



# ON THE RECORD:

U.S. DISCLOSURES ON RENDITION,  
SECRET DETENTION, AND COERCIVE INTERROGATION



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The Center for Human Rights and Global Justice (CHRGJ) brings together and expands the rich array of teaching, research, clinical, internship, and publishing activities undertaken within New York University (NYU) School of Law on international human rights issues. Philip Alston is the Center's Faculty Chair; Smita Narula and Margaret Satterthwaite are Faculty Directors; Jayne Huckerby is Research Director; Veerle Opgenhaffen is Program Director; and Lama Fakih is Center Fellow.

The International Human Rights Clinic at NYU School of Law (a program of the Center) provides high-quality, professional human rights lawyering services to individual clients and non-governmental and intergovernmental human rights organizations, partnering with groups based in the United States and abroad. Working as legal advisers, counsel, co-counsel, or advocacy partners, clinic students work side-by-side with human rights activists from around the world. The Clinic is co-directed by Professor Smita Narula and Professor Margaret Satterthwaite of the NYU faculty; and Michelle Williams is Clinic Administrator.

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## **TABLE OF ACRONYMS AND TERMS**

ACLU:	American Civil Liberties Union
AI:	Amnesty International
AIUSA:	Amnesty International USA
CCR:	Center for Constitutional Rights
CHRGJ:	Center for Human Rights and Global Justice at New York University School of Law
CIA:	Central Intelligence Agency
DOD:	U.S. Department of Defense
DOJ:	U.S. Department of Justice
DOJ OIG:	U.S. Department of Justice Office of Inspector General
DTA:	<i>Detainee Treatment Act</i>
FBI:	U.S. Federal Bureau of Investigation
FOIA:	Freedom of Information Act
HRF:	Human Rights First
HRW:	Human Rights Watch
IHRC/ CHRGJ:	International Human Rights Clinic at NYU School of Law's Center for Human Rights and Global Justice
ODNI:	Office of the Director of National Intelligence
TDIP:	European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners
UN:	United Nations
U.S.:	United States



## INTRODUCTION

According to the United States (U.S.) government, shortly after September 11, 2001, the Central Intelligence Agency (CIA) was tasked with planning a “separate” program to begin secretly detaining and interrogating individuals outside of the United States.<sup>1</sup> At that time, the CIA was also reportedly authorized to forcibly transfer individuals to foreign countries for interrogation in a practice commonly known as “rendition” or “extraordinary rendition.”<sup>2</sup> Starting with the rendition of Ibn al-Shaykh al-Libi to Egypt in January 2002,<sup>3</sup> and the detention and interrogation of Abu Zubaydah in March 2002,<sup>4</sup> the U.S. post-9/11 rendition, secret detention, and coercive interrogation program has since swept up many individuals, the vast majority of whom are still unaccounted for by the United States.

Between 2001 and September 2006, information about CIA rendition, secret detention, and coercive interrogation operations emerged piecemeal. The U.S. government was the source of some of this information: officials discussed rendition in the media and on Capitol Hill, but gave only partial accounts; they announced the capture of individuals, but refused to disclose their whereabouts; and they informed the National Commission on Terrorist Attacks Upon the U.S. (the 9/11 Commission) that certain individuals were “currently in U.S. custody,” but refused to give the Commission the access it sought to the detainees themselves. The U.S. government also provided “statements” culled from interrogations on behalf of certain secret CIA detainees in the cases of *United States v. Paracha* and *United States v. Moussaoui*. Media, inter-governmental bodies (such as the Council of Europe and the United Nations (UN)), human rights organizations, and former detainees also provided comprehensive insights into the CIA’s activities.

Following the decision of the U.S. Supreme Court in *Hamdan v. Rumsfeld* on June 29, 2006—holding that Common Article 3 of the Geneva Conventions applies to all U.S. detainee operations in the “War on Terror”—the U.S. government felt compelled to make additional disclosures on its rendition, secret detention, and coercive interrogation activities. On September 6, 2006, President George W. Bush acknowledged that the United States was operating a secret detention program as part of its “War on Terror” and stated that the program would continue.<sup>5</sup> This announcement prompted a slew of acknowledgements about the program by U.S. government personnel acting in their official capacity, ranging from President Bush to the Office of the Director of National Intelligence (ODNI), the Director of the CIA, the Department of Defense (DOD), and U.S. Secretary of State, among others. These acknowledgements provided insights into the nature and scope of the CIA’s program, including, for instance, information concerning:

- The existence and continued use of the CIA’s secret detention and enhanced interrogation program;
- The existence of the government’s rendition program and its use to transfer terrorism suspects to third countries;
- The CIA’s use of an “alternative set of procedures”, a “new interrogation program”, “enhanced interrogation techniques”, or “special methods of questioning” on CIA detainees and how such techniques were purportedly approved (including the role of the National Security Council Principals Committee and the Department of Justice (DOJ));



- The number of individuals detained in the program (“fewer than 100”) and subject to enhanced interrogation techniques (“less than a third” of the “fewer than 100”);
- The number of renditions performed by the CIA, additional to the number it has detained in secret facilities (“mid-range,” “two figures”);
- U.S. collaboration with foreign partners to apprehend, render, and detain individuals;
- The names of 19 individuals secretly detained by the CIA and the details regarding the apprehension of a number of these individuals;
- The CIA’s use of waterboarding against at least three detainees in 2002 and 2003; and,
- The recordings of interrogations of CIA detainees and the subsequent destruction of those videotapes by the CIA in 2005.<sup>6</sup>

These official disclosures are complemented by a wealth of other publicly available information that has come from foreign government officials, former detainees and rendered individuals, and former U.S. officials (speaking both on and off the record) as well as current U.S. officials (speaking off the record) to media, investigatory bodies, and human rights organizations. The plethora of publicly available information highlights the extent to which U.S. government disclosures have been both highly selective and unduly secretive. Such an approach aggravates the state of uncertainty that hangs over the fate and whereabouts of those individuals who are still missing;<sup>7</sup> those who will be subject to the CIA’s activities in the future; and those former CIA detainees who seek redress but have been prevented from pursuing claims in U.S. courts because of the U.S. government’s invocation of the “state secrets” privilege.<sup>8</sup>

In an effort to obtain further information from the U.S. government about its rendition, secret detention, and coercive interrogation activities, in 2004, 2006, and 2007, Amnesty International USA (AIUSA), the Center for Constitutional Rights (CCR), and the International Human Rights Clinic at NYU School of Law’s Center for Human Rights and Global Justice (NYU IHRC/CHRGJ)<sup>9</sup> submitted Freedom of Information Act (FOIA) requests to several U.S. agencies, including the CIA. Following a refusal to disclose the majority of the information sought, AIUSA, CCR, and NYU IHRC filed suit in June 2007 in federal court in the Southern District of New York. In spring 2008, the CIA admitted that it had more than 7,000 relevant documents, but sought a ruling that it did not need to disclose the vast majority of those documents, arguing, *inter alia*, that it cannot be compelled to disclose information it argues is properly classified. In response, on June 26, 2008, AIUSA, CCR, and NYU IHRC filed an opposition to the CIA’s motion for summary judgment and a memorandum of law in support of a cross-motion for partial summary judgment.<sup>10</sup>

This filing was accompanied by an account of what is known to date about the U.S. rendition, secret detention, and interrogation program, in the form of a 78-page declaration by NYU IHRC/CHRGJ’s Professor Margaret Satterthwaite.<sup>11</sup> The declaration—which also contains several hundred pages of exhibits—aggregates all the public information available to date about the CIA’s activities, presenting both U.S. government statements and other publicly available sources, such as media accounts and reports by human rights organizations. This report—*On the Record: U.S. Disclosures on Rendition, Secret Detention, and Coercive Interrogation*—is based in large part on that

declaration. It omits references to, and copies of, exhibits to the declaration, but otherwise presents the same information found in the sources cited within the declaration.

This report aims to shed light both on what has been revealed and what has been obscured by the U.S. government. It also seeks to demonstrate the enormous range of information that is in the public sphere about the nature and scope of the U.S. rendition, secret detention, and coercive interrogation activities. This exercise makes it increasingly evident that the threats of disclosure of “state secrets” and harm to national security are ill-founded, and that the real concern lays in the very fact that a program of this nature exists and continues to operate.

## **I. U.S. GOVERNMENT STATEMENTS ABOUT THE EXISTENCE OF THE POST-9/11 RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM**

### **A. SECRET DETENTION AND INTERROGATION**

President George W. Bush, the Office of the Director of National Intelligence (ODNI), and the CIA have each separately confirmed that, following September 11, 2001, the CIA operated a “separate” CIA detention and interrogation program. In a September 6, 2006 statement, President Bush first officially declared that “[i]n addition to the terrorists held at Guantanamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency.”<sup>12</sup> On September 6, 2006, the ODNI also provided an overview of the “CIA’s detention and interrogation program,” and noted that “[s]hortly after 11 September 2001” there were briefings on the “authorities” for the program.<sup>13</sup>

On November 10, 2006, the CIA Associate General Counsel clarified what the “authorities” for the program may have included in a letter<sup>14</sup> sent to Plaintiffs in *ACLU et. al. v. DOD et. al.*, 04-Civ.-4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.) that stated that the CIA had “located...one document responsive to Item No. 61” of the list of responsive records specifically identified by Plaintiffs. Item No. 61 is described by Plaintiffs as a directive signed by President Bush granting the CIA the authority to set up detention facilities outside the United States and/or outlining interrogation methods that may be used against detainees. The CIA describes the document located as responsive to Item No. 61 as “a memorandum from President Bush to the Director of the CIA. Additionally, General Michael Hayden, Director of the CIA (CIA Director General Hayden) has also made numerous references to “our rendition, detention and interrogation programs” and their origins, stating in September 2007 that “[e]verything is on the table”<sup>15</sup> but also indicating in October 2007 that he “can’t commend [sic] on any of the techniques we may or may not have used.”<sup>16</sup>

President Bush, DOD, and CIA Director General Hayden, have confirmed that the secret detention and coercive interrogation program continues to operate. President Bush stated on September 6, 2006 that “[t]he current transfers mean that there are now no terrorists in the CIA program. But...having a CIA program for questioning terrorists will continue to be crucial...”<sup>17</sup> Following this statement, in April 2007, the Office of the Assistant Secretary of Defense announced that the DOD had taken custody of Abd al-Hadi al-Iraqi and that “prior to his arrival at Guantanamo Bay, he was held in CIA custody.”<sup>18</sup> CIA Director General Hayden also made reference to this transfer in an interview with Charlie Rose, making clear that the U.S. secret detention program was operational into 2007.<sup>19</sup> These assertions were followed by a March 2008 statement by the Office of the Assistant Secretary of Defense in which it was announced that the DOD had taken custody of Muhammad Rahim al-Afghani and that “prior to his arrival at Guantanamo Bay, he was held in CIA custody.”<sup>20</sup>

### **B. RENDITION**

President Bush, U.S. Secretary of State Condoleezza Rice, CIA Director General Hayden, and other U.S. officials have all repeatedly acknowledged the use of rendition to transfer terrorism suspects to third countries. For instance, at a March 2005 press conference, President Bush stated that in the “post-9/11 world” one technique of the United States is to “arrest people and send them

back to their country of origin with the promise that they won't be tortured.”<sup>21</sup> At a press conference the following month, the President reiterated the point and further stated that individuals were also being sent to third countries: “...we send people to countries where they say they're not going to torture the people...”<sup>22</sup> The CIA has made similar admissions about the use of rendition to transfer individuals to third countries. In March 2005, then-CIA Director General Porter Goss testified about “renditions” in an open session of the Senate Armed Services Committee.<sup>23</sup> On September 7, 2007, CIA Director General Hayden discussed the U.S. practice of rendition, characterizing renditions as “renditions—that's moving a terrorist from A to B”<sup>24</sup> The following month, in an interview with Charlie Rose, CIA Director General Hayden further confirmed that there is a “group of people...on whom we've conducted renditions. We have moved them from one country to another.”<sup>25</sup>

Confirmation that the United States uses the practice of “rendition” has also come from U.S. Secretary of State Condoleezza Rice,<sup>26</sup> White House Press Secretaries Scott McClellan<sup>27</sup> and Tony Snow,<sup>28</sup> and CIA spokesperson, Paul Gimigliano, who has explained that “[s]etting aside the myths, rendition...has been used over the years on a very limited scale, and is designed to take terrorists off the street.”<sup>29</sup>

## **II. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT THE EXISTENCE OF THE POST- 9/11 RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM**

### **A. AUTHORIZATION AND DEBATE OVER THE PROGRAM**

Media and other reports have also widely reported on the adoption of the CIA's rendition, secret detention, and coercive interrogation programs and the means by which they were authorized. In March 2005, the New York Times reported that a presidential directive purportedly gave the CIA broad new authority to covertly transfer individuals to third countries solely for interrogation or detention purposes.<sup>30</sup> In November 2005, the Washington Post discussed in detail the "covert prison system set up by the CIA nearly four years ago" and noted that "six days after the Sept. 11 attacks, President Bush signed a sweeping finding that gave the CIA broad authorization to disrupt terrorist activity, including permission to kill, capture and detain members of al Qaeda anywhere in the world."<sup>31</sup> The following month, ABC News noted that the "CIA's secret prisons have existed since March 2002."<sup>32</sup> Then, in December 2005, the New York Times reported that Ibn al-Shaykh al-Libi was rendered to Egypt in January 2002 "...because the White House had not yet provided detailed authorization for the C.I.A. to hold him," and noted that the CIA itself began to detain individuals in 2002 with the apprehension of Abu Zubaydah.<sup>33</sup> In 2006, the Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights described a "global 'spider's web'" of rendition operations and secret detentions.<sup>34</sup> Its subsequent report on the issue, also described the development of the "High-Value Detainee" (HVD) Program and the "evolution of specific 'black sites'" in the program.<sup>35</sup>

Media and other reports have also widely reported on debates between the CIA and other agencies over the adoption of the CIA's rendition, secret detention, and coercive interrogation programs. In June 2004, Newsweek reported that the handling of Ibn al-Shaykh al-Libi had set off a "bitter feud between the FBI and the CIA over how to interrogate terror suspects."<sup>36</sup> Other sources have described the "turf battle" over al Qaeda prisoners<sup>37</sup> and the protracted debate over the treatment of "high-value" al Qaeda suspects, their transfers, their location of detention, and whether they would be placed into the criminal justice system or held outside that system.<sup>38</sup>

### **B. RENDITION FOR COERCIVE INTERROGATION**

Former U.S. officials have acknowledged the use of renditions to transfer terrorism suspects to third countries. For instance, Tyler Drumheller, former chief of the CIA's Europe division, stated that he "...once had to brief Condoleezza Rice on a rendition operation, and her chief concern was not whether it was the right thing to do, but what the president would think about it...This is no way to run a covert policy."<sup>39</sup> Michael Scheuer, former Chief of the Bin Laden Unit at the CIA and an architect of the rendition program, has also acknowledged the existence of the program in describing the origins of the "Rendition Program" and its current manifestations.<sup>40</sup>

Beginning in 2002, media and other accounts have also quoted named and unnamed U.S. officials stating that the post 9/11 rendition program was aimed at coercive interrogation, including torture and cruel, inhuman, and degrading treatment. In March 2002, the Guardian quoted an unnamed U.S. diplomat stating that "[a]fter September 11, [renditions] have been occurring all the

time...It allows us to get information from terrorists in a way we can't do on U.S. soil.”<sup>41</sup> In December 2002, the Washington Post also quoted an unnamed official who has been involved in rendering individuals, who explained his understanding of the purpose of post-9/11 renditions as follows: “We don’t kick the [expletive] out of them. We send them to other countries so *they* can kick the [expletive] out of them.”<sup>42</sup> (emphasis in original). In a later article, the Washington Post quoted an unnamed official who revealed that “[t]he temptation is to have these folks in other hands because they have different standards.”<sup>43</sup> In a 2005 interview with the BBC, Robert Baer, a former covert officer for the CIA, confirmed that one goal of the rendition program is to employ harsh interrogation tactics: “If you send a prisoner, for instance, to Egypt, you will probably never see him again, the same way with Syria.”<sup>44</sup>

### **III. GOVERNMENT STATEMENTS ABOUT THE NUMBER AND IDENTITIES OF INDIVIDUALS RENDERED, SECRETLY DETAINED, AND COERCIVELY INTERROGATED BY THE CIA**

