

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

AMNESTY INTERNATIONAL USA, CENTER
FOR CONSTITUTIONAL RIGHTS, INC. and
WASHINGTON SQUARE LEGAL SERVICES,
INC.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE, DEPARTMENT
OF HOMELAND SECURITY, DEPARTMENT
OF JUSTICE, DEPARTMENT OF STATE, AND
THEIR COMPONENTS,

Defendants.

ECF CASE

07 CV 5435 (LAP)

DECLARATION OF GITANJALI S. GUTIERREZ

Gitanjali S. Gutierrez, pursuant to penalty of perjury under 28 U.S.C. § 1746, does hereby state the following:

1. I am an attorney with the Center for Constitutional Rights, Inc. (“CCR”), one of three co-Plaintiffs in the above-captioned matter. The other co-Plaintiffs are Amnesty International USA (“AIUSA”) and Washington Square Legal Services (“WSLS”).

2. Among the Plaintiffs, there are four requests filed under the Freedom of Information Act (“FOIA”) at issue in this litigation.

3. In the four requests (“Plaintiffs’ Requests”), Plaintiffs seek records concerning rendition and secret detention of individuals in the “War on Terror,” including records related to, *inter alia*, evaluations and authorizations, policies and procedures, identities of individuals and

locations, activities of private contractors and non-governmental actors, and treatment of, and injuries sustained by, individuals transferred or detained.

FOIA Request of Co-Plaintiff CCR

4. Plaintiff CCR sent the first request (“CCR Request”) to Defendant Central Intelligence Agency (“CIA”) on December 21, 2004. The CCR Request sought records related to various aspects of the CIA program of secret detention, enhanced interrogation and extraordinary rendition. A copy of that request from then CCR Deputy Legal Director Barbara Olshansky is attached hereto as Exhibit A.

5. In a letter dated February 2, 2005, Scott Koch, CIA Information and Privacy Coordinator, acknowledged receipt of the CCR Request and provided a reference number for processing. In the letter, the CIA denied CCR’s fee waiver and expedited processing requests. A copy of that letter from CIA Information and Privacy Coordinator Scott Koch to then CCR Deputy Legal Director Barbara Olshansky is attached hereto as Exhibit B.

6. In a letter dated February 25, 2005, CCR Staff Attorney Rachel Meeropol appealed the CIA’s fee waiver denial, asserting that the FOIA request falls squarely within the standards for fee waivers as the disclosure of responsive documents is “in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requestor.” Plaintiff CCR is seeking from Defendant CIA a final, signed copy of the Letter from CCR Staff Attorney Rachel Meeropol to the CIA Agency Release Panel and will provide it to the Court upon receipt.

7. In a letter dated April 18, 2005, CIA Information and Privacy Coordinator Scott Koch acknowledged receipt of CCR’s February 25, 2005 letter of appeal of the CIA’s fee waiver

denial. A copy of that letter from CIA Information and Privacy Coordinator Scott Koch to CCR Staff Attorney Rachel Meeropol is attached hereto as Exhibit C.

8. During the administrative appeal stage, co-Plaintiff CCR never received a substantive response from the CIA to our request or any responsive documents or acknowledgement of the existence of documents responsive to their requests.

FOIA Request of Co-Plaintiffs AIUSA and WSLs

9. Plaintiffs AIUSA and WSLs sent the second and third requests (“AIUSA and WSLs Requests”) to the CIA Information and Privacy Coordinator on April 25, 2006. One request sought the locations and identities of secret or irregular detainees, and records related to their “apprehension, transfer, detention, and interrogation.” The other request sought memoranda of understanding, reports, and documents created relating to U.S. reports to various international bodies related to ghost or unregistered detainees. A copy of those letters from AIUSA Deputy Director Curt Goering and New York University (“NYU”) International Human Rights Clinic Director Margaret L. Satterthwaite are attached hereto as Exhibits D and E, respectively.

10. In two letters dated May 5, 2006, CIA Information and Privacy Coordinator Scott Koch acknowledged receipt of the AIUSA and WSLs Requests, denied expedited processing and assigned reference numbers to the two requests. A copy of the letters from CIA Information and Privacy Coordinator Scott Koch to Catherine Kane Ronis, WilmerHale Attorney and formerly Counsel to AIUSA, are attached hereto as Exhibits F and G, respectively.

11. In a letter dated July 3, 2006, AIUSA Deputy Director Curt Goering appealed the CIA’s denial of expedited processing in the two requests. A copy of the letter from AIUSA Deputy Director Curt Goering, International Human Rights Clinic Director Margaret L.

Satterthwaite and Catherine Kane Ronis, WilmerHale Attorney and formerly Counsel to AIUSA, to the CIA Information and Privacy Coordinator is attached hereto as Exhibit H.

12. During the administrative appeal stage, co-Plaintiffs AIUSA and WSLs never received a substantive response from the CIA to their requests or any responsive documents or acknowledgement of the existence of documents responsive to their requests.

Litigation

13. After exhausting administrative remedies without receiving a response from the CIA, co-Plaintiffs CCR, AIUSA and WSLs filed a joint complaint on June 7, 2007.

14. Attorneys for the CIA and Plaintiffs met in September and October 2007, when parties agreed to (1) the use of a representative sample for *Vaughn* purposes and (2) the use of the sampling agreement reached in *ACLU, et al. v. DOD, et al.*, No. 04 Civ. 4151 (AKH), as a guide in negotiations. Under the *ACLU* formula, Plaintiffs were entitled to 385 sample documents but proposed 350 in an effort to expedite processing of the records. The CIA refused, forcing Plaintiffs to decide between delaying processing of the records and receiving a fair representative set. Plaintiffs chose to expedite processing and agreed to accept a 250 document sample.

15. Plaintiffs' submission of suggested categories to the CIA was similarly refused. Citing workload and classified status concerns, the CIA only agreed to sort into a handful of categories: "source" categories—Office of Inspector General ("OIG"), Office of General Counsel ("OGC"), and non-OIG; and within each of those "source" categories, four "type" categories (memos/reports, emails, cables, and "miscellaneous").

16. The agreements reached by parties were memorialized in a Stipulation dated April 21, 2008 ("Stipulation"), and so ordered by this Court on June 9, 2008. In the Stipulation, the

CIA agreed to (a) process responsive records, (b) provide Plaintiffs with releasable information, and (c) provide a sample set of Withheld Records, which include records from OIG investigations closed prior to June 7, 2007 (“Representative Set”). The CIA also agreed to provide separately a representative set, for records from OIG investigations closed between June 7, 2007 and December 1, 2007 (“Additional OIG Representative Set”). Stipulation Preamble, ¶¶ 10-13.

Co-Plaintiffs’ Fourth FOIA Request

17. During their negotiations, co-Plaintiffs submitted a list of specific documents known to exist and likely to be in the CIA’s possession and asked that these documents be *Vaughn* indexed outside the sample, similar to what was done in *ACLU, et al. v. DOD, et al.*, *supra*. After the CIA refused to do so, Plaintiffs filed a separate FOIA request for these documents.

18. Co-Plaintiffs jointly filed their fourth request on December 28, 2007 (“Specific Documents Request”). This request sought seventeen specific documents or categories of documents known or believed to exist and be in the CIA’s possession, and understood to be responsive to the co-Plaintiffs original requests. A copy of the letter from International Human Rights Clinic Director Margaret L. Satterthwaite to the CIA Information and Privacy Coordinator is attached hereto as Exhibit I.

19. By letter dated January 30, 2008, the CIA approved the fee waiver request and denied expedited processing for co-Plaintiffs Specific Documents request. A copy of the letter from CIA Information and Privacy Coordinator Scott Koch to International Human Rights Clinic Director Margaret L. Satterthwaite is attached hereto as Exhibit J.

20. After receiving no substantive response to the Specific Documents Request, despite numerous inquiries to DOJ, Plaintiffs' amended their Complaint on June 6, 2008 to include this request in the above-captioned litigation, as consented to by the CIA. See Stipulation ¶ 19.

Supplemental Attached Exhibits

21. Attached hereto as Exhibit K is a true and correct copy of *ACLU, et al. v. DOD, et al.*, No. 04 Civ. 4151 (AKH), Hr'g Tr. 1, 28-33, Jan. 16, 2008.

22. Attached hereto as Exhibit L is a true and correct copy of Letter from Sean H. Lane, Assistant United States Attorney for the Southern District of New York, to Alvin K. Hellerstein, U.S. District Court Judge (Feb. 5, 2008) (acknowledging that the Director of the CIA "made disclosures to the Senate Select Committee on Intelligence concerning the CIA's past use of an interrogation technique known as waterboarding").

23. Attached hereto as Exhibit M is a true and correct copy of Letter from Sean H. Lane, Assistant United States Attorney for the Southern District of New York, to Melanca D. Clark, Gibbons Del Deo Attorney for the plaintiffs in *ACLU, et al. v. DOD, et al., supra*, (May 23, 2008) (enclosing "redacted versions of those documents where the CIA determined that there is segregable information that can be produced" subsequent to the CIA Director's official disclosure of the agency's use of waterboarding detainees in U.S. custody, and less than two weeks after the Court in that case overruled certain of the CIA's FOIA exemption invocations).

Dated: June 25, 2008
New York, NY

/GSG/
GITANJALI S. GUTIERREZ

Exhibit A

centerforconstitutionalrights

666 broadway new york, ny 10012
212.614.6464 www.ccr-ny.org

ghost detainees

December 21, 2004

Scott A. Koch
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Re: Request Submitted Under the Freedom of Information Act

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The Request is submitted on behalf of the Center for Constitutional Rights ("Requester").

We are filing this Request simultaneously with the Department of Defense (including its components, the Departments of the Army, Navy, and Air Force, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, and the Central Intelligence Agency. By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(4)(E).

Background on Records Requested

Recent news reports indicate that the Central Intelligence Agency ("CIA") has been secretly operating a holding and interrogation center ("CIA Guantánamo Center" or "Center") within the larger American military-run prison at Guantánamo Bay, Cuba ("Guantánamo"). The reports further indicate that individuals apprehended after September 11, 2001, and held by the United States at Guantánamo ("Detainees") in the CIA Guantánamo Center have been separately interrogated by CIA agents.¹

News reports also indicate that the CIA Guantánamo Center is "related to a network of holding centers operated by the CIA at undisclosed locations around the world"² since United States authorities began capturing individuals after the attacks of September 11, 2001.

¹ See David Johnston and Neil A. Lewis, "Officials Describe Secret C.I.A. Center at Guantánamo Bay," New York Time, December 17, 2004.

² *Id.*



Other news reports state that the "buildings used by the CIA are shrouded by high fences covered with thick green mesh plastic and ringed with floodlights . . . [t]hey sit within the larger Camp Echo complex, which was erected to house the Defense Department's high value detainees and those awaiting military trials on terrorism charges."³ According to one military official, the "CIA's [Guantánamo] facility has been 'off-limits to nearly everyone on the base.'"⁴

According to a report by the Washington Post, in contrast to the majority of detainees held at Guantánamo, the CIA detainees "are held under separate rules and far greater secrecy."⁵ Under a presidential decree and policies approved by Administration attorneys, "the CIA is allowed to capture and hold certain classes of suspects without accounting for them in any public way and without revealing the rules for their treatment."⁶ According to other news reports, these detainees have not and will not receive review of their status through the Combatant Status Review Tribunals.⁷

In addition to the secret CIA Guantánamo Center, there have been numerous media reports during the last two years confirming the existence of CIA detention facilities located around the world, including one in an off-limits corner of the Bagram Airbase in Afghanistan, at Camp Cropper, a detention center on the outskirts of Baghdad International Airport,⁸ on ships at sea,⁹ on Britain's Diego Garcia Island in the Indian Ocean,¹⁰ in a secret facility in Jordan,¹¹ and in secret locations outside of Iraq.¹² According to a report by Human Rights Watch, detainees are being held in more than 24 secret detention facilities across the globe.¹³ Furthermore, government officials have admitted that even within known facilities, CIA officials have employed a policy under which "ghost prisoners" captured in Iraq and Afghanistan have been interrogated by CIA agents and have had their "identities and locations withheld from relatives, the International Red Cross and even Congress."¹⁴ Finally,

³ Dana Priest and Scott Higham, "At Guantánamo, A Prison Within A Prison; CIA Has Run a Secret Facility for Some Al Qaeda Detainees, Officials Say," Washington Post, December 17, 2004, at A01.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Suzanne Goldenberg, "'Ghost Detainees' at Camp Delta: Pentagon Accused of Planning To Exclude Some Guantánamo Prisoners from Review," The Guardian, July 10, 2004 at 18.

⁸ Eric Schmitt, "Abuse Inquiry Says Official Exercised Little Oversight," The New York Times, Dec. 4, 2004 at A10.

⁹ Eric Schmitt & Douglas Jehl, "Army Says CIA hid More Iraqis than it Claimed," The New York Times, Sept. 9, 2003 at A1.

¹⁰ *Id.*

¹¹ Inigo Gilmore & Robin Gedye, "Jordan Ghost Jail 'holds al-Qa'eda men' Israeli Intelligence Expert Claims to have Solved Mystery of Missing Terrorist Leaders Captured by American Forces in Past Three Years," The Daily Telegraph, Oct. 14, 2004 at 16.

¹² See Dave Goldliner, "Saddam's Pals on Hunger Strike," Daily News, December 13, 2004 at 20.

¹³ Human Rights Watch, "The United States Disappeared: The CIA's Long Term 'Ghost Detainees'" October, 2004.

¹⁴ Editorial, The Washington Post, "The CIA's Disappeared," October 26, 2004.

reports have stated that CIA agents have spirited detainees in Iraq to third countries for interrogation under conditions which might violated the requirements of international humanitarian law.¹⁵

The Washington Post reports that other detainees captured during the war in Iraq are being held under the custody of an Army task force, "Task Force 6-26, in a secret facility in Iraq. According to that report, the Pentagon does not officially acknowledge the existence of the unit."¹⁶

The Request seeks records relating to the identity of, transport and location(s) of, authority over, and treatment of all unregistered, CIA, and "ghost" Detainees interdicted, interrogated, and detained by any agency or department of the United States.

Both international and United States law unequivocally prohibit hiding individuals in such a manner even during wartime. The Geneva Conventions require the registration of all detainees with the Red Cross. They also prohibit "forcible transfers as well as deportations" of individuals, and ban all "physical or moral coercion . . . in particular to obtain information." The Convention Against Torture ("CAT"), which the United States has signed and ratified, prohibits the use of torture and the infliction of other cruel, inhuman or degrading treatment or punishment.¹⁷ The prohibition against torture is also codified in United States law at 18 U.S.C. § 2340A.

The CAT further provides that "[n]o State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he

¹⁵ Eric Schmitt & Douglas Jehl, "Army Says CIA hid More Iraqis than it Claimed," The New York Times, Sept. 9, 2003 at A1.

¹⁶ Barton Gellman & R. Jeffrey Smith, "Report to Defense Alleged Abuse by Prison Interrogation Teams; Intelligence Official Informed Defense Dept. in June," The Washington Post, Dec. 8, 2004 at A1.

¹⁷ In this Request, the terms "torture" and "cruel, inhuman or degrading treatment or punishment" have the meaning accorded them in the CAT, as interpreted by the United Nations Committee Against Torture. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, art. 1, S. Treaty Doc. No. 100-20 (1998), 1465 U.N.T.S. 85. The CAT defines "torture" 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." *Id.* The United Nations Committee Against Torture has held that the following techniques constitute "torture" as defined under the CAT: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill. See Report of the Committee Against Torture, U.N. GAOR, 52d Sess., Supp. No. 44, at para 257, U.N. Doc. A/52/44 (1997). Our use of these terms also encompasses torture and/or "cruel inhuman or degrading treatment or punishment" under any other United States constitutional or statutory provision.

would be in danger of being subjected to torture.”¹⁸ This provision is implemented in United States law by the Foreign Affairs Reform and Restructuring Act of 1998, which states that “[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”¹⁹

To determine whether the United States is honoring its obligations under domestic and international law, Requesters seek the release of agency records as described in the numbered paragraphs below:

RECORD REQUESTS

Please disclose the following records:

1. All records that propose, authorize, report on, or describe, or that discuss the legality or appropriateness of holding Unregistered, CIA, and/or “Ghost” Detainees in special CIA or other agency facilities for purposes of interrogation.
2. All records that discuss the creation, use and/or closure of the various centers at which the CIA and/or any other agency of the federal government has held, and/or continues to hold Unregistered, CIA, and/or “Ghost” Detainees.
3. All records reflecting the use of any private companies, other U.S. officials or citizens, and/or officials or citizens of any foreign governments regarding the interdiction, arrest, transfer, detention, questioning, interrogation, and/or other treatment of any Unregistered, CIA, or “Ghost” Detainee
4. All records reflecting standards or policies governing who may be held as an Unregistered, CIA, and/or “Ghost” Detainee and what procedural protections or guidelines, if any, are used to review the arrest, detention, and treatment of these Detainees.
5. Every location from September 11, 2001 to the present at which the CIA or any other governmental agency has been or is now holding Unregistered, CIA, or “Ghost” Detainees, the dates of operation of each such facility, whether the facility remains open at this time, the purpose of the facility, a complete list of the Detainees held at the facility (both past and current with indications as to this status), a list of

¹⁸ CAT, art. 3.

