment that would probably not be prohibited by the U.S. Constitution. [Citing a ruling that German refusal to recognize individual's gender change might be considered "degrading" treatment.] To make clear that the United States construes the phrase to be coextensive with its constitutional guarantees against cruel, unusual, and inhumane treatment, the following understanding is recommended:
>
> > "The United States understands the term 'cruel, inhuman or degrading treatment or punishment,' as used in Article 16 of the Convention, to mean the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States."[17] [Emphasis added.]

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[16] (U) Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980). The United States is not a party to the Vienna Convention on treaties, but it generally regards its provisions as customary international law.

[17] (U//FOUO) S. Treaty Doc. No. 100-20, at 15-16.

39. (U//FOUO) In accordance with the Convention, the United States criminalized acts of torture in 18 U.S.C. 2340A(a), which provides as follows:

> Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

The statute adopts the Convention definition of "torture" as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control."[18] "Severe physical pain and suffering" is not further defined, but Congress added a definition of "severe mental pain or suffering:"

> [T]he prolonged mental harm caused by or resulting from--
>
> (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
>
> (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
>
> (C) the threat of imminent death; or
>
> (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality. . . .[19]

These statutory definitions are consistent with the understandings and reservations of the United States to the Torture Convention.

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> Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.[21]

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> [The United States] have been given greater opportunity to make good on our commitment to uphold standards of human dignity and liberty .... [N]o country is exempt from scrutiny, and all countries benefit from constant striving to identify their weaknesses and improve their performance .... [T]he Reports serve as a gauge for our international human rights efforts, pointing to areas of progress and drawing our attention to new and continuing challenges.
>
> In a world marching toward democracy and respect for human rights, the United States is a leader, a partner and a contributor. We have taken this responsibility with a deep and abiding belief that human rights are universal. They are not grounded exclusively in American or western values. But their protection worldwide serves a core U.S. national interest.

The State Department Report identified objectionable practices in a variety of countries including, for example, patterns of abuse of prisoners in Saudi Arabia by such means as "suspension from bars by handcuffs, and threats against family members, . . . [being] forced constantly to lie on hard floors [and] deprived of sleep . . . ." Other reports have criticized hooding and stripping prisoners naked.

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> The United States declares its strong solidarity with torture victims across the world. Torture anywhere is an affront to human dignity everywhere. We are committed to building a world where human rights are respected and protected by the rule of law.

Freedom from torture is an inalienable human right . . . . Yet torture continues to be practiced around the world by rogue regimes whose cruel methods match their determination to crush the human spirit . . . .

Notorious human rights abusers . . . have sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors . . . .

The United States is committed to the worldwide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment . . . .

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Appendix C

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Appendix E

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~~TOP SECRET~~ [redacted]

SPECIAL REVIEW

~~(TS~~ [redacted] COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001 – OCTOBER 2003)

[redacted]

7 May 2004

[redacted]

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[redacted]

Enhanced Interrogation Techniques

[redacted]

he waterboard technique

[redacted]

DOJ LEGAL ANALYSIS

36. ~~(TS~~ [redacted] The ensuing legal opinions focus on the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (Torture Convention),[15] especially as implemented in the U.S. criminal code, 18 U.S.C. 2340-2340A.

37. (U//FOUO) The Torture Convention specifically prohibits "torture," which it defines in Article 1 as:

> any act by which *severe* pain or suffering, whether physical or mental, is *intentionally* inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction. [Emphasis added.]

Article 4 of the Torture Convention provides that states party to the Convention are to ensure that all acts of "torture" are offenses under their criminal laws. Article 16 additionally provides that each state party "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to acts of torture as defined in Article 1."

---

[15] (U//FOUO) Adopted 10 December 1984, S. Treaty Doc. No. 100-20 (1988) 1465 U.N.T.S. 85 (entered into force 26 June 1987). The Torture Convention entered into force for the United States on 20 November 1994.

38. (U//FOUO) The Torture Convention applies to the United States only in accordance with the reservations and understandings made by the United States at the time of ratification.[16] As explained to the Senate by the Executive Branch prior to ratification:

> Article 16 is arguably broader than existing U.S. law. The phrase "cruel, inhuman or degrading treatment or punishment" is a standard formula in international instruments and is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. To the extent the phrase has been interpreted in the context of those agreements, "cruel" and "inhuman" treatment or punishment appears to be roughly equivalent to the treatment or punishment barred in the United States by the Fifth, Eighth and Fourteenth Amendments. "Degrading" treatment or punishment, however, has been interpreted as potentially including treatment that would probably not be prohibited by the U.S. Constitution. [Citing a ruling that German refusal to recognize individual's gender change might be considered "degrading" treatment.] To make clear that the United States construes the phrase to be coextensive with its constitutional guarantees against cruel, unusual, and inhumane treatment, the following understanding is recommended:
>
> > "The United States understands the term 'cruel, inhuman or degrading treatment or punishment,' as used in Article 16 of the Convention, to mean the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States."[17] [Emphasis added.]

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[16] (U) Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980). The United States is not a party to the Vienna Convention on treaties, but it generally regards its provisions as customary international law.

[17] (U//FOUO) S. Treaty Doc. No. 100-20, at 15-16.

39. (U//FOUO) In accordance with the Convention, the United States criminalized acts of torture in 18 U.S.C. 2340A(a), which provides as follows:

> Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

The statute adopts the Convention definition of "torture" as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control."[18] "Severe physical pain and suffering" is not further defined, but Congress added a definition of "severe mental pain or suffering:"

> [T]he prolonged mental harm caused by or resulting from–
>
> (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
>
> (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
>
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Appendix C

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EXHIBIT CC

REDACTED

[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MAJID KHAN,	:	
Petitioner,	:	
v.	:	No. 07-1324
ROBERT M. GATES,	:	
Respondent.	:	

MOTION TO DECLARE INTERROGATION METHODS APPLIED AGAINST PETITONER CONSTITUTE TORTURE

Petitioner Majid Khan ("Petitioner" or "Majid"), a prisoner at the U.S. Naval Station at Guantánamo Bay, Cuba ("Guantánamo"), who seeks review under the Detainee Treatment Act of 2005 ("DTA"), Pub. L. No. 109-148, §§ 1001-1006, 119 Stat. 2680, 2739-45, moves by and through his undersigned counsel for an order declaring that the interrogation methods applied against him by U.S. personnel constitute torture and other forms of impermissible coercion.[1]

[1] Counsel for Respondents do not consent to this motion seeking a declaration that Petitioner's interrogations by U.S. personnel while in secret CIA detention and elsewhere constitute torture.

