



UNC
SCHOOL OF LAW

Human Rights Policy Lab

Extraordinary Rendition and Torture Victim Narratives

Madeline Batt
Joshua R. Bennett
Isabelle Chammas
Priscilla M. Encarnacion
Siya Hegde
Hillary Li
Nicole Moore
Jeffrey S. Nooney
Matt Norchi
Seth Proctor
Tyler J. Walters

Deborah M. Weissman
Reef C. Ivey II Distinguished Professor of Law
Faculty Advisor

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INTRODUCTION

Following the declaration of the ‘war on terror’ in September 2001, the U.S. government led the way in constructing a global system of detention, kidnapping and prisoner transfers (extraordinary rendition), and torture. The system involved the detention and torture, in secret, of hundreds of detainees, in scores of detention sites around the world. Many, perhaps most citizens are not aware of this program, but it is a system that in fact existed, was always contrary to international and domestic laws, and the dissemination of knowledge about the program is one step on the way to taking responsibility for it and for ways to prevent it in the future.

Extraordinary renditions between detention sites in a range of countries have been carried out using a variety of aircraft supplied by private contractors. The narratives of the victims of torture and cruel, inhuman, or degrading treatment that follow in this compilation were extraordinary rendered on airplanes operated by Aero Contractors, headquartered in North Carolina, and that flew out of Johnston County Airport, a political subdivision of the state of North Carolina, and the North Carolina Global Transpark, a state-created industrial transportation park.

The detention system relied upon by the government was outside the law. The extraordinary rendition and prison transfers facilitated by airplanes that flew out of North Carolina were illegal. Torture is illegal.

These narratives were compiled with the hope that the revelation of circumstances and egregious violations suffered by the victims would yield transparency, repair and restoration as required by the law.

Abu ‘Abdallah

I. Introduction

1. The CIA has closely guarded information regarding Abu ‘Abdallah’s rendition and detention. As a result, little is known for certain about his ordeal in American custody.¹ Nonetheless, given the information that is available about the Rendition, Detention, and Interrogation (RDI) program in general, it is likely that ‘Abdallah was subjected to torture as well as extralegal detention and extraordinary rendition.

II. Detention

A. Possible Capture and Detention in Iraq

2. Another detainee, Khaled al-Maqtari,² has testified about a prisoner named Abu ‘Abdallah al-Saudi.³ If the man he described is the same person as ‘Abdallah, and his testimony is correct, ‘Abdallah was captured in Iraq in February 2004. He was then held in secret detention in Iraq until his extraordinary rendition.⁴

B. Rendition from Iraq to Afghanistan

3. Al-Maqtari has stated that ‘Abdallah arrived at the secret prison DETENTION SITE COBALT 6-8 weeks after he did, so in March-April 2004. This time frame matches the dates that the Senate Select Committee on Intelligence’s Torture Report suggests that ‘Abdallah entered CIA custody, which lends support to the theory that the man al-Maqtari described is the same ‘Abdallah who appears in the Torture Report.⁵

¹ RENDITION PROJECT, *Abu Abdallah*. <https://www.therenditionproject.org.uk/prisoners/abu-abdallah.html>.

² Al-Maqtari is also profiled in this briefing book.

³ RENDITION PROJECT, *supra* note 1.

⁴ *Id.*

⁵ *Id.*

4. Based on this information, the Rendition Project identified a flight on 12 March 2004 that rendered ‘Abdallah from Iraq to Afghanistan.⁶

5. The plane that rendered ‘Abdallah was registered as N313P and operated by Aero Contractors, a company headquartered in Johnston County, North Carolina. N313P left its home base, Kinston Regional Airport, in the evening on 6 March 2004. From there, it flew to Washington Dulles International Airport and then to Tripoli, Libya.⁷ Before rendering ‘Abdallah, it completed the rendition of two Libyan dissidents from Thailand to Libya.⁸ After that trip—and a 48-hour stay in a five-star hotel for its crew—the aircraft flew to Baghdad, Iraq, where it picked up ‘Abdallah and two other detainees and transported them to Afghanistan.⁹

C. Secret Detention

6. ‘Abdallah was detained in the CIA’s secret prison system for well over two years.¹⁰ Khaled al-Maqtari’s testimony indicates that at least some of that time was spent at DETENTION SITE COBALT in Afghanistan.¹¹ However, the U.S. government has not released any further details about his detention or treatment.¹² If, in fact, the government has no information on the condition or whereabouts of ‘Abdallah, a person the CIA captured, extraordinarily rendered, and detained without due process of law, it is an additional indication of the government’s total lack of regard for its international human rights obligations and the most rudimentary concerns about the inherent dignity of human life.

D. Possible Transport to Saudi Arabia

⁶ *Id.*

⁷ RENDITION PROJECT, *Rendition Circuit: 6-14 March 2004*.
<https://www.therenditionproject.org.uk/flights/renditions/N313P-040306.html>.

⁸ The dissidents, Abdel Hakim Belhadj and Fatima Bouchar, are also profiled in this briefing book.

⁹ RENDITION PROJECT, *supra* note 7.

¹⁰ SENATE SELECT COMMITTEE ON INTELLIGENCE, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* 460 (2014).

¹¹ RENDITION PROJECT, *supra* note 1.

¹² *Id.*

7. If ‘Abdallah is indeed the man described by al-Maqtari, he was likely transported back to Saudi Arabia, his home country, when he left CIA custody. A flight from Afghanistan to Saudi Arabia between 29 July and 1 August 2006, by an aircraft registered as N17D, may have brought ‘Abdallah to Saudi Arabia.¹³

8. Apart from this possibility, nothing is publicly known about ‘Abdallah’s location or fate.

E. Likelihood of Torture

9. The CIA has refused to release information about ‘Abdallah’s treatment and the human rights violations undoubtedly inflicted on him during his time in its custody. Furthermore, if he has survived his ordeal, it must be assumed that ‘Abdallah has not been capable of discussing the details of his suffering; experts on the psychological consequences of torture have noted that the extremely traumatic nature of torture undermines victims’ ability to speak about their experiences. In the face of government silence and the psychological impact of torture, therefore, public knowledge about ‘Abdallah’s abuse is limited.

10. However, the public documentation that does exist demonstrates that each and every case of extraordinary rendition entailed torture, abuse, humiliation, and suffering. Based on the known practices and protocols of the RDI program, it is justifiable to conclude that ‘Abdallah was subjected to walling, isolation, stress positions, extremes of temperature, sleep deprivation, and beatings.

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

11. As noted above, in spite of the CIA’s failure to properly disclose the details of ‘Abdallah’s detention, available knowledge about the RDI program strongly indicates that he suffered egregious rights violations, including torture. Based on the pattern and practices of the

¹³ *Id.*

CIA's extraordinary rendition program, the following section proceeds with the assumption that 'Abdallah suffered the tortures and other rights violations typically experienced by CIA detainees.

A. International Law Violations

12. The prohibition on torture, which is considered "one of the most universally recognized human rights,"¹⁴ was violated by 'Abdallah's treatment. The prohibition on torture is a peremptory norm; as such, all states must adhere to it in all circumstances. Refusal to comply cannot be justified by appeals to the fact that a state did not consent to uphold the prohibition or that a particular situation warranted an exception to the rule.¹⁵ Whatever the United States' intelligence and security concerns, therefore, they do not legitimize derogation from the prohibition on torture.

13. The United States has also ratified a number of treaties that forbid torture, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT). All of these treaties have been violated by the United States' abuse of 'Abdallah.

14. According to both the UDHR and the ICCPR, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."¹⁶ The ICCPR further dictates that states must adhere to the prohibition on torture at all circumstances, even during public emergency. 'Abdallah's torture was a violation of both of these treaties.

¹⁴ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

¹⁵ *Id.*

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

15. The CAT, which the U.S. ratified in 1994,¹⁷ also prohibits torture.¹⁸ It further states that the prohibition holds even in “exceptional” circumstances.¹⁹ Once again, this treaty has been violated by the torture of ‘Abdallah.

16. Other provisions of the CAT have also been violated by ‘Abdallah’s treatment. For example, the CAT requires the United States to

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.²⁰

17. As a result of this provision, the United States is obliged to prevent both torture within its borders and the extradition of people to be tortured in other countries.²¹

18. Moreover, the Supremacy Clause of the U.S. Constitution dictates that each individual state must adhere to treaties ratified by the United States. North Carolina is therefore bound by the CAT to take appropriate measures to prevent torture, regardless of whether it is inflicted inside or outside of the United States.²²

19. The CAT refers to “administrative” preventative measures, and these represent the course of action that North Carolina must take. In particular, the state’s political entities and subdivisions must revoke or discontinue Aero Contractors’ “flying permits, licenses, and

¹⁷ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

¹⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

¹⁹ CAT, *supra* note 18, at art. 2.

²⁰ CAT, *supra* note 18, at art. 2.

²¹ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

²² Weissman et al., *Obligations and Obstacles*, *supra* note 21.

leases.”²³ Because Aero facilitated the extradition of people to be tortured, North Carolina is required to take those measures pursuant to the CAT.

20. In addition to torture, ‘Abdallah was subjected to extraordinary rendition, a process wherein he was abducted and transported without his consent or any legal proceedings. This act violated another treaty ratified by the United States, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).²⁴ The Protocol bans “trafficking in persons,” which it defines as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁵

21. ‘Abdallah’s extraordinary rendition violated the Protocol’s prohibition on human trafficking.

22. Other provisions of the Protocol have also been violated. One such provision describes human trafficking victims’ entitlements, which include “the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.”²⁶ ‘Abdallah, who is

²³ *Id.*

²⁴ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12-a&chapter=18&clang=_en.

²⁵ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

²⁶ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

owed these entitlements as a victim of human trafficking, has been denied them. This is a violation of international law.

23. In addition, the Protocol dictates, “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”²⁷ ‘Abdallah has not had the opportunity to seek compensation for his suffering; this is a violation of the Protocol.

B. Federal Law Violations

24. Pursuant to the Supremacy Clause, any international treaty ratified by the United States is equivalent to a federal statute. The international law violations described above, therefore, are also federal law violations.²⁸

25. Several other federal laws were violated by the United States and Aero Contractors. For instance, the Eighth Amendment of the U.S. Constitution prohibits “cruel and unusual punishments,”²⁹ a category which certainly includes torture. ‘Abdallah’s treatment was therefore in violation of the Constitution.

26. The lack of accountability for ‘Abdallah’s torture is also a federal crime. The Federal Torture Statute (FTS) mandates that anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20 years, or both.”³⁰ No American public official has ever been prosecuted for ‘Abdallah’s torture, which is a violation of the FTS.

27. Some federal laws provide mechanisms to achieve accountability for ‘Abdallah’s ordeal. For example, under the Alien Tort Statute (ATS), non-U.S. citizens who are the victims of

²⁷ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

²⁸ Weissman et al., *supra* note 21, at 36.

²⁹ U.S. CONST. amend VIII

³⁰ 18 U.S. Code § 2340A.

egregious human rights violations can sue government officials and private actors in U.S. courts, even if the violations did not occur in the U.S.³¹ In 2010, five former detainees used the ATS as grounds to sue the United States and Jeppesen Dataplan,³² a company that provided “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”³³ A precedent therefore exists for using the ATS to prosecute both the United States and Aero Contractors for their respective roles in the RDI program.

28. The Torture Victims Protection Act (TVPA) of 1991 is another potential path to accountability for ‘Abdallah’s abuse. The TVPA was established to help fulfill the United States’ obligations under the UN Charter and other mechanisms for the protection of international human rights by implementing “a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”³⁴ The TVPA grants ‘Abdallah the capacity to seek compensation for the damages he suffered in U.S. custody.

C. North Carolina Law Violations

29. In operating the plane that extraordinarily rendered ‘Abdallah, Aero Contractors participated in the violation of a number of state laws. As a result, North Carolina is in the unique position of being able to hold the company accountable on a state level for its egregious violations of human rights.

³¹ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

³² The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

³³ *Id.* at 13526.

³⁴ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb., 106 Stat. 73, 73 (1992).

30. Aero’s contribution to the RDI program violated several provisions of the North Carolina Constitution. For example, Article I, § 19, states, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”³⁵ Other provisions of the Constitution prohibit kidnapping, involuntary servitude, trafficking, and criminal conspiracy. Aero Contractors directly participated in or facilitated all of these crimes by operating planes used for extraordinary rendition.³⁶ The company, therefore, engaged in multiple violations of the North Carolina Constitution.

31. Section 14-39 of the North Carolina General Statutes criminalizes both kidnapping³⁷ and “serious bodily harm to or terrorizing the person” who has been kidnapped.³⁸ Furthermore, the North Carolina legislature has established that “first degree kidnapping,” wherein the abducted individual is not transported to a safe place or has been “seriously injured or sexually assaulted,”³⁹ is a particularly serious crime. The extralegal abduction and disappearance of ‘Abdallah violates NCGS § 14-39’s prohibition on kidnapping, and ‘Abdallah’s torture violates NCGS § 14-39’s ban on causing harm to or terrorizing the kidnapped person. Moreover, transporting ‘Abdallah to the CIA’s abusive secret prison system—certainly not a “safe place”—makes ‘Abdallah’s abduction “first degree kidnapping,” a severe violation of NCGS § 14-39.

IV. Conclusion

32. Despite the secrecy maintained by the United States, it is clear that ‘Abdallah’s rendition and detention were illegal on international, federal, and state levels. It is now incumbent on the

³⁵ N.C. CONST. art. 1, § 19.

³⁶ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

³⁷ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

³⁸ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

³⁹ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

U.S. government to fully investigate and recognize the crimes committed against him. It is critical, too, that the entities that perpetrated and facilitated those crimes—namely, the United States of America, North Carolina and its political subdivisions, and Aero Contractors—provide redress for their violation of ‘Abdallah’s fundamental human rights.

33. The current lack of acknowledgement and accountability surrounding ‘Abdallah’s ordeal demonstrates a reprehensible acceptance of torture. This attitude not only severely undermines the United States’ international standing but also encourages future human rights violations. The knowledge that torture can be committed with absolute impunity, evidenced by the U.S. government’s failure to act in defense of ‘Abdallah’s rights, can only lead to more acts of torture. Accountability now both ensures justice for ‘Abdallah and promotes the safety of innumerable future victims.

Omar al-Faruq

I. Introduction

1. In early June 2002,¹ Omar al-Faruq was seized by Indonesian authorities² in Bogor, Indonesia.³ Following his capture, al-Faruq was subjected to secret detention in CIA custody.⁴ He was ultimately rendered to Bagram airbase where he reportedly suffered abuse at the hands of guards.⁵ He was detained there until his escape in July 2011.⁶ Little is known about the human rights violations he suffered due to the failure of the CIA and U.S. government to disclose information about his capture, detention, and torture.

II. Detention

A. Capture in Indonesia

2. Omar al-Faruq, an Iraqi citizen raised in Kuwait,⁷ was captured in Indonesia in early June 2002.⁸

B. Detention in CIA Secret Prisons

3. Al-Faruq was rendered from Indonesia to Egypt, via Diego Garcia, on 15 September 2002. He was transported on a Gulfstream V jet registered as N379P, operated by Aero Contractors, headquartered in Johnston County, North Carolina.⁹

¹ RENDITION PROJECT, *Umar Faruq*. <https://www.therenditionproject.org.uk/prisoners/faruq.html>.

² Alicia A. Caldwell, "Pentagon: Top al-Qaida Operative Escaped," ASSOCIATED PRESS (1 November 2005). <http://www.truth-out.org/archive/component/k2/item/58325:pentagon-top-alqaida-operative-escaped>.

³ OPEN SOCIETY JUSTICE INITIATIVE, *Globalizing Torture: CIA Detention and Extraordinary Rendition* 39 (2013).

⁴ *Id.*

⁵ Alicia A. Caldwell, *supra* note 2.

⁶ RENDITION PROJECT, *supra* note 1.

⁷ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 3, at 39.

⁸ RENDITION PROJECT, *supra* note 1.

⁹ RENDITION PROJECT, *Rendition Circuit Index*.

4. He spent 13-14 months in the CIA's secret prison network.¹⁰ The CIA has refused to disclose the details of his location and treatment during this time.

C. Detention at Bagram Airbase

5. Between 29 October 2003 and 22 November 2003, al-Faruq was transferred out of CIA custody. It was likely at this time that he entered Department of Defense custody at Bagram Airbase.¹¹

6. It is alleged that, while at Bagram airbase, al-Faruq was subjected to walling, a torture method wherein the victim is slammed against a wall.¹² Al-Faruq was prepared to testify in a lawsuit against the soldier who inflicted the abuse on him.¹³

7. However, before he could testify, al-Faruq escaped from Bagram Airbase on 10 July 2005 along with three others.¹⁴

D. Death

8. On 25 September 2006, UK troops took part in an operation to arrest al-Faruq which ended in his being shot dead.¹⁵

E. Likelihood of Torture

9. The U.S. government has refused to disclose any details about al-Faruq's treatment by the CIA and his detention at Bagram. However, based on the publicly available information both about al-Faruq's alleged mistreatment and the ubiquity of torture in the Rendition, Detention, and Interrogation (RDI) program in general, it is justifiable to assume that al-Faruq was

¹⁰ SENATE SELECT COMMITTEE ON INTELLIGENCE, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* [hereinafter SSCI Report] 458 (2014).

¹¹ Rendition Project

¹² Alicia A. Caldwell, *supra* note 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ BBC NEWS, "Profile: Omar al-Farouq" (26 September 2006).
http://news.bbc.co.uk/2/hi/middle_east/5379604.stm.

subjected to torture. Given the typical torture methods used by the United States, one must further conclude that al-Faruq experienced walling, isolation, stress positions, sleep deprivation, extremes of temperature, and beatings.

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

10. As stated above, despite the CIA's refusal to reveal the details of al-Faruq's treatment during his detention, it is reasonable to conclude that he suffered egregious rights violations, including torture. Based on the pattern and practices of the CIA's extraordinary rendition program, the following legal claims on behalf of al-Faruq are asserted.

A. International Law Violations

11. First, al-Faruq's treatment violates "one of the most universally recognized human rights": the prohibition on torture.¹⁶ The prohibition on torture is a peremptory norm. As such, it applies to every state, even those who have not committed to uphold it, and in every situation, even emergencies.¹⁷ The United States' security concerns, therefore, do not make al-Faruq's torture acceptable.

12. However, even if the prohibition on torture was not a peremptory norm, the U.S.' conduct would still be illegal. This is because the United States has agreed to uphold the prohibition in a variety of treaties, including the Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT). Each of these treaties has been violated by the torture inflicted on al-Faruq.

¹⁶ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

¹⁷ *Id.*

13. The UDHR and the ICCPR both mandate that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁸ The ICCPR further requires that states uphold the prohibition on torture in all circumstances, even during public emergencies. Al-Faruq’s torture was a violation of both of these treaties.

14. The CAT, ratified by the U.S. in 1994,¹⁹ also forbids torture,²⁰ including in “exceptional” circumstances.²¹ Al-Faruq’s torture violated this provision, which represents the fundamental purpose of the CAT.

15. Al-Faruq’s treatment further violated several other provisions of the CAT. For example, the CAT dictates that parties must “ensure that education and information regarding the prohibition against torture [are provided to all personnel] involved in a custody interrogation, or treatment of any individual to any form of arrest, detention, or imprisonment.”²² The United States violated the CAT by failing to properly educate and train the personnel who actually inflicted torture on al-Faruq.

16. Furthermore, the CAT obliges parties to take measures to prevent torture. It states that the United States must

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.²³

¹⁸ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

¹⁹ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

²⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

²¹ CAT, *supra* note 18, at art. 2.

²² CAT, *supra* note 18, at art. 2.

²³ CAT, *supra* note 18, at art. 2.

17. This provision requires the United States to not merely end torture within its borders, but also ascertain that none of its states or territories extradites individuals to states where they are in danger of being tortured.²⁴

18. Pursuant to the Supremacy Clause of the U.S. Constitution, each individual state is bound to follow treaties ratified by the United States. Thus, North Carolina must also take appropriate preventative measures to stop torture within the United States and the extradition of individuals to places where they could be tortured.²⁵

19. The “administrative” measures to which the CAT refers present a particularly clear path to the fulfillment of North Carolina’s responsibilities under international law. In response to Aero Contractors’ critical contribution to the RDI program, North Carolina’s political entities and subdivisions can and must take administrative steps, namely, revoking or discontinuing Aero Contractors’ “flying permits, licenses, and leases.”²⁶ Failure to do so, given the role Aero played in the extradition of al-Faruq and other detainees to be tortured, is a violation of the CAT.

20. In addition to the torture to which he was subjected, al-Faruq suffered extraordinary rendition. This act, wherein he was seized and transported without his consent or any legal justification, violated another treaty ratified by the United States: the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).²⁷ The Protocol prohibits “trafficking in persons,” which it defines as:

²⁴ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

²⁵ *Id.* at 36.

²⁶ *Id.*

²⁷ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized*

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁸

21. The extraordinary rendition of al-Faruq was a violation of the Protocol's prohibition on human trafficking.

22. Al-Faruq's ordeal violated a number of other provisions of the Protocol, which discuss the entitlements of victims of human trafficking. These entitlements include "the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities."²⁹ Due to his status as a victim of human trafficking, al-Faruq was entitled to these forms of assistance; however, he never received them.

23. The Protocol further states, "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."³⁰ Al-Faruq never had the opportunity to obtain compensation for his suffering, which violates international law.

B. Federal Law Violations

Crime. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

²⁸ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

²⁹ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

³⁰ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

24. Pursuant to the Supremacy Clause of the Constitution, U.S. states must consider international treaties the country ratifies as equivalent to federal statutes. Therefore, the international law violations described above also constitute violations of federal law.³¹

25. In addition to these violations, both the United States and Aero Contractors violated federal laws that are not derived from international treaties. For instance, the Eighth Amendment of the U.S. Constitution prohibits “cruel and unusual punishments.”³² The torture methods utilized throughout the RDI program were both cruel and unusual; al-Faruq’s experience was therefore a violation of the Constitution.

26. Furthermore, the absence of accountability regarding al-Faruq’s torture violates the Federal Torture Statute (FTS), which dictates that anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20 years, or both”.³³ The fact that no American public official has been prosecuted for al-Faruq’s torture violates the FTS.

27. Other federal laws provide opportunities to seek accountability for Mohammed’s abuse. For example, the Alien Tort Statute (ATS) offers victims of egregious human rights violations who do not have U.S. citizenship the capacity to sue government officials and private actors in U.S. courts, regardless of whether the rights violation occurred in the United States.³⁴ In 2010, five former detainees used the ATS as grounds to sue the United States and Jeppesen Dataplan,³⁵

³¹ Weissman et al., *supra* note 21, at 36.

³² U.S. CONST. amend VIII

³³ 18 U.S. Code § 2340A.

³⁴ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

³⁵ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

a company that provided “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”³⁶ There is therefore a precedent for using the ATS to prosecute the United States and Aero Contractors.³⁷

28. The 1991 Torture Victims Protection Act (TVPA) is another potential path to accountability for al-Faruq’s torture. Established as a mechanism to fulfill the United States’ responsibilities under the UN Charter and other international structures for the protection of human rights, the TVPA constitutes “a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.” Had al-Faruq lived, the TVPA would have allowed him to seek restitution for the abuse he suffered.

C. North Carolina Law Violations

29. Aero Contractors violated several state laws by operating the plane that rendered al-Faruq. As a result of these violations, North Carolina is in the unique position of being able and, indeed, legally obliged to hold the company accountable on a state level for its egregious violations of international human rights.

30. Aero Contractors violated numerous provisions of the North Carolina Constitution. Article I, § 19, dictates, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”³⁸ Other provisions forbid kidnapping, involuntary servitude, trafficking, and

³⁶ *Id.* at 13526.

³⁷ It should be noted that although the Jeppesen Dataplan case was dismissed on the basis of the “State Secrets Doctrine,” such legal defense is likely no longer available to the government given the ongoing declassification of documents related to the CIA’s Extraordinary Rendition and Torture program. *See e.g.*, Irving. Figueroa, et al., *Assessing Recent Developments: Achieving Accountability for Torture* (2016) <http://www.law.unc.edu/documents/academics/humanrights/tortureaccountability.pdf>,

³⁸ N.C. CONST. art. 1, § 19.

criminal conspiracy. Aero Contractors directly participated in or facilitated all of these crimes through its contribution to the RDI program.³⁹

31. Section 14-39 of the North Carolina General Statutes also prohibits kidnapping,⁴⁰ and further identifies “serious bodily harm to or terrorizing the person” who has been kidnapped as a crime.⁴¹ In addition, the North Carolina legislature has classified “first-degree kidnapping,” wherein the abducted individual is not transported to a safe place or has been “seriously injured or sexually assaulted,” as a particularly serious crime.⁴² The extralegal capture and forced disappearance of al-Faruq constitutes kidnapping, and his torture constitutes “terrorizing” him and causing him “serious bodily harm.” Moreover, the secret prison system where al-Faruq was detained was certainly not a “safe place” given the torture that habitually occurred there. NCGS § 14-39 has therefore been violated.

IV. Conclusion

32. Omar al-Faruq was subjected to extralegal capture, detention without legal justification, and torture. As outlined above, all of these acts against him were illegal according to state, national, and international standards. Moreover, the United States has maintained a shameful silence on these crimes.

33. It is critical that the entities responsible for al-Faruq’s ordeal—namely, the United States, North Carolina and its political subdivisions, and Aero Contractors—recognize their respective roles in the violation of al-Faruq’s fundamental human rights and provide redress for his suffering. Their continuing failure to do so amounts to an endorsement of torture. Such an

³⁹ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

⁴⁰ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

⁴¹ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

⁴² N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

attitude toward this reprehensible human rights violation is not only morally indefensible; it also ensures that future perpetrators will feel entitled to inflict brutal acts with the security of impunity. Achieving justice now is crucial both for today's victims, including al-Faruq, and for countless victims in the future.

Sharqawi Abdu Ali Al Hajj

I. Introduction

1. Sharqawi Abdu Ali Al Hajj (known by other names including Riyadh Mr. Al Hajj or Shergawi) is a Yemeni citizen, born in April 1974 in the city of Ta'izz, Yemen.¹
2. Mr. Al Hajj complete primary, middle and secondary education and then attended Taz University.² In 1994, he traveled to Bosnia, serving with the Bosnian army on the side of the United States and its allied. In 1995, he returned to Yemen.³
3. In 2000, Mr. Al Hajj traveled to Afghanistan and then fled to Pakistan after the U.S. bombing campaign began. He arrived in Karachi, Pakistan and in February 2002, he was then captured after his arrest by American and Pakistani forces.⁴
4. Currently, Mr. Al Hajj is being held in the “communal” camp (“Camp 6”) at Guantanamo with most of the remaining detainees who are being held without charge.⁵ He has described his motives for traveling as relating to his desire to provide assistance to refugees and other poor and oppressed individuals and has disavowed the accusations that he

¹ *Ali Al-Hajj al-Sharqawi*, The Rendition Project, (hereinafter the Rendition Project), <https://www.therenditionproject.org.uk/prisoners/sharqawi.html>; *Double Jeopardy*, Hum. Rts. Watch, 23 (Apr. 7 2008), https://www.hrw.org/sites/default/files/reports/jordan0408_1.pdf. Additional clarifying information has been provided by Mr. Al Hajj’s current attorneys as of October 2017.

² See *The Guantánamo Docket, Abdu Ali al Haji Sharqawi* 2, N.Y. Times, <https://www.nytimes.com/interactive/projects/guantanamo/detainees/1457-abdu-ali-al-haji-sharqawi> (last visited Nov. 11, 2017). As the New York Times notes, “These documents include some assertions that cannot be independently verified. Many allegations have been contested by detainees and their lawyers, and some have been undercut by other evidence.”

³ Andy Worthington, *29th Periodic Review Board at Guantánamo – for Sharqawi Ali Al-Hajj, Alleged Al-Qaeda Facilitator*, Mar. 22, 2016, at <http://www.andyworthington.co.uk/2016/03/22/29th-periodic-review-board-at-guantanamo-for-sharqawi-ali-al-hajj-alleged-al-qaeda-facilitator/>.

⁴ *Id.* Declaration of Petitioner Sharqawi Abdu Ali Al-Haag (ISN 1457)(2010), Civil Action No. 1:09-cv-00745. Additional clarifying information provided by Mr. Al-Hajj’s current attorneys as of October 2017.

⁵ Information provided by Mr. Al-Hajj’s current attorneys as of October 2017.

was involved with any extremist organizations.⁶ He has never been accused of taking up arms against the United States or involvement in *any* act of violence.

II. Initial Rendition to Jordan

5. On February 7, 2002 Mr. Al Hajj was arrested during a raid on a “suspected al-Qaeda safe house” in Karachi, Pakistan.⁷ The raid was executed under a joint operation between the U.S. and Pakistan’s Inter-Service Intelligence Directorate forces.⁸ Of the 500 individuals detained at the Guantanamo Bay detention camps, Mr. Al Hajj was part of the 86% of individuals captured by Pakistan or Northern Alliance forces and handed over to the United States at a time when the United States offered large bounties for the capture of suspected enemies.⁹
6. After he was captured, Mr. Al Hajj wHajj was held in solitary confinement in Pakistan for three weeks, where he was questioned and told that if he cooperated he would be sent home.¹⁰ He cooperated, but was instead subjected to more torture and cruelty.¹¹
7. Mr. Al Hajj was held in solitary confinement for over three weeks until midnight of February 10, 2002 when unidentified individuals placed a hood over his head, cuffed his hands together, and placed him into a car.¹² Throughout the car ride, none of the individuals told

⁶ Worthington, *supra* note 3.

⁷ Hum. Rts. Watch, *supra* note 1, at 23; Dep’t. of Def., *supra* note 2, at 4, 23; Amrit Singh, *Globalizing Torture*, Open Soc’y. Found., 57 (2013), <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; The Rendition Project, *supra* note 1; Craig Whitlock, *Jordan's Spy Agency: Holding Cell for the C.I.A.*, Wash. Post (Dec. 1, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/30/AR2007113002484.html>; *U.S. Crimes and Impunity*, Amnesty Int’l., 10 (Apr. 21, 2015), https://www.amnestyusa.org/wp-content/uploads/2017/04/cia_torture_report_amr_5114322015.pdf; *Comm. Study of the C.I.A.’s Detention and Interrogation Program*, U.S.S. Select Comm. on Intelligence, (hereinafter the USSCI Exec. Summ.) 384, footnote 2185 (Declassification Revisions Dec. 3, 2014), https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf; *Al-Hajj v. Obama*, 800 F. Supp. 2d 19, 21 (D.D.C. 2011).

⁸ Hum. Rts. Watch, *supra* note 1, at 23.

⁹ Mark & Joshua Denbeaux, *Rep. on Guantanamo Detainees, A Profile of 517 Detainees through Analysis of Dep’t of Def. Data, The Guantanamo Detainees: The Gov’t.’s Story*, Seton Hall Univ. Sch. of Law, 3-4 (last visited Jun. 2, 2017), http://law.shu.edu/publications/guantanamoReports/guantanamo_report_final_2_08_06.pdf.

¹⁰ Declaration of Petitioner Sharqawi Abdu Ali Al-Haag (ISN 1457) (2010), Civil Action No. 1:09-cv-00745, ¶ 3.

¹¹ *Id.*

¹² Hum. Rts. Watch, *supra* note 1, at 23.

Mr. Al Hajj where they were taking him.¹³ Instead, they played loud music and upon arriving at an undisclosed airport, and records suggest that they drove directly beside a CIA-owned Gulfstream V jet aircraft under tail number N379P, operated by Aero Contractors based in Johnston County, NC.¹⁴ The individuals then removed Mr. Al Hajj from the car and boarded him onto the aircraft through what appeared to him as a back entrance.¹⁵ He was then placed into a dark compartment within the aircraft where he was held down tightly around his neck and placed onto a chair with guards surrounding him.¹⁶ It was then that one of the guards notified him that he would be returning to his home country of Yemen.¹⁷

8. Some time from approximately February 11-15, 2002, Mr. Al Hajj was instead transported to Amman, Jordan.¹⁸ When he asked why he had been sent to Jordan instead of Yemen, as he was told, a guard replied, “You are with your Brothers in Amman,” and advised him not to ask any further questions.¹⁹

III. Detention and Torture in Jordan

9. Mr. Al Hajj was then taken to and held as a detainee in the General Intelligence Department (GID) Headquarters in Wadir Sir, Amman, Jordan from February 2002 to January 2004, over twenty-three months.²⁰ Mr. Al Hajj was held alongside fellow detainee Hassan bin Attash, a Saudi-born Yemeni, for the majority of his detention at the GID Headquarters.²¹

¹³ *Id.*

¹⁴ Hum. Rts. Watch, *supra* note 1, at 14, 23; The Rendition Project, *supra* note 8; *Partial List of Detainees Secretly Transported by Aero Contractors of N.C. for Torture by or for the C.I.A.*, N.C. Stop Torture Now (last visited Jun. 2, 2017), <http://ncstn.org/content/wp-content/uploads/2015/05/partial-list-of-detainees.pdf> (citing Stephen Grey, *Ghost Plane* (2006) as primary source of info.).

¹⁵ Hum. Rts. Watch, *supra* note 1, at 23.; USSCI Exec. Summ., *supra* note 8, at 384, footnote 2185.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Hum. Rts. Watch, *supra* note 1, at 14; N.C. Stop Torture Now, *supra* note 14.

¹⁹ Hum. Rts. Watch, *supra* note 1, at 23.

²⁰ Hum. Rts. Watch, *supra* note 8, at 24.

²¹ *Id.*

10. For the next twenty-three months, Mr. Al Hajj was subjected to continuous torture and interrogation.²² He began documenting his ordeal around October 2002 in a handwritten note, marked with his thumbprint and titled, “a short summary of my sufferings.”²³ In his note, he describes his experience with GID interrogators:

“When I told them the truth, I was tortured and beaten. They threatened me with electricity . . . with snakes and dogs . . . [They said] we’ll make you see death They threatened to rape me.”²⁴

11. When representatives of the International Committee of the Red Cross (ICRC) visited the GID facility, Mr. Al Hajj was hidden from them.²⁵ When an ICRC representative arrived at the Headquarters, guards would move Mr. Al Hajj to the soldier’s lecture room, where he would remain until the representative had finally left the facility.²⁶

12. When he was later transferred to Guantanamo Bay in 2004, Mr. Al Hajj notified his attorneys that the GID interrogators in Jordan had also performed *falaqa* on him, a Jordanian torture method in which prisoners are given extended beatings on the bottoms of their feet, causing excruciating pain.²⁷

13. In April 2006, Mr. Al Hajj further elaborated on his treatment at the GID Headquarters

“I was being interrogated all the time, in the evening and in the day. I was shown thousands of photos, and I really mean thousands, I am not exaggerating And in between all this you have the torture, the abuse, the cursing, humiliation. They had threatened me with being sexually abused and electrocuted. I was told that if I wanted to leave with permanent disability both mental and physical, that that could be arranged. They said they had all the facilities of Jordan to achieve that. I was told that I had to talk, I had to tell them everything. They beat me in a way

²² *Id.* at 23-25.

²³ Joanne Mariner, “We’ll Make You See Death,” Salon Media Grp. Inc. (Apr. 10, 2008), http://www.salon.com/2008/04/10/jordan_rendition/S; Hum. Rts. Watch, *supra* note 1, at 2, 23; Open Soc’y. Found., *supra* note 8, at 23, 57; The Rendition Project; *supra* note 8.

²⁴ Hum. Rts. Watch, *supra* note 1, at 2, 23; Craig Whitlock, *supra* note 7. (This same note was later smuggled out of the facility by another detainee in 2003.)

²⁵ Hum. Rts. Watch, *supra* note 1, at 3.

²⁶ *Id.* at 3, 14.

²⁷ *Id.* at 2-3.

that does not know any limits. They threatened me with electricity, with snakes and dogs. They say we'll make you see death. They threatened to rape me.”²⁸

14. In 2010, Mr. Al Hajj testified before the U.S. District Court for the District of Columbia that during his time at the GID Headquarters in Jordan, he was placed on the ground during interrogations, with the interrogator in a chair above him with his foot on his face.²⁹
15. After prolonged torture, Mr. Al Hajj began to confess to allegations made by his interrogators, and manufactured facts in order to make the torture stop.³⁰
16. Mr. Al Hajj refused to sign a report with statements that he had never uttered. His captors told him that he would be subject to further interrogation and that someone would “pluck” his beard. After the culmination of his ordeal and additional threats, Mr. Al Hajj signed the statement.³¹
17. Mr. Al Hajj’s accounts of his treatment at the GID detention facility have been corroborated through the testimony of other detainees held at such facility around the same time period, most of whom were subjected to similar abusive treatment.³² One detainee in particular alleged that Mr. Al Hajj had received harsher abuses when compared to other detainees.³³ Mr. Al Hajj’s overall detainment at the GID Headquarters in Jordan has also been corroborated by the CIA, identifying him as Riyadh the Facilitator in the Senate Select Intelligence Committee report on CIA Torture.³⁴ The torture he suffered in Jordan would not

²⁸ Human Rts. Watch, *supra* note 1, at 24, Mariner, *supra* note 23.

²⁹ *Al-Hajj*, 800 F. Supp. 2d at 21.

³⁰ Declaration of Kristin B. Wilhelm In Support of Petitioner’s Petition for Release and Other Relief Under Detainee Treatment Act of 2005, May 23, 2007, Case 1:09-cv-00745-RCL,

³¹ Declaration of Petitioner Sharqawi Abdu Ali Al-Haag (ISN 1457) (2010), Civil Action No. 1:09-cv-00745 RCL).

³² Hum. Rts. Watch, *supra* note 1, at 3, 43.

³³ *Id.* at 3.

³⁴ USCCI Exec. Summ., *supra* note 7, at 386, note 2185.

have occurred but for his having been extraordinarily rendered on a plane operated by Aero Contractors located in Johnston County, NC.

IV. Rendition from Jordan to Afghanistan

18. At 11:00 P.M. G.M.T. on January 7, 2004, Mr. Al Hajj was taken out of his cell and placed into a car with a black hood over his head.³⁵ Guards cut off his clothes and performed a body search on him, including a search of his rectal cavity³⁶ He was then given a diaper, shorts, a sleeveless shirt and plastic handcuffs to wear.³⁷ Guards then tied Mr. Al Hajj to the wall of a room where he would stand for over an hour in handcuffs.³⁸ This methodical and deviously constructed protocol during the transport process has been determined to be aimed at forcing a state of learned helplessness upon detainees and has been ruled by the European Court of Human Rights to constitute a form of torture.³⁹
19. When the guards returned for him, they tied his hands and feet together, and carried him to another location.⁴⁰ He was eventually thrown by the guards like a sack onto a CIA-owned Boeing 737, under tail number N313P operated by Aero Contractors, based in Johnston County, NC, where he landed on top of another detainee, who today is presumed to have been Hassan bin Attash.⁴¹
20. On January 8, 2004 at 1:39 P.M. G.M.T. Mr. Al Hajj was placed into the CIA's Detention and Interrogation Program when he was flown out of Afghanistan on the CIA-owned Boeing

³⁵ Hum. Rts. Watch, *supra* note 1, at 25, footnote 45 (citing Mr. Al Hajj lawyer's notes).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ James E. Pfander, Const. Torts & The War on Terror, 35 (2017); *El-Masri v. Macedonia*, Eur. Ct. Hum. Rts., No. 39630/09 (2012).

⁴⁰ Hum. Rts. Watch, *supra* 1, at 24.

⁴¹ *Id.* at 25; N.C. Stop Torture Now, *supra* note 18.

737, under tail number N313P, operated by Aero Contractors which thus further facilitated his detention and torture in Afghanistan.⁴²

V. Detention and Torture in Afghanistan

21. The flight arrived in Kabul, Afghanistan, where Mr. Al Hajj was then transferred to the CIA's Dark Prison nearby.⁴³ Throughout his detainment at such facility, guards kept his cell in complete darkness and subjected him to continuous loud music.⁴⁴ The cell was filthy, the food was extremely bad, and on occasions, prison guards force-fed Mr. Al Hajj when he refused to eat.⁴⁵ In his 2006 statement, Mr. Al Hajj described the Dark Prison as "a pitch dark place, with extremely loud scary sounds."⁴⁶ On some rare occasions, guards let him sit on a chair in front of a high wall once a week, where he would notice snow cover.⁴⁷ The torture he suffered at the Dark Prison in Afghanistan would not have occurred but for his having been extraordinarily rendered on a plane operated by Aero Contractors located in Johnston County, NC.
22. Another detainee by the name of Khaled al-Maqtari created a detailed list of each detainee, and the cell they were held in at the Dark Prison, for the first few months of 2004, along with a floor plan of the facility.⁴⁸ This information has been corroborated through similar descriptions of such facilities during that time period within the testimonies of detainees

⁴² Hum. Rts. Watch, *supra* note 1, at 24; USSCI Exec. Summ., *supra* note 7, at 383, footnote 2160, 386, 390; *U.S. Crimes and Impunity*, *supra* note 7, at 54; N.C. Stop Torture Now, *supra* note 18.

⁴³ Open Soc'y. Found., *supra* note 7, at 57.

⁴⁴ *Id.*; *Al-Hajj*, 800 F. Supp. 2d at 21; *U.S. Crimes and Impunity*, *supra* note 7, at 10.

⁴⁵ *Al-Hajj*, 800 F. Supp. 2d at 21-22.

⁴⁶ The Rendition Project, *supra* note 1.

⁴⁷ *U.S.: A Case to Answer, From Abu Ghraib to Secret C.I.A. Custody: The Case of Khaled al-Maqtari*, Amnesty Int'l., 24 (Mar. 2008), [https://www.therenditionproject.org.uk/pdf/PDF%2033%20\[AI 200803REP%20USA%20A%20Case%20to%20Answer\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2033%20[AI%200803REP%20USA%20A%20Case%20to%20Answer].pdf)

⁴⁸ The Rendition Project, *supra* note 1.

Mohammed al-Shoroeiya, Khalid al-Sharif, and Mohamed Bashmilah.⁴⁹ A rendering of such list and floor plan has been attached to this document within the Appendix.

VI. Rendition from Dark Prison to Bagram Air Base to Guantanamo Bay

23. Around May 10-16, 2004, guards transported Mr. Al Hajj to the Bagram Air Base (hereinafter referred to as “Bagram”), a location known to host some of the worst torture atrocities during the Global War on Terror, especially during its early years.⁵⁰
24. Upon arrival, Mr. Al Hajj was told Bagram was “a base belonging to the American Army.”⁵¹ For two and a half months at Bagram, Mr. Al Hajj was placed in solitary confinement in a two foot by three-foot wooden cage with no toilet.⁵² He was interrogated by an investigator who continued to interrogate him at Guantanamo.⁵³ In another instance, he was beaten by two guards.⁵⁴
25. Mr. Al Hajj remained at the Bagram facility in U.S. Military custody for a total of approximately four months.⁵⁵ On September 19, 2004, he was transported to Guantanamo Bay, Cuba on a United States military aircraft with call-sign RCH948y.⁵⁶ He was accompanied by fellow detainees Hassan bin Attash, Binyam Mohamed and al-Kazimi.⁵⁷
26. In 2009, President Barack Obama established the Guantanamo Review Task Force; however, Mr. Al Hajj was not approved for transfer as a result of this process. In 2011, President

⁴⁹ *Id.*

⁵⁰ Open Soc’y. Found., *supra* note 8, at 56; Craig Whitlock, *supra* note 7; The Rendition Project, *supra* note 8; *U.S. Crimes and Impunity*, *supra* note 8, at 55; *Al-Hajj*, 800 F. Supp. 2d at 22; Tim Golden, *In U.S. Report, Brutal Details of 2 Afghan Inmates’ Deaths*, N.Y. Times (May 20, 2005), http://www.nytimes.com/2005/05/20/world/asia/in-us-report-brutal-details-of-2-afghan-inmates-deaths.html?_r=0.

⁵¹ *Al-Hajj*, 800 F. Supp. 2d at 22.

⁵² *Id.*

⁵³ Motion by Petitioner Sharqawi Abdu Ali Al-Haag To Strike Statements in the Factual Return, No. 09-cv-745 (D.D.C.) (filed Dec. 15, 2010), at 3.

⁵⁴ *Al-Hajj*, 800 F. Supp. 2d at 22.

⁵⁵ The Rendition Project, *supra* note 1.

⁵⁶ Craig Whitlock, *supra* note 7; USSCI Exec. Summ., *supra* note 7, at 4; The Rendition Project, *supra* note 1; *U.S. Crimes and Impunity*, *supra* note 7, at 55.

⁵⁷ The Rendition Project, *supra* note 1; *U.S. Crimes and Impunity*, *supra* note 7, at 55.

Obama issues an Executive Order establishing the Periodic Review Board (PRB) to review the status of detainees who had not been approved for transfer. On April 19, 2013, the Periodic Review Board within the Department of Defense identified Mr. Al Hajj as eligible for review.⁵⁸ He had PRB hearings in 2016 and 2017, as the result of which he was again designated for continuing detention. His next PRB hearing is scheduled for 2020, 18 years after his capture and his detention appears to be indefinite.⁵⁹ As of such date, Mr. Al Hajj continues to remain at Guantanamo Bay, making it a total of 15 years since he has been held in custody at the behest of the United States custody, and has been in Guantanamo for 12 of those years.⁶⁰ One of Mr. Al Hajj's attorneys, John Chandler, commented on Mr. Al Hajj's current condition, "His health is ruined by his treatment by or on behalf of our country. He can eat little but yogurt. He weighs perhaps 120 pounds. The United States of America has lost its way."⁶¹

27. The United States District Court has held that, "In Jordan, petitioner [Mr. Al Hajj] experienced patent coercion during interrogations -- including intimidation, regular beatings, and threats of electrocution and violence. In Kabul, he was forced to endure complete darkness and continuous loud music. The Court thus finds that petitioner was subject to physical and psychological coercion in Jordan and Kabul."⁶²
28. Mr. Al Hajj's treatment was not uncommon. Multiple authorities have documented numerous instances of such actions against individuals, indicating a systematic effort by the U.S. to

⁵⁸ 71 Guantanamo Detainees Determined Eligible for Receive a Periodic Rev. Bd. as of April 19, 2013, Dep't. of Def. (last visited Jun. 2, 2017), https://upload.wikimedia.org/wikipedia/commons/1/12/71_Guantanamo_Detainees_Determined_Eligible_to_Receive_a_Periodic_Review_Board_as_of_April_19%2C_2013.pdf.

⁵⁹ *Unclassified Summ. of Final Determination*, Periodic Rev. Secretariat, Dep't. of Def., 1 (Mar. 30, 2017), http://www.prs.mil/Portals/60/Documents/ISN1457/FullReview1/20170330_U_ISN1457_FINAL_DETERMINATION_PUBLIC.pdf.

⁶⁰ The Rendition Project, *supra* note 1; Dep't. of Def., *supra* note 2, at 1.

⁶¹ Worthington, *supra* note 3.

⁶² *Al-Hajj v. Obama*, 800 F. Supp. 2d at 23.

deprive detainees of their rights. Amnesty International published a report on March 6, 2006 documenting consistent denial of counsel to detainees and denial of access to communication with families and others. This report further documented Geneva Convention violations of detainees' rights via exposure to extreme cold, heat, and use of unlawful restraint and physical contact. A United Nations Human Rights report published shortly after the Amnesty report mirrored Amnesty's findings, and further documented deprivation of food, medical treatment, and hygiene. An ICRC report documents mistreatment via extended isolation, hooding, physical threats, denial of food and water, and the use of prolonged exposure to loud noise and music.

VII. Sharqawi Al Hajj's Current Condition

29. In recent months, Mr. Al Hajj has suffered increasing despair with regard to his failing health and chronic and deteriorating conditions. He recently "escalated" his hunger strike because of his health issues and his indefinite detention, and in July 2017 he reported that he "stopped being fed through a tube or drinking Ensure."⁶³
30. As a result of his hunger strike, his health has further deteriorated. On one occasion, he lost consciousness and was taken to the hospital under emergency circumstances. The medical team informed him that his blood sugar had dropped so low and had "reached a point of danger."⁶⁴
31. Mr. Al Hajj's condition, both physical and mental, has been of great concern to his current attorneys, one of whom stated in support of an emergency motion seeking an independent

⁶³ Declaration of Pardiss Kebriaei In Support of Petitioner Sharqawi Al Hajj's Emergency Motion, September 6, 2017, Case No. 09-cv-745 (RCL) *hereinafter* Kebriaei Declaration.

⁶⁴ *Id.*

medical evaluation and his medical records that he was noticeably failing, appearing “frail, gaunt” and without energy and concentration.⁶⁵

32. Mr. Al Hajj further described suffering from frequent and severe abdominal pains. He has also suffered from severe bouts of jaundice. He reported that his weight, as of August 2017, was 104 pounds.⁶⁶

33. Mr. Al Hajj’s physical and mental condition have deteriorated to the point where it has interfered with his ability to consult with counsel or to attend habeas or Periodic Review Board meetings as he finds it too physically demanding to be moved from his cell.

34. Dr. Jess Ghannam, an expert Professor of Psychiatry who is also a licensed psychologist for over twenty years, and has served as an expert consultant to in cases of Military Commission proceedings at Guantanamo assessed Mr. Al Hajj’s current physical and mental condition based on information from his counsel, and his experience based on working with current and former detainees at Guantanamo. He opines that his medical condition that pre-dates his hunger strike could be life-threatening.⁶⁷

35. Dr. Ghannam set forth his “significant concerns about his health and potential for decline and a medically emergent collapse.” He expressed great concern about the “functioning of his liver, the appearance of jaundice, and lack of treatment,” which may fail to comply with the accepted standard of care for his condition.⁶⁸

36. Dr. Ghannam also opines that Mr. Al Hajj suffers from a condition known as “Guantanamo Syndrome” suffered by individuals “subjected to severe torture in Pakistan, Afghanistan, and

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Declaration of Dr. Jess Ghannam In Support of Petitioner Sharqawi Al Hajj’s Emergency Motion, Au. 29, 2017, Case No. 09-cv-745 (RCL). Mr. Al Hajj was diagnosed with Hepatitis B prior to his detention. *Id.*

⁶⁸ *Id.*

Jordan.” He describes these conditions as “debilitating and disabling.” The symptoms include “sleep difficulties, cognitive difficulties, gastro-intestinal difficulties, chronic pain, chronic headaches, fatigue, and general physical impairment.” He further explains that these symptoms are present in individuals who are *not* on a hunger strike. He offers his opinion, “with reasonable medical probability, that Mr. Hajj may very well be on the precipice of total bodily collapse.”⁶⁹

37. Mr. Al Hajj has been detained for over 16 years with no prospects for transfer or release, contributing, if not causing his current grave health crisis. Moreover, his frail and debilitating condition interferes with his ability to access judicial relief.⁷⁰

VIII. Violations of Law

A. International Law

38. Mr. Al Hajj’s treatment was in violation of the following international regulations:

- a. Article 3 of the Universal Declaration guarantees the “right to life, liberty and security of person.”⁷¹
- b. Article 5 of the Universal Declaration of Human Rights (UDHR), which states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁷²
- c. Article 8 guarantees “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁷³
- d. Common Article 3 of the Geneva Conventions prohibits inhumane treatment of detainees.⁷⁴
- e. Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which states: “No one shall be subjected to torture or to cruel, inhuman or degrading

⁶⁹ *Id.*

⁷⁰ See Petitioner’s Emergency Motion for an Independent Medical Evaluation and Medical Records, Sept. 6, 2017, Case No. 09-cv-745 (RCL).

⁷¹ Universal Declaration of Hum. Rts. (hereinafter UDHR), art. 3, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

⁷² *Id.* at art 5.

⁷³ *Id.* at art. 8.

⁷⁴ Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 2, 6 U.S.T. 3316, 75 U.N.T.S. 135, 136.

treatment or punishment.”⁷⁵ In addition, the Human Rights Committee, the overseeing and interpretive body of the ICCPR,⁷⁶ has stated that “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁷⁷ Thus, the extradition, by the United States, of an individual to an area where it is known that they will be tortured by other parties is virtually no different than if the United States tortured the individual itself.

39. Mr. Al Hajj’s treatment was in violation of various provisions within the Convention against

Torture (CAT) which defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁷⁸ The provisions in violation include:

- i. Article 2(1) which states, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”⁷⁹
- ii. Article 3(1) which states, “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁸⁰

⁷⁵ International Covenant on Civil and Political Rights (hereinafter ICCPR), art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171.

⁷⁶ See Office of the United Nations High Commissioner for Human Rights, Human Rights Committee (May 28, 2017), <http://www2.ohchr.org/english/bodies/hrc/>.

⁷⁷ U.N. Human Rights Comm., General Comment No. 20, ¶ 9, U.N. Doc. A/47/40 (1992).

⁷⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter CAT), art. 1(1), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988) [hereinafter CAT], 1465 U.N.T.S. 85.

⁷⁹ *Id* at art. 2(1).

⁸⁰ *Id* at art. 3(1).

40. In a document titled ““Legal Authority and Policy for Enteral Feeding at JTF-GTMO”, an attorney from the Department of Defense admitted that “international law and certain medical ethical standards holds that the 'forced feeding' of a mentally competent person capable of making an informed decision is never acceptable.”⁸¹
41. The treaties outlined above are all binding at all levels, including federal, the state, of North Carolina and its political subdivisions. The “Supremacy Clause,” the second clause of the United States Constitution, states that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁸²
42. On February 7, 2002, Mr. Al Hajj was deprived of the guarantees to the “right to life, liberty and security of person” as provided under Article 3 of the UDHR when he was arrested and subsequently detained by the joint operation including the United States. These violations include the processes of extraordinary rendition in and of themselves and which further facilitated and perpetuated such violations with every rendition from the GID Headquarters in Jordan, the Dark Prison in Afghanistan, the Bagram Air Base, to the Guantanamo Detention Camps where he currently resides.
43. Moreover, Mr. Al Hajj was deprived of his right to life, liberty and security of person without the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law as required under Article 8 of the UDHR when he was summarily detained, extraordinarily rendered without any process,

⁸¹ Jason Leopold, “*The Military Admitted Force-Feeding Gitmo Detainees Violates International Law and Medical Ethics*”, Vice (Jan. 29, 2015), <https://news.vice.com/article/how-a-military-memo-could-save-the-nurse-who-refused-to-force-feed-guantanamo-detainees>.

⁸² U.S. CONST. art. VI, cl. 2.

and prohibited from seeking any counsel until his rendition to Guantanamo Bay in May 2004. Most telling is the fact that prison guards at the GID Headquarters continuously hid Mr. Al Hajj from ICRC whenever officials visited the facility.

44. The United States exposed Mr. Al Hajj to the danger of torture or cruel, inhuman or degrading treatment or punishment of foreign nations through the rendition of Mr. Al Hajj to the GID Headquarters in Jordan after its joint operation with Pakistani forces in Pakistan, his subsequent rendition to the Dark Prison in Afghanistan, and Bagram Air Base also in Afghanistan, in violation of Article 7 of the ICCPR, and Article 3(1) of CAT. At all of these locations, Mr. Al Hajj was transported under aircrafts known to be owned by the CIA and operated by Aero Contractors based in Johnston County, NC. The facilities to which he was transferred to were known to be torture facilities.
45. In permitting the CIA and Aero Contractors to perform its extraordinary rendition program, with the breadth of discretion it held, the United States, the state of North Carolina and its political subdivisions, also failed to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction in violation of Article 2(1) of CAT. The transportation of detainees internationally, and the detainees held at the CIA owned Dark Prison and Bagram Air Base are all operations performed within the jurisdiction of the United States.
46. Most importantly, Mr. Al Hajj was subjected to torture or to cruel, inhuman or degrading treatment or punishment during his “arrest” and subsequent detainment in patent violation of Article 5 of the UDHR, Article 7 of the ICCPR and CAT. Upon his capture, he was placed into a car, a hood was placed over his head, and his hands were cuffed together for the purposes of extraordinary rendition to torture accomplished through his kidnapping aboard

Aero Contractor operated planes. Throughout his detention at the GID Headquarters in Jordan he was subjected to continuous torture and interrogation including beatings on the bottoms of his feet, guards stepping on his face, and receiving threats of the use of force through electricity, murder, and rape against him. Upon his rendition to the CIA's Dark Prison in Afghanistan, he was stripped naked, penetrated in his anus, and left standing alone in handcuffs for over an hour. During his actual detention at the Dark Prison, he was subject to loud music, complete darkness, and was force-fed whenever he refused to eat. At the Bagram Air Base, Mr. Al Hajj was confined to a two foot by three-foot wooden cage with no toilet, and at times was beaten by two guards. All of these acts are sufficient to constitute acts of torture as provided under the UDHR and CAT.

B. United States Federal Law

47. Mr. Al Hajj's treatment was in violation of the U.S. Constitution, including the Fifth, Eighth, and Fourteenth Amendment and numerous federal laws, including:

- a. Torture Victims Protection Act of 1991, which states: "An individual who, under actual or apparent authority, or color of law, of any foreign nation— subjects an individual to torture shall, in a civil action, be liable for damages to that individual."⁸³
- b. 18 U.S. Code §2340A which states "Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years."⁸⁴ Torture under this statute is defined as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control".
- c. War Crimes Act of 1996, prohibiting acts of torture, defined as, "An act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind."⁸⁵

⁸³ Torture Victim Protection Act of 1991 1992 Enacted H.R. 2092, 102 Enacted H.R. 2092, 106 Stat. 73.

⁸⁴ 18 U.S. Code § 2340A.

⁸⁵ 18 U.S. Code § 2441.

48. The acts performed against Mr. Al Hajj of which are sufficient to constitute acts of torture under the definitions provided under Article 5 of the UDHR, Article 7 of the ICCPR and CAT, are also sufficient to constitute acts of torture as defined under Torture Victims Protection Act of 1991, 18 U.S. Code §2340A, and War Crimes Act of 1996. Therefore, the United States as well as Aero Contractors are liable to Mr. Al Hajj for the acts of torture committed against him during his detainment beginning on February 7, 2002. In addition, the guards who performed such acts of torture can be held criminally liable for the actions under 18 U.S. Code §2340A.

C. North Carolina State Law

49. The Rendition process, and detention of Mr. Al Hajj was in violation the North Carolina Constitution, which states ““No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”⁸⁶

50. This process was also violation of North Carolina General Statute §14-39 regarding Kidnapping and Abduction, which states: “Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, . . . shall be guilty of kidnapping.”⁸⁷ This statute extends liability to private companies in violation as well and includes conspiracy to commit such acts.

51. Similar to the reasoning provided under part A and B, the acts performed upon Mr. Al Hajj, constituting acts of torture under International and Federal law, are sufficient to constitute

⁸⁶ N.C. Const. art. 1, §19.

⁸⁷ N.C. Gen. Stat. § 14-39.

acts of kidnapping act provided under of North Carolina General Statute §14-39, and the deprivation of the Due Process right guaranteed under the North Carolina Constitution.

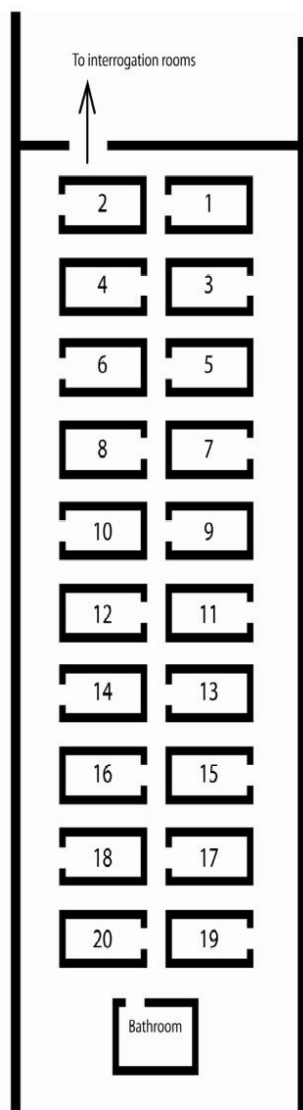
IX. Conclusion

52. Mr. Al Hajj was illegally kidnapped and extraordinarily rendered via a process outside of the law and without any legal protections to a country with the full knowledge and intent that he would be tortured there. Mr. Al Hajj endured terrifying kidnapping, detention and torture, all of which was in patent violation of international, federal, and North Carolina state laws. As a result, he has suffered and will continue to suffer severe lifelong distress, and has been irreparably harmed. It is incumbent upon the United States, North Carolina and its political subdivisions, as well as Aero Contractors to admit wrongdoing via Congressional and other action, and take responsibility for the atrocities committed against Mr. Al Hajj and the countless other individuals that were harmed through acts of torture and extradition.

Appendix



Photo of Sharqawi Abdu Ali Al Hajj from leaked JTF-GTMO Detainee Assessment



Detainees reportedly held in secret facility in Afghanistan from January – April 2004; listed by cell number and name known to other detainees [given name in brackets]

1. Ahmed the Malaysian: current whereabouts unknown
2. Riba'i [Hassan LNU]: transferred to CIA "black site" in 2004, reportedly transferred to Libya in 2006, whereabouts unconfirmed
3. Yasser al Jaza'iri: transferred to CIA "black site" in 2004, current whereabouts unknown
4. Riyadh al-Sharqawi [Al-Haj Abu Ali Sharqawi]: transferred to Guantánamo in September 2004
5. Umayr bin Attash [Hassan Muhammad bin Attash]: arrived late January 2004, transferred to Guantánamo in September 2004
- Ibn al-Sheikh al-Libi [Ali Abdul-Hamid al-Fakhiri]: transferred out of this facility in early January 2004, apparently to CIA "black site", reportedly transferred to Libya in 2005, current whereabouts unconfirmed
6. Shumilla [Muhammad Faraj Ahmed Bashmilah]: transferred to CIA "black site" in April 2004, returned to Yemen in May 2005, released from custody in March 2006
7. Naseem al Tunisi: current whereabouts unknown
8. Hazim al-Libi [Khaled al-Sharif]: transferred to CIA "black site" in 2004, reportedly transferred to Libya in 2006, whereabouts unconfirmed
9. Abu Malik al Qasemi [Sanaad Yislam al Kazimi]: transferred to Guantánamo in September 2004
10. Abu Abdullah al Saudi: arrested in Iraq in February or March 2004, transferred to Afghanistan facility in April 2004, current whereabouts unknown
11. Marwan al-Adenni [Salah Nasser Salim 'Ali Qaru]: transferred to CIA "black site" in April 2004, returned to Yemen in May 2005, released from custody in March 2006
12. Mu'ath al-Suri, aka Abu Abdullah: current whereabouts unknown
13. Khaled al-Maqtari: transferred to CIA "black site" in April 2004, returned to Yemen in September 2006, released from custody in May 2007
14. a Somali man, name unknown
15. Adnan al Libi [Majid LNU]: transferred to CIA "black site" in 2004, current whereabouts unknown
16. Muhammad al Assad: transferred to CIA "black site" in April 2004, returned to Yemen in May 2005, released from custody in March 2006
17. Binyam Mohammed [based on his own statement, Khaled al-Maqtari said this was one of the cells occupied by someone who did not speak]: transferred to Guantánamo September 2004
18. Majid Khan: transferred to CIA "black sites", transferred to Guantánamo September 2006
19. Laid Saidi [based on his own statement: Khaled al-Maqtari says that someone arrived in this cell a day or two before the April 2004 transfer]: Laid Saidi himself reports having been moved from one detention facility in Afghanistan to another in late April 2004
20. Sheikh Saleh al-Libi: current whereabouts unknown

Mohammed al-Asad

I. Introduction

1. Mohammed al-Asad, a Yemeni national,¹ was living in Tanzania when he was arrested and flown to a secret prison in Djibouti.² He was later transferred into the CIA's secret prison system.³ During his detention, he was subjected to torture that included solitary confinement, sensory overload in the form of constant loud music, punitive dietary manipulation, artificial light twenty-four hours a day, exposure to cold weather,⁴ and beatings.⁵ After apparently realizing that al-Asad was not involved in terrorist activity, the CIA eventually transferred him to Yemen.⁶ Al-Asad was ultimately released; he passed away in 2016 without any evidence of recovery or restitution for the torture he suffered.⁷

II. Detention

A. Background

2. Al-Asad is a citizen of Yemen.⁸ In 1985, he moved to Tanzania, where he established a family and a successful business.⁹ Seeking to facilitate his residential and business endeavors, al-Asad acquired a forged Tanzanian passport and birth certificate.¹⁰

¹ OPEN SOCIETY JUSTICE INITIATIVE, *Globalizing Torture: CIA Detention and Extraordinary Rendition* 32 (2013).

² Sudarsan Raghavan and Julie Tate, "African Commission Asked to Take Case Challenging CIA Rendition Program," WASHINGTON POST 1 (28 February 2011). <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/28/AR2011022803848.html>.

³ HUMAN RIGHTS WATCH, *CIA Secret Prisons: A Decade Later, Justice in Africa?* (2013). <https://www.hrw.org/news/2013/11/01/cia-secret-prisons-decade-later-justice-africa>.

⁴ *Communication 383/10: Mohammed Abdullah Saleh al-Asad v. The Republic of Djibouti* [hereinafter *Al-Asad v. Djibouti*] 2-3 (2014). http://www.achpr.org/files/sessions/55th/comunications/383.10/achpr55_383_10_eng.pdf.

⁵ HUMAN RIGHTS WATCH, *supra* note 3.

⁶ *Id.*

⁷ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1; Matt Apuzzo *et al.*, *How U.S. Torture Left a Legacy of Damaged Minds*, N.Y. Times, Oct. 9, 2016, at <https://www.nytimes.com/2016/10/09/world/cia-torture-guantanamo-bay.html>.

⁸ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1.

⁹ *Al-Asad v. Djibouti*, *supra* note 4, at 1.

¹⁰ *Id.*

3. In 1994, the Islamic foundation Al-Haramain rented office space at one of al-Asad's properties.¹¹

B. Capture, Detention, & Rendition in Tanzania

4. Two men who spoke Swahili and appeared to be Tanzanian arrested Al-Asad in his home in Dar es Salaam, Tanzania, at around 9:00 PM on 26 December 2003.¹² They blindfolded and bound him.¹³

5. Al-Asad was brought to an apartment where he was interrogated for approximately five hours.¹⁴ Authorities questioned him about his immigration status in Tanzania and his acquisition of a Tanzanian passport.¹⁵

6. In the early hours of 27 December 2003, al-Asad was again blindfolded and handcuffed.¹⁶ He was taken to an airport, where he was forced to enter a small aircraft and sit in a passenger seat. When he asked his destination, guards responded, "We can't tell you. We are just following orders. We have nothing to do with this. People in charge know where we are taking you. We are just following orders."¹⁷ He also heard people speaking English at the front of the aircraft.¹⁸ The flight took several hours.¹⁹

C. Detention in Djibouti

¹¹ Lauren Walker, "For One Detainee, the CIA Torture Report Was a Victory," NEWSWEEK (11 December 2014). <http://www.newsweek.com/man-wrongfully-detained-cia-sees-acknowledgement-torture-report-291121>.

¹² *Al-Asad v. Djibouti*, *supra* note 4, at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ RENDITION PROJECT, *Mohammed al-Asad*. <https://www.therenditionproject.org.uk/prisoners/asad.html>.

¹⁸ *Id.*

¹⁹ *Al-Asad v. Djibouti*, *supra* note 4, at 2.

7. When al-Asad landed, he was pushed into a motor vehicle²⁰ and driven for 20-30²¹ minutes to a detention facility, where he would be held in isolation for two weeks.²²
8. It is generally acknowledged that this facility was in Djibouti. The media has reported that 800 U.S. personnel who were part of a counterterrorism task force were stationed in Djibouti in late 2002, at a base for the CIA's unmanned predator planes,²³ and sources in Tanzania have confirmed that al-Asad was brought to this base.²⁴ In addition, a picture of the President of Djibouti was hanging on the wall of the room where al-Asad was interrogated.²⁵
9. Upon his arrival, al-Asad's handcuffs were removed but his blindfold remained. Someone speaking Arabic ordered him to sit down, and at that point he removed his blindfold.²⁶ He saw that he was being kept in a dirty, old, unfurnished room with bits of cardboard box on the floor.²⁷
10. Ten minutes later, al-Asad was transferred to a larger, cleaner room containing only an old sponge mattress, a toilet, a tap, and a plastic water basin.²⁸ The room had windows that let in mosquitos at night and prevented him from sleeping.²⁹
11. During al-Asad's first week of detention, he was not interrogated. He also had no opportunities to exercise.³⁰

²⁰ *Id.*

²¹ Sources differ on the exact time al-Asad's drive took. See RENDITION PROJECT, *supra* note 17; *Al-Asad v. Djibouti*, *supra* note 4, at 1.

²² Sudarsan Raghavan and Julie Tate, *supra* note 2.

²³ AMNESTY INTERNATIONAL, *United States of America: Below the Radar: Secret Flights to Torture and "Disappearance"* 11 (2006).

²⁴ *Id.*

²⁵ *Id.*

²⁶ RENDITION PROJECT, *supra* note 17.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Al-Asad v. Djibouti*, *supra* note 4, at 2.

³⁰ RENDITION PROJECT, *supra* note 17.

12. During the second week of detention, al-Asad was interrogated three times,³¹ for about an hour each time.³² His interrogators were U.S. officials, one man and one woman, who told him they were from the FBI.³³ An Arabic language interpreter who looked Syrian or Lebanese and, occasionally, a third man who said he was from Djibouti were also present at interrogations.³⁴

13. Al-Asad was interrogated about Al-Haramain, ties to alleged terrorism suspects, and specific individuals in Tanzania.³⁵ According to his lawyers, “He truly thought that once they realized he was innocent that he would be sent home.”³⁶ Instead, he was told that he would be transferred to another place in a few days.³⁷ Thinking that this was a threat, he tried to speak calmly, but he says the interpreter responded by shouting and behaving threateningly. Al-Asad was afraid the guards would abuse him, and they sometimes threatened his wife and children.³⁸

D. Extraordinary Rendition to Afghanistan

14. On January 8th, 2004, al-Asad was extraordinarily rendered from Djibouti to Afghanistan on N313P, a Boeing 737 operated by the North Carolina-based company Aero Contractors headquartered in Johnston County.³⁹ It was at this point that he formally entered CIA custody⁴⁰ for the period noted by the Senate Select Committee on Intelligence (SSCI)’s report.⁴¹

15. Authorities blindfolded al-Asad and bound his hands with cloth. He was then driven for about 20 minutes to an airport.⁴² Upon arrival, he was pulled out of the car with some force.⁴³ He

³¹ *Al-Asad v. Djibouti*, *supra* note 4, at 2.

³² RENDITION PROJECT, *supra* note 17.

³³ AMNESTY INTERNATIONAL, *supra* note 23, at 11.

³⁴ RENDITION PROJECT, *supra* note 17.

³⁵ *Id.*

³⁶ Lauren Walker, *supra* note 11.

³⁷ RENDITION PROJECT, *supra* note 17.

³⁸ *Id.*

³⁹ RENDITION PROJECT, *Rendition Circuit Index* (2017) [Unpublished data].

⁴⁰ RENDITION PROJECT, *supra* note 17.

⁴¹ SENATE SELECT COMMITTEE ON INTELLIGENCE, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* 460 (2014).

⁴² RENDITION PROJECT, *supra* note 17.

⁴³ *Id.*

saw approximately five men concealing their faces with balaclavas.⁴⁴ In preparation for his extraordinary rendition on the Aero plane, the men tore off his clothing, shoved a finger into his rectum, photographed him naked, put him in a diaper, and dressed him in a Western-style short-sleeved shirt and a pair of trousers. They also plugged his ears with cotton, placed headphones and a hood over his head, and tightly taped around his head. His hands, waist, and feet were chained.⁴⁵ Al-Asad remembered, “I was blind, deaf, and could barely walk. I was in severe pain and felt deeply humiliated and weak.”⁴⁶ He was so debilitated that he had to be half-carried to the aircraft.⁴⁷

16. Once on the aircraft, al-Asad was forced to lie on his back on the floor. He was strapped down at the waist and legs. This state, he says, caused him considerable pain because it aggravated a previous back injury, but he was unable to shift to a less painful position. When he asked for help, there was no response.⁴⁸

17. The flight lasted multiple hours and had a short 30-minute stop. Periodically, something he suspected was a pulse oxymeter was clamped onto his finger.⁴⁹ Eventually, he arrived in an unknown location, later confirmed to be Afghanistan,⁵⁰ which he described as “cold and muddy.”⁵¹

E. Detention in Afghanistan

⁴⁴ *Al-Asad v. Djibouti*, *supra* note 4, at 2.

⁴⁵ *Id.*

⁴⁶ RENDITION PROJECT, *supra* note 17.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Sudarsan Raghavan and Julie Tate, *supra* note 2, at 1.

⁵¹ AMNESTY INTERNATIONAL, *supra* note 23, at 12.

18. In Afghanistan, al-Asad was held in two different detention facilities.⁵² They were approximately 20-40 minutes apart by car over unpaved roads.⁵³ His cell at the first facility was large and dirty, with a rug and a high, narrow window; at the second facility, his cell was smaller and darker, and graffiti covered the walls.⁵⁴

19. Al-Asad is diabetic, and he says that he was not given necessary medication during this period of detention. As a result, he was often dizzy or ill.⁵⁵

F. Extraordinary Rendition to Third Facility

20. In April 2004, likely around the 24th, al-Asad was once again prepared for transfer using a method similar to the one inflicted on him previously.⁵⁶ According to Amnesty International, he and the prisoners transferred with him

were stripped naked before being given absorbent plastic underpants, a pair of knee length cotton trousers to wear over them, a cotton shirt, and a pair of blue overalls. They were handcuffed and their hands were strapped to a belt around their waist, their legs were shackled together and to the belt. Foam earplugs were inserted in their ears. They were blindfolded and had their mouths covered with a surgical facemask, presumably to prevent them from talking. They were then hooded, and tape or a bandage was wrapped around the hood to prevent movement. Finally, a pair of heavy, sound-deadening headphones were placed over the hood.⁵⁷

21. After a flight that al-Asad remembers being longer than four hours, the plane landed, and he was made to wait for about an hour. He was then thrown roughly into a helicopter with several other prisoners and flew for 2.5-3 hours. When the helicopter landed, he was taken to a new detention facility by car.⁵⁸

G. Detention in Third Facility, Likely Eastern Europe

⁵² *Al-Asad v. Djibouti*, *supra* note 4, at 2.

⁵³ AMNESTY INTERNATIONAL, *supra* note 23, at 12.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

22. Al-Asad spent 13 months in the final secret facility.⁵⁹ Though its location is unconfirmed,⁶⁰ it is believed that the facility was in Eastern Europe.⁶¹ Flight times, food offerings, weather patterns, and the variation in the hour of sunset all provide evidence for this conclusion.⁶²

23. This facility was new or refurbished, well-staffed and resourced, and highly organized.⁶³ In addition, Amnesty International reports that it was “carefully designed and operated to ensure maximum security and secrecy, as well as disorientation, dependence and stress for the detainees.”⁶⁴

24. During his detention at this facility, al-Asad was never permitted to go outside or to look through a window.⁶⁵ Artificial light was typically kept on for 24 hours per day, and when it failed the cells were pitch black.⁶⁶

25. All of the guards and officials at the facility were Americans. The director of the prison, one of the few people detainees saw unmasked, told al-Asad in 2004 that he was “at the top of the list” to be returned home.⁶⁷

H. Torture During Detention

26. During his detention in Djibouti, Afghanistan, and a third unconfirmed location, al-Asad was subject to numerous forms of torture. These included solitary confinement, constant loud

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Sudarsan Raghavan and Julie Tate, *supra* note 2, at 1.

⁶² AMNESTY INTERNATIONAL, *supra* note 23, at 13-15.

⁶³ *Id.* at 13.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 14.

⁶⁷ *Id.* at 13.

music, dietary manipulation, artificial light 24 hours per day, denial of adequate medical care, and exposure to cold weather.⁶⁸

I. Transfer to Yemen & Ultimate Release

27. On 5 May 2005, al-Asad was transferred to Yemeni custody.⁶⁹ He was transported in what was likely a small military jet.⁷⁰

28. The US Embassy had informed Yemeni officials of al-Asad's impending arrival the previous day. Yemeni officials received no information about evidence or charges against him, but were told to keep him in custody until his case file was transferred to Yemen. No case file arrived.⁷¹

29. After nine months of detention in Yemen, al-Asad was brought to trial for obtaining a false travel document. He pled guilty and was released on the basis of time served on 14 March 2004. This occurred about two and a half years after his initial arrest. At no point was al-Asad ever charged for any terrorism-related crime.⁷²

30. Upon his release, al-Asad told Amnesty International, "For me now, it has to be a new life, because I will never recover the old one."⁷³ He lost his business and was not permitted to return home to Tanzania; instead, he was forced to re-establish a life in Yemen along with his wife and five children, the fifth of whom was born while he was in detention.⁷⁴

J. Search for Justice

31. In 2009, British and American human rights lawyers confidentially filed legal documents at the African Commission on Human and People's Rights on al-Asad's behalf, requesting that

⁶⁸ *Al-Asad v. Djibouti*, *supra* note 4, at 2-3.

⁶⁹ *Id.* at 3.

⁷⁰ AMNESTY INTERNATIONAL, *supra* note 23, at 15.

⁷¹ *Id.* at 15-16.

⁷² *Id.* at 16.

⁷³ *Id.* at 16.

⁷⁴ Lauren Walker, *supra* note 11.

the government of Djibouti be held accountable for the abuses it committed.⁷⁵ They made the case public in 2011, apparently to put pressure on the body to move forward with the case.⁷⁶

32. In 2014, the African Commission on Human and People’s Rights rejected al-Asad’s case on the grounds that there was not sufficient evidence that he was detained in Djibouti.⁷⁷ Months later, leaks from the still-classified SSCI torture report executive summary revealed that, contrary to its previous denials, Djibouti played a significant role in the CIA’s Rendition, Detention, and Interrogation (RDI) program. Based on this new evidence, al-Asad’s lawyers have submitted a request for the Commission to reconsider its decision.⁷⁸

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

33. Al-Asad’s abuse was a serious violation of “one of the most universally recognized human rights”:⁷⁹ the prohibition on torture. The prohibition on torture is a peremptory norm. This status means that all states, including those that have not officially agreed to adhere to it, must uphold the prohibition. In addition, no situation justifies derogating from it.⁸⁰ There is, therefore, no circumstance that could have legitimized al-Asad’s abuse.

34. Beyond being a peremptory norm, the prohibition on torture is a pillar of the United States’ human rights policy. The country has upheld it in numerous treaties, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and

⁷⁵ Sudarsan Raghavan and Julie Tate, *supra* note 2, at 1.

⁷⁶ *Id.* at 2.

⁷⁷ *Al-Asad v. Djibouti*, *supra* note 4, at 37.

⁷⁸ CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, *Press Release: Rendition Victim Seeks Second Chance at Justice*, NEW YORK UNIVERSITY SCHOOL OF LAW (2014). <http://chrgj.org/rendition-victim-seeks-second-chance-at-justicecase-against-djibouti-demonstrates-urgent-need-for-transparency-about-cia-rendition-program/>.

⁷⁹ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

⁸⁰ *Id.*

Political Rights (ICCPR), and the Convention Against Torture (CAT). Each one of these treaties was violated by al-Asad's torture.

35. The UDHR and the ICCPR both require that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁸¹ Furthermore, the ICCPR reinforces the fact that no situation—not even public emergency—justifies making an exception to the prohibition. The torture inflicted on al-Asad violated both of these treaties.

36. The CAT, which was ratified by the U.S. in 1994,⁸² also prohibits torture.⁸³ Like the ICCPR, it additionally states that the prohibition holds even in “exceptional circumstances.”⁸⁴ The U.S. violated both of these provisions of the CAT by torturing al-Asad.

37. The U.S. also violated the CAT by failing to adequately train the personnel who inflicted the abuse on al-Asad. The CAT states that parties must “ensure that education and information regarding the prohibition against torture [are provided to all personnel] involved in a custody interrogation, or treatment of any individual to any form of arrest, detention, or imprisonment.”⁸⁵ The fact that al-Asad was tortured demonstrates that this obligation was not fulfilled.

38. The CAT was once more violated by the United States' failure to implement adequate measures to prevent torture. The CAT requires the United States to

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are

⁸¹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

⁸² UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

⁸³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

⁸⁴ CAT, *supra* note 18, at art. 2.

⁸⁵ CAT, *supra* note 83.

substantial grounds for believing that he would be in danger of being subjected to torture.⁸⁶

39. According to this provision, the United States must go beyond prohibiting torture within its borders by ensuring that no U.S. state or territory extradites an individual to a country where they could be tortured.⁸⁷ The U.S. did not adhere to this directive.

40. Pursuant to the Supremacy Clause of the U.S. Constitution, individual states also have this obligation. North Carolina is thus bound by law to ascertain that appropriate measures are taken to prevent torture, irrespective of where it occurs.

41. The way for North Carolina to uphold this responsibility is by taking “administrative” measures as described in the CAT. Specifically, North Carolina’s political entities and subdivisions must revoke or discontinue Aero’s “flying permits, licenses, and leases.”⁸⁸ Given Aero Contractors’ critical contribution to the RDI program and the torture it entailed, failure to do so would be a violation of the CAT.

42. Torture was not the only crime perpetrated against al-Asad. His extraordinary rendition also violated international law, namely, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).⁸⁹ The purpose of the Protocol is to eradicate “trafficking in persons,” which it defines as

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of

⁸⁶ CAT, *supra* note 72, at art. 2, 114.

⁸⁷ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

⁸⁸ *Id.*

⁸⁹ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁹⁰

43. The multiple extraordinary renditions suffered by al-Asad violate the Protocol's ban on human trafficking.

44. His ordeal violated other provisions of the Protocol, as well. For instance, the Protocol dictates that victims of human trafficking are entitled to "the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities."⁹¹ Al-Asad has not received any of these forms of assistance, despite being entitled to them as a victim of human trafficking. This state of affairs violates international law.

45. In addition, the Protocol dictates that "each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."⁹² Al-Asad has not been offered any path in the United States' legal system to obtain compensation for the abuses he suffered, which is a violation of the Protocol.

B. Federal Law Violations

⁹⁰ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

⁹¹ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

⁹² U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

46. Pursuant to the Supremacy Clause, treaties ratified by the United States are legally equivalent to federal statutes. In consequence, the international law violations outlined above constitute federal law violations as well.⁹³

47. Al-Asad's abuse violated additional federal laws beyond these treaties. For instance, the Eighth Amendment prohibits "cruel and unusual punishments."⁹⁴ The torture inflicted on al-Asad violates this clause of the Constitution.

48. The failure to seek accountability for al-Asad's torture also violates federal law. The Federal Torture Statute (FTS) states that anyone who "commits or attempts to commit torture" outside the United States "shall be fined under this title or imprisoned not more than 20 years, or both."⁹⁵ No American public official has ever been prosecuted for al-Asad's abuse; this violates the FTS.

49. Additional federal laws offer potential paths to accountability for al-Asad's torture. For example, the Alien Tort Statute (ATS) provides non-U.S. citizens who are the victims of egregious human rights violations with the capacity to sue government officials and private actors in U.S. courts. They can do so regardless of where the human rights violations in question occurred. In 2010, five former detainees used the ATS as grounds to sue the United States and Jeppesen Dataplan,⁹⁶ a company that provided "flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture."⁹⁷ This case sets a

⁹³ Weissman et al., *supra* note 87, at 36.

⁹⁴ U.S. CONST. amend VIII

⁹⁵ 18 U.S. Code § 2340A.

⁹⁶ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

⁹⁷ *Id.* at 13526.

precedent demonstrating that both the United States and Aero Contractors can be prosecuted under the ATS.

50. The Torture Victims Protection Act (TVPA) of 1991 can also be used to seek accountability for the United States' and Aero's crimes against al-Asad. Established to help fulfill the United States' obligations under the UN Charter and other mechanisms for the protection of international human rights, the TVPA implemented a "civil action for recovery of damages from an individual who engages in torture or extrajudicial killing."⁹⁸ The TVPA provides al-Asad with grounds to seek compensation for the abuse inflicted on him.

C. North Carolina Law Violations

51. In operating the planes used for the RDI program, Aero Contractors violated numerous North Carolina state laws. These violations place the state in the unique position of being able to achieve accountability for international human rights violations on a state level.

52. Many such violations were committed against the North Carolina Constitution. Under Article I, § 19 of the North Carolina Constitution, for instance, "no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . ."⁹⁹ Kidnapping, involuntary servitude, trafficking, and criminal conspiracy are addressed in other provisions of the Constitution; Aero Contractors facilitated or directly participated in all of those crimes by operating planes used for torture and extraordinary rendition.¹⁰⁰ The company therefore violated the North Carolina Constitution.

⁹⁸ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb., 106 Stat. 73, 73 (1992).

⁹⁹ N.C. CONST. art. 1, § 19.

¹⁰⁰ See N.C. GEN. STAT. § 14-39 (2016) ("Kidnapping"); see also N.C. GEN. STAT. § 14-2.4 (2016) ("Punishment for conspiracy to commit a felony").

53. Aero Contractors also violated section 14-39 of the North Carolina General Statutes. This section criminalizes kidnapping¹⁰¹ and additionally forbids “serious bodily harm to or terrorizing the person” who has been abducted.¹⁰² Furthermore, the North Carolina legislature has established the crime of “first-degree kidnapping,” wherein the kidnapped individual is not transported to a safe place, or has been “seriously injured or sexually assaulted.”¹⁰³ Al-Asad’s extraordinary rendition entailed kidnapping, and his torture constitutes “serious bodily harm” and “injury.” NGCS § 14-39 has thus been violated.

IV. Conclusion

54. According to state, domestic, and international law, the things al-Asad was forced to experience—including extraordinary rendition, extralegal detention, and torture—were illegal. As the entities responsible for these crimes, the United States, North Carolina and its political subdivisions, and Aero Contractors are legally bound to provide redress for al-Asad’s suffering. The ICCPR and the CAT even identify specific forms that redress might take, such as official acknowledgment, remedial action, and compensation for any damages incurred by victims.¹⁰⁴

The continued failure to provide redress to al-Asad sends an unacceptable message: that the United States endorses torture and allows it to be committed with impunity. This attitude conveys not only an abhorrent indifference to human rights, but also an assurance to potential perpetrators of torture that their crimes can be committed without fear of justice.

¹⁰¹ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

¹⁰² N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

¹⁰³ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

¹⁰⁴ *See* ICCPR, *supra* note 81; *see also* Convention Against Torture, *supra* note 83.

Salah Nasir Salim Ali Qaru

I. Introduction

1. Salah Nasir Salim Ali Qaru is a Yemeni national who was wrongfully detained in the CIA's secret prison system for approximately 2 years,¹ despite the fact that evidence against him was at best speculative.² After his 2003 arrest in Indonesia, Qaru was detained and tortured for several days in Jordan.³ From Jordan, Qaru was rendered to a secret prison in Afghanistan on a jet airplane operated by Aero Contractors headquartered in North Carolina,⁴ and then imprisoned for some time in a detention facility thought to be in Eastern Europe.⁵ Eventually, he was flown to Yemen, where, despite the submission of any proof against him, he pled guilty in February 2006 to obtaining a forged travel document and was released on the basis of time served.⁶

II. Detention

A. Detention in Indonesia

2. In August 2003, Qaru was taken into custody by Indonesian immigration officials, purportedly for questioning about his visa.⁷ However, Amnesty International reports that detaining people to question them about their immigration status is a common tactic in intelligence investigations by which to justify questioning and holding individuals,⁸ and it seems

¹ OPEN SOCIETY JUSTICE INITIATIVE, *Globalizing Torture: CIA Detention and Extraordinary Rendition* 52 (2013).

² SENATE SELECT COMMITTEE ON INTELLIGENCE, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* 16 (2014).

³ RENDITION PROJECT, *Salah Qaru*. <https://www.therenditionproject.org.uk/prisoners/qaru.html>.

⁴ RENDITION PROJECT, *Rendition Circuit Index*. [Unpublished.]

⁵ AMNESTY INTERNATIONAL, *United States of America: Below the Radar: Secret Flights to Torture and "Disappearance"* 12-13 (2006). <https://www.therenditionproject.org.uk/documents/RDI/060405-Amnesty-Below-the-Radar.pdf>.

⁶ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1, at 52.

⁷ AMNESTY INTERNATIONAL, *United States of America/Yemen: Secret Detention in CIA "Black Sites"* 6 (2005). (Salah Nasir Salim Ali Qaru is referred to in this report as Salim 'Ali), at <https://www.therenditionproject.org.uk/documents/RDI/051108-Amnesty-CIA-Black-Sites.pdf>.

⁸ *Id.* at 5.

that this was the true purpose of Qaru's detention. Despite the fact that his detention was ostensibly related to his immigration status, Qaru was held in an intelligence services center.⁹

3. At the intelligence services center, Qaru was chained to a wall for three days without food.¹⁰ His wife Aisha was tried to see him three times, but she was denied access. Qaru knew that she was attempting to call him because his cell phone was left right outside of his cell, slightly beyond his reach, and it rang repeatedly until its batteries failed.¹¹

4. After the intelligence services center, Qaru was held in a deportation center for three weeks.¹² He was eventually given a plane ticket to Yemen via Thailand and Jordan. Aisha, an Indonesian citizen, could not travel with him because she was in her last month of pregnancy.¹³

B. Detention in Jordan

5. In Jordan, Qaru was removed from the plane and questioned by the Jordanian General Intelligence Department (GID), who asked him if he had ever been in Afghanistan. Qaru, who had a stamp from Afghanistan on his passport, answered affirmatively and was taken into custody.¹⁴

6. The GID interrogated Qaru about "*jihad* in Afghanistan" for 10 days, which confused him because the questions had no relevance to the time period he had spent in Afghanistan. Qaru was "tortured horribly" during interrogations.¹⁵

7. For example, Qaru described

being suspended from the ceiling and having the soles of his feet beaten so badly that when they took him down from the hooks he had to crawl back to his cell. He was stripped and beaten by a ring of masked soldiers with sticks. 'When one got tired of hitting me, they would replace him,' he told Amnesty International. 'They

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.* at 6-7.

¹² *Id.* at 7.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

tried to force me to walk like an animal, on my hands and feet, and I refused, so they stretched me out on the floor and walked on me and put their shoes in my mouth.’ Another time, he said, a guard noticed he had a bad foot, and forced him to stand on it throughout the night while they interrogated him: sometimes during interrogation they held plates of food near his face while they ate, although he was not fed; sometimes they put out cigarettes on his arm.¹⁶

C. Rendition from Jordan to Afghanistan

8. On 9 September,¹⁷ after 10 days of detention in Jordan, Qaru was hooded and shackled, had foam stuffed into his ears, and was put on a plane. He was forced onto his back and his arms were chained to the floor during the flight that lasted 3-4 hours.¹⁸

9. The plane that transported Qaru to Afghanistan was a Gulfstream V jet registered as N379P. The plane was operated by Aero Contractors, a company based in North Carolina that flew out of Johnston County airport.¹⁹

D. Detention in Afghanistan

10. At the facility, which was likely the secret prison known as DETENTION SITE COBALT,²⁰ other detainees communicated to Qaru that he was in Afghanistan.²¹ Qaru was held at this facility for 7 months.²²

11. The guards at the prison were always covered and wore masks and gloves.²³ However, Qaru was able to identify that all the guards and interrogators were American.²⁴

¹⁶ *Id.*

¹⁷ RENDITION PROJECT, *Rendition Circuit Index* (2017) [Unpublished].

¹⁸ RENDITION PROJECT, *supra* note 3.

¹⁹ RENDITION PROJECT, *Rendition Circuit Index* (2017) [Unpublished].

²⁰ *Id.*

²¹ AMNESTY INTERNATIONAL, *supra* note 5, at 10.

²² RENDITION PROJECT, *supra* note 3.

²³ AMNESTY INTERNATIONAL, *supra* note 5, at 10.

²⁴ *Id.* at 10.

12. Qaru and the other prisoners at the facility were held in complete isolation in cells that were approximately 2 meters by 3 meters. In addition, they were constantly shackled to a ring attached to the floor and were monitored at all times by two cameras in the cells.²⁵

13. Whenever Qaru left his cell—for example, for a shower or interrogation—the guards required him to follow a specific routine. As the guard opened the door, Qaru was forced to turn his back to the door and place his hands on the wall opposite. He would then be hooded and handcuffed with his arms behind his back before his shackles were removed. Amnesty International reports that the hoods used in the prison “had a kind of noose that could be tightened around the neck if the detainee did not move fast enough or in the right direction.”²⁶

14. Qaru was allowed outside for 20 minutes once a week. During this time, he was brought to a courtyard with very high walls and forced to sit in a chair facing the wall. His hood would not be removed until he was seated. He was not allowed to look left or right, and a guard behind the chair would “enforce the rules.”²⁷

E. Rendition from Afghanistan to Unknown Location

15. In April 2004, likely around the 24th, Qaru was underwent preparations for another rendition.

He was stripped naked before being given absorbent plastic underpants, a pair of knee length cotton trousers to wear over them, a cotton shirt, and a pair of blue overalls. [He and the men with whom he was transported] were handcuffed and their hands were strapped to a belt around the waist, their legs were shackled together and to the belt. Foam earplugs were inserted in their ears. They were blindfolded and had their mouths covered with a surgical facemask, presumably to prevent them from talking. They were then hooded, and tape or a bandage was wrapped around the hood to prevent movement. Finally, a pair of heavy, sound-deadening headphones were placed over the hood. A similar process was described by Swedish police officers who witnessed a US-led renditions team preparing two

²⁵ *Id.* at 11.

²⁶ *Id.*

²⁷ *Id.*

men for transfer in December 2001; the renditions team told them that the procedures had become policy for transporting terrorist suspects “post 9/11”.²⁸

16. Qaru remembers being transported on a plane for three to four hours and then by helicopter for approximately two and a half to three hours. After that, he was taken to a new detention facility by car.²⁹

17. The CIA has refused to reveal the location of this detention facility, and different sources have speculated that it could be in different places. The Rendition Project believes that the facility was DETENTION SITE ORANGE,³⁰ which is also located in Afghanistan.³¹ However, Amnesty International provides extensive evidence suggesting that the facility was in Eastern Europe.³²

F. Detention in Unknown Location (Possibly Eastern Europe)

18. Qaru was imprisoned in this detention facility for 13 months.³³ The facility was “new or refurbished, and carefully designed and operated to ensure maximum security and secrecy, as well as disorientation, dependence and stress for the detainees.”³⁴ All of the guards and officials at the facility were Americans.³⁵

19. Upon arrival, Qaru was examined by a doctor or medic, who photographed him naked and noted wounds and marks on his body on a medical record. He was also weighed on a scale that measured only in pounds.³⁶

²⁸ *Id.* at 12.

²⁹ *Id.*

³⁰ RENDITION PROJECT, *supra* note 3.

³¹ Crofton Black and Sam Raphael, *Revealed: The Boom and Bust of the CIA's Secret Torture Sites*, BUREAU OF INVESTIGATIVE JOURNALISM (14 October 2015). <https://www.thebureauinvestigates.com/stories/2015-10-14/revealed-the-boom-and-bust-of-the-cias-secret-torture-sites>.

³² AMNESTY INTERNATIONAL, *supra* note 5, at 12-15.

³³ RENDITION PROJECT, *supra* note 3.

³⁴ AMNESTY INTERNATIONAL, *supra* note 5, at 13.

³⁵ *Id.*

³⁶ *Id.*

20. During his time at the detention facility, Qaru was never allowed to go outside or even look out a window.³⁷ Artificial light kept the cells bright 24 hours per day, and in the winter the cells were colder than anything he had ever experienced.³⁸

G. Detention in Yemen

21. Between 1-7 May 2005, after more than 19 months in CIA secret detention, Qaru was flown to Yemen alongside two other Yemeni detainees.³⁹

22. The U.S. Embassy in Yemen had informed Yemeni officials that Qaru and two other men would be transferred to Yemeni custody. The U.S. did not offer any information on their charges or evidence against them and instructed Yemeni officials to keep them in custody until their case files were transferred from Washington, D.C. No such files were ever transferred, and Qaru was held in arbitrary detention in Yemen for more than nine months.⁴⁰

23. On 13 February 2006, approximately two and a half years since his arrest, Qaru was brought to trial for “forgery in connection with obtaining a false travel document for personal use.”⁴¹ The alleged forgery was not produced as evidence. Nonetheless, Qaru pled guilty and was sentenced to two years in prison. Including the time he had spent in secret detention, he had already served his time, so a judge ordered his release.⁴²

24. Qaru was released in Aden on either 27 or 28 March. He was directed to report to political security every month and not to leave Aden without permission.⁴³

H. Aftermath of Detention

³⁷ *Id.*

³⁸ *Id.* at 14

³⁹ RENDITION PROJECT, *supra* note 3.

⁴⁰ AMNESTY INTERNATIONAL, *supra* note 5, at 15-16.

⁴¹ *Id.* at 16.

⁴² *Id.*

⁴³ *Id.*

25. Qaru’s ordeal has not ended with his release from arbitrary detention. Amnesty International describes what the lives of Qaru and Muhammad Basmilah, who was detained alongside him, are like now:

The prospects are...bleak for Muhammad Bashmilah and Salah Qaru. The men do not know if they will be reunited with their wives in Indonesia, who have been thrown into destitution by their absence. Even if they manage to raise the money, they may not get permission to travel to Indonesia. Nor will it be easy for them to support themselves in Yemen. Even though they were never charged with a terrorist offence, they believe that they will remain stigmatized because they were detained by the USA. Under suspicion by any potential employers, and harassed by the security and intelligence service, they fear they will never be able to lead normal lives or take care of their families. All three men have suffered emotional and physical trauma – Salah Qaru and Muhammad Bashmilah have described severe torture during their detention in Jordan and are in urgent need of medical attention for problems caused or exacerbated by the long months in isolation and secret detention.⁴⁴

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

26. Salah Nasir Salim Ali Qaru’s abuse in both Jordanian and American custody violated “one of the most universally recognized human rights”:⁴⁵ the prohibition on torture. As a peremptory norm, the prohibition on torture is applicable to all states—including those that have not agreed to abide by it—and in all situations—including conflict or emergency.⁴⁶ Qaru’s torture, therefore, cannot be justified by appealing to American intelligence or security concerns.

27. Furthermore, the United States has gone beyond observing the prohibition’s status as a peremptory norm by ratifying numerous international treaties that also forbid torture. These include the Declaration of Human Rights (UDHR), the International Covenant on Civil and

⁴⁴ *Id.*

⁴⁵ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

⁴⁶ *Id.*

Political Rights (ICCPR), and the Convention Against Torture (CAT). Qaru’s torture violates all of them.

28. Both the UDHR and the ICCPR dictate that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁴⁷ In addition, the ICCPR states that no situation—not even public emergency—legitimizes derogation from the prohibition. The torture Qaru suffered violated both of these treaties.

29. Ratified by the U.S. in 1994,⁴⁸ the CAT also forbids torture,⁴⁹ including in “exceptional” circumstances.⁵⁰ This provision, which represents the most essential purpose of the CAT, was violated by Qaru’s treatment.

30. The U.S. violated additional provisions of the CAT as well. For example, the CAT states that the United States must:

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.⁵¹

31. According to this provision, the United States must not only prohibit torture within its borders, but also ensure that no U.S. state or territory extradites someone to a country where they may experience torture.⁵²

⁴⁷ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

⁴⁸ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

⁴⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

⁵⁰ CAT, *supra* note 18, at art. 2.

⁵¹ CAT, *supra* note 18, at art. 2, 114.

⁵² Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

32. Pursuant to the Supremacy Clause of the U.S. Constitution, individual states must also adhere to this requirement. North Carolina is therefore legally obliged to ensure that appropriate measures are taken to prevent torture, regardless of where that torture occurs.

33. The state can and must fulfill that obligation through the “administrative” measures to which the CAT refers.⁵³ In particular, North Carolina’s political entities and subdivisions must revoke or discontinue Aero’s “flying permits, licenses, and leases.”⁵⁴ Considering the critical contribution Aero Contractors made to the rendition and torture of Qaru and many others, failing to do so would be a violation of the CAT.

34. Qaru’s extraordinary rendition, in addition to his torture, violated international law. Specifically, his rendition violated the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).⁵⁵ The Protocol is dedicated to the eradication of “trafficking in persons,” which it defines as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁵⁶

35. Qaru’s extraordinary rendition violated the Protocol’s ban on human trafficking.

⁵³ *Id.* at 38.

⁵⁴ *Id.*

⁵⁵ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

⁵⁶ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

36. Other aspects of his ordeal violated additional provisions of the Protocol, which dictate what entitlements are owed to victims of human trafficking. Those entitlements include “the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.”⁵⁷ Qaru has not received any of these forms of assistance, though his status as a victim of human trafficking should entitle him to them. This is a violation of international law.

37. The Protocol also states, “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”⁵⁸ Qaru has never been offered any opportunity to obtain compensation for the damage he has suffered, which violates the Protocol.

B. Federal Law Violations

38. Pursuant to the Supremacy Clause, treaties ratified by the United States legally bind individual states as fully as federal statutes. As a result, the international law violations detailed above also constitute federal law violations.⁵⁹

39. Beyond these treaty violations, still more federal laws were violated by Qaru’s treatment. The Eighth Amendment of the U.S. Constitution, for example, forbids “cruel and unusual punishments.”⁶⁰ Qaru’s torture violated this clause of the Constitution.

40. The lack of accountability regarding Qaru’s torture is another violation of federal law. The Federal Torture Statute (FTS) states that anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20

⁵⁷ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

⁵⁸ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

⁵⁹ Weissman et al., *supra* note 52, at 36.

⁶⁰ U.S. CONST. amend VIII

years, or both”.⁶¹ No American public official has ever been prosecuted for Qaru’s abuse, which violates the FTS.

41. Other federal laws could be used to achieve accountability for Qaru’s torture. One such law is the Alien Tort Statute (ATS), which grants non-U.S. citizens who are the victims of egregious human rights violations (no matter where those violations occur) the capacity to sue government officials and private actors in U.S. courts. In 2010, using the ATS, five former detainees sued the United States and Jeppesen Dataplan,⁶² a company that provided “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”⁶³ In doing so, they set a precedent for the prosecution of both the United States and Aero Contractors under the ATS.

42. The U.S. and Aero could also be held accountable under the Torture Victims Protection Act (TVPA) of 1991. Intended to assist in the fulfillment of the United States’ responsibilities under the UN Charter and other international human rights protection mechanisms, the TVPA “establish[es] a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”⁶⁴ Under the TVPA, Qaru has grounds to seek compensation for his torture.

C. North Carolina Law Violations

43. As a result of the significant contribution North Carolina made to the CIA’s torture and extraordinary rendition program, the government of the state is uniquely positioned to uphold

⁶¹ 18 U.S. Code § 2340A.

⁶² The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

⁶³ *Id.* at 13526.

⁶⁴ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmbll., 106 Stat. 73, 73 (1992).

human rights by holding Aero Contractors, a North Carolina company, accountable for Qaru's rendition. In particular, North Carolina can achieve accountability by penalizing Aero for its many violations of state law.