#### **A. NUMBER OF SECRET DETAINEES**

According to CIA Director General Hayden, the CIA has secretly detained and interrogated “fewer than 100” prisoners in CIA facilities.<sup>45</sup> President Bush, the ODNI, and CIA Director General Hayden have confirmed that the first individual detained in the CIA’s program was Abu Zubaydah and that the program began with his apprehension in 2002. In September 2006, President Bush referred to the apprehension of Abu Zubaydah and stated that the “CIA used an alternative set of procedures” against him.<sup>46</sup> On the same day as the President’s speech, the ODNI also noted the apprehension of Zubaydah in March 2002 by the CIA and its partners, stating that “[o]ver the ensuing months, the CIA designed a new interrogation program...” to question Zubaydah.<sup>47</sup> In 2007, CIA Director General Hayden reiterated that the CIA’s detention and interrogation program “...began with the capture of Abu Zubaydah in the spring of 2002.”<sup>48</sup> In a subsequent interview with Charlie Rose, Hayden referred to the number of individuals detained in the “life of the program, since the capture of Abu Zubaydah in March of 2002.”<sup>49</sup>

#### **B. IDENTITIES OF SECRET DETAINEES**

To date, the U.S. government has confirmed by name at least 19 individuals secretly detained by the CIA.<sup>50</sup> As early as December 2002, National Director and Deputy National Security Adviser for combating terrorism, Wayne A. Downing, was quoted as stating on the record that “[t]he interrogations of Abu Zubaida drove me nuts at times.”<sup>51</sup> In 2004, the 9/11 Commission stated that the following individuals were “currently in U.S. custody”: Ramzi Binalshibh; Waleed Mohammed bin Attash (Tawfiq bin Attash, Tawfiq Attash Khallad); Hassan Ghul; Hambali; Khalid Sheikh Mohammed; Abu Zubaydah; Ali Abd al Rahman al Fakasi al Ghamdi; and Abd al Rahim al-Nashiri.<sup>52</sup>

Over the next few years, the U.S. government provided “statements” on behalf of certain secret CIA detainees in trials in U.S. courts. In the criminal case of *United States v. Paracha*, the U.S. government provided unclassified summaries of statements by Majid Khan, Ammar al Baluchi (Ali Abdul Aziz Ali), and Khalid Sheik Mohammed.<sup>53</sup> During the *United States v. Moussaoui* proceedings the U.S. government provided substitutions of testimony for Khalid Sheik Mohammed, Mustafa Ahmed al-Hawsawi, Walid Muhammad Salih Bin Attash (Khallad), and Riduan Isamuddin (Hambali), noting in each substitution the individual’s date of capture and that each individual “has been interrogated over the course of years on multiple occasions since his capture” and is “not available to testify either in person or by video for national security reasons.”<sup>54</sup> On September 6, 2006, President Bush announced that “...Khalid Sheikh Mohammed, Abu Zubaydah, Ramzi bin al-Shibh, and 11 other terrorists in CIA custody have been transferred to the United States Naval Base at Guantanamo Bay”<sup>55</sup> and the ODNI provided the identities and detailed biographical information of these fourteen individuals.<sup>56</sup> A few days later, a report of the U.S. Senate Select Committee on Intelligence cited to CIA operational cables, dated February 4, 5, and 19, 2004, recording information given by detainee Ibyn al-Shaykh al-Libi to CIA debriefers.<sup>57</sup>

The U.S. Government did not provide any additional information about the identities of the CIA's secret detainees until 2007, when the DOD announced that it had taken custody of Abd al-Hadi al-Iraqi, who had been "held in CIA custody."<sup>58</sup> CIA Director General Hayden also described the transfers of the 14 secret detainees to Guantánamo Bay in September 2006 and of Abd al-Hadi al-Iraqi in 2007 on the Charlie Rose Show.<sup>59</sup> Another detainee was named in 2008, when the DOD announced that it had taken custody of Muhammad Rahim al-Afghani and that "...he was held in CIA custody."<sup>60</sup>

### **C. SCOPE OF POST-9/11 RENDITION PROGRAM**

In addition to identifying the names of individuals held by the CIA in secret U.S. facilities, the U.S. government has officially acknowledged the scope of its post-9/11 rendition program. In September and October 2007, CIA Director General Hayden confirmed the number of renditions, stating that "and I mentioned renditions, the number of renditions—that's moving a terrorist from A to B—apart from that 100 that we've detained, the number of renditions is actually even a smaller number, mid-range two figures"<sup>61</sup> and confirming that the number of individuals rendered is "[m]id-range, two figures since September 11, 2001."<sup>62</sup>



#### **IV. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT THE NUMBER AND IDENTITIES OF INDIVIDUALS RENDERED, SECRETLY DETAINED, AND COERCIVELY INTERROGATED BY THE CIA**

##### **A. IDENTITIES AND NUMBER OF SECRET DETAINEES**

The media and human rights organizations have reported on the number of detainees subject to the practice of U.S. secret detention and have identified many of these individuals by name. In a 2004 report, Human Rights Watch (HRW) discussed 11 named detainees in undisclosed locations.<sup>63</sup> In November 2005, the Washington Post reported that “more than 100 suspected terrorists have been sent by the CIA into the covert system, according to current and former U.S. intelligence officials and foreign sources.”<sup>64</sup> The New York Times also reported that “[t]he agency currently holds between two and three dozen high-ranking terrorist suspects in secret prisons around the world.”<sup>65</sup>

In December 2005, CHRGJ released a report presenting the stories of 28 named individuals believed to have been “disappeared” by the U.S. government.<sup>66</sup> In 2007, several human rights organizations identified and provided biographic information about 39 individuals—most identified by name—believed to have been held at some point by the United States in secret sites, all of whom at the time of the report remained missing.<sup>67</sup> The 39 included the cases of specific individuals whose detention has been officially acknowledged by the United States but whom the United States has never disclosed as being in any known place of detention.

Former CIA detainees have provided information about the number of individuals with whom they were held and their identities, reportedly because their fellow prisoners sought to make known their names and identifying information. For instance, while they were in CIA custody, Khaled el-Masri and Laid Saidi, along with a “collection of prisoners”:

...spent night after night repeating their telephone numbers to one another from within the dark and dirty cells where they were being held in Afghanistan. Anyone who got out, they said they agreed, would use the numbers to contact the families of the others to let them know that they were still alive.<sup>68</sup>

Former CIA detainee, Khaled al-Maqtari, also listed the names and/or identifying information and cell numbers of 20 prisoners who made their identities known to him while they were held in a CIA “black site” in Afghanistan between January and April 2004.<sup>69</sup> Another former detainee, Marwan Jabour, has also provided those names he recalls seeing on the wall of his cell, inscribed below his cell sink, written on a mattress, and written on a shirt.<sup>70</sup>

##### **B. IDENTITIES AND NUMBER OF INDIVIDUALS RENDERED POST-9/11**

The media and human rights organizations have also reported on the number of individuals who were subject to post-9/11 renditions. In a 2008 report, HRW detailed the cases of 14 non-Jordanian prisoners who were rendered by the CIA to Jordan, which “served as a proxy jailer for the US Central Intelligence Agency (CIA), holding prisoners that the CIA apparently wanted out of circulation, and later handing some of them back to the CIA.”<sup>71</sup> Also in 2008, Mother Jones

reported the following: “We found information on 117 renditions that have occurred since September 11, 2001. When we excluded renditions to Afghanistan, CIA secret prisons (or ‘black sites’), Guantanamo, or American custody, we found 53 cases of extraordinary rendition.” The article further outlined the cases of these individuals who were rendered to countries including Egypt, Jordan, Libya, Morocco, Pakistan, and Syria.<sup>72</sup>

### **C. IDENTITIES OF CIA PERSONNEL INVOLVED**

The media has reported the names of certain CIA officials involved in the rendition, secret detention and coercive interrogation program and some of these officials have openly spoken to the media about their part in the program. For instance, former CIA agent, John Kiriakou, gave an on-camera interview to ABC News in December 2007 about his activities within the CIA’s secret detention program.<sup>73</sup> Michael Scheuer identified himself in a New York Times op-ed in March 2005 “as head of the C.I.A.’s bin Laden desk,” stating that “(he) started the Qaeda detainee/rendition program and ran it for 40 months.”<sup>74</sup> The New York Times has also named one of Khalid Sheikh Mohamed’s interrogators in the CIA program as being Deuce Martinez.<sup>75</sup>

## **V. GOVERNMENT STATEMENTS ABOUT APPREHENSION, TRANSFER, AND INTERROGATION IN THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM**

### **A. APPREHENSION, TRANSFER, AND THE ROLE OF FOREIGN PARTNERS**

President Bush, the ODNI, and other U.S. officials have officially confirmed that the United States, working with foreign partners, has been responsible for the apprehension of individuals rendered and detained in the CIA's program. In September 2006, President Bush stated that "[w]orking with our allies, we've captured and detained thousands of terrorists and enemy fighters in Afghanistan, in Iraq, and other fronts of this war on terror."<sup>76</sup> Also in September 2006, the ODNI stated that "[i]n March 2002, the CIA and our Coalition partners captured Abu Zubaydah..." and that "[d]etainees have provided names [sic] approximately 86 individuals...Nearly half of these individuals have been removed from the battlefield by the US and its allies."<sup>77</sup> More than three years earlier, a "senior administration official" had announced and described the capture of "Ryuduan bin Isomuddin," (Hambali) as a "joint operation...[that] did involve others" and Scott McClellan, White House Press Secretary, and the senior administration official both stated that Hambali was now in the "custody of the United States government" but the senior administration official refused to "get into...details at this point" regarding where Hambali was being held.<sup>78</sup>

### **B. DETENTION OUTSIDE OF JUDICIAL PROCESS**

President Bush has officially confirmed that individuals held by the CIA in its program are secretly detained and have been kept outside regular judicial processes, stating in reference to the transfer of individuals from secret CIA custody to Guantánamo Bay on or around September 6, 2006 that, "...we have largely completed our questioning of the men -- and to start the process for bringing them to trial, we must bring them into the open" and that after their transfer to Guantánamo Bay, "the International Committee of the Red Cross is being advised of their detention, and will have the opportunity to meet with them."<sup>79</sup>

### **C. "ALTERNATIVE SET OF PROCEDURES"—AUTHORIZATION, NATURE, AND SCOPE**

The ODNI has confirmed that in 2002 a "new interrogation program," involving what President Bush confirmed to be an "alternative set of procedures" was authorized for use against individuals in the CIA's secret detention and interrogation program. In September 2006, President Bush referred to the questioning of Abu Zubaydah, stating that "[a]nd so the CIA used an alternative set of procedures."<sup>80</sup> That same day, the ODNI—in discussing the capture of Abu Zubaydah in March 2002—stated that "over the ensuing months, the CIA (had) designed a new interrogation program..."<sup>81</sup>

In April 2008, President Bush stated that he had "approved" the enhanced interrogation techniques used by the CIA. He stated his awareness that the National Security Council Principal's Committee met and approved "enhanced interrogation techniques" for use against CIA secret detainees, noting: "Well, we started to connect the dots in order to protect the American people...And yes, I'm aware our national security team met on this issue. And I approved."<sup>82</sup> In September and October 2007, CIA Director General Hayden specified that such "special methods

of questioning” or “enhanced interrogation techniques” had been used against “less than a third” of the individuals secretly detained by the CIA.<sup>83</sup> At the end of January 2008, John Negroponte, former Director of National Intelligence and current U.S. Deputy Secretary of State confirmed that waterboarding had been used in interrogations.<sup>84</sup> In February 2008, during questioning before the Senate Select Committee on Intelligence, CIA Director General Hayden confirmed the use of waterboarding as an interrogation technique for CIA detainees and also disclosed that the CIA had subjected three named detainees—Abu Zubaydah, Khalid Sheikh Mohammed, and Abd al-Rahim al-Nashiri—to waterboarding in 2002 and 2003.<sup>85</sup>

Official U.S. documents released pursuant to FOIA litigation have also confirmed that the CIA used “enhanced techniques” for interrogation; that these techniques include waterboarding or “the waterboard”; that the CIA waterboarded three named individuals, Khalid Sheikh Mohamed, Abu Zubaydah and Abd al-Rahim al-Nashiri,<sup>86</sup> and that individual interrogators did not make independent decisions about what techniques to use, but instead sought specific authorization from officials in the United States.<sup>87</sup> At least one Article III court is currently considering whether evidence was obtained from CIA detainees through torture.<sup>88</sup>

#### **D. CIA INTERROGATORS**

In addition to information about the nature of techniques and which detainees were subjected to them, the U.S. government has provided information about CIA interrogators, their training, and their average age. President Bush and the ODNI have both explained that interrogators must be screened and that they must also complete more than 250 hours of specialized training.<sup>89</sup> CIA Director General Hayden has also stated that “[t]he amount of training for this specific activity is 240 hours,” and specified that the average age of a CIA interrogator is 43.<sup>90</sup>

## **VI. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT APPREHENSION, TRANSFER, AND INTERROGATION IN THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM**

### **A. AUTHORIZATION AND USE OF COERCIVE INTERROGATION TECHNIQUES**

Former U.S. government officials have stated that authorization for the use of specific techniques came from officials in the United States. Paul C. Kelbaugh, deputy legal counsel at the CIA's Counterterrorist Center from 2001 to 2003, has publicly recalled that interrogators sent lawyers questions from the "black sites" about the legal limits on their interrogation techniques, specifying that they "...were getting asked about combinations—'Can we do this and this at the same time?'"<sup>91</sup> Former CIA agent John Kiriakou has also stated that "[i]t wasn't up to individual interrogators to decide, 'Well, I'm gonna slap him' Or, 'I'm going to shake him.' Or, 'I'm gonna make him stay up for 48 hours.' Each one of these steps, even though they're minor steps, like the intention shake, or the open-handed belly slap, each one of these had to have the approval of the deputy director for operations..." and that "the cable traffic back and forth was extremely specific...it was extremely deliberate."<sup>92</sup>

Additionally, U.S. intelligence sources have provided detailed information about the six "enhanced interrogation techniques" instituted in 2002 for use against secret CIA detainees. These techniques have been described as: "the attention grab"; "the attention slap"; "the belly slap"; "longtime standing"; "the cold cell"; and, waterboarding. In 2005, ABC News reported that it had been told by "former and current intelligence officers and supervisors" that harsh interrogation techniques were "first authorized in mid-March 2002" and described the six techniques.<sup>93</sup> The New York Times also reported that techniques "...included slaps to the head; hours held naked in a frigid cell; days and nights without sleep while battered by thundering rock music; long periods manacled in stress positions; or the ultimate, waterboarding."<sup>94</sup>

Current and former CIA officials have also provided details of the waterboarding of Khalid Sheikh Mohamed and Abu Zubaydah, including how long the technique was applied to each individual. ABC News has reported that "[t]he most effective use of waterboarding, according to current and former CIA officials, was in breaking Khalid Sheikh Mohammed" and that "'KSM lasted the longest under waterboarding, about a minute and a half, but once he broke, it never had to be used again,' said a former CIA official familiar with KSM's case."<sup>95</sup> Former CIA agent John Kiriakou has revealed that Zubaydah "was able to withstand the waterboarding for quite some time. And by that I mean probably 30, 35 seconds--."<sup>96</sup>

### **B. TYPICAL RENDITION PROCEDURES AND HANDLING OF DETAINEES**

Publicly available information has disclosed that before their transfer to either a third country for interrogation or to a secret CIA "black site"—or in some cases, both—detainees are typically stripped naked; handcuffed, shackled, and blindfolded; have earplugs inserted in their ears and their mouths covered; and are hooded, before being bundled onto a plane and rendered.<sup>97</sup> In December 2005, the Washington Post described the lead-up to rendition as follows:

Members of the Rendition Group follow a simple but standard procedure: Dressed head to toe in black, including masks, they blindfold and cut the clothes off their new captives, then administer an enema and sleeping drugs. They outfit detainees in a diaper and jumpsuit for what can be a day-long trip. Their destinations: either a detention facility operated by cooperative countries in the Middle East and Central Asia, including Afghanistan, or one of the CIA's own covert prisons -- referred to in classified documents as 'black sites,' which at various times have been operated in eight countries, including several in Eastern Europe.<sup>98</sup>

This comports with accounts from former detainees. The experience of former detainee Laid Saidi has been described as follows:

After being held for a week in a prison in the mountains of Malawi, Mr. Saidi said, a group of people arrived in a sport utility vehicle: a gray-haired Caucasian woman and five men dressed in black wearing black masks revealing only their eyes. The Malawians blindfolded him, and his clothes were cut away, he said. He heard someone taking photographs. Then, he said, the blindfold was removed and the agents covered his eyes with cotton and tape, inserted a plug in his anus and put a disposable diaper on him before dressing him. He said they covered his ears, shackled his hands and feet and drove him to an airplane where they put him on the floor.<sup>99</sup>