¹⁹ Pub. L. No. 105-277, § 2242(b), 112 Stat. 2681 (1999) (codified as Note to 8 U.S.C. § 1231).

techniques used for interrogation at each facility, and a list of personnel who have worked and those who continue to work at each Center.

6. All records concerning the treatment of the Unregistered Detainees held in any CIA or other governmental facility in the world. Please include all records discussing the following interrogation methods at such facilities, including but not limited to records discussing their legality or appropriateness: using "stress and duress" techniques on Detainees; using force against them; subjecting them to physical injury; requiring them to stand or kneel for prolonged periods; depriving them of sleep, food or water; holding them in awkward and painful positions for prolonged periods; denying them painkillers or medical treatment; administering or threatening to administer mind altering substances, "truth serums" or procedures calculated to disrupt the senses or personality; subjecting them to prolonged interrogation under bright lights; requiring them to be hooded, stripped, or blindfolded; binding their hands and feet for prolonged periods of time; isolating them for prolonged periods of time; subjecting them to violent shaking; subjecting them to intense noise; subjecting them to heat or cold; or threatening harm to them or other individuals.
7. All records setting forth or discussing policies, procedures or guidelines²⁰ relating to the detention, questioning, interrogation, transfer, and treatment (including, but not limited to the interrogation with the use of torture or other cruel, inhuman or degrading treatment or punishment) of the Unregistered, CIA, and "Ghost" Detainees, including but not limited to policies, procedures or guidelines relating to the methods listed above.
8. All records relating to measures taken, or policies, procedures or guidelines put in place, to ensure that CIA Detainees were not, are not or will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment. Please include all records indicating how any such policies, procedures or guidelines were, are, or will be, communicated to personnel involved in the interrogation or detention of CIA Detainees.
9. All records indicating or discussing actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 4, above.
10. All records indicating or discussing serious injuries, illnesses, and/or deaths of any Unregistered, CIA, and/or "Ghost" Detainees.
11. All records, including autopsy reports and death certificates, relating to the deaths of any Unregistered, CIA, and/or "Ghost" Detainees.

²⁰ In this Request, the phrase "policies, procedures or guidelines" means policies, procedures or guidelines that were in force on September 11, 2001 or that have been put in place since that date.

12. All records relating to investigations, inquiries, or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 4, above, including but not limited to records indicating the existence of such investigations, inquiries or disciplinary proceedings.
13. All records relating to the actual or alleged torture or other cruel, inhuman or degrading treatment or punishment of any Unregistered, CIA, and/or "Ghost" Detainee.
14. All records relating to policies, procedures or guidelines governing the role of health personnel in the interrogation of the Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to the role of health personnel in the medical, psychiatric, or psychological assessment of Detainees immediately before, during or immediately after interrogation. Please include all records indicating how any such policies, procedures or guidelines were, are or will be communicated to personnel involved in the interrogation or detention of Detainees.
15. All records relating to medical, psychiatric or psychological assessment of any Unregistered, CIA, and/or "Ghost" Detainee or guidance given to interrogators by health personnel immediately before, during or immediately after the interrogation of any Unregistered, CIA, and/or "Ghost" Detainees.
16. All records indicating whether and to what extent the International Committee for the Red Cross ("ICRC") had, has or will have access to Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to records related to particular decisions to grant or deny the ICRC access to any Detainee or group of Detainees.
17. All records indicating whether and to what extent any other non-governmental organization or foreign government had, has or will have access to the Unregistered, CIA, and/or "Ghost" Detainees, including but not limited to records related to particular decisions to grant or deny them access to any Detainee or group of Detainees.

Fee Waiver

The Requester qualifies as "representatives of the news media" and the records are not sought for commercial use. Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II). These organizations are "entit[ies] that gather . . . information of potential interest to a segment of the public, use . . . [their] editorial skills to turn the raw

materials into a distinct work, and distribute . . . that work to an audience." *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The CCR is a legal and public education not-for-profit organization that engages in litigation, legal research, and the production of publications in the fields of civil and international human rights. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination. These materials are available through CCR's Development and Education & Outreach Departments. CCR also operates a website, www.ccr-ny.org, that addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public.

The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above.

We also request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii). This Request aims at furthering public understanding of government conduct, and specifically to help the public determine whether or not the government's commitment to domestic and international proscriptions against torture is honored in practice.

As indicated above, numerous news articles reflect the significant public interest in the records we seek. See articles cited *supra*; see also *Answers about Torture*, Washington Post, Mar. 16, 2003, at B06 ("The Bush administration has categorically denied that it is torturing people. But it has offered no details regarding its policies toward interrogations. . . . The secrecy surrounding U.S. policy makes any objective assessment of these allegations impossible. . . . The public is entitled to a fuller understanding."). Disclosure of the requested records will contribute significantly to the public's understanding of government conduct.

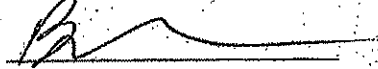
* * *

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter.

Please respond to Barbara Olshansky, Deputy Legal Director, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, New York 10012.

Signed by:



BARBARA OLSHANSKY
RACHEL MEEROPOL
MICHAEL RATNER
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel: (212) 614-6439
Fax: (212) 614-6499

Exhibit B

Central Intelligence Agency



Washington, D.C. 20505

2 February 2005

Ms. Barbara Olshansky
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Reference: F-2005-00498

Dear Ms. Olshansky:

This is in response to your Freedom of Information Act (FOIA) request, dated 21 December 2004, in which you requested certain documents pertaining to "unregistered, CIA and/or 'ghost' detainees." We will begin processing your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431, as amended. If documents exist, to the extent your latest request covers any material requested in your previous requests for information pertaining to detainees (F-2004-01456 and F-2004-00066), it will be treated as a duplicate request and not processed. We assigned your request the number referenced above. Please refer to this number in future correspondence about this request.

I reviewed your request for a fee waiver, in accordance with the CIA's FOIA regulations, published in part 1900.13(b) of the Code of Federal Regulations. I have denied your request for a fee waiver because your request does not meet the standards for a fee waiver specified in the Agency's regulations. You have the right to appeal this determination to the Agency Release Panel. If you wish to do so, please submit your appeal to the Agency Release Panel, in my care, within 45 days of the date of this letter.

Based upon the information provided in your letter and the requirements of Agency regulations, I have determined that your request falls into the "all other" fee category, which means that you will be responsible for search costs, beyond the first two hours of search time, and reproduction costs, beyond the first 100 pages. In accordance with Agency regulations, copying costs will be assessed at the rate of ten cents per page.

I reviewed your request for expedited processing, in accordance with Agency regulations. Your request does not meet the standards for expedited processing specified in Agency regulations and therefore is denied. The Agency will process your request in accordance with its standard procedures.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Koch", with a long horizontal flourish extending to the right.

Scott Koch
Information and Privacy Coordinator

Exhibit C

Central Intelligence Agency



Washington, D.C. 20505

18 April 2005

Rachel Meeropol, Esq.
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Reference: F-2005-00498 (Olshansky, Barbara)

Dear Ms. Meeropol:

This acknowledges receipt of your 25 February 2005 letter in which you appealed the denial of a fee waiver for your 21 December 2004 Freedom of Information Act (FOIA) request for certain documents pertaining to "unregistered, CIA and/or 'ghost' detainees," referenced above.

We accept your appeal of the fee waiver denial. We will begin the fee waiver appeal process and advise you of the outcome.

Sincerely,

A handwritten signature in black ink that reads "Scott Koch".

Scott Koch
Information and Privacy Coordinator

Exhibit D

WILMERHALE

April 25, 2006

Catherine Kane Ronis

Via Facsimile, Email and U.S. Mail

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catherine.ronis@wilmerhale.com

Information and Privacy Coordinator
Central Intelligence Agency
Washington D.C. 20505
(Ph.) 703-613-1287
(Fax) 703-613-3007

Re: Request Submitted Under the Freedom of Information Act for Records Concerning Detainees, including "Ghost Detainees/Prisoners," "Unregistered Detainees/Prisoners," and "CIA Detainees/Prisoners"

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The Request is submitted on behalf of Amnesty International ("AI") and Washington Square Legal Services, Inc. ("WSLS"). AI is a non-government organization and a world-wide movement of members who campaign for internationally-recognized human rights. WSLS is the corporation that houses the International Human Rights Clinic ("the Clinic") of the New York University School of Law ("NYU Law School"). The Clinic is a project of NYU Law School's Center for Human Rights and Global Justice ("CHRGJ").

We are filing this request simultaneously with the Department of Defense (including its components, the Department of the Army, Navy and Air Force, the Marine Corps, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, the Central Intelligence Agency, and the Department of Homeland Security (including its components the Office of Intelligence and Analysis, the Directorate for Policy, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, U.S. Coast Guard, and U.S. Customs and Border Protection). By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

We are seeking the opportunity to inspect and copy, if necessary, all records in the possession of the Department, including any officers, divisions or bureaus thereof, on the topics listed below.

Wilmer Cutler Pickering Hale and Dorr LLP, 2445 M Street, NW, Washington, DC 20037

Baltimore Beijing Berlin Boston Brussels London Munich New York Northern Virginia Oxford Palo Alto Waltham Washington

Definitions

For purposes of this request, the following terms shall be understood as described below:

The term "records" includes any and all reports, statements, examinations, memoranda, correspondence (including electronic mail), designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, or guidelines.

The term "government official" includes any U.S. government employee, and any person providing services to any agency of the United States government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the U.S. government.

The term "foreign official" includes any foreign government employee, and any person providing services to any agency of a foreign government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the foreign government.

The term "communication" means the giving, receiving, transmitting, or exchanging of information, including, but not limited to, any and all written, printed, telephonic, electronic, and in-person conversations by and with any person, and/or talk, gestures, or documents which memorialize or refer to any communications.

The term "detainee" means any person deprived of their liberty by one or more individuals or agencies who is prevented by any means from leaving the place in which he or she is being held. The term "detention" means depriving any person of their liberty such that they are prevented by any means from leaving the place in which they are held.

The term "place of detention" means any place or facility in which a "detainee" is kept, inside or outside the United States, regardless of whether it is officially recognized as a place of detention.

Scope of Request

Unless otherwise stated, this request refers to *individuals who were, have been, or continue to be deprived of their liberty by or with the involvement of the United States and about whom the United States has not provided public information. These individuals have been referred to, among other things, as "ghost detainees/prisoners," "unregistered detainees/prisoners," "CIA detainees/prisoners" and "Other Governmental Agency Detainees" ("OGA Detainees")*. These individuals have reportedly been held in various locations, including regular and irregular detention facilities, ships, aircraft, and military bases.

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Although not limited to any specific geographic area, this request pertains particularly to the following places:

Afghanistan	Azerbaijan	Bulgaria	Djibouti
Egypt	Germany	Indonesia	Iraq
Jordan	Kosovo	Macedonia	Morocco
Pakistan	Poland	Romania	Syria
Thailand	Turkey	Ukraine	
United Kingdom (including Diego Garcia)			
United States (including all territories under the S.M.T.J)			
Uzbekistan	Yemen		

This Request does not seek records related to the formal extradition of individuals.

Requested records pertain to persons apprehended since September 11, 2001.

Background

Numerous media reports indicate that the United States is involved in the secret or irregular apprehension, transfer, and detention of individuals on foreign territory.¹ These reports suggest that the government secretly detains and transports individuals on U.S. ships, military bases, and U.S.-chartered planes, as well as in foreign states.²

¹ See, e.g., Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1; Jan Cienski, Christopher Condon, Caroline Daniel, Guy Dinmore, Andrei Postelnicu, & Demetri Sevastopulo, *Evidence CIA Has Secret Jails in Europe*, FINANCIAL TIMES (LONDON), Nov. 3, 2005, at 1; Siobhan Gorman & Tom Bowman, *Reports of Secret CIA Prisons Prompt Concern*, L.A. TIMES, Nov. 3, 2005, at A4; Douglas Jehl & David Johnston, *CIA Now Acting Independently to Move Prisoners*, INT'L HERALD TRIB., Mar. 7, 2005, at 4; Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake: German Citizen Released After Months in Rendition*, WASH. POST., Dec. 4, 2005; Brian Ross and Richard Esposito, *Exclusive: Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS, Dec. 5, 2005, at <http://abcnews.go.com/WNT/Investigation/story?id=1375123>; Eric Schmitt and Thom Shanker, *Rumsfeld Issued an Order to Hide Detainee in Iraq*, N.Y. TIMES, June 17, 2004, at A1; *US bars access to terror suspects*, BBC NEWS, Dec. 9, 2005; Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16; *White House Mum on Secret CIA Prisons*, AGENCE FRANCE PRESSE ENGLISH WIRE, Nov. 2, 2005; *Yemen says U.S. sent prisoners to Europe*, UNITED PRESS INT'L (UPI), Dec. 11, 2005, at <http://www.upi.com/InternationalIntelligence/view.php?StoryID=20051211-051738-9694r>.

² See, id. and further e.g., Craig Whitlock, *Europeans Probe Secret CIA Flights; Questions Surround Possible Illegal Transfer of Terrorism Suspects*, WASH. POST, Nov. 17, 2005, at A22; Eric Schmitt & Carolyn Marshall, *In Secret Unit's 'Black Room,' a Grim Portrait of U.S. Abuse*, N.Y. TIMES, Mar. 19, 2006.

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Records Requested

Please disclose any records reflecting, discussing or referring to the policy and/or practice concerning:

1. The apprehension, transfer, detention, and interrogation of persons within the Scope of Request, including but not limited to:

(a) The transfer of intelligence by one or more U.S. agencies or government officials to one or more foreign agencies or officials, in connection with the apprehension or detention of a person.

(b) A request or direction by one or more U.S. agencies or government officials to one or more foreign agencies or officials regarding the apprehension of any person, and any related agreement concerning such apprehension.

(c) The apprehension of a person in a foreign country by, with the involvement of, or in the presence of one or more U.S. officials.

(d) The transfer of a person from any country to any other country for the purpose of detention and/or interrogation, at the direction or request or with the knowledge of one or more U.S. agencies or officials.

(e) The transfer of a person from one place of detention to another within the same country at the direction or request or with the knowledge of one or more U.S. agencies or officials.

(f) The detention of a person in a foreign country at the direction or request of one or more U.S. agencies or officials, including any agreement concerning the detention.

(g) One or more U.S. agencies or officials seeking and/or being granted access to a foreign national detained in a foreign country.

(h) One or more U.S. agencies or officials being present in a place of detention in a foreign country. This does not include visits to U.S. citizens by U.S. officials pursuant to the Vienna Convention on Consular Relations.

(i) One or more U.S. agencies having control, direction, or administration of a subdivision, portion, or "cell" of a place of detention in a foreign country.

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2. Current and former places of detention where individuals within the Scope of Request have been or are currently held, including but not limited to:

(a) Any place of detention in a foreign country being under the control, direction, or administration of one or more U.S. agencies.

(b) Any place of detention that is not under the control, direction or administration of one or more U.S. agencies, where a detainee is held at the request or instruction of one or more U.S. agencies or officials.

(c) Any subdivision, portion, or "cell" of a place of detention in a foreign country under the control, direction, or administration of one or more U.S. agencies.

(d) Any agreement between the U.S. government or one or more U.S. agencies or officials, and a foreign government or one or more foreign agencies or officials, in relation to a place of detention in a foreign country, regardless of whether that place of detention is foreign or U.S.—controlled.

3. The names and identities of detainees who fall within the scope of this request.³

Fee Waiver

The requestors qualify as "representatives of the news media" and the records sought are not for commercial use. Moreover, this Request "is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii).

Amnesty International is a non-governmental organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters and urgent action requests informing the public about human rights, including torture and disappearances. AI also disseminates information through its website www.amnesty.org.

³ Because of the nature of their detention, the requestors do not know the names or identities of those within the scope of this request. For examples of individuals that the United States has acknowledged detaining, but about whom the United States has not provided public information, see Center for Human Rights and Global Justice, *Fate and Whereabouts Unknown: Detainees in the "War on Terror"* (2005), available at <http://www.nyuhr.org/docs/Whereabouts%20Unknown%20Final.pdf>; and Human Rights Watch, "List of 'Ghost Prisoners' Possibly in CIA Custody (2005), available at <http://hrw.org/english/docs/2005/11/30/usdom12109.htm>. The scope of this request extends far beyond these examples.

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The Center for Human Rights and Global Justice is a research center at NYU Law School. CHRGGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education and training. CHRGGJ publishes reports and operates a website www.nyuhr.org discussing human rights issues.

The International Human Rights Clinic is a project of CHRGGJ and an official program at NYU Law School, composed of students and directed by clinical professors, who engage in research and advocacy on human rights issues.

Washington Square Legal Services is a not-for-profit corporation that houses the clinical program of NYU Law School.

The requesters plan to disseminate the information disclosed as a result of this Request through the channels described above.