44. A number of those violations were committed against the North Carolina Constitution. For example, under Article I, § 19 of the North Carolina Constitution, "no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . ." ⁶⁵ Other provisions of the Constitution address kidnapping, involuntary servitude, trafficking, and criminal conspiracy, all of which Aero Contractors directly facilitated or participated in by operating planes used for torture and extraordinary rendition. ⁶⁶ The North Carolina Constitution was therefore violated.

45. In addition, section 14-39 of the North Carolina General Statutes criminalizes the act of kidnapping ⁶⁷ and further prohibits "serious bodily harm to or terrorizing the person" who has been abducted. ⁶⁸ The North Carolina legislature has also identified the crime of "first-degree kidnapping," wherein the kidnapped individual is not transported to a safe place, or has been "seriously injured or sexually assaulted." ⁶⁹ The extralegal abduction and detention of Qaru without his consent constitutes kidnapping, and his torture constitutes serious bodily harm, terror, and serious injury. As a result, NGCS § 14-39 has been violated.

IV. Conclusion

46. According to international, domestic, and state standards, the rendition, detention, and torture of Salah Nasir Salim Ali Qaru was illegal. It is incumbent on the entities responsible—

⁶⁵ N.C. CONST. art. 1, § 19.

⁶⁶ See N.C. GEN. STAT. § 14-39 (2016) ("Kidnapping"); see also N.C. GEN. STAT. § 14-2.4 (2016) ("Punishment for conspiracy to commit a felony").

⁶⁷ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

⁶⁸ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

⁶⁹ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

including the U.S. government, the North Carolina state government and its political subdivisions, and Aero Contractors—to provide recognition and redress.

47. The current impunity enjoyed by the perpetrators of Qaru's ordeal conveys that the United States endorses torture. Such an attitude runs counter to the country's purported commitment to human rights and to the many laws described above; it also encourages future atrocities. The absence of justice now ensures that future perpetrators will inflict torture with the assurance that their crime will go unacknowledged and unpunished.

Ramzi bin al-Shibh

I. Introduction

1. Born May 1, 1972, Ramzi bin al-Shibh is a Yemeni national who was detained by Central Intelligence Agency (CIA) officials for a period of 1,305 days.¹ In 1995, when bin al-Shibh was twenty-three years old, he unsuccessfully applied to obtain a U.S. visa in order to escape the civil war in Yemen.² After being denied entry to the United States, bin al-Shibh traveled to Munich, Germany and applied for asylum.³ His asylum application in Germany was also denied, which led him to seek a student visa at the German embassy in Sanaa, Yemen.⁴ He traveled back to Germany and remained there until 1999. The CIA alleged that bin al-Shibh was involved in terrorist activities including planning the attack on September 11, 2001, assertions that have not been verified. Moreover, in some instances they have been contested, and undermined by other evidence.⁵ Bin al-Shibh was rendered in Karachi, Pakistan and subjected to inhumane treatment torture through the Agency's "enhanced interrogation program" and labeled as a "high-value detainee."⁶ As defined by the U.S. Government, a high-value detainee "(1) is a senior member of al-Qai'da...; (2) has knowledge of imminent terrorist threats against the USA... or has had direct involvement in planning and preparing terrorist actions against the USA... and (3) if released, constitutes a clear and continuing threat to the USA or its allies."⁷ He is currently under military custody in Guantanamo Bay facing charges of conspiracy for the September 11th attacks.

¹ *Ramzi bin al-Shibh profile*, The Rendition Project,

<http://www.therenditionproject.org.uk/prisoners/binalshibh.html> (last visited June 26, 2017).

² Memorandum from the US Navy Rear Admiral to the Commander of the US Southern Command (Dec. 8, 2006), <https://www.nytimes.com/interactive/projects/guantanamo/detainees/10013-ramzi-bin-al-shibh>.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 5.

⁶ United States Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 101 (2014) [hereinafter USSCI].

⁷ COMMISSIONER FOR HUMAN RIGHTS: ADVANCING ACCOUNTABILITY IN RESPECT OF THE CIA BLACK SITE IN ROMANIA (2012).

II. Extraordinary Rendition from Pakistan

2. On September 11, 2002, a full year after the attack on September 11 and a year after the CIA claims to have suspected bin al-Shibh as having been a facilitator, Pakistani officials captured him while conducting raids in Karachi, Pakistan.⁸ Within a few days, bin al-Shibh was turned over to the U.S. authorities while the media raved about capturing “the most prominent al-Qaeda member ... to date.”⁹

3. Shortly after his capture, Ramzi bin al-Shibh was shackled and blindfolded so that he would not know where he was being taken or by whom. The exact whereabouts and rendition circuits that he endured cannot be known precisely because of the failure of the CIA to make all facts known to him or his counsel. However, the CIA was in control of his renditions and transfers and has been and remains aware of his whereabouts throughout his ordeal. Testimony from CIA officials and from other intelligence officers suggests that bin al-Shibh was being held either in Morocco or Jordan.¹⁰ Flight data and detailed testimony from several fellow detainees support the claim that he had been sent to Morocco.¹¹

4. In conformity with the testimony of the detainees, it is believed that flight number N379P carried bin al-Shibh from Afghanistan to Morocco on September 27, 2002.¹² N379P is known to be a CIA-owned Gulfstream V jet that is based at the Johnston County Airport in Smithfield, North Carolina.¹³ The aircraft was generally housed and operated by Aero Contractors, Ltd., a

⁸ *Id.*

⁹ Kelli Arena, “*Binalshibh to go to third country for questioning*”, CNN (Sep. 17, 2002) at <http://www.edition.cnn.com/2002/WORLD/asiapcf/south/09/16/alqaeda.pakistan/>

¹⁰ *Ramzi bin al-Shibh*, supra note 1.

¹¹ *Id.*

¹² *Known Rendition Circuits*, The Rendition Project, <https://www.therenditionproject.org.uk/flights/aircraft/N379P.html> (last visited June 17, 2017).

¹³ *Id.*

privately-owned company headquartered in Johnston County. The company acquired permits from the North Carolina government to begin operations, was issued a North Carolina state identification number, employs residents of the state, and enjoys benefits from state and local resources. As a private entity, Aero Contractors, Ltd., necessarily must comply with federal and state laws against torture. Aero contractors provided the vehicle and flight crew necessary to complete the rendition operation.

5. Once Aero Contractors, Ltd., had arrived at the location of bin al-Shibh and the CIA had him in its possession, his extraordinary rendition ordeal commenced. The procedure for the capture and transport of all detainees in CIA custody has been found to be very uniform. Victims of the rendition program spoke of their experience which was then summarized by the Red Cross:

The detainee would be photographed, both clothed and naked prior to and again after transfer. A body cavity check (rectal examination) would be carried out and some detainees alleged that a suppository... was also administered at that moment.¹⁴

6. Ramzi bin al-Shibh was then forced to put on a diaper and a tracksuit, earphones, a blindfold, and black goggles.¹⁵ He was shackled, hands and feet, and taken to the plane.¹⁶ He was not allowed to go to the bathroom and was forced to relieve himself in his diaper. The flight lasted anywhere from twenty-four to thirty hours and was designed to disorient bin al-Shibh, confuse him as to where he was being taken, and instill in him hopelessness and the belief that the CIA had complete control over him at all times.¹⁷

¹⁴ INTERNATIONAL COMMITTEE OF THE RED CROSS: ICRC REPORT ON THE TREATMENT OF FOURTEEN “HIGH VALUE DETAINEES” IN CIA CUSTODY (2007) [hereinafter ICRC].

¹⁵ *Supra*, note 14.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

III. Detention and Torture at CIA Black Sites

7. While in Morocco, Ramzi bin al-Shibh was detained at a prison run by Moroccan intelligence but funded by the CIA.¹⁸ His transfer to a Moroccan prison by the CIA occurred despite the fact that the United States knew that Morocco regularly abused prisoners.¹⁹ He remained at this site from late 2002 to early 2003. The torture he suffered in a Moroccan prison would not have occurred but for his having been extraordinarily rendered on a plane operated by Aero Contractors.

8. Several years after bin al-Shibh was released from Moroccan custody, two video tapes of his interrogations were released to the public.²⁰ Officials assert that both videos reveal a standard interrogation session but do not show violence or torturous actions.²¹ He was presented with questions and given the opportunity to answer with explanation. Bin al-Shibh was reported to have been very cooperative with this type of interrogation technique, providing information that was used in over fifty CIA intelligence reports.²² One CIA official even remarked that “[o]verall, [Ramzi bin al-Shibh] provided what was needed.”²³ However, the CIA headquarters felt that more drastic measures needed to be taken to obtain a greater amount of information from bin al-Shibh and transferred him to another site to be exposed to more extreme measures.²⁴

8. Believing Ramzi bin al-Shibh to have additional information vital to the United States’ war on terror, the CIA transferred him to what was referred to as detention site BLUE in

¹⁸ *Known Rendition Circuits*, supra note 12.

¹⁹ Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644_2.html

²⁰ *See 9/11 Tapes Found Under Interrogation Desk*, MSN and NBC News, Aug. 17, 2010 http://www.nbcnews.com/id/38735351/ns/us_news-security/#.WVZYdIGQyUk. It is worth mentioning that the CIA destroyed tapes of interrogation by torture. *See* Mark Mazzetti, *U.S. Says C.I.A. Destroyed 92 Tapes of Interrogations*, N.Y. Times, Mar. 3, 2008 at A16.

²¹ *Id.*

²² USSCI, supra note 6 (2014).

²³ *Id.*

²⁴ *Id.*

February of 2003.²⁵ The information has also been corroborated by the Council of Europe's Committee on Legal Affairs and Human Rights. "Poland housed what the CIA's Counterterrorism Centre considered its 'most sensitive HVDs.'"²⁶ One CIA official remarked that nearly a dozen HVDs were kept in Poland.²⁷ This rendition from Morocco to Poland, where detention site BLUE was based, was again performed by Aero Contractors, Ltd. The same North Carolina-based N379P plane was used for this transport. However, this rendition was carried out with even less transparency. A dummy flight plan was filed under the alias of Jeppesen International Trip Planning rather than the company's true name in order to conceal Aero's involvement with the extraordinary rendition program.²⁸

9. Upon arrival to site BLUE, bin al-Shibh was stripped naked and subjected to sensory dislocation which included having his head and face forcibly shaved. His captors exposed him to loud noises and bright lights, forced him to withstand unnaturally cold temperatures, and shackled him with his hands above his head.²⁹ He was deprived of solid food for nearly 4 weeks and was prohibited from wearing any clothing.³⁰ Although the Agency's policy was to allow each detainee the opportunity to cooperate through non-violent interrogation before subjecting him/her to enhanced interrogation, this practice was not afforded to bin al-Shibh. Bin al-Shibh's interrogation plan instructed officials to begin with these inhumane techniques in order to "diminish" his "initial resistance level" rather than allow him to comply on his own volition.³¹ This torture plan became the framework for all other High-Value Detainees within the program.

²⁵ *Id.*

²⁶ *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*, Committee on Legal Affairs and Human Rights, Council of Europe, 24 (June 7, 2007).

²⁷ *Id.*

²⁸ *Ramzi bin al-Shibh profile*, supra note 1.

²⁹ United States Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 77 (2014) [hereinafter USSCI].

³⁰ *Ramzi bin al-Shibh profile*, supra note 1.

³¹ USSCI, supra note 29.

10. Through June 6, 2003, interrogators at site BLUE continued to perform enhanced interrogation techniques on bin al-Shibh including forced sleep deprivation, slaps across the face and in the abdomen, and holding him in total darkness to instill a sense of fear of his interrogators.³² Bin al-Shibh also testified to being sprayed with a hose during interrogations and shackled to a bed for over a month in cold temperatures.³³ He further stated that when he was forcibly shaved, officers would deliberately leave some patches unshaven to make him feel even more undignified.³⁴

11. After his time at site BLUE, bin al-Shibh was transported back to Morocco where he remained another three and a half months. This rendition was also executed by Aero Contractors, Ltd., marking the third time that the North Carolina company aided and abetted in the torture of Ramzi bin al-Shibh.³⁵ Over the next several years, bin al-Shibh was transferred to a military prison in Guantanamo Bay, transferred back to Morocco and then moved to Romania. Each time he was transferred, his captors used the same cruel and inhumane techniques described above.

12. By early 2006, he had been shuffled around the enhanced interrogation program for over three years, facing extreme isolation and having no contact with his family who believed him to be dead. About a year before his final rendition to Guantanamo Bay, Cuba, psychologists assessed Ramzi bin al-Shibh and recorded his severe psychological disturbances – all ramifications as a result of his torture. He experienced “visions, paranoia, insomnia, and attempts at self-harm.”³⁶ A psychologist on site wrote: “in [bin al-Shibh’s] case, it is important to keep in mind that he was previously a relatively high-functioning individual, making his deterioration over the past several

³² *Id.* at 80.

³³ ICRC, *supra* note 14.

³⁴ *Id.*

³⁵ *Ramzi bin al-Shibh profile*, *supra* note 1.

³⁶ USSCI, *supra* note 29.

months more alarming.”³⁷ Since his release from his initial Moroccan custody in 2002, bin al-Shibh has provided the CIA with very little useful information, suggesting that the use of extreme extraordinary rendition practices and torture for four years of his life was of no benefit to assisting with the so-called significance to war on terror.³⁸ Rather than allow him a fair trial, the CIA subjected him to years of inhumane treatment in hopes of gaining al-Qaeda intelligence.

13. On September 5, 2006, Ramzi bin al-Shibh was transferred into U.S. military custody at Guantanamo Bay, Cuba, where he was placed on anti-psychotic medications.³⁹ He has since been charged with conspiracy for the 9/11 attacks and is awaiting military trial.⁴⁰

IV. Violations of Law

A. International Law

14. Torture is defined in the Convention Against Torture (CAT) as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession...”⁴¹ The rendition, detention, and enhanced interrogation of Ramzi bin al-Shibh by the United States’ Central Intelligence Agency is a textbook example of the type of action against which the Convention Against Torture was meant to protect. As a party to the convention, the United States is bound by this document. Although the nation was heartbroken over the events of September 11 and the administration was in disarray and desperately seeking answers for the wellbeing of national security, the Convention expressly provides that “no exceptional circumstances whatsoever, whether a state of war or a threat of war... may be invoked as a justification of torture.”⁴²

³⁷ *Id.*

³⁸ *Id.* at 76.

³⁹ *Id.*

⁴⁰ *Ramzi bin al-Shibh profile*, supra note 1.

⁴¹ *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*, Article 1 (Dec. 10, 1984).

⁴² *Id.* at Article 2.

15. The document also prohibits the extradition of individuals to foreign governments with constructive knowledge that the individual would be subjected to torture. Article 3 states:

“(1) No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”⁴³

This provision directly prohibits the extraordinary rendition program that the CIA had established and operated throughout the first decade of the century.

17. Similar to the Convention Against Torture, the United States is an active member of the UN and was a party to the United Nations’ Universal Declaration of Human Rights (UDHR). Therefore, the U.S. is bound to its provisions. Article 5 of the UDHR states that “[n]o one shall be subject to torture or to cruel, inhumane, or degrading treatment or punishment.”⁴⁴ In addition, the Declaration also contains a clause implemented into Article 8 that grants individuals “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁴⁵ From 2002-2006, bin al-Shibh was not given the opportunity to be heard or a fair trial. He was subjected to torture tactics for four years before he was transferred to Guantanamo Bay, Cuba, where he still awaits a proper hearing today.

16. Article 7 of the International Covenant on Civil and Political Rights also lays out a prohibition on torture: “No one shall be subjected to torture or to cruel, inhumane, or degrading treatment or punishment.”⁴⁶ This treaty is of particular importance because it was ratified less

⁴³ *Id.* at Article 3.

⁴⁴ Universal Declaration of Human Rights, art. 5, G.A. Res. 217(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

⁴⁵ *Id.*

⁴⁶ International Covenant on Civil and Political Rights, art. 7 (Dec. 16, 1966).

than ten years before the rendition program was established. The treaty went into effect on September 8, 1992.⁴⁷

B. United States Federal Law

17. In addition to the Eighth Amendment to the U.S. Constitution which prohibits cruel and unusual punishment, 18 U.S.C. § 2304 defines torture as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control.” Accordingly, the Code provides that anyone who “commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years for life.” 18 U.S.C. § 2304A(a) (2004). Considering that the aforementioned provision has been enacted within the criminal code, violation of this law would create severe consequences for the offender.

C. North Carolina State Law

18. North Carolina Constitution states that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”⁴⁸ The Constitution also requires that if anyone be facing criminal charges, they must be formally indicted, presented, or impeached.⁴⁹ Throughout the entirety of the rendition program, Ramzi bin al-Shibh was not given a proper trial and was not presented with any charges.

V. Conclusion

⁴⁷ *Id.*

⁴⁸ N.C. Const. art. 1, § 19.

⁴⁹ N.C. Const. § 17.

In conclusion, Ramzi bin al-Shibh was treated inhumanely with an extreme disregard for his life and liberty. He was shuffled around the CIA rendition program for four years, being shackled, stripped, screamed at, slapped, and deprived of food and social interaction. He will suffer the emotional ramification of this period for the rest of his life. Bin al-Shibh experienced years of physical and emotional torture and it is the responsibility of North Carolina, Aero Contractors, and federal officials to take responsibility for this terrible set of events.

Mustafa Salim Ali el-Madaghi

I. Introduction

1. Mustafa Salim Ali el-Madaghi was born in Libya and spent his entire adolescent life in the country. He was a devout Muslim throughout his childhood and into his young-adult years. Reflecting on his memories throughout the 1980s and early 1990s, el-Madaghi remarked that he had been stigmatized and ostracized for his religion.¹ Specifically, under the Muammar Gaddafi's reign in Libya, el-Madaghi feared for his well-being as a Muslim. He stated, "I had a beard when I was at the university and it was obvious I used to pray."² He continued on to admit that he "was afraid to show anything like that because such an appearance was considered an act of outright opposition" to the Gaddafi regime.³ As time passed and the number of arrests under Gaddafi escalated, el-Madaghi fled Libya in 1990.⁴ Of el-Madaghi's friends and relatives that chose to stay in the country, many were imprisoned or killed.⁵

2. Upon fleeing Libya from religious persecution, el-Madaghi traveled to Afghanistan where he would eventually join the LIFG.⁶ The LIFG, or the Libyan Islamic Fighting Group, was established in order to overthrow Muammar Gaddafi's government in Libya. Gaddafi's government was seen by many Libyan nationals as oppressive and anti-Muslim.

3. After joining the group, el-Madaghi traveled to Sudan where he spent a brief period of time, and then continued on to Mauritania, usually alternating between two aliases, Mustafa Salim Ali Moderi Tarabulsi or Shaykh Musa, for his personal protection.⁷ Throughout his time in

¹ HUMAN RIGHTS WATCH: DELIVERED INTO ENEMY HANDS: US-LED ABUSE AND RENDITION OF OPPONENTS TO GADDAFI'S LIBYA (Sep. 5, 2012)

² Human Rights Watch, *supra* note 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Mauritania, el-Madaghi served as the deputy to Saleh Hadiyah Abu Abdullah Di'iki, another LIFG member who was forcibly rendered and detained by the Central Intelligence Agency (CIA).⁸

II. Extraordinary Rendition from Mauritania

4. On February 5, 2004, while living with his wife and children in Mauritania, Mustafa Salim Ali el-Madaghi was arrested by the Mauritanian intelligence, just four months after the rendition of Di'iki.⁹ Madaghi was blindfolded and taken to a secret detention facility where he remained in isolation for two days before he was questioned.¹⁰ For the first two days that he was in isolation, no Mauritanian intelligence official questioned him. He was not presented with charges, not given the opportunity to be heard, and was not told where he was being held.

III. Detention and Torture

5. After the first two days of solitary confinement, el-Madaghi was introduced to his interrogators. A group of foreigners had arrived at the detention center and the interrogations were conducted by a foreigner who spoke Arabic with a Lebanese accent.¹¹ Two other men were present for one interrogation session – the head of the Mauritanian intelligence and a Mauritanian interrogator.¹² Madaghi told Human Rights Watch that he believes the foreign interrogator was American because “he asked about threats to the United States, talked on the phone in English, and sent text messages in English on his cell phone.”¹³

6. The interrogations lasted ten days.¹⁴ When the interrogator questioned el-Madaghi, he was determined to obtain confessions about involvement with Al-Qaeda. When el-Madaghi

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

insisted that he was not affiliated with Al-Qaeda and was only a member of the Libyan Islamic Fighting Group, the interrogation did not cease. The official threatened to hurt his wife and children.¹⁵ The interrogator brought his wife to the detention facility and made el-Madaghi look at her through the key hole.¹⁶ He was told that she would be raped and hurt if he did not provide the information that they requested.¹⁷ The officials even went to his home, recorded his children's voices, and played it back for el-Madaghi to hear. All of these tactics were intended to make el-Madaghi confess to his involvement with Al-Qaeda, which he had been insisting he was not affiliated with. El-Madaghi was detained in Mauritania for nearly two months – from February 5, 2004, through the end of March 2004.¹⁸

7. In March of 2004, el-Madaghi was woken up in the middle of the night, blindfolded and shackled.¹⁹ He was placed on a bus and sent to the airport.²⁰ The officials on the bus with el-Madaghi, men he believed to be Americans, stripped him naked, took pictures of him exposed, put him in a diaper, forced him to wear headphones, and kept his hands and feet bound with a blindfold over his eyes.²¹ He was also given a routine health inspection by getting his ears and eyes checked. These actions are consistent with other CIA rendition victims.

8. He was taken to a detention facility in Morocco where his interrogations continued. They housed him in a freezing room, dumped ice-cold water on him, and threatened him with violence. El-Madaghi claimed that the interrogations were nearly identical to the interrogations led by the foreign official in Mauritania. He was kept in a room underground with a small window near the top of the wall that allowed some light exposure. He could hear the daily call to

¹⁵ *Id.* at 79.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 80.

prayer and could hear the intelligence officials bringing in other prisoners.²² Altogether, el-Madaghi was detained here for forty days.

9. On April 14, 2004, the CIA notified Libyan authorities that they were willing to negotiate a transfer of el-Madaghi back into Libyan custody.²³ On May 5, 2004, he was moved again and, not knowing where he was to be sent, he begged not to be sent back to Libya out of fear of the religious persecution and potential physical harm that could await him upon his return. He was put through the same CIA extraordinary rendition program to which he was subjected to on his way out of Mauritania. He was blindfolded, constrained with headphones and shackled. This time, he was able to loosen his headphones slightly to try to figure out where they were taking him, and he was beaten for it.²⁴ He was transferred from one car to another and then to a plane where he was chained to a chair.²⁵

10. Against his protests, el-Madaghi was taken to Libya. About two weeks after his arrival, Musa Kusa, then Libyan foreign intelligence chief, came to visit him.²⁶ El-Madaghi recounted the experience with Human Rights Watch:

He asked me: ‘Do you know who brought you here?’ I didn’t want to say anything. He said ‘The Americans brought you here. It’s all over now. There is cooperation between us and the Americans.’ I was sure that was the case, but then he just confirmed it for me.²⁷

11. El-Madaghi’s story is corroborated by Eurocontrol flight data filed with Human Rights Watch. There is record of a CIA-affiliated plane, N379P, traveling from Washington, DC, to

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Nouakchott, Mauritania. On March 25, 2004, that was believed to have captured Mustafa Salim Ali el-Madaghi and rendered him to Morocco.²⁸

12. Plane number N379P is generally housed and operated by Aero Contractors, Ltd., a privately-owned company headquartered in Johnston County, North Carolina. This North Carolina-based company is a fixture of the small town of Smithfield, North Carolina, because it employs many of the residents. Aero Contractors, Ltd., is registered in the state, was issued state permits for its airport's constructions, and receives benefits from the local government. It this North Carolina company that is believed to have conducted many extraordinary rendition flights including that of el-Madaghi.

13. Once in Libyan custody, el-Madaghi was placed into solitary confinement. He was housed in a room that contained no bed and had no windows. He was given a blanket and a concrete floor to sleep on.²⁹ For the first two years of his detention in Libya, he was not formally charged, and he was not given a trial. But for the CIA's voluntary transfer of el-Madaghi to the Libyan intelligence, el-Madaghi would not have been subjected to such inhumane treatment. The CIA had knowledge of the conditions that el-Madaghi would be subjected to under Libyan control. After his first two year in custody, el-Madaghi was charged with trying to overthrow the Libyan government and given a life sentence. He was not released from Libyan control until February 16, 2011, when Gaddafi was overthrown from power.

IV. Violations of Law

A. International Law

14. The United Nations' Universal Declaration of Human Rights (UDHR) is a document that was written and signed by the member states of the United Nations (UN). As an active

²⁸ *Id.* at 82.

²⁹ *Id.*

participant of the UN, the United States is legally bound to the UDHR provisions. Article 5 states that “[n]o one shall be subject to torture or to cruel, inhumane, or degrading treatment or punishment.”³⁰ Article 8 also contains a clause that guarantees an individual the right to “an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”³¹ During the CIA’s custody of el-Madaghi, he was placed in confinement and not given a fair trial. Though he continuously told his interrogators that he was a member of the LIFG and not of Al-Qaeda, they continued to detain him against international law.

15. Second, the International Covenant on Civil and Political Rights states that “No one shall be subjected to torture or to cruel, inhumane, or degrading treatment or punishment.”³² This Covenant was entered into on September 8, 1992, just 9 years before the rendition program went into effect.³³ It is also important to note that the preamble to this Covenant also states that the ratifying nations recognize the “inherent dignity” and “inalienable rights of all members of the human family,” calling those values the “foundation of freedom, justice and peace in the world.”³⁴

16. Third, the Convention Against Torture (CAT) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession...”³⁵ Mustafa Salim Ali el-Madaghi’s treatment under CIA control was in direct violation of the United States’

³⁰ Universal Declaration of Human Rights, art. 5, G.A. Res. 217(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

³¹ *Id.*

³² International Covenant on Civil and Political Rights, art. 7, Sept. 8, 1992.

³³ *Id.*

³⁴ *Id.* at Preamble.

³⁵ *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*, Article 1 (Dec. 10, 1984).

promise to refrain from using torture as a means to obtain information from suspected enemies. El-Madaghi was blindfolded, stripped naked, and threatened in order to gain insight into Al-Qaeda's operations. El-Madaghi's family was terrorized by being taken to the detention facility where el-Madaghi was being held and also by being subjected to video-taping in order to use it as leverage against el-Madaghi.

17. The CAT also prohibits extradition of individuals in Article 3:

“(1) No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”³⁶

The CIA knowingly violated this provision that is contained in Article 3 of the Convention Against Torture. When the CIA negotiated a deal with Libya that allowed for the transfer of el-Madaghi back into Libyan custody, the United States had constructive knowledge that el-Madaghi would not be afforded humane treatment and would not be given a proper trial. The U.S. was aware of the Gaddafi regime and its mistreatment of those who did not comply, yet they allowed for his release to Libyan intelligence and the retention of el-Madaghi in detention centers for years before his release.

B. United States Federal Law

18. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, 18 U.S.C. § 2304 defines torture as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control.” Additionally, the Code provides

³⁶ *Id.* at Article 3.

that anyone who “commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years for life.” 18 U.S.C. § 2304A(a) (2004). Considering that the aforementioned provision has been enacted within the criminal code, violation of this law would create severe consequences for the offender.

C. North Carolina State Law

19. North Carolina Constitution states that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”³⁷ The Constitution also requires that if anyone be facing criminal charges, they must be formally indicted, presented, or impeached.³⁸ Throughout the entirety of the rendition program, Mustafa Salim Ali el-Madaghi was not given a proper trial and was not presented with any charges. He was also transferred into Libyan custody where he was further restricted from obtaining a proper trial. This transfer was made possible by Aero Contractors, Ltd., a North Carolina business that must be held accountable to North Carolina state law.

V. Conclusion

20. Mustafa Salim Ali el-Madaghi was extraordinarily rendered in Mauritania and subjected the United States’ CIA extraordinary rendition program for months. During his time in the program, he was starved, sleep-deprived, shackled, and subjected to psychological distress. His family was threatened, along with himself, without affording him a chance at a trial. He was transported by Aero Contractors, Ltd., a North Carolina company, and treated as though his life

³⁷ N.C. Const. art. 1, § 19.

³⁸ N.C. Const. § 17.

was worth nothing. It is time for Aero Contractors, North Carolina, and federal officials to take responsibility for their part in this program.

Mohammed Saad Iqbal Madni

I. Introduction

1. Mohammed Saad Iqbal Madni was born on October 17, 1977, in Lahore.¹ He is a citizen of Pakistan.² Madni moved to Indonesia with his family when he was young but had moved back to Lahore by 1993.³ When in Pakistan, Madni told U.S. officials that he worked for a mosque where he taught Islamic Studies.⁴ According to a Department of Defense memo, as early as the age of 21, Iqbal taught at a university in Lahore.⁵ Madni moved once again to Indonesia in November of 2001.

2. Throughout his short time in Indonesia, Madni worked for an Islamic radio station where he read the Koran over a live broadcast.⁶ Madni began spending time with an organization monitored by the Indonesian government although the group was a legal organization. Indonesian officials heard Madni's off-hand comment about explosions in shoes and notified the Central Intelligence Agency (CIA) of the potential threat.⁷ The United States then instructed the Indonesian government to hold him until U.S. officials arrived. As a result of the investigations, the CIA also classified Madni as a member of Al-Qaeda with close familial ties to existing Al-Qaeda extremists.⁸

¹ Memorandum from the Major General to the Commander of the US Southern Command (Aug. 26, 2005), <https://www.nytimes.com/interactive/projects/guantanamo/detainees/743-muhammad-saad-iqbal>

² *Mohammed Saad Iqbal Madni*, The Rendition Project, <https://www.therenditionproject.org.uk/prisoners/madni.html>

³ Memorandum, supra note 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Madni Profile*, supra note 2.

⁷ *Id.*

⁸ Memorandum, supra note 1.

II. Extraordinary Rendition

3. Mohammed Saad Iqbal Madni was arrested in Jakarta, Indonesia, by Indonesian police on January 9, 2002.⁹ He testified that nearly twenty Indonesian officers raided his home, captured him, and took him to the Jakarta airport.¹⁰ He was held and interrogated for two days by Indonesian and Egyptian officials, waiting for U.S. officials to arrive and take Madni into their custody.¹¹ The Egyptian intelligence stripped Madni down until he was not wearing any clothes, placed him in shackles around his neck and his feet while naked, and even kicked him while he was on the ground.¹² At the end of the two days, his captors prepared to move him. Madni later recalled in a BB Radio 4 interview:

One person from Egyptian intelligence, he come and he punched me in my chest and he grabbed me with one hand and he threw me against the wall, and at that time I got a perforation in my eardrum and start bleeding from my ear and my nose, my throat, my mouth also. And they put me in handcuffs and leg shackles they threw me inside a car and then they take me to plane, the CIA aircraft. Inside aircraft they put me inside a box, was like a wood box, and the top was with a plastic sheet. I was, can't move my body because the shackle was very tight and very painful.¹³

4. The CIA aircraft that Madni referenced was the Gulfstream V jet that is commonly referred to as flight N379P. This aircraft has been used in dozens of other renditions throughout the Bush administration. The plane is regularly housed at a small airport in Smithfield, North Carolina, and is owned and operated by a North Carolina company – Aero Contractors, Ltd.¹⁴ Aero Contractors, Ltd., is a privately held business headquartered in Johnston County. Its

⁹ Memorandum, supra note 1.

¹⁰ Witness Statement of the Claimant, The Rendition Project, ¶ 1, <https://www.therenditionproject.org.uk/documents/RDI/090818-Madni-v-BIOT-Witness-Statement-of-Claimant.pdf>

¹¹ *Madni Profile*, supra note 2.

¹² Witness Statement, supra note 10.

¹³ *Id.*

¹⁴ *Rendition Circuit: 9-15 January 2002*, The Rendition Project, <https://www.therenditionproject.org.uk/flights/renditions/N379P-020109.html>

purpose is to supply aircraft and a flight team to meet its clients' needs. Throughout the first decade of the century, it has been contracted out by the CIA in order to aid in the extraordinary rendition program the CIA developed. Aero would provide the vessel and the crew necessary in order to transport government officials from Washington Dulles Airport to wherever the targeted individual was located. Aero would then transport the captive to one of dozens of CIA black sites located around the world. Although Aero is a private company, it has significant ties to the local community and has continued to operate despite its black stain on the community. The company is registered in North Carolina, obtained construction and operational permits from the local government, and employs many Johnston County residents.

5. Flight data from N379P shows that the plane left from Johnston County Airport on January 9, 2002, and stopped at Washington Dulles International Airport, most likely to pick up the CIA rendition team.¹⁵ From Washington, the plane flew directly to Cairo to pick up Egyptian officials.¹⁶ For the next six days, no record of the plane was found.¹⁷

6. When U.S. officials took custody of Madni at the Jakarta airport, they put clothes on him, put a hood over his head, and forced him into N379P.¹⁸ When he walked onto the plane, intelligence officials forced him to lay down in a coffin in the back of the aircraft.¹⁹ Inside the coffin was shackles that wrapped all around Madni's body and fastened tight enough so that he could not move.²⁰ After several hours of flight, officials lifted the lid off the box so that Madni could urinate in a bottle.²¹ After several more hours, Mohammed Saad Iqbal Mandi landed in Cairo, Egypt.

¹⁵ *Rendition Circuit*, supra note 14.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Witness Statement, supra note 10.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Witness Statement, supra note 10.

III. Detention in Egypt, Afghanistan, and Guantanamo

7. Madni was extraordinarily rendered on January 11, 2002, and was taken to Cairo where he was detained for 92 days.²² Upon his arrival, he was placed into a car and driven to an Egyptian Intelligence office about thirty minutes from the airport.²³ He was given a medical examination where he was told that he was “bleeding from [his] nose, ears and mouth, and that there was blood in [his] urine. Although examined [he] was not treated.”²⁴ He was placed in an underground cell that resembled a grave – measuring six feet by four feet.²⁵ He was interrogated for up to 15 hours at a time by Egyptian personnel.²⁶ Madni recalled that most of the interrogations revolved around his involvement with Al-Qaeda, questions about Afghanistan and bin Laden.²⁷

8. Like several of the other captives, Madni was subjected to shock torture when he was thought to be lying or uncooperative.²⁸ The shock instruments were attached to his head and his knees.²⁹ Madni was also forced to drink something that he was instructed was tea but he believed to contain drugs.³⁰ His interrogators would force him to drink, leave the room, and ask him questions over a microphone. This severely disoriented him and left him confused. He was also hung from the ceiling and beaten to the point of bleeding.³¹

9. On April 11, 2002, Madni was forced to sign a document that stated that he was never tortured during his time in Cairo.³² With the signing of this document, Madni’s time in Cairo

²² *Madni Profile*, supra note 2.

²³ Witness Statement, supra note 10.

²⁴ *Id.*

²⁵ *Madni Profile*, supra note 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Witness Statement, supra note 10.

³⁰ *Id.* at ¶ 9.

³¹ *Id.* at ¶ 10.

³² *Id.* at ¶ 11.

came to an end. The torture he experienced in Egypt would not have occurred had he not been extraordinarily rendered on an Aero plane operated out of Johnston Co., NC.

10. Madni was then passed along to U.S. officials who transferred him to Bagram, Afghanistan.³³ This extraordinary rendition was again carried out through the use of N379P and Aero Contractors, Ltd.³⁴ This marks the second time that Mohammed Saad Iqbal Madni's illegal rendition and torture was aided by the employees at Aero. On board the plane, intelligence officials taped his mouth, shackled him in a fetal position, and routinely administered electric shocks.³⁵ Madni remained in Afghanistan for over seven months.³⁶ He was routinely beaten and kept in solitary confinement the entire time. Madni told New York Times that one of the reasons he kept receiving beatings was because he denied knowing Osama bin Laden, a denial that was supported by his polygraph tests.³⁷ This time, the interrogations were conducted directly by American officials.³⁸

11. On March 22, 2003, Madni was rendered to Guantanamo Bay, Cuba.³⁹ Upon his arrival, he was given a routine medical examination. He was diagnosed with psychological disorder, placed on medication, and was required to be followed by a psychiatrist.⁴⁰ Other prisoners at the camp also reported that Madni's physical and mental health was failing.⁴¹ During his time in U.S. custody, he attempted to hang himself twice and went on three hunger strikes.⁴² Despite his ill health, Madni was put through the "frequent flyer programme" where "the detainee is moved

³³ *Madni Profile*, supra note 2.

³⁴ *The Rendition Circuit: 8-15 April 2002*, The Rendition Project, <https://www.therenditionproject.org.uk/flights/renditions/N379P-020408.html>

³⁵ *Id.*

³⁶ *Id.* at ¶ 13.

³⁷ *An Ex-Detainee of the U.S. Describes a 6-Year Ordeal*, The New York Times.

³⁸ *Madni Profile*, supra note 2.

³⁹ *Id.* at ¶ 15.

⁴⁰ Memorandum, supra note 1.

⁴¹ *Madni Profile*, supra note 2.

⁴² *An Ex-Detainee of the U.S. Describes a 6-Year Ordeal*, The New York Times.

from cell to cell every 20-30 minutes and refused any sleep.⁴³ He remained in Guantanamo Bay until August 31, 2008, surviving nearly 7 years in the U.S. CIA rendition program.⁴⁴ On August 31, he was taken to Islamabad to be hospitalized and he reconnected with his family upon discharge.⁴⁵ His injuries were so severe that he required surgery on his ear, physical therapy treatment on his back, and he sought out a team of psychiatrists to help him drop his addiction to the drugs that he had been ingesting for seven years.⁴⁶

12. For seven years Madni was shuffled around the rendition program and was never given a trial. He was not even charged with a crime. Upon his release, officials merely remarked that he was “no longer considered an enemy combatant.”⁴⁷

IV. Violations of Law

A. International Law

13. Torture is defined in the Convention Against Torture (CAT) as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession...”⁴⁸ The rendition, detention, and enhanced interrogation of Mohammed Saad Iqbal Madni by the United States’ Central Intelligence Agency is expressly prohibited by this document. Madni was released from the United States’ custody with depression, drug addiction, a ruptured ear drum, and pain throughout his left side. The only tangible reason for his capture was an off-hand comment about a shoe bomb that led intelligence agents to believe that he may have information regarding larger terrorist groups. The U.S. could point to no acts that amounted to a crime and merely detained

⁴³ *Id.*

⁴⁴ Witness Statement, *supra* note 10.

⁴⁵ *Madni Profile*, *supra* note 2.

⁴⁶ *An Ex-Detainee of the U.S. Describes a 6-Year Ordeal*, *supra* note 37.

⁴⁷ *Id.*

⁴⁸ *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*, Article 1 (Dec. 10, 1984).

him for the information that they believed he had. He faced no criminal indictment, was not given a trial, and was never told why he was being held captive. When he told them repeatedly that he had never met bin Laden, they beat him for lying. He was used as an instrument to obtain terrorist information which he did not have. As a party to the Convention, the United States is bound by this document. The Convention also provides that “no exceptional circumstances whatsoever, whether a state of war or a threat of war... may be invoked as a justification of torture.”⁴⁹

14. The document also prohibits the extradition of individuals to foreign governments with constructive knowledge that the individual would be subjected to torture. Article 3 states:

“(1) No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”⁵⁰

United States officials transferred Madni into the custody of Egyptian intelligence knowing the techniques and procedures they utilize throughout their interrogation process. Both U.S. and Egyptian officials were present for the rendition from Indonesia and subsequent transfer to Afghanistan. The CAT has clearly been violated in this regard.

15. The Universal Declaration of Human Rights (UDHR) provides that, “No one shall be subject to torture or to cruel, inhumane, or degrading punishment.”⁵¹ The United States has horrifically violated this provision by stripping him naked, making him sleep in chains, beating him and making him bleed.

⁴⁹ *Id.* at Article 2.

⁵⁰ *Id.* at Article 3.

⁵¹ Universal Declaration of Human Rights, art. 5, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

16. Article 7 of the International Covenant on Civil and Political Rights also lays out the same prohibition on torture: “No one shall be subjected to torture or to cruel, inhumane, or degrading treatment or punishment.”⁵² In both of these documents, the United States was a party to the convention and are legally required to comply with its standards. If the standards are not met, the United States should and must face the consequences of their actions.

B. United States Federal Law

17. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, 18 U.S.C. § 2304 defines torture as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control.” Accordingly, the Code provides that anyone who “commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years for life.” 18 U.S.C. § 2304A(a) (2004). Considering that the aforementioned provision has been enacted within the criminal code, violation of this law would create severe consequences for the offender.

C. North Carolina State Law

18. North Carolina Constitution states that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”⁵³ The Constitution also requires that if anyone be facing criminal charges, they must be formally indicted, presented, or

⁵² International Covenant on Civil and Political Rights, art. 7, (Dec. 16, 1966).

⁵³ N.C. Const. art. 1, § 19.

impeached.⁵⁴ As mentioned before, Mohammed Saad Iqbal Madni was never charged with a crime, was never given a trial, and was not allowed to speak with anyone regarding his situation. He was unaware of the reason that he was being held captive at the CIA black sites.

V. Conclusion

19. The CIA's inhumane and horrific treatment of Mohammed Saad Iqbal Madni, as well as all of the other detainees that were involved in the rendition program, has not gone unnoticed. As a party to multiple international covenant prohibiting torture, the United States has no excuse for its treatment of these detainees and there should be legal recourse taken in order to ensure that something like this does not happen again. It is up to both the North Carolina state government as well as the citizens of North Carolina to see that both Aero Contractors, Ltd., and the United States government understand the immorality of their actions and take responsibility for the pain and suffering they have inflicted on these individuals.

⁵⁴ N.C. Const. § 17.

Mohammed El-Zari

I. Introduction

1. Mohammed El Zari was born on September 23, 1968.¹ El Zari, along with his companion Ahmed Agiza, is an Egyptian national who was a victim of the extraordinary rendition program run by the U.S. Central Intelligence Agency (CIA). Both men were illegally captured by U.S. officials in Sweden in December of 2001.² El Zari remained in detention until October 27, 2003, nearly two years after his initial capture.³ He had left Egypt in the 1990s, fleeing persecution and torture by Egyptian officials who has accused him of involvement with violent Islamist organizations. He feared that his only relief was to escape from Egypt and eventually settled in Sweden and filed for asylum.⁴ El Zari's attorney has stated that the accusations against El-Zari were unsubstantiated and amounted to a "miscarriage of justice."⁵

2. El Zari remained in Sweden while his asylum claim was pending. He was awaiting the verdict on his asylum when he was notified that the Swedish Foreign Affairs Ministry would not be making a decision before December 20, 2001.⁶ However, on December 18 of that year, based on information submitted by the United States, El Zari's asylum was abruptly rejected. The ministry then revoked El Zari's permit to remain in Sweden on security grounds and denied him protection against any forcible return to Egypt, effectively exiling El Zari from the country.⁷ The Swedish Foreign Affairs Ministry did not notify El Zari's lawyers of this decision and denied El

¹ *Ahmed Agiza and Mohamed El-Zery*, The Rendition Project, https://www.therenditionproject.org.uk/prisoners/agiza_elzery.html

² *Sweden: The Case of Mohammed El Zari and Ahmed Agiza: Violations of Fundamental Human Rights by Sweden Confirmed*, Amnesty International, Nov. 27, 2006.

³ *Id.*

⁴ *El-Zery Profile*, supra note 1.

⁵ Broken Promise (Transcript) (2014)

[https://www.therenditionproject.org.uk/pdf/PDF%20410%20\[Transcript%20of%20TV4,%20Kalla%20Fakta,%20The%20Broken%20Promise,%2017%20May%202004\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20410%20[Transcript%20of%20TV4,%20Kalla%20Fakta,%20The%20Broken%20Promise,%2017%20May%202004].pdf).

⁶ *El Zery Profile*, supra note 4.

⁷ *Id.*

Zari the right to contact him about it. Upon his denial of asylum, Swedish officials began communicating with Egyptian officials in order to return El Zari back to his country of birth. During the negotiations, Sweden obtained several so-called “diplomatic assurances” from the Egyptian government that El Zari would be treated humanely and Sweden reserved the right to monitor their detention and investigation of him. This, of course, did not happen and Egypt tortured and mistreated El Zari for years through their interrogation program and their collaboration with the United States.⁸

II. Rendition from Sweden

3. The same day that his asylum was rejected, El Zari was captured by Swedish Security Police in order to return him to his home nation. He was brought to the Bromma airport in Stockholm, Sweden, where he was passed off to U.S. and Egyptian officials. Egyptian authorities assured the Swedish police that El Zari would be treated justly and humanely and would be given a proper trial. Neither of these promises were upheld.

4. When El Zari arrived at the airport, he was met by a group of about seven hooded CIA officials along with a doctor and two Egyptian nationals.⁹ Upon meeting El Zari, the CIA officers conducted a full physical intrusive bodily search. His CIA captors cut his clothes off and threw them into bags. He was handcuffed and shackled, dressed in an adult diaper, and had a suppository inserted into his anus.¹⁰ He recalls feeling every muscle relax and he lost control of his body. He was then dressed in a track suit and his shoes were taken from him, leaving him barefoot in freezing temperatures. The entire process was photographed by officials. El Zari was escorted onto a plane and handcuffed to a mattress in the rear. He was unable to move for hours

⁸ *Id.*

⁹ *El-Zery Profile*, supra note 4.

¹⁰ *Id.* at 4.

at a time and was forced to keep his hood on throughout the flight. United States and Egyptian officials remained on the flight with El Zari and took him to Cairo, Egypt.¹¹

5. It has been confirmed that the plane that transported El Zari from Stockholm to Egypt was the Gulfstream V, otherwise known as N379P.¹² This plane has been reported to have conducted over fifty illegal renditions during the CIA enhanced interrogation program. The plane is owned and operated by Aero Contractors, Ltd., a North Carolina-based company headquartered in Johnston county. The company is privately held and is registered with the state of North Carolina. The company also acquired construction permits from the state and employs residents of Johnston County. As a North Carolina company, Aero Contractors, Ltd., is subject to North Carolina law as well as United States Federal Law. The allegation that Aero Contractors, Ltd., was the company that performed the illegal rendition of El Zari has also been corroborated by the Rendition Project which obtained European flight records and North Carolina Stop Torture Now.¹³

6. The plane left from Johnston County, North Carolina, on December 18, 2001, just after midnight. It flew to Washington Dulles International Airport to pick up the CIA rendition team.¹⁴ From there, the plane traveled to Cairo where two Egyptian officials joined the CIA team and the Aero Contractors, Ltd., flight crew.¹⁵ N379P continued on to Stockholm where the two victims were obtained and transported to Cairo.¹⁶ N379P is generally housed in Smithfield, North Carolina, where Aero has its headquarters.

¹¹ *EU: Rendition, Revelation of 800 Secret CIA Flights in European Airspace*, Amnesty International UK, Dec. 5, 2005, <https://www.amnesty.org.uk/press-releases/eu-rendition-revelation-800-secret-cia-flights-european-airspace>

¹² *El-Zery Profile*, supra note 4.

¹³ *Plane Spotting*, North Carolina Stop Torture Now, <http://ncstn.org/content/planespotting/>

¹⁴ *Rendition Circuit: 18-20 December 2001*, The Rendition Project, <https://www.therenditionproject.org.uk/flights/renditions/N379P-011218.html>

¹⁵ *Id.*

¹⁶ *Id.*

III. Detention and Torture in Cairo

7. While in Cairo, El Zari was not given the opportunity for a trial but was instead subjected to torture techniques in order to obtain more information about his alleged involvement with terrorist organizations. He remained blindfolded for over two months - from December 18, 2001, to February 20, 2002.¹⁷ The only time his blindfold was removed was during his meetings with the Swedish Ambassador during which his ability to speak freely was thoroughly impaired. These meetings were held in order to ensure that the prisoners were afforded just treatment, though El Zari's continuous complaints, however limited due to his fear of retaliation, made no impact.¹⁸ Sweden's lack of due diligence in understanding the reality of what was occurring at this detention center in Egypt has since resulted in several investigations.¹⁹

8. During his time in Cairo, El Zari was repeatedly tortured. He suffered electric shocks to his genitals, ears, and nipples.²⁰ When his interrogators believed him to be lying or withholding information, they would release a shock to force him into compliance. As time continued, El Zari's interrogators began to wear him down. El Zari recalls admitting to crimes and other terrorist involvement that were untrue and inaccurate, hoping to make the torture stop. He also stated that his "torture was monitored by doctors who made sure that it would not leave him with visible scars."²¹ Both the United States and Egypt understood that their treatment of El Zari was against international law and also contrary to their promises to Sweden. Therefore, they were very careful to keep El Zari healthy.

¹⁷ *El-Zery Profile*, supra note 4.

¹⁸ *Id.*

¹⁹ *Sweden*, supra note 2.

²⁰ *Id.* at 5.

²¹ *Id.*

9. El Zari was detained until October 27, 2003 for a total of twenty-two months. He was never charged with any crime and never given a trial. It was not until his law few months that he learned the reason for his detention. U.S. and Egyptian officials had believed him to be a part of a terrorist organization composing over 250 members. Many of the others accused alongside El Zari had already been executed.²²

IV. Violations of Law

A. International Law

10. The Convention Against Torture (CAT) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession...”²³ When a nation signs a treaty, they are legally bound to comply with its provisions. Because the United States was a party to this agreement and was one of the ratifying members, they must face international ramifications when they violate the CAT. Amnesty International has already stated that Sweden’s involvement with the rendition and torture of Mohammed El Zari was enough to constitute a violation of the treaty under Article 3:

“(1) No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”²⁴

Because Sweden had reason to believe that the U.S. and Egypt were torturing the detainees in Cairo, Sweden should take partial responsibility for the sufferings of the Cairo detainees.

²² *El-Zery Profile*, supra note 4.

²³ *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*, Article 1 (Dec. 10, 1984).

²⁴ *Id.* at Article 3.

11. Sweden was merely complicit with the rendition and torture of the Cairo detainees. In contrast, Aero Contractors, Ltd., and the United States were both the principal actor in the detention of Mohammed El Zari. Therefore, it is safe to say that the CIA rendition program violates the international Covenant Against Torture.

12. The Universal Declaration of Human Rights (UDHR) Article 5 states that “[n]o one shall be subject to torture or to cruel, inhumane, or degrading treatment or punishment.”²⁵

Additionally, Article 8 grants individuals “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”²⁶ Throughout El Zari’s detention in Cairo he was not afforded a just trial. Even more, he was not told why he was being detained until he had been there nearly two years. He was even prohibited from contacting his attorney and all legal remedies were denied to him.

13. Finally, the International Covenant on Civil and Political Rights, Article 7, states that “No one shall be subjected to torture or to cruel, inhumane, or degrading treatment or punishment.”²⁷ This provision was clearly violated by the mistreatment of Mohammed El Zagi throughout his two years at the CIA black site.

B. United States Federal Law

17. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual treatment, 18 U.S.C. § 2304 defines torture as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control.” Accordingly, the Code provides that anyone who “commits or attempts to commit torture shall be fined under this title or

²⁵ Universal Declaration of Human Rights, art. 5, G.A. Res. 217(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

²⁶ *Id.*

²⁷ International Covenant on Civil and Political Rights, art. 7 (Dec. 16, 1966).

imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years for life.” 18 U.S.C. § 2304A(a) (2004). Considering that the aforementioned provision has been enacted within the criminal code, violation of this law would create severe consequences for the offender.

C. North Carolina State Law

18. North Carolina Constitution states that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”²⁸ The Constitution also requires that if anyone be facing criminal charges, they must be formally indicted, presented, or impeached.²⁹ Throughout the entirety of the rendition program, Mohammed El Zagi was not given a proper trial and was not presented with any charges.

V. Conclusion

Mohammed El Zagi was subjected to years of torture through shock punishment, psychological warfare, solitary confinement, and forced nudity. He ripped from his home in Sweden and placed in a detention center with no explanation and no legal remedy. He was denied a fair trial, treated as less than human, and forced to wear blindfolds and shackles throughout his time in the rendition program. This treatment of another human being is inexcusable and it is time that North Carolina take action against the injustice. As the home of Aero Contractors, Ltd., it is North Carolina’s responsibility to see that actions such as these do not go unpunished.

²⁸ N.C. Const. art. 1, § 19.

²⁹ N.C. Const. § 17.

Omar Ghramesh

I. Introduction

1. Omar Ghramesh was captured by the CIA in Pakistan in March 2002. He was subsequently extraordinarily rendered to a brutal prison in Syria, likely on an Aero Contractors-operated plane. His fate and whereabouts are unknown, and the United States has never publicly acknowledged his rendition.

II. Detention

A. Capture & Detention in Pakistan

2. The CIA seized Ghramesh in Faisalabad, Pakistan, on 28 March 2002.¹ His capture was part of an operation targeting Abu Zubaydah.²

3. In Pakistan, U.S. operatives showed Ghramesh photos of Abu Zubaydah looking “battered and bruised” and told him, “If you don’t talk, this is what will happen to you.”³

B. Rendition

4. Ghramesh was rendered from Pakistan to Syria on 14 May 2002.⁴ At that time, flight records demonstrate that the Gulfstream V jet N379P, which is known to have carried out CIA renditions, was traveling in the same region. The jet was operated by Aero Contractors, headquartered in Johnston County, North Carolina. Because the dates of its travel in this region match the dates of his rendition, N379P may have transported Ghramesh. At least two others, Abdul Halim Dalak and an unnamed teenager (likely Noor Al-Deen),⁵ may also have been

¹ OPEN SOCIETY JUSTICE INITIATIVE, *Globalizing Torture: CIA Detention and Extraordinary Rendition* 40 (2013).

² Andy Worthington, *Lost in Guantanamo: The Faisalabad 16* (2008).

<http://www.andyworthington.co.uk/2008/12/09/lost-in-guantanamo-the-faisalabad-16/>.

³ *Id.*

⁴ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1.

⁵ *Id.* at 38.

rendered on this flight.⁶ For the involvement of N379P to be confirmed, the U.S. government must release evidence in CIA records that it is currently refusing to disclose.

C. Detention at the “Palestine Branch”

5. In Syria, Ghraresh was detained at a facility called the “Palestine Branch.”⁷ The Palestine Branch is notorious for its brutality; several detainees formerly imprisoned there described it as “one of the most feared detention facilities.”⁸ Human Rights Watch has reported that torture techniques such as stress positions, sleep deprivation, electrocution, and severe beatings—including with cables and other objects—were habitually used there.⁹

D. Disappearance

6. After his rendition to the Palestine Branch, there is no publicly available information regarding Ghraresh’s location or circumstances. It is incumbent on the CIA and the U.S. government, which had control over his whereabouts and his extraordinary rendition to Syria, to provide full disclosure as to his condition and fate.

E. Torture

7. The UN has confirmed that Ghraresh was subjected to torture during his detention.¹⁰ The CIA has refused to release further details. However, based on both the agency’s practices throughout the Rendition, Detention, and Interrogation (RDI) program and the techniques utilized at the Palestine Branch, it is justifiable to assume that Ghraresh suffered stress

⁶ UNITED NATIONS, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism* 75 (2010). <http://hrlibrary.umn.edu/instreet/A-HRC-13-42.pdf>.

⁷ Andy Worthington, *supra* note 2.

⁸ HUMAN RIGHTS WATCH, *Torture Archipelago: Arbitrary Arrests, Torture, and Enforced Disappearances in Syria’s Underground Prisons since March 2011* (2012). <https://www.hrw.org/report/2012/07/03/torture-archipelago/arbitrary-arrests-torture-and-enforced-disappearances-syrias>.

⁹ *Id.*

¹⁰ UNITED NATIONS, *supra* note 6.

positions, sleep deprivation, walling, extremes of temperature, isolation, beatings, and electrocution.

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

8. Ghramesh’s abuse violated “one of the most universally recognized human rights”: the prohibition on torture.¹¹ The prohibition on torture is a peremptory norm. As such, all states are required to uphold it, irrespective of any official commitment to do so, and no situation can justify derogating from it.¹² Thus, the United States’ intelligence and security aims do not legitimize its complicity in the acts of torture to which Ghramesh was subject.

9. The United States has, moreover, explicitly committed to adhere to the prohibition on torture in several treaties. These include the Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT). Through the torture of Ghramesh, all of these three treaties have been violated.

10. Both the UDHR and the ICCPR state that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹³ Furthermore, the ICCPR explicitly requires that states uphold the prohibition on torture at all times, even during times of public emergency. The torture inflicted on detainees at the Palestine Branch, including Ghramesh, violated both of these treaties.

¹¹ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

¹² *Id.*

¹³ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

11. Ratified in 1994,¹⁴ the CAT forbids torture in all circumstances,¹⁵ even in “exceptional” ones.¹⁶ Ghraresh’s torture violated this fundamental provision of the CAT.

12. In rendering Ghraresh to Syria, the United States violated additional provisions of the CAT. Under the CAT, the United States must

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.¹⁷

13. Torture was frequently used at the Palestine Branch. Thus, at the time of Ghraresh’s rendition, there were “substantial grounds for believing” that he “would be in danger of being subjected to torture” at the prison. For this reason, sending Ghraresh to the Palestine Branch violated this provision of the CAT.

14. The same provision will be violated by the state of North Carolina if it does not take action to fulfill its responsibilities under the CAT. Pursuant to the Supremacy Clause of the U.S. Constitution, states must obey international treaties ratified by the United States. North Carolina is thus obliged to “take effective...measures to prevent acts of torture” both inside and outside of the United States.¹⁸

15. North Carolina can and must take administrative measures to fulfill that obligation. More specifically, the state and its political entities and subdivisions must revoke or discontinue Aero

¹⁴ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

¹⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

¹⁶ CAT, *supra* note 18, at art. 2.

¹⁷ CAT, *supra* note 18, at art. 2.

¹⁸ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 36 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

Contractors’ “flying permits, licenses, and leases.”¹⁹ Aero’s critical contribution to the RDI program, which may have included the rendition of Ghamesh to be tortured, demands such action from North Carolina pursuant to the CAT.

16. In addition to torture, Ghamesh was subjected to extraordinary rendition. This aspect of his ordeal violated another treaty ratified by the United States, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).²⁰ The Protocol forbids “trafficking in persons,” which it defines as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.²¹

17. The extralegal capture and transport of Ghamesh was a violation of the Protocol’s ban on human trafficking.

18. Other provisions of the Protocol were also violated; these provisions concern entitlements owed to victims of human trafficking. The entitlements include “the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training

¹⁹ *Id.*

²⁰ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

²¹ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

opportunities.”²² Ghramesh has not received these forms of assistance, despite his entitlement to them as a victim of human trafficking.

19. The Protocol also dictates, “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”²³ Ghramesh has been offered no path to obtaining compensation for the violation of his rights, which is against international law.

B. Federal Law Violations

20. Pursuant to the Supremacy Clause, U.S. states must adhere to treaties ratified by the country as if they were federal statutes. The international law violations described above are also federal law violations.²⁴

21. Furthermore, the United States—and likely Aero Contractors—breached a number of federal laws beyond the treaties above. For example, the Eighth Amendment prohibits “cruel and unusual punishments.”²⁵ By rendering Ghramesh to Syria, the United States subjected him to the cruel and unusual punishments inflicted on detainees at the Palestine Branch, thereby violating its own Constitution.

22. The lack of accountability for Ghramesh’s torture also violates the Federal Torture Statute (FTS). The FTS states that anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20 years, or both”.²⁶ The fact that no American public official has been prosecuted for Ghramesh’s torture violates the FTS.

²² U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

²³ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

²⁴ Weissman et al., *supra* note 18, at 36.

²⁵ U.S. CONST. amend VIII

²⁶ 18 U.S. Code § 2340A.

23. Additional federal laws present opportunities to achieve accountability for Ghraimesh’s abuse. For instance, the Alien Tort Statute (ATS) offers non-U.S. citizens who are the victims of egregious human rights violations (irrespective of whether the violations occur inside or outside of the United States) the capacity to sue government officials and private actors in U.S. courts.²⁷ In 2010, five former detainees used the ATS as grounds to sue the United States and Jeppesen Dataplan,²⁸ a company that provided “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”²⁹ The ATS thus provides a precedent for the prosecution of both the United States and Aero Contractors.

24. The Torture Victims Protection Act (TVPA) of 1991 could also be used to hold the U.S. and Aero accountable for Ghraimesh’s rendition and torture. The TVPA was instituted to help fulfill the United States’ obligations under the UN Charter and other international human rights protection mechanisms “by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”³⁰ The TVPA provides Ghraimesh with grounds to seek compensation for his torture.

C. North Carolina Law Violations

25. Aero Contractors violated several state laws by operating the planes used for CIA renditions, possibly including Ghraimesh’s. North Carolina thus has the unique capacity and,

²⁷ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

²⁸ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

²⁹ *Id.* at 13526.

³⁰ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmbll., 106 Stat. 73, 73 (1992).

moreover, the legal obligation to hold the company accountable for its violation of Ghramesh's human rights.

26. Aero Contractors violated numerous provisions of the North Carolina Constitution. For example, Article I, § 19, states, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”³¹ Kidnapping, involuntary servitude, trafficking, and criminal conspiracy are prohibited in other provisions. Aero Contractors directly participated in or facilitated all of those crimes through its contribution to the RDI program.³²

27. Section 14-39 of the North Carolina General Statutes also criminalizes kidnapping.³³ Furthermore, it determines that “serious bodily harm to or terrorizing the person” who has been kidnapped is a crime.³⁴ The North Carolina legislature has also defined the particularly serious crime of “first-degree kidnapping,” wherein the abducted individual is not transported to a safe place or has been “seriously injured or sexually assaulted.”³⁵ Ghramesh's extralegal capture and forced disappearance constitutes kidnapping, and his torture constitutes “terrorizing” him. Furthermore, transporting Ghramesh to the Palestine Branch constitutes transporting him to an unsafe place, as torture was habitually used on the people detained there. NCGS § 14-39 has thus been violated.

IV. Conclusion

27. Omar Ghramesh suffered extralegal capture and extraordinary rendition. He was imprisoned in a notoriously abusive detention facility despite the fact that he was never charged

³¹ N.C. CONST. art. 1, § 19.

³² See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

³³ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

³⁴ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

³⁵ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

for any crime. He was subjected to torture, which is widely recognized as an exceptionally severe human rights violation. Pursuant to the international, federal, and state laws outlined above, these acts against him were not merely morally indefensible, but also illegal.

28. The United States' refusal to acknowledge their abuse of Ghramesh is unacceptable; its silence is a tacit endorsement of impunity for torture. Such an attitude both seriously undermines the United States' international reputation and, more troublingly, encourages future perpetrators to believe that their crimes will go unpunished. The entities responsible for Ghramesh's ordeal—including the United States of America and possibly North Carolina and its political subdivisions and Aero Contractors—must recognize the damage they have inflicted and provide redress. Failing to do so is a profound injustice both for Ghramesh and for the many other people, present and future, who are victims of torture.

Jamil Qasim Saeed Mohammed

I. Introduction

1. Jamil Qasim Saeed Mohammed, a student living in Pakistan, was arrested by Pakistani authorities and transferred to U.S. custody¹ in October 2001.² He was then rendered to Jordan, where the CIA often sent prisoners to facilitate abusive interrogations.³ Since his rendition, Mohammed has disappeared.⁴ Despite repeated requests from NGOs, no information on his location or condition has been made publicly available.⁵

II. Rendition & Detention

A. Background

2. At the time of his capture, Mohammed was studying microbiology at Karachi University in Pakistan.⁶ A Yemeni citizen from the city of Taiz, he reportedly arrived in Karachi from Yemen's capital, Sana'a, in 1993.⁷

B. Capture

3. In late September or early October 2001, the Pakistan Ministry of Interior requested information on Mohammed from Karachi University.⁸ Shortly afterward, Mohammed was

¹ OPEN SOCIETY JUSTICE INITIATIVE, *Globalizing Torture: CIA Detention and Extraordinary Rendition* 49 (2013).

² Masood Anwar, "Mystery Man Handed Over to U.S. Troops in Karachi," THE NEWS INTERNATIONAL, PAKISTAN (26 October, 2001). freerepublic.com/focus/news/556778/posts.

³ HUMAN RIGHTS WATCH, *Double Jeopardy: CIA Renditions to Jordan* (2008). <https://www.hrw.org/reports/2008/jordan0408/>.

⁴ Craig Whitlock, "Jordan's Spy Agency: Holding Cell for the CIA," WASHINGTON POST 2 (1 December, 2007). <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/30/AR2007113002484.html?sid=ST2007120100473>.

⁵ AMNESTY INTERNATIONAL, *UK: CIA Rendition Flights Used UK Airfields* (2005). <https://www.amnesty.org/download/Documents/84000/eur450592005en.pdf>.

⁶ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1.

⁷ Masood Anwar, *supra* note 2.

⁸ *Id.*

arrested by Pakistani security forces.⁹ No information is publicly available on the period of detention immediately following his arrest.

C. Rendition

4. Mohammed was rendered to Jordan on 23 October 2001. Witnesses saw U.S. operatives force him, shackled and blindfolded, onto the plane.¹⁰ One source described the operation as “so mysterious that all persons involved in the operation, including U.S. troops, were wearing masks.”¹¹ He also reported that a masked U.S. agent filmed the operation.¹² According to the source, the plane arrived at the Karachi airport from Amman and departed, returning to Amman, at 2:40 AM.¹³

5. As reported by Amnesty International and two news outlets, including the Washington Post,¹⁴ witnesses also observed that the tail number of the plane was N379P, thereby identifying it as a Gulfstream V jet operated by Aero Contractors, a company headquartered in Johnston County, North Carolina.¹⁵ In addition, although there are gaps in the flight data for these dates, documentation does place N379P in Amman on the date of Mohammed’s rendition and suggest that it may have been in Karachi on that date as well. Thus, strong evidence indicates that Aero Contractors transported Mohammed. It is the responsibility of the U.S. government to further investigate and confirm the company’s involvement in the rendition.

D. Disappearance

⁹ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1.

¹⁰ HUMAN RIGHTS WATCH, *supra* note 3.

¹¹ Masood Anwar, *supra* note 2.

¹² *Id.*

¹³ HUMAN RIGHTS WATCH, *supra* note 3.

¹⁴ *Id.*; Dana Priest, “Jet Is an Open Secret in Terror War,” WASHINGTON POST 2 (27 December, 2004). <http://www.washingtonpost.com/wp-dyn/content/article/2004/12/27/AR2005033104932.html>.

¹⁵ *Id.*

6. Mohammed has not been seen or heard from since witnesses observed him boarding N379P.¹⁶ Amnesty International has requested information on his whereabouts and fate from both the American and Jordanian governments, but the organization has received no reply.¹⁷

E. Likelihood of Torture

7. The CIA has refused to reveal the details of Mohammed's treatment and the human rights violations he suffered. Assuming he is alive, it is reasonable to assume he has not been able to disclose or publicly discuss the details of the horrors he suffered. As psychologists with expertise in the consequences of torture have noted, the extreme psychological trauma he suffered is likely to have hindered his ability to discuss his rendition, detention, and torture with media, representatives, and other advocates or even family members.

8. However, given the public documentation that exists, it is evident that the extraordinary rendition protocols in each and every situation resulted in torture, abuse, humiliation, and suffering.

9. In addition, detainees rendered to Jordan by the CIA were systematically tortured.¹⁸ CIA prisoners who have been held in Jordan describe being threatened, deprived of sleep, beaten, and having their feet whipped.¹⁹

10. Based on the pervasive use of torture at Jordanian detention facilities and in the Rendition, Detention, and Interrogation (RDI) program as a whole, it is reasonable to assume that Mohammed was subjected to torture. Based on the typical practices of the United States and

¹⁶ Craig Whitlock, *supra* note 4.

¹⁷ AMNESTY INTERNATIONAL, *supra* note 5; Craig Whitlock, *supra* note 4.

¹⁸ HUMAN RIGHTS WATCH, *supra* note 3.

¹⁹ *Id.*

Jordan, one must further conclude that Mohammed suffered walling, isolation, stress positions, extremes of temperature, sleep deprivation, beatings, and foot whippings.

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

11. As noted above, the failure of the CIA to properly disclose the details of Mohammed's detainment and interrogation nonetheless does not preclude a judicious and justifiable conclusion that he suffered egregious rights violations, including torture. Based on the pattern and practices of the CIA's extraordinary rendition program, the brutality of Jordanian interrogation processes, and the information gathered about Mohammed's circumstances, the following legal claims on behalf of Mohammed are asserted.

A. International Law Violations

12. Mohammed's ordeal violated the prohibition on torture, which is considered "one of the most universally recognized human rights."²⁰ As a peremptory norm, the prohibition on torture applies to all states, even those who have not officially agreed to uphold it, and in all situations, even emergencies.²¹ The United States' security concerns, therefore, do not justify the rendition of Mohammed to be tortured in Jordan.

13. The U.S. has furthermore expressly committed to uphold the prohibition on torture. The country has ratified a number of treaties, including the Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT), all of which it has violated through its complicity in Mohammed's torture.

²⁰ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

²¹ *Id.*

14. The UDHR and the ICCPR both require that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²² The ICCPR further mandates that states uphold the prohibition on torture at all times, even during public emergency. Mohammed’s torture in Jordan violated both of these treaties.

15. Pursuant to the CAT, ratified by the U.S. in 1994,²³ torture is always forbidden,²⁴ including in “exceptional” circumstances.²⁵ As a result of Mohammed’s torture, this provision—the fundamental purpose of the CAT—was violated.

16. Mohammed’s torture also violated other provisions of the CAT, which mandate that states take preventative measures to ensure that torture does not occur. For example, under the CAT, the United States is required to

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.²⁶

17. This provision obliges the United States to go beyond ending torture within its borders; it must also ascertain that none of its states or territories engages in the extradition of individuals to states where they could be tortured.²⁷

²² Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

²³ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

²⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

²⁵ CAT, *supra* note 18, at art. 2.

²⁶ CAT, *supra* note 18, at art. 2.

²⁷ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

18. The Supremacy Clause of the U.S. Constitution requires each state to follow treaties ratified by the United States. Therefore, North Carolina must also ensure that adequate preventative measures are taken to stop both torture within the United States and the extradition of individuals to be tortured elsewhere.²⁸

19. The “administrative” measures discussed in the CAT are particularly significant to this effort. To fulfill its obligations under the CAT, North Carolina’s political entities and subdivisions can and must take administrative steps, namely, revoking or discontinuing Aero Contractors’ “flying permits, licenses, and leases.”²⁹ Failure to do so, given the critical role Aero played in the extradition of detainees, including Mohammed, to be tortured, is a violation of international law.

20. In addition to the torture Mohammed suffered, he was subjected to extraordinary rendition; as such, he was captured and transported without his consent or any legal proceedings. This aspect of his ordeal violated another treaty ratified by the United States: the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).³⁰ The Protocol prohibits “trafficking in persons,” which it defines as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.³¹

²⁸ *Id.* at 36.

²⁹ *Id.*

³⁰ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

³¹ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

21. Through its extraordinary rendition of Mohammed, the United States violated the Protocol's prohibition of human trafficking.

22. Mohammed's experience was in violation of several other provisions of the Protocol, which concern the entitlements owed to victims of human trafficking. These entitlements include "the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities."³² As a victim of human trafficking, Mohammed is entitled to these forms of assistance; however, he has not received them.

23. The Protocol further dictates, "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."³³ Mohammed has not had the opportunity to obtain compensation for his suffering, which is a violation of international law.

B. Federal Law Violations

24. International treaties ratified by the United States are equivalent to federal statutes pursuant to the Supremacy Clause of the U.S. Constitution. Thus, in violating the international laws described above, the United States also violated its own federal law.³⁴

25. Furthermore, both the United States and Aero Contractors violated federal laws as well as the treaties described above. For example, "cruel and unusual punishments" are prohibited by the Eighth Amendment of the U.S. Constitution.³⁵ The torture methods used in the RDI program and

³² U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

³³ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

³⁴ Weissman et al., *supra* note 21, at 36.

³⁵ U.S. CONST. amend VIII

at Jordanian detention facilities are both cruel and unusual; Mohammed's ordeal thus violated the Constitution.

26. The complete lack of accountability regarding Mohammed's torture is a violation of the Federal Torture Statute (FTS), which states that anyone who "commits or attempts to commit torture" outside the United States "shall be fined under this title or imprisoned not more than 20 years, or both".³⁶ No American official has been prosecuted for Mohammed's torture; this failure violates the FTS.

27. Additional federal laws present opportunities for accountability for Mohammed's torture, which is critical to achieve but currently nonexistent. For instance, the Alien Tort Statute (ATS) provides grounds for victims of egregious human rights violations who do not have U.S. citizenship to sue government officials and private actors in U.S. courts. They may do so regardless of whether the rights violation occurred in the United States.³⁷ In 2010, five former detainees used the ATS to sue the United States and Jeppesen Dataplan,³⁸ a company that provided "flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture."³⁹ There is, therefore, a precedent for the prosecution of the United States and Aero Contractors using the ATS.⁴⁰

³⁶ 18 U.S. Code § 2340A.

³⁷ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

³⁸ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. See Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

³⁹ *Id.* at 13526.

⁴⁰ It should be noted that although the Jeppesen Dataplan case was dismissed on the basis of the "State Secrets Doctrine," such legal defense is likely no longer available to the government given the ongoing declassification of documents related to the CIA's Extraordinary Rendition and Torture program. See e.g., Irving. Figueroa, et al., *Assessing Recent Developments: Achieving Accountability for Torture* (2016) <http://www.law.unc.edu/documents/academics/humanrights/tortureaccountability.pdf>,

28. The 1991 Torture Victims Protection Act (TVPA) is another potential path to accountability for Mohammed’s abuse. Created to help fulfill the United States’ obligations under the UN Charter and other international mechanisms for the protection of human rights, the TVPA established “a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.” The law thus provides grounds for Mohammed to seek compensation for his torture.

C. North Carolina Law Violations

29. By operating the plane that rendered Mohammed to Jordan, Aero Contractors violated myriad state laws. As a result of these violations, North Carolina has the unique capacity and responsibility to hold the perpetrators of egregious international human rights violations accountable on a state level.

30. Aero Contractors violated several provisions of the North Carolina Constitution through its contribution to the RDI program. Article I, § 19, dictates, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”⁴¹ Other provisions prohibit kidnapping, involuntary servitude, trafficking, and criminal conspiracy. Aero Contractors directly participated in or facilitated all of these crimes in its role relative to the RDI program.⁴²

31. Section 14-39 of the North Carolina General Statutes also criminalizes kidnapping.⁴³ It further determines that “serious bodily harm to or terrorizing the person” who has been kidnapped is a crime.⁴⁴ In addition, the North Carolina legislature has defined the crime of “first-

⁴¹ N.C. CONST. art. 1, § 19.

⁴² See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

⁴³ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

⁴⁴ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

degree kidnapping,” wherein the abducted individual is not transported to a safe place or has been “seriously injured or sexually assaulted,” as a particularly serious legal violation.⁴⁵ Extrajudicially seizing and “disappearing” Mohammed constitutes kidnapping, and torturing him constitutes “terrorizing” and “serious bodily harm.” Furthermore, rendering Mohammed to Jordan, where torture is used extensively on detainees, constitutes transporting him to an unsafe place. NCGS § 14-39 has thus been violated.

IV. Conclusion

32. Jamil Qasim Saeed Mohammed, a young man attempting to pursue his education, was robbed of his future when he was seized and extralegally detained. He was extraordinarily rendered to Jordanian custody, where prisoners are habitually subjected to brutal abuse. It must be assumed that he was severely tortured. Each of these aspects of his ordeal was illegal.

33. The United States’ silence surrounding these criminal acts is unacceptable. By refusing to acknowledge the wrongs inflicted on Mohammed, the U.S. government fosters a culture of impunity. Accepting impunity amounts to endorsing torture. Thus, silence does not merely profoundly damage the United States’ reputation; it also encourages future perpetrators to use torture with the knowledge that their acts will go unpunished. The entities responsible for Mohammed’s maltreatment—including the United States of America, North Carolina and its political subdivisions, and Aero Contractors—must acknowledge and make amends for the harms they have inflicted. Only through recognition and redress can justice be achieved.

⁴⁵ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

Mohamedou Ould Slahi

I. Introduction

1. Mohamedou Slahi was one of many innocent Muslim men of Middle Eastern descent who was captured during the U.S. “War on Terror.” Like others, he was detained in Guantanamo Bay, and like others was deprived of sleep for weeks. He was kidnapped by the United States after government officials claimed he was a national security threat and was then tortured. However, one incident stands out to Slahi. One day, after Slahi had been brought back to his cell after enduring harsh interrogations and beatings and having gone without food the entire day, his guard exited the cell and perhaps unknowingly inflicted upon Slahi what he has described as most painful, dehumanizing act of the day. She said to him “You see, people in Yemen don’t know about this stuff.”¹ Slahi is not from Yemen. At that moment, he realized that his guards do not know who he is, or what, if anything, he had been accused of. He had to endure this Kafkaesque nightmare for nearly 15 years, as documented in his book *Guantanamo Diary*, which he wrote during his detention.

II. Before Detention

2. Mohamedou Ould Slahi was born on December 31, 1970, in the town of Rosso, Mauritania. His family was large; Slahi had 11 siblings. Slahi’s father taught him to read the Koran at an early age. He studied mathematics during high school, and then earned a scholarship to attend the Carl Duisberg Society in Germany.² Slahi was the first member of his family to attend college. He began to study engineering in Germany. In 1990, he traveled to Afghanistan to

¹ UNC Human Rights Policy Lab interview with Mohamedou Slahi. March 1, 2017.

² SPIEGEL Staff, “The Career of Prisoner No. 760”, Der Spiegel, 2008, <http://www.spiegel.de/international/world/from-germany-to-guantanamo-the-career-of-prisoner-no-760-a-583193-2.html>.

oppose the Communist regime in Kabul. He trained for several weeks in Khost before returning to Germany. Slahi would return to Afghanistan in late 1991 for the same reasons, and left for good after the Communists were ousted in early 1992.

3. Slahi then returned to Germany where he completed his degree. He lived and worked in Duisburg for most of the 1990s. Slahi kept in touch with some of the people he met in Afghanistan as well. He was unable to earn permanent residency status in Germany. Thus, he applied for immigrant status in Canada, on advice of a friend. In November 1999, Slahi moved to Montreal. He attended and briefly lived at a mosque in the city. Shortly after, an al-Qaeda member named Ahmed Ressam was arrested trying to cross the Canadian border into the United States. Ressam's car was loaded with explosives. He was planning to bomb the Los Angeles International Airport in what became known as the "Millennium Plot". Ressam had attended the same mosque in Montreal as Slahi, which sparked a large investigation into the Muslim community. Even though Ressam left the city before Slahi had arrived, Slahi was still questioned about his involvement in the plot.

III. Return to Mauritania

4. In January 2000, Slahi left for his home country of Mauritania. He planned to meet his brothers in Dakar, Senegal, then drive to their home in Mauritania. When he arrived in Dakar, Slahi and his brothers were arrested by American agents in the airport.³ They were loaded into a truck and taken to local police station.

5. Slahi was interrogated by an American and Senegalese official. The Senegalese official detained Slahi, but released his brothers who were allowed to go back home. After questioning Slahi for multiple days and taking his picture and fingerprints, the American captor elected to

³ Mohamedou Ould Slahi, *Guantanamo Diary*, 76, (Larry Siems ed. 2015).

release him as well. The official drove Slahi back to the airport. He accompanied Slahi on a small, private plane back to Mauritania. After arriving in Mauritania, Slahi was then held by Mauritanian authorities and questioned about the Millennium Plot. Around February 15, 2000, while still held in Mauritanian custody, the FBI arrived to question Slahi about his trips to Afghanistan and the Millennium plot. He was released from Mauritanian custody on February 19, 2000.⁴ On September 29, 2001, the Director of Mauritanian Intelligence Service called Slahi to inform him he was being arrested at the behest of the American government.⁵ Slahi drove to the house of the Director of Mauritanian Intelligence Service. He was then taken to the police station and again questioned by the FBI about the Millennium plot. He was released, then called back by Mauritanian officials in November of 2001. The Mauritanian government then turned him over to the United States.

6. The Mauritanian secret service drove Slahi to the airport at which point the Americans took over. Slahi's kidnappers forced him onto a CIA rendition flight to Jordan for further interrogation. He was blindfolded and earmuffed, although allowed to remove the blindfold to eat during the flight.⁶ Slahi arrived in Jordan around November 29, 2001.

7. Slahi describes his ordeal once he was detained in Jordan as a result of his extraordinary rendition at the hands of his American captors. He was beaten, starved, and threatened with more severe beatings unless he confessed to being involved in the Millennium Plot to attack Los Angeles. As part of his torture, the Jordanians put another detainee in the interrogation room next to Slahi, and beat the man until he cried.⁷ They would often walk Slahi through the "torture row"

⁴ *Id.*, at 104.

⁵ *Id.*, at 114.

⁶ *Id.*, at 143.

⁷ *Id.*, at 182.

so he would hear the cries of prisoners. On July 19, 2002, U.S. officials forced Slahi onto a plane that traveled from Jordan to Afghanistan.

8. The plane was likely a CIA-leased Gulfstream jet with the tail number N379P, which was operated by North Carolina-registered Aero Contractors and is based at Smithfield, North Carolina. N379P's involvement in CIA renditions is well-known,⁸ and, at the time of Slahi's rendition, flight logs demonstrate that the plane flew from Jordan to Afghanistan, which strongly suggests that it may have transported Slahi. It is incumbent on the U.S. government, however, to investigate and confirm whether N379P and Aero Contractors were involved in Slahi's rendition.

IV. Taken to Guantanamo

9. Slahi arrived in Bagram, Afghanistan on or around July 20, 2002.⁹ American forces interrogated Slahi during this time. Slahi was kept in isolation for the first few days. He was shackled 24 hours per day, and kept in a narrow corridor between other cells.¹⁰ He was interrogated by a man he called "William the Torturer". William told Slahi that he would be sent to an American prison and raped by multiple men. He also threatened torture if Slahi did not "tell him what he wanted to hear".¹¹ He forced Slahi into painful positions that aggravated Slahi's sciatic nerve problem.

10. "On Aug. 4, 2002, Slahi was again hooded, shackled, diapered, and drugged, and put on a flight with 30 other Bagram Air Base detainees for a 36-hour journey to Guantánamo. He arrived depleted from his nine-month ordeal in Jordan and Afghanistan; official Defense Department

⁸ Rendition Project, *N379P-N8068V-N44982*. <https://www.therenditionproject.org.uk/flights/aircraft/N379P.html>.

⁹ *Id.*, at 12.

¹⁰ *Id.*, at 15.

¹¹ *Id.*, at 18.

documents record that Slahi, who stands 5-foot-7, weighed just a little over 109 pounds when he was “inprocessed” on August 5.”¹²

11. When Slahi arrived at Guantánamo Bay, he believed the worst of his treatment was over. In his memoir, he recalls telling his fellow detainees “Since you guys are not involved in crimes you need to fear nothing. I personally am going to cooperate, since nobody is going to torture me. I don’t want any of you to suffer what I suffered in Jordan”.¹³ One of Slahi’s first interrogators even offered sympathy for his previous treatment in Jordan, remarking “[t]hose countries don’t respect human rights. They even torture people”.¹⁴ This sentiment would become darkly ironic as Slahi’s time continued in Guantanamo.

12. Still sick and suffering from his treatment in Jordan, Slahi collapsed in his cell within three days of arriving at Guantanamo. He was severely dehydrated from constant vomiting. He was so weak that he slept on the floor in his cell for a month, unable to even climb onto his bed. Slahi was questioned by officials using conventional methods during this time. However, in January of 2003, interrogators formulated “special interrogation techniques” to question him. They drafted a memo which included numerous unique techniques: using dogs during interrogations, exploitation of religious taboos, a mock prison transfer via watercraft.¹⁵ On July 1, 2003, this interrogation plan was approved by Guantánamo Gen. Geoffrey Miller. Secretary of Defense Donald Rumsfeld personally approved the plan on August 13, 2003.¹⁶

¹² “*The Guantánamo Memoirs of Mohamedou Ould Slahi*” Slate. (April 30, 2013) http://www.slate.com/articles/news_and_politics/foreigners/2013/04/mohamedou_ould_slahi_s_guantanamo_memoirs_part_1_the_endless_interrogations.html.

¹³ Slahi, *supra* note 3, at 41.

¹⁴ *Id.*, at 44.

¹⁵ Committee on Armed Service – United States Senate, *Inquiry into the treatment of detainees in US Custody*, 136-7 (Nov 20, 2008),

¹⁶ *Id.*, at 138.

13. The special interrogation plan implemented by the CIA actually began before approval was received from higher command.¹⁷ The plan started by placing Slahi in a cell where he was kept in nearly complete isolation. Slahi describes the sparse conditions in his diary:

In the block the recipe started. I was deprived of my comfort items, except for a thin iso-mat and a very thin, small, and worn-out blanket. I was deprived of my books, which I owned. I was deprived of my Quran. I was deprived of my soap. I was deprived of my toothpaste. I was deprived of the roll of toilet paper I had. The cell—better, the box—was cooled down so that I was shaking most of the time. I was forbidden from seeing the light of the day. Every once in a while they gave me a rec time in the night to keep me from seeing or interacting with any detainees. I was living literally in terror. I don't remember having slept one night quietly; for the next 70 days to come I wouldn't know the sweetness of sleeping. Interrogation for 24 hours, three and sometimes four shifts a day. I rarely got a day off.¹⁸

14. One practice involved turning the air conditioner down as low as possible in his room to make it nearly freezing. This would sometimes last more than 12 hours. Slahi only had a thin uniform for warmth, while his interrogators would be dressed “like somebody entering a meat locker” during their brief time in the room.¹⁹ Some interrogators doused him with ice water to make the torment worse.²⁰ Others shackled his arms to prevent him from rubbing his hands together to generate any warmth.

15. His interrogators also used speakers to loudly play music to keep him awake and uncomfortable. The song “Bodies” was a common one that played as strobe lights flashed at Slahi.²¹

16. Slahi's interrogators also used sexual abuse to degrade and humiliate him. Slahi describes the torture method in his book:

¹⁷ *Id.*, at 139.

¹⁸ Slahi, *supra* note 3, at 218.

¹⁹ *Id.*, at 243.

²⁰ *Id.*, at 244.

²¹ *Id.*, at 235.

As soon as I stood up, the two [redacted] took off their blouses, and started to talk all kind of dirty stuff you can imagine, which I minded less. What hurt me most was them forcing me to take part in a sexual threesome in the most degrading manner. . . . Both [redacted] stuck on me, literally one on the front and the other older [redacted] stuck on my back rubbing [redacted] whole body on mine. At the same time they were talking dirty to me, and playing with my sexual parts.²²

17. One of the notable incidents of torture involved interrogators taking Slahi out on a boat, similar to a tactic detailed in the special interrogation plan sent to Secretary Rumsfeld.²³ Around August 25, 2003, Slahi was eating his dinner when three soldiers and a dog—a German shepherd—burst into his cell. While a masked man beat Slahi in his face and ribs, another man “stayed at the door holding the dog’s collar, ready to release it on [Slahi].”²⁴ Slahi was blindfolded, chained, and dragged to a truck. During the ride, two men continued to beat him. When he started to pray, Slahi was threatened, and was continually punched. His mouth and nose were bleeding and began to swell. The guards sprayed Ammonia in his nose to keep him awake.

18. The guards then forced Slahi onto a boat, where the beatings continued. As part of the torture, his guards forced him to drink salt water. Slahi vomited, but they continued to pour the water into his mouth.²⁵ At some point during the trip, a new team took over the interrogation. They stuffed Slahi’s clothes with ice cubes, from his neck down to his ankles. Whenever the ice melted, they replaced it with more cubes. They continued to punch Slahi at random intervals so he would not know when to expect it. Slahi described the fear this created: “There is nothing more terrorizing than making somebody expect a smash every single heartbeat”.²⁶

²² *Id.*, at 230.

²³ *See supra* note 15.

²⁴ Slahi, *supra* note 3, at 250.

²⁵ *Id.*, at 253.

²⁶ *Id.*, at 259.

19. At various points, Slahi undertook a hunger strike to stop his tortuous treatment. He wrote in his book: “I was just wishing to pass out so I didn’t have to suffer, that was really the main reason for my hunger strike.” However, this just led to more threats by his interrogator. The unnamed figure warned: “You’re not gonna die, We’re gonna feed you up your ass.”²⁷

20. Slahi was often unable to freely practice his religion. He was threatened with beatings for attempting to pray. He was also unable to take part in tradition religious practices either. He recalls: “I was also forbidden to fast during the sacred month of Ramadan October 2003, and fed by force”.²⁸

21. During the course of his torture, Slahi was constantly threatened. The threats weren’t just about torture either; they often referenced his death. One guard told him: “If you don’t cooperate, we’re going to put you in a hole and wipe your name out of our database.”²⁹

22. Slahi was forced to interact with “Mr. X”, the masked interrogator who was mentioned by the Senate Committee on Armed Service: “On July 17, 2003, the masked interrogator told Slahi about a dream he had had where he saw "four detainees that were chained together at the feet. They dug a hole that was six feet long, six feet deep, and four feet wide. Then he observed the detainees throw a plain, unpainted, pine casket with the number 760 [Slahi's internment serial number (ISN)] painted on it in orange on the ground.”³⁰ He describes the incredible terror that all of these threats caused in his diary:

“When [redacted] informed me about the intentions of his team, I was terrified. My mouth dried up, I started to sweat, my heart started to pound . . . I started to get nausea, a head-ache, a stomach-ache. . . . You don’t know how terrorizing it is for a human being to be threatened with torture. One literally becomes a child.”³¹

²⁷ *Id.*, at 231.

²⁸ *Id.*

²⁹ *Id.*, at 220-221.

³⁰ Committee on Armed Service, *supra* note 15, at 139.

³¹ Slahi, *supra* note 3, at 216-217.

23. Slahi's captors also threatened his family. His interrogators threatened to arrest his mother, and imprison her at Guantanamo as well.³² Slahi was even presented with forged letters from the Department of Defense "announcing" that this would happen.

24. The ongoing torture Slahi suffered caused extreme mental stress. Slahi began to hallucinate. He heard the voices of his family, Koran readings, and even music from his home. This was corroborated by government documents as well. An October 17, 2003 email from a JTF-GTMO interrogator to LTC Diane Zierhoffer, a ITF-GTMO Behavioral Science Consultation Team (BSCT) Psychologist, stated that "'Slahi told me he is 'hearing voices' now... He is worried as he knows this is not normal.... By the way ... is this something that happens to people who have little external stimulus such as daylight, human interaction etc???? Seems a little creepy.'" LTC Zierhoffer responded "sensory deprivation can cause hallucinations, usually visual rather than auditory, but you never know... In the dark you create things out of what little you have." Notwithstanding his U.S. captor's understanding that Slahi was experiencing severe mental health problems as a result of the conditions of his confinement, his isolation and torture continued.

25. In order to escape his torment, Slahi began to falsely confess to a number of crimes in the hopes that he might be spared additional torture. He describes his desperation in his diary:

Now, thanks to the unbearable pain I was suffering, I had nothing to lose, and I allowed myself to say anything to satisfy my assailants. . . I answered all the questions [the interrogator] asked me with incriminating answers. I tried my best to make myself look as bad as I could, which is exactly the way you can make your interrogator happy. I made my mind up to spend the rest of my life in jail. You see most people can put up with being imprisoned unjustly, but nobody can bear agony day in and day out for the rest of his life.³³

³² *Id.*, at 249,

³³ *Id.*, at 278.

Slahi wrote over one thousand pages of false material, both about himself and implicating others in terrorist activities. This effectively ended the worst of his torture.

26. His treatment appalled even those assigned by the United States to work on his case. Marine Lt. Col. Stuart Couch was the officer assigned to prosecute Mohamedou Ould Slahi. Couch “withdr[ew] from the case when he uncovered information about Slahi’s treatment at the hands of his interrogators.”³⁴

27. Despite enduring torture, and nearly fourteen years of incarceration at Guantanamo Bay, and notwithstanding his so-called confession, Mohamedou Slahi was never actually charged with a crime. U.S. Air Force Col. Morris Davis was the Chief Prosecutor for Military Commissions at Guantanamo. In a media interview, Col. Davis described the lack of any real evidence against Slahi: “I remember a while after I got there, in early 2007, we had a big meeting with the CIA, the FBI, the Department of Defense, and the Department of Justice, and we got a briefing from the investigators who worked on the Slahi case, and their conclusion was there’s a lot of smoke and no fire . . . They could never directly link him to any attempt to cause any real harm.”³⁵

V. Legal Process

28. In 2009, the ACLU joined Mr. Slahi’s legal team of Nancy Hollander, Theresa Duncan, and Linda Moreno in a habeas corpus petition arguing against his indefinite detention. In March 2010, a federal judge ruled that the United States could not continue to detain Mr. Slahi. The judge found that allegations that Mr. Slahi participated in the so-called Millennium Plot to attack the Los Angeles airport and that he recruited two of the 9/11 hijackers were not supported by any credible evidence. The judge ultimately concluded that there was no basis for the government’s

³⁴Larry Siems, “*He Reminded Me of Forrest Gump*”, Slate (May 1, 2013) at http://www.slate.com/articles/news_and_politics/foreigners/2013/04/mohamedou_ould_slahi_s_guant_namo_memoirs_an_interview_with_colonel_morris.html.

³⁵ Siems, *supra* note 34.

contention that Mr. Slahi was part of al Qaeda and thus ruled that he could not be detained indefinitely.³⁶

29. However, this ruling was appealed by the Obama administration. With his habeas case sitting in limbo, Slahi had to wait until he could appear before the Periodic Review Board to get another chance at release. One of his former guards actually submitted a letter of support to the Periodic Review Board advocating for Slahi's release. He wrote glowingly of Slahi, going as far as to say he "would be pleased to welcome [Slahi] into his home."³⁷ The letter is attached as Exhibit A. [for now it's A, that will probably change] In July 2016, the Periodic Review Board granted his release, after determining that he poses no significant threat to the United States.

30. Mohamedou Slahi hand-wrote a 466-page manuscript detailing his treatment in 2005. He wrote it in English, his fourth language. After a prolonged legal battle, it was finally declassified in 2012. "Guantanamo Diary" was published on January 20, 2015. Despite the heavy redaction in parts, it received widespread critical acclaim.

31. Slahi was released to his home country of Mauritania in October 2016. His resilience in the face of the adversity of his situation is remarkable. His ability to travel outside the county has been limited.³⁸ The return of his documents has been delayed by the Mauritian government, reportedly because of pressure by the United States. Despite this, he has been invited to conferences around Europe, and plans to travel in the future.

VI. Violations of Law

A. International Law

³⁶ "*Slahi V. Obama - Habeas Challenge To Guantánamo Detention*", ACLU (Oct 25, 2016) at <https://www.aclu.org/cases/slahi-v-obama-habeas-challenge-guantanamo-detention>.

³⁷ [Redacted], Periodic Review Board letter. April 16, 2016. Exhibit A.

³⁸ UNC Human Rights Policy Lab interview with Mohamedou Slahi. March 1, 2017.

32. Slahi's treatment violates article 5 of the Universal Declaration of Human Rights, which states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."³⁹

33. Slahi's treatment violates article 7 of the International Covenant on Civil and Political Rights (ICCPR), which states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁴⁰

34. Slahi's treatment violates multiple sections of the Convention against Torture (CAT). Article 2 requires that: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." And further, article 3(1), which states: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."⁴¹ The United States violated these provisions by the acts of torture committed by and under their supervision, and by rendering Slahi without any semblance of process to Jordan for torture.

35. The practice of forced feeding also violates international law. In a document titled "'Legal Authority and Policy for Enteral Feeding at JTF-GTMO", an attorney from the Department of Defense admitted that "international law and certain medical ethical standards holds that the 'forced feeding' of a mentally competent person capable of making an informed decision is never acceptable".⁴²

³⁹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁴⁰ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

⁴¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁴² Jason Leopold, "*The Military Admitted Force-Feeding Gitmo Detainees Violates International Law and Medical Ethics*", Vice (Jan 29, 2015) <https://news.vice.com/article/how-a-military-memo-could-save-the-nurse-who-refused-to-force-feed-guantanamo-detainees>.

B. United States Federal Law

36. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, Slahi's treatment was in violation of the Torture Victims Protection Act of 1991, which states "An individual who, under actual or apparent authority, or color of law, of any foreign nation— subjects an individual to torture shall, in a civil action, be liable for damages to that individual."⁴³

37. Slahi's treatment also violates the federal law against torture, which states "Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years."⁴⁴ This statute defines torture as "means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control".

38. Slahi's treatment violated the War Crimes Act of 1996. This act prohibits torture, defined as:

An act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.⁴⁵

C. North Carolina State Law

39. The rendition process, and detention of Slahi violated the North Carolina Constitution, which states "No person shall be taken, imprisoned, or disseized of his freehold, liberties, or

⁴³ TORTURE VICTIM PROTECTION ACT OF 1991, 1992 Enacted H.R. 2092, 102 Enacted H.R. 2092, 106 Stat. 73.

⁴⁴ 18 U.S. Code § 2340A.

⁴⁵ 18 U.S. Code § 2441.

privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”⁴⁶

40. The rendition process, and detention of Slahi violated a North Carolina statute regarding kidnapping and abduction, which states: “Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, . . . shall be guilty of kidnapping.”⁴⁷ This statute extends liability to private companies in violation as well and includes conspiracy to commit such acts.

VII. Conclusion

41. The United States, North Carolina and its political subdivisions, and Aero Contractors committed many violations of international, federal, and state law.

42. These violations have harmed the reputation of the United States and have likely created greater threats to the national security of the country. The United States is foreclosed from assuming a global leadership position on matters pertaining to human rights.

43. Perhaps most importantly, the human rights violations perpetrated against Mohamedou Slahi and his family have severely and permanently impacted their lives. Slahi is owed accountability and repair for the harm he has suffered.

⁴⁶ N.C. Const. art. 1, §19.

⁴⁷ N.C. Gen. Stat. § 14-39.

April 16, 2016,
Dear Periodic Review Board,

I understand that Mohamadou Slahi is scheduled for a hearing before the Periodic Review Board. I am writing this letter in support of his effort to be released from the prison in Guantanamo Bay. I am pleased to provide you my observations about him, consistent with my obligations to the United States Military. I am confident that there is more I could provide that would be helpful for you and supportive of him but it would require doing so in a secure forum. I served for several years in the United States military in the early years of this century, including ten months as a guard at the prison in Guantanamo Bay. While there, I interacted with numerous prisoners. One prisoner I got to know reasonably well was Mohamedou Slahi. Mohamedou and us guards at the time did not have a normal guard/detainee relationship based on the circumstances of his detention. We had the chance to spend hours and hours, face to face getting to know each other.

Before my assignment to Guantanamo, I had heard that the men I would be guarding were the worst of the worst and that they would likely hate me and everything the United States and I stood for. I expected to find angry and brutal men. In no way did I experience that with Mohamedou.

I have read Mr. Slahi's account of his treatment in Guantanamo and his descriptions of the abuse he suffered during interrogations and in his first months in the prison. I would have expected a person who experienced such treatment to be angry and hostile.

My experience with Mr. Slahi was nothing of the sort. I found Mr. Slahi to be polite, friendly, and respectful. For some time, I had the opportunity to interact with Mr. Slahi on a daily basis. I observed Mr. Slahi to maintain a good sense of humor despite his surroundings. We spoke about many things, including sharing our views about life. I did not see or hear support for violence or fundamentalist Islam from him.

During my time serving in Guantanamo, my wife gave birth to our daughter. I was quite proud and pleased. Because I had developed a relationship as human beings with Mr. Slahi, I shared the fact of her birth with him. He was openly pleased for me and able to express compassion and empathy.

I have learned that the habeas corpus court granted Mr. Slahi's petition more than five years ago and held that there was no evidence that justified his imprisonment. I was quite pleased and believed that decision was consistent with American values. I was saddened when I then learned that the decision was remanded by the Court of Appeals and that his case is still pending.

Based on my interactions with Mr. Slahi while in Guantanamo, I would be pleased to welcome him into my home. Based on my interactions, I do not have safety concerns if I were to do so. I would like the opportunity to eventually see him again.

I would be pleased to speak with you in person at Mr. Slahi's hearing if that would be helpful.
Sincerely,

[REDACTED]

Ph- [REDACTED]

Email- [REDACTED]

Sifullah Abdullah Paracha

I. Introduction

1. “Good morning. I am David Remes, private counsel for Sifullah Abdullah Paracha.”¹

These words begin the most recent hearing before the Periodic Review Board (PRB), the committee which reviews detainees for potential release from the United States’ Guantanamo Bay detention facility, held on March 16, 2016.² Twelve years after his initial capture, Paracha sits in a white prison jumpsuit – an outfit reserved for Guantanamo’s most compliant prisoners – in a trailer on the facility’s grounds. From this trailer, Paracha will testify before the members of the board as he seeks nothing more than to be returned to his family. In seeking his release after over a decade of detention without charge, Paracha must convince this board, which is made up of one senior official each from the Department of Defense, Department of Homeland Security, Department of Justice, Department of State, and the Office of the Director of National Intelligence, that he is an individual who presents no threat and should be released pursuant to Executive Order 13567, the Order which has brought the board together.³

II. The Facts of Sifullah Paracha’s Capture, Rendition and Detention

2. Prior to his capture, Sifullah Paracha was a successful businessman in his native Pakistan. Having graduated from university in Karachi, Pakistan, Paracha came to the United States to study computer systems at the New York Institute of Technology (NYIT) when he was 24. While in New York, Paracha met his wife and started a family.⁴ After graduating from NYIT,

¹*Opening Statements of Detainees Representatives*, Periodic Review Board (Mar. 16, 2016), available at http://www.prs.mil/Portals/60/Documents/ISN1094/160301_U_ISN1094_OPENING_STATEMENTS_OF_DETAINEE_REPRESENTATIVES_PUBLIC.pdf. (Hereinafter PRB).

² *Id.*

³ Associated Press, *Guantanamo Bay’s oldest prisoner seeks release* (Mar. 8, 2016), <https://www.theguardian.com/us-news/2016/mar/08/guantanamo-bay-oldest-prisoner-saifullah-paracha-seeks-release>; *About the Periodic Review Board*, Periodic Review Board, <http://www.prs.mil/About-the-PRB/>

⁴ *Saifullah Paracha*, Reprieve, <http://www.reprieve.org/guantanamo-bay/saifullah-paracha/>.

Paracha remained in New York for 15 years while working in real estate—during which time he became a permanent U.S. resident.⁵ In the mid-1980s, Paracha returned to Pakistan to found a number of businesses, including a clothing and textile export business and a television production company.⁶

3. However, in July of 2003, Paracha’s life changed dramatically when he left for Bangkok, Thailand on a business trip, and never returned.⁷ Upon arriving at the airport in Bangkok on July 5th,⁸ Paracha was abducted by U.S. authorities and rendered to Bagram Airbase in Afghanistan for interrogation. The decision to capture Paracha was based on information obtained from an individual being subjected to torture during interrogation, and without corroborating evidence of Paracha’s financial support of, or involvement in, Al Qaida.⁹

4. This transport, and the initial processing procedure detailed below, likely occurred on a Gulfstream V with the tail number N379P—a plane operated by Aero Contractors out of Johnston County Airport in Smithfield, North Carolina.¹⁰ N379P is known to have carried out numerous CIA rendition flights,¹¹ and during the time period of Paracha’s rendition the plane disappears from flight logs while traveling in the region. The lack of documentation during this circuit suggests that authorities wanted to keep the plane’s path secret, potentially because it was

⁵ *Id.*

⁶ *Id.*

⁷ Andy Worthington, *Saifullah Paracha, 68-Year Old Pakistani Businessman, Has His Ongoing Imprisonment at Guantánamo Approved* (Apr. 15, 2016), <http://www.andyworthington.co.uk/2016/04/15/saifullah-paracha-68-year-old-pakistani-businessman-has-his-ongoing-imprisonment-at-guantanamo-approved/>.

