

via email

September 15, 2015

John P. Fitzpatrick, Director
Information Security Oversight Office
National Archives and Records Administration
700 Pennsylvania Avenue, NW, Room 500
Washington, DC 20408

Re: Wrongful classification of information regarding CIA torture, in violation of Executive Order 13526

Dear Mr. Fitzpatrick:

I write to you pursuant to section 5.2(6) of Executive Order 13526 (hereinafter “the Executive Order”), to challenge the ongoing, improper classification of information regarding the CIA’s Rendition, Detention and Interrogation Program.

Specifically, I believe that the CIA has classified and continues to classify information in violation of:

- Section 1.1 of the Executive Order, which states that information may be classified only if “the information is owned by, produced by or for, or is under the control of the United States government.”
- Section 1.7(a) of the Executive Order, which states that

In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to:

- (1) conceal violations of law, inefficiency, or administrative error;
- (2) prevent embarrassment to a person, organization, or agency;
- (3) restrain competition; or
- (4) prevent or delay the release of information that does not require protection in the interest of the national security.

With respect to Section 1.1: as described in more detail below, the CIA continues to censor the thoughts, memories and statements of former CIA black site prisoners now in military custody at Guantanamo Bay.

With respect to Section 1.7: the public version of the Senate Select Committee on Intelligence’s Study of the CIA’s Detention and Interrogation Program, released in December of 2014, revealed evidence of numerous serious violations of law by the CIA. These include, but are not limited to, brutalization of prisoners in violation of:

- the Anti-Torture Statute, 18 U.S.C. § 2340A, which states that torture and conspiracy to commit torture are felonies, subject to sentences of up to twenty years imprisonment, or death if the victim dies.¹
- the War Crimes Act, 18 U.S.C. § 2441, which states that certain grave breaches of the Geneva Conventions are felonies punishable by a sentence of up to life imprisonment, or death if the victim dies.²
- International treaties, including the four Geneva Conventions and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³

The Senate study's executive summary also demonstrates in detail that the CIA's acts exceeded the guidance provided in the "torture memos" written by the Department of Justice's Office of Legal Counsel (OLC),⁴ and that the OLC's memos relied on false representations of fact by the CIA.⁵ The report documents numerous false statements, and concealment or destruction of evidence regarding the torture program,⁶ in potential violations of the following statutes: 18 U.S.C. § 1001 (false statements to executive, legislative or judicial branch); 18 U.S.C. § 1505 (obstruction of proceedings before departments, agencies, and committees); 18 U.S.C. § 1519 (destruction, alteration, or falsification of records in federal investigations); and 44 U.S.C. § 3106 (unlawful removal, destruction of records).

¹ The full text of the Anti-Torture Statute is available at <https://www.law.cornell.edu/uscode/text/18/part-I/chapter->

² The full text of the War Crimes Act is available at <https://www.law.cornell.edu/uscode/text/18/2441>. Acts of war crimes are described throughout the SSCI Study Executive Summary. For references to a war crime ending in death, the November 2002 homicide of Gul Rahman at DETENTION SITE COBALT in Afghanistan, see SSCI Study Findings at 10, 14; SSCI Study Executive Summary at 49-50, 54-58, 60, 62-63, 102, 121, 190, 438, 458, 461, 469, 489, 496-497

³ The text of the four Geneva Conventions of 1949 is available at <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>. The text of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is available at <http://www.hrweb.org/legal/cat.html>. Violations of both treaties are described throughout the SSCI Study Findings and Executive Summary.

⁴ See SSCI Study Findings at 3-4, 10-12, 14; SSCI Study Executive Summary at 49-50, 54-58, 63, 67, 69-70, 73, 82-83, 99-108, 111-115

⁵ See SSCI Study Findings at 2-5, 12; SSCI Study Executive Summary at 409-436. See also Katherine Hawkins, *The Lies Hidden Inside the Torture Report*, Politico Magazine, Jan. 28, 2015, available at <http://www.politico.com/magazine/story/2015/01/torture-report-lies-114693.html>

⁶ See SSCI Study Findings at 2-9, 12; SSCI Study Executive Summary at 43-44 (describing missing video footage of several waterboarding sessions, including a session in which a detainee became "completely unresponsive" and "remained unresponsive until medical intervention"); 184-193 (false or inaccurate statements to the CIA Inspector General's office); 443-444 (destruction of interrogation videotapes in response to proposed Congressional Investigation); 447-454, 462-499 (false or inaccurate statements to Congress). The report also documents numerous inaccurate statements about the interrogation program, which, while they occurred outside the context of testimony or investigations and are less likely to constitute statutory violations, are highly embarrassing to the CIA. See SSCI Study Findings at 2-9, 12; SSCI Study Executive Summary at 47 (inaccurate statements in a Presidential Daily Brief); 117-118 (describing inaccurate statements to National Security Council); 172-408 (evaluating in detail specific CIA representations about intelligence gained and lives saved through "enhanced interrogation," and finding them "almost entirely inaccurate"); 401-408 (evaluating CIA representations to the media); 409-436 (inaccurate statements to the Department of Justice's Office of Legal Counsel).

The Department of Justice has declined to indict any CIA officer for these violations despite multiple criminal investigations—but no explanation for that failure has ever been made public.⁷ The criminal investigations may well have failed precisely because the CIA classified most of the relevant evidence, or because prosecutors concluded that the statute of limitations had expired.⁸ In any case, despite the Department of Justice’s inability or unwillingness to prosecute, there is clear evidence of crimes.⁹ Further, even where the CIA’s abuses and false statements do not rise to the level of a crime, they are clearly embarrassing to the individuals responsible and to the agency as a whole.

Courts have held that evidence of embarrassing violations of law may nonetheless be properly classified if the information constitutes “intelligence sources and methods”, and is not classified with the specific intent of concealing illegality.¹⁰ But the courts have done so primarily out of deference to Executive Branch’s expertise. In contrast, the Information Security Oversight Office is a part of the Executive Branch, charged by the President with oversight of the classification system to ensure that the classification power is not abused.¹¹

There is precedent for your office intervening to ensure that the classification power is not used improperly to conceal evidence of unlawful detainee abuse from the public. On May 6, 2004, classification expert Steven Aftergood wrote to ISOO raising concerns that the Taguba Report, which detailed “numerous incidents of sadistic, blatant, and wanton criminal abuses” inflicted on detainees at the Abu Ghraib prison in Iraq, had been improperly classified as Secret.¹² As Aftergood later testified to a Congressional hearing, ISOO “responded to me the very same day, initiating an investigation... I thought it was an extraordinary response from a Government agency. Nobody responds like that.”¹³ In response to ISOO’s investigation and further consultation with the office, the Department of Defense declassified the majority of the Taguba report, updated its classification training, and sent a Department-wide directive emphasizing that classification could not be used “to conceal violations of law.”¹⁴

⁷ See Charlie Savage, *U.S. Tells Court That Documents from Torture Investigation Should Remain Secret*, New York Times, December 10, 2014, available at <http://www.nytimes.com/2014/12/11/us/politics/us-tells-court-that-documents-from-torture-investigation-should-remain-secret.html>

⁸ *Report of the Constitution Project Task Force on Detainee Treatment* (March 2013) at 330-331, available at <http://detainee-taskforce.org/pdf/Full-Report.pdf>

⁹ In addition to the above citations from the SSCI study, see Letter from William C. Hubbard, President, American Bar Association, to Attorney General Loretta Lynch, June 23, 2015, available at https://www.americanbar.org/content/dam/aba/uncategorized/GAO/2015june23_letter_todoj_authcheckdam.pdf; Letter from ACLU, Amnesty International, and Human Rights Watch to Attorney General Loretta Lynch, June 23, 2015, available at http://www.hrw.org/sites/default/files/related_material/Letter-to-AG-Lynch-Special-Prosecutor-Torture.pdf

¹⁰ E.g. *ACLU v. Dep’t of Defense*, 628 F.3d 612 (D.C. Cir 2011), available at https://www.aclu.org/sites/default/files/field_document/CSRT_FOIA_opinion.pdf

¹¹ Executive Order 13526 (2009) at sections 3.1(e), 5.1, available at <https://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>

¹² Letter from Steven Aftergood to ISOO Director J. William Leonard, May 6, 2004, available at <http://www.fas.org/sgp/news/2004/05/sa050604.pdf>

¹³ Transcript of Hearing before the Subcommittee on National Security, Emerging Threats and International Relations, House Committee on Government Reform, August 24, 2014, available at <http://www.gpo.gov/fdsys/pkg/CHRG-108hhrg98291/html/CHRG-108hhrg98291.htm>. A copy of ISOO’s response to Aftergood’s letter is available at <http://www.fas.org/sgp/news/2004/05/isoo050604.pdf>

¹⁴ Letter from ISOO Director J. William Leonard to Steven Aftergood, October 29, 2004, available at <http://fas.org/sgp/bush/secdef091604.pdf> <http://www.fas.org/sgp/news/2004/10/isoo102904.pdf>

Similar intervention with regard to the CIA is long overdue. The Senate study's Executive Summary demonstrates, if it were not already clear, that the original classification authority has a major conflict-of-interest with regard to the CIA torture program, which has led to distorted assessments about the need to keep information secret to protect national security.

One of the report's findings is that the CIA "coordinated the release of classified information to the media, including inaccurate information" about the use and effectiveness of "enhanced interrogation techniques."¹⁵ In internal emails, one CIA attorney acknowledged that these authorized leaks to the press made "the [legal] declaration I just wrote about the secrecy of the interrogation program a work of fiction." A second attorney wrote, referencing CIA statements that it could neither confirm nor deny the existence of certain documents about the torture program, "[o]ur Glomar figleaf is getting pretty thin."¹⁶

The attempt to conceal evidence of illegal, embarrassing behavior also distorted the intelligence community's analysis of and response to the Senate report itself. For years before the Executive Summary's release, current and former CIA officials claimed that the release of the report would endanger national security, placing intelligence officers and hostages at risk. According to Senator Dianne Feinstein, this culminated "days before the public release of our report on CIA detention and interrogation," when SSCI was given "an intelligence assessment predicting violence throughout the world and significant damage to United States relationships" if they proceeded with plans to publish the Executive summary.¹⁷ As Feinstein noted in a Senate hearing, "[t]he threat assessment was not correct"; there have been no credible reports of violence against hostages, U.S. diplomatic missions, or intelligence posts in response to the report.¹⁸ Senator Feinstein later said of the threat assessment to a reporter, "it was just intimidation."¹⁹

There is strong evidence that classification of evidence regarding the torture program violated the Executive Order, in some cases willfully so. It is important that there be consequences for this abuse of the classification power to deter similar violations in the future. But it is even more important that the cover-up end, and that ISOO act to oversee ongoing CIA classification decisions regarding the rendition, detention and interrogation program.

More specifically, even after the release of the Senate report's executive summary, and subsequent revisions to the CIA's classification guidance,²⁰ the following categories of information remain classified in violation of the Executive Order.

¹⁵ SSCI Study Findings at 8-9

¹⁶ SSCI Study Executive Summary at 405

¹⁷ SSCI hearing, February 12, 2015, video available at <http://www.c-span.org/video/?c4527978/feinstein-calls-torture-report-threat-assessment>

¹⁸ Id.

¹⁹ Connie Bruck, *The Inside War*, The New Yorker, June 22, 2015, available at <http://www.newyorker.com/magazine/2015/06/22/the-inside-war>

²⁰ Since the release of the Senate report's executive summary, the CIA has revised its classification guidance regarding the rendition, detention and interrogation program. The following information is no longer considered classified under the revised classification guidance: (1) the fact that the former rendition, detention, and interrogation program was a covert action authorized by a Memorandum of Notification dated September 17, 2001; (2) general allegations of torture by former CIA detainees, with exceptions that will be discussed further below; (3)

I. THE PSEUDONYMS AND TITLES OF CIA PERSONNEL, AND THE NAMES OF NON-COVERT CIA PERSONNEL AND CONTRACTORS WHO HAVE ACKNOWLEDGED THEIR FORMER AFFILIATION WITH THE CIA

As they researched and drafted their study into the CIA black site program, Senate investigators agreed to use cover names or aliases instead of the true names of covert CIA personnel. According to news reports, the Senate originally used “several hundred” pseudonyms in its report, along with real names of certain high-ranking CIA officials.²¹ The CIA, with the White House’s concurrence,²² redacted all but five pseudonyms for CIA employees and contractors from the final public version of the executive summary.²³ In many cases, after Senate investigators replaced pseudonyms with CIA officials’ titles in an effort to maintain the report’s comprehensibility, the Executive Branch fully or partially blacked out the titles as well.

When Senators objected to this, the CIA repeatedly responded that redacting officials’ pseudonyms, in addition to their names, was necessary to protect undercover agents and their families from violence. For example, CIA spokesperson Dean Boyd stated in October 2014 that “Pseudonyms are redacted to keep individual intelligence officers from being identified and potentially harmed. Making public those pseudonyms associated with individual officers, as well as dates, locations and other identifying information related to those officers, dramatically increases the likelihood that they will be exposed and potentially subject to threats or violence.”²⁴

This argument is flawed in two respects. First, there is ample precedent for the use of pseudonyms to protect CIA agents’ identities in oversight reports. Second, the Senate torture report redacts the titles and pseudonyms of CIA personnel who are *not* under cover. In some cases, the individuals in question have identified themselves or been identified in official documents by name as CIA employees.

Previous investigative reports that have referred to CIA personnel with pseudonyms include the *9/11 Commission Report* (2004); Major General George Fay’s Report of his *AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade* (2004); the *Report of the Congressional Committees Investigating the Iran-Contra Affair* (1987);

names and descriptions of “enhanced interrogation techniques,” (4) the way in which “enhanced interrogation techniques” and “standard interrogation techniques” were applied to the 119 former detainees named in the Senate study’s executive summary; (5) the conditions of confinement for the 119 former detainees named in the executive summary. See CIA, *Classification Guidance for Information About the Central Intelligence Agency’s Former Rendition, Detention and Interrogation Program* (updated January 28, 2015), available at <http://www.openthegovernment.org/sites/default/files/RDIclassificationguidance.pdf>

²¹ Connie Bruck, *The Inside War*, *The New Yorker*, June 22, 2015, available at <http://www.newyorker.com/magazine/2015/06/22/the-inside-war>

²² *Id.*

²³ The pseudonyms for CIA officers and contractors that remain in the final public version of the Senate report executive summary are: Grayson Swigert, Hammond Dunbar, Company Y, CIA OFFICER 1, CIA OFFICER 2.

²⁴ Ron Wyden *Blasts CIA Censorship*, Associated Press, October 22, 2014, available at <http://www.politico.com/story/2014/10/ron-wyden-cia-112127.html>. See also David Welna, *Senate ‘Torture Report’ Findings Expected This Year*, NPR, November 19, 2014, available at <http://www.npr.org/sections/itsallpolitics/2014/11/19/365233613/senate-torture-report-findings-expected-this-year>; Mark Mazzetti and Carl Hulse, *Senate Democrats Clash With White House on CIA Torture Report*, *New York Times*, November 20, 2014, available at <http://www.nytimes.com/2014/11/21/us/politics/no-headway-is-made-on-cia-torture-report.html>

and the *Church Committee's Report on Alleged Assassination Plots Involving Foreign Leaders* (1975).²⁵ There are also contemporaneous examples of the use of pseudonyms to protect CIA personnel, including covert agents currently serving overseas. On November 21, 2014—while negotiations over the use of pseudonyms in the Senate torture report were ongoing—the House Permanent Select Committee on Intelligence released its *Investigative Report on the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012*.²⁶ The report notes that HPSCI interviewed a number of CIA personnel who “remain under cover. Their continued anonymity...[is] critical to their ability to continue to defend U.S. installations and personnel.”²⁷ HPSCI nonetheless identified those CIA personnel by title (e.g. “Benghazi Chief of Base”) or by pseudonym (e.g. “Officer 1,” “Officer 2,” etc.).²⁸ There is no indication that the CIA raised any objection to this use of pseudonyms.

