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11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 **BINYAM MOHAMED;**
ABOU ELKASSIM BRITEL;
16 **AHMED AGIZA;**
MOHAMED FARAG AHMAD
17 **BASHMILAH;**
BISHER AL-RAWI,

18 **Plaintiffs,**

19 **v.**

20 **JEPPESEN DATAPLAN, INC.,**

21 **Defendant.**

Civil Action No. 5:07-cv-02798 (JW)

22 **DECLARATION OF ANNA WIGENMARK**
23 **IN SUPPORT OF PLAINTIFFS'**
24 **OPPOSITION TO THE UNITED STATES'**
25 **MOTION TO DISMISS OR, IN THE**
26 **ALTERNATIVE, FOR SUMMARY**
27 **JUDGMENT**
28

Declaration of Anna Wigenmark - C 07-2798-JW

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BASHMILAH only**

Declaration of Anna Wigenmark - C 07-2798-JW

1 I, ANNA WIGENMARK, of Stockholm, Sweden, under penalty of perjury under the laws
2 of the United States of America, declare as follows, pursuant to 28 U.S.C. § 1746:

- 3
4 1. I am a Human Rights Lawyer at the Swedish Helsinki Committee for Human Rights
5 and I am familiar with the factual circumstances surrounding the rendition of Mr.
6 Agiza and another Egyptian citizen, Mohamed El Zery, from Sweden to Egypt on
7 December 18, 2001. I am also well acquainted with international legal proceedings
8 filed on their behalf subsequent to their rendition, as well as the findings of official
9 investigations and inquiries conducted into this matter. I was counsel for Mr. El Zery
10 in his individual application to the U.N. Human Rights Committee. Presently, I am
11 representing both Mr. El Zery and Mr. Agiza in negotiations with the Swedish
12 Chancellor of Justice seeking reparations for their illegal expulsion from Sweden. I
13 have full power of attorney for Mr. Agiza and I make this Declaration on his behalf in
14 opposition to the United States Motion to Dismiss, or in the Alternative, Summary
15 Judgment.
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- 17 2. That Mr. Agiza was removed by the Swedish government from Sweden to Egypt on
18 December 18, 2001, is not in dispute. Attached hereto as Exhibit A is a true and
19 correct copy of the order expelling Mr. Agiza signed by then Minister for Foreign
20 Affairs, Anna Lindh.
21
- 22 3. The specific facts surrounding Mr. Agiza's rendition from Sweden to Egypt on
23 December 18, 2001, including the involvement of agents of the Central Intelligence
24 Agency ("CIA"), are well known by the Swedish public and indeed by thousands of
25 people worldwide. They are as stated in the complaint filed in this matter and, so far
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as I am aware, his specific allegations concerning involvement of agents of the U.S., Swedish and Egyptian governments in his rendition have never been refuted.

4. Since Mr. Agiza's rendition, the facts of his case have been the subject of numerous inquiries at the universal, regional and national level. At the universal level, the United Nations Committee Against Torture has considered and issued recommendations concerning Mr. Agiza's case. Regionally, investigations have been carried out into Mr. Agiza's rendition by the European Parliament and the Council of Europe. And, on the national level, the Office of the Parliamentary Ombudsman of the Swedish Government and the Swedish Parliament's Standing Committee on the Constitution, have conducted inquiries in to his rendition during which both institutions confirmed that agents of the Swedish, U.S. and Egyptian governments were implicated.
5. On June 25, 2003, Mr. Agiza filed a petition before the United Nations Committee Against Torture (CAT) against Sweden, challenging Sweden's decision to expel him. In its decision issued on May 20, 2005, the CAT found that the expulsion of Mr. Agiza violated, *inter alia*, Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (prohibition against rendition to torture).
6. The CAT was provided with detailed information deriving from the Swedish Minister for Foreign Affairs, including reports from the Swedish Embassy in Cairo and Swedish government *aide memoires*. In arriving at its decision, the Committee considered this information together with submissions made by the Swedish