REDACTED

PRELIMINARY STATEMENT

Unlike other Guantánamo prisoners, Majid Khan has long had legal resident status in the United States and strong voluntary ties to this country. Majid is a twenty-seven-year-old U.S. resident and asylee-holder and a citizen of Pakistan, an ally of the United States.[2] He grew up in the suburbs of Baltimore, Maryland, and has had political asylum in this country since 1998. He graduated from Owings Mills High School in 1999, purchased a home near Baltimore, opened a bank account, and worked for the State of Maryland and Electronic Data Systems. He paid thousands of dollars in taxes to the Internal Revenue Service. His family still resides legally near Baltimore; and some of his family members are U.S. citizens. Majid's only home is in this country.

On March 5, 2003, Majid [redacted] in Karachi, Pakistan, [redacted] Notwithstanding his substantial, voluntary ties to this country, Petitioner was [redacted] to CIA custody for detention and interrogation at secret prisons overseas. Majid was forcibly disappeared by the CIA. He did not reemerge until September 6, 2006, when he was transferred to the U.S. Naval

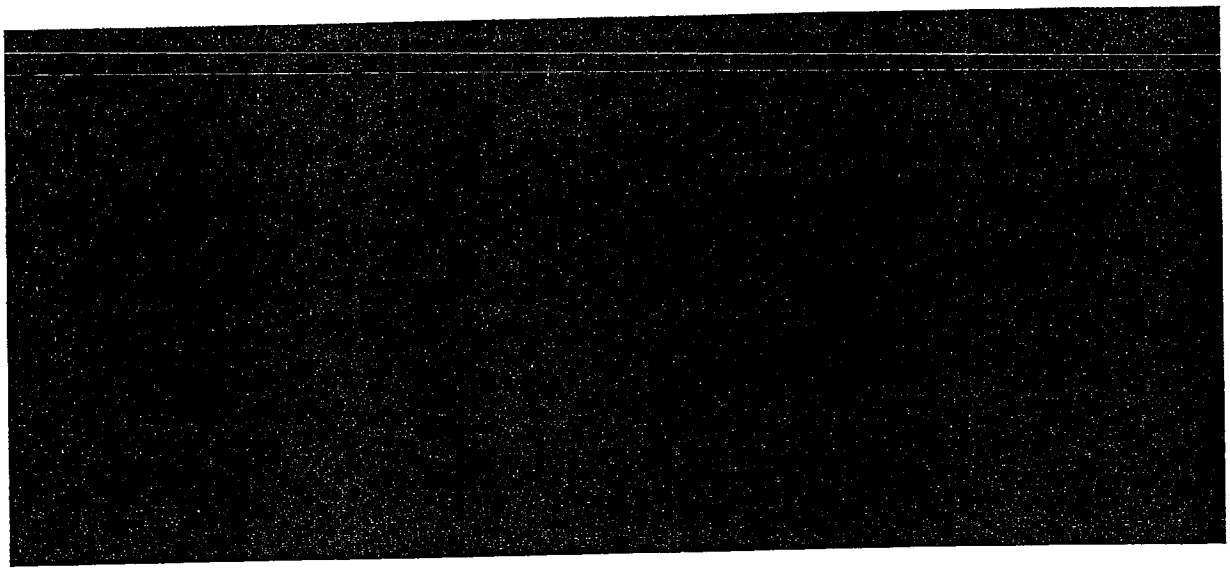
[2] Petitioner's background, secret detention and interrogation are set forth in detail in the Declaration of Gitanjali S. Gutierrez ("Gutierrez Declaration"), attached hereto as Exhibit 1.

Station at Guantánamo Bay, Cuba, where he remains imprisoned without charge or trial.

Majid then filed a petition for a writ of habeas corpus in the U.S. District Court for the District of Columbia on September 29, 2006, challenging his indefinite detention in military custody. *See Khan v. Bush*, No. 06-1690 (RBW) (D.D.C.). In April 2007, he appeared before a CSRT and was subsequently found to be properly detained as an "enemy combatant." On August 14, 2007, a few days after the CSRT determination was announced, Majid filed this DTA action challenging that determination and preserving all other legal claims, including his right to habeas relief.

Majid's Secret Detention and Interrogations Using Torture and Cruel, Inhuman and Degrading Treatment, and Other Impermissible Forms of Coercion

From March 2003 until the present day, the United States has imprisoned and interrogated Petitioner Majid Khan and other individuals in secret detention using methods that include torture, cruel, inhuman and degrading treatment, or other unlawful coercion to extract confessions and other incriminating information from them. U.S. interrogators applied techniques against Majid long-viewed as abhorrent by our Nation and our Anglo-American jurisprudence, [redacted]



Further, these incidents were not isolated acts of rouge CIA agents or contractors. Rather, the secret detention and interrogation regime to which U.S. personnel subjected Majid was a carefully developed program calculated and designed deliberately to apply techniques euphemistically referred to as "enhanced interrogation methods" or "alternative interrogation methods" under conditions of careful monitoring by It was, by all accounts, a program of U.S. government torture

CSRT Consideration of Information Related to Petitioner Extracted By Torture or Other Forms of Impermissible Coercion

Respondents have refused to product any "government information" in this case. Rather, on September 27, 2007, they filed a pending omnibus Motion to

[3] Further details of this program and the interrogation techniques CIA agents applied against other individuals are set forth in the Declaration of J. Wells. Dixon ("Dixon Declaration"), attached hereto as Exhibit 2.

Stay Orders to File Certified Index to Record, and have not made any further submissions to the record. Despite Respondents' failure to produce the government information, however, Petitioner Khan hereby submits documents he prepared and presented during his CSRT proceeding that confirm that the tribunal and reviewing authorities were presented with evidence that U.S. personnel extracted information from Petitioner Khan during his imprisonment in U.S. custody that was obtained through torture, cruel, inhuman or degrading treatment, and unlawful coercion.[4]

Because this Court must determine whether Petitioner's CSRT complied with its own regulations – including the requirement that the CSRT assess whether any statements were obtained through coercion and the probative value of such information – and whether these regulations are consistent with the Constitution and laws of the United States, this Court should grant the requested relief and declare that the interrogation methods applied against Petitioner Khan constitute torture and other forms of impermissible coercion.