In contrast, as discussed in more detail below, the CIA blacked out the pseudonyms of some of its employees from the Senate torture report even though they are clearly *not* undercover. This includes two CIA attorneys, Jonathan Fredman and Robert Eater, whose employment by the CIA has been openly acknowledged in unclassified official documents, by the lawyers themselves. There is no valid basis for concealing their true names, let alone their pseudonyms or titles. The only apparent purpose for doing so is to obscure the lawyers’ crucial role in collaborating with the Department of Justice’s Office of Legal Counsel to construct a legal shield for torture.

The CIA also redacted the pseudonym of one former employee, Charlie Wise, who retired from the agency and died in 2003.²⁹ In Wise’s case, it is theoretically possible that his name might remain properly classified to protect his sources or family members, but the CIA’s claims to that effect should be carefully scrutinized and evaluated. In any case, there is no justification for refusing to identify him by a pseudonym.

These examples demonstrate that Senators were correct to argue that the redaction of CIA officers’ aliases and titles was an attempt to conceal illegality and wrongdoing and prevent calls for any form of accountability, rather than a proper exercise of the classification power. As former Senator Mark Udall noted on the Senate floor in December, this not only makes the Senate torture report’s executive summary more difficult to understand and shields the officials in question from any form of accountability, but

²⁵ Press Release, Senator Ron Wyden, “Wyden: CIA Demand to Black Out Torture Report Details Would Be Unprecedented,” October 31, 2014, available at <http://www.wyden.senate.gov/news/press-releases/wyden-cia-demand-to-black-out-torture-report-details-would-be-unprecedented>

²⁶ Available at <http://intelligence.house.gov/sites/intelligence.house.gov/files/documents/Benghazi%20Report.pdf>

²⁷ Id. at 3

²⁸ Id.

²⁹ Jason Leopold, *The Watchdog, the Whistleblower, and the Secret CIA Torture Report*, VICE News, May 19, 2015, available at <https://news.vice.com/article/the-watchdog-the-whistleblower-and-the-cias-secret-torture-report>; Greg Miller, Adam Goldman and Julie Tate, *Senate Report on CIA Program Details Brutality, Dishonesty*, Washington Post, December 9, 2014, available at http://www.washingtonpost.com/world/national-security/senate-report-on-cia-program-details-brutality-dishonesty/2014/12/09/1075c726-7f0e-11e4-9f38-95a187e4c1f7_story.html; Greg Miller, Adam Goldman and Ellen Nakashima, *CIA Misled on Interrogation Program, Senate Report Says*, Washington Post, March 31, 2014, available at http://www.washingtonpost.com/world/national-security/cia-misled-on-interrogation-program-senate-report-says/2014/03/31/eb75a82a-b8dd-11e3-96ae-f2c36d2b1245_story.html

tars all of the CIA personnel by making it appear that the CIA writ large was responsible for developing, implementing, and representing the truth about the CIA's detention and interrogation program. In fact, a small number of CIA officers were largely responsible.³⁰

Udall noted that the committee

asked the CIA to identify any influences in the summary wherein a CIA official mentioned by pseudonym would result in the outing of any CIA undercover officer, and they could not provide any such examples.³¹

A. Jonathan Fredman

Jonathan Fredman was the chief counsel for the CIA's Counterterrorist Center (CTC) on September 11, 2001, and served in that position until April 2004. Mr. Fredman's position as a CIA employee and the head lawyer of CTC has not only been reported in the press but has been repeatedly, publicly confirmed in unclassified government documents and by Fredman himself:

- An official report by the Senate Armed Services Committee, which was declassified in 2009, describes a meeting on October 2, 2002 at Guantanamo attended by "Jonathan Fredman, who was chief counsel to the CIA's CounterTerrorist Center."³²
- An unclassified paper prepared by Fredman and sent to the Senate Armed Services Committee on November 17, 2008, states in part: "On September 11, 2001, I was chief legal counsel for the CIA Counterterrorist Center, or CTC....Among my responsibilities

³⁰ Remarks of Senator Mark Udall (CO), *Congressional Record*, December 10, 2014, page S6477, available at <http://www.gpo.gov/fdsys/pkg/CREC-2014-12-10/pdf/CREC-2014-12-10-pt1-PgS6470-2.pdf#page=7>

³¹ Id. Several CIA officials involved in the torture program have been publicly identified in the press since the Senate report's release. This is not attributable to the use of pseudonyms but rather to the pre-existing public record of their role in the torture program. Alfreda Frances Bikowsky, for example, is not identified even by a pseudonym in the Senate report, and in many cases her title is redacted. Nonetheless, she has been identified in press articles after the report's release in large part because she had already been publicly identified long before. See Connie Bruck, *The Inside War*, *The New Yorker*, June 22, 2015, available at <http://www.newyorker.com/magazine/2015/06/22/the-inside-war>; Jane Mayer, *The Unidentified Queen of Torture*, *The New Yorker*, December 18, 2014, available at <http://www.newyorker.com/news/news-desk/unidentified-queen-torture>; Matthew Cole, *Bin Laden Expert Accused of Shaping CIA Deception on 'Torture' Program*, NBC News, December 16, 2014, available at <http://www.nbcnews.com/news/investigations/bin-laden-expert-accused-shaping-cia-deception-torture-program-n269551>; Ali Watkins and Marisa Taylor, *In Senate-CIA Fight on Interrogation Report, Another Controversy*, August 27, 2014, McClatchy News, available at <http://www.mcclatchydc.com/2014/08/27/237763/in-senate-cia-fight-on-interrogation.html>; Adam Goldman and Greg Miller, *Spy Agencies' Attorney Has Fiercely Defended Surveillance Programs Revealed by Snowden*, *Washington Post*, January 12, 2014, available at http://www.washingtonpost.com/world/national-security/2014/01/12/43841ac6-7a34-11e3-af7f-13bf0e9965f6_story.html; John Cook, *Chief of CIA's 'Global Jihad Unit' Revealed Online*, *Gawker*, September 22, 2011, available at <http://gawker.com/5842912/chief-of-cias-global-jihad-unit-revealed-online>

³² Senate Armed Services Committee, *Inquiry Into the Treatment of Detainees in U.S. Custody* at xvii, 3, 19, 22, 53-56, 61-63 (November 20, 2008) available at http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf

was to provide legal advice to the Director of CTC about proposed and ongoing operations conducted pursuant to written Presidential direction to CIA provided following the attacks of 9/11.” Fredman confirmed that these issues included “detention or interrogation,” and specifically interpretation of the anti-torture statute. Fredman wrote, “I stayed at my post in CTC until early April 2004,” and that “[a]s the chief counsel for CTC, I managed a legal staff that grew from three people in the days immediately before 9/11 to approximately 10 people thereafter.” Fredman’s letter was subsequently publicly released under the Freedom of Information Act.³³

- Mr. Fredman’s public Wordpress site, Tumblr site, and LinkedIn profile state that he served as “Chief counsel to the Director of Central Intelligence Counterterrorist Center.”³⁴

In the Senate Intelligence Committee’s torture report, however, Fredman’s name and pseudonym are omitted, and his full title is redacted. He is identified only as “[redacted] CTC Legal”, making it far more difficult to follow the Senate report’s narrative on his crucial role in the start of and the legal authorization for the torture program.

Based on a close analysis of the SSCI Study Executive Summary, the following pages likely refer to Fredman:³⁵ 11-13, 22, 26, 33, 43, 45, 51-52, 56, 58-59, 64, 74, 85, 116-117, 191-194, 197, 209, 213, 236, 357, 410-411, 442, 463, 464, 468-470, and 495. Those pages reveal, in part, that:

- Fredman first suggested that the Counterterrorism Center (CTC) hire contract psychologist James Mitchell to advise them on how to interrogate the CIA’s first black site prisoner, Abu Zubaydah.³⁶
- In July 2002, Fredman drafted a letter to Attorney General John Ashcroft, asking the Department of Justice for “a formal declination of prosecution, in advance, for any employees of the United States, as well as any other personnel acting on behalf of the United States, who may employ methods in the interrogation of Abu Zubaydah that otherwise might subject those individuals to prosecution.” The letter acknowledged that the CIA was contemplating the use of “aggressive methods” against Abu Zubaydah that would be prohibited by the torture statute “apart from potential reliance upon the doctrines of necessity or of self-defense.”³⁷ The acknowledgment by a CIA attorney that

³³ Available at http://jonathanfredman.com/uploads/Letter_to_the_SASC.pdf (accessed September 14, 2015).

³⁴ Available at <https://www.linkedin.com/in/jonathanfredman>; <http://jonathanfredman.tumblr.com/>; <https://jonathanfredman.wordpress.com/if-the-detainee-dies-youre-doing-it-wrong/>; <https://jonathanfredman.wordpress.com/about-jonathan-fredman-2/> (accessed September 14, 2015).

³⁵ References to actions taken by “[redacted] CTC legal” from September 11, 2001 to April 2004 likely refer to Mr. Fredman, as other CTC attorneys are referenced differently in the Senate report. The redacted word most likely refers to Mr. Fredman’s position as chief counsel for the CTC, a position only one other individual, Robert Eatinger, held during the CIA’s detention and interrogation program. Mr. Eatinger replaced Mr. Fredman as the CTC’s chief lawyer in April 2004.

³⁶ SSCI Study Executive Summary at 26

³⁷ Id. at 33-34

the actions the agency was contemplating violated the torture statute weakens the claim that they relied in good faith on legal advice from the Office of Legal Counsel.³⁸

- The August 1, 2002 Office of Legal Counsel torture memo stated that the CIA represented that Abu Zubaydah was the “third or fourth” highest ranking individual in Al Qaeda. That claim was based on a single source, who retracted it before the OLC memo was issued. Fredman was notified of the retraction on July 10, 2002, but apparently did not notify OLC.³⁹
- Fredman was a member of a team of CIA officials that traveled to “DETENTION SITE GREEN” in Thailand in August 2002 to observe Abu Zubaydah’s interrogation, including waterboarding.⁴⁰ As such, he personally observed the differences between the Office of Legal Counsel memos’ descriptions of how “enhanced interrogation techniques” would be administered, and how they were used in practice.
- Fredman participated in discussions about the interrogation of Ridha al-Najjar at “DETENTION SITE COBALT” in Afghanistan in summer 2002.⁴¹ Najjar’s brutal interrogation at COBALT began in August 2002. Najjar was isolated, kept in total darkness and cold, hooded and wearing a diaper, and having his wrists shackled over his head for 22 hours a day on consecutive days. By September 21, 2002, he was described as “clearly a broken man” and “on the verge of complete breakdown.” CIA officials stated that Najjar’s treatment “became the model” for interrogations at COBALT, which was the detention site that housed more CIA detainees than any other prison.⁴²
- Fredman told the CIA inspector general that it was legal for CIA contract interrogators to threaten Khalid Sheikh Mohammed’s children “so long as the threats were ‘conditional’.”⁴³
- Fredman had a major role in soliciting and compiling inaccurate claims by CIA officials “that hundreds or thousands of innocent lives have been saved as a result” of the use of “enhanced interrogation techniques.”⁴⁴ This inaccurate information was used repeatedly in political and legal defenses of the black site program in its later years, and was central to its reauthorization by the Office of Legal Counsel in 2005 and 2007.

³⁸ The letter to Ashcroft was never sent, but the CIA did ask the Department of Justice criminal division for an advance declination of prosecution at a meeting in July 2002; the criminal division refused. For further details, and analysis of the legal significance of the failed attempt to secure an advance declination of prosecution, see John Sifton, *They Knew It Was Illegal*, Human Rights Watch, December 10, 2014, available at <http://www.hrw.org/news/2014/12/10/they-knew-it-was-illegal>

³⁹ SSCI Study Executive Summary at 410

⁴⁰ Id. at 43, 52, footnote 251

⁴¹ Id. at 52

⁴² Id. at 52-54

⁴³ Id. at 85

⁴⁴ Id. at 191-194

(OpenTheGovernment.org attempted to contact Mr. Fredman to give him the opportunity to comment on the accuracy of the Senate report’s executive summary and the above analysis, but received no reply.)

B. Robert Eatinger

Robert Eatinger replaced Jonathan Fredman as the chief counsel for the CIA’s Counterterrorist Center (CTC) in April 2004, and served in that position until September 2009. He later served as the CIA’s Acting General Counsel. Mr. Eatinger’s positions as a CIA attorney, chief counsel for CTC, and Acting General Counsel for the CIA have not only been reported in the press but have been repeatedly, publicly confirmed by unclassified government sources and by Eatinger himself:

- In a signed, sworn, public declaration in a federal court case from 2009, Mr. Eatinger stated that “from April 2004 until September 2009, I worked in the CounterTerrorism Center of the CIA as a member of the Office of General Counsel.”⁴⁵
- Mr. Eatinger’s public LinkedIn profile states that he served as “Senior Counterterrorism Counsel” for a U.S. government agency from April 2004 to September 2009.⁴⁶
- Former CIA General Counsel John Rizzo’s memoirs, approved for release by the CIA’s Prepublication Review Board, refer to Eatinger as the agency’s “senior lawyer for counterterrorism matters.”⁴⁷
- Eatinger publicly identified himself as a CIA attorney at an American Bar Association conference on October 31, 2014.⁴⁸
- On March 11, 2014, Senator Dianne Feinstein gave a floor speech in which she condemned the CIA’s interference with the Senate investigation into the torture program, particularly the CIA’s criminal referral of Senate staff for reading documents known as “the Panetta Review.” Eatinger, who was then the CIA’s Acting General Counsel, filed that referral. Feinstein did not use his name in her speech, but noted that during the CIA’s detention program, “the now acting general counsel was a lawyer in the CIA’s Counterterrorism Center—the unit within which the CIA managed and carried out this program. From mid-2004 until the official termination of the detention and interrogation program in January 2009, he was the unit’s chief lawyer. He is mentioned by name more than 1,600 times in our study. And now this individual is sending a crimes report to the Department of Justice on the actions of congressional staff—the same congressional staff who researched and drafted a report that details how CIA officers—including the acting

⁴⁵ Declaration of Robert Eatinger, *Horn v. Huddle* (D.D.C. No. 94-1756, October 23, 2009), available at <http://www.dcofiles.com/EatingerDecl.pdf>

⁴⁶ Available at <https://www.linkedin.com/pub/robert-eatinger/62/a2b/390> (accessed September 14, 2015)

⁴⁷ John Rizzo, *Company Man* (2014) at 13

⁴⁸ A video of the event is available at http://www.americanbar.org/news/abanews/aba-news-archives/2013/11/cia_general_counsel.html (accessed September 14, 2015)

general counsel himself—provided inaccurate information to the Department of Justice about the program.”⁴⁹

- Days after Feinstein’s speech, and numerous press reports identifying Robert EATINGER as the CIA acting general counsel of whom she spoke,⁵⁰ Director of Central Intelligence John Brennan made the following statement: “I also want to commend Bob EATINGER, who has served as Acting General Counsel in recent months. Bob is an exemplary public servant who has demonstrated throughout his career exceptional competence and integrity and has made numerous contributions to our Nation’s security.”⁵¹

Although EATINGER’s full name and position as the head lawyer for the CIA’s counterterrorism center are unclassified and public information, his name, pseudonym, and full title are omitted or redacted from the Senate torture report. Instead, he is identified in the report as “[redacted] CTC Legal”, “CIA associate general counsel,” or “[redacted] Legal Group, DCI Counterterrorist Center.”⁵² This serves no legitimate national security purpose; its only effect is to obscure EATINGER’s crucial role in the legal authorization for the torture program.