1 government on its liability for the expulsion of Mr. Agiza. In its submission the
2 Swedish government made detailed reference to its discussions with the Egyptian
3 government regarding the decision to expel Mr. Agiza from Sweden to Egypt. In
4 addition, the Committee considered U.S. involvement in the matter. Attached hereto
5 as Exhibit B is a true and correct copy of the findings and recommendations of the
6 CAT Committee, *available at*:

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8 [http://sim.law.uu.nl/SIM/CaseLaw/fulltextcat.nsf/160f6e7f0fb318e8c1256d410033e0](http://sim.law.uu.nl/SIM/CaseLaw/fulltextcat.nsf/160f6e7f0fb318e8c1256d410033e0a1/b38dcf2b03d521cac1257021003d2212?OpenDocument)
9 [a1/b38dcf2b03d521cac1257021003d2212?OpenDocument](http://sim.law.uu.nl/SIM/CaseLaw/fulltextcat.nsf/160f6e7f0fb318e8c1256d410033e0a1/b38dcf2b03d521cac1257021003d2212?OpenDocument)

10 7. Following the Committee's decision, on May 16, 2007, the Swedish government
11 repealed its earlier decision expelling Mr. Agiza from Sweden and referred his request
12 for a residence permit in Sweden to the Swedish Migration Board for examination
13 under the Aliens Act 2005. The Swedish government also referred Mr. Agiza's
14 request for compensation for the injuries he suffered to the government body
15 responsible, the Office of the Chancellor of Justice, instructing the Office to negotiate
16 an agreement with Mr. Agiza on this matter. Attached hereto as Exhibit C is a true
17 and correct copy of a letter dated May 24, 2007, from the Ministry for Foreign Affairs
18 to the Committee Against Torture setting forth this information.

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20 8. A Temporary Committee of the European Parliament established to inquire into the
21 alleged use of European Countries by the CIA for the transportation and illegal
22 detention of prisoners also conducted an inquiry into Mr. Agiza's rendition and issued
23 a report on its findings in January 2007. In sum, in relation to Mr. Agiza's rendition,
24 the European Parliament found that: "the Swedish authorities accepted an (*sic*) US
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1 offer to place at their disposal an aircraft that benefited from special overflight
2 authorisation in order to transport [Mr. Agiza] to Egypt; and “the Swedish security
3 police lost control over the enforcement of the expulsion of Ahmed Agiza [...] to
4 Egypt, outside the rule of law, by remaining passive during the degrading treatment of
5 the men by US agents at Bromma airport.” Attached hereto as Exhibit D is a true and
6 correct copy of the relevant paragraphs of the European Parliament resolution on the
7 alleged use of European countries by the CIA for the transportation and illegal
8 detention of prisoners (2006/2200 (INI)), *available at:*

9 http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf

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11 9. Mr. Agiza’s rendition and subsequent detention in Egypt was the subject of a second
12 inter-governmental inquiry carried out by the Council of Europe into alleged secret
13 detentions and unlawful inter-state transfers of detainees involving Council of Europe
14 Member States. In a report published in 2006, the Council of Europe, based on flight
15 records, and other evidence, concluded that the CIA was involved in Mr. Agiza’s
16 removal from Sweden to Egypt. Attached hereto as Exhibit E is a true and correct
17 copy of the report of the Council of Europe relative to Mr. Agiza’s rendition,
18 *available at:*

19
20 [http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingD
21 ocs/doc06/edoc10957.htm?link=/Documents/WorkingDocs/Doc06/EDOC10957.htm](http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.htm?link=/Documents/WorkingDocs/Doc06/EDOC10957.htm)