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[4] *See, e.g.*, Khan CSRT Exhibit D-b, Majid Khan written statement of Torture for Combatant Status Review Tribunal taken Mar 2007 by PR 3, attached hereto as Exhibit 3, and Khan CSRT Exhibit D-c, Majid Khan Oral Statement of Torture for Combatant Status Review Tribunal taken Mar/Apr 2007 by PR 3, attached hereto as Exhibit 4.

ARGUMENT

I. Information Related to Petitioner Indisputably Was Obtained Through Torture, Cruel, Inhuman and Degrading Treatment and Unlawful Coercion

A. Torture is Clearly Defined Under U.S. Law

Under the applicable definitions, the tactics used against Majid constitute torture and unlawful coercion. The Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, 120 Stat. 2600, prohibits torture and cruel, inhuman and degrading treatment if it inflicts "severe physical or mental pain or suffering." The MCA incorporates by reference the definitions of 18 U.S.C. § 2340(2), which provide, *inter alia*, that:

> "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from –
>
> (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
>
> * * *
>
> (C) the threat of imminent death; or
>
> (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering . . . .

Although the MCA does not provide further guidance concerning the standard to be used to define torture or impermissible coercion, military and federal court decisions have categorized many of the various methods of interrogation and

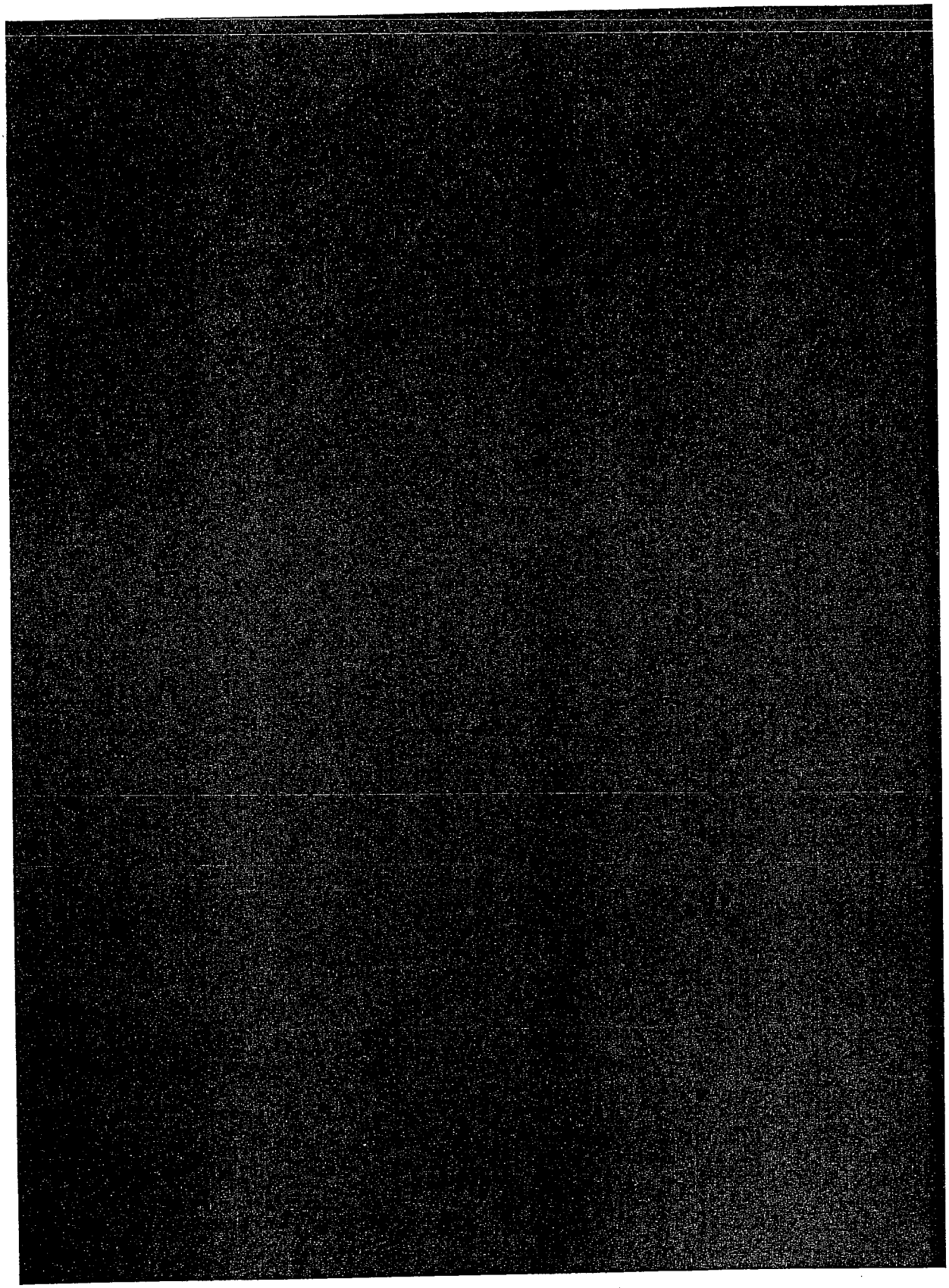
coercion used against Petitioner as torture or impermissible coercion.[5]