The following pages of the SSCI Study Executive Summary likely refer to EATINGER or to documents authored by EATINGER: 48, 132, 139, 158, 162, 173, 178, 196, 205-206, 209-212, 215, 220-221, 227, 235, 240, 249-250, 255, 261, 295, 304-305, 317, 343, 345-347, 349-351, 358-360, 368-370, 403, 405, 407, 412-423, 425-430, 444, and 453-454. Based on those pages:

- The Office of Legal Counsel’s (OLC) continued authorization of the CIA’s detention and interrogation program from 2004-2007 depended heavily on a series of false factual representations about the program.⁵³ EATINGER had a major role in providing this inaccurate information to OLC. The following documents are cited in the SSCI report as containing inaccurate representations to OLC by “[redacted] CTC Legal”, “CIA associate general counsel,” or “[redacted] Legal Group, DCI Counterterrorist Center”:
 - A July 30, 2004 letter to Daniel Levin, an Acting Assistant Attorney General in the Office of Legal Counsel (OLC), which contained inaccurate descriptions of the CIA’s use of dietary manipulation, nudity, water dousing, the abdominal slap, standing sleep deprivation, and the use of diapers.⁵⁴

⁴⁹ Senator Dianne Feinstein, Statement on Intel Committee’s CIA Detention, Interrogation Report, March 11, 2014, available at <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=db84e844-01bb-4eb6-b318-31486374a895>

⁵⁰ Mark Mazzetti and Jonathan Weisman, *Conflict Erupts in Public Rebuke on CIA Inquiry*, New York Times, March 11, 2014, available at http://www.nytimes.com/2014/03/12/us/cia-accused-of-illegally-searching-computers-used-by-senate-committee.html?_r=0; Ken Dilanian, *CIA Lawyer Robert EATINGER is No Stranger to Controversy*, Los Angeles Times, March 12, 2014, available at <http://articles.latimes.com/2014/mar/12/nation/la-na-cia-lawyer-20140313>; Stephen Braun, *CIA Lawyer at Center of Computer Snooping Clash*, Associated Press, March 12, 2014, available at <http://www.northjersey.com/news/cia-lawyer-at-center-of-computer-snooping-clash-1.739790>.

⁵¹ Josh Gerstein and Manu Raju, *Senate Confirms New CIA Lawyer*, Politico, March 13, 2014, available at <http://www.politico.com/story/2014/03/caroline-krauss-cia-lawyer-senate-confirmed-104646.html>

⁵² See SSCI Study Executive Summary at 139, footnote 437

⁵³ Id. at 409-436

⁵⁴ Id. at 414

- An August 19, 2004 letter to Daniel Levin.⁵⁵
 - An August 25, 2004 letter to Daniel Levin regarding the interrogation of Janat Gul.⁵⁶
 - A December 30, 2004 letter to Daniel Levin containing inaccurate information regarding the use of and medical effects of “enhanced interrogation techniques”⁵⁷
 - An April 15, 2015 fax to OLC.⁵⁸
 - An April 22, 2005 fax to OLC containing materials on KSM and Abu Zubaydah
 - A March 2, 2005 memo to Steven Bradbury, acting head of OLC, with the subject “Effectiveness of the CIA Counterterrorist Interrogation Techniques,” which contained a series of assertions about plots disrupted and intelligence obtained through the use of “enhanced interrogations.” The Senate report concludes that “[t]hese representations of ‘effectiveness’ were almost entirely inaccurate.”⁵⁹
 - A May 4, 2005 letter, purportedly composed the CIA’s Office of Medical Services but signed by Eatinger, making a series of false claims about the medical effects of “enhanced interrogation” on CIA detainees.⁶⁰
 - A January 25, 2006 letter to Steven Bradbury, making inaccurate assertions about conditions of confinement at CIA black sites.⁶¹
 - An April 23, 2006 fax to Steven Bradbury, which inaccurately stated that CIA medical officers ended prisoners’ sleep deprivation if it resulted in hallucinations, and inaccurately stated that the CIA had detained 96 prisoners when the actual total was 118.⁶²
- Eatinger consulted in detail with CIA officers about individual interrogations, increasing the likelihood that he was in a position to know that the information provided to the Justice Department in the above-referenced documents was inaccurate.⁶³

⁵⁵ Id. at 423

⁵⁶ Id. at 346-352, 416-417

⁵⁷ Id. at 422

⁵⁸ Id. at 418

⁵⁹ Id. at 425-426. This document, commonly known as the “Effectiveness Memo,” is also cited throughout the executive summary.

⁶⁰ Id. at 419-421. Although the May 4 letter on the medical effects of “enhanced interrogation” sent by the CIA’s Associate General Counsel stated that it had been composed by the CIA’s Office of Medical Services (OMS), less than a month before OMS had written to a CIA official (whose name, pseudonym and title are entirely redacted) that “OMS is not in the business of saying what is acceptable in causing discomfort to other human beings, and will not take on that burden.” Id.

⁶¹ Id. at 428-429

⁶² Id. at 429-430

⁶³ For example, see the discussion of the interrogation of Janat Gul, and representations to OLC regarding Gul’s interrogation, on pages 346-352, 416-417 of the SSCI Study Executive Summary.

- At a June 10, 2008 Congressional hearing, Eateringer “provided inaccurate information on several topics, including the use of sleep deprivation and its effects.”⁶⁴
- As previously reported in the press, Eateringer also had an important role in the destruction of CIA videotapes of Abu Zubaydah’s and Abd al Rahim al Nashiri’s torture. Eateringer was previously known to have told CIA clandestine service chief Jose Rodriguez that he had the legal authority to destroy the tapes and that there was no legal impediment to doing so (such as pending investigations or court cases).⁶⁵ According to Eateringer’s supervisor John Rizzo, however, Eateringer had no idea Rodriguez planned to act on his advice, and CIA lawyers never would have approved the tapes’ destruction before a thorough “scrub of the ongoing and pending court cases and congressional investigations . . . to ensure that destruction could not conceivably impact any of them.”⁶⁶ The Senate report reveals that in fact, Eateringer and other CIA attorneys approved the destruction of tapes partly in order to prevent Congressionally-authorized investigations from accessing them. One email likely written by Eateringer a few days before the tapes were destroyed stated, “[c]ommissions tend to make very broad document production demands, which might call for these videotapes that should have been destroyed in the normal course of business 2 years ago.”⁶⁷

(OpenTheGovernment.org attempted to contact Mr. Eateringer to give him the opportunity to comment on the accuracy of the Senate report executive summary and the above analysis, but received no reply.)

C. Charlie Wise

Charlie Wise is not identified by name or pseudonym in the Senate torture report, but is referred to by title as the CIA’s chief of interrogations. According to press reports, Wise was forced to retire from the CIA in 2003, and died of a heart attack the same year.⁶⁸ He therefore cannot meet the statutory definition of a covert agent under 50 U.S.C. § 426, which applies only to intelligence personnel who are “serving outside the United States or ha[ve] within the last five years served outside the United States.” He also cannot be placed in any personal danger by acknowledgment of his true name or pseudonym.

⁶⁴ Id. at 453-454

⁶⁵ Mark Mazzetti and Scott Shane, *Bush Lawyers Discussed Fate of CIA Tapes*, New York Times, December 19, 2007, available at <http://www.nytimes.com/2007/12/19/washington/19intel.html?pagewanted=all>; Ken Dilanian, *CIA Lawyer Robert Eateringer is No Stranger to Controversy*, Los Angeles Times, March 12, 2014, available at <http://articles.latimes.com/2014/mar/12/nation/la-na-cia-lawyer-20140313>; John Rizzo, *Company Man* (2014) at 19

⁶⁶ John Rizzo, *Company Man* (2014) at 18

⁶⁷ SSCI Study Executive Summary at 443-444, footnote 2488

⁶⁸ Greg Miller, Adam Goldman, and Ellen Nakashima, *CIA Misled on Interrogation Program, Senate Report Says*, Washington Post, March 31, 2014, available at https://www.washingtonpost.com/world/national-security/cia-misled-on-interrogation-program-senate-report-says/2014/03/31/eb75a82a-b8dd-11e3-96ae-f2c36d2b1245_story.html; Greg Miller, Adam Goldman, and Julie Tate, *Senate Report on CIA Program Details Brutality, Dishonesty*, Washington Post, December 9, 2014, available at https://www.washingtonpost.com/world/national-security/senate-report-on-cia-program-details-brutality-dishonesty/2014/12/09/1075c726-7f0e-11e4-9f38-95a187e4c1f7_story.html; Jason Leopold, *The Watchdog, the Whistleblower, and the Secret CIA Torture Report*, VICE News, May 19, 2015, available at <https://news.vice.com/article/the-watchdog-the-whistleblower-and-the-cias-secret-torture-report>

The following pages of the SSCI Study Executive Summary refer to the CIA's "chief of interrogations," and therefore likely refer to Wise: 19, 35, 50, 65, 71-72, 82, 99, 104, 117, 474-475, 488, and 496. Based on those pages:

- Wise became the CIA's chief of interrogations in the Renditions Group in the fall of 2002, despite a prior recommendation by the CIA inspector general that "he be orally admonished for inappropriate use of interrogation techniques" overseas in the 1980s.⁶⁹
- In November 2002, he and another individual led the CIA's first interrogator training course.⁷⁰
- Wise told interviewers with the CIA's Office of the Inspector General that "[DETENTION SITE COBALT] is good for interrogations because it is the closest thing he has seen to a dungeon, facilitating the displacement of detainee expectations."⁷¹
- Wise, who unlike contractors James Mitchell and Bruce Jessen was not certified to use waterboarding, told CIA OIG personnel that the waterboard was "overused" on both Khalid Sheikh Mohammed and Abu Zubaydah, and "ineffective" with regard to KSM.⁷²
- In January 2003, Wise expressed strong objections to a CIA headquarters proposal to continue or increase the use of "enhanced interrogation techniques" against Abd al Rahim al Nashiri. Wise, whose presence previously caused al Nashiri to "visibly and markedly tremble[] with fear,"⁷³ drafted a cable stating in part:

It is the assessment of the prior interrogators that [al-Nashiri] has been mainly truthful and is not withholding significant information. To continue to use enhanced technique[s] without clear indications that he [is] withholding important info is excessive and may cause him to cease cooperation....continued enhanced methods may push [al-Nashiri] over the edge psychologically."⁷⁴

In the same cable, Wise objected to the "conflict of responsibility" involved in having contract psychologist Bruce Jessen (identified in the Senate report by the pseudonym "Hammond Dunbar") serve both as Nashiri's interrogator, and as the mental health professional responsible for "serv[ing] as a check on the interrogator to prevent the interrogator from any unintentional excess of pressure which might cause permanent psychological harm."⁷⁵

Wise also emailed colleagues to inform them that he no longer wanted "to be associated in any way with the interrogation program," and would be "retiring

⁶⁹ SSCI Study Executive Summary at 19

⁷⁰ Id. at 35

⁷¹ Id. at 50, footnote 240

⁷² Id. at 65, footnote 324

⁷³ Id. at 71, footnote 358

⁷⁴ Id. at 71

⁷⁵ Id. at 72

shortly.” He wrote, “this is a train wreck [sic] waiting to happen and I intend to get the hell off the train before it happens.”⁷⁶

The interrogation plan was implemented over Wise’s objections.

- Despite his objections to Nashiri’s treatment, Wise did not immediately resign or retire from the interrogation program.⁷⁷ Wise participated in the “enhanced interrogation” of Khalid Sheikh Mohammed (KSM) at DETENTION SITE COBALT in March 2003. Soon after KSM’s capture, Wise “ordered the rectal rehydration of KSM without determination of medical need,” a procedure that he later described as showing “total control over the detainee.”⁷⁸ Independent medical professionals have described “rectal rehydration” as a form of sexual assault lacking any medical basis,⁷⁹ although the CIA continues to defend it as a medical technique.⁸⁰
- In May and June of 2003, Wise “used water dousing against detainees, including with cold water and/or ice water baths, as an interrogation technique without prior approval from CIA headquarters.”⁸¹ In some cases, these techniques were used at a CIA safehouse rather than a detention facility.⁸² At least one detainee who Wise subjected to “water dousing” was later released because of lack any evidence of his involvement with terrorism.⁸³
- Wise “placed a broomstick behind the knees” of a CIA detainee named Zubair “when Zubair was in a stress position on his knees on the floor. Although stress positions had been approved for Zubair, the use of the broomstick was not approved.”⁸⁴
- In July 2003, the CIA de-certified Wise from conducting interrogations as a result of the broomstick incident, although according to SSCI he “does not appear to

⁷⁶ Id. at 71

⁷⁷ Id. at 71, footnote 359

⁷⁸ Id. at 82

⁷⁹ Physicians for Human Rights, *Medical Professionals Denounce “Rectal Feeding” as “Sexual Assault Masquerading as Medical Treatment,”* December 2014, available at <http://physiciansforhumanrights.org/library/other/fact-sheet-rectal-hydration-and-rectal-feeding.html>. See also Press Release, Senator Dianne Feinstein, “Fact Check: CIA’s Use of Rectal Rehydration, Feeding Not Medical Procedures,” December 12, 2014, available at <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=e8f730c3-43c8-4931-94f6-c478f25d8bbb>

⁸⁰ *CIA Comments on the Senate Select Committee on Intelligence Report on the Rendition, Detention, and Interrogation Program* (June 27, 2013) at 55, available at [https://www.cia.gov/library/reports/CIA June2013 Response to the SSCI Study on the Former Detention and Interrogation Program.pdf](https://www.cia.gov/library/reports/CIA%20June2013%20Response%20to%20the%20SSCI%20Study%20on%20the%20Former%20Detention%20and%20Interrogation%20Program.pdf); SSCI Study Executive Summary at 100, footnote 584, 115, footnote 680; CIA Jennifer Bendery, *Dianne Feinstein: No, the CIA Did Not Use Rectal Hydration as a ‘Medical Procedure’ on Detainees*, Huffington Post, December 12, 2014, available at http://www.huffingtonpost.com/2014/12/12/dianne-feinstein-cia-torture-report_n_6318336.html

⁸¹ SSCI Study Executive Summary at 99, 104, footnote 610

⁸² Id. at 96, footnote 558, 104, footnote 610

⁸³ Id. at 16, footnote 32

⁸⁴ Id. at 104, footnote 609

have been investigated or reprimanded for training interrogators on the abdominal slap before its used was approved, training significant numbers of new interrogators to conduct interrogations on potentially compliant detainees, or conducting large numbers of water dousing on detainees without requesting or obtaining authorization.”⁸⁵

Because of Wise’s central role in some of the torture program’s worst abuses, his objection to other abuses, and his selection by CIA as chief of interrogations despite having been reprimanded for detainee abuse decades before, there is a compelling public interest in declassification of his name, or at least allowing open discussion of his role in the torture program under a pseudonym. Given that he reportedly stopped serving overseas and died over a decade ago, there is likely to be limited harm to national security or his personal privacy resulting from disclosure. If ISOO does find that ongoing threats to Wise’s family members or to sources with whom he had contact overseas justifies continuing classification of his name, he should at least be identified by a pseudonym.