Expedited Processing

Expedited processing is warranted as there is a "compelling need" for the records sought in this Request. 5 U.S.C. § 552(a)(6)(E)(i)(I). This need arises because the requesters are "primarily engaged in disseminating information" and there is an "urgency to inform the public concerning actual or alleged Federal Government Activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). *See also* 32 C.F.R. § 286.4(d)(3)(ii) (DOD); 6 C.F.R. § 5.5(d)(1)(ii) (DHS); 28 C.F.R. § 16.5(d)(1)(ii) (DOJ); 22 C.F.R. § 171.12(b)(2) (DOS).

AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CHRGGJ is engaged in disseminating information about human rights, including in particular, the Federal Government's role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGGJ's website. The Clinic actively supports this work, and WSLS houses the clinic. As reflected in the media articles cited above, there is an urgent need to provide the public with information relating to the U.S. government's practices concerning unregistered or ghost detainees.

There is also a "compelling need" because failure to obtain the records on an expedited basis "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). *See also* 32 C.F.R. § 286.4(d)(3)(i) (DOD); 6 C.F.R. § 5.5(d)(1)(i) (DHS); 28 C.F.R. § 16.5(d)(1)(i) (DOJ); 22 C.F.R. § 171.12(b)(1) (DOS). This Request arises in the context of allegations of ongoing unlawful detention and abuse of individuals with the involvement of U.S. agents abroad. Failure to publicly expose and thereby halt any such practices could reasonably be expected to pose an imminent threat to the physical

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safety and lives of individuals whose identities we are unable to ascertain without the records sought herein.

AI and WSLs certify that the foregoing statements regarding the basis for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). *See also* 32 C.F.R. § 286.4(d)(3)(iii) (DOD); 6 C.F.R. § 5.5(d)(3) (DHS); 28 C.F.R. § 16.5(d)(3) (DOJ); 22 C.F.R. § 171.12(b) (DOS).

* * *

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

As indicated above, we are applying for expedited processing of this Request. Notwithstanding your determination of that application, we look forward to your reply to the Request **within twenty (20) days**, as required under 5 U.S.C. § 552(a)(6)(A)(i).

WILMERHALE

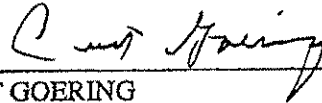
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Page 8

Thank you for your prompt attention. Please direct all questions and future responses to:

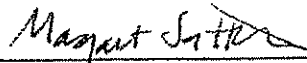
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Sincerely,



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Exhibit E

WILMERHALE

April 25, 2006

Catherine Kane Ronis

Via Facsimile, Email and U.S. Mail

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Information and Privacy Coordinator
Central Intelligence Agency
Washington D.C. 20505
(Ph.) 703-613-1287
(Fax) 703-613-3007

Re: Request Under the Freedom of Information Act for Records Concerning Ghost Detainee Memoranda, Department of Defense Detainee Reporting, Reports to Certain U.N. Committees, and the Draft Convention on Enforced Disappearance

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The Request is submitted on behalf of Amnesty International ("AI") and Washington Square Legal Services, Inc. ("WSLS"). AI is a non-government organization and a world-wide movement of members who campaign for internationally-recognized human rights. WSLS is the corporation that houses the International Human Rights Clinic ("the Clinic") of the New York University School of Law ("NYU Law School"). The Clinic is a project of NYU Law School's Center for Human Rights and Global Justice ("CHRGJ").

We are filing this request simultaneously with the Department of Defense (including its components, the Department of the Army, Navy and Air Force, the Marine Corps, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, the Central Intelligence Agency, and the Department of Homeland Security (including its components the Office of Intelligence and Analysis, the Directorate for Policy, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, U.S. Coast Guard, and U.S. Customs and Border Protection). By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

We are seeking the opportunity to inspect and copy, if necessary, all records in the possession of the Department, including any officers, divisions or bureaus thereof, on the topics listed below.

Wilmer Cutler Pickering Hale and Dorr LLP, 2445 M Street, NW, Washington, DC 20037

Baltimore Beijing Berlin Boston Brussels London Munich New York Northern Virginia Oxford Palo Alto Waltham Washington

Definitions

For purposes of this request, the following terms shall be understood as described below:

The term "records" includes any and all reports, statements, examinations, memoranda, correspondence (including electronic mail), designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, or guidelines.

The term "government official" includes any U.S. government employee, and any person providing services to any agency of the United States government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the U.S. government.

The term "foreign official" includes any foreign government employee, and any person providing services to any agency of a foreign government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the foreign government.

The term "communication" means the giving, receiving, transmitting, or exchanging of information, including, but not limited to, any and all written, printed, telephonic, electronic, and in-person conversations by and with any person, and/or talk, gestures, or documents which memorialize or refer to any communications.

The term "detainee" means any person deprived of their liberty by one or more individuals or agencies who is prevented by any means from leaving the place in which he or she is being held. The term "detention" means depriving any person of their liberty such that they are prevented by any means from leaving the place in which they are held.

The term "place of detention" means any place or facility in which a "detainee" is kept, inside or outside the United States, regardless of whether it is officially recognized as a place of detention.

Unless otherwise specified, this request relates to all records generated between September 11, 2001 and the present.

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Memoranda of Understanding

The practice of persons being kept as “off-the-record” detainees in military prisons has been well documented.¹ In this context, “ghost” or “unregistered” detainees are understood to refer to those detainees who were at some point during their detention, or remain: not “officially” registered at military facilities; “kept off the books”; and/or denied access to the International Committee of the Red Cross (ICRC).² Documents produced by the Department of Defense on March 3, 2005 pursuant to an ACLU FOIA request³ and a media report in the

¹ See Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16. See also Jane Mayer, *A Deadly Interrogation: Can the C.I.A. Legally Kill a Prisoner?*, NEW YORKER, Nov. 14, 2005, at 44 (discussing the practice, particularly with respect to the death of Manadel al-Jamadi). See also the following Department of Defense documents released to the American Civil Liberties Union (ACLU) pursuant to a *Freedom of Information Act* request, all available at <http://www.aclu.org/torturefoia/released/030905/>: Transcript of deposition of Brig. Gen. Janis L. Karpinski, Appendix to Fay/Jones/Kern Report (July 18, 2004); Statement of MNF-I, C2, IMIR CW2, Annex to Fay/Jones/Kern Report (June 16, 2004); Sworn Statement of E-5, 519th MI Bn, Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report; Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report; Sworn Statement of SGT, 372nd MP, Camp Victory, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of SPC/E4, B Co., 66th MI Group, 202nd MI BN, Annex to Fay/Jones/Kern Report (May 24, 2004); Sworn Statement of SGT, Member of GTMO team, “Shut Up Group,” Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of CW2, A/519th MI Bn, Annex to Fay/Jones/Kern Report (May 19, 2004); Sworn Statement of SGT, 372nd MP Co, Annex to Fay/Jones/Kern Report (May 7, 2004); Statement of B/Co, 470th MI Grp. SGT, Annex to Fay/Jones/Kern Report (May 18, 2004). See further HUMAN RIGHTS FIRST, BEHIND THE WIRE: AN UPDATE TO *ENDING SECRET DETENTIONS* 6 (2005), available at http://www.humanrightsfirst.org/us_law/PDF/behind-the-wire-033005.pdf (providing overview of the practice of ghosting in military facilities); HUMAN RIGHTS WATCH, *THE UNITED STATES' DISAPPEARED: THE CIA'S LONG-TERM "GHOST DETAINEES"* 5-15 (2004), available at <http://www.hrw.org/backgrounder/usa/us1004/us1004.pdf> (outlining practice of keeping CIA prisoners in military detention generally).

² *Id.*

³ See Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report, in Department of Defense FOIA Release, at 000719-000725, available at <http://www.aclu.org/torturefoia/released/030905/> (“OGA and TF-121 routinely brought in detainees for a short period of time. The A/519th soldiers initiated the term ‘ghost.’ They stated they used this term as the detainees were not in-processed in the normal way via the MP database and were not yet categorized. It was difficult to track these particular detainees and I and other officers recommended that a Memorandum of Understanding be written up between OGA, the 205th MI BDE and the 800th MP BDE to establish procedures for a ghost detainee”); Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report, in Department of Defense FOIA Release, at 000726-000729, available at <http://www.aclu.org/torturefoia/released/030905/> (“...in reference to Ghost detainees, OGA would bring in detainees for a short period of time. [REDACTED] brought them in. These particular ghost detainees were not yet categorized and OGA was working on that. It was very difficult keeping track of these OGA because they were not processed until OGA decided to turn them over to us. COL PAPPAS was not happy with that procedure.

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Washington Post dated March 11, 2005⁴ indicate that this arrangement for "ghosting" was not "ad hoc" but was embodied in a Memorandum of Understanding (MOU) between military officials and the CIA.⁵ The exact contours of this arrangement are not publicly known as a copy of this MOU was not included in the documents released by the Department of Defense.⁶

Records Requested

We seek the following records relating to the arrangement described above:

1. Any memorandum of understanding, or other record reflecting an agreement or proposed agreement between agencies, or between any agency and any subdivision or official, concerning the handling of ghost or unregistered detainees. This includes but is not limited to:
 - (a) Any record reflecting communications about whether or not to draft any memorandum of understanding or agreement regarding unregistered or ghost detainees.
 - (b) Any record reflecting communications about the content of any memorandum of understanding or agreement regarding unregistered or ghost detainees.
2. Any record reflecting a policy, whether formal or informal, about the reception, detention, or movement of unregistered or ghost detainees.
3. Any memorandum of understanding, or other record reflecting an agreement between any agencies, or between any subdivision or official or any other agency, regarding the transfer of detainees from the custody of one agency to that of another.

[REDACTED] recommended that a Memorandum of Understanding be written up between OGA and MI on the procedures to drop off a ghost detainee. COL PAPPAS met with OGA and TF-121 and the memorandum on procedures for dropping ghost detainees was signed").

⁴ Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16.

⁵ *Id.*

⁶ Press Release, American Civil Liberties Union, *Newly Released Army Documents Point to Agreement Between Defense Department and CIA on "Ghost" Detainees, ACLU Says: Declassified Annexes to Fay Report, Which Denied Link, Contain Further Evidence of Brutal Army Abuses (Mar. 10, 2005)*, available at <http://www.aclu.org/safefree/general/17597prs20050310.html>.

Department of Defense Detainee Reporting

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, 118 Stat. 1811 (2004) ("the Act"), requires the Department of Defense to submit an annual report regarding certain detainees.

Records Requested

4. Any record generated in connection with the reporting requirement under Section 1093(c) of the Act, regardless of whether or not such record was actually submitted in the final report, and any record submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives pursuant to Section 1093(c) of the Act.⁷ This includes but is not limited to records reflecting:

- (a) Any notice of investigation into any violation of international obligations or laws of the United States regarding the treatment of individuals detained by the U.S. Armed Forces or by a person providing services to the Department of Defense on a contractual basis.
- (b) Any discussions regarding whether any investigation described in Request 4(a) should be reported.
- (c) The number of detainees held in Department of Defense custody, or released from Department of Defense custody during the time period covered by the report, broken down into the greatest number of time intervals for which such information is available.
- (d) The number of detainees detained by the Department of Defense as "enemy prisoners of war," "civilian internees," and "unlawful combatants," broken down into the greatest number of time intervals for which such information is available.
- (e) The number of detainees detained by the Department of Defense under any status other than "enemy prisoners of war," "civilian internees," and "unlawful combatants," broken down into the greatest number of time intervals for which such information is available.

⁷ Section 1093(e) of the Act mandates that the reports "be submitted, to the extent practicable, in unclassified form, but may include a classified annex as necessary to protect the national security of the United States." To the extent any records or portions of records responsive to this request are classified, please provide basic information as to the date, sender, recipient, and subject matter of the classified records.

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- (f) The transfer or proposed transfer of detainees by the Department of Defense to the jurisdiction of other countries, and the countries to which those detainees were transferred.
- (g) Any communications regarding decisions to include or not include information in the Department of Defense's report under Section 1093(c) of the Act and decisions as to whether to submit any information in unclassified or classified form pursuant to Section 1093(d) of the Act.

United States Report to the Committee Against Torture

On May 6, 2005, the U.S. submitted its Second Periodic Report to the United Nations ("U.N.") Committee Against Torture, as required by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Records Requested

All records reflecting:

5. Communications regarding the United States' Second Periodic Report to the Committee Against Torture, including but not limited to:

- (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Committee Against Torture.
- (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment relating to apprehension, transfer and detention, (including Articles 1, 3, 5, 16), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
- (c) Proposed language or earlier drafts of the report to the Committee Against Torture.

United States Report to the Human Rights Committee

On November 28, 2005, the U.S. submitted its Third Periodic Report to the U.N. Human Rights Committee, as required by the International Covenant on Civil and Political Rights.

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Records Requested

All records reflecting:

6. Communications regarding the United States' Third Periodic Report to the Human Rights Committee, including but not limited to:

- (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Human Rights Committee.
- (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the International Covenant on Civil and Political Rights relating to apprehension, transfer and detention, (including Articles 6, 7, 9), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
- (c) Proposed language or earlier drafts of the report to the Human Rights Committee.

The Convention on the Protection of all Persons from Enforced Disappearance

On September 23, 2005, a U.N. working group concluded the draft text of the Convention on the Protection of all Persons from Enforced Disappearance. In 2006, the draft convention will be submitted to the U.N. Commission on Human Rights and the U.N. General Assembly, before being opened for signature and ratification.

Records Requested

7. Any record reflecting communications regarding the negotiation or drafting of the draft Convention on the Protection of all Persons from Enforced Disappearance.

8. Any record reflecting communications with a foreign government, or an agency or official of a foreign government, regarding the drafting of the draft Convention on the Protection of all Persons from Enforced Disappearance.

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Fee Waiver

The requestors qualify as “representatives of the news media” and the records sought are not for commercial use. Moreover, this Request “is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii).

Amnesty International is a non-government organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters and urgent action requests informing the public about human rights, including the prohibition on torture and the prohibition on disappearances. AI also disseminates information through its website www.amnesty.org.

The Center for Human Rights and Global Justice is a research center at NYU Law School. CHRJGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education and training. CHRJGJ publishes reports and operates a website www.nyuhr.org discussing human rights issues.

The International Human Rights Clinic is a project of CHRJGJ and an official program at NYU Law School, composed of students and directed by clinical professors, who engage in research and advocacy on human rights issues.

Washington Square Legal Services is a not-for-profit corporation that houses the clinical program of NYU Law School.

The requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above.

Expedited Processing

Expedited processing is warranted as there is a “compelling need” for the records sought in this request. 5 U.S.C. § 552(a)(6)(E)(i)(I). The requesters are primarily engaged in “disseminating information” and there is an “urgency to inform the public concerning the actual or alleged Federal Government Activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). *See also* 32 C.F.R. § 286.4(d)(3)(ii) (DOD); 6 C.F.R. § 5.5(d)(1)(ii) (DHS); 28 C.F.R. § 16.5(d)(1)(ii) (DOJ); 22 C.F.R. § 171.12(b)(2) (DOS).

AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CHRJGJ is engaged in disseminating information about human rights, including in particular, the Federal

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Government's role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGI's website. The Clinic actively supports this work, and WSLS houses the clinic. As reflected in the media reports discussed above, there is an urgent need to provide the public with information relating to the U.S. government's practices concerning unregistered or ghost detainees.

There is also a "compelling need" because failure to obtain the records on an expedited basis "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). *See also* 32 C.F.R. § 286.4(d)(3)(i) (DOD); 6 C.F.R. § 5.5(d)(1)(i) (DHS); 28 C.F.R. § 16.5(d)(1)(i) (DOJ); 22 C.F.R. § 171.12(b)(1) (DOS). This Request arises in the context of allegations of ongoing unlawful detention and abuse of individuals with the involvement of U.S. agents abroad. Failure to publicly expose and thereby halt the practices prompting this Request could reasonably be expected to pose an imminent threat to the physical safety and lives of such individuals.

AI and WSLS certify that the foregoing statements regarding the basis for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). *See also* 32 C.F.R. § 286.4(d)(3)(iii) (DOD); 6 C.F.R. § 5.5(d)(3) (DHS); 28 C.F.R. § 16.5(d)(3) (DOJ); 22 C.F.R. § 171.12(b) (DOS).

* * *

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

As indicated above, we are applying for expedited processing of this Request. Notwithstanding your determination of that application, we look forward to your reply to the Request **within twenty (20) days**, as required under 5 U.S.C. § 552(a)(6)(A)(i).

WILMERHALE

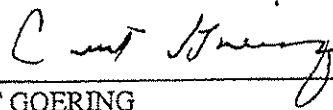
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Thank you for your prompt attention. Please direct all questions and future responses to:

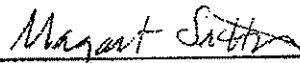
CATHERINE K. RONIS
Counsel to Amnesty International USA
WilmerHale
2445 M Street Washington, D.C. 20037
Tel: (202) 663-6380
Fax: (202) 663-6363
E-mail: catherine.ronis@wilmerhale.com

If you need someone to reach by telephone or email, you may also contact Kyle DeYoung at WilmerHale at (202) 663-6785.