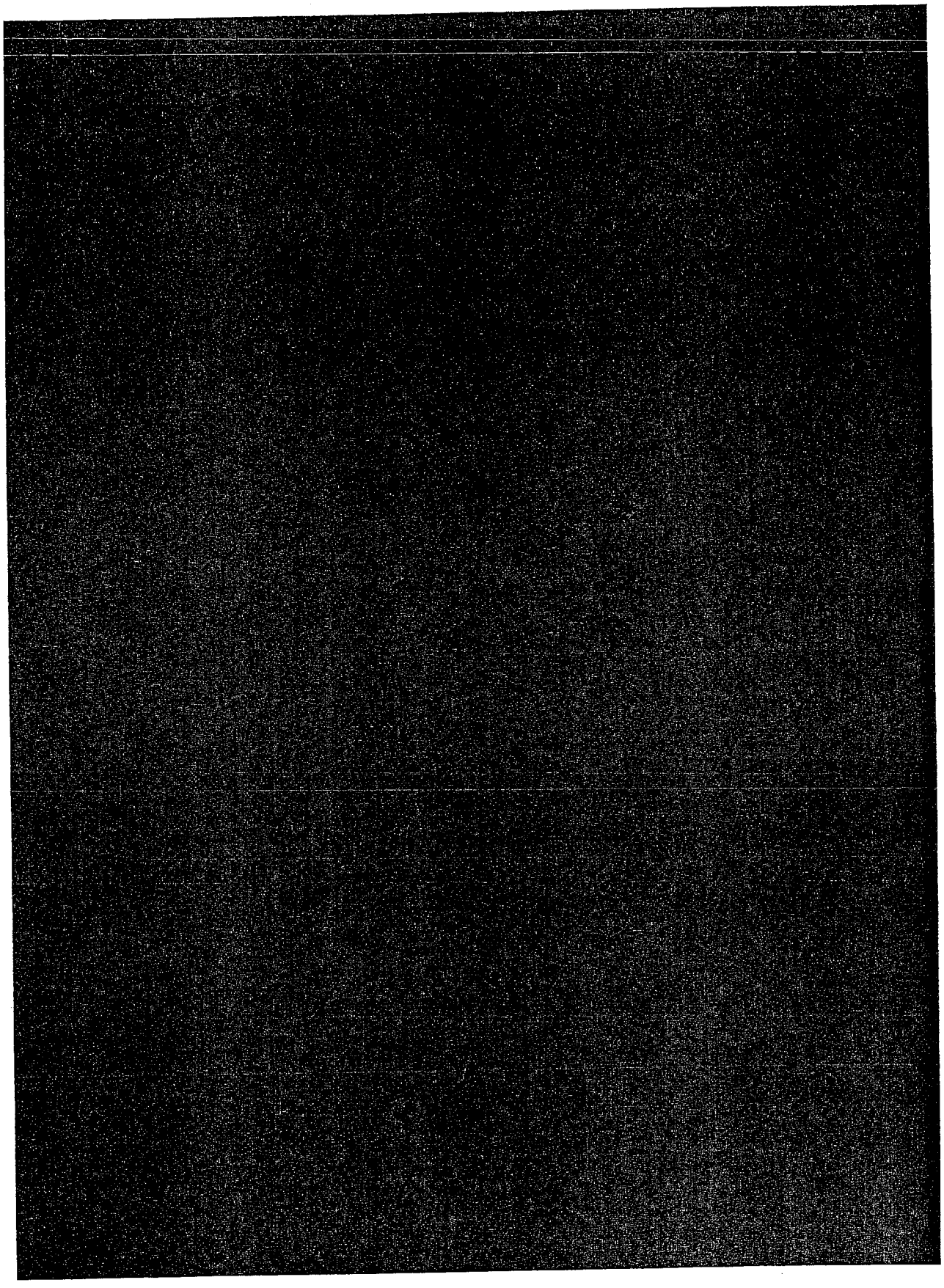
B. U.S. Personnel Tortured Petitioner and Other Detainees to Obtain Information Related to Petitioner's Status

Information related to Petitioner that U.S. interrogators obtained from Petitioner Khan and other detainees [redacted] was indisputably extracted through torture, cruel, inhuman and degrading treatment and unlawful coercion. During Petitioner's most shocking period of interrogations, he was submitted to [redacted] interrogation tactics that have long been prohibited by U.S. civil and military law.

Most notably, for example, Petitioner Khan [redacted]

[5] *See, e.g., United States v. Lee*, 744 F.2d 1124 (5th Cir. 1984) (affirming conviction for "water torture" perpetrated against criminal defendants by a county sheriff and two deputies); *United States of America v. Chinsaku Yuki*, Manilla (1946) (military commission convened by Commanding General Phillipines-Ryukus Command convicted Sergeant-Major Chinsaku Yuki of the Kempentai of using "water torture" against individuals in his custody), NARA NND 775011 Record Group 331 Box 1586.





[redacted]

In addition to these extreme tactics, throughout his imprisonment, Respondents and other government agencies have subjected Petitioner Khan to a variety of other forms of torture, cruel, inhuman and degrading treatment, and other lesser forms of impermissible coercion. These methods have included:

[redacted]

Petitioner seeks a declaratory ruling from this Court that each of these methods [redacted] constitute torture in violation of the MCA and other federal law.

C. Petitioner's CSRT Considered Information Obtained By Or Derived From Torture or Other Impermissible Forms of Coercion

Petitioner placed before his CSRT panel credible and detailed information concerning the torture used against him while in U.S. custody, including the [redacted] No question arises that the CRST panel and reviewing authorities were aware of this information. Yet, a serious risk exists that Majid's CSRT, in reaching its final determination, relied in whole or in part upon information obtained unlawfully from Majid or other individuals [redacted] Furthermore, information acquired through torture and other unlawful techniques led interrogators to discover additional information that was likely produced in Petitioner's CSRT as part of the government information affirming Petitioner's "enemy combatant" classification.

Finally, other individuals detained in the [redacted] secret detention and interrogation program include Ammar al Baluchi, Guantanamo Detainee ISN #10018, Mohd Farik bin Amin Zubair, Guantanamo Detainee ISN #10021, and Khalid Sheikh Mohammed, Guantanamo Detainee ISN #10024, whom Respondents have publicly alleged have information related to Petitioner's status

determination[6] and upon whose statements Petitioner's CSRT may have relied upon in whole or in part.

III. THIS COURT SHOULD DECLARE PETITIONER'S INTERROGATION CONSTITUE TORTURE

A. The CSRT Regulations and the MCA Prohibit Reliance Upon Information Obtained By Torture

It is unsettled to what extent the fundamental concerns underlying judicial reliance on torture and other impermissible forms of coercion are embodied within the judicial review available under the DTA.[7] The Court should, however, rule whether or not the tactics applied to Petitioner constitute torture or impermissible coercion in order to conduct the review required even under the narrowest reading of the DTA.[8]

This Court must determine whether the CSRT panel followed the procedures

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[6] *See, e.g.*, Unclassified Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10018 (Al Baluchi, Ammar), at 23-24; Unclassified Summary of Evidence for Combatant Status Review Tribunal – Mohd Farik Bin Amin (Zubair), at 2.

[7] To the extent that the DTA prohibits this Court from holding that Petitioner is unlawfully detained because the CSRT justified his enemy combatant status and detention pursuant to statements extracted through torture or other impermissible forms of coercion, the DTA review is an inadequate substitute for the writ of habeas corpus.