⁸ *Id.*

⁹ S. Select Comm. on Intelligence, 114th Cong., Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program, at 89, (2014) *available at* <https://www.amnestyusa.org/pdfs/sscistudy1.pdf> [hereinafter COMMITTEE REPORT]. (Footnote 497 explains that the individual providing such information, Majid Khan, “fabricated a lot of his early [CIA] interrogation reporting to stop... what he called 'torture.'”)

¹⁰ Stephen Grey, *Ghost Plane*, St. Martin’s Press (2007); No More Guantánamos, *available at* <http://www.nogitmos.org/saifullahparacha>.

¹¹ *N379P-N8068V-N44982*, Rendition Project, <https://www.therenditionproject.org.uk/flights/aircraft/N379P.html>.

transporting Paracha. It is incumbent on the U.S. government to investigate and confirm whether N379P and Aero Contractors were involved in Paracha's rendition.

5. The transportation portion of the rendition process, which is essentially officially sanctioned kidnapping, functioned as the beginning of the interrogation process for detainees in the United States' custody.¹² The protocol during the transport process was aimed at forcing a state of learned helplessness upon detainees.¹³ First, detainees would have their clothing forcibly removed with either knives or scissors.¹⁴ Next, the C.I.A. would take pictures of the now naked detainee and force a suppository into their rectum in order to sedate them for the duration of the transport.¹⁵ Finally, a detainee would be put in a diaper, dressed in non-descript clothing, blindfolded, have their head covered with a black hood, and shackled.¹⁶ This process was methodical and deviously constructed to infantilize detainees. Such was the power of just this initial process that the European Court of Human Rights has concluded it alone to be a form of torture.¹⁷

6. Once Paracha arrived in Bagram, he would remain there for twelve months before he was transported again—this time to the United States' Guantanamo Bay detention facility where he still remains. What is known about conditions at Bagram is unsettling, and points towards Paracha having been subjected to the same torturous physical abuses as were other prisoners. Investigation by Human Rights Watch has revealed testimony from those working at "black site" facilities such as Bagram. This testimony describes the circumstances of Paracha's detention and indicates prisoners were subjected to electric shocks, extended incommunicado detention,

¹² James E. Pfander, *Const. Torts & The War on Terror*, 35 (2017).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *El-Masri v. Macedonia*, Eur. Ct. Hum. Rts., No. 39630/09 (2012).

sometimes while under a hood to further the isolation and confusion, as well as prolonged shackling and interrogation in stress positions.¹⁸ The abuses of detainees at such “black site” facilities were so extreme that a detainee’s death was not an uncommon end result.¹⁹ Due to the extreme nature of the interrogations taking place, and in an effort to keep the facility’s operations and detainee list a secret, the International Committee of the Red Cross (ICRC) was often barred from entering the facility.²⁰

7. Though the Guantanamo facility is notorious as a holding ground for individuals where due process and a right to speedy trial are oft neglected, it is a comparable paradise in relation to the conditions at Bagram. When comparing Bagram to Guantanamo, Omar Deghayes, who, like Paracha, was also prisoner at Bagram and who was later transferred to Guantanamo, stated that “Bagram is definitely the worst At Guantanamo, things were bad, but at least there were some kind of rules, [but in] Bagram, they still don’t [have any rules], and when I was there, there was no respect for anything. The guards got away with whatever they wanted: they could beat you up when they felt like it.”²¹

8. For over the past 12 years, Paracha has remained imprisoned at Guantanamo in a nine-foot by six-foot cell that is constantly splashed in the glare of the facility’s neon lights.²² The Senate Select Committee on Intelligence has confirmed his victimization in the CIA’s

¹⁸ *Soldiers’ Accounts*, Human Rights Watch (July 2006), <https://www.hrw.org/reports/2006/us0706/2.htm>.

¹⁹ Human Rights Watch, *supra* note 18.

²⁰ *Id.*

²¹ David Rose, *Why Bagram is Guantanamo’s evil twin and Britain’s dirty secret* (Dec. 9, 2009, 8:30 AM), <http://www.dailymail.co.uk/home/moslive/article-1232665/Why-Bagram-Guantanamos-evil-twin-Britains-dirty-secret.html> (Deghayes’ statements mirror those of others regarding standard procedures for transportation and detainee inspection. In Deghayes’ experience at Bagram, prisoners were not allowed to speak, were consistently hooded during transport or arbitrarily through the day, where “hung with handcuffs from the bars of the cages if they were caught talking,” and if they slumped with exhaustion during punishment or interrogation, then they were beaten.)

²² Reprieve, *supra* note 4.

extraordinary rendition and torture program.²³ As he nears 70 years old, Paracha’s survival depends on proper treatment of his severe diabetes, heart condition, and tuberculosis—which is becoming more costly and is often outright unavailable at a facility such as Guantanamo. Despite the fact that he has been imprisoned for so long, Paracha has not been charged with a crime and has not been afforded the opportunity to return to his family or to seek the outside medical care he needs to survive.

III. Violation of International, Domestic, and State Law

9. Regrettably, acts constituting torture, as defined under international treaty law, U.S. domestic law, and North Carolina state law, have gone hand-in-hand with many detentions like Paracha’s by U.S. authorities. Innocent men and women have forcibly been taken from their families and had their lives put on hold or destroyed, often while being held incommunicado by their capturers, as part of mistaken identity-based capture, rendition, and detention. Even worse, detainees at Bagram and other such facilities were often subject to torture—a crime whose domestic and international prohibitions mirror those of genocide and slavery. For many prisoners like Mr. Paracha, there is no end in sight. Rather than justify their detention and move forward with charging such detainees, authorities have elected to keep them imprisoned.

A) Violations of International Law

10. The actions taken against Paracha violate the United Nations’ Universal Declaration of Human Rights (UDHR). The UDHR holds that, “No one shall be subject to torture or to cruel, inhuman, or degrading treatment or punishment.”²⁴ Because the protocol used by U.S. agents

²³ United States Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program*, 357 (2014).

²⁴ Universal Declaration of Human Rights, art. 5, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

during the rendition process has been held to constitute torture, Paracha's basic human rights under the UDHR were violated.²⁵ Further, these basic rights were violated in the process of holding and interrogating Paracha at the Bagram facility before his eventual transfer to Guantanamo because of the known detention conditions and interrogation techniques used at Bagram.²⁶ Finally, the UDHR continues to be violated by Paracha's continued detention without justifying charge.

11. The rights granted to Paracha under the aspirational UDHR have been violated under the 1966 International Convention on Civil and Political Rights (ICCPR), to which the United States is a party. The ICCPR directly mirrors the UDHR's language regarding torturous acts.²⁷ Such acts are stated as so offensive under the ICCPR, that torture is specifically prohibited even where the ICCPR allows for bound nations to derogate in periods of "public emergency which threatens the life of the nation."²⁸ Because the ICCPR mirrors the UDHR regarding the disallowance of torture and cruel, inhuman, or degrading acts, and because the ICCPR further states there to be no justifying circumstances for such acts, Paracha's basic human rights have been violated under the ICCPR via his treatment during rendition, detainment, interrogation, and continued confinement without charge.

12. The United States has violated Paracha's rights under the Convention Against Torture (CAT), to which the United States is a party. CAT further affirms that torture is unilaterally forbidden and that there are no circumstances by which it can be justified.²⁹ CAT additionally

²⁵ See Pfander, *supra* note 12.

²⁶ See Rose, *supra* note 21

²⁷ International Covenant on Civil and Political Rights, art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171, (hereinafter "ICCPR").

²⁸ ICCPR, *supra* note 27. Other obligations which cannot be waived due to extreme circumstances include arbitrary executions, slavery, ex post facto laws, and failure to abide by the right to be recognized as a person under the law and have freedom of thought, religion, and conscience.

²⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2(2), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, (hereinafter "CAT"). "No

mandates that parties “ensure that education and information regarding the prohibition against torture [are provided to all personnel] involved in a custody interrogation, or treatment of any individual to any form of arrest, detention, or imprisonment.”³⁰ Finally, CAT prohibits extraordinary rendition. Though the United States maintained particular reservations, understandings, and declarations in ratifying both the ICCPR and CAT, none of these negated its absolute duty to prohibit torture and maltreatment or provide effective remedies.³¹ Paracha’s treatment is a violation of CAT because the treatment he received during his rendition, detention, and interrogation is classified as torture.³² Further, the very fact that Paracha was subject to extraordinary rendition is a violation of CAT.

13. Paracha’s rights have further been violated under the American Convention on Human Rights,³³ to which the United States is a signatory of, and the European Convention on the Protection of Human and Fundamental Freedoms, which many of the United States’ key allies are parties to.³⁴ Just like the ICCPR and CAT, these treaties forbid signatories from engaging in torture or maltreatment under any circumstances. Because the prisoner handling protocols used by U.S. agents during the rendition process and in detaining and interrogating prisoners like Paracha at the Bagram facility have been classified as torture, the United States is in violation of both of these documents.

exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

³⁰ CAT, *supra* note 29.

³¹ U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01, 1992 WL 65154; U.S. Reservations, Declarations, and Understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 136 Cong. Rec. S17486-01, 1990 WL 168442.

³² European Convention on the Protection of Human Rights and Fundamental Freedom, Nov. 4, 1950, art. 3, 213 U.N.T.S. 221, 224.

³³ American Convention on Human Rights, art. 5.2, opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, (hereinafter, ACHR). The U.S. is a signatory of, but has not ratified, the ACHR.

³⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, entered into force Sept. 3, 1953, 213 U.N.T.S. 222.

14. The rights guaranteed to Paracha under the Geneva Conventions, all four of which the United States is a party to, have been violated. All four of the Geneva Conventions absolutely prohibit torture.³⁵ Common Article 3, which is the same in each of the four Conventions, states that torture “shall remain prohibited at any time and any place whatsoever.”³⁶ Committing acts of torture is considered a “grave breach” under the Conventions, and is punishable as a war crime.³⁷ Because of the nature of the protocols used in rendering Paracha and the treatment of detainees like Paracha at the Bagram facility, the United States has breached the anti-torture provisions of the Geneva Conventions.

B) Violations of Domestic Law

15. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, the treatment of Paracha and detainees like him violates 18 U.S.C. § 2340. Under § 2340, “[w]hoever outside the United States commits or attempts to commit torture. . . . [and] is a national of the United States; or . . . is present in the United States, irrespective of the nationality of the victim or alleged offender,” is to be held accountable for such acts.³⁸ The definition of what constitutes torture under this statute is broad, and encompasses any “act committed by a person under the color of law specifically intended to inflict severe physical or mental pain or suffering.”³⁹ The broad nature of § 2340 (and the accompanying anti-torture

³⁵ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 12, Aug. 12 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, art. 12, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 17, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 32, Aug. 12, 1949; 6 U.S.T. 3516, 75 U.N.T.S. 287. [hereinafter, collectively referred to as the “Geneva Conventions”]

³⁶ Geneva Conventions, *supra* note 35.

³⁷ Rome Statute of the International Criminal Court, art. 8(2)(a)(ii), 8(2)(c)(i), July 17, 1998, 2187 U.N.T.S. 90. available at http://hrlibrary.umn.edu/instree/Rome_Statute_ICC/romestatute.html.

³⁸ 18 U.S.C.A. § 2340A (West)

³⁹ 18 U.S.C. §2340 holds:

“(1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

statutes, § 2340A and § 2340B) means that the protocol used to capture and render Paracha, as well as the conditions of his detention and interrogation in Bagram, fall within its reach. Because the actions against Paracha are covered by § 2340, the United States has violated its own domestic law in its treatment of Paracha.

16. The actions taken against Paracha violated the War Crimes Act of 1996, a federal law declaring acts falling within the scope of a “grave breach” classification under Common Article 3 of the Geneva Conventions to be war crimes.⁴⁰ Because the protocols used in rendering Paracha and the treatment of detainees like Paracha at the Bagram facility constitute a violation of Common Article 3 of the Geneva Conventions, the War Crimes Act has also been violated.

17. Those participating in capturing, rendering, and interrogating Paracha have violated the Torture Victims Protection Act of 1991. The Act holds any “individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture shall, in a civil action, be liable for damages.”⁴¹ Torture is defined within the Act’s scope as “any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering . . . whether physical or mental, is intentionally inflicted on that individual” in order to obtain information or a confession from the torture victim.⁴² Because the protocols used in the rendition process by agents of the U.S. have been deemed torture by the European Court of

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from--

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

(3) “United States” means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

⁴⁰ 18 U.S.C. §2441.

⁴¹ § 13:2.Torture Victims Protection Act of 1991—Text, *Litigating International Torts in U.S. Courts* § 13:2.

⁴² Torture Victims Protection Act, *supra* note 41.

Human Rights, and because the enhanced interrogation techniques used on those like Paracha would likely be classified as such if heard before an American court pursuant to this Act, those involved in the extraordinary rendition and interrogation of Paracha have violated the Torture Victims Protection Act.

18. Those responsible for the extrajudicial capture, extraordinary rendition, and enhanced interrogation of Paracha are subject to the jurisdiction of the U.S. court system. Under the Alien Tort Act, the circuit courts of the U.S. are granted original jurisdiction over any tort claim brought by an alien resulting from a violation of the law of nations or any treaty to which the U.S. is a party.⁴³

C) Violations of State Law

19. The extraordinary rendition of Paracha, and the torturous acts of agents by the United States—likely aboard a plane operated by Aero Contractors out of Johnston County Airport in Smithfield, North Carolina—violate the Constitution of North Carolina. Article I of North Carolina’s Constitution holds that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws. . . .”⁴⁴ Because many detainees, possibly including Paracha, were subject to extrajudicial capture and detention by the operators of a North Carolina-based plane and company, the Constitution of North Carolina has been violated.

20. The extrajudicial capture, rendition, and detention of detainees, potentially including Paracha, aboard a plane owned in, and operated out of, North Carolina violates North Carolina’s kidnapping laws. North Carolina General Statute (NCGS) § 14-39 holds that “[a]ny person who

⁴³ 28 U.S.C. 1350.

⁴⁴ N.C. Const. art. I, § 19.

shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person . . . shall be guilty of kidnapping if such confinement, restraint, or removal is for the purpose of: Holding such person . . . as a hostage; or . . . [d]oing serious bodily harm to or terrorizing [that person]. . . .”⁴⁵ Because Paracha and others were subject to extrajudicial capture without their consent and subject to bodily harm and terrorizing during their interrogations as part of the United States’ protocols for extraordinary rendition and enhanced interrogation, NCGS § 14-39 has been violated.

21. The extrajudicial capture, transportation, detention, and interrogation of Paracha further violates North Carolina’s felonious restraint law, which is a lesser included offense of a NCGS § 14-39 violation. One who “restrains another person without that person’s consent . . . and moves the person from the place of initial restraint by transporting him in a motor vehicle or other conveyance” violates North Carolina felonious restraint law.⁴⁶ Because Paracha was captured without his consent and moved from Bangkok, his initial place of restraint—perhaps by transport aboard an aircraft owned and operated in North Carolina—NCGS § 14-43.3 has been violated.

22. The acts committed against Paracha qualify as aggravating factors which a court may consider under NCGS § 15A-1340.16. In Paracha’s case, the aggravating factors are: (1) that “[t]he defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants;” (2) that “[t]he defendant was hired or paid to commit the offense;” (3) that “[t]he offense was especially heinous, atrocious or cruel;” (4) that “[t]he defendant was armed with or used a deadly weapon at the time of the crime;” and (5) “[a]ny other aggravating factor reasonably related” Because such U.S. agencies as the C.I.A. induced contractors like Aero to participate in the extraordinary rendition program and

⁴⁵ N.C.G.S. § 14-39(a)(1, 3).

⁴⁶ N.C.G.S. § 14-43.3.

made use of subordinate agents and military members as part of their acts, the first aggravating factor is present under North Carolina law. Because contractors were hired out and paid to operate the planes used in violating the aforementioned state, federal, and international laws, the second aggravating factor is present. Because the acts committed against Paracha as part of his capture, rendition, and interrogation qualify as torture, a crime which is considered so heinous and cruel as to be a war crime under international law, the third aggravating factor is present. Because those involved in the capture, rendition, and interrogation of Paracha were armed during portions of the process, the fourth aggravating factor is present. Because of the gravity and multitude of violations which have been committed against Paracha, it is likely the fifth aggravating factor is present.

23. Finally, Aero Contractors is guilty of conspiracy, and liable under both civil and criminal law in North Carolina. First, “civil conspiracy [occurs] when [there is] (1) a conspiracy, (2) wrongful acts done by certain of the alleged conspirators in furtherance of that conspiracy, and (3) injury as a result of that conspiracy.”⁴⁷ Additionally, “criminal conspiracy is an agreement, express or implied, between two or more persons to do an unlawful act or to do a lawful act by unlawful means.”⁴⁸ Because Aero Contractors conspired to aid agents of the U.S. in committing acts which violated international and federal law, those involved are civilly liable under North Carolina law for the damages suffered by detainees, who may include Paracha, as a result. Further, because the basis of this conspiracy was an agreement between Aero Contractors and agents of the U.S. to commit acts which violated international and federal law, those involved are

⁴⁷ State ex rel. Cooper v. Ridgeway Brands Mfg., LLC, 362 N.C. 431, 444, 666 S.E.2d 107, 115 (2008).

⁴⁸ State v. Clark, 137 N.C.App. 90, 527 S.E.2d 319 (2000).

liable for criminal conspiracy to commit all of the aforementioned violations of North Carolina law.

IV. The United States, the State of North Carolina and its Political Subdivisions, and Aero Contractors Must Provide Redress

24. In order to satisfy its obligations under the aforementioned international and domestic law, the United States must provide remedies for victims of torture and other illegal treatment at the hands of its agents. Remedies included within the ICCPR and CAT include official acknowledgement and remedial action, and compensation for any damages incurred by victims because of such acts. The entire purpose of specifying such remedies is to both deter nations from engaging in torture and to provide a basis by which victims can be made whole. Especially important in the investigation of such harms is the truth telling and documentary function of civil review. Allowing for harms to be documented and recognized helps to ensure future violations are not committed, and assists victims in beginning to rebuild their lives.

25. Furthermore, without acknowledgement and remedy for such crimes, the United States is sending the message that it condones torture and maltreatment and that it will allow these acts to be committed with impunity. The United States holds a duty as one of the world's moral leaders to take a stand and acknowledge where it has done harm. If the acts committed against those like Mr. Paracha are allowed to go unpunished, then the United States effectively cedes its moral high ground, and instead shows itself as standing on a foundation of hypocrisy—a nation which condemns only where it stands to benefit, yet shirks from its duties when the failings are its own.

Abd Al-Salam Al-Hilah

I. Introduction

1. Abd Al-Salam Al-Hilah (known by other names including Abdul al Salam al Hela, Abdul al Heela, Abd al-Salam Ali Abd al-Rahman, Abu Umar, Abd Salam al-Nuaman, referred to herein as “Al-Hilah”) is a 49-year-old Yemeni national, born on January 30, 1968 in Sanaa, Yemen.¹ Al-Hilah graduated from high school in 1988, and subsequently attended Sanaa University from 1988 to 1989.² He became a successful businessman after leaving the university and rose to great prominence in his family and community.³ From 1997 to 2002 he served as the director of the Yemeni Institute of Development and Investment.⁴ At some point in time he married and had three children.⁵

2. Al-Hilah was identified by the Department of Defense (“DOD”) as a “high value detainee” (“HVD”) for his alleged foreknowledge of the 1993 World Trade Center bombing, the 2000 attack on the UK Embassy in Sanaa, YM, the 2000 attack on the USS COLE, a planned attack on the US or British Embassy in Sanaa that was to occur in October 2002, and the 11 September 2001 terrorist attack.⁶ However, he has expressly denied any association or involvement in such attacks, and stated that he is not a member of Al-Qai’ida.⁷ Sources suggest

¹ Most Recent Images of Al-Hilah have been included in the Appendix. Amrit Singh, *Globalizing Torture*, Open Soc’y. Found., 42 (2013), <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; *Abd Al-Salam Al-Hilah*, The Rendition Project, (“Rendition Project”), <https://www.therenditionproject.org.uk/prisoners/hilah.html>; Andrei Scheinkman, Alan McLean, Jeremy Ashkenas, Archie Tse and Jacob Harris, *The Guantanamo Docket, Abdul al Salam al Hilal, ISN 1463 - Abdul al Salam al Hilal - JTF-GTMO Detainee Assessment*, N.Y. Times (Sept. 24, 2008), <https://www.nytimes.com/interactive/projects/guantanamo/detainees/1463-abdul-al-salam-al-hilal>.

² Andrei Scheinkman, *JTF-GTMO Detainee Assessment*, *supra* note 1, at 1.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 1.

⁷ Andrei Scheinkman, Alan McLean, Jeremy Ashkenas, Archie Tse and Jacob Harris, *The Guantanamo Docket, Abdul al Salam al Hilal, ISN 1463 - Abdul al Salam al Hilal - Combatant Status Rev. Tribunal Transcripts*, N.Y. Times, 3 (last visited Jul. 8 2017), <https://www.nytimes.com/interactive/projects/guantanamo/detainees/1463-abdul-al-salam-al-hilal>.

that he was captured and detained because it was believed that he was an “intelligence asset” who possessed “tribal, political and business influence” but constituted no threat to the United States.⁸

3. In late September 2002, Al-Hilah traveled to Cairo, Egypt for a meeting with Arab Contractors, an Egyptian construction firm.⁹ Two days after his arrival Al-Hilah was arrested by a joint operation between Egyptian Intelligence and the CIA.¹⁰ He was then interrogated at a hotel, within a sealed area.¹¹ At some point in time, he was released by the official, but was later arrested at another hotel.¹² Due to the extreme secrecy of Al-Hilah’s location from this point up to his final rendition to Guantanamo Bay in September 2004, his precise whereabouts during such time remains uncertain, although known to the CIA.

4. Al-Hilah’s family did not learn of his whereabouts until a year after his arrest, and only learned about his circumstances solely due to the fact that Al-Hilah was able to smuggle a letter, dated on January 12, 2004, from the Bagram Airbase.¹³ His letter informed his family that:

I have been put in jail in Afghanistan by the Americans, after I was arrested in...Egypt during a brief business trip. The CIA conspired with the Egyptian Mukhabarrat, making false allegations and threats against me, so as to justify their crime of kidnapping me...

⁸ Britain Eakin, *Gitmo Board Reviews Once-Prominent Yemeni*, Courthouse News Service (May 12, 2016), <http://oldarchives.courthousenews.com/2016/05/12/gitmo-board-reviews-once-prominent-yemeni.htm>

⁹ Amrit Singh, *supra* note 1, at 42.

¹⁰ *Guantanamo: Abdulsalam Al-Hilah : [Glob. Letter-Writing Marathon 2006]* (“Guantanamo”), Amnesty Int’l., 1 (Dec. 5, 2006), <https://www.amnesty.org/en/documents/amr51/180/2006/en/>; USA: *Who are the Guantanamo Detainees: Case Sheet No. 15: Yemeni Nat’l.: Abdulsalam Al-Hilah* (“Case Sheet”), Amnesty Int’l., 1 (Jan. 11, 2006), <https://www.amnesty.org/en/documents/amr51/012/2006/en/>; Amrit Singh, *supra* note 1, at 42; The Rendition Project, *supra* note 1;

¹¹ Amnesty Int’l., *Guantanamo*, *supra* note 10, at 1.

¹² *Id.*

¹³ *Id.*; *Cairo to Kabul to Guantanamo*, Hum. Rts. Watch, (last visited Jul. 7, 2017), <http://pantheon.hrw.org/legacy/english/docs/2005/03/28/usint10379.htm>.

5. Solitary confinement is a common characteristic of CIA custody and it is likely that al-Hilah was confined in such condition. The International Committee of the Red Cross (“ICRC”) described the experience of many HVDs:

Throughout the entire period during which they were held in the CIA detention program . . . detainees were kept in continuous solitary confinement and incommunicado detention. They had no knowledge of where they were being held, no contact with persons other than their interrogators or guards. Even their guards were usually masked and, other than the absolute minimum, did not communicate in any way with the detainees. None had any real – let alone regular – contact with other persons detained, other than occasionally for the purposes of inquiry when they were confronted with another detainee. None had any contact with legal representation. The fourteen had no access to news from the outside world, . . . None of the fourteen had any contact with their families, either in written form or through family visits or telephone calls. They were therefore unable to inform their families of their fate.¹⁴

II. Extraordinary Renditions, Torture, and Detentions

From Egypt to the Dark Prison Detention Site in Kabul, Afghanistan

6. Subsequent to his arrest, Al-Hilah was detained in Egyptian custody for seven to eight days.¹⁵ During his detainment, guards subjected him to degrading treatment.¹⁶

7. On September 28, 2002, Egyptian officials placed him on a minibus and drove him to an airport. At the airport, he was taken to what appeared to him as a small private plane, with a maximum of 20 seats, guarded by hooded soldiers.¹⁷ Sources now indicate that this aircraft was in fact a Gulfstream V Jet with the tail number N379P, operated by Aero Contractors, headquartered in North Carolina and based in Johnston County, North Carolina.¹⁸ Al-Hilah was then stripped naked, searched, redressed in blue overalls, cuffed on his hands and feet, and

¹⁴ *Al Nashiri v. Poland*, Eur. Ct. of Hum. Rts., 40 (Feb. 2, 2015).

¹⁵ Amrit Singh, *supra* note 1, at 42.

¹⁶ *Id.*

¹⁷ Amnesty Int’l., *Guantanamo*, *supra* note 10, at 1.

¹⁸ *Planespotting*, North Carolina Stop Torture Now, (last visited Jul. 7, 2017), <http://ncstn.org/content/planespotting/>.

blindfolded.¹⁹ This methodical and deviously constructed protocol during the transport process has been determined to be aimed at forcing a state of learned helplessness upon detainees and has been ruled by the European Court of Human Rights to constitute a form of torture.²⁰ Al-Hilah was then placed on the aircraft and rendered by the CIA to its secret detention site known as “Dark Prison” located near Kabul, Afghanistan.²¹ Other records suggest that during this time, Al-Hilah was instead initially rendered to Baku, Azerbaijan, and then to Dark Prison.²²

Detention and Torture at Dark Prison

8. Al-Hilah was held in secret detention at Dark Prison for over two and a half months, and during such time, lost over 70 pounds.²³ Dark Prison’s standard operating procedure at such time was to maintain detainee cells in complete darkness for the entire duration of their detainment, twenty-four hours a day, seven days a week, as loud rap or heavy metal music played for several weeks at a time.²⁴ Another detainee previously held at Dark Prison, by the name of Ali- al-Hajj al-Sharqawi, described the site as “a pitch dark place, with extremely loud scary sounds.”²⁵ Al-Hilah confirmed this account, stating that the only time he ever saw a light was when a bright strobe light was flashed in his eyes during interrogation, temporarily blinding him.²⁶ He also described “sharp metallic rock music” being played for 24 hours a day.²⁷

¹⁹ Amnesty Int’l., *Guantanamo*, *supra* note 10, at 1.

²⁰ James E. Pfander, *Const. Torts & The War on Terror*, 35 (2017); *El-Masri v. Macedonia*, Eur. Ct. Hum. Rts., No. 39630/09 (2012).

²¹ Amrit Singh, *supra* note 1, at 42, 62; The Rendition Project, *supra* note 1.

²² Hum. Rts. Watch, *supra* note 13.

²³ Amnesty Int’l., *Guantanamo*, *supra* note 10, at 1; Amrit Singh, *supra* note 1, at 42.

²⁴ Amrit Singh, *supra* note 1, at 62-63.

²⁵ *Ali Al-Hajj al-Sharqawi*, The Rendition Project, <https://www.therenditionproject.org.uk/prisoners/sharqawi.html>.

²⁶ Amnesty Int’l., *Case Sheet*, *supra* note 10, at 2.

²⁷ *Id.*

9. In addition, Al-Hilah was regularly stripped naked and interrogated.²⁸ On one occasion, U.S. agents interrogated him for over 15 consecutive days.²⁹ On some occasions, he would be suspended from the ceiling.³⁰ However, at all times one of his hands remained cuffed to the wall, making it difficult for him to sleep or use the toilet.³¹

10. It was the plane operated by Aero Contractors located in Johnston County, NC. that delivered Al-Hilah to the Dark Prison where he suffered egregious torture.

Rendition from Dark Prison to the Cobalt Detention Site in Kabul, Afghanistan

11. Al-Hilah was then rendered by the CIA to the secret detention site called “COBALT.”³² He stated that COBALT also went by the name of “Malidu.”³³

Detention and Torture at COBALT

12. Al-Hilah was held at a CIA detention site known as COBALT for one year and two months.³⁴ During this time, Afghan forces at the facility told him that he was being detained at the wishes of the United States.³⁵

13. The COBALT detention site is a detention, debriefing, and interrogation facility maintaining high to medium value detainees.³⁶ Its facilities are made up of a single abandoned brick factory located within the north region of Kabul, consisting of 20 individual concrete structures used as cells, three interrogation rooms, a staff room, a guardroom, and a conditioning room used for water dousing.³⁷ CIA Chief of Interrogations described this site as, “a dungeon,”

²⁸ *Id.*

²⁹ Amrit Singh, *supra* note 1, at 42.

³⁰ Amnesty Int’l., *Case Sheet*, *supra* note 10, at 2.

³¹ *Id.*

³² Amrit Singh, *supra* note 1, at 42.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*; The Rendition Project, *supra* note 1.

³⁶ *Disposition Memorandum*, CIA Office of Inspector Gen., Cent. Intelligence Agency, 9 (Dec. 6, 2006), https://www.ushrnetwork.org/sites/ushrnetwork.org/files/mustafa_al-hawsawi_2016_uncat_loipr_submission.pdf.

³⁷ CIA Office of Inspector Gen., *supra* note 36; Amrit Singh, *supra* note 1, at 63.

where detainees were “kept in complete darkness and constantly shackled in isolated cells with loud music and only a bucket to use for human waste.”³⁸

14. During Al-Hilah’s detainment at COBALT, standard operating procedures included “total light deprivation, loud continuous music, isolation, and dietary manipulation.”³⁹ During most interrogation sessions, the technique of “walling” was employed, in which CIA interrogators wrapped a towel around the detainee’s neck and swung them into a plywood wall.⁴⁰ This plywood wall, called a “walling board,” is a false wall that creates a loud noise when struck, creating the illusion upon the detainees that the impact had been worse than it actually was.⁴¹

15. In between interrogation sessions, detainees were kept in a coffin called the “large box,” and on some occasions, placed in a smaller constrained area the size of an office space, called the “small box.”⁴²

Rendition from COBALT to Strawberry Fields Detention Site in Guantanamo Bay, Cuba

16. After two and a half months at COBALT, Al-Hilah was briefly rendered back to Dark Prison before he was rendered to Bagram air base.⁴³ The Bagram Air Base was the United States’ main detention facility located within Afghanistan.⁴⁴ At this site, detainees were held in metal shipping containers and kept standing or kneeling for hours, with black hoods placed over

³⁸ Dominic Rushe, Ewen MacAskill, Ian Cobain, Alan Yuhas & Oliver Laughland, *C.I.A. Torture Rep., Rectal rehydration and waterboarding: the CIA torture rep.’s grisliest findings*, the guardian (2:17 P.M. EST Dec. 11, 2014), <https://www.theguardian.com/us-news/2014/dec/09/cia-torture-report-worst-findings-waterboard-rectal>.

³⁹ *Comm. Study of the C.I.A.’s Detention and Interrogation Program*, U.S.S. Select Comm. on Intelligence, 67, footnote 338 (“USSCI Exec. Summ.”) (Declassification Revisions Dec. 3, 2014), https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf.

⁴⁰ *On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit* at 9, *Al-Nashiri v. Obama*, (Jan. 17, 2017), <https://assets.documentcloud.org/documents/3519934/Nashiri-SCT-petition-and-appendix.pdf>;

⁴¹ *Narrative Summ. Describing the Condition of the Accused’s Confinement at Each Location, and the Accused’s Conditions During Each Movement Between Locations*, *United States v. Al-Nashiri*, 191 F. Supp. 3d 1308 (USCMCR 2016).

⁴² *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 40, at 8.

⁴³ Amrit Singh, *supra* note 1, at 62.

⁴⁴ *Id.*

their heads, or spray-painted goggles.⁴⁵ Al-Hilah was detained here along with various other detainees including, Hussein Salem Muhammed Almerfedi, Jamil el-Banna, Samer Helmi al-Barq, Muhammad Farag Ahmed Bashmilah, Ahmed Muhammed Haza al-Darbi, Abdel Aziz Inayatulla, and Ramzi bin al-Shibh.⁴⁶

17. On September 19, 2004, Al-Hilah was sent to the detention site known as Strawberry Fields in Guantánamo Bay, Cuba to face prosecution for alleged terrorist activities against the United States.⁴⁷ Upon arrival, he was registered under Internment Serial Number #1463 and placed in “Camp 5”.⁴⁸

18. During his detainment at Strawberry Fields, Al-Hilah was subjected to various acts of torture, including, constraining of his body, biting, regular beatings, insults, and verbal abuse.⁴⁹ On one occasion, Al-Hera was tied by his hands and feet and a guard began to bite him.⁵⁰ When asked why he was doing so, the guard replied, “Because you are a terrorist.”⁵¹ On another occasion, Al-Hilah refused to attend an interrogation session because prayer time had not been called.⁵² As punishment, the guards dragged him from his cell, removed all of his belongings, and forced him to sleep on the floor.⁵³

19. In July 2005, this abuse led Al-Hilah to join 200 other detainees in a hunger strike in protest of the abuse and injustice experienced at Strawberry Fields.⁵⁴

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ The Rendition Project, *supra* note 1.

⁴⁸ Andrei Scheinkman, *JTF-GTMO Detainee Assessment*, *supra* note 1, at 1; Abdulalsalam al Hilal, *From the unclassified notes of David Remes, attorney for Abdulalsalam al Hilal*, Center for the Study of Hum. Rts. In America, (Jul. 25, 2009), <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/prisoner-testimonies/prisoner-testimonies/unclassified-notes-from-his-attorney-july-25-2009>.

⁴⁹ Amnesty Int’l., *Case Sheet*, *supra* note 10, at 3.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

20. In his attempts to recount his experience in CIA custody, Al-Hilah has experienced great difficulty, stating that "wounds are too many" and that he "doesn't want to reopen them."⁵⁵

Overall, he stated that conditions at the various secret detention sites were "very, very bad."⁵⁶ Al-Hilah continues to suffer from high cholesterol, diabetes, and pain from a leg that was broke during his detainment.⁵⁷ He believes that he has been denied adequate medical care for his condition.⁵⁸

21. On November 4, 2004, during his Combatant Status Review Tribunal (CSRT) Hearing, Al-Hilah expressed his concern over the various procedural deficiencies he saw in the tribunal proceeding, stating

It's not fair for me if you mask some of the secret information. How can I defend myself? . . . It is unfair that the government is going to be talking about me and I don't have an attorney, . . . and that attorney can come up with evidence that proves my innocence. . . you have determined that I am guilty when I am not. . . My Personal Representative is supposed to be with me. Not against me. Now he is talking like he is an interrogator. How can he be an attorney? . . . I cannot say anything that can be used against me. I am even afraid to say what my name is.⁵⁹

22. On this same day, the CSRT classified Al-Hilah as an enemy combatant.⁶⁰ On July 30, 2007, and again on June 22, 2016, Al-Hilah was recommended for continued detainment.⁶¹

23. On August 5, 2008, Al-Hilah filed a Habeas Corpus petition to U.S. Court of Appeals, D.C. Circuit.⁶² On May 13, 2016, in a separation action, the U.S. District Court for the District of

⁵⁵ Amnesty Int'l., *Guantanamo*, *supra* note 10, at 1.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Andrei Scheinkman, *Combatant Status Rev. Tribunal Transcripts*, *supra* note 7, at 6.

⁶⁰ *Combatant Status Rev. Tribunal Decision Cover Sheet*, Combatant Status Rev. Tribunal, Dep't. of Def., (Nov. 4, 2004), https://web.archive.org/web/20081117120002/http://www.dod.mil/pubs/foi/detainees/csr_arb/publicly_filed_CSRT_records_4818-4946.pdf

⁶¹ *Unclassified Summ. of Final Determination*, Periodic Rev. Board, Dep't. of Def., (Jun. 22, 2016), http://www.prs.mil/Portals/60/Documents/ISN1463/20160622_U_ISN_1463_FINAL_DETERMINATION.pdf; Andrei Scheinkman, *JTF-GTMO Detainee Assessment*, *supra* note 1, at 1.

⁶² *Abdul-Rahman Al-Hilah v. Obama*, CV 08-5268 (RCL).

Columbia denied Al-Hilah's motion to compel the government to reveal to petitioner the government's allegations against him.⁶³

24. As of July 7, 2017, Al-Hilah continues to remain in indefinite detention of the Guantanamo Bay detention camps for over 12 years 10 months.⁶⁴

III. Violations of Law

“[The] Extraordinary Rendition is an illegal practice under both domestic and international law, and that, consistent with U.S. policy against torture, the U.S. government is duty bound to cease all acts of Extraordinary Rendition, to investigate Extraordinary Renditions that have already taken place, and to prosecute and punish those found to have engaged in acts that amount to crimes in connection with Extraordinary Rendition.”⁶⁵

A. International Law

25. The European Parliament, the Council of Europe, the ICRC, the CIA's own 2004 Inspector General's report, the UN Joint Study on Secret Detention, and the March 2013 report to the UN Human Rights Council of UN Special Rapporteur Ben Emmerson QC, have all concluded that the CIA's Extraordinary Rendition program resulted in serious human rights violations.⁶⁶

⁶³ *Abdul-Rahman Al-Hilah v. Obama*, CV 05-1048 (RCL), 2016 WL 2771116, at *1 (D.D.C. May 13, 2016).

⁶⁴ Andrei Scheinkman, *JTF-GTMO Detainee Assessment*, *supra* note 1.

⁶⁵ *Torture by Proxy: Int'l. and Domestic Law Applicable to "Extraordinary Renditions"*, The Comm. on Int'l. Hum. Rts. of the Ass'n. of the Bar of the City of N.Y. & The Center for Hum. Rts. and Glob. Justice, N.Y.U. Sch. of Law, 5-6 (Jun. 2006), [https://www.therenditionproject.org.uk/pdf/PDF%2039%20\[CHRGJ-2006-06REP%20Torture%20by%20Proxy\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2039%20[CHRGJ-2006-06REP%20Torture%20by%20Proxy].pdf)

⁶⁶ CHR Res. 3/2010, UN Doc. A/HRC/22/52, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf; *Request for an investigation concerning suspicion of crim. offences committed in Lithuania against Mr Mustafa al-Hawsawi*, REDRESS (Sep. 13, 2013), <http://www.redress.org/downloads/casework/final-lithuania---investigation-request.pdf>; CHR Res. 3/2010, UN Doc. A/HRC/13/42, 46, <http://hrlibrary.umn.edu/instreet/A-HRC-13-42.pdf>.

26. In the case of Al-Hilah, his treatment at the different CIA secret detention sites was in violation of the following international regulations Universal Declaration of Human Rights

(UDHR). The provisions in violation include:

- a. Article 3 which guarantees the “right to life, liberty and security of person.”⁶⁷
- b. Article 5 which guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶⁸
- c. Article 8 which guarantees “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁶⁹

27. Al-Hilah’s treatment was also in violation the following provisions within the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“Human Trafficking Protocol”), including:

- a. Article 3(a) which defines “trafficking in persons” as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁷⁰
- b. Article 6(2) providing that “Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.”⁷¹
- c. Article 6(3) providing that, “Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-

⁶⁷ Universal Declaration of Hum. Rts. (hereinafter UDHR), art. 3, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

⁶⁸ *Id.* at art 5.

⁶⁹ *Id.* at art. 8.

⁷⁰ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

⁷¹ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3.

governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.”⁷²

d. Article 6(6) providing that “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”⁷³

28. Al-Hilah’s treatment at CIA secret detention sites also violated provisions within the International Covenant on Civil and Political Rights (ICCPR), including:

a. Article 7 which guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁷⁴ In addition, the Human Rights Committee, the overseeing and interpretive body of the ICCPR, has stated that “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁷⁵ Thus, the extradition, by the US, of an individual to an area where it is known that they will be tortured by other parties is virtually no different than if the US tortured the individual itself.

b. Article 14(3)(b) which guarantees that an accused must “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”⁷⁶ Specifically, under General Comment No. 32, the Human Rights Committee indicated that: “Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”⁷⁷

29. Al-Hilah’s treatment was also in violation of various provisions within the Convention against Torture (CAT), defining torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has

⁷² U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

⁷³ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

⁷⁴ Int’l. Covenant on Civil and Political Rts. (hereinafter ICCPR), art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171.

⁷⁵ See Office of the U.N.s High Comm’r. for Hum. Rts., Hum. Rts. Comm. (May 28, 2017); Gen. Comment No. 20, ¶ 9, U.N. Doc. A/47/40, U.N. Hum. Rts. Comm., (1992).

⁷⁶ ICCPR, *supra* note 74, at 171.

⁷⁷ ICCPR, *supra* note 74, at 171.

committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁷⁸ The provisions in violation include:

- i. Article 2(1) which states, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”⁷⁹
- ii. Article 3(1) which states, “No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁸⁰
- iii. Article 12 which states, “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”⁸¹

30. Al-Hilah’s treatment is also in violation of various other international regulations, including:

- a. Principle 8 of the Prevention of Crime and the Treatment of Offenders requiring that: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”⁸² In addition, the Special Rapporteur on the Promotion and Protection of Human rights and Fundamental Freedoms while Countering Terrorism has stressed that "the decision to prosecute someone for a terrorist crime should never on its own have the consequence of excluding or limiting confidential communication with counsel."⁸³

⁷⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter CAT), art. 1(1), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85.

⁷⁹ *Id* at art. 2(1).

⁸⁰ *Id* at art. 3(1).

⁸¹ *Id* at art. 12.

⁸² See Rep. on the Eighth U.N.s Congress on the Prevention of Crime and Treatment of Offenders, 197, U.N. Doc. A/ CONF.144/28/Rev. 1 (1991); CHR Res. 31/2012, UN Doc. UA G/SO 218/2 G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24), [https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_30.11.12_\(31.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_30.11.12_(31.2012).pdf).

⁸³ CHR Res. 31/2012, *supra* note 82, at 3.

31. The treaties outlined above are all binding at all levels, including federal, the state, of North Carolina and its political subdivisions. The “Supremacy Clause,” the second clause of the U.S. Constitution, states that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁸⁴

32. In September 2002, Al-Hilah was deprived of the guarantees to the “right to life, liberty and security of person” without the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law as provided under Article 3 and 8 of the UDHR, Article 14(3)(b) of the ICCPR, and Principle 8 of the Prevention of Crime and the Treatment of Offenders, when he was arrested and subsequently kept in detainment by the United States. These violations, as will be outlined below, include the process of extraordinary rendition in and of itself, which further facilitated and perpetuated the violations committed against Al-Hilah from Afghanistan to the Guantanamo Detention Camps where he is currently held.

33. Throughout Al-Hilah’s secret detainment at the various CIA secret detention sites, there was no public knowledge of his existence or whereabouts. This made him unavailable to numerous organizations and agencies including the International Committee of the Red Cross, which could provide him assistance. This level of secret detention has been alleged to arise to the level of enforced disappearance, violating the right to personal liberty, the prohibition of arbitrary arrest or detention, and the right to a fair trial under Article 3 and 8 of the UDHR.⁸⁵ Pertinently, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution

⁸⁴ U.S. CONST. art. VI, cl. 2.

⁸⁵ REDRESS, *supra* note 66, at 2.

urging the United States to discontinue its operations at Guantanamo Bay, and concluding that the United States had engaged in the unlawful practice of secret detention.⁸⁶ PACE's Committee of Ministers also urged the United States to provide either a prompt release or fair trial of the detainees held at Guantanamo Bay by an independent and impartial court, so to ensure "that the rights of all detainees are ensured and that the principle of the rule of law is fully respected."⁸⁷

34. However, the United States has failed and on occasion directly refused to make such reparations. It has been alleged that the current U.S. Military Commission system, detainees' primary avenue for redress, would be an insufficient measure for Al-Hilah, based on the fact that the system does not meet international fair standards as established under Article 8 of the UDHR, Article 14(3)(b) of the ICCPR, Principle 8 of the Prevention of Crime and the Treatment of Offenders, and Article 6(2), 6(3) and 6(6) of the Human Trafficking Protocol.⁸⁸

35. To begin with, The UN Working Group on Arbitrary Detention highlighted that the tribunal did not grant detainees "an enforceable right to compensation" by "determining the legality of any detainee's law of war detention," instead the Military tribunal only endeavors "to make discretionary determinations whether or not a detainee represents a continuing threat to the security of the United States."⁸⁹ This sort of limited review deprives Al-Hilah of an avenue for redress and reparation, and perpetuates his indefinite detention, violating his "right to life, liberty and security of person" without the right to an effective remedy by the competent national tribunals, as discussed earlier.

⁸⁶ *Alleged secret detentions and unlawful inter-state transfers involving Council of Eur. member st.'s, Draft rep. – Part II (explanatory memorandum)*, Comm. on Legal Affairs and Hum. Rts., Parliamentary Assemb. of the Council of Eur., 4 (Jun. 7, 2006), http://assembly.coe.int/committeedocs/2006/20060606_ejdoc162006partii-final.pdf (citing PACE Resol. (1433/2005) and Recommendation (1699/2005)).

⁸⁷ REDRESS, *supra* note 66, at 2.

⁸⁸ *Lithuanian Court's ruling on CIA rendition case, a breakthrough for justice*, Amnesty Int'l. (12:00 A.M. U.T.C. Jan. 29, 2014), <https://www.amnesty.org/en/latest/news/2014/01/lithuania-court-decision-cia-detention/>.

⁸⁹ CHR Res. 31/2012, *supra* note 82, at 5.

36. In addition, the UN Working Group on Arbitrary Detention highlighted that the limitations on disclosure of classified national security information during Combatant Status Review Tribunal hearings has greatly impeded on detainees right to adequate counsel by drastically limiting their defense attorney’s ability to represent them, making it “almost impossible to locate and interview [] possible witnesses . . . [or] ask other witnesses about information as they will not have been cleared to view classified information.”⁹⁰ For Al-Hilah to have the opportunity to declassify any classified information, his attorney-client privileges must in effect be violated upon each request. This is due to the fact that any classified information must be presented by his attorney to the judge and the government before he may testify to it in the courtroom.⁹¹ This kind of blanket disclosure requirement is in stark contrast to the directives provided under the Special Rapporteur on the Promotion and Protection of Human rights and Fundamental Freedoms while Countering Terrorism.⁹²

37. In addition, Al-Hilah’s detention has violated his right to access to adequate counsel as provided under Article 14(3)(b) of the ICCPR, and Principle 8 of the Prevention of Crime and the Treatment of Offenders as well. During Al-Hilah’s secret detention, defense counsel was completely inaccessible to him due to his inability to access the outside world, and the fact that outside counsel had no knowledge of his status at such facility.⁹³ Moreover, under his current detention in Guantanamo Bay, detention procedures are impermissibly burdening his right to counsel by extensively restricting how he communicates with his counsel and prohibiting access by counsel to his medical records.

⁹⁰ CHR Res. 31/2012, *supra* note 82, at 2.

⁹¹ CHR Res. 31/2012, *supra* note 82, at 2.

⁹² CHR Res. 31/2012, *supra* note 82, at 2.

⁹³ *Matter of Mustafa Adam Al-Hawsawi regarding the United States of America, Precautionary Measure No. 422-14*, Inter-American Comm. on Hum. Rts. Res. 24/2015 (Jul. 7, 2015), <http://www.redress.org/downloads/resolution-24-2015---precautionary-measures-al-hawsawi.pdf>.

38. Most importantly, Al-Hilah was subjected to torture or to cruel, inhuman or degrading treatment or punishment during his arrest and subsequent detainment in patent violation of Article 5 of the UDHR, Article 7 of the ICCPR and CAT. Secret detention is said to facilitate the continued use of torture, and in many instances, is also considered a *de facto* use of torture on detainees.⁹⁴ Moreover, detainees held in secret detention, who have been labeled as HVDs were at a greater risk of being subjected to torture and other ill-treatment.⁹⁵

39. Al-Hilah faced numerous accounts of torture in violation of international regulations including nudity, confined spaces, hooding, isolation, and other degrading treatment. Overall, these acts are sufficient to constitute acts of torture as provided under the UDHR and CAT.

40. In permitting the CIA and independent contractors, such as Aero Contractors, to perform its extraordinary rendition program, with the breadth of discretion they held, the United States, the state of North Carolina and its political subdivisions, failed to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction in violation of Article 2(1) of CAT. The rendering and harboring of detainees internationally at the various CIA detention sites are all operations performed within the jurisdiction of the United States. Based on this affiliation, the United States also knowingly exposed Al-Hilah to the danger of torture, cruel, inhuman or degrading treatment, or punishment of foreign nations through its permission and directives in performing the numerous renditions from Afghanistan to Cuba. Moreover, the United States continues to leave detainees at the threat of torture. These operations are all in stark violation of Article 7 of the ICCPR, and Article 3(1) of CAT. At all of these locations, Al-Hilah was transported under aircrafts known to be owned

⁹⁴ REDRESS, *supra* note 66, at 2.

⁹⁵ *Id.*

by the CIA and operated by various independent contractors, including Aero Contractors. The facilities to which he was transferred to were known to be torture facilities.

41. The U.S. government maintained an established system throughout Al-Hilah's detainment in which it paid the CIA, its independent contractors, and complicit governments for the purpose of continuing his transfer and harboring in each CIA secret detention site from the period of 2002 to 2006. This was done against his will, under the threat of force, in order to obtain any potential information from him. Such form of systematic processing of a person satisfies the definition of "trafficking in persons," violating of Article 3(a) of the Human Trafficking Protocol. In fact, the 2012 Executive Summary concluded that through this system of payment, the United States had financially incentivized independent contractors and complicit governments to perform such trafficking.⁹⁶

B. United States Federal Law

42. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, Al-Hilah's treatment was in violation of numerous federal laws, including:

a. Torture Victims Protection Act of 1991, which states: "An individual who, under actual or apparent authority, or color of law, of any foreign nation— subjects an individual to torture shall, in a civil action, be liable for damages to that individual."⁹⁷

b. 18 U.S. Code §2340A which states "Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years."⁹⁸ Torture under this statute is defined as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control".

c. War Crimes Act of 1996, prohibiting acts of torture, defined as, "An act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a

⁹⁶ USCCI Exec. Summ., *supra* note, at 139-40, footnote 843.

⁹⁷ Torture Victim Protection Act of 1991 1992 Enacted H.R. 2092, 102 Enacted H.R. 2092, 106 Stat. 73.

⁹⁸ 18 U.S. Code § 2340A.

confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.”⁹⁹

43. The acts performed against Al-Hilah of which are sufficient to constitute acts of torture under the definitions provided under Article 5 of the UDHR, Article 7 of the ICCPR and CAT, are also sufficient to constitute acts of torture as defined under Torture Victims Protection Act of 1991, 18 U.S. Code §2340A, and War Crimes Act of 1996. Therefore, the United States, as well as Aero Contractors, are liable to Al-Hilah for the acts of torture committed against him during his detainment. In addition, the guards who performed such acts of torture can be held criminally liable for the actions under 18 U.S. Code §2340A.

C. North Carolina State Law

44. The Rendition process, and detention of Al-Hilah was in violation the North Carolina Constitution, which states ““No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”¹⁰⁰

45. This process was also violation of North Carolina General Statute §14-39 regarding Kidnapping and Abduction, which states: “Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, . . . shall be guilty of kidnapping.”¹⁰¹ This statute extends liability to private companies in violation as well and includes conspiracy to commit such acts.

46. Similar to the reasoning provided under part A and B, the acts performed upon Al-Hilah, constituting acts of torture under International and Federal law, are sufficient to constitute acts of

⁹⁹ 18 U.S. Code § 2441.

¹⁰⁰ N.C. Const. art. 1, §19.

¹⁰¹ N.C. Gen. Stat. § 14-39.

kidnapping act provided under of North Carolina General Statute §14-39, and the deprivation of the Due Process right guaranteed under the North Carolina Constitution.

IV. Conclusion

47. Al-Hilah was illegally kidnapped and extraordinarily rendered via a process outside of the law and without any legal protections to a country with the full knowledge and intent that he would be tortured there. He endured a terrifying kidnapping, detention and torture, all of which was in patent violation of international, federal, and North Carolina state laws. As a result, he has suffered and will continue to suffer severe lifelong distress, and has been irreparably harmed. It is incumbent upon the United States, North Carolina and its political subdivisions, pertinently, independent contractors Aero Contractors, to admit wrongdoing via Congressional action, and take responsibility for the atrocities committed against Al-Hilah and the countless other individuals that were harmed through acts of torture and extradition.

Appendix



Image of Abd Al-Salam Al-Hilah. Obtained from the N.Y. Times, Guantanamo Docket.



Image of the Alleged Gulfstream V Jet, tail number N379P, the reported aircraft transporting Al-Hilah from Egypt to Dark Prison detention site in Kabul, Afghanistan. Obtained from The Rendition Project website.

Abdul Halim Dalak

I. Introduction

1. Abdul Halim Dalak, a student at the time of his capture of unknown citizenship,¹ has been described as one of the United States' "ghost prisoners."² He was captured in Pakistan in November 2001 and extraordinarily rendered to Syria in May 2002.³ His fate since then is unknown, and the United States has never publicly acknowledged his rendition.⁴

II. Detention

A. Capture & Rendition

2. The CIA seized Dalak in Pakistan in November 2001.⁵

3. Dalak was rendered from Pakistan to Syria on 14 May 2002.⁶ Flight documentation shows that the Gulfstream V jet N379P, which completed many CIA extraordinary rendition flights, was traveling in that region at that time. It is thus possible that Dalak was rendered on N379P, which was operated by Aero Contractors, headquartered in North Carolina. During this rendition circuit, N379P may also have transported at least two others, Omar Ghraresh and an unknown teenager,⁷ likely Noor Al-Deen.⁸ It is incumbent on the United States government to make publicly available the CIA records that could establish with certainty whether N379P was involved in Dalak's rendition.

B. Detention at the "Palestine Branch"

¹ OPEN SOCIETY JUSTICE INITIATIVE, *Globalizing Torture: CIA Detention and Extraordinary Rendition* 37 (2013).

² Andy Worthington, *Lost in Guantanamo: The Faisalabad 16* (2008).

<http://www.andyworthington.co.uk/2008/12/09/lost-in-guantanamo-the-faisalabad-16/>.

³ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1, at 37.

⁴ Andy Worthington, *supra* note 2.

⁵ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1, at 37.

⁶ Andy Worthington, *supra* note 2.

⁷ *Id.*

⁸ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 1, at 38.

4. In Syria, Dalak was imprisoned at a detention facility known as the “Palestine Branch.”⁹ The Palestine Branch is notorious for the brutal torture used on its prisoners.¹⁰ Several people formerly detained in the prison described it as “one of the most feared detention facilities.”¹¹ In addition, Human Rights Watch has reported that stress positions, sleep deprivation, electrocution, and severe beatings—including with cables and other objects—were regularly used there.¹²

C. Disappearance

5. After his rendition to the Palestine Branch, there is no publicly available information regarding Dalak’s whereabouts. His current circumstances are unknown.

D. Torture

6. The UN has confirmed that Dalak experienced torture during his detention.¹³ While the CIA has refused to reveal further details, the agency’s practices throughout the Rendition, Detention, and Interrogation (RDI) program and the techniques utilized at the Palestine Branch make it reasonable to assume that Dalak suffered stress positions, sleep deprivation, walling, extremes of temperature, isolation, beatings, and electrocution.

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

7. First, Dalak’s treatment violated “one of the most universally recognized human rights”: the prohibition on torture.¹⁴ The prohibition on torture is a peremptory norm; as a result, all

⁹ Andy Worthington, *supra* note 2.

¹⁰ HUMAN RIGHTS WATCH, *Torture Archipelago: Arbitrary Arrests, Torture, and Enforced Disappearances in Syria’s Underground Prisons since March 2011* (2012). <https://www.hrw.org/report/2012/07/03/torture-archipelago/arbitrary-arrests-torture-and-enforced-disappearances-syrias>.

¹¹ *Id.*

¹² *Id.*

¹³ UNITED NATIONS, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism* 75 (2010). <http://hrlibrary.umn.edu/instree/A-HRC-13-42.pdf>.

¹⁴ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

states are obligated to uphold it, regardless of whether they have committed to do so, and no situation can legitimize derogating from it.¹⁵ Thus, whatever its intelligence or security aims, the United States cannot justify its complicity in the acts of torture to which Dalak was subject.

8. The prohibition on torture has also been upheld by the United States in several treaties, including the Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT). Through the torture of Dalak, all three treaties have been violated.

9. The UDHR and the ICCPR both mandate that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁶ Furthermore, the ICCPR makes explicit the requirement that states adhere to the prohibition on torture at all times, even during public emergency. The torture inflicted on prisoners at the Palestine Branch, including Dalak, violated both of these treaties.

10. The CAT, which the U.S. ratified in 1994,¹⁷ states that torture is always forbidden,¹⁸ even in “exceptional” circumstances.¹⁹ As a result of Dalak’s torture, this essential provision of the CAT was violated.

11. Furthermore, Dalak’s extradition to Syria violated other provisions of the CAT. The CAT requires the United States to

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are

¹⁵ *Id.*

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

¹⁷ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

¹⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

¹⁹ CAT, *supra* note 18, at art. 2.

substantial grounds for believing that he would be in danger of being subjected to torture.²⁰

12. At the Palestine Branch, where brutal forms of torture were habitually used on prisoners, there are “substantial grounds for believing” that Dalak “would be in danger of being subjected to torture.” The fact that the CIA rendered Dalak to the Palestine Branch is therefore a violation of the CAT.

13. The same provision also compels the state of North Carolina and its political subdivisions to take action to avoid violating the CAT. Pursuant to the Supremacy Clause of the U.S. Constitution, every state must adhere to international treaties ratified by the United States. North Carolina is therefore legally obliged to ensure that appropriate measures are taken to prevent torture, whether it occurs inside or outside of the United States.²¹

14. The state must fulfill these obligations by taking “administrative” measures as recommended by the CAT. Specifically, North Carolina’s political entities and subdivisions must revoke or discontinue Aero Contractors’ “flying permits, licenses, and leases.”²² Aero’s critical role in the RDI program, which may have included Dalak’s rendition to the Palestine Branch, necessitates such a response by North Carolina pursuant to the CAT.

15. In addition to torture, Dalak faced extralegal capture and transport. In subjecting him to this rights violation, the United States breached another treaty it has ratified: the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children,

²⁰ CAT, *supra* note 18, at art. 2.

²¹ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 36 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

²² *Id.*

Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).²³ The Protocol forbids “trafficking in persons,” which it defines as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁴

16. The extraordinary rendition of Dalak violated the Protocol’s ban on human trafficking.
17. The United States has also violated other provisions of the Protocol, which discuss human trafficking victims’ entitlements. These entitlements include “the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.”²⁵ The United States has not provided any of these forms of assistance to Dalak, despite his entitlement to them as a victim of human trafficking.
18. The Protocol further states, “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”²⁶ There has been no possibility of Dalak’s obtaining compensation; this is a violation of international law.

B. Federal Law Violations

²³ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

²⁴ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

²⁵ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

²⁶ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

19. Pursuant to the Supremacy Clause, international treaties ratified by the United States hold power equivalent to that of federal statutes. Thus, the international law violations described above are also federal law violations.²⁷

20. The United States—and potentially Aero Contractors—further violated several federal laws in addition to the treaties above. Amendment 8 of the U.S. Constitution, for example, forbids “cruel and unusual punishments.”²⁸ The tortures used at the Palestine branch were both cruel and unusual; in rendering Dalak to Syria, the United States subjected him to these punishments, thereby violating its own Constitution.

21. Furthermore, the lack of accountability for Dalak’s torture is a violation of the Federal Torture Statute (FTS). The FTS states that anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20 years, or both”.²⁹ The fact that no American public official has been prosecuted for Dalak’s torture violates the FTS.

22. Other federal laws offer opportunities to hold the United States and Aero Contractors accountable for Dalak’s ordeal. The Alien Tort Statute (ATS), for example, grants non-U.S. citizens who are the victims of egregious human rights violations (regardless of whether the violations occur inside or outside of the United States) to sue government officials and private actors in U.S. courts.³⁰ In 2010, the ATS permitted five former detainees to sue the United States and Jeppesen Dataplan,³¹ a company that provided “flight planning and logistical support

²⁷ Weissman et al., *supra* note 21, at 36.

²⁸ U.S. CONST. amend VIII

²⁹ 18 U.S. Code § 2340A.

³⁰ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

³¹ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written

services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”³² The United States or Aero Contractors could thus both be prosecuted for their contribution to Dalak’s abuse using the ATS.³³

23. The Torture Victims Protection Act (TVPA) of 1991 could also be used to access accountability for Dalak’s rendition and torture. The TVPA was intended to assist in the fulfillment of the United States’ responsibilities under the UN Charter and other international human rights protection mechanisms “by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”³⁴ Under the TVPA, Dalak has grounds to seek compensation for his abuse.

C. North Carolina Law Violations

24. Through the operation of the planes utilized for extraordinary renditions, possibly including Dalak’s, Aero Contractors violated numerous state laws. North Carolina therefore has the capacity and, moreover, the obligation to hold the company accountable for its many violations of international human rights.

25. As a result of its role in the RDI program, Aero Contractors violated a number of provisions of the North Carolina Constitution. Article I, § 19, states, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any

about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

³² *Id.* at 13526.

³³ It should be noted that although the Jeppesen Dataplan case was dismissed on the basis of the “State Secrets Doctrine,” such legal defense is likely no longer available to the government given the ongoing declassification of documents related to the CIAs Extraordinary Rendition and Torture program. *See e.g.*, Irving. Figueroa, et al., *Assessing Recent Developments: Achieving Accountability for Torture* (2016) <http://www.law.unc.edu/documents/academics/humanrights/tortureaccountability.pdf>,

³⁴ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb., 106 Stat. 73, 73 (1992).

manner deprived of his life, liberty, or property . . .”³⁵ Additional provisions of the Constitution forbid kidnapping, involuntary servitude, trafficking, and criminal conspiracy. Aero Contractors directly participated in or facilitated all of these crimes by contributing to the CIA’s rendition flights.³⁶ The company, therefore, repeatedly violated the North Carolina Constitution through its transport of victims that may have included Dalak.

26. Section 14-39 of the North Carolina General Statutes also criminalizes kidnapping³⁷ and further classifies “serious bodily harm to or terrorizing the person” who has been kidnapped as a crime.³⁸ In addition, the North Carolina legislature has identified the crime of “first-degree kidnapping,” wherein the abducted individual is not transported to a safe place or has been “seriously injured or sexually assaulted.”³⁹ Dalak’s extralegal capture and forced disappearance constitutes kidnapping, and his torture constitutes “terrorizing” him. Furthermore, rendering Dalak to the Palestine Branch certainly constitutes transporting him to an unsafe place, as torture was used extensively there. NCGS § 14-39 has thus been violated.

IV. Conclusion

27. Abdul Halim Dalak was subject to extralegal seizure and extraordinary rendition. He was detained in a notoriously brutal prison without being charged for any crime. He experienced torture, an egregious violation of his human rights. Pursuant to the plethora of laws discussed above, these acts against him were not merely morally indefensible, but also illegal.

28. The current silence regarding Dalak’s ordeal must end. Allowing impunity for torture both severely damages the United States’ international standing and assures future perpetrators

³⁵ N.C. CONST. art. 1, § 19.

³⁶ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

³⁷ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

³⁸ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

³⁹ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

that their human rights violations will go unpunished. The entities responsible for his treatment—
—including the United States of America and possibly North Carolina and its political
subdivisions and Aero Contractors—must acknowledge the harm they have inflicted and provide
redress for their crimes. Any failure to do so is an unacceptable departure from justice.

Abd al-Rahim al-Nashiri

I. Introduction

1. Abd al-Rahim al-Nashiri (known by other names including Abdulrahim Mohammad Abda al-Nasheri, aka Abu Bilal al-Makki or Mullah Ahmad Belal) is a 52-year-old Saudi national of Yemen descent, born on January 5, 1965 in Mecca, Saudi Arabia.¹ Al-Nashiri was a quiet child, born of twelve children born in his family.² During his adolescence, he worked as a laborer at his father's construction business.³ For the following years, prior to his arrest, Al-Nashiri worked in various occupations, including taxi driver, clothes salesman, restaurant owner, and merchant based in Mecca, investing and working in various fishing companies throughout the middle-east.⁴
2. During the period of 1993 to 2002, Al-Nashiri traveled to various countries to observe how other indigenous peoples faced similar struggles of political and economic discontent, and how they were "making changes for the better."⁵ During his travels, Al-Nashiri interacted with various humanitarian organizations.⁶

¹ Most Recent Images of Al-Nashiri have been included in the Appendix. *On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit* at 13, *Al-Nashiri v. Obama*, <https://assets.documentcloud.org/documents/3519934/Nashiri-SCT-petition-and-appendix.pdf>; Amrit Singh, *Globalizing Torture*, Open Soc'y. Found., 50 (2013), <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; *List of Ghost Prisoners Possibly in CIA Custody*, Hum. Rts. Watch (Dec. 1, 2005), <http://pantheon.hrw.org/legacy/english/docs/2005/11/30/usdom12109.htm>; *ODNI Biographies of High Value Terrorist Detainees Transferred to the US Naval Base at Guantanamo Bay*, Office of the Dir. of Nat'l. Intelligence, 4 (Sep. 6, 2006), <https://www.documentcloud.org/documents/3024744-ODNI-Biographies-of-High-Value-Terrorist.html>.

² *Memorandum For: Mr. Richard Kammen, civilian learned council, and CDR(S) Stephen Reyes, JAGC, USN, SUBJECT: RMC 706 Sanity Board Evaluation of Ahd Al Rahim Hussayn Muhammad Al Nashiri: ISN#10015*, Walter Reed Nat'l. Mil. Medical Center, Center for Forensic Behavioral Sciences, 14 (Mar. 28, 2013), <https://assets.documentcloud.org/documents/3520086/Abd-al-Rahim-al-Nashiri-s-Sanity-Board-report.pdf>.

³ *Id.*

⁴ See *Combatant Status Rev. Tribunal Hearing, ISN 10015*, U.S. Naval Base Guantánamo Bay, Cuba, 35 (Mar. 14, 2007), http://www.aclu.org/files/pdfs/safefree/csrt_alnashiri.pdf.

⁵ Walter Reed Nat'l. Mil. Medical Center, *supra* note 2, at 15.

⁶ *Id.*

3. Al-Nashiri was identified by the Department of Defense (“DOD”) as a “high value detainee” (“HVD”) after alleged association with terrorist organizations and accusations of orchestrating both the attack on the USS Cole in 2000, and the French civilian oil tanker MV Limburg in the Gulf of Aden in 2002.⁷ He has expressly denied any association or involvement in such attacks, and stated that he is not a member of Al-Qai’ida.⁸
4. In mid-October 2002, Al-Nashiri became the second HVD detained by the CIA through its rendition program when he was captured in Dubai, United Arab Emirates (UAE) by the CIA’s Special Activities Division.⁹ Due to the extreme secrecy of his location from this point up to his final rendition to Guantanamo Bay in September 2006, his precise whereabouts during such time remains uncertain.¹⁰
5. However, it is known that for the next three and a half years, Al-Nashiri was kept in secret detention, and subjected to a minimum of four separate periods of CIA enhanced interrogation techniques (“EITs,”) including being “sodomized, kept naked and kenneled like a dog, crammed into a box the size of an office safe, [subjected to walling, water boarded, facial slaps, attention grabs, sleep deprived, hooded, stripped naked, shackled to the floor, exposed to cold temperatures, force fed, isolated] and [] threaten[ed] with a revved power drill while hanging shackled and nude from a cell ceiling.”¹¹ Throughout his detainment, Al-Nashiri believed that CIA interrogators were poisoning his food, causing him to have headaches, arm

⁷ Carol Rosenberg, *In a first, former CIA captive appeals Guantánamo trial to Sup. Ct.*, The Miami Herald (7:39 P.M. Mar. 18, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article139424468.html>; Amrit Singh, *supra* note 1, at 50-51.

⁸ U.S. Naval Base Guantánamo Bay, Cuba, *supra* note 4, at 11.

⁹ Office of the Dir. of Nat’l. Intelligence, *supra* note 1, at 1.

¹⁰ Rafal Kalicki, *Polish Prosecutors Urged to Probe CIA torture Talk*, Reuters (1:49 P.M. EST Dec. 16, 2010), <http://www.reuters.com/article/us-poland-cia-suspectidUSTRE6BF4R720101216?feedType=RSS&feedName=worldNews>; Office of the Dir. of Nat’l. Intelligence, *supra* note 0, at 1.

¹¹ See *Comm. Study of the C.I.A. ’s Detention and Interrogation Program*, U.S.S. Select Comm. on Intelligence, (“USSCI Exec. Summ.”) (Declassification Revisions Dec. 3, 2014), https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf; Walter Reed Nat’l. Mil. Medical Center, *supra* note 2, at 18.

and joint pain, and gastrointestinal issues.¹² In describing his experience in CIA custody, Al-Nashiri stated that

[f]rom the time I [had been] arrested five years ago, they [had] been torturing me. It [had] happened during interviews. One time they [had] tortured me one way and another time they [had] tortured me in a different way. . . [T]hey used to drown me in water.¹³

6. Solitary confinement is a common characteristic of CIA custody. The International

Committee of the Red Cross (“ICRC”) described the experience of many HVDs:

Throughout the entire period during which they were held in the CIA detention program . . . detainees were kept in continuous solitary confinement and incommunicado detention. They had no knowledge of where they were being held, no contact with persons other than their interrogators or guards. Even their guards were usually masked and, other than the absolute minimum, did not communicate in any way with the detainees. None had any real – let alone regular – contact with other persons detained, other than occasionally for the purposes of inquiry when they were confronted with another detainee. None had any contact with legal representation. The fourteen had no access to news from the outside world, . . . None of the fourteen had any contact with their families, either in written form or through family visits or telephone calls. They were therefore unable to inform their families of their fate.¹⁴

7. Al-Nashiri’s incidents of torture have been confirmed by the Senate Select

Committee on Intelligence (“USSCI”) in its 2014 Executive Summary Report, which also concluded that various “EITs” performed on Al-Nashiri during his secret detention were never approved or reported to CIA Headquarters¹⁵

II. Detention and Torture at COBALT Detention Site in Kabul, Afghanistan.

¹² USSCI Exec. Summ., *supra* note 11, at 101-103.

¹³ *Al Nashiri v. Poland*, Eur. Ct. of Hum. Rts., 40 (Feb. 2, 2015).

¹⁴ *Id.* at 32.

¹⁵ USSCI Exec. Summ., *supra* note 11, at 101-103.

8. Subsequent to his arrest, Al-Nashiri was detained at an unknown location within the city of Dubai for over a month.¹⁶ During his detainment, guards deprived him of sleep, beat him, and hung him by his hands.¹⁷
9. It is believed that Al-Nashiri was then rendered by the CIA on November 9, 2002, aboard a Gulfstream IV jet with the tail number N85VM, operated by Richmor Aviation, to the COBALT secret detention site (also referred to as “Salt Pit”), located in Afghanistan.¹⁸ During the flight, a CIA operative tormented him with ice cubes down his shirt.¹⁹
10. The COBALT site in a region north of Kabul is a detention, debriefing, and interrogation facility maintaining high to medium value detainees.²⁰ It houses 20 individual concrete structures used as cells, three interrogation rooms, and a room used for water dousing.²¹ CIA Chief of Interrogations described this site as, “a dungeon,” where detainees were “kept in complete darkness and constantly shackled in isolated cells with loud music and only a bucket to use for human waste.”²²
11. During Al-Nashiri’s detainment at COBALT, standard operating procedures included “total light deprivation, loud continuous music, isolation, and dietary manipulation.”²³ During most interrogation sessions, CIA interrogators wrapped a towel around the detainee’s neck and

¹⁶ Walter Reed Nat’l. Mil. Medical Center, *supra* note 2, at 16.

¹⁷ *Id.*

¹⁸ *Rendition Circuit: 6-13 November 2002*, The Rendition Project, (lasted visited Jun. 23, 2017), <https://www.therenditionproject.org.uk/flights/renditions/N85VM-021106.html>; *Aircraft Profile: N85VM-N227SV*, The Rendition Project (last visited Jun. 23, 2017), <https://www.therenditionproject.org.uk/flights/aircraft/N85VM.html>; USSCI Exec. Summ., *supra* note 11, at 66-67.

¹⁹ Walter Reed Nat’l. Mil. Medical Center, *supra* note 2, at 16.

²⁰ *Disposition Memorandum*, CIA Office of Inspector Gen., Cent. Intelligence Agency, 9 (Dec. 6, 2006), https://www.ushrnetwork.org/sites/ushrnetwork.org/files/mustafa_al-hawsawi_2016_uncat_loipr_submission.pdf.

²¹ CIA Office of Inspector Gen., *Disposition Memorandum*, *supra* note 36; Amrit Singh, *supra* note 1, at 63.

²² Dominic Rushe, Ewen MacAskill, Ian Cobain, Alan Yuhas & Oliver Laughland, *C.I.A. Torture Rep., Rectal rehydration and waterboarding: the CIA torture rep.’s grisliest findings*, *the guardian* (2:17 P.M. EST Dec. 11, 2014), <https://www.theguardian.com/us-news/2014/dec/09/cia-torture-report-worst-findings-waterboard-rectal>.

²³ USSCI Exec. Summ., *supra* note 11, at 67, footnote 338.

swung them into a plywood wall— a technique known as “walling.”²⁴ In between interrogation sessions, detainees were kept in a coffin called the “large box,” and on some occasions, placed in a smaller constrained area the size of an office space, called the “small box.”²⁵ Available information suggests that Al-Nashiri was subject to such confinement while at COBALT.

12. During his detainment, CIA interrogators subjected Al-Nashiri to prolonged sleep deprivation for numerous days, and placed him in stress standing positions, where his wrists would be shackled to a bar or hook on the ceiling for at least two days.²⁶ Al-Nashiri stated that CIA interrogators also kept the temperature in his cell as “cold as ice cream.”²⁷

13. The USSCI confirmed that Al-Nashiri was subjected to at least two days of “EITs” of “waterboarding” at COBALT.²⁸ Waterboarding is a technique which involves “binding the detainee to a bench with his feet elevated above his head,” “immobilizing his head,” and “plac[ing] a cloth over his mouth and nose while pouring water onto the cloth in a controlled manner.”²⁹ Airflow during this procedure is restricted for around 20 to 40 seconds and the technique is intended to produce the sensation of drowning and suffocation.³⁰ In a petition to the U.S. Supreme Court, Al-Nashiri’s attorneys included photographs of the same water board Al-Nashiri was strapped to during his waterboarding sessions at COBALT.³¹ This same petition describes Al-Nashiri’s experience as follows:

A rag was placed over his forehead and eyes and water poured into his mouth and nose until he began to choke 'and aspirate. The rag was then lowered, suffocating

²⁴ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 0, at 9.

²⁵ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 0, at 8.

²⁶ *Al Nashiri v. Poland*, *supra* note 13, at 32.

²⁷ *Id.*; Walter Reed Nat’l. Mil. Medical Center, *supra* note 2, at 16.

²⁸ *ICRC Rep. on the Treatment of Fourteen —High Value Detainees in CIA Custody*, Int’l. Comm. of the Red Cross (“ICRC”), 11 (Feb. 14, 2007), www.nybooks.com/icrc-report.pdf.

²⁹ *Id.*, at 33.

³⁰ Amrit Singh, *supra* note 1, at 54; ICRC *supra* note 28, at 33.

³¹ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 0, at 8.

him with the water still in his throat, sinuses, and lungs. Eventually, the rag was lifted and the water expurgated, allowing him to "take 3-4 breaths" before the process was repeated.³²

III. Detention and Torture at the GREEN Secret Detention Site in Bangkok, Thailand

14. After five days at COBALT, the CIA rendered Al-Nashiri around November 15-16, 2002, alongside Abu Zubaydah, aboard a white unmarked Gulfstream V Jet aircraft, with the tail number N379P, operated by Aero Contractors headquartered in Johnston County, North Carolina, to the GREEN secret detention site (also referred to as "Cat's Eye"), located on a military base of the northeastern province of Udon Thani, Thailand.³³
15. Throughout Al-Nashiri's detainment at GREEN he was subjected to various CIA torture techniques. Immediately upon arrival, CIA interrogators began to interrogate him.³⁴ After twelve continuous days of interrogation sessions, CIA interrogators subjected Al-Nashiri to two sessions of waterboarding.³⁵ After these twelve days, Al-Nashiri was subjected to a minimum of one additional waterboarding session.³⁶ This record of events was corroborated in February 2008, when previous CIA Director Michael Hayden confirmed that President Bush authorized the use of "waterboarding" on Al-Nashiri.³⁷ Cable reports from GREEN to

³² *Id.*

³³ An image of the alleged aircraft has been included in the Appendix. *ABD AL-RAHIM AL-NASHIRI*, The Rendition Project, (last visited Jun. 29, 2017), <https://www.therenditionproject.org.uk/prisoners/nashiri.html> (noting that a redaction in the USSCI Exec. Summ. Rep. appeared to be the exact length of the written word "five"); *N379P-N8068V-N44982*, The Rendition Project, (last visited Jun. 29, 2017), <https://www.therenditionproject.org.uk/flights/aircraft/N379P.html>; *Rendition Circuit: 12-18 November 2002*, The Rendition Project, (last visited Jun. 29, 2017), <https://www.therenditionproject.org.uk/flights/renditions/N379P-021112.html>; Amrit Singh, *supra* note 1, at 111; *Al Nashiri v. Poland*, *supra* note 13, at 34.

³⁴ *Al Nashiri v. Poland*, *supra* note 13, at 34.

³⁵ *Id.*; ICRC *supra* note 28, at 33.

³⁶ USSCI Exec. Summ., *supra* note 11, at 67.

³⁷ George W. Bush, *Decision Points*, 171 (2012); Amrit Singh, *supra* note 1, at 50.

CIA headquarters indicate that Al-Nashiri's interrogations at the site were video-taped.³⁸

However, these recordings were destroyed by the CIA in November 2005.³⁹

16. Al-Nashiri was also subjected to various other methods of torture. He was "kept naked and shackled, and [] 'threatened with sodomy, and with the arrest and rape of his family."⁴⁰

17. The torture Al-Nashiri suffered at GREEN, a CIA location to where he was extraordinarily rendered on a plane operated by Aero Contractors located in Johnston County, NC., was horrific.

IV. Detention and Torture at the BLUE Secret Detention Site in Poland

18. On December 4, 2002, the CIA closed down Green, and on December 5, 2002, rendered Al-Nashiri, along with Abu Zubaydah, to the Szymany military airbase in Poland where they were transferred to CIA detention cite BLUE.⁴¹

19. During Al-Nashiri's detainment at BLUE, he was subjected to three sessions of waterboarding.⁴² Due to his small frame, James Mitchell, a CIA contracted psychologist and architect of the torture program, recalled that when CIA interrogators attempted to strap Al-Nashiri onto the board, he nearly fell off.⁴³

20. During one particularly egregious session, CIA interrogators placed a broom behind Al-Nashiri's knees as he knelt and forced his body backwards, pulling his knees joints apart until he began screaming.⁴⁴ Mr. Mitchell described what he observed that day:

³⁸ *Al Nashiri v. Poland*, *supra* note 13, at 33, 34.

³⁹ *Comm. Study of the C.I.A.'s Detention and Interrogation Program, Foreword*, U.S.S. Select Comm. on Intelligence, 4 (Declassification Revisions Dec. 3, 2014), https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf; Amrit Singh, *supra* note 1, at 111.

⁴⁰ *Al Nashiri v. Poland*, *supra* note 13, at 34; The Rendition Project, *ABD AL-RAHIM AL-NASHIRI*, *supra* note 33.

⁴¹ Amrit Singh, *supra* note 1, at 50; *Al Nashiri v. Poland*, *supra* note 13, at 34.

⁴² James Mitchell, *Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying to Destroy America*, 97 (Nov. 29, 2016).

⁴³ *Id.* at 97.

⁴⁴ *Id.* at 112-113; *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 0, at 8.

When it became apparent that al-Nashiri was limber enough to sit easily in a kneeling position with his back on the floor, the interrogators put a broomstick behind his knees. This time when they pushed him backward, al-Nashiri started to scream. It was the specific physically coercive techniques they were using that distressed and concerned me. I did not believe those techniques had been approved by the Justice Department. I was also concerned that the way the techniques were being applied placed undue strain on al-Nashiri's knees, back, and neck muscles. I was expecting medical personnel on-site to stop the interrogation. But that didn't happen.⁴⁵

21. The Chief Interrogator then proceeded to lift Al-Nashiri off the floor from his arms, as they were tied behind his back.⁴⁶ Mr. Mitchell was so concerned that the stress position would dislocate Al-Nashiri's shoulders, that he intervened in the session.⁴⁷ On April 12, 2007, during a Senate Select Intelligence Hearing, the CIA Director clarified that the chaining of the arms above the head was not an approved "EIT."⁴⁸
22. After Mr. Mitchell's interruption, the techniques used against Al-Nashiri grew only more intense, and CIA interrogators began "dousing al-Nashiri with cold water while using a stiff-bristled brush to scrub his ass and balls and then his mouth and blowing cigar smoke in his face until he became nauseous."⁴⁹
23. In December 2002, CIA Headquarters deployed an untrained or qualified individual ("CIA Officer 2")⁵⁰ to perform interrogations on Al-Nashiri despite the existence of records demonstrating numerous expressed concerns including, the officer's anger management

⁴⁵ James Mitchell, *supra* note 42, at 112.

⁴⁶ *Special Review - Counterterrorism Detention and Interrogation Program (2003-7123-IG)*("Special Review"), CIA Office of Inspector General, 59 (May 7, 2004), <https://fas.org/irp/cia/product/ig-interrog.pdf>; *Al Nashiri v. Poland*, *supra* note 13, at 36; USSCI Exec. Summ., *supra* note 11, at 70.

⁴⁷ CIA Office of Inspector Gen., *Special Review*, *supra* note 46, at 49; USSCI Exec. Summ., *supra* note 11, at 70.

⁴⁸ USSCI Exec. Summ., *supra* note 11, at 69, footnote 349; James Mitchell, *supra* note 42, at 113-114.

⁴⁹ James Mitchell, *supra* note 42, at 115.

⁵⁰ This is the name such officer is addressed by within the USSCI Exec. Summ.

issues.⁵¹ CIA Officer 2 was subsequently permitted to perform “EITs” on Al-Nashiri, despite the fact that he was neither trained, certified, or approved to employ such techniques.⁵²

24. From the period of December 28, 2002 to January 1, 2003, Al-Nashiri was then subjected to numerous torture techniques which were never approved by nor reported to CIA

Headquarters.⁵³ The first recorded incident occurred in December 2002, when CIA Officer 2 hooded Al-Nashiri, placed him in a standing stress position, with his hands raised over his head, and subjected to unapproved nudity, and sleep deprivation for over two to three days continuously.⁵⁴

25. On another occasion, CIA Officer 2 initiated a mock execution upon Al-Nashiri in which he undressed and hooded him, and then subsequently pointed a semi-automatic handgun at his right temple, racking it close to his head once or twice.⁵⁵ Al-Nashiri began to cry when the handgun was placed near his head.⁵⁶ CIA Officer 2 then revved a bitless power drill near Al-Nashiri’s face, as Al-Nashiri flinched and shook.⁵⁷ The CIA Office of Inspector General (“OIG”), in its subsequent investigation on CIA Officer 2’s conduct, stated that, “no one may threaten a detainee with death, including pointing a handgun at them.”⁵⁸

⁵¹ USSCI Exec. Summ., *supra* note 11, at 68, footnote 345.

⁵² *Id.* at 69.

⁵³ CIA Office of Inspector Gen., *Special Review*, *supra* note 46, at 35-36; *Rep. of Investigation*, CIA Office of Inspector Gen., (Oct. 29, 2003), <https://www.cia.gov/library/readingroom/docs/0006541525.pdf>; Amrit Singh, *supra* note 1, at 50; *Al Nashiri v. Poland*, *supra* note 13, at 35.

⁵⁴ CIA Office of Inspector Gen., *Rep. of Investigation*, *supra* note 53; Amrit Singh, *supra* note 1, at 50; *Al Nashiri v. Poland*, *supra* note 13, at 34, 36; USSCI Exec. Summ., *supra* note 11, at 69, 103, footnote 597.

⁵⁵ CIA Office of Inspector Gen., *Special Review*, *supra* note 53, at 41-42; *Al Nashiri v. Poland*, *supra* note 13, at 35, 38; CIA Office of Inspector Gen., *Rep. of Investigation*, *supra* note 53.

⁵⁶ CIA Office of Inspector Gen., *Rep. of Investigation*, *supra* note 53.

⁵⁷ *Id.*; CIA Office of Inspector Gen., *Special Review*, *supra* note 46, at 41-42; *Al Nashiri v. Poland*, *supra* note 13, at 35, 38.

⁵⁸ CIA Office of Inspector Gen., *Rep. of Investigation*, *supra* note 53.

26. During yet another incident, CIA Officer 2 threatened to sexually abuse Al-Nashiri's mother and other members of his family in his presence.⁵⁹ At another session, he was placed in stress position, as CIA Officer 2 pushed his body backwards, further tensing his body.⁶⁰ Other various techniques employed upon Al-Nashiri during this period included numerous slaps to the back of his head, and the blowing of smoke in his face.⁶¹ Reports of such treatment have been corroborated by the testimony of thirteen other HVDs, who recounted similar stories of treatment to the ICRC.⁶²

27. The use of the "EITs" upon Al-Nashiri were not reported to CIA Headquarters until January 2003, when the newly arriving CIA Chief of Interrogations learned of such sessions and reported them to CIA headquarters.⁶³ At that time, Chief of Interrogations contacted CIA Headquarters, expressing his strong reservations towards the proposed "Revised Interrogation Plan" for the use of "EITs" on Al-Nashiri.⁶⁴ His cable to CIA Headquarters stated:

We have serious reservations with the continued use of enhanced techniques with [al-Nashiri] and its long term impact on him. [Al-Nashiri] has been held for three months in very difficult conditions, both physically and mentally. 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 on any level. . .⁶⁵

⁵⁹ CIA Office of Inspector Gen., *Special Review*, *supra* note 46, at 43; Amrit Singh, *supra* note 1, at 50; European Court of Human Rights, *supra* note 13, at 35, 38; USSCI Exec. Summ., *supra* note 11, at 69, 487 (citing the May 2004 Inspector General Special Review).

⁶⁰ CIA Office of Inspector General, *Special Review*, *supra* note 53, at 44; *Al Nashiri v. Poland*, *supra* note 13, at 36.

⁶¹ One CIA interrogator admitted that he and other interrogators did in fact blow smoke from cigars into Al-Nashiri's face during various sessions. USSCI Exec. Summ., *supra* note 11, at 70.

⁶² One CIA interrogator admitted that he and other interrogators did in fact blow smoke from cigars into Al-Nashiri's face during various sessions. USSCI Exec. Summ., *supra* note 11, at 71; *Nashiri v. Poland*, *supra* note 13, at 37.

⁶³ USSCI Exec. Summ., *supra* note 11, at 71.

⁶⁴ USSCI Exec. Summ., *supra* note 11, at 71.

⁶⁵ *Id.*

28. In stark contrast to the findings by the Chief of Interrogations, and others, the CIA Chief of Base expressed approval of CIA Officer 2's use of "EITs" on Al-Nashiri, believing that CIA Officer 2 was authorized to use such "EITs" and was "sent from CIA Headquarters 'to resolve the matter of Al-Nashiri's cooperation.'"⁶⁶
29. Thereafter, CIA interrogators began shaving Al-Nashiri, "removing his clothing, and placing him in a standing sleep deprivation position with his aims affixed over his head."⁶⁷ Records on the use of "EITs" on Al-Nashiri became, "'increasingly summarized [in] form, providing little on how or when the techniques were applied during an interrogation."⁶⁸ CIA interrogators also began to raise greater concern over Al-Nashiri's general health, highlighting that during one session, Al-Nashiri began suffering from a head cold, causing his body to convulse for over ten minutes.⁶⁹
30. On October 29, 2003, the OIG issued a "Report of Investigation" concluding that CIA Officer 2 acted unreasonably in believing it was unnecessary for him to report the use of a handgun and drill on Al-Nashiri, and that the use of such techniques went "beyond anything approved by or consistent with Agency policies."⁷⁰ On May 7, 2004 the OIG reported in its "Special Review" that it had received reports from CIA operatives concerned that the techniques performed on Al-Nashiri might "involve violations of human rights."⁷¹
31. On September 11, 2003, the Department of Justice refused to prosecute.⁷² In April 2004, CIA Officer 2 and CIA Chief of Base were subjected to disciplinary measures, however CIA Officer 2 received only a one-year letter of reprimand, and suspension from work for five

⁶⁶ *Id.* at 475.

⁶⁷ *Id.* at 472.

⁶⁸ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 0, at 11.

⁶⁹ USSCI Exec. Summ., *supra* note 11, at 72.

⁷⁰ CIA Office of Inspector Gen., *Rep. of Investigation*, *supra* note 53.

⁷¹ CIA Office of Inspector Gen., *Special Review*, *supra* note 46, at 1; USSCI Exec. Summ., *supra* note 11, at 121.

⁷² *Al Nashiri v. Poland*, *supra* note 13, at 36; CIA Office of Inspector Gen., *Rep. of Investigation*, *supra* note 53.

days, while Chief of Base received a two-year letter of reprimand, and suspension from work for merely ten days.⁷³

V. Rendition to and from Rabat, Morocco, to Guantanamo Bay, Cuba, to Bucharest Romania

32. On June 6, 2003, Al-Nashiri was placed on a Gulfstream V jet (known as the “Guantanamo Express”) with a tail number N379P, operated by Aero Contractors, and rendered Al-Nashiri, alongside Ramzi bin al-Shibh, to Rabat, Morocco.⁷⁴ Although little is known about his treatment in Morocco, Human Rights Watch and the stories of other detainees held in prisons in Morocco detail horrific abuse likely to have been visited on Al-Nashiri.⁷⁵ The torture he likely suffered at the hands of the Moroccans would not have occurred but for his extraordinary rendition on the plane flew by Aero Contractors headquartered in Johnston County, NC. On September 22, 2003, the CIA then rendered Al-Nashiri from Rabat, Morocco to the Strawberry Fields secret detention site located in Guantanamo Bay Cuba.⁷⁶
33. In 2004 the U.S. Supreme Court held in *Rasul v. Bush* that a U.S. federal habeas statute conferred jurisdiction on district courts to hear challenges brought by detainees held at Guantanamo Bay. Shortly thereafter, numerous sources have come to a consensus that at 8:00 A.M. on April 12, 2004⁷⁷, aboard aircraft N85VM operated by Richmor Aviation, Al-

⁷³ USSCI Exec. Summ., *supra* note 11, at 70, footnote 356.

⁷⁴ Amrit Singh, *supra* note 1, at 50; *Al Nashiri v. Poland*, *supra* note 13, at 35, 38-39; The Rendition Project, *ABD AL-RAHIM AL-NASHIRI*, *supra* note 33.

⁷⁵ See UNC School of Law Human Rights Policy Seminar, *Brief in Support of Abou ElKassim Britel* 11 n49 (2014).

⁷⁶ *Al Nashiri v. Poland*, *supra* note 13; The Rendition Project, *ABD AL-RAHIM AL-NASHIRI*, *supra* note 33.

⁷⁷ Other sources have suggested that Al-Nashiri was first rendered back to Rabat, Morocco on March 27, 2004, and then subsequently rendered to Romania. See *Al Nashiri v. Poland*, *supra* note 13, at 39; *Rendition Circuit: 11-13 April 2004*, The Rendition Project, (last visited Jun. 23, 2017), <https://www.therenditionproject.org.uk/flights/renditions/N85VM-040411.html>; The Rendition Project, *ABD AL-RAHIM AL-NASHIRI*, *supra* note 33.

Nashiri was rendered to a CIA secret detention site called “BRIGHT LIGHT” located in Bucharest, Romania.⁷⁸

34. Most importantly, by rendering Al-Nashiri to a secret detention site outside of the control of the United States and jurisdiction of its courts, the United States was able to continue its interrogations in secret while prohibiting Al-Nashiri from speaking with an attorney, or challenging his detention in U.S. courts, as would have been the case had he remained three months longer at Guantanamo Bay.⁷⁹

35. At BRIGHT LIGHT, CIA operatives were known to subject detainees to mistreatment including sleep deprivation, water dousing, slapping or forced to stand in painful positions, all abuses that Al-Nashiri likely suffered.⁸⁰ During Al-Nashiri’s detainment, he was force fed Ensure rectally after going on a hunger strike in May 2004.⁸¹ However, the rectal feeding procedure is a discouraged method in providing nutrition due to the fact that the colon and rectum absorb only a minimal amount of minerals and vitamins.⁸² Moreover, there are risks that the recipient may suffer as a result of such procedure, including “damage to the rectum and colon, triggering bowels to empty, food rotting inside the recipient’s digestive tract, or an inflamed or prolapsed rectum from careless insertion of the feeding tube.”⁸³ USSCI confirmed that Al-Nashiri was force fed absent evidence of medically necessity, and that CIA Headquarters had failed to respond, investigate, or even inquire into the matter.⁸⁴

⁷⁸ *Rasul v. Bush*, 542 U.S. 466, 481, 124 S. Ct. 2686, 2696, 159 L. Ed. 2d 548 (2004); The Rendition Project, *Rendition Circuit: 11-13 April 2004*, *supra* note 77; *Al-Nashiri v. Romania*, Open Soc’y. Found., (Aug. 6, 2012), <https://www.opensocietyfoundations.org/litigation/al-nashiri-v-romania>; Amrit Singh, *supra* note 1, at 104.

⁷⁹ Matt Apuzzo & Adam Goldman, *AP Exclusive: CIA flight carried secret from Gitmo*, Associated Press, 1 (Aug. 7, 2010), http://archive.boston.com/news/nation/washington/articles/2010/08/07/ap_exclusive_cia_flight_carried_secret_from_gitmo/; Carol Rosenberg, *supra* note 7.

⁸⁰ Open Soc’y. Found., *supra* note 78; *Al-Nashiri v. Romania*, *supra* note 78.

⁸¹ USSCI Exec. Summ., *supra* note 11, at 73.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 99-100, footnote 584.

36. In July 2005, CIA Headquarters received cables expressing concerns over Al-Nashiri's "continued state of depression."⁸⁵ Days after this cable, a CIA Psychologist assessed that Al-Nashiri was on the "verge of a breakdown."⁸⁶

VI. Rendition from BRIGHT LIGHT to STRAWBERRY FIELDS

37. After three and a half years at these various CIA secret detention sites, the CIA rendered Al-Nashiri to Guantanamo Bay, also referred to as "STRAWBERRY FIELDS" to face prosecution for alleged terrorist activities against the United States, along with 14 other HVDs from other secret CIA sites.⁸⁷ Al-Nashiri was registered under Internment Serial Number 010015, and placed in a single-cell facility known as "Camp 7."⁸⁸

38. Throughout various periods of his detention, sources have confirmed the possibility that Al-Nashiri may suffer from a mental disability.⁸⁹ In early 2003, a CIA psychologist examined that Al-Nashiri had problems with paying attention in class, remembering information, and that this problem had existed for a long time.⁹⁰ One CIA interrogator stated that Al-Nashiri was one of, "the dumbest terrorist I have ever met."⁹¹ Another stated, "He was an idiot. He couldn't read or comprehend a comic book."⁹²

⁸⁵ *Id.* at 114 (quoting undisclosed CIA Headquarters statement).

⁸⁶ *Id.* at 114 (quoting undisclosed communications that occurred on Jul. 29, 2005).

⁸⁷ Adam Goldman and Matt Apuzzo, *CIA Moved Detainees to Avoid US Legal System*, USA Today (Aug. 6, 2010), http://usatoday30.usatoday.com/news/washington/2010-08-06-detainees-transferred_N.htm; *President Discusses Creation of Mil. Comm'ns to Try Suspected Terrorists*, The White House (1:45 P.M. Sep. 6, 2006), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>; Amrit Singh, *supra* note 1, at 42.

⁸⁸ *Application, Al Nashiri v. Poland*, Eur. Ct. H.R., 34 (May 6, 2011), <https://www.opensocietyfoundations.org/sites/default/files/echr-al-nashiri-application-20110506.pdf>; *Andrei Scheinkman, Alan McLean, Jeremy Ashkenas, Archie Tse and Jacob Harris, The Guantanamo Docket, Abd al Rahim al Nashiri*, *N.Y. Times* (last visited Jun. 30, 2017), <https://www.nytimes.com/interactive/projects/guantanamo/detainees/10015-abd-al-rahim-al-nashiri>.

⁸⁹ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 1, at 14.

⁹⁰ Walter Reed Nat'l. Mil. Medical Center, *supra* note 2, at 14.

⁹¹ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 0, at 14.

⁹² Adam Goldman, *The hidden history of the CIA's prison in Poland*, The Washington Post, (Jan. 23, 2014), 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?utm_term=.d59aa9f20869.

39. Al-Nashiri continues to suffer medical complications and disorders including post-traumatic stress disorder, anxiety, a phobia of water, and major depression as a result of his torture and continued detainment.⁹³ On a daily basis, Al-Nashiri suffers from an unending list of symptoms including, “concomitant hypervigilance, flashbacks, sleep disorders, [] nightmares . . . headaches, chest pain, joint pain, stomach pain. . . persistent and chronic anal-rectal complaints, difficulty defecating, bleeding, hemorrhoids, [and] pain with sitting.”⁹⁴ For a year after his arrival to Strawberry Fields, he avoided leaving his cell entirely.⁹⁵ He described that before his arrest, “I used to be able to run about ten kilometres. Now, I cannot walk for more than ten minutes. My nerves are swollen in my body.”⁹⁶
40. Al-Nashiri’s medical complications were confirmed by, Dr. Sondra S. Crosby, whom the DOD hired to conduct an evaluation of Al-Nashiri’s mental and physical condition. She stated in pertinent part within her declaration:

Mr. Al-Nashiri suffers from complex posttraumatic stress disorder as a result of extreme physical, psychological, and sexual torture inflicted upon him by the United States. . . The result is that Mr. Al-Nashiri is most likely irreversibly damaged by torture that was unusually cruel and designed to break him. Indeed, in my many years of experience treating torture victims from around the world, Mr. Al-Nashiri presents as one of the most severely traumatized individuals I have ever seen. Making matters worse, there is no present effort to treat the damage, and there appear to be efforts to block others from giving him appropriate clinical care. The physical and psychological diagnoses of Mr. Al-Nashiri are compelling. . . Mr. Al-Nashiri displays every symptom of complex PTSD. He suffers chronic nightmares, the content of which, . . . directly relate to the specific physical, emotional and sexual torture inflicted upon Mr. Al-Nashiri while in US custody. . . [T]here is no question that Mr. Al-Nashiri was tortured at the hands of the CIA and that his current symptoms and poor health directly relate to that torture. . . [H]e shows little sustained improvement [and] there are multiple factors that are unique to Guantanamo and the military proceedings against him that are further exacerbating his symptoms and suffering. . . Lack of adequate

⁹³ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 1, at 13; Carol Rosenberg, *supra* note 7; USSCI Exec. Summ., *supra* note 11, at 72; Walter Reed Nat’l. Mil. Medical Center, *supra* note 2, at 39.

⁹⁴ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 0, at 14.

⁹⁵ *Id.* at 13.

⁹⁶ *Al Nashiri v. Poland*, *supra* note 13, at 40.

mental health treatment is exacerbating Mr. Al-Nashiri's suffering and instability, and he continues to suffer from ongoing PTSD symptoms including somatic complaints, nightmares, hypervigilance, flashbacks, numbing, and a host of other symptoms.⁹⁷

41. Moreover, various scars on his wrists, legs, and ankles were also discovered by another doctor analyzing Al-Nashiri's mental health condition.⁹⁸

42. Since October 2002, Al-Nashiri was held in detention without charges until June 30, 2008, when the U.S. Government brought charges against him for the bombing of the USS Cole.⁹⁹ These charges were dropped in February 2009, and later reinstated on September 14, 2011 when the U.S. Office of Military Commission charged Al-Nashiri with various war crimes.¹⁰⁰ Prosecutors are currently seeking the death penalty, making Al-Nashiri the first Guantanamo detainee to face such penalty.¹⁰¹

43. On March 14, 2007, Al-Nashiri attended a Combatant Status Review Tribunal Hearing to determine whether his HVD classification should remain active.¹⁰² The hearing was closed to the public; he had no access to classified evidence, could not confront any of the evidence presented against him and was not provided any legal counsel.¹⁰³ Instead, the tribunal merely assigned him a "personal representative," who did not serve as his agent, and none of his communications were protected by the attorney-client privilege.¹⁰⁴ During the hearing, Al-

⁹⁷ *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 1, at Appendix 124.

⁹⁸ *Id.* at Appendix 232.

⁹⁹ U.S. drops Guantanamo charges per Obama order, Reuters, (9:01 P.M. Feb. 6, 2009), <https://www.reuters.com/article/latestCrisis/idUSN25491168>; *Exec. Order – Rev. and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities*, The White House, (12:00 A.M. Jan. 22, 2009), https://web.archive.org/web/20090208210817/http://www.whitehouse.gov:80/the_press_office/Closure_Of_Guantanamo_Detention_Facilities/;

¹⁰⁰ *Id.*; *Al Nashiri v. Poland*, *supra* note 13, at 41; Andrei Scheinkman, *supra* note 88; Carol Rosenberg, *supra* note 7.

¹⁰¹ *Al Nashiri v. Poland*, *supra* note 13, at 41.

¹⁰² *Id.* at 40; See U.S. Naval Base Guantánamo Bay, Cuba, *supra* note 8.

¹⁰³ *Al Nashiri v. Poland*, *supra* note 13, at 40.