Sincerely,



CURT GOERING
Deputy Director
Amnesty International USA
5 Penn Plaza
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Tel: (212) 807-8400
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Exhibit F

Central Intelligence Agency



Washington, D.C. 20505

5 May 2006

Catherine Kane Ronis, Esq.
Counsel to Amnesty International USA
WilmerHale
2445 M Street, N.W.
Washington, D.C. 20037

Dear Ms. Ronis:

The office of the Information and Privacy Coordinator has received your 25 April 2006 Freedom of Information Act request. Our officers will review it, and will advise you should they encounter any problems or if they cannot begin the search without additional information.

I reviewed your request for expedited processing in accordance with Agency regulations. Your request does not meet the standards for expedited processing specified in Agency regulations and therefore is denied. The Agency will process your request in accordance with its standard procedures.

We have assigned your request Reference No. F-2006-01014. Please use this number when corresponding with us about this request so that we can identify it easily.

Sincerely,

A handwritten signature in black ink that reads "Scott Koch".

Scott Koch
Information and Privacy Coordinator

Exhibit G

Central Intelligence Agency



Washington, D.C. 20505

5 May 2006

Catherine Kane Ronis, Esq.
Counsel to Amnesty International USA
WilmerHale
2445 M Street, N.W.
Washington, D.C. 20037

Dear Ms. Ronis:

The office of the Information and Privacy Coordinator has received your 25 April 2006 Freedom of Information Act request. Our officers will review it, and will advise you should they encounter any problems or if they cannot begin the search without additional information.

I reviewed your request for expedited processing in accordance with Agency regulations. Your request does not meet the standards for expedited processing specified in Agency regulations and therefore is denied. The Agency will process your request in accordance with its standard procedures.

We have assigned your request Reference No. F-2006-00994. Please use this number when corresponding with us about this request so that we can identify it easily.

Sincerely,

A handwritten signature in black ink that reads "Scott Koch".

Scott Koch
Information and Privacy Coordinator

Exhibit H

July 3, 2006

Catherine Kane Ronis

+1 202 663 6380 (t)

+1 202 663 6363 (f)

catherine.ronis@wilmerhale.com

By Certified U.S. Mail, Facsimile, and E-mail

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

Re: *Freedom of Information Act Appeal - Case Numbers F-2006-00994 and F-2006-01014*

Dear Sir or Madam::

On April 25, 2006 Amnesty International USA^{1/} ("Amnesty") and Washington Square Legal Services ("WSLS") filed two requests for information under the Freedom of Information Act regarding detainees secretly held by the United States Government, including "Ghost Detainees/Prisoners," "Unregistered Detainees/Prisoners" and "CIA Detainees/Prisoners" ("the Requests"). Your agency, the Central Intelligence Agency ("CIA"), assigned the Requests case numbers F-2006-00994 and F-2006-01014. Although the Department of Justice's Office of Public Affairs granted our request for expedited processing for identical requests, you denied our request for expedited processing on May 5, 2006. Copies of the Requests and the denial letters are attached. See Exhibits A-D.

Amnesty and WSLS hereby appeal the CIA's denial of expedited processing of the Requests. As set forth in 5 U.S.C. § 552(a)(6)(E)(i)(I) and 32 C.F.R. § 1900.34, information requests qualify for expedited processing where (1) the failure to obtain the requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of at least one individual, or (2) where the requestor is primarily engaged in disseminating information and the information requested here is relevant to a matter of public urgency concerning an actual or alleged Federal government activity. As demonstrated in our original requests, and elaborated upon below, the Requests qualify for expedited treatment under both standards.

^{1/} Amnesty International USA is the U.S. Section of Amnesty International. See <http://www.amnestyusa.org/about/>.

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1. **Amnesty is primarily engaged in disseminating information and there is a clear "urgency to inform the public concerning actual or alleged government activity"**
 - a. **Amnesty is primarily engaged in disseminating information**^{2/}

Amnesty plainly qualifies as an entity primarily engaged in disseminating information. As a human rights organization, Amnesty's primary activity involves disseminating information to the public regarding human rights. According to its governing statute, Amnesty's human rights mission is accomplished by *disclosing* human rights abuses accurately, quickly and persistently. It researches individual cases as well as patterns of human rights abuses and then "*these findings are publicized, and members, supporters and staff mobilize public pressure on governments and others to stop the abuses.*"^{3/} As it explains on its website: "We search out the facts. We send experts to talk with victims, observe trials and interview local human rights activists and officials. We monitor thousands of media outlets and maintain contact with reliable sources of information all over the world. We publish detailed reports. We inform the news media. We publicize our concerns in leaflets, posters, advertisements, newsletters and websites."^{4/}

Amnesty disseminates this information through its heavily subscribed website, <www.amnestyusa.org>, and directs e-mails to its more than 330,000 members in the United States.⁵ The website addresses human rights issues in depth, provides features on human rights issues in the news, and contains an online library containing thousands of documents and articles relating to the issues addressed by Amnesty -- including information and documents obtained on issues covered by the Requests.^{6/} Amnesty also conducts news briefings, issues press releases,

^{2/} As explained in the Requests, WSLs is also an entity primarily engaged in disseminating information. However, because Amnesty clearly meets this requirement, the Requests qualify for expedited treatment regardless of whether WSLs also qualifies. See *ACLU v. DOJ*, 321 F. Supp. 2d 24, 30 n5 (2004) ("as long as one of the plaintiffs qualifies as an entity 'primarily engaged in disseminating information' the requirement is satisfied") (citing *Al-Fayed v. CIA*, 254 F.3d 300, 309 (D.C. Cir. 2001)).

^{3/} Statute of Amnesty International, *Methods*, available at <http://web.amnesty.org/pages/aboutai-statute-eng> (as amended by the 27th International Council, meeting in Morelos, Mexico, 14 to 20 August 2005).

^{4/} "How Does Amnesty International carry out its work?" available at <http://www.amnestyusa.org/about/faq.html>. See also <http://www.amnestyusa.org> for feature articles, in-depth reports, and current news concerning human rights.

⁵ See http://www.amnestyusa.org/about/aiusa_annualreport.pdf p3.

^{6/} See e.g., Amnesty International, Public Statement (with Human Rights Watch, the International Commission of Jurists and the Association for the Prevention of Torture), *Twelve Steps to End Renditions and Secret Detentions in*

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and publishes newsletters, annual country reports, a quarterly magazine and other materials.⁷⁷ Indeed, Amnesty's mission fundamentally depends on disseminating information to its members, governments and the public. Thus, "the publicizing of human rights abuses is a core component of Amnesty International's mission and is central to all of its activities."⁸⁷

Courts have determined that entities similar to Amnesty are primarily engaged in dissemination of information for the purpose of receiving expedited processing of their FOIA requests. *See e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (determining that the Leadership Conference on Civil Rights, a coalition of national organizations whose mission is to promote civil rights legislation and policy, was primarily engaged in dissemination of information for the purpose of expediting its FOIA requests); *ACLU*, 321 F. Supp. 2d at 29 n5 (determining that the Electronic Privacy Information Center (EPIC), a public interest research organization, was primarily engaged in dissemination of information for the purposes of expediting its request); *Electronic Privacy Info. Center v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003) (determining that EPIC was a representative of the news media for the purposes of a fee waiver). In making this determination, the critical question is whether the entity in question "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience." *EPIC*, 241 F. Supp. 2d at 11. While the EPIC Court discussed this standard in the context of whether or not the EPIC met the "representative of the news media" requirement for a fee waiver, the analysis applies with equal force to the very similar "primarily engaged in disseminating information" requirement for expedited processing. *See ACLU*, 321 F. Supp. 2d at 29 n5 (relying on the same language from *EPIC*, 241 F. Supp. 2d at 11, in

Europe, June 27, 2006, IOR 10/001/2006; Amnesty International, Public Statement, *Council of Europe: PACE calls for an end to rendition and secret detention*, June 27, 2006, IOR 10/002/2006; Amnesty International, Press Release, *USA: Front companies used in secret flights to torture and "disappearance,"* May 4, 2006, AMR 51/054/2006; Amnesty International, Press Release, *US: Government creating "climate of torture,"* May 3, 2006, AMR 51/070/2006; Amnesty International, *Europe: Partners in crime: Europe's role in US renditions*, June 14, 2006, EUR 01/008/2006; Amnesty International, *Below the radar: Secret Flights to torture and 'disappearance,'* April 5, 2006, AMR 51/051/2006; Amnesty International, *Secret Detention in CIA "Black Sites,"* Nov. 8, 2005, AMR 51/177/2005. All of these documents are available on <www.amnestyusa.org>.

⁷⁷ The fact that Amnesty publishes these periodicals alone is sufficient to establish that Amnesty is a representative of the media, *see EPIC*, 241 F. Supp. 2d at 11-14 (concluding that EPIC is a news media entity because it publishes periodicals); *National Security Archive v. DOD*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), and therefore to meet the "primarily engaged in disseminating information" standard. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n5 (D.D.C. 2004).

⁸⁷ Declaration of Curt Goering, Senior Deputy Executive Director for Policy and Programs, Amnesty International, USA, ¶ 5 (attached as Exhibit E).

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concluding that EPIC was primarily engaged in dissemination of information for the purposes of expediting its request).^{9/}

Given the extent of Amnesty's disclosure of human rights information and publishing activities, the organization easily satisfies the "primarily engaged in disseminating information" requirement for expedited processing of the Requests.

b. There is "urgency to inform the public" about secret or irregular apprehension, transfer or detention

There is also clear urgency to inform the public on the issues of secret detention, ghost detainees, and extraordinary rendition. Courts have consistently recognized that ongoing media attention to an issue is an indicator of urgency. *See Al-Fayed v. CIA*, 254 F.3d 300, 308 (2001) (recognizing fact that an issue "is the subject of current news coverage" is an important factor in deciding whether compelling need exists); *ACLU of Northern Cal. v. DOD*, 2006 WL 1469418, *7 (N.D. Cal. May 25, 2006) ("If anything, extensive media interest usually is a fact supporting not negating urgency in the processing of FOIA request.") (emphasis in original); *ACLU*, 321 F. Supp. 2d at 29-31 (newspaper articles reflecting public concern a factor supporting finding of urgency).

The Requests clearly relate to a subject of general public interest and ongoing media attention. As explained in the original Requests, media sources around the world have avidly covered news related to these matters, but much pertinent information concerning rendition and ghost detainees is not yet known to the public. Indeed, media interest in secret detention, ghost detainees, and extraordinary rendition has only increased since the filing of the original Requests.¹⁰

^{9/} See also 32 C.F.R. § 286.4(d)(3)(ii) (Department of Defense Regs) ("Representatives of the news media . . . would normally qualify as individuals primarily engaged in disseminating information.").

¹⁰ See e.g., Jan Sliva, *EU concedes rendition flights took place*, The Herald, (June 28, 2006); Ike Seamans, *Above the law*, The Miami Herald, (June 25, 2006); *MIDDLE EAST: Region still lacks support for torture victims, say observers*, Reuters Foundation, (June 25, 2006); *The Detention Dilemma*, The Washington Post, (June 19, 2006); Barrie Dunsmore, *Ugly portrait emerges dot by dot*, Times Argus, (June 18, 2006); Josh White, *Bad Advice Blamed For Banned Tactics*, The Washington Post, (June 17, 2006); Anemona Hartocollis, *Judges Press CIA Lawyer Over Withheld Documents*, The New York Times, (June 13, 2006); *Court Weighs ACLU Request on CIA Terror Documents*, New York Sun, (June 13, 2006); Larry Neumeister, *Court Urges to Protect CIA Detention Info*, Guardian Unlimited (June 13, 2006); *Euro MP's to Extend Probe Into CIA Activities*, Expatica, (June 13, 2006); *Court Will Investigate Alleged CIA Flights*, Los Angeles Times, (June 13, 2006); Jeremy Smith, *EU Lawmakers Back Report on CIA Terror Kidnappings*, Reuters, (June 12, 2006); Jan Sliva, *Probe of CIA Prisons Implicates EU Nations*, Forbes, (June 7, 2006).

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In addition, the urgency to inform the public is further underscored here by the fact that the European Union and the Council of Europe are conducting official investigations into the practice of rendition and the involvement of European countries in extraordinary rendition and secret detention.^{11/} In the last month alone, each of the investigations has produced a report, thereby further heightening public interest in these topics.^{12/} These European investigations have encountered difficulties in obtaining information about these practices^{13/} and have highlighted the extent to which there is a lack of information about the system.^{14/} Where public debate and

^{11/} In the Council of Europe there is an investigation by Secretary General Terry Davis pursuant to Article 52 of the European Convention and an inquiry by Senator Dick Marty for the Parliamentary Assembly of the Council of Europe: *see generally* <http://www.coe.int/T/E/Com/Files/Events/2006-cia/>. The European Parliament has a Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners: *see generally* <http://www.europarl.europa.eu/activities/expert/committees/presentation.do?committee=2073&language=EN>. *See generally* Craig Whitlock, *European Inquiry Fails to Confirm Secret CIA Prisons; But U.S. Tactics Called 'Appalling'*, WASH. POST, Jan. 25, 2006, at A16.

^{12/} Committee on Legal Affairs and Human Rights, *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, Draft report – Part II (Explanatory memorandum), 7 June 2006, available at http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf; Secretary General, *Secretary General's supplementary report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies*, SG/Inf(2006)13, 14 June 2006, available at [http://www.coe.int/t/E/Com/Press/Source/SG_Inf\(2006\).doc](http://www.coe.int/t/E/Com/Press/Source/SG_Inf(2006).doc); Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, Interim report on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, 15 June 2006, available at <http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A6-2006-0213+0+DOC+PDF+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y..>

^{13/} Committee on Legal Affairs and Human Rights, *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, Draft report – Part II (Explanatory memorandum), 7 June 2006, available at http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf para. 23; Council of Europe, Parliamentary Assembly, Resolution 1507 *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states* (2006), available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/Eres1507.htm>, para. 11 (noting that "Attempts to expose the true nature and extent of these unlawful operations have invariably faced obstruction or dismissal, from the United States and its European partners alike. The authorities of most Council of Europe member States have denied their participation, in many cases without actually having carried out any inquiries or serious investigations."); Secretary General, *Secretary General's report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies*, SG/Inf(2006) 5, Feb. 28, 2005, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf\(2006\)5&Sector=secPrivateOffice&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf(2006)5&Sector=secPrivateOffice&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75) paras. 16 – 19.

^{14/} *See, e.g.*, Committee on Legal Affairs and Human Rights, *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, Draft report – Part II (Explanatory memorandum), 7 June

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Page 6

investigations are ongoing, there is a particular value to the disclosure of information, in order to accurately frame the debate or conclude the investigation.

Finally, the urgent need to inform the public about secret detention, ghost detainees, and extraordinary rendition is further supported by the fact that these alleged government practices are ongoing. As a result, the alleged program's details and the potential violation of individuals' human rights are of immediate concern to Amnesty and the general public. See *ACLU*, 321 F. Supp. 2d at 30 ("Because the records that plaintiffs seek relate to current surveillance efforts, the potential invasion of the public's privacy interests is of immediate concern, weighing in favor of a finding of expediency").

In short, given the widespread and continuing interest that surrounds these issues, the fact that both the controversy and the alleged government programs are ongoing, and that fundamental components of the alleged program are still unknown, it is clear that there is urgency to inform the public about the information sought by the Requests.

2. **"Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual"**

Amnesty and WSLs have requested information regarding the government's program for secretly or irregularly apprehending, transferring or detaining individuals, which allegedly involves the ongoing unlawful detention and abuse of individuals by or with the involvement of U.S. agents. There are publicly reported allegations that individuals are being abused as part of the government's secret detention programs. The Requests therefore satisfy the requirement that denying a request for expedited processing "could reasonably be expected to pose an imminent threat to the life or physical safety of at least one individual."

For example, *ABC News* reported that ten detainees held by the U.S. in secret sites were subjected to "enhanced interrogation techniques," including waterboarding.^{15/} The *Washington Post* reported that one suspect held in custody by the U.S. Government was held incommunicado for nearly five months, and subjected to threats of violence and physical harm. The captive was reportedly told "You are in a country where no one knows about you, in a country where there is no law. If you die, we will bury you, and no one will know." He was kicked and beaten, and

2006, available at http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf, para. 16.

^{15/} Brian Ross & Richard Esposito, *Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS, Dec. 5, 2005, available at <http://abcnews.go.com/WNT/Investigation/story?id=1375123>.

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analysis of his hair after he was released revealed he was malnourished during his captivity.^{16/} In addition, there have been reports of torture of CIA "ghost detainees" in Afghanistan^{17/} and in Iraq^{18/}, including, in at least one case, the death of a prisoner, Manadel al-Jamadi.^{19/} Amnesty International's research shows that other individuals secretly detained suffered mistreatment,^{20/} and that torture and other forms of ill-treatment is typical of the experience of those subjected to extraordinary rendition.^{21/} It has further been reported that the United States' secret detention system has been designed to facilitate the gathering of intelligence unhindered by the due process

^{16/} Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, WASH. POST, Dec. 4, 2005, at A1.

^{17/} HUMAN RIGHTS FIRST, BEHIND THE WIRE: AN UPDATE TO *ENDING SECRET DETENTIONS 2* (2005), available at http://www.humanrightsfirst.org/us_law/PDF/behind-the-wire-033005.pdf (detailing the ill-treatment of one "ghost" detainee in the Salt Pit resulting in death).