As HRW has explained, "all of these accounts [from former detainees] had certain common characteristics, including descriptions of interrogators and prison directors who spoke American-accented English, black uniformed and masked guards, flights in which the detainee was placed in diapers and wrapped up like a package, and various forms of physical and mental abuse."<sup>100</sup> Amnesty International (AI) has reported on former CIA detainee Khaled el-Maqtari's description of this process, noting that:

In a procedure which has also been described to Amnesty International by other detainees transported by the CIA, a three- or four-person removal team, dressed completely in black, with black gloves and facemasks, came to prepare Khaled al-Maqtari for his departure. They put him in a diaper, socks, short trousers, and a shirt without buttons, then covered his eyes and stuffed his ears with cotton, taped firmly into place, before hooding him and topping it off with noise-reducing headphones.<sup>101</sup>

Released detainees have detailed the treatment they and others experienced in secret detention, or after rendition to a foreign country. That treatment has included beatings with a cable on palms, hips, and lower back; sleep deprivation; bombardment with loud music or other noises; genital mutilation; threats of confinement in a so-called dog box (approximately 1 cubic meter in size); threats of rape, electrocution, and death; painful shackling; and being hung from a pole. The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, has concluded, based *inter alia* on testimony of released detainees, that 17 of the techniques used against Arar in Far Falestin, Syria "constituted torture."<sup>102</sup> Detainees who have detailed the treatment they received and that others experienced as part of their rendition and secret detention have included Marwan Jabour,<sup>103</sup> Binyam Mohamed,<sup>104</sup> and Khaled al-Maqtari.<sup>105</sup>

### **C. INCOMMUNICADO DETENTION**

Legal filings and public reports show that throughout the period of their detention, CIA secret detainees are not able to contact lawyers, humanitarian organizations such as the International Committee of the Red Cross, their families, or their governments, and are detained for prolonged periods without acknowledgement or charge. With regard to U.S. “ghost detainees,” HRW has reported that “[t]he detainees are being held indefinitely and *incommunicado*, without legal rights or access to counsel.”<sup>106</sup> Similarly, CCR on behalf of its client, Maher Arar, has alleged that Arar was denied access to counsel while held in the United States and then transported to Syria, against his will, where he was held *incommunicado* and tortured for ten months.<sup>107</sup> The American Civil Liberties Union (ACLU), on behalf of Khalid El-Masri, has similarly alleged that he was denied access to counsel, consular officials, or his family for nearly half a year without charge or explanation.<sup>108</sup> Former CIA detainee, Mohamed Farag Ahmad Bashmilah, has also explained that during the 19 months he was in CIA custody, he was never allowed to contact his family, lawyers, government representatives, or humanitarian organizations.<sup>109</sup>

### **D. LOCATIONS OF CIA SECRET DETENTION FACILITIES**

The media, human rights organizations, and inter-governmental organizations have named specific countries alleged to have hosted CIA “black sites” or CIA secret facilities, including Afghanistan, Iraq, Poland, Romania, and Thailand. In March 2005, the New York Times reported that “top military intelligence officials at the Abu Ghraib prison came to an agreement with the CIA to hide certain detainees at the facility without officially registering them, according to documents obtained by The Washington Post.”<sup>110</sup> The Washington Post has reported that the “covert prison system set up by the CIA” included “sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe, as well as a small center at the Guantanamo Bay prison in Cuba, according to current and former intelligence officials and diplomats from three continents.”<sup>111</sup>

HRW has also reported that its independent research “corroborates the Washington Post’s allegations that there were detention facilities in Eastern Europe. Specifically, we have collected information that CIA airplanes traveling from Afghanistan in 2003 and 2004 made direct flights to remote airfields in Poland and Romania.”<sup>112</sup> The Council of Europe, Parliamentary Assembly Committee on Legal Affairs and Human Rights has also reported that the CIA operated secret prisons in Poland and Romania during the period 2002-2005.<sup>113</sup> Recently, the New York Times reported that Khalid Sheikh Mohamed was secretly detained in Poland, “where the most important of the C.I.A.’s black sites had been established,” and that Thailand was host to the first CIA “black site”.<sup>114</sup>

### **E. DAY-TO-DAY OPERATIONS OF CIA SECRET DETENTION FACILITIES**

Former CIA detainees, including those who have been released following prosecution or detention by their governments, have provided comprehensive and credible public accounts of the day-to-day operation of secret U.S. prisons, including showering schedules; diet; encounters with medical personnel, psychiatrists, and dentists; descriptions of interrogators and interpreters; and sketches of cells and facilities. For instance, AI has released several reports describing the cases of former CIA detainees Mohammed al-Asad, Salah Naser Salem Ali Darwish, and Mohamed Farag Ahmad Bashmilah, describing in detail their prolonged experiences in CIA secret detention in

Afghanistan and unknown locations.<sup>115</sup> Additionally, several former detainees have provided comprehensive accounts of their time in CIA detention. These include Khaled El-Masri, who produced a 25-page declaration submitted in *El-Masri v. Tenet* describing his experience in CIA detention;<sup>116</sup> Marwan Jabour;<sup>117</sup> Mohamed Farag Ahmad Bashmilah, who produced a 60-page declaration outlining his apprehension, transfer, and detention, submitted in *Mohamed et. al. v. Jeppesen Dataplan, Inc.*;<sup>118</sup> and Khaled al-Maqtari.<sup>119</sup>

## **F. PROXY DETENTION BY FOREIGN AUTHORITIES**

Media, foreign governments, human rights organizations, and inter-governmental entities, have reported on the use of proxy detention, or detention by foreign authorities at the behest of the United States. Such reports include information about cases of former CIA detainees who were held in proxy detention after being transferred out of CIA secret detention or following rendition. For instance, in January 2005, the Washington Post reported that Australian citizen Mamdouh Habib was held at the behest of the United States in Egypt after being rendered from Pakistan and before being sent to Guantánamo.<sup>120</sup> In several publications, AI has described how three Yemeni nationals, Mohammed al-Asad, Salah Nasser Salem Ali Darwish, and Mohamed Farag Ahmad Bashmilah, were sent to Yemen for continued detention at the behest of the United States after being released from CIA secret detention.<sup>121</sup>

Indeed, the UN Working Group on Arbitrary Detention has stated that the government of Yemen has confirmed that Mohamed Farag Ahmad Bashmilah and Salah Nasser Salim ‘Ali were handed over to Yemen by the United States and detained, “...pending receipt of their [the persons’] files from the United States of America authorities in order to transfer them to the Prosecutor.”<sup>122</sup> In a letter dated December 20, 2005 from the Permanent Mission of the Republic of Yemen to the UN Office and Other International Organizations; to the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism; and the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Permanent Mission confirmed that former secret CIA detainees Mohamed Farag Ahmad Bashmilah and Salah Nasser Salim ‘Ali were handed over to Yemen by the United States, that they were detained by the Yemeni authorities for questioning and to verify the allegations made against them by the United States, and that on November 10, 2005, the Yemeni authorities received files on the individuals from the United States authorities.<sup>123</sup>

Human rights organizations have also reported extensively on the use of proxy detention. For instance, HRW has described the transfer of former CIA detainee, Marwan Jabour, from U.S. custody into first Jordanian and then Israeli custody;<sup>124</sup> AI, Cageprisoners, CCR, CHRGJ, HRW and Reprieve U.K. have jointly described the cases of a number of individuals once held by the CIA who had been returned to Libya for continued detention;<sup>125</sup> Mother Jones has set out the cases of a number of individuals who remained in the custody of their home governments after being returned from secret detention by the CIA;<sup>126</sup> and AI has comprehensively described the transfer of former CIA detainee Khaled al-Maqtari to detention in Yemen and his subsequent release.<sup>127</sup>

Additionally, statements made during the course of litigation against the U.S. government also reveal the extent to which proxy detention has been utilized. For instance, statements in *Arar v. Ashcroft* describe the detention, interrogation, and torture of Maher Arar in proxy detention in Syria after being rendered by the United States;<sup>128</sup> and statements in *Mohamed et al. v. Jeppesen Dataplan, Inc.*,



describe the detention, interrogation, and torture of Binyam Mohamed in proxy detention in Morocco after being rendered by the United States.<sup>129</sup>

## **VII. GOVERNMENT STATEMENTS ABOUT ATTEMPTS TO SHIELD FROM SCRUTINY THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM**

### **A. LACK OF CONGRESSIONAL OVERSIGHT**

From the inception of the CIA's rendition, secret detention, and coercive interrogation activities, those few members of Congress aware of the CIA's program, or elements of it, have expressed frustration at the lack of information provided by the CIA. These expressions of frustration have included a letter from Porter Goss and Jane Harman, U.S. House of Representatives, Permanent Select Committee on Intelligence to then-Director of the CIA, George Tenet on October 10, 2003, stating:

On Thursday, October 16th, 2003, the Committee will hold a full Committee briefing on the information being obtained from terrorist detainees, including but not limited to, information from three of the most noticeable terrorists in detention, Khalid Sheik Mohammed, Abu Zubaida and [REDACTED]. The Committee requests that you send senior-level briefers who can provide the Committee a full and detailed account on this subject. Some recent briefings to the Committee have been disappointing and the Committee has been frustrated with the quality of the information being provided.<sup>130</sup>

Several months later in August 2004, Senator Patrick Leahy also wrote to Tenet stating:

On October 8, 2003, I wrote to inquire about the standards the Central Intelligence Agency applies to the treatment of detainees in its custody around the world. I am afraid that the reply I received to that letter dated November 3, 2003 from General Counsel Scott Muller did not answer the specific question I posed, namely, whether the policies and practices relating to the interrogation of detainees stated in a June 25, 2003 letter to me from Defense Department Counsel William Haynes apply in full to the CIA.<sup>131</sup>

This was followed by yet another letter from Senator John D. Rockefeller IV, then Vice Chairman of the Senate Select Committee on Intelligence, to John Negroponte, Director of National Intelligence in September 2006 seeking "confirmation" in an abundance of "caution" from the Director of National Intelligence that certain statements regarding the CIA secret prison program were unclassified, after asserting that the statements provided, "important context... without divulging national security information;" all the statements were nevertheless classified.<sup>132</sup>

On May 31, 2007, the Senate Select Committee on Intelligence issued its report on the fiscal year 2008 Intelligence Reauthorization Bill, in which it expressed its concern about the lack of Congressional oversight of the CIA's detention and interrogation program, noting that "...the Administration's decision to withhold the program's existence from the full Committee membership for five years was unfortunate in that it unnecessarily hindered congressional oversight of the program"<sup>133</sup>

## **B. DISSEMINATION OF INACCURATE INFORMATION AND DESTRUCTION OF EVIDENCE**

In February 2008, CIA Director General Hayden acknowledged that the U.S. government had erroneously assured the government of the United Kingdom that British soil or airspace had not been used for rendition operations since September 11, 2001. Correcting the record, he revealed that the British Island territory of Diego Garcia had been used for rendition flights.<sup>134</sup> Additionally, U.S. Attorneys have admitted that CIA declarations submitted in U.S. federal court contained inaccurate information about CIA activities when they asserted falsely that no audio or video recordings of interrogations of certain detainees had been made, and that the U.S. did not possess any such recordings. An October 25, 2007 letter from U.S. Attorney, Chuck Rosenberg, to the Honorable Karen J. Williams and the Honorable Leonie Brinkema confirmed that “[t]he fact that audio/video recording of enemy combatant interrogations occurred, and that the United States was in possession of three of those recordings is, as noted, inconsistent with factual assertions in CIA declarations...”<sup>135</sup>

CIA Director General Hayden has acknowledged that the interrogations of two individuals in the CIA program, identified separately as Abu Zubaydah and Abd al-Rahim al-Nashiri, were taped and subsequently destroyed by the CIA,<sup>136</sup> stating that “[t]he press has learned that back in 2002, during the initial stage of our terrorist detention program, the CIA videotaped interrogations, and destroyed the tapes in 2005.”<sup>137</sup>

## **C. DENIAL OF INFORMATION TO OTHER U.S. AGENCIES OR BODIES**

Other U.S. agencies or bodies have complained about the extent to which the CIA has denied them access to information about rendition, secret detention, and interrogation. The *9-11 Commission Report* concluded that the:

Current security requirements nurture over classification and excessive compartmentation of information among agencies. Each agency’s incentive structure opposes sharing, with risks (criminal, civil and internal administrative sanctions) but few rewards for sharing information. No one has to pay the long-term costs of over-classifying information, though those costs—even in literal financial terms—are substantial. There are no punishments for *not* sharing information. Agencies uphold a ‘need-to-know’ culture of information protection rather than promoting a ‘need-to-share’ culture of integration.<sup>138</sup>

It also recorded that “[t]he Intelligence committees [adhering to CIA classification requirements] cannot take advantage of democracy’s best oversight mechanism: public disclosure.”<sup>139</sup> Similarly, the DOJ’s Office of Inspector General (DOJ OIG) noted in 2008 that the CIA denied the DOJ OIG access to a particular detainee and that the CIA’s reasons for doing so were “unwarranted, and its lack of cooperation hampered our investigation.”<sup>140</sup>

## **D. RESTRICTIONS ON FORMER CIA DETAINEES’ TESTIMONIES**

The U.S. government is preventing former CIA secret detainees who were transferred to Guantánamo Bay from on or around September 6, 2006 from publicly describing their own interrogation and detention by the CIA; their lawyers are also prevented from publicly discussing the CIA’s treatment of these individuals. For instance, in the Combatant Status Review Tribunal open

session hearings pertaining to detainees such as Abd Al Rahim Hussein Mohammed Al Nashiri, Abu Zubaydah and Majid Khan, portions of transcripts are redacted that appear to pertain to the treatment to which the detainee was subject while in the custody or control of the CIA.<sup>141</sup> Similarly, as set out in the Emergency Stipulation in *Khan v. Gates*, in the U.S. Court of Appeals for the District of Columbia Circuit, the DOJ's terms for providing an attorney with conditional access to a former CIA detainee client require that counsel treat all information learned from the clients as presumptively top secret/sensitive compartmentalized information and make all filings under seal pending classification review by the government.<sup>142</sup> On March 14, 2008, an attorney from CCR provided the Senate Select Committee on Intelligence with a briefing on the operation of the CIA's secret detention and interrogation program with respect to CCR's client, Majid Khan, however this briefing was classified.<sup>143</sup>

## **E. OVER-CLASSIFICATION PRACTICES IN RESPECT TO THE "WAR ON TERROR"**

Congress has conducted hearings on the issue of over-classification and undue withholding of documents in connection with "War on Terror" activities, and Members of Congress have expressed grave concern over the CIA's withholding of information in its briefings to Congress and in otherwise obstructing access to information. Reporting on the Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, the U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence recorded that "prior to September 11, 2001, the U.S. Intelligence Community was involved in fighting a 'war' against Bin Ladin largely without the benefit of what some would call its most potent weapon in that effort: an alert and committed American public."<sup>144</sup> In a hearing entitled Too Many Secrets: Overclassification as a Barrier to Critical Information Sharing before the Subcommittee on National Security, Emerging Threats and International Relations of the House Committee on Government Reform, Sub-Committee chairman Christopher Shays stated:

Against a stateless, adaptable enemy, we dare not rely on organizational stovepipes to conclude, in advance, who should have access to one piece of an emerging mosaic...The cold war paradigm of 'need to know' must give way to the modern strategic imperative, 'the need to share...The dangerous, if natural, tendency to hide embarrassing or inconvenient facts can mask vulnerabilities and only keeps critical information from the American people.<sup>145</sup>

The Briefing Memorandum for a February 2005 hearing, Emerging Threats: Overclassification and Pseudo-Classification, before the same Sub-Committee, reiterated this point, explaining that the "purpose of this hearing is to examine the proliferation of categories of information that are not classified but are withheld from public disclosure" and noting the national security challenges this withholding of information presents.<sup>146</sup>

## **VIII. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT ATTEMPTS TO SHIELD FROM SCRUTINY THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM**

### **A. DESTRUCTION OF EVIDENCE**

Former and current U.S. officials, including Frederick P. Hitz, a former CIA Inspector General from 1990 to 1998, have said that the CIA's tapes of detainee interrogations were destroyed in part to prevent legal scrutiny. In March 2008, the New York Times quoted Hitz as saying: "They thought they were saving themselves from legal scrutiny, as well as possible danger from Al Qaeda if the tapes became public," and reported more generally that "...in interviews in recent months with several officers involved in the decision, they said that a primary factor was the legal risks that officers shown on the tape might face."<sup>147</sup>