D. James Elmer Mitchell

Psychologist James Elmer Mitchell, the contract psychologist who played a central role in designing and implementing the CIA’s torture program, is identified by the pseudonym “Grayson Swigert” in the Senate Torture Report. Mitchell is referenced by pseudonym or description on pages 9, 11, and 19 of the SSCI Study Findings, and pages 5, 21, 26-27, 30, 32-33, 36, 40-41, 46, 64-66, 71, 83-85, 88, 125, 158, 163, 166-169, 173-174, 177, 219, 223-224, 228, 241, 250, 263, 278-279, 287, 296, 303, 411, 463-465, 467, and 471 of the SSCI Study Executive Summary.

The use of a pseudonym, while preferable to refusing to identify Mitchell at all, cannot be justified on national security grounds, as Mitchell’s true name is not properly classified. Dr. Mitchell and his partner, Dr. Bruce Jessen, are identified by name in a previous Senate report by the Senate Armed Services Committee.⁸⁶ Moreover, both before and after the Senate Intelligence Committee report’s release, Mitchell acknowledged his role in developing the CIA’s “enhanced interrogation” program.⁸⁷ These acknowledgments became increasingly explicit and were widely disseminated after the Senate report was released, and the CIA reportedly released Mitchell from his non-disclosure agreement.⁸⁸

⁸⁵ Id. at 117

⁸⁶ Senate Armed Services Committee, *Inquiry Into the Treatment of Detainees in U.S. Custody* (November 20, 2008) available at http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf. Mitchell and Jessen are referenced on pages xiv, 6-8, 10-11, 14-18 20, 23, 24, 44-45, and 184 of the Armed Services Committee’s report

⁸⁷ Jason Leopold, *James Mitchell: “I’m Just A Guy Who Got Asked To Do Something For His Country*, The Guardian, April 18, 2014, available at <http://www.theguardian.com/world/2014/apr/18/james-mitchell-cia-torture-interview>; Jason Leopold, *CIA Torture Architect Breaks Silence to Defend “Enhanced Interrogation,”* The Guardian, April 18, 2014, VICE News video interview with James Mitchell, December 10, 2014, available at <https://www.youtube.com/watch?v=MmNUI0itl-8>

⁸⁸ E.g. Fox News video interview with James Mitchell, December 16, 2014, available at <http://video.foxnews.com/v/3946118068001/megyn-kelly-on-exclusive-interview-with-dr-james-mitchell/?#sp=show-clips>; Paul Thompson and Nick Craven, *I Saw British Agents at Secret Torture Sites, Says Boss of CIA’s Brutal Interrogation Programme*, Daily Mail, December 13, 2014, available at

For example, in December 2014, Mitchell stated, “Yes, I waterboarded KSM. I was part of a larger team that waterboarded a small number of detainees.”⁸⁹ He also confirmed that he is identified as “Grayson Swigert” in the Senate report; that Dr. Bruce Jessen was his partner; and that, at times, he and Jessen had expressed concerns to CIA headquarters and to the CIA’s Office of the Inspector General about excessive harm to detainees.⁹⁰ In one interview, Mitchell specifically requested “the full release of my OIG deposition.”⁹¹

Mitchell also voluntarily cooperated with a non-governmental review of the American Psychological Association’s role in abusive detainee interrogations by the CIA and Department of Defense, conducted by David Hoffman of Sidley Austin LLP (“Hoffman Report”). Mitchell was interviewed for the Hoffman report on May 15, 2015 and sent additional investigators additional information by email on May 31, 2015.⁹² Another former CIA employee, Kirk Hubbard, also spoke to Sidley Austin LLP investigators about Mitchell and Jessen’s role in the interrogation program, as well as providing Sidley Austin with relevant documents.⁹³ Whatever justification there was for treating Mitchell’s true name as classified before these acknowledgments, there is clearly none today.

E. Bruce Jessen

Dr. Mitchell’s business partner, Dr. Bruce Jessen, is identified as “Dr. Hammond Dunbar” in the Senate Torture Report. Jessen is referenced by pseudonym or description on pages 9, 11, and 19 of the SSCI Study Findings, and pages 5, 21, 32-33, 36, 40-41, 46, 54-56, 64-66, 71-73, 83-85, 88, 90, 102, 108, 125, 163, 165-169, 173-174, 177, 190, 219, 223-224, 228, 241, 250, 263, 278-279, 287, 296, 303, 411, 463-465, 471, 489, and 497 of the SSCI Study Executive Summary.

Jessen has been less explicit than Mitchell about his role in the CIA program, but he has acknowledged his affiliation, which has also been public record for many years. In December 2014, Jessen expressed a desire to “set the record straight” about the program and his involvement, but said he was prevented from doing so by a CIA nondisclosure agreement.⁹⁴

<http://www.dailymail.co.uk/news/article-2873050/I-saw-British-agents-secret-torture-sites-says-boss-CIA-s-brutal-interrogation-programme.html>; James Risen and Matt Apuzzo, *CIA, On Path to Torture, Chose Haste Over Analysis*, New York Times, December 15, 2014, available at http://www.nytimes.com/2014/12/16/us/politics/cia-on-path-to-torture-chose-haste-over-analysis-.html?_r=0; Jason Leopold, *Psychologist James Mitchell Admits He Waterboarded al Qaeda Suspects*, VICE News, December 15, 2014, available at <https://news.vice.com/article/psychologist-james-mitchell-admits-he-waterboarded-al-qaeda-suspects>

⁸⁹ Jason Leopold, *Psychologist James Mitchell Admits He Waterboarded al Qaeda Suspects*, VICE News, December 15, 2014, available at <https://news.vice.com/article/psychologist-james-mitchell-admits-he-waterboarded-al-qaeda-suspects>; VICE News video interview with James Mitchell, December 10, 2014, available at <https://youtu.be/MmNUi0itl-8>.

⁹⁰ Id.

⁹¹ Id.

⁹² Hoffman Report (July 2, 2015) at 128, 138, 144, 156, 158-159, 163-164, 197, 491, 539, available at <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>

⁹³ Id. at 127, 156-160, 163-164, 180, 184.

⁹⁴ Jacob Jones, *Face to Face With Jessen*, Inlander, December 12, 2014, available at <http://www.inlander.com/spokane/face-to-face-with-jessen/Content?oid=2391700>; *Bruce Jessen Built CIA Program; Quit Role as Mormon Bishop*, Reuters, December 11, 2014, available at http://www.huffingtonpost.com/2014/12/12/bruce-jessen-mormon-bishop_n_6312234.html

According to other news reports, however, that nondisclosure agreement is no longer in effect.⁹⁵ As with James Mitchell, there is no longer any justification for classifying Bruce Jessen's true name and affiliation with the CIA program.

F. Mitchell, Jessen, & Associates

Mitchell, Jessen & Associates is identified as "Company Y" in the Senate Torture Report.⁹⁶ The company's role in the torture program had been publicly reported for eight years in the press.⁹⁷ A declassified report on detainee treatment released in 2009 by Senate Armed Services Committee states that James Mitchell and Bruce Jessen formed "a company called Mitchell Jessen & Associates. Mitchell, Jessen & Associates is co-owned by seven individuals...As of July 2007, the company had between 55 and 60 employees."⁹⁸

In December 2014, after the publication of the Senate torture report's executive summary, the press published and reported on unclassified business registration records for Mitchell, Jessen, & Associates from the State of Washington and Delaware, listing James Mitchell as its CEO, Bruce Jessen as its President, and naming several of its other officers and directors.⁹⁹

In addition to the disclosures on unclassified registration forms, James Mitchell has publicly confirmed that Mitchell, Jessen & Associates is "Company Y," which received \$81 million in government funds for its role in the interrogation program. In December 2014, Mitchell spoke to the press about the bidding process by which his company was awarded the contract, the CIA's auditing and renewal of the contract, the company's profit margin, and his own and others' salaries.¹⁰⁰ Joseph Matarazzo, a partner of Mitchell, Jessen and Associates who owned a small

⁹⁵ James Risen and Matt Apuzzo, *CIA, On Path to Torture, Chose Haste Over Analysis*, New York Times, December 15, 2014, available at http://www.nytimes.com/2014/12/16/us/politics/cia-on-path-to-torture-chose-haste-over-analysis-.html?_r=0; Jason Leopold, *Psychologist James Mitchell Admits He Waterboarded al Qaeda Suspects*, VICE News, December 15, 2014, available at <https://news.vice.com/article/psychologist-james-mitchell-admits-he-waterboarded-al-qaeda-suspects>; Howard Altman, *Architect of Interrogation Program Seeks Vindication*, Tampa Tribune, December 16, 2014, available at <http://www.tbo.com/list/military-news/pasco-man-who-designed-interrogation-technique-says-he-raised-concerns-to-cia-20141216/>

⁹⁶ Mitchell, Jessen and Associates is referenced on page 11 of the SSCI Study Findings, and pages 168 and 169 of the SSCI Study Executive Summary

⁹⁷ E.g. Katherine Eban, *Rorschach and Awe*, Vanity Fair, July 2007, available at <http://www.vanityfair.com/news/2007/07/torture200707>; Mark Benjamin, *The CIA's Torture Teachers*, Salon, June 21, 2007, available at http://www.salon.com/2007/06/21/cia_sere/; Karen Dorn Steele and Bill Morlin, *Spokane Psychologists Linked to CIA: Congress Probes Role in Controversial Interrogations*, The Spokesman-Review, June 29, 2007, available at <http://www.spokesman.com/stories/2007/jun/29/spokane-psychologists-linked-to-cia-congress/>

⁹⁸ Senate Armed Services Committee, *Inquiry Into the Treatment of Detainees in U.S. Custody* at 24 (November 20, 2008), available at http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf

⁹⁹ Hunter Walker, *These 7 Men Owned the Company Linked to CIA Torture*, Business Insider, December 11, 2014, available at <http://www.businessinsider.com/the-company-behind-cia-torture-2014-12>. See also documents available at https://www.scribd.com/fullscreen/249818540?access_key=key-IOL2jfpsUtQ4W1NN86nR&allow_share=true&escape=false&view_mode=scroll; https://www.scribd.com/fullscreen/249818540?access_key=key-IOL2jfpsUtQ4W1NN86nR&allow_share=true&escape=false&view_mode=scroll (accessed September 2, 2015); and http://www.sos.wa.gov/corps/search_detail.aspx?ubi=602495307 (accessed September 4, 2015).

¹⁰⁰ James Risen and Matt Apuzzo, *CIA, On Path to Torture, Chose Haste Over Analysis*, New York Times, December 15, 2014, available at http://www.nytimes.com/2014/12/16/us/politics/cia-on-path-to-torture-chose-haste-over-analysis-.html?_r=0; Jason Leopold, *Psychologist James Mitchell Admits He Waterboarded al Qaeda Suspects*,

share of the company, and Kirk Hubbard, a former CIA employee who left the agency to work as a consultant for Mitchell, Jessen and Associates, have also publicly acknowledged the company's existence and their relationship with it.¹⁰¹

Given these unclassified, voluntary disclosures, there is no national security justification for continuing to maintain that "Company Y's" true identity is classified.

Again, given their own acknowledgment and repeated official acknowledgment of their work for the CIA, Fredman's and Eatinger's true names are not properly classified, and should no longer be redacted from the Senate torture report. If ISOO nonetheless determines that their true names should be redacted, their pseudonyms and full titles should be released.

For the same reasons, ISOO should order the CIA to declassify the true names of James Mitchell, Bruce Jessen, and Mitchell, Jessen and Associates.

In Wise's case, it is theoretically possible that his name might remain properly classified to protect sources with whom he interacted or his family members, but the CIA's claims to that effect should be carefully scrutinized and evaluated. In any case, there is no justification for refusing to identify him by a pseudonym. There is also no justification for redacting other CIA employees' titles and pseudonyms from the Executive Summary—and the examples discussed above demonstrate that the CIA's representations that they redacted pseudonyms only to protect covert officers are false.

II. THE NAMES OF COUNTRIES THAT HAVE ACKNOWLEDGED THE PRESENCE OF CIA DETENTION FACILITIES IN THEIR TERRITORY OR THEIR GOVERNMENT'S ROLE IN THE CIA PROGRAM

The locations of the CIA's black sites have been public for years—in most cases a decade or more: Afghanistan. Thailand. Poland. Romania. Lithuania. Morocco. However, both these country's names and pseudonyms (e.g. "Country A") have been redacted from the SSCI Study Executive Summary, as they are still officially classified. Instead, the Senate report refers to black site locations by color-code names. The black site in Poland is identified as DETENTION SITE BLUE; Thailand as DETENTION SITE GREEN; Romania as DETENTION SITE BLACK; Lithuania as DETENTION SITE VIOLET; CIA prisons in Afghanistan as DETENTION SITE COBALT, DETENTION SITE GRAY, DETENTION SITE BROWN, and DETENTION SITE ORANGE; and CIA prisons at the U.S. Naval Base at Guantanamo Bay, Cuba as DETENTION SITE MAROON and DETENTION SITE INDIGO.

The Executive Order on National Security Classification states that "[c]lassified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or

VICE News, December 15, 2014, available at <https://news.vice.com/article/psychologist-james-mitchell-admits-he-waterboarded-al-qaeda-suspects>; Howard Altman, *Architect of Interrogation Program Seeks Vindication*, Tampa Tribune, December 16, 2014, available at <http://www.tbo.com/list/military-news/pasco-man-who-designed-interrogation-technique-says-he-raised-concerns-to-cia-20141216/>. See also Hoffman Report at 128, available at <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>

¹⁰¹ Hoffman Report at 50, 180, footnote 748, 326, available at <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>

similar information,” and that “[t]he unauthorized disclosure of foreign government information is presumed to cause damage to the national security.”¹⁰² U.S. courts have upheld official refusal to confirm facts in the public domain on grounds that “foreign governments can often ignore unofficial disclosures of CIA activities that might be viewed as embarrassing or harmful to their interests. . . . They cannot, however, so easily cast a blind eye on official disclosures made by the CIA itself, and they may, in fact, feel compelled to retaliate.”¹⁰³ But this rationale dissolves when a foreign government has acknowledged the very same information that the CIA maintains must be kept secret for that government’s protection. Current and former government officials from Afghanistan, Poland, and Romania have all acknowledged that the CIA imprisoned suspects on their soil, and there is no legitimate justification for the CIA’s ongoing concealment of that fact.