^{18/} Press Release, American Civil Liberties Union, Newly Released Army Documents Point to Agreement Between Defense Department and CIA on "Ghost" Detainees, ACLU Says: Declassified Annexes to Fay Report, Which Denied Link, Contain Further Evidence of Brutal Army Abuses (Mar. 10, 2005), available at <http://www.aclu.org/safefree/general/17597prs20050310.html>. Many of the documents released by the Department of Defense pursuant to the ACLU's FOIA request, available at <http://www.aclu.org/torturefoia/released/030905/>, describe torture and mistreatment of "ghost" detainees. See, e.g., Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of SGT, 372nd MP, Camp Victory, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of SPC/E4, B Co., 66th MI Group, 202nd MI BN, Annex to Fay/Jones/Kern Report (May 24, 2004); Sworn Statement of SGT, Member of GTMO team, "Shut Up Group," Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of SGT, 372nd MP, Annex to Fay/Jones/Kern Report (May 7, 2004); Statement of B/Co, 470th MI Grp. SGT, Annex to Fay/Jones/Kern Report (May 18, 2004). See also Center for Human Rights and Global Justice, Human Rights First, Human Rights Watch, *By the Numbers: Findings of the Detainee Abuse and Accountability Project* (2006) available at http://www.nyuhr.org/docs/By_The_Numbers.pdf.

^{19/} Douglas Jehl & Tim Golden, *C.I.A. is Likely to Avoid Charges in Most Prisoner Deaths*, N.Y. TIMES, Oct. 23, 2005, at 6; Jane Mayer, *A Deadly Interrogation: Can the C.I.A. legally kill a prisoner?*, NEW YORKER, Nov. 14, 2005, at 44.

^{20/} See Amnesty International, *BELOW THE RADAR: SECRET FLIGHTS TO TORTURE AND "DISAPPEARANCE,"* Apr. 5, 2006, available at <http://web.amnesty.org/library/Index/ENGAMR510512006?open&of=ENG-USA>.

^{21/} "Amnesty International has interviewed several victims of rendition. Their testimonies were coherent and plausible when checked against factual data such as flight information. Also consistent was the description, by every single one, of incidents of torture and other ill-treatment." Press Release, *Exposing Renditions*, AMNESTY INTERNATIONAL EU OFFICE, Apr. 5 2006, available at <http://web.amnesty.org/library/Index/ENGAMR510572006?open&of=ENG-344>.

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rights that normally guard against this abuse.^{22/} Finally, it is widely recognized that secret detention is conducive to torture and other forms of human rights violations.^{23/}

If these reports are accurate, there plainly is an immediate threat to the life and physical safety of a number of individuals.^{24/} Expedited processing of records is therefore required to prevent further harm to individuals currently detained and those likely to be detained in the future.

* * *

^{22/} Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1 ("...intelligence officials defend the agency's approach, arguing that the successful defense of the country requires that the agency be empowered to hold and interrogate suspected terrorists for as long as necessary and without restrictions imposed by the U.S. legal system or even by the military tribunals established for prisoners held at Guantanamo Bay."); HUMAN RIGHTS FIRST, *BEHIND THE WIRE: AN UPDATE TO ENDING SECRET DETENTIONS* ii (2005), available at http://www.humanrightsfirst.org/us_law/PDF/behind-the-wire-033005.pdf (discussing the rationale of U.S. security policy on detentions which views detention as a means of intelligence gathering); HUMAN RIGHTS WATCH, *THE UNITED STATES' DISAPPEARED: THE CIA'S LONG-TERM "GHOST DETAINEES"* 5-15 (2004), available at <http://www.hrw.org/backgrounders/usa/us1004/us1004.pdf> (noting the intelligence gathering functions of interrogating persons in secret detention and raising concerns about the reliability of such information).

^{23/} For example, the U.N. Committee Against Torture "note(d) with concern that the State party does not always register persons detained in territories under its jurisdiction outside the United States, depriving them of an effective safeguard against acts of torture (article 2)." The Committee also expressed concern at "allegations that the State party has established secret detention facilities, which are not accessible to the International Committee of the Red Cross...The Committee is also concerned by allegations that those detained in such facilities could be held for prolonged periods and face torture or cruel, inhuman or degrading treatment." Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America*, CAT/C/USA/CO/2, 18 May 2006, available at <http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.USA.CO.2.pdf>, para. 16.

^{24/} The exact number of persons subjected to secret or irregular apprehension, transfer or detention is unknown. Estimates of the number of persons rendered vary from around one hundred to several thousand. Center for Human Rights and Global Justice, *Beyond Guantánamo: Transfers to Torture One Year After Rasul v. Bush* (New York: NYU School of Law, 2005) at 3. With respect to secret detention, human rights organizations have identified by name 29 individuals who they believe are held in secret detention and have stated that there is likely many more. See WITNESS, *Outlawed: Extraordinary Rendition, Torture and Disappearances in the 'War on Terror'*, http://www.witness.org/index.php?option=com_rightsalert&Itemid=178&task=view&alert_id=49, released June 26, 2006. See also Center for Human Rights and Global Justice, *Fate and Whereabouts Unknown: Detainees in the 'War on Terror'* (New York: NYU School of Law, 2005) available at <http://www.nyuhr.org/docs/Whereabouts%20Unknown%20Final.pdf>; Human Rights Watch, List of "Ghost Prisoners" Possibly in CIA Custody, <http://hrw.org/english/docs/2005/11/30/usdom12109.htm> (last updated Dec. 1, 2005).

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July 3, 2006
Page 9

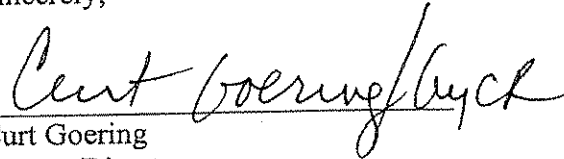
Amnesty International USA and Washington Square Legal Services, Inc., certify that the foregoing statements regarding the bases for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi); 32 C.F.R. 286.4(d)(3)(iii)-(iv). We look forward to your reply to this appeal **within ten (10) days**, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(II), 32 C.F.R. 286.4(d)(3), and 32 C.F.R. 286.4(d)(3)(v).

Thank you for your prompt attention. Please direct all questions and future responses to:

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If you need to reach someone by telephone or email, you may also contact Kyle DeYoung at WilmerHale at (202) 663-6785 or at kyle.deyoung@wilmerhale.com.

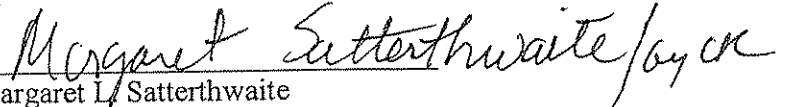
Sincerely,

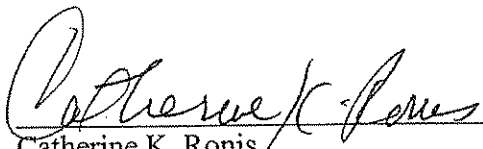


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WILMERHALE

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Page 10


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TAB A

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April 25, 2006

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Re: Request Submitted Under the Freedom of Information Act for Records Concerning Detainees, including "Ghost Detainees/Prisoners," "Unregistered Detainees/Prisoners," and "CIA Detainees/Prisoners"

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The Request is submitted on behalf of Amnesty International ("AI") and Washington Square Legal Services, Inc. ("WSLS"). AI is a non-government organization and a world-wide movement of members who campaign for internationally-recognized human rights. WSLS is the corporation that houses the International Human Rights Clinic ("the Clinic") of the New York University School of Law ("NYU Law School"). The Clinic is a project of NYU Law School's Center for Human Rights and Global Justice ("CHRGJ").

We are filing this request simultaneously with the Department of Defense (including its components, the Department of the Army, Navy and Air Force, the Marine Corps, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, the Central Intelligence Agency, and the Department of Homeland Security (including its components the Office of Intelligence and Analysis, the Directorate for Policy, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, U.S. Coast Guard, and U.S. Customs and Border Protection). By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

We are seeking the opportunity to inspect and copy, if necessary, all records in the possession of the Department, including any officers, divisions or bureaus thereof, on the topics listed below.

Definitions

For purposes of this request, the following terms shall be understood as described below:

The term "records" includes any and all reports, statements, examinations, memoranda, correspondence (including electronic mail), designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, or guidelines.

The term "government official" includes any U.S. government employee, and any person providing services to any agency of the United States government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the U.S. government.

The term "foreign official" includes any foreign government employee, and any person providing services to any agency of a foreign government on a contractual basis, regardless of his or her rank or ability to speak or make decisions on behalf of the foreign government.

The term "communication" means the giving, receiving, transmitting, or exchanging of information, including, but not limited to, any and all written, printed, telephonic, electronic, and in-person conversations by and with any person, and/or talk, gestures, or documents which memorialize or refer to any communications.

The term "detainee" means any person deprived of their liberty by one or more individuals or agencies who is prevented by any means from leaving the place in which he or she is being held. The term "detention" means depriving any person of their liberty such that they are prevented by any means from leaving the place in which they are held.

The term "place of detention" means any place or facility in which a "detainee" is kept, inside or outside the United States, regardless of whether it is officially recognized as a place of detention.

Scope of Request

Unless otherwise stated, this request refers to *individuals who were, have been, or continue to be deprived of their liberty by or with the involvement of the United States and about whom the United States has not provided public information. These individuals have been referred to, among other things, as "ghost detainees/prisoners," "unregistered detainees/prisoners," "CIA detainees/prisoners" and "Other Governmental Agency Detainees" ("OGA Detainees")*. These individuals have reportedly been held in various locations, including regular and irregular detention facilities, ships, aircraft, and military bases.

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Although not limited to any specific geographic area, this request pertains particularly to the following places:

Afghanistan	Azerbaijan	Bulgaria	Djibouti
Egypt	Germany	Indonesia	Iraq
Jordan	Kosovo	Macedonia	Morocco
Pakistan	Poland	Romania	Syria
Thailand	Turkey	Ukraine	
United Kingdom (including Diego Garcia)			
United States (including all territories under the S.M.T.J)			
Uzbekistan	Yemen		

This Request does not seek records related to the formal extradition of individuals.

Requested records pertain to persons apprehended since September 11, 2001.

Background

Numerous media reports indicate that the United States is involved in the secret or irregular apprehension, transfer, and detention of individuals on foreign territory.¹ These reports suggest that the government secretly detains and transports individuals on U.S. ships, military bases, and U.S.-chartered planes, as well as in foreign states.²

¹ See, e.g., Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1; Jan Cienski, Christopher Condon, Caroline Daniel, Guy Dinmore, Andrei Postelnicu, & Demetri Sevastopulo, *Evidence CIA Has Secret Jails in Europe*, FINANCIAL TIMES (LONDON), Nov. 3, 2005, at 1; Siobhan Gorman & Tom Bowman, *Reports of Secret CIA Prisons Prompt Concern*, L.A. TIMES, Nov. 3, 2005, at A4; Douglas Jehl & David Johnston, *CIA Now Acting Independently to Move Prisoners*, INT'L HERALD TRIB., Mar. 7, 2005, at 4; Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake: German Citizen Released After Months in Rendition*, WASH. POST., Dec. 4, 2005; Brian Ross and Richard Esposito, *Exclusive: Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS, Dec. 5, 2005, at <http://abcnews.go.com/WNT/Investigation/story?id=1375123>; Eric Schmitt and Thom Shanker, *Rumsfeld Issued an Order to Hide Detainee in Iraq*, N.Y. TIMES, June 17, 2004, at A1; *US bars access to terror suspects*, BBC NEWS, Dec. 9, 2005; Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16; *White House Mum on Secret CIA Prisons*, AGENCE FRANCE PRESSE ENGLISH WIRE, Nov. 2, 2005; *Yemen says U.S. sent prisoners to Europe*, UNITED PRESS INT'L (UPI), Dec. 11, 2005, at <http://www.upi.com/InternationalIntelligence/view.php?StoryID=20051211-051738-9694r>.

² See, *id.* and further e.g., Craig Whitlock, *Europeans Probe Secret CIA Flights; Questions Surround Possible Illegal Transfer of Terrorism Suspects*, WASH. POST, Nov. 17, 2005, at A22; Eric Schmitt & Carolyn Marshall, *In Secret Unit's 'Black Room,' a Grim Portrait of U.S. Abuse*, N.Y. TIMES, Mar. 19, 2006.

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Records Requested

Please disclose any records reflecting, discussing or referring to the policy and/or practice concerning:

1. The apprehension, transfer, detention, and interrogation of persons within the Scope of Request, including but not limited to:

(a) The transfer of intelligence by one or more U.S. agencies or government officials to one or more foreign agencies or officials, in connection with the apprehension or detention of a person.

(b) A request or direction by one or more U.S. agencies or government officials to one or more foreign agencies or officials regarding the apprehension of any person, and any related agreement concerning such apprehension.

(c) The apprehension of a person in a foreign country by, with the involvement of, or in the presence of one or more U.S. officials.

(d) The transfer of a person from any country to any other country for the purpose of detention and/or interrogation, at the direction or request or with the knowledge of one or more U.S. agencies or officials.

(e) The transfer of a person from one place of detention to another within the same country at the direction or request or with the knowledge of one or more U.S. agencies or officials.

(f) The detention of a person in a foreign country at the direction or request of one or more U.S. agencies or officials, including any agreement concerning the detention.

(g) One or more U.S. agencies or officials seeking and/or being granted access to a foreign national detained in a foreign country.

(h) One or more U.S. agencies or officials being present in a place of detention in a foreign country. This does not include visits to U.S. citizens by U.S. officials pursuant to the Vienna Convention on Consular Relations.

(i) One or more U.S. agencies having control, direction, or administration of a subdivision, portion, or "cell" of a place of detention in a foreign country.

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2. Current and former places of detention where individuals within the Scope of Request have been or are currently held, including but not limited to:

(a) Any place of detention in a foreign country being under the control, direction, or administration of one or more U.S. agencies.

(b) Any place of detention that is not under the control, direction or administration of one or more U.S. agencies, where a detainee is held at the request or instruction of one or more U.S. agencies or officials.

(c) Any subdivision, portion, or "cell" of a place of detention in a foreign country under the control, direction, or administration of one or more U.S. agencies.

(d) Any agreement between the U.S. government or one or more U.S. agencies or officials, and a foreign government or one or more foreign agencies or officials, in relation to a place of detention in a foreign country, regardless of whether that place of detention is foreign or U.S.—controlled.

3. The names and identities of detainees who fall within the scope of this request.³

Fee Waiver

The requestors qualify as "representatives of the news media" and the records sought are not for commercial use. Moreover, this Request "is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii).

Amnesty International is a non-governmental organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters and urgent action requests informing the public about human rights, including torture and disappearances. AI also disseminates information through its website www.amnesty.org.

³ Because of the nature of their detention, the requestors do not know the names or identities of those within the scope of this request. For examples of individuals that the United States has acknowledged detaining, but about whom the United States has not provided public information, see Center for Human Rights and Global Justice, *Fate and Whereabouts Unknown: Detainees in the "War on Terror"* (2005), available at <http://www.nyuhr.org/docs/Whereabouts%20Unknown%20Final.pdf>; and Human Rights Watch, "List of 'Ghost Prisoners' Possibly in CIA Custody (2005)", available at <http://hrw.org/english/docs/2005/11/30/usdom12109.htm>. The scope of this request extends far beyond these examples.

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The Center for Human Rights and Global Justice is a research center at NYU Law School. CHRGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education and training. CHRGJ publishes reports and operates a website www.nyuhr.org discussing human rights issues.

The International Human Rights Clinic is a project of CHRGJ and an official program at NYU Law School, composed of students and directed by clinical professors, who engage in research and advocacy on human rights issues.

Washington Square Legal Services is a not-for-profit corporation that houses the clinical program of NYU Law School.

The requesters plan to disseminate the information disclosed as a result of this Request through the channels described above.

Expedited Processing

Expedited processing is warranted as there is a "compelling need" for the records sought in this Request. 5 U.S.C. § 552(a)(6)(E)(i)(I). This need arises because the requesters are "primarily engaged in disseminating information" and there is an "urgency to inform the public concerning actual or alleged Federal Government Activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 32 C.F.R. § 286.4(d)(3)(ii) (DOD); 6 C.F.R. § 5.5(d)(1)(ii) (DHS); 28 C.F.R. § 16.5(d)(1)(ii) (DOJ); 22 C.F.R. § 171.12(b)(2) (DOS).

AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CHRGJ is engaged in disseminating information about human rights, including in particular, the Federal Government's role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGJ's website. The Clinic actively supports this work, and WSLS houses the clinic. As reflected in the media articles cited above, there is an urgent need to provide the public with information relating to the U.S. government's practices concerning unregistered or ghost detainees.