### **B. CIA LIMITATIONS ON INTERNAL AND EXTERNAL OVERSIGHT**

Media reports have also recorded the extent to which the CIA has taken steps to limit internal and external oversight of its rendition, secret detention, and interrogation activities. The Washington Post reported that the "CIA and the White House, citing national security concerns and the value of the program, have dissuaded Congress from demanding that the agency answer questions in open testimony about the conditions under which captives are held."<sup>148</sup> There have also been reports of unprecedented reprisal for speaking out about the CIA program. For instance, in June 2006, the New York Times reported on the dismissal of a senior career officer for disclosing information about the CIA's secret detention program and stated that "[s]everal former veteran C.I.A. officials said the dismissal of an agency employee over a leak was rare and perhaps unprecedented."<sup>149</sup> The National Journal also explained that:

The CIA has imposed new and tighter restrictions on the books, articles, and opinion pieces published by former employees who are still contractors with the intelligence agency. According to several former CIA officials affected by the new policy, the rules are intended to suppress criticism of the Bush administration and of the CIA.<sup>150</sup>

This revelation was followed by a New York Times article reporting that CIA Director General Hayden "has ordered an unusual internal inquiry into the work of the agency's inspector general, whose aggressive investigations of the CIA's detention and interrogation programs and other matters have created resentment among agency operatives."<sup>151</sup>

The media has sought to gain further information to enhance oversight; several media organizations have sought access to the sealed statements of former CIA detainee, Majid Khan, that describe his experience in the CIA secret detention program. Specifically, the New York Times, the Associated Press, and USA Today filed a motion in March 2008 to unseal Majid Khan's declarations concerning his experience in the CIA secret detention and coercive interrogation program.<sup>152</sup>

### **C. IMPROPER CLASSIFICATION GENERALLY**

Government officials have also estimated that a large proportion of classified information is improperly overclassified due to the tremendous incentives for overclassification and few for proper

declassification, and Members of Congress have expressed concern about overclassification. For instance, President Reagan's National Security Council Executive Secretary has reported that he suspected only ten percent of classification was for "legitimate protection of secrets."<sup>153</sup> Similarly, Carol A. Haave, the Pentagon's Deputy Under Secretary of Defense for Counter-Intelligence and Security, has estimated that 50 percent of the Pentagon's documents are classified as a result of overclassification and J. William Leonard, Director of the Information Security Oversight Office, noted that an inter-agency appeals panel recommended declassification against agency claims of secrecy "60-some-odd percent of the time."<sup>154</sup> Thomas Kean, Chair of the 9/11 Commission, has also stated that he estimates "three-quarters of what [he] read that was classified shouldn't have been."<sup>155</sup>

This sentiment has been echoed by Members of Congress generally. For instance, in June 2004, the New York Times reported on Congressional disappointment that the CIA had redacted between 30 and 40 percent of the Senate Intelligence Committee's report on pre-war intelligence and quoted Senator Pat Roberts as saying "I feel very strongly that the great majority of this report should be made public...the American people certainly deserve to see it."<sup>156</sup> The Washington Post—also reporting on the intelligence community's redactions in the Senate Intelligence Committee's report on prewar intelligence—similarly noted the Senators' outrage, as described by Senator Trent Lott who said "it would be laughable if it wasn't so insulting, because they redacted half of what we had. A lot of it was to redact a word that revealed nothing."<sup>157</sup>

## **IX. GOVERNMENT STATEMENTS ABOUT ILLEGALITY AND IMPROPER ACTS IN THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM**

### **A. THE IMPACT OF *HAMDAN V. RUMSFELD***

Shortly after the decision of the U.S. Supreme Court in *Hamdan v. Rumsfeld* on June 29, 2006—holding that Common Article 3 of the Geneva Conventions applies to all U.S. detainee operations in the “War on Terror”—the United States government had to reverse its previous analysis that Common Article 3 did not apply to “War on Terror” detainees.<sup>158</sup> The Administration’s previous position is contained in President George W. Bush’s, *Memorandum: Human Treatment of al Qaeda and Taliban Detainees* (2002):

I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al-Qaida or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to ‘armed conflict not of an international character.’<sup>159</sup>

In *Hamdan v. Rumsfeld*, the Supreme Court expressly rejected the view “that the war with al Qaeda evades the reach of” Common Article 3.<sup>160</sup> Following the *Hamdan* ruling, U.S. Deputy Secretary of Defense, Gordon R. England issued a memorandum on the *Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense*, noting that “[t]he Supreme Court has determined that Common Article 3 to the Geneva Conventions of 1949 applies as a matter of law to the conflict with Al Qaeda” and reminding officials to “ensure that all DoD personnel adhere to these standards.”<sup>161</sup>

President Bush and other U.S. officials have described the U.S. Supreme Court’s decision as undermining the ability of the CIA to continue its secret detention and interrogation activities. On September 6, 2006, President Bush noted that the decision “...put in question the future of the CIA program,” and said that, “[a]s we work with Congress to pass a good bill, we will also consult with congressional leaders on how to ensure that the CIA program goes forward in a way that follows the law.”<sup>162</sup> He further commented that, “[n]ow, the Court said that you’ve got to live under Article III of the Geneva Convention, and the standards are so vague that our professionals won’t be able to carry forward the program, because they don’t want to be tried as war criminals.”<sup>163</sup> On September 15, 2006, President Bush reiterated his intention for the CIA’s secret detention program to continue, but indicated that this would require a new legal foundation, stating that the “...program is not going to go forward if our professionals do not have clarity in the law” and “[i]f Congress passes a law that does not clarify the rules...the program is not going forward.”<sup>164</sup>

Because the decision in *Hamdan* rejected the legal basis for the CIA’s program, President Bush has sought to enact new measures to authorize the CIA’s detention and interrogation activities. For example, he has stated that he envisaged the Military Commissions Act of 2006 would provide the CIA with the needed authority to operate its secret detention program, saying “[w]hen I proposed this legislation, I explained that I would have one test for the bill Congress produced: Will it allow the CIA program to continue? This bill meets that test.”<sup>165</sup> Relevantly, the Military Commissions Act of 2006 stipulates that:

As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.<sup>166</sup>

In Executive Order 13440 (2007), President Bush states that “I hereby determine that Common Article 3 shall apply to a program of detention and interrogation operated by the Central Intelligence Agency as set forth in this section,” and that “I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that:...” and sets out certain such conditions.<sup>167</sup>

## **B. U.S. OFFICIALS’ CONCERNS ABOUT THE CIA PROGRAM**

CIA Director General Hayden, the DOJ, Congress, CIA agents, and other U.S. officials have all identified concerns—either their own or concerns within the U.S. government generally—about the legal basis of the CIA’s rendition, secret detention, and coercive interrogation practices, and that these activities involved illegal acts. For instance, the U.S. Senate Select Committee on Intelligence recently noted its expectation that it would receive a legal review of the program “...as part of its ongoing oversight of the program” and stated that “[b]oth Congress and the Administration must continue to evaluate whether having a separate CIA detention program that operates under different interrogation rules than those applicable to military and law enforcement officers is necessary, lawful, and in the best interests of the United States.”<sup>168</sup>

The CIA Director General Hayden has also stated that the Military Commissions Act is insufficient to assuage the CIA’s concerns about the legal basis for going forward with the program.<sup>169</sup> CIA Director General Hayden has also expressed concern about the legality of certain CIA interrogation practices, stating that waterboarding “is not included in the current program, and in my own view, the view of my lawyers and the Department of Justice, it is not certain that the technique would be considered to be lawful under current statute.”<sup>170</sup> The Federal Bureau of Investigation (FBI) Office of the Inspector General similarly reported on grave concerns about the CIA’s aggressive interrogation techniques against Abu Zubaydah, which have included waterboarding.<sup>171</sup> A number of FBI agents have also stated that detainees at Guantánamo Bay reported that before they were transferred to Guantánamo they had been sent by the United States to foreign countries “for more aggressive interrogation by foreign interrogators.”<sup>172</sup> The destination countries included Egypt and Jordan, two countries cited year after year by the Department of State for the systemic practice of torture.<sup>173</sup> Several agents also reported that they were aware of cases of threatened rendition.<sup>174</sup>

Members of Congress have repeatedly expressed concern over the illegality and impropriety of CIA rendition, secret detention, and interrogation activities and have taken actions seeking to limit such activities. In late 2005, Congressional concern over the interrogation tactics employed in the rendition and secret detention program, including waterboarding, led to the drafting and ultimate passage of the McCain amendment, which was incorporated into the Detainee Treatment Act (DTA) 42 U.S.C.A. § 2000dd, and signed into law. The DTA prevents anyone in the custody or physical control of the United States from being “subject to cruel, inhuman, or degrading treatment or punishment.” 42 U.S.C.A. § 2000dd(a).<sup>175</sup> In June 2008, 56 Members of Congress sent a letter to



the Honorable Michael Mukasey requesting that a special counsel be appointed to “investigate whether the Bush Administration’s policies regarding the interrogation of detainees have violated federal criminal laws. There is mounting evidence that the Bush Administration has sanctioned enhanced interrogation techniques against detainees under the control of the United States that warrant an investigation.”<sup>176</sup>

### **C. LEGAL REVIEWS AND INVESTIGATIONS**

President Bush, the ODNI, CIA Director General Hayden, and other U.S. officials have all stated that these measures were subject to multiple legal reviews by the DOJ, as well as the CIA. John Fredman, “then chief counsel to the CIA’s counter-terrorism centre,”<sup>177</sup> has stated in relation to the CIA’s use of coercive techniques that “[s]ignificantly harsh techniques are approved through the DOJ.”<sup>178</sup> President Bush has also stated that “[t]he Department of Justice reviewed the authorized methods extensively” and that “[t]his program has been subject to multiple legal reviews by the Department of Justice and CIA lawyers.”<sup>179</sup> The ODNI has stated that “[t]he Department of Justice has reviewed procedures proposed by the CIA on more than one occasion...”<sup>180</sup> CIA Director General Hayden has also stated that the “...CIA designed specific, appropriate interrogation procedures. Before they were used, they were reviewed and approved by the Department of Justice and by other elements of the Executive Branch.”<sup>181</sup> In discussing the CIA’s use of waterboarding, CIA Director General Hayden has also noted that “that tactic, which has not been employed since 2003, was deemed legal by the Department of Justice when it was used.”<sup>182</sup>

U.S. officials have acknowledged that several aspects of the CIA’s rendition, secret detention, and interrogation activities have been, or are being, subjected to internal and external investigation into alleged impropriety and illegality by the CIA Office of Inspector General and the DOJ. President Bush and the ODNI have disclosed that the CIA’s Inspector General has conducted oversight and investigations into the rendition and secret detention program. In September 2006, President Bush stated that “[t]his program has received strict oversight by the CIA’s Inspector General.”<sup>183</sup> The ODNI similarly stated that “[t]he program has been investigated and audited by the CIA’s Office of the Inspector General (OIG), which was given full and complete access to all aspects of the program.”<sup>184</sup> The DOJ has also launched investigations into aspects of the CIA’s program, including the CIA’s destruction of videotapes of detainee interrogations.<sup>185</sup>

In addition to concerns within the U.S. government about the legality of rendition and secret detention, members of Congress have expressed other types of concerns about the CIA’s activities. The U.S. Senate Select Committee on Intelligence has noted that:

...the Committee believes that consideration should be given to whether it is the best means to obtain a full and reliable intelligence debriefing of a detainee. Both Congress and the Administration must continue to evaluate whether having a separate CIA detention program that operates under different interrogation rules than those applicable to military and law enforcement officers is necessary, lawful, and in the best interests of the United States. Moreover, the Committee believes that the demonstrated value of the program should be weighed against both the complications it causes to any ultimate prosecution of these terrorists, and the damage the program does to the image of the United States abroad.<sup>186</sup>

**D. RECOGNITION OF PUBLIC CONCERN**

U.S. officials have also acknowledged that there is a high level of concern among the public regarding the CIA's rendition, secret detention, and coercive interrogation activities. Representative Edward Markey has noted in respect of legislative efforts to prevent funds for torture, that "[t]he resounding bipartisan support for this amendment comes in the wake of public outrage at the CIA practice of sending suspects to prisons in countries around the world that are known to violate human rights."<sup>187</sup> Representative Markey has also been quoted as saying "[t]he more the American people find out we are allowing other countries to torture in our name, there is going to be an outcry in this country."<sup>188</sup> CIA Director General Hayden has acknowledged the public interest in the CIA's rendition and secret detention programs and has noted that "[m]any of the things this agency does on behalf of the American people have become controversial" and that CIA employees "aren't people separated from the American political culture" and are therefore "affected by what goes on in the broader political culture when it's discussing the kind of work that they do."<sup>189</sup>

## **X. OTHER PUBLICLY AVAILABLE INFORMATION ABOUT ILLEGALITY AND IMPROPER ACTS IN THE RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION PROGRAM**

### **A. THE IMPACT OF *HAMDAN V. RUMSFELD***

The media has reported on statements by U.S. officials concerning the Supreme Court's rejection of the U.S. government's determination that Common Article 3 of the Geneva Conventions does not apply to the "War on Terror". The New York Times has referenced statements by U.S. officials and noted that "[b]efore the court's ruling, the administration repeatedly denied that suspects held at Guantánamo Bay fell under Common Article 3."<sup>190</sup> The New York Times has also reported in relation to the U.S. detention policy that "[m]any officials said the most important factor in forcing a new approach was the Supreme Court's ruling in June that the military commissions set up by the administration could not proceed. That decision...some officials said, left the C.I.A.'s interrogation program on even more tenuous ground."<sup>191</sup>

### **B. CIA INSPECTOR GENERAL INVESTIGATIONS**

The media and human rights organizations have reported that the CIA's Inspector General has conducted more than one investigation into the rendition and secret detention program. For instance, a New York Times article reporting on the CIA's destruction of videotapes of interrogations of detainees, noted that "[s]crutiny of the C.I.A.'s secret detention program kept building. Later in 2003, the agency's inspector general, John L. Helgeson, began investigating the program, and some insiders believed the inquiry might end with criminal charges for abusive interrogations."<sup>192</sup> Reporting on the deaths of detainees in CIA custody, Human Rights First (HRF) stated that:

Reports of internal efforts at the CIA to address detainee abuse by agents are less than encouraging. After completing a review in spring 2004 of CIA detention and interrogation procedures in Afghanistan and Iraq, the CIA Inspector General made 10 recommendations for changes, including more safeguards against abuse, to CIA Director Porter Goss. Eight of the 10 have been 'accepted,' but the changes did not apparently prevent consideration of a proposal for handling deaths of detainees in CIA custody. According to the Washington Post, "One proposal circulating among mid-level officers calls for rushing in a CIA pathologist to perform an autopsy and then quickly burning the body."<sup>193</sup>

The Washington Post, also reporting on deaths of detainees in CIA custody, stated that the "CIA's inspector general is investigating at least half a dozen allegations of serious abuse in Iraq and Afghanistan, including two previously reported deaths in Iraq, one in Afghanistan and the death at the Salt Pit, U.S. officials said."<sup>194</sup> Reporting on mistaken renditions, the Washington Post also noted:

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. One turned out to be an innocent college professor who had given the al Qaeda member a bad grade, one official said.<sup>195</sup>

On the subject of mistaken renditions, the Associated Press has stated that “[t]he CIA’s inspector general, John Helgerson, is looking into fewer than 10 cases of potentially ‘erroneous renditions’, according to a current intelligence official who spoke on condition of anonymity because the investigations are classified.”<sup>196</sup> Reporting on the drugging of prisoners, the Washington Post specified that “[h]owever, the use of drugs by the CIA was discussed during a 2004 internal investigation conducted by the inspector general for coalition forces in Afghanistan.”<sup>197</sup> In relation to the CIA’s destruction of videotapes of interrogations of detainees, the Washington Post reported in December 2007, that the DOJ indicated that it would be working with the CIA’s Inspector General’s office to determine “whether a further investigation is warranted” into the agency’s destruction of videotapes in 2005.<sup>198</sup>

### **C. CIA CONCERNS ABOUT ILLEGALITY**

The media has reported that the CIA Inspector General and individual CIA agents have expressed concerns about the legal basis of the CIA’s rendition, secret detention, and interrogation practices, and concern that these activities involve illegal acts. The Washington Post reported that by 2004, concerns had grown so intense that the CIA suspended the use of certain techniques pending a legal review of the interrogation program:

Current and former CIA officers aware of the recent decision said the suspension reflects the CIA’s fears of being accused of unsanctioned and illegal activities, as it was in the 1970s. The decision applies to CIA detention facilities, such as those around the world where the agency is interrogating al Qaeda leaders and their supporters, but not military prisons at Guantanamo Bay, Cuba, and elsewhere. ‘Everything’s on hold,’ said a former senior CIA official aware of the agency’s decision. ‘The whole thing has been stopped until we sort out whether we are sure we’re on legal ground.’<sup>199</sup>

The New Yorker has reported that “[r]endition was originally carried out on a limited basis, but after September 11th, when President Bush declared a global war on terrorism, the program expanded beyond recognition—becoming, according to a former C.I.A. official, ‘an abomination.’”<sup>200</sup> The Washington Post has reported that “[s]ince [the secret detention system was conceived], the arrangement has been increasingly debated within the CIA, where considerable concern lingers about the legality, morality and practicality of holding even unrepentant terrorists in such isolation and secrecy, perhaps for the duration of their lives.”<sup>201</sup> In November 2005, the New York Times revealed that:

A classified report issued last year by the Central Intelligence Agency’s inspector general warned that interrogation procedures approved by the C.I.A. after the Sept. 11 attacks might violate some provisions of the international Convention Against Torture, current and former intelligence officials say. The previously undisclosed findings from the report, which was completed in the spring of 2004, reflected deep unease within the C.I.A. about the interrogation procedures, the officials said.<sup>202</sup>

The Washington Post has also noted, with respect to secret CIA prisons, that “some CIA officers have worried privately that they may have violated international law or domestic criminal statutes.”<sup>203</sup> In July 2007, The Guardian further reported that:

Dick Marty, the Swiss senator who produced the Council of Europe’s report on the hidden transport and detention of suspects, yesterday told a committee in the European parliament that he had received information about the secret programme from dissident officers within the upper reaches of the CIA. He said the officers were disturbed that the programme, known as renditions, led to the torture and mistreatment of detainees.<sup>204</sup>

In a similar vein, the New York Times has reported that “[f]rom the secret sites in Afghanistan, Thailand and Eastern Europe where C.I.A. teams held Qaeda terrorists, questions for the lawyers at C.I.A. headquarters arrived daily. Nervous interrogators wanted to know: Are we breaking the laws against torture?”<sup>205</sup> It has also stated that “[a] report by [CIA Inspector General John] Helgerson’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.”<sup>206</sup> In February 2008, ABC News reported that the 2002 Presidential authorization of harsh interrogation techniques was signed under protest by some in the intelligence community:

At the time a presidential finding was signed in 2002 approving the use of harsh interrogation techniques including waterboarding, one of the CIA’s most senior officials registered his objections to the technique, which a senior intelligence official failed to acknowledge today when he stated on the condition of anonymity that the current debate over the use of the technique is troubling to intelligence professionals. In fact, a number of intelligence professionals, current and former, object to the use of the technique.<sup>207</sup>

According to the New York Times, “[t]he Justice Department revealed...that its internal ethics office was investigating the department’s legal approval for waterboarding of Qaeda suspects by the Central Intelligence Agency and was likely to make public an unclassified version of its report.”<sup>208</sup> On February 22, 2008, the Associated Press quoted a letter dated February 18, 2008, from Marshall Jarrett, head of the DOJ Office of Professional Responsibility, to Senators Durbin and Whitehouse, as stating that “[a]mong other issues, we are examining whether the legal advice contained in those memoranda was consistent with the professional standards that apply to Department of Justice attorneys.”<sup>209</sup>

As of April 2006, it was reported that the CIA’s Office of Inspector General had referred a number of cases of detainee abuse to the DOJ for their investigation and potential criminal prosecution. For example, the New Yorker detailed the death following CIA interrogation of “ghost detainee” Manadel al-Jamadi and reported that “[i]n a subsequent internal investigation, United States government authorities classified Jamadi’s death as a ‘homicide,’ meaning that it resulted from unnatural causes.”<sup>210</sup> HRF has also reported on numerous cases of detainee deaths in which the CIA was implicated, finding that:

Deaths in which the CIA has been implicated (alone or jointly with Army Special Forces or Navy SEALs) have presented additional problems. Such deaths are required to be investigated by the CIA Inspector General and, if cause exists, referred to the Department of Justice for prosecution. Yet while five of the deaths in custody analyzed by HRF appear to

involve the CIA, only a contract worker associated with the CIA has to date faced criminal charges for his role in the death of detainees. Further, the CIA has sought to keep closed the courts-martial of Army personnel where CIA officers may be implicated, and has in military autopsies classified the circumstances of the death. These efforts have encumbered the investigation and prosecution of both CIA officials and military personnel. (internal citations omitted).<sup>211</sup>

In 2006, CHRGJ, HRF and HRW issued a report that indicated that “[a]ccording to the Department of Justice, twenty cases have been referred to it by the Department of Defense or the CIA’s Inspector General.”<sup>212</sup> It also added that:

Justice Department officials told DAA [Detainee Abuse and Accountability] Project researchers in April 2006 that one of the 20 persons referred to the Justice Department for prosecution was indicted: David Passaro, a CIA contractor indicted for assault in the case of an Afghan detainee beaten to death in eastern Afghanistan in June 2003. Officials said that 17 other individuals were still being investigated and that the Department had decided not to prosecute two others.<sup>213</sup>

The New York Times has further explained what has prompted investigations into detainee abuse, noting that concerning the death of Manadel al-Jamadi:

It was only after the Abu Ghraib photographs were leaked to C.I.D. (the Criminal Investigation Division of the Army) that C.I.D., C.I.A., O.I.G. (Office of Inspector General) and the NCIS (Naval Criminal Investigative Service) started a joint investigation. Eventually the death of al-Jamadi was also taken up by the various military and civil commissions set up to investigate the abuses at Abu Ghraib.<sup>214</sup>

#### **D. U.S. GOVERNMENT CONCERNS ABOUT ILLEGALITY OF POST-9/11 RENDITION AND COERCIVE INTERROGATION OUTSIDE THE CIA**

As with the secret detention program and CIA interrogation techniques, concerns that the post-9/11 rendition program involved illegal acts were raised very early within the U.S. government, most notably within the FBI. On November 27, 2002, an FBI supervisory special agent wrote a memo analyzing the practice of sending detainees “to Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information” under U.S. law.<sup>215</sup> The agent concluded that this technique—rendition—amounted to a violation of federal criminal law: 18 U.S.C. § 2340, the federal torture statute.<sup>216</sup> Further, the agent concluded that discussing a plan to render an individual “could be seen as a conspiracy to violate” the torture statute.<sup>217</sup>

The media has reported on the fact that Members of Congress have called for the appointment of a special counsel to investigate whether the approval of harsh interrogation techniques involved the commission of crimes. On June 8, 2008, the Washington Post reported that “[n]early 60 House Democrats yesterday urged the Justice Department to appoint a special counsel to examine whether top Bush administration officials may have committed crimes in authorizing the use of harsh interrogation tactics against suspected terrorists.”<sup>218</sup> Representative Jerrold Nadler has stated in reference to the CIA’s interrogation techniques that “[i]t has become abundantly clear that

an independent investigation into these matters is long overdue and that the Justice Department lacks the political independence to conduct an impartial investigation,” adding that, “[a] special counsel is the best way to investigate how the Bush Administration created interrogation policies that have resulted in the widespread abuse of detainees in U.S. custody and control.”<sup>219</sup>

## **E. ADDITIONAL CONCERNS OF THE U.S. GOVERNMENT**

In addition to concerns about illegality, the media has reported that former officials have expressed additional concerns about the rendition, secret detention, and interrogation programs. The L.A. Times has reported that “[o]ne former high-ranking CIA official said [CIA Inspector General John Helgerson] has not shied away from taking positions in heated internal policy debates. The former official recalled attending staff meetings in which Helgerson expressed opposition to agency involvement in handling detainees as part of the war on terrorism.”<sup>220</sup> The Globe and Mail has reported that “[t]he creator of the CIA’s ‘extraordinary-rendition’ program says he has always distrusted interrogation intelligence flowing from the controversial practice, given that the admissions it produced were usually ‘very tainted’ by foreign agencies who jailed suspects at the behest of the United States.”<sup>221</sup>

## **F. FINDINGS OF UN HUMAN RIGHTS BODIES**

Concerns within the U.S. government about the legality of its post-9/11 rendition and secret detention policy were echoed by UN human rights institutions charged with monitoring compliance by countries with the human rights treaties that they ratify. Because the United States has ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture) and the International Covenant on Civil and Political Rights, the U.S. is subject to review by the UN Committee Against Torture and the UN Human Rights Committee on a periodic basis. The UN Committee Against Torture (which monitors the Convention Against Torture) and the UN Human Rights Committee (which monitors the International Covenant on Civil and Political Rights) have both found that the U.S. practices of rendition, secret detention, and “enhanced interrogation” were violations of these binding treaties.

In July 2006, the UN Committee Against Torture found that the U.S. policy of rendition was a violation of the Convention;<sup>222</sup> determined that secret detention as practiced by the United States in the “War on Terror” was a “per se” violation of the treaty and amounted to enforced disappearance;<sup>223</sup> and stated that some of the interrogation techniques employed by the U.S. amounted to torture or to cruel, inhuman or degrading treatment or punishment.<sup>224</sup> In September 2006, the UN Human Rights Committee called on the United States to cease the rendition of individuals to countries where detainees face a risk of torture or cruel, inhuman, or degrading treatment;<sup>225</sup> urged the United States to “immediately cease its practice of secret detention and close all secret detention facilities;”<sup>226</sup> and expressed concern that the U.S. government had:

...authorized for some time the use of enhanced interrogation techniques, such as prolonged stress positions and isolation, sensory deprivation, hooding, exposure to cold or heat, sleep and dietary adjustments, 20-hour interrogations, removal of clothing and deprivation of all comfort and religious items, forced grooming, and exploitation of detainees’ individual phobias.<sup>227</sup>

Several UN experts responsible for monitoring specific human rights issues have criticized the U.S. rendition, secret detention, and interrogation program as practiced after 9/11, finding that it violates human rights standards binding on the United States. In August 2005, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted a report to the UN General Assembly that included an analysis of specific rendition cases and U.S. involvement therein.<sup>228</sup> The report concluded that the renditions in question violated key provisions of the Convention Against Torture.<sup>229</sup> In November 2007, the UN Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism submitted a report concerning his mission to the United States to the UN General Assembly that included an analysis of specific rendition cases and U.S. involvement therein.<sup>230</sup> The report concluded that information gathered during his mission “supports the suspicion that the CIA has been involved and continues to be involved in the extraordinary rendition of terrorism suspects and possibly other persons.”<sup>231</sup> The report also called for an end to extraordinary rendition and secret detention, and criticized the CIA’s interrogation techniques.<sup>232</sup>

## **G. INVESTIGATIONS BY FOREIGN GOVERNMENTS**

Foreign governments commonly thought of as allies of the United States in the fight against terrorism have also been voicing concerns about the post-9/11 rendition program ever since reports of the practice were made public. For instance, the Washington Post has reported on the ten-month Swedish investigation into rendition of two Egyptian asylum seekers.<sup>233</sup> The Guardian has also reported that Spanish police have traced up to 42 suspected CIA operatives believed to have taken part in secret flights carrying detained or kidnapped terror suspects to interrogation centers and jails in Afghanistan, Egypt, and elsewhere.<sup>234</sup> Following this last revelation, the Washington Post reported that officials in Norway, Spain, Sweden, and the European Parliament had opened formal inquiries or demanded answers from U.S. officials about CIA rendition flights within their respective jurisdictions.<sup>235</sup> In addition, Le Figaro has reported that officials opened criminal investigation into use of Bourget airport by the CIA for rendition flights;<sup>236</sup> the Spiegel Online has documented the German parliamentary inquiry into the CIA’s alleged kidnapping and secret detention of German citizen Khaled El-Masri;<sup>237</sup> and the Christian Science Monitor provided information concerning European investigations into CIA rendition flights, including inquiries in Germany, Italy, Portugal, Spain, and Switzerland.<sup>238</sup>

## **H. INVESTIGATIONS BY THE COUNCIL OF EUROPE AND EUROPEAN PARLIAMENT**

Following public reports of European involvement in CIA activities, two major European inter-governmental organizations—the Council of Europe and the European Parliament—launched inquiries into CIA rendition and secret detention activities in Europe. According to the European Parliament’s Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP), “[o]ver one thousand CIA-operated flights used European airspace from 2001 to 2005 and temporary secret detention facilities ‘may have been located at US military bases’ in Europe.”<sup>239</sup> The Council of Europe has characterized the final report of its Parliamentary Assembly Committee on Legal Affairs and Human Rights inquiry into CIA activities in Europe as describing:

...in detail the scope and functioning of the US’s ‘high-value detainees’ programme, which it says was set up by the CIA ‘with the co-operation of official European partners belonging to



Government services' and kept secret for many years thanks to strict observance of the rules of confidentiality laid down in the NATO framework.<sup>240</sup>

## **I. PUBLIC CONCERN WITH THE CIA'S ACTIVITIES AND MISTAKES**

The volume and substance of reporting on the CIA's rendition, secret detention, and coercive interrogation program have documented the high level of public concern with the CIA's activities. For example, as early as January 2005, the Washington Post noted that the "so-called 'Torture Memo'" (purporting to authorize abusive interrogation practices) was "withdrawn after public outcry and has recently been replaced by a new legal interpretation that is much narrower in scope and conventional in outlook."<sup>241</sup> The Friends Committee on National Legislation: A Quaker Lobby in the Public Interest, has stated that "[t]he public outcry against torture is strengthening the hand of those within the U.S. government who oppose torture and want to prohibit its use."<sup>242</sup> In July 2006, World Public Opinion published the results of a public opinion survey of Americans, finding, among other things, that 57 percent of respondents believe that the U.S. "should not permit U.S. military and intelligence agencies to secretly send terrorism suspects to other countries that are known to use torture."<sup>243</sup> The ACLU has also discussed the public outcry over the 2002 Bybee memorandum, which stated that abuse does not rise to the level of torture under U.S. law unless it inflicts pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," noting that following the public outcry the memorandum was rescinded by the administration.<sup>244</sup> The Roanoke Times has also noted "public outcries against...travesties, including revelations of extraordinary rendition and torture."<sup>245</sup>

By the end of 2005, as the stories of released CIA detainees emerged, the public also learned about the rendition and secret detention program's propensity for errors, particularly in respect to former detainees Khaled El-Masri and Maher Arar. For example, in relation to El-Masri, a March 2005 CBS News report discussed his rendition, secret detention, and torture on the basis of mistaken identity.<sup>246</sup> In December 2005, the Washington Post also recounted evidence that the rendition and secret detention of Khaled El-Masri was carried out by mistake.<sup>247</sup> Approximately one year later, in September 2006, The New Yorker reported that U.S. Secretary of State Condoleezza Rice had conceded to the German government that the rendition and secret detention of German citizen, Khaled El-Masri, had been a mistake.<sup>248</sup> In relation to Maher Arar, the Canadian Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar found that "there is no evidence to indicate that Mr. Arar has committed any offence or that his activities constitute a threat to the security of Canada."<sup>249</sup> Accordingly, a Washington Post editorial has characterized Maher Arar's case as "vividly illustrat[ing] a couple of the points that veteran military and diplomatic leaders have been trying to impress on Mr. Bush about the dangers of the CIA program."<sup>250</sup>

## ENDNOTES

<sup>1</sup> White House Office of the Press Secretary, *News Release: President Discusses Creation of Military Commissions to Try Suspected Terrorists*, Sept. 6, 2006, available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html> (last visited Sept. 24, 2008) [hereinafter *White House News Release*]; Announcement, Office of the Director of National Intelligence, *Summary of the High Value Terrorist Detainee Program*, Sept. 6, 2006, available at <http://www.dni.gov/announcements/content/TheHighValueDetaineeProgram.pdf> (last visited Sept. 24, 2008) [hereinafter *ODNI Summary of the Program*].

<sup>2</sup> Douglas Jehl and David Johnston, *Rule Change Lets C.I.A. Freely Send Suspects Abroad to Jails*, N.Y. TIMES, Mar. 6, 2005, available at <http://www.nytimes.com/2005/03/06/politics/06intel.html> (last visited Sept. 24, 2008).