A. Afghanistan

On December 10, 2014, Afghan President Ashraf Ghani said he had read “every page” of the Senate torture report. Ghani condemned the torture of prisoners at DETENTION SITE COBALT and other CIA prisons in Afghanistan.¹⁰⁴ He requested additional disclosures about violations against Afghan prisoners, stating “[u]nfortunately this report shows that our Afghan countrymen have been subjected to torture and their rights violated. We want the number of these Afghans to be known, we want their names to be released so we take action for their rights and to defend their human dignity in a serious and fundamental way.”¹⁰⁵ Ghani emphasized that under the Bilateral Security Pact between Afghanistan and the U.S, the U.S. would no longer be able to detain individuals on Afghan soil.¹⁰⁶

On a subsequent visit to the United States in spring 2015, President Ghani again referred to the report’s evidence of abuses in Afghanistan, stating at a public event, “I salute Senator Feinstein and Senator McCain for their courage to face the abuses that were committed by U.S. forces and by their Afghan counterparts and associates.”¹⁰⁷ He said of the psychologists involved in creating the CIA torture program, “I hope that these people are prosecuted to the fullest extent in law and held accountable because they have destroyed hundreds of lives in my country as well as elsewhere.”¹⁰⁸

Ghani’s acknowledgment was not surprising. The fact that the CIA detained, interrogated and tortured prisoners in Afghanistan has been reported in the press since 2002, with increasing levels of detail.¹⁰⁹ Numerous former prisoners have described being tortured at CIA sites in

¹⁰² Executive Order 13526 (2009), section 1.1(c), (d)

¹⁰³ *Wilson v. CIA*, 586 F.3d 171, 186 (2nd Cir. 2009)

¹⁰⁴ *Afghanistan Strongly Condemns CIA Torture Report*, Andalou Agency, December 10, 2014, available at <http://www.aa.com.tr/en/world/433713--afghanistan-strongly-condemns-cia-torture-report>

¹⁰⁵ *Afghan Leader Demands US Answers on Torture*, Al Jazeera, December 10, 2014, available at <http://www.aljazeera.com/news/asia/2014/12/afghan-leader-demands-us-answers-torture-20141210181650324853.html>

¹⁰⁶ *Id.*

¹⁰⁷ Afghan President Ashraf Ghani, Remarks at the Council of Foreign Relations (Washington, D.C.), March 26, 2015, transcript available at <http://www.cfr.org/afghanistan/road-ahead-afghanistan/p36304>

¹⁰⁸ *Id.*

¹⁰⁹ E.g. Dana Priest and Barton Gellman, *U.S. Decries Abuse But Defends Interrogations*, Washington Post, December 26, 2002, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901356.html>; Dana Priest, *CIA Avoids Scrutiny of Detainee Treatment*, Washington Post, March 3, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A2576->

Afghanistan.¹¹⁰ Several federal judges have found these descriptions to be credible and accurate in habeas corpus cases,¹¹¹ as have the European Court of Human Rights,¹¹² the Council of Europe and the European Parliament,¹¹³ and the United Nations.¹¹⁴ CIA involvement in detention and interrogation operations in Afghanistan was also confirmed in 2006, when a federal court convicted CIA contractor David Passaro of fatally assaulting an Afghan named Abdul Wali in Asadabad Firebase in Afghanistan.¹¹⁵

More generally, the CIA's central role in the Afghan war and post-war government has been freely acknowledged by both the agency and the government of Afghanistan. The CIA is widely known to have created Afghanistan's National Directorate of Security (NDS) and to have paid its entire budget until 2008; reporters have described the NDS as a CIA "subsidiary."¹¹⁶ The CIA's

[2005Mar2.html](#); Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, Washington Post, December 4, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/03/AR2005120301476.html>; Human Rights Watch, *U.S. Operated Secret 'Dark Prison' in Kabul*, December 19, 2005, available at <https://www.hrw.org/news/2005/12/19/us-operated-secret-dark-prison-kabul>; Craig S. Smith and Souad Mekhennet, *Algerian Tells of Dark Term in U.S. Hands*, New York Times, July 7, 2006, available at <http://www.nytimes.com/2006/07/07/world/africa/07algeria.html?pagewanted=all>; Adam Goldman and Kathy Gannon, *Death Shed Light on CIA 'Salt Pit' Near Kabul*, Associated Press, March 28, 2010, available at http://www.nbcnews.com/id/36071994/ns/us_news-security/t/death-shed-light-cia-salt-pit-near-kabul/#.VcusMLXchgs; Adam Goldman and Matt Apuzzo, *At CIA, Mistakes By Officers Are Often Overlooked*, Associated Press, February 9, 2011, available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/08/AR2011020807033.html>

¹¹⁰Human Rights Watch, *U.S. Operated Secret 'Dark Prison' in Kabul*, December 19, 2005, available at <https://www.hrw.org/news/2005/12/19/us-operated-secret-dark-prison-kabul>; Craig S. Smith and Souad Mekhennet, *Algerian Tells of Dark Term in U.S. Hands*, New York Times, July 7, 2006, available at <http://www.nytimes.com/2006/07/07/world/africa/07algeria.html?pagewanted=all>; Complaint, *El Masri v. Tenet*, (E.D.Va. December 6, 2005), available at

https://www.aclu.org/sites/default/files/field_document/asset_upload_file829_22211.pdf; Human Rights Watch, *Delivered Into Enemy Hands* (September 2012) at 34-55, 62-66, 70-7, 85-87, available at http://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf; *Report of the Constitution Project Task Force on Detainee Treatment* (March 2013) at 177-179, available at <http://detainee-taskforce.org/pdf/Full-Report.pdf>

¹¹¹ *Ali Ahmed v. Obama*, 613 F. Supp. 2d 51, 57-58, 61-64 (D.D.C. 2009); *Mohammed v. Obama*, 689 F. Supp. 2d 38, 57-60 (D.D.C. 2009); *Anam v. Obama*, 696 F. Supp. 2d 1, 3-8 (D.D.C. 2010); *Abdah v. Obama*, 08 F. Supp. 2d 9, 14-15 (D.D.C. 2010)

¹¹² *El-Masri v. Macedonia*, European Court of Human Rights, Judgment, No. 39630/09 (Dec. 13, 2012), available at https://www.opensocietyfoundations.org/sites/default/files/CASE_OF_EL-MASRI_v_THE_FORMER_YUGOSLAV_REPUBLIC_OF_MACEDONIA.pdf

¹¹³ European Parliament, *Report on the Alleged Use of European Countries by the C.I.A. for the Transportation and Illegal Detention of Prisoners* (2007), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>; Council of Europe, *Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States* (2006), ¶¶ 64-65, 92, 95-96, 98, 100-103, 184, 210, available at http://assembly.coe.int/committeedocs/2006/20060606_ejdoc162006partii-final.pdf

¹¹⁴ U.N. Human Rights Council, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism* (February 2010), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

¹¹⁵ *United States v. Passaro*, 577 F.3d 207 (4th Cir. 2009), available at <http://www.ca4.uscourts.gov/Opinions/Published/074249.P.pdf>

¹¹⁶ Greg Miller, Julie Tate and Josh Partlow, *Mystery Surrounds Move of Afghan "Torturer in Chief" to U.S. Amid Allegations of Agency Abuse*, Washington Post, April 28, 2014, available at https://www.washingtonpost.com/world/national-security/mystery-surrounds-move-of-afghan-torturer-in-chief-to-us-amid-allegations-of-agency-abuse/2014/04/28/0916144a-ca4b-11e3-93eb-6c0037d0e2ad_story.html; Joshua Partlow and Julie Tate, *U.S. Had Advance Warning of Abuse at Afghan Prisons, Officials Say*, Washington Post, October 30, 2011, available at http://www.washingtonpost.com/world/asia_pacific/us-had-advance-warning-of-

official website contains numerous articles about the agency's activities in Afghanistan after September 11,¹¹⁷ and a series of official memoirs cleared by the CIA's prepublication review board discuss CIA counterterrorism operations in Afghanistan at length.¹¹⁸

Government officials in Afghanistan have been even more blunt. For example, after the *New York Times* reported in April 2003 that the CIA had been making large cash payments to Afghan government officials for many years,¹¹⁹ then-President of Afghanistan Hamid Karzai gave the following response at a news conference:

Yes, we received cash from the CIA for the past 10 years. It was very useful, and we are thankful for this aid.... Yesterday, I thanked the CIA's chief in Kabul and I requested their continued help, and they promised that they will continue.¹²⁰

Successive Afghan presidents have freely acknowledged the CIA's activities in Afghanistan. The current president has acknowledged that the CIA's activities included the torture of Afghans on Afghan soil, in collaboration with Afghan officials. There is simply no plausible argument that the ongoing classification of location of DETENTION SITE COBALT, DETENTION SITE GRAY, DETENTION SITE ORANGE, or DETENTION SITE BROWN must be hidden to protect the United States' relationship with the government of Afghanistan, or any other legitimate national security interest. Ongoing secrecy serves only to "conceal violations of law, inefficiency, or administrative error," and to "prevent embarrassment" to the CIA and agency employees—precisely what section 1.7 of Executive Order 13526 forbids.

B. Poland

The existence of a CIA black site in Poland was first reported in 2005 by Human Rights Watch.¹²¹ The allegation was repeatedly corroborated by human rights investigators and journalists, who reported that the prison was located in the village of Stare Kjejkuty; that

[abuse-at-afghan-prisons-officials-say/2011/10/21/gIQA7Dg2VM_story.html](http://www.nytimes.com/2011/10/21/gIQA7Dg2VM_story.html); C. J. Chivers, Carlotta Gall, Andrew W. Lehren, Mark Mazzetti, Jane Perlez, and Eric Schmitt, *View Is Bleaker Than Official Portrayal of War in Afghanistan*, *New York Times*, July 25, 2010, available at

http://www.nytimes.com/2010/07/26/world/asia/26warlogs.html?pagewanted=all&_r=0

¹¹⁷ E.g. <https://www.cia.gov/news-information/featured-story-archive/2013-featured-story-archive/flashback-sept-26-2001.html>; <https://www.cia.gov/news-information/press-releases-statements/cia-casualties-in-afghanistan.html>; <https://www.cia.gov/about-cia/cia-museum/experience-the-collection/text-version/stories/on-the-front-lines-cia-in-afghanistan.html> (accessed July 1, 2015)

¹¹⁸ E.g. Gary Schroen, *First In: An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan* (2006); George Tenet, *At the Center of the Storm* (2007); Robert Grenier, *88 Days to Kandahar: A CIA Diary* (2015)

¹¹⁹ Matthew Rosenberg, *With Bags of Cash, CIA Seeks Influence in Afghanistan*, *New York Times*, April 28, 2013, available at http://www.nytimes.com/2013/04/29/world/asia/cia-delivers-cash-to-afghan-leaders-office.html?_r=0.

¹²⁰ Qadir Sediqi and Chelsea J. Carter, *Karzai: CIA Promises to Continue Cash Payments*, CNN, May 6, 2013, available at <http://www.cnn.com/2013/05/04/world/asia/afghanistan-cia-money/>; Matthew Rosenberg, *Karzai Says He Was Assured CIA Would Continue Delivering Bags of Cash*, *New York Times*, May 4, 2013, available at <http://www.nytimes.com/2013/05/05/world/asia/karzai-said-he-was-assured-of-cash-deliveries-by-cia.html>

¹²¹ Human Rights Watch, *Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe*, November 6, 2005, available at <https://www.hrw.org/news/2005/11/06/human-rights-watch-statement-us-secret-detention-facilities-europe/>. See also Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, *Washington Post*, November 2, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>

methods used against detainees there included waterboarding, sleep deprivation, and mock execution; and that Polish intelligence received \$15 million in cash for its cooperation with the CIA.¹²²

More recently, in response to the release of the Senate torture report and rulings from the European Court of Human Rights, the Polish government and high-level former officials have confirmed that they allowed the CIA to imprison terrorism suspects on Polish soil.

In December 2014, former Polish President Aleksander Kwasniewski told reporters, “The U.S. side asked the Polish side to find a quiet site where it could conduct activity that would allow to effectively obtain information from persons who had declared a readiness to cooperate with the U.S. side... We gave our consent to that.” Kwasniewski said he had asked the U.S. government to sign a document agreeing to treat prisoners humanely, but “[t]he memorandum was not signed by the American side.”¹²³ Former Polish Prime Minister Leszek Miller gave a similar account at the same press conference.¹²⁴ Both Miller and Kwasniewski criticized release of the Senate report, but also distanced themselves from the CIA’s “methods which are repulsive, which I do not accept, which are not justifiable,” in Kwasniewski’s words.¹²⁵

Kwasniewski and Miller are no longer in office, but the current government of Poland has also acknowledged the country’s role in the torture program. In July 2014, the European Court of Human Rights (ECHR) ruled that it was “established beyond a reasonable doubt” that Abu Zubaydah and Abd al Rahim al Nashiri were unlawfully detained and tortured in CIA custody in Poland, in violation of the European Convention on Human Rights.¹²⁶ The court found that Poland had failed to properly investigate the allegations of torture and unlawful detention on its soil, and ordered the Polish government to conduct a thorough investigation and pay compensation to both detainees.¹²⁷ The Polish government unsuccessfully appealed the verdict, but has now stated that it will comply with the court’s order. Foreign Minister Grzegorz

¹²² Council of Europe, *Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report* (2007), ¶¶ 7-8, 117-127, 136-138, 167-173, 197-200, available at http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf; Adam Goldman, *The Hidden History of the CIA’s Prison in Poland*, Washington Post, January 23, 2014, available at https://www.washingtonpost.com/world/national-security/the-hidden-history-of-the-cias-prison-in-poland/2014/01/23/b77f6ea2-7c6f-11e3-95c6-0a7aa80874bc_story.html

¹²³ Monika Scislowska, *Ex-Leader: Poland Agreed to CIA Site, Not Torture*, Associated Press, December 10, 2014, available at <http://bigstory.ap.org/article/1fe93d1598914585846d42cf9cd980e4/ex-leader-poland-agreed-cia-site-not-torture>; Lucy Draper, *Polish Leaders Defend Million-Dollar Pay-Off Over CIA Torture Facility*, Newsweek Europe, December 10, 2014, available at <http://europe.newsweek.com/former-polish-leaders-defend-million-dollar-pay-over-cia-torture-facility-290862>

¹²⁴ Id.

¹²⁵ *Poland’s Secret CIA Prisons: Kwasniewski Admits He Knew*, BBC News, December 10, 2014, available at <http://www.bbc.com/news/world-us-canada-30418405>

¹²⁶ *Al Nashiri v. Poland*, European Court of Human Rights, Judgment, No. 28761/11 (July 24, 2014), available at <http://hudoc.echr.coe.int/eng?i=001-146044#%7B%22itemid%22:%5B%22001-146044%22%5D%7D>; *Husayn (Abu Zubaydah) v. Poland*, European Court of Human Rights, Judgment, No. 7511/13 (July 24, 2014), available at <http://hudoc.echr.coe.int/eng?i=001-146047#%7B%22itemid%22:%5B%22001-146047%22%5D%7D>

¹²⁷ Id.