¹⁰⁴ *Id.*

Nashiri stated he had lied in his confessions of participating in various terrorist activities simply to stop the CIA interrogators from torturing him.¹⁰⁵ He stated specifically,

I just said those things to make the people happy. They were very happy when I told them these things. But when they freed me, I told them all I only told you these things to make you happy.¹⁰⁶

44. In August 2014, a military trial judge dismissed a portion of the charges for the MV Limburg bombing, and on January 17, 2017, after unsuccessful efforts at obtaining a Writ of Habeas Corpus, or a Writ of Mandamus, Al-Nashiri's attorneys submitted a 38-page petition to the U.S. Supreme Court, requesting the court intervene in the Military Tribunal proceedings.¹⁰⁷ In this petition, substantial evidence on Al-Nashiri's torture and degrading treatment during his detention have been documented.¹⁰⁸ Unfortunately, even if Al-Nashiri is acquitted, sources suggest that he may never be released from detention.¹⁰⁹

45. As of June 30, 2017, Al-Nashiri continues to remain in detention of the Guantanamo Bay detention camps for over 10 years and nine months.¹¹⁰

VII. Violations of Law

“[The] Extraordinary Rendition is an illegal practice under both domestic and international law, and that, consistent with U.S. policy against torture, the U.S. government is duty bound to cease all acts of Extraordinary Rendition, to investigate Extraordinary Renditions

¹⁰⁵ U.S. Naval Base Guantánamo Bay, Cuba, *supra* note 8, at 10.

¹⁰⁶ *Id.* at 22.

¹⁰⁷ *USS Cole: Abd al-Rahim Hussein Muhammed Abdu Al-Nashiri (2)*, Office of Mil. Comm'ns, (last visited Jun. 30, 2017), <http://www.mc.mil/CASES.aspx>; *Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 1; *In re Al-Nashiri*, 835 F.3d 110 (D.C. Cir. 2016); Carol Rosenberg, *supra* note 7

¹⁰⁸ *See Abd Al-Rahim Al-Nashiri v. Obama*, *supra* note 1.

¹⁰⁹ *Lawyer: Gitmo trial in Cole Attack could be moot*, Associated Press, (Oct. 24, 2011), <http://www.arkansasonline.com/news/2011/oct/24/lawyer-gitmo-trial-cole-attack-could-be-moot/>.

¹¹⁰ *Id.*; Andrei Scheinkman, *supra* note 88.

that have already taken place, and to prosecute and punish those found to have engaged in acts that amount to crimes in connection with Extraordinary Rendition.”¹¹¹

A. International Law

46. The European Parliament, the Council of Europe, the ICRC, the CIA’s own 2004 Inspector General’s report, the UN Joint Study on Secret Detention, and the March 2013 report to the UN Human Rights Council of UN Special Rapporteur Ben Emmerson QC, have all concluded that the CIA’s Extraordinary Rendition program resulted in serious human rights violations.¹¹²

47. In the case of Al-Nashiri, his treatment at the different CIA secret detention sites was in violation of the following international regulations Universal Declaration of Human Rights (UDHR). The provisions in violation include:

- a. Article 3 which guarantees the “right to life, liberty and security of person.”¹¹³
- b. Article 5 which guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹¹⁴
- c. Article 8 which guarantees “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”¹¹⁵

48. Al-Nashiri’s treatment was also in violation the following provisions within the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children,

¹¹¹ *Torture by Proxy: Int’l. and Domestic Law Applicable to “Extraordinary Renditions”*, The Comm. on Int’l. Hum. Rts. of the Ass’n. of the Bar of the City of N.Y. & The Center for Hum. Rts. and Glob. Justice, N.Y.U. Sch. of Law, 5-6 (Jun. 2006), [https://www.therenditionproject.org.uk/pdf/PDF%2039%20\[CHRGJ-2006-06-REP%20Torture%20by%20Proxy\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2039%20[CHRGJ-2006-06-REP%20Torture%20by%20Proxy].pdf)

¹¹² CHR Res. 3/2010, UN Doc. A/HRC/22/52, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf; *Request for an investigation concerning suspicion of crim. offences committed in Lithuania against Mr Mustafa al-Hawsawi*, REDRESS (Sep. 13, 2013), <http://www.redress.org/downloads/casework/final-lithuania---investigation-request.pdf>; CHR Res. 3/2010, UN Doc. A/HRC/13/42, 46, <http://hrlibrary.umn.edu/instreet/A-HRC-13-42.pdf>.

¹¹³ Universal Declaration of Hum. Rts. (hereinafter UDHR), art. 3, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

¹¹⁴ *Id* at art 5.

¹¹⁵ *Id* at art. 8.

Supplementing the United Nations Convention Against Transnational Organized Crime, (“Human Trafficking Protocol”), including:

- a. Article 3(a) which defines “trafficking in persons” as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹¹⁶
- b. Article 6(2) providing that “Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.”¹¹⁷
- c. Article 6(3) providing that, “Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.”¹¹⁸
- d. Article 6(6) providing that “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”¹¹⁹

49. Al-Nashiri’s treatment at CIA secret detention sites also violated provisions within the

International Covenant on Civil and Political Rights (ICCPR), including:

- a. Article 7 which guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹²⁰ In addition, the Human Rights Committee, the overseeing and interpretive body of the ICCPR, has stated that “States parties must not expose individuals to the danger of torture or cruel,

¹¹⁶ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

¹¹⁷ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3.

¹¹⁸ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

¹¹⁹ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

¹²⁰ Int’l. Covenant on Civil and Political Rts. (hereinafter ICCPR), art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171.

inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”¹²¹ Thus, the extradition, by the US, of an individual to an area where it is known that they will be tortured by other parties is virtually no different than if the US tortured the individual itself.

- b. Article 14(3)(b) which guarantees that an accused must "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."¹²² Specifically, under General Comment No. 32, the Human Rights Committee indicated that: “Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”¹²³

50. Al-Nashiri’s treatment was also in violation of various provisions within the Convention against Torture (CAT), defining torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”¹²⁴

The provisions in violation include:

- i. Article 2(1) which states, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”¹²⁵
- ii. Article 3(1) which states, “No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹²⁶
- iii. Article 12 which states, “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there

¹²¹ See Office of the U.N.s High Comm’r. for Hum. Rts., Hum. Rts. Comm. (May 28, 2017); Gen. Comment No. 20, ¶ 9, U.N. Doc. A/47/40, U.N. Hum. Rts. Comm., (1992).

¹²² ICCPR, *supra* note 74, at 171.

¹²³ ICCPR, *supra* note 74, at 171.

¹²⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter CAT), art. 1(1), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85.

¹²⁵ *Id* at art. 2(1).

¹²⁶ *Id* at art. 3(1).

is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”¹²⁷

51. Al-Nashiri’s treatment was also in violation of various other international regulations,

including:

- a. Principle 8 of the Prevention of Crime and the Treatment of Offenders requiring that: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”¹²⁸ In addition, the Special Rapporteur on the Promotion and Protection of Human rights and Fundamental Freedoms while Countering Terrorism has stressed that “the decision to prosecute someone for a terrorist crime should never on its own have the consequence of excluding or limiting confidential communication with counsel.”¹²⁹

52. In addition, in a document titled ““Legal Authority and Policy for Enteral Feeding at JTF-GTMO”, an attorney from the DOD admitted that “international law and certain medical ethical standards holds that the ‘forced feeding’ of a mentally competent person capable of making an informed decision is never acceptable.”¹³⁰

53. The treaties outlined above are all binding at all levels, including federal, the state, of North Carolina and its political subdivisions. The “Supremacy Clause,” the second clause of the U.S. Constitution, states that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”¹³¹

¹²⁷ *Id* at art. 12.

¹²⁸ See Rep. on the Eighth U.N.s Congress on the Prevention of Crime and Treatment of Offenders, 197, U.N. Doc. A/ CONF.144/28/Rev. 1 (1991); CHR Res. 31/2012, UN Doc. UA G/SO 218/2 G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24), [https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_30.11.12_\(31.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_30.11.12_(31.2012).pdf).

¹²⁹ CHR Res. 31/2012, *supra* note 82, at 3.

¹³⁰ Jason Leopold, “*The Mil. Admitted Force-Feeding Gitmo Detainees Violates Int’l. Law and Medical Ethics,*” *Vice* (Jan. 29, 2015), <https://news.vice.com/article/how-a-military-memo-could-save-the-nurse-who-refused-to-force-feed-guantanamo-detainees>.

¹³¹ U.S. CONST. art. VI, cl. 2.

54. In October 2002, Al-Nashiri was deprived of the guarantees to the “right to life, liberty and security of person” without the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law as provided under Article 3 and 8 of the UDHR, Article 14(3)(b) of the ICCPR, and Principle 8 of the Prevention of Crime and the Treatment of Offenders, when he was arrested and subsequently kept in detainment by the United States. These violations, as will be outlined below, include the process of extraordinary rendition in and of itself, which further facilitated and perpetuated the violations committed against Al-Hawsawi at Afghanistan, Thailand, Poland, Morocco, Romania, to the Guantanamo Detention Camps where he is currently held.
55. Throughout Al-Nashiri’s secret detainment at the various CIA secret detention sites, there was no public knowledge of his existence or whereabouts. This made him unavailable to numerous organizations and agencies including the International Committee of the Red Cross, which could provide him assistance. This level of secret detention has been alleged to arise to the level of enforced disappearance, violating the right to personal liberty, the prohibition of arbitrary arrest or detention, and the right to a fair trial under Article 3 and 8 of the UDHR.¹³² Pertinently, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution urging the United States to discontinue its operations at Guantanamo Bay, and concluding that the United States had engaged in the unlawful practice of secret detention.¹³³ PACE’s Committee of Ministers also urged the United States to provide either a prompt release or fair trial of the detainees held at Guantanamo Bay by an independent and

¹³² REDRESS, *supra* note 66, at 2.

¹³³ *Alleged secret detentions and unlawful inter-state transfers involving Council of Eur. member st. 's, Draft rep. – Part II (explanatory memorandum)*, Comm. on Legal Affairs and Hum. Rts., Parliamentary Assemb. of the Council of Eur., 4 (Jun. 7, 2006), http://assembly.coe.int/committeedocs/2006/20060606_ejdoc162006partii-final.pdf (citing PACE Resol. (1433/2005) and Recommendation (1699/2005)).

impartial court, so to ensure “that the rights of all detainees are ensured and that the principle of the rule of law is fully respected.”¹³⁴

56. However, the United States has failed and on occasion directly refused to make such reparations. It has been alleged that the current U.S. Military Commission system, detainees’ primary avenue for redress, would be an insufficient measure for Al-Nashiri, based on the fact that the system does not meet international fair standards as established under Article 8 of the UDHR, Article 14(3)(b) of the ICCPR, Principle 8 of the Prevention of Crime and the Treatment of Offenders, and Article 6(2), 6(3) and 6(6) of the Human Trafficking Protocol.¹³⁵

57. To begin with, The UN Working Group on Arbitrary Detention highlighted that the tribunal did not grant detainees “an enforceable right to compensation” by “determining the legality of any detainee’s law of war detention,” instead the Military tribunal only endeavors “to make discretionary determinations whether or not a detainee represents a continuing threat to the security of the United States.”¹³⁶ This sort of limited review deprives Al-Nashiri of an avenue for redress and reparation, and perpetuates his indefinite detention, violating his “right to life, liberty and security of person” without the right to an effective remedy by the competent national tribunals, as discussed earlier.

58. In addition, the UN Working Group on Arbitrary Detention highlighted that the limitations on disclosure of classified national security information during Combatant Status Review Tribunal hearings has greatly impeded on detainees right to adequate counsel by drastically limiting their defense attorney’s ability to represent them, making it “almost impossible to

¹³⁴ REDRESS, *supra* note 66, at 2.

¹³⁵ *Lithuanian Court’s ruling on CIA rendition case, a breakthrough for justice*, Amnesty Int’l. (12:00 A.M. U.T.C. Jan. 29, 2014), <https://www.amnesty.org/en/latest/news/2014/01/lithuania-court-decision-cia-detention/>.

¹³⁶ CHR Res. 31/2012, *supra* note 82, at 5.

locate and interview [] possible witnesses . . . [or] ask other witnesses about information as they will not have been cleared to view classified information.”¹³⁷ For Al-Nashiri to have the opportunity to declassify any classified information, his attorney-client privileges must in effect be violated upon each request. This is due to the fact that any classified information must be presented by his attorney to the judge and the government before he may testify to it in the courtroom.¹³⁸ This kind of blanket disclosure requirement is in stark contrast to the directives provided under the Special Rapporteur on the Promotion and Protection of Human rights and Fundamental Freedoms while Countering Terrorism.¹³⁹

59. In addition, Al-Nashiri’s detention has violated his right to access to adequate counsel as provided under Article 14(3)(b) of the ICCPR, and Principle 8 of the Prevention of Crime and the Treatment of Offenders as well. During Al-Nashiri’s secret detention, defense counsel was completely inaccessible to him due to his inability to access the outside world, and the fact that outside counsel had no knowledge of his status at such facility.¹⁴⁰ Moreover, under his current detention in Guantanamo Bay, detention procedures are impermissibly burdening his right to counsel by extensively restricting how he communicates with his counsel and prohibiting access by counsel to his medical records.

60. Most importantly, Al-Nashiri was subjected to torture or to cruel, inhuman or degrading treatment or punishment during his arrest and subsequent detainment in patent violation of Article 5 of the UDHR, Article 7 of the ICCPR and CAT. The International Committee of the Red Cross has already concluded that the enforcement of CIA “EITs” is a *de facto* use of

¹³⁷ CHR Res. 31/2012, *supra* note 82, at 2.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Matter of Mustafa Adam Al-Hawsawi regarding the United States of America, Precautionary Measure No. 422-14*, Inter-American Comm. on Hum. Rts. Res. 24/2015 (Jul. 7, 2015), <http://www.redress.org/downloads/resolution-24-2015---precautionary-measures-al-hawsawi.pdf>.

torture against a detainee.¹⁴¹ In addition, secret detention is said to facilitate the continued use of torture, and in many instances, is also considered a *de facto* use of torture on detainees.¹⁴² Detainees held in secret detention, who has been labeled as HVDs were at a greater risk of being subjected to torture and other ill-treatment.¹⁴³

61. Al-Nashiri faced numerous accounts of torture in violation of international regulations including sodomization, nudity, confined spaces, walling, waterboarding, facial slaps, attention grabs, sleep deprivation, hooding, exposure to cold temperatures, force fed, isolation, mock executions, and threatened with his life. Overall, these acts are sufficient to constitute acts of torture as provided under the UDHR and CAT.
62. In permitting the CIA and independent contractors, such as Aero Contractors, to perform its extraordinary rendition program, with the breadth of discretion they held, the United States, the state of North Carolina and its political subdivisions, failed to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction in violation of Article 2(1) of CAT. The rendering and harboring of detainees internationally at the various CIA detention sites are all operations performed within the jurisdiction of the United States. Based on this affiliation, the United States also knowingly exposed Al-Nashiri to the danger of torture, cruel, inhuman or degrading treatment, or punishment of foreign nations through its permission and directives in performing the numerous renditions from Afghanistan, Thailand, Poland, Cuba, Morocco, and Romania. Moreover, the United States continues to leave detainees at the threat of torture. Although the United States took care to reprimand the CIA interrogator who had subject Al-Nashiri to the

¹⁴¹ ICRC Rep. on the treatment of fourteen “high value detainees” in CIA custody, Int’l. Committee of the Red Cross, at 8-9 (Feb. 14, 2007), <https://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>.

¹⁴² REDRESS, *supra* note 66, at 2.

¹⁴³ REDRESS, *supra* note 66, at 2.

mock execution in Bangkok, Thailand, it permitted him to continue his work in the CIA with the role of training other officers.¹⁴⁴ These operations are all in stark violation of Article 7 of the ICCPR, and Article 3(1) of CAT. At all of these locations, Al-Nashiri was transported under aircrafts known to be owned by the CIA and operated by various independent contractors, including Aero Contractors. The facilities to which he was transferred to were known to be torture facilities.

63. The U.S. government maintained an established system throughout Al-Nashiri's detainment in which it paid the CIA, its independent contractors, and complicit governments for the purpose of continuing his transfer and harboring in each CIA secret detention site from the period of 2002 to 2006. This was done against his will, under the threat of force, in order to obtain any potential information from him. Such form of systematic processing of a person satisfies the definition of "trafficking in persons," violating of Article 3(a) of the Human Trafficking Protocol. In fact, the 2012 Executive Summary concluded that through this system of payment, the United States had financially incentivized independent contractors and complicit governments to perform such trafficking.¹⁴⁵

64. Finally, upon discovery of its lack of oversight procedure, and exposure of Al-Nashiri to torture at the CIA detention sites, the United States failed to provide a prompt and impartial investigation when reasonable ground arose that Al-Nashiri had been subjected to CIA "EITs," violating of Article 5 of the UDHR, Article 7 of the ICCPR and CAT. This includes

¹⁴⁴ Amrit Singh, *supra* note 1, at 50.

¹⁴⁵ USCCI Exec. Summ., *supra* note, at 139-40, footnote 843.

the CIA's direct interference with the USSCI's research when it destroyed video recording of Al-Nashiri's interrogation sessions in 2005.¹⁴⁶

B. United States Federal Law

65. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, Al-Nashiri's treatment was in violation of numerous federal law, including:

- a. Torture Victims Protection Act of 1991, which states: "An individual who, under actual or apparent authority, or color of law, of any foreign nation— subjects an individual to torture shall, in a civil action, be liable for damages to that individual."¹⁴⁷
- b. 18 U.S. Code §2340A which states "Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years."¹⁴⁸ Torture under this statute is defined as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control".
- c. War Crimes Act of 1996, prohibiting acts of torture, defined as, "An act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind."¹⁴⁹

66. The acts performed against Al-Nashiri of which are sufficient to constitute acts of torture under the definitions provided under Article 5 of the UDHR, Article 7 of the ICCPR and CAT, are also sufficient to constitute acts of torture as defined under Torture Victims Protection Act of 1991, 18 U.S. Code §2340A, and War Crimes Act of 1996. Therefore, the United States, as well as Aero Contractors, are liable to Al-Nashiri for the acts of torture

¹⁴⁶ *Comm. Study of the C.I.A.'s Detention and Interrogation Program*, U.S.S. Select Comm. on Intelligence, (hereinafter the USSCI Exec. Summ.) 186-187 (Declassification Revisions Dec. 3, 2014), https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf.

¹⁴⁷ Torture Victim Protection Act of 1991 1992 Enacted H.R. 2092, 102 Enacted H.R. 2092, 106 Stat. 73.

¹⁴⁸ 18 U.S. Code § 2340A.

¹⁴⁹ 18 U.S. Code § 2441.

committed against him during his detainment. In addition, the guards who performed such acts of torture can be held criminally liable for the actions under 18 U.S. Code §2340A.

C. North Carolina State Law

67. The Rendition process, and detention of Al-Nashiri was in violation the North Carolina Constitution, which states ““No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”¹⁵⁰
68. This process was also violation of North Carolina General Statute §14-39 regarding Kidnapping and Abduction, which states: “Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, . . . shall be guilty of kidnapping.”¹⁵¹ This statute extends liability to private companies in violation as well and includes conspiracy to commit such acts.
69. Similar to the reasoning provided under part A and B, the acts performed upon Al-Nashiri, constituting acts of torture under International and Federal law, are sufficient to constitute acts of kidnapping act provided under of North Carolina General Statute §14-39, and the deprivation of the Due Process right guaranteed under the North Carolina Constitution.

XI. Conclusion

70. Al-Nashiri was illegally kidnapped and extraordinarily rendered via a process outside of the law and without any legal protections to a country with the full knowledge and intent that he would be tortured there. He endured a terrifying kidnapping, detention and torture, all of which was in patent violation of international, federal, and North Carolina state laws. As a

¹⁵⁰ N.C. Const. art. 1, §19.

¹⁵¹ N.C. Gen. Stat. § 14-39.

result, he has suffered and will continue to suffer severe lifelong distress, and has been irreparably harmed. It is incumbent upon the United States, North Carolina and its political subdivisions, pertinently, independent contractors Aero Contractors, to admit wrongdoing via Congressional action, and take responsibility for the atrocities committed against Al-Nashiri and the countless other individuals that were harmed through acts of torture and extradition.

Appendix



Image of Abd Al-Rahim Al-Nashiri. Obtained from The Rendition Project Website.



Image of the Alleged Gulfstream V Jet, tail number N379P, the reported aircraft transporting Al-Nashiri from the Afghanistan to Thailand, as well as Poland detention site to Rabat, Morocco. Obtained from the Rendition Project website.

Gouled Hassan Dourad

I. Introduction

1. Gouled Hassan Dourad is a Djibouti national currently detained at Guantánamo Bay.¹ He was captured by Djibouti authorities in March 2004 and rendered to CIA custody. Until 2006, when he was transferred to Guantánamo, he was imprisoned in the CIA's secret prison network, but little information about his location and treatment during that time has been made publicly available.² Dourad is considered a high-value detainee; however, he denies having any link to al-Qaeda,³ and he has never been charged with a crime or tried for any terror-related offense.⁴

II. Detention

A. Background

2. According to unconfirmed documentation from the Department of Defense,⁵ Dourad completed secondary school in Mogadishu, Somalia in 1990. In 1991, when the Somali civil war began, his family sent him to a refugee camp in Puettlingen, Germany. After his asylum application was rejected in Germany and then in the Netherlands, Dourad moved to Stockholm, Sweden in 1993. There, his asylum application was accepted. He lived in Sweden, continuing his education, for almost three years.⁶

¹ RENDITION PROJECT, *Gouled Dourad*. <https://www.therenditionproject.org.uk/prisoners/dourad.html>

² *Id.*

³ Robert Burns, "Somali Held at Guantanamo Denies Al-Qaeda Link," ASSOCIATED PRESS (May 5, 2007). <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/04/AR2007050402185.html>.

⁴ Andy Worthington, "Somali 'High-Value Detainee,' Held in CIA Torture Prisons, Seeks Release from Guantánamo via Review Board" (May 8, 2016). <http://www.andyworthington.co.uk/2016/08/05/somali-high-value-detainee-held-in-cia-torture-prisons/#more-24683>.

⁵ Department of Defense documents cannot be independently verified and contain some assertions that have been challenged by detainees or their lawyers or undermined by other evidence. See <https://www.nytimes.com/interactive/projects/guantanamo/detainees/10023-gouled-hassan-dourad/documents/7>.

⁶ DEPARTMENT OF DEFENSE, *Recommendation for Continued Detention Under DoD Control (CD) for Guantanamo Detainee, ISN US9SO-010023DP (S) 2-3* (2008). [https://www.therenditionproject.org.uk/pdf/PDF%20381%20\[JTF-GTMO%20Detainee%20Assessment,%20Gouled%20Hassan%20Dourad%20\(19%20Sept%202008\)\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20381%20[JTF-GTMO%20Detainee%20Assessment,%20Gouled%20Hassan%20Dourad%20(19%20Sept%202008)].pdf).

3. Dourad has a wife and four children, all of whom currently live in Kenya.⁷ According to his personal representatives, he also has experience in computer engineering and small business, and he is a fan of National Geographic and Harry Potter.⁸

B. Capture

4. Dourad was living in Djibouti when, on 4 March 2004, he was captured by Djibouti officials working with the CIA.⁹

5. CIA cables record that Dourad was interrogated by CIA officials before being rendered to their custody, and it is alleged that he provided detailed information on a potential terrorist attack in Djibouti.¹⁰

C. Rendition

6. The details of Dourad's rendition, though known to the CIA, have not been made publicly accessible. However, some conclusions can be drawn from the available information that has been made public.

7. Based on redacted information from the Senate Select Committee on Intelligence Torture Report ("Torture Report"), it is clear that Dourad entered CIA custody between 10-31 March 2004.¹¹ Juxtaposed with renditions flight data, this fact suggests that Dourad was rendered on 8 March 2004, on a Gulfstream V jet registered as N8068V previously registered as N379P.¹²

⁷ *Periodic Review Board Initial Hearing, 02 Aug 2016, Guleed Hassan Ahmed, ISN 10023: Personal Representative Opening Statement* (2016).

http://www.prs.mil/Portals/60/Documents/ISN10023/160802_U_ISN_10023_OPENING_STATEMENTS_OF_DETAINEES_REPRESENTATIVES_PUBLIC.pdf.

⁸ *Id.*

⁹ RENDITION PROJECT, *supra* note 1, at par. 1.

¹⁰ SENATE SELECT COMMITTEE ON INTELLIGENCE, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* [hereinafter SSCI Report] 337 (2014).

¹¹ RENDITION PROJECT, *supra* note 1, at par. 3.

¹² *Id.* at par. 3.

8. N8068V, registered to Aero Contractors headquartered in North Carolina, flew from its home base of Johnston County Airport to Washington Dulles International Airport in the afternoon on 6 March 2004. After Washington Dulles, the aircraft stopped in Shannon, Ireland shortly after midnight on 7 March, and then continued on to Djibouti. In Djibouti, where it stayed for over 24 hours, the aircraft likely picked up Dourad.¹³

9. Dourad's destination after leaving Djibouti is uncertain. The plane subsequently flew to Afghanistan, Morocco, and Guantánamo; thus, he could have been taken to any of those places.¹⁴

10. Journalist Adam Goldman claims that Dourad was detained at Guantánamo Bay in March 2004 and was later moved to Morocco with other high-value detainees. Although little is known about his treatment in Morocco, Human Rights Watch and the stories of other detainees held in prisons in Morocco detail horrific abuse likely to have been visited on Dourad.¹⁵ The torture he likely suffered at the hands of the Moroccans would not have occurred but for his extraordinary rendition on the plane flew by Aero Contractors headquartered in Johnston County, NC. If Goldman's analysis is correct, Dourad's destination during this rendition circuit was likely eventually Guantánamo.¹⁶

D. Secret Detention

11. Dourad was ultimately detained in the CIA's secret prison network for over two years. His precise whereabouts during this time are unknown except to the CIA.¹⁷

12. The details of Dourad's treatment throughout this period have also been kept from the public; however, the protocols and existing descriptions of the CIA's program of extraordinary

¹³ RENDITION PROJECT, *Rendition Circuit: 6-13 March 2004*, at par. 2.
<https://www.therenditionproject.org.uk/flights/renditions/N379P-040306.html>.

¹⁴ *Id.* at par. 2.

¹⁵ See UNC School of Law Human Rights Policy Seminar, *Brief in Support of Abou ElKassim Britel* 11 n49 (2014), <http://www.law.unc.edu/documents/academics/humanrights/britelbrief.pdf>.

¹⁶ *Id.* at par. 1.

¹⁷ RENDITION PROJECT, *supra* note 1, at par. 4-5.

rendition and torture shows that detainees captured as part of the “war on terror” were regularly brutalized. The scant public documentation made available further shows that he was subjected to the deprivation of medical care. The Torture Report notes that he was one of several detainees who “had care delayed” for “serious medical issues.”¹⁸

E. Guantánamo Bay

13. On September 4, 2006, Dourad and several other “high-value detainees” were rendered to Guantánamo Bay.¹⁹

14. Few details regarding Dourad’s treatment at Guantánamo are publicly available. He did, however, discuss some of the abuse he has faced while serving as a witness for another detainee, Ramzi bin al-Shibh,²⁰ in a pre-trial hearing.²¹ He reported, “They have mental torturing in the Camp Seven,” the area where high-value detainees are held. He went on to describe “vibrations in his cell floor, a constant ‘stinky smell’ and noises that sounded ‘like someone on the roof...hitting hammer.’²²

15. Today, Dourad remains at Guantánamo, where he has now been imprisoned for almost eleven years.²³ He has never been charged by the U.S. government with any offense and was not recommended for prosecution by Obama’s Guantánamo Review Task Force, which suggests that the United States lacks sufficient (if any) evidence for its claims that he is a significant figure in East Africa al-Qaeda.²⁴ Indeed, Dourad denies the allegation; he states that while he fought in what he considered a holy war against Ethiopians in Somalia, he was not a member of al-Qaeda

¹⁸ SSCI Report, *supra* note 10, at 493.

¹⁹ RENDITION PROJECT, *supra* note 1, at par. 7.

²⁰ Ramzi bin al-Shibh is also profiled in this briefing book.

²¹ Andy Worthington, *supra* note 4.

²² Lacey Ann Johnson, “Guantanamo Inmate Testifies about Torment by U.S. Guards,” REUTERS (June 2, 2016). <http://www.reuters.com/article/us-usa-guantanamo-idUSKCN0YO2MH>.

²³ NEW YORK TIMES, *The Guantánamo Docket: Gouled Hassan Dourad*.

<https://www.nytimes.com/interactive/projects/guantanamo/detainees/10023-gouled-hassan-dourad/documents/7>.

²⁴ Andy Worthington, *supra* note 4.

and did not want to harm the United States.²⁵ “My training was solely for the purpose of fighting in Somalia, but not against Americans,” he said in a statement.²⁶

IV. Laws Condemning Extraordinary Rendition, Torture, and Detention

16. Dourad was captured and detained against his will without charge. He was subjected to mental torture. Furthermore, given our knowledge of the abuse inflicted both on high-value detainees and at the secret prisons where Dourad was held,²⁷ it is likely that he was subjected to other forms of torture as well. All of these aspects of his ordeal were illegal.

A. International Law Violations

17. Dourad’s treatment violated several international laws regarding human rights.

18. First, the “mental torturing” Dourad described constitutes a violation of the prohibition on torture, “one of the most universally recognized human rights.”²⁸ As a peremptory norm, the prohibition on torture applies to every state, irrespective of whether it has committed to uphold it, and in every situation, including emergencies.²⁹ Thus, even if Dourad did have ties to al-Qaeda—a charge he denies—torturing him would never be permissible under international law.

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19. Regardless of its status as a peremptory norm, however, the prohibition on torture has been upheld by the United States in numerous treaties, which include the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and

²⁵ Robert Burns, *supra* note 3.

²⁶ *Id.*

²⁷ For detailed accounts of the abuse other detainees experienced, see the rest of the victim narratives in this briefing book.

²⁸ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

²⁹ *Id.*

³⁰ ASS’N PREVENTION TORTURE, *Defusing the Ticking Bomb Scenario: Why we must say No to torture, always* 17 (2007), http://www.apr.ch/content/files_res/tickingbombscenario.pdf.

the Convention Against Torture (CAT). Each of these treaties has been violated by Dourad's abuse.

20. The UDHR and the ICCPR both dictate that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."³¹ In addition, The ICCPR explicitly notes that one can never derogate from the prohibition on torture, even during public emergency. The "mental torturing" Dourad experienced is a clear violation of the provisions forbidding torture, which, once again, is valid whoever the victim and whatever the context is.

21. The fundamental purpose of the CAT, which the U.S. ratified in 1994,³² is to prohibit torture in all circumstances,³³ including "exceptional" ones.³⁴ Dourad's torture thus violated the most essential tenet of the CAT.

22. The torture also violated a number of other CAT provisions, including some that mandate that states take specific preventative measures to eliminate torture. For instance, the CAT obliges the United States to

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.³⁵

³¹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

³² UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

³³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

³⁴ CAT, *supra* note 18, at art. 2.

³⁵ CAT, *supra* note 18, at art. 2.

23. According to this provision, the United States' responsibilities extend beyond preventing torture within its borders; the U.S. must also ensure that none of its states or territories extradites someone to a country in which they are in danger of being tortured.³⁶

24. Pursuant to the Supremacy Clause of the U.S. Constitution, each state is legally bound to follow international treaties ratified by the United States. By law, therefore, North Carolina must ensure that adequate measures are taken to prevent torture both inside and outside of the United States.³⁷

25. In particular, the "administrative" measures discussed in the CAT offer a clear path to accountability when considered in the context of the Rendition, Detention, and Interrogation (RDI) program. North Carolina's political entities and subdivisions must revoke or discontinue Aero's "flying permits, licenses, and leases" to be compliant with the CAT.³⁸ Because of Aero Contractors' significant contribution to the RDI program, through which Dourad and many others were tortured, allowing the company to continue operating is a violation of international law.

26. In addition to the mental torture he has experienced, Dourad was seized and transported without his consent or any due process. This aspect of his ordeal violates another treaty the United States has ratified: the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against

³⁶ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

³⁷ *Id.* at 36.

³⁸ *Id.*

Transnational Organized Crime, (“the Protocol”).³⁹ The Protocol prohibits “trafficking in persons,” which it defines as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴⁰

27. Dourad’s extraordinary rendition was a violation of the Protocol’s ban on human trafficking.

28. Other provisions of the Protocol discuss human trafficking victims’ entitlements; the United States has violated these provisions as well. Victims’ entitlements include “the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.”⁴¹ Given his status as a victim of human trafficking, Dourad should benefit from these forms of assistance; however, the United States has offered him none of them.

29. The Protocol also states, “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”⁴² That Dourad has been offered no path to obtaining

³⁹ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

⁴⁰ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

⁴¹ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

⁴² U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

compensation for the damage he suffered as a result of his extraordinary rendition is a violation of international law.

B. Federal Law Violations

30. Pursuant to the Supremacy Clause, international treaties ratified by the United States are equivalent to federal statutes. Thus, in violating the international laws described above, the United States government and Aero Contractors also violated federal law.⁴³

31. The U.S. government and Aero further violated a number of federal laws beyond these treaties. For instance, Amendment 8 of the U.S. Constitution prohibits “cruel and unusual punishments.”⁴⁴ Subjecting someone to mental torture is both cruel and unusual; as such, Dourad’s treatment was in violation of the Constitution.

32. In addition, the lack of accountability regarding Dourad’s treatment violates the Federal Torture Statute (FTS). Under the FTS, anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20 years, or both.”⁴⁵ No American public official has ever been prosecuted for Dourad’s torture; this absence of justice violates the FTS.

33. Still more federal laws could constitute mechanisms for holding the United States and Aero Contractors accountable for Dourad’s treatment. For instance, the Alien Tort Statute (ATS) grants non-U.S. citizens who are the victims of egregious human rights violations (whether those violations took place inside or outside of the United States) to sue government officials and private actors in U.S. courts.⁴⁶ In 2010, five former detainees used the ATS as grounds to sue the

⁴³ Weissman et al., *supra* note 21, at 36.

⁴⁴ U.S. CONST. amend VIII

⁴⁵ 18 U.S. Code § 2340A.

⁴⁶ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

United States and Jeppesen Dataplan,⁴⁷ a corporation that provided “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”⁴⁸ Thus, there is a precedent for the prosecution of the United States or Aero Contractors for each of their roles in Dourad’s abuse.⁴⁹

34. The Torture Victims Protection Act (TVPA) of 1991 is another law that could be used to achieve accountability for Dourad’s rendition and torture. The TVPA was established to help fulfill the United States’ obligations under the UN Charter and other international mechanisms for the protection of human rights “by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”⁵⁰ The TVPA provides Dourad with grounds to seek compensation for his abuse.

C. North Carolina Law Violations

35. Aero Contractors violated numerous state laws by operating the planes used to extraordinarily render Dourad and many others. As a result, North Carolina is in the unique position of being able to hold the perpetrators of flagrant violations of international rights accountable at a state level. Indeed, North Carolina must hold Aero accountable in order to comply with its own laws.

⁴⁷ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

⁴⁸ *Id.* at 13526.

⁴⁹ It should be noted that although the Jeppesen Dataplan case was dismissed on the basis of the “State Secrets Doctrine,” such legal defense is likely no longer available to the government given the ongoing declassification of documents related to the CIAs Extraordinary Rendition and Torture program. *See e.g.*, Irving. Figueroa, et al., *Assessing Recent Developments: Achieving Accountability for Torture* (2016) <http://www.law.unc.edu/documents/academics/humanrights/tortureaccountability.pdf>,

⁵⁰ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb., 106 Stat. 73, 73 (1992).

36. For instance, Aero Contractors violated several provisions of the North Carolina Constitution. Article I, § 19, states, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”⁵¹ Other constitutional provisions address kidnapping, involuntary servitude, trafficking, and criminal conspiracy. Aero Contractors participated in or facilitated all of these crimes through their contribution to the RDI program.⁵² Dourad’s extraordinary rendition and extralegal detention therefore violate multiple provisions of the North Carolina Constitution.

37. Section 14-39 of the North Carolina General Statutes also criminalizes kidnapping.⁵³ Moreover, in addition to kidnapping itself, “serious bodily harm to or terrorizing the person” who has been kidnapped is classified as a crime.⁵⁴ “First-degree kidnapping,” wherein the abducted individual is not transported to a safe place or has been “seriously injured or sexually assaulted,” is further identified as an even more serious crime.⁵⁵ Dourad’s extralegal capture and detention constitutes kidnapping, and the mental torture he experienced constitutes “terrorizing” him. Furthermore, the secret prison system where Dourad was held was certainly not a safe place given the brutal violence inflicted on prisoners there. NCGS § 14-39 has therefore been violated.

IV. Conclusion

38. Gouled Hassan Dourad was seized and transported against his will. He was tortured mentally and, given how brutally prisoners are treated in U.S. black sites, possibly physically. He

⁵¹ N.C. CONST. art. 1, § 19.

⁵² See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

⁵³ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

⁵⁴ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

⁵⁵ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

has been detained without charge for more than thirteen years, despite the fact that he continues to deny having ties to al-Qaeda.

39. According to the many laws outlined above, this reprehensible treatment is illegal.

40. Those responsible for these illegal acts must be held accountable. The U.S. government, the North Carolina government and its political subdivisions, and Aero Contractors each played a crucial role in the RDI program and therefore in the violation of Dourad's human rights; it is critical that they provide redress for their crimes. In the absence of that redress, the United States demonstrates a fundamental disregard for human rights and an appalling acceptance of torture. Moreover, accepting torture would not only undermine the United States' international standing, it would also set a standard for the future. Impunity now can only encourage future human rights violations. Accountability, in contrast, is a commitment to justice both now and in years to come.

Yunus Rahmatullah

I. Introduction

1. Yunus Rahmatullah was captured and detained in the U.S. secret prison system for a decade¹ because of a case of mistaken identity.² After being wrongfully identified as a member of a Sunni extremist group, Rahmatullah was seized by British forces in Iraq and transferred to American custody.³ Throughout his ten years of detention, he was never charged or tried, and he was forbidden from meeting with his lawyer.⁴ He was also subjected to brutal torture.⁵ Rahmatullah's eventual release was the result of years of investigation and legal action; his case reached the UK Supreme Court, which suggested that his rendition was a war crime.⁶

II. A Decade in Detention

A. Background

2. Yunus Rahmatullah is a Pakistani citizen.⁷ In late January or early February 2004, he moved to Baghdad, Iraq. He had plans to start a rice importation business there with another Pakistani national named Amanatullah Ali. Ali lived in the same building as Rahmatullah and was captured alongside him.⁸

B. Capture

¹ REPRIEVE, *Yunus Rahmatullah* par. 1-3. <http://www.reprive.org.uk/case-study/yunus-rahmatullah/>.

² RENDITION PROJECT, *Yunus Rahmatullah and Amanatullah Ali* par. 1. https://www.therenditionproject.org.uk/prisoners/rahmatullah_ali.html.

³ *Id.*

⁴ REPRIEVE, *supra* note 1, at par. 4.

⁵ *Id.*

⁶ *Id.* at par. 8.

⁷ RENDITION PROJECT, *supra* note 2, at par. 1.

⁸ *Rahmatullah v Ministry of Defense and Foreign & Commonwealth Office, Reamended Particulars of Claim* [Hereinafter *Rahmatullah v MOD*] 4 (2014).

[https://www.therenditionproject.org.uk/pdf/PDF%20480%20\[Rahmatullah%20v%20MOD%20and%20FCO,%20Reamended%20Particulars%20of%20Claim%20\(25%20July%202014\)\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20480%20[Rahmatullah%20v%20MOD%20and%20FCO,%20Reamended%20Particulars%20of%20Claim%20(25%20July%202014)].pdf).

3. Rahmatullah was captured by British forces in a raid on the building where he lived, which MI6 believed to be a safe house for foreign fighters. The mission was codenamed Operation Aston.⁹

4. His capture was one of many operations carried out by Task Force 121,¹⁰ a joint US-UK special forces unit. Task Force 121 was originally instructed to detain individuals suspected of having information on Saddam Hussein's weapons of mass destruction; however, once it was discovered that Hussein did not, in fact, possess weapons of mass destruction, the unit was re-assigned to capture al-Qaida leaders.¹¹

5. Rahmatullah and Ali were seized because UK intelligence forces falsely identified them as members of Lashkar-e-Taiba (LET), a Sunni extremist group.¹² There is no evidence that Rahmatullah has ever been involved with LET, a charge which he denies.¹³ The fact that the U.S. cleared him for release in 2010 (years before they actually released him) supports the assertion that he was never a threat.¹⁴ Furthermore, Ali is Shia, not Sunni; he is a member of a minority group that is itself targeted by LET.¹⁵

6. In a suit against the British Ministry of Defense and Foreign and Commonwealth Office, Rahmatullah's capture was described in detail:

Approximately ten days after his arrival [in Iraq], the Claimant [Rahmatullah] was sleeping in his bedroom...At approximately 1am he was awoken by gunfire. A number of vehicles pulled up outside the apartment...The Claimant heard helicopters above the property. A number of soldiers stormed into the

⁹ RENDITION PROJECT, *supra* note 2, at par. 1.

¹⁰ *Id.*

¹¹ Ian Cobain, "Camp Nama: British Personnel Reveal Horrors of Secret US Base in Baghdad," *GUARDIAN* par. 4 (April 1, 2013).

<https://www.theguardian.com/world/2013/apr/01/camp-nama-iraq-human-rights-abuses>.

¹² RENDITION PROJECT, *supra* note 2, at par. 1.

¹³ *Id.* at par. 4.

¹⁴ Clive Stafford Smith, "Yunus Rahmatullah: The US and UK Caught Committing a Crime Together," *GUARDIAN* par. 2 (October 31, 2012).

<https://www.theguardian.com/commentisfree/2012/oct/31/yunus-rahmatullah-unlawful-detention>.

¹⁵ RENDITION PROJECT, *supra* note 2, at par. 2.

apartment...The soldiers began hitting the Claimant with the butts of their rifles, repeatedly striking him in the stomach and head, causing him to lose consciousness. The Claimant briefly regained consciousness to find that he was outside on the ground. The Claimant's hands were tied behind him with plastic zip ties and his legs bound with zip ties...He was then hooded and thrown into the back of a vehicle.¹⁶

7. Numerous international and regional human rights bodies, including the U.N. Committee Against Torture, have determined that hooding can constitute torture.¹⁷ The hooding and beatings Rahmatullah experienced during capture would prove characteristic of his later ordeal.

8. The description of his capture continues:

Inside the vehicle the Claimant was beaten on his nose and around his eyes, causing him to lose consciousness once again. On regaining consciousness the Claimant found he was lying on his back with his arms still tied behind him. He could feel that he was lying on what he believed to be dead bodies in plastic bags on the floor of the vehicle. Later the Claimant realized that he was drenched in blood that was not his own...After some time the Claimant was taken out of the vehicle and transferred into what he believed was a helicopter. Inside the aircraft he was again beaten on his head with the soldiers' weapons until he lost consciousness.¹⁸

C. Detention at Camp Nama

9. The helicopter took Rahmatullah to Camp Nama, a secret detention facility located at Baghdad International Airport and operated by both U.S. and U.K. forces.¹⁹ Camp Nama, which ordinary military personnel and the International Committee of the Red Cross could not access, is particularly notorious for abusive interrogations which violate international human rights standards.²⁰

¹⁶ *Rahmatullah v MOD*, *supra* note 8, at 4.

¹⁷ INTERNATIONAL REHABILITATION COUNCIL FOR TORTURE VICTIMS, *Istanbul Protocol: Statement on Hooding*, <http://irct.org/istanbul-protocol/statement-on-hooding>.

¹⁸ *Rahmatullah v MOD*, *supra* note 8, at 5.

¹⁹ RENDITION PROJECT, *supra* note 2, at 5.

²⁰ HUMAN RIGHTS WATCH, *"No Blood, No Foul": Soldiers' Accounts of Detainee Abuse in Iraq*, <https://www.hrw.org/report/2006/07/22/no-blood-no-foul/soldiers-accounts-detainee-abuse-iraq>.

10. The majority of the torture that occurred at Camp Nama was authorized by senior military officials. However, the already abusive techniques often devolved into even more brutal treatment in practice.²¹

11. Rahmatullah was subject to a wide range of these techniques. His abuse included beatings, death threats, sleep deprivation, forced nudity, cold water dousing, walling, stress positions, and confinement in a coffin-like box while water was dripped onto him.²² He was also kept in a cell just 18 inches wide.²³

12. These techniques were not the extent of the torture to which he was subjected; his suit describes still more. For example, after his first interrogation, Rahmatullah “was tied to a vehicle by a rope...The vehicle accelerated quickly and [he] was dragged along the ground for approximately 20 meters.”²⁴ Immediately following this ordeal, Rahmatullah was thrown “into a pen containing a number of large dogs.”²⁵

The dogs were muzzled but attacked the Claimant with their claws, scratching him and causing bleeding wounds to the back of his right shoulder his lower back and the side of his right leg. The soldiers allowed the dogs to attack the Claimant for around 20 minutes and then tied the dogs up about half an arm’s length from the Claimant, who was still in the same pen as the dogs. The Claimant was left in the pen with the dogs for around five to six hours. During this time soldiers would intermittently enter the pen and beat the Claimant.²⁶

13. Rahmatullah’s suit also describes the use of a torture technique very similar to waterboarding.

[T]he soldier standing behind him tilted the Claimant’s head backwards and placed a cloth over his mouth and nose. The soldier poured water onto the Claimant’s face through the cloth. The Claimant tried to swallow the water but was unable to do so quickly enough. Water poured into his nose and mouth causing the Claimant

²¹ *Id.*

²² *Rahmatullah v MOD, supra* note 8, at 5-8.

²³ RENDITION PROJECT, *supra* note 2, at par. 6.

²⁴ *Rahmatullah v MOD, supra* note 8, at 6.

²⁵ *Id.*

²⁶ *Id.*

to experience a sensation of drowning and that he could not breathe. After the soldier stopped, the people stood in front of the Claimant resumed their questioning. However, the Claimant was still in too weak a state to speak so the interrogators gestured to the soldier behind who again placed the cloth over the Claimant's face and poured water over his face until he choked. This process was repeated multiple times until eventually the Claimant lost consciousness.²⁷

D. Detention at Second Facility in Iraq

14. After a period of time at Camp Nama, Rahmatullah was hooded and driven to another detention facility.²⁸ It is possible that the facility was Abu Ghraib.²⁹

15. Further, equally severe torture was inflicted on Rahmatullah at this site. He was subjected to torture both outside of and during his interrogations, which lasted up to 10 hours at a time.³⁰ Here, the techniques used on Rahmatullah included brutal beatings, stress positions, sensory overload, forced nudity, food deprivation, death threats, threats of sexual assault, being choked and led by a rope, and being confined in a cupboard-like space for 5-6 days.³¹ Soldiers also suspended him upside down and dunked him into cold water, poured his own urine onto him, and forced him to lie in a pile of naked detainees.³² The latter experience is still too traumatic for him to discuss at length.³³

16. At one point Rahmatullah was tortured so severely that he began vomiting blood. He lost consciousness during this session, and had to be taken to a doctor. He required an intravenous drip and an oxygen mask to recover; however, he was removed from medical care before he could improve completely.³⁴

E. Detention at Abu Ghraib

²⁷ *Id.* at 8-9.

²⁸ *Id.* at 10.

²⁹ *Id.*

³⁰ *Id.* at 12.

³¹ *Id.* at 10-13.

³² *Id.* at 13.

³³ *Id.*

³⁴ *Id.* at 14.

17. Approximately one to two weeks after returning from medical care, Rahmatullah was hooded and transferred again. The journey lasted only about ten minutes by helicopter and a land-based vehicle.³⁵ It is possible that this transfer was within the same prison rather than to a new site.³⁶

18. Upon his arrival, he was taken to a communal cell, where other detainees told him he was in a prison called Abu Ghraib.³⁷ Rahmatullah spent approximately two to four days at this site,³⁸ during which time he was interrogated and beaten. At one point, he was beaten with a rubber instrument on his feet and waist, and his feet became so swollen that he was unable to walk.³⁹

E. Rendition to Afghanistan

19. In March 2004, Rahmatullah was rendered to Afghanistan alongside Amanatullah Ali.⁴⁰ During his rendition, his entire body and face were covered tightly in duct tape, with just a small hole underneath his nose. He was taken onto an aircraft and then given an injection that caused him to lose consciousness.⁴¹

20. Records suggest that the aircraft that transported Rahmatullah to Afghanistan was a Boeing 737 registered as N313P.⁴² The plane was operated by Aero Contractors, headquartered in North Carolina.

21. N313P left its home base airport, Kinston Regional Airport, in the evening on 6 March 2004. It flew to Washington Dulles International Airport, where it remained overnight, and then

³⁵ *Id.*

³⁶ *Id.* at 10-11.

³⁷ *Id.* at 15.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ RENDITION PROJECT, *Rendition Circuit: 6-14 March 2004*, <https://www.therenditionproject.org.uk/flights/renditions/N313P-040306.html>.

⁴¹ *Rahmatullah v MOD*, *supra* note 8, at 16.

⁴² RENDITION PROJECT, *supra* note 2, at par. 7.

to Tripoli, Libya in the morning on 7 March.⁴³ Before rendering Rahmatullah and Ali, the plane rendered two other detainees, Libyan dissidents Abdel Hakim Belhadj and Fatima Bouchar, from Thailand to Libya.⁴⁴ After traveling to Thailand and returning to Libya with Belhadj and Bouchar, the aircraft flew to Palma de Mallorca where the renditions crew stayed in a five-star hotel for two nights.⁴⁵ Then, on either 11 or 12 March (flight documentation lists conflicting dates), N313P flew to Baghdad, Iraq, and then Afghanistan.⁴⁶

22. The U.K. government has acknowledged that two men later found to be Rahmatullah and Ali were rendered from Baghdad to Afghanistan in March 2004, and the flight mentioned above is the only known flight renditions flight between Iraq and Afghanistan in that time frame. Thus, it is extremely likely that Rahmatullah and Ali were rendered on the flight on 11 or 12 March.⁴⁷

F. Detention in Afghanistan

23. Upon arrival in Afghanistan, Rahmatullah was initially detained in a secret prison. In January 2005, he was moved to Bagram Airbase,⁴⁸ where he would remain until 2014.⁴⁹

24. Initially, Rahmatullah was interrogated for six to eight hours one to three times a week.⁵⁰ After three years, interrogations occurred once every two to three months,⁵¹ and eventually they were even less frequent; for example, in 2008, Rahmatullah was not interrogated at all.⁵² The lack of interrogations may have reflected officials' awareness that Rahmatullah did not pose a

⁴³ RENDITION PROJECT, *supra* note 40, at par. 2.

⁴⁴ *Id.* at par. 1.

⁴⁵ Ian Cobain, "Special report: Rendition Ordeal That Raises New Questions about Secret Trials," *GUARDIAN* (April 8, 2012), <https://www.theguardian.com/world/2012/apr/08/special-report-britain-rendition-libya>.

⁴⁶ RENDITION PROJECT, *supra* note 40, at par. 6.

⁴⁷ *Id.*

⁴⁸ RENDITION PROJECT, *supra* note 2, at par. 8.

⁴⁹ REPRIEVE, *supra* note 1.

⁵⁰ *Rahmatullah v MOD*, *supra* note 8, at 22.

⁵¹ *Id.*

⁵² *Id.* at 26.

threat or possess valuable information, as his detention was officially determined “not necessary” in 2010—a full four years before his actual release.⁵³

25. The conditions Rahmatullah suffered during his years in Bagram were egregious. He was confined in small, cage-like cells; subjected to sensory deprivation, sensory overload, and extreme temperatures; deprived of food and medical care; forced to use the toilet and showers in view of guards and other detainees, which he found humiliating; placed in long-term solitary confinement, where there was either no toilet (forcing him to urinate and defecate on the floor) or the toilet was the only source of water (forcing him to drink from it); and subjected to sleep deprivation, wherein he would be beaten if he fell asleep.⁵⁴ Guards also bent his fingers to such extremes that he believes they broke, sprayed him with pepper spray and tear gas, and injected him with a substance that caused paralysis for a period of three days and made physical movement excruciating for some time after.⁵⁵

26. Additionally, guards repeatedly and pointedly disrespected Rahmatullah’s religion. When detainees attempted to pray, guards turned up the loud music that played in the prisons, threw water on them, or ordered them to hold out their arms.⁵⁶ They also turned off the water specifically so that the detainees could not perform their ablutions before prayer.⁵⁷ While suffering such abuses, detainees were told “This is how we treat Muslims.”⁵⁸

27. The abuse detainees experienced in Bagram led to several protests, including hunger strikes that Rahmatullah often participated in. Sometimes these protests were successful, as when the detainees used hunger strikes to ensure the return of a detainee who had been “disappeared”

⁵³ *Id.* at 28.

⁵⁴ *Id.* at 15-30.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 23.

⁵⁸ *Id.* at 20.

to “set an example.”⁵⁹ At other times, the hunger strikes resulted in extremely painful force feeding, which Rahmatullah was subject to at least six times.⁶⁰

28. These years of torture and abuse left Rahmatullah in “catastrophic mental and physical shape.”⁶¹ In 2010, he was moved to the “Special Health Unit” at Bagram. He spent six to seven months in a Bagram mental health facility, where he was treated with medication that made it difficult to sleep and that he believed worsened his condition. The food there was of worse quality than he had previously experienced, and he was taunted for being “crazy.”⁶²

G. Transfer to a Pakistani Jail

29. In early May 2014, Rahmatullah and about nine other detainees were taken to meet with representatives of the International Committee of the Red Cross. The detainees were told that the United States had signed their release documents.⁶³

30. On 14 May 2014, Rahmatullah was taken to meet with a man named Captain Braunlich. Captain Braunlich gave Rahmatullah two documents, one in English and one in Pashto, and told him to sign them.⁶⁴ After reading the documents, Rahmatullah realized that signing them would be entering an agreement not to criticize the U.S. for the way he had been treated.⁶⁵

31. Rahmatullah initially refused to sign. However, after being persuaded “in a very forceful manner” and told that his refusal would “create problems regarding his release,” he reluctantly signed. He tried to write on the document that he was signing reluctantly, but he was given a separate, blank sheet of paper and told to do so there instead.⁶⁶

⁵⁹ *Id.* at 30.

⁶⁰ *Id.* at 24.

⁶¹ RENDITION PROJECT, *supra* note 2.

⁶² *Rahmatullah v MOD*, *supra* note 8, at 28.

⁶³ *Id.* at 30.

⁶⁴ *Id.* at 30-31.

⁶⁵ *Id.* at 31.

⁶⁶ *Id.*

32. The next day, Rahmatullah was removed from his cell and tightly shackled. The cuffs around his wrists were so tight that his hands became swollen and extremely painful. He was driven on a bus to the airport and took a 60-90-minute flight on a U.S. military aircraft. For the duration of the flight, Rahmatullah was in pain because he was so tightly bound.⁶⁷

33. Rahmatullah was told upon his arrival that he was in Islamabad, Pakistan.⁶⁸ Shortly thereafter, he was transferred to Huda Jail in Quetta. At Huda Jail, he was asked questions for several hours and forced to thumbprint an unknown document against his will.⁶⁹

H. Release & Aftermath of Detention

34. On 17 June 2014, after over a decade in detention, Rahmatullah was released.⁷⁰

35. The impact of his ordeal on his ability to cope with daily life was immediately apparent.

His lawsuit details his experience of leaving prison:

Upon his release from Huda Jail in Quetta, the Claimant was shocked to see vast open spaces, an open road, markets and cars. Over the last ten years the Claimant had not been allowed to move more than the most minimal distance without being held by a guard on either arm. When he first stepped out of the prison gates, he was unable to walk unaccompanied. As a result, he had to call for his cousin, who was walking a few steps ahead, and ask him to walk beside him at all times.⁷¹

36. Rahmatullah is still experiencing severe difficulty readjusting to his life after release. He suffers from “reliving traumatic episodes, quasi-psychotic experiences, emotional detachment, and cognitive problems.”⁷² The suit reports that he finds “the prospect of seeking employment and starting a family after years of debilitating abuse, mistreatment and detention” highly daunting and that “[h]e is not able to engage in any meaningful way in a normal life.”⁷³

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 32.

⁷⁰ *Id.* at 33.

⁷¹ *Id.* at 34.

⁷² *Id.*

⁷³ *Id.* at 33-34.

III. Legal Proceedings

37. While Rahmatullah was in detention, the U.K. non-profit Reprieve sued the U.K. Ministry of Defense for denying his habeas corpus rights.⁷⁴

38. Rahmatullah's representatives based their case on a memorandum of understanding signed by the U.S., Australia, and the U.K. in March 2003.⁷⁵ The memorandum stated that when the treatment of a detainee by one of the signatories violated the Geneva Conventions, the signatory that originally detained the individual in question "must take effective measures to correct the situation or request the return of the transferred person."⁷⁶ Reprieve argued that the British government was bound by this memorandum to request that the United States return Rahmatullah.⁷⁷

39. The case reached the Supreme Court, which issued a judgment that Rahmatullah's detention was indeed unlawful and the U.K. was obligated to request his return from the U.S.⁷⁸

40. However, the U.S. simply refused to comply with the U.K.'s request; as a result, the Court of Appeal determined that there was nothing more that the British government could do to ensure Rahmatullah's release.⁷⁹

41. Through Reprieve, Rahmatullah continued his legal efforts to seek accountability and reparations for the human rights violations he suffered. The U.K. High Court has ruled that his

⁷⁴ RENDITION PROJECT, *supra* note 2.

⁷⁵ Joshua Rozenburg, "Yunus Rahmatullah's Unlawful Detention? UK Should Have Tried Harder," *GUARDIAN* (October 31, 2012).

<https://www.theguardian.com/law/2012/oct/31/yunus-rahmatullah-uk-supreme-court>.

⁷⁶ RENDITION PROJECT, *supra* note 2.

⁷⁷ Joshua Rozenburg, *supra* note 75.

⁷⁸ *Id.*

⁷⁹ *Id.*

case against the Ministry of Defense and its entanglement with the CIA Torture Program must be allowed to proceed.⁸⁰

IV. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

42. The extrajudicial detention and brutal torture of Yunus Rahmatullah was not only morally abhorrent. It also violated a plethora of international laws.

43. First, the abusive interrogation tactics and other forms of violence inflicted on Rahmatullah violated “one of the most universally recognized human rights”:⁸¹ the prohibition on torture. The prohibition on torture is a peremptory norm. As such, every state is bound by the prohibition, regardless of whether they have officially agreed to uphold it, and no emergency or other extenuating circumstance can justify derogating from it.⁸² Rahmatullah was innocent; however, even if he had possessed valuable information or presented a genuine threat, torturing him would still be illegal and indefensible.⁸³

44. Furthermore, the United States has ratified a number of treaties that explicitly prohibit torture, including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT). Rahmatullah’s treatment was a violation of the United States’ commitment to each of these treaties.

⁸⁰ *Rahmatullah v. Ministry of Defense* [2015] EWCA Civ 843; *Rahmatullah v. Ministry of Defense*, [2017] UKSC 1 and [2017] UKSC 3.

⁸¹ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

⁸² *Id.*

⁸³ ASS’N PREVENTION TORTURE, *Defusing the Ticking Bomb Scenario: Why we must say No to torture, always* 17 (2007), http://www.apr.ch/content/files_res/tickingbombscenario.pdf.

45. The UDHR and the ICCPR both mandate that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁸⁴ The ICCPR also includes a provision that explicitly states that the prohibition on torture holds in every situation, including public emergency. The violence inflicted on Rahmatullah clearly constitutes a violation of the provisions prohibiting torture, which, once again, are applicable no matter what information Rahmatullah’s torturers believed he possessed.

46. The CAT, which the U.S. ratified in 1994,⁸⁵ also prohibits torture in all circumstances,⁸⁶ even “exceptional” ones.⁸⁷ The severe abuse Rahmatullah experienced was thus in violation of this basic purpose of the CAT.

47. Moreover, the United States breached several other CAT provisions, which require that states take particular measures to prevent torture. For example, under the CAT, the United States is obligated to “ensure that education and information regarding the prohibition against torture [are provided to all personnel] involved in a custody interrogation, or treatment of any individual to any form of arrest, detention, or imprisonment.”⁸⁸ By failing to properly train the personnel who actually committed the violent acts against Rahmatullah, the U.S. violated this provision of the CAT.

48. The CAT also dictates that U.S. must:

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are

⁸⁴ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

⁸⁵ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

⁸⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

⁸⁷ CAT, *supra* note 86, at art. 2.

⁸⁸ CAT, *supra* note 86, at art. 10.

substantial grounds for believing that he would be in danger of being subjected to torture.⁸⁹

49. Pursuant to this provision, the United States is required to do more than just prohibit torture within its borders; it must also ensure that no U.S. state or territory extradites an individual to a country where they may be subjected to torture.⁹⁰

50. According to the Supremacy Clause of the U.S. Constitution, individual states must abide by international treaties ratified by the United States. North Carolina is thus legally required to ascertain that effective measures are taken to prevent torture, whether within or outside of the United States.⁹¹

51. The “administrative” measures mentioned in the CAT are especially significant to North Carolina’s responsibilities with regard to its role in the RDI program. In order to fulfill its obligations under the CAT, North Carolina’s political entities and subdivisions must revoke or discontinue Aero’s “flying permits, licenses, and leases.”⁹² Given the critical role the company played in the transport of Rahmatullah and many others to locations where they were tortured, failing to do so would be a violation of international law.

52. As well as these international treaties concerning torture, the United States has ratified the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).⁹³ The Protocol prohibits “trafficking in persons,” which it defines as:

⁸⁹ CAT, *supra* note 86, at art. 2.

⁹⁰ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

⁹¹ *Id.* at 36.

⁹² *Id.*

⁹³ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized*

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁹⁴

53. The extraordinary rendition of Rahmatullah without his consent violated the Protocol's ban on human trafficking.

54. The United States has also violated other provisions of the Protocol, which concern human trafficking victims' entitlements. These entitlements include "the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities."⁹⁵ As a victim of human trafficking, Rahmatullah should be able to access these forms of assistance; however, he has received no assistance whatsoever from the United States.

55. The Protocol further states, "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."⁹⁶ The fact that Rahmatullah has had no opportunity to obtain compensation for the extensive damage he suffered as a result of his rendition and torture violates international law.

B. Federal Law Violations

Crime. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

⁹⁴ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

⁹⁵ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

⁹⁶ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

56. Pursuant to the Supremacy Clause, international treaties ratified by the United States are equivalent in power to federal statutes. The international law violations discussed above, therefore, are also violations of federal law.⁹⁷

57. Moreover, further federal laws beyond these treaties condemn Rahmatullah’s treatment. Amendment 8 of the United States Constitution, for example, forbids “cruel and unusual punishments.”⁹⁸ The torture Rahmatullah experienced can absolutely be described as both cruel and unusual; his abuse thus violates the U.S. Constitution.

58. The United States has also violated the Federal Torture Statute (FTS) in its failure to hold anyone accountable for committing the violent acts to which Rahmatullah was subjected. The FTS states that anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20 years, or both”.⁹⁹ That fact that no American public official has been prosecuted for Rahmatullah’s torture is a clear violation of the FTS.

59. Additional federal laws offer opportunities to hold the United States and Aero Contractors accountable for their responsibility for Rahmatullah’s abuse. For instance, the Alien Tort Statute (ATS) is a law that permits non-U.S. citizens who are the victims of severe human rights violations (even those that took place outside of the U.S.) to sue government officials and private actors in U.S. courts.¹⁰⁰ In 2010, using the ATS as grounds for their claim, five former detainees sued the United States and Jeppesen Dataplan,¹⁰¹ a corporation that provided “flight

⁹⁷ Weissman et al., *supra* note 21, at 36.

⁹⁸ U.S. CONST. amend VIII

⁹⁹ 18 U.S. Code § 2340A.

¹⁰⁰ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

¹⁰¹ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written

planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”¹⁰² Through the ATS, therefore, the United States or Aero Contractors can both be prosecuted for their contributions to Rahmatullah’s ordeal.¹⁰³

60. The Torture Victims Protection Act (TVPA) of 1991 could also be used to hold the U.S. or Aero accountable for their role in Rahmatullah’s rendition, detention, and torture. The TVPA was established as a mechanism to execute the United States’ obligations under the UN Charter and other international structures designed to protect human rights “by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”¹⁰⁴ Under the TVPA, Rahmatullah has the capacity to seek compensation for his abuse.

C. North Carolina Law Violations

61. Through their participation in Rahmatullah’s rendition, Aero Contractors violated several state laws. These violations offer North Carolina the unique opportunity to ensure that the perpetrators of egregious human rights violations are held accountable at a state level.

62. For example, Aero Contractors breached a number of provisions of the North Carolina Constitution. Article I, § 19, states, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”¹⁰⁵ Kidnapping, involuntary servitude, trafficking, and criminal

about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

¹⁰² *Id.* at 13526.

¹⁰³ It should be noted that although the Jeppesen Dataplan case was dismissed on the basis of the “State Secrets Doctrine,” such legal defense is likely no longer available to the government given the ongoing declassification of documents related to the CIAs Extraordinary Rendition and Torture program. *See e.g.*, Irving. Figueroa, et al., *Assessing Recent Developments: Achieving Accountability for Torture* (2016)

<http://www.law.unc.edu/documents/academics/humanrights/tortureaccountability.pdf>,

¹⁰⁴ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb1., 106 Stat. 73, 73 (1992).

¹⁰⁵ N.C. CONST. art. 1, § 19.

conspiracy are all mentioned in other constitutional provisions. Operating planes used in the RDI program—including the one that transported Rahmatullah—involved facilitating or participating in all of those crimes.¹⁰⁶ Rahmatullah’s extraordinary rendition and extralegal detention is, therefore, a violation the North Carolina Constitution. Because Aero Contractors breached its constitution, North Carolina has a responsibility to take legal action against the company.

63. Furthermore, section 14-39 of the North Carolina General Statutes prohibits kidnapping and further criminalizes a number of related acts.¹⁰⁷ For instance, in addition to kidnapping itself, “serious bodily harm to or terrorizing the person” who has been kidnapped is identified as a crime.¹⁰⁸ The North Carolina legislature has also defined “first-degree kidnapping,” wherein the abducted individual is not transported to a safe place or has been “seriously injured or sexually assaulted,” as a particularly serious crime.¹⁰⁹ The nonconsensual capture and detention of Rahmatullah constitutes kidnapping, and the torture he experienced constitutes serious bodily harm, terror, and serious injury. For these reasons, NCGS § 14-39 has been violated.

IV. Conclusion

64. Yunus Rahmatullah is an innocent man who was detained for ten years, despite the fact that no charges were ever brought against him. He experienced extraordinary rendition against his will and brutal torture that has had disastrous effects on his physical and mental health. As the British Supreme Court has acknowledged and the section above reiterates, Rahmatullah’s ordeal was entirely illegal.

¹⁰⁶ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); *see also* N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

¹⁰⁷ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

¹⁰⁸ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

¹⁰⁹ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

65. It is critical that the illegality of Rahmatullah's detention, rendition, and torture is recognized and that those responsible are held accountable. The U.S. government, the North Carolina government and its political subdivisions, and Aero Contractors all contributed to the flagrant violation of Rahmatullah's fundamental human rights, and they must provide redress for their crimes. If they fail to do so, the United States abandons its professed commitment to human rights and conveys a chilling message: torture is acceptable. Demonstrating that the U.S. endorses torture is not only a huge blow to this country's international standing; it is also a promise to potential torturers that they will be able to commit egregious acts with impunity. Only by committing to justice now can we hope for justice in the future.

Walid bin Attash

I. Introduction

1. Walid bin Attash is a “high-value detainee” who was subject to the CIA’s rendition, detention, and interrogation (RDI) program.¹ He was captured in Pakistan in 2003² and was thereafter secretly held in CIA custody for 3.5 years.³ In September 2006, he was transferred to Guantánamo Bay, where he remains imprisoned today,⁴ now facing capital charges for his role in the September 11th attacks.⁵ Throughout his time in American custody, he suffered not only extrajudicial rendition and unlawful detention, but also extreme torture⁶ that was both inhumane and ineffective.⁷ This abusive treatment was a fundamental violation of bin Attash’s legal and human rights.

II. Detention and Torture

A. Background

2. The Department of Defense claims that Walid bin Attash was born in Azan, Yemen. He is a Yemeni citizen,⁸ as is his brother Hassan, who is also detained in Guantánamo Bay.⁹

¹ RENDITION PROJECT, *Walid Mohammed bin Attash*, <https://www.therenditionproject.org.uk/prisoners/walid-binattash.html>.

² OPEN SOCIETY JUSTICE INITIATIVE, *Globalizing Torture: CIA Detention and Extraordinary Rendition* 33 (2013).

³ RENDITION PROJECT, *supra* note 1, at par. 1.

⁴ *Id.*

⁵ ASSOCIATED PRESS, “9/11 Defendants Charged at Guantánamo with Terrorism and Murder,” *NEW YORK TIMES* (May 31, 2011). <http://www.nytimes.com/2011/06/01/us/01gitmo.html>.

⁶ RENDITION PROJECT, *supra* note 1.

⁷ SENATE SELECT COMMITTEE ON INTELLIGENCE, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* 242 (2014) (hereinafter SSCI Report).

⁸ DEPARTMENT OF DEFENSE, *Combatant Status Review Tribunal Input and Recommendation for Continued Detention Under DoD Control (CD) for Guantanamo Detainee, ISN: US9YM-010014DP (S) 1* (2006) (hereinafter DOD Report). https://www.therenditionproject.org.uk/documents/RDI/061208-DoD-JTF_Detainee_Assessment_Walid_binAttash.pdf. These documents include some assertions that cannot be independently verified. Many allegations have been contested by detainees and their lawyers, and some have been undercut by other evidence. See <https://www.nytimes.com/interactive/projects/guantanamo/detainees/10014-walid-bin-attash>.

⁹ RENDITION PROJECT, *Hassan bin Attash*, <https://www.therenditionproject.org.uk/prisoners/hassan-binattash.html>. See the narrative on Hassan bin Attash in this briefing book.

3. Bin Attash is missing a portion of his leg and wears a prosthetic.¹⁰ According to unverified Department of Defense documentation, he lost it in 1997 during a battle against the Northern Alliance.¹¹

B. Capture and Detention in Pakistan

4. Bin Attash was captured in Karachi, Pakistan on April 29th, 2003.¹²

5. He was likely held in Pakistani custody for two weeks.¹³ At this time, he was interrogated by Pakistani officials and responded to questions “on a variety of matters.”¹⁴

C. Detention and Torture in Afghanistan

6. After his detention in Pakistan, bin Attash was rendered to a black site in Afghanistan codenamed DETENTION SITE COBALT. He was likely transferred between May 15th-16th.¹⁵ He spent approximately three weeks detained in Afghanistan.¹⁶

7. Upon his arrival at DETENTION SITE COBALT, bin Attash was “immediately subjected to the CIA’s enhanced interrogation techniques.”¹⁷ The techniques used on bin Attash include facial grabs, facial insult slaps, abdominal slaps, forced nudity, denial of food, stress positions, sensory overload, walling, water dousing, lack of proper toilet, and confinement in total darkness.¹⁸

8. Bin Attash described parts of his ordeal in testimony to the International Committee of the Red Cross (ICRC). He described the stress position he was subjected to as follows:

¹⁰ INTERNATIONAL COMMITTEE OF THE RED CROSS, *ICRC Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody* 31 (2007). https://www.therenditionproject.org.uk/documents/RDI/070214-ICRC-Treatment_of_14_HVDs_in_CIA_Custody.pdf.

¹¹ DOD Report, *supra* note 8, at 3.

¹² *Globalizing Torture*, *supra* note 2, at 33.

¹³ RENDITION PROJECT, *supra* note 1.

¹⁴ SSCI Report, *supra* note 7, at 244.

¹⁵ RENDITION PROJECT *supra* note 1, at par. 2.

¹⁶ *Id.* at par. 3.

¹⁷ SSCI Report, *supra* note 7, at 244.

¹⁸ RENDITION PROJECT, *supra* note 1 at par. 3; ICRC Report, *supra* note 10, at 31.

I was kept in a standing position, feet flat on the floor, but with my arms above my head and fixed with handcuffs and a chain to a metal bar running across the width of the cell. The cell was dark with no light, artificial or natural.

...After some time of being held in this position my stump began to hurt so I removed my artificial leg to relieve the pain. Of course my one good leg then began to ache and soon started to give way so that I was left hanging with all my weight on my wrists. I shouted for help but at first nobody came. Finally, after about one hour a guard came and my artificial leg was given back to me and I was again placed in the standing position with my hands above my head. After that the interrogators sometimes deliberately removed my artificial leg in order to add extra stress to the position.¹⁹

9. He also described the procedures of his interrogations in depth:

...For interrogation I was blindfolded and removed from the cell and taken to another room. Every day for the first two weeks I was subjected to slaps to my face and punches to my body during the interrogation...Also on a daily basis during the first two weeks a collar was looped around my neck and then used to slam me against the walls of the interrogation room.

...Also on a daily basis during the first two weeks I was made to lie on a plastic sheet placed on the floor which would then be lifted at the edges. Cold water was then poured onto my body with buckets...I would be kept wrapped inside the sheet with the cold water for several minutes. I would then be taken for interrogation to a separate room. At the end of the interrogation I would be placed under hot lights to dry out thoroughly and warm up. This was sometimes done during the interrogation.

The interrogators threatened to infect me with HIV. I was given at least two injections by the doctor during this period, but I have no idea what they were for. Female interrogators were also present which I found highly humiliating in my naked state.²⁰

10. Bin Attash suffered these tortures for two weeks. During the entirety of this period, he was forced to remain nude, given Ensure to drink instead of food, and kept in a stress position whenever he was not being interrogated (apart from “two or three times” when he was permitted to lie down).²¹

¹⁹ ICRC Report, *supra* note 10, at 31-32.

²⁰ *Id.* at 32.

²¹ *Id.* at 31-32.

11. During his third week in Afghanistan, some of the torture methods ceased but he continued to be subjected to sensory overload in the form of the loud music that played constantly in the prison.²²

D. Rendition to Poland

12. On June 5th, 2003, bin Attash was rendered from Afghanistan to Poland.²³ Sources speaking to the Council of Europe's rapporteur on European complicity in the RDI program,²⁴ flight data from this period,²⁵ and bin Attash's own testimony²⁶ all confirm this fact.

13. Bin Attash was rendered on the Aero Contractors-operated Gulfstream V jet with registration number N379P.²⁷ The plane left its home base, Johnston County Airport, in the late evening on June 3rd, 2003. From there, it flew to Virginia; Frankfurt, Germany; and Tashkent, Uzbekistan.²⁸ The aircraft's flight path after Tashkent is unknown.²⁹ However, Polish flight data records that N379P landed in Szymany on June 6th, flying from Kabul.³⁰ Bin Attash was likely transferred from Afghanistan to Poland on this flight.³¹

14. Bin Attash recalled that during his flight,

I was blindfolded and earphones were placed over my ears. I was transported in a sitting position, shackled by the ankles and by the wrists with my hands in front of my body. I think that the flight lasted probably more than eight hours. On this occasion the transfer was done using a military plane. If I shifted my position too much during the journey somebody hit me by hand on the head.³²

²² *Id.*

²³ RENDITION PROJECT, *supra* note 1, at par. 13.

²⁴ COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS, *Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report* 24 (2007).
[https://www.therenditionproject.org.uk/pdf/PDF%2067%20\[EP-MEM-2007-06%20Secret%20Detentions%20Marty%20Memo\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2067%20[EP-MEM-2007-06%20Secret%20Detentions%20Marty%20Memo].pdf).

²⁵ RENDITION PROJECT, *supra* note 1, at par. 13.

²⁶ *Id.*

²⁷ RENDITION PROJECT, *Rendition Circuit: 3-7 June 2003* par. 1.

<https://www.therenditionproject.org.uk/flights/renditions/N379P-030603.html>.

²⁸ *Id.* at par. 4.

²⁹ *Id.* at par. 5.

³⁰ *Id.* at par. 6.

³¹ *Id.* at par. 7.

³² ICRC Report, *supra* note 10, at 32.

E. Detention and Torture in Poland

15. Upon his arrival in Poland, Bin Attash spent one month in what he believes was an underground cell.³³ After his first month, his torture recommenced.³⁴

On the subject of his torture in Poland, bin Attash testified,

I was stripped naked and remained naked throughout the month of July. Also during this time I was again kept for several days in a standing position with my arms above my head and fixed with handcuffs and a chain to a metal ring in the ceiling...I do not remember for exactly how many days I was kept standing, but I think it was about ten days. The doctor finally ordered that I be allowed to sit on the floor, I was still kept with my arms extended above my head. This was very painful on my back. During the standing I was made to wear a diaper. However, on some occasions the diaper was not replaced and so I had to urinate and defecate over myself.³⁵

16. CIA cables document that the sleep deprivation bin Attash describes here amounted to 115 total hours, with one period of four hours rest. He was moved to seated sleep deprivation after 95 hours.³⁶ Bin Attash continued,

[E]veryday...[a]fter having been washed down with cold water in my cell I was taken for interrogation. On one occasion I heard sounds of a person being tortured next door. In this place of detention, female interrogators were again present while I was naked. One of them was particularly aggressive in her questioning. [He would not go further into detail on this subject.]³⁷

17. CIA cables also record that bin Attash was threatened with rectal rehydration,³⁸ a tactic for demonstrating “total control” over detainees,³⁹ during his time in Poland.

F. Rendition to and Torture in Romania

³³ *Id.*

³⁴ *Id.* at 33.

³⁵ *Id.*

³⁶ SSCI Report, *supra* note 7, at 117.

³⁷ ICRC Report, *supra* note 10, at 33.

³⁸ SSCI Report, *supra* note 7, at 100.

³⁹ *Id.* at 82.

18. On September 27th, 2003, after more than three months in Poland, bin Attash was rendered to Romania.⁴⁰ He was transferred on the Aero Contractors-operated Boeing 737 with registration number N313P.⁴¹

19. N313P left its home base, Kinston Regional Airport, on September 20th, 2003, in the evening. It then flew to Virginia, to Prague, to Tashkent, to Kabul, and to Szymany, where it collected up bin Attash. After Szymany, it flew to Bucharest, Romania, where bin Attash was brought to his next detention site.⁴²

20. Several additional “high value detainees” were transferred between detention sites during this rendition circuit, including Khaled Sheikh Mohammed, Abu Zubaydah, and Ramzi bin al-Shibh.⁴³ A lawyer who has represented multiple CIA detainees described these transfers as “a shell game to hide detainees from the courts”⁴⁴ and prevent them from accessing lawyers.⁴⁵

21. Little is known about bin Attash’s detention in Romania. Even the length of his detention there is unknown.⁴⁶

G. Secret Detention after Romania

22. The black site where bin Attash was held in Romania was closed in November 2005.⁴⁷ Prior to its closure, bin Attash must have been rendered elsewhere; precisely where and when he

⁴⁰ RENDITION PROJECT, *supra* note 1, at par. 20.

⁴¹ RENDITION PROJECT, *Rendition Circuit: 20-25 September 2003* par. 1. <https://www.therenditionproject.org.uk/flights/renditions/N313P-030920.html>.

⁴² *Id.* at par. 3-5.

⁴³ *Id.* at par. 1. Narratives about each of these detainees can be found in this briefing book.

⁴⁴ Adam Goldman and Matt Apuzzo, *CIA Moved Gitmo Suspects in “Game to Hide Detainees from the Courts,”* ASSOCIATED PRESS par. 4 (August 6, 2010), http://www.nbcnews.com/id/38588813/ns/us_news-security/t/cia-moved-gitmo-suspects-game-hide-detainees-courts/#.WTgBiBPYuCR

⁴⁵ *Id.* at par. 1.

⁴⁶ RENDITION PROJECT, *supra* note 1, at par. 21.

⁴⁷ RENDITION PROJECT, *HVDs 2005-2006* par. 2. <https://www.therenditionproject.org.uk/prisoners/hvds-2005-2006.html>.

was transferred are unknown to him or his counsel, although the CIA was in control of his renditions and is aware of his then whereabouts.⁴⁸

23. Evidence points toward his destination's being either Afghanistan or Lithuania.⁴⁹ Two organizations, The Rendition Project and Reprieve, have identified four possible rendition circuits coming out of Romania in the months before the site's closure. Two of the circuits involved trips from Romania to Lithuania. One involved a trip from Romania to Afghanistan, and another involved a trip from Romania to Egypt that possibly continued on to Afghanistan.⁵⁰ Thus, bin Attash could have spent the roughly one year where his location has been kept secret by the CIA in either of those countries.⁵¹

H. Rendition to and Detention in Guantánamo Bay

24. According to Department of Defense records, bin Attash was transferred from CIA custody to Guantánamo Bay on September 4th, 2006.⁵² Other records suggest that the date of transfer may have been one day later, on September 5th.⁵³

25. Bin Attash remains detained in Guantánamo Bay, where he is facing capital charges for his role in the September 11th attacks.⁵⁴ The charges were first filed in 2008, but they were subsequently dropped after the Obama administration decided to try the men suspected of involvement in the attacks in a civilian court rather than a military one. Eventually, as a result of political opposition to the plan, the charges were re-filed, and bin Attash will be prosecuted before a military commission.⁵⁵

⁴⁸ *Id.* at par. 1.

⁴⁹ *Id.* at par. 3.

⁵⁰ *Id.* at par. 4.

⁵¹ RENDITION PROJECT, *supra* note 1.

⁵² DOD Report, *supra* note 8, at 3.

⁵³ RENDITION PROJECT, *supra* note 1, at par. 23.

⁵⁴ *Globalizing Torture*, *supra* note 2, at 33.

⁵⁵ ASSOCIATED PRESS, *supra* note 5.

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. *International Law Violations*

26. Walid bin Attash’s treatment at the hands of the United States government was indefensible both morally and before international law.
27. First, the use of “enhanced interrogation techniques” and other forms of abuse on bin Attash is a violation of “one of the most universally recognized human rights”:⁵⁶ the prohibition on torture. The prohibition on torture is a peremptory norm. It applies, therefore, to every state and every situation. States that have not officially consented to the prohibition are still bound by it, and no conflict or emergency is grounds for suspending it.⁵⁷ Thus, whatever threat his torturers believed he posed or whatever intelligence they imagined he was hiding, bin Attash’s abuse cannot be justified.⁵⁸
28. Moreover, the United States has ratified several international treaties condemning torture, including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT). The abuse of bin Attash violates all of these.
29. The UDHR and the ICCPR both include a provision ensuring that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁵⁹ The ICCPR also explicitly states that the prohibition on torture applies in all circumstances, including public emergency. The enhanced interrogation techniques and other forms of maltreatment that Walid

⁵⁶ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.
⁵⁷ *Id.*

⁵⁸ ASS’N PREVENTION TORTURE, *Defusing the Ticking Bomb Scenario: Why we must say No to torture, always* 17 (2007), <https://sakai.unc.edu/access/content/group/704dcc53-2c52-45db-9ced-8fe27c5d5dbc/Jan%2011/TickingBombScenario.pdf>.

⁵⁹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 4, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. [Hereinafter ICCPR].

bin Attash experienced are clearly in violation of the provisions prohibiting torture, and the ICCPR further reinforces the fact that no potential intelligence is valuable enough to justify derogating from them.

30. The goal of the CAT, which the U.S. ratified in 1994,⁶⁰ was to eradicate torture.⁶¹ It prohibits torture in all circumstances, even “exceptional” ones.⁶² The U.S. thus violated the CAT’s fundamental purpose by abusing bin Attash.

31. In addition, the United States violated several other CAT provisions, which impose specific obligations on states to prevent torture. For example, under the CAT, the United States must “ensure that education and information regarding the prohibition against torture [are provided to all personnel] involved in a custody interrogation, or treatment of any individual to any form of arrest, detention, or imprisonment.”⁶³ The United States thus violated the CAT by failing to properly educate and train the personnel who themselves took part in brutal acts forbidden by the CAT.

32. The CAT also states that the United States must:

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.⁶⁴

⁶⁰ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

⁶¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter CAT].

⁶² CAT, *supra* note 86, at art. 2.

⁶³ CAT, *supra* note 86, at art. 10.

⁶⁴ CAT, *supra* note 86, at art. 2.

33. This provision dictates that the United States must go beyond prohibiting torture within its borders by ensuring that no U.S. state or territory extradites an individual to a country where there is reason to believe they could be tortured.⁶⁵

34. Pursuant to the Supremacy Clause of the U.S. Constitution, individual states have the same responsibility. North Carolina is thus legally obligated to ensure that appropriate measures are taken to prevent torture, regardless of where it occurs—whether within or outside of the United States.⁶⁶

35. The “administrative” measures to which the CAT refers are particularly relevant to North Carolina’s role in the RDI program and its aftermath. In order to fulfill this obligation, North Carolina’s political entities and subdivisions must revoke or discontinue Aero’s “flying permits, licenses, and leases.”⁶⁷ Given the state’s knowledge of the company’s critical contribution to the illegal transport, detention, and torture of Walid bin Attash and many others, doing otherwise would be a violation of international law.

36. In addition to these international treaties forbidding torture, the United States has ratified the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, (“the Protocol”).⁶⁸ The Protocol prohibits “trafficking in persons,” which it defines as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or

⁶⁵ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

⁶⁶ *Id.* at 36.

⁶⁷ *Id.*

⁶⁸ UNITED NATIONS, *Status of Treaties: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁶⁹

37. The extralegal, coerced transfer of bin Attash violated the Protocol's ban on human trafficking.

38. It also violated other provisions of the Protocol, pursuant to which victims are entitled to legal and other forms of assistance, which include "the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities."⁷⁰ Bin Attash has received none of these entitlements, all of which he should be able to access as a victim of human trafficking.

39. The Protocol further requires that "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."⁷¹ Bin Attash has had no opportunity to seek compensation for the trafficking and torture to which he was subject. This is a violation of international law.

B. Federal Law Violations

40. Pursuant to the Supremacy Clause, international treaties ratified by the United States hold the same power as federal statutes. In committing the aforementioned international law violations, therefore, the United States and North Carolina governments also violated federal law.⁷²

⁶⁹ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

⁷⁰ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

⁷¹ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

⁷² Weissman et al., *supra* note 21, at 36.

41. In addition to these treaties, several federal laws forbid the acts perpetrated against bin Attash. Amendment 8 of the United States Constitution, for instance, prohibits “cruel and unusual punishments.”⁷³ The myriad forms of torture inflicted on bin Attash were undeniably both cruel and unusual.

42. Moreover, by failing to hold the perpetrators of bin Attash’s torture accountable, the United States has violated The Federal Torture Statute (FTS). The FTS mandates that anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20 years, or both”.⁷⁴ That no American public official has ever been prosecuted for bin Attash’s torture is a flagrant breach of the FTS.

43. Other federal laws provide grounds for prosecuting both the United States and Aero Contractors for each of their roles in bin Attash’s abuse. For example, the Alien Tort Statute (ATS) is a mechanism for non-U.S. citizens who are the victims of egregious human rights violations (including those that occur outside the United States) to sue government officials and private actors in U.S. courts.⁷⁵ In 2010, five former detainees used the ATS as grounds to sue the United States and Jeppesen Dataplan,⁷⁶ a corporation that provided “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to

⁷³ U.S. CONST. amend VIII

⁷⁴ 18 U.S. Code § 2340A.

⁷⁵ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

⁷⁶ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. See Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

torture.”⁷⁷ The United States or Aero Contractors could therefore both be prosecuted for the role each played in bin Attash’s unlawful detainment and torture.

44. The Torture Victims Protection Act (TVPA) of 1991 could also be used to challenge the U.S. or Aero. The TVPA was written as a means of executing the United States’ obligations under the UN Charter and other international mechanisms for the protection of human rights “by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”⁷⁸ Pursuant to the TVPA, bin Attash has the right to seek compensation as redress for his abuse.

C. North Carolina Law Violations

45. Aero Contractors’ role in the RDI program breached a number of state laws. These violations confer on North Carolina the rare power to hold the perpetrators of extreme violations of international human rights accountable at a state level.

46. For instance, Aero Contractors violated several provisions of the North Carolina Constitution. Under Article I, § 19, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”⁷⁹ Other provisions concern kidnapping, involuntary servitude, trafficking, and criminal conspiracy. Aero Contractors facilitated or participated in all of those crimes by operating the planes used in the RDI program.⁸⁰ Bin Attash’s extrajudicial detention and transfer thus violate the North Carolina Constitution and provide grounds for North Carolina to take legal action against Aero.

⁷⁷ *Id.* at 13526.

⁷⁸ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb., 106 Stat. 73, 73 (1992).

⁷⁹ N.C. CONST. art. 1, § 19.

⁸⁰ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

47. Section 14-39 of the North Carolina General Statutes also forbids kidnapping and outlines several related crimes.⁸¹ It prohibits, for instance, “serious bodily harm to or terrorizing the person” who has been kidnapped.⁸² The North Carolina legislature has further defined the crime of “first-degree kidnapping,” wherein the abducted individual is not transported to a safe place or has been “seriously injured or sexually assaulted.”⁸³ Capturing and detaining bin Attash without his consent constitutes kidnapping, and his extreme abuse undoubtedly constitutes serious bodily harm, terror, and serious injury. NCGS § 14-39 has therefore been violated.

IV. Conclusion

48. Walid bin Attash was seized and detained without any semblance of legal justification. He was extraordinarily rendered to black sites with the knowledge that he would be subjected to “enhanced interrogation” there. He experienced numerous brutal forms of torture. All of these aspects of bin Attash’s ongoing ordeal are illegal according to state, federal, and international law.

49. It is crucial that the entities responsible for the damage suffered by bin Attash—including the U.S. government, the North Carolina government and its political subdivisions, and Aero Contractors—are held accountable for these egregious violations. Without accountability, recognition, and redress, the United States betrays its commitment to human rights. It conveys that this country endorses torture and assures future perpetrators that their crimes will go unpunished. Only by taking action to acknowledge and remedy these atrocities can justice be ensured.

⁸¹ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

⁸² N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

⁸³ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

Hassan bin Attash

I. Introduction

1. Hassan bin Attash, a Yemeni citizen born in Saudi Arabia,¹ is the youngest detainee in Guantánamo Bay.² He was only about sixteen when he was captured by Pakistani forces in September 2002.³ After four days in a Karachi prison, bin Attash was secretly rendered to the US-operated “Prison of Darkness” in Kabul.⁴ From there, he was sent to Jordan, back to Kabul, to Bagram, and finally to Guantánamo.⁵ At each of these locations, bin Attash was subjected to torture and severe abuse, including stress positions, sleep deprivation, and regular beatings.⁶ Despite the continued absence of any charge against him, his detention—and, he says, his abuse—have continued to this day.⁷

II. Capture, Detainment, and Torture

A. Background

2. Hassan bin Attash is a Yemeni citizen who was born and raised in Saudi Arabia.⁸ According to a document authored by the U.S. Department of Defense, he attended about eight

¹ *Declaration of David H. Remes, Counsel to Hassan Bin Attash* [hereinafter *Remes’ Declaration*] 1 (October 18, 2011), [https://www.therenditionproject.org.uk/pdf/PDF%20373%20\[Hassan%20Bin%20Attash%20et%20al%20v%20Bush%20Complaint%20and%20supporting%20docs\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20373%20[Hassan%20Bin%20Attash%20et%20al%20v%20Bush%20Complaint%20and%20supporting%20docs].pdf). AMNESTY INTERNATIONAL, *Jordan: “Your confessions are ready for you to sign”: Detention and Torture of Political Suspect* 39-40 (July 2006) (hereinafter, “Your confessions”), [https://www.therenditionproject.org.uk/pdf/PDF%2032%20\[AI-2006-07-REP%20Jordan%20your%20confessions%20are%20ready%20for\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2032%20[AI-2006-07-REP%20Jordan%20your%20confessions%20are%20ready%20for].pdf).

² *Id.*

³ RENDITION PROJECT, *Hassan bin Attash*, para. 2-3, <https://www.therenditionproject.org.uk/prisoners/hassan-binattash.html>.

⁴ *See supra* note 1, “Your confessions”, at 39-40.

⁵ *Id.*

⁶ *Supra* note 3, “Hassan bin Attash,” at par. 3-4.

⁷ *Id.* at 17.

⁸ *Supra* note 1, *Remes’ Declaration*.

to nine years of school in Jeddah, Saudi Arabia, where he studied history, geography, and English, among other subjects.⁹

3. Bin Attash's brother Walid, who was later captured and imprisoned by the U.S. as a "high value detainee,"¹⁰ has been accused of being a "senior al-Qaeda operative."¹¹ This connection appears to be the primary reason for bin Attash's detainment. In the Executive Summary of a recommendation for the "continued detention" of bin Attash, the Department of Defense stresses that he is "under the influence" of his brother and underscores his "close familial ties with senior level al-Qaeda members."¹² He was also asked questions about his brother during interrogation.¹³

B. Capture

4. Hassan bin Attash was seized in Karachi, Pakistan, on September 11th, 2002. His capture was part of a series of multiple raids on buildings in the city that purportedly functioned as al-Qaeda safe houses.¹⁴

5. He was captured alongside several others, including Bashir al-Marwalah, Abdul Rabbani Abd al-Rahim Abu Rahman, Mohammed Ahmad Ghulam Rabbani, and Ramzi bin al-Shibh.¹⁵ All but one of those men remains detained in Guantánamo Bay.¹⁶

C. Detainment and Torture in Pakistan

⁹ DEPARTMENT OF DEFENSE, *Recommendation for Continued Detention Under DoD Control (CD) for Guantanamo Detainee, ISN PK9SA-001456DP* [hereinafter *DoD Recommendation*] 2 (2008), [https://www.therenditionproject.org.uk/pdf/PDF%20431%20\[JTF-GTMO%20Detainee%20Assessment,%20Hassan%20bin%20Attash%20\(25%20June%202008\)\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20431%20[JTF-GTMO%20Detainee%20Assessment,%20Hassan%20bin%20Attash%20(25%20June%202008)].pdf), 2.

¹⁰ *Supra* note 3, "Hassan bin Attash," at par. 1.

¹¹ *Supra* note 9, *DoD Recommendation*, at 1.

¹² *Id.*

¹³ *Supra* note 1, *Remes' Declaration*, at 3.

¹⁴ *Supra* note 3, "Hassan bin Attash," at par. 2.

¹⁵ *Id.*

¹⁶ *Id.* See also *Bashir Nasir Ali al Marwalah*, NEW YORK TIMES, <https://www.nytimes.com/interactive/projects/guantanamo/detainees/837-bashir-nasir-ali-al-marwalah>.

6. After his capture, bin Attash was detained in a Karachi prison for 3-4 days,¹⁷ where he was interrogated by both Pakistani and American agents.¹⁸ Though he was blindfolded, bin Attash could tell there were about twelve interrogators.¹⁹

7. The interrogators subjected bin Attash to torture during questioning.²⁰ Both Pakistani and American interrogators punched him in the face and stomach, and one interrogator beat him with a stick. They also deprived him of sleep.²¹

D. First Detainment and Torture at the “Dark Prison”

8. Between September 14th-15th, 2002, Hassan bin Attash was transferred to a CIA-run detention site in Afghanistan called the “Dark Prison.” He was detained there for 2-3 days.²²

9. In the Dark Prison, bin Attash was kept in total darkness and played constant, excruciatingly loud heavy metal and rap music.²³ Because of the darkness and loud music, bin Attash could not distinguish between night and day, nor could he tell when the appropriate time for prayer was.²⁴ He was also denied food, water, and access to a toilet, which forced him to urinate and defecate on himself.²⁵

10. Bin Attash’s days in the Dark Prison were spent in a constant cycle of questioning and torture.²⁶ Whenever he was not being questioned, bin Attash was subjected to a stress position wherein he was hung by his wrists from a bar above his head with his toes barely reaching the floor.²⁷ His lawyer compared this position to stretching “as though on a medieval rack,” and

¹⁷ *Supra* note 3, “Hassan bin Attash,” at par. 3.

¹⁸ *Supra* note 1, *Remes’ Declaration*, at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Supra* note 3, “Hassan bin Attash,” at par. 4.

²³ *Id.*

²⁴ *Supra* note 1, *Remes’ Declaration*, at 2.

²⁵ *Supra* note 1, *Remes’ Declaration*, at 3.

²⁶ *Supra* note 3, “Hassan bin Attash,” at 4.

²⁷ *Supra* note 1, *Remes’ Declaration*, at 2.

reported that bin Attash had said that “this position was so painful no one put in this position could stand it for even a moment.”²⁸ Bin Attash, however, would be left in the position for 6-8 hours between interrogation sessions.²⁹

11. After suffering through this stress position, his captors brought bin Attash in for questioning.³⁰ They interrogated him while he was naked with his wrists chained to a wall behind him. While they questioned him, interrogators would shine bright lights in his eyes, which had grown accustomed to the total darkness of the prison, and periodically spray him with cold water.³¹ These sessions lasted for 30-60 minutes.³² Afterwards, bin Attash would be returned to his cell and to the stress position, and the cycle would recommence.³³

E. Rendition to Jordan

12. After spending 2-3 days in the Dark Prison, bin Attash was extraordinarily rendered to Jordan on a Gulfstream V aircraft registered as N379P.³⁴ The aircraft, which was operated by Aero Contractors, headquartered in Johnston County, North Carolina, left Johnston Country Airport in the evening of September 11th, 2002.³⁵ Several days later, after numerous stops and the extraordinary rendition of another, unknown detainee, it flew into Kabul, Afghanistan on the 17th of September.³⁶ The aircraft collected bin Attash in Afghanistan and then flew to Amman, Jordan, where he was to face still more extreme abuse.³⁷

²⁸ *Id.*

²⁹ *Supra* note 3, “Hassan bin Attash,” at par. 4.

³⁰ *Supra* note 1, *Remes’ Declaration*, at 3.

³¹ *Id.*

³² *Id.*

³³ *Supra* note 3, “Hassan bin Attash,” at par. 4.

³⁴ RENDITION PROJECT, *Rendition Circuit: 11-19 September 2002*, at par. 1, <https://www.therenditionproject.org.uk/flights/renditions/N379P-020911.html> ; *Partial List of Detainees Secretly Transported by Aero Contractors of N.C. for Torture by or for the C.I.A.*, N.C. Stop Torture Now (citing Stephen Grey, *Ghost Plane* (2006) as primary source of information). Last visited Jun. 2, 2017), <http://ncstn.org/content/wp-content/uploads/2015/05/partial-list-of-detainees.pdf>.

³⁵ *Id.* at par. 2.

³⁶ *Id.* at par. 5.

³⁷ *Id.*

F. Detainment and Torture in Jordan

13. In Jordan, bin Attash spent 16 months detained in the headquarters of the GID (Jordanian intelligence), located in Wadi Sir, Amman.³⁸ While there, he was repeatedly interrogated and tortured in the presence of Americans.³⁹ For a period lasting three months, he was tortured for twelve hours a day.⁴⁰

14. During interrogations, bin Attash was asked about weapons of mass destruction—a line of questioning one of his lawyers described as “nonsensical”—and about his brother Walid. If he did not provide the answers interrogators wanted, they beat him.⁴¹ As a result, bin Attash “told them whatever they wanted to hear. He just wanted it to stop,” according to another of his lawyers.⁴²

15. Bin Attash suffered a variety of other tortures in Jordan. They slapped and punched him, stepped on his body and face, threatened him with electric shocks, and deprived him of sleep.⁴³ He told his lawyers that sleep deprivation, in particular, was “one of his worst tortures”;⁴⁴ a Jordanian detained with bin Attash remembered seeing guards “[slap] his face” or “[spray] water on him” if they saw his eyes close,⁴⁵ depriving him to such an extreme that bin Attash became, in his words, “almost crazy.”⁴⁶

16. Bin Attash’s lawyer described another of the tortures to which he was subjected as follows:

³⁸ *Supra* note 3, “Hassan bin Attash,” at par. 6.

³⁹ *Supra* note 1, *Remes’ Declaration*, at 1.

⁴⁰ HUMAN RIGHTS WATCH, *Double Jeopardy: CIA Renditions to Jordan 27* (2008), <https://www.hrw.org/reports/2008/jordan0408/>.

⁴¹ *Id.*

⁴² *Supra* note 3, “Hassan bin Attash,” at par. 9.

⁴³ *Id.* at par. 7.

⁴⁴ *Supra* note 1, *Remes’ Declaration*, at 3.

⁴⁵ *Supra* note 40, *Double Jeopardy*.

⁴⁶ *Supra* note 1, *Remes’ Declaration*, at 3-4.

Sadistically, Hassan's keepers would lie him on his back, raise his feet above his head, secure his legs on a horizontal bar, and thrash the soles of his feet until they were raw, and afterward force him to stand in a pile of salt half-melted by hot water. Hassan has told counsel that he felt as though he was walking on hot coals, and that eventually he actually tasted salt.⁴⁷

17. The torture he suffered in Jordan would not have occurred but for his having been extraordinarily rendered on a plane operated by Aero Contractors located in Johnston County, North Carolina.

G. Rendition to "Dark Prison"

18. After 16 months in Jordan, bin Attash was rendered back to the U.S.-operated Dark Prison in Afghanistan on a Boeing 737 registered as N313P operated by Aero Contractors headquartered in Johnston County, North Carolina.⁴⁸ The aircraft left Kinston Regional Airport in North Carolina in the afternoon of January 5th, 2004. After stops in Virginia and Frankfurt, it landed in Amman, Jordan, where it picked up bin Attash. At 1:39 GMT on January 8th, the aircraft then flew directly to Kabul, Afghanistan, where bin Attash was offloaded and taken back to the Dark Prison.⁴⁹

19. Another detainee, Ali al-Hajj al-Sharqawi, was also rendered to the Dark Prison on this flight.⁵⁰ He remembers seeing a man who was likely bin Attash being thrown into a luggage cart, and then being picked up "like a sack" and "thrown on top of [the man he saw]."⁵¹

H. Second Detention and Torture in the "Dark Prison"

⁴⁷ *Supra* note 1, *Remes' Declaration*, at 4.

⁴⁸ HUMAN RIGHTS WATCH, *U.S. Operated Secret 'Dark Prison' in Kabul* (2005) <https://www.hrw.org/news/2005/12/19/us-operated-secret-dark-prison-kabul>; RENDITION PROJECT, *Rendition Circuit: 5-10 January 2004, par. 1*, <https://www.therenditionproject.org.uk/flights/renditions/N313P-040105.html>. See *supra* note 34.

⁴⁹ *Id.* at 2-4.

⁵⁰ *Id.* at 3.

⁵¹ *Id.*

20. Bin Attash was held in the Dark Prison again for about four months.⁵² He was subjected to the same forms of torture as during his previous detainment in the prison, for example, deprivation of food and water, sensory overload, and stress positions.⁵³

I. Detention and Torture in Bagram

21. At some point between the 4th-14th of May, bin Attash was transferred to Bagram Airbase.⁵⁴ Binyam Mohamed, a detainee who was likely transferred alongside bin Attash, testified that he was transferred by helicopter with other detainees—who probably included bin Attash—“tied like hens going for slaughter.”⁵⁵

22. At Bagram, bin Attash’s abuse continued. He was repeatedly tortured with beatings, stress positions, sleep deprivation, and solitary confinement. He was also forced to strip naked, denied food and medical treatment, and threatened with mauling by dogs and electrocution.⁵⁶

J. Detainment and Torture in Guantánamo Bay

23. On September 19th, 2004, bin Attash was transferred to Guantánamo Bay on a U.S. military aircraft with the call-sign RCH948y.⁵⁷

24. Bin Attash experienced further torture at Guantánamo. He suffered beatings, solitary confinement, extremes of heat and cold, and sleep deprivation.⁵⁸ According to his lawyer, his interrogators at Guantánamo threatened to send him back to Jordan or the Dark Prison if he did not provide the answers they wanted, so once again, he told them what they wanted to hear.⁵⁹

J. Present and Future

⁵² *Supra* note 3, “Hassan bin Attash,” at par. 10, 13.