[8] To the extent the Court requires further information prior to ruling on this motion concerning the interrogation tactics applied to Petitioner, discovery and an evidentiary hearing should be scheduled under appropriate procedures that afford Petitioner a meaningful opportunity to pursue his DTA claims and that safeguard national security concerns, if any, related to the interrogation methods applied in the CIA secret detention program.

set forth in the July 2006 Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants, attached hereto as Exhibit 5,[9] in reaching its conclusion that Petitioner is properly detained as an "enemy combatant." Pursuant to these regulations, the CSRT panel must have assessed "whether any statement derived from or relating to evidence regarding the status of Petitioner was obtained as a result of coercion and the probative value, if any, of such statement." *See* Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants, at 30; *see also* DTA at § 1005(b)(1). It cannot be disputed that this Court has the authority to order the requested relief pursuant to the DTA, as well as the All Writs Act, 28 U.S.C. § 1651.

B. The Prohibition Against Judicial Reliance upon Information Obtained by or Derived From Torture and Other Lesser Unlawful Coercion is Deeply-Rooted

Our Nation's fundamental traditions prohibit judicial reliance upon statements extracted through torture and other lesser forms of impermissible coercion to justify imprisonment of an individual.[10] Torture has been illegal under

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[9] The government conducted Petitioner's CSRT on or around April 15-19, 2007, and the CSRT panel's decision was finalized on or around August 9, 2007. Consequently, CSRT regulations promulgated in July 2006 were applicable to his proceeding.

[10] To the extent that the DTA prohibits this Court from holding that Petitioner is unlawfully detained because the CSRT justified his enemy combatant status and detention pursuant to statements extracted through torture or other impermissible forms of coercion, the DTA review is an inadequate substitute for the writ of habeas corpus.

English common law for more than 350 years.[11] Common law judges did not consider evidence against a defendant that investigators extracted through torture and unlawful coercion because the judges considered this information inherently unreliable and viewed judicial acquiescence in these practices as degrading the dignity of justice.[12]

Our Founders shared this revulsion of judicial reliance upon statements extracted by torture or impermissible coercion and embodied protections against this practice within the Constitution.[13] Our criminal law also prohibits acts of

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[11] *See, e.g.*, James Heath, *Torture and English Law*, 178 (1982).

[12] Although the rare use of torture had a brief appearance in English Common Law during the period of the infamous Star Chamber, 5 William S. Holdworth, *A History of English Common Law*, 184-85 (1924), it was used even under these universally condemned circumstances solely for purposes of investigation. At no point in English common law history were statements obtained through torture or other inhumane treatment used against criminal defendants. *See, e.g.*, Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of Rebels in the Year 1746, in County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* 244 (2d ed. Corrected, London, W. Strahan & M. Woodfall 1776) (spelling modernized).

[13] The Fifth Amendment's protection against self-incrimination was a direct response to the historical experience of the Star Chamber and intended to prohibit judicial reliance upon statements extracted through unlawful cruelty or coercion, including torture. *See Michigan v. Tucker*, 417 U.S. 433, 440 (1974) ("The privilege against compulsory self-incrimination was developed by painful opposition to a course of ecclesiastical inquisitions and Star Chambers proceedings occurring several centuries ago."). Further, constitutional prohibitions against unreasonable searches and seizures, cruel and unusual punishments, and the guarantee of due process, reflect the Founders' antipathy to government cruelty and undue coercion within our Nation's justice system. *See, e.g., Gregg v. Georgia*, 428 U.S. 153, 169-170 (1976) ("The American draftsmen, who adopted the English phrasing in drafting the Eighth Amendment, were primarily concerned

torture during wartime and peacetime,[14] as well as the introduction of statements obtained through torture or other impermissible coercion against criminal defendants.[15] The government's apparent reliance upon information extracted using such tactics in the present case threatens the common law and constitutional prohibitions designed to protect individual liberty, to guard against tyranny, and to preserve the balance between the state and the individual that rests at the core of our Anglo-American legal traditions.

Conclusion

For the reasons set forth above, Petitioner respectfully urges the Court to grant Petitioner's motion and issue an order declaring that the interrogation methods applied against him by U.S. personnel constitute torture and other forms of impermissible coercion.

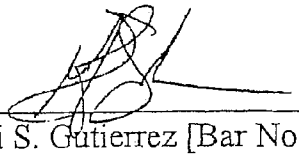
. . with proscribing 'tortures' and other 'barbarous' methods of punishment.") (citation omitted).

[14] *See* 18 U.S.C. § 2340. Further, in *Hamdan v. Rumsfeld*, 542 U.S. 507 (2006), the Supreme Court found that Common Article 3 of the 1949 Geneva Conventions is applicable to detainees in Guantanamo. Common Article 3 expressly prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" against detainees in military custody at Guantánamo. *See also* MCA. Pub. L. No. 109-366, 120 Stat. 2600.

[15] *See, e.g., Brown v. Mississippi*, 297 U.S. 278 (1936).

Dated: December 6, 2007

Respectfully submitted,



Gitanjali S. Gutierrez [Bar No. 51177]

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666 Broadway, 7th Floor
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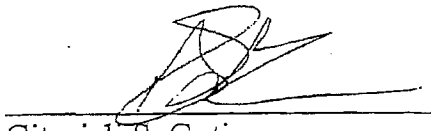
Fax: (212) 614-6499

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2007, I caused the foregoing Petitioner's Motion to Declare Interrogation Methods Applied Against Petitioner Constitute Torture, with exhibits, to be filed and served on counsel listed below by causing an original and six copies to be delivered to the Court Security Office.

Robert M. Loeb, Esq.
U.S. Department of Justice
Civil Division, Room 7268
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001



Gitanjali S. Gutierrez

EXHIBIT
DD

Other Document #85

Document #85

(FOIA DOC 4)

PAGE 1

Denied in Full

[redacted]

[redacted]

[redacted] **Permissible Interrogation Techniques**

Unless otherwise approved by Headquarters, CIA officers [redacted] may use only Permissible Interrogation Techniques, which comprise the (a) Standard Techniques and (b) Enhanced Techniques.