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23 10. In 2004-2005, the Parliamentary Ombudsman of the Swedish Government conducted
24 an inquiry into the rendition of Mr. Agiza and Mr. Mohamed El-Zery. The inquiry
25 was initiated by the Ombudsman to establish: “what occurred at Bromma airport and
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1 the manner in which the expulsion of the two Egyptians was carried out.” The
2 Ombudsman’s report, published on March 22, 2005, focused on: “the actions of the
3 [Swedish] Security Police in connection with the use of public authority by *foreign*
4 *officials* on Swedish territory and the use of force and coercive measures.” (emphasis
5 added).
6

7 11. In the course of his inquiry, the Ombudsman interviewed members of the Swedish
8 security police present at Bromma airport during Mr. Agiza’s rendition and examined
9 relevant Swedish security police records as well as documentation from the Swedish
10 Ministry for Foreign Affairs and Ministry of Justice. From his examination of this
11 information, the Ombudsman noted that: “Some time before the expulsion decision
12 was made the Security Police received an offer from the American Central
13 Intelligence Agency (CIA) of the use of a plane that was said to have what was
14 referred to as direct access so that it could fly over Europe without having to touch
15 down.” [¶ 2.4.1.] Quoting from a memorandum drawn up by the Security Police on
16 February 7, 2002, the Ombudsman also noted: “After some consultation with the staff
17 of the Ministry for Foreign Affairs the Foreign Minister then gave approval of the
18 acceptance by SÄPO/RPS of the help offered by the USA for the transport of A. [Mr.
19 Agiza] and E.Z.[Mr. El Zery]” [¶2.4.2.]
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22 12. Referencing official documentation, the report establishes that on the afternoon of
23 December 18, 2001 a Swedish Security Officer met with American officials at
24 Bromma airport to discuss details of Mr. Agiza’s rendition later that day and that:
25 “During the meeting it was also said that the security personnel on the plane might be
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1 wearing hoods and that they wished to conduct a security check of A. [Agiza] and E.Z
2 [Mohamed El Zery] before they boarded the plane.” [¶2.4.3.] And: “in addition to its
3 crew, a security team of seven or eight, among them a doctor and two Egyptian
4 officials” would be on board. [*Id.*]

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6 13. Based on interviews and his examination of both classified and unclassified
7 government documentation, the Ombudsman in his report details the whole rendition
8 process from beginning to end, including the fact that the men were subjected to a
9 rigorous “security check” by Americans wearing hoods and that two representatives
10 of the Swedish Security Police were on board the aircraft when it took off for Cairo.
11 The report also describes the conditions of the two men during the flight and that
12 upon arrival in Cairo at about 3 a.m., Mr. Agiza and Mr. El Zery “disembarked and
13 were received by Egyptian officials [and] driven off in a transit bus.” [*Id.*]

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15 14. The Ombudsman’s report contains a very detailed description of the *modus operandi*
16 of Mr. Agiza’s rendition: “[Mr. Agiza and Mr. El-Zery] were [...] subjected to a
17 security check at Bromma airport conducted by American officials. As has already
18 been made clear, these checks comprised at least the following elements: ‘A. and E.Z.
19 were subjected to body-searches, their clothes were cut to pieces and placed in bags,
20 their hair was thoroughly examined, as were their oral cavities and ears. In addition
21 they were handcuffed and their ankles fettered, dressed in overalls and photographed.
22 Finally loose hoods without holes for their eyes were placed over their heads. A. and
23 E.Z. were then taken out of the police station in bare feet and conveyed to the aircraft
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1 where they were laid on mattresses to which they were strapped. The hoods,
2 handcuffs and fetters were not removed during the flight to Egypt.” [¶ 3.2.2.]

3 15. In conclusion, the Ombudsman determined that: “The Swedish Security Police
4 officers remained in the background while the American officials exercised public
5 authority on their own by, for instance, adopting coercive measures such as body-
6 searches, physical examination and some degree of force in the use of fetters and
7 handcuffs.” [¶ 3.1.2.] and that: “American security officials did not merely assist the
8 [Swedish] Security Police in their enforcement but that in reality they took over and
9 were in control from the moment of their arrival at Bromma airport.” [¶3.1.1.]