⁵³ *Supra* note 1, *Remes’ Declaration*, at 4.

⁵⁴ *Supra* note 3, “Hassan bin Attash,” at par. 13.

⁵⁵ *Id.*

⁵⁶ *Supra* note 1, *Remes’ Declaration*, at 4.

⁵⁷ *Supra* note 3, “Hassan bin Attash,” at par. 15.

⁵⁸ *Supra* note 1, *Remes’ Declaration*, at 4.

⁵⁹ *Supra* note 1, “Hassan bin Attash,” at 5.

25. Bin Attash, who is now in his thirties, is still detained in Guantánamo. He has spent his entire adult life in the prison.⁶⁰

26. The CIA has corroborated that bin Attash is a victim of their extraordinary rendition and torture program.⁶¹

27. In spite of the trauma of his years of abuse, bin Attash’s lawyers report that he is “friendly” and “engaging” and possesses a “quick wit” and a “thirst for knowledge.” He has endeavored to further his education despite his detainment by “devouring” English-language news sources and attending Art, English, Computer, Life Skills, and History classes.⁶²

28. In the future, bin Attash hopes to become an Arabic-English translator.⁶³ His lawyers report that he believes “his language skills along with his strong desire to meet new people from diverse backgrounds will serve him well” in that career.⁶⁴

III. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

29. The American government’s egregious treatment of Hassan bin Attash, in addition to its deplorability from a moral standpoint, breaches a number of international norms and laws.

30. First, the repeated, severe abuse of bin Attash violates “one of the most universally recognized human rights”:⁶⁵ the prohibition on torture. The prohibition on torture is a peremptory norm. As such, it may be enforced even against states that have not officially agreed to abide by

⁶⁰ PERIODIC REVIEW BOARD FILE REVIEW, *Hassan Muhammad Ali Bin Attash, ISN 1456: Personal Representative Statement*, (September 8, 2016), http://www.prs.mil/Portals/60/Documents/ISN1456/160907_U_ISN1456_PR_PC_OPENING_STATEMENTS_PUBLIC_v1.pdf.

⁶¹ SENATE SELECT COMMITTEE ON INTELLIGENCE, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* 484 (2014).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

the prohibition, and no conflict or emergency is sufficient to warrant an exemption from the rule.⁶⁶ Thus, even if bin Attash was as great a threat to American security as was imagined, or if he possessed highly valuable intelligence, his torture would not be justified. Its prohibition is absolute.⁶⁷

31. However, reliance on the fact that torture is a peremptory norm in international law should not be necessary. The United States has ratified numerous international treaties condemning torture. In its treatment of bin Attash, it has breached all of these.

32. One of these is the Universal Declaration of Human Rights, which states unequivocally, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶⁸

33. In addition, the United States’ treatment of bin Attash violated the International Covenant on Civil and Political Rights, which the U.S. ratified in 1992.⁶⁹ It explicitly prohibits torture, including during times of public emergency.⁷⁰

34. The United States also breached the Convention Against Torture (CAT), which the it ratified in 1994.⁷¹ The CAT defines torture as follows:

“[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him . . . information or a confession, punishing him for an act he . . . has committed or is suspected of having committed, or intimidating or coercing him . . . when such

⁶⁶ *Id.*

⁶⁷ ASS’N PREVENTION TORTURE, *Defusing the Ticking Bomb Scenario: Why we must say No to torture, always* 17 (2007), <https://sakai.unc.edu/access/content/group/704dcc53-2c52-45db-9ced-8fe27c5d5dbc/Jan%2011/TickingBombScenario.pdf>.

⁶⁸ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR].

⁶⁹ UNITED NATIONS, *Status of Treaties: International Covenant on Civil and Political Rights*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en#top.

⁷⁰ International Covenant on Civil and Political Rights, art. 4, 7, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

⁷¹ UNITED NATIONS, *Status of Treaties: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁷²

35. According to this definition, which is the one most widely used by human rights activists and scholars, there are four elements required for an act to constitute torture. These are (1) the nature of the act in question (“severe pain or suffering, whether physical or mental”); (2) the intent behind the act (“intentionally inflicted on a person”); (3) purpose of the act (“obtaining from him or a third person information or a confession, punishing him for an act he or third person has committed . . .”); and (4) the involvement of public officials (“or any other person acting in an official capacity”).⁷³

36. These four elements can be used as guidelines to demonstrate that the abuse to which bin Attash was subjected was, indeed, torture, and thus that the United States has violated the Convention Against Torture. First, it is undeniable that the pain bin Attash suffered was severe, both mentally and physically. Second, the violence inflicted on him was certainly intentional; his planned transfer between detainment sites and the threats of further violence can leave no doubt that he was abused intentionally. Third, the purpose of the abuse was to facilitate interrogation and thereby acquire information. Fourth, American officials either directly committed or were present for the violent acts perpetrated against bin Attash. The United States, therefore, breached the Convention Against Torture in its treatment of bin Attash.

37. The Convention Against Torture imposes further obligations on states that the United States also failed to uphold. The CAT states that the United States must:

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are

⁷² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter Convention against Torture].

⁷³ Convention against Torture, *supra* note 72, at art. 1, 113-114.

substantial grounds for believing that he would be in danger of being subjected to torture.⁷⁴

38. The language of this provision clarifies that, beyond prohibiting torture within its borders, the United States must ensure that no U.S. state or territory extradites an individual to a country where they could be in danger of being subjected to torture.⁷⁵

39. Pursuant to the Supremacy Clause of the U.S. Constitution, this obligation also applies to individual states. As such, North Carolina has the legal responsibility to ascertain that appropriate measures are taken to prevent torture, irrespective of whether it occurs within or outside of the United States.

40. The CAT dictates that states must take “administrative” measures to prevent torture from occurring within their own jurisdictions.⁷⁶ These administrative measures constitute a crucial part of North Carolina’s obligations under the CAT. To fulfill them, the state’s political entities and subdivisions must revoke or discontinue Aero’s “flying permits, licenses, and leases.”⁷⁷ Failing to do so, given the invaluable role Aero Contractors played in the rendition and torture of individuals like bin Attash, would be a violation of international law.

B. Federal Law Violations

41. Pursuant to the Supremacy Clause, international treaties ratified by the United States are equivalent to federal statutes. Thus, in breaching international treaties, the United States and North Carolina governments also violated federal law.⁷⁸

⁷⁴ Convention against Torture, *supra* note 72, at art. 2, 114.

⁷⁵ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

⁷⁶ *Id.* at 38.

⁷⁷ *Id.*

⁷⁸ *Id.* at 36.

42. Furthermore, bin Attash’s treatment was against numerous federal laws beyond these treaties. Amendment 8 of the United States Constitution, for instance, prohibits “cruel and unusual punishments.”⁷⁹ This language certainly encompasses the violence inflicted on bin Attash.

43. In addition, the Alien Tort Statute (ATS) grants non-U.S. citizens who have suffered egregious human rights violations (including those perpetrated outside the United States) the power to sue government officials and private actors in U.S. courts.⁸⁰ In 2010, five former detainees used the ATS as grounds to sue the United States and Jeppesen Dataplan,⁸¹ a corporation that provided “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”⁸² A precedent therefore exists for bin Attash to challenge the United States or Aero Contractors for the role each played in his unlawful detainment and torture.

44. The Torture Victims Protection Act (TVPA) of 1991 could also be used to challenge the U.S. or Aero. The TVPA was intended to provide a mechanism for the execution of the United States’ obligations under the UN Charter and other international structures for the protection of human rights “by establishing a civil action for recovery of damages from an individual who

⁷⁹ U.S. CONST. amend VIII

⁸⁰ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

⁸¹ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

⁸² *Id.* at 13526.

engages in torture or extrajudicial killing.”⁸³ Under the TVPA, bin Attash has grounds to seek compensation as redress for the suffering inflicted on him.

45. Finally, the Federal Torture Statute (FTS) has been flagrantly violated by the absence of any attempt to hold the perpetrators of bin Attash’s torture accountable. The FTS states that anyone who “commits or attempts to commit torture” outside the United States “shall be fined under this title or imprisoned not more than 20 years, or both”.⁸⁴ No American public official has ever been prosecuted for bin Attash’s torture, a clear breach of the FTS.

C. North Carolina Law Violations

46. Because of the critical role North Carolina played in the CIA’s torture and extraordinary rendition program, the government of the state has a unique capacity to act in defense of human rights by holding Aero Contractors accountable for the rendition of bin Attash. They can do so by pursuing the many violations of North Carolina state law Aero committed.

47. Several such violations were committed against the North Carolina Constitution. Under Article I, § 19 of the North Carolina Constitution, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”⁸⁵ Other state provisions explicitly concern issues of kidnapping, involuntary servitude, trafficking, and criminal conspiracy, all of which Aero Contractors directly facilitated or participated in through the use of their planes for the torture and rendition program.⁸⁶ The planned extrajudicial capture and transport of bin Attash to various black sites without his consent thus violates the North Carolina Constitution.

⁸³ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb., 106 Stat. 73, 73 (1992).

⁸⁴ *Id.*

⁸⁵ N.C. CONST. art. 1, § 19.

⁸⁶ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

48. Section 14-39 of the North Carolina General Statutes criminalizes the act of kidnapping.⁸⁷ It also specifically prohibits “serious bodily harm to or terrorizing the person” who has been kidnapped.⁸⁸ Moreover, the North Carolina legislature has established the existence of the crime of “first-degree kidnapping,” wherein the abducted individual is not transported to a safe place, or has been “seriously injured or sexually assaulted.”⁸⁹ The extrajudicial capture and detention of bin Attash constitutes kidnapping, and his torture certainly constitutes serious bodily harm, terror, and serious injury. NGCS § 14-39 has thus been violated.

IV. Conclusion

49. Under international, domestic, and state law, the detention and torture of Hassan bin Attash was illegal. Those responsible—including the U.S. government, the North Carolina government and its political subdivisions, and Aero Contractors—must provide redress.

50. The international treaties and domestic laws described above require that the United States, the State of North Carolina and its political subdivisions, and Aero Contractors provide remedies for victims of torture and other illegal treatment perpetrated by its agents. The ICCPR and the CAT list official acknowledgement, remedial action, and compensation for any damages incurred by victims due to such acts as forms of redress.⁹⁰ These remedies are intentionally specified, both to deter nations from engaging in torture and to provide a foundation for victims’ healing. The truth telling and documentary function of civil review, in particular, help prevent future violations and assist victims in rebuilding their lives.

51. Without the recognition and redress that the United States, the state of North Carolina and its political subdivisions, and Aero Contractors are legally obligated to provide, the country

⁸⁷ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

⁸⁸ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

⁸⁹ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

⁹⁰ See ICCPR, *supra* note 70; see also Convention Against Torture, *supra* note 72.

implicitly endorses torture and conveys that it can be committed with impunity. Failing to take action to remedy the harm that was done to Hassan bin Attash is at once an admission of this nation's hypocrisy and moral baseness and an assurance to potential perpetrators of torture that their crimes will go unacknowledged and unpunished.

Ahmed Agiza

I. The Rendition and Torture of Ahmed Agiza

1. Ahmed Agiza is a 54-year-old Egyptian man. He is married to a Swedish woman with whom he has Swedish children. He was illegally rendered at the age of 39 from Stockholm, Sweden, by United States officials and as a result, he was subjected to torture in Egypt for nine years.¹

A. Capture in Sweden

2. In December 2001, Ahmed Agiza was abducted by U.S. agents² in a degrading and humiliating fashion without any semblance of due process and taken to Egypt in a U.S. airplane from Bromma airport located in Stockholm, Sweden.³ Agiza's abduction was based on erroneous and unsubstantiated Swedish Security Services (Säpo) reports that suggested he might have had been in contact with terrorist organizations.⁴ Agiza further explained that he was a known opponent of former Egyptian president Mubarak, an ally of the United States, and who presided according to draconian principles, and that the United States was willing to assist in the return of Mubarak's opponents in exchange for Egypt's assistance with finding alleged terrorists

¹ Much of the narrative and information gathered regarding Agiza was published in a series of interviews in the Swedish newspaper, Expressen. These interviews were translated from Swedish to English on February 22, 2017, by Johannes Lichtman, a faculty member at the University of North Carolina at Wilmington. The European Parliament Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners also acknowledged (and decried) Agiza's extraordinary rendition to torture. See Giovanni Claudio Fava, Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)) Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners 25 (2007) at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>; Rapporteur: Dick Marty, Committee on Legal Affairs and Human Rights Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states Draft report – Part II (Explanatory memorandum) 20, 36, 37 (2006) at http://assembly.coe.int/committeedocs/2006/20060606_ejdoc162006partii-final.pdf

² Agiza was apprehended by Swedish Special Police and then handed over to U.S. agents outside of Stockholm. *Biography of Plaintiff Ahmed Agiza*, ACLU, <https://www.aclu.org/other/biography-plaintiff-ahmed-agiza>.

³ Andrea Gunnarsson, *Ahmed Agiza Settles in Orebro*, EXPRESSEN (July 7, 2012), <http://www.expressen.se/nyheter/ahmed-agiza-bosatter-sig-i-orebro/>.

⁴ See Gunnarsson, *supra* note 3.

associated with the events of September 11.⁵ According to Agiza, “I was kidnapped outside my home, in a degrading manner, and with elements of violence, I was taken to Egypt.”⁶ His captors stripped him, inserted suppositories into his rectum, dressed him in a diaper and overalls, blindfolded him, and placed a hood over him.⁷ He was handcuffed, shackled, and dragged onto a Gulfstream V aircraft.⁸

B. *Extradition and Confinement in Egypt*

3. The Gulfstream airplane which transported and extraordinarily rendered Agiza was registered as number N379P. Flight records detailed that this aircraft departed on December 18, 2001 from Johnston County Airport, North Carolina and was operated by Aero Contractors headquartered in Johnston County and flew to Cairo, Egypt.⁹ From Egypt, the plane flew from Cairo to Bromma airport in Sweden, arriving at 7:43 p.m.¹⁰ Next, the plane departed Bromma for

⁵ Amina Ismail, *Q&A with Ahmed Agiza: A Survivor of the Mubarak Regime’s War on Terror*, EGYPT INDEPENDENT (September 25, 2011), <http://www.egyptindependent.com/news/qa-ahmed-agiza-survivor-mubarak-regimes-war-terror>.

⁶ Emelie Henricson, *Agiza: I Was Kidnapped Outside My Home*, EXPRESSEN (May 6, 2013), <http://www.expressen.se/nyheter/agiza-jag-kidnappades-utanfor-min-bostad/>.

⁷ See *Biography of Plaintiff Ahmed Agiza*, supra note 2.

⁸ *Id.* Agiza’s kidnapping and extraordinary rendition on N379, identified as an Aero operated plane, has been confirmed by Rapporteur: Giovanni Claudio Fava, European Parliament, Working Document No 9, on certain European countries analysed during the work of the Temporary Committee Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners 12, 18, 20, 22, 27, 33, 36, 46, 51, 54 (2007) at [https://www.therenditionproject.org.uk/pdf/PDF%2085%20\[EP%202007%20Working%20Document%209%20on%20certain%20European%20countries\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2085%20[EP%202007%20Working%20Document%209%20on%20certain%20European%20countries].pdf), Rapporteur: Giovanni Claudio Fava Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, WORKING DOCUMENT N° 8 on the companies linked to the CIA, aircraft used by the CIA and the European countries in which CIA aircraft have made stopovers Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners 12, 23, 29, 32, 34, 36, 39, 41, 43, 47, 49, 53 (2006) at <http://www.statewatch.org/cia/documents/working-doc-no-8-nov-06.pdf>.

⁹ *Id.*

¹⁰ *Id.*

Cairo at 8:48 p.m., and arrived on December 19, 2001.¹¹ The plane departed Cairo at 6:56 p.m.¹² and arrived back in Washington, D.C. at 7:18 p.m.¹³

4. His U.S. captors delivered Agiza to Egyptian intelligence services upon arrival in Cairo. There, he was held in solitary confinement in a tiny, squalid prison cell that measured no more than two square meters, that had no windows, heat, or light.¹⁴

5. While detained in Egypt, Agiza was subject to severe torture which he described in an interview with a journalist: “I endured electric shocks and beatings. They tied my hands and feet and hung me up naked like a slaughtered animal. They threatened to kill me and they threatened me and my family with sexual assault.”¹⁵ During all of Agiza’s interrogations, he was blindfolded.¹⁶ There are additional details regarding Agiza’s torture that he has been unable to disclose due to the trauma he has suffered.¹⁷

6. Agiza also described the psychological aspects of torture in addition to the physical pain he suffered. His words describe the terror and pain he experienced: “There are two things that were painful for me throughout this whole process. The first is that I could not see my children grow up, and the other is the mental and physical health problems I suffered while in prison.”¹⁸

7. Agiza bounced around several prisons in Egypt, including State Security in Nasr City, Tora Prison, and then Scorpion Prison, which is known as Egypt’s Guantanamo Bay.¹⁹ As can

¹¹ *Id.*

¹² *Id.* We do not know officially whether it was 6:56 p.m. or a.m. However, flight time from Cairo to D.C. is approximately 13 hours, so the best guess is that the flight left at 6:56 p.m.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Emelie Henricson, *Agiza: I Was Kidnapped Outside My Home*, EXPRESSEN (May 6, 2013), <http://www.expressen.se/nyheter/agiza-jag-kidnappades-utanfor-min-bostad/>.

¹⁶ Ismail, *supra* note 5.

¹⁷ *Id.*

¹⁸ Rebecka Martikainen & Kassem Hamade, *Ahmed Agiza Speaks Out About Today’s Announcement*, EXPRESSEN (July 4, 2012), <http://www.expressen.se/nyheter/ahmed-agiza-talar-ut-om-beskedet-i-dag/>.

¹⁹ Ismail, *supra* note 16.

be expected, the transfers from prison to prison were psychologically devastating and destabilizing.

C. *“Justice Has Prevailed”*²⁰

8. Agiza spent nine years in an Egyptian prison and was finally released in 2011.²¹ In the fall of 2012, Agiza was granted a permanent residence permit in Sweden.²² Upon his release, he declared, “I will celebrate the decision with my elderly mother by taking her to dinner tonight. She has supported me and my family this whole time, so she deserves for me to celebrate this decision with her.”²³

D. *Agiza’s Current Predicament*

9. Agiza currently lives in Sweden. When asked about his involvement with al-Qaeda and Osama bin Laden, he stated

“I am one of the victims of the consequences of 11 September. I had nothing to do with it. Far-right forces in the U.S. wanted to use the situation to win political points in public opinion at home. And I’ve said from the beginning to the Swedish authorities that I seek political asylum.”²⁴

Agiza also noted that he “watched the events of 11 September on TV like everyone else.”²⁵

10. Agiza suffers from severe health problems related to his torture. He has a problem with his vertebral column and suffers leg muscle atrophy.²⁶ He cannot stand or sit for a long time, and has problems feeling sensations below his waist.²⁷ Further, he has breathing problems because his captors broke his nose and never properly healed.²⁸ His blood pressure is unstable, he suffers

²⁰ Agiza noted that “Justice has prevailed” when he was released from Egypt. Martikainen, *supra* note 18.

²¹ *Agiza Receives Swedish Residence Permit*, EXPRESSEN (July 4, 2012), <http://www.expressen.se/nyheter/agiza-far-svenskt-uppehallstillstand/>.

²² Henricson, *supra* note 6.

²³ Martikainen, *supra* note 18.

²⁴ Martikainen, *supra* note 18.

²⁵ Ismail, *supra* note 16.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

from diabetes and ulcers, and has difficulty sleeping.²⁹ Agiza additionally suffers from psychological distress, and has explained that “time in prison has changed my life in many ways and it’s not possible to get back what it was before.”³⁰

E. Hope for the Future

11. With regard to his future, Agiza stated that, “I try to take it day by day. I have no dreams or goals. I feel a little disoriented. Agiza, when released stated that “there are two things I am going to devote a lot of time to: to get medical attention for my health problems and to spend time with my children and my family.”³¹

12. In 2008, Amnesty International demanded compensation for the human rights abuses that Agiza suffered, and also demanded accountability from the persons responsible for his detention, deportation and torture.³² Agiza was also a plaintiff in *Mohamed v. Jeppesen Dataplan*,³³ where much of the treatment he received, described above, was relayed in a law suit against a company that provided services for the CIA to use in their rendition program. While the case was ultimately dismissed under a state secrets rationale, the court recognized potential human rights violations, and admitted that they did not make the decision “lightly.”³⁴ Despite the dismissal, the court importantly noted that non-judicial relief was possible, including the enactment, by Congress, of private bills admitting wrongdoing or providing compensation, or remedial bills “giving appropriate causes of action and procedures to address claims” like Agiza’s.³⁵ Thus, despite the foreclosure of judicial remedies, it is still possible for the United States, North

²⁹ *Id.*

³⁰ Henricson, *supra* note 6.

³¹ Gunnarsson, *supra* note 3.

³² Henricson, *supra* note 6.

³³ 614 F. 3d 1070 (Ninth Cir., 2010).

³⁴ *Id.* at 1092.

³⁵ *Id.*

Carolina and its political subdivisions, and Aero to acknowledge the wrongs that were committed against Agiza and other individuals.

II. The Legality of Agiza's Treatment

A. *International Law*

13. The United States has signed multiple treaties outlawing torture. The United Nations, which the United States is a member of, issued the Universal Declaration of Human Rights (UDHR) in 1948. This declaration unequivocally prohibits torture. Article 5 states that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."³⁶ Further, Article 9 states that "No one shall be subjected to arbitrary arrest, detention or exile."³⁷ Finally, Article 10 of the Universal Declaration of Human Rights states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."³⁸ Under the International Covenant on Civil and Political Rights (ICCPR), "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."³⁹ Additionally, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) outlaws mental pain and suffering with the intent of punishing an individual.⁴⁰

14. The United States is prohibited from extraditing individuals to countries with the knowledge that they may be subject to torture. CAT specifically outlaws extradition of individuals to countries when there are reasonable grounds to believe that torture will occur.⁴¹

³⁶ Universal Declaration of Human Rights, art. 5, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR].

³⁷ UDHR, art. 9, *supra* note 36.

³⁸ UDHR, art. 10, *supra* note 36.

³⁹ International Covenant on Civil and Political Rights, art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171 [hereinafter ICCPR].

⁴⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1(1), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988) [hereinafter CAT], 1465 U.N.T.S. 85.

⁴¹ CAT, art. 3, *supra* note 40.

The Human Rights Committee, the overseeing and interpretive body of the ICCPR,⁴² has stated that “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁴³ Thus, the extradition, by the United States, of an individual to an area where it is known that they will be tortured by other parties is virtually no different than if the United States tortured the individual itself.

15. The treaties outlined above are all binding for Federal, North Carolina and local law. The “Supremacy Clause,” the second clause of the United States Constitution, states that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁴⁴

16. The United States treatment of Agiza when he was abducted outside of Bromma airport constitutes torture. Agiza’s US captors stripped him, inserted suppositories into his rectum, dressed him in a diaper and overalls, as well as blindfolded and hooded him and otherwise terrorized him. These acts all constitute mental degradation and torture, as defined in the UNHR, ICCR, and CAT. Agiza was specifically rendered to Egypt by the United States to be tortured. This violates the HR Committee’s ruling—and CAT’s provision—that individuals cannot be extradited to countries when there are reasonable grounds to believe that torture will occur.⁴⁵

⁴² See Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, available at <http://www2.ohchr.org/english/bodies/hrc/> [last accessed 04/17/ 2017 at 10:47PM EST].

⁴³ U.N. Human Rights Comm., General Comment No. 20, ¶ 9, U.N. Doc. A/47/40 (1992).

⁴⁴ U.S. CONST. art. VI, cl. 2.

⁴⁵ Additionally, the Committee Against Torture held that Sweden additionally violated Article 3 of CAT by rendering him to a location where he was likely to be tortured. See GLOBALIZING TORTURE: CIA SECRET DETENTION AND EXTRAORDINARY RENDITION, OPEN SOCIETY 25 (2012), <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>.

17. Additionally, while there is no evidence that demonstrates what role officials of the United States may have played in the torture of Agiza while he was held captive in Egypt, this does not absolve the federal government, nor Aero or the State of North Carolina and its political subdivisions from culpability for the acts of torture that were done to him. Agiza was rendered on an Aero operated plane flown out of Johnston County, NC to Egypt in order to be tortured. This violates CAT's provision that prohibits the extradition or removal of individuals to countries when there are reasonable grounds to believe that torture will occur.

B. Federal Law

17. In addition to the U.S. Constitution, Eighth Amendment prohibiting cruel and unusual punishment, the United States Code outlaws torture, and defines it as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.”⁴⁶ Culpability extends to those aiding and abetting and conspiring to commit acts of torture.⁴⁷

18. Enacted in 1992, the Torture Victim Protection Act (“TVPA”) creates a private right of action for individuals, regardless of citizenship or nationality, in federal courts against other individuals, acting “under actual or apparent authority, or color of law, of any foreign nation” that have committed acts of torture against the plaintiffs.⁴⁸

⁴⁶ 18 U.S.C. § 2340. Severe physical or mental pain is defined as the intentional infliction or threatened infliction of severe physical pain or suffering; the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; the threat of imminent death; or the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality. *Id.*

⁴⁷ 18 U.S.C. § 2341.

⁴⁸ 28 U.S.C. § 1350, note § 2(a) 2006.

19. The United States Code’s prohibition on conspiracy to commit torture was violated, as the United States extradited Agiza to Egypt with the knowledge and understanding that he would be tortured there. Further, under the Torture Victim Protection Act (“TVPA”), Agiza has a private right of action against his captors and those that committed acts of torture against him.

C. North Carolina Law

20. Torture is prohibited by North Carolina law. Article 1, Section 19 of the North Carolina Constitution states that “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”⁴⁹ North Carolina’s Constitution also provides that “[n]o person shall be denied the equal protection of the laws.”⁵⁰ Additionally, it is illegal, under North Carolina law, for individuals to be kidnapped, held in involuntary servitude, and subject to serious bodily harm, or to aid, abet, or conspire to commit such acts.⁵¹ Liability under this statute extends to corporations.⁵²

21. Agiza was captured by U.S. personnel, and extraordinarily rendered on airplanes operated by Aero Contractors. He was subject to severe pain and humiliating and degrading treatment as a result of his capture, and was rendered to Egypt with the intent that he be tortured by foreign parties. These acts violate both North Carolina’s Constitution, as well as North Carolina’s general laws.

III. Conclusion

22. Ahmed Agiza was illegally kidnapped and extraordinarily rendered via a process outside of the law and without any legal protections to a country with the full knowledge and intent that

⁴⁹ N.C. CONST. art. I, § 19.

⁵⁰ *Id.*

⁵¹ N.C. GEN. STAT. § 14-39.

⁵² *Id.*

he would be tortured there. As a result, he has suffered and will continue to suffer severe lifelong distress, and has been irreparably harmed. It is incumbent upon the United States, North Carolina and its political subdivisions, as well as Aero Contractors to admit wrongdoing via Congressional action, and take responsibility for the atrocities committed against Ahmed Agiza and the countless other individuals that were harmed through acts of torture and extradition.

Appendix



Ahmed Agiza

Mustafa Ahmad al-Hawsawi

I. Introduction

1. Mustafa al-Hawsawi (known by other names including Hashim 'Abd al-Rahman, Zahir, Ayyub, Muhammad Adnan) is a 48-year-old Saudi national, born in Jeddah, Saudi Arabia on August 5, 1968.¹
2. There is little information available on Al-Hawsawi prior to his detainment due to the classified nature of such information. According to a single source, a detainee assessment from the Department of Defense (“DOD”), it is possible that Al-Hawsawi attended high school in Jeddah, Saudi Arabia, graduating with a focus in natural sciences.² He may have also attended King Abd al-Aziz and majored in Islamic Studies with the desire to become a professor in a madrasa, a religious Islamic school.³
3. Al-Hawsawi was identified by the DOD as a “high value detainee” (“HVD”) after alleged association with terrorist organizations and was considered to be an al-Qa’ida member and suspected 9/11 facilitator.⁴ He continues to deny these accusations.⁵ The allegations cannot be independently verified and numerous sources have brought into question the accuracy and credibility of the information acquired and provided by the CIA.⁶

¹ Most Recent Images of Al-Hawsawi have been included in the Appendix. Amrit Singh, *Globalizing Torture*, Open Soc’y. Found., 42 (2013), <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; *JTF-GTMO Detainee Assessment*, Joint Task Force, Dep’t. of Def, NY Times (last visited Jun. 19, 2017) <https://www.nytimes.com/interactive/projects/guantanamo/detainees/10011-mustafa-ahmed-al-hawsawi>; *Mustafa al-Hawsawi*, The Rendition Project, <https://www.therenditionproject.org.uk/prisoners/hawsawi.html>.

² Dep’t. of Def., *JTF-GTMO Detainee Assessment*, *supra* note 1, at 2.

³ *Id.*

⁴ *Comm. Study of the C.I.A.’s Detention and Interrogation Program*, U.S.S. Select Comm. on Intelligence, (hereinafter the USSCI Exec. Summ.) 186-187 (Declassification Revisions Dec. 3, 2014), https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf; CHR Res. 3/2010, UN Doc. A/HRC/13/42, 46, <http://hrlibrary.umn.edu/instreet/A-HRC-13-42.pdf>.

⁵ *Verbatim Transcript of Combatant Status Rev. Trib. Hearing for ISN10011*, Combatant Status Trib., Dep’t. of Def., 7, 21-22 (Mar. 31, 2007), <https://www.documentcloud.org/documents/78008-isn-10011-mustafa-ahmed-al-hawsawi-combatant.html#document/p1> at 7, 21-22.

⁶ See USSCI Exec. Summ., *supra* note 4.

4. In fact, Al-Hawsawi was “one of the numerous individuals [] detained by the CIA and subjected to the CIA's enhanced interrogation techniques [(“EIT”)] despite doubts and questions surrounding their knowledge of terrorist threats and the location of senior al-Qa’ida leadership”.⁷ In 2014 the Select Committee on Intelligence (“the Committee”) released an Executive Summary Report, finding that the information allegedly assisting in the identification Al-Hawsawi was both inaccurate and omitted material facts.⁸

II. Initial Rendition to Detention Site Cobalt in Afghanistan

5. On March 1, 2003, Al-Hawsawi was arrested in Rawalpindi, Pakistan along with Khalid Sheikh Muhammad in a joint raid by the CIA and Pakistani Intelligence forces and subsequently kept in isolation and interrogated for over two days.⁹ On March 4, 2003, he was turned over to U.S. custody at the Bagram Air Base in Afghanistan.¹⁰ Around this time, the United States alleges to have seized a laptop from his possession, in addition to a handwritten, 19 page address book containing information on al-Qa’ida operatives.¹¹ However on March 21, 2007, during a Tribunal hearing for Combatant Status Review, Al-Hawsawi denied owning any item fitting the description of the address book.¹²

6. Following Al-Hawsawi's first interrogation session, Chief of Interrogations asked CIA Headquarters for information on what al-Hawsawi actually “knows,” saying: “he does not

⁷ *Id.*, at 431-432.

⁸ *Id.*, at 368.

⁹ Dr. Bogumil Zygmunt, Esq., *Application to Appellate Prosecutor*, (Nov. 12, 2003), <http://www.redress.org/download/application-to-appellate-prosecutor---english-translation.pdf>; Open Soc’y. Found., *supra* note 1, at 42; Dep’t. of Def., *JTF-GTMO Detainee Assessment*, *supra* note 1, at 4; The Rendition Project, *Mustafa al-Hawsawi*, *supra* note 1.

¹⁰ The Rendition Project, *Mustafa al-Hawsawi*, *supra* note 1; Dr. Bogumil Zygmunt, Esq., *supra* note 9.

¹¹ NY Times, *supra* note 1, at 1; Combatant Status Trib., *Verbatim Transcript*, *supra* note 5, at 7; *Summ. of Evid. for Combatant Status Review Trib. – Al Hawsawi, Mustafa Ahmed*, Combatant Status Trib., Dep’t. of Def., 2-3 (Feb. 8, 2007), <https://www.documentcloud.org/documents/78007-isn-10011-mustafa-ahmed-al-hawsawi-combatant.html#document/p2>.

¹² Combatant Status Trib., *Verbatim Transcript*, *supra* note 11, at 12.

appear to the [sic] be a person that is a financial mastermind.”¹³ Regardless of such doubt, Al-Hawsawi was extraordinarily rendered, alongside Khalid Sheikh Muhammad from Kabul, Afghanistan to the Cobalt Detention Site also located within Afghanistan.¹⁴

III. Detention and Torture at the Cobalt Detention Site

7. The Cobalt Detention Site is a detention, debriefing, and interrogation facility maintaining high to medium value detainees.¹⁵ The site consists of 20 individual concrete structures which were used as cells, three interrogation rooms, a staff room, a guardroom, and a conditioning room used for water dousing.¹⁶ CIA Chief of Interrogations described this site as, “a dungeon,” where detainees were “kept in complete darkness and constantly shackled in isolated cells with loud music and only a bucket to use for human waste”.¹⁷ During Al-Hawsawi’s detainment at such site, he was subjected to numerous CIA “EITs”.¹⁸
8. The first recorded incident occurred on April 6, 2003, when a senior CIA interrogator, and second interrogator subjected Al-Hawsawi to 14 non-stop hours of water dousing, walling, attention grasps, facial holds, cramped confinement, and psychological pressures.¹⁹ Al-Hawsawi later described this experience to another CIA interrogator (“Confidant”) during a debriefing session.²⁰ Al-Hawsawi stated that during the session two masked individuals who, on numerous occasions during the session, placed him “on a rotating table of wood with a

¹³ USCCI Exec. Summ., *supra* note 4, at 432, footnote 2423.

¹⁴ The Rendition Project, *Mustafa al-Hawsawi*, *supra* note 1.

¹⁵ *Disposition Memorandum*, Office of Inspector Gen., Cent. Intelligence Agency, 9 (Dec. 6, 2006), https://www.ushrnetwork.org/sites/ushrnetwork.org/files/mustafa_al-hawsawi_2016_uncat_loipr_submission.pdf.

¹⁶ Office of Inspector Gen., *supra* note 36.

¹⁷ Dominic Rushe, Ewen MacAskill, Ian Cobain, Alan Yuhas & Oliver Laughland, *C.I.A. Torture Rep., Rectal rehydration and waterboarding: the CIA torture rep.'s grisliest findings*, *the guardian* (2:17 P.M. EST Dec. 11, 2014), <https://www.theguardian.com/us-news/2014/dec/09/cia-torture-report-worst-findings-waterboard-rectal>.

¹⁸ CHR Res. 3/2010, *supra* note 4, at 46; USCCI Exec. Summ., *supra* note 4, at 100, footnote 584, 103, footnote 600.

¹⁹ USCCI Exec. Summ., *supra* note 4, at 105-106; Office of Inspector Gen., *supra* note 36.

²⁰ USCCI Exec. Summ., *supra* note 4, at 101-103; See Office of Inspector Gen., *supra* note 36.

bed of shiny metal,” and poured several bottles of water onto his chest, letting the water run onto his face and nose, making it feel as if he was being drowned.²¹ As the water poured over him, He recalled crying out to God.²²

9. The Confidant, concerned that Al-Hawsawi may have been subjected to unauthorized “EITs”, reported the incident to the Office of Inspector General (“OIG”).²³ The Confidant’s email states in pertinent as follows,

"As you know, I have serious reservations about watering them in a prone position because if not done with care, the net effect can approach the effect of the water board. If one is held down on his back, on the table or on the floor, with water poured in his face I think it goes beyond dousing and the effect, to the recipient, could be indistinguishable from the water board. I have real problems with putting one of them on the water board for 'dousing.' Putting him in a head down attitude and pouring water around his chest and face is just too close to the water board, and if it is continued may lead to problems for us."²⁴

10. The incident was again referred to the OIG by the Counterterrorist Center Legal Group several months later. Finally, on July 13, 2004, more than a year after the reported incident, the OIG reported to the Criminal Division of the U.S. Attorney’s Office in the Eastern District of Virginia that a possible violation of federal criminal law may have occurred.²⁵ On December 6, 2006, under case number 2004-7604IG, a “Disposition Memorandum” was filed in which the OIG found that the “EITs” of water dousing had been employed on Al-Hawsawi and that such technique was an established practice at the Cobalt site, developed with the guidance of the CIA, CTC attorneys, and the CIA’s Office of Medical Services.²⁶

²¹ USCCI Exec. Summ., *supra* note 4, at 101-103; Office of Inspector Gen., *supra* note 36, at 6.

²² USCCI Exec. Summ., *supra* note 4, at 106.

²³ USCCI Exec. Summ., *supra* note 4, at 101-103.

²⁴ USCCI Exec. Summ., *supra* note 4, at 106.

²⁵ Office of Inspector Gen., *supra* note 36, at 2.

²⁶ Office of Inspector Gen., *supra* note 36, at 1, 13; USCCI Exec. Summ., *supra* note 4, at 106-107;

The OIG also found that interrogators alleged hearing Al-Hawsawi cry out to God when the water was poured onto him, but believed it was solely because the water was cold.²⁷

11. While the findings in the memorandum highlighted that there was no request or authorization for the use of waterboard on Al-Hawsawi during that time period, there was no finding that Al-Hawsawi was ever subjected to waterboarding.²⁸ Instead, the memorandum alleged that Al-Hawsawi was given a “bath,” where he was placed upon a blue tarp spread across the floor.²⁹

12. However, similar reports on the use of waterboarding at Cobalt have previously been made by detainees Abu Hazim, and Mohammed Shoroeyia.³⁰ In addition, a CIA photograph included in the 2014 Senate Select Committee on Intelligence Executive Summary Report displays a wooden waterboard located within Cobalt.³¹ In the photo, buckets, a bottle of unknown pink solution (filled two thirds of the way to the top) and a watering can be seen resting on or by the wooden beams of waterboard.³² When inquired as to the purpose of the items in this picture, the CIA was unable to provide a response.³³ These accounts and circumstantial evidence strongly contradict the CIA’s claim that “only three men in U.S. custody has been waterboarded.”³⁴

13. Evidence further demonstrates that Al-Hawsawi was subjected to other “EITs” including sleep deprivation of greater than 48 hours and repeated rectal examinations conducted with

²⁷ USCCI Exec. Summ., *supra* note 4, at 106-107.

²⁸ USCCI Exec. Summ., *supra* note 4, at 106-107; Office of Inspector Gen., *supra* note 36, at 11.

²⁹ *Id.*

³⁰ USCCI Exec. Summ., *supra* note 4, at 107 (citing accusations recorded within *Delivered into Enemy Hands*, Hum. Rts. Watch Rep. (Sep. 6, 2012)).

³¹ USCCI Exec. Summ., *supra* note 4, at 106.

³² USCCI Exec. Summ., *supra* note 4, at 106, footnote 623 (citing photograph contained in Vol. III of the Comm. Study).

³³ USCCI Exec. Summ., *supra* note 4, at 107.

³⁴ USCCI Exec. Summ., *supra* note 4, at 106, footnote 623.

excessive forces. On November 23, 2003, CIA General Counsel Scott Muller sent an email to an undisclosed recipient, with the subject line, “Al-Hawsawi,” in which he suggested, “changing the sleep deprivation line as [sic] between enhanced and standard from 72 to 48 hours,” thereby classifying any sleep deprivation interrogation technique over 48 hours as an “EIT,” indirectly suggesting that an incident may have occurred in which Al-Hawsawi was subjected to more than 48 hours of sleep deprivation.³⁵

14. Records demonstrate that at least 5 detainees have previously been subjected to rectal feeding and hydration by CIA operatives at Cobalt.³⁶ However, the colon and rectum can only absorb a minimal amount of minerals and vitamins.³⁷ Therefore, the rectal feeding procedure has been a discouraged method by which to provide any nutrition.³⁸ Moreover, there are risks the recipient may suffer as a result of such procedure. For example, such a procedure could result in “damage to the rectum and colon, triggering bowels to empty, food rotting inside the recipient’s digestive tract, or an inflamed or prolapsed rectum from careless insertion of the feeding tube.”³⁹

15. In its 2014 Senate Select Committee on Intelligence Executive Summary Report, it was confirmed that Al-Hawsawi was one of the detainees subjected to “rectal exams” at Cobalt.⁴⁰ Further, it was indicated that the procedure performed on him was “conducted with ‘excessive force,’” which resulted in a subsequent diagnosis of chronic hemorrhoids, an anal fissure, and symptomatic rectal prolapse.⁴¹

³⁵ USCCI Exec. Summ., *supra* note 4, at 134.

³⁶ The guardian, *supra* note 38.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ The Rendition Project, *Mustafa al-Hawsawi*, *supra* note 1; USCCI Exec. Summ., *supra* note 4, at 100, footnote 584 (citing email from a redacted source titled, “ACTIONS from the GC Update this Morning”).

⁴¹ *Id.*

16. The 2014 Senate Select Committee on Intelligence Executive Summary Report made additional findings that the “EITs” performed on Al-Hawsawi were not approved by CIA Headquarters and that the CIA had ultimately failed to prosecute, respond, investigate, or even inquire into certain records of such techniques being performed on Al-Hawsawi.⁴²

IV. Rendition from Cobalt Detention Site to Guantanamo Bay, Cuba

17. On November 22, 2003, Al-Hawsawi was rendered from Cobalt in Afghanistan to Guantanamo Bay, Cuba on a white, unmarked Boeing 737 with tail number N313P operated by Aero Contractors headquartered in Johnston County, North Carolina.⁴³ This first recorded presence of Al-Hawsawi at Guantanamo Bay predates the date the United States has alleged Al-Hawsawi was rendered to Guantanamo Bay.⁴⁴

18. Earlier, between 20-25 September, the same aircraft had made a circuit that included stops at Guantanamo and numerous other CIA secret detention sites within Poland and Romania, rendering other HVDs such as Abu Zubaydah, Ramzi bin al-Shibh, and Abd al-Rahim al-Nashiri.⁴⁵ During this time, it is possible Al-Hawsawi was detained in a Poland detention site for some time prior to his rendition to Guantanamo Bay.⁴⁶

19. The torture he suffered at Guantanamo Bay would not have occurred but for his having been extraordinarily rendered on a plane operated by Aero Contractors located in Johnston County, NC.

⁴² USCCI Exec. Summ., *supra* note 4, at 99, 101-103.

⁴³ An Image of the alleged aircraft has been included in the Appendix. Matt Apuzzo & Adam Goldman, *AP Exclusive: CIA flight carried secret from Gitmo*, Associated Press, 1-2 (Aug. 7, 2010), http://archive.boston.com/news/nation/washington/articles/2010/08/07/ap_exclusive_cia_flight_carried_secret_from_gitmo/; *Aircraft Profile: N313P-N4476S*, The Rendition Project (last visited Jun. 6, 2017), <https://www.therenditionproject.org.uk/flights/aircraft/N313P.html>.

⁴⁴ *President Discusses Creation of Mil. Comm’ns to Try Suspected Terrorists*, The White House (1:45 P.M. Sep. 6, 2006), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

⁴⁵ The Rendition Project, *Aircraft Profile: N313P-N4476S*, *supra* note 43.

⁴⁶ *Mustafa al-Hawsawi*, REDRESS (last visited Jun. 17, 2017), <http://www.redress.org/case-docket/al-hawsawicase-1>.

V. Rendition from Guantanamo Bay to Rabat, Morocco.

20. In 2004 the U.S. Supreme Court held in *Rasul v. Bush* that a U.S. federal habeas statute conferred jurisdiction on district courts to hear challenges brought by detainees held at Guantanamo Bay. Shortly thereafter, Al-Hawsawi was rendered to detention facility located within Rabat, Morocco. Much of the information about the location of Al-Hawsawi had been a matter of extreme secrecy; thus, his precise whereabouts throughout the period of March 2004 to September 2006 are uncertain. However, numerous sources have reached a consensus that Al Hawsawi was rendered either on March 27, 2004 or on a later flight at 8:00 A.M. on April 12, 2004 aboard aircraft N85VM operated by Richmor Aviation.⁴⁷
21. Most importantly, by renditioning him to a secret detention site outside of the country, the United States was able to continue its investigation of Al-Hawsawi in secret, prohibiting him from speaking with an attorney, or challenging his detention in U.S. courts, as would have been the case, had he remained three months longer at Guantanamo Bay.⁴⁸

VI. Rendition from Morocco to Violet Detention Site in Antaviliai, Lithuania

22. On an undisclosed date, Al-Hawsawi was then rendered to Lithuania where he was detained at the Violet detention site, allegedly located in Antaviliai, Lithuania.⁴⁹ Violet is known to have held numerous HVDs until late 2005.⁵⁰

⁴⁷ *Rasul v. Bush*, 542 U.S. 466, 481, 124 S. Ct. 2686, 2696, 159 L. Ed. 2d 548 (2004); The Rendition Project, *Rendition Circuit: 11-13 April 2004* (lasted visited Jun. 10 2017), <https://www.therenditionproject.org.uk/flights/renditions/N85VM-040411.html>; *Rendition Circuit: 26-30 March 2004*, The Rendition Project (last visited Jun. 10, 2017), <https://www.therenditionproject.org.uk/flights/renditions/N313P-030920.html>; Open Soc’y. Found., *supra* note 1, at 42; Office of Inspector Gen., *supra* note 37, at 9; Dr. Bogumil Zygmunt, Esq, *supra* note 9.

⁴⁸ Matt Apuzzo, *AP Exclusive*, *supra* note 43, at 1;

⁴⁹ *CIA prison case: Guantanamo detainee asks Vilnius ct. for victim status*, Baltic Course (9:00 P.M. GST Oct. 5, 2016), <http://www.baltic-course.com/eng/legislation/?doc=121136>; *Breaking the Conspiracy of Silence, USA’s European ‘Partners in Crime’ Must Act After Senate Torture Rep.*, Amnesty Int’l., 16 (Jan. 20, 2015), <https://www.amnesty.org/en/documents/EUR01/002/2015/en/>; The Rendition Project, *Mustafa al-Hawsawi*, *supra* note 1.

⁵⁰ Amnesty Int’l., *Partners in Crime*, *supra* note 49, at 16.

23. During his detainment at Violet, Al-Hawsawi continued to suffer numerous medical emergencies.⁵¹ However, despite knowledge of his condition and the lack of adequate medical care at the detention site, the Lithuanian government was unwilling to admit him to a local hospital for treatment.⁵² After repeated attempts by CIA operatives to obtain assistance from the DOD, the CIA was ultimately forced to seek third-party assistance in treating Al-Hawsawi.⁵³ This resulted in the delayed care and further complication of serious, and life threatening conditions and was a consequence of the failure to assure that Al-Hawsawi would be transferred to a location that would respect his human rights.

VII. Rendition from Violet Detention Site to Brown in Afghanistan

24. Around March 2006, the Violet detention site was closed down due to the Lithuanian government's strong aversion to providing necessary medical care to the detainees held at the site in local hospitals.⁵⁴ Around such time, Al-Hawsawi was likely rendered to Afghanistan and detained at the Brown detention site (also referred to as "Strawberry Fields").⁵⁵

VIII. Rendition from Detention Site Brown to Guantanamo Bay, Cuba

25. Al-Hawsawi remained at these various secret CIA detention facilities for over three and a half years until September 4, 2006, when he was rendered to Guantanamo Bay in order to face prosecution for alleged terrorist activities against the United States, along with 14 other HVDs from other secret CIA sites, including Abu Zubaydah, Abd al-Nashiri and Ramzi bin

⁵¹ USCCI Exec. Summ., *supra* note 4, at 154, 493, The Rendition Project, *Mustafa al-Hawsawi*, *supra* note 1.

⁵² *Id.*; *U.S. Crimes and Impunity*, Amnesty Int'l., 26 (Apr. 21, 2015), https://www.amnestyusa.org/wp-content/uploads/2017/04/cia_torture_report_amr_5114322015.pdf

⁵³ USCCI Exec. Summ., *supra* note 4, at 154, 49; Amnesty Int'l., *U.S. Crimes and Impunity*, *supra* note 52, at 26.

⁵⁴ Amnesty Int'l., *Partners in Crime*, *supra* note 49, at 16, 17; Amnesty Int'l., *U.S. Crimes and Impunity*, *supra* note 52, at 26.

⁵⁵ *The Rep. on the Const. Project's Task Force on Detainee Treatment*, The Const. Project, 169 (2013), https://www.opensocietyfoundations.org/sites/default/files/constitution-project-report-on-detainee-treatment_0.pdf; The Rendition Project, *Mustafa al-Hawsawi*, *supra* note 1.

al Shibh.⁵⁶ Al-Hawsawi was registered under Internment Serial Number US9SA-010011DP.⁵⁷

26. On March 21, 2007, the Combatant Status Review Tribunal met to review Al-Hawsawi's HVD designation and whether he should remain in continued detention.⁵⁸ The hearing lasted little more than an hour, and instead of providing him with competent counsel, the tribunal assigned Al-Hawsawi a one-time personal representative who was a military officer with no training.⁵⁹ In addition, the proceedings contained numerous procedural errors, including the failure to exclude coerced and hearsay statements, inability to cross-examine witnesses, and an initial presumption that the government's evidence was correct.⁶⁰
27. Since March 2003, Al-Hawsawi had been held in detainment without charges until February 11, 2008, when the DOD finally announced that it would seek criminal charges and death penalty against Al-Hawsawi, under the Military Commissions Act of 2009, 10 U.S.C. §§ 948a, et seq., for the commission of criminal offenses through his alleged role in the September 11 terror attacks.⁶¹ Only after this point, in April 2008, Al-Hawsawi was assigned a military lawyer, but was not permitted to choose who would represent him.⁶² In June 2008, a military commission trial named Al-Hawsawi as a co-defendant to 9/11 mastermind Khalid

⁵⁶ Adam Goldman and Matt Apuzzo, *CIA Moved Detainees to Avoid US Legal System*, USA Today (Aug. 6, 2010), http://usatoday30.usatoday.com/news/washington/2010-08-06-detainees-transferred_N.htm; The White House, *supra* note 44; Open Soc'y. Found., *supra* note 1, at 42; CHR Res. 3/2010, *supra* note 4, at 46; Dep't. of Def., *JTF-GTMO Detainee Assessment*, *supra* note 1, at 4; The Rendition Project, *Mustafa al-Hawsawi*, *supra* note 1;

⁵⁷ Dep't. of Def., *JTF-GTMO Detainee Assessment*, *supra* note 1, at 1.

⁵⁸ CHR Res. 50/2014, UN Doc. A/HRC/WGAD/2014/USA/50/14 (21.01.2015) 2, <http://www.icj.org/wp-content/uploads/2015/03/WGAD-al-hawsawi-Op2014-50.pdf>.

⁵⁹ CHR Res. 50/2014, *supra* note 58, at 2.

⁶⁰ *Id.*

⁶¹ Dr. Bogumil Zygmunt, Esq., *supra* note 9; CHR Res. 50/2014, *supra* note 58, at 2-3; Sgt. Sara Moore, *Defense Dep't. Seeks Death Penalty for Six Guantanamo Bay Detainees*, American Forces Press Service (Feb. 11, 2008), <http://archive.defense.gov/news/newsarticle.aspx?id=48930>

⁶² CHR Res. 50/2014, *supra* note 58, at 2.

Sheikh Muhammad and charged with criminal offenses.⁶³ On January 21, 2010 the charges were dropped.⁶⁴ He nonetheless continued to remain in detention, without criminal charges, until May 5, 2011, when the charges were reinstated.⁶⁵

28. Throughout his entire detainment, Al-Hawsawi has been prohibited from practicing his Islamic faith or from having any contact with his family. He has been prohibited from communicating with his defense attorneys in any manner other than physical visitations or regular mail.⁶⁶ Since his capture in 2003, the Saudi Arabian government has attempted to meet with him on numerous occasions.⁶⁷ However, in 2014, a military judge ruled that Al-Hawsawi was not entitled to meet with Saudi Arabian consular officials.⁶⁸
29. Al-Hawsawi has also continued to suffer medical complications including chronic and debilitating headaches, chronic hemorrhoids, rectal prolapse and degenerate disk disease, as a result of rectal feeding at the Cobalt detention site.⁶⁹ In June 26, 2016, he weighed only 104 pounds, 44 pounds lighter than his weight in 2003.⁷⁰ In addition, in July 2004, he tested

⁶³ *Top 9/11 suspects to plead guilty*, BBC News (19:55 GMT, Dec. 8, 2008), <http://news.bbc.co.uk/2/hi/americas/7770856.stm>; BBC News, *supra* note 63; Dr. Bogumil Zygmunt, Esq, *supra* note 9.

⁶⁴ CHR Res. 50/2014, *supra* note 58, at 3.

⁶⁵ *9/11 Defendants Charged at Guantánamo With Terrorism and Murder*, Associated Press (May 31, 2001), <http://www.nytimes.com/2011/06/01/us/01gitmo.html>; Andrei Scheinkman, Alan McLean, Jeremy Ashkenas, Archie Tse and Jacob Harris, *The Guantanamo Docket*, N.Y. Times (last visited Jun. 6, 2017), <https://www.nytimes.com/interactive/projects/guantanamo/detainees/10011-mustafa-ahmed-al-hawsawi/documents/11>; Karen Parrishm, *Lawyers, Onlookers Prepare for Guantanamo Arraignment*, Dep. of Def. (May 4, 2012), <http://archive.defense.gov/news/newsarticle.aspx?id=116214>; Dep't. of Def., *JTF-GTMO Detainee Assessment*, *supra* note 1, at 1; Open Soc'y. Found., *supra* note 1, at 42; CHR Res. 50/2014, *supra* note 58, at 3.

⁶⁶ CHR Res. 31/2012, UN Doc. UA G/SO 218/2 G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24) 3, [https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_30.11.12_\(31.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_30.11.12_(31.2012).pdf), at 3; CHR Res. 50/2014, *supra* note 58.

⁶⁷ *Request for Joint Urgent Appeal on Behalf of Mr. Mustafa al-Hawsawi*, Office of the U.N.s High Comm'r. for Hum. Rts., 8 (Jun. 26, 2016), https://www.ushrnetwork.org/sites/ushrnetwork.org/files/mustafa_al-hawsawi_2016_uncat_loipr_submission.pdf.

⁶⁸ Office of the U.N.s High Comm'r. for Hum. Rts., *supra* note 67, at 8.

⁶⁹ Carol Rosenberg, '*Sodomized*' *Guantánamo captive to undergo rectal surgery*, Miami Herald, (10:11 A.M. Oct. 11, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article107451907.html>.

⁷⁰ "The medically recommended weight for a man of his stature and age is approximately 66kg (145lbs)." Office of the U.N.s High Comm'r. for Hum. Rts., *supra* note 68, at 3.

positive for blood in his urine, and in September 2006 for Hepatitis C.⁷¹ His attorney, Walter Ruiz describes what happened to Al-Hawsawi as “sodomy,” and that such horrifying practices have resulted in a medical infirmity requiring Al-Hawsawi, “. . . to reinsert parts of his anus back into his anal cavity,” whenever he has a bowel movement, which “causes him to bleed, causes him excruciating pain.”⁷²

30. Despite the gravity of his medical condition, detention officials have continued to neglect providing Al-Hawsawi with necessary medical treatment, providing care that is “not adequate, instead the medical care offered is sporadic, with lack of continuity, lack of equipment and it is inadequate to treat his myriad conditions.”⁷³ Moreover, his counsel has been denied any access to his medical records.⁷⁴ A military judge has also refused to grant Al-Hawsawi such relief.⁷⁵ As recent as October 14, 2016, Al-Hawsawi was admitted into the Guantanamo Navy Base Hospital to undergo surgery to correct the rectal prolapse causing him to bleed continuously from his anus for over a decade.⁷⁶
31. As of June 6, 2017, Al-Hawsawi continues to remain in detention of the Guantanamo Bay detention camps for over 10 years and nine months.⁷⁷

VIII. Violations of Law

⁷¹ Mr. Walter B. Ruiz, Esq., Lt. Col. Sean M. Gleason, USMC, LTC Jennifer N. Williams, JAG, U.S. Army, *The U.S. Gov’t. Denies Adequate Medical Care and Rehabilitation for Torture Victims Held in Continuing Confinement at Guantanamo Bay Prisons*, Universal Periodic Rev. 22nd Sess. – United States of America (May 11, 2015), <http://www.redress.org/downloads/usa-upr-torture-rehabilitation-hawsawi-brief.pdf>.

⁷² Carol Rosenberg, *supra* note 69.

⁷³ *Matter of Mustafa Adam Al-Hawsawi regarding the United States of America, Precautionary Measure No. 422-14*, Inter-American Comm. on Hum. Rts. Res. 24/2015 (Jul. 7, 2015), <http://www.redress.org/downloads/resolution-24-2015---precautionary-measures-al-hawsawi.pdf>.

⁷⁴ Inter-American CHR Res. 24/2015, *supra* note 73.

⁷⁵ *Id.*

⁷⁶ Carol Rosenberg, *supra* note 69.

⁷⁷ *Id.*

“[The] Extraordinary Rendition is an illegal practice under both domestic and international law, and that, consistent with U.S. policy against torture, the U.S. government is duty bound to cease all acts of Extraordinary Rendition, to investigate Extraordinary Renditions that have already taken place, and to prosecute and punish those found to have engaged in acts that amount to crimes in connection with Extraordinary Rendition.”⁷⁸

A. International Law

32. The European Parliament, the Council of Europe, the ICRC, the CIA’s own 2004 Inspector General’s report, the UN Joint Study on Secret Detention, and the March 2013 report to the UN Human Rights Council of UN Special Rapporteur Ben Emmerson QC, have all concluded that the C.I.A.’s Extraordinary Rendition program resulted in serious human rights violations.⁷⁹

33. In the case of Al-Hawsawi, his treatment at the different CIA secret detention sites was in violation of the following international regulations Universal Declaration of Human Rights (UDHR). The provisions in violation include:

- a. Article 3 which guarantees the “right to life, liberty and security of person.”⁸⁰
- b. Article 5 which guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁸¹
- c. Article 8 which guarantees “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁸²

⁷⁸ *Torture by Proxy: Int’l. and Domestic Law Applicable to “Extraordinary Renditions”*, The Comm. on Int’l. Hum. Rts. of the Ass’n. of the Bar of the City of N.Y. & The Center for Hum. Rts. and Glob. Justice, N.Y.U. Sch. of Law, 5-6 (Jun. 2006), [https://www.therenditionproject.org.uk/pdf/PDF%2039%20\[CHRGJ-2006-06-REP%20Torture%20by%20Proxy\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2039%20[CHRGJ-2006-06-REP%20Torture%20by%20Proxy].pdf)

⁷⁹ CHR Res. 3/2010, UN Doc. A/HRC/22/52, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf; CHR Res. 3/2010, *supra* note 4; *Request for an investigation concerning suspicion of crim. offences committed in Lithuania against Mr Mustafa al-Hawsawi*, REDRESS, 2 (Sep. 13, 2013), <http://www.redress.org/downloads/casework/final-lithuania---investigation-request.pdf>.

⁸⁰ Universal Declaration of Hum. Rts. (hereinafter UDHR), art. 3, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

⁸¹ *Id* at art 5.

⁸² *Id* at art. 8.

34. Al-Hawsawi's treatment was also in violation the following provisions within the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, ("Human Trafficking Protocol"), including:

- a. Article 3(a) which defines "trafficking in persons" as "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs."⁸³
- b. Article 6(2) providing that "Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence."⁸⁴
- c. Article 6(3) providing that, "Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities."⁸⁵
- d. Article 6(6) providing that "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."⁸⁶

35. Al-Hawsawi's treatment at CIA secret detention sites also violated provisions within the International Covenant on Civil and Political Rights (ICCPR), including:

⁸³ U.N.T.S. vol. 2237, Doc. A/55/383, p. 319, <https://www.osce.org/odihr/19223?download=true>.

⁸⁴ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3.

⁸⁵ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 3-4.

⁸⁶ U.N.T.S. vol. 2237, Doc. A/55/383, *supra* note 25, at 4.

- a. Article 7 which guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁸⁷ In addition, the Human Rights Committee, the overseeing and interpretive body of the ICCPR, has stated that “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁸⁸ Thus, the extradition, by the US, of an individual to an area where it is known that they will be tortured by other parties is virtually no different than if the US tortured the individual itself.
- b. Article 14(3)(b) which guarantees that an accused must “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”⁸⁹ Specifically, under General Comment No. 32, the Human Rights Committee indicated that: “Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”⁹⁰

36. Al-Hawsawi’s treatment was also in violation of various provisions within the Convention against Torture (CAT), defining torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁹¹

The provisions in violation include:

- i. Article 2(1) which states, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”⁹²

⁸⁷ Int’l. Covenant on Civil and Political Rts. (hereinafter ICCPR), art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171.

⁸⁸ See Office of the U.N.s High Comm’r. for Hum. Rts., Hum. Rts. Comm. (May 28, 2017); Gen. Comment No. 20, ¶ 9, U.N. Doc. A/47/40, U.N. Hum. Rts. Comm., (1992).

⁸⁹ ICCPR, *supra* note 74, at 171.

⁹⁰ ICCPR, *supra* note 74, at 171.

⁹¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter CAT), art. 1(1), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85.

⁹² *Id* at art. 2(1).

- ii. Article 3(1) which states, “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁹³
- iii. Article 12 which states, “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”⁹⁴

37. Al-Hawsawi’s treatment was also in violation of various other international regulations,

including:

- a. Principle 8 of the Prevention of Crime and the Treatment of Offenders requiring that: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”⁹⁵ In addition, the Special Rapporteur on the Promotion and Protection of Human rights and Fundamental Freedoms while Countering Terrorism has stressed that “the decision to prosecute someone for a terrorist crime should never on its own have the consequence of excluding or limiting confidential communication with counsel.”⁹⁶

38. In addition, in a document titled ““Legal Authority and Policy for Enteral Feeding at JTF-GTMO”, an attorney from the Department of Defense admitted that “international law and certain medical ethical standards holds that the ‘forced feeding’ of a mentally competent person capable of making an informed decision is never acceptable.”⁹⁷

39. The treaties outlined above are all binding at all levels, including federal, the state, of North Carolina and its political subdivisions. The “Supremacy Clause,” the second clause of the U.S. Constitution, states that “all Treaties made, or which shall be made, under the Authority

⁹³ *Id* at art. 3(1).

⁹⁴ *Id* at art. 12.

⁹⁵ See Rep. on the Eighth U.N.s Congress on the Prevention of Crime and Treatment of Offendors, 197, U.N. Doc. A/ CONF.144/28/Rev. 1 (1991); CHR Res. 31/2012, UN Doc. UA G/SO 218/2 G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24), [https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_30.11.12_\(31.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_30.11.12_(31.2012).pdf).

⁹⁶CHR Res. 31/2012, *supra* note 82, at 3.

⁹⁷ Jason Leopold, “*The Mil. Admitted Force-Feeding Gitmo Detainees Violates Int’l. Law and Medical Ethics*,” *Vice* (Jan. 29, 2015), <https://news.vice.com/article/how-a-military-memo-could-save-the-nurse-who-refused-to-force-feed-guantanamo-detainees>.

of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁹⁸

40. On March 1 2003, Al-Hawsawi was deprived of the guarantees to the “right to life, liberty and security of person” without the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law as provided under Article 3 and 8 of the UDHR, Article 14(3)(b) of the ICCPR, and Principle 8 of the Prevention of Crime and the Treatment of Offenders, when he was arrested and subsequently kept in detainment by a joint operation including the United States. These violations, as will be outlined below, include the process of extraordinary rendition in and of itself, which further facilitated and perpetuated the violations committed against Al-Hawsawi at Afghanistan, Poland, Morocco, Lithuania to the Guantanamo Detention Camps where he currently held.
41. Throughout Al-Hawsawi’s secret detainment at the CIA secret detention sites of Bagram Air Base, Cobalt, Violet, and Brown, and possibly one in Poland, there was no public knowledge of his existence or whereabouts. This made him unavailable to numerous organizations and agencies including the International Committee of the Red Cross, which could provide him assistance. He was prohibited from exercising his religion or having contact with his family, both matters which are intimately weaved into the definition of liberty of a person. This level of secret detention has been alleged to arise to the level of enforced disappearance, violating the right to personal liberty, the prohibition of arbitrary arrest or detention, and the right to a fair trial under Article 3 and 8 of the UDHR.⁹⁹ Pertinently, the Parliamentary Assembly of

⁹⁸ U.S. CONST. art. VI, cl. 2.

⁹⁹ REDRESS, *Request for Investigation*, *supra* note 79, at 2.

the Council of Europe (PACE) adopted a resolution urging the United States to discontinue its operations at Guantanamo Bay, and concluding that the United States had engaged in the unlawful practice of secret detention.¹⁰⁰ Moreover, the Inter-American Commission on Human Rights found that Al-Hawsawi faced a serious and urgent situation, with his life and personal integrity at risk under the current conditions he is being held under in detention.¹⁰¹ The Inter-American Commission requested that the United States adopt the necessary measures to protect the life and personal liberty of Al-Hawsawi.

42. PACE's Committee of Ministers also urged the United States to provide either a prompt release or fair trial of the detainees held at Guantanamo Bay by an independent and impartial court, so to ensure "that the rights of all detainees are ensured and that the principle of the rule of law is fully respected."¹⁰² PACE's findings were reinforced on November 30, 2012, when the U.N. Working Group on Arbitrary Detention concluded that Al-Hawsawi's detention was arbitrary, and in violation of the United States' obligations under various international regulations.¹⁰³ The group concluded that after, "taking into account all the circumstances of the case," the adequate remedy for Al-Hawsawi was to be released and accorded "an enforceable right to compensation."¹⁰⁴

43. However, the United States has failed and on occasion directly refused to make such reparations. It has been alleged that the current U.S. Military Commission system, detainees' primary avenue for redress, would be an insufficient measure for Al-Hawsawi, based on the

¹⁰⁰ *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states, Draft rep. – Part II (explanatory memorandum)*, Comm. on Legal Affairs and Hum. Rts., Parliamentary Assemb. of the Council of Europe, 4 (Jun. 7, 2006), http://assembly.coe.int/committeedocs/2006/20060606_ejdoc162006partii-final.pdf (citing PACE Resol. (1433/2005) and Recommendation (1699/2005)).

¹⁰¹ CHR Res. 24/201, *supra* note 73.

¹⁰² REDRESS, *Request for Investigation*, *supra* note 79, at 2.

¹⁰³ CHR Res. 50/2014, *supra* note 58; Amnesty Int'l., *U.S. Crimes and Impunity*, *supra* note 52, at 34.

¹⁰⁴ *Id.*

fact that the system does not meet international fair standards as established under Article 8 of the UDHR, Article 14(3)(b) of the ICCPR, Principle 8 of the Prevention of Crime and the Treatment of Offenders, and Article 6(2), 6(3) and 6(6) of the Human Trafficking Protocol.¹⁰⁵

44. To begin with, The U.N. Working Group on Arbitrary Detention highlighted that the tribunal did not grant detainees “an enforceable right to compensation” by “determining the legality of any detainee’s law of war detention,” instead the Military tribunal only endeavors “to make discretionary determinations whether or not a detainee represents a continuing threat to the security of the U.S.”¹⁰⁶ It also refuses to exercise jurisdiction in granting medical relief to Al-Hawsawi. Not only does this sort of limited review deprive Al-Hawsawi of an avenue for redress and reparation, it also perpetuates his indefinite detention, violating his “right to life, liberty and security of person” without the right to an effective remedy by the competent national tribunals, as discussed earlier.

45. In addition, the UN Working Group on Arbitrary Detention highlighted that the limitations on disclosure of classified national security information during Combatant Status Review Tribunal hearings greatly impedes on Al-Hawsawi’s right to adequate counsel by drastically limiting his defense attorney’s ability to represent him, making it “almost impossible to locate and interview [] possible witnesses . . . [or] ask other witnesses about information as they will not have been cleared to view classified information.”¹⁰⁷ Moreover, for Al-Hawsawi to have the opportunity to declassify any classified information, his attorney-client privileges must in effect be violated upon each request. This is due to the fact that any

¹⁰⁵ *Lithuanian Court’s ruling on CIA rendition case, a breakthrough for justice*, Amnesty Int’l. (12:00 A.M. U.T.C. Jan. 29, 2014), <https://www.amnesty.org/en/latest/news/2014/01/lithuania-court-decision-cia-detention/>

¹⁰⁶ CHR Res. 31/2012, *supra* note 82, at 5.

¹⁰⁷ CHR Res. 31/2012, *supra* note 82, at 2.

classified information must be presented by his attorney to the judge and the government before he may testify to it in the courtroom.¹⁰⁸ This kind of blanket disclosure requirement is in stark contrast to the directives provided under the Special Rapporteur on the Promotion and Protection of Human rights and Fundamental Freedoms while Countering Terrorism.¹⁰⁹

46. In addition, Al-Hawsawi's detention has violated his right to access to adequate counsel as provided under Article 14(3)(b) of the ICCPR, and Principle 8 of the Prevention of Crime and the Treatment of Offenders as well. During Al-Hawsawi's secret detention, defense counsel was completely inaccessible to him due to his inability to access the outside world, and the fact that outside counsel had no knowledge of his status at such facility.¹¹⁰ Moreover, under his current detention in Guantanamo Bay, detention procedures are impermissibly burdening his right to counsel by extensively restricting how he communicates with his counsel and prohibiting access by counsel to his medical records.

47. Most importantly, Al-Sharqawi was subjected to torture or to cruel, inhuman or degrading treatment or punishment during his arrest and subsequent detainment in patent violation of Article 5 of the UDHR, Article 7 of the ICCPR and CAT. The International Committee of the Red Cross has already concluded that the enforcement of CIA "EITs" is a *de facto* use of torture against a detainee.¹¹¹ In addition, secret detention is said to facilitate the continued use of torture, and in many instances, is also considered a *de facto* use of torture on detainees.¹¹² Detainees held in secret detention, who has been labeled as HVDs were at a greater risk of being subjected to torture and other ill-treatment.¹¹³ The Office of the United Nations High

¹⁰⁸ CHR Res. 31/2012, *supra* note 82, at 2.

¹⁰⁹ CHR Res. 31/2012, *supra* note 82, at 2.

¹¹⁰ CHR Res. 24/201, *supra* note 73.

¹¹¹ ICRC Rep. on the treatment of fourteen "high value detainees" in CIA custody, Int'l. Committee of the Red Cross, at 8-9 (Feb. 14, 2007), <https://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>.

¹¹² REDRESS, *Request for Investigation*, *supra* note supra note 79, at 2.

¹¹³ REDRESS, *Request for Investigation*, *supra* note 79, at 2.

Commissioner for Human Rights found in June 26, 2016 that the U.S. government knowingly placed Al-Hawsawi's "life in imminent jeopardy and irreparable harm by withholding needed medical treatment, while it maintains total effective confinement and control over him at Guantanamo Bay."¹¹⁴

48. Al-Hawsawi faced numerous accounts of torture in violation of international regulations. On April 6, 2003, when a senior CIA interrogator, and second interrogator subjected Al-Hawsawi to 14 non-stop hours of "EITs" of water dousing, walling, attention grasps, facial holds, cramped confinement, and psychological pressures. He was subjected to numerous medically unnecessary rectal feeding procedures, which have led to the majority of his health complications today. He was also very likely subjected to "EITs" of sleep deprivation of over 48 hours. On top of that, Al-Hawsawi faced additional torture when officials at the Violet Detention Site in Lithuania, and Guantanamo Bay failed to provide him the necessary medical care to treat his severe injuries and chronic conditions.¹¹⁵ Due to such neglect, Al-Hawsawi has continued to suffer from excruciating pain. Such a denial of necessary medical services amount to a continued extension of the original torture imposed on him.¹¹⁶ Overall, these acts are sufficient to constitute acts of torture as provided under the UDHR and CAT.
49. In permitting the CIA and independent contractors, such as Aero Contractors to perform its extraordinary rendition program, with the breadth of discretion they held, the United States, the state of North Carolina and its political subdivisions, failed to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction in violation of Article 2(1) of CAT. The transportation of detainees

¹¹⁴ Office of the U.N.s High Comm'r. for Hum. Rts., *supra* note 70.

¹¹⁵ Universal Periodic Review 22nd Session, *supra* note 71.

¹¹⁶ Universal Periodic Review 22nd Session, *supra* note 71.

internationally, and the detainees held at the CIA owned Dark Prison and Bagram Air Base are all operations performed within the jurisdiction of the United States. Based on this affiliation, the United States also knowingly exposed Al-Hawsawi to the danger of torture, cruel, inhuman or degrading treatment, or punishment of foreign nations through its permission and directives in performing the numerous renditions from Pakistan to the Cobalt, to Guantanamo Bay, to Rabat, Morocco, to Violet, to Brown, and to his final destination in Guantanamo. These operations are all in stark violation of Article 7 of the ICCPR, and Article 3(1) of CAT. At all of these locations, Al-Hawsawi was transported under aircrafts known to be owned by the CIA and operated by various independent contractors including Aero Contractors. The facilities to which he was transferred to were known to be torture facilities.

50. The U.S. government maintained an established system throughout Al-Hawsawi's detainment in which it paid the CIA, its independent contractors, and complicit governments for the purpose of continuing his transfer and harboring in each CIA secret detention site from the period of 2003 to 2006. This was done against his will, under the threat of force, in order to obtain any potential information from him. Such form of systematic processing of a person satisfies the definition of "trafficking in persons," violating of Article 3(a) of the Human Trafficking Protocol. In fact, the 2014 Senate Select Committee on Intelligence Executive Summary concluded that through this system of payment, the United States had financially incentivized independent contractors and complicit governments to perform such trafficking.¹¹⁷

¹¹⁷ USCCI Exec. Summ., *supra* note 4, at 139-40, footnote 843.

51. Finally, upon discovery of its lack of oversight procedure, and exposure of Al-Hawsawi to torture at the CIA detention sites, the United States failed to provide a prompt and impartial investigation when reasonable ground arose that Al-Hawsawi had been subjected to CIA “EITs,” violating of Article 5 of the UDHR, Article 7 of the ICCPR and CAT. Al-Hawsawi diligently reported the employment of the “EITs” during his session shortly after their occurrence on April 6, 2003, an accounting shortly thereafter disclosed to the OIG by the debriefing interrogator. However, even after the OIG received a second notice of the incident by the Counterterrorist Legal Group several months later, the OIG did not notify the U.S. Attorney’s office until July 13, 2004, and did not make his findings until December 6, 2006, over three years after the incident occurred.

52. In addition, substantial evidence raises concern over the OIG’s impartiality during his investigation of Al-Hawsawi’s torture of the Cobalt Detention site. Particularly, although numerous sources corroborated the use of the waterboard during the alleged session, the OIG found that such instrument had never been employed. When a CIA photograph was discovered, identifying a waterboard with buckets of water located within the Cobalt Detention Site, the CIA could provide no explanation. In addition, although the CIA alleged that the waterboard had only ever been employed on three individuals, numerous other detainees recounted being subjected to such practices.

B. United States Federal Law

53. In addition to the U.S. Constitution, Eighth Amendment prohibits cruel and unusual punishment, Al-Hawsawi’s treatment was in violation of numerous federal law, including:

- a. Torture Victims Protection Act of 1991, which states: “An individual who, under actual or apparent authority, or color of law, of any foreign nation— subjects an

individual to torture shall, in a civil action, be liable for damages to that individual.”¹¹⁸

- b. 18 U.S. Code §2340A which states “Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years.”¹¹⁹ Torture under this statute is defined as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control”.
- c. War Crimes Act of 1996, prohibiting acts of torture, defined as, “An act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.”¹²⁰

54. The acts performed against Al-Hawsawi of which are sufficient to constitute acts of torture under the definitions provided under Article 5 of the UDHR, Article 7 of the ICCPR and CAT, are also sufficient to constitute acts of torture as defined under Torture Victims Protection Act of 1991, 18 U.S. Code §2340A, and War Crimes Act of 1996. Therefore, the United States as well as Aero Contractors are liable to Al-Hawsawi for the acts of torture committed against him during his detainment beginning on March 1, 2003. In addition, the guards who performed such acts of torture can be held criminally liable for the actions under 18 U.S. Code §2340A.

C. North Carolina State Law

55. The Rendition process, and detention of Al-Hawsawi was in violation the North Carolina Constitution, which states ““No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”¹²¹

¹¹⁸ Torture Victim Protection Act of 1991 1992 Enacted H.R. 2092, 102 Enacted H.R. 2092, 106 Stat. 73.

¹¹⁹ 18 U.S. Code § 2340A.

¹²⁰ 18 U.S. Code § 2441.

¹²¹ N.C. Const. art. 1, §19.

56. This process was also violation of North Carolina General Statute §14-39 regarding Kidnapping and Abduction, which states: “Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, . . . shall be guilty of kidnapping.”¹²² This statute extends liability to private companies in violation as well and includes conspiracy to commit such acts.

57. Similar to the reasoning provided under part A and B, the acts performed upon Al-Hawsawi, constituting acts of torture under International and Federal law, are sufficient to constitute acts of kidnapping act provided under of North Carolina General Statute §14-39, and the deprivation of the Due Process right guaranteed under the North Carolina Constitution.

X. Conclusion

58. Al-Hawsawi was illegally kidnapped and extraordinarily rendered via a process outside of the law and without any legal protections to a country with the full knowledge and intent that he would be tortured there. He endured a terrifying kidnapping, detention and torture, all of which was in patent violation of international, federal, and North Carolina state laws. As a result, he has suffered and will continue to suffer severe lifelong distress, and has been irreparably harmed. It is incumbent upon the United States, North Carolina and its political subdivisions, as well as independent contractor Aero Contractors to admit wrongdoing via Congressional action, and take responsibility for the atrocities committed against Al-Hawsawi and the countless other individuals that were harmed through acts of torture and extradition.

¹²² N.C. Gen. Stat. § 14-39.

Appendix



Mustafa al Hawsawi, posing for the International Committee of the Red Cross at Guantánamo, in the summer of 2015 in a photo obtained by the Miami Herald.



Image of the Alleged Boeing 737, tail number N313P, believed to have transported Al-Hawsawi from Cobalt Detention Site in Afghanistan to Guantanamo Bay, Cuba. Obtained from The Rendition Project website.



Image of the Alleged Gulfstream IV Jet, tail number N85VM, believed to have been one of the possible aircrafts that transported Al-Hawsawi from Guantanamo Bay, Cuba to Detention Site Violet in Rabat, Morocco. Obtained from The Rendition Project website.

Khaled Sheikh Mohammed

I. Introduction

1. Khaled Sheikh Mohammed is a Pakistani national currently detained in Guantánamo Bay.¹ He was arrested in Pakistan in March 2003.² After his capture, he was transferred between CIA black sites in Afghanistan, Poland, Romania, and Lithuania.³ Considered a “high value detainee,” Mohammed was repeatedly subjected to extreme torture during the three and a half years he spent in secret CIA detention,⁴ including beatings and “wallings”, stress positions, sleep deprivation, medically unnecessary “rectal rehydration” and at least 183 separate uses of the waterboard.⁵ The use of these abusive “enhanced interrogation techniques” was ineffective in producing valuable intelligence.⁶

II. Background

2. According to a document from the Department of Defense, Khaled Sheikh Mohammed was born in Baluchistan, Pakistan.⁷ Other sources record that he was born in Kuwait,⁸ where he was raised.⁹ The Department of Defense reports that he attended a high school operated by the Kuwaiti government.¹⁰

¹ RENDITION PROJECT, *Khalid Sheikh Mohammed*, par. 1, <https://www.therenditionproject.org.uk/prisoners/khaled-sheikh-mohammed.html>

² OPEN SOCIETY JUSTICE INITIATIVE, *Globalizing Torture: CIA Detention and Extraordinary Rendition* 49 (2013).

³ RENDITION PROJECT, *supra* note 1.

⁴ *Id.* at par. 1.

⁵ SENATE SELECT COMMITTEE ON INTELLIGENCE, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* 84-85 (2014) (hereinafter SSCI Report).

⁶ *Id.* at 85. See Dexter Filkins, *Khaled Sheikh Mohammed and the C.I.A.*, Dec. 31, 2014 (describing “walling” as the practice of slamming a person repeatedly against a wall), <http://www.newyorker.com/news/news-desk/khalid-sheikh-mohammed-cia>

⁷ DEPARTMENT OF DEFENSE, *Combatant Status Review Tribunal Input and Recommendation for Continued Detention Under DoD Control (CD) for Guantanamo Detainee, ISN: US9KU-010024DP (S)*

2 (2006) (hereinafter DOD Report), [https://www.therenditionproject.org.uk/pdf/PDF%20436%20\[JTF-GTMO%20Detainee%20Assessment,%20Khalid%20Sheikh%20Mohamed%20\(8%20Dec%202006\)\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20436%20[JTF-GTMO%20Detainee%20Assessment,%20Khalid%20Sheikh%20Mohamed%20(8%20Dec%202006)].pdf)

⁸ <http://www.bbc.com/news/world-12964158>

⁹ *Id.*

¹⁰ *Id.*

3. He is believed to be fluent in Arabic, English, Urdu, and Baluchi.¹¹
4. Mohammed attended college in the United States. He originally studied at Chowan College in Murfreesboro, North Carolina, and later transferred to North Carolina Agricultural and Technical State University.¹² He graduated with a degree in mechanical engineering.¹³

III. Capture

A. Capture in Pakistan

5. Mohammed was seized in a joint raid by Pakistani Inter-Services Intelligence Directorate and the CIA in Rawalpindi, Pakistan on March 1st, 2003. He was immediately transferred into U.S. Custody.¹⁴

B. CIA Misrepresentations Regarding Mohammed's Capture

6. The CIA falsely claimed that Mohammed's capture was the result of enhanced interrogation techniques used on other detainees. On September 6th, 2006, President George Bush delivered a speech based on information reported by the CIA in which he stated,

[Abu] Zubaydah¹⁵ was questioned using these procedures [the CIA's enhanced interrogation techniques], and soon he began to provide information on key al-Qa'ida operatives, including information that helped us find and capture more of those responsible for the attacks on September the 11th. For example, Zubaydah identified one of KSM's [Khaled Sheikh Mohammed's] accomplices in the 9/11 attacks, a terrorist named Ramzi bin al-Shibh.¹⁶ And together these two terrorists provided information that helped in the planning and execution of the operation that captured Khalid Sheikh Mohammed.¹⁷

¹¹ BBC NEWS, *Profile: Khalid Sheikh Mohammed* (May 5, 2012), <http://www.bbc.com/news/world-12964158>

¹² DOD Report, *supra* note 7.

¹³ Susan Candiotti, *et al.*, *Suspected 9/11 Mastermind Graduated from U.S. University*, CNN (December 19, 2002), <http://edition.cnn.com/2002/US/South/12/19/al.qaeda.aggie/>

¹⁴ *Khaled Sheikh Mohammed*, *Supra* note 1, at par. 2.

¹⁵ Abu Zubaydah, the first CIA detainee subjected to enhanced interrogation techniques, is also profiled in this briefing book.

¹⁶ Ramzi bin al-Shibh is also profiled in this briefing book.

¹⁷ SSCI Report, *supra* note 5, at 326.

7. CIA records bely this claim. They demonstrate that Mohammed’s capture was the result of a “unilateral CIA asset (‘ASSET X’),”¹⁸ not intelligence extracted from Abu Zubaydah, Ramzi bin al-Shibh, or indeed any other CIA detainee through enhanced interrogation methods.¹⁹ The CIA’s false assertions about the role enhanced interrogation techniques played in Mohammed’s capture foreshadowed the agency’s later misrepresentation of the techniques’ efficacy on Mohammed.

IV. Detention

A. Detention and Torture in Pakistan

8. After being transferred into US custody, Mohammed was detained in Rawalpindi, Pakistan, for 2-3 days. While there, Mohammed was brutally interrogated by a CIA agent, who threw him on the floor, punched him repeatedly in the stomach, chest, and face, and stepped on his face. He was also deprived of sleep.²⁰

B. Rendition from Pakistan to Afghanistan

9. After being held in Pakistan, Mohammed was transferred to a black site in Afghanistan with the code name DETENTION SITE COBALT.²¹ Mohammed described the journey as follows:

During the transfer from Pakistan to Afghanistan my eyes were covered with a cloth tied around my head and with a cloth bag pulled over it. A suppository was inserted into my rectum. I was not told what the suppository was for. I was dressed in a shalwar kameez, shackled hands and feet and put sitting in a vehicle for the journey to the airport. I was then put in sitting position on a plane. The transfer was OK, with no particular problems to report. The flight was short, only about 1 hour. I arrived at night. The transfer from the plane to the place of detention took

¹⁸ *Id.* at 327.

¹⁹ *Id.* at 327.

²⁰ *Khaled Sheikh Mohammed, supra* note 1, at par. 2.

²¹ *Id.* at par. 3.

about 15-20 minutes. During my time in this place of detention I could hear planes taking off and landing. I think the place was Bagram.²²

C. Detention and Torture in Afghanistan

10. Mohammed was detained for three days in Afghanistan, during which time he was subjected to brutal interrogation and torture.²³

11. CIA operatives planned to use enhanced interrogation techniques on Mohammed even before he arrived at the site. Less than two hours after Mohammed's capture, COBALT's chief of interrogations sent an email to CIA Headquarters requesting permission to "press [Mohammed] for threat info right away."²⁴ CIA Headquarters authorized the use of enhanced interrogation techniques on Mohammed the same day.²⁵ They did not require interrogators to use non-coercive techniques first.²⁶

12. Having already been authorized at the time of his arrival, Mohammed's abuse began immediately. He recalled,

After arrival my clothes were cut off of me, the bag and blindfold were removed and photographs were taken of me naked. I remained naked throughout the three days I stayed in this place of detention. I was checked by a doctor and asked about my medical history. I told the doctor about the pain I was still suffering from the beating in Pakistan. I was then placed in a cell, about 2m x 4m, naked, where I was kept in a standing position with my hands cuffed and chained to a bar above my head.²⁷

13. Mohammed was subjected to enhanced interrogation techniques just a "few minutes" into his interrogation. In addition to the humiliation he suffered as a result of having to stand nude he

²² INTERNATIONAL COMMITTEE OF THE RED CROSS, *ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody* [hereinafter ICRC Report] 33 (2007), [https://www.therenditionproject.org.uk/pdf/PDF%20101%20\[ICRC,%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20101%20[ICRC,%20Feb%202007.%20Report%20on%20Treatment%20of%2014%20HVD%20in%20CIA%20Custody].pdf)

²³ *Id.* at 34.

²⁴ SSCI Report, *supra* note 5, at 81.

²⁵ *Id.*

²⁶ *Id.* at 82.

²⁷ ICRC Report, *supra* note 22, at 33-34.

described in his testimony above, Mohammed suffered “facial and abdominal slaps, the facial grab, stress positions, standing sleep deprivation...and water dousing.”²⁸ The chief of interrogations also ordered a rectal rehydration for Mohammed as a tactic of demonstrating “total control” over him.²⁹ Mohammed described the experience as follows:

On one occasion during the interrogation I was offered water to drink, when I refused I was...taken to another room where I was made to lie [on] the floor with three persons holding me down. A tube was inserted into my anus and water poured inside. Afterwards I wanted to go to the toilet as I had a feeling as if I had diarrhea. No toilet access was provided until four hours later when I was given a bucket to use.³⁰

14. During his interrogations in Afghanistan, Mohammed fabricated information that the CIA acted on to capture and wrongfully detain two innocent individuals.³¹

D. Rendition from Afghanistan to Poland

15. After three days in Afghanistan, Mohammed was rendered to a black site in Poland. He recounted,

...I was dressed in a tracksuit. My eyes were covered with a cloth tied around my head. A cloth bag was then pulled over my head. Headphones were placed over my ears—playing music, but not too loud. I was transported about ten minutes by vehicle and then placed in a plane sitting, leaning back, with my hands and ankles shackled in a high chair. I fell asleep. The first proper sleep in over five days...On arrival the transfer from the airport to the next place of detention took about one hour. I was transported sitting on the floor of a vehicle. I could see at one point that there was snow on the ground. Everybody was wearing black, with masks and army boots, like Planet-X people.³²

16. The plane Mohammed described was a Gulfstream V jet with the registration number N379P operated by Aero Contractors headquartered in Johnston County, North Carolina.³³

²⁸ SSCI Report, *supra* note 5, at 82.

²⁹ *Id.*

³⁰ ICRC Report, *supra* note 22, at 34.

³¹ SSCI Report, *supra* note 5, at 83.

³² ICRC Report, *supra* note 22, at 35.

³³ RENDITION PROJECT, *Rendition Circuit: 1-9 March 2003*, <https://www.therenditionproject.org.uk/flights/renditions/N379P-030301.html>

N379P took off from its home base, Johnston County Airport, in the evening on March 1st, 2003, the day of Mohammed's capture. From there, it travelled to Washington Dulles International Airport, to Prague, and then on to Tashkent, Uzbekistan.³⁴ After Uzbekistan, its flight path is unclear. Flight plans filed for the aircraft were "dummies" intended to disguise the true details of its journey.³⁵ However, the Polish Air Navigation Services Agency has documented that N379P flew into Szymany airport from Kabul, where it likely collected Mohammed, at 3:50 PM on March 7th.³⁶ In Szymany, Mohammed was unloaded from N379P and taken to a black site.

E. Detention and Torture in Poland

17. At the Polish site, which was codenamed DETENTION SITE BLUE, Mohammed faced what he described as his "most intense interrogation."³⁷ His interrogators, who told him they would bring him to the "verge of death and back again,"³⁸ utilized a variety of techniques, including "nudity, standing sleep deprivation, the attention grab and insult slap, the facial grab, the abdominal slap, the kneeling stress position,...walling," and extensive use of the waterboard.³⁹ They also threatened his children and "hung a picture of [his] sons in his cell as a way to '[heighten] his imagination concerning where they are, who has them, and what is in store for them.'"⁴⁰

18. Initially, Mohammed was interrogated for approximately eight hours per day. Eventually, his time spent in interrogation was reduced to four hours per day.⁴¹

19. Mohammed detailed his ordeal:

³⁴ *Id.* at par. 4.

³⁵ *Id.* at par. 5-6.

³⁶ *Id.* at par. 6.

³⁷ ICRC, *supra* note 22, at 35.

³⁸ *Id.*

³⁹ SSCI Report, *supra* note 5, at 84-85.

⁴⁰ *Id.* at 85, 91.

⁴¹ ICRC Report, *supra* note 22, at 35.

Apart from when I was taken for interrogation to another room, I was kept for one month in the cell in a standing position with my hands cuffed and shackled above my head and my feet cuffed and shackled to a point in the floor. Of course during this month I fell asleep on some occasions while still being held in this position. This resulted in all my weight being applied to the handcuffs around my wrists resulting in open, bleeding wounds...[During interrogations, i]f I were perceived not to be cooperating I would be put against a wall and punched and slapped in the body, head and face. A thick flexible plastic collar would also be placed around my neck so that it could then be held at the two ends by a guard who would use it to slam me repeatedly against the wall. The beatings were combined with the use of cold water, which was poured over me using a hose-pipe. The beatings and use of cold water occurred on a daily basis during the first month.

...The harshest period of the interrogation was just prior to the end of the first month. The beatings became worse and I had cold water directed at me from a hose-pipe by guards while I was still in my cell. The worst day was when I was beaten for about half an hour by one of the interrogators. My head was banged against the wall so hard that it started to bleed. Cold water was poured over my head. This was then repeated with other interrogators. Finally I was taken for a session of water boarding.⁴²

20. Mohammed was waterboarded at least 183 times.⁴³ During one twenty-five hour period, from March 12th-13th, 2003, Mohammed was subjected to five waterboarding sessions.⁴⁴ CIA records indicate that during one of these sessions, Mohammed's "abdomen was somewhat distended and he expressed water when the abdomen was pressed,"⁴⁵ leading a medical officer to note that "we are basically doing a series of near drownings."⁴⁶ After these sessions, CIA Headquarters began to question the efficacy of the technique; however, Mohammed continued to be waterboarded for another ten days.⁴⁷

21. These further sessions included the use of the waterboard as a punitive tactic. On March 15th, Mohammed was waterboarded for failing to confirm intelligence that later turned out to be

⁴² *Id.* at 35-36.

⁴³ SSCI Report, *supra* note 5, at 85.

⁴⁴ *Id.* at 87.

⁴⁵ *Id.* at 86.

⁴⁶ *Id.*

⁴⁷ *Id.* at 88.

false. During that day's sessions, the interrogators adapted the technique so that they were "now using their hands to maintain a one-inch deep 'pool' of water over [Mohammed's] nose and mouth in an effort to make it impossible for [him] to ingest all the water being poured."⁴⁸ Several other sessions, on March 21st and 22nd, were punishment for denying that al-Qa'ida was involved in efforts to recruit African American Muslims. Mohammed's denials were ultimately found to be truthful.⁴⁹

F. CIA Misrepresentations Regarding Inefficacy of Mohammed's Torture

22. As a result of the torture inflicted on him, Mohammed felt pressure to fabricate information that would please his interrogators. He admitted,

During the harshest period of my interrogation I gave a lot of false information in order to satisfy what I believed the interrogators wished to hear in order to make the ill treatment stop. I later told the interrogators that their methods were stupid and counterproductive. I'm sure the false information I was forced to invent in order to make the ill-treatment stop wasted a lot of their time and led to several false red-alerts being placed in the US.⁵⁰

23. Thus, Mohammed's abusive interrogations were both cruel and ineffective.

24. The CIA, however, repeatedly made erroneous claims to the contrary. They asserted that Mohammed provided "little threat information or actionable intelligence prior to the use of the CIA's enhanced interrogation techniques," that they "overcame [his] resistance through the use of...enhanced interrogation techniques," that the "waterboard interrogation technique was particularly effective in eliciting information," and that the information was "generally accurate" and "consistent."⁵¹ CIA records⁵² and Mohammed's own testimony⁵³ directly contradict all of

⁴⁸ *Id.*

⁴⁹ *Id.* at 91.

⁵⁰ ICRC Report, *supra* note 22, at 37.

⁵¹ SSCI Report, *supra* note 5, at 211.

⁵² See SSCI Report, *supra* note 5, at 211-215.

⁵³ ICRC Report, *supra* note 22, at 37.

these claims. The defense of torture as an interrogation tactic, therefore, rested on serious misrepresentations about its efficacy on Mohammed.⁵⁴

G. Rendition to and Detention in Romania

25. On September 22nd, 2003, after more than six months at the black site in Poland, Mohammed was transferred to a black site codenamed DETENTION SITE BLACK in Romania.⁵⁵ He travelled on a Boeing 737 with the registration number N313P, which was operated by Aero Contractors headquartered in Johnston County, North Carolina.⁵⁶

26. N313P left its home base, Kinston Regional Airport, in the evening on September 20th, 2003. From there, it flew to Washington Dulles International Airport, to Prague, to Tashkent, to Kabul, and then to Szymany, where it picked up Mohammed. It then flew to Bucharest, Romania, where Mohammed was unloaded and taken to his next detention site.⁵⁷

27. Several other “high value detainees” were transferred between detention sites at this time. These included Walid bin Attash, Mustafa al-Hawsawi, Abu Zubaydah, and Ramzi bin al-Shibh.⁵⁸ The movement of detainees between secret prisons was, according to a lawyer who has represented multiple CIA detainees, “a shell game to hide detainees from the courts”⁵⁹ and prevent them from accessing lawyers.⁶⁰

⁵⁴ SSCI Report, *supra* note 5, at 214.

⁵⁵ *Khaled Sheikh Mohammed*, *supra* note 1.

⁵⁶ RENDITION PROJECT, *Rendition Circuit: 20-25 September 2003* par. 1-2, <https://www.therenditionproject.org.uk/flights/renditions/N313P-030920.html>

⁵⁷ *Id.* at par. 3-5.

⁵⁸ *Id.* at par. 1. Narratives about each of these detainees can be found in this briefing book.

⁵⁹ Adam Goldman and Matt Apuzzo, *CIA Moved Gitmo Suspects in “Game to Hide Detainees from the Courts,”* ASSOCIATED PRESS par. 4 (August 6, 2010), http://www.nbcnews.com/id/38588813/ns/us_news-security/t/cia-moved-gitmo-suspects-game-hide-detainees-courts/#.WTgBiBPYuCR

⁶⁰ *Id.* at par.1.

28. Very little is known about Mohammed's treatment in Romania, where he was detained for more than two years.⁶¹ Documentation does not reveal whether he was subjected to further enhanced interrogation techniques at this site.⁶²

H. Rendition to and Detention in Lithuania

29. Based on analysis of flight records in conjunction with redacted information in the Senate Select Committee on Intelligence's torture report, it appears that Mohammed was transferred to a secret prison in Lithuania codenamed DETENTION SITE VIOLET between October 5th-6th, 2005.⁶³

30. He was likely transported on two separate aircraft involved in the rendition program, N308AB and N787WH. Between October 5th-6th, N308AB flew from Romania to Albania. Shortly after, N787WH flew from Albania to Lithuania. Mohammed thus could have travelled from Romania to Albania, switched planes, and then continued on to Lithuania, where he was detained for over five months.⁶⁴

31. The details of Mohammed's treatment in Lithuania are unknown.⁶⁵

I. Rendition to and Second Detention in Afghanistan

32. In March 2006, Mohammed was rendered to a secret prison with the code name DETENTION SITE BROWN in Afghanistan.⁶⁶

33. As when he was rendered to Lithuania, Mohammed was likely transported on two aircraft identified as being involved in the rendition program, N733MA and N740EH. Between March

⁶¹ *Khaled Sheikh Mohammed, supra* note 1.

⁶² *Id.* at par. 27.

⁶³ *Id.* at par. 29.

⁶⁴ *Id.* at par. 29-30.

⁶⁵ *Id.* at par. 30.

⁶⁶ *Id.*

25th-26th, 2006, N733MA flew from Lithuania to Cairo; afterwards, N740EH flew from Cairo to Afghanistan, where Mohammed was detained for a second time.⁶⁷

34. Mohammed spent more than five months at DETENTION SITE BROWN. The details of his treatment during that time are unknown.⁶⁸

J. Rendition to and Detention in Guantánamo Bay

35. In September 2006, the U.S. government confirmed that Mohammed was one of 14 “high value detainees” transferred from the CIA’s network of secret prisons to Guantánamo Bay.⁶⁹ His transfer occurred on either the 4th or the 5th of September 2006,⁷⁰ after 3.5 years in CIA secret detention.⁷¹ He is still imprisoned there today.⁷²

36. In May 2011, military prosecutors brought capital charges against Mohammed for conspiracy related to the September 11th attacks.⁷³ In a submission to the UN Special Rapporteur on Torture, Mohammed’s lawyers called the trial a “show trial” that “lacks legitimacy to such an extent that were he to be acquitted, the U.S. would not release him, but would hold him indefinitely until he dies of natural causes.”⁷⁴

V. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

⁶⁷ *Id.*

⁶⁸ *Id.* at par. 31.

⁶⁹ *Globalizing Torture*, *supra* note 2, at 50.

⁷⁰ *Id.*, *supra* note 1, at par. 31.

⁷¹ *Khaled Sheikh Mohammed*, *supra* note 1, at par. 31.

⁷² *Globalizing Torture*, *supra* note 2, at 50.

⁷³ *Id.*

⁷⁴ David Nevin, Derek A. Poteet, and Jason D. Wright, *Letter of Allegation Against the U.S. and any Other Undisclosed Potentially-Complicit State Party*, DEPARTMENT OF DEFENSE: OFFICE OF THE CHIEF DEFENSE COUNSEL 2 (2012), [https://www.therenditionproject.org.uk/pdf/PDF%20437%20\[KSM%20UN%20Torture%20petition%2026%20June%202012\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20437%20[KSM%20UN%20Torture%20petition%2026%20June%202012].pdf)

37. Khaled Sheikh Mohammed's treatment by the American government was morally indefensible. It also violates numerous international norms and laws.

38. First, the egregious violence repeatedly inflicted on Mohammed breaches "one of the most universally recognized human rights":⁷⁵ the prohibition on torture. The prohibition on torture is a peremptory norm. It is thus enforceable in any situation, including conflict or emergency, and even against states that have not officially agreed to abide by the prohibition.⁷⁶ Hence, the possibility of uncovering information about a terrorist attack does not justify the use of torture under international law.⁷⁷

39. In addition to its status as a peremptory norm, the prohibition on torture is enshrined in several treaties, listed below, which have been ratified by the United States. The abuse to which Mohammed was subjected breaches all of these.

40. The Universal Declaration of Human Rights (UDHR) states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁷⁸ Eleanor Roosevelt, representing the United States, chaired the UDHR drafting committee.⁷⁹ Thus, in its treatment of Mohammed, the U.S. has flagrantly violated a document it played a crucial role in creating.

⁷⁵ INTERNATIONAL JUSTICE RESOURCE CENTER, *Torture*, <http://www.ijrcenter.org/thematic-research-guides/torture/>.

⁷⁶ *Id.*

⁷⁷ ASS'N PREVENTION TORTURE, *Defusing the Ticking Bomb Scenario: Why we must say No to torture, always* 17 (2007), <https://sakai.unc.edu/access/content/group/704dcc53-2c52-45db-9ced-8fe27c5d5dbc/Jan%2011/TickingBombScenario.pdf>.

⁷⁸ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), at art. 5. [Hereinafter UDHR].

⁷⁹ UNITED NATIONS, *Universal Declaration of Human Rights: History of the Document*, <http://www.un.org/en/sections/universal-declaration/history-document/>

41. Mohammed's treatment also violated the International Covenant on Civil and Political Rights (ICCPR), which the U.S. ratified in 1992.⁸⁰ It explicitly prohibits torture, including during times of public emergency.⁸¹

42. Furthermore, the enhanced interrogation of Mohammed violated the Convention Against Torture (CAT), which the United States has ratified. Like the ICCPR, the CAT specifically states that no state of emergency is sufficient to justify torture.⁸² Mohammed's abuse thus violates the fundamental purpose of the CAT, which is the prohibition of torture.⁸³

43. The CAT additionally dictates that parties must "ensure that education and information regarding the prohibition against torture [are provided to all personnel] involved in a custody interrogation, or treatment of any individual to any form of arrest, detention, or imprisonment."⁸⁴

The United States thus violated the CAT by failing to properly educate and train the personnel who themselves took part in brutal acts forbidden by the CAT.

44. The Convention Against Torture imposes further obligations on states that, once again, the United States did not uphold. The CAT states that the United States must:

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.⁸⁵

⁸⁰ UNITED NATIONS, *Status of Treaties: International Covenant on Civil and Political Rights*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en#top.