There is also a "compelling need" because failure to obtain the records on an expedited basis "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). See also 32 C.F.R. § 286.4(d)(3)(i) (DOD); 6 C.F.R. § 5.5(d)(1)(i) (DHS); 28 C.F.R. § 16.5(d)(1)(i) (DOJ); 22 C.F.R. § 171.12(b)(1) (DOS). This Request arises in the context of allegations of ongoing unlawful detention and abuse of individuals with the involvement of U.S. agents abroad. Failure to publicly expose and thereby halt any such practices could reasonably be expected to pose an imminent threat to the physical

WILMERHALE

FOIA Request
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Page 7

safety and lives of individuals whose identities we are unable to ascertain without the records sought herein.

AI and WSLS certify that the foregoing statements regarding the basis for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). *See also* 32 C.F.R. § 286.4(d)(3)(iii) (DOD); 6 C.F.R. § 5.5(d)(3) (DHS); 28 C.F.R. § 16.5(d)(3) (DOJ); 22 C.F.R. § 171.12(b) (DOS).

* * *

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

As indicated above, we are applying for expedited processing of this Request. Notwithstanding your determination of that application, we look forward to your reply to the Request **within twenty (20) days**, as required under 5 U.S.C. § 552(a)(6)(A)(i).

WILMERHALE

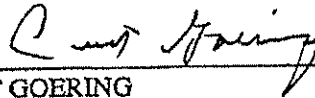
FOIA Request
April 21, 2006
Page 8

Thank you for your prompt attention. Please direct all questions and future responses to:

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Sincerely,



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Re: Request Under the Freedom of Information Act for Records Concerning Ghost Detainee Memoranda, Department of Defense Detainee Reporting, Reports to Certain U.N. Committees, and the Draft Convention on Enforced Disappearance

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The Request is submitted on behalf of Amnesty International ("AI") and Washington Square Legal Services, Inc. ("WSLS"). AI is a non-government organization and a world-wide movement of members who campaign for internationally-recognized human rights. WSLS is the corporation that houses the International Human Rights Clinic ("the Clinic") of the New York University School of Law ("NYU Law School"). The Clinic is a project of NYU Law School's Center for Human Rights and Global Justice ("CHRGJ").

We are filing this request simultaneously with the Department of Defense (including its components, the Department of the Army, Navy and Air Force, the Marine Corps, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, the Central Intelligence Agency, and the Department of Homeland Security (including its components the Office of Intelligence and Analysis, the Directorate for Policy, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, U.S. Coast Guard, and U.S. Customs and Border Protection). By this letter, we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

We are seeking the opportunity to inspect and copy, if necessary, all records in the possession of the Department, including any officers, divisions or bureaus thereof, on the topics listed below.

Wilmer Cutler Pickering Hale and Dorr LLP, 2445 M Street, NW, Washington, DC 20037

Baltimore Beijing Berlin Boston Brussels London Munich New York Northern Virginia Oxford Palo Alto Waltham Washington

Definitions

For purposes of this request, the following terms shall be understood as described below:

The term "records" includes any and all reports, statements, examinations, memoranda, correspondence (including electronic mail), designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, or guidelines.

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The term "place of detention" means any place or facility in which a "detainee" is kept, inside or outside the United States, regardless of whether it is officially recognized as a place of detention.

Unless otherwise specified, this request relates to all records generated between September 11, 2001 and the present.

Memoranda of Understanding

The practice of persons being kept as “off-the-record” detainees in military prisons has been well documented.¹ In this context, “ghost” or “unregistered” detainees are understood to refer to those detainees who were at some point during their detention, or remain: not “officially” registered at military facilities; “kept off the books”; and/or denied access to the International Committee of the Red Cross (ICRC).² Documents produced by the Department of Defense on March 3, 2005 pursuant to an ACLU FOIA request³ and a media report in the

¹ See Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16. See also Jane Mayer, *A Deadly Interrogation: Can the C.I.A. Legally Kill a Prisoner?*, NEW YORKER, Nov. 14, 2005, at 44 (discussing the practice, particularly with respect to the death of Manadel al-Jamadi). See also the following Department of Defense documents released to the American Civil Liberties Union (ACLU) pursuant to a *Freedom of Information Act* request, all available at <http://www.aclu.org/torturefoia/released/030905/>: Transcript of deposition of Brig. Gen. Janis L. Karpinski, Appendix to Fay/Jones/Kern Report (July 18, 2004); Statement of MNF-I, C2, IMIR CW2, Annex to Fay/Jones/Kern Report (June 16, 2004); Sworn Statement of E-5, 519th MI Bn, Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report; Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report; Sworn Statement of SGT, 372nd MP, Camp Victory, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of SPC/E4, B Co., 66th MI Group, 202nd MI BN, Annex to Fay/Jones/Kern Report (May 24, 2004); Sworn Statement of SGT, Member of GTMO team, “Shut Up Group,” Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of CW2, A/519th MI Bn, Annex to Fay/Jones/Kern Report (May 19, 2004); Sworn Statement of SGT, 372nd MP Co, Annex to Fay/Jones/Kern Report (May 7, 2004); Statement of B/Co, 470th MI Grp. SGT, Annex to Fay/Jones/Kern Report (May 18, 2004). See further HUMAN RIGHTS FIRST, *BEHIND THE WIRE: AN UPDATE TO ENDING SECRET DETENTIONS 6* (2005), available at http://www.humanrightsfirst.org/us_law/PDF/behind-the-wire-033005.pdf (providing overview of the practice of ghosting in military facilities); HUMAN RIGHTS WATCH, *THE UNITED STATES' DISAPPEARED: THE CIA'S LONG-TERM "GHOST DETAINEES"* 5-15 (2004), available at <http://www.hrw.org/backgrounder/usa/us1004/us1004.pdf> (outlining practice of keeping CIA prisoners in military detention generally).

² *Id.*

³ See Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report, in Department of Defense FOIA Release, at 000719-000725, available at <http://www.aclu.org/torturefoia/released/030905/> (“OGA and TF-121 routinely brought in detainees for a short period of time. The A/519th soldiers initiated the term ‘ghost.’ They stated they used this term as the detainees were not in-processed in the normal way via the MP database and were not yet categorized. It was difficult to track these particular detainees and I and other officers recommended that a Memorandum of Understanding be written up between OGA, the 205th MI BDE and the 800th MP BDE to establish procedures for a ghost detainee”); Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report, in Department of Defense FOIA Release, at 000726-000729, available at <http://www.aclu.org/torturefoia/released/030905/> (“...in reference to Ghost detainees, OGA would bring in detainees for a short period of time. [REDACTED] brought them in. These particular ghost detainees were not yet categorized and OGA was working on that. It was very difficult keeping track of these OGA because they were not processed until OGA decided to turn them over to us. COL PAPPAS was not happy with that procedure.

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Page 4

Washington Post dated March 11, 2005⁴ indicate that this arrangement for "ghosting" was not "ad hoc" but was embodied in a Memorandum of Understanding (MOU) between military officials and the CIA.⁵ The exact contours of this arrangement are not publicly known as a copy of this MOU was not included in the documents released by the Department of Defense.⁶

Records Requested

We seek the following records relating to the arrangement described above:

1. Any memorandum of understanding, or other record reflecting an agreement or proposed agreement between agencies, or between any agency and any subdivision or official, concerning the handling of ghost or unregistered detainees. This includes but is not limited to:
 - (a) Any record reflecting communications about whether or not to draft any memorandum of understanding or agreement regarding unregistered or ghost detainees.
 - (b) Any record reflecting communications about the content of any memorandum of understanding or agreement regarding unregistered or ghost detainees.
2. Any record reflecting a policy, whether formal or informal, about the reception, detention, or movement of unregistered or ghost detainees.
3. Any memorandum of understanding, or other record reflecting an agreement between any agencies, or between any subdivision or official or any other agency, regarding the transfer of detainees from the custody of one agency to that of another.

[REDACTED] recommended that a Memorandum of Understanding be written up between OGA and MI on the procedures to drop off a ghost detainee. COL PAPPAS met with OGA and TF-121 and the memorandum on procedures for dropping ghost detainees was signed").

⁴ Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST, Mar. 11, 2005, at A16.

⁵ *Id.*

⁶ Press Release, American Civil Liberties Union, *Newly Released Army Documents Point to Agreement Between Defense Department and CIA on "Ghost" Detainees, ACLU Says: Declassified Annexes to Fay Report, Which Denied Link, Contain Further Evidence of Brutal Army Abuses* (Mar. 10, 2005), *available at* <http://www.aclu.org/safefree/general/17597prs20050310.html>.

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Department of Defense Detainee Reporting

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, 118 Stat. 1811 (2004) ("the Act"), requires the Department of Defense to submit an annual report regarding certain detainees.

Records Requested

4. Any record generated in connection with the reporting requirement under Section 1093(c) of the Act, regardless of whether or not such record was actually submitted in the final report, and any record submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives pursuant to Section 1093(c) of the Act.⁷ This includes but is not limited to records reflecting:

- (a) Any notice of investigation into any violation of international obligations or laws of the United States regarding the treatment of individuals detained by the U.S. Armed Forces or by a person providing services to the Department of Defense on a contractual basis.
- (b) Any discussions regarding whether any investigation described in Request 4(a) should be reported.
- (c) The number of detainees held in Department of Defense custody, or released from Department of Defense custody during the time period covered by the report, broken down into the greatest number of time intervals for which such information is available.
- (d) The number of detainees detained by the Department of Defense as "enemy prisoners of war," "civilian internees," and "unlawful combatants," broken down into the greatest number of time intervals for which such information is available.
- (e) The number of detainees detained by the Department of Defense under any status other than "enemy prisoners of war," "civilian internees," and "unlawful combatants," broken down into the greatest number of time intervals for which such information is available.

⁷ Section 1093(e) of the Act mandates that the reports "be submitted, to the extent practicable, in unclassified form, but may include a classified annex as necessary to protect the national security of the United States." To the extent any records or portions of records responsive to this request are classified, please provide basic information as to the date, sender, recipient, and subject matter of the classified records.

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- (f) The transfer or proposed transfer of detainees by the Department of Defense to the jurisdiction of other countries, and the countries to which those detainees were transferred.
- (g) Any communications regarding decisions to include or not include information in the Department of Defense's report under Section 1093(c) of the Act and decisions as to whether to submit any information in unclassified or classified form pursuant to Section 1093(d) of the Act.

United States Report to the Committee Against Torture

On May 6, 2005, the U.S. submitted its Second Periodic Report to the United Nations ("U.N.") Committee Against Torture, as required by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Records Requested

All records reflecting:

5. Communications regarding the United States' Second Periodic Report to the Committee Against Torture, including but not limited to:

- (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Committee Against Torture.
- (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment relating to apprehension, transfer and detention, (including Articles 1, 3, 5, 16), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
- (c) Proposed language or earlier drafts of the report to the Committee Against Torture.

United States Report to the Human Rights Committee

On November 28, 2005, the U.S. submitted its Third Periodic Report to the U.N. Human Rights Committee, as required by the International Covenant on Civil and Political Rights.

Records Requested

All records reflecting:

6. Communications regarding the United States' Third Periodic Report to the Human Rights Committee, including but not limited to:

- (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Human Rights Committee.
- (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the International Covenant on Civil and Political Rights relating to apprehension, transfer and detention, (including Articles 6, 7, 9), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
- (c) Proposed language or earlier drafts of the report to the Human Rights Committee.

The Convention on the Protection of all Persons from Enforced Disappearance

On September 23, 2005, a U.N. working group concluded the draft text of the Convention on the Protection of all Persons from Enforced Disappearance. In 2006, the draft convention will be submitted to the U.N. Commission on Human Rights and the U.N. General Assembly, before being opened for signature and ratification.

Records Requested

7. Any record reflecting communications regarding the negotiation or drafting of the draft Convention on the Protection of all Persons from Enforced Disappearance.

8. Any record reflecting communications with a foreign government, or an agency or official of a foreign government, regarding the drafting of the draft Convention on the Protection of all Persons from Enforced Disappearance.

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Fee Waiver

The requestors qualify as "representatives of the news media" and the records sought are not for commercial use. Moreover, this Request "is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii).

Amnesty International is a non-government organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters and urgent action requests informing the public about human rights, including the prohibition on torture and the prohibition on disappearances. AI also disseminates information through its website www.amnesty.org.

The Center for Human Rights and Global Justice is a research center at NYU Law School. CHRJGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education and training. CHRJGJ publishes reports and operates a website www.nyuhr.org discussing human rights issues.

The International Human Rights Clinic is a project of CHRJGJ and an official program at NYU Law School, composed of students and directed by clinical professors, who engage in research and advocacy on human rights issues.

Washington Square Legal Services is a not-for-profit corporation that houses the clinical program of NYU Law School.

The requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above.

Expedited Processing

Expedited processing is warranted as there is a "compelling need" for the records sought in this request. 5 U.S.C. § 552(a)(6)(E)(i)(I). The requesters are primarily engaged in "disseminating information" and there is an "urgency to inform the public concerning the actual or alleged Federal Government Activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 32 C.F.R. § 286.4(d)(3)(ii) (DOD); 6 C.F.R. § 5.5(d)(1)(ii) (DHS); 28 C.F.R. § 16.5(d)(1)(ii) (DOJ); 22 C.F.R. § 171.12(b)(2) (DOS).

AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CHRJGJ is engaged in disseminating information about human rights, including in particular, the Federal

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Government's role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGF's website. The Clinic actively supports this work, and WSLs houses the clinic. As reflected in the media reports discussed above, there is an urgent need to provide the public with information relating to the U.S. government's practices concerning unregistered or ghost detainees.

There is also a "compelling need" because failure to obtain the records on an expedited basis "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). *See also* 32 C.F.R. § 286.4(d)(3)(i) (DOD); 6 C.F.R. § 5.5(d)(1)(i) (DHS); 28 C.F.R. § 16.5(d)(1)(i) (DOJ); 22 C.F.R. § 171.12(b)(1) (DOS). This Request arises in the context of allegations of ongoing unlawful detention and abuse of individuals with the involvement of U.S. agents abroad. Failure to publicly expose and thereby halt the practices prompting this Request could reasonably be expected to pose an imminent threat to the physical safety and lives of such individuals.

AI and WSLs certify that the foregoing statements regarding the basis for expedited processing are true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). *See also* 32 C.F.R. § 286.4(d)(3)(iii) (DOD); 6 C.F.R. § 5.5(d)(3) (DHS); 28 C.F.R. § 16.5(d)(3) (DOJ); 22 C.F.R. § 171.12(b) (DOS).

* * *

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

As indicated above, we are applying for expedited processing of this Request. Notwithstanding your determination of that application, we look forward to your reply to the Request **within twenty (20) days**, as required under 5 U.S.C. § 552(a)(6)(A)(i).

WILMERHALE

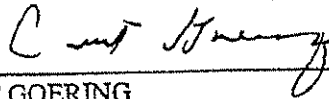
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Page 10

Thank you for your prompt attention. Please direct all questions and future responses to:

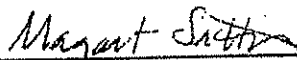
CATHERINE K. RONIS
Counsel to Amnesty International USA
WilmerHale
2445 M Street Washington, D.C. 20037
Tel: (202) 663-6380
Fax: (202) 663-6363
E-mail: catherine.ronis@wilmerhale.com

If you need someone to reach by telephone or email, you may also contact Kyle DeYoung at WilmerHale at (202) 663-6785.

Sincerely,



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Deputy Director
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Fax: (212) 627-1451
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TAB C



Washington, D.C. 20505

5 May 2006

Catherine Kane Ronis, Esq.
Counsel to Amnesty International USA
WilmerHale
2445 M Street, N.W.
Washington, D.C. 20037

Dear Ms. Ronis:

The office of the Information and Privacy Coordinator has received your 25 April 2006 Freedom of Information Act request. Our officers will review it, and will advise you should they encounter any problems or if they cannot begin the search without additional information.

I reviewed your request for expedited processing in accordance with Agency regulations. Your request does not meet the standards for expedited processing specified in Agency regulations and therefore is denied. The Agency will process your request in accordance with its standard procedures.

We have assigned your request Reference No. F-2006-01014. Please use this number when corresponding with us about this request so that we can identify it easily.

Sincerely,

A handwritten signature in black ink that reads "Scott Koch".

Scott Koch
Information and Privacy Coordinator

TAB D

Central Intelligence Agency



Washington, D.C. 20505

5 May 2006

Catherine Kane Ronis, Esq.
Counsel to Amnesty International USA
WilmerHale
2445 M Street, N.W.
Washington, D.C. 20037

Dear Ms. Ronis:

The office of the Information and Privacy Coordinator has received your 25 April 2006 Freedom of Information Act request. Our officers will review it, and will advise you should they encounter any problems or if they cannot begin the search without additional information.

I reviewed your request for expedited processing in accordance with Agency regulations. Your request does not meet the standards for expedited processing specified in Agency regulations and therefore is denied. The Agency will process your request in accordance with its standard procedures.

We have assigned your request Reference No. F-2006-00994. Please use this number when corresponding with us about this request so that we can identify it easily.

Sincerely,

A handwritten signature in black ink that reads "Scott Koch".