<sup>3</sup> Douglas Jehl, *Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim*, N.Y. TIMES, Dec. 9, 2005, available at <http://www.nytimes.com/2005/12/09/politics/09intel.html> (last visited Sept. 24, 2008).

<sup>4</sup> See *White House News Release*, *supra* note 1. See also *ODNI Summary of the Program*, *supra* note 1.

<sup>5</sup> See *White House News Release*, *supra* note 1 (“In addition to the terrorists held at Guantánamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency . . .”); White House Office of the Press Secretary, *Press Release: The White House Fact Sheet: Bringing Terrorists to Justice*, Sept. 6, 2006, available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-2.html> (last visited Sept. 24, 2008); See also *ODNI Summary of the Program*, *supra* note 1; Office of the Director of National Intelligence, *Biographies of High Value Terrorist Detainees Transferred to the US Naval Base at Guantánamo Bay*, Sept. 6, 2006, available at <http://www.dni.gov/announcements/content/DetaineeBiographies.pdf> (last visited Sept. 24, 2008).

<sup>6</sup> For full list of official acknowledgements by the U.S. government see Opposition to the CIA’s Motion for Summary Judgment and Memorandum of Law in Support of Plaintiff’s Cross motion for Partial Summary Judgment, *Amnesty Int.’l USA, et al. v. CIA, et al.*, (No. 07 CV 5435), at 28-9 (S.D. N.Y. 2007).

<sup>7</sup> See Amnesty International, Cageprisoners, the Center. for Constitutional Rights, New York University School of Law Center. for Human Rights and Global Justice (CHRGJ), Human Rights Watch, and Reprieve, *Off the Record: U.S. Responsibility for Enforced Disappearances in the “War on Terror”* (June 2007), available at [http://chrgj.org/docs/OffRecord/OFF\\_THE\\_RECORD\\_FINAL.pdf](http://chrgj.org/docs/OffRecord/OFF_THE_RECORD_FINAL.pdf) (last visited Sept. 24, 2008); CHRGJ, *Fate and Whereabouts Unknown: Detainees in the “War on Terror”* (Dec. 2005), available at <http://www.chrgj.org/docs/Whereabouts%20Unknown%20Final.pdf> (last visited Sept. 24, 2008); Human Rights Watch, *List of “Ghost Prisoners” Possibly in CIA Custody* (last updated Dec. 1, 2005), available at <http://hrw.org/english/docs/2005/11/30/usdom12109.htm> (last visited Sept. 24, 2008); Human Rights Watch, *The United States’ “Disappeared”: The CIA’s Long-Term “Ghost Detainees”* (Oct. 2004), available at <http://www.hrw.org/backgrounders/usa/us1004> (last visited Sept. 24, 2008).

<sup>8</sup> See *Arar v. Ashcroft*, 414 F. Supp. 2d 250 (E.D.N.Y. 2006), *aff’d* *Arar v. Ashcroft*, 532 F.3d 157 (2nd Cir. 2008); *El-Masri v. Tenet*, 437 F. Supp. 2d 530 (E.D. Va. 2006), *aff’d sub nom. El-Masri v. U.S.*, 479 F.3d 296 (4th Cir. 2007), *cert. denied*, 128 S. Ct. 373 (2007); *Mohamed et al. v. Jeppesen Dataplan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008).

<sup>9</sup> Washington Square Legal Services, Inc. is the corporation that supports the International Human Rights Clinic of New York University School of Law.

<sup>10</sup> See *supra* note 6.

<sup>11</sup> Declaration of Margaret L. Satterthwaite in Support of Opposition to the CIA’s Motion for Summary Judgment and Memorandum of Law in Support of Plaintiff’s Cross motion for Partial Summary Judgment, *Amnesty Int.’l USA, et al. v. CIA, et al.*, (No. 07 CV 5435), (S.D. N.Y. 2007), available at <http://www.chrgj.org/projects/docs/jun08declaration.pdf> and Exhibits A-Z, available at <http://www.chrgj.org/projects/docs/jun08exhibitsaz.pdf>, Exhibits AA-GG, available at <http://www.chrgj.org/projects/docs/jun08exhibitsaagg.pdf>, Exhibits HH-NN, available at <http://www.chrgj.org/projects/docs/jun08exhibitsshnn.pdf> (last visited Sept. 24, 2008).

<sup>12</sup> *White House News Release*, *supra* note 1.

<sup>13</sup> *ODNI Summary of the Program*, *supra* note 1.

<sup>14</sup> Letter from Office of General Counsel, CIA to Melanca D. Clark, Gibbins [sic], Del Deo, Dolan, Griffinger & Vecchione, P.C., Nov. 10, 2006 (letter sent in connection with *ACLU et. al. v. DOD et. al.*, 04-Civ.-4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.)).

<sup>15</sup> See CIA Director General Hayden, *A Conversation with Michael Hayden*, Council on Foreign Relations, Sept. 7, 2007, available at <http://www.cfr.org/publication/14158/> (last visited Sept. 24, 2008) [hereinafter *A Conversation with Michael Hayden*] noting that “In 2007 to date, CIA officers have testified in 57 congressional hearings, and we’re responding to 29 congressionally legislated requests for information. We have answered 1,140 QFRs -- that’s Questions For the Record -- as well as 254 other letters, questions and requests. CIA experts have given more than 500 briefings to members of

Congress and their staffs. We have issued some 100 congressional notifications about our sensitive programs. Everything is on the table. I personally have briefed the Hill nine times since last September on renditions, detentions and interrogations.”

<sup>16</sup> The Charlie Rose Show, *Transcript of Director Michael Hayden's Interview with Charlie Rose*, PBS television broadcast Oct. 22, 2007, available at <http://www.ihl.com/articles/2007/10/23/america/23hayden.php> (last visited Sept. 24, 2008) [hereinafter *Director Michael Hayden's Interview with Charlie Rose*].

<sup>17</sup> *White House News Release*, *supra* note 1.

<sup>18</sup> U.S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), News Release, *Defense Department Takes Custody of a High-Value Detainee*, Apr. 27, 2007, available at <http://www.defenselink.mil/Releases/Release.aspx?ReleaseID=10792> (last visited Sept. 24, 2008) [hereinafter *Defense Department Takes Custody of a High-Value Detainee* (2007)].

<sup>19</sup> *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.

<sup>20</sup> U.S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), News Release, *Defense Department Takes Custody of a High-Value Detainee*, Mar. 14, 2008, available at <http://www.defenselink.mil/releases/release.aspx?releaseid=11758> (last visited Sept. 24, 2008) [hereinafter *Defense Department Takes Custody of a High-Value Detainee* (2008)].

<sup>21</sup> White House Office of the Press Secretary, *President's Press Conference*, Mar. 16, 2005, available at <http://www.whitehouse.gov/news/releases/2005/03/20050316-3.html> (last visited Sept. 24, 2008).

<sup>22</sup> White House Office of the Press Secretary, *Press Conference of the President*, Apr. 28, 2005, available at <http://www.whitehouse.gov/news/releases/2005/04/20050428-9.html> (last visited Sept. 24, 2008).

<sup>23</sup> *Testimony of DCI Goss Before Senate Armed Services Committee*, 109th Cong. 4, Mar. 17, 2005, available at [https://www.cia.gov/news-information/speeches-testimony/2005/Goss\\_testimony\\_03172005.html](https://www.cia.gov/news-information/speeches-testimony/2005/Goss_testimony_03172005.html) (last visited Sept. 24, 2008).

<sup>24</sup> *A Conversation with Michael Hayden*, *supra* note 15.

<sup>25</sup> *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.

<sup>26</sup> U.S. Secretary of State Condoleezza Rice, *Remarks Upon Her Departure for Europe*, Andrews Air Force Base, Dec. 5, 2005, available at <http://www.state.gov/secretary/rm/2005/57602.htm> (last visited Sept. 24, 2008).

<sup>27</sup> White House Office of the Press Secretary, *Press Briefing by Scott McClellan*, Dec. 6, 2005, available at <http://www.whitehouse.gov/news/releases/2005/12/20051206-3.html>, (last visited Sept. 24, 2008) (Scott McClellan discussing “renditions” of terrorism suspects).

<sup>28</sup> White House Office of the Press Secretary, *Press Gaggle by Tony Snow*, June 7, 2006, available at <http://www.whitehouse.gov/news/releases/2006/06/20060607-2.html> (last visited Sept. 24, 2008) (Tony Snow providing “[s]everal points to make on rendition.”).

<sup>29</sup> Craig Whitlock, *Jordan's Spy Agency: Holding Cell for the CIA*, WASH. POST, Dec. 1, 2007, available at [http://www.washingtonpost.com/wp-dyn/content/article/2007/11/30/AR2007113002484\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/11/30/AR2007113002484_pf.html) (last visited Sept. 24, 2008).

<sup>30</sup> Douglas Jehl & David Johnston, *Rule Change Lets C.I.A. Freely Send Suspects Abroad to Jails*, N.Y. TIMES, Mar. 6, 2005, available at [http://www.nytimes.com/2005/03/06/politics/06intel.html?\\_r=1&oref=slogin](http://www.nytimes.com/2005/03/06/politics/06intel.html?_r=1&oref=slogin) (last visited Sept. 24, 2008).

<sup>31</sup> Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html> (last visited Sept. 24, 2008).

<sup>32</sup> Brian Ross & Richard Esposito, *Exclusive: 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> (last visited Sept. 24, 2008).

<sup>33</sup> Jehl, *Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim*, *supra* note 3.

<sup>34</sup> Eur. Parl. Ass., Comm. on Legal Aff. and Hum. Rts., *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, 17th Sitting, Doc. No. 10957 (2006) at 9-19, available at <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf> (last visited Sept. 24, 2008) [hereinafter Comm. on Legal Aff. and Hum. Rts., *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states* (2006)].

<sup>35</sup> Eur. Parl. Ass., Comm. on Legal Aff. and Hum. Rts., *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*, 23rd Sitting, Doc. No. 11302 (2007), at 10-14, available at [http://assembly.coe.int/CommitteeDocs/2007/EMarty\\_20070608\\_NoEmbargo.pdf](http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf) (last visited Sept. 24, 2008) [hereinafter Comm. on Legal Aff. and Hum. Rts., *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states* (2007)].

- <sup>36</sup> Michael Hirsh, John Barry & Daniel Klaidman, *A Tortured Debate*, NEWSWEEK, June 21, 2004, available at <http://www.newsweek.com/id/54093?tid=relatedcl> (last visited Sept. 24, 2008).
- <sup>37</sup> JAMES RISEN, *STATE OF WAR: THE SECRET HISTORY OF THE CIA AND THE BUSH ADMINISTRATION* 28-29 (2006).
- <sup>38</sup> RON SUSKIND, *THE ONE PERCENT DOCTRINE: DEEP INSIDE AMERICA'S PURSUIT OF ITS ENEMIES SINCE 9/11* 111-15 (2006).
- <sup>39</sup> Spiegel Interview with CIA's Former Europe Director, "We Probably Gave Powell the Wrong Speech," Jan. 29, 2007, available at <http://www.spiegel.de/international/spiegel/0,1518,462782,00.html> (last visited Sept. 24, 2008).
- <sup>40</sup> Extraordinary Rendition in U.S. Counterterrorism Policy: The Impact on Transatlantic Relations, Joint Hearing Before Subcomm. on International Organizations, Human Rights, and Oversight and Subcomm. on Europe of the Comm. on Foreign Affairs (Apr. 17, 2007), available at <http://foreignaffairs.house.gov/110/34712.pdf> (last visited Sept. 24, 2008).
- <sup>41</sup> Duncan Campbell, *U.S. sends suspects to face torture*, GUARDIAN (London), Mar. 12, 2002, available at <http://www.guardian.co.uk/world/2002/mar/12/september11.usa> (last visited Sept. 24, 2008).
- <sup>42</sup> Dana Priest & Barton Gellman, *U.S. Decries Abuse but Defends Interrogations; 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities*, WASH. POST, Dec. 26, 2002, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901356.html> (last visited Sept. 24, 2008).
- <sup>43</sup> DeNeen L. Brown & Dana Priest, *Deported Terror Suspect Details Torture in Syria; Canadian's Case Called Typical of CIA*, WASH. POST, Nov. 5, 2003, available at <http://www.washingtonpost.com/ac2/wp-dyn/A522-2003Nov4?language=printer> (last visited Sept. 24, 2008).
- <sup>44</sup> Transcript of "File on 4—Rendition," BBC, Feb. 8, 2005, at 6, available at [news.bbc.co.uk/1/hi/shared/bsp/hi/pdfs/15\\_02\\_05\\_renditions.pdf](http://news.bbc.co.uk/1/hi/shared/bsp/hi/pdfs/15_02_05_renditions.pdf) (last visited Sept. 24, 2008).
- <sup>45</sup> *A Conversation with Michael Hayden*, *supra* note 15. See also *Statement to Employees by Director of the Central Intelligence Agency, General Michael V. Hayden on the CIA's Terrorist Interrogation Program*, Oct. 5, 2007, available at <https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2007/terrorist-interrogation-program.html> (last visited Sept. 24, 2008) [hereinafter *General Hayden Statement to CIA Employees on the CIA's Terrorist Interrogation Program*] and *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.
- <sup>46</sup> *White House News Release*, *supra* note 1.
- <sup>47</sup> *ODNI Summary of the Program*, *supra* note 1.
- <sup>48</sup> *A Conversation with Michael Hayden*, *supra* note 15. See also *Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on the Taping of Early Detainee Interrogations*, Dec. 6, 2007, available at <https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2007/taping-of-early-detainee-interrogations.html> (last visited Sept. 24, 2008).
- <sup>49</sup> *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16 (CIA Director General Hayden stating that the "CIA's terrorist detention and interrogation program began after the capture of Abu Zubaydah in March 2002.").
- <sup>50</sup> Those who have been named by the U.S. government are: (1) Muhammad Rahim al-Afghani (Mohammed Rahim); (2) Ali Abdul-Hamid al-Fakhiri (Ali Abd-al-Hamid al-Fakhiri, Ibn al-Shaykh al-Libi); (3) Ali Abd al-Rahman al-Faqasi al-Ghamdi (Abu Bakr al Azdi); (4) Mustafa al-Hawsawi (Hashim 'Abd al-Rahman, Zahir, Ayyub, Muhammad Adnan); (5) Abd al-Hadi al-Iraqi (Abu Abdullah, Abdal Hadi al Iraqi); (6) Abu Faraj al-Libi (Mustafa al-'Uzayti, Mahfuz, 'Abd al-Hafiz, Abu Hamada, Tawfiq); (7) Abd al-Rahim al-Nashiri (Abd al-Rahim Hussein Muhammad Abdu, Mulla Bilal, Bilal, Abu Bilal al-Makki, Khalid al-Safani, Amm Ahmad ("Uncle Ahmad")); (8) Ramzi bin al-Shibh (Abu Ubaydah, 'Umar Muhammad 'Abdallah Ba' Amar); (9) Ali Abdul Aziz Ali ('Ammar al-Baluchi); (10) Mohamed Farik Amin (Zubair); (11) Waleed Muhammad bin Attash (Khallad Bin 'Attash, Silver); (12) Gouled Hassan Dourad (Guleed Hassan Ahmad, Hanad); (13) Ahmed Khalfan Ghailani (Haytham al-Kini); (14) Hassan Ghul; (15) Riduan Isamudin (Hambali) (Riduan bin Isomuddin, Encep Nurjaman); (16) Majid Khan (Yusif); (17) Mohammed Nazir Bin Lep (Lillie, Lilie, Li-Li); (18) Khalid Sheikh Mohammed (Mukhtar); (19) Abu Zubayda (Hani, Tariq, Zayn al-'Abidin Abu Zubaydah).
- <sup>51</sup> Priest, *U.S. Decries Abuse but Defends Interrogations*, *supra* note 42.
- <sup>52</sup> The National Commission on Terrorist Attacks Upon The U.S., *9-11 Commission Report* (2004) [hereinafter *9-11 Commission Report*] at 434-436.
- <sup>53</sup> *United States v. Paracha*, 2006 U.S. Dist. LEXIS 1, \*11-12 (S.D.N.Y. 2006).
- <sup>54</sup> Substitution for the Testimony of Khalid Sheikh Mohammed, Defendant's Exhibit 941, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1; Substitution for the Testimony of Mustafa Ahmed al-Hawsawi, Defendant's Exhibit 943, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1; Substitution for the Testimony of Walid Muhammad Salih Bin Attash ("Khallad"), Defendant's Exhibit 945, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1-2; Substitution for the Testimony of Riduan Isamuddin ("Hambali"), Defendant's Exhibit 946, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 2.
- <sup>55</sup> *White House News Release*, *supra* note 1.