Schetyna has said regarding compensating the former detainees, “We have to do it...because we are a country that abides laws.”¹²⁸

According to documents submitted by the Polish government to the Council of Europe, in addition to compensation, Polish prosecutors have repeatedly asked the United States for legal assistance in its criminal investigation of the black site.¹²⁹ These official requests began before the ECHR verdict, with legal motions submitted on March 18, 2009; March 9, 2011; May 24, 2013; and May 27, 2013.¹³⁰ The United States government declined the first request, and ignored the others.¹³¹

The Polish government sent another request for legal assistance on September 2, 2014.¹³² On December 22, 2014, Poland made a motion requesting “access to the original, full and uncensored version of the Senate Select Committee on Intelligence: Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program” as well as the CIA’s and SSCI Minority’s response.¹³³ Polish government representatives also raised the issue in meetings with U.S. government personnel (including former Attorney General Eric Holder and Assistant Secretary of State for European and Eurasian Affairs Victoria Nuland) in February 2014, November 2014, December 2014, and April 2015.¹³⁴ The United States government appears to have simply disregarded all these requests, which a representative of the Polish prosecution told the press “is undoubtedly hampering our investigation.”¹³⁵

Rather than protecting the Polish government, the United States’ refusal to acknowledge that “DETENTION SITE BLUE” was located there has obstructed a Polish investigation and led to adverse consequences for Poland before the European Court of Human Rights. This is a violation of Article 9 of the Convention Against Torture, as well as section 1.7 of the Executive Order.

C. Romania

As with Poland, the existence of a CIA black site in Romania was first reported in 2005 by Human Rights Watch,¹³⁶ and later confirmed by international organizations and the press.¹³⁷

¹²⁸ Alan Yuhas, *Poland Agrees to Pay Reparations to Guantanamo Detainees*, The Guardian, February 18, 2015, available at <http://www.theguardian.com/world/2015/feb/18/poland-agrees-reparations-guantanamo-detainees>

¹²⁹ Communication from Poland concerning the cases of Al Nashiri and Hussayn and Abu Zubaydah against Poland (Applications No. 28761/11, 7511/13), August 20, 2015, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2788528&SecMode=1&DocId=2295036&Usage=2>

¹³⁰ Id.

¹³¹ Id.

¹³² Id.

¹³³ Id.

¹³⁴ Id. See also Communication from the authorities concerning the Al Nashiri group of cases against Poland (Application No. 28761/11), May 20, 2015, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2757097&SecMode=1&DocId=2269862&Usage=2>

¹³⁵ *US Snubs Poland Request for CIA Secret Prison Documents*, Associated Press, June 13, 2015, available at <http://www.theguardian.com/world/2015/jun/13/poland-cia-secret-prison-report>

¹³⁶ Human Rights Watch, *Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe*, November 6, 2005, available at <https://www.hrw.org/news/2005/11/06/human-rights-watch-statement-us-secret-detention-facilities-europe/>. See also Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Washington Post, November 2, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>

After the release of the Senate torture report's executive summary—which identified the Romanian black site as “DETENTION SITE BLACK”—several high-ranking Romanian government officials admitted that they had agreed to host a CIA prison. Ion Iliescu, President of Romania from 2000 to 2004, said in April 2015 that he had approved the CIA's request to operate a site in Romania, but “I would surely have taken another decision” if he had known what the CIA was doing to prisoners there.¹³⁸ Similarly, Ioan Talpes, the head of Romania's intelligence service from 1992 to 1997 and 2000 to 2004, said in December 2004 that the CIA had operated one or two “centres” in Romania where “it is probabl[e] that people were imprisoned and treated in an inhumane manner” between 2003 and 2006.¹³⁹ Talpes said that Romania had allowed the CIA to operate the “centres” but “explicitly taken no interest in knowing what the CIA did there.... It was the Americans' business what they did in these places.”¹⁴⁰

There is no active Romanian investigation into the black site. However, an application by Abd al Rahim al Nashiri alleging that he was detained and tortured in Romania is currently pending before the European Court of Human Rights,¹⁴¹ and may eventually lead to domestic proceedings.¹⁴²

III. DETAINEES' DESCRIPTION OF THEIR OWN TREATMENT IN CIA CUSTODY

Until January of 2015, the U.S. government took the position that Guantanamo prisoners' memories of their torture by the CIA were almost entirely classified. The government successfully argued that by being imprisoned and interrogated in black sites, military commissions defendants and other former CIA detainees at Guantanamo “were exposed to classified sources, methods, and activities.” Therefore, Guantanamo prisoners and their lawyers were banned from revealing their memories of:

- (a) the details surrounding their capture
- (b) information that “would reveal or tend to reveal” the foreign countries where they were held by the CIA
- (c) the names, identities, and physical descriptions of any individuals involved in their capture, detention or interrogation in CIA custody

¹³⁷ Council of Europe, *Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report* (2007), ¶¶ 7-8, 117-122, 201-231, available at http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf; Adam Goldman and Matt Apuzzo, *AP Exclusive: Inside Romania's Secret CIA Prison*, Associated Press, December 8, 2011, available at <http://news.yahoo.com/ap-exclusive-inside-romania-secret-cia-prison-050239912.html>

¹³⁸ *Former Romania President Admits Allowing CIA Site*, Associated Press, April 27, 2015, available at <http://www.aljazeera.com/news/2015/04/romania-president-admits-allowing-cia-site-150427140351035.html>

¹³⁹ Kate Connolly, *Romanian Ex-Spy Chief Acknowledges CIA Had 'Black Prisons' in Country*, The Guardian, December 14, 2014, available at <http://www.theguardian.com/world/2014/dec/14/romania-cia-black-prisons-ioan-talpes>

¹⁴⁰ *Id.*

¹⁴¹ *Al Nashiri v. Romania*, Application No. 33234/12 to the European Court of Human Rights (June 1, 2012), available at <https://www.opensocietyfoundations.org/sites/default/files/echr-nashiri-romania-20120802.pdf>

¹⁴² The Senate Torture Report confirms Nashiri's detention at the Romanian black site, which had previously been reported in the press. See SSCI Study Executive Summary at 75, 114

- (d) “The enhanced interrogation techniques that were applied” to detainees “including descriptions of the techniques as applied, the duration, frequency, sequencing, and limitations of those techniques,” and
- (e) Descriptions of the conditions of confinement in CIA custody¹⁴³

In late January of 2015, the CIA revised its classification guidance in response to the release of the executive summary of the Senate torture report.¹⁴⁴ The new guidance states that the 119 prisoners named in Appendix 2 of the SSCI report can describe their treatment in CIA custody, but the agency still intends to censor information that could:

reveal the identifies (*e.g.* names, physical descriptions, or other identifying information) of CIA personnel or contractors; the locations of detention sites (including the name of any country in which they detention site was allegedly located); or any foreign intelligence service involvement in the [detainee’s] capture, rendition detention or interrogation.¹⁴⁵

It is unclear whether prisoners will be permitted to identify the black sites where they were held using the same designations as the Senate used in the executive summary (“DETENTION SITE BLUE,” “DETENTION SITE COBALT,” “DETENTION SITE GREEN,” “DETENTION SITE ORANGE,” etc.). It is also unclear whether they will be permitted to provide any information about the dates when they were transferred from one CIA prison to another, or name the other prisoners with whom they were detained or transferred.

It is also unclear whether the revisions allowing the 119 former CIA detainees named in the SSCI report to disclose “general allegations of torture,” “EITs as applied,” “conditions of confinement” and “information regarding [their] treatment” will be consistently applied in practice. Attorneys for the first detainee in the CIA program, Abu Zubaydah, recently reported that they had made ten submissions of a total of 116 pages of notes detailing Zubaydah’s torture for declassification review.¹⁴⁶ According to attorney Joseph Margulies, “[t]he government declared all of it classified,” although it contained only Zubaydah’s descriptions of his torture and omitted all prohibited information regarding exact dates, locations, and perpetrators’ identities.¹⁴⁷ Margulies said the CIA was simply trying to “guarantee that Abu Zubaydah never discloses what was done to him.”¹⁴⁸

¹⁴³ *United States v. Mohammad*, Second Amended Protective Order # 1 To Protect Against Disclosure of National Security Information (Military Commissions Trial Judiciary, December 16, 2013), available at [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE013DDD\(KSM%20et%20al\)\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE013DDD(KSM%20et%20al)).pdf)

¹⁴⁴ CIA, *Classification Guidance for Information About the Central Intelligence Agency’s Former Rendition, Detention and Interrogation Program* (updated January 28, 2015), available at <http://www.openthegovernment.org/sites/default/files/RDIclassificationguidance.pdf>

¹⁴⁵ *United States v. Mohammad*, Government Motion to Amend 13DDD Second Amended Protective Order #1 to Protect Against Disclosure of National Security Information (Military Commissions Trial Judiciary, January 30, 2015) at 16, available at [http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE013RRR\(Gov\)\).pdf](http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE013RRR(Gov)).pdf)

¹⁴⁶ David Rohde, *U.S. Government Blocks Release of New CIA Torture Details*, Reuters, September 10, 2015, available at <http://www.reuters.com/article/2015/09/11/us-usa-cia-torture-idUSKCN0RA2RM20150911>

¹⁴⁷ Id.

¹⁴⁸ Id.

Despite the changes in the classification guidance, the U.S. government still asserts that prisoners' memories of certain crucial aspects of their torture—and in some cases, all of their memories—are “intelligence sources and methods,” and the Guantanamo courtroom will continue to be equipped with a censorship button. This is a violation of not only Section 1.7 of the Executive Order, but also Section 1.1, which states that information may be classified only if “the information is owned by, produced by or for, or is under the control of the United States government.”¹⁴⁹ A prisoner's memories of his own torture—including the dates when it occurred, the location where it occurred, and descriptions of the perpetrators—do not fall into this category.

Federal courts and military commissions have declined to hear challenges to the censorship of Guantanamo prisoners' memories, but they have done so on jurisdictional grounds.¹⁵⁰ No court has reached the merits of the government's argument that a prisoner's “observations and experiences” of torture are “information...owned by, produced by or for, or is under the control of the United States government,” or that the government's interest in censoring this information outweighs the public's First Amendment right of access to court proceedings.

Courts have upheld prior restraints on former government employees' speech, but they have done so on the basis of those employees' voluntary assumption of restrictions on speech in return for government employment and access to classified information. Gaining knowledge of “intelligence sources and methods” by being flown to secret prisons and tortured is not analogous to signing a non-disclosure agreement. A prisoner's memories of the details of his disappearance and torture—including descriptions of the facilities where it occurred, other prisoners he encountered or whose torture he witnessed, and physical descriptions of the perpetrators—is not information owned by the U.S. government, and cannot be properly classified.

IV. THE CIA'S MISTREATMENT OF PRISONERS IN IRAQ

The Senate torture report's executive summary does not address the CIA's treatment of prisoners at military facilities in Iraq.¹⁵¹ The public portions of the CIA's revised classification guidance

¹⁴⁹ Executive Order 13526 (2009), section 1.1

¹⁵⁰ E.g. *ACLU v. United States*, Order Denying Writ of Mandamus (U.S. Court of Military Commission Review, March 27, 2013, available at <https://lawfare.s3-us-west-2.amazonaws.com/staging/s3fs-public/uploads/2013/03/13-003-ACLU-Writ-Ordering-Dismissal-J.-Silliman-Concur-Mar-27-2013.pdf>) (finding that challenge to military commissions protective order was not ripe for review); *United States v. Mohammad*, Order in Response to Defense Motion to Dismiss Because the Amended Protected Order #1 Violates the Convention Against Torture (Military Commissions Trial Judiciary, December 16, 2013) (denying challenge to protective order because judge lacked authority to override determination by original classification authority), available at <https://lawfare.s3-us-west-2.amazonaws.com/staging/s3fs-public/uploads/2013/12/KSM-II-AE200II.pdf>; *Husayn v. Gates*, Memorandum Order (D.D.C. No. 08-1360, March 29, 2011), available at <http://www.ecases.us/case/dcd/2664500/muhammad-husayn-v-gates> (finding that judge lacked authority to order government to expedite classification review of petition for habeas corpus)

¹⁵¹ SSCI Study Executive Summary at 9, footnote 5, 457. The SSCI study does report on several cases where the CIA took custody of prisoners who were originally captured in Iraq, including Hassan Ghul, Ibrahim Jan, and Abu Ja'far al-Iraqi. Id. at 130-131, 143, 148-149, footnote 901-904. Appendix 2 to the executive summary also lists as CIA detainees several other individuals whose capture in Iraq has been reported elsewhere, including Hiwa Abdul Rahman Rashul, Khaled al-Maqtari, and Aso Hawleri, though it omits at least two other detainees reported to have been rendered from Iraq to Bagram airbase Afghanistan by the CIA, Yunus Rahmatullah and Amanatullah Ali. See SSCI Study Executive Summary at 459-46. See also Rendition Project, “Hiwa Rashul,” available at

on the rendition, detention and interrogation program also do not indicate any recent declassification of information about the agency's treatment of prisoners in Iraq.¹⁵² Thus, the agency's position on the classified nature of its treatment of prisoners in Iraq likely remains unchanged by the release of the Senate report—and unchanged since 2011, when the CIA claimed that at least two CIA Inspector General's reports into homicides of prisoners in Iraq were classified in their entirety.¹⁵³

One of those two homicides, the killing of Manadel al-Jamadi at Abu Ghraib, was perpetrated primarily by CIA officers.¹⁵⁴ This fact has been public record since early 2004, when photographs of Jamadi's corpse appeared in the press along with other images abuse from Abu Ghraib.¹⁵⁵ In 2005, several press outlets published more detailed accounts of the CIA's role in Jamadi's death.¹⁵⁶ *The New Yorker* reported that a CIA officer named Mark Swanner had ordered U.S. soldiers to shackle Jamadi's hands to a window frame behind his back, in a position that likely caused Jamadi's death by asphyxiation.¹⁵⁷ Years later, the press reported that a federal grand jury was hearing testimony about Jamadi's death as part of a grand jury investigation led

<http://www.therenditionproject.org.uk/prisoners/rashul.html>; Rendition Project, "Khaled al-Maqtari," available at <http://www.therenditionproject.org.uk/prisoners/maqtari.html>; Rendition Project, "Aso Hawleri," available at <http://www.therenditionproject.org.uk/prisoners/hawleri.html>; Rendition Project, "Yunus Rahmatullah and Amanatullah Ali," available at http://www.therenditionproject.org.uk/prisoners/rahmatullah_ali.html

¹⁵² CIA, *Classification Guidance for Information About the Central Intelligence Agency's Former Rendition, Detention and Interrogation Program* (updated January 28, 2015), available at <http://www.openthegovernment.org/sites/default/files/RDClassificationGuidance.pdf>

¹⁵³ See Vaughn Index, *ACLU v. CIA*, November 14, 2011 at 5-6 (asserting that a 70 page report of the CIA Inspector General's Investigation of the Death of Abid Hamad Mahawish Al-Mahawli is properly classified in its entirety), 17-18 (asserting that a 98 page report of the CIA Inspector General's Investigation of the Death of Manadel Al-Jamadi is properly classified in its entirety), available at https://www.aclu.org/files/assets/cia_vaughn_index_11142011.pdf. See also id. at 13-14 (asserting that a 108 page report of the CIA Inspector General's Investigation of the Nonregistration of Detainees is properly classified in its entirety). The latter report likely concerns agency activities in Iraq, but unlike the two OIG homicide investigations this cannot be confirmed based on the public record.