[redacted]

Enhanced Techniques [redacted] the water board; [redacted]

[redacted]

[redacted]

CTCL 237-1

[redacted]

[redacted] In each instance the use of Enhanced Techniques must be approved by Headquarters in advance, [redacted]

[redacted]

[redacted]

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[redacted]

Document #85

(FOIA DOC 4)

PAGES 4 TO 8

Denied in Full

EXHIBIT
EE

Press Releases & Statements

Director's Statement on the Past Use of Diego Garcia

Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on the Past Use of Diego Garcia

February 21, 2008

The British Government announced today that the United States recently provided information on rendition flights through Diego Garcia—a UK territory in the Indian Ocean—that contradicted earlier data from us. Our government had told the British that there had been no rendition flights involving their soil or airspace since 9/11. That information, supplied in good faith, turned out to be wrong.

In fact, on two different occasions in 2002, an American plane with a detainee aboard stopped briefly in Diego Garcia for refueling. Neither of those individuals was ever part of CIA's high-value terrorist interrogation program. One was ultimately transferred to Guantanamo, and the other was returned to his home country. These were rendition operations, nothing more. There has been speculation in the press over the years that CIA had a holding facility on Diego Garcia. That is false. There have also been allegations that we transport detainees for the purpose of torture. That, too, is false. Torture is against our laws and our values. And, given our mission, CIA could have no interest in a process destined to produce bad intelligence.

In late 2007, CIA itself took a fresh look at records on rendition flights. This time, the examination revealed the two stops in Diego Garcia. The refueling, conducted more than five years ago, lasted just a short time. But it happened. That we found this mistake ourselves, and that we brought it to the attention of the British Government, in no way changes or excuses the reality that we were in the wrong. An important part of intelligence work, inherently urgent, complex, and uncertain, is to take responsibility for errors and to learn from them. In this case, the result of a flawed records search, we have done so.

Mike Hayden

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EXHIBIT
FF

UNITED
NATIONS

A

General Assembly

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GENERAL

A/HRC/4/40/Add.1
2 February 2007

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

HUMAN RIGHTS COUNCIL
Fourth regular session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the Opinions adopted by the Working Group on Arbitrary Detention at its forty-fourth, forty-fifth and forty-sixth sessions, held in November 2005, May 2006 and August 2006, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions is included in the report of the Working Group to the Human Rights Council at its fourth regular session (A/HRC/4/40).

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CONTENTS

CONTENTS (*continued*)

and redressed, if necessary by putting the perpetrators to justice. Yet, any procedure aiming to put right gross human rights violations, as such welcomed by the Working Group, shall scrupulously respect the rules and standards drawn up and accepted by the international community to respect the rights of any person charged of a criminal offence. The violation of the rights of the person charged may easily backfire. This is particularly true in the present case; any lack of respect for the rights of the leaders of the former regime in the criminal proceedings against them may undermine the credibility of the justice system of the newly emerging democratic Iraq.

39. The Working Group believes that under the circumstances the proper way to ensure that the detention of Saddam Hussein does not amount to arbitrary deprivation of liberty would be to see to it that his trial is conducted by an independent and impartial tribunal in strict conformity with international human rights standards.

40. On the basis of what precedes, the Opinion of the Working Group is that:

(a) It will not take a position on the alleged arbitrariness of the deprivation of liberty of Mr. Saddam Hussein during the period of international armed conflict;

(b) It will follow the development of the process and will request more information from both concerned Governments and from the source. In the meantime and referring to paragraph 17 (c) of its methods of work, it decides to keep the case pending until further information is received.

Adopted on 30 November 2005.

OPINION No. 47/2005 (YEMEN)

Communication: addressed to the Government on 9 August 2005.

Concerning: Messrs. Walid Muhammad Shahir Muhammad al-Qadasi; Salah Nasser Salim`Ali and Muhammad Faraj Ahmed Bashmilah.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2 The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted to the source the reply provided by the Government. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

5. The source reports that Mr. Walid Muhammad Shahir Muhammad al-Qadasi, a citizen of Yemen, was arrested in the Islamic Republic of Iran in late 2001. He was held there for about three months before being handed over, with other detained foreign nationals, to the authorities in Afghanistan, who in turn handed them over to the custody of the United States of America. He was held in a prison in Kabul, where he was blindfolded, interrogated, threatened with death and accused of belonging to Al-Qaida. Walid Muhammad Shahir Muhammad al-Qadasi and his fellow detainees were kept in underground cells, 10 of them in a cell measuring approximately two by three metres, and constantly exposed to loud music. After three months in detention in Kabul, he was transferred to a detention centre of the United States military forces at Baghram Air Base, outside Kabul. After a month there, Walid Muhammad Shahir Muhammad al-Qadasi was taken to the United States military base at Guantánamo Bay, Cuba.

6. Walid Muhammad Shahir Muhammad al-Qadasi was transferred from Guantánamo Bay to Yemen at the beginning of April 2004. On his arrival, he was detained in the Political Security Prison in Sana'a. He was denied access to a lawyer and not brought before a court. Walid Muhammad Shahir Muhammad al-Qadasi was visited in detention by representatives of the source in mid-April 2004. The prison staff informed the source that Walid Muhammad Shahir Muhammad al-Qadasi was under investigation and would be released as soon as the investigation was completed. Subsequently, he was transferred to Ta'iz prison, where a lawyer from the United States non-governmental organization Centre for Constitutional Rights met with him on 21 June 2005. He currently remains in detention there. He has not been charged with a criminal offence, nor been given the opportunity to challenge the legality of his detention. The Head of the Political Security Department in Sana'a informed the source that Walid Muhammad Shahir Muhammad al-Qadasi and other detainees who returned from Guantánamo Bay were being held at the request of the United States authorities and would remain detained in Yemen pending receipt of their files from these authorities for investigation.

7. With regard to Mr. Salah Nasser Salim 'Ali, the source reports that he is a 27-year-old Yemeni citizen who lived in Jakarta until 19 August 2003. On that day he was detained in Jakarta by agents of the Indonesian police and taken to an immigration centre. After four days of detention, during which his passport expired, Salah Nasser Salim 'Ali was told that he would be deported to Yemen, via Jordan. Upon arrival at the airport in Amman, however, he was taken to a detention facility of the Jordanian intelligence service, where he was interrogated about a past stay in Afghanistan and tortured repeatedly for four days.