- <sup>56</sup> *Biographies of High Value Terrorist Detainees Transferred to the US Naval Base at Guantánamo Bay*, *supra* note 6.
- <sup>57</sup> Report of the Senate Select Committee on Intelligence, *Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments*, Sept. 9, 2006, at 79-82, available at <http://intelligence.senate.gov/phasesiaccuracy.pdf> (last visited, Sept. 24, 2008).
- <sup>58</sup> *Defense Department Takes Custody of a High-Value Detainee* (2007), *supra* note 18.
- <sup>59</sup> *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.
- <sup>60</sup> *Defense Department Takes Custody of a High-Value Detainee* (2008), *supra* note 20.
- <sup>61</sup> *A Conversation with Michael Hayden*, *supra* note 15.
- <sup>62</sup> *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.
- <sup>63</sup> Human Rights Watch, *The United States' "Disappeared," The CIA's Long-Term "Ghost Detainees,"* *supra* note 7.
- <sup>64</sup> Priest, *CIA Holds Terror Suspects in Secret Prisons*, *supra* note 31.
- <sup>65</sup> Jehl, *Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim*, *supra* note 3.
- <sup>66</sup> CHRGI, *Fate and Whereabouts Unknown: Detainees in the "War on Terror,"* *supra* note 7.
- <sup>67</sup> Amnesty International et. al., *Off the Record, U.S. Responsibility for Enforced Disappearances in the "War on Terror,"* *supra* note 7. These individuals are: Hassan Ghul, Ali Abd al-Rahman al-Faqasi al-Ghamdi, and Ali Abdul-Hamid al-Fakhiri (Ali Abd-al-Hamid al-Fakhiri, Ibn al-Shaykh al-Libi).
- <sup>68</sup> Craig S. Smith & Souad Mekhennet, *Algerian Tells of Dark Term in U.S. Hands*, N.Y. TIMES, July 7, 2006, available at <http://www.nytimes.com/2006/07/07/world/africa/07algeria.html> (last visited Sept. 24, 2008).
- <sup>69</sup> Amnesty International, *USA: A case to answer: From Abu Ghraib to secret CIA custody: The case of Khaled al-Maqtari* 19-25 (2008), available at [http://www.amnesty-eu.org/static/documents/2008/AMR51\\_013\\_2008al-Maqtari\\_final.pdf](http://www.amnesty-eu.org/static/documents/2008/AMR51_013_2008al-Maqtari_final.pdf) (last visited Sept. 24, 2008) [hereinafter *The case of Khaled al-Maqtari*].
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- <sup>71</sup> Human Rights Watch, *Double Jeopardy: CIA Renditions to Jordan*, at 1 (2008), available at <http://www.hrw.org/reports/2008/jordan0408/jordan0408web.pdf> (last visited Sept. 24, 2008).
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- <sup>73</sup> Richard Esposito & Brian Ross, *Coming in From the Cold: CIA Spy Calls Waterboarding Necessary But Torture, Former Agent Says the Enhanced Technique Was Used on Al Qaeda Chief Abu Zubaydah*, ABC NEWS, Dec. 10, 2007, available at <http://abcnews.go.com/Blotter/Story?id=3978231&page=1> (last visited Sept. 24, 2008).
- <sup>74</sup> Michael Scheuer, Op-Ed., *A Fine Rendition*, N.Y. TIMES, Mar. 11, 2005, available at <http://www.nytimes.com/2005/03/11/opinion/11scheuer.html?pagewanted=print&position=> (last visited Sept. 24, 2008).
- <sup>75</sup> Scott Shane, *Inside a 9/11 Mastermind's Interrogation*, N.Y. TIMES, June 22, 2008, available at <http://www.nytimes.com/2008/06/22/washington/22ksm.html?partner=rssnyt&emc=rss&pagewanted=all> (last visited Sept. 24, 2008).
- <sup>76</sup> *White House News Release*, *supra* note 1.
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- <sup>78</sup> White House Office of the Press Secretary, *Press Gaggle with Scott McClellan and a Senior Administration Official*, Aug. 14, 2003, available at <http://www.whitehouse.gov/news/releases/2003/08/20030814-3.html> (last visited Sept. 24, 2008).
- <sup>79</sup> See *White House News Release*, *supra* note 1.
- <sup>80</sup> *Id.*
- <sup>81</sup> ODNI *Summary of the Program*, *supra* note 1.
- <sup>82</sup> Jan Crawford Greenberg, Howard L. Rosenberg & Ariane de Vogue, *Bush Aware of Advisers' Interrogation Talks*, ABC NEWS, Apr. 11, 2008, available at <http://abcnews.go.com/TheLaw/LawPolitics/story?id=4635175&> (last visited Sept 24, 2008).
- <sup>83</sup> *General Hayden Statement to CIA Employees on the CIA's Terrorist Interrogation Program*, *supra* note 45. See also *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.
- <sup>84</sup> Q&A: John Negroponte, *No Hand-Wringing, Please*, NAT'L J., Jan. 25, 2008, available at <http://news.nationaljournal.com/articles/080125nj1.htm> (last visited, Sept, 24 2008).
- <sup>85</sup> *Senate Select Committee on Intelligence Holds a Hearing on the Annual Threat Assessment: Hearing Before the S. Select Comm. on Intelligence*, 110th Cong. 23-26 (2008).

<sup>86</sup> Other Documents Nos. 3, 7, 25, 29, 45, 65, 67, 85, 87, 101, 103, 119, 129, 131, 169; Interview Report No. 103; Cable No. 333; and Special Review (documents released in connection with *ACLU et. al. v. DOD et. al.*, 04 Civ. 4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.).

<sup>87</sup> *Other Document No. 85*, (undated) (released in connection with *ACLU et. al. v. DOD et. al.*, 04 Civ. 4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.)) (stating that “In each instance the use of Enhanced Techniques must be approved by Headquarters in advance”).

<sup>88</sup> Motion to Declare Interrogation Methods Applied Against Petitioner Constitute Torture, Dec. 6, 2007, *Khan v. Gates*, 07-1324 (D.C. Cir.) (heavily redacted motion seeking judicial ruling that interrogation methods used by CIA constituted impermissible torture and that any evidence derived from interrogations should not be considered by the court).

<sup>89</sup> *White House News Release*, *supra* note 1 and *ODNI Summary of the Program*, *supra* note 1.

<sup>90</sup> *A Conversation with Michael Hayden*, *supra* note 15.

<sup>91</sup> Scott Shane, David Johnston, & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. TIMES, Oct. 4, 2007, available at <http://www.nytimes.com/2007/10/04/washington/04interrogate.html> (last visited Sept. 24, 2008).

<sup>92</sup> Richard Esposito & Brian Ross, *Coming in From the Cold: CIA Spy Calls Waterboarding Necessary But Torture, Former Agent Says the Enhanced Technique Was Used on Al Qaeda Chief Abu Zubaydah*, ABC News, Dec. 10, 2007, Part 1 of Transcript at 20-21, available at [http://abcnews.go.com/images/Blotter/brianross\\_kiriakou\\_transcript1\\_blotter071210.pdf](http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf) (last visited Sept. 24, 2008) [hereinafter *Coming in From the Cold: Part 1 of Transcript*].

<sup>93</sup> Brian Ross & Richard Esposito, *CIA's Harsh Interrogation Techniques Described*, ABC NEWS, Nov. 18, 2005, available at <http://abcnews.go.com/WNT/Investigation/story?id=1322866> (last visited Sept. 24, 2008).

<sup>94</sup> Shane, Johnston, & Risen, *Secret U.S. Endorsement of Severe Interrogations*, *supra* note 91.

<sup>95</sup> Brian Ross & Richard Esposito, *Exclusive: Only Three Have Been Waterboarded by CIA*, ABC NEWS, Nov. 2, 2007, available at <http://blogs.abcnews.com/theblotter/2007/11/exclusive-only-.html> (last visited Sept. 24, 2008).

<sup>96</sup> Esposito & Ross, *Coming in From the Cold: Part 1 of Transcript*, *supra* note 92, at 16.

<sup>97</sup> Comm. on Legal Aff. and Hum. Rts., *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states* (2006), *supra* note 34, at 20-23 (describing the procedure used by the CIA to process detainees).

<sup>98</sup> Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, WASH. POST, Dec. 4, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/03/AR2005120301476.html> (last visited Sept. 24, 2008).

<sup>99</sup> Smith & Mekhennet, *Algerian Tells of Dark Term in U.S. Hands*, *supra* note 68.

<sup>100</sup> Human Rights Watch, *Ghost Prisoner*, *supra* note 70, at 29.

<sup>101</sup> Amnesty International, *The Case of Khaled Al-Maqtari*, *supra* note 69, at 12.

<sup>102</sup> *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*, Report of Professor Stephen J. Toope, *Fact Finder*, Oct. 14, 2005, at 13-19. See also Complaint and Demand for Jury Trial, *Arar v. Ashcroft*, 414 F. Supp. 2d 250 (E.D.N.Y. 2006) (No. 04-cv-0249), ¶¶ 49-63 (describing the detention, interrogation and torture of Maher Arar in Jordan and Syria after being rendered by the United States).

<sup>103</sup> Human Rights Watch, *Ghost Prisoner*, *supra* note 70, at 15-16.

<sup>104</sup> First Amended Complaint, *Mohamed et al. v. Jeppesen Dataplan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008) (No. 5:07-cv-02798) at 21, ¶¶ 69-72 [hereinafter First Amended Complaint, *Mohamed et al. v. Jeppesen Dataplan, Inc.*].

<sup>105</sup> Amnesty International, *The Case of Khaled Al-Maqtari*, *supra* note 69, at 16-18.

<sup>106</sup> Human Rights Watch, *U.S. Holding at Least Twenty-Six “Ghost Detainees,”* Dec. 1, 2005, available at <http://www.hrw.org/english/docs/2005/11/30/usdom12113.htm> (last visited Sept. 24, 2008).

<sup>107</sup> Complaint and Demand for Jury Trial, *Arar v. Ashcroft*, *supra*, note 102.

<sup>108</sup> *El-Masri v. Tenet*, *supra* note 8.

<sup>109</sup> Declaration of Mohamed Farag Ahmad Bashmilah in Support of Plaintiffs’ Opposition to the United States’ Motion to Dismiss or, in the Alternative, for Summary Judgment, *Mohamed et. al. v. Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (N.D. Cal. filed Aug. 1, 2007), ¶¶ 47-164 [hereinafter *Mohamed et. al. v. Jeppesen Dataplan, Inc.*, Bashmilah Declaration].

<sup>110</sup> Josh White, *Army, CIA Agreed on ‘Ghost’ Prisoners*, WASH. POST, Mar. 11, 2005, available at <http://www.washingtonpost.com/ac2/wp-dyn/A25239-2005Mar10?language=printer> (last visited Sept. 24, 2008).

<sup>111</sup> Priest, *CIA Holds Terror Suspects in Secret Prisons*, *supra* note 31.

<sup>112</sup> Human Rights Watch, *Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe*, Nov. 7, 2005, available at <http://www.hrw.org/english/docs/2005/11/07/usint11995.htm> (last visited Sept. 24, 2008).

<sup>113</sup> Comm. on Legal Aff. and Hum. Rts., *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states* (2007), *supra* note 35, §§ II, III, IV.

<sup>114</sup> Shane, *Inside a 9/11 Mastermind’s Interrogation*, *supra* note 75.

<sup>115</sup> Amnesty International, *USA/Jordan/Yemen: Torture and secret detention: Testimony of the “disappeared” in the “war on terror,”* Aug. 4, 2005, available at <http://archive.amnesty.org/library/Index/ENGAMR511082005?open&of=ENG-YEM> (last visited Sept. 24, 2008) [hereinafter *Testimony of the “disappeared” in the “war on terror,”*]; Amnesty International, *USA/Yemen: Secret Detention in CIA “Black Sites,”* Nov. 7, 2005, available at <http://www.amnesty.org/en/library/info/AMR51/177/2005> (last visited Sept. 24, 2008) [hereinafter *Secret Detention in CIA “Black Sites,”*]; Amnesty International, *United States of America: Below the radar: Secret flights to torture and “disappearance,”* Apr. 5, 2006, at 9-17, available at [http://www.amnestyusa.org/stoptorture/pdf/below\\_the\\_radar\\_full\\_report.pdf](http://www.amnestyusa.org/stoptorture/pdf/below_the_radar_full_report.pdf) (last visited Sept. 24, 2008) [hereinafter *Below the radar: Secret flights to torture and “disappearance,”*].

<sup>116</sup> *El-Masri v. Tenet*, 437 F. Supp. 2d 530 (E.D. Va. 2006), *aff’d sub nom. El-Masri v. U.S.*, 479 F.3d 296 (4th Cir. 2007), *cert. denied*, 128 S. Ct. 373 (2007).

<sup>117</sup> Human Rights Watch, *Ghost Prisoner*, *supra* note 70.

<sup>118</sup> *Mohamed et. al. v. Jeppesen Dataplan, Inc.*, Bashmilah Declaration, *supra* note 109.

<sup>119</sup> Amnesty International, *The Case of Khaled Al-Maqtari*, *supra* note 69.

<sup>120</sup> Dana Priest & Dan Eggen, *Terror Suspect Alleges Torture: Detainee Says U.S. Sent Him to Egypt before Guantanamo*, WASH. POST, Jan. 6, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A51726-2005Jan5.html> (last visited Sept. 24, 2008).

<sup>121</sup> Amnesty International, *Testimony of the “disappeared” in the “war on terror,”* *supra* note 115; Amnesty International, *Secret Detention in CIA “Black Sites,”* *supra* note 115; Amnesty International, *Below the radar: Secret flights to torture and “disappearance,”* *supra* note 115.

<sup>122</sup> United Nations Working Group on Arbitrary Detention Opinion 47/2005, A/HRC/4/40/Add.1, ¶15 (Feb. 2, 2007), 41-44, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=470b77b40> (last visited Sept. 24, 2008).

<sup>123</sup> Letter from The Permanent Mission of the Republic of Yemen to the United Nations Office and Other International Organizations, to the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, and the United Nations Special Rapporteur On Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 20, 2005), Exhibit V of *Mohamed et. al. v. Jeppesen Dataplan, Inc.*, Bashmilah Declaration, *supra* note 109.

<sup>124</sup> Human Rights Watch, *Ghost Prisoner*, *supra* note 70.

<sup>125</sup> Amnesty International et. al., *Off the Record, U.S. Responsibility for Enforced Disappearances in the “War on Terror,”* *supra* note 7, at 8, 11, 13.

<sup>126</sup> Bergen & Tiedemann, *Disappearing Act: Rendition by the Numbers*, *supra* note 72.

<sup>127</sup> Amnesty International, *The Case of Khaled Al-Maqtari*, *supra* note 69.

<sup>128</sup> Complaint and Demand for Jury Trial, *Arar v. Ashcroft*, *supra* note 102, ¶¶ 49-63.

<sup>129</sup> First Amended Complaint, *Mohamed et al. v. Jeppesen Dataplan, Inc.*, *supra* note 104, at 21, ¶¶ 69-72.

<sup>130</sup> Letter from Porter Goss and Jane Harman, U.S. House of Representatives, Permanent Select Committee on Intelligence, to The Honorable George Tenet, Director of Central Intelligence (Oct. 10, 2003) (document released in connection with *Amnesty Int.’l USA, et al. v. CIA, et al.*, (No. 07 CV 5435), (S.D. N.Y. 2007)).

<sup>131</sup> Letter from Senator Patrick Leahy to The Honorable George Tenet, Director of Central Intelligence gency [sic] (Jan. 27, 2004) (document released in connection with *Amnesty Int.’l USA, et al. v. CIA, et al.*, (No. 07 CV 5435), (S.D. N.Y. 2007)).

<sup>132</sup> Letter from Senator John D. Rockefeller IV, then Vice Chairman of the Senate Select Committee on Intelligence, to John Negroponte, Director of National Intelligence (Sept. 22, 2006) (document released in connection with *Amnesty Int.’l USA, et al. v. CIA, et al.*, (No. 07 CV 5435), (S.D. N.Y. 2007)).

<sup>133</sup> U.S. Senate, Select Committee on Intelligence, Report, together with additional views [To accompany S. 1538], May 31, 2007, at 36 [hereinafter *Senate Select Committee on Intelligence Report*].