¹⁵⁴ The other Iraqi prisoner whose death was the subject of a CIA Inspector General's investigation, General Abid Hamad Mahawish Al-Mahawli, more commonly known as General Abid Hamid Mowhoush, most likely died as a direct result of actions by U.S. military personnel. However, there were credible reports that CIA personnel and CIA-trained Iraqi paramilitaries beat Mowhoush severely several days before his death. See *Report of the Constitution Project Task Force on Detainee Treatment* (March 2013) at 97-99, available at <http://detaineeataskforce.org/pdf/Full-Report.pdf>; Josh White, *Documents Tell of Brutal Improvisation by GIs*, Washington Post, August 3, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/02/AR2005080201941.html>

¹⁵⁵ Images are available at http://media.npr.org/programs/atc/features/2005/oct/jamadi/graner_200-7a55995ff974c844472c51565f9a6401c89fde96-s300-c85.jpg; http://media.npr.org/programs/atc/features/2005/oct/jamadi/family_200-a22d003b1f9a9e6cc3f2b93bde14b16e057e86f7-s300-c85.jpg; http://www.nbcnews.com/id/6988054/ns/world_news-mideast_n_africa/t/reports-detail-abu-ghraib-prison-death-was-it-torture/#.Ve8wSRaFOcw (accessed September 8, 2015)

¹⁵⁶ See John McChesney, *The Death of an Iraqi Prisoner*, NPR, October 27, 2005, available at <http://www.npr.org/templates/story/story.php?storyId=4977986>; Jane Mayer, *A Deadly Interrogation*, New Yorker, November 14, 2005, available at <http://www.newyorker.com/magazine/2005/11/14/a-deadly-interrogation>.

¹⁵⁷ Jane Mayer, *A Deadly Interrogation*, New Yorker, November 14, 2005, available at <http://www.newyorker.com/magazine/2005/11/14/a-deadly-interrogation>

by U.S. Attorney John Durham.¹⁵⁸ The Associated Press said that the grand jury heard testimony about a CIA officer named Steve Stormoen, who was not present in the shower-room where Jamadi died but had supervised a program of “ghosting” prisoners like Jamadi at Abu Ghraib and other locations in Iraq.¹⁵⁹ A third CIA officer, whose name the Associated Press declined to publish but was nicknamed “Chili”, was reportedly also present at Abu Ghraib on the day of Jamadi’s death.¹⁶⁰

The CIA’s role in the Jamadi homicide, and in prisoner abuse in Iraq more generally, has been also been confirmed in unclassified government documents. For example, a 2004 military investigation into detainee abuse at Abu Ghraib by Major General George Fay stated that:

- While multiple government agencies were present at Abu Ghraib, “the acronym ‘Other Government Agency’ (OGA) referred almost exclusively to the CIA. CIA detention and interrogation practices led to a loss of accountability, abuse, reduced interagency cooperation, and an unhealthy mystique that further poisoned the atmosphere at Abu Ghraib.”¹⁶¹
- “CIA detainees in Abu Ghraib, known locally as ‘Ghost Detainees,’ were not accounted for in the detention system.”¹⁶²
- “CIA representatives brought [Manadel al-Jamadi] into Abu Ghraib early in the morning of 4 November 2003, sometime around 0430 to 0530 hours,” took him into a shower stall, were present during his death, and made arrangements for the storage and removal of Jamadi’s body after his death.¹⁶³

¹⁵⁸ Adam Zagorin, *Haunted by Homicide: Federal Grand Jury Investigates War Crimes and Torture in Death of ‘the Iceman’ at Abu Ghraib, Plus Other Alleged CIA Abuses*, Time, June 13, 2011, available at <http://nation.time.com/2011/06/13/haunted-by-homicide-federal-grand-jury-investigates-war-crimes-and-torture-in-death-of-the-ice-man-at-abu-ghraib-and-other-alleged-cia-abuses/>; Adam Goldman and Matt Apuzzo, *Grand Jury Probes CIA in 2003 Prison Death*, Associated Press, June 14, 2011, available at

http://www.nbcnews.com/id/43398548/ns/us_news-security/t/grand-jury-probes-cia-iraq-prison-death/#.Ve81shaFOcw; Pete Yost and Adam Goldman, *CIA Interrogation Deaths: Justice Department to Investigate Deaths of Two Detainees*, Associated Press, June 30, 2011, available at

http://www.huffingtonpost.com/2011/06/30/cia-interrogation-deaths-justice-department-review_n_887969.html;

Adam Goldman and Matt Apuzzo, *AP Sources: Feds Eye CIA Officer in Prisoner Death*, Associated Press, July 13, 2011, available at <http://news.yahoo.com/ap-sources-feds-eye-cia-officer-prisoner-death-070722901.html>

¹⁵⁹ Adam Goldman and Matt Apuzzo, *AP Sources: Feds Eye CIA Officer in Prisoner Death*, Associated Press, July 13, 2011, available at <http://news.yahoo.com/ap-sources-feds-eye-cia-officer-prisoner-death-070722901.html>.

¹⁶⁰ Id.

¹⁶¹ Major General George R. Fay, *AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade* (August 2004) at 52-53, available at

https://www.thetorturedatabase.org/files/foia_subsite/pdfs/fay_jones_kern_report.pdf. (Major General Fay’s Report begins at page 35 of the PDF). See also id. at 9 (“the term Other Government Agencies (OGA) most commonly referred to the Central Intelligence Agency (CIA). The CIA conducted unilateral and joint interrogation operations at Abu Ghraib. The CIA’s detention and interrogation practices contributed to a loss of accountability and abuse at Abu Ghraib.”)

¹⁶² Id. at 53. The CIA’s use of “ghost detainees” at Abu Ghraib is also discussed on pages 9, 44-45, and 118 of Major General Fay’s report.

¹⁶³ Id. at 53. Jamadi’s death and the CIA’s role in it are also discussed on pages 9, 54-55, 71, 75-76 and 100 of Major General Fay’s report.

- “The systematic lack of accountability for interrogator actions and detainees plagued detainee operations in Abu Ghraib. It is unclear how and under what authority the CIA could place prisoners like [Jamadi] in Abu Ghraib because no memorandums of understanding existed on the subject. . . . Local CIA officers convinced [military personnel at Abu Ghraib] that they should be allowed to operate outside the established local rules and procedures.”¹⁶⁴ In addition, the military chain of command had “a total lack visibility over OGA detainees” held in military detention facilities.¹⁶⁵
- The death of Manadel al-Jamadi and other CIA violations “were widely known” to U.S. military personnel at Abu Ghraib, and as a result “speculation and resentment grew over the lack of personal responsibility, of some people being above the laws and regulations,” in part because “CIA officers operating at Abu Ghraib used alias[es] and never revealed their true names.”¹⁶⁶

Similarly, an unclassified Army Criminal Investigative Division (CID) file regarding Jamadi’s death, released under the Freedom of Information Act in 2008, repeatedly references the involvement of CIA or “Other Government Agency” personnel in Jamadi’s detention, interrogation, and killing.¹⁶⁷ A Justice Department Inspector General’s report from May 2008 briefly discusses the CIA’s practice of holding “ghost detainees” at Abu Ghraib and elsewhere in Iraq.¹⁶⁸ Soldiers have referred to CIA or “OGA” personnel’s role in prisoner abuse in other CID documents, court martial testimony, and statements to the press.¹⁶⁹

Given these disclosures—which began long before the black site program was acknowledged in any form—the CIA should never have been able to withhold the Inspector General’s reports into its activities in Iraq. There is no legitimate national security rationale for ongoing classification of the CIA’s unauthorized abuse of “ghost detainees” in Iraq, particularly in light of the declassification of the details of CIA abuses elsewhere.¹⁷⁰

¹⁶⁴ Id. at 54

¹⁶⁵ Id. at 55

¹⁶⁶ Id. at 54-55

¹⁶⁷ U.S. Army Criminal Investigative Div., CID Report (Death) 0237-03-CID259-61219 (released October 1, 2008) at 1-2, 19, 27-29, 47-49, 61, 64, 65, 68, 70-71, 73, 75, 77, 83, 87, 89, 93, 96, 110, 130, 133, available at <http://www.aclu.org/files/projects/foiasearch/pdf/DODDOACID009482>

¹⁶⁸ U.S. Department 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* (May 2008) at 256-258, available at <https://oig.justice.gov/special/s0805/final.pdf>

¹⁶⁹ *Report of the Constitution Project Task Force on Detainee Treatment* (March 2013) at 95-102, available at <http://detaineeataskforce.org/pdf/Full-Report.pdf>

¹⁷⁰ The intelligence community may attempt to argue that the threat posed by ISIS to the government of Iraq or to Western hostages justifies ongoing classification. ISOO should treat those claims with extreme skepticism given that, (1) while the details of the CIA’s torture of Iraqi detainees may be inflammatory, they cannot be more so than the photograph of the worst single incident, which has been public for over a decade; (2) the current Iraqi government bears no responsibility for well-known actions by CIA personnel in military prisons shortly after the U.S. invasion; (3) as discussed above, the intelligence community’s similar warnings regarding the release of the Senate torture report proved entirely inaccurate.

V. THE CIA'S RENDITION OF INDIVIDUALS TO TORTURE IN FOREIGN CUSTODY

Following the release of the Senate torture report, the CIA formally revised its classification guidance to publicly acknowledge the detention of 119 prisoners listed in Appendix 2, pages 458-461 of the Senate study's executive summary. However, both the Senate report and the CIA's acknowledgment exclude many prisoners who were "rendered" by the CIA to foreign custody as part of the rendition, detention, and interrogation program.

The likely rationale for ongoing classification regarding rendition is to protect the United States government's relationships with the foreign intelligence services involved. But this rationale is unpersuasive. First, in some cases the foreign governments in question have acknowledged their participation in the rendition. For example, in January 2015 the Syrian state news agency, SANA, published an interview with Syrian President Bashar al-Assad with a Czech paper that included the following exchange:

Question 2: But in those times, the beginning of the so-called American war on terrorism, Syria used to help the CIA in the rendition programs and interrogating and torturing people. Why did you join that program?....

President Assad: We have been suffering from extremism for more than five decades. And terrorism, in its stark shape, appeared in Syria in the 1970s. At that time we called for international cooperation to fight terrorism. Nobody cared about that then. In the West, they were not aware of this problem. That's why we have always been ready to help and cooperate with any country that wants to fight terrorism. And for that reason we helped the Americans, and we are always ready to join any country which is sincere about fighting terrorism.¹⁷¹

Second, in an overlapping set of rendition cases—notably those involving renditions to Gaddafi's Libya and Assad's Syria—the United States has openly supported the overthrow of the government to which it once sent prisoners, in part because of the intelligence services' record of gross human rights violations.

Third, prisoners' repeated, credible allegations of torture after renditions demonstrate that either the receiving countries violated their diplomatic agreements with United States to protect transferred detainees' human rights, or that U.S. and foreign intelligence officials conspired to evade the laws against transferring prisoners to torture. In either case, the public interest in

¹⁷¹ The text of the interview, which was published January 15, 2015, is available at <http://sana.sy/en/?p=25117> (accessed August 28, 2015) and http://www.presidentassad.net/index.php?option=com_content&view=article&id=1421:president-al-assad-interview-with-the-czech-literarni-noviny-january-15-2015&catid=307:2014&Itemid=468 (accessed August 28, 2015). See also citations *infra* regarding the rendition of the Saadi family, Abdel Hakim Belhadj, and Fatima Bouchar to Libya and the rendition of Maher Arar to Syria.

detering such violations and in complying with the legal obligation to provide redress to torture victims overrides any continuing interest in secrecy.¹⁷²

Fourth, it would be possible for the CIA to acknowledge individuals' rendition without confirming the countries to which they were transferred, just as the CIA acknowledged its former black site detainees' identities without acknowledging the countries in which they were held. Many of the CIA detainees listed in the Appendix to the Senate torture report were rendered to foreign custody as well as being detained by the United States. There is no logical reason the United States cannot similarly acknowledge its own part in the rendition of other detainees, even if it declines to confirm other countries' role.

Below is a list of prisoners whose overseas capture or transfer by the CIA and subsequent torture, ill treatment, death or disappearance has been publicly reported, but not officially acknowledged by the U.S. government. The list is likely incomplete; it may also inadvertently include individuals who are listed in the SSCI Study Executive Summary under a different name or alias.

Several of the individuals listed below have unsuccessfully sought redress from U.S. courts only to have their claims defeated by official secrecy,¹⁷³ and/or have personally requested that the United States acknowledge their detention and torture. For example, Sami al Saadi, Abdel Hakim Belhadj, Muhammad Saad Iqbal Madni, and Abou El Kassim Britel wrote to President Obama in August 2014 asking that the United States declassify and acknowledge the CIA's role in their torture overseas, and stating:

Several of us fought against Gaddafi, a dictator America later helped us be free of. But in 2004 CIA agents (working with British and Libyan agents) abducted us from Southeast Asia. Sometimes our wives and children were abducted with us. We will never forget their screams as agents tore us from them. They have marked us even more than the beatings we received.

Others of us were snatched by the CIA from Africa or Asia and shipped to secret locations in Afghanistan, Egypt, and Morocco....

America's failure to confront this dark history poisons relations with the Middle East. You once came to Cairo, in a speech watched by tens of thousands of Arab citizens, and asked for a "new beginning" based on our "common principles of justice and progress, tolerance and the dignity of all human beings." That dignity was stripped from us when the CIA hooded us, beat us, and turned us over to people who did even worse. The insult is renewed

¹⁷² The United States is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 14 of the Convention requires that "each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."

¹⁷³ *Arar v. Ashcroft*, 585 F.3d 559 (2nd Cir. 2009); *Mohamed et al. v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070 (9th Cir. 2010)

every time someone excuses rendition or permits it to be covered up.