10 16. The Ombudsman concludes that in the circumstances agents of the United States and
11 Swedish governments violated Swedish criminal law by subjecting Mr. Agiza to
12 “degrading and humiliating treatment” and by exercising police powers on Swedish
13 soil without legal authority to do so. Attached hereto as Exhibit F is a true and correct
14 copy of the report of the Office of the Parliamentary Ombudsman of the Swedish
15 Government, *available at*:

16 [http://www.jo.se/Page.aspx?MenuId=106&MainMenuId=106&Language=en&Object](http://www.jo.se/Page.aspx?MenuId=106&MainMenuId=106&Language=en&ObjectClass=DynamX_SFS_Decision&Id=1662)
17 [Class=DynamX_SFS_Decision&Id=1662\]](http://www.jo.se/Page.aspx?MenuId=106&MainMenuId=106&Language=en&ObjectClass=DynamX_SFS_Decision&Id=1662)

18 17. The Swedish Parliament’s Standing Committee on the Constitution also inquired into
19 the Swedish government’s handling of Mr. Agiza’s rendition, and in particular,
20 whether the government knew and approved of CIA involvement. In its report on the
21 inquiry, the Standing Committee concluded that Swedish government actions violated
22 Swedish immigration laws, and specifically, the Alien’s Act, prohibiting the transfer
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1 of anyone from Sweden to a country where there is a substantial likelihood of his
2 being subjected to torture. Attached hereto as Exhibit G is a true and correct copy of
3 an English translation of the summary of the conclusions of the Standing Committee
4 on the Constitution.

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6 18. During the hearing, and as recorded in the official report of the proceedings, the
7 Administrative Director of the Swedish security services, Mr. Arne Andersson, stated
8 that Swedish security police fully informed the then Minister for Foreign Affairs
9 about the CIA-involvement in the rendition. Attached hereto as Exhibit H is a true and
10 correct copy of an unofficial English translation of Mr. Arne Andersson's testimony
11 before the Standing Committee.

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13 19. Members of the Standing Committee also interviewed senior Swedish government
14 officials. In response to questions concerning Egyptian and American government
15 involvement in Mr. Agiza's rendition, the State Secretary at the Ministry for Foreign
16 Affairs, Ms. Gun-Britt Andersson, confirmed that an agreement had been reached
17 between Sweden and the Head of Egyptian security regarding Mr. Agiza's removal to
18 Egypt. The political Director at the Ministry for Foreign Affairs, Mr. Sven-Olof
19 Pettersson was also interviewed by the Committee. He confirmed that U.S. officials
20 had assisted in the process of convincing Egypt to accept return of its citizens from
21 Sweden.

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23 20. Mr. Petersson disclosed also that it was American intelligence agencies that had
24 initially provided the Swedish government with information on Mr. Agiza and Mr. El
25 Zery and in the course of a telephone conversation with Ms. Gillian Milovanovic, an
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official from the American Embassy in Stockholm, Ms. Milovanovic had expressed her concern that the two men may not be under constant surveillance by Security Police. Attached hereto as Exhibit I is a true and correct copy of an unofficial English translation of the testimony of Sven-Olof Petersson before the Standing Committee on the Constitution Swedish Parliament.

21. Flight records obtained in the course of the aforementioned inquiries conducted by the European Parliament and Council of Europe confirm CIA involvement in Mr. Agiza's rendition. Both institutions separately identify that a Gulfstream aircraft with the registration number N379P was involved in his transportation to Egypt, and that this aircraft was owned and operated by agents of the CIA. The European Parliament and Council of Europe both also note the same itinerary for this aircraft. Attached hereto as Exhibit J are true and correct copies of the flight records for N379P for December 18, 2001, referenced by the European Parliament and Council of Europe.

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

Executed this ____ day of ____ 2007.

Anna Wigenmark