<sup>134</sup> CIA Director General Hayden, *Director’s Statement on the Past Use of Diego Garcia*, Feb. 21, 2008, available at <https://www.cia.gov/news-information/press-releases-statements/past-use-of-diego-garcia.html> (last visited, Sept. 24, 2008) (CIA Director General Hayden acknowledging that “In late 2007, CIA itself took a fresh look at records on rendition flights. This time, the examination revealed the two stops in Diego Garcia.”).

<sup>135</sup> Letter from Chuck Rosenberg, U.S. Attorney, to the Honorable Karen J. Williams and the Honorable Leonie Brinkema (Oct. 25, 2007).

<sup>136</sup> *General Hayden Statement on the Taping of Early Detainee Interrogations*, *supra* note 48.

<sup>137</sup> *Id.* See also Mark Mazzetti & David Johnston, *Inquiry Begins Into Destruction of Tapes*, N.Y. TIMES, Dec. 9, 2007, available at <http://www.nytimes.com/2007/12/09/washington/09zubaydah.html> (last visited Sept. 24, 2008) (referring to “new questions about which officials inside the C.I.A. were involved in the decision to destroy the videotapes, which showed severe interrogation methods used on two Qaeda suspects, Abu Zubaydah and Abd al-Rahim al-Nashiri.”).

<sup>138</sup> 9-11 Commission Report, *supra* note 52, at 416-419.

<sup>139</sup> *Id.* at 103.

<sup>140</sup> U.S. Dep't of Justice, Office of the Inspector General, *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, at iii, n.4 (2008), available at <http://www.usdoj.gov/oig/special/s0805/final.pdf> (last visited Sept. 24, 2008) [hereinafter DOJ OIG, *FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*].

<sup>141</sup> Verbatim Transcript of Open Session Combatant Status Review Tribunal Hearing for ISN 10015 (Abd Al Rahim Hussein Mohammed Al Nashiri), Mar. 14, 2007, at 15-16, 19-21; Verbatim Transcript of Open Session Combatant Status Review Tribunal Hearing for ISN 10016 (Zayn Al Abidin Muhammad Husayn (AKA Zubaydah)), Mar. 27, 2007, at 22-26; Verbatim Transcript of Open Session Combatant Status Review Tribunal Hearing for ISN 10020 (Majid Khan) Apr. 15, 2007, at 21-22, 26, 28, 35.

<sup>142</sup> Emergency Stipulation to Immediate Entry of Interim Guantanamo SCI Protective Order, *Khan v. Gates*, No. 07-1324 (D.D.C. filed Oct. 12, 2007) (U.S. Court of Appeals for the District of Columbia Circuit).

<sup>143</sup> Center for Constitutional Rights (CCR), Press Release, *CCR Attorney Gives Unprecedented Classified Briefing to Senate Intelligence Committee on Details of CIA Torture Program*, Mar. 14, 2008, available at <http://ccrjustice.org/newsroom/press-releases/ccr-attorney-gives-unprecedented-classified-briefing-senate-intelligence-com> (last visited Sept. 24, 2008).

<sup>144</sup> *Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, Report of the U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence*, S. Rep. No. 107-351 & H.R. Rep. No. 107-792, at xv, xvii, 124 (2002).

<sup>145</sup> *Too Many Secrets: Overclassification as a Barrier to Critical Information Sharing: Hearing Before the Subcomm. on Nat'l Sec., Emerging Threats, and Int'l Relations of the H. Comm. on Gov't Reform*, 108th Cong. 2 (2004), available at <http://www.fas.org/sgp/congress/2004/082404transcript.pdf> (last visited, Sept. 24, 2008) [hereinafter *Hearing on Too Many Secrets: Overclassification as a Barrier to Critical Information Sharing*].

<sup>146</sup> Briefing Memorandum for the hearing, *Emerging Threats: Overclassification and Pseudo-Classification*, Feb. 24, 2005, *Emerging Threats: Overclassification and Pseudo-Classification: Hearing Before the Subcomm. on National Security, Emerging Threats, and International Relations of the H. Comm. on Government Reform*, 109th Cong. (2005).

<sup>147</sup> Mark Mazzetti & Scott Shane, *Tapes' Destruction Hovers Over Detainee Cases*, N.Y. TIMES, Mar. 28, 2008, available at <http://www.nytimes.com/2008/03/28/washington/28intel.html> (last visited Sept. 24, 2008). See also Scott Shane & Mark Mazzetti, *Tapes by C.I.A. Lived and Died To Save Image*, N.Y. TIMES, Dec. 30, 2007, available at <http://www.nytimes.com/2007/12/30/washington/30intel.html> (last visited Sept. 24, 2008) (discussing the decision by the CIA to destroy tapes of detainees' interrogations).

<sup>148</sup> Priest, *CIA Holds Terror Suspects in Secret Prisons*, *supra* note 31.

<sup>149</sup> David Johnston & Scott Shane, *CIA Fires Senior Officer Over Leaks*, N.Y. TIMES, Apr. 22, 2006, available at <http://www.nytimes.com/2006/04/22/washington/22leak.html> (last visited Sept. 24, 2008).

<sup>150</sup> Shane Harris, *CIA Tightens Limits on Former Employees' Ability to Speak Out*, NAT'L J., Apr. 28, 2006, available at <http://www.govexec.com/dailyfed/0406/042806nj1.htm> (last visited Sept. 24, 2008).

<sup>151</sup> Mark Mazzetti & Scott Shane, *C.I.A. Chief Orders Internal Inquiry*, INT'L HERALD TRIB., Oct. 11, 2007, available at <http://www.iht.com/articles/2007/10/12/america/12intel.php> (last visited Sept. 24, 2008).

<sup>152</sup> Motion of the New York Times Company, the Associated Press and USA Today to Unseal, Mar. 6, 2008, *Khan v. Gates*, 07-1324 (D.C. Cir.).

<sup>153</sup> *Report of Comm'n on Reducing and Protecting Gov't Secrecy*, S. Doc. No. 105-2, at 36 (1997) (statement of Rodney B. McDaniel) ("Moynihan Report").

<sup>154</sup> *Hearing on Too Many Secrets: Overclassification as a Barrier to Critical Information Sharing*, *supra* note 145, at 75, 82, 83.

<sup>155</sup> Cox News Service, *Lawmakers Frustrated by Delays in Declassifying Documents*, July 21, 2004.

<sup>156</sup> Douglas Jehl, *The Reach of War: Intelligence; C.I.A. Classifies Much of a Report on Its Failings*, N.Y. TIMES, June 16, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9801E4D81E30F935A25755C0A9629C8B63> (last visited Sept. 24, 2008).

<sup>157</sup> Editorial, *Credible Classifications*, WASH. POST, July 13, 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A45384-2004Jul12.html> (last visited Sept. 24, 2008).

<sup>158</sup> Mark Mazzetti & Kate Zernike, *White House Says Terror Detainees Hold Basic Rights*, N.Y. TIMES, July 12, 2006, available at <http://www.nytimes.com/2006/07/12/washington/12gitmo.html> (last visited Sept. 24, 2008).

<sup>159</sup> President George W. Bush, *Memorandum: Humane Treatment of al Qaeda and Taliban Detainees* (2002), reprinted in *THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB* (Karen J. Greenberg & Joshua L. Dratel eds., 2005).



<sup>160</sup> *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2795. See further 2795-2797 (determining that the government's position that Common Article 3 does not apply to the conflict with Al-Qaeda is "erroneous" and finding that "Common Article 3, then, is applicable here").

<sup>161</sup> Memorandum by U.S. Deputy Secretary of Defense Gordon R. England, Office of the Secretary of Defense, *Application of Common Article 3 of the Geneva Conventions to the Treatment of Detainees in the Department of Defense*, July 7, 2006, available at <http://www.defenselink.mil/pubs/pdfs/DepSecDef%20memo%20on%20common%20article%203.pdf> (last visited Sept. 24, 2008).

<sup>162</sup> *White House News Release*, *supra* note 1.

<sup>163</sup> White House Office of the Press Secretary, *News Release: Press Conference of the President*, Sept. 15, 2006, available at <http://www.whitehouse.gov/news/releases/2006/09/20060915-2.html> (last visited Sept. 24, 2008).

<sup>164</sup> *Id.*

<sup>165</sup> White House Office of the Press Secretary, *President Bush Signs Military Commissions Act of 2006*, Oct. 17, 2006, available at <http://www.whitehouse.gov/news/releases/2006/10/20061017-1.html> (last visited Sept. 24, 2008).

<sup>166</sup> *Military Commissions Act of 2006*, Pub. L. No. 109-366, 120 Stat. 2600 (Oct. 17, 2006), enacting Chapter 47A of title 10 of the United States Code (as well as amending section 2241 of title 28), sec. 6(a)(3)(A).

<sup>167</sup> Exec. Order 13440, 72 C.F.R. 40707 (2007).

<sup>168</sup> *Senate Select Committee on Intelligence Report*, *supra* note 133.

<sup>169</sup> *A Conversation with Michael Hayden*, *supra* note 15.

<sup>170</sup> *Statement to Employees by Director of the Central Intelligence Agency, General Michael V. Hayden on Lawful Interrogation*, Feb. 13, 2008 [hereinafter *General Hayden Statement to CIA Employees on Lawful Interrogation*].

<sup>171</sup> DOJ OIG, *FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, *supra* note 140, at 67-75.

<sup>172</sup> *Id.* at 196.

<sup>173</sup> See, e.g., U.S. Dep't. of State *Country Reports on Human Rights Practices 2007: Egypt*, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100594.htm> (last visited Sept. 24, 2008); U.S. Dep't. of State *Country Reports on Human Rights Practices 2006: Egypt*, available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78851.htm> (last visited Sept. 24, 2008); U.S. Dep't. of State *Country Reports on Human Rights Practices 2005: Egypt*, available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61687.htm> (last visited Sept. 24, 2008); U.S. Dep't. of State *Country Reports on Human Rights Practices 2007: Jordan*, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100598.htm> (last visited Sept. 24, 2008); U.S. Dep't. of State *Country Reports on Human Rights Practices 2006: Jordan*, available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78855.htm> (last visited Sept. 24, 2008); U.S. Dep't. of State *Country Reports on Human Rights Practices 2005: Jordan*, available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61691.htm> (last visited Sept. 24, 2008).

<sup>174</sup> See, DOJ OIG, *FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, *supra* note 140, at 196-198.

<sup>175</sup> See also Eric Schmitt, *President Backs McCain Measure on Inmate Abuse*, N.Y. TIMES, Dec. 16, 2005, available at <http://www.nytimes.com/2005/12/16/politics/16detain.html> (last visited Sept. 24, 2008).

<sup>176</sup> Letter from Jan Schakowsky, John Conyers et al (56 Members of Congress) to The Honorable Michael Mukasey (June 6, 2008), available at [http://media.washingtonpost.com/wp-srv/politics/documents/mukasey\\_letter\\_060708.pdf](http://media.washingtonpost.com/wp-srv/politics/documents/mukasey_letter_060708.pdf) (last visited Sept. 24, 2008).

<sup>177</sup> See *US interrogation policy condemned*, BBC NEWS, June 18, 2008, available at <http://news.bbc.co.uk/2/hi/americas/7460444.stm> (last visited Sept. 24, 2008).

<sup>178</sup> Minutes, Counter-Resistance Strategy Meeting, Guantánamo Bay, Oct. 2, 2002, in Email between DoD CITF Personnel, Oct. 24, 2002 in U.S. Senate Armed Services Committee, *The origins of aggressive interrogation techniques, Part I of the Committee's inquiry into the treatment of detainees in U.S. custody*, Index of Documents, Tab 7, available at <http://levin.senate.gov/newsroom/supporting/2008/Documents.SASC.061708.pdf> (last visited Sept. 24, 2008).

<sup>179</sup> *White House News Release*, *supra* note 1.

<sup>180</sup> ODNI *Summary of the Program*, *supra* note 1.

<sup>181</sup> *General Hayden Statement on the Taping of Early Detainee Interrogations*, *supra* note 48.

<sup>182</sup> *General Hayden Statement to CIA Employees on Lawful Interrogation*, *supra* note 170.

<sup>183</sup> *White House News Release*, *supra* note 1.

<sup>184</sup> ODNI *Summary of the Program*, *supra* note 1.

<sup>185</sup> U.S. Dep't of Justice, *Statement by Attorney General Michael B. Mukasey Regarding the Opening of an Investigation Into the Destruction of Videotapes by CIA Personnel*, Jan. 2, 2008, available at [http://www.usdoj.gov/opa/pr/2008/January/08\\_opa\\_001.html](http://www.usdoj.gov/opa/pr/2008/January/08_opa_001.html) (last visited Sept. 24, 2008) (announcing the initiation of a criminal investigation into the destruction of videotapes by the CIA).

<sup>186</sup> *Senate Select Committee on Intelligence Report*, *supra* note 133, at 36.

<sup>187</sup> Representative Edward Markey, Press Release, *Congress Passes Markey Amendment to Prevent Funds for Torture*, Mar. 16, 2005, available at [http://markey.house.gov/index.php?option=com\\_content&task=view&id=532&Itemid=141](http://markey.house.gov/index.php?option=com_content&task=view&id=532&Itemid=141) (last visited Sept. 24, 2008).

<sup>188</sup> Nat Hentoff, *Torture doublespeak: Secret orders and 'renditions' cast their shadow*, WASH. TIMES, Mar. 21, 2005.

<sup>189</sup> *Director Michael Hayden's Interview with Charlie Rose*, *supra* note 16.

<sup>190</sup> David Stout & John O'Neil, *In Big Shift, U.S. to Follow Geneva Treaty for Detainees*, N.Y. TIMES, July 11, 2006, available at <http://www.nytimes.com/2006/07/11/world/11cnd-detain.html?hp&ex=1152676800&en=e36adb8e22b9523a&ei=5094&partner=homepage> (last visited Sept. 24, 2008).

<sup>191</sup> Tim Golden, *Detainee Memo Created Divide in White House*, N.Y. TIMES, Oct. 1, 2006, <http://www.nytimes.com/2006/10/01/washington/01detain.html> (last visited Sept. 24, 2008).

<sup>192</sup> Shane & Mazzetti, *Tapes by C.I.A. Lived and Died to Save Image*, *supra* note 147.

<sup>193</sup> Human Rights First, *Command's Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan* 9 (2006), available at <http://www.humanrightsfirst.info/pdf/06221-ctn-hrf-dic-rep-web.pdf> (last visited Sept. 24, 2008) [hereinafter *Command's Responsibility*].

<sup>194</sup> Dana Priest, *CLA Avoids Scrutiny of Detainee Treatment: Afghan's Death Took Two Years to Come to Light; Agency Says Abuse Claims Are Probed Fully*, WASH. POST, Mar. 3, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A2576-2005Mar2.html> (last visited Sept. 24, 2008).

<sup>195</sup> Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, *supra* note 98.

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## ON THE RECORD:

### U.S. Disclosures on Rendition, Secret Detention, and Coercive Interrogation

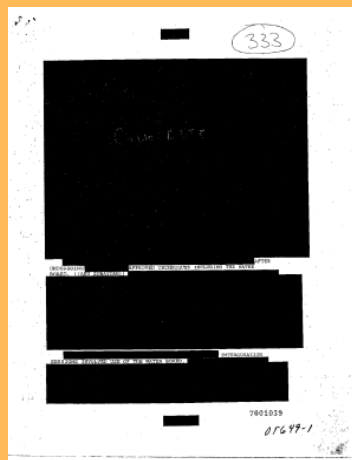
In the aftermath of September 11, 2001, the U.S. government has increasingly acknowledged its practice of rendering, secretly detaining, and coercively interrogating individuals outside of the United States as part of its “War on Terror.” Officials at every level of the government, from President George W. Bush down, have provided insight into these activities, revealing details such as the CIA’s use of coercive interrogation techniques, including waterboarding; the numbers and sometimes identities of detainees; the role of foreign partners in U.S. activities; and the destruction of videotapes of detainee interrogations.

Based on publicly available information, *On the Record* aggregates this wide range of disclosures on U.S. rendition, secret detention, and coercive interrogation activities. It includes statements by current U.S. officials and a plethora of other publicly available information from foreign government officials, former U.S. officials, the media, inter-governmental organizations, human rights organizations, and former detainees and rendered individuals themselves. As an informational resource, this report sheds light both on what has been revealed and what has been obscured by the U.S. government, underlining both the selectivity and undue secrecy informing what it chooses to disclose on the record.

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Right: Heavily redacted document released by the U.S. government as a result of Freedom of Information Act litigation *ACLU et. al. v. DOD et. al.*, 04 Civ. 4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.).