Publishing the truth is not just important for the US's standing in the world. It is a necessary part of correcting America's own history.¹⁷⁴

Renditions to Libya

Sami al Saadi, his wife Karima Al Saadi, and their children Khadija Al Saadi, Mostapha Al Saadi, Anes Al Saadi, and Arowa Al Saadi¹⁷⁵
Abdel Hakim Belhadj and Fatima Bouchar¹⁷⁶
Mustafa Salim Ali el-Madaghi¹⁷⁷

Renditions to Syria

Maher Arar¹⁷⁸

¹⁷⁴ Letter from CIA torture and rendition victims to President Barack Obama, August 28, 2014, available at http://www.reprive.org/uploads/2/6/3/3/26338131/2014_08_28_pub_cia_torture_victims_letter_to_obama.pdf

¹⁷⁵ See Ian Cobain, *Britain Helped Bring Her Family to Gaddafi—Now She is Asking Why*, The Guardian, October 24, 2011, available at <http://www.theguardian.com/world/2011/oct/24/britain-family-gaddafi-legal>; Constitution Project Task Force on Detainee Treatment, Transcript of Interview with Sami Al Saadi, September 5, 2012, available at <http://detaineeataskforce.org/wp-content/uploads/2013/02/Sami-Al-Saadi-former-Libyan-dissident-against-el-Qaddafi-subject-of-extraordinary-rendition.pdf>; Khadija al-Saadi, *The CIA Must Tell The Truth About My Rendition At 12 Years Old*, Gawker, August 6, 2014, available at <http://gawker.com/the-cia-must-tell-the-truth-about-my-rendition-at-12-ye-1616583709>; Human Rights Watch, *Delivered Into Enemy Hands* (September 2012) at 102-110, available at http://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf; Rendition Project, “Sami al-Saadi,” available at <http://www.therenditionproject.org.uk/prisoners/saadi.html>. See also source documents regarding Saadi rendition obtained from Libyan government by Human Rights Watch, available at <http://www.therenditionproject.org.uk/pdf/PDF%20420%20%5BTripoli%20Docs,%20Rendition%20of%20Abu%20Munthir%20%2822%20March%202004%29%5D.pdf>;

<http://www.therenditionproject.org.uk/pdf/PDF%20421%20%5BTripoli%20Docs,%20Rendition%20of%20Abu%20Munthir%20%2823%20March%202004%29%5D.pdf>

¹⁷⁶ See November 7, 2011 Letter of Claim to United Kingdom, Re: Mr. Abel Hakim Belhadj and Ms. Fatima Bouchar, available at

http://reprive.webfactional.com/static/downloads/2011_11_07_PUB_REDACTED_Belhadj_Letter_of_Claim_against_UK_Govt2.pdf; Human Rights Watch, *Delivered Into Enemy Hands* (September 2012) at 91-101, available at http://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf; Rendition Project, “Abdel Hakim Belhadj and Fatima Bouchar,” available at http://www.therenditionproject.org.uk/prisoners/belhadj_bouchar.html. See also source documents regarding Belhadj rendition obtained from Libyan government by Human Rights Watch, available at <https://s3.amazonaws.com/s3.documentcloud.org/documents/902375/triploidocs-appendix1.pdf>.

¹⁷⁷ Human Rights Watch, *Delivered Into Enemy Hands* (September 2012) at 78-82, available at http://www.hrw.org/sites/default/files/reports/libya0912webwcover_1.pdf

¹⁷⁸ There is a particularly compelling rationale for declassifying Arar's rendition given that: (a) he appears to have been innocent of any connection to terrorism; (b) the Canadian government has acknowledged its role in Arar's rendition after an extensive government inquiry, and has told U.S. courts that it does not object to American acknowledgment of his rendition and torture; (c) Syria's then-U.S. ambassador Imad Moustapha has acknowledged detaining Arar at the U.S. government's request; (d) the U.S. government has acknowledged and help document the widespread practice of torture in Syria. See Katherine Hawkins, *The Promises of Torturers: Diplomatic Assurances and the Legality of 'Rendition'*, Georgetown Immigration Law Journal, vol. 20, issue 2 (Winter 2006) at 213-227 (copy on file with author). Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar, *Report of Professor Stephen J. Toope, Fact-Finder* (October 14, 2005), available at <http://epe.lac->

Noor Al-Deen¹⁷⁹
Yasser Tinawi¹⁸⁰
Mohammed Haydar Zammar¹⁸¹
Abdul Halim Dalak¹⁸²
Omar Ghraimesh¹⁸³
Bahaa Mustafa Jaghel¹⁸⁴
Barah Abdul Latif¹⁸⁵
Mustafa Setmariam Nassar, a.k.a. Abu Musab al-Suri¹⁸⁶

Renditions to Egypt

Talat Fouad Qassem¹⁸⁷

bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/ToopeReport_final.pdf; Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar*, Volumes 1 (2006), available at http://www.sirc-csars.gc.ca/pdfs/cm_arar_bgv1-eng.pdf, Volume 2 (2006), available at http://www.sirc-csars.gc.ca/pdfs/cm_arar_bgv2-eng.pdf; Letter from Canada's Minister of Foreign Affairs Lawrence Cannon, M.P., to Maher Arar's counsel Paul Champ, April 15, 2010, available at http://ccrjustice.org/sites/default/files/assets/Letter%20from%20Canada%27s%20Minister%20of%20Foreign%20Affairs_04.15.10.pdf; Rebecca Leung, *His Year in Hell*, 60 Minutes, January 21, 2004, available at <http://www.cbsnews.com/news/his-year-in-hell-21-01-2004>; U.S. Deputy Representative to the United Nations Michele J. Sison, Remarks at the Launch of the "Caesar" Photographic Exhibit at the United Nations, March 10, 2015, available at <http://usun.state.gov/briefing/statements/238761.htm>. See also Rendition Project, "Maher Arar," available at <http://www.therenditionproject.org.uk/prisoners/arar.html>

¹⁷⁹ U.N. Human Rights Council, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism (February 2010) at ¶ 147, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>; Peter Finn and Joby Warrick, *Detainee's Harsh Treatment Foiled No Plots*, Washington Post, March 29, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/28/AR2009032802066.html>; Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 38, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>

¹⁸⁰ Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 58, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>

¹⁸¹ Id. at 59; Holger Stark, *The Forgotten Prisoner: A Tale of Extraordinary Renditions and Double Standards*, Der Spiegel, November 21, 2005, available at <http://www.spiegel.de/international/spiegel/the-forgotten-prisoner-a-tale-of-extraordinary-renditions-and-double-standards-a-386033.html>

¹⁸² Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 37, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; Stephen Gray, *Ghost Plane* (2006) at 276

¹⁸³ Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 40, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; Stephen Gray, *Ghost Plane* (2006) at 276

¹⁸⁴ Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 44, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; Stephen Gray, *Ghost Plane* (2006) at 276

¹⁸⁵ Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 45, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; Stephen Gray, *Ghost Plane* (2006) at 276

¹⁸⁶ Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 51, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>

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Mohammed Al Zawahiri¹⁹⁴
Ahmed Agiza¹⁹⁵
Mohammed Al Zery¹⁹⁶
Mamdouh Habib¹⁹⁷
Mohammed Saad Iqbal Madni¹⁹⁸
Saif al Islam al Masri¹⁹⁹
Abu Omar, a.k.a. Hassan Mustafa Osama Nasr²⁰⁰

¹⁸⁷ Human Rights Watch, *Black Hole: The Fate of Islamists Rendered to Egypt* (May 2005) at 19-21, available at <https://www.hrw.org/sites/default/files/reports/egypt0505.pdf>

¹⁸⁸ Id. at 21-24

¹⁸⁹ Id. at 21-24

¹⁹⁰ Id. at 21-24

¹⁹¹ Id. at 21-24

¹⁹² Id. at 21-24

¹⁹³ Id. at 24-30

¹⁹⁴ Id. at 24-30; Matthew Cole and Sarah O. Wali, *New Egyptian VP Ran Mubarak's Security Team, Oversaw Torture*, ABC News, February 1, 2011, available at <http://abcnews.go.com/Blotter/egypt-crisis-omar-suleiman-cia-rendition/story?id=12812445>; Samer al-Atrush, *Egypt Offered Arm of al-Qaeda Number Two's Brother as DNA Evidence*, The Telegraph, May 8, 2011, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/8501207/Egypt-offered-arm-of-al-Qaeda-number-twos-brother-as-DNA-evidence.html>

¹⁹⁵ *Agiza v. Sweden*, Committee Against Torture, No. 233/2003, ¶13.4, U.N. Doc. CAT/C/34/D/233/2003 (May 20, 2003); First Amended Complaint, *Mohamed v. Jeppesen* (N.D. Cal. Aug. 1, 2007), ¶¶ available at https://www.aclu.org/sites/default/files/field_document/mohamed_v_jeppesen_1stamendedcomplaint.pdf; Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 30-31, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; Rendition Project, "Ahmed Agiza and Mohamed Al-Zery," available at http://www.therenditionproject.org.uk/prisoners/agiza_elzery.html

¹⁹⁶ *Alzery v. Sweden*, Human Rights Committee, No. 1416/2005, ¶ 11.5 (Oct. 25, 2006); Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 59-60, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; Rendition Project, "Ahmed Agiza and Mohamed Al-Zery," available at http://www.therenditionproject.org.uk/prisoners/agiza_elzery.html

¹⁹⁷ Katherine Hawkins, *The Promises of Torturers: Diplomatic Assurances and the Legality of 'Rendition'*, Georgetown Immigration Law Journal, vol. 20, issue 2 (Winter 2006) at 242-245 (copy on file with author); Joseph Margulies, *Guantanamo and the Abuse of Presidential Power* (2006) at 182-188; Rendition Project, "Mamdouh Habib," available at <http://www.therenditionproject.org.uk/prisoners/mamdouh-habib.html>

¹⁹⁸ See Rendition Project, "Mohammed Saad Iqbal Madni," available at <http://www.therenditionproject.org.uk/prisoners/madni.html>; Rendition Project, "Rendition Circuit: 9-15 January 2002," available at <http://www.therenditionproject.org.uk/flights/renditions/N379P-020109.html>

¹⁹⁹ Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 48, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>

²⁰⁰ Gaia Pianigiani, *Italy Jails Ex-Officials for Rendition*, New York Times, February 12, 2013, available at http://www.nytimes.com/2013/02/13/world/europe/former-italian-military-officials-sentenced-in-abduction-of-abu-omar.html?_r=0; John Foot, *The Rendition of Abu Omar*, London Review of Books, August 2, 2007, available at

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Abu Hassan al-Suri²⁰⁶
Abu Yousef al-Jaza'eri²⁰⁷
Khayr al-Din al-Jaza'eri²⁰⁸

Renditions to Morocco

Abou El Kassim Britel²⁰⁹

Renditions to Ethiopia

Mohammed Ali Isse²¹⁰

Renditions to Saudi Arabia

Ali Abd al-Rahman al-Faqasi al-Ghamdi²¹¹

<http://www.lrb.co.uk/v29/n15/john-foot/the-rendition-of-abu-omar>; Peter Bergen, *Exclusive: I Was Kidnapped By The CIA*, Mother Jones, March-April 2008, available at <http://www.motherjones.com/politics/2008/03/exclusive-i-was-kidnapped-cia?page=1>; Rendition Project, "Abu Omar," available at <http://www.therenditionproject.org.uk/prisoners/abu-omar.html>

²⁰¹ Kerry Pither, *Dark Days: The Story of Four Canadians Tortured in the Name of Fighting Terror* (2008); Chronology Prepared by Ahmad El Maati and his Legal Counsel, available at <http://v1.theglobeandmail.com/v5/content/pdf/0809elmaaticronology.pdf>; Colin Freeze, *Suleiman May Have Questioned Tortured Canadian*, The Globe and Mail, February 10, 2011, available at <http://www.theglobeandmail.com/news/world/suleiman-may-have-questioned-tortured-canadian/article565870/>

²⁰² Human Rights Watch, *Double Jeopardy: CIA Renditions to Jordan* (April 2008) at 29, available at https://www.hrw.org/sites/default/files/reports/jordan0408_1.pdf

²⁰³ Id. at 19-20

²⁰⁴ Mohamedou Ould Slahi, *Guantanamo Diary* (2015); Human Rights Watch, *Double Jeopardy: CIA Renditions to Jordan* (April 2008) at 30-31, available at https://www.hrw.org/sites/default/files/reports/jordan0408_1.pdf

²⁰⁵ Human Rights Watch, *Double Jeopardy: CIA Renditions to Jordan* (April 2008) at 18-19, available at https://www.hrw.org/sites/default/files/reports/jordan0408_1.pdf

²⁰⁶ Id. at 29

²⁰⁷ Id. at 19-20

²⁰⁸ Id. at 19-20

²⁰⁹ *Report of the Constitution Project Task Force on Detainee Treatment* (March 2013) at 192-193, 281-282, available at <http://detainee-taskforce.org/pdf/Full-Report.pdf>; Renee Schoof, *UNC Legal Team, Rights Advocates Take Up Cause of Tortured Ex-Prisoner*, McClatchy, October 13, 2014, available at <http://www.newsobserver.com/news/politics-government/article10091912.html>; First Amended Complaint,

Mohamed v. Jeppesen, (N.D. Cal. Aug. 1, 2007), ¶¶ 90-118, available at https://www.aclu.org/sites/default/files/field_document/mohamed_v_jeppesen_1stamendedcomplaint.pdf; Rendition Project, "Abou El Kassim Britel," available at <http://www.therenditionproject.org.uk/prisoners/britel.html>

²¹⁰ Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (February 2013) at 44, available at <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>

Renditions to Unknown Destinations

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Walid bin Azmi²¹³

Jawad al Bashar²¹⁴

Abdul Basit²¹⁵

Mustafa Mohammed Fadhil²¹⁶

Speen Ghul²¹⁷

Safwan al-Hasham²¹⁸

Abdul Karim Mehmood, a.k.a. Abu Musab al-Baluchi/Musaab Aruchi²¹⁹

CONCLUSION

The Executive Order on national security classification formally forbids agencies from classifying information, or failing to declassify information, in order to “conceal violations of law,” “prevent embarrassment,” or “prevent or delay the release of information that does not require protection.” It also forbids classification of any information unless “the information is owned by, produced by or for, or is under the control of the United States government.”

Despite these prohibitions, the U.S. government has formally classified many details of an unlawful, embarrassing torture program for well over a decade. Secrecy regarding “black sites” and torture has played a major role in ensuring that no CIA personnel could be prosecuted for torture, war crimes, destruction of evidence, or other relevant federal crimes. It has ensured that civil courts were closed to victims of torture, indefinitely delayed trials of the accused perpetrators of the September 11 attacks, and put the United States in breach of its obligations under the Convention Against Torture.

It is important to bear in mind that upholding the classification of the details of the torture program not only conceals illegality, but makes it a crime for individuals with security clearances to reveal or openly discuss it. This complaint is entirely sourced to information in the public domain—but if I held a security clearance, I could not file it without risking my livelihood, and possible prosecution.

The intelligence community has successfully defended its classification of the torture program by arguing that, while secrecy might have the effect of concealing illegal or embarrassing conduct, its *purpose* was to protect legitimate “sources and methods” or relationships with foreign countries. But that rationale fails in the cases discussed above. The pseudonym and title of a lawyer who has repeatedly published his own true name and CIA affiliation is not a properly classified “source and method.” Revealing that there were black sites in Afghanistan does not

²¹¹ Id. at 40

²¹² Id. at 55

²¹³ Id. at 33

²¹⁴ Id. at 35

²¹⁵ Id. at 35

²¹⁶ Id. at 39

²¹⁷ Id. at 40

²¹⁸ Id. at 42

²¹⁹ Id. at 48

jeopardize relationships with that country when its President has acknowledged that fact, and asked for justice for the victims. Admitting that the CIA tortured prisoners in Iraq, 11 years after the photograph of a dead CIA prisoner at Abu Ghraib first became public, cannot plausibly harm national security. Concealing the fact that the CIA rendered prisoners to torture Assad's Syria, when Assad himself has acknowledged that fact, does not protect national security. And forbidding victims from disclosing details of their own torture on the grounds that being tortured exposed them to "sources and methods" is a chilling precedent, that the United States would rightly condemn if any dictatorship attempted it.

If you find that all this information is nonetheless properly classified under the current Executive Order, then the classification system imposes no meaningful check at all on the intelligence community's ability to use secrecy to conceal criminal activity, and the Executive Order is drastically in need of revision. But I hope and believe that will not be the case.

Thank you for your attention to this matter, and please let me know if I can be of further assistance or if you would like to meet to discuss these issues further.

Sincerely,

Katherine Hawkins

National Security Fellow, OpenTheGovernment.org