⁸¹ International Covenant on Civil and Political Rights, art. 4, 7, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

⁸² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2(2), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, (hereinafter "CAT"). "No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

⁸³ European Convention on the Protection of Human Rights and Fundamental Freedom, Nov. 4, 1950, art. 3, 213 U.N.T.S. 221, 224.

⁸⁴ CAT, *supra* note 29.

⁸⁵ Convention against Torture, *supra* note 72, at art. 2, 114.

45. This provision indicates that the United States must go beyond prohibiting torture within its borders by ascertaining that no U.S. state or territory extradites an individual to a country where they might be in danger of being subjected to torture.⁸⁶

46. Pursuant to the Supremacy Clause of the U.S. Constitution, individual states also have this responsibility. North Carolina is thus legally obliged to ensure that appropriate measures are taken to prevent torture, whether it occurs within or outside of the United States.

47. The administrative measures referred to in the provision above require North Carolina to take action against Aero Contractors. To fulfill their duties under the CAT, the state's political entities and subdivisions must revoke or discontinue Aero's "flying permits, licenses, and leases."⁸⁷ If they do not, given Aero Contractors' crucial contribution to the rendition and torture of individuals like Mohammed, they are violating international law.

B. Federal Law Violations

48. Pursuant to the Supremacy Clause, international treaties ratified by the United States hold the same power as federal statutes. The violations of international law discussed above are thus also violations of federal law.⁸⁸

49. Furthermore, Mohammed's treatment violated a number of other federal laws, including Amendment 8 of the United States Constitution. This amendment prohibits "cruel and unusual punishments,"⁸⁹ of which Mohammed's abuse is an obvious example. The United States government therefore breached its own constitution when it inflicted torture on Mohammed.

⁸⁶ Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 37 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

⁸⁷ *Id.*

⁸⁸ *Id.* at 36.

⁸⁹ U.S. CONST. amend VIII

50. The Federal Torture Statute (FTS), another federal law violated through Mohammed's abuse, dictates that anyone who "commits or attempts to commit torture" outside the United States "shall be fined under this title or imprisoned not more than 20 years, or both."⁹⁰ The fact that no American has been prosecuted for Mohammed's torture is a flagrant breach of the FTS.

51. Additional federal laws provide grounds for prosecuting both the United States and Aero Contractors for their respective roles in Mohammed's rendition and torture. The Alien Tort Statute (ATS) is one of these laws; it provides non-U.S. citizens who have been subjected to egregious human rights violations (including those perpetrated outside the United States) with the capacity to sue government officials and private actors in U.S. courts.⁹¹ In 2010, five former detainees used the ATS to sue the United States and Jeppesen Dataplan,⁹² a company that provided "flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture."⁹³ Thus, there is a precedent for Mohammed to challenge the United States or Aero Contractors for the role each played in his unlawful detention and torture.

52. The Torture Victims Protection Act (TVPA) of 1991 is another mechanism through which Mohammed could challenge the U.S. or Aero. The TVPA was intended to assist in the execution of the United States' obligations to protect human rights under the UN Charter and other documents "by establishing a civil action for recovery of damages from an individual who

⁹⁰ *Id.*

⁹¹ CTR. CONST. RTS. *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

⁹² The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

⁹³ *Id.* at 13526.

engages in torture or extrajudicial killing.”⁹⁴ The TVPA constitutes grounds for Mohammed to demand compensation as redress for the torture to which he was subjected.

C. North Carolina Law Violations

53. In facilitating the CIA’s rendition and torture program, Aero Contractors breached a plethora of state laws. This dynamic places North Carolina in the unique position of being able to hold the perpetrators of extreme violations of international human rights accountable at a state level.

54. For instance, Aero Contractors committed several violations of the North Carolina Constitution. Under Article I, § 19, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”⁹⁵ Other provisions explicitly discuss kidnapping, involuntary servitude, trafficking, and criminal conspiracy. Aero Contractors is guilty of directly abetting or participating in all of these crimes through the use of their planes for the torture and rendition program.⁹⁶ Mohammed’s capture and numerous renditions therefore violate the North Carolina Constitution and constitute grounds for North Carolina to take action against the company.

55. Section 14-39 of the North Carolina General Statutes criminalizes the act of kidnapping and provides details on related crimes.⁹⁷ It prohibits, for example, “serious bodily harm to or terrorizing the person” who has been kidnapped.⁹⁸ The North Carolina legislature has also defined the crime of “first-degree kidnapping,” wherein the abducted individual is not transported to a safe place, or has been “seriously injured or sexually assaulted.”⁹⁹ The

⁹⁴ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmbi., 106 Stat. 73, 73 (1992).

⁹⁵ N.C. CONST. art. 1, § 19.

⁹⁶ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

⁹⁷ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

⁹⁸ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

⁹⁹ N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

extrajudicial capture and detention of Mohammed constitutes kidnapping, and his torture certainly constitutes serious bodily harm, terror, and serious injury. NCGS § 14-39 has therefore been violated.

VI. Conclusion

56. According to state, federal, and international law, the detention, rendition, and torture of Khaled Sheikh Mohammed were illegal. Morally and legally, Mohammed is entitled to redress.

57. Furthermore, the laws outlined above are unequivocal: the entities responsible for Mohammed's maltreatment—including the U.S. government, the North Carolina government and its political subdivisions, and Aero Contractors—must provide that redress. The ICCPR and the CAT identify specific forms that redress might take, such as official acknowledgment, remedial action, and compensation for any damages incurred by victims.¹⁰⁰

58. The choice to specify how redress may be provided was intentional. These remedies are both a deterrent for potential perpetrators of torture and a foundation for victims' healing. The truth telling and documentary function of civil review are especially important in serving these two goals.

59. The failure to provide the redress and recognition that the United States, the state of North Carolina and its political subdivisions, and Aero Contractors legally owe their victims conveys a deeply troubling message: that this nation endorses torture. It indicates, too, that the act can be committed with impunity. Without redress, the United States demonstrates a hypocritical and condemnable disregard for human rights and communicates to anyone who would commit torture that they can do so freely, without fear of punishment. The absence of justice now breeds injustice for years to come.

¹⁰⁰ See ICCPR, *supra* note 70; see also Convention Against Torture, *supra* note 72.

Amantullah Ali

I. Introduction

1. The removal of a national dictator and ruling party that are hostile to one's religion should make traveling through that nation safer and easier. When Saddam Hussein was deposed, Amantullah Ali's travel as a rice merchant should have become easier and safer. As a member of the Shi'a community, Ali should have been safe to travel to holy sites just over the Iraqi border that had long been inaccessible due to persecution of Shi'a by the Sunni majority in Iraq. In fact, Ali was able to travel free from harm at the hands of such oppressors. However, a case of mistaken identity by Iraq's liberators gave Ali a one-way ticket on one of the world's most notorious extraordinary rendition and torture planes, N3013P, the C.I.A.-owned Boeing 737 operated by Aero Contractors, LTD out of Johnston County Airport in Smithfield, North Carolina, to years of detention at one of the C.I.A.'s most brutal black sites.¹

II. The Facts of Amantullah Ali's Capture, Rendition, and Detention

2. In 2004, Amanatullah Ali was seized by British forces and turned over to U.S. military forces in Iraq.² Ten years later, Ali was released from U.S. custody without any charges.³ He suffers not only as a result of this extended period of detention, but also because he was subjected to the torturous and abusive actions taken against him which run contrary to legal norms and moral practices.⁴

¹ *Aircraft Profile: N313P-N4476S*, The Rendition Project, <https://www.therenditionproject.org.uk/flights/aircraft/N313P.html> (last visited Feb. 24, 2017).

² Richard Norton-Taylor, *Men allegedly tortured by UK troops plan to go to court over report*, The Guardian (Mar. 19, 2015, 7:03 AM), <https://www.theguardian.com/world/2015/mar/19/men-allegedly-tortured-by-uk-troops-plan-to-go-to-court-over-report>.

³ Norton-Taylor, *supra* note 2.

⁴ *Id.* (Another man captured with Ali in the raid by British forces, and later held and interrogated at the same camps as Ali, has filed suit successfully based on the crimes committed against him. Ali has since become a part of that suit.)

3. In late 2003 and early 2004, a joint task force, deemed Task Force 121 and consisting of U.S. and U.K. forces, was conducting operations designed to seek out and detain suspects believed to have knowledge of Saddam Hussein's projects involving weapons of mass destruction.⁵ After it was determined there was no such weapons programs under the former Iraqi dictator's government, Task Force 121's assignment was changed to identifying and capturing suspected Al Qaida members.⁶ When Task Force 121 transitioned to its new mission, U.K. intelligence officials began working to identify members of Lashkar-e-Taiba (LET), a Sunni extremist group.⁷

4. While the world's eyes were on large-scale operations as coalition forces fought the Global War on Terror, Ali was just like the millions of other civilians in the region at the time: trying get on with life, ply a trade, and provide for a family. Ali, a rice merchant, had traveled to Iran, a major importer of rice in the region, numerous times beginning in 2002.⁸ Though military action made getting on with some parts of life more tedious, it opened up others. One positive was that the removal of the Hussein dictatorship meant that a number of Shi'a holy sites in Iraq near the route Ali traveled to Iran suddenly became much more accessible to outsiders.⁹

5. In February of 2004 Ali decided to take advantage of the opportunity to visit some of these Shi'a holy sites near Karbala and Najaf as part of his business travels.¹⁰ Unbeknownst to Ali, he and one other man had been incorrectly identified by U.K. intelligence as members of the Sunni LET – despite both of them in fact being Shi'a Muslims, a sect which is actively targeted

⁵ *Yunus Rahmatullah and Amantullah Ali*, The Rendition Project, (hereinafter the Rendition Project) https://www.therenditionproject.org.uk/prisoners/rahmatullah_ali.html (last visited Feb. 25, 2017).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

and persecuted by the Sunni LET.¹¹ As a result of this misidentification, Ali was captured during a Task Force 121 mission called “Operation Aston,” the building Ali was staying in was raided in an effort to arrest and detain foreign fighters.¹²

6. At this point, Ali completely disappeared. Ali never returned home, never arrived where he had planned as part of the next leg of his trip, and was not seen or heard from by any civilians until 2005 when his family received a letter from the International Committee of the Red Cross (ICRC).¹³ Ali was, in intelligence community terms, “disappeared.”

7. Immediately following his detention at the hands of British forces, Ali was transferred to U.S. military custody and taken to Camp Nama, a U.S.- and U.K.-operated secret facility in the Baghdad International Airport.¹⁴ While there is little information about Ali’s treatment during his time in Camp Nama, Human Rights Watch reports detainees there were beaten, exposed to extreme cold, threatened with death, and subjected to a number of other forms of torture and psychological abuse.¹⁵

8. Overall, what is known about operations at Camp Nama is unsettling and points towards Ali having been subjected to the same physical abuses as were other prisoners. Further investigation by Human Rights Watch has revealed testimony from those working at the Camp Nama facility that describes the circumstances Ali’s imprisonment: Prisoners were subjected to electric shocks, extended incommunicado detention, sometimes while under a hood to further the isolation and confusion, as well as prolonged shackling and interrogation in stress positions.¹⁶

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*; Norton-Taylor, *supra* note 2.

¹⁵ *Soldiers’ Accounts*, Human Rights Watch (July 2006), <https://www.hrw.org/reports/2006/us0706/2.htm>. (detainees were “stripped naked” and then “put in the mud and sprayed with the hose, with very cold hoses, in February . . . [Then they were] taken out of the mud and put next to an air conditioner.”)

¹⁶ Rendition Project, *supra* note 5; Human Rights Watch, *supra* note 15.

The extent of the abuses of detainees at Camp Nama and those like it was such that a detainee's death was not an uncommon end result.¹⁷ Due to the extreme nature of the interrogations taking place, and in an effort to keep the facility's operations and detainee list a secret, the ICRC was often barred from entering the facility.¹⁸

9. Within a month of being taken into custody and detained in Camp Nama, Ali was rendered to Afghanistan by the C.I.A.¹⁹ Ali's rendition journey to the Bagram facility in Afghanistan occurred via N3013P, the C.I.A.-owned Boeing 737 operated by Aero Contractors, LTD out of Johnston County Airport in Smithfield, North Carolina.²⁰

10. The transportation portion of the rendition process, which is essentially officially sanctioned kidnapping, functioned as the beginning of the interrogation process for detainees in the United States' custody.²¹ The protocol during the transport process was aimed at forcing a state of learned helplessness upon detainees.²² First, detainees would have their clothing forcibly removed with either knives or scissors.²³ Next, the C.I.A. would take pictures of the now naked detainee and force a suppository into their rectum in order to sedate them for the duration of the transport.²⁴ Finally, a detainee would be put in a diaper, dressed in non-descript clothing, blindfolded, have their head covered with a black hood, and shackled.²⁵ This process was methodical and deviously constructed to infantilize detainees. Such was the power of just this

¹⁷ Human Rights Watch, *supra* note 15. (Detainee Abed Hamed Mowhoush's death at Forward Operating Base Tiger drew such attention that interrogators Chief Warrant Officer Lewis Welshofer Jr. and Spec. Jerry Loper were charged with assault and murder and brought before Army courts-martial for their connection to Mowhoush's death. An Army investigation in connection with the incident revealed that Mowhoush was beaten severely before being placed inside a closed sleeping bag that was then tied in with electrical cord. Tied inside the sleeping bag, he died.)

¹⁸ *Id.*

¹⁹ Rendition Project, *supra* note 5.

²⁰ Aircraft Profile, *supra* note 1.

²¹ James E. Pfander, *Const. Torts & The War on Terror*, 35 (2017).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

initial process that the European Court of Human Rights has concluded it alone to be a form of torture.²⁶

11. Aboard the North Carolina-based aircraft, Ali would have been subjected to this process as he was transported to Bagram Airbase, where he would eventually be able to get a letter to his family through the ICRC.²⁷ Despite finally being able to reach his family while at Bagram, he was unable to communicate many details about his treatment in the facility. However, investigative and legal actions by Reprieve, a U.K.-based legal project focused on securing information about potentially innocent detainees and pursuing legal action in order to secure their release, found the man captured along with Ali, Yunnus Rahmatullah, “is in catastrophic mental and physical shape” as a result of the abuses suffered by detainees in the Bagram facility.²⁸ Ali’s capture and detention was identical to Rahmatullah’s and it is reasonable to assume Ali suffered the same consequences.

12. Bagram itself has been noted as a site which has played host to some of the worst torture atrocities of the Global War on Terror, especially in the early years.²⁹ Regarding a confidential Army investigation following the deaths of two Afghan detainees at the site, Larry Di Rita, the Pentagon’s chief spokesman at the time, stated “that there were people who clearly violated anyone’s standard for humane treatment.”³⁰ In Bagram, “[t]here was the Geneva Conventions for enemy prisoners of war, but nothing for terrorists” – and senior officers dictated that detainees where considered terrorists until it was proven otherwise.³¹

²⁶ *El-Masri v. Macedonia*, Eur. Ct. Hum. Rts., No. 39630/09 (2012).

²⁷ Rendition Project, *supra* note 5.

²⁸ *Id.*

²⁹ Tim Golden, *In U.S. Report, Brutal Details of 2 Afghan Inmates’ Deaths* (May 20, 2005), http://www.nytimes.com/2005/05/20/world/asia/in-us-report-brutal-details-of-2-afghan-inmates-deaths.html?_r=0.

³⁰ *Id.*

³¹ *Id.*

13. The horrific conditions of Bagram are further revealed through the descriptions of the facility by Omar Deghayes, who was a prisoner at Bagram during the same period as Ali. When comparing Bagram to Guantanamo, Deghayes, stated that “Bagram is definitely the worst At Guantanamo, things were bad, but at least there were some kind of rules, [but in] Bagram, they still don’t, and when I was there, there was no respect for anything. The guards got away with whatever they wanted: they could beat you up when they felt like it.”³²

14. In 2009, almost six years after his initial capture, officials in the U.K. admitted that their forces had abducted and handed over to the U.S. two men in February of 2004.³³ At this point, the men were known only as “Prisoner A” and “Prisoner B.”³⁴ However, after investigating the matter further, Reprieve learned that Ali was one of these men.³⁵ Reprieve subsequently filed a lawsuit with U.K. courts in July 2013 detailing the abuses discovered as a result of its investigation.³⁶

15. In November of 2014, a High Court judge in the U.K. ruled that the case filed by Reprieve involving the abuses suffered by Ali could move forward.³⁷ In doing so, the court acknowledged Ali’s claims were substantial grounds for believing that, by transferring him to U.S. custody, Ali was put at a significant risk of suffering torture and other inhumane and degrading acts, and would further suffer a “flagrant denial of justice” if the case were not

³² David Rose, *Why Bagram is Guantanamo’s evil twin and Britain’s dirty secret* (Dec. 9, 2009, 8:30 AM), <http://www.dailymail.co.uk/home/moslive/article-1232665/Why-Bagram-Guantanamos-evil-twin-Britains-dirty-secret.html> (Deghayes’ statements mirror those of others regarding standard procedures for transportation and detainee inspection. In Deghayes’ experience at Bagram, prisoners were not allowed to speak, were consistently hooded during transport or arbitrarily through the day, where “hung with handcuffs from the bars of the cages if they were caught talking,” and if they slumped with exhaustion during punishment or interrogation, then they were beaten.)

³³ *Yunus Rahmatullah*, Reprieve, <http://www.reprieve.org.uk/case-study/yunus-rahmatullah/> (last visited Feb. 27, 2017) (hereinafter Reprieve Case Study).

³⁴ *Id.*

³⁵ *Id.* (The identity of the other man was found to be Yanus Rahmantullah, whom was taken in the raid by British forces long with Ali.)

³⁶ *Id.*

³⁷ *Id.*

allowed to move forward³⁸ The court emphasized a search for justice over whether the actions taken by U.S. and U.K. personnel were unlawful.³⁹ The opinion recognized the importance of the court's function in protecting constitutional rights from government infringement, stating that, “[f]or the court to refuse to decide a case involving a matter of legal right on the ground that vindicating the right would be harmful to state interest would seem to be to be an abdication of its constitutional function.”⁴⁰

16. The High Court's decision is crucial in the effort to ferret out the truth regarding what happened once the fog of war descended during the Global War on Terror. While participants in such “enhanced interrogation” programs may attempt to justify their actions during the period as necessary, physical and psychological torture are illegal. Abuses such as the ones suffered by Ali occurred in contravention to every international treaty and convention to which the U.S. is a party.

17. Finally, situations like Mr. Ali's were not uncommon. Multiple authorities have documented numerous instances of such actions against individuals, both innocents like Mr. Ali and those later charged with crimes, which indicates a systematic effort to deprive detainees of their rights. Amnesty International published a report on March 6, 2006 documenting consistent denial of counsel to detainees and denial of access to communication with families and others. This report further documented Geneva Convention violations of detainees' rights via exposure to extreme cold, heat, and use of unlawful restraint and physical contact. A United Nations Human Rights report published shortly after the Amnesty report mirrored Amnesty's findings,

³⁸ *Rahmatullah and Ali v. Secretary of State* [2014] EWHC 3846, ¶227(i) (QB).

³⁹ Richard Norton-Taylor, *Man allegedly tortured by US and UK troops wins right to sue for damages* (Nov. 19, 2014), <https://www.theguardian.com/law/2014/nov/19/man-allegedly-tortured-us-uk-troops-wins-right-sue-damages>.

⁴⁰ *Id.*

and further documents deprivation of food, medical treatment, and hygiene. Additionally, an ICRC report supports Mr. Ali's claim of incommunicado isolation. The ICRC report shows that detainees were denied contact with families – even to notify them of their location and that they were alive – and further documents mistreatment via extended isolation, hooding, physical threats, denial of food and water, and the use of prolonged exposure to loud noise and music.

III. Violations of International, Domestic, and State Law

18. Regrettably, acts constituting torture, as it's defined under both U.S. domestic law and international treaty law, have gone hand-in-hand with many detentions similar to the one suffered by Mr. Ali. Innocent men and women have been forcibly taken from their families and had their lives put on hold or destroyed, often while being held incommunicado by their captures, as part of mistaken-identity-based capture, rendition, and detention. Even worse, detainees were often subject to torture – a crime whose domestic and international prohibitions mirror those of genocide and slavery. At the end of their ordeals, many prisoners, such as Mr. Ali, were cleared of wrongdoing and released without charge.

A) Violations of International Law

19. The extrajudicial capture, rendition protocol used, and enhanced interrogation of Mr. Ali violate the United Nations' Universal Declaration of Human Rights (UDHR). The UDHR holds that, "No one shall be subject to torture or to cruel, inhuman, or degrading treatment or punishment."⁴¹ Because the protocol used by U.S. agents during the rendition process has been classified as torture,⁴² Ali's basic human rights under the UDHR were violated. Further, these basic rights were violated in the process of holding and interrogating Ali at the Bagram and

⁴¹ Universal Declaration of Human Rights, art. 5, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

⁴² Pfander, *supra* note 12 at 35 (2017).

Camp Nama because the known holding conditions and interrogation techniques used at Bagram and Camp Nama have been deemed to be torture and resulted in the deaths of some detainees subject to these practices.⁴³

20. These rights granted to Ali under the aspirational UDHR have been further violated under the 1966 International Convention on Civil and Political Rights (ICCPR), to which the United States is a party. The ICCPR directly mirrors the UDHR's language regarding torturous acts.⁴⁴ Acts of torture are stated to be so offensive under the ICCPR, that torture is specifically prohibited even in instances where the ICCPR allows for signatory nations to derogate in periods of "public emergency which threatens the life of the nation."⁴⁵ Because the ICCPR mirrors the UDHR regarding the disallowance of torture and cruel, inhuman, or degrading acts, and because the ICCPR further states there to be no justifying circumstances for such acts, Ali's basic human rights have been violated under the ICCPR via his treatment during his extrajudicial capture, rendition, detainment, and interrogation at Bagram and Camp Nama.

21. The extrajudicial capture, rendition protocol used, and enhanced interrogation of Ali violated his rights under the Convention Against Torture (CAT), to which the United States is a party. CAT further affirms that torture is unilaterally forbidden and that there are no circumstances by which it can be justified.⁴⁶ CAT additionally mandates that parties "ensure that education and information regarding the prohibition against torture [are provided to all

⁴³ See Rose, *supra* note 32.

⁴⁴ International Covenant on Civil and Political Rights, art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171, (hereinafter "ICCPR").

⁴⁵ ICCPR, *supra* note 27. Other obligations which cannot be waived due to extreme circumstances include arbitrary executions, slavery, ex post facto laws, and failure to abide by the right to be recognized as a person under the law and have freedom of thought, religion, and conscience.

⁴⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2(2), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, (hereinafter "CAT"). "No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

personnel] involved in a custody interrogation, or treatment of any individual to any form of arrest, detention, or imprisonment.”⁴⁷ Finally, CAT prohibits extraordinary rendition. Though the United States maintained particular reservations, understandings, and declarations in ratifying both the ICCPR and CAT, none of these negated its absolute duty to prohibit torture and maltreatment or provide effective remedies.⁴⁸ Ali’s treatment is a violation of CAT because the treatment Ali received during his extrajudicial capture, rendition, and detention and interrogation at Bagram and Camp Nama is classified as torture.⁴⁹ Additionally, the United States violated CAT provisions by failing to properly educate and train guards and interrogators at Bagram and Camp Nama. This is evidenced by both the testimony of former guards and interrogators stationed there as well as by the abuses and deaths recorded at those facilities as a result of improper interrogation and general detainee treatment. Finally, the very fact that Ali was subject to extraordinary rendition is a violation of CAT because CAT forbids party nations from engaging in such practices.

22. The extrajudicial capture, rendition protocol used, and enhanced interrogation of Ali violated his rights under the American Convention on Human Rights,⁵⁰ to which the United States is a signatory of, and the European Convention on the Protection of Human and Fundamental Freedoms, which many of the United States’ key allies are parties to.⁵¹ Mirroring the ICCPR and CAT, these treaties forbid signatories from engaging in torture or maltreatment

⁴⁷ CAT, *supra* note 29.

⁴⁸ U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01, 1992 WL 65154; U.S. Reservations, Declarations, and Understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 136 Cong. Rec. S17486-01, 1990 WL 168442.

⁴⁹ European Convention on the Protection of Human Rights and Fundamental Freedom, Nov. 4, 1950, art. 3, 213 U.N.T.S. 221, 224.

⁵⁰ American Convention on Human Rights, art. 5.2, opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, (hereinafter, ACHR). The U.S. is a signatory of, but has not ratified, the ACHR.

⁵¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, entered into force Sept. 3, 1953, 213 U.N.T.S. 222.

under any circumstances. Because the protocols used by U.S. agents during the rendition process, and in detaining and interrogating prisoners like Ali at the Bagram and Camp Nama facilities, have been classified as torture, the United States is in violation of both of these documents.

23. The extrajudicial capture, rendition protocol used, and enhanced interrogation of Ali abridged the rights guaranteed to him by the Geneva Conventions, all four of which the United States is a party to, have been violated. All four of the Geneva Conventions absolutely prohibit torture.⁵² Common Article 3, which is the same in each of the four Conventions, states that torture “shall remain prohibited at any time and any place whatsoever.”⁵³ Committing acts of torture is considered a “grave breach under the Conventions, and is punishable as a war crime.”⁵⁴ Because the protocols used in rendering Ali and the treatment of detainees like Ali at the Bagram facility meet the definition of torture under the Conventions, the ICCPR, and CAT, the United States has breached the anti-torture provisions of the Geneva Conventions

B) Violations of Domestic Law

24. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment. The extrajudicial capture, rendition protocol used, and enhanced interrogation of Ali violates 18 U.S.C. § 2340. Under § 2340, “[w]hoever outside the United States commits or attempts to commit torture. . . . [and] is a national of the United States; or . . . is present in the United States, irrespective of the nationality of the victim or alleged offender,” is

⁵² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 12, Aug. 12 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, art. 12, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 17, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 32, Aug. 12, 1949; 6 U.S.T. 3516, 75 U.N.T.S. 287. [hereinafter, collectively referred to as the “Geneva Conventions”]

⁵³ Geneva Conventions, *supra* note 35.

⁵⁴ Rome Statute of the International Criminal Court, art. 8(2)(a)(ii), 8(2)(c)(i), July 17, 1998, 2187 U.N.T.S. 90. available at http://hrlibrary.umn.edu/instate/Rome_Statute_ICC/romestatute.html.

to be held accountable for such acts. The definition of what constitutes torture under this statute is broad, and encompasses any “act committed by a person under the color of law specifically intended to inflict severe physical or mental pain or suffering.” The broad nature of § 2340 means that the protocol used to capture and render Ali, as well as the conditions of his detention and interrogation in Bagram and Camp Nama, fall within its scope⁵⁵. Because the actions against Ali are covered by § 2340, the United States has violated its own domestic law in its treatment of Ali.

25. Because the actions taken Ali have been classified as torture,⁵⁶ his treatment further violates the War Crimes Act of 1996, a federal law declaring acts falling within the scope of a “grave breach” classification under Common Article 3 of the Geneva Conventions to be war crimes. Because the protocols used in rendering Ali and the treatment of detainees like Ali at the Bagram facility constitute a violation of Common Article 3 of the Geneva Conventions, the War Crimes Act has also been violated

26. Those participating in capturing, rendering, and interrogating Ali have violated the Torture Victims Protection Act of 1991. The Act holds any “individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture shall, in a civil action, be liable for damages.”⁵⁷ Torture is defined within the Act’s scope as “any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering . . . whether physical or mental, is intentionally inflicted on that individual” in order to obtain information or a confession from the torture victim.⁵⁸ Because the protocols used in the rendition process by agents of the U.S. have been deemed torture by the European Court of

⁵⁵ See Human Rights Watch, *supra* note 15; and Rose, *supra* note 32.

⁵⁶ See Golden, *supra* note 50.

⁵⁷ § 13:2. Torture Victims Protection Act of 1991—Text, *Litigating International Torts in U.S. Courts* § 13:2.

⁵⁸ Torture Victims Protection Act, *supra* note 41.

Human Rights, and because the enhanced interrogation techniques used on those like Ali would likely be classified as such if heard before an American court pursuant to this Act, those involved in the extraordinary rendition and interrogation of Ali have violated the Torture Victims Protection Act.

27. Those responsible for the extrajudicial capture, extraordinary rendition, and enhanced interrogation of Ali are subject to the jurisdiction of the U.S. court system. Under the Alien Tort Act, the circuit courts of the U.S. are granted original jurisdiction over any tort claim brought by an alien resulting from a violation of the law of nations or any treaty to which the U.S. is a party.⁵⁹

C) Violations of State Law

28. The extraordinary rendition of Ali, and the torturous acts of agents by the United States, aboard a plane operated by Aero Contractors out of Johnston County Airport in Smithfield, North Carolina violate the Constitution of North Carolina. Article I of the Constitution of North Carolina holds that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws. . . .”

Because Ali was subject to extrajudicial capture, rendition, and detention by the operators of a North Carolina-based plane and company, the Constitution of North Carolina has been violated.

29. The extrajudicial capture, rendition, and detention of Ali aboard a plane owned in, and operated out of, North Carolina violates North Carolina’s kidnapping laws. North Carolina General Statute (NCGS) § 14-39 holds that “[a]ny person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the

⁵⁹ 28 U.S.C. 1350.

consent of such person . . . shall be guilty of kidnapping if such confinement, restraint, or removal is for the purpose of: Holding such person . . . as a hostage; or . . . [d]oing serious bodily harm to or terrorizing [that person]. . . .” Because the Ali was subject to extrajudicial capture without his consent and was subject to bodily harm and terrorizing during his interrogation as part of the United States’ protocols for extraordinary rendition and enhanced interrogation, NGCS § 14-39 has been violated.

30. The extrajudicial capture, transportation, detention, and interrogation of Ali further violates North Carolina’s felonious restraint law, which is a lesser included offense of a NGCS § 14-39 violation. One who “restrains another person without that person's consent . . . and moves the person from the place of initial restraint by transporting him in a motor vehicle or other conveyance” violates North Carolina felonious restraint law. Because Ali was captured without his consent and moved from Bangkok, his initial place of restraint by transport aboard an aircraft owned and operated in North Carolina, NCGS § 14-43.3 has been violated.

31. The acts committed against Ali qualify as aggravating factors which a court may consider under NCGS § 15A-1340.16. In Ali’s case, the aggravating factors are: (1) that “[t]he defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants;” (2) that “[t]he defendant was hired or paid to commit the offense; (3) that “[t]he offense was especially heinous, atrocious or cruel;” (4) that “[t]he defendant was armed with or used a deadly weapon at the time of the crime;” and (5) “[a]ny other aggravating factor reasonably related” Because such U.S. agencies as the C.I.A. induced contractors such as Aero to participate in the extraordinary rendition program and made use of subordinate agents and military members as part of their acts, the first aggravating factor is present under North Carolina law. Because contractors were hired out and paid to

operate the planes used in violating the aforementioned state, federal, and international laws, the second aggravating factor is present. Because the acts committed against Ali as part of his capture, rendition, and interrogation qualify as torture, a crime which is considered so heinous and cruel as to be a war crime under international law, the third aggravating factor is present. Because those involved in the capture, rendition, and interrogation of Ali were armed during portions of the process, the fourth aggravating factor is present. Because of the gravity and multitude of violations which have been committed against Ali, it is likely the fifth aggravating factor is present.

32. Finally, Aero Contractors is guilty of conspiracy, and liable under both civil and criminal law in North Carolina. First, “civil conspiracy [occurs] when [there is] (1) a conspiracy, (2) wrongful acts done by certain of the alleged conspirators in furtherance of that conspiracy, and (3) injury as a result of that conspiracy.”⁶⁰ Additionally, “criminal conspiracy is an agreement, express or implied, between two or more persons to do an unlawful act or to do a lawful act by unlawful means.”⁶¹ Because Aero Contractors conspired to aid agents of the U.S. in committing acts which violated international and federal law, those involved are civilly liable under North Carolina law for the damages suffered by Ali as a result. Further, because the basis of this conspiracy was an agreement between Aero Contractors and agents of the U.S. to commit acts which violated international and federal law, those involved are liable for criminal conspiracy to commit all of the aforementioned violations of North Carolina law.

IV. The United States, the State of North Carolina and Its Political Subdivisions and Aero Contractors Must Provide Redress

⁶⁰ *State ex rel. Cooper v. Ridgeway Brands Mfg., LLC*, 362 N.C. 431, 444, 666 S.E.2d 107, 115 (2008).

⁶¹ *State v. Clark*, 137 N.C.App. 90, 527 S.E.2d 319 (2000).

33. In order to satisfy its obligations under the aforementioned international and domestic law, the United States must provide remedies for victims of torture and other illegal treatment at the hands of its agents. Remedies included within the ICCPR and CAT include official acknowledgement and remedial action, and compensation for any damages incurred by victims due to such acts. The entire purpose of specifying such remedies is to both deter nations from engaging in torture and to provide a basis by which victims can be made whole. Especially important in the investigation of such harms is the truth telling and documentary function of civil review. Allowing for harms to be documented and recognized helps to ensure future violations are not committed, and to assist victims in beginning to rebuild their lives.

34. Furthermore, without acknowledgement and remedy for such crimes, the United States is sending the message that it condones torture and maltreatment, and that it will allow these acts to be committed with impunity. The United States holds a duty as one of the world's moral leaders to take a stand and acknowledge where it has done harm. If the acts committed and facilitated by U.S. officials, agencies, the State of North Carolina and its political subdivisions, and Aero Contractors against those like Mr. Ali are allowed to go unpunished, the nation effectively cedes its moral high ground, and instead shows itself as standing on a foundation of hypocrisy—a nation which condemns only where it stands to benefit, yet shirks from its duties when the failings are its own.

Jamil el-Banna

I. Introduction

In 2002, Jamil el-Banna left his house for business travel. What happened next reveals the manner in which the United States violated peremptory norms and international human rights treaties, as well as federal and state laws, that prohibit forced disappearances and torture. El-Banna was kidnapped by a “snatch crew” on behalf of the United States and the Central Intelligence Agency’s extraordinary rendition program, and subsequently abused and tortured until his release from Guantanamo Bay detention camp in December of 2007. His captors flew him on a plane operated by Aero Contractors headquartered in Johnston County, NC and delivered him to torture in various sites outside of the United States. It is the goal of this narrative to emphasize, as a public record, the mistreatment of Jamil el-Banna and the gross violations of international, federal, and domestic law committed by the United States government. El-Banna’s narrative in most ways is identical to that of Bisher al-Rawi because they were captured and rendered together and the conditions of their detention were nearly identical. Much of the information in the public record about el-Banna from which this narrative is derived is told together with the facts about al-Rawi. It is still important, however, that they each have their individual stories told.

II. Extraordinary Rendition Narrative

A. Pre-Capture

1. Jamil el-Banna was born in Jericho, West Bank in 1952, after the nation of Israel was established. Soon after his birth, his family moved into Jordan, where they were housed at a

refugee camp near Amman.¹

2. In 1994, el-Banna moved to the United Kingdom, where he successfully applied for refugee status.² He lived in northwest London where he married his wife and had five children.³ Through a friend, el-Banna met Bisher al-Rawi and both were interested in starting a business together.⁴

B. Capture

3. On November 8th, 2002, el-Banna traveled to Gambia.⁵ The purpose of this visit was to assist al-Rawi's brother and some of their colleagues, who were establishing a peanut-oil processing business. The men traveled with machinery to be used for initial launch of the business. El-Banna, al-Rawi, and al-Rawi's brother, were taken into custody by the Gambian National Intelligence Agency on their arrival at Banjul airport, purportedly on suspicion of alleged links to al-Qaeda and advice from British security authorities.⁶

4. At first the two men were under a kind of unofficial house arrest. They were not formally charged with any crimes under Gambian law.⁷ They were told that they would be released when their business machinery had been checked to make sure it was not something that could be used for terrorism. They were not detained in a Gambian jail, but rather in a CIA "snatch team" safe house, which was provided by American security officials. They were both guarded by Gambians.⁸

5. The very next day, American personnel came and started speaking with the men, asking

¹ The Rendition Project, Bisher al-Rawi and Jamil el-Banna, available at https://www.therenditionproject.org.uk/prisoners/rawi_banna.html (hereinafter the Rendition Project).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

questions. Then after about 45 minutes, each of the men were put in separate areas, and al-Rawi and el-Banna were put in the reception area. El-Banna was given a mattress but he had to sleep on the floor.⁹

6. American personnel interrogated el-Banna the next morning and continued to interrogate him as days continued to pass.¹⁰

7. Over time, the conditions gradually got worse. El-Banna ended up in a very small cell, purpose-built for him. His cell had virtually nothing in it except a small foam mattress on the floor -- no toilet, no running water—nothing.¹¹

8. One late evening, a U.S. official came to el-Banna and told him after a conversation, “You are going to be taken to Afghanistan.”¹²

C. Detention and Experience of Torture

9. In late December 2002, the CIA decided to transport al-Rawi and el-Banna from Gambia. The “black team” that arrived to escort them wore black uniforms, and their faces were covered by black balaclavas. They cut the clothes from the detainees’ bodies and bound them for transportation.¹³

10. Gambian guards started cuffing both men, hooded their heads and shackled their feet. Then el-Banna was put in a car.¹⁴

11. El-Banna was transported to the airport. Upon arrival, he could not see or hear properly, but he could hear the sounds of the aircraft. After a long wait, with the shackles and cuffs continually inflicting pain, two Gambian guards started escorting him and eventually started

⁹ Extended Interviews: Bisher al-Rawi, available at <http://www.pbs.org/frontlineworld/stories/rendition701/interviews/bisher.html> (hereinafter Grey Interview).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

aggressively dragging him.¹⁵

12. El-Banna was taken into a dark, empty room. There, he was stripped, his captors cut his clothing off, and he was restrained down from feet, torso, and chest on a stretcher while completely immobilizing him to be taken aboard an aircraft.¹⁶

13. Flight documents indicate that al-Rawi and el-Banna were taken aboard a Gulfstream V aircraft registered with the Federal Aviation Administration (FAA) as N379P and operated by Aero Contractors located in Johnston Co, NC.¹⁷ Jeppesen Dataplan Inc. provided the logistical and flight support for the aircraft, which was used for a CIA clandestine interrogation and detention program run outside of the United States.¹⁸

14. After arriving in Afghanistan, the restraints were removed from el-Banna and again he was dragged out. He was then thrown down the stairs and then lifted and thrown into a van-like vehicle.¹⁹

15. After a short trip in the vehicle, el-Banna was taken out of the vehicle, again very forcefully and thrown somewhere. His hands were cuffed behind him in order to immobilize his arms. He was thrown on the ground.²⁰

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ ACLU, *Biography of Bisher al-Rawi*, available at <https://www.aclu.org/other/biography-plaintiff-bisher-al-rawi> (hereinafter ACLU Biography). El-Banna's kidnapping and extraordinary rendition on N379, identified as an Aero operated plane, has been confirmed Rapporteur: Giovanni Claudio Fava Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, WORKING DOCUMENT N° 8 on the companies linked to the CIA, aircraft used by the CIA and the European countries in which CIA aircraft have made stopovers Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners 6, 7, 12, 23, 29, 32, 34, 36, 39, 41, 43, 47, 49, 53 (2006) at <http://www.statewatch.org/cia/documents/working-doc-no-8-nov-06.pdf>; Giovanni Claudio Fava, Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)) Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners 14,15,17,19,20,21,25,45 (2007) at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>.

¹⁸ *Id.*

¹⁹ Grey Interview, *supra* note 9.

²⁰ *Id.*

16. Later, one of his captors removed the hood, the ear defenders and the cuffs from el-Banna but left him in the shackles. They placed him in a cell. For the duration of his imprisonment in this “dark prison,” they had shackles on 24 hours a day.²¹

17. For the next two months, U.S. officials subjected el-Banna to humiliation, degradation, and physical and psychological torture.²²

18. El-Banna was forced to undergo prolonged periods of isolation and sleep deprivation. He was frequently threatened with death.²³

19. In January 2003, Amnesty International received information that al-Rawi and el-Banna had been secretly transferred from Gambia to Afghanistan, absent any extradition or deportation process and despite the fact that a habeas corpus petition filed on their behalf was still pending before a court in Gambia.²⁴ Despite requests, U.S. officials refused to confirm al-Rawi or el-Banna’s whereabouts. The British government similarly refused to provide any consular or diplomatic assistance in locating them or seeking their immediate or unconditional release.²⁵

20. For the duration of el-Banna’s first few days, he sat in the corner of his cell, and suffered extreme cold. The width of the cell could be touched easily with both hands.²⁶

21. His captors played music and recorded voices at a very loud volume. This music was left on all the time, except for a few short seconds when the tape turned over.²⁷

22. El-Banna was never issued any watch or calendar and had no way to tell time in the

²¹ *Id.*

²² Binyam Mohamed *et al.*, v. Jeppesen Dataplan *et al.* 613 F3d 1070, 1074 (2009).

²³ Grey Interview, *supra* note 9.

²⁴ Mohamed v. Jeppesen Dataplan, First Amended Complaint, Aug. 1, 2007, [https://www.therenditionproject.org.uk/pdf/PDF%20238%20\[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20First%20Amendment%20to%20the%20Complaint%20\(Aug%202007\)\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20238%20[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20First%20Amendment%20to%20the%20Complaint%20(Aug%202007)].pdf).

²⁵ *Id.*

²⁶ Grey Interview, *supra* note 9.

²⁷ *Id.*

prison. There was no consistency, even with meals, to help him keep track of time.²⁸

23. After several weeks in the dark prison, el-Banna's cell door was open and his captors put his hands behind his back. They dragged him out of the cell and threw him into a van where he landed on top of Bisher al-Rawi.²⁹

24. The men were then driven in the van to a helicopter, which illegally "rendered" them to Bagram Air Base in Afghanistan.³⁰

25. El-Banna stayed in Bagram for two months. Upon arrival at Bagram, he was forced to stand for 24 hours and was interrogated almost daily.³¹

26. El-Banna was again subjected to humiliation, degradation, and physical and psychological torture by U.S. officials. He was kicked and dragged along the floor, deprived of access to a toilet, shower, or clean clothes, held in a squalid cell, and forced to undergo prolonged periods of isolation and sleep deprivation. His captors threatened him with death or with transfer to another county to be tortured.³²

27. On February 7, 2003 el-Banna was transported on a 24-hour flight to the U.S. detention facility in Guantánamo Bay, Cuba, in shackles, handcuffs and with goggles blinding his vision. He was also forced to shave his hair and beard.³³

28. El-Banna was transported on board a U.S. military transport aircraft with call sign RCH191y, alongside 25 other detainees, including Bisher al-Rawi. Before departing, all those being rendered were isolated from the prisoners who were staying behind, forcibly shaved, and left shackled and handcuffed in excruciating pain for eight hours. They were prepared for the

²⁸ *Id.*

²⁹ ACLU Biography, *supra* note 17.

³⁰ *Id.*

³¹ http://chrgj.org/wp-content/uploads/2012/10/Amended_Jeppesen_Complaint_-_Final080107.pdf

³² *Id.*

³³ ACLU Biography, *supra* note 17.

flight in the same way as before, with a blindfold, goggles, ear defenders, hood, and remained handcuffed and shackled for the duration of the flight.³⁴

29. El-Banna remained in Guantanamo for more than four years without being told why he was there and without any official charge lodged against him.³⁵

30. El-Banna was constantly subjected to severe temperature extremes and other sensory torments, many of which were part of a sleep deprivation program.³⁶

31. On August 7, 2007 the United Kingdom government requested the release of Jamil el-Banna and four other foreign nationals who had been legal British residents. The UK government warned its public that the negotiations might take months.³⁷

32. El-Banna's son wrote the following letter to Mr. Blair while el-Banna was detained at Guantanamo:

“Dear Sir Tony Blair, I am a boy called Anas Jamil El-Banna. I am 7 years old. Me and my four brothers are writing to you this letter from my heart because I miss my father. I am wishing that you can help me and my father. I am always asking mother, Where is my father, when will he come back? And my mother says I don't know. Now I have started to know that my father is in prison in a place called Cuba and I don't know the reason why and I don't know where is Cuba. I hope that you can help me because I miss my father. Every night I think of my dad and I cry in a very low voice so that my mother doesn't hear, and I dream that he is coming home and gives me a big, big hug. Every Eid I wait for my father to come back. I hope to God that you can help me to bring my daddy back to me. I don't want anything, I just want my daddy please. Please Mr Blair can you bring my daddy back to me on this Eid. I wish you a happy life with your children in your house. Love Anas - 7 years old, Mohamed - 6 years, Abdulrahman - 4 years, Badeah - 3 years, Mariam - 9 months— Anas Jamil El-Banna”³⁸

³⁴ Rendition Project *supra* note 1.

³⁵ *Id.*

³⁶ Brent Mickum, Guantanamo's Lost Souls, (January 8, 2007) ((Author Brent Mickum was Al-Rawi's lawyer while he was held at Guantanamo) available at <https://www.theguardian.com/commentisfree/2007/jan/08/post885>.

³⁷ Robert DeVries “UK resident to be released from Guantanamo”, *The Jurist*. March 29, 2007). Archived from the original on May 8, 2009. Retrieved March 31, 2007

³⁸ Tim Shipman, 0-year-old to Tony Blair: 'Why is my dad in prison?' Jan. 9, 2007, available at <http://www.dailymail.co.uk/news/article-427671/10-year-old-Tony-Blair-Why-dad-prison.html>.

D. Post-Release Circumstances

33. In June 2007, the Council of Europe released a report implicating several countries in the extraordinary renditions of UK residents, including Jamil el-Banna.³⁹ The report specifically mentions el-Banna several times, including noting the hundreds of stopovers made by CIA-operated aircraft at airports throughout Europe. The report expressed serious concern about the purpose of those flights that came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees.⁴⁰

34. The report specifically “deplores the stopovers at airports of aircraft which have been shown to have been used by the CIA on other occasions for the extraordinary rendition of... Jamil el-Banna.”⁴¹ The report also explicitly condemns “the extraordinary rendition of Jamil el-Banna, a Jordanian citizen and resident of the United Kingdom... who [was] arrested by Gambian authorities in Gambia in November 2002, turned over to US agents, and flown to Afghanistan and then to Guantánamo, where [he] remain[ed] detained without trial or any form of judicial assistance.”⁴²

35. Jamil el-Banna was released from Guantanamo Bay on November 18th, 2007 and flown back to Britain. On his return, he was detained under port and border controls and questioned.⁴³

36. Following his release from the U.S. base in Cuba, el-Banna’s children ran out in the street as the police van bringing him home pulled up outside their front door. It was the first time he

³⁹ Council of Europe Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions and Unlawful Inter-State Transfers Of Detainees Involving Council of Europe Member States*, 2006, http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Rendition Project, *supra* note 1.

had met his youngest daughter, Mariam, 4, who was not yet born when el-Banna was detained by the Americans.⁴⁴

37. After el-Banna was released from Guantanamo, a Spanish magistrate filed requests for el-Banna to be extradited to Spain to face terror allegations, accusing el-Banna of being an al-Qaeda member.⁴⁵

38. In early 2008, Judge Baltasar Garzon, an investigating magistrate at the National Court in Madrid, opened up an investigation in response to torture allegations made by four former Guantanamo detainees, including el-Banna. According to the court report, the torture allegations included “sexual abuse”, “beating: and the throwing of fluids into prisoners’ eyes⁴⁶. On Thursday March 6, 2008, Spanish judge Baltasar Garzon dismissed an extradition request brought against el-Banna on humanitarian grounds.

39. Garzon based his decision on a medical examination made public on February 12, 2008. The report said el-Banna suffered from: "post-traumatic stress syndrome, severe depression and suicidal tendencies."⁴⁷

40. Judge Garzón also cited "documents declassified by the U.S. administration as giving evidence of what previously could be intuited: an official plan of approved torture and abuse of people being held in custody while facing no charges and without the most basic rights of people who have been detained."⁴⁸

41. In 2014, the United States Senate Report detailing a Committee Study of the Central Intelligence Agency's Detention and Interrogation Program officially recognized Jamil el-Banna

⁴⁴ *Id.*

⁴⁵ Guantanamo Detainees Out on Bail, Dec. 20, 2007, available at http://news.bbc.co.uk/2/hi/uk_news/7153146.stm.

⁴⁶ Spanish Court Opens Investigation of Guantánamo Torture Allegations, Apr. 28, 2009, available at <https://www.theguardian.com/world/2009/apr/29/spain-court-guantanamo-detainees-torture>.

⁴⁷ *Id.*

⁴⁸ *Id.*

as a victim-participant of the program as did the European Parliament Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners.⁴⁹

III. Violations of Law

A. *International Law Violations*

42. A number of international conventions outline the explicit prohibition of torture, cruel inhuman and degrading treatment, and rendition to torture. United Nations monitoring bodies have also declared the practice of extraordinary rendition to be a violation of the international law prohibition against torture.⁵⁰ It is important to reiterate that the prohibition against torture is universally recognized as a principle of customary international law. The international community understands the prohibition of torture to be a “peremptory norm of international law”⁵¹ from which no derogation is permitted, and which binds even states that have not ratified the conventions enumerated.⁵² Thus, the international law prohibition of torture is absolute and non-derogable – no exceptional circumstances or emergencies may be used to justify torture, including terrorism and national security concerns.⁵³

⁴⁹ Senate Select Committee on Intelligence, Study on CIA Detention and Interrogation Program 458 (2014) <https://www.amnestyusa.org/pdfs/sscistudy1.pdf>. See Giovanni Claudio Fava, Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, *supra* note 17, at 25.

⁵⁰ Parliament of Canada, *Extraordinary Rendition: International Law and the Prohibition of Torture* (2008), at <http://www.lop.parl.gc.ca/content/lop/researchpublications/prb0748-e.htm#intl1aw>.

⁵¹ *Id.*

⁵² Association of the Bar of the City of New York and The Center for Human Rights and Global Justice, *Torture by Proxy: International and Domestic Law Applicable to “Extraordinary Renditions,”* 2004; Human Rights Watch, *Still At Risk: Diplomatic Assurances No Safeguard Against Torture*, April 2005; Matteo Winkler, “When ‘Extraordinary’ Means Illegal: International Law and the European Reactions to the United States Rendition Program,” Yale Law School Student Scholarship Series No. 46, 2007, at http://digitalcommons.law.yale.edu/student_papers/46?utm_source=digitalcommons.law.yale.edu%2Fstudent_papers%2F46&utm_medium=PDF&utm_campaign=PDFCoverPages.

⁵³ United Nations, Office of the High Commissioner for Human Rights, Committee Against Torture, *Statement of the UN Committee Against Torture*, CAT/C/XXVII/Misc.7, 22 November 2001.

43. International law stipulates that states have an obligation to bring their domestic laws into line with the international prohibition against torture and to interpret all treaties they have ratified in context and in good faith – outsourcing torture beyond a nation’s borders is not consistent with these obligations.⁵⁴

i. Universal Declaration of Human Rights

44. In “bringing together the international norms on human rights,”⁵⁵ the Universal Declaration was the first authority and guide to the rules on fundamental human rights.⁵⁶ Subsequent international human rights instruments adopted by the UN General Assembly build on the principles set out in the Universal Declaration.

45. Article 3 of the Universal Declaration guarantees the “right to life, liberty and security of person.” The capture, detention and torture of el-Banna through extraordinary rendition certainly implicate his rights to liberty and security. Article 5 specifically prohibits torture and “cruel, inhuman or degrading treatment or punishment.”⁵⁷ Articles 6, 8, 10 and 11 of the Universal Declaration consider the lack of due process to victims of extraordinary rendition. Article 6 guarantees that “everyone has the right to recognition everywhere as a person before the law” and Article 8 guarantees “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁵⁸

⁵⁴ Office of the United Nations High Commissioner for Human Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 1984.

⁵⁵<http://www.law.unc.edu/documents/clinicalprograms/theinternationallegalandscapeofextraordinaryrendition.pdf> (pg. 9).

⁵⁶ Vojin Dimitrijevic, *Customary Law as an Instrument for the Protection of Human Rights* 8 (Istituto Per Gli Studi Di Politica Internazionale (ISPI) Working Paper -7, 2006).

⁵⁷ A United Nations Priority: Universal Declaration of Human Rights, ¶¶ 3, 6, www.un.org/rights/HRToday/declar.htm

⁵⁸ *Id.*

46. It is clear that the program of extraordinary rendition comprised el-Banna's due process rights. Once rendered to another country and detained, el-Banna was denied access to the recognized judicial procedures of that country, as well as access to counsel or the aid or the aid of their Embassy. Finally, the function of extraordinary rendition to deliver individuals to other countries for the purpose of interrogation and torture is clearly a violation of Article 14 of the Universal Declaration, which guarantees "the right to seek and to enjoy in other countries asylum from persecution."⁵⁹

ii. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT")

47. One of the most recognizable international law prohibitions against torture is the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). Article 1 of this Convention sets out the definition of torture, which includes conduct undertaken by state actors or persons acting with the consent or acquiescence of a state for the purposes of obtaining information:⁶⁰

"Art. 1(1) For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Other forms of mistreatment involving less severe physical or mental pain or where the necessary intention to torture is not present are also prohibited under article 16 of CAT: the right not to be subjected to cruel, inhuman, or degrading punishment."

48. Article 2 of CAT requires states parties to take measures to prevent torture in any territory under their jurisdiction. It also clearly states that torture is never justified – there can be

⁵⁹ *Id.*

⁶⁰ Office of the United Nations High Commissioner for Human Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 1984.

no derogation from a state's obligation to prevent and prohibit torture, even in times of war, threat of war, internal political instability, or when facing any other public emergency such as terrorism.⁶¹

49. Article 3 sets out the prohibition against "refoulement," which most clearly prohibits extraordinary rendition:⁶²

"(1) No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

50. The UN Committee Against Torture was established under CAT as a monitoring body to both provide interpretations of the Convention for all states parties and to monitor the individual actions of states parties. Those states who have ratified the Convention must submit reports to the Committee every four years outlining their progress in implementing the Convention. The Committee examines these reports, hears from the states parties, and then issues Concluding Observations with recommendations for how the state party can improve its compliance with the Convention. The Committee's pronouncements are non-binding in law, but are a significant source of influence in the international community.⁶³

51. The UN Committee Against Torture has stated that article 3 requires a state considering transferring an individual to another state to conduct an objective assessment of the conditions in the state to which an individual will be transferred, and a subjective assessment of the danger particular to the individual. An individual must not be transferred where these assessments lead

⁶¹ *Id.*

⁶² *Id.*

⁶³ Office of the United Nations High Commissioner for Human Rights, information about the UN Committee Against Torture.

to a finding of a substantial likelihood of danger of torture that is greater than mere suspicion. There need not be a high probability of torture for the prohibition to apply.⁶⁴

52. Articles 4 to 7 of CAT require states parties to ensure that all acts of torture are offenses under domestic criminal law, to investigate and prosecute all acts of torture, and to assert jurisdiction over torture offences where such offences are committed in a territory under the state's jurisdiction, committed by a national of the state, or perpetrated against a national of the state.⁶⁵

53. In this case, it is clear that Jamil el-Banna was subjected to torture and other cruel, inhuman or degrading treatment or punishment in violation of CAT. Some specific examples of the acts of torture he suffered include but are not limited to forced and prolonged periods of isolation, sleep deprivation, frequent death threats, and shackling for periods of twenty-four hours a day, seven days per week. All of these acts are clear violations of Article 1 of CAT. In addition, his rendition to Bagram is a clear violation of Article 3 of CAT.

iii. United Nations International Covenant on Civil and Political Rights (“ICCPR”)

54. The United Nations International Covenant on Civil and Political Rights (ICCPR) also provides an explicit prohibition against torture and cruel, inhuman and degrading treatment.⁶⁶

The United States ratified the ICCPR on June 8, 1992 and the treaty came into force on September 8, 1992.⁶⁷ Article 7 states that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.⁶⁸

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Office of the United Nations High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), adopted 1966. (ICCPR)

⁶⁷ <http://www.law.unc.edu/documents/clinicalprograms/theinternationallegallandscapeofextraordinaryrendition.pdf> (UNC Report)

⁶⁸ ICCPR *supra* note 66.

55. The UN Human Rights Committee is the treaty body responsible for monitoring implementation of the ICCPR, like the Committee Against Torture. Again, state parties must submit regular reports to this Committee, usually every four years. The Committee has been called upon a number of times to interpret the Convention's prohibition of torture. In its General Comment on article 7, the Committee emphasizes that the prohibition of torture is non-derogable, stating:

The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency... no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.⁶⁹

56. This General Comment also explicitly extends the article 7 prohibition against torture to include transfers to torture, stating, "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement."⁷⁰

57. Considering the various U.S. actors involved in el-Banna's extraordinary rendition, including the aircraft carriers and corporations contracted by the C.I.A. to plan the rendition flights and to provide the planes, crew and landing sites, and perhaps even to engage in the torture and cruel and inhuman treatment of those rendered overseas, there are a number of state and local actors whose involvement in extraordinary rendition likely amount to violations of the ICCPR. News reports and investigations document the complex network of shell companies and operating companies used by the C.I.A. to transfer and torture victims on rendition flights. The

⁶⁹ United Nation, Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, *General Comment No. 20: Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7)*, 10 March 1992, para. 3.

⁷⁰ *Id.*

obligation to investigate and address allegations of violations by private persons and entities gives States the responsibility of ensuring that private actors are not acting under the power of the State to inflict torture on others.⁷¹

iv. The Geneva Conventions

58. The Geneva Conventions (which the United States has signed, but not ratified) prohibit torture and inhuman, cruel or degrading treatment with respect to certain categories of protected persons (including civilians and protected prisoners of war) in times of armed conflict or in post-conflict occupied territories.⁷² Breach of this prohibition is considered a war crime and states parties have an obligation to investigate such breaches and prosecute or extradite perpetrators regardless of the nationality of the victim or the perpetrator, or where the act took place.⁷³ The Conventions state that no physical or other form of coercion may be exercised against protected persons to obtain information from them or from third parties, that civilians may not be forcibly transferred to another state except under an extradition treaty, and that prisoners of war may not be transferred to any state where they are likely to be tortured or inhumanely treated.⁷⁴

59. Neither civilians nor protected prisoners of war may be transferred to penitentiaries for disciplinary punishment.⁷⁵ Protected persons may be transferred only to other states parties, and only after the sending state has satisfied itself of the willingness and ability of the receiving state power to apply the Convention. If torture is subsequently discovered, the sending state must request the return of the individual or take measures to correct the situation.⁷⁶

⁷¹ UNC Report, *supra* note 66 .

⁷² [The Geneva Conventions: The Core of International Humanitarian Law](#), adopted 1949. In particular, *see* articles 12, 14 and 17 of the 3rd Geneva Convention, and articles 31 to 32 of the 4th Geneva Convention.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

60. In this case, el-Banna being forcibly transferred from Gambia to a “dark prison” and then to Bagram, as well as the United States failure to investigate, are clear violations of the Geneva Conventions.

B. Federal Law Violations

i. Anti-Torture Statute & Torture Victims Protection Act

61. The U.S. Code (18 U.S. Code § 2340A), specifically prohibits torture and states:

(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life. (b) There is jurisdiction over the activity prohibited in subsection (a) if (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender. A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.⁷⁷

62. Similarly, U.S. Code (28 U.S. Code § 1350) responds to the issue of torture. The Torture Victim Protection Act of 1991 allows victims of torture, or the families of those who were killed through extrajudicial means, to sue their tormentors in U.S. courts, regardless of their citizenship or where the crime occurred.⁷⁸

63. Both of these anti-torture statutes include identical, albeit imprecise, definitions of what constitutes torture. Among the proscribed actions are “the intentional infliction or threatened infliction of severe physical pain or suffering”; the use of “mind-altering substances”; and threats against other people, presumably family members.⁷⁹ It is clear that these federal statutes were

⁷⁷ 18 U.S. Code § 2340A.

⁷⁸ Brendan Koerner, *Is Torture Against the Law*, May 13, 2004, at http://www.slate.com/articles/news_and_politics/explainer/2004/05/is_torture_against_the_law.html.

⁷⁹ *Id.*

violated when el-Banna was routinely subjected to intentionally inflicted severe physical pain as well consistently feared imminent death.

ii. Constitution

64. The Supreme Court has located constitutional protections against interrogations under torture in the Fourth Amendment, the Fifth Amendment, the Fourteenth Amendment, and the Eighth Amendment. Although no single provision of the U.S. Constitution expressly prohibits torture as a means to extract information, secure a confession, punish for an act committed, intimidate or coerce, or for any reason based on discrimination, torture clearly violates rights established by the Bill of Rights. In numerous cases, the Court has condemned the use of force amounting to torture or other forms of ill treatment during interrogations, including such practices as whipping, slapping, depriving a victim of food, water, or sleep, keeping him naked or in a small cell for prolonged periods, holding a gun to his head, or threatening him with mob violence.⁸⁰ Torture would also violate state constitutions, whose provisions generally parallel the protections set forth in the federal Bill of Rights.

iii. Deprivation of Rights Under Color of Law

65. The principal federal law that would apply to torture against detainees is 18 U.S.C. 242, which makes it a criminal offense for any public official to willfully to deprive a person of any right protected by the Constitution or laws of the United States. The law states:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts

⁸⁰ Human Rights Watch, *The Legal Prohibition Against Torture*, June 2004, available at <https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture#laws>.

include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.⁸¹

C. State Law Violations

i. North Carolina State Constitution

66. The extraordinary rendition of el-Banna also violated the North Carolina State Constitution. Article 1, Section 19 states:

“No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.”⁸²

ii. CAT Domestications Applicable to North Carolina

67. While North Carolina may not be able to administratively or judicially control what goes on outside its borders, it has a responsibility under CAT to accomplish what it can to prevent acts of torture.⁸³ In this specific situation, there are several actions that North Carolina can take to fulfill its federal obligations under CAT. Now that North Carolina’s administrators and legal advisors have been notified of illegal activity of state actors in connection to extraordinary rendition, the state and its political subdivisions should be required to take action.

iii. Criminal Laws

⁸¹ 18 U.S.C. Sec. 242.

⁸² North Carolina State Constitution, at <http://www.ncleg.net/Legislation/constitution/article1.html>.

⁸³ Richard P. Shafer, *Construction and Application of United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment*, 184 A.L.R. Fed. 385, 285 (2003) (italics added).

68. In the United States, most criminal laws are state rather than federal. Although a few states have laws addressing torture as such, each state has laws that criminalize violence against persons (e.g. assault, rape), regardless of whether committed by public officials or private individuals. In addition, states typically have specific laws that criminalize acts by public officials that constitute abuses of authority, “official oppression,” or the unlawful infliction of bodily injury.⁸⁴

IV. Conclusion

It is clear that Jamil el-Banna suffered egregious violations of international, federal, and state law during the five years was kidnapped, held and abused in the CIA extraordinary rendition program. Jamil el-Banna experienced years of physical and emotional torture by U.S. officials, and facilitated by the state of North Carolina, its political subdivisions, and Aero Contractors. As a legal and moral obligation, these entities must take public accountability for the role that government and state resources played in helping to facilitate this U.S. torture program.

⁸⁴ See *supra* note 80.

Abu Zubaydah

I. Introduction

1. Most of what has been already written about Abu Zubaydah is in the form of various accounts of his pain and suffering as a detainee in Guantanamo. He is infamously known as the first detainee who the CIA subjected to waterboarding, 83 times to be precise.¹ These horrific accounts fail to capture the complete depth and inhumanity of his torture. We tend to only know so much as his photos reveal – the eye-patch he wears to conceal his blinded left eye; his dark-haired, bearded demeanor; and the impassivity gleaned from his lifeless gaze. He is described as one of the “highest-profile prisoners in Guantanamo Bay”² for his status as an alleged senior al-Qaeda operative.³ He, however, describes himself as a “broken man”,⁴ who has been shielded from the outside world since the time of his capture in March of 2002.⁵

2. The purpose of this narrative is to fill in the gaps of Zubaydah’s life, bridging together what we already know of it and what has been fairly hidden from the public eye. While mainly focusing on the brutality of the torture he suffered after being extraordinarily rendered to Guantanamo, it also includes information that connects his background to his alleged affiliation

¹ David Smith, *Abu Zubaydah, detainee tortured by CIA, makes case for Guantanamo release*, GUARDIAN para. 19 (Aug. 23, 2016, 2:21 PM), <https://www.theguardian.com/us-news/2016/aug/23/abu-zubaydah-guantanamo-bay-cia-torture> [<https://perma.cc/ZQ55-4JBW>]. Rapporteur: Mr Dick Marty, Committee on Legal Affairs and Human Rights Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report Explanatory Memorandum 13, 24, 71 (2007) (further confirmation that Zubaydah was a victim of the CIA extraordinary rendition to torture program) at http://assembly.coe.int/committeedocs/2007/emarty_20070608_noembargo.pdf.

² Jason Leopold, *Exclusive: Abu Zubaydah’s journey from student to mujahedeen*, AL JAZEERA para. 1 (Nov. 7, 2013, 9:00 AM), <http://america.aljazeera.com/articles/2013/11/5/notebook-one-thesecretidiariesofabuzubaydah.html> [<https://perma.cc/23GD-4Z6J>].

³ See Andy Worthington, *Abu Zubaydah: The Futility Of Torture and A Trail of Broken Lives* (March 30, 2009), <http://www.andyworthington.co.uk/2009/03/30/abu-zubaydah-the-futility-of-torture-and-a-trail-of-broken-lives/> [<https://perma.cc/QP69-6M7X>].

⁴ Smith, *supra* note 1, at para. 20 (quoting Joseph Margulies).

⁵ Scott Shane, *Abu Zubaydah, Tortured Guantanamo Detainee, Makes Case for Release*, N.Y. TIMES para. 2 (Aug. 23, 2016), <https://www.nytimes.com/2016/08/24/us/abu-zubaydah-torture-guantanamo-bay.html> [<https://perma.cc/5CJJ-Y35D>].

with terrorism. In the process of doing so, Zubaydah’s narrative will speak to the following biographical questions: What was his childhood like? What was his occupation and scope of ambition as a young man? What were the events that led to his capture? What, in his own words, have his experiences been throughout the course of his detention? What have his relationships been like, and what has remained of his source of motivation in his battle for survival? By casting a fresh light on his circumstances and personal endurances, and North Carolina’s role in facilitating his extraordinary torture and rendition, this document aims to develop a clearer understanding of what must still be accomplished in the fight to preserve his humanity.

3. This compilation of Zubaydah’s narrative has been extrapolated from various sources for the purposes of incorporating his story into a public record. While Zubaydah’s alleged status as a “high-value”⁶ detainee who was associated with the 9/11 attacks may never be properly ascertained, it does not negate his entitlement to certain inalienable human rights. Among these rights are the right to life, and the right to be protected from torture and cruel and degrading treatment.

II. Pre-Capture Narrative

4. Abu Zubaydah (born “Zayn al-Abidin Muhammad Husayn”) was born to a Palestinian father and a Jordanian mother in 1971.⁷ His country of birth, however, was Saudi Arabia, and the city was Riyadh.⁸ As an individual of multiple cultural identities, Zubaydah felt the stigma of being perceived as a “refugee” by the people around him. He acknowledges in a diary entry that

⁶ Worthington, *supra* note 3, at para. 2.

⁷ *Id.*, at para. 3.

⁸ See Raymond Bonner, *The Terror Suspect Who Had Nothing To Give*, PRO PUBLICA para. 27 (July 8, 2016, 8:00 AM), <https://www.propublica.org/article/the-terror-suspect-who-had-nothing-to-give> [<https://perma.cc/TU34-GZBY>].

he had “no homeland, no passport and no identity.”⁹ As a young man, he traveled to Mysore, India to pursue his higher education in computer science.¹⁰

III. Capture

5. Zubaydah became a target for rendition and torture after the 9/11 terrorist attacks when the CIA suspected that he had been coordinating training at a camp where two of the hijackers had been stationed.¹¹ On March 28, 2002 – just over six months after the attacks – a combined team of Pakistani, CIA, and FBI intelligence agents captured Zubaydah in Faisalabad, Pakistan, during a raid on what was identified as a “safe house” where he was found to have been residing with other individuals.¹² These Pakistani and American counterterrorism forces had been charged with the mission of tracking Zubaydah’s location throughout this city, an extensive search that resulted in countless raids like this.¹³

6. Zubaydah suffered a series of grave injuries as a result of the raid (he was “shot in the leg, groin, and stomach...”).¹⁴ A physician was flown in from Johns Hopkins Medical Center to attend to his wounds, though the exact location of the hospital where Zubaydah was treated remains uncertain.¹⁵ One former CIA agent who was present during the course of Zubaydah’s treatment observed that he had never before seen the extent of such injuries in a person who later

⁹ *Original document: Abu Zubaydah diaries volume one*, U.S. DEPT. JUST. FED. BUREAU INVESTIGATIONS (Nov. 5, 2013, 5:00 AM), <http://america.aljazeera.com/multimedia/2013/11/original-documentabuzubaydahdiariesvolumeone.html> [<https://perma.cc/LT6R-W76S>].

¹⁰ See Rupert Cornwell, *The secret diary of Abu Zubaydah, from student to hardline jihadi and CIA torture*, INDEPENDENT para. 4 (Nov. 9, 2013), <http://www.independent.co.uk/news/world/middle-east/the-secret-diary-of-abu-zubaydah-from-student-to-hardline-jihadi-and-cia-torture-8929831.html> [<https://perma.cc/7YYH-FP5Z>].

¹¹ See Shane, *supra* note 5, at para. 21.

¹² JOSEPH MARGULIES, WHAT CHANGED WHEN EVERYTHING CHANGED: 9/11 AND THE MAKING OF NATIONAL IDENTITY 210 (2013) [hereinafter MARGULIES, WHAT CHANGED].

¹³ See Thomas Joscelyn, *The Zubaydah Dossier*, THE WEEKLY STANDARD para. 1 (Aug. 17, 2009), <http://www.weeklystandard.com/print/the-zubaydah-dossier/article/240744> [<https://perma.cc/DPX7-7NAH>].

¹⁴ *Id.* at para. 3.

¹⁵ See *id.* at para. 3.

survived.¹⁶ A Pakistani doctor who was also a member of the treatment team recounted that what stuck in his mind the most was “how much blood [Zubaydah] lost”, so much so that it “pooled under the bed” he was lying in.¹⁷

7. Zubaydah was later flown to a secret jail cell (black site) situated in Thailand after his medical condition stabilized.¹⁸ President Bush authorized this initial transfer by March 2002.¹⁹ However, in the meantime, FBI agents purposefully withheld Zubaydah’s pain medications until he was willing to cooperate with interrogators.²⁰ His interrogation began once he awakened from his coma.²¹ Even in these beginning stages of Zubaydah’s capture, the U.S. government’s efforts were unsuccessful in extrapolating the intelligence that they had expected to obtain from an individual of Zubaydah’s alleged significance. It is important to note this early on in the Zubaydah narrative that perceptions of him as a “high-ranking member of al Qaeda” were later admitted to be mistaken.²²

8. FBI agents nonetheless conducted the initial interrogation of Zubaydah at the Thailand black site before he entered into CIA custody. They reported that Zubaydah had voluntarily “provided valuable information” that identified at least two of the men responsible for these attacks.²³ He offered information to his interrogators during a period of questioning according to what has been described as rapport-building techniques of interrogation, and told them that the

¹⁶ See *Abu Zubaydah*, RENDITION PROJECT para. 1, <https://www.therenditionproject.org.uk/prisoners/zubaydah.html> [<https://perma.cc/64T8-XGU5>].

¹⁷ *Id.*

¹⁸ See Shane, *supra* note 5, at para. 15.

¹⁹ See *supra* note 16, at para. 2.

²⁰ See JOSEPH MARGULIES, GUANTANAMO AND THE ABUSE OF PRESIDENTIAL POWER 178 (2006) [hereinafter MARGULIES, GUANTANAMO].

²¹ See *supra* note 16, at para. 1.

²² MARGULIES, WHAT CHANGED, *supra* note 12, at 210.

²³ Shane, *supra* note 5, at para. 15.

two men had “proposed an idea to conduct a ‘Dirty Bomb’ attack”.²⁴ Empirical studies have demonstrated that rapport building works as one of the “most effective strategies” in which “detainees reduce their own counter-interrogation strategies” to lend some of the most useful intelligence.²⁵ Matthew Alexander, a former Air Force interrogator, has gone so far as to report that the use of rapport-building interrogation methods has enabled detainees to cooperate as much as seventy-five percent more than they would under coercive methods.²⁶

9. Additional non-coercive interrogation methods²⁷ used on Zubaydah are discussed in the context of his interrogation sessions with FBI agent Ali Soufan, who described his approach of obtaining intelligence as “traditional”.²⁸ Soufan’s techniques accounted for Zubaydah’s cultural background, personal history, and language fluency.²⁹ Rather than relying on threatening, coercive practices that would instill constant intimidation in Zubaydah, these thorough, traditional techniques instead aimed to use trust and social interaction as “powerful incentives” to induce cooperation, and extract more accurate information.³⁰

²⁴ S. Select Comm. on Intelligence, 113th Cong., *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program*, S. Rep. No. 113-288, 256 (2014) [hereinafter *Senate Torture Report*].

²⁵ Wray Herbert, *The Science of Interrogation: Rapport, Not Torture*, HUFFINGTON POST para. 6 (Feb. 10, 2015, 11:46 AM), http://www.huffingtonpost.com/wray-herbert/the-science-of-interrogat_b_6309296.html [<https://perma.cc/7GP4-BGE7>].

²⁶ See “*The Foundation of Interrogation*” *Is Rapport, Not Torture*, WILSON CENTER para. 2 (Feb. 25, 2009), <https://www.wilsoncenter.org/article/the-foundation-interrogation-rapport-not-torture> [<https://perma.cc/XS8H-G8TL>].

²⁷ While non-coercive methods of torture were presented as chief recommendations of the Intelligence Science Board’s two different multiyear studies, the very fact that they pulled attention away from the “strategic consequences” of torture is in and of itself problematic. This is because as the burden of proof shifts from those who condone torture as a violation of domestic and international law to those who oppose it altogether, it instead focuses on torture’s “tactical efficacy”. Although the non-effectiveness of torture is an important consideration, it is just as critical to shed light on the ongoing existence of torture as a mechanism of interrogation, and the individuals who remain in support of it. See Douglas Johnson et al., *The Strategic Costs of Torture: How “Enhanced Interrogation” Hurt America*, FOREIGN AFFAIRS para. 30 (Sept. 2016), <https://www.foreignaffairs.com/articles/united-states/strategic-costs-torture> [<https://perma.cc/98Z3-J4LX>].

²⁸ James P. Pfiffner, *The Efficacy of Coercive Interrogation: Notes from the Field*, GEO. MASON U. 1, 14 (2012), http://pfiffner.gmu.edu/wp-content/uploads/2011/10/Pfiffner_Torture_Efficacy_Ch-6_ET.pdf.

²⁹ See *id.* at 15.

³⁰ *Id.* at 15.

10. In spite of Zubaydah's willingness to disclose such information, members of the CIA believed that he had been concealing additional information of value as it pertained to the attacks.³¹ Zubaydah suffered the early stages of his torture at this time, as FBI officials shackled his naked body to a chair for about two to three weeks, deprived him of sufficient food, and held him in freezing temperatures.³² His freedom and mobility were limited to the use of the toilet, which was in the form of a bucket.³³ At times, he survived only on water and a nutrition drink called, "Ensure".³⁴ His captors also forced him to stay awake by spraying water directly in his face.³⁵

11. Agents on site were initially reluctant to conduct the enhanced interrogations as they believed these methods to be illegal. However, upon seeking a stamp of approval from senior officials at the National Security Council in Washington, D.C. in July of that same year, all methods of interrogation proceeded as planned.³⁶ Lawyers from the Office of Legal Counsel at the Department of Justice even went so far as to issue official memos that authorized the proceedings, and concluded that all enhanced techniques were in fact legal.³⁷ It is without question that even as a cooperative detainee under certain circumstances, Zubaydah was tortured beyond what information he was able to provide.

12. There was a period of 47 days from June 18th to August 4, 2002 in which Zubaydah was left in complete isolation at the Thailand black site.³⁸ While the FBI team had left the site's

³¹ Shane, *supra* note 5, at para. 16.

³² See Declaration for the Petitioner at 25, *Husayn v. Gates*, No. 08-1360 (July 23, 2009).

³³ See *supra* note 16, at para. 6.

³⁴ *Supra* note 16, at para. 6.

³⁵ See *supra* note 16, at para. 6.

³⁶ See MARGULIES, WHAT CHANGED, *supra* note 12, at 210.

³⁷ *Id.*

³⁸ See *supra* note 16, at para. 8.

premises entirely, the CIA began to plot a more aggressive and invasive torture plan. The following is a transcript of the proposed interrogation plan, dated July 15, 2002:

If [Zubaydah] develops a serious medical condition which may involve a host of conditions including a heart attack or another catastrophic type of condition, all efforts will be made to ensure that proper medical care will be provided. In the event that he dies, we need to be prepared to act accordingly, keeping in mind the liaison equities involving our hosts regardless which [disposition] option we follow however, and especially in light of the planned psychological pressure techniques to be implemented, we need to get reasonable assurances that [Zubaydah] will remain in isolation and incommunicado for the remainder of his life.³⁹

13. While some of Zubaydah's detention sites continue to remain undisclosed, it has been confirmed that on December 5, 2002, he was transferred to a black site in Poland after his initial detention at a similar site in Thailand.⁴⁰ The CIA held him at a facility in Stare Kiejkuty until September 22, 2003.⁴¹ For the subsequent four years until his transfer to Guantanamo Bay in September 2006, Zubaydah underwent constant shifting from site to site. On or about February 17th of 2005, he was extraordinarily rendered to Lithuania, where high-level Lithuanian officials had provided prior authorization as to his secret detention.⁴² His transfer route to Lithuania was said to have passed through either Jordan or Romania.⁴³ Previous to his time in Lithuania, Zubaydah was detained at a facility in Rabat, Morocco.⁴⁴ The CIA was responsible for implementing each of these transfers.

14. Prior to each of Zubaydah's transfers from prison to prison, and among different black sites, he was neither told how long the process would take, nor where he would be transported to,

³⁹ *Supra* note 16, at para. 8.

⁴⁰ See Camille Sespene, *Zubaydah: Establishing International Accountability for Complicity of Torture and Transforming Enhanced Interrogation Rhetoric*, 38 LOY. L.A. INT'L & COMP. L. REV. 189, 198 (2016).

⁴¹ See *id.* at 199.

⁴² See *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*, OPEN SOC'Y JUST. INITIATIVE 90 (2013).

⁴³ See *supra* note 16, at *Timeline of Key Events*.

⁴⁴ See *supra* note 42, at 60.

and was forced to shave his beard and head. The journeys lasted anywhere from twenty-four to thirty hours at a given time.⁴⁵ He recalls one transfer operation, in particular, in which his blindfold was tied around his head so tightly that he obtained wounds to his nose and ears as a result of it.⁴⁶ During his transfers, he “would be shackled by hands and feet . . . [and] usually be transported in a reclined sitting position with his hands shackled in front.”⁴⁷ He was also prohibited from using the toilet, and, instead, forced to “urinate or defecate into the diaper.”⁴⁸

15. Conceptualizing these facts, as they would have occurred in real-time, is to equate them as being a form of torture in and of themselves. As Zubaydah was never told where he would be detained next, or the duration of time in which he would be rendered in each site, his life felt constantly unstable. He, like other detainees who were held in CIA custody, was also denied access to legal representation throughout the course of his torture.⁴⁹

16. It is also crucial to note that a portion of Zubaydah’s rendition prior to his detention at Guantanamo Bay was facilitated on CIA-owned aircrafts that flew in and out of North Carolina’s Kinston Regional Jetport. Publicly available flight logs reveal that Boeing 737 with registration number N313P was one such aircraft that was responsible for his transfer in and around March of 2004.⁵⁰ The “nominally independent company, Aero Contractors, which in fact worked exclusively for the CIA”, was found to have operated it.⁵¹ The planning stages of this global

⁴⁵ Geoff Loane & John Rizzo, *ICRC Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody*, ICRC 1, 6 (2007), <https://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>.

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *See Sespene, supra* note 40, at 199.

⁵⁰ *See Rendition Circuit: 20-25 September 2003*, RENDITION PROJECT para. 1, <https://www.therenditionproject.org.uk/flights/renditions/N313P-030920.html> [<https://perma.cc/QW5R-TZG8>].

⁵¹ *Id.* at para. 2.

circuit were so intricate, however, that they consisted of dummy flight plans that were set out to disguise the landing of this and other aircrafts in Poland instead.⁵²

IV. Methods of Interrogation and Experiences of Torture

17. Zubaydah is acknowledged as being the “CIA’s first detainee,” according to the Senate Torture Report.⁵³ His interrogations became the subject of a series of videotapes. However, the CIA destroyed the tapes in 2005.⁵⁴ At this stage of his torture, the CIA had also rejected the idea of providing the U.S. military with access to Zubaydah, as it wanted to keep his detention a secret from the International Committee of the Red Cross (“ICRC”).⁵⁵ As a result of the CIA’s interest in Zubaydah, and with the advice of two military psychologists who were inexperienced in conducting interrogations of this nature, CIA interrogators began subjecting Zubaydah to “extreme physical force”.⁵⁶ The “theories of interrogation” conducted by the psychologists, and used against Zubaydah, stemmed from the notion of “learned helplessness”.⁵⁷ Their tactics were coercive enough so as to force Zubaydah into a “zone of cooperation”, and were rationalized by their firm belief that Zubaydah could provide information regarding threats to the United States homeland.⁵⁸

18. Upon the Justice Department’s approval of the psychologists’ interrogation techniques, Zubaydah was countlessly waterboarded to the point where he became “completely unresponsive, with bubbles rising through his open, full mouth.”⁵⁹ In February 2008, CIA

⁵² *See id.* at para. 2.

⁵³ *Senate Torture Report*, *supra* note 24, at 10.

⁵⁴ *See Senate Torture Report*, *supra* note 24, at 5.

⁵⁵ *See supra* note 16, at para. 2.

⁵⁶ Shane, *supra* note 5, at para. 16.

⁵⁷ *Senate Torture Report*, *supra* note 24, at 18.

⁵⁸ John W. Schiemann, *No, Donald Trump, torture doesn’t work*, POLITICO para. 10 (Dec. 2, 2016, 5:24 AM), <http://www.politico.com/agenda/story/2016/12/no-donald-trump-torture-doesnt-work-000249> [<https://perma.cc/ZL8T-YYVK>].

⁵⁹ Shane, *supra* note 5, at para. 18.

director Gen. Michael Hayden publicly confirmed that Zubaydah had in fact been waterboarded.⁶⁰ Being waterboarded meant that Zubaydah underwent suffocation by water. He was strapped to a reclined bed, while a cloth was placed over his face and covered his nose and mouth. The water “was then poured continuously onto the cloth, saturating it and blocking off any air so that [Zubaydah] could not breathe.”⁶¹ Zubaydah believes that he was waterboarded for a period of six days by guards “with black costumes, masks and black goggles.”⁶² Zubaydah has previously described the extent of his torture in his own words as follows:

I was put on what looked like a hospital bed, and strapped down very tightly with belts. A black cloth was then placed over my face and the interrogators used a mineral water bottle to pour water on the cloth so that I could not breathe. After a few minutes the cloth was removed and the bed was rotated into an upright position. The pressure of the straps on my wounds caused severe pain. I vomited . . . I struggled without success to breathe. I thought I was going to die. I lost control of my urine. Since then I still lose control of my urine when under stress.⁶³

19. His waterboarding was accompanied by a series of abusive verbal interrogations. Zubaydah recounts that around the fourth day of his waterboarding sessions, he was told, “nobody in Washington believes you”.⁶⁴ At the end of the six days, he was notified that he would be speaking to new interrogators – a man and a woman – while being forced to stand naked and shackled in front of them.⁶⁵ While these periods of questioning were much shorter in duration, lasting only one to two hours per day, Zubaydah neither responded to nor answered any questions.⁶⁶

⁶⁰ See *Abu Zubaydah*, N.Y. TIMES: GUANTANAMO DOCKET para. 2 (2008), <http://projects.nytimes.com/guantanamo/detainees/10016-abu-zubaydah> [<https://perma.cc/A55E-YX4F>].

⁶¹ Loane & Rizzo, *supra* note 45, at 10.

⁶² Declaration for the Petitioner, *supra* note 32, at 28.

⁶³ Loane & Rizzo, *supra* note 45, at 10.

⁶⁴ Declaration for the Petitioner, *supra* note 32, at 28.

⁶⁵ *Id.*, at 29.

⁶⁶ *Id.*

20. The CIA employed additional enhanced interrogation techniques to further Zubaydah's suffering. He was confined to a narrow box for constraining his movement. In some situations, agents went so far as to place him in a "coffin-like box with insects",⁶⁷ even in spite of his insect phobia.⁶⁸ He underwent periods of prolonged nudity. He endured days of intense sleep deprivation, at times up to 180 hours on end.⁶⁹ He was exposed to loud music and extreme cold. He was restricted the provision of solid food, and, at times, denied food altogether. He was habitually slammed into a hard concrete wall as a towel collared his neck.⁷⁰

21. Zubaydah was frequently made to hang by his arms. He was shackled in a standing position for prolonged periods of time. Interrogators would often place a cover over the boxes in which they confined him to, blocking his ventilation, and making his wounds prone to infection.⁷¹

22. In the process of being so restricted, the bullet wounds in Zubaydah's stomach and leg from his capture opened up and began bleeding.⁷² "The pain, discomfort and humiliation were incredible," he later said.⁷³ "Sometimes I would pass out from the pain and stress."⁷⁴

23. All of these methods of enhanced interrogation were used to increase Zubaydah's "sense of hopelessness."⁷⁵ However, none were said to have been successful in his disclosure of "useful information."⁷⁶ In his written declaration, Zubaydah mentioned repeatedly telling his interrogators that he "never supported or engaged in any hostilities against the United States."⁷⁷

⁶⁷ Lisa Hajjar, *American Torture: The Price Paid, the Lessons Learned*, MIDDLE EAST REP., July 1, 2009, at 14, 16.

⁶⁸ See *supra* note 42, at 17.

⁶⁹ See *Senate Torture Report*, *supra* note 24, at 10.

⁷⁰ Shane, *supra* note 5, at para. 19.

⁷¹ See Loane & Rizzo, *supra* note 45, at 13.

⁷² See Declaration for the Petitioner, *supra* note 32, at 27.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Senate Torture Report*, *supra* note 24, at 55.

⁷⁶ *Id.*, at 67.

⁷⁷ Declaration for the Petitioner, *supra* note 32, at 24.

He maintained his composure throughout his torture, even in times of “extreme duress and violence” at the hands of the CIA, whose interrogations were often in the form of screamed questions.⁷⁸ The only information that Zubaydah provided in response to the interrogations was basic information regarding his knowledge of Al Qaeda – however, as he has stated openly in his Declaration, this would have been information that anyone who spent time in Afghanistan would have known.⁷⁹

24. The Senate Torture Report makes light of the CIA personnel’s comments that the extent of Zubaydah’s coercive interrogation was “visually and psychologically very uncomfortable”.⁸⁰ There were several members who were so “profoundly affected . . . some to the point of tears and choking up.”⁸¹ Some even requested to be transferred to a different CIA station because of the extent to which the torture inflicted on detainees affected them on a personal level.⁸² These same personnel simultaneously began to question the efficacy of the interrogation tactics being used altogether.⁸³ On a wider scale, however, the mere existence of the United States’ torture policy and its damaging, deleterious effects on individuals like Zubaydah confirms that no contemporary society is more secure because of it.⁸⁴ Rather, these effects work to “boost rather than diminish the threat of terrorism” and the survival of global empathy in a post-9/11 world.⁸⁵

25. Among most other individuals imprisoned at Guantanamo and other detention camps, Zubaydah’s name remains amongst the more well known. The degree of torture he endured “set

⁷⁸ *Id.*, at 27.

⁷⁹ *See* Declaration for the Petitioner, *supra* note 32, at 25.

⁸⁰ *Senate Torture Report*, *supra* note 24, at 70.

⁸¹ *Id.*

⁸² *See* Deborah M. Weissman et al., *Assessing Recent Developments: Achieving Accountability for Torture*, UNC SCH. L. HUM. RTS. POL. LAB 1, 60 (2016), <http://www.law.unc.edu/documents/academics/humanrights/tortureaccountability.pdf> [hereinafter Weissman et al., *Assessing Recent Developments*].

⁸³ *See id.*

⁸⁴ *See* Hajjar, *supra* note 67, at 19.

⁸⁵ Hajjar, *supra* note 67, at 19.

the stage for the whole CIA interrogation program.”⁸⁶ While there is no justification as to the harshness of Zubaydah’s torture, especially the frequent waterboarding operations inflicted on him, a likely factor the CIA relied on to justify his treatment was their initial presumption that he was Osama bin Laden’s top recruiter and affiliate.⁸⁷ This presumption, however, was grossly unsubstantiated, as there was no record found of Zubaydah having joined al-Qaeda’s operations prior to September 11, 2001.

V. Ongoing Detention

26. In January 2010, the Guantanamo Review Task Force recommended Zubaydah for prosecution.⁸⁸ At present, Zubaydah’s case is under evaluation by the Periodic Review Board (“PRB”) in order to decide whether his continued detention in Guantanamo “remains necessary to protect against a continuing significant threat to the security of the United States.”⁸⁹ While the US government’s unclassified summary has framed Zubaydah’s identity and allegations in a negative light, other pieces of evidence reveal that he was not working in allegiance to Osama bin Laden.⁹⁰ Zubaydah has stated in his personal account of his torture that he was “unconnected to al Qaeda, and did not train anyone for operations and did not support violence against the United States or Americans.”⁹¹ It should be further noted that Zubaydah has not actually been

⁸⁶ A bipartisan report released by the Senate Armed Services Committee in April 2009 stated that enhanced interrogation techniques, such as placing detainees in stress positions and stripping them of their clothes, were used in Iraq only upon approval for use in Guantanamo Bay and Afghanistan. Thus, the torture of detainees like Zubaydah that was committed at Guantanamo set a precedent for the kind of torture that would be replicated in other detention facilities and black sites across the globe. See Hajjar, *supra* note 67, at 16; see also Gail R. Chaddock, *Report says top officials set tone for detainee abuse*, CHRISTIAN SCI. MONITOR (Apr. 22, 2009), <http://www.csmonitor.com/USA/Politics/2009/0422/report-says-top-officials-set-tone-for-detainee-abuse> [<https://perma.cc/W2WV-DXJC>].

⁸⁷ See Hajjar, *supra* note 67, at 16.

⁸⁸ See *supra* note 60, at para. 1.

⁸⁹ *The Periodic Review Board*, PERIODIC REV. SECRETARIAT: U.S. DEPT. DEF. para. 1 (accessed Apr. 4, 2017), <http://www.prs.mil/About-the-PRB/> [<https://perma.cc/JC5T-UNCP>].

⁹⁰ Joscelyn, *supra* note 13, at para. 5.

⁹¹ Declaration for the Petitioner, *supra* note 32, at 25.

charged for a single crime by the U.S. government to date.⁹² Furthermore, according to Zubaydah, “In fact, people with the CIA later admitted to me that they were wrong to think I was in al Qaeda”.⁹³

27. Zubaydah’s attorneys have persistently argued that his status as an alleged 9/11 conspirator and affiliate “was overstated by the Bush administration for political reasons.”⁹⁴ The 9/11 Commission, spearheaded by Congress for the purpose of investigating the facts surrounding the 9/11 attacks, sought to question senior members of al-Qaeda, including Zubaydah. The CIA, however, “flatly refused” to make Zubaydah available to the commission.⁹⁵ For this reason, black site prisons around the world became a rubber stamp for the Bush administration’s post-9/11 detention policy. Irrespective of whether these allegations about Zubaydah’s identity are true, he, like all individuals, is entitled to a life that is protected from torture.

VI. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

28. United States government officials responsible for the torture of Zubaydah and his fellow detainees maintained that their treatment of them did not violate international law.⁹⁶ However, Zubaydah’s pre-capture narrative and the allegations ascribed to him by the CIA as one of Al Qaeda’s highest-profile terrorists, even if true, do not justify the egregious torture that he has suffered. As torture has attained the status of a peremptory norm of general international law, the

⁹² See Sespene, *supra* note 40, at 190.

⁹³ Declaration for the Petitioner, *supra* note 32, at 25.

⁹⁴ Joscelyn, *supra* note 13, at para. 7.

⁹⁵ MARGULIES, GUANTANAMO, *supra* note 20, at 180.

⁹⁶ See Derek Summerfield, *Fighting “Terrorism” With Torture: Torture Is A Form Of Terrorism: There Are No Justifications For It*, 326 BRIT. MED. J. 773, 773 (2003).

prohibition on torture is “not subject to derogation, even in times of war or emergency.”⁹⁷ Even if Zubaydah were in fact a 9/11 conspirator, any and all acts of torture inflicted on him would essentially be “adopting the same moral principles as terrorism itself.”⁹⁸ Furthermore, it is without doubt that these various coercive tactics were “inconsistent with our values as Americans, and their consequences present lasting challenges for us as a country and for the individuals involved”.⁹⁹

29. The existence of the extraordinary rendition and torture program has undermined the integrity of democratic institutions, and has also contributed to the development of the anti-Islamic narrative that continues to stigmatize victims of torture like Zubaydah. Its “weapon of choice” has been described as the “invocation and manipulation” of the rule of law.¹⁰⁰ Those who were opposed to the threat of “Islamization”¹⁰¹ have made attempts to circumvent pre-existing legal mechanisms, and also devise new frameworks that might classify torture as falling outside the purview of international law altogether.

30. Prior to discussing specific international human rights instruments of which torture is a blatant violation, it is worth noting the way in which the rule of law has been perceived as a limiting factor of the exercise of governmental power. In a portion of his dissent in *Olmstead v. U.S.*, decided nearly nine decades ago, Justice Brandeis ardently stated:

In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is

⁹⁷ *Torture*, INT’L JUST. RESOURCE CTR. para. 2 (accessed Apr. 16, 2017), <http://www.ijrcenter.org/thematic-research-guides/torture/> [<https://perma.cc/T693-6Y8Q>].

⁹⁸ *Defusing the Ticking Bomb Scenario: Why we must say No to torture, always*, ASS’N PREVENTION TORTURE, 1, 6 (2007), <https://sakai.unc.edu/access/content/group/704dcc53-2c52-45db-9ced-8fe27c5d5dbc/Jan%2011/TickingBombScenario.pdf>.

⁹⁹ Matt Apuzzo et al., *How US Torture Left a Legacy of Damaged Minds*, N.Y. TIMES para. 10 (Oct. 9, 2016), <https://www.nytimes.com/2016/10/09/world/cia-torture-guantanamo-bay.html> [<https://perma.cc/CKF2-8YEH>] (quoting Ben Rhoades, the deputy national security adviser).

¹⁰⁰ MARGULIES, WHAT CHANGED, *supra* note 12, at 165-66.

¹⁰¹ *Id.*, at 166.

contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that, in the administration of the criminal law, the end justifies the means – to declare that the Government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution. Against that pernicious doctrine, this Court should resolutely set its face.¹⁰²

31. While these words were crafted for the purpose of defining both a general right to privacy, and the extent to which a government’s wire-tapping operations constituted an unreasonable search and seizure, they can be understood as having much broader implications. The government is expected to abide to a similar set of obligations in the context of human rights treaty provisions that are set out to protect and vindicate the rights of persons. There is a range of international and regional human rights instruments that condemn not only torture, but also virtually any form of “cruel, inhuman, or degrading punishment or treatment.”¹⁰³ This prohibition is enshrined in Article 5 of the Universal Declaration of Human Rights (UDHR), which the United Nations General Assembly had adopted in 1948 under the stewardship of Eleanor Roosevelt.¹⁰⁴ Although the UDHR is not a binding treaty, many human rights bodies and international jurists interpret its provisions to be a reflection of customary international law.¹⁰⁵ The “right to be free from torture” has achieved customary status in the international legal community under the UDHR’s auspices “by virtue of its wide acceptance” as a human rights norm.¹⁰⁶

¹⁰² *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

¹⁰³ American Convention on Human Rights art. 5, Aug. 27, 1979, 1144 U.N.T.S. 144, 149.

¹⁰⁴ See *Champions of Human Rights: Eleanor Roosevelt (1884-1962)*, UNITED HUM. RTS., <http://www.humanrights.com/voices-for-human-rights/eleanor-roosevelt.html> [https://perma.cc/SK4G-C58N].

¹⁰⁵ See Deborah M. Weissman et al., *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 18-19 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman et al., *Obligations and Obstacles*].

¹⁰⁶ Hilary Charlesworth, *Universal Declaration of Human Rights (1948)*, OXFORD PUB. INT’L L. para. 16 (accessed Apr. 16, 2017), <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e887> [https://perma.cc/YCH3-6NSY].

32. Article 5 of the American Convention on Human Rights goes on to state that “[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” In 1994, Congress passed a federal anti-torture statute that criminalized the act of American government officials to torture individuals outside of the country.¹⁰⁷ It did so as part of the United States’ obligations under the 1984 United Nations Convention Against Torture (CAT), which it had signed in 1988.¹⁰⁸

33. While no single definition of torture holds predominance in international law, the CAT’s definition of it is the one looked on to most widely by human rights activists and scholars. Under Article 1 of the CAT, torture is defined as:

“[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him . . . information or a confession, punishing him for an act he . . . has committed or is suspected of having committed, or intimidating or coercing him . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹⁰⁹

34. It is fairly clear from this definition that there are four essential elements associated with the crime of torture in a universal legal framework. The text of this provision alone underscores: (1) the nature of the act in question (“severe pain or suffering, whether physical or mental”); (2) intent behind its commission (“intentionally inflicted on a person”); (3) purpose behind its commission (“obtaining from him or a third person information or a confession, punishing him for an act he or third person has committed . . .”); and (4) the involvement of public officials (“or any other person acting in an official capacity”).¹¹⁰ Although this definition appears to read as all-encompassing, the challenges associated with its applicability remain tied to the fact that is

¹⁰⁷ See MARGULIES, GUANTANAMO, *supra* note 20, at 89.

¹⁰⁸ See *id.*; see also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter Convention against Torture].

¹⁰⁹ Convention against Torture, *supra* note 108, at art. 1, 113-114.

¹¹⁰ Convention against Torture, *supra* note 108, at art. 1, 113-114.

falls outside the purview of torture's definition under customary international law. However, for the purposes of conveying the extent to which the conduct afflicted on Zubaydah constituted torture, these four elements can nonetheless be used as guidelines.

35. It is without question that Zubaydah's suffering was conducted at the hands of public officials, be they direct members of the CIA, FBI, or affiliates of other federal governmental bodies. It is also undeniable that the pain he endured was "severe", both on a mental and on a physical level. Furthermore, as the element of 'intent' remains fundamental to the enhanced interrogation tactics that were implemented on Zubaydah, the violent acts incurred on him were a result of a pre-planned attack on his personal liberty and sense of dignity. Finally, all acts were committed for the primary purpose of extracting information about his alleged affiliation to the September 11 attacks, and the al Qaeda terrorist regime. To distinguish one type of interrogation technique as more or less tortuous than another would detract from the notion that torture is in fact torture, and inexcusable irrespective of the degree.

36. It is perhaps just as important to make note of the United States' obligations as a party to the CAT. That is, the United States must:

take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction and that no state that is a party to it may expel, return, or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.¹¹¹

37. The language of this provision suggests that irrespective of whether individuals like Zubaydah who were transported via Aero's services were tortured *within* a U.S. state or territory, the United States still has a duty to ensure that no state or territory "extradites a person to another country where the detainee could be tortured."¹¹² Hence, pursuant to the Supremacy Clause,

¹¹¹ Convention against Torture, *supra* note 108, at art. 2, 114.

¹¹² Weissman *et al.*, *Obligations and Obstacles*, *supra* note 105, at 37.

CAT would bind to individual states like North Carolina that also have the legal responsibility to ensure that appropriate measures are taken to prevent and eliminate all acts of torture regardless of where they occur.¹¹³

38. North Carolina's legal responsibility to fulfill federal obligations under CAT stems from CAT's explicit mandate that states take "administrative" measures to prevent torture from occurring within their own jurisdictions.¹¹⁴ Among these obligations include the need for the state's political entities and subdivisions to revoke or discontinue Aero's "flying permits, licenses, and leases" with regards to its operations.¹¹⁵ This cannot be an unreasonable expectation to impose on North Carolina's government bodies, especially considering the amount of basic information that has been made available to them concerning Aero's complicity in the extraordinary rendition and torture of individuals like Zubaydah.

39. The program of extraordinary rendition also violates the terms of the 1966 International Covenant on Civil and Political Rights (ICCPR), which the United States, as a member state to the treaty, must not derogate from under any circumstances.¹¹⁶ In other words, the ICCPR has served as a binding agreement, and has even gone so far as to preclude torture as a justified action in times of public emergency.¹¹⁷ Torture in the international legal arena qualifies as a war crime and "crime against humanity",¹¹⁸ due to its status as a "grave breach"¹¹⁹ of the 1949

¹¹³ *Id.*

¹¹⁴ Weissman *et al.*, *Obligations and Obstacles*, *supra* note 105, at 38.

¹¹⁵ *Id.*

¹¹⁶ See Deborah M. Weissman *et al.*, *The North Carolina Connection To Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 7 (2012), <http://www.law.unc.edu/documents/clinicalprograms/finalrenditionreportweb.pdf> [hereinafter Weissman *et al.*, *The North Carolina Connection*].

¹¹⁷ See Geoffrey Wallace, *International Law and Public Attitudes Toward Torture: An Experimental Study*, 67 CAMBRIDGE U. PRESS 105, 108 (2013).

¹¹⁸ *Id.*; see also Rome Statute of the International Criminal Court art. 7 § 1(f) (1988) (classifies torture as a 'crime against humanity').

¹¹⁹ Wallace, *supra* note 117, at 108.

Geneva Conventions and their Additional Protocols that were enacted in subsequent decades. Its existence has also been closely associated to national security threats. Some of America's most powerful public officials have outwardly expressed the "need to work on the 'dark side' to defeat terrorists", while also viewing the Geneva Conventions' provisions as "obsolete" with regards to the war on terror.¹²⁰

40. However, one of the most concerning issues with regards to these violations has been the nation's reliance on state secrecy doctrines to immunize agents of extraordinary torture and rendition from accountability mechanisms altogether.¹²¹ Consequently, this guise of state secrecy has also denied victims like Zubaydah of opportunities to seek redress for the crimes to which they have been subjected. At the same time, this is not to say that Zubaydah's suffering has been left unacknowledged or uncompensated by non-US governments. Following the human rights violations at Abu Ghraib that became public knowledge, Canadian and European officials, and other authorities housed in the European Parliament and Council of Europe, launched public inquiries in a number of Western states.¹²² The European Court of Human Rights took the lead initiative in prosecuting torture of US detainees that was committed by CIA black sites, and the governments of those countries that were found to be complicit.¹²³

41. In the 2014 decision of *Husayn Abu Zubaydah v. Poland*,¹²⁴ the Court ruled against Poland, which had to pay Zubaydah 130,000 euros for detaining him in a Polish black site and for blatantly violating Article 3 of the European Convention on Human Rights.¹²⁵ The Court finalized the judgment even when the Polish government subsequently appealed this initial

¹²⁰ *Id.*, at 109.