8. As to Mr. Muhammad Faraj Ahmed Bashmilah, aged 37, the source reports that he is a Yemeni citizen, who also lived in Indonesia. In October 2003, he travelled to Jordan with his wife. On arrival at Amman airport, Jordanian immigration authorities took his passport. Three days later, on 19 October 2003, he was arrested by the Jordanian Da'irat al-Mukhabarat al-'Amah (General Intelligence Department, who kept him in custody for four days. During this period he was allegedly repeatedly tortured.

9. The source further states that from detention in Jordan, Messrs. Salah Nasser Salim 'Ali and Muhammad Farah Ahmed Bashmilah were transferred to a detention centre under United States control. They were taken blindfolded to this detention centre by a several hours' long plane flight and detained underground, and are therefore not able to identify the location

of the detention centre. Both the forces in charge of transferring them thereto and those in charge of the detention centre were, however, from the United States. They were subsequently transferred, again blindfolded, by plane and helicopter, to a second detention centre under United States control. They are therefore not able to identify the location of the facility. In both places, the two men were interrogated about their activities in Afghanistan and Indonesia, and about their knowledge of other persons suspected of terrorist activities.

10. According to the source, Messrs. Salah Nasser Salim 'Ali and Muhammad Farah Ahmed Bashmilah were kept in United States custody for 20 and 18 months, respectively. During this period, they were held in solitary confinement and incommunicado, without contact with anyone other than the prison guards, interrogators and interpreters. Western music was piped into their cells uninterruptedly, 24 hours a day. In the second facility they were given books, including the Koran, and videos, and had an opportunity to exercise. Salah Nasser Salim 'Ali was visited by a doctor twice a month.

11. On or around 5 May 2005, without explanation, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali were transferred to Yemen, where they were detained in the central prison of Aden. They were subsequently briefly taken to Sana'a and back to Aden. They are currently detained at the Fateh political security facility in Aden, where they have received visits by their family.

12. The source states that neither Muhammad Farah Ahmed Bashmilah nor Salah Nasser Salim 'Ali have been charged or tried with any offence, nor have they been informed of the reason for their continued detention. Representatives of the Yemeni authorities have told the source that the reason for their detention is that their transfer from United States detention was conditional upon them being held in Yemen.

13. According to the source, the detention of Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali is devoid of any legal basis and thus arbitrary. In particular, the three above-mentioned persons were released from United States custody without charges and were never charged with any criminal offence in Yemen, where they have been detained for 18 months (Walid Muhammad Shahir Muhammad al-Qadasi) and three months (Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali), respectively. No decision concerning their detention and or statement setting forth the grounds therefor has been issued by any Yemeni authority. They have not been informed of any charges against them, have not been provided with legal assistance, have not had the right to challenge the lawfulness of their detention, and have not had a single hearing in their case.

14. The source adds that the detention of Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim'Ali is in violation of Yemeni domestic law, as well, because, according to it, suspects have the right to see a judge or prosecutor within 24 hours of being detained, the right to challenge the legal basis of their detention and the right to seek prompt legal assistance. Furthermore, Yemeni law provides that detention is not permitted except for acts punishable by law.

15. In its reply to these allegations, the Government confirms that Messrs. Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim 'Ali were handed over to Yemen by the United States. They are held in a security police facility because of their alleged involvement in terrorist activities related to Al-Qaida. The Government of Yemen adds that the "competent authorities are still dealing with the case pending receipt of their [the persons'] files from the United States of America authorities in order to transfer them to the Prosecutor".

16. In replying to the Government's observations, the source informs that, as of 8 November 2005, the three men remain in detention, while the Government continues to state that it is awaiting the files concerning their cases from the United States authorities.

17. The Working Group, based on the above information provided by the source and the Government, which coincide, is in the position to render an Opinion.

18. The Government states that Messrs. Al-Qadasi, Bashmila and Salim were handed over to Yemen by the United States. It is waiting for the files from the American authorities so as to transfer them to the prosecutor. This clearly shows that the Yemen authorities do not currently have any files on them.

19. The Working Group notes with concern that the transfers that the three persons experienced before being detained in Yemen occurred outside the confines of any legal procedure, such as extradition, and do not allow the individuals access to counsel or to any judicial body to contest the transfers.

20. No charges have been made by the Government of Yemen against these three men. They have not been informed of any accusation against them, nor have been brought before any judicial authority. No legal procedure has been followed to accuse them. Their deprivation of liberty is, as such, devoid of any legal basis.

21. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Messrs. Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim'Ali, is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

22. Consequent upon the Opinion rendered, the Working Group requests the Government:

> To release the three above-mentioned persons, or otherwise subject them to a competent judicial authority, bringing these cases in conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 30 November 2005.

EXHIBIT GG

بسم الله الرحمن الرحيم

MISSION DE LA RÉPUBLIQUE DU YÉMEN

الوفد الدائم للجمهورية اليمنية

No. 758
OI/ 68

The Permanent Mission of the Republic of Yemen to the United Nations Office and Other International Organizations presents its compliments the Special Rapporteur on the question of Torture and to the Special Rapporteur on Human Rights and Terrorism and has the honor to attach herewith,

Our country's reply to the note verbale Ref. ALG/So214 (53-02) YEM12/2005 on the case of the two Yemeni citizens, **Salah Nasser Ali** (27 years old) and **Muhammad Farah Ahmed Bashmilah** (37 years old).

The Permanent Mission hopes that constructive dialogue and cooperation continue between our government and your Special Rapporteurs in a positive atmosphere so as to understand the conditions and circumstances of each case separately.

And as you all know, the cases related to international terrorism and its relation with external factors are extremely sensitive and it is difficult to settle them quickly and to come to clear facts.

The Permanent Mission of the Republic of Yemen avails itself of this opportunity to renew to the Special Rapporteur on the question of Torture and the Special Rapporteur on Human Rights and Terrorism the assurances of its highest consideration.

Geneva, December 20th 2005

OHCHR REGISTRY
27 DEC 2005
Recipients : SPB

البعثة الدائمة للجمهورية اليمنية لدى المكتب الأوروبي للأمم المتحدة والمنظمات الدولية
MISSION PERMANENTE DE LA REPUBLIQUE DU YEMEN AUPRES DE L'OFFICE EUROPEEN DE L'ONU
GENEVE

CHEMIN DU JONC 19 - 1216 COINTRIN (GENÈVE) - TÉL. (022) 798 53 33 - FAX (022) 798 04 65

• بسم الله الرحمن الرحيم •

الجمهورية اليمنية
رئاسة الجمهورية
الجهاز المركزي للأمن السياسي

الرقم .....٢٣٦٧.....
التاريخ ١٣/١٢/٢٠٠٥م
الموافق ١٤هـ
المرفقات .....