Scott Koch
Information and Privacy Coordinator

TAB E

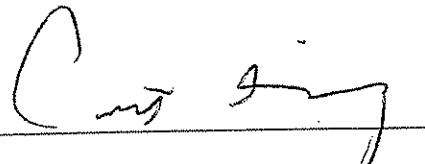
DECLARATION OF CURT GOERING
IN SUPPORT OF REQUEST FOR EXPEDITED PROCESSING

I, Curt Goering, declare pursuant to 5 U.S.C. § 552 and 32 C.F.R. § 286.4 (d)(3)(iv):

1. I am the Senior Deputy Executive Director for Policy and Programs of Amnesty International USA (AIUSA). I submit this declaration in support of the Freedom of Information Act appeal of denial of expedited processing filed today on behalf of Amnesty International and Washington Square Legal Services, Inc.
2. I have been involved with Amnesty International in various capacities for twenty-five years. During that time, I have held positions at Amnesty International's international headquarters in London and at its government relations office in Washington, D.C. I currently work at the national section headquarters in New York City.
3. Amnesty International is dedicated to bringing about a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. To accomplish this goal, Amnesty engages in research and action campaigns. At the heart of every campaign is the dissemination of information about particular human rights abuses that Amnesty International has documented. Amnesty International expends extensive resources researching alleged abuses to generate reports and shape its campaigns.
4. In order to stop human rights violations, Amnesty International exposes them through meticulous, painstaking research and reporting which it discloses to the public, government officials, intergovernmental organizations, opinion leaders and shapers, as well as its members. Every year Amnesty International disseminates human rights information on approximately 150 countries around the world, as well as on abuses perpetrated by non-state actors. In addition, the organization distributes a large volume of information on a broad range of thematic human rights issues such as violence against women, abuses fuelled by military, security or police transfers, refugee and migrant issues, and information about human rights laws and treaties.
5. The publicizing of human rights abuses is a core component of Amnesty International's mission and central to all of its activities. For example, one of Amnesty International's primary action strategies is letter writing, an activity through which Amnesty International communicates its concerns to key decision-makers around the world while simultaneously educating the public and its membership about the issues involved. In addition to letter writing campaigns and reports on human rights issues around the world, Amnesty International engages in widespread education work, the purpose of which is also to disseminate information about human rights.
6. Based on my many years of experience with this organization and my familiarity with its goals and methods, as discussed in ¶¶1-5, I am certain that Amnesty International is primarily engaged in the dissemination of information.

7. It is also my opinion, based on Amnesty International's extensive involvement with the issues over the past forty-five years, that imminent threats to the physical safety and lives of many individuals could be prevented with information we have requested. Research shows that individuals who are held by governments that do not disclose information about their fate and whereabouts are at great risk of physical and psychological maltreatment, torture, and death. Additionally, it is well-established that the psychological impact of prolonged solitary detention in an unknown location may also lead to severe health consequences. For these reasons, I believe that failure to obtain the requested information will pose imminent and ongoing threats to the lives and physical safety of individuals.

8. I further certify that the disclosure of the requested information would serve a humanitarian need for at least two reasons. First, information about secret detention practices is essential for Amnesty International and other organizations to educate the public about these practices. So long as governments believe it is permissible to detain people secretly, without determinations of guilt or any other supervision, our basic human rights are at risk. Second, the information is needed to ensure that those being detained and transferred are not suffering the harms set out in ¶ 7. Disclosure of the fate and whereabouts of the individuals being held or transferred is required to alleviate these risks. The disclosure of this information will therefore promote the welfare and interest of humanity.



Curt Goering, Senior Deputy
Executive Director for Policy and
Programs of Amnesty International
USA

Exhibit I

**INTERNATIONAL HUMAN RIGHTS CLINIC
WASHINGTON SQUARE LEGAL SERVICES, INC.**

245 SULLIVAN STREET, 5th FLOOR, NEW YORK, NY 10012, USA
TEL: +1-212 998-6431 - FAX: +1-212- 995-4031

MARGARET L. SATTERTHWAITTE
Clinic Director

SMITA NARULA
Clinic Director

December 28, 2007

Via Facsimile and U.S. Mail:

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505
(Ph.) 703-613-1287
(Fax) 703-613-3007

Re: Request Under the Freedom of Information Act for Specific Records Concerning
Information on Secret Detention And Rendition

Dear Freedom of Information Act Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The request is submitted by the International Human Rights Clinic of Washington Square Legal Services¹ ("WSLS"), on behalf of WSLS, Amnesty International ("AI"), and the Center for Constitutional Rights ("CCR"). We are currently engaged in litigation with your agency concerning two requests filed on April 25, 2006 by WSLS and AI, and one request filed on December 21, 2004 by CCR, all of which seek records pertaining to rendition and secret detention in connection with the U.S. Government's anti-terrorism efforts.² The attorneys representing the U.S. Government in this litigation are being sent copies of this request.

We seek the opportunity to inspect and copy, if necessary, the specific records listed below, or, in the event that any of the specified records have been destroyed, any records which are integrally related to, summarize, or are interchangeable with said records. We seek records in the possession of the Central Intelligence Agency, including any officers, divisions, or bureaus thereof. We further request that you expedite processing pursuant to 5 U.S.C. § 552(a)(6)(e)(i).

Records Requested

For the purpose of this request, the term "records" includes any and all reports, statements, examinations, memoranda, correspondence, designs, maps, photographs, microfilms, computer tapes or disks, audio or videotapes or transcripts thereof, rules, regulations, codes, handbooks, manuals, or guidelines.

Please disclose the following records, or, in the event that they have been destroyed, any records that are integrally related to, summarize, or are interchangeable with said records.

¹ WSLS is the corporation that supports the International Human Rights Clinic ("the Clinic") of the New York University School of Law. The Clinic is a project of NYU School of Law's Center for Human Rights and Global Justice.

² Amnesty International USA et al. v. CIA, No. 07-cv-5435 (S.D.N.Y.).

1. The spring 2004 report by the Office of the Inspector General (OIG) on the CIA's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The existence of this document was publicly revealed in October 2007 by the *New York Times*.
 - "A report by Mr. Helgeson's office completed in the spring of 2004 warned that some C.I.A.-approved interrogation procedures appeared to constitute cruel, inhuman and degrading treatment, as defined by the international Convention Against Torture." Mark Mazzetti and Scott Shane, *C.I.A. Watchdog Becomes Subject Of C.I.A. Inquiry*, N.Y. Times, October 12, 2007, at A1.

2. The list of "erroneous renditions" compiled by the CIA's OIG. This list was described by several intelligence officials in a December 2005 article in the *Washington Post*.
 - "The CIA inspector general is investigating a growing number of what it calls 'erroneous renditions,' according to several former and current intelligence officials. One official said about three dozen names fall in that category; others believe it is fewer. The list includes several people whose identities were offered by al Qaeda figures during CIA interrogations, officials said." Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, Wash. Post, December 4, 2005, at A1.

3. The fax sent by the CIA to the Royal Canadian Mounted Police Criminal Intelligence Directorate (RCMP CID) in the afternoon or evening of Oct. 3, 2002, asking a number of questions about Maher Arar. The existence of this document was publicly acknowledged in the official report of the Canadian Government's inquiry into the rendition of Mr. Arar.
 - "Late in the afternoon of October 3, the CIA sent a fax to RCMP CID, asking a number of questions about Mr. Arar." Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar, Addendum: Disclosure of Information Authorized by the Federal Court of Canada in accordance with Sections 38.04 and 38.06 of the Canada Evidence Act 157 (2006) (based on 2005 testimony of Gar Parady, Director General of the Consular Affairs Bureau of Foreign Affairs and International Trade Canada (DFAIT)) (Transcripts of Testimony available at <http://www.ararcommission.ca/eng/14b.htm>).

4. The document sent by the CIA to the RCMP CID, the Canadian Security Intelligence Service (CSIS), and Project A-O Canada on Nov. 5, 2002 in response to requests for information on the whereabouts of Mr. Arar. The existence of this document was publicly acknowledged in the official report of the Canadian Government's inquiry into the rendition of Maher Arar.
 - "On November 5, the CIA sent CSIS and Project A-O Canada a written response to CSIS' [sic] October 10 request for information about the circumstances of Mr. Arar's removal." Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar, Addendum: Disclosure of Information Authorized by the Federal Court of Canada in accordance with Sections 38.04 and 38.06 of the Canada Evidence Act 307 (2006). "An identical reply was also sent to RCMP Headquarters." *Id.* at 180

(based on testimony of Dan Livermore of the Security and Intelligence Branch of DFAIT).

5. The cables between the Deputy Director of Operations (or other agency official(s)) at the CIA and the operative(s) in the field discussing and/or approving the use of a slap on detainee Abu Zubaydah (Zein al Abideen Mohamed Hussein). The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007.
 - "There was discussion: 'Should we slap him? What's to be gained if we slap him?' . . . The Deputy Director for Operations says, 'Yes, you can slap him.' The cable goes out. They slap him." "*CIA - Abu Zubaydah*": Interview with John Kiriakou (ABC News broadcast Dec. 10, 2007), available at http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf and http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript2_blotter071210.pdf
6. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of a slap on detainee Khalid Sheikh Mohammed. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
7. The cables between the Deputy Director of Operations (or other agency official(s)) at the CIA and the operative(s) in the field discussing and/or approving the use of an 'attention shake' on Abu Zubaydah. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007.
 - "[W]e had these trained interrogators who were sent to his location-- to use the enhanced techniques as necessary to get him to open up... [T]hese enhanced techniques included everything from-- what was called an attention shake where you grab the person by their lapels and sha[ke] them." *Id.*
8. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of an 'attention shake' on Khalid Sheikh Mohammed. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
9. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) to the operative(s) in the field discussing and/or approving the use of sleep deprivation on Abu Zubaydah. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
10. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of sleep deprivation on Khalid Sheikh Mohammed. The existence of such cables was

acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*

11. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of waterboarding on Abu Zubaydah. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
 - “Two people were water boarded, Abu Zubaydah being one.” *Id.*
12. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of waterboarding on Khalid Sheikh Mohammed. The existence of such cables was acknowledged by former CIA employee John Kiriakou during an ABC News program on Dec. 10, 2007. *Id.*
 - “It’s my understanding that he [Khalid Sheikh Mohammed] was—that he was also water boarded.” *Id.*
13. Video tapes, audio tapes, and transcripts of materials related to interrogations of detainees that were acknowledged to exist during the case of *United States v. Zacharias Moussaoui* and described in a letter from United States Attorney Chuck Rosenberg to Chief Judge Karen Williams, United States Court of Appeals for the Fourth Circuit, and Judge Leonie Brinkema, United States District Court, Eastern District of Virginia, dated October 25, 2007, including, but not limited to two video tapes and one audio tape of interrogations of detainees, the transcripts of those tapes submitted for the court’s review in the *Moussaoui* case, and the intelligence cables summarizing the substance of those tapes.
 - Letter from Chuck Rosenberg, U.S. Attorney, to the Honorable Karen J. Williams and the Honorable Leonie Brinkema, (Oct. 25, 2007), *available at* http://graphics8.nytimes.com/packages/pdf/world/20071207_intel_letter.pdf.
14. The Sept. 13, 2007 notification (described in a letter from Chuck Rosenberg to Judges Williams and Brinkema, dated October 25, 2007) from the attorney for the CIA informing the United States Attorney for the Eastern District of Virginia that the CIA had obtained a video tape of an interrogation of one or more detainees. *Id.*
15. The communications between the CIA and the U.S. Embassy in Sana’a, Yemen, relating to the apprehension, transfer and/or detention of Mohamed Farag Ahmad Bashmilah (Muhammad Bashmilah). These communications likely occurred on or around March 5, 2005, and were preparatory to a communication between the U.S. Embassy in Sana’a and the Government of Yemen that has been acknowledged by the Government of Yemen.
 - “On March 5, 2005, the United States, through the Liaison Officer in Sanaa [sic], informed the Central Organization for Political Security in Yemen that Mr. Mohamed Bashmilah was being held in their custody.” Letter from the Embassy of the Republic of Yemen in France to Mr. Dick Marty, Council of Europe (Mar. 27, 2006) (filed as Exhibit G to Declaration of Mohamed Farag Ahmad Bashmilah in *Mohamed et al. v. Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (N.D.Cal. Dec. 14, 2007)).

16. The communications between the U.S. Government and the Government of Yemen, and/or any documents pertaining to the transfer of Mohamed Farag Ahmad Bashmilah from U.S. custody to the custody of the Government of Yemen on or near May 5, 2005. The Government of Yemen has acknowledged the existence of communications between the U.S. Government and the Government of Yemen concerning Mr. Bashmilah's transfer. *Id.*
17. A copy of the files relating to Salah Nasser Salim Ali and Mohamed Farag Ahmad Bashmilah provided to the Government of Yemen on Nov. 10, 2005 by the United States Government. The Government of Yemen has acknowledged the existence of these files.
 - o Letter from Ghalib Mathar al-Qamish, Chief of the Central Department of Political Security, Yemen, to the Special Rapporteur on the question of Torture and the Special Rapporteur on the question of Human Rights and Counter-Terrorism (Dec. 20, 2005) (filed as Exhibit V to Declaration of Mohamed Farag Ahmad Bashmilah in *Mohamed et al. v. Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (N.D.Cal. Dec. 14, 2007)).

Fee Waiver

The requesters qualify as "representatives of the news media" and the records sought are not for commercial use. Moreover, this Request "is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii).

The International Human Rights Clinic of WSLs is a project of the Center for Human Rights and Global Justice ("CHRGJ") and an official program of NYU School of Law, composed of students and directed by clinical professors who engage in research and advocacy on human rights issues. CHRGJ is a research center at NYU School of Law. CHRGJ aims to advance human rights and respect for the rule of law through advocacy, scholarship, education, and training. CHRGJ publishes reports and also disseminates information through its website, www.chrgj.org.

Amnesty International is a non-governmental organization and a world-wide movement of members who campaign for internationally recognized human rights. AI publishes reports, press-briefings, newsletters, and urgent action requests informing the public about human rights, including torture and disappearances. AI also disseminates information through its website, www.amnesty.org.

The Center for Constitutional Rights is a legal and public education not-for-profit organization that engages in litigation, legal research, and the production of publications in the fields of civil and international human rights. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination. These materials are available through CCR's Development and Education & Outreach Departments. CCR also operates a website, www.ccr-ny.org, that addresses the issues on which CCR works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public.

The requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above. This Request aims generally to further public understanding of government conduct; and particularly to contribute to the current debate around the rendition and secret detention policies and programs put in place by the CIA.

Expedited Processing

Expedited processing is warranted under 5 U.S.C. § 552(a)(6)(E)(i)(I), as there is a “compelling need” for the records sought in this request: the requesters are primarily engaged in “disseminating information” and there is an “urgency to inform the public concerning the actual or alleged Federal Government Activity” under 5 U.S.C. § 552(a)(6)(E)(v)(II). There is also a “compelling need” because failure to obtain the records on an expedited basis “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I).

CHRGJ is engaged in disseminating information about human rights, including in particular, the Federal Government’s role in upholding human rights. As indicated above, this information is disseminated through published reports and CHRGJ’s website. The Clinic actively supports this work, and WSLs houses the clinic. AI is primarily engaged in disseminating information about human rights, through its reports, newsletters, press-briefings, urgent action requests, and on its website. CCR disseminates information through newsletters, publications, handbooks, and through its website. All three organizations seek the documents listed in this request to educate the public about the CIA’s secret detention and rendition program, which is currently the subject of high-profile debate.³

Moreover, failure to obtain the records can reasonably be expected to pose an imminent threat to the physical safety of individuals undergoing or at risk of undergoing ongoing unlawful detention and abuse with the involvement of or at the behest of U.S. agents abroad. 5 U.S.C. § 552(a)(6)(E)(v)(I). Allegations of torture and ill-treatment have surrounded the secret detention and rendition program. Failure to publicly expose and thereby halt the practices prompting this Request could reasonably be expected to pose an imminent threat to the physical safety and lives of at least one individual. CIA director Michael Hayden recently admitted that the secret detention and rendition program remains in operation.⁴

³ See, e.g., Joby Warrick & Dan Eggen, *Waterboarding Recounted: Ex-CIA Officer Says It 'Probably Saved Lives' but Is Torture*, Wash. Post., Dec. 11, 2007, at A1; Pamela Hess, *Congress Wants Answers on CIA Tapes*, Wash. Post., Dec. 11, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/10/AR2007121000087.html>; Mark Mazetti, *CIA Destroyed Two Tapes Showing Interrogations*, N.Y. Times, Dec. 7, 2007, at A1; CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, *SURVIVING THE DARKNESS: TESTIMONY FROM THE U.S. "BLACK SITES" (2007)*, available at <http://www.chrgj.org/projects/docs/survivingthedarkness.pdf>

⁴ CIA Director Hayden recently discussed the secret detention and rendition program on the *Charlie Rose Show*, explaining that as of 2007, the U.S. program of “rendition” and CIA detention continued. *The Charlie Rose Show: Interview with Director Michael Hayden* (PBS television broadcast Oct. 22 & 23, 2007) (transcript available at <https://www.cia.gov/news-information/press-releases-statements/interview-with-charlie-rose.html>).

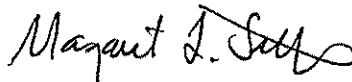
* * *

If this request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. We also reserve the right to appeal a decision to withhold any information.