¹²¹ See Weissman *et al.*, *The North Carolina Connection*, *supra* note 116, at 5.

¹²² See Douglas Johnson *et al.*, *supra* note 27, at para. 18.

¹²³ See *id.*

¹²⁴ See *Husayn (Abu Zubaydah) v. Poland*, App. No. 7511/13, Eur. Ct. H.R. (2014).

¹²⁵ See Johnson *et al.*, *supra* note 27, at para. 18.

ruling.¹²⁶ In a separate action filed on behalf of Zubaydah by the International Centre for the Legal Protection of Human Rights (“Interights”), the Court also undermined Lithuania’s role in Zubaydah’s torture and enforced disappearance at a secret detention facility situated on Lithuanian soil.¹²⁷ In both of these cases, the Court’s ruling helped to establish a “precedence of accountability for complicity in torture”, and required that all activities conducted within the European Union “comport to international human rights standards”.¹²⁸

42. Litigation like this falls within the ambit of the European Convention on Human Rights (“ECHR”), of which the European Court of Human Rights serves as the primary body of enforcement. The Council of Europe adopted it on November 4, 1950 for the purpose of protecting substantive and procedural political and civil rights when the safeguards and remedies of member states failed.¹²⁹ As of late, the ECHR’s ratification “became a prerequisite for joining the European Union”.¹³⁰ Article 3 explicitly prohibits torture by stating “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹³¹ Article 6 ensures all individuals the right to a fair trial,¹³² and Article 13 goes on to provide the right to an effective remedy in the event that an individual’s rights have been violated.¹³³

43. The implementation of international treaty obligations that are imposed on State parties with federal structures, such as the United States, are expected to occur at the level of individual states like North Carolina as well. Hence, it is critical that North Carolina does its part to abide to treaty obligations, especially “in areas of substantive law for which they are responsible under

¹²⁶ See Sespene, *supra* note 40, at 201.

¹²⁷ See *supra* note 42, at 93.

¹²⁸ Sespene, *supra* note 40, at 190.

¹²⁹ See Sespene, *supra* note 40, at 192.

¹³⁰ Sespene, *supra* note 40, at 192.

¹³¹ *European Convention on Human Rights*, COUNCIL EUR. 1, 6 (1950), https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/Convention_ENG.pdf.

¹³² See *id.* at 9.

¹³³ See *id.* at 12.

[American] constitutional law”, so as to render the nation’s treaty compliance more meaningful.¹³⁴

44. Additionally, “whatever its utility for philosophers,”¹³⁵ torture as a manifestation of the ticking time bomb thought experiment can provide no sound basis for policy. The rationale behind this is straightforward: bureaucracies of torture that are borne out of institutionalized and political notions of torture eventually end up torturing innocents. As a tragic result, the “morass of false and ambiguous information” that is generated inevitably end up “exceeding even their own guidelines and limits on torture’s brutality.”¹³⁶

45. The details of the degree of violence inflicted on Zubaydah undeniably constitute acts of torture under the rule of law. However, in spite of former President Obama’s Executive Order 13491 (“Order”), which banned the United States government’s use of torture, there is grave concern as to its lasting impact in this current political administration.¹³⁷ President Trump has already made statements in which he “vowed to reinstate torture, including treatment that would be ‘a hell of a lot worse than waterboarding.’”¹³⁸ This public condonation of waterboarding as a form of torture not only poses as a grave sign of disrespect towards innocent civilians like Zubaydah, but it also reinforces the fact that the United States government was and continues to be actively aware of its stake in the extraordinary torture and rendition program.

46. Since its promulgation on January 22, 2009, however, the Order has also been the subject of criticism by some who “argue that it has fallen short of addressing all of the CIA’s extrajudicial practices.”¹³⁹ These skeptics have gone so far as to believe that the Order was in

¹³⁴ Weissman *et al.*, *The North Carolina Connection*, *supra* note 116, at 7.

¹³⁵ Schiemann, *supra* note 58, at para. 12.

¹³⁶ *Id.*

¹³⁷ See Johnson *et al.*, *supra* note 27, at para. 1.

¹³⁸ *Id.*, at para. 2.

¹³⁹ Sespene, *supra* note 40, at 205.

fact worded for the purpose of preserving the CIA’s authority to detain alleged terrorists “on a short-term transitory basis” before rendering them to a foreign territory for trial or interrogation.¹⁴⁰

B. Federal Law Violations

47. Under Amendment 8 of the United States Constitution, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹⁴¹ The Constitution’s second clause, the Supremacy Clause, states that all contents of this living, breathing document “shall be the supreme Law of the Land”, and, as such, the United States shall not derogate from them.¹⁴² This includes, but is not limited to, torture and all other forms of cruel, unusual, and/or degrading punishments inflicted on another human being.

48. The Supremacy Clause also makes explicit the fact that the “Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State . . .” which ascribes equal value to ratified treaties as enacted federal statutes.¹⁴³ Therefore, not only do international treaties bind the constitutions, laws, and courts of state jurisdictions, but under the auspices of the Supremacy Clause, they also bind state and local officials to their legal obligations.¹⁴⁴ This language also requires Aero Contractors, and North Carolina’s own state and local public officials, to abide to the obligations of international treaties. As Aero functions as both a private entity as well as a government contractor, it must be held “similarly responsible” for the crimes against humanity that it and its employees committed in violation of international human rights treaties and federal law.¹⁴⁵

¹⁴⁰ *Id.*

¹⁴¹ U.S. CONST. amend. VIII.

¹⁴² U.S. CONST. art. VI, para. 2.

¹⁴³ Weissman *et al.*, *Obligations and Obstacles*, *supra* note 105, at 36.

¹⁴⁴ *Id.* note 105, at 36-37.

¹⁴⁵ *Id.*, at 39.

49. Additional federal laws that expressly condemn torture as flagrant violations of human rights include the Alien Tort Statute (“ATS”), Torture Victims Protection Act (“TVPA”) of 1991, and the Federal Torture Statute of 1994, among others.

50. Under the ATS, 28 U.S.C. § 1350, non-U.S. citizens who have suffered egregious human rights violations have the capacity to sue government officials and private actors in U.S. courts.¹⁴⁶ This federal law was adopted as part of the Judiciary Act of 1789 for the purpose of granting non-U.S. citizens the power to sue for violations of customary international law that have been perpetrated in other parts of the world.¹⁴⁷

51. In 2010, five individuals who were detained within the CIA’s torture and extraordinary rendition program filed a suit against the United States and one of its corporations, Jeppesen Dataplan.¹⁴⁸ Like Aero Contractors, Jeppesen Dataplan had been providing “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”¹⁴⁹ The suit was in fact brought within the purview of the ATS, and was marshaled under claims for the “forced disappearance” and the “torture and other cruel, inhuman or degrading treatment” of the detainees.¹⁵⁰ If Zubaydah were to file a suit against Aero for possessing actual or constructive knowledge that its services were being used to transport him from North Carolina to black sites globally, such a suit would surely present a valid and cognizable cause of action.¹⁵¹

¹⁴⁶ See *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, CTR. CONST. RTS. para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

¹⁴⁷ *Id.*

¹⁴⁸ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. See Brief of Plaintiffs-Appellants, Mohamed et al., v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

¹⁴⁹ *Id.* at 13526.

¹⁵⁰ *Id.* at 13526.

¹⁵¹ See *Al Shimari v. CACI Premier Tech.*, 758 F.3d 516 (4th Cir. 2014) (No. 15-1831).

52. The TVPA of 1991 was promulgated for the purpose of executing the United States' obligations under the United Nations Charter and other international mechanisms that pertained to the protection of human rights "by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing."¹⁵² Under this rule of law, Zubaydah would be entitled to seek compensation as the very least form of redress possible. It defines torture much along the same lines as the CAT does, though it expands the "mental pain or suffering" elements to include not only "the intentional infliction or threatened infliction of severe physical pain or suffering", but also "the [threatened] administration or application . . . of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality" and "the threat of imminent death".¹⁵³ Given the egregious and almost fatal nature of a great many offences inflicted on Zubaydah, his suffering would more than likely qualify as a "threat of imminent death" for the purposes of classifying it as torture. However, the TVPA as a whole establishes a ten-year statute of limitations, which means that any action(s) concerning the US government's liability under this law should have been commenced within ten years after Zubaydah's cause(s) of action arose.¹⁵⁴

53. These expanded definitions of torture are mirrored in the Federal Torture Statute (18 U.S.C. § 2340). The FTS goes further to specify that alleged offenders of torture can be either US nationals, or anyone present in the United States, irrespective of their nationality.¹⁵⁵ It also states that anyone who "commits or attempts to commit torture" outside the United States "shall be fined under this title or imprisoned not more than 20 years, or both".¹⁵⁶ The fact that no

¹⁵² Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb., 106 Stat. 73, 73 (1992).

¹⁵³ *Id.* at § 3(b)(2)(C).

¹⁵⁴ *See id.* at § 2(c) ("No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.").

¹⁵⁵ Federal Torture Statute, 18 U.S.C. § 2340(A) (1994).

¹⁵⁶ *Id.*

American public official responsible for Zubaydah’s torture has been prosecuted under this federal statute demonstrates a blatant disregard for its existence.

C. North Carolina Law Violations

54. Given North Carolina’s shocking associations with the extraordinary rendition and torture program, and the traumatic experiences of Zubaydah and others, it is disturbing to think that there has been little to no pressure placed on its public officials. However, the reality is that “North Carolina has not been prevented from acting [in matters of foreign affairs] because of the federal government’s refusal to act”.¹⁵⁷ This lack of federal action should not be used as a pretext for North Carolina’s obligation to comply with its own independent human rights standards. More importantly, a cause of action intended to hold Aero Contractors accountable for Zubaydah’s rendition already exists under North Carolina state law.

55. Under Article I, § 19 of the North Carolina Constitution, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”¹⁵⁸ There are separate state provisions that pertain more specifically to issues of kidnapping, involuntary servitude, trafficking, and criminal conspiracy, all of which directly relate to Aero Contractor’s role in the planes’ operation in association to the torture and rendition program.¹⁵⁹

56. Section 14-39 of the North Carolina General Statutes criminalizes the act of kidnapping, holding that any person shall be found guilty if their “confinement, restraint or removal” of another has been detected for the purpose of “[f]acilitating the commission of any felony or . . .

¹⁵⁷ Deborah M. Weissman, *North Carolina is bound to act on torture*, NCCIT para. 7 (Feb. 20, 2016), <http://www.nccit.org/blog/no-moving-on>.

¹⁵⁸ N.C. CONST. art. 1, § 19.

¹⁵⁹ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

flight . . . following the commission of a felony”.¹⁶⁰ While the term ‘torture’ is not made explicit in the language of this section’s provisions, it also criminalizes any act of committing “serious bodily harm to or terrorizing the person so confined, restrained or removed”.¹⁶¹ Furthermore, the North Carolina legislature has acknowledged degrees of kidnapping by including a separate provision that classifies the offense of first-degree kidnapping as one in which the abducted individual fails to be transported to a safe place, or has been “seriously injured or sexually assaulted”.¹⁶²

57. The extent of torture incurred by Zubaydah on the Aero-operated aircraft associated with North Carolina’s Johnston County airport has undoubtedly violated these criminal state provisions. Under a separate statutory provision, the CIA agents responsible for Zubaydah’s capture, kidnapping, and transport on these planes have also committed the offense of “felonious restraint” by unlawfully-restraining him without his consent to which charges of criminal conspiracy to commit such offense would apply.¹⁶³ Pursuant to North Carolina law, while this offense is considered to be a lesser offense of kidnapping altogether, it has been explicitly classified as a Class F felony nonetheless.¹⁶⁴

VII. Conclusion

58. Zubaydah’s narrative is intended to underscore the necessity to seek accountability for the harms he suffered. By developing a factual record about the intricacies of the extraordinary rendition and torture program, it is undeniable that the U.S. government, the state of North Carolina and its political subdivisions, as well as Aero Contractors have violated a series of

¹⁶⁰ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(2).

¹⁶¹ N.C. GEN. STAT., *supra* note 36, at § 14-39(a)(3).

¹⁶² N.C. GEN. STAT., *supra* note 36, at § 14-39(b).

¹⁶³ N.C. GEN. STAT., *supra* note 36, at § 14-43.3.

¹⁶⁴ *See* N.C. GEN. STAT., *supra* note 36, at § 14-43.3.

peremptory norms from which there can be no derogation. As these government entities have “failed to investigate or provide any opportunity for redress”, it is now the responsibility of civil society, international organizations, investigative journalists, policy-makers, and private institutions to help restore the goals of international human rights law.¹⁶⁵

¹⁶⁵ Weissman et al., *The North Carolina Connection*, *supra* note 116, at 7.

Bisher al-Rawi

I. Introduction

1. Bisher Amin Kahlil al-Rawi (“al-Rawi”) has never been charged with a crime, and yet he was made to suffer egregious forms of punishment and horror as a result of the U.S. response to the events of Sept. 11, 2001.¹ This narrative sets forth his experiences and therefore, his entitlement to remedy and repair. On November 2001, Al-Rawi left his house for business travel. Without explanation or notice, he was kidnapped by a “snatch crew” on behalf of the United States and the Central Intelligence Agency’s extraordinary rendition program. His captors flew him on a plane operated by Aero Contractors headquartered in Johnston County, NC and delivered him to torture in various sites outside of the United States. Bisher al-Rawi was subsequently abused and tortured until his release from Guantanamo Bay detention camp in March of 2007. It is the goal of this narrative to emphasize, as a public record, the mistreatment of Bisher al-Rawi and the gross violations of international, federal, and state law committed by the United States government, the state of North Carolina and its political subdivisions, and Aero Contractors headquartered in Johnston County, NC. Al-Rawi’s narrative in most ways is identical to that of Jamil el-Banna because they were captured and rendered together and the conditions of their detention were nearly identical. Much of the information in the public record about al-Rawi from which this narrative is derived is told together with the facts about el-Banna. It is still important, however, that they each have their individual stories told.

II. Extraordinary Rendition Narrative

Pre-Capture

¹ ACLU, *Biography of Bisher al-Rawi*, available at <https://www.aclu.org/other/biography-plaintiff-bisher-al-rawi> (hereinafter ACLU Biography).

2. Bisher al-Rawi was born in Baghdad, Iraq.² He grew up and attended school in Baghdad with his brother and sister until an event forced his family to flee.³

3. In the early 1980s, al-Rawi's father, an Iraqi businessman, attracted the suspicion of Saddam Hussein and was arrested on false charges.⁴ He was held by Saddam's secret police for 18 months before he was released on the orders of an Iraqi judge.⁵

4. Upon his father's release, the family made plans to escape Baghdad for London.⁶ In the 1980's, the al-Rawi family fled Iraq as exiles.⁷ Al-Rawi emigrated to the United Kingdom where he obtained legal resident status and his siblings eventually became British citizens.⁸

5. Al-Rawi remained in West London where he met his wife and had a family.⁹

Capture

6. On November 8th, 2002, al-Rawi traveled to Gambia.¹⁰ The purpose of this visit was to assist al-Rawi's brother and some of their colleagues, including Jamil el-Banna, who were establishing a peanut-oil processing business. The men traveled with machinery to be used for initial launch of the business. Al-Rawi, his brother, and el-Banna were taken into custody by the Gambian National Intelligence Agency on their arrival at Banjul airport, purportedly on suspicion of alleged links to al-Qaeda and advice from British security authorities.¹¹

7. At first the two men were under a kind of unofficial house arrest. They were not formally

² *Id.*

³ David Rose, *How MI5 had me kidnapped and thrown into CIA's Dark Prison*, July 28, 2007. <http://www.dailymail.co.uk/news/article-471444/How-MI5-kidnapped-thrown-CIAs-Dark-Prison.html>.

⁴ ACLU Biography, *supra* note 1.

⁵ *Bisher Al-Rawi's Terrifying Journey From Public-School To Camp Delta*, April 29, 2006, available at <http://www.independent.co.uk/news/uk/crime/bisher-al-rawis-terrifying-journey-from-public-school-to-camp-delta-6102313.html>.

⁶ *Id.*

⁷ ACLU Biography, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ The Rendition Project, Bisher al-Rawi and Jamil el-Banna, available at https://www.therenditionproject.org.uk/prisoners/rawi_banna.html (hereinafter the Rendition Project).

charged with any crimes under Gambian law.¹² They were told that they would be released when their business machinery had been checked to make sure it was not something that could be used for terrorism. They were not detained in a Gambian jail, but rather in a CIA “snatch team” safe house, which was provided by American security officials. They were both guarded by Gambians.¹³

8. The very next day, American personnel came and started speaking with the men, asking questions. Then after about 45 minutes, each of the men were put in separate areas, and al-Rawi and el-Banna were put in the reception area. Al-Rawi was given a mattress but he had to sleep on the floor.¹⁴

9. American personnel interrogated al-Rawi the next morning and continued to interrogate him as days continued to pass.¹⁵

10. Over time, the conditions gradually got worse. Al-Rawi ended up in a very small cell, purpose-built for him. His cell had virtually nothing in it except a small foam mattress on the floor—no toilet, no running water—nothing.¹⁶

11. One late evening, a U.S. official came to Al-Rawi and told him after a conversation, “You are going to be taken to Afghanistan.” Assuming confrontation would lead to further injury, Al-Rawi didn’t ask why or tell the official he had not done anything or otherwise protest.¹⁷

Detention and Experience of Torture

12. In late December 2002, the CIA decided to transport al-Rawi and el-Banna from Gambia.

¹² *Id.*

¹³ *Id.*

¹⁴ Extended Interviews: Bisher al-Rawi, available at <http://www.pbs.org/frontlineworld/stories/rendition701/interviews/bisher.html> (hereinafter Grey Interview).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

The “black team” that arrived to escort them wore black uniforms, and their faces were covered by black balaclavas. They cut the clothes from the detainees’ bodies and bound them for transportation.¹⁸

13. “Lee” (an American interrogator who had identified himself by this name) had mentioned to al-Rawi that he was going to Afghanistan, and one of the Gambian guards said, “This is your last night.” They started cuffing both men, hooded their heads and shackled their feet. Then al-Rawi was put in a car and, due to his hood, he could not breathe properly.¹⁹

14. Al-Rawi was transported to the airport. Upon arrival, Al-Rawi could not see or hear properly, but he could hear the sounds of the aircraft. Al-Rawi sat on a bench, with the hood still on, and waited for a long period of time. After the long wait, with the shackles and cuffs continually inflicting pain, two Gambian guards started escorting him and eventually started aggressively dragging him.²⁰

15. Al-Rawi was taken into a dark, empty room. There, he was stripped, had his clothing cut off, and was restrained down from feet, torso, and chest on a stretcher (similar to an ambulance stretcher) completely immobilizing him to be taken aboard an aircraft.²¹ Al-Rawi asked repeatedly to use the restroom but was ignored.²²

16. Flight documents indicate that al-Rawi and el-Banna were taken aboard a Gulfstream V aircraft registered with the Federal Aviation Administration (FAA) as N379P operated by Aero Contractors, located in Johnston Co., NC.²³ Jeppesen Dataplan Inc. provided the logistical and

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ ACLU Biography, *supra* note 1. For further documentation of Al-Rawi’s victimization in the CIA’s extraordinary and rendition to torture program, *see* Rapporteur: Giovanni Claudio Fava, Temporary Committee On The Alleged Use Of European Countries By The CIA For The Transport And Illegal Detention Of Prisoners, WORKING DOCUMENT N° 8 On The Companies Linked To The CIA,

flight support for the aircraft, which was used for a CIA clandestine interrogation and detention program run outside of the United States.²⁴

17. After arriving in Afghanistan, the restraints were removed from al-Rawi and again he was dragged out. He was then thrown down the stairs and then lifted and thrown into a van-like vehicle.²⁵

18. After a short trip in the vehicle, al-Rawi was taken out of the vehicle, again very forcefully and thrown somewhere. His hands were cuffed behind him so as to immobilize his arms and restrict his movement. He was thrown on the ground.²⁶

19. Later, one of his captors removed the hood, the ear defenders and the cuffs from al-Rawi but left him in the shackles. They placed him in a cell. For the duration of his imprisonment in this “dark prison,” they had shackles on 24 hours a day.²⁷

20. For the next two months, U.S. officials subjected al-Rawi to humiliation, degradation, and physical and psychological torture.²⁸

21. Al-Rawi was forced to undergo prolonged periods of isolation and sleep deprivation. His

Aircraft Used By The CIA And The European Countries In Which CIA Aircraft Have Made Stopovers Temporary Committee On The Alleged Use Of European Countries By The CIA For The Transport And Illegal Detention Of Prisoners 6,7, 12, 23, 28, 32, 34, 36, 39, 41, 43, 47, 49, 53. (2006) at <http://www.statewatch.org/cia/documents/working-doc-no-8-nov-06.pdf>; See Giovanni Claudio Fava, Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)) Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners 14, 15, 17, 19-21, 25, 26 (2007) at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>; Rapporteur: Giovanni Claudio Fava, European Parliament, Working Document No 9, On Certain European Countries Analysed During The Work Of The Temporary Committee Temporary Committee On The Alleged Use Of European Countries By The CIA For The Transport And Illegal Detention Of Prisoners 6, 8-10, 12, 13, 18, 22, 27, 30, 33, 36, 44, 51, 54 (2007) at [https://www.therenditionproject.org.uk/pdf/PDF%2085%20\[EP%202007%20Working%20Document%209%20-%20on%20certain%20European%20countries\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2085%20[EP%202007%20Working%20Document%209%20-%20on%20certain%20European%20countries].pdf).

²⁴ *Id.*

²⁵ Grey Interview, *supra* note 14.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Binyam Mohamed *et al.*, v. Jeppesen Dataplan *et al.* 613 F3d 1070, 1074 (2009).

captors frequently threatened him with death.²⁹

22. During this entire time, efforts by al-Rawi's family to locate him or learn of his whereabouts were rebuffed at almost every turn.³⁰

23. In January 2003, Amnesty International received information that al-Rawi and el-Banna had been secretly transferred from Gambia to Afghanistan, absent any extradition or deportation process and despite the fact that a habeas corpus petition filed on their behalf was still pending before a court in Gambia.³¹ Despite requests, U.S. officials refused to confirm al-Rawi or el-Banna's whereabouts. The British government similarly refused to provide any consular or diplomatic assistance in locating them or seeking their immediate or unconditional release.³²

24. For the duration of al-Rawi's first few days in Afghanistan, he sat in the corner of his cell, and suffered extreme cold. The width of the cell could be touched easily with both hands.³³

25. There was no real human contact in the prison. In an interview, Al-Rawi stated:

“...you had some sort of odd voices -- not music -- playing on speakers. You had people coming to check you were alive -- not OK, but alive. You're moving, you're OK, that's it. They'll bang on the door; you're asleep; you jump and that's it. That's good enough. They'll just go away. They'll come and give you food -- maybe every two to three days; maybe once a day. They'll just open the door and hand it over to you. They'll give you water once every couple of days as well. There isn't any conversation. Nobody says anything to you; you couldn't say anything. Everything is sort of by sign. It's a very cold place temperature-wise and people-wise, as well.”³⁴

26. His captors played music and recorded voices at a very loud volume. This music was on all the time, except for a few short seconds when the tape turned over.³⁵

²⁹ Grey Interview, *supra* note 14.

³⁰ *Id.*

³¹ Mohamed v. Jeppesen Dataplan, First Amended Complaint, Aug. 1, 2007, [https://www.therenditionproject.org.uk/pdf/PDF%20238%20\[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20First%20Amendment%20to%20the%20Complaint%20\(Aug%202007\)\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20238%20[Mohamed%20et%20al%20v.%20Jeppesen%20Dataplan,%20Inc.%20-%20First%20Amendment%20to%20the%20Complaint%20(Aug%202007)].pdf).

³² *Id.*

³³ Grey Interview, *supra* note 14.

³⁴ *Id.*

³⁵ *Id.*

27. Al-Rawi was never issued any watch or calendar and had no way to tell time in the prison. There was no consistency, even with meals, to help him keep track of time.³⁶
28. Al-Rawi was never interrogated while being held in the dark prison.³⁷
29. After several weeks in the dark prison, Al-Rawi's cell door was open and his hands were put behind his back. His captors dragged him out of the cell and threw him into a van. Jamil el-Banna was thrown on top of him. After a few seconds had passed, he was beaten severely. His extensive injuries were later photographed by U.S. soldiers.³⁸
30. Al Rawi and el-Banna were then driven in the van to a helicopter, which illegally "rendered" them to Bagram Air Base in Afghanistan.³⁹
31. Al-Rawi stayed in Bagram for two months. Upon arrival at Bagram, Al-Rawi was forced to stand for 24 hours and was interrogated almost daily.⁴⁰
32. Al-Rawi was repeatedly subjected to humiliation, degradation, and physical and psychological torture by U.S. officials. He was kicked and dragged along the floor, deprived of access to a toilet, shower, or clean clothes, held in a squalid cell. His captors forced him to undergo prolonged periods of isolation and sleep deprivation. They threatened him with death or with transfer to another county to be tortured.⁴¹
33. On February 7, 2003 al-Rawi was transported on a 24-hour flight to the U.S. detention facility in Guantánamo Bay, Cuba. For the entire flight, his captors held him in shackles, handcuffs and with goggles blinding his vision. He was also forced to shave his hair and beard.⁴²

³⁶ *Id.*

³⁷ *Id.*

³⁸ ACLU Biography, *supra* note 1.

³⁹ *Id.*

⁴⁰ First Amended Complaint, *supra* note 31.

⁴¹ *Id.*

⁴² ACLU Biography, *supra* note 1.

34. Al-Rawi was transported on board a U.S. military transport aircraft with call sign RCH191y, alongside 25 other detainees, including Jamil el-Banna. Before departing, all those being rendered were isolated from the prisoners that were staying behind, forcibly shaved, and left shackled and handcuffed in excruciating pain for eight hours. They were prepared for the flight in the same way as before, with a blindfold, goggles, ear defenders, hood, and remained handcuffed and shackled for the duration of the flight.⁴³

35. Al-Rawi remained in Guantanamo for more than four years without being told why he was there or with any official charge.⁴⁴

36. While at Guantanamo, al-Rawi wrote his lawyer and said:

“I think it is only now that I can claim that I’ve moved a step closer to understanding the feelings and emotions of the poor and millions of human beings who are starving through the world. Now I understand what deprivation really means, why people fight and kill each other over food.”⁴⁵

37. Al-Rawi was constantly subjected to severe temperature extremes and other sensory torments, many of which were part of a sleep deprivation program.⁴⁶ Frequently, al-Rawi’s cell was unbearably cold because the air conditioning was turned up to the maximum.⁴⁷ Sometimes, his captors would remove his orange jumpsuit and sheet, leaving him only in his shorts.⁴⁸ For weeks at a time, al-Rawi constantly shivered and was unable to sleep because of the extreme cold.⁴⁹ Once, when al-Rawi attempted to warm himself by covering himself with his prayer rug, one of the few "comfort items" permitted to him, his guards removed it for "misuse".⁵⁰

⁴³ Rendition Project, *supra* note 11.

⁴⁴ *Id.*

⁴⁵ Clive Stafford Smith, *Eight O'clock Ferry to The Windward Side: Seeking Justice In Guantánamo Bay*. 1st ed. National Great Books, 2008.

⁴⁶ Brent Mickum, Guantánamo’s Lost Souls, (January 8, 2007) ((Author Brent Mickum was Al-Rawi’s lawyer while he was held at Guantanamo) available at <https://www.theguardian.com/commentisfree/2007/jan/08/post885>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

38. On other occasions, his captors did nothing to mitigate the heat that became so unbearable that his breathing was difficult and labored.⁵¹ For a week at a time, all al-Rawi would do is lie completely still, sweat pouring off his body during the day when the Cuban heat can reach 100 degrees Fahrenheit, and the temperature inside is even higher.⁵²

39. Al-Rawi was allowed no contact with fellow prisoners. Bright lights were kept on twenty-four hours a day. Al-Rawi was given fifteen sheets of toilet paper per day, but because he used his sheets to cover his eyes to help him to sleep, his toilet paper - considered another “comfort item” by his constabulary – had eventually been removed for "misuse".⁵³ Accordingly, he no longer received his daily ration of fifteen sheets of toilet paper.⁵⁴

40. On March 30, 2007 al-Rawi was released from Guantánamo without any charges and flown directly to Britain, where he currently resides.⁵⁵

Post-Release Circumstances

41. In June 2007, the Council of Europe released a report implicating several countries in the extraordinary renditions of UK residents, including Bisher al-Rawi.⁵⁶ The report specifically mentions al-Rawi several times, including noting the hundreds of stopovers made by CIA-operated aircraft at airports throughout Europe. The report expressed serious concern about the purpose of those flights that came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees.⁵⁷

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ First Amended Complaint, *supra* note 31.

⁵⁶ Council of Europe Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions And Unlawful Inter-State Transfers Of Detainees Involving Council Of Europe Member States*, 2006, http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf.

⁵⁷ *Id.*

42. The report specifically “deplores the stopovers at airports of aircraft which have been shown to have been used by the CIA on other occasions for the extraordinary rendition of Bisher Al-Rawi.”⁵⁸ The report also explicitly condemns “the extraordinary rendition of Bisher Al-Rawi, an Iraqi citizen and resident of the United Kingdom... who [was] arrested by Gambian authorities in Gambia in November 2002, turned over to US agents, and flown to Afghanistan and then to Guantánamo, where [he] remain[ed] detained without trial or any form of judicial assistance.”⁵⁹

43. In August 2007, Bisher al-Rawi became the fifth plaintiff in a case filed against Jeppesen Dataplan alleging complicity in his rendition and torture.⁶⁰ Ultimately, however, the case itself was not heard in court, after the U.S. Government intervened, asserting ‘state secrets privilege’ and claiming that the litigation would damage national security interests.⁶¹ In arguing that the U.S. government’s intervention should not be allowed to stand, al-Rawi submitted a declaration to the court outlining the facts in his case.⁶²

44. In 2014, Bisher al-Rawi was officially recognized as a participant in the United States Senate Report detailing a Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program.⁶³

II. Violations of Law

International Law Violations

44. A number of international conventions outline the explicit prohibition of torture, cruel inhuman and degrading treatment, and rendition to torture. Numerous United Nations monitoring

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ First Amended Complaint, *supra* note 31.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Senate Select Committee on Intelligence, Study on CIA Detention and Interrogation Program 458 (2014) <https://www.amnestyusa.org/pdfs/sscistudy1.pdf>.

bodies have also declared the practice of extraordinary rendition to be a violation of the international law's prohibition against torture.⁶⁴ It is important to reiterate that the prohibition against torture is universally recognized as a principle of *jus cogens* and customary international law. The international community understands the prohibition of torture to be a "peremptory norm of international law"⁶⁵ from which no derogation is permitted, and which binds even states that have not ratified the conventions enumerated.⁶⁶ Thus, the international law's prohibition against torture is absolute and non-derogable – no exceptional circumstances or emergencies may be used to justify torture, including terrorism and national security concerns.⁶⁷

45. International law stipulates that states have an obligation to bring their domestic laws into line with the international prohibition against torture and to interpret all treaties they have ratified in context and in good faith. Outsourcing torture beyond a nation's borders is not consistent with these obligations.⁶⁸

Universal Declaration of Human Rights

46. In "bringing together the international norms on human rights,"⁶⁹ the Universal Declaration was the first authority and guide to the rules on fundamental human rights.⁷⁰

⁶⁴ Parliament of Canada, *Extraordinary Rendition: International Law and the Prohibition of Torture* (2008), at <http://www.lop.parl.gc.ca/content/lop/researchpublications/prb0748-e.htm#intl1aw>

⁶⁵ *Id.*

⁶⁶ Association of the Bar of the City of New York and The Center for Human Rights and Global Justice, *Torture by Proxy: International and Domestic Law Applicable to "Extraordinary Renditions,"* 2004; Human Rights Watch, *Still At Risk: Diplomatic Assurances No Safeguard Against Torture*, April 2005; Matteo Winkler, "When 'Extraordinary' Means Illegal: International Law and the European Reactions to the United States Rendition Program," Yale Law School Student Scholarship Series No. 46, 2007 at http://digitalcommons.law.yale.edu/student_papers/46?utm_source=digitalcommons.law.yale.edu%2Fstudent_papers%2F46&utm_medium=PDF&utm_campaign=PDFCoverPages.

⁶⁷ United Nations, Office of the High Commissioner for Human Rights, Committee Against Torture, *Statement of the UN Committee Against Torture*, CAT/C/XXVII/Misc.7, 22 November 2001.

⁶⁸ Office of the United Nations High Commissioner for Human Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 1984.

⁶⁹ <http://www.law.unc.edu/documents/clinicalprograms/theinternationallegallandscapeofextraordinaryrendition.pdf> (pg. 9).

⁷⁰ Vojin Dimitrijevic, *Customary Law as an Instrument for the Protection of Human Rights* 8 (Istituto Per Gli Studi Di Politica Internazionale (ISPI) Working Paper -7, 2006).

Subsequent international human rights instruments adopted by the UN General Assembly build on the principles set out in the Universal Declaration.

47. Article 3 of the Universal Declaration guarantees the “right to life, liberty and security of person.” The capture, detention and torture of al-Rawi through extraordinary rendition certainly implicate his rights to liberty and security. Article 5 specifically prohibits torture and “cruel, inhuman or degrading treatment or punishment.”⁷¹ Articles 6, 8, 10 and 11 of the Universal Declaration consider the lack of due process to victims of extraordinary rendition. Article 6 guarantees that “everyone has the right to recognition everywhere as a person before the law” and Article 8 guarantees “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁷²

48. It is clear that the program of extraordinary rendition compromised al-Rawi’s due process rights. Once rendered to another country and detained, al-Rawi was denied access to the recognized judicial procedures of that country, as well as access to counsel or the aid or the aid of their Embassy. Finally, the function of extraordinary rendition to deliver individuals to other countries for the purpose of interrogation and torture is clearly a violation of Article 14 of the Universal Declaration, which guarantees “the right to seek and to enjoy in other countries asylum from persecution.”⁷³

United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”)

49. One of the most recognizable international law prohibitions against torture is the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

⁷¹ A United Nations Priority: Universal Declaration of Human Rights, ¶¶ 3, 6, www.un.org/rights/HRToday/declar.htm

⁷² *Id.*

⁷³ *Id.*

Punishment (“CAT”). Article 1 of this Convention sets out the definition of torture, which includes conduct undertaken by state actors or persons acting with the consent or acquiescence of a state for the purposes of obtaining information:⁷⁴

“Art. 1(1) For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Other forms of mistreatment involving less severe physical or mental pain or where the necessary intention to torture is not present are also prohibited under article 16 of CAT: the right not to be subjected to cruel, inhuman, or degrading punishment.”

50. Article 2 of CAT requires states parties to take measures to prevent torture in any territory under their jurisdiction. It also clearly states that torture is never justified – there can be no derogation from a state’s obligation to prevent and prohibit torture, even in times of war, threat of war, internal political instability, or when facing any other public emergency such as terrorism.⁷⁵

51. Article 3 sets out the prohibition against “refoulement,” which most clearly prohibits extraordinary rendition:⁷⁶

“(1) No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

⁷⁴ Office of the United Nations High Commissioner for Human Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 1984.

⁷⁵ *Id.*

⁷⁶ *Id.*

52. The UN Committee Against Torture was established under CAT as a monitoring body to both provide interpretations of the Convention for all states parties and to monitor the individual actions of states parties. Those states who have ratified the Convention must submit reports to the Committee every four years outlining their progress in implementing the Convention. The Committee examines these reports, hears from the states parties, and then issues Concluding Observations with recommendations for how the state party can improve its compliance with the Convention. The Committee's pronouncements are non-binding in law, but are a significant source of influence in the international community.⁷⁷

53. The UN Committee Against Torture has stated that article 3 requires a state considering transferring an individual to another state to conduct an objective assessment of the conditions in the state to which an individual will be transferred, and a subjective assessment of the danger particular to the individual. An individual must not be transferred where these assessments lead to a finding of a substantial likelihood of danger of torture that is greater than mere suspicion. There need not be a high probability of torture for the prohibition to apply.⁷⁸

54. Articles 4 to 7 of CAT require states parties to ensure that all acts of torture are offenses under domestic criminal law, to investigate and prosecute all acts of torture, and to assert jurisdiction over torture offences where such offences are committed in a territory under the state's jurisdiction, committed by a national of the state, or perpetrated against a national of the state.⁷⁹

55. In this case, it is clear that Bisher al-Rawi was subjected to torture and other cruel, inhuman or degrading treatment or punishment in violation of CAT. Some specific examples of

⁷⁷ Office of the United Nations High Commissioner for Human Rights, information about the UN Committee Against Torture.

⁷⁸ *Id.*

⁷⁹ *Id.*

al-Rawi's torture include, but are not limited to, prolonged periods of isolation, sleep deprivation, frequent death threats, the denial of "comfort items," shackling for periods of twenty-four hours, seven days per week, and food deprivation. All of these are clear violations of Article 1 of CAT. In addition, his rendition to Bagram is a clear violation of Article 3 of CAT.

United Nations International Covenant on Civil and Political Rights ("ICCPR")

56. The United Nations International Covenant on Civil and Political Rights (ICCPR) provides another explicit prohibition against torture and cruel, inhuman and degrading treatment.⁸⁰ The United States ratified the ICCPR on June 8, 1992 and the treaty came into force on September 8, 1992.⁸¹ Article 7 states that:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."⁸²

57. The UN Human Rights Committee is the treaty body responsible for monitoring implementation of the ICCPR, like the Committee Against Torture. Again, state parties must submit regular reports to this Committee, usually every four years. The Committee has been called upon a number of times to interpret the Convention's prohibition of torture. In its General Comment on article 7, the Committee emphasizes that the prohibition of torture is non-derogable, stating:

"The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency... no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to

⁸⁰ Office of the United Nations High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), adopted 1966. (ICCPR)

⁸¹ UNC School of Law Immigration/Human Rights Policy, *The International Legal Landscape of Extraordinary Rendition*, (2010-2011) available at <http://www.law.unc.edu/documents/clinicalprograms/theinternationallegallandscapeofextraordinaryrendition.pdf> (UNC Report)

⁸² ICCPR, *supra* note 80.

excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.”⁸³

58. This General Comment also explicitly extends the article 7 prohibition against torture to include transfers to torture, stating, “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁸⁴

59. Considering the various U.S. actors involved in al-Rawi’s extraordinary rendition, including the aircraft carriers and corporations contracted by the C.I.A. to plan the rendition flights and to provide the planes, crew and landing sites, and perhaps even to engage in the torture and cruel and inhuman treatment of those rendered overseas, there are a number of State actors whose involvement in extraordinary rendition could amount to violations of the ICCPR. News reports and investigations document the complex network of shell companies and operating companies used by the C.I.A. to transfer and torture victims on rendition flights. The obligation to investigate and address allegations of violations by private persons and entities gives States the responsibility of ensuring that private actors are not acting under the power of the State to inflict torture on others.⁸⁵

The Geneva Conventions

60. The Geneva Conventions (which the United States has signed, but not ratified) prohibit torture and inhuman, cruel or degrading treatment with respect to certain categories of protected persons (including civilians and protected prisoners of war) in times of armed conflict or in post-

⁸³ United Nation, Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, *General Comment No. 20: Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art. 7)*, 10 March 1992, para. 3.

⁸⁴ *Id.*

⁸⁵ UNC Report, *supra* note 81.

conflict occupied territories.⁸⁶ Breach of this prohibition is considered a war crime and states parties have an obligation to investigate such breaches and prosecute or extradite perpetrators regardless of the nationality of the victim or the perpetrator, or where the act took place.⁸⁷ The Conventions state that no physical or other form of coercion may be exercised against protected persons to obtain information from them or from third parties, that civilians may not be forcibly transferred to another state except under an extradition treaty, and that prisoners of war may not be transferred to any state where they are likely to be tortured or inhumanely treated.⁸⁸

61. Neither civilians nor protected prisoners of war may be transferred to penitentiaries for disciplinary punishment.⁸⁹ Protected persons may be transferred only to other states parties, and only after the sending state has satisfied itself of the willingness and ability of the receiving state power to apply the Convention. If torture is subsequently discovered, the sending state must request the return of the individual or take measures to correct the situation.⁹⁰

62. In this case, al-Rawi being forcibly transferred from Gambia to a “dark prison” and then to Bagram, as well as the United States failure to investigate, are clear violations of the Geneva Conventions.

D. Federal Law Violations

Anti-Torture Statute & Torture Victims Protection Act

63. One section of the U.S. Code (18 U.S. Code § 2340A), that deals specifically with torture states:

⁸⁶ [The Geneva Conventions: The Core of International Humanitarian Law](#), adopted 1949. In particular, *see* articles 12, 14 and 17 of the 3rd Geneva Convention, and articles 31 to 32 of the 4th Geneva Convention.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

“(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life. (b) There is jurisdiction over the activity prohibited in subsection (a) if (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender. A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.”⁹¹

64. Section of the U.S. Code (28 U.S. Code § 1350) also deals with the issue of torture. The Torture Victim Protection Act of 1991 allows victims of torture, or the families of those who were killed through extrajudicial means, to sue their tormentors in U.S. courts, regardless of their citizenship or where the crime occurred.⁹²

65. Both of these anti-torture statutes include identical, albeit imprecise, definitions of what constitutes torture. Among the proscribed actions are "the intentional infliction or threatened infliction of severe physical pain or suffering"; the use of "mind-altering substances"; and threats against other people, presumably family members.⁹³ It is clear that these federal statutes were violated when al-Rawi was routinely subjected to intentionally inflicted severe physical pain as well consistently feared imminent death.

Constitution

66. The Supreme Court has located constitutional protections against interrogations under torture in the Fourth Amendment, the Fifth Amendment, the Fourteenth Amendment, and the Eighth Amendment. Although no single provision of the U.S. Constitution expressly prohibits

⁹¹ 18 U.S. Code § 2340A

⁹² Brendan Koerner, *Is Torture Against the Law*, May 13, 2004, at http://www.slate.com/articles/news_and_politics/explainer/2004/05/is_torture_against_the_law.html.

⁹³ *Id.*

torture as a means to extract information, secure a confession, punish for an act committed, intimidate or coerce, or for any reason based on discrimination, torture clearly violates rights established by the Bill of Rights. In numerous cases, the Court has condemned the use of force amounting to torture or other forms of ill treatment during interrogations, including such practices as whipping, slapping, depriving a victim of food, water, or sleep, keeping him naked or in a small cell for prolonged periods, holding a gun to his head, or threatening him with mob violence.⁹⁴ Torture would also violate state constitutions, whose provisions generally parallel the protections set forth in the federal Bill of Rights.

Deprivation of Rights Under Color of Law

67. The principal federal law that would apply to torture against detainees is 18 U.S.C. 242, which makes it a criminal offense for any public official to willfully to deprive a person of any right protected by the Constitution or laws of the United States. The law states:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.⁹⁵

C. State Law Violations

⁹⁴ Human Rights Watch, *The Legal Prohibition Against Torture*, June 2004, available at <https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture#laws>.

⁹⁵ 18 U.S.C. Sec. 242.

North Carolina State Constitution

68. The extraordinary rendition of al-Rawi violated the North Carolina State Constitution.

Article 1, Section 19 states:

“No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.”⁹⁶

CAT Domestications Applicable to North Carolina

69. While North Carolina may not be able to administratively or judicially control what goes on outside its borders, it has a responsibility under CAT to accomplish what it can to prevent acts of torture.⁹⁷ In this specific situation, there are several actions that North Carolina can take to fulfill its federal obligations under CAT. Now that North Carolina’s administrators and legal advisors have been notified of illegal activity of state actors in connection to extraordinary rendition, the state and its political subdivisions should be required to take action.

Criminal Laws

70. In the United States, most criminal laws are state rather than federal. Although a few states have laws addressing torture as such, each state has laws that criminalize violence against persons (e.g. assault, rape), regardless of whether committed by public officials or private individuals. In addition, states typically have specific laws that criminalize acts by public officials that constitute abuses of authority, “official oppression,” or the unlawful infliction of bodily injury.⁹⁸

IV. Conclusion

⁹⁶ North Carolina State Constitution, at <http://www.ncleg.net/Legislation/constitution/article1.html>.

⁹⁷ Richard P. Shafer, *Construction and Application of United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment*, 184 A.L.R. Fed. 385, 285 (2003) (italics added).

⁹⁸ 18 U.S.C. Sec. 242.

It is clear that Bisher al-Rawi suffered egregious violations of international, domestic, and state law during the five years following his kidnapping and detention in the CIA extraordinary rendition program. Al-Rawi experienced years of physical and emotional torture by United States officials and as facilitated by the State of North Carolina, its political subdivisions, and Aero Contractors. As a legal and moral obligation, these entities must take public accountability for the role that government and state resources played in helping to facilitate this U.S. torture program.

Khaled El-Masri

I. Introduction

1. The CIA subjected Khaled El-Masri to extraordinary rendition in violation of multiple international law and norms. His capture, rendition, and detention would have been unlawful and egregious under any circumstances; however, in his case, the CIA officials who orchestrated his kidnapping had done so on the mistaken belief that he was someone else, a fact they sought to prevent from being made public. El-Masri first sought suit in the United States against those who were responsible for his illegal transfer and torture to no avail as the government sought to suppress evidence about the wrongdoings in the name of national security. El-Masri then brought suit in the European Court of Human Rights based on the egregious violations he suffered. That court ruled in his favor based on evidence it received, which, along with El-Masri's accounts and other documentation, support the account below

II. Life Before Capture

2. Khaled El-Masri was born in Kuwait on June 29, 1963 to Lebanese parents. The family returned to Lebanon, but eventually fled to Germany in 1985 during the civil war. Upon arrival, El-Masri applied for asylum processed but was granted citizenship before the application was processed. In 1995, El-Masri renounced his Lebanese citizenship, and acquired German citizenship by virtue of his parents' nationality. In 1996, and after a divorce from his first wife, El-Masri married his second wife, who was also Lebanese. Together, they had four young children.¹

¹ Declaration of Khaled El-Masri, filed in *El-Masri v. Tenet*, 437 F.Supp.2d 530 (E.D. Va. 2006) (hereinafter Decl.), ¶¶ 1–2, 4 at [https://www.therenditionproject.org.uk/pdf/PDF%20374%20\[Khaled%20el-Masri%20v%20Tenet%20Declaration%206%20April%202006\]](https://www.therenditionproject.org.uk/pdf/PDF%20374%20[Khaled%20el-Masri%20v%20Tenet%20Declaration%206%20April%202006]). *See also* The Rendition Project, Khaled El-Masri, at <https://www.therenditionproject.org.uk/prisoners/khaled-elmasri.html>.

3. El-Masri took a few different jobs until he became a car salesman. He was subsequently laid off. After a few months of unemployment, El-Masri and his wife began experiencing marital problems. These problems were compounded by the fact that he, his wife and four young children lived in a one-room apartment. By December of that 2003, El-Masri decided it would be best to spend some time away from his home.²

4. El-Masri decided to travel to Macedonia where the cost of living there was inexpensive. On December 30, 2003, he purchased a round-trip bus ticket from Ulm to Skopje. He planned on visiting for at least a week before returning home. The bus traveled without incident through Germany, Austria, Slovenia, Croatia, and Serbia.³

5. Around 3 p.m. on December 31, 2003, the bus arrived at the border between Serbia and Macedonia, and the passengers' papers were checked. Everyone, except El-Masri, had their passport returned to them. The bus driver approached El-Masri and asked him to get off the bus and meet with the border official. The official asked a few routine questions.⁴

6. The official asked about where and for how long El-Masri was going to stay in Macedonia. El-Masri responded that he had no specific place in mind, but that he planned to stay for about a week.⁵ The border agent told El-Masri that as soon as he arrived in Skopje to go and see the local police. After these few questions the official instructed El-Masri to return to the bus.⁶

II. Capture

7. As the bus drove towards Skopje, El-Masri asked the bus driver to return his passport.

² *Id.* ¶¶ 3–4.

³ *See Id.* ¶ 4.

⁴ *See Decl.* ¶¶ 7–9; *El-Masri v. The Former Yugoslav Republic of Macedonia*, 2012-IV Eur. Ct. H.R. 263, 265 (2012).

⁵ *See Decl.* ¶¶ 7–9.

⁶ *Id.*

The bus driver told El-Masri that he didn't have the passport, turned the bus around, and drove back to the border. El-Masri asked the border official for his passport, but was told that there was a problem, and resolving it might take some time. El-Masri remained behind and let the bus continue on.⁷ At this time, El-Masri was taken by a Macedonian official to a narrow room where he was told to put all of his belongings on the table. Everything was thoroughly searched, and then a young man appeared to interrogate El-Masri.⁸

8. During the interrogation, El-Masri was asked about Islamic organizations and groups by unknown interrogators. El-Masri acknowledged that he had heard of the organizations, but explained that he had no involvement or any contact with any of them. El-Masri was asked about his knowledge and participation in various aspects of the Islamic community back in Germany.⁹ He was asked if he prayed or fasted, and replied, "sometimes." The interrogation at the boarder ended around 10 p.m., seven hours after he had initially arrived.

9. El-Masri was taken to Skopski Merak, a hotel in Skopje, by escorts dressed in plain clothes and armed with guns. Three armed escorts remained with El-Masri. After entering a hotel room, the escorts locked the door, and said that they were going to be staying with El-Masri.¹⁰ Here, the interrogations resumed in English despite the fact that El-Masri had only a very basic grasp of the language, and lasted until approximately 3 a.m.¹¹

10. His captors who were assumed to be Americans based on the language they spoke, told El-Masri that he was not under arrest, but in fact, he was detained and interrogated for the next three days. His captors observed his every move. Even when he used the toilet, they demanded

⁷ *Id.*

⁸ *Id.*

⁹ Macedonia, 2012-IV Eur. Ct. H.R. at 265.

¹⁰ See *El-Masri v. Tenet*, 437 F.Supp.2d 530, 532 (E.D. Va. 2006); Macedonia, 2012-IV Eur. Ct. H.R. at 265.

¹¹ See Decl. ¶ 12.

he leave the door open.¹²

11. El-Masri became exhausted after being locked in a hotel room and constantly asked questions, and began imploring them to provide an interpreter, or at least an opportunity to speak with the German Embassy, a lawyer, and his family. All his requests were refused. At one point, he became so angry that he demanded to be released and attempted to leave by force. During this particular incident, everyone yelled in his own language. Communication was clearly impossible. One of the men pulled out his firearm and held it to El-Masri's head; the other two placed their hands on their holsters in a threatening manner.¹³

12. On the fifth day, a man with a bag appeared. He had sheets of paper, finger-print ink, and a camera. He took El-Masri's finger prints and photograph. After about seven days, another official turned up. He clearly out-ranked the guards. The official was very respectful, and asked El-Masri about his condition and the food. He offered to allow El-Masri to order food from any nearby restaurant. He also asked about the guards' conduct. El-Masri thanked him and declined. Then the official made another offer. He told El-Masri to admit to belonging to Al-Qaeda and they would send him back to Germany with a police escort. El-Masri repeated that he was not associated with any terrorists, and the official subsequently left. Two or three days later El-Masri was presented with a list of allegations. Based on the fact that his interrogators spoke English, the comments made to El-Masri that referenced various governments that sought to harm him or would otherwise would offer him no protection, as well as reference to his status as a "wanted" person by "the president", it is assumed that his captors were Americans.¹⁴

13. On the thirteenth day of his seizure, El-Masri began a hunger strike to protest his

¹² *Id.* ¶¶ 15–16.

¹³ *See* Macedonia, 2012-IV Eur. Ct. H.R. at 265; Decl. ¶ 16.

¹⁴ Decl. ¶¶ 20—22.

situation. He did not eat again for the remaining ten days of his detention in Macedonia. At around 8 p.m. on the twenty-third day of his captivity, January 23, 2004, one of his captors made a video recording of El-Masri. He was instructed to state his full name, that he had been treated well, and that he would shortly be flown back to Germany. He was then accompanied out of the hotel. Once outside, two men approached him, and grabbed his arms while a third man handcuffed and blindfolded him.¹⁵

14. His captors placed El-Masri was placed in a vehicle and it drove off. After about half an hour, the vehicle came to a halt. El-Masri was taken out of the vehicle and led to a room where each of his arms were forcefully bent backwards. This violent and unexpected motion sent his joints into an unnatural configuration that was extremely painful. Once El-Masri's arms were restrained, his captors began beating him severely, striking him from all sides. Then someone grabbed his head with both hands so he would be unable to move. Others sliced his off clothing, and left him completely naked.¹⁶

15. El-Masri tried to resist at first, screaming for them to stop, but his efforts were in vain. He was terrified and utterly humiliated, and his assailants continued to beat him. His assailants then threw him face first onto the ground and pulled and curled his arms behind his back while one of his captors drove a boot into his center of gravity. At this point they began to sodomize him.¹⁷ They forced some hard object into his anus. During this entire event, El-Masri could hear the sound of what he thought was a camera shutter. This act was not about control and served no interest but to degrade and shame.¹⁸

¹⁵ *Id.* ¶ 24.

¹⁶ Khaled El-Masri, *supra* note 1; STEPHEN GRAY, *GHOST PLANE: THE TRUE STORY OF THE CIA TORTURE PROGRAM*, 1640–44 (2007) (eBook).

¹⁷ Richard Norton-Taylor, *CIA 'Tortured and Sodomised' Terror Suspect, Human Rights Court Rules*, *THE GUARDIAN* (Dec. 13, 2012); Macedonia, 2012-IV Eur. Ct. H.R. at 337.

¹⁸ *See* Decl. ¶ 28.

16. El-Masri was then pulled to his feet and pushed into a corner of a room. His feet were tied together, and then, for the first time since the hotel, they took off the blindfold. As soon as it was removed, a very bright light was shown directly into his eyes leaving him temporarily blinded. When he regained his vision, El-Masri saw seven to eight men dressed in black standing around, with hoods and gloves.¹⁹

17. El-Masri was dressed in a diaper, over which they fitted a dark blue sports suit with short sleeves and legs. He was once again blindfolded, but this time his ears were plugged with cotton, and covered with headphones. A bag was placed over his head and a belt around his waist. His hands were chained to the belt. Because of the bag, breathing became more and more difficult. The struggle for breath caused El-Masri to panic.²⁰

III. Rendition

18. While El-Masri panicked, his captors transported him to be loaded onto a U.S. plane, Boeing business jet registered as N313P with the FAA and operated by North Carolina-based Aero Contractors, Inc. (“Aero”).²¹ In the airplane, he was thrown to the floor with his arms and

¹⁹ See Decl. ¶¶ 28–29.

²⁰ Khaled El-Masri, *supra* note 1.

²¹ Investigation by the Council of Europe show that a Boeing business jet operated by Aero and registered by the Federal Aviation Administration as N313P, took off from Palma, Majorca, Spain on January 23, 2004, and landed at the Skopje airport at 8:51 p.m. that evening. The jet left Skopje more than three hours later, flying to Baghdad and then on to Kabul, the Afghan capital. See Macedonia, 2012-IV Eur. Ct. H.R. at 284–85. For further confirmation that El-Masri was a victim of extraordinary rendition to torture and flown on a plane, N313P identified as being operated by Aero Contractors, see Rapporteur: Giovanni Claudio Fava, Temporary Committee On The Alleged Use Of European Countries By The CIA For The Transport And Illegal Detention Of Prisoners, WORKING DOCUMENT N° 8 On The Companies Linked To The CIA, Aircraft Used By The CIA And The European Countries In Which CIA Aircraft Have Made Stopovers Temporary Committee On The Alleged Use Of European Countries By The CIA For The Transport And Illegal Detention Of Prisoners 6, 7, 10, 23, 29, 32, 34, 36, 39, 41, 43, 49, 53 (2006) at <http://www.statewatch.org/cia/documents/working-doc-no-8-nov-06.pdf>; Giovanni Claudio Fava, Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)) Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners 57 (2007) at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>; Rapporteur: Mr Dick Marty, Committee On Legal Affairs And Human Rights Alleged Secret Detentions And Unlawful Inter-State Transfers Involving Council Of Europe Member States Draft Report – Part II (Explanatory memorandum) 24-26, 52-54 (2006) at http://assembly.coe.int/committeedocs/2006/20060606_ejdoc162006partii-final.pdf _; Rapporteur: Giovanni

legs secured to the sides of the plane in a spread-eagled position. El-Masri received two injections, one in the left arm and one in the right arm, at different times during the flight. Eventually, the men guarding him put something over his nose that made him feel light-headed and lose consciousness.²²

19. His awareness of his surroundings vacillated from foggy to unconscious for the duration of the flight. When the plane landed for the final time he was awake and gaining awareness. He removed from the aircraft, and felt dry, warm air. El-Masri knew immediately that the place where the plane had landed couldn't possibly be Europe.

20. Next El-Masri's captors threw him into what felt like the trunk of a vehicle, and moved once again. He was then dragged out of the trunk and down a flight of stairs, his arms raised unnaturally high behind his back. The movement was so quick that, at times, his feet hardly touched the ground. In the process of moving him, he was violently pushed and shoved through the building. Finally, he was thrown into a room. They beat and kicked him while someone stepped on his head and neck and removed the chains and blindfold.²³

21. Then everything stopped. Without explanation, the men left El-Masri bruised and bleeding on the floor behind a locked door. After his eyes adjusted to the light, he realized he was lying in a small, filthy, concrete cell. There was one dirty, military-style blanket and some old, torn clothes bundled into a thin pillow instead of a bed. It was cold and dark.

22. Through a small grill on the metal door of the cell, he saw a man dressed in Afghan

Claudio Fava, European Parliament, Working Document No 9, On Certain European Countries Analysed During The Work Of The Temporary Committee Temporary Committee On The Alleged Use Of European Countries By The CIA For The Transport And Illegal Detention Of Prisoners 6, 12, 14-16, 18, 19, 27-30, 33, 36, 37, 39, 46, 51, 52, 54 (2007) at

[https://www.therenditionproject.org.uk/pdf/PDF%2085%20\[EP%202007%20Working%20Document%209%20on%20certain%20European%20countries\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2085%20[EP%202007%20Working%20Document%209%20on%20certain%20European%20countries].pdf)

²² Decl. ¶ 31; S. REP. NO. 113-288, at 128 (2014).

²³ Amy Davidson, *Torturing the Wrong Many*, NEWYORKER (Dec. 13, 2012).

clothes standing in front of the cell. El-Masri was very thirsty at this point and called out to the man for some water. The man pointed to a small bottle in the corner of his cell. It was a very old plastic bottle, dirty outside as well as in. The color of the water was greenish-brown. It stank. After he held the bottle, the smell stayed on his hands for some time, but he was extremely thirsty and tried to drink the water. It caused him to vomit. It was impossible for him to quench his thirst with the water inside that bottle.²⁴

23. That night four masked men in black uniforms came to his cell, dragged him outside, and pushed him into another room close by. He was told to strip naked for a doctor to examine him. El-Masri undressed and stood naked. He was photographed, and blood and urine samples were taken.

24. After the examination, which lasted about ten minutes, El-Masri dressed and was put back into his cell. There was no lighting, and it was almost impossible to sleep because of the cold and the pain from being strapped to the unpadded floor of the airplane. Only after ten days was he able to sleep on his stomach or back. The discomfort was made worse by the nighttime cold, and he had only one blanket.²⁵

25. On the second night, El-Masri was dragged to an interrogation room to meet the man that would interrogate him during his captivity. The man asked if he knew why he had been detained. El-Masri said that he did not. The man then told El-Masri that they were in a land without laws, and that nobody knew he was there. In total, El-Masri was interrogated three or four times by this man. His interrogations were always accompanied by threats, insults, pushing, and shoving. Two of the men who participated in these interrogations identified themselves as Americans.

²⁴ See Decl. ¶ 37.

²⁵ See *El-Masri v. Tenet*, 437 F.Supp.2d at 534.

During each interrogation, El-Masri demanded that to meet with a representative of the German government, but his demands were ignored.²⁶

26. In March, together with several other inmates, El-Masri commenced a hunger strike. They refused to eat or drink until they were allowed to see an American commander or representative to complain and demand their basic human rights. Initially, there was no response to their demands. On the eighth day, one of the prisoners met with an American official and handed him a note detailing some of the demands, including respect for their most basic human rights, to afford them access to a court to challenge their continued detention, to inform their relatives of their whereabouts, and that they be given reading materials. None of the demands were met.²⁷

27. On March 13, El-Masri was interrogated by three unmasked American officials and a psychologist who also functioned as the prison's Arabic interpreter. On March 31, after twenty-seven days without food, El-Masri was taken to an interrogation room where his American interrogators demanded that he end his hunger strike. El-Masri responded that he would not unless released, brought before a court, permitted access to a German government official, or he died.

28. An interrogator acknowledged that El-Masri was innocent of any crime and said he would take that matter up with his superiors in Washington, D.C., but could not release anyone without their authorization. After this conversation, El-Masri was returned to his cell, and continued his hunger strike. His health continued to deteriorate on a daily basis, and he received no medical treatment despite his repeated requests. The CIA as well as the State Department

²⁶ Decl. ¶ 43.

²⁷ STEPHEN GRAY, GHOST PLANE: THE TRUE STORY OF THE CIA TORTURE PROGRAM, 1804 (2007) (eBook).

knew that they had the wrong man and that El-Masri was being detained unlawfully.²⁸

29. On the night of April 10th, thirty-seven days into his hunger strike, hooded men entered his cell. El-Masri was dragged from his bed, and had his hands and feet bound. They dragged him into the interrogation room, sat him in a chair, and tied him to it. One of the men then grabbed El-Masri's head, while the others stuffed a tube in his nose and forced liquid directly into his stomach. After this procedure, he was given canned food and some books to read. The food boxes had blue and white labels that listed sodium and potassium as part of their contents. Also, El-Masri noticed that "USA" was printed on these boxes. El-Masri was weighed at this time and realized he had lost more than sixty pounds.²⁹

30. Around the beginning of May, the Afghan prison director took El-Masri to the interrogation room where he met with an American who identified himself as a psychologist. He promised El-Masri that he would be released from the facility very soon.

31. Some days later, on May 16, the American prison director, together with a man in military uniform, arrived. He spoke German and told El-Masri that he wanted to talk. El-Masri asked him if his wife knew where he was. He said that she did not. After El-Masri's questions, the man began to interrogate El-Masri. He asked the same questions regarding El-Masri's alleged associations with extremists in Neu-Ulm, Germany and people who attended or preached at the multicultural center in Neu-Ulm. The interrogation lasted for about two to three hours.³⁰

32. El-Masri saw this man three more times. On May 20,³¹ he said that it might take another

²⁸ See Davidson, *supra* note 23; S. REP. NO. 113-288, at 15 (2014).

²⁹ See Decl. ¶ 55.

³⁰ *Id.* ¶ 59.

³¹ El-Masri dutifully counted every day beginning with the first day of his detention. When he didn't have paper or pencil to record the dates, he would scratch the days off on the wall of his cell. Then, when he was issued paper and a pencil he recorded them. When the other inmates warned that the guards would keep any papers in his cell after he left, he committed the dates to memory. *Id.* ¶ 64.

week to assess whether or not El-Masri could be released. Upon hearing this, El-Masri became angry and threatened to begin his hunger strike again the next day. After he began his second hunger strike, he was told that the officials were just clearing the security formalities for a transfer from Afghanistan to Germany. An official explained that the flight would not go directly to Germany and that it would be a long flight. He reassured El-Masri that he would be home soon.

33. On the evening of May 27, the American doctor and the American prison director examined El-Masri. He was told he would be flown back to Germany the next day. The next morning, El-Masri was handcuffed, shackled, and blindfolded before being led outside and put inside a jeep. He was driven for about ten minutes and taken inside a large empty shipping container. His captors sat him in a chair facing the wall so that he was unable to see out. From this position, El-Masri heard the sound of an approaching airplane.³²

34. Shortly thereafter, his blindfold was removed and he was handed the suitcase that had been taken from him in Skopje. He was given two t-shirts, his hands were cuffed, his ears were plugged and covered with headphones, and he was blindfolded. Once inside the airplane, he was chained to a seat. The plane was much smaller than the one that had flown him from Macedonia and had leather seats.³³

35. El-Masri sat listening to the muffled American accents of two or three different persons. He was terrified that he was being flown to another country to be executed and the most recent promise of being returned home was just a lie to placate him. The flight lasted about six to seven hours. Upon arrival, El-Masri was transferred into a car and driven up and down paved and

³² *Id.* ¶ 66.

³³ *Id.* ¶ 69.

unpaved roads for more than three hours. The vehicle came to a halt and he was aware that the three men that had been in the car during the drive evacuated the car without him. Then three persons climbed into the vehicle.³⁴

36. The vehicle drove for another three hours. After the vehicle stopped, El-Masri was taken from the car, turned around, and relieved of his blindfold and handcuffs. His suitcase and passport were returned to him, and he was directed to walk down a path without turning back. The car left and he began to walk as instructed. It was dark and no one was around.³⁵

37. El-Masri eventually came across three armed men. They immediately asked for his passport. When they saw that his German passport had no Albanian visa, they said he was breaking the law by being there, and asked what he was doing in Albania without the necessary authorization. El-Masri had no idea he was in Albania. They walked together a short distance until they came upon an old one-story building with an Albanian flag on it.³⁶

38. Another officer went through El-Masri's suitcase and asked him what he was doing in Albania. When he told them the story of his arrest in Macedonia, transport to and imprisonment in Afghanistan, and eventual transport to Albania, they all laughed and said that no one would believe his story. They instructed him not to tell that story to anyone. He was told he would be put on a flight to Germany.

39. The three men drove him to the Mother Theresa Airport in Tirana. They arrived at around 6 a.m., and one of the men took his passport and 320 Euros from his wallet and went into the airport building. He returned fifteen minutes later, and instructed El-Masri to go through a door. El-Masri went through immigration controls without further inspection and received an

³⁴ Macedonia, 2012-IV Eur. Ct. H.R. at 277.

³⁵ *Id.*; S. REP. NO. 113-288, at 129 (2014).

³⁶ Macedonia, 2012-IV Eur. Ct. H.R. at 277; see also Davidson, *supra* note 23.

exit stamp in his passport.

IV. Release

40. The plane landed at Frankfurt International Airport at 8.45 a.m. on May 29, 2004. From Frankfurt, El-Masri traveled to Neu-Ulm and from there to his home village, Senden. He knew before he entered his house that no one was there and that no one had been there for some time. He went from his home to the Cultural Center in Neu-Ulm where he asked about his wife and children. He was told that his wife and children were all safe and that they had all relocated to her family's place in Lebanon. El-Masri called his wife and she returned to Germany with their four children one week later. Since then, El-Masri and his wife had two additional children born.

41. El-Masri retained the ACLU to represent him in legal proceedings in the United States. On December 3, 2005, together with his German lawyer, Mr. Gnidjic, El-Masri attempted to travel to the United States to meet with his U.S. lawyers and to attend a press conference. They attempted to enter the United States in Atlanta. Although Mr. Gnidjic was permitted to enter the country, El-Masri was denied entry. No reasons were given for his refusal. He was sent back to Germany via France that same day.

42. Before his abduction, detention, and torture, El-Masri lived peaceably with his wife and children and had no criminal record. Since his ordeal, El-Masri has experienced a severe deterioration in his mental health. He has been convicted of two separate crimes that resulted in incarceration at a correctional facility in Keptem, Germany.

43. Psychiatrists who have examined him have attributed the deterioration in his mental health and his conduct in the criminal matters to the severe psychological impact of the abduction, detention, and torture he experienced in Macedonia and Afghanistan.

44. The Senate Select Committee on Intelligence Torture Report confirms that El-Masri was

a victim of the CIA's extraordinary rendition and torture program.³⁷ Despite numerous efforts to attain some form of accountability and justice for the egregious harms that have been perpetrated against El-Masri, he remains without remedy from any federal or state authority in the United States.

V. Legal Analysis

A) International Law

45. The treatment of El-Masri violated Vienna Convention on Consular Relations, done in Vienna on 24 April 1963 and entered into force on 19 March 1967. Article states, "if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph ..."

46. The treatment of El-Masri violated International Covenant on Civil and Political Rights (ICCPR) 94. The relevant provisions of the ICCPR, which was adopted on 16 December 1966 and entered into force on 23 March 1976. Article 7 states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

47. The treatment of El-Masri violated the Convention Against Torture, which was adopted on 10 December 1984 and entered into force on 26 June 1987. Article 2 states, "each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of

³⁷ United States Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 98. (2014).

torture in any territory under its jurisdiction . . . No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

48. The treatment of El-Masri violated the Universal Declaration of Human Rights. Article 5 states, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

B) Federal Law

49. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, the treatment of El-Masri violated the federal statute against torture. It states, “Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both . . .”

50. The treatment of El-Masri violated the War Crimes Act of 1996. It states, “The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.”

51. The treatment of El-Masri violated the Foreign Affairs Reform and Restructuring Act of 1997. Section 1242 states, “It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”

52. The treatment of E-Masri violated the Detainee Treatment Act of 2005. Section 1003

states, “No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.”

C) North Carolina Law

53. The treatment of El-Masri violated the North Carolina Constitution. Article 1, Section 19 of the NC Constitution states, “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”

54. The treatment of El-Masri violated North Carolina General Statute § 99D-1. It prohibits “[t]wo or more persons, motivated by race, religion, ethnicity, or gender, but whether or not acting under color of law, [from conspiring] to interfere with the exercise or enjoyment by any other person . . . of a right secured by the Constitutions of the United States or North Carolina, or of a right secured by a law of the United States or North Carolina that enforces, interprets, or impacts on a constitutional right.”

55. The treatment of El-Masri violated North Carolina General Statute § 14-39. It prohibits kidnapping and applies to corporations. The relevant part states, “Any person [or corporation] who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person”

VI. Conclusion

The torture and rendition program was operated in a way that a man known to be innocent by his interrogators was not released for months. This violates American values, and cannot pass into the annals of U.S. history without a legal reckoning. U.S. officials and agencies, along with the State of North Carolina and its political subdivisions, and Aero Contractors must

provide remedy and repair.

Abou ElKassim Britel

I. Introduction

1. Abou ElKassim Britel is a peaceful and pious man who has been victimized by the United States, Pakistan, Morocco, and Italy—that is, across three continents without any accountability or avenue for remedy. The lack of basic due process has caused him irreparable psychological and physiological harm. Britel needlessly suffers from Post-Traumatic Stress as a result of being tortured and from heavy metal poisoning from the conditions of his captivity in Pakistan. This tragedy could have been avoided if any of the countries involved in his detention or extradition had conducted a proper investigation into the accusations lobbed at him. In fact, Italy did conduct an investigation and found that no evidence existed of any wrong doing; however, this did not result in his ability to obtain remedy or reparation from any source.

2. This narrative includes a chronology that spans the wrongdoings of multiple governments. It has as its goal, however, the making of a public record that focuses most specifically on the responsibilities of United States, North Carolina and its political subdivisions, and Aero Contractors headquartered in Johnston County, North Carolina to account and offer remedy for their participation in the extraordinary rendition and torture of Britel.

II. Capture

3. Abou ElKassim Britel immigrated to Italy from Morocco in 1989 at the age of twenty-one¹. Upon arrival, he took various jobs to make ends meet², but his passion was the study and promotion of his Islamic faith. In 1995, Britel met and eventually married Anna Lucia

¹ Abou Elkassim Britel, Rendition Project, <http://www.therenditionproject.org.uk/prisoners/britel.html> [<http://perma.cc/D9AK-DMKS>] (last visited Apr. 16, 2017).

² He worked in a poultry shop and qualified as an electrician. Decl. of Abou ElKassim Britel in Supp. of Pls'. Opp'n to the U.S. Mot. to Dismiss or, in the Alternative, for Summ. J. filed on 30 May 2007 in Binyam Mohamed et al v. Jeppesen Dataplan, Inc., No. C07-02798 JW (N.D. Cal. Civ. R.1-1 filed 30 May 2007) (hereinafter Decl.), ¶ 2, Nov. 2, 2007, <https://www.therenditionproject.org.uk/prisoners/britel.html>.

Pighizzini, an Italian woman who shared his faith and passion. In 2000, Britel and his wife began working together to translate books central to the Islamic faith from Arabic into Italian to make their faith more accessible to interested Italians.³ They set up a website “Islamiqra” where they made these translations of religious material available, and provided topical commentaries and spiritual encouragement to Italian-speaking Muslims.⁴

4. In 2001, Britel began looking for opportunities to expand his outreach with Islamiqra. This search led him to the Middle East and surrounding Islamic countries, where he thought financing to expand his outreach to Italian speakers would be easier to find. In addition, he was able to conduct research for materials he intended to publish on his website. This business and research trip was abruptly ended in March 10, 2002 when he was apprehended by the Pakistani police.⁵

5. The Pakistani police charged Britel with immigration-related offenses, and processed him into a facility in Lahore, Pakistan. Once detained, the accusation of entering into Pakistan illegally morphed into the much more serious charge of being a “terrorist fighter.” His accusers increased the force of their interrogation methods which eventually devolved into violent conduct, demanding that Britel confess to unfounded accusations that he was involved in terrorist activity. Britel insisted that he was not a terrorist and requested legal representation and the opportunity to speak with representative from the Italian Embassy. Despite the legal obligation to grant these requests, he was denied access to legal representation and the Italian embassy.⁶

III. Torture and Rendition

A) Pakistan

³ *Id.* at ¶ 3.

⁴ *Id.* See also Islamiqra Home Page, <http://www.islamiqra.eu/> (last visited Apr. 17, 2017).

⁵ Decl. ¶¶ 4–5.

⁶ ElKassim Britel, *supra* note 1.

6. The Pakistanis subjected Britel to severe beatings, sleep deprivation, and suspended him from the walls or ceiling. The exceedingly brutal beatings sometimes included the use of instruments such as cricket bats. His captors bound his hands and feet while hanging him from the walls or ceiling for extended periods of time. These techniques generate intense pain in isolation, but the cumulative effect of these torture treatments is beyond excruciating. This physical torture was accompanied by denial of access to a toilet and threats of worse torture or death for him and his family unless he admitted to the unfounded charges they had lodged against him.⁷

7. After several weeks of being deprived of sleep, hung from the walls or ceiling of his cell, his captors told him that his family would be the victim of similar treatment. Britel finally broke and in an attempt to make the torture stop, was forced to sign a confession, although the confession was false.⁸

8. Soon after he confessed, U.S. officials intervened in Britel's capture and detention. They registered him in their biometric database by taking his fingerprints and photo. The U.S. officials told Britel that he would be killed by his Pakistani interrogators unless he cooperated with them. In May 2002, Britel's U.S. captors transferred him from Lahore, Pakistan to the Pakistani intelligence services headquarters in Islamabad.⁹

9. There he was interrogated by U.S. intelligence agents on four separate occasions. The agents repeatedly asked Britel about his alleged association with Osama Bin Laden. He again asked to speak with a representative from the Italian Embassy, but was denied. During his last

⁷ Decl. ¶¶ 5–6.

⁸ *Id.* See also Joby Warrick, *Ten Years Later, CIA 'Rendition' Program Still Divides N.C. Town*, WASH. POST (Feb. 9, 2012), https://www.washingtonpost.com/world/national-security/ten-years-later-cia-rendition-program-still-divides-nc-town/2012/01/23/gIQAwrAU2Q_story.html?utm_term=.6001f38dd71b.

⁹ Decl. ¶ 8; ElKassim Britel, *supra* note 1.

interrogation he met with a person known to him as “David Morgan” and was told that he could meet with the Moroccan ambassador; however, that meeting never happened. After the last interrogation, one of his Pakistani captors told Britel that he would be released and returned to Italy.¹⁰

B) Morocco

10. Britel, however, was not released. He was handcuffed and blindfolded before being taken to an airport. There he had his clothing cut from his body and his blindfold removed. He was photographed, and then dressed in a diaper and torn t-shirt. After having his hands and feet shackled, his captors dragged him onto a small American aircraft where he was forced onto his back. Flight records show that on May 23, 2002, a Gulfstream V aircraft, registered with the FAA as N379P, operating out of Johnston County Airport in North Carolina, departed Washington, D.C. at 12:45 and arrived at Frankfurt, Germany at 07:39 before taking off at 10:08 the same morning for Dubai, United Arab Emirates, arriving there at 16:10, and on May 24, 2002, landed in Islamabad, Pakistan.¹¹ These records show that Britel was put on that aircraft. He heard a second prisoner brought onto the plane who did not have a Moroccan accent.

11. While on the plane, Britel was shackled and bound. He was told not to move, and was hit or kicked if he did. During the six-hour flight, Britel experienced great pain in his back due to the

¹⁰ Decl. ¶¶ 9–10.

¹¹ At 09:05 the next day, May 24, the same aircraft departed from Islamabad at 21:05 and arrived in Rabat, Morocco at 07:03 the following day, May 25. Less than an hour later, at 07:58 the aircraft departed Rabat for Porto, Portugal, where it remained overnight before departing Porto at 08:00 the next morning for Washington, D.C., arriving at 15:09 on May 26, 2002. Deborah M. Weissman, *et. al.*, *The North Carolina Connection to Extraordinary Rendition and Torture*, 21 (Jan. 2012) <http://www.law.unc.edu/documents/clinicalprograms/finalrenditionreportweb.pdf>; see also *Aero Flew Them*, North Carolina Stop Torture Now (last visited April, 15 2017) <http://ncstn.org/content/aero-flew-them/>. For further information concerning Britel’s victimization through the U.S. extraordinary rendition program on a plane operated by Aero Contractors, see *Rapporteur: Giovanni Claudio Fava Temporary Committee On The Alleged Use Of European Countries By The CIA For The Transport And Illegal Detention Of Prisoners, WORKING DOCUMENT N° 8 On The Companies Linked To The CIA, Aircraft Used By The CIA And The European Countries In Which CIA Aircraft Have Made Stopovers Temporary Committee On The Alleged Use Of European Countries By The CIA For The Transport And Illegal Detention Of Prisoners* 6, 7, 12, 23, 29, 32, 34, 36, 39, 41, 43, 45, 49, 53 (2006) at <http://www.statewatch.org/cia/documents/working-doc-no-8-nov-06.pdf>.

extended time he had been required to lay on his back with his hands and feet shackled together. He requested to change position to alleviate this pain, and had his mouth taped shut in response.¹²

12. The plane landed in Rabat, Morocco whereupon the U.S. officials transferred Britel into the custody of the Moroccan intelligence services. The Moroccan agents processed him into the Témara prison. Once in Morocco, the interrogations and torture started over again. Britel spent the next eight months in complete isolation. He was deprived of sleep, adequate food, and even human contact. The only time he did interact with other humans was during vicious interrogations.¹³

13. Britel's interrogations consisted of being handcuffed and blindfolded while his interrogator would ask him questions about everything including his private life, the people he associated with in Italy, and his willingness to act as an informant for Moroccan intelligence. He was severely beaten on all parts of his body whenever his interrogators were not pleased with the level of his cooperation. The beatings were also accompanied with threats of castration and anal penetration. The threats were not limited to harming Britel, but also extended to his sisters currently in Morocco and his wife back in Italy.¹⁴

14. In February 2003, eleven months and one day after his arrest and detention in Pakistan, Britel was released without explanation or any charges. His wife Anna flew to Morocco to meet Britel, but she was not greeted by the same man who had left her to pursue financing for their website. Instead of the happy good-natured man she married, she found a man with large

¹² See Warrick, *supra* note 8.

¹³ Decl. ¶¶ 17–19; GIOVANNI CLAUDIO FAVA, EUROPEAN PARLIAMENT, 2006/2200(INI), REPORT ON THE ALLEGED USE OF EUROPEAN COUNTRIES BY THE CIA FOR THE TRANSPORTATION AND ILLEGAL DETENTION OF PRISONERS, 10 (2007) [hereinafter *FAVA Report*], <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN>

¹⁴ *Id.*

portions of his skin black and blue, and with hair that could not grow on the scar tissue that had developed as a result of the torture. Britel was also suffering from chronic diarrhea, dizziness, and significant loss of vision in his left eye.¹⁵

15. Anna and Britel remained in Morocco because Britel was not strong enough to travel, and because he had not had his passport returned to him. The Moroccan intelligence agents continued to pressure him with intimidation to act as an informant upon his return to Italy.

16. On May 12, 2003, Britel received documentation from the Italian embassy in Rabat that would allow him to return home.¹⁶ While making travel arrangements for himself and his wife to return home to Italy, Casablanca suffered the worst terrorist attack in its history.¹⁷ The response to the bombing was tragic in its own right. Some human rights organizations estimated that between two-thousand and five-thousand people were arrested in connection to the bombings. Nine hundred three were convicted in mass trials that lacked the due process necessary to provide a minimally fair trial.¹⁸ Britel was rounded up as a suspect in Morocco's response, and later convicted based on the earlier false confession he signed. He was sentenced to 15 years. On appeal, his sentence was reduced to 9 years.¹⁹

IV. Release

¹⁵Decl. ¶ 19. See ElKassim Britel, *supra* note 1; FAVA REPORT, *supra* note 13, at 13.

¹⁶Decl. ¶ 22. Human Rights Watch, *Morocco's Truth Commission: Honoring Past Victims During an Uncertain Present*, 17 HUM. RTS. WATCH 1, 43 (NOV. 2005), [HTTPS://WWW.HRW.ORG/SITES/DEFAULT/FILES/REPORTS/MOROCCO1105WCOVER.PDF](https://www.hrw.org/sites/default/files/reports/morocco1105wcover.pdf).

¹⁷See Douglas Jehl, *AFTEREFFECTS: MOROCCO; Suicide Bombs Kill at Least 14 in Casablanca*, N.Y. TIMES (May 17, 2003), <http://www.nytimes.com/2003/05/17/world/aftereffects-morocco-suicide-bombs-kill-at-least-14-in-casablanca.html>; Martin Bright, Paul Harris & Ali Bouzerda, *Horror in Casablanca as Al-Qaeda Toll Hits, 41* THE GUARDIAN (May 17, 2003), <https://www.theguardian.com/world/2003/may/18/alqaida.terrorism2>.

¹⁸See Human Rights Watch, *Morocco's Truth Commission Honoring Past Victims during an Uncertain*, 17 HUM. RTS. WATCH 1, 43 (Nov. 2005) <https://www.hrw.org/sites/default/files/reports/morocco1105wcover.pdf>.

¹⁹See ElKassim Britel, *supra* note 1.

17. The government of Italy conducted a thorough and complete six-year investigation into Britel's alleged involvement with terrorist activities, and found a complete lack of evidence of any criminal behavior or other activity associated with terrorism.²⁰ He was finally released from Moroccan prison in 2011 after a pardon by the King of Morocco. He returned to Italy where he is suffering permanent damage resulting from his illegal rendition and torture at the hands of the American, Pakistani, and Moroccan governments.²¹

18. After his release, Britel returned to Bergamo, Italy and where he currently resides with his wife, Anna. Today, Britel suffers serious health consequences due to the extensive torture he endured while unlawfully detained.²²

19. Britel reported loss in visual acuity and trouble concentrating.²³ He is suspected of having heavy metal poisoning, which resulted from exposure during his time as a prisoner in Pakistan from March to May 2002.²⁴ Heavy metal poisoning has grave consequences. As a result of the stress and trauma he suffered throughout his ordeal, Britel cannot remember to take his medications or to attend his daily appointments.²⁵ He also reports weakened limbs, which cause him to drop objects throughout the day.²⁶ He suffers from disrupted sleep, trouble eating, fatigue, depression, and anxiety.²⁷ He experiences persistent discomfort and itching on his head.²⁸ A medical evaluation shows that Britel's psychopathological condition is consistent with

²⁰ See Order of Dismissal, Dr. Francesca Morelli, Office of the Judge for Prelim. Investigations, Tribunal of Brescia, Sept. 29, 2006; See also Warrick, *supra* note 8.

²¹ See Elkassim Britel, *supra* note 1.

²² Dr. Luisella Maria Vigna, Medical Report, The Department of Preventive Medicine at the Clinica del Lavoro L. Devoto, Milan (Jan 31, 2012). This document refers to Britel's December 19, 2011 visit.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Dr. Sarah Viola, Clinical Notes Relating to Abou Elkassim Britel, Bergamo (Oct. 10, 2011).

²⁸ Interview by the UNC School of Law Human Rights Policy Seminar with Abou Elkassim Britel and Anna Lucia Pighizzini, in Chapel Hill, NC (Apr. 16, 2014) (Hereinafter, Interview-Human Rights Policy Seminar).

Post-Traumatic Stress Disorder.²⁹ Britel pursued therapy for his psychological condition.³⁰

Unfortunately, treatment was only offered in Milan, and the travel was exhausting and anxiety-ridden; Britel was unable to endure the trip and had to discontinue his treatment.³¹

20. Britel remains isolated from his community because of the trauma and torture he experienced and which prevent him from reintegrating into his community. It is difficult for him to conduct the routines of daily life. Additionally, both Britel and Anna suffer social ostracism in their community. They are isolated and marginalized because of the stigma of having been wrongfully associated with terrorism. Both Britel and Anna have lost friends and the support of their Muslim community.

21. The stigma of having been extraordinarily rendered and detained in a Moroccan prison that housed so-called terrorist contributed to media accounts in the Italian press that harmed both Britel and his wife. After his “trial” in Morocco, some Italian publications reported that Britel had been convicted for leading the bomb-plot in Casablanca, or even that he was one of the suicide bombers—charges that were completely false and had never even been lodged against him by Moroccan authorities.³² Although Italian publications have since run corrected versions of Britel’s story, people are still reluctant to associate with him. He has explained his circumstances stating, “People used to talk to me normally. . . now some of them won’t talk to me because they fear they may be accused of being terrorists.”³³

²⁹ *Id.*

³⁰ Medical Report 2, 3 *supra* note 22.

³¹ Interview-Human Rights Policy Seminar, *supra* note 28.

³² Interview by Cageprisoners with Anna Lucia Pighizzini (Jan. 9, 2008) (hereinafter Cageprisoners), at <http://www.cageprisoners.com/our-work/interviews/item/158-interview-with-khadija-pighizzini>.

³³ Interview by N.C. Stop Torture Now with Abou Elkassim Britel and Anna Lucia Pighizzini, Raleigh/Bergamo 00:10:43:28—00:10:57:04 (Sept. 15, 2013).

22. Britel and Anna would like to move on with their lives. In their words, however, the ordeal “has affected [their] dignity.”³⁴ In addition to his feelings of isolation, health problems, and crippling anxiety, Britel cannot find employment.

23. Beyond the inherent difficulties of rebuilding their lives after such extensive suffering and stigma, Anna and Britel do take some comfort, however, in the knowledge that individuals and groups have advocated on their behalf. “Despite the burden that I carry because of the wrong that was done to me,” Britel said in an interview with North Carolina based advocacy group N.C. Stop Torture Now, “it felt good to know that somebody was thinking of me... sharing this injustice with me from a different angle, so to speak.”³⁵

V. Legal Analysis

A) International Law

24. The treatment of Britel violated Vienna Convention on Consular Relations, entered into force on 19 March 1967. Article 36 states, “if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph ...”

25. The treatment of Britel violated the Universal Declaration of Human Rights. Article 5 states, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

³⁴ Interview-Human Rights Policy Seminar, *supra* note 28.

³⁵ *Id.* at 00:04:1900 – 00:04:02:18; 00:03:49:20—00:04:02:18

26. The treatment of Britel violated International Covenant on Civil and Political Rights (ICCPR) 94. The relevant provisions of the ICCPR, which was adopted on 16 December 1966 and entered into force on 23 March 1976. Article 7 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

27. The treatment of Britel violated the Convention Against Torture, which was adopted on 10 December 1984 and entered into force on 26 June 1987. Article 2 states, “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction . . . No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

B) Federal Law

28. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, the treatment of Britel violated the federal statute against torture. It states, “Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both . . .”

29. The treatment of Britel violated the War Crimes Act of 1996. It states, “The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.”

30. The treatment of Britel violated the Foreign Affairs Reform and Restructuring Act of 1997. Section 1242 states, “It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”

31. The treatment of Britel violated the Detainee Treatment Act of 2005. Section 1003 states, “No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.”

C) North Carolina Law

32. The treatment of Britel violated the North Carolina Constitution. Article 1, Section 19 of the NC Constitution states, “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”

33. The treatment of Britel violated North Carolina General Statute § 99D-1. It prohibits “[t]wo or more persons, motivated by race, religion, ethnicity, or gender, but whether or not acting under color of law, [from conspiring] to interfere with the exercise or enjoyment by any other person . . . of a right secured by the Constitutions of the United States or North Carolina, or of a right secured by a law of the United States or North Carolina that enforces, interprets, or impacts on a constitutional right.”

34. The treatment of Britel violated North Carolina General Statute § 14-39. It prohibits kidnapping and applies to corporations. The relevant part states, “Any person [or corporation]

who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person . . .”

VI. Conclusion

An innocent man was victimized. He was subjected to treatment that no person should be made to endure. Aero Contractors enabled this to happen. North Carolina and its political subdivisions must stop its citizens and businesses from contributing to the perpetration of torture or any human rights abuses. U.S. officials and agencies, the state of North Carolina and its political subdivisions, and Aero Contractors are all responsible for the human rights violations that Britel endured and must engage in a process of remediation and repair.

Binyam Mohamed

I. Introduction

1. Binyam Mohamed is a resident of the U.K. whose story, from personal upbringing to his entire experience of capture, rendition—via North Carolina-based Aero Contractors, Inc.—detention, interrogation, torture, and eventual release from Guantanamo, has been recounted many times, to many different people and entities. Through each of these accounts, his narrative has remained consistent. The account that follows¹ is virtually identical to other accounts Mohamed has provided of his experience.²

II. Binyam Mohamed's Initial Capture

2. Binyam Mohamed's almost seven-year ordeal—of extraordinary renditions, indefinite detention, and torture—began when he was stopped at the airport in Karachi, Pakistan, as he was attempting to get on a flight to return home to London in April 2002.³
3. To understand what brought him to this point, it is important to go back to the beginning of his story. Binyam Mohamed was born to an Ethiopian father and a Yemeni mother.⁴ The

¹ Much of this compilation is derived from an extensive interview in the Daily Mail because Binyam Mohamed relayed his story firsthand, in his own words, to journalist David Rose; the account is consistent with other descriptions and details documented elsewhere. *See* David Rose, *How MI5 Colluded in My Torture: Binyam Mohamed Claims British Agents Fed Moroccan Torturers Their Questions*, DAILY MAIL (Mar. 9, 2009), <http://www.dailymail.co.uk/news/article-1160238/How-MI5-colluded-torture-Binyam-Mohamed-claims-British-agents-fed-Moroccan-torturers-questions--WORLD-EXCLUSIVE.html>.

² *See, e.g.*, DICK MARTY, COUNCIL OF EUROPE, COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS, ALLEGED SECRET DETENTIONS AND UNLAWFUL INTER-STATE TRANSFERS OF DETAINEES INVOLVING COUNCIL OF EUROPE MEMBER STATES § 3.9, 43–45 (June 12, 2006) [hereinafter MARTY REPORT]; Stafford Smith Decl., *Mohamed v. Jeppesen Dataplan, Inc.*, No. 07-cv-02798 (N.D. Cal. Dec. 14, 2007); Exhibit A to Stafford Smith Decl., *Mohamed v. Jeppesen Dataplan, Inc.*, No. 07-cv-02798 (N.D. Cal. Dec. 14, 2007) (containing a full account of Binyam Mohamed's rendition and torture as relayed by him to his attorney Clive Stafford Smith); ACLU, BIOGRAPHY OF PLAINTIFF BINYAM MOHAMED, <https://www.aclu.org/other/biography-plaintiff-binyam-mohamed>; John F. Burns, *Britain Discloses Date on Ex. Detainee*, NY TIMES (Feb. 10, 2010), <http://www.nytimes.com/2010/02/11/world/europe/11britain.html>.

³ UNITED NATIONS, JOINT STUDY ON GLOBAL PRACTICES IN RELATION TO SECRET DETENTION IN THE CONTEXT OF COUNTERING TERRORISM § 151 (Feb. 19, 2010), <http://hrlibrary.umn.edu/instreet/A-HRC-13-42.pdf> [hereinafter U.N. JOINT STUDY].

⁴ *See* Rose, *supra* note 1.

family of five (Mohamed had a brother and sister) lived in Addis Ababa where his father worked as a senior executive with the state-owned Ethiopian Airlines.⁵ After the fall of dictator Haile Mengistu, a new government formed whose officials began arresting those associated with the old regime, including many of Mohamed's father's colleagues.⁶

4. In 1992, when Mohamed was only 14 years old, the family decided to flee Ethiopia and move to the United States, but Mohamed's mother stayed behind.⁷ The family lived in a suburb of Washington D.C. for only two years because Mohamed became a victim of racist bullying at his school.⁸
5. Mohamed's father decided to settle the family in London instead and they arrived there in the spring of 1994, when Mohamed was just several months shy of his sixteenth birthday.⁹ The family stayed in a hotel for the first week but then, unexpectedly, Mohamed's father left Binyam there while he returned to the United States.¹⁰
6. Mohamed was left to fend for himself and faced challenges in doing so.¹¹ Mohamed applied for asylum and while his application was pending, decided to travel and learn more about his religion.¹²
7. His travels took him to Afghanistan.¹³ While there, Mohamed became ill and could not leave the country despite the fact that he desperately wanted to, upon realizing that the West was about to attack Afghanistan.¹⁴

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Rose, *supra* note 1.

¹² *Id.*

¹³ *Id.*

¹⁴ See Rose, *supra* note 1 (happening in the immediate aftermath of September 11, 2001).

8. Mohamed's turmoil was described by journalist David Rose:

Mohamed became swept up in the tide of refugees. He fled from city to city and in 2002 managed to cross into Pakistan and made his way to Karachi. He booked a flight to London for April 3, but officials saw that his passport looked wrong and sent him packing. Six days later, using the same document, he tried again. This time the Pakistanis detained him.¹⁵

III. Binyam Mohamed's Renditions and Detentions

A. Pakistan

9. Mohamed was detained in Landi prison in Pakistan.¹⁶ His first interaction with an American, who called himself Chuck and who told Mohamed that he worked for the FBI, was approximately two weeks after his initial capture.¹⁷ "I told him I wanted a lawyer. He told me, 'The law's changed. There are no lawyers. Either you're going to answer me the easy way or I get the information I need another way.'"¹⁸
10. As has been subsequently disclosed, shortly after September 11, the CIA was described as being "obsessed" with concerns about whether Al Qaeda obtained nuclear fissile material.¹⁹
11. This preoccupation would prove to be detrimental to Mohamed. His interrogation took a turn for the worse when he revealed that while in Pakistan he had

seen a website with spoof instructions for building a nuclear device - instructions that included advice to refine bomb-grade uranium by whirling a bucket round one's head. "I mentioned the website to Chuck," Mohamed says. "It was obviously a joke: it never crossed my mind that anyone would take it seriously. But that's when he started getting all excited. Towards the end of April he began telling me about this A-bomb I was supposed to be building, and he started on about Osama Bin Laden and his top lieutenants, showing me pictures and making out I must have known them. He

¹⁵ *Id.* (failing to charge him with any crime).

¹⁶ See U.N. JOINT STUDY, *supra* note 3, at 179.

¹⁷ See Rose, *supra* note 1.

¹⁸ *Id.*

¹⁹ *Id.*

started asking me about operations and what type I had been trained for.”²⁰

12. Mohamed describes his torture:

For at least ten days I was deprived of sleep. Sometimes the Pakistanis chained me from the top of the gate to the cell by my wrists from the end of one interrogation to the start of the next for about 22 hours. If I shouted, sometimes I would be allowed to use a toilet. Other times, they wouldn't let me go and I would p*** myself. They had a thick wooden stick, like a kind of paddle, which they used to beat me while I was chained. They'd beat me for a few minutes, then stop, then start again. They also carried out a mock execution. A guard put a gun to my head and said he was going to pull the trigger. They were saying, “This is what the Americans want us to do.”²¹

13. During this time Mohamed was continually threatened by those he referred to as “the Americans” who told him he'd be sent to places where he would suffer worse torture, such as Jordan or Israel.²² At one point, Mohamed described asking for one sugar for a cup of tea he was given.²³ One of his captors told him “You'll need more than one sugar where you're going.”²⁴

14. Mohamed has also provided details about the ways in which his willingness to cooperate and provide answers to questions were either manipulated by his captors or egregiously and erroneously assessed as an indication of his culpability.

They asked me about the A-bomb website and I told them it was a joke. They wanted to know everything about my life in the UK and I gave them all the information I had. Later I realised that was part of my undoing: I told them the area I lived in had 10,000 Moroccans and was known as Little Morocco. The feedback I got later from the Americans was that because the Brits told them I had

²⁰ *Id.*

²¹ *Id.*

²² See, e.g., Reprieve, “*Human Cargo*”: *Binyam Mohamed and the Rendition Frequent Flier Programme* 6 (June 10, 2008),

[https://www.therenditionproject.org.uk/pdf/PDF%20100%20\[Reprieve,%20Jun%202008.%20Human%20Cargo,%20Report%20on%20Binyam\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20100%20[Reprieve,%20Jun%202008.%20Human%20Cargo,%20Report%20on%20Binyam].pdf).

²³ Rose, *supra* note 1.

²⁴ *Id.*

lived in a Moroccan area, the[Americans] thought Moroccans would be more likely to make me talk. At the same time, the[Americans] thought I must know something about what Moroccans were up to in London.²⁵

B. Travel via North Carolina-based Aero Contractors, Inc.

15. On July 21, 2002, as confirmed by a European Parliament investigation, flight logs compiled for the Council of Europe indicate that a Gulfstream Jet, registered as 379P, was the aircraft used to transport Mohamed from Pakistan to Morocco, an aircraft that was operated by North Carolina-based Aero Contractors, Inc. (“Aero”).²⁶
16. Mohamed was approached by people dressed in black, wearing masks, which covered their faces, and Timberland boots.²⁷ These people stripped Mohamed of his clothing, took photographs of him, inserted their fingers up his backside and dressed him in a tracksuit.²⁸ He was blindfolded, forced to wear ear-mufflers, shackled, and finally put onto the plane.²⁹ He was tied to his seat for the entire duration of the 8-10-hour flight from Pakistan to Morocco.³⁰
17. Reprieve, one of the principal human rights organizations investigating torture and assisting victims has documented Mohamed’s ordeal and states that it “describes a routine consistently recounted by numerous victims, and recorded by NGOs, government inquiries and other

²⁵ *Id.*

²⁶ Stafford Smith Decl. ¶ 6, Mohamed v. Jeppesen Dataplan, Inc., No. 07-cv-02798 (N.D. Cal. Dec. 14, 2007); *see* MARTY REPORT, *supra* note 2, at 63, 69; *see also* GIOVANNI CLAUDIO FAVA, EUROPEAN PARLIAMENT, REPORT ON THE ALLEGED USE OF EUROPEAN COUNTRIES BY THE CIA FOR THE TRANSPORTATION AND ILLEGAL DETENTION OF PRISONERS ¶¶ 72–73 (Jan. 30, 2007) (condemning the multiple extraordinary renditions of Binyam Mohamed and remarking that the Commission is “deeply disturbed” by testimony relating to his torture).

²⁷ Reprieve, *supra* note 22, at 8.

²⁸ *Id.*, at 8–9.

²⁹ *Id.*, at 9.

³⁰ *Id.*, at 9.

witnesses around the world, that has come to be known as the *modus operandi* of US renditions.”³¹

18. The Senate Select Committee on Intelligence Report confirms that Binyam Mohamed was rendered by the CIA on July 2002.³²

C. Morocco

19. Mohamed characterizes his 18-month long experience in Morocco as “medieval torture.”³³

20. Mohamed describes a routine that would be repeated throughout his detention in Morocco:

[T]hey cut off my clothes with some kind of doctor’s scalpel. I was totally naked. I was afraid to ask Marwan [Mohamed’s main Moroccan interrogator/torturer] what would happen because it would show fear. I tried to put on a brave face. But maybe I was going to be raped. Maybe they’d electrocute me. Maybe castrate me. They took the scalpel to my right chest. It was only a small cut. Maybe an inch. Then they cut my left chest. One of them took my penis in his hand and began to make cuts. He did it once, and they stood still for maybe a minute, watching my reaction. I was in agony, crying, trying desperately to suppress myself, but I was screaming. I remember Marwan seemed to smoke half a cigarette, throw it down, and start another. They must have done this 20 to 30 times in maybe two hours. There was blood all over. They cut all over my private parts. One of them said it would be better just to cut it off, as I would only breed terrorists.³⁴

21. This treatment encouraged Mohamed to fabricate elaborate confessions. “They had fed me enough through their questions for me to make up what they wanted to hear. I confessed to it all None of it was true.”³⁵

22. Mohamed’s lowest point came when it became clear that Britain was complicit with his detention and treatment in Morocco at the helm of the CIA. “When I realised that the British

³¹ *Id.*, at 8 n.10.

³² SENATE SELECT COMMITTEE ON INTELLIGENCE, COMMITTEE STUDY OF THE CENTRAL INTELLIGENCE AGENCY’S DETENTION AND INTERROGATION PROGRAM 235 n.1338, 238 (Dec. 3, 2014) [hereinafter SENATE REPORT].

³³ Rose, *supra* note 1.

³⁴ Rose, *supra* note 1.

³⁵ Such fabricated confessions included associations with Khalid Shaikh Mohammed and Osama Bin Laden, the plot to build a dirty nuclear bomb, and a plot to destroy apartments in New York with gas pipes. *See Id.*

were co-operating with the people torturing me, I felt completely naked. It was when they started asking the questions supplied by the British that my situation worsened. They sold me out.”³⁶

D. Travel via North Carolina-based Aero Contractors, Inc.

23. On January 22, 2004, as confirmed by a European Parliament investigation, flight logs prepared for the Council of Europe indicate that an Aero-operated Boeing business jet, registered as N313P, was the aircraft involved in Mohamed’s second rendition, from Morocco to Afghanistan.³⁷

24. Mohamed describes his second U.S.-orchestrated rendition much like his first:

It was a cold night. I was cuffed, blindfolded, put in a van and driven for about half an hour. Then they took me into a room, still blindfolded. It was dark. It was January 21st or 22nd, 2004, at about 10pm. After waiting about two hours, I heard a plane. I know I was going to go. I heard an American accent. I knew then I was being transferred back to the Americans. It was me and two other prisoners. There were five U.S. soldiers in black and grey, with face masks, and again with Timberland type boots. They did not talk to me. They cut off my clothes.³⁸

25. The Senate Select Committee on Intelligence Report confirms that Binyam Mohamed was rendered to CIA custody in January 2004 as does the European Parliament document his victimization in the rendition circuits on Aero operated planes.³⁹

³⁶ *Id.*

³⁷ *Id.*

³⁸ *See supra* note 22, at 18.