الأخ الدكتور/أبو بكر عبدالله القربي

وزير الخارجيـــــــــــــــــــه المحترم

بعد التحيه : -

ردا على مـذكرتكم رقـم رقـم ١٠/٢١٤/١٠ بتـاريخ ٢٠٠٥/١٢/٧م بخصوص مذكرة الوفد الدائم بجنيف بناء على بلاغ المقرر الخاص بالتعـذيب والمقرر الخاص بحقوق الإنسان والارهاب بشأن المواطنين /صلاح ناصر سالم علي ومحمد فرج أحمد باشميله .. وبناء عليـــه :-

نود افادتكـــــــــــم بما يـــلي :-

أولا :

فيما يتعلق بصحة الوقائع الوارده في البلاغ حول تعرضهما (المذكوران انفا) للضرب والاهانه والتعذيب والتهديد بالتحرش والاحتجاز السري بمعزل عن العالم ، من قبل السلطات الاندونيسيه والاردنيه والامريكيه كمـا ورد فـي البلاغ ، فهي من مسئولية المقرر الخاص بالتعذيب والمقرر الخاص بحقوق الإنسان والارهاب بمتابعة السلطات في البلدان المذكوره حول صحة الوقائع الوارده في البلاغ ..

ثانيا :

حول مزاعم التعرض للتعذيب أشار المذكوران انفا من خلال التحقيق معهما إلا انهما قد تعرضا للتعذيب من قبل السلطات المشار اليها انفا . .

ثالثاً :

المسوغات القانونية :

تؤكد السلطات اليمنية بأنه لم يجري اعتقال المذكوران وانما سلما للسلطات اليمنية من السلطات الامريكية تحت تهمة انتمائهما إلى مايسمى بتنظيم

بسم الله الرحمن الرحيم

الجمهورية اليمنية
رئاسة الجمهورية
الجهاز المركزي للأمن السياسي

الرقم ٢٣٦٧
التاريخ ١٤/١٢/٢٠٠٥م
الموافق ١٤هـ
المرفقات .....

القاعده ، وقد قامت السلطات اليمنية باحتجازهما وفقاً لقانون الاجراءات الجزائيه رقم (١٣) لسنة ٩٤م للتحقيق معهما والتأكد من صحة مانسب اليهما من جانب السلطات الامريكية ، وقد جرى احتجازهما بناء على مسوغات قانونية وفقاً للقانون المشار اليه انفاً ويخضع موضوعهما للمراجعه القانونيه للتأكد من سلامة الاجراءات القانونية من قبل النيابة العامة ومدى ملائمة ومطابقة هذه الاجراءات للقانون وقد تسلمت السلطات اليمنية ملفاتهما من السلطات الامريكية بتاريخ ١٠/نوفمبر/٢٠٠٥م ، ويجرى استكمال الاجراءات القانونية لاحالتهما إلى القضاء .

رابعاً :

الرعاية الصحية وبرامج اعادة التأهيل :

يحظي المحتجزون على ذمة قضايا بالرعاية الصحية وكذلك برامج اعادة التأهيل وفقاً للقانون سوى كان ذلك في مراكز الاحتجاز أو في السجون بناءً على قانون تنظيم السجون في حالة الادانة والحكم بالحبس ، وهناك لوائح داخلية تنظم وتقر مثل هذه الرعاية ، ويجري متابعتها والاشراف عليها من قبل النيابة العامة .

للاطلاع واجراءاتكم ..

وتقبلوا تحياتنا ،،

لواء
قايد مطهر القميش
رئيس الجهاز المركزي للأمن السياسي

نسخه للاخ/مدير مكتب رئاسة الجمهورية .
نسخه للاخ/وزير الداخليه .
نسخه للأخت/وزيرة حقوق الإنسان .

(*Translated from Arabic*)

Republic of Yemen

Office of the President

Central Political Security Department

Sir,

In response to your note No. 10/214/10, dated 7 December 2005, regarding a note from the Permanent Mission in Geneva about a report from the Special Rapporteur on torture and the Special Rapporteur on Human Rights and counter terrorism concerning Yemeni citizens Salah Nasser Salim Ali and Muhammad Faraj Ahmed Bashmilah, we should like to provide you with the following information:

1. With regard to the accuracy of the facts alleged in the report, namely, that the two men were beaten, verbally abused, tortured, threatened with sexual abuse and held in incommunicado detention by the Indonesian, Jordanian and United States authorities, it is up to the Special Rapporteur on torture and the Special Rapporteur on Human Rights and terrorism to check with the authorities of the countries concerned whether the facts alleged in the report are accurate.

2. With regard to the allegations about torture, both of the above-mentioned persons stated, when questioned, that they had not been tortured by any of the authorities mentioned above.

3. Legal basis:

The Yemeni authorities confirm that the two men were not arrested but rather were handed over to them by the United States authorities after having been accused of being members of the organization known as Al-Qa`ida. The Yemeni authorities detained them under

Mr. Abubakr Abdallah Al-Qirbi
Minister for Foreign Affairs

CHR/NONE/2005/426
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the Code of Criminal Procedures No. 13 of 1994, with a view to questioning them and verifying the allegations made by the United States authorities. The legal basis on which they were held was the aforementioned Code. The lawfulness of detention is subject to judicial review. Steps are taken to verify that the Department of Public Prosecutions has followed the proper legal procedures and that the procedures are consistent with the law. The Yemeni authorities received the files on these two men from the United States authorities on 10 November 2005, and the legal procedures are being completed pending their arraignment before the courts.

4. Medical treatment and rehabilitation programmes:

Under the Prisons Act, detainees awaiting trial are legally entitled to access to medical treatment and rehabilitation programmes, whether at a detention centre or, if they have been convicted and sentenced to imprisonment, at a prison. There are internal rules that regulate and establish the parameters for such treatment. The Department of Public Prosecutions oversees the implementation of these rules.

Accept, Sir etc.

(*Signed*): Ghalib Mathar al-Qamish
Chief
Central Department of Political Security

cc.: Director, Office of the President of the Republic
Minister for Internal Affairs
Minister for Human Rights