We look forward to your reply to the Request **within twenty (20) days**, as required under 5 U.S.C. § 552(a)(6)(A)(i).

Thank you for your prompt attention. Should you have any questions in this matter, please contact Margaret L. Satterthwaite, International Human Rights Clinic, Washington Square Legal Services, Inc., New York University School of Law, 245 Sullivan Street, New York, NY 10012; tel.: (212) 998-6657.

Sincerely,



Margaret L. Satterthwaite
Director, International Human Rights Clinic
Washington Square Legal Services, Inc.
New York University School of Law
245 Sullivan Street
New York, NY 10012
Tel: (212) 998-6657
Fax: (212) 995-4031
E-mail: margaret.satterthwaite@nyu.edu

Copies to: Jeannette Vargas, Esq., Assistant United States Attorney
Brian Feldman, Esq., Assistant United States Attorney
Emily E. Daughtry, Esq., Special Assistant United States Attorney
Kyle DeYoung, Esq., WilmerHale
Emi Maclean, Esq., Center for Constitutional Rights

Exhibit J



Washington, D.C. 20505

Ms. Margaret L. Satterthwaite
Director, International Human Rights Clinic
Washington Square Legal Services, Inc.
New York University School of Law
245 Sullivan Street
New York, NY 10012

JAN 30 2008

Reference: F-2008-00611

Dear Ms. Satterthwaite:

On 28 December 2007, the Information and Privacy Coordinator received your Freedom of Information Act (FOIA) request of the same date. Specifically, you request copies of the following records:

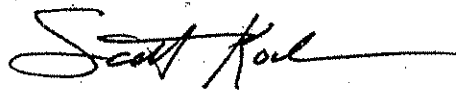
1. The spring 2004 report by the Office of the Inspector General (OIG) on the CIA's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. The list of "erroneous renditions" compiled by the CIA's OIG.
3. The fax sent by the CIA to the Royal Canadian Mounted Police Criminal Intelligence Directorate (RCMP CID) in the afternoon or evening of Oct. 3, 2002, asking a number of questions about Maher Arar.
4. The document sent by the CIA to RCMP CID, the Canadian Security Intelligence Service (CSIS), and Project A-O Canada on Nov. 5, 2002 in response to requests for information on the whereabouts of Mr. Arar.
5. The cables between the Deputy Director of Operations (or other agency official(s)) at the CIA and the operative(s) in the field discussing and/or approving the use of a slap on detainee Abu Zubaydah (Zein al Abideen Mohamed Hussein).
6. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of a slap on detainee Khalid Sheikh Mohammed.
7. The cables between the Deputy Director of Operations (or other agency official(s)) at the CIA and the operative(s) in the field discussing and/or approving the use of an "attention shake" on Abu Zubaydah.
8. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of an "attention shake" on Khalid Sheikh Mohammed.

9. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of sleep deprivation on Abu Zubaydah.
10. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of sleep deprivation on Khalid Sheikh Mohammed.
11. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of waterboarding on Abu Zubaydah.
12. The cables between the Deputy Director of Operations at the CIA (or other agency official(s)) and the operative(s) in the field discussing and/or approving the use of waterboarding on Khalid Sheikh Mohammed.
13. Video tapes, audio tapes, and transcripts of materials related to interrogations of detainees that were acknowledged to exist during the case of *United States v. Zacharias Moussaoui* and described in a letter from United States Attorney Chuck Rosenberg to Chief Judge Karen Williams, United States Court of Appeals for the Fourth Circuit, and Judge Leonie Brinkema, United States District Court, Eastern District of Virginia, dated October 25, 2007, including but not limited to two video tapes and one audio tape of interrogations of detainees, the transcripts of those tapes submitted for the court's review in the *Moussaoui* case, and the intelligence cables summarizing the substance of those tapes.
14. The Sept. 13, 2007 notification (described in a letter from Chuck Rosenberg to Judges Williams and Brinkema, dated October 25, 2007) from the attorney for the CIA informing the United States Attorney for the Eastern District of Virginia that the CIA had obtained a video tape of an interrogation of one or more detainees.
15. The communications between the CIA and the U.S. Embassy in Sana'a, Yemen, relating to the apprehension, transfer and/or detention of Mohamed Farag Ahmad Bashmilah (Muhammad Bashmilah).
16. The communications between the U.S. Government and the Government of Yemen, and/or any documents pertaining to the transfer of Mohamed Farag Ahmad Bashmilah from U.S. custody to the custody of the Government of Yemen on or near May 5, 2005.
17. A copy of the files relating to Salah Nasser Salim Ali and Mohammed Farag Ahmad Bashmilah provided to the Government of Yemen on Nov. 10, 2005 by the United States Government.

The CIA Information Act, 50 U.S.C. § 431, as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of the FOIA. To the extent your request seeks information that is subject to the FOIA, we accept your request and will process it in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, and, unless you object, search only for CIA-originated records existing through the date of this acceptance letter. As a matter of administrative discretion, we have waived any fees associated with the processing of your FOIA request.

You have requested expedited processing. We handle all requests in the order we receive them: that is, "first-in, first-out." We make exceptions to this rule only when a requester establishes a compelling need under the standards in our regulations. A "compelling need" exists: 1) when the matter involves an imminent threat to the life or physical safety of an individual, or 2) when a person primarily engaged in disseminating information makes the request and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity. We have reviewed your request and determined that it does not demonstrate a "compelling need" under these criteria and, therefore, we deny your request for expedited processing.

Sincerely,

A handwritten signature in black ink that reads "Scott Koch". The signature is written in a cursive style with a long horizontal line extending to the right.

Scott Koch
Information and Privacy Coordinator

Exhibit K

81G6ALCA
1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

2
3 AMERICAN CIVIL LIBERTIES
3 UNION, ET AL,

4
4 Plaintiffs,

5
5 v.

04 CV 04151 (AKH)

6
6 DEPARTMENT OF DEFENSE, ET AL,

7
7 Defendants.
8
8 -----x

9 New York, N.Y.
9 January 16, 2008
10 3:20 p.m.

11 Before:

11
12 HON. ALVIN K. HELLERSTEIN,

12
13 District Judge

13
14 APPEARANCES

14
15 AMERICAN CIVIL LIBERTIES UNION
15 Attorneys for Plaintiffs

16 BY: AMRIT SINGH
16 ALEXA KOLBI-MOLINAS
17 -AND-

17 GIBBONS, P.C.
18 BY: LAWRENCE S. LUSTBERG
18 MELANCA D. CLARK

19
19 MICHAEL J. GARCIA
20 United States Attorney for the
20 Southern District of New York

21 SEAN H. LANE
21 PETER M. SKINNER
22 Assistant United States Attorneys

22
23 ALSO PRESENT: JAMEEL JAFFER, ACLU
23 ARTHUR EISENBERG, NYCLU

24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

81G6ALCA

1 THE COURT: I understand that I can look at the
2 effects of techniques that are considered abuse and from that
3 reason backwards. But let's say that we are not talking about
4 categories of abuse now, but we are talking about other kinds
5 of documents that theoretically could exist.

6 What would you want me to look for? I don't think you
7 want me to look at a memorandum discussing various potential
8 techniques and then measure that against my field manual and
9 make my own conclusions whether they are lawful or not lawful.

10 MS. SINGH: Your Honor, you can do that. Because that
11 is the purpose of field manual. It sets out all the
12 interrogation methods.

13 THE COURT: It doesn't do it with the kind of
14 specificity that would enable me to compare a method.

15 MS. SINGH: But the Defense Department can do that.
16 They can tell you which of the methods that it is withholding
17 fall into current methods that are currently listed in the Army
18 field manual and which methods are not.

19 THE COURT: What you want me to do is look or have the
20 government look for any memorandum that comment on deviations
21 from the Army field manual?

22 MS. SINGH: That's correct.

23 THE COURT: Mr. Lane.

24 MR. LANE: Your Honor, as we set forth in our brief
25 and tried to explain earlier, we have released, and again as we

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1 explained in the Church report that we attached --

2 THE COURT: No. If you already released it, it is not
3 a problem. The problem is that which has not been released.

4 MR. LANE: The next step in terms of what has been
5 withheld as a classified document, plaintiffs are seeking to
6 put labels on things to say this is unlawful.

7 THE COURT: I have changed the gloss. I don't want to
8 draw conclusions, but where the Army has drawn conclusions or
9 suspects a conclusion of deviation, Ms. Singh says those
10 documents should be at least given to me for in camera review.

11 MR. LANE: Your Honor, I don't profess to understand
12 how the line that Ms. Singh just identified could actually be
13 done in --

14 THE COURT: I will give you an example.

15 MR. LANE: -- in application.

16 THE COURT: I will give you an example. It has been
17 reported that such and such interrogation technique deviates
18 from the field manual. Then the memorandum goes on to describe
19 and discuss that. That would be a kind of memorandum she would
20 be interested at least for me to look at.

21 MR. LANE: Your Honor, what I can tell you is --

22 THE COURT: I don't want to look at the various
23 categories of techniques and draw my own conclusion whether or
24 not it deviates. I don't want to do that. I don't have the
25 expertise to do that.

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1 MR. LANE: What I think, your Honor, we have tried to
2 do something that is that, although maybe we have called it
3 something else. What we have tried to do, as I have said
4 before, the Army and DoD has released tons of documents
5 relating to allegations of mistreatment, and the allegations of
6 mistreatment boil down to somebody did something to me that
7 they shouldn't have done, which would be something that is
8 beyond the scope of what is authorized. That is what all those
9 Army CID reports that we have been releasing for more than
10 three years are.

11 THE COURT: If you have released it, there is nothing
12 further to do. Ms. Singh --

13 MR. LANE: I thought she was going further than that,
14 your Honor, and essentially saying doctrinally we have to get
15 into weeds and look into where to draw lines.

16 THE COURT: I have narrowed it, Mr. Lane. I have
17 narrowed it. I think her remarks are acceptable to that, but I
18 am not even going that far. I don't like to go through weeds.

19 MR. LANE: I can appreciate that, your Honor.

20 Certainly what DoD has tried to do in this case is
21 release allegations of mistreatment or abuse including entire
22 reports that deal with those things as well as individual
23 investigations that are now closed that address individual
24 allegations of mistreatment.

25 What DoD has also done is where those are allegations

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1 that are made by a detainee may be intertwined with other
2 information about interrogation doctrine techniques and various
3 information that would be sensitive that we have released what
4 we can release and redacted what we can redact.

5 THE COURT: You are slipping off of the point. There
6 is a third category. We have two categories so far: Analyses
7 of causes of deaths and analyses of complaints of abuse.

8 Here is the third category: Documents that make
9 reference to deviations from Army-authorized investigative
10 techniques.

11 In other words, someone has got to put down their
12 conclusion deviation or something equivalent in the memorandum
13 for it to be spotted.

14 I am not looking to make conclusions of what is or
15 what is not a deviation. I am only drawing upon Ms. Singh's
16 request of what already has been labeled as such a document or
17 for you to find out if there is such a deviation. In other
18 words, someone has to say "deviation."

19 MR. LANE: Your Honor, I confess the documents weren't
20 processed that way, but what I can tell you is I think that we
21 are talking about the same thing to be honest with you. I
22 think when we are talking about allegations of mistreatment
23 what we are talking about is whether somebody makes a claim,
24 whether it is investigated as group in a large report like the
25 Church report, or it investigated individual in an request --

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1 THE COURT: Analysis of mistreatments whether it is
2 called abuse or deviations from recognized or authorized
3 interrogation techniques.

4 MR. LANE: Your Honor, one thing I would point out,
5 however, is when your Honor was referring earlier to the chart
6 exemption, the Aly chart Exhibit 1 and some of these documents,
7 you can see that a lot of these documents really just simply
8 don't fall into even Ms. Singh's own category in the sense
9 that --

10 THE COURT: She is giving up a lot of those claims.

11 MR. LANE: Well, your Honor, I am not sure that is the
12 case. I haven't heard that yet from plaintiff's standing here.
13 So that is why I am pointing --

14 THE COURT: I haven't heard it yet, but it is coming
15 because we just discussed it.

16 MR. LANE: That is fine, your Honor.

17 THE COURT: So, look, I have two areas I want to
18 pursue -- two or three depending on how you categorize them.
19 One is analyses of causes of death to prisoners and the second
20 is allegations of either abuse of prisoners or deviations from
21 recognized Army methods of interrogation.

22 MR. LANE: Just to make clear, your Honor, you are not
23 talking about getting into the weeds on essentially detention
24 interrogation policy and its nuances?

25 THE COURT: Already aware there has been a label of
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1 deviation already assigned in some fashion or already suspect
2 or the subject of inquiry.

3 I can't do any better than that because I haven't seen
4 the documents and I am trying to respond to arguments from both
5 of you finding some area where I think there is some room to
6 put in some definition. These will be the subjects of in
7 camera inquires.

8 Does that conclude the DoD, Ms. Singh.

9 MS. SINGH: No, your Honor. It is just Exemption 1,
10 unfortunately. If you would rather move to another agency, I
11 would be glad to relinquish my spot to my colleagues.

12 THE COURT: No, let's finish.

13 MS. SINGH: Your Honor, with respect to Exemption 2,
14 we make a similar argument as we do for Exemption 1. We
15 basically demonstrate in our brief that the government hasn't
16 demonstrated that documents relating to past interrogation
17 methods or abuse could significantly risk circumvention of
18 agency regulations or statute. We make a similar argument with
19 Exemption 7E, which contains similar language to Exemption 2.

20 So I think that your rulings with respect to Exemption
21 1 would also apply to our argument. On Exemption 2 there is
22 one more argument that we make --

23 THE COURT: I think 1 and 2 are collapsing on the same
24 issue.

25 MS. SINGH: There is one more argument that we make
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Exhibit L



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

February 5, 2008

BY FACSIMILE

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007-1312

Re: ACLU, et al., v. Department of Defense, et al., No. 04 Civ. 4151 (AKH)

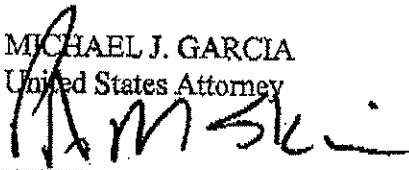
Dear Judge Hellerstein:

This morning, the Director of the Central Intelligence Agency made disclosures to the Senate Select Committee on Intelligence concerning the CIA's past use of an interrogation technique known as waterboarding. These disclosures may affect the CIA's positions in this litigation. We are examining the issue and will apprise the Court and Plaintiffs as soon as possible of any changes in the CIA's positions. We thank the Court for its attention to this matter.

Respectfully,

MICHAEL J. GARCIA
United States Attorney

By:


SEAN H. LANE
PETER M. SKINNER
Assistant United States Attorneys
Telephone: (212) 637-2601

cc: Melanca Clark, Esq.
Amrit Singh, Esq.

Exhibit M



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street, 5th Floor
New York, New York 10007

May 23, 2008

BY FEDERAL EXPRESS

Melanca D. Clark, Esq.
Gibbons, Del Deo, Dolan,
Griffinger & Vecchione, P.C.
One Riverfront Plaza
Newark, N.J. 07102

Re: ACLU, et al., v. Department of Defense, et al., No. 04 Civ. 4151 (AKH);

Dear Ms. Clark:

The CIA has re-reviewed the records that were the subject of the parties' Third Cross-Motion for Summary Judgment to determine whether there are documents, or portions of documents, that may be produced in light of the Director of the Central Intelligence Agency's February 5, 2008 disclosures to the Senate Select Committee on Intelligence concerning the CIA's past use of an interrogation technique known as waterboarding. We are enclosing redacted versions of those documents where the CIA determined that there is segregable information that can be produced. The cover sheet attached to the front of each redacted document identifies a document number, which corresponds to the numbers used for the document descriptions in the Seventh Dorn Declaration. The last document, which was not addressed in the Seventh Dorn Declaration, is a redacted version of the final report of the CIA's Office of Inspector General concerning its review of the CIA's interrogation and detention program.

In addition, at the May 12, 2008 in camera presentation, the Court preliminarily overruled certain of the CIA's FOIA exemption invocations. The Court, however, is permitting the CIA to file a supplemental classified declaration further explaining those exemptions. The Court will review that classified declaration ex parte and in camera, on June 17, 2008, and will then finalize its preliminary rulings. If those rulings require the production of additional information, the CIA will request a stay while it determines whether to appeal those rulings.

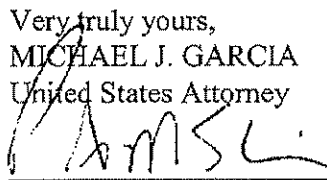
A court reporter transcribed those portions of the May 12, 2008 proceeding that did not concern classified information. With leave of the Court, the CIA has reviewed that transcript to verify that no classified information was inadvertently transcribed. We have notified the Court that the transcript is not classified. It is our understanding that the Court intends to file the transcript on the docket.

Melanca D. Clark, Esq.
May 23, 2008
Page 2

Thank you for your attention to these matters.

Very truly yours,
MICHAEL J. GARCIA
United States Attorney

By:



SEAN H. LANE
PETER M. SKINNER
Assistant United States Attorneys
Telephone: (212) 637-2737

Enclosures