³⁹ SENATE REPORT, *supra* note 32, at 238. *See also* Rapporteur: Giovanni Claudio Fava Temporary COMMITTEE ON THE ALLEGED USE OF EUROPEAN COUNTRIES BY THE CIA FOR THE TRANSPORT AND ILLEGAL DETENTION OF PRISONERS, WORKING DOCUMENT N° 8 ON THE COMPANIES LINKED TO THE CIA, AIRCRAFT USED BY THE CIA AND THE EUROPEAN COUNTRIES IN WHICH CIA AIRCRAFT HAVE MADE STOPOVERS Temporary COMMITTEE ON THE ALLEGED USE OF EUROPEAN COUNTRIES BY THE CIA FOR THE TRANSPORT AND ILLEGAL DETENTION OF PRISONERS 6, 7, 10, 12, 32,34,36, 39, 41, 49, 53, 54(2006) at <http://www.statewatch.org/cia/documents/working-doc-no-8-nov-06.pdf>. Rapporteur: Giovanni Claudio Fava, EUROPEAN PARLIAMENT, WORKING DOCUMENT NO 9, ON CERTAIN EUROPEAN COUNTRIES ANALYSED DURING THE WORK OF THE TEMPORARY COMMITTEE Temporary COMMITTEE ON THE ALLEGED USE OF EUROPEAN COUNTRIES BY THE CIA FOR THE TRANSPORT AND ILLEGAL DETENTION OF PRISONERS 27, 33, 36, 54(2007) at

E. Afghanistan

26. Mohamed's next stop was a secret CIA prison in Afghanistan where he would spend a total of five months in the dark prison, as it was known.⁴⁰

27. Mohamed describes his situation when he arrived in the secret CIA prison in Afghanistan.

When I got to Kabul a female agent started taking close-up pictures of my genitals. She was shocked. When they removed my diaper she could see blood was still oozing from the cuts on my penis. For the first two weeks they had me on antibiotics and they took pictures of my genitals every day. They told me, "This is not for us. It's for Washington." They wanted to be sure it was healing.⁴¹

28. The prison was known as the dark prison because detainees were literally forced to spend all of their time in total darkness.⁴² To add insult to injury loud music and sounds were played constantly, including a track of ghost laughter.⁴³

29. Mohamed provided additional descriptions about the conditions of his detention.

The toilet in the cell was a bucket. Without light, you either find the bucket or you go on your bed. There were loudspeakers in the cell, pumping out what felt like about 160 watts, a deafening volume, non-stop, 24 hours a day. They played the same CD for a month, The Eminem Show. It's got about 20 songs on it and when it was finished it went back to the beginning and started again.⁴⁴

30. Mohamed was shackled for hours on end and placed in positions designed to cause great pain including a forced standing position with both hands chained either above his head, at waist level, or to the floor.⁴⁵ He recalls one instance where he was chained up for eight consecutive

[https://www.therenditionproject.org.uk/pdf/PDF%2085%20\[EP%202007%20Working%20Document%209%20-%20on%20certain%20European%20countries\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2085%20[EP%202007%20Working%20Document%209%20-%20on%20certain%20European%20countries].pdf)

⁴⁰ U.N. JOINT STUDY, *supra* note 3, at 180.

⁴¹ Rose, *supra* note 1.

⁴² U.N. JOINT STUDY, *supra* note 3, at 180.

⁴³ U.N. JOINT STUDY, *supra* note 3, at 180.

⁴⁴ Rose, *supra* note 1.

⁴⁵ *Id.*

days, placed in a position “that meant I couldn’t stand straight nor sit. I couldn’t sleep. I had no idea whether it was day or night.”⁴⁶

31. Mohamed was deprived of basic human necessities such as access to clean water with which to bathe, clean food, and even clean air to breath.

You got a shower once a week, with your arms chained above you, stripped naked, in the dark, with someone else washing you. The water was salty and afterwards you felt dirtier than when you went in. It wasn’t a shower for washing: it was for humiliation. . . . [Mohamed believed the food was contaminated because he was constantly sick.] The weight just dropped off me. . . . The floor was made of cement dust. Whatever movement you made, the air would be full of cement and I started getting breathing problems. My bed was a thin mattress on the floor, surrounded by that dust. In Kabul I lost my head. It felt like it was never going to end and that I had ceased to exist. . . . It’s a miracle my brain is still intact.⁴⁷

F. Guantanamo Bay, Cuba

32. By the time Mohamed reached his final place of detention, Guantanamo Bay, it was September 2004.⁴⁸ The Senate Select Committee on Intelligence Report verifies that Binyam Mohamed was held in CIA custody beginning in 2004.⁴⁹

33. While his conditions of confinement were certainly an improvement upon the medieval torture he endured in Morocco and the dark prison in Afghanistan, Mohamed still remained in unsanitary conditions, never exposed to natural light, forced into stress positions, and confined to overcrowded cells.⁵⁰

⁴⁶ *Id.*

⁴⁷ Rose, *supra* note 1.

⁴⁸ U.N. JOINT STUDY, *supra* note 3, § 151.

⁴⁹ SENATE REPORT, *supra* note 32, at 238, 469 § 95.

⁵⁰ U.N. JOINT STUDY, *supra* note 3, at 180.

34. Mohamed recalled that the Emergency Reaction Force, a SWAT team used to punish inmates in their cells, was used against him.⁵¹ The provocation came from Mohamed's refusal to have his fingerprints taken, fearing they would ultimately be used against him.

They nearly broke my back. The guy on top was twisting me one way, the guys on my legs the other. They marched me out of the cell to the fingerprint room, still cuffed. I clenched my fists behind me so they couldn't take prints, so they tried to take them by force. The guy at my head sticks his fingers up my nose and wrenches my head back, jerking it around by the nostrils. Then he put his fingers in my eyes. It felt as if he was trying to gouge them out.⁵² Another guy was punching my ribs and another was squeezing my testicles. Finally I couldn't take it any more. I let them take the prints.⁵³

35. When his ordeal finally came to an end, it took Mohamed by surprise. "It is, he admits, still difficult to accept."⁵⁴

36. Mohamed was never charged with a crime, and was exonerated and released in February 2009.⁵⁵

IV. Violations of International, Federal, and State Law

A. International

37. Besides being morally reprehensible, torture is prohibited by the Universal Declaration of Human Rights: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁵⁶

⁵¹ Rose, *supra* note 1.

⁵² This very same tactic was used against at least one other Guantanamo detainee, Omar Deghayes, which ultimately blinded him in one eye. See Patrick Barkham, *How I Fought to Survive Guantanamo*, THE GUARDIAN (Jan. 20, 2010), <https://www.theguardian.com/world/2010/jan/21/i-fought-to-survive-guantanamo> (chronicling the brutal attack on Deghayes while he too was detained in Guantanamo).

⁵³ Rose, *supra* note 1.

⁵⁴ *Id.*

⁵⁵ See U.N. JOINT STUDY, *supra* note 3, at 180 (noting that Mohamed was at one point in time charged with conspiracy and brought before a United States military commission but the charges were ultimately dropped and never pursued).

⁵⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 at art. 5 (Dec. 10, 1948) [hereinafter "U.D.H.R."].

38. The Declaration also admonishes that no State, group, or person has “any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”⁵⁷

39. The International Covenant on Civil and Political Rights also includes a provision prohibiting torture.⁵⁸

40. The Convention Against Torture, which has been signed and ratified by the United States, defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is *inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁵⁹

B. Federal

41. The United States Constitution itself prohibits cruel and unusual punishment.⁶⁰ In addition, Congress has passed several statutes specifically prohibiting the use of torture including the Immigration and Nationality Act of 1952, the Torture Victims Protection Act of 1991, the Federal Torture Statute of 1994, and the War Crimes Act of 1996, among others.

C. North Carolina

⁵⁷ *Id.* at art. 30.

⁵⁸ International Covenant on Civil and Political Rights, adopted Dec. 19, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171 at art. 7 (entered into force Mar. 23, 1976) [hereinafter “International Covenant on Civil & Political Rights”].

⁵⁹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part I, Art. 1, ¶ 1 (emphasis added).

⁶⁰ U.S. CONST. amend VIII.

42. The North Carolina Constitution provides that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property”⁶¹
43. North Carolina statutory provisions prohibit kidnaping, involuntary servitude, and human trafficking; this prohibition extends to private firms or corporations engaged in such activity.⁶²
44. Based on these international and domestic standards, at both the federal and state level, it is clear that Binyam Mohamed was tortured in violation of international and domestic law. From the moment Mohamed was initially captured in Pakistan to his eventual release, his rendition, detention, and torture was inflicted on him both at the direction of and directly by American officials—directly implicating American officials in his mistreatment.

V. Conclusion

45. When Mohamed relayed his ordeal to journalist David Rose in 2009 he said, “[m]entally right now, the result of my experience is that I feel emotionally dead. You could do anything to me and I wouldn’t feel it any more.”⁶³
46. Mohamed plans to remain in Britain: “It’s the only place I can call home. . . . I want to live a normal life, to find a wife, get married, have a family, a job. Meanwhile, I’ll do whatever I can to get the other innocent prisoners out of Guantanamo.”⁶⁴
47. Since his release, Mohamed has withdrawn from public advocacy, as he prefers to deal with his trauma in a more private setting.⁶⁵

⁶¹ N.C. CONST. art. I § 19.

⁶² N.C. GEN. STAT. § 14–39 (punishing corporations by fine—between \$5,000 and \$100,000—and by revoking the right to conduct business in the state of North Carolina).

⁶³ Rose, *supra* note 1.

⁶⁴ Rose, *supra* note 1.

⁶⁵ Skype Interview with Steven M. Watt, Senior Staff Attorney, ACLU Human Rights Program (Apr. 10, 2017).

48. Mohamed's tragic experiences are due to the actions and omissions of U.S. officials and agencies, the State of North Carolina and its officials and political subdivisions, as well as Aero Contractors. These responsible parties and entities must offer Mohamed and other victims adequate remedy and reparations as required by law.

Mohamed Farag Ahmad Bashmilah

I. Introduction

1. Mohamed Bashmilah is a 49-year-old Yemeni citizen who was held and tortured in secret CIA detention for over 18 months, and then held in arbitrary detention in Yemen for a further 10 months. His full 59-page declaration along with exhibits was submitted to the U.S. Federal District Court in the Northern District of California in December 2007 in a law suit filed in an effort to obtain reparations and repair for the unlawful acts done to him is attached here. He lives in Aden, Yemen with his wife and mother. What follows is a summary compilation of the torture and inhumane treatment he suffered.

2. Mohamed Bashmilah was born in 1968. Before his detention, he was a business owner. In his native Yemen, he worked with his uncle selling clothes from 1996-2000.¹ In late 2000, he moved to Indonesia to work in a clothing factory belonging to his cousins.² In order to further the interests of the enterprise, he studied the language of Indonesia and upon achieving a requisite level of proficiency, Bashmilah expanded his duties and began buying and selling clothes for the business. At some point while in Indonesia, he lost his passport and sought a replacement. He was issued a replacement passport, dated March 17, 2003, from the Embassy of the Republic of Yemen in Jakarta.

3. In late 2003, Bashmilah was arrested by immigration authorities. He was accused of using a forged Indonesian identification card, an identification card he had procured in order to

¹ Declaration of Mohamed Farag Ahmad Bashmilah in Support of Plaintiffs' Opposition to the United States' Motion to Dismiss or, in the Alternative, for Summary Judgment ¶ 2, Mohamed et al. v. Jeppesen Dataplan, Inc., 539 F. Supp.2d 1128 (2008) (No. C 07-02798 JW) [hereinafter "Bashmilah Declaration"].

² Bashmilah, *supra* note 1.

marry his wife and continue working as a merchant. He paid a fine, and the immigration officials forced him to leave the country on a flight of his choosing.³ .

4. Around the time of his arrest, Bashmilah's mother had traveled to Jordan in order to have heart surgery. While leaving Indonesia, Bashmilah and his wife made plans to stop in Jordan in order to assist with her hospital admission and otherwise provide her with support as she went through her medical ordeal. Upon arriving in Jordan, airport officials confiscated Bashmilah's passport and questioned him about its validity. They ignored his efforts to explain that this was a replacement passport for his original that had been lost. He was told to report to the Jordanian General Intelligence Department ("GID") for return of his passport. Although he repeatedly visited the GID over the next month, officials never returned his passport to him.

5. On October 21, 2003, Bashmilah again attempted to obtain his passport. He attempted to explain the urgency of the situation and that he needed his passport as proof of identity to arrange for his mother's heart surgery. Bashmilah offered the paperwork concerning his mother's medical procedure to demonstrate his need for his passport. On this occasion, instead of returning his passport, he was taken to an office for questioning. A Jordanian official accused him of arms trading⁴, amongst other crimes. Bashmilah denied these accusations and he was struck and kicked with such force that he fell off his chair. The official then beat him and kicked him so hard that he could not get up while holding him captive in the office.

6. The Jordanian intelligence official called in three guards. Bashmilah was handcuffed, chained, blindfolded and then taken outside of the GID building to a car.⁵ Bashmilah was ordered to direct his captors to the residence he and his mother were renting. Officials then

³ *Id.*, at ¶4.

⁴ *Id.*, at ¶14.

⁵ *Id.*, at ¶16.

ransacked the apartment while his mother and wife were locked in another room screaming and crying. The officials did not find anything during the search. When his mother and wife tried to protest his detention, they were each hit by the officials. His captors told the landlord that he was free to evict his mother and his wife which terrified him because of his mother's heart disease and because he did not know how they could manage. His captors then blindfolded Bashmilah again, and drove him back to GID.

7. When Bashmilah arrived back at the GID facility, his captors stripped him of all of his clothes and left him naked. He was photographed, had his fingerprints taken, and he was dressed in a light blue outfit, and the put in solitary confinement.⁶ Two other Jordanian officials then entered his cell and began to interrogate him. They subjected him to physical and mental abuse. They suspended him upside down from the ceiling, beat him with canes, and slapped and struck him repeatedly. He was humiliated and was forced to imitate a donkey and a dog. Perhaps worst of all, his interrogators threatened to rape his wife and mother. After these threats, Bashmilah agreed to sign whatever they wanted.⁷ Bashmilah signed a "confession" and was told that he would be released. His captors continued to torture him by beating him with their hands, feet, instruments including canes, humiliating him, forcing him to run in circles until collapse, and ongoing threats to his very life.

II. Rendition from Jordan to Afghanistan

8. On October 26, 2003, Bashmilah was taken to the airport. As he was removed from his cell, he heard individuals speaking English, and were believed to be Americans. His clothes were cut off and he was left entirely naked. One person held him from behind, as others – whom he could see because they had removed his blindfold – were dressed head to toe in black, with

⁶ *Id.*, at ¶22.

⁷ *Id.*, at ¶24.

black masks covering their faces and surgical gloves on their hands, beat him and kicked him. Another person took pictures of him, and then one of them forcefully stuck his finger into his anus. Bashmilah was in severe pain and began to faint.⁸ He was put into a diaper, tightly blindfolded with tape applied over the blindfold. Headphones were strapped over his ears to block out sound. Once loaded into the plane, he was forced to lie on his back. His chest and legs and hands were tied and chained to his waist. He was strapped to a metallic board, like a hospital gurney. During the flight, he suffered pain in his head, sides, and knees from blows and kicks from the men who prepared him for rendition. During this entire time he was in a panic about the well-being of his wife and mother.

9. Bashmilah was flown out of Amman at 4.15 a.m. on October 26, 2003 on a Gulfstream V aircraft, registered with the Federal Aviation Administration (FAA) as N379P. N379P was operated by North Carolina-registered Aero Contractors and is based at Smithfield, North Carolina. This flight arrived in Kabul, Afghanistan at 8.25 a.m. the same day.⁹

III. Detention and Torture in Afghanistan

10. When Bashmilah arrived in Afghanistan, he was tightly bound and placed in the back of a truck, while someone sat on his back so he couldn't raise his head. For roughly the first fifteen days, his hands were left cuffed, and legs were shackled together. This severely restricted his movement and caused him great pain. Because his hands and legs were tied, he could not take

⁸ *Id.*, at ¶39.

⁹ *Rendition of Mohamed Bashmilah, Jordan to Afghanistan*, The Rendition Project, at <https://www.therenditionproject.org.uk/flights/renditions/N379P-031024.html>. Bashmilah's rendition as part of the "American 'spider's web'" has been confirmed by the European Parliament. *See* Rapporteur: Mr Dick Marty, Committee on Legal Affairs and Human Rights Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states Draft report 43 (2006) http://assembly.coe.int/committeedocs/2006/20060606_ejdoc162006partii-final.pdf _.

off the diaper in which he had arrived. Thus, for the first fifteen days in Afghanistan, he was kept in the same diaper that had been put on him in Jordan.¹⁰

11. An American doctor examined Bashmilah. During this examination, the doctor saw his injuries and bruises, that is the signs of the abuse he suffered.

12. In his declaration to the court, Bashmilah describes the conditions of his cell: “I was kept in this cell for about three months. Excruciatingly loud western rap and Arabic music was played twenty-four hours a day, seven days a week for approximately the first month.... After that they would pipe in the sound of waves or birds chirping.... The guards would not let me sleep, and routinely woke me every half hour, requiring me to raise my hands to show that I was still alive. I was subject to constant surveillance by the camera that sat above the cell door. There was no heating in the cell and it was very cold.”¹¹

13. Bashmilah’s mental state significantly deteriorated during those months. He attempted suicide three times. Once by trying to hang himself with string pulled from his blanket, then by trying to overdose on pills he was given daily, and finally by slashing his wrists. On another occasion, he was so distraught that he bashed his head against the wall repeatedly.¹²

IV. Transferred Around Other Cells in Afghanistan

14. After three months Bashmilah was transferred to a new cell. This cell was quieter, but still barren. His hands and feet were constantly shackled. His right hand was also chained to a post on the wall. Bashmilah described the chain as “so heavy that I could not even lift my right hand to my chest during prayer.”¹³ He stayed in this cell for roughly two months until his captors moved him again. This new cell was next to an interrogation room. While Bashmilah listened to

¹⁰ Bashmilah, *supra* note 1, at ¶61.

¹¹ *Id.*, at ¶64.

¹² *Id.*, at ¶66.

¹³ *Id.*, at ¶68.

the screams of other detainees being tortured, the guards intimated that he could be next if he didn't cooperate. During this entire time Bashmilah was held in solitary confinement. He only saw the guards and other prison personnel.

15. Bashmilah believes and documentation and reports confirm that he was held in what has been referred to as the Dark Prison in Afghanistan under the control of the United States.¹⁴ His interrogators and other officials with whom he had contact all spoke English with American accents. During this entire period, the Americans denied him the right to contact his family, his government, his attorney, or any humanitarian entity such as the International Committee of the Red Cross.

V. Transfer to CIA Black Site

16. On or about April 24, 2004, Bashmilah was transferred yet again. He was “taken from [his] cell, stripped, forced by people in black masks to wear a diaper, a cotton shirt, and pants, blindfolded, shackled, and hooded.”¹⁵ His captors loaded him into a plane and flew him to a CIA black site facility. Upon arrival, he was stripped and photographed. He taken to a cell, but left completely naked for two to three days until the guards gave him clothes. His captors blasted radio static into his cell for 24 hours a day.

17. The isolation and psychological torment caused severe stress for Bashmilah. Bashmilah attempted to harm himself again in this cell. He states, “One time I used a piece of metal to slash my wrists. After cutting myself, I used my blood to write ‘I am innocent’ and ‘this is unjust’ on the walls of my cell.”¹⁶

¹⁴ The Rendition Project, Prisoners, Mohamed Bashmilah, at <https://www.therenditionproject.org.uk/prisoners/bashmilah.html>.

¹⁵ Bashmilah, *supra* note 1, at ¶86.

¹⁶ *Id.*, at ¶116.

18. Bashmilah also underwent a hunger strike for 10 days. As a means to force him to eat, the guards strapped him to the chair shoved a tube into his nose. Bashmilah describes this as a horribly painful technique and states that began screaming because of the pain as they forced the tube all the way into his stomach. He was force-fed like this for around three days.¹⁷

19. The next day, Bashmilah was flown on a passenger plane to Aden, and taken to Fateh Prison, where he was detained for a further 10 months at the request of the United States government.¹⁸ When he first arrived he states he was “constantly dizzy, suffered nose bleeds, and often felt like I was floating on water. I believe these things happened because I had not been exposed to the sun for such a long time and was now suddenly in a place with abundant sunlight.”¹⁹ Bashmilah was finally released on 27 March 2006. However, that was not the end of his suffering. He described the lasting effects in his declaration, “My health deteriorated severely while I was in detention. To this day I suffer the mental and physical scars of prolonged uncharged detention, torture, and cruel treatment with tremendous consequences for my emotional, psychological, and physical health.”²⁰

20. Bashmilah’s financial security was also ruined by his detention. He states, “my financial situation remains strained because being in secret detention has tarnished my reputation and because my passport, which indicated that I am a business man, has never been returned to me.”²¹

21. Despite the significant physical pain Bashmilah endured during his rendition and torture, he did not regard that as the worst part. In a post-release interview, Bashmilah stated “I consider

¹⁷ *Id.*, at ¶120.

¹⁸ *Id.*, at ¶172.

¹⁹ *Id.*, at ¶170.

²⁰ *Id.*, at ¶199.

²¹ *Id.*, at ¶200.

that psychological torture I endured was worse than the physical torture”. He called his imprisonment “almost like being inside a tomb.”²² In that same interview, Bashmilah recalled “Whenever I saw a fly in my cell, I was filled with joy,” he said. “Although I would wish for it to slip from under the door so it would not be imprisoned itself.”

22. The effects of Bashmilah’s rendition and detainment extended to his family as well. Bashmilah explained toll it took on his loved ones, writing: “My mother and wife were in such anguish that they had to be hospitalized for illness, stress, and anxiety. My father passed away while I was disappeared and I am still distraught thinking that he died without knowing whether I was dead or alive.”²³ His wife was left in total poverty during his detention. Bashmilah stated “When my wife returned to Indonesia she was so destitute that she had to go through trash to collect aluminum foil to sell in order to sustain herself.”²⁴

23. After being held for 30 months and upon his release, Bashmilah explained that he wanted to bring to light the torture and suffering he experienced as well as the pain and trauma suffered by other detainees as well. He agreed to be a plaintiff in the federal lawsuit against Jeppesen DataPlan, Inc. He gave interviews about his treatment, and provided drawings of the cells where he was tortured, interrogated, and confined. The renderings of his drawings are attached to this document as Exhibit A.

24. Bashmilah was identified in the Senate Select Intelligence Committee report on CIA Torture as one of the 26 individuals who were wrongly detained.²⁵ In the report, his name was

²² Mark Benjamin, *Inside the CIA’s notorious “black sites”*, Slate, December 14, 2007, at <http://www.salon.com/2007/12/15/bashmilah/>.

²³ Mohamed Farag Bashmilah, *Disappeared in the Name of National Security*, The Word Post, March 22, 2009, at http://www.huffingtonpost.com/mohamed-farag-bashmilah/disappeared-in-the-name-o_b_168200.html.

²⁴ Bashmilah, *supra* note 1, at ¶197.

²⁵ United States Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program*, 16 n32. (2014).

recorded as “Mohammad al-Shomaila”²⁶, due to “a different transliteration and without the ‘Ba’ prefix common in Yemeni names.”²⁷

25. Although the torture and illegal treatment he suffered has finally been acknowledged by the US Government, and he was never associated with a crime, criminal act, or act of terrorism, Bashmilah has never received an apology or any form of reparations.²⁸

VI. Violations of Law

A. International Law

26. Bashmilah’s treatment violates article 5 of the Universal Declaration of Human Rights, which states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

27. Bashmilah’s treatment violates article 7 of the International Covenant on Civil and Political Rights (ICCPR), which states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁹

28. Bashmilah’s treatment violates multiple sections of the Convention against Torture (CAT). Article 2(1), which states: 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. And also article 3(1), which states: No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.³⁰

²⁶ *Id.*, at 25.

²⁷ Scott Shane, *Amid Details on Torture, Data on 26 Who Were Held in Error*, New York Times, December 12, 2014, at <https://www.nytimes.com/2014/12/13/us/politics/amid-details-on-torture-data-on-26-held-in-error-.html>.

²⁸ *See supra* note 9.

²⁹ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

³⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

29. Forced Feeding: In a document titled ““Legal Authority and Policy for Enteral Feeding at JTF-GTMO”, an attorney from the Department of Defense admitted that “international law and certain medical ethical standards holds that the 'forced feeding' of a mentally competent person capable of making an informed decision is never acceptable”. The practice qualifies generally as torture, but especially considering the manner in which Bashmilah’s guards performed it.³¹

B. United States Federal Law

30. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, Bashmilah’s treatment was in violation of the Torture Victims Protection Act of 1991, which states: “An individual who, under actual or apparent authority, or color of law, of any foreign nation— subjects an individual to torture shall, in a civil action, be liable for damages to that individual.”³²

31. It violates the federal law against torture, which states “Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years.”³³ This statute defines torture as “means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control”.

32. Bashmilah’s treatment violated the War Crimes Act of 1996. This act prohibits torture, defined as:

An act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person

³¹ Jason Leopold, “*The Military Admitted Force-Feeding Gitmo Detainees Violates International Law and Medical Ethics*”, Vice (Jan 29, 2015) at <https://news.vice.com/article/how-a-military-memo-could-save-the-nurse-who-refused-to-force-feed-guantanamo-detainees>.

³² TORTURE VICTIM PROTECTION ACT OF 1991, 1992 Enacted H.R. 2092, 102 Enacted H.R. 2092, 106 Stat. 73.

³³ 18 U.S. Code § 2340A.

within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.³⁴

C. North Carolina State Law

33. The Rendition process, and detention of Bashmilah violated the North Carolina Constitution, which states “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”³⁵

34. This process also violated a North Carolina statute regarding Kidnapping and Abduction, which states: “Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, . . . shall be guilty of kidnapping.”³⁶ This statute extends liability to private companies in violation as well and includes conspiracy to commit such acts.

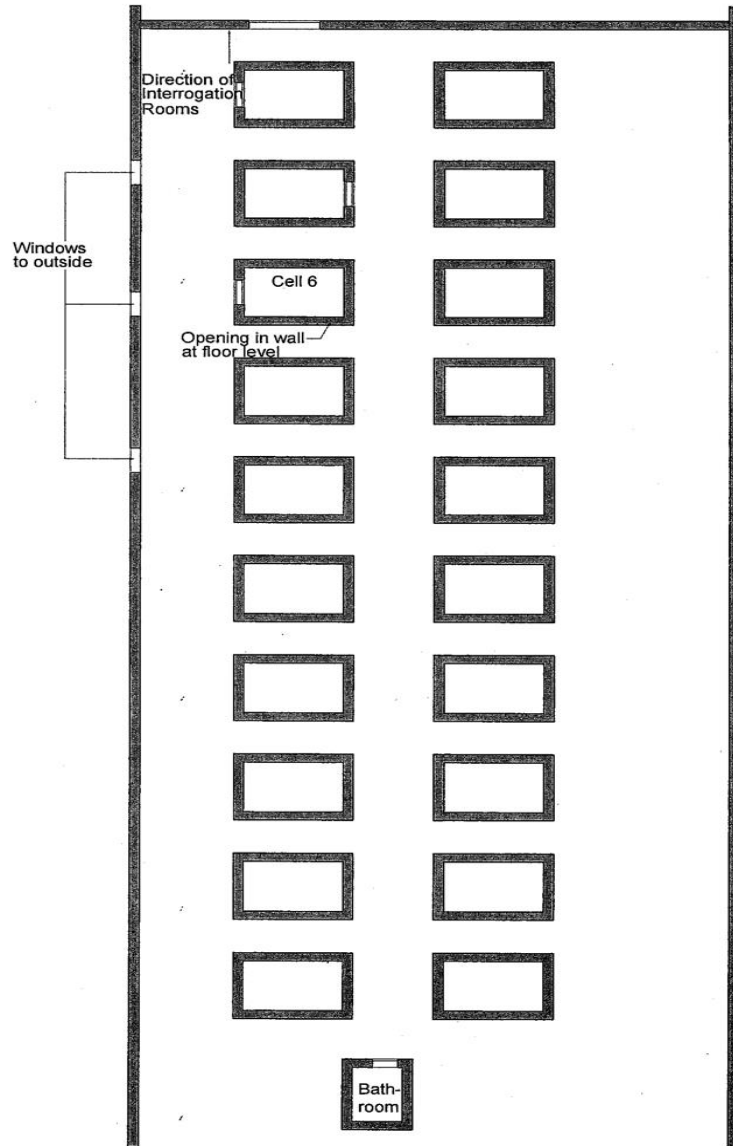
VII. Conclusion

35. Mohamed Bashmilah was forced to suffer terrifying kidnapping, detention and torture, all in violation of international, federal, and state laws. He is entitled to remedy and relief from the United States, the state of North Carolina and its political subdivisions, and Aero Contractors.

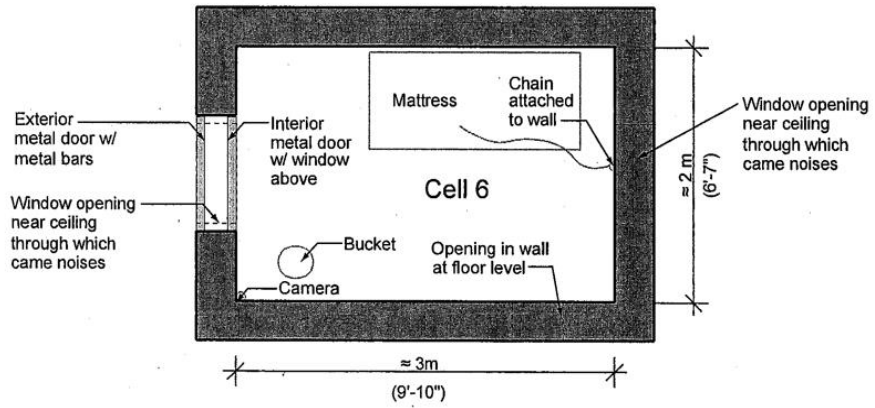
³⁴ 18 U.S. Code § 2441.

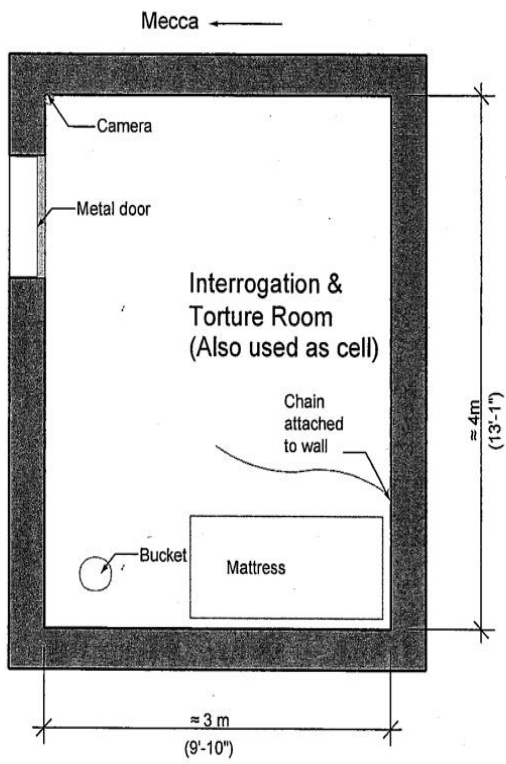
³⁵ N.C. Const. art. 1, §19.

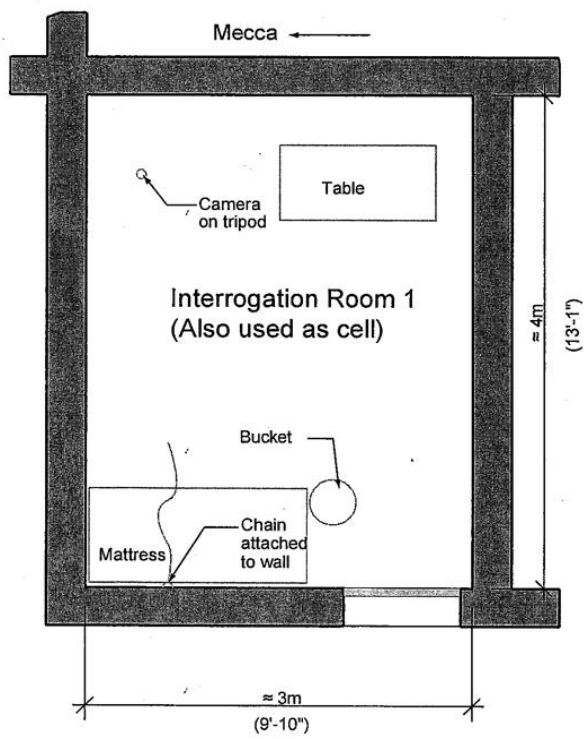
³⁶ N.C. Gen. Stat. § 14-39.



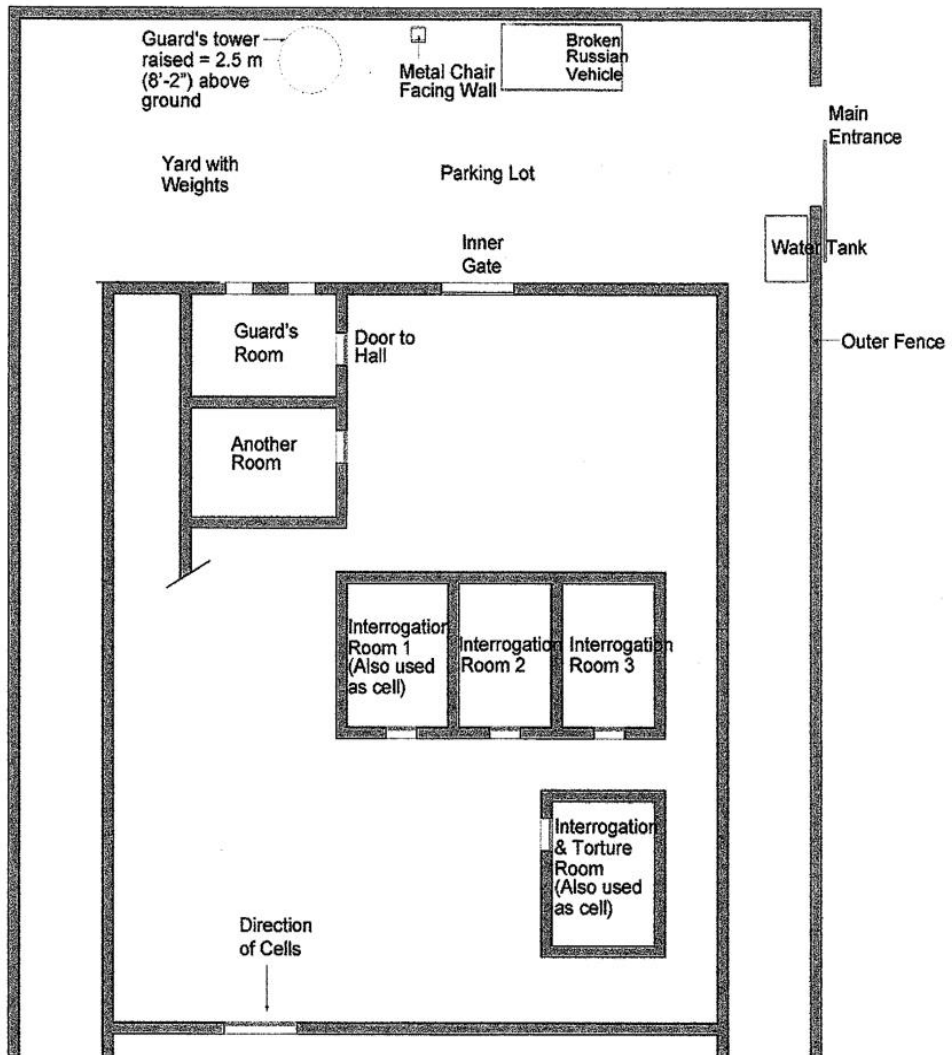
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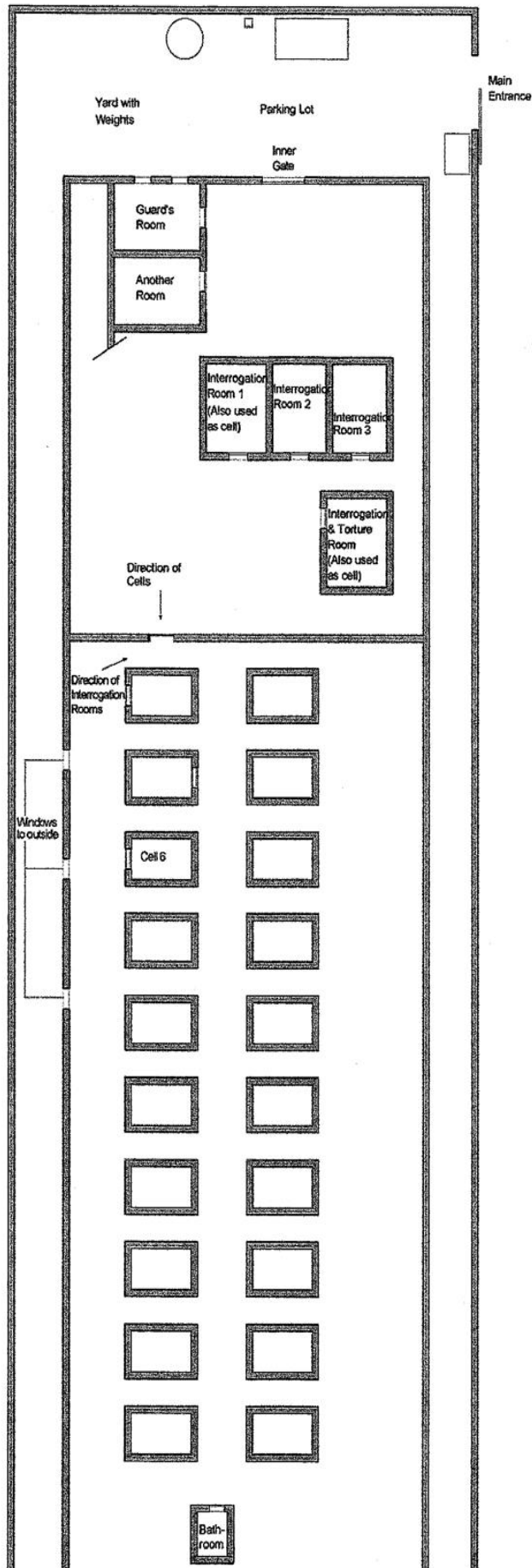


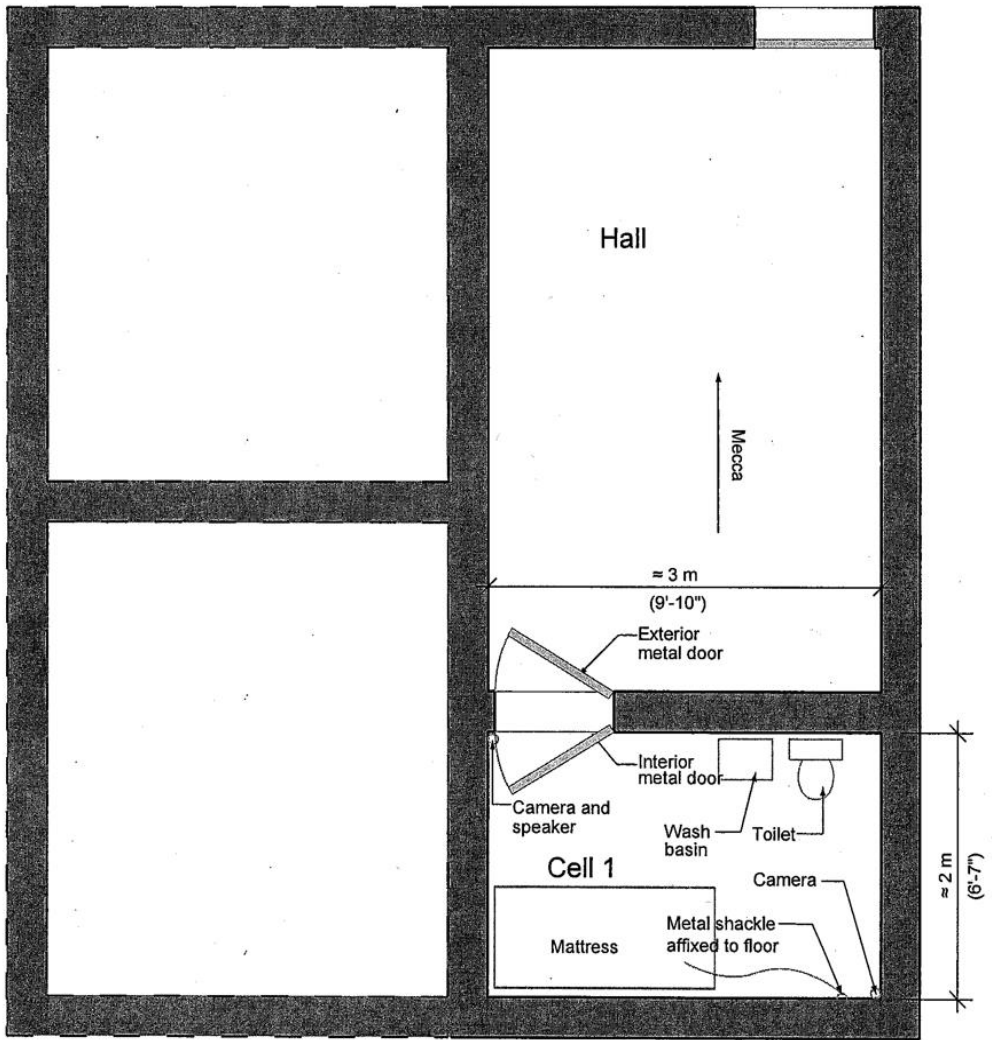


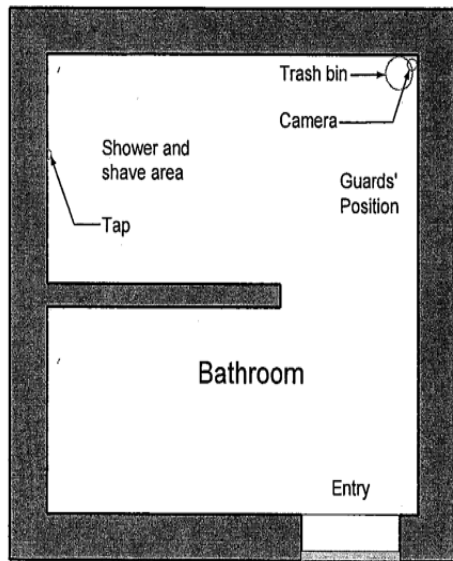


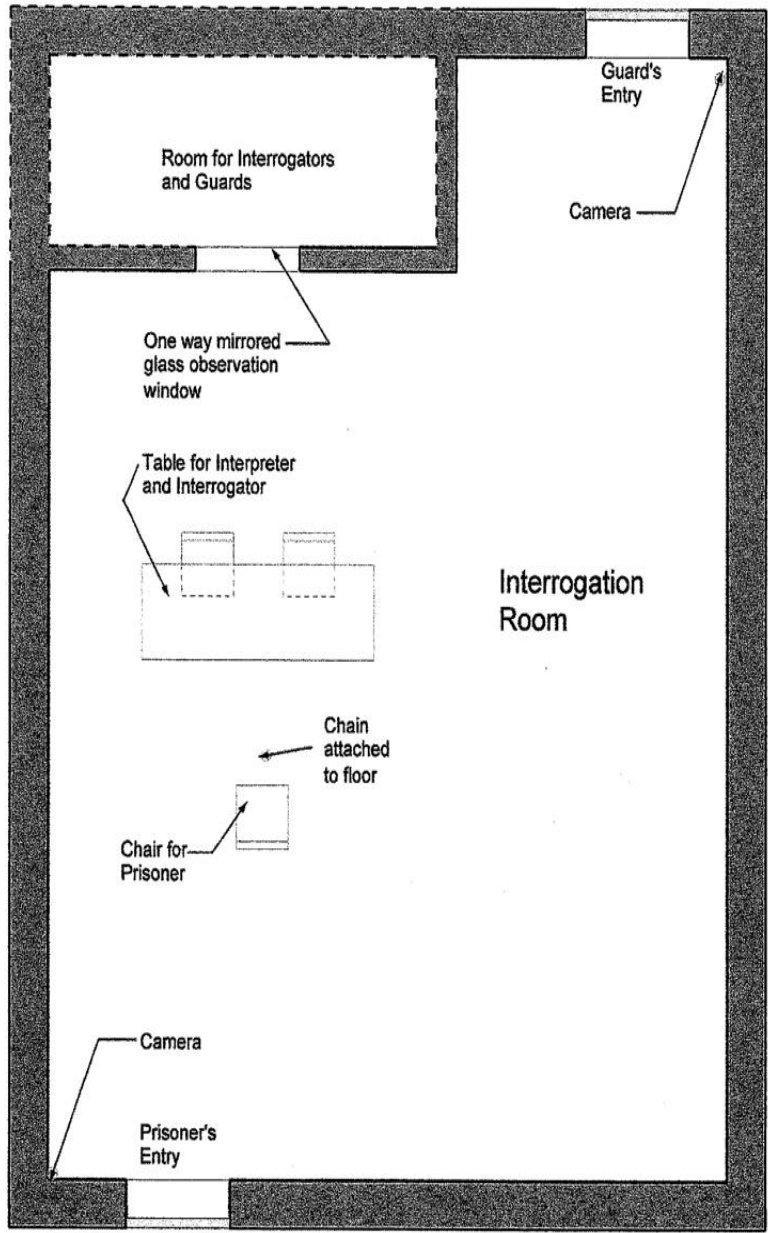


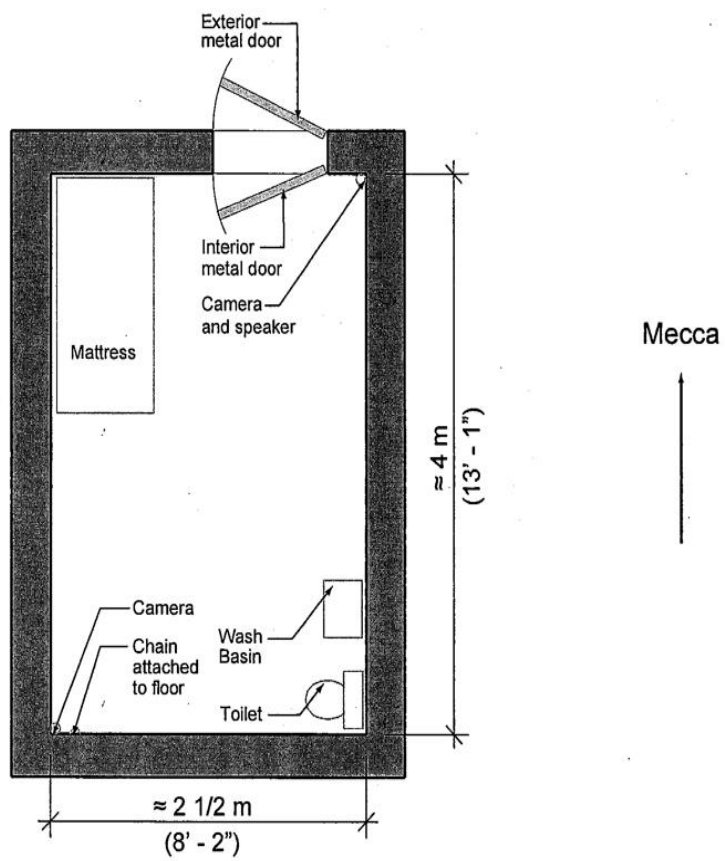












Khaled al-Maqtari

I. The Rendition and Torture of Khaled al-Maqtari

1. Khaled al-Maqtari is a Yemeni man who was detained and tortured by United States armed forces and intelligence operatives despite never being charged or convicted of any crime against the United States or its citizens. We do not know much about who al-Maqtari is as a human being beyond what is written about him in relation to these events. As a result, the details of horrific violence to which he was subject is largely what we know about his circumstances. Much of the information contained in this narrative is derived from a report by Amnesty International, entitled *From Abu Ghraib to Secret CIA Custody: The Case of Khaled Al-Maqtari*. Khaled al-Maqtari's narrative and interview are not refined chronicles in terms of date and chronology. However, torture experts have relayed that while certain details of treatment are difficult to recall for victims of torture, such as a concept of time elapsed, victims are often able to recall in detail specific events and experiences.¹

A. *Travels, Capture, and Rendition to Abu Ghraib*

2. Khaled al-Maqtari was born in Tabuk, in Saudi Arabia, but spent most of his life in Hodeidah, Yemen.² Al-Maqtari left Yemen for Iraq in early 2003, travelling by land, and arrived in spring of that year.³ After spending time near Ramadi and then Mosul, he finally arrived to Fallujah in October of 2003 (seven months after the US-led invasion of Iraq).⁴ Al-Maqtari had

¹ Skype interview with Allison Beckman, Project Manager, and Clinical Supervisor, Center for Victims of Torture in Chapel Hill, N.C. (Feb. 22, 2017). Beckman is a licensed social worker (LCSW), with a Masters in Social Work (MSW).

² AMNESTY INT'L, FROM ABU GHRAIB TO SECRET CIA CUSTODY: THE CASE OF KHALED AL-MAQTARI 3 (2008), available at [https://www.therenditionproject.org.uk/pdf/PDF%2033%20\[AI-2008-03-REP%20USA%20A%20Case%20to%20Answer\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%2033%20[AI-2008-03-REP%20USA%20A%20Case%20to%20Answer].pdf).

³ *Id.*

⁴ *Id.*

lived in Fallujah for three months, working at a café, when armed and armored US forces⁵ raided the area where he worked, and arrested both al-Maqtari⁶ and dozens of other residents.⁷ He, along with the other prisoners, were taken to a military camp outside of Fallujah by U.S. officials.⁸ He was put on a truck and hooded and cuffed. The plastic cuffs were placed on his wrists so tightly that they left grooves in his wrists and had to be cut off.⁹

3. His American captors pulled him from the truck by the plastic cuffs that bound his hands, all the while they kick and beat him and forced him to crawl. Al-Maqtari: “I learned that this was how I would always be moved.”¹⁰

4. Al-Maqtari was subject to interrogation by an “American” man with grey hair and civilian clothing, who asked him where he was from.¹¹ The interrogator became angry when al-Maqtari answered he was Iraqi, as the interrogator recognized that al-Maqtari’s accent as Yemeni.¹²

5. After this interrogation, al-Maqtari was hooded and taken to a cell by US soldiers, where he was kept standing; a U.S. soldier would enter the room and scream directly into al-Maqtari’s ear when he would attempt to sit down. “He was just shouting at me like a beast, I don’t think he was saying words, just shouting.”¹³

⁵ The US forces came with armored vehicles and tanks and arrested dozens of other residents. According to Maqtari, they were loaded onto US trucks, with helicopters circling overhead of the scene. AMNESTY INT’L, *supra* note 2, at 3.

⁶ Maqtari reported that the handcuffs around his wrists were pulled so tightly that they “dug furrows into his wrists.” AMNESTY INT’L, *supra* note 2, at 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Khaled al-Maqtari*, THE RENDITION PROJECT, [hereinafter The Rendition Project] <https://www.therenditionproject.org.uk/prisoners/maqtari.html>.

¹⁰ AMNESTY INT’L, *supra* note 2, at 4.

¹¹ *Id.*

¹² Maqtari could only understand the phrase “what the hell is this” amid the flurry of the interrogator’s words. AMNESTY INT’L, *supra* note 2, at 4.

¹³ *Id.*

6. Khaled al-Maqtari was transported by helicopter, along with at least two other detainees to the Abu Ghraib Detention Facility. He was never assigned an Internment Serial Number (ISN), standard protocol for detaining military prisoners; this provides evidence that he was turned over to Military Intelligence (MI) as a suspected foreign fighter, and not processed through normal prisoner of war standards.¹⁴

7. At Abu Ghraib, al-Maqtari was brought into a room and interrogated by three Americans and interpreter about whether he was a Sunni or Shia Muslim. After answering that he was just a Muslim,¹⁵ his clothes were cut off “from his feet to his neck” with scissors, and he was shackled and hooded.¹⁶ His interrogators did not identify themselves to him, other than saying that they were Americans.

8. Al-Maqtari was then dragged into a larger room, which he described as “the torture room.” In this torture room, there was water on the floor. Al-Maqtari described it as “just enough to make it slippery and too uncomfortable to sit or lie down on, and to make it worse when I fell down on it.”¹⁷ Inside the room, he was beaten by the three men with fists and sticks. The men took turns “as though it was a children’s game. There was a CD machine, playing some kind of terrorizing music to create frightening atmosphere, and it was very loud.” His captors swung him in circles while he was hooded to disorient him; he repeatedly smashed into the wall because he could not conceptualize his surroundings.¹⁸

¹⁴ Individuals detained in the field, and found to be ben “an imperative risk to the security and safety of Iraq” were assigned an ISN and entered into a database. No record of a Khaled al-Maqtari was found. AMNESTY INT’L, *supra* note 2, at 5.

¹⁵ “I had to think. I didn’t know which answer would make them hit me harder, so finally I just said that I am a Muslim.” AMNESTY INT’L, *supra* note 2, at 6.

¹⁶ AMNESTY INT’L, *supra* note 2, at 6.

¹⁷ *Id.* at 7.

¹⁸ *Id.*

9. Throughout this period, he was subject to extreme forms of torture, including standing naked on a chair in front of a powerful air conditioner, while holding a full case of bottled water. His hood was removed, and cold water was poured periodically over his head and naked body, which made him shiver so hard that he could not stand. When his arms shook from holding the heavy box, he was beaten. When he could not stand, he was beaten. When he was close to passing out, they would put smelling salts under his nose, or a mentholated ointment in his eyes, which caused him to fear he would lose his vision. Periodically an interpreter would enter and shout “wake up” in Arabic to prevent him from falling asleep.¹⁹

10. At one point, Al-Maqtari was suspended with a chain upside down by his feet, with his arms still cuffed behind his back. “All of my muscles were tensed up to stop me from collapsing down, and I was terrified if I let go it would have broken my back.” He was moved up and down so that he “could experience all the different kinds of pain.” Throughout this period, the sticks and CD player were used to beat and terrorize him. The interrogator shouted at him: “I’m from New York, the place you Arab [...] tried to destroy.”²⁰ Al-Maqtari was set on a box, and used as a footstool by the interrogator. At one point, the interrogator put a cigarette out on his shoulder.

11. On occasion, al-Maqtari was brought into a small room where he was able to lie down in a hunched position. From time to time, he given “food” and water. Al-Maqtari on the “food”: “It was some kind of dried thing, not real food, and not cooked or hydrated, so it was very hard to eat. They did just enough to keep us alive for the next interrogation.”²¹

12. Al-Maqtari’s interrogators asked him about the houses he had stayed at in Mosul and Fallujah, offering to stop torturing him if he answered the questions.²² Al-Maqtari was in terrible

¹⁹ AMNESTY INT’L, *supra* note 2, at 8.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*, at 8-9.

pain and unable to concentrate. Eventually, he told them the houses that he had stayed in, and they brought him a long-stripped shirt that barely covered him. After a period of three or so days, he was cuffed and brought onto a helicopter by US soldiers to take him back to Fallujah.²³

13. In Fallujah, Americans placed him in a white dented van, made to look like a civilian vehicle, though it was upgrading with surveillance equipment. The van contained the grey-haired man from earlier, as well as other armed personnel. They drove around the area, and al-Maqtari pointed out the house that he had stayed in. Al-Maqtari was brought back to Abu Ghraib, and the American's promise to stop torturing him was ignored. Interrogators told him that the house he pointed out had been raided, and that an American soldier had died in the raid. The interrogators began beating him again, shouting that he was an accomplice in the death of American.²⁴

14. Al-Maqtari was again stripped, beaten, drenched in cold water and subject to the powerful air conditioner. He was then thrown onto an outdoor area covered in gravel, and forced to crawl across it, with the stones digging into his skin, while three dogs were let loose around him. While the dogs were trained not to attack him, he was not aware of this, and remained terrified of the noises they were making and their proximity to his naked body. "The dogs came and put their noses right against me and made terrible noises. I had no defense, not even any clothes . . . [I]t was very, very frightening because I never knew that they were not going to bite me. I still have dreams about this."²⁵

15. After this ordeal, al-Maqtari was subject to bright, industrial-grade light cast in his face and threatened with rape from Mossad, the national intelligence agency of Israeli. He was taken into the room where lying down was possible, and told that he would be allowed to sleep for an

²³ *Id.*, at 9.

²⁴ *Id.*

²⁵ *Id.*

entire hour if he pointed out the houses he stayed at in Mosul. Al-Maqtari, desperate for even an hour of sleep, agreed.²⁶ Americans took al-Maqtari to Mosul by helicopter, and placed into a similar vehicle as in Fallujah. Al-Maqtari pointed out the house he had stayed in, and answered questions about the house.

16. One day after his return to Abu Ghraib, he was stripped again, and subject to continued torture. The interrogators accused him of not telling them about a stash of weapons in the Mosul house. Al-Maqtari tried to communicate that he had only been there for a few months, and would not have known about it. He was repeatedly tortured, and asked about a house that he had spent a few hours in al-Amriya, a district in western Baghdad.²⁷

17. Al-Maqtari was taken by what was likely a team from the United Kingdom Special Forces to the district in Baghdad. They drove around in a black Jeep; Al-Maqtari was chained to the interrogator. They were unable to locate the house, both because he could not see well and because he did not know the district well.²⁸

18. After around a week of being detained, al-Maqtari was attended by a medic who examined his wounds, and gave him antibiotics and pills for his pain. His wounds included severe bruising on his ribs, back, and legs, spitting blood, and deep gouges in his wrists from his plastic cuffs.²⁹

²⁶ *Id.*, at 10.

²⁷ *Id.*

²⁸ *Id.*, at 10-11.

²⁹ While in the presence of the medic, the interpreter said things like “oh, I wonder how this could have happened to you? (the interpreter was there the entire time of Maqtari’s detainment and torture.)” AMNESTY INT’L, *supra* note 2, at 11.

19. While in detention in Abu Ghraib, Khaled al-Maqtari was never registered, documented, or charged with any crime, nor was he ever allowed to contact a lawyer or his family. They also never directly accused him of any action of any type, no less related to terrorism.³⁰

20. Following his detention with the military, the CIA took custody of al-Maqtari, and flew him to a black site in Afghanistan.³¹ The US extraction team put him in a diaper, socks, short trousers, and a shirt without buttons, covered his eyes, stuffed his ears with cotton, hooded him, and then put noise reducing headphones on him.³² Al-Maqtari believes that he was transported with at least one other prisoner, and possibly two others.³³ “Whenever they put on or take off the chains, they grab you harshly, so that we do not escape. They were very strong, everything was horrifying, they even closed the doors violently to terrify us. I was not able to see anything, everything was black. They did not want you to be comfortable; they wanted us to be in an atmosphere of terror all the way there.”³⁴

B. Transition To the Black Site

21. Al-Maqtari was transported first by airplane to Kabul, Afghanistan, and then by motor vehicle to what al-Maqtari believes was Bagram Air Base in Afghanistan.³⁵ The airplane that took al-Maqtari to Afghanistan was a Gulfstream V, variously registered as N44982, N379P, N8068V, and is the same plane that has been used to illegally render other detainees by the CIA

³⁰ A former interrogator present in Abu Ghraib in 2004, Eric Fair, spoke with Amnesty International, and while he was unable to verify all of Khaled Maqtari’s details (for instance, the suspension of prisoners by their feet), he did say: “I’ve poured over this report, hoping to find major inconsistencies and gross exaggerations. It is to this nation’s shame that I cannot. My time at Abu Ghraib and Fallujah offers no concrete evidence to refute many of the things Khaled has said.” AMNESTY INT’L, *supra* note 2, at 12.

³¹ AMNESTY INT’L, *supra* note 2, at 12.

³² *Id.*

³³ *Id.*

³⁴ *Id.*, at 13.

³⁵ *Id.*, at 16.

from the Johnston County Airport in North Carolina, operated by Aero Contractors headquartered in Johnston County.³⁶

22. The rendition was degrading, terrorizing, and painful. Al-Maqtari was stripped of his clothes and dressed in a diaper. He had his eyes and ears taped clothes. He was shackled and hooded and forced to wear ear defenders. He suffered tremendous pain. He describes having his hands tied around his back, and if we moved to alleviate the pain, his captors kicked him.³⁷

23. At Bagram, he was brought to see a doctor or medic, who took a urine sample. Additionally, photographs were taken of his naked body, and his wounds and marks were recorded on a diagram.³⁸

24. He was placed in a small cell for two weeks, and then a larger one after. Both cells had cameras that he believes followed his movements, and sounds were played over speakers during the initial stages of his capture. He describes it:

It was not really music, but noise to scare you, like from one of those scary movies. You feel your veins pumping and you become nervous. I was very nervous all the time I was in the room. Every time you think you are getting used to it, they would change it. Whenever you try to sleep, they bang on the door loudly and violently. There was music and shouting.³⁹

25. Although al-Maqtari saw a doctor when he entered into the black site, and was suffering from internal bleeding and extensive bruising, it was several weeks before he was given any medical treatment.⁴⁰ He was also allowed outside, though this was dependent on his

³⁶ *Id.*, at 16.

³⁷ *The Rendition Project*, *supra* note 9.

³⁸ AMNESTY INT'L, *supra* note 2, at 16.

³⁹ *Id.*, at 16.

⁴⁰ Maqtari believes that his medical treatment was tied to his cooperation: "They started to give me treatment after a while when they knew I was telling the truth. They started to treat the bruises and wounds. They gave me an ointment and 'Vicks' for the breathing. Of course they gave us these things for the interrogation, I know this was for the sake of information. The proof for that is that when they got the information, they took the 'Vicks' and everything else from me." AMNESTY INT'L, *supra* note 2, at 19.

“cooperation.”⁴¹ Al-Maqtari was allowed to take a five-minute shower once a week, although the water was cold.

26. Maqtari was initially placed into what he later found out was cell 19. After two weeks in cell 19, he was moved to cell 13, which was closer to other prisoners. This allowed him to ask questions during breaks in noise. The lights in cell 13 were left on at all times. Al-Maqtari was able to pass messages along, though there was always a fear of them being intercepted.

27. In April 2004, possibly around the 24th, al-Maqtari and other detainees were taken out of the Afghanistan facility. Before he left, al-Maqtari was brought before a doctor, who examined him and each mark and injury on him was numbered and recorded on a chart. Al-Maqtari was able to count nine other charts on the doctor’s desk, suggesting that there were at least nine other detainees possibly being prepared for removal. Al-Maqtari was put in nappy (diaper), knee length trousers and a shirt, his ears covered, and his eyes taped shut. Finally, sound-deadening headphones, as well as handcuffs and shackles were put on.

28. Following this ordeal, al-Maqtari and the other detainees were placed in a vehicle, and driven approximately 30 minutes away to an airport. Around sunset, he was put on a plane, that appeared larger than the Gulfstream jet he had flown in earlier.⁴² Regarding the flight, al-Maqtari noted that “I was very tired and couldn’t count how long it took exactly. I don’t think I slept because if you try to sleep, the guards kick you, but maybe I did and the time is hard to judge when one is very ill.”⁴³ Al-Maqtari describes the journey:

After we landed, we were taken from the plane to a helicopter. The distance between them was maybe 200 metres [*sic*], and the air was cool and fresh, definitely not hot. The helicopter journey was for one-and-a-half to two hours

⁴¹ AMNESTY INT’L, *supra* note 2, at 19

⁴² *Id.*, at 27. According to Maqtari, “From the loud noise and rough ride and the way we sat, I felt it might have been a plane used for cargo.” Additionally, the plane seemed to have bench sites that ran along the interior side of the aircraft, rather than in rows like normal passenger jets. *Id.*

⁴³ *Id.*

approximately. It was shorter than the plane trip, anyway. We were put into a vehicle, lying down as before. At first the road was asphalt, then it was bumpy, as if it was not paved. It took about 30 minutes to get there. The road was one level, neither going up nor going down.⁴⁴

C. *Arrival at the CIA's Black Site*

29. Al-Maqtari was first held in a container and was then moved to different cells to spend the next 28 months of his life at a CIA black site.⁴⁵ In the cells, there were no windows and no natural light entered the rooms. Heat and air conditioning were available in the prison cells, though these were generally used as methods to inflict punishment or reward behavior, rather than provide habitable living conditions.

30. Al-Maqtari spent the first few days in this facility naked and chained to the wall. In al-Maqtari's cell, there two video cameras, with red lights that blinked whenever he moved. Al-Maqtari remained in this cell for four months, then moved to a nearby cell for around one year, and then finally to a third cell for the remainder of his 28-month incarceration.

31. Interrogations in the black site followed much of the same pattern as the procedure that al-Maqtari endured in Afghanistan,⁴⁶ and it took several days before he was given basic clothing, and several months before he was given any blankets. Gradually, however, his situation improved. In the second year in the black site, he was given access to books and writing materials and was allowed to exercise. During the interrogations, al-Maqtari did not suffer extreme physical abuse that he was subjected to in Abu Ghraib, though he was handled roughly by the guards.⁴⁷ However, al-Maqtari was subjected to a type of torture known as "no touch

⁴⁴ AMNESTY INT'L, *supra* note 2, at 27

⁴⁵ The Rendition Project, *supra* note 9.

⁴⁶ The Amnesty Report notes that the interrogators seemed intent on preserving the secrecy of the black site. They frequently asked al-Maqtari how many cells he believed there to be in the facility. AMNESTY INT'L, *supra* note 2, at 31.

⁴⁷ The Amnesty Report notes that "the years of interrogation endured by Khaled al-Maqtari and other detainees who were never charged by the US, could perhaps best be characterized as a broad information fishing exercise." AMNESTY INT'L, *supra* note 2, at 31.

torture,” where he was subjected to prolonged solitary confinement, sensory deprivation and overload, stress positions, sleep deprivation, forced nudity, exposure to extreme temperatures, prolonged shackling and sleep deprivation.⁴⁸

32. Al-Maqtari had very little contact with other human beings during his 28-month detention in the black site. It was forbidden to communicate with other prisoners in the detention center. Al-Maqtari would sometimes try to write on his cell wall, but would get caught and punished by being blasted with extremely loud music. Approximately six months prior to his release, al-Maqtari was permitted to meet with another detainee for a half hour.⁴⁹

33. Al-Maqtari was plagued by ill-health during his entire 28 month-long stay in the black site. According to al-Maqtari, he was in excellent health at the time of his arrest, but the physical effects of his torture at the hands of Americans in Abu Ghraib and other facilities, as well as the psychological effects of his imprisonment led to the extreme deterioration of his health. Al-Maqtari on his health at the final black site:

“I think I was the most ill there. I had many illnesses and many doctors. I asked them but they refused to say what diseases I have got.” Maqtari started coughing up blood while in detention, which did not abate: “I had to spit and cough all the time. I asked them [the doctors] where is this coming from? One said ‘maybe this is because of the weather and you are in the room on your own’, and another said ‘maybe because of the place you left your toothbrush’, and another says, ‘this is discharge from your nose’. Everyone said a different thing, and they couldn’t find treatment for these illnesses.”⁵⁰

34. Al-Maqtari was given four or five medications a day, and he needed visits from a doctor at least once or twice a week. He endured seizures, panic attacks, fits of hysteria, stomach pain, vomiting blood, passing blood from his bladder or bowels, back and knee pain, and kidney

⁴⁸ AMNESTY INT’L, *supra* note 2, at 32.

⁴⁹ The other detainee was Ahmed Abdel Rashid, also known as Abu Ahmed. Maqtari and Ahmed would read the Quran, and also speak of their childhoods and families together. AMNESTY INT’L, *supra* note 2, at 37.

⁵⁰ AMNESTY INT’L, *supra* note 2, at 39. During the interviews for the writing of the Amnesty Report, Maqtari repeatedly coughed up blood. *Id.*

stones. Al-Maqtari: “I have been examined by an expert here and he told me that there was a hole where a piece [of bone] broke off in my shoulder and another in my side. Afterwards I always had pain all over my body, and I cannot turn from side to side. I think this was from the suspending . . . I could not bear the pain.”

35. By early August 2006, al-Maqtari was transferred to a hospital facility due to extreme stomach pain and bleeding, inability to eat solid food, and his body’s failure to respond to drug treatment. In late August or early September, he was transferred to the Political Security prison in Sana’a, Yemen, for 16 days. Following this, he was transferred to a jail in Hodeidah. Finally, in May 2007, he was released. Despite his release, al-Maqtari bears extreme physical and emotional scarring from his U.S.-instigated torture. He cannot work, and remains alive due to his family. Even though he was never charged with any terrorist offense by the United States, he believes he is stigmatized from being detained. Khaled al-Maqtari does not believe that he will ever be able to live a normal life as a result of his torture.

II. Legal Violations

36. Torture entered the public realm in the fear-driven post-9/11 world, construed as a necessary governmental tool to combat terrorists and prevent terrorist attacks. Despite assertions to the contrary, torture remains illegal, according to both international and domestic law. Thus, the acts perpetrated against Mr. Maqtari, and others like him were not only cruel and inhumane, but highly illegal as well.

A. International Law

37. The United Nations, which the United States is a member, issued the Universal Declaration of Human Rights (UDHR) in 1948. This declaration unequivocally outlaws torture. Article 5 states that, “No one shall be subjected to torture or to cruel, inhuman or degrading

treatment or punishment.”⁵¹ Further, Article 9 states that “No one shall be subjected to arbitrary arrest, detention or exile.”⁵² Finally, Article 10 of the Universal Declaration of Human Rights states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”⁵³ While this declaration is not legally binding, it serves to underscore the strong commitment of member nations towards eliminating torture.

38. Following the adoption of the UDHR, the United States signed and ratified that 1966 International Covenant on Civil and Political Rights (ICCPR). This treaty specifically outlaws torture. Part III, Article 7 reads “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”⁵⁴ The ICCPR does allow for deviation from certain of its provisions in emergency or crisis situations.⁵⁵ However, the provision regarding torture is exempted from this deviation, meaning the ICCPR unequivocally outlaws torture, even during periods of crisis.⁵⁶

39. In addition to the UDHR and ICCPR, the United States has signed and ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). This is binding international law, and specifically outlaws torture in all of its forms. CAT defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third

⁵¹ Universal Declaration of Human Rights, art. 5, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR].

⁵² UDHR, art. 9, *supra* note 51.

⁵³ UDHR, art. 10, *supra* note 51.

⁵⁴ International Covenant on Civil and Political Rights, art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171 [hereinafter ICCPR].

⁵⁵ ICCPR, art. 4, *supra* note 55.

⁵⁶ ICCPR, art. 4, *supra* note 55.

person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁵⁷

Additionally, CAT holds that individuals may not be extradited to countries when there are reasonable grounds to believe that torture will occur.⁵⁸ Further, CAT reiterates the notion established in the ICCPR that no circumstances allow for the use of torture.⁵⁹

40. The United States is also a party to all four of the Geneva Conventions, which all explicitly prohibit torture.⁶⁰ Common Article 3 in each of the conventions states that torture “shall remain prohibited at any time and any place whatsoever.”

41. The treaties outlined above are all binding for Federal, North Carolina and local law. The “Supremacy Clause,” the second clause of the Constitution, states that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁶¹

42. The extradition and capture of al-Maqtari violates CAT, as his U.S. captors knew that he would be subjected to acts of torture. Additionally, al-Maqtari was never charged with any crime, and thus was not able to present any sort of defense, a violation of the UDHR. Al-Maqtari

⁵⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1(1), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988) [hereinafter CAT], 1465 U.N.T.S. 85.

⁵⁸ CAT, art. 3, *supra* note 57.

⁵⁹ CAT, art. 2, *supra* note 57.

⁶⁰ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 12, Aug. 12 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, art. 12, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 17, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 32, Aug. 12, 1949; 6 U.S.T. 3516, 75 U.N.T.S. 287.

⁶¹ U.S. CONST. art. VI, cl. 2.

was repeatedly subjected to extreme physical abuse. While in Abu Ghraib prison, he endured beatings, was swung in circles and smashed into walls, and forced to stand naked in cold temperatures holding heavy objects. All of these acts constitute torture and are violations of the UDHR, ICCPR, and CAT. At the CIA black site, al-Maqtari was also subjected to physical acts of torture, as defined by the ICCPR and CAT when he as subjected to stress positions, sleep deprivation, forced nudity, exposure to extreme temperatures, prolonged shackling and sleep deprivation.

43. Al-Maqtari was subjected to a wide variety of mental abuse categorized as torture. First, in Abu Ghraib, al-Maqtari was subjected to sensory deprivation, forced to remain naked, given drugs and stimulants to keep him awake, hooded and shackled for great lengths of time, and deprived of food and water. At the CIA's black site, al-Maqtari was subjected to prolonged solitary confinement, sensory deprivation and overload, sleep deprivation, forced nudity, and sleep deprivation. All of these acts constitute torture, and are gross violations of the UDHR, the ICCPR, and CAT.

B. Federal Law

44. Prohibitions against torture are also codified in United States law.⁶² The United States Constitution, through the application of the Eighth Amendment, denounces torture through the provision that "cruel and unusual punishments" are prohibited.⁶³ In addition to this foundational principle, prohibitions against torture are codified into federal statutes. The United States Code outlaws torture, and defines it as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical

⁶² See 18 U.S.C. § 2340.

⁶³ U.S. CONST. amend. VIII.

control.”⁶⁴ Those found to have committed acts of torture are punishable by up to twenty years in prison.⁶⁵ The law applies to all U.S. nationals, home and abroad, states and political subdivisions, and also applies in equal weight to those conspiring to commit acts of torture.⁶⁶ Further, the Detainee Treatment Act of 2005 (DTA) outlaws “cruel, inhuman, or degrading treatment or punishment.”⁶⁷ Further, the DTA does not impose geographic limitations on the ban on treatment.⁶⁸

45. Torture perpetrated by the United States, either at home or abroad, is expressly prohibited through the application of the Alien Tort Statute.⁶⁹ The Alien Tort Statute gives U.S. federal district courts original jurisdiction “of any civil action by an alien for tort only, committed in violation of the law of nations or a treaty of the United States.”⁷⁰ Further, the Torture Victim Protection Act (“TVPA”) creates a cause of action for individuals in federal courts, regardless of citizenship or nationality, against an individual who commits an act of torture towards them. The 1996 War Crimes Act (“WCA”)⁷¹ criminalizes war crimes, including the implementation of torture, regardless of whether the acts were committed in the United States or abroad.⁷² This ban includes “severe physical or mental pain or suffering,” cruel or inhuman treatment, and intentionally causing serious bodily injury.⁷³

⁶⁴ 18 U.S.C. § 2340. Severe physical or mental pain is defined as the intentional infliction or threatened infliction of severe physical pain or suffering; the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; the threat of imminent death; or the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality. *Id.*

⁶⁵ 18 U.S.C. § 2341.

⁶⁶ 18 U.S.C. § 2341.

⁶⁷ *See* Detainee Treatment Act of 2005, § 1003(a) (codified at 42 U.S.C. § 2000dd (2006)).

⁶⁸ *Id.* (“Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.”)

⁶⁹ 28 U.S.C. § 1350.

⁷⁰ *Id.*

⁷¹ 18 U.S.C. § 2441 (2006).

⁷² § 2441(a), § 2441(d)(1)(A)-(I).

⁷³ *Id.*

46. The acts committed against al-Maqtari, including his kidnapping and the process of extraordinary rendition, all constitute torture under the applicable federal laws. The stripping, beating, sensory deprivation, lack of food, and lack of sleep inflicted upon al-Maqtari violate federal laws, as they impinged his dignity, as well as his physical and mental well-being.

C. North Carolina Law

47. Torture is prohibited by North Carolina law. Article 1, Section 19 of the North Carolina Constitution states that “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”⁷⁴ North Carolina’s Constitution also provides that “[n]o person shall be denied the equal protection of the laws.”⁷⁵ Additionally, it is illegal, under North Carolina law, for individuals to be kidnapped, held in involuntary servitude, and subject to serious bodily harm, or to aid, abet, or conspire to commit such acts.⁷⁶ Liability under this statute extends to corporations.⁷⁷

48. As al-Maqtari was kidnapped against his will and subject to excruciating and horrific torture, his treatment is a violation of North Carolina’s Constitution, as well as its statutory law. Aero Contractors is also liable for these breaches of law, based on the liability of corporations set forth in N.C. Gen. Stat § 14-39.

III. Conclusion

49. Khaled al-Maqtari was subject to illegal and cruel acts of torture that have permanently scarred his life. He was extraordinarily rendered outside of legal processes on planes operated by Aero Contractors housed at the Johnston County Airport, with the support of state public funds,

⁷⁴ N.C. CONST. art. I, § 19.

⁷⁵ *Id.*

⁷⁶ N.C. GEN. STAT. § 14-39.

⁷⁷ *Id.*

and tortured by United States military and intelligence personnel. The Senate Select Committee on Intelligence confirms his victimization in the CIA's extraordinary rendition and interrogation program.⁷⁸ He was never charged or convicted of any crime against the United States or its citizens.

⁷⁸ United States Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 96 (2014).

Appendix



Khaled al-Maqtari

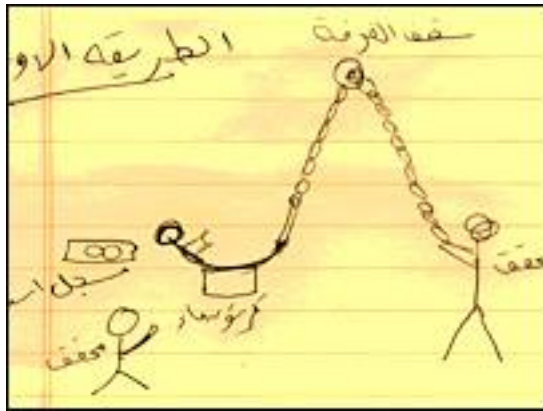


Image that al-Maqtari drew depicting his suspension from the ceiling.

Omar Deghayes

I. Introduction

1. British resident Omar Deghayes' story, from personal upbringing to his entire experience of capture, rendition, detention, interrogation, torture, and eventual release from Guantanamo, has been recounted many times, to many different people and entities. Through each of these accounts, his narrative has remained consistent. The account that follows¹ is virtually identical to other accounts Deghayes has provided of his ordeal.²

II. Omar Deghayes' Initial Capture

2. Omar Deghayes was captured at his home in Lahore, Pakistan, in April 2002.³ According to a United Nations Joint Study on Secret Detention, one hundred people in black tracksuits surrounded his home to take custody of him.⁴ He was handcuffed and hooded in the presence of an American.⁵
3. To understand what brought him to this point, we must go back to the beginning of his story. Deghayes, originally from Tripoli, Libya, was born in 1969 and was one of five children.⁶

His father was a prominent Libyan lawyer who sent his children to Saltdean, a coastal village

¹ Much of this compilation is derived from an extensive interview in the Guardian because Omar Deghayes relayed his story firsthand, in his own words, to journalist Patrick Barkham; the account is consistent with other descriptions and details documented elsewhere. See Patrick Barkham, *How I Fought to Survive Guantanamo*, THE GUARDIAN (Jan. 20, 2010), <https://www.theguardian.com/world/2010/jan/21/i-fought-to-survive-guantanamo>.

² See, e.g., OPEN SOCIETY JUSTICE INITIATIVE, GLOBALIZING TORTURE: CIA SECRET DETENTION AND EXTRAORDINARY RENDITION 98, 115–16 (2013), <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>; Dipesh Gadhur, *M15 Handed Me to Gadaffi's Agents*, THE TIMES (Sept. 11, 2011), <https://www.thetimes.co.uk/article/mi5-handed-me-to-gadaffis-agents-jqzj9zs8qqc>; Ian Cobain, *Omar Deghayes: "He was Brought in Manacled and Hooded,"* THE GUARDIAN (July 14, 2010), <https://www.theguardian.com/law/2010/jul/14/omar-deghayes-mi5>.

³ See Barkham, *supra* note 1.

⁴ UNITED NATIONS, JOINT STUDY ON GLOBAL PRACTICES IN RELATION TO SECRET DETENTION IN THE CONTEXT OF COUNTERING TERRORISM § 153 (Feb. 19, 2010), <http://hrlibrary.umn.edu/instree/A-HRC-13-42.pdf> [hereinafter U.N. JOINT STUDY].

⁵ *Id.*

⁶ See Barkham, *supra* note 1.

in East Sussex, England, during their summer holidays to learn English.⁷ After his father, an opponent of Muammar Gaddafi, was killed in Libya, the Deghayes family sought asylum in Britain.⁸ They decided to settle in Saltdean.⁹ Deghayes had a secular upbringing and studied law at the University of Wolverhampton.¹⁰ While a student Deghayes became a practicing Muslim and when he finished his studies to become a solicitor, he decided to take a trip to experience the Arabic culture he was forced to leave behind as a child.¹¹

4. His travels eventually took him to Afghanistan where he decided to settle, believing he could put his language skills and legal training to good use.¹² He eventually married and had a son.¹³
5. Deghayes accomplished a lot while in Afghanistan including opening a school, helping different non-governmental organizations, and dabbling in the export of agricultural products.¹⁴ “I was generating income for myself but I had more ambition than that – to establish myself as a lawyer Things were really good. Then this war broke out and everything was shattered.”¹⁵
6. After the U.S.-led invasion, Deghayes decided that he and his family could no longer stay in Afghanistan.¹⁶ In early 2002, he paid for help so that he and his family could escape to neighboring Pakistan.¹⁷ His plan was always to return to Afghanistan and continue the work he had started, but Deghayes hoped his wife and child would live in England with his mother

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (referring to the immediate aftermath of September 11, 2001).

¹⁶ *Id.*

¹⁷ *Id.*

in the meantime.¹⁸ “I still thought I had nothing to fear. Even if there was an invasion, there was nothing I had been doing that was illegal.”¹⁹

7. Deghayes and his young family rented a house in Lahore—close to the boarder with India—and “far away from the war atmosphere.”²⁰ Deghayes was not safe for long. During this time, the Americans had been providing monetary incentives to anyone who could point to Arabs who had been living in Afghanistan.²¹ “The atmosphere changed completely. Nice Pakistan turned into a trap.”²²

III. Omar Deghayes’ Renditions and Detentions

A. Pakistan

8. While in custody, Deghayes says that Pakistani officials beat him and interrogated him at the behest of American officials.²³ Deghayes was even introduced to an American man, who told him at the beginning of their meeting that he worked for the CIA, as well as a British intelligence officer.²⁴
9. Deghayes describes the dialogue he had with his captor:

I was really annoyed and said, “You shouldn’t do this, you’re helping these people – I’m kidnapped, abducted against my will. Your job is to get me out of here. I’m British and if I go back to England, I will take you to court for what you are doing now.” Andrew [the British intelligence officer] was a little bit scared, but he looked at me and said, “What case would you bring against me?” I had nothing in my mind. He said, “Listen, if you answer my questions and co-operate with me, I will do my best. I will get you out of there.”²⁵

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See U.N. JOINT STUDY, *supra* note 4, at § 153.

²⁴ See Barkham, *supra* note 1.

²⁵ *Id.*

10. Deghayes was asked to look at a photo album containing one hundred pictures of “supposed terrorists” and asked if he recognized anyone.²⁶ Then without warning, one morning Deghayes was tied up, blindfolded, and hooded before being transported to an airport.²⁷ Upon arrival at the airport, the hood, described as a “thin black bag,” was removed and Deghayes found himself in the presence of U.S. military personnel.²⁸ A new hood was placed over his head which “felt worse than the first bag – it suffocated me. [Smelling] like socks or cheese This was an indication of the new regime – there were even harder times coming up.”²⁹

B. Travel

11. Once on the plane, the situation worsened. Deghayes, was placed in a box and cuffed with plastic handcuffs.³⁰ Deghayes was “bundled” with forty-four other detainees and then thrown onto the floor of the airplane.³¹

12. Deghayes describes the environment: “People were crying. People were throwing up. Some people were suffocating, and there was a kick here and a kick there: ‘Get your head down, you bastard!’ Things like that. Then the plane took off and you could smell [the guards] drinking spirits.”³²

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ U.N. JOINT STUDY, *supra* note 4, at 165.

³¹ *Id.*

³² Barkham, *supra* note 1.

C. Bagram Military Base, Afghanistan

13. When the plane landed Deghayes found himself at Bagram Military Base, where he would spend the next two months.²²⁸⁰ His captors forced him to change into a two-piece blue uniform and he was prohibited from interacting with the other detainees.²²⁸¹ He was tied to barbed wire and humiliated.²²⁸² Deghayes explained that “[t]here were no rules in Bagram; people just went in and kicked people if they didn’t like them.”²²⁸³

14. Deghayes became completely distraught and was unable to eat, which in turn made him weak.²²⁸⁴ He describes his situation:

I was really sick; I became a skeleton. I couldn’t walk any more. I lost my mind – I was really scared for my mental safety. I tried to eat but I threw up. I started to hear voices in my head because of the hunger. People would say something and I could not understand what they were saying. You hear shouts and you’re speaking to yourself inside your head. I started to become really scared because I thought I was losing my brains and going crazy.²²⁸⁵

15. While in this weakened, delusional state, Deghayes was interrogated several times by officials he believes were British.²²⁸⁶ “They felt I was lying to them. I said to them I studied in Holborn, London. They said, ‘Which train did you take to get there?’ They didn’t believe anything, they weren’t free to do what they liked; the Americans were running the show.”²²⁸⁷

16. His interrogators believed that Deghayes was involved with terrorists and that the scuba diving lessons he had taken in England were related to terrorist training.²²⁸⁸

²²⁸⁰ U.N. JOINT STUDY, *supra* note 4, at 164.

²²⁸¹ *See* Barkham, *supra* note 1.

²²⁸² *Id.*

²²⁸³ *Id.*

²²⁸⁴ *Id.*

²²⁸⁵ *Id.*

²²⁸⁶ *Id.*

²²⁸⁷ *Id.*

²²⁸⁸ *Id.*

17. Based on secret video evidence, his captors also believed that Deghayes had been in Chechnya serving as a teacher in terrorist training camps.²²⁸⁹ In fact, at no time in his life had Deghayes ever been to Chechnya.²²⁹⁰ Deghayes states that he thought “all these allegations laughable.”²²⁹¹ It was later discovered through Deghayes’ attorney Clive Stafford Smith, director of the human rights charity Reprieve, that the so-called evidence against Deghayes was based upon the erroneous belief that he appeared in an Islamic terrorist training video in Chechnya.²²⁹² While American officials refused to hand the secret video evidence to Stafford Smith, he was eventually able to obtain a copy from the BBC.²²⁹³
18. This was a classic case of mistaken identity. Once the video was obtained and examined, Stafford Smith was able to demonstrate that the man in the video was missing a small scar on his face that Deghayes has had since childhood.²²⁹⁴ Stafford Smith says “[t]his was typical of the whole Guantánamo experience They said they had evidence and they wouldn’t let you see it. Then when you did, it was incorrect.”²²⁹⁵

²²⁸⁹ *Id.*

²²⁹⁰ *Id.*

²²⁹¹ *Id.*

²²⁹² *Id.*

²²⁹³ *Id.*

²²⁹⁴ *Id.*

²²⁹⁵ *Id.*

D. Guantanamo Bay, Cuba

19. Deghayes arrived in Guantanamo in the fall of 2002 and was held there for almost six years.²²⁹⁶ While there Deghayes was not immune from physical or psychological humiliation. According to Deghayes, the guards would “do actions to pretend as if they are raping you. They put you down on your stomach. It was really horrible, all sexual and psychological stuff.”²²⁹⁷ On other occasions, Deghayes says the guards would hold a prisoner’s head and bang it against the floor.²²⁹⁸
20. Sometimes the violence was even more extreme. Deghayes recalls the retaliation he suffered for staging a protest against being forced to walk around in his underwear: “I didn’t realise what was going on until the guy had pushed his fingers inside my eyes and I could feel the coldness of his fingers. Then I realised he was trying to gouge out my eyes.”²²⁹⁹ Trying to resist the pain only caused the guard to force his hands harder inside Deghayes’ eye sockets.²³⁰⁰ “When he pulled his hands out, I remember I couldn’t see anything – I’d lost sight completely in both eyes.”²³⁰¹ The attack left Deghayes permanently blind in one eye.²³⁰² Deghayes was also punched in the face by guards and now has a crooked nose as a result.²³⁰³ His hand was slammed in a prison door and Deghayes carries a permanent scar across his forefinger.²³⁰⁴

²²⁹⁶ See U.N. JOINT STUDY, *supra* note 4, at 164.

²²⁹⁷ Barkham, *supra* note 1.

²²⁹⁸ *Id.*

²²⁹⁹ *Id.*

²³⁰⁰ *Id.*

²³⁰¹ *Id.*

²³⁰² Jeremy Scahill, *Little Known Military Thug Squad Still Brutalizing Prisoners at Gitmo Under Obama*, ALTERNET (May 15, 2009) (noting that “[a] medical examination cited in the Spanish investigation confirmed that Deghayes suffered from blindness of the right eye, fracture of the nasal bone and fracture of the right index finger”).

²³⁰³ See Barkham, *supra* note 1.

²³⁰⁴ *Id.*

21. The guards in Guantanamo also used pepper spray and other chemicals against the detainees, using a small opening in the cell doors.²³⁰⁵ Deghayes adopted an approach to handling his situation that was different than most of the other detainees, that is, he would try and physically fight back.²³⁰⁶ Deghayes recalls “[i]t was chaos; they would fall on top of each other and it was embarrassing [for them]. They were wearing all this heavy stuff [body armor] which didn’t help either.”²³⁰⁷ Deghayes’ tactic worked to some extent because several guards began to avoid his cell.²³⁰⁸
22. In addition to the U.S. captors and torturers, Deghayes was subjected to additional suffering by Libyan officials who were flown to Guantanamo at the behest of the U.S. government.²³⁰⁹ Aero Contractors, based in North Carolina, was responsible for flying Libyan security agents in N8068V (N379P re-registered) from Libya to Guantanamo on September 8–9, 2004, for the purpose of threatening Deghayes and furthering the fear and psychological harm he suffered.²³¹⁰
23. Deghayes says “[t]he CIA had often threatened to hand me over to the Libyans if I didn’t cooperate. [When the Libyans actually arrived, n]ow I thought it was for real.”²³¹¹

²³⁰⁵ *Id.*

²³⁰⁶ *Id.*

²³⁰⁷ *Id.*

²³⁰⁸ *Id.*

²³⁰⁹ See CENTER FOR CONSTITUTIONAL RIGHTS, FOREIGN INTERROGATORS IN GUANTANAMO BAY: US ALLOWS SECURITY FORCES FROM BRUTAL HUMAN RIGHTS ABUSING REGIMES INTO GUANTANAMO; MANY COUNTRIES COMPLICIT IN ABUSES AT GUANTANAMO, http://www.pegc.us/archive/Organizations/CCR_Foreign_Int_200805.pdf.

²³¹⁰ NORTH CAROLINA STOP TORTURE NOW, PARTIAL LIST OF DETAINEES SECRETLY TRANSPORTED BY AERO CONTRACTORS OF NORTH CAROLINA FOR TORTURE BY OR FOR THE CIA (May 2015), <http://ncstn.org/content/wp-content/uploads/2015/05/partial-list-of-detainees.pdf> (citing STEPHEN GREY, *GHOST PLANE* (2006) as primary source of information).

²³¹¹ Dipesh Gadhur, *MI5 Handed Me to Gadaffi’s Agents*, THE TIMES (Sept. 11, 2011), <https://www.thetimes.co.uk/article/mi5-handed-me-to-gadaffis-agents-jqzj9zs8qqc>.

24. Deghayes was interrogated under freezing cold air conditions, questioned about Libyans living in Britain who were allegedly dissidents of the Gaddafi regime, questioned about his own ties to such dissident groups, and he was even threatened with death.²³¹²
25. In addition to the physical abuse and psychological interrogation by the Libyans, Deghayes was also interrogated by U.S. officials: “The Americans . . . showed me books of military scuba diving [sic] and ships and mines and they said, ‘Which ones did you see?’”²³¹³ But in the month before his release, his treatment suddenly changed. “For one month we were fattened up with milk shakes, chocolates and really good cakes.”²³¹⁴

IV. Omar Deghayes’ Hope, Mission, and Survival

26. To survive, Deghayes developed “a personal policy of resistance.”²³¹⁵ While this tactic likely caused him more physical pain, it gave him the personal strength he needed to survive.

I was targeted more, but I was also relaxed compared with others who didn’t do that. It was really scary for [the guards] to come into my cell Being humiliated by getting beaten up is better than giving your own trousers out. If I’d done those things, I would’ve been really bitter now. I’m probably less bitter than anyone else because I know I gave them a really hard time. If I had given in, and all this was bottled up, I would have been like I see them [other ex-prisoners] – really bitter, full of hatred.²³¹⁶

27. During this ordeal, his faith grew stronger as well.

We knew there’s a Muslim [God] behind things, there’s a hereafter, our patience and hardships will be rewarded and the pain has to end sometime. Our religion teaches these things – the good always prevails and the bad is only temporary; the patience of Job, the patience of Moses. All these teachings make a difference. . . . My body and physical being can be chained, can be tarnished, can

²³¹² *Id.*; see also CENTER FOR CONSTITUTIONAL RIGHTS, *supra* note 2309.

²³¹³ Barkham, *supra* note 1.

²³¹⁴ *Id.*

²³¹⁵ *Id.*

²³¹⁶ *Id.*

be beaten, can be raped . . . but not the spiritual: that is something that nobody can bind down. The spirit is what makes us who we are.²³¹⁷

V. Omar Deghayes Now

28. Deghayes has attempted to provide some depiction of his current circumstances after years of suffering torture and detention:

You know if you are in a forest or walking on the moon, you can't tell what is what. I was like this when I came out. . . . To my shock, when I came out from prison the whole country had changed – the surveillance, the Islamophobia, the control orders, secret evidence, and people being under curfews not being able to leave the house. We never had thugs and mobs in the street before, and kids didn't go binge-drinking or stealing. When I came back, these were some of the changes that I had to adjust to.²³¹⁸

29. The strain of his detention in Guantanamo was too much for his marriage to bear.²³¹⁹ The letters that were sent to and from Deghayes and his wife remained undelivered.²³²⁰ “It's cruel, isn't it? These were just normal letters between husband and wife,” comments Deghayes.²³²¹ The two eventually divorced, each believing the one had abandoned the other.²³²² His ex-wife currently lives in Afghanistan while their son, Sulaiman, lives in the Emirates with his grandmother, Deghayes' mother.²³²³ Deghayes hopes that his son will eventually move to England and receive a secular education.²³²⁴

30. Deghayes now lives in Brighton and has remarried.²³²⁵

Brighton is such a nice city. You can just walk by the sea, and the fresh air comes across. It reminds me of Tripoli. Before, I used to

²³¹⁷ *Id.*

²³¹⁸ *Id.*

²³¹⁹ *Id.*

²³²⁰ *Id.*

²³²¹ *Id.*

²³²² *Id.*

²³²³ *Id.*

²³²⁴ *Id.*

²³²⁵ *Id.*

long for Tripoli; now, only recently, I have started to prefer Brighton. Maybe when you are younger you want to go back to dreams, and when you get to 40 you start to think, this is nicer, this is really what I like.²³²⁶

31. Since his release, Deghayes has spent his time working with Reprieve on legal challenges on behalf of himself and other survivors of Guantanamo.²³²⁷

VI. Violations of International, Federal, and State Law

A. International

32. Besides being morally reprehensible, torture is prohibited by the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²³²⁸

33. The Declaration also admonishes that no State, group, or person has “any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”²³²⁹

34. The International Covenant on Civil and Political Rights also includes a provision prohibiting torture.²³³⁰

35. The Convention Against Torture, which has been signed and ratified by the United States, defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any

²³²⁶ *Id.*

²³²⁷ *Id.*

²³²⁸ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 at art. 5 (Dec. 10, 1948) [hereinafter “U.D.H.R.”].

²³²⁹ *Id.* at art. 30.

²³³⁰ International Covenant on Civil and Political Rights, adopted Dec. 19, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171 at art. 7 (entered into force Mar. 23, 1976) [hereinafter “International Covenant on Civil & Political Rights”].

kind, when such pain or suffering is *inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.²³³¹

B. Federal

36. The United States Constitution itself prohibits cruel and unusual punishment.²³³² In addition, Congress has passed several statutes specifically prohibiting the use of torture including the Immigration and Nationality Act of 1952, the Torture Victims Protection Act of 1991, the Federal Torture Statute of 1994, and the War Crimes Act of 1996, among others.

C. North Carolina

37. The North Carolina Constitutions provides that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property”²³³³

38. North Carolina statutory provisions prohibit kidnaping, involuntary servitude, and human trafficking; this prohibition extends to private firms or corporations engaged in such activity.²³³⁴

39. Based on these international and domestic standards, at both the federal and state level, it is clear that Oman Deghayes was tortured in violation of international and domestic law. From the moment Deghayes was initially captured in Pakistan to his eventual release, his rendition, detention, and torture was inflicted on him both at the direction of and directly by American officials—directly implicating American officials in his mistreatment. U.S. officials and

²³³¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Part I, Art. 1, ¶ 1 (emphasis added).

²³³² U.S. CONST. amend VIII.

²³³³ N.C. CONST. art. I § 19.

²³³⁴ N.C. GEN. STAT. § 14–39 (punishing corporations by fine—between \$5,000 and \$100,000—and by revoking the right to conduct business in the state of North Carolina).

agencies, the state of North Carolina and its political subdivisions, and Aero Contractors are obligated to provide remedy and reparation.

VII. Conclusion

40. Omar Deghayes, as is true of all of the survivors of the U.S. extraordinary rendition program, has been left scarred by this ordeal. Deghayes' brother Abubaker describes how Omar will never quite be the same:

His memory is not as good as it was. He forgets to switch off lights. If he opens a window, it stays open. He stays up at night a lot, thinking. . . Imagine the lights are on for six years. . . . A lot of the things Omar had in his character seem to have deepened, like rebellion and resistance and not accepting oppression. I think they became more rooted in him rather than being beaten out of him.²³³⁵

41. Deghayes would like to see justice prevail by having a public inquiry and holding accountable those involved with the capture, rendition, detention, and torture of himself and countless others.²³³⁶ “Even if I get damages, I will give them to charity. The court is an opportunity to embarrass and expose those who committed these crimes.”²³³⁷

²³³⁵ Barkham, *supra* note 1.

²³³⁶ *Id.*

²³³⁷ Barkham, *supra* note 1.

Mamdouh Habib

I. Introduction

1. In sharing a compilation of Mamdouh Habib’s story which contains graphic and disturbing accounts of the suffering and indignities that he experienced, what comes across most vividly is his resilience and willpower. Since his release and repatriation without charge from Guantanamo Bay in 2005, Habib has spoken out in various capacities about the events of his capture, and the degree of torture he was subjected to at the hands of the CIA. In addition to filing suit against the U.S. government, Habib sought accountability on various other fronts. For example, he filed suits against the Australian and Egyptian governments, at times *pro se*, for their similar involvement in his extraordinary rendition, torture, and detention.¹

2. There is also a plethora of news coverage regarding Habib’s post-release experiences, and it is quite evident from nearly all sources of literature about him that he wants his story to be heard and acknowledged. He also wants the U.S. government to be held accountable for what it did to him.

3. Most notably, however, Habib has channeled his inner spirit and personal narrative into the development of his memoir, “My Story: The Tale of a Terrorist Who Wasn’t,”² which was published just three years after his release. Accounts of his experiences, as he has communicated in his own words, will be woven through this compilation of testimony to serve the objectives of the North Carolina Commission of Inquiry on Torture (“NCCIT”). Habib’s story is also one that

¹ See generally Ben Worsley & Michael Vincent, *Australian Guantanamo detainee Mamdouh Habib considering further court action after release of torture report*, ABC NEWS (Dec. 10, 2014, 4:05AM), <http://www.abc.net.au/news/2014-12-10/mamdouh-habib-considers-court-action-after-us-torture-report/5958686> [<https://perma.cc/CP79-LYX5>] (discussing how former Guantanamo detainee, Habib, is “considering further court action against the Australian Government” for its complicity in his extraordinary torture and rendition).

² See generally MAMDOUH HABIB & JULIA COLLINGWOOD, *MY STORY: THE TALE OF A TERRORIST WHO WASN’T* (2008) (detailing the events of Habib’s experiences in detention, and the circumstances leading up to them); see also *infra* Appendix.

holds particular significance to North Carolina, as he was rendered to Afghanistan from Cairo, Egypt via the Gulfstream Jet (N379P), which flew from its home base at Johnston County Airport.³ There are publicly available flight records that verify this chain of transport. It is also crucial to note that Aero Contractors was the company responsible for the operation of this CIA-owned Gulfstream V jet.⁴

II. Pre-Capture Narrative

4. Although an Egyptian by birth, Habib shared a cultural identity as an Australian as he bought a second home there in 1992 and traveled frequently between both countries.⁵ The majority of his early life, however, was spent in Egypt. He was the middle child of seven siblings, and was raised in a middle-class family in a traditional Egyptian community.⁶ He enlisted in the army at the age of seventeen, as was the custom and expectation of every young man in his country. Upon completing his military commitments, Habib began studying psychology at a university, but soon left Egypt after a year or so when he realized the subject matter was not for him.

5. Habib had a thirst to travel and see the world, so he decided to use his post-military years of early adulthood to take advantage of various opportunities abroad. At first, he lived in Syria, where he worked as a waiter for a while. He then lived in Jordan, where he took on a job delivering gas cylinders. In later phases of his employment, he worked as a salesman, “selling everything from Scotch whisky to ladders” in Bulgaria, Iraq, Yugoslavia, Lebanon, and Turkey.⁷ These

³ See *Mamdouh Habib*, RENDITION PROJECT para. 5, <https://www.therenditionproject.org.uk/prisoners/mamdouh-habib.html> [<https://perma.cc/C7ND-NUNA>].

⁴ See *Rendition Circuit: 8-15 April 2002*, RENDITION PROJECT paras. 1-2, <https://www.therenditionproject.org.uk/flights/renditions/N379P-020408.html> [<https://perma.cc/23PB-SKW3>].

⁵ See *id.*

⁶ See HABIB & COLLINGWOOD, *supra* note 2, at 1.

⁷ *Id.* at 8.

experiences, he reflects on, made him “very street smart”, while also enabling him to become financially stable.⁸

6. Habib’s faith was another significant part of his life. He was born a Muslim, and strove to devoutly follow the teachings of his father who preached the values of honesty and compassion.⁹ His father had little interest in material possessions, and this characteristic served as a meaningful influence on Habib throughout the course of his upbringing. Their relationship remained especially close, even when Habib was detained in Guantanamo Bay. His father’s death, just two weeks after Habib’s release and repatriation back to Australia, was an especially difficult loss, as Habib ascribes his father’s “strong principles” and Muslim faith as having guided him throughout his life in custody.¹⁰

7. After traveling throughout Europe, Habib decided to apply for an Australian visa so that he could settle down and stabilize his career. He re-located to Australia at the age of 27.¹¹

III. Kidnapping and Capture

8. Mamdouh Ahmed Habib’s capture took place in Pakistan on October 4, 2011, at the hands of Pakistani authorities.¹² This date was approximately a month following the September 11 attacks on American soil, and U.S. authorities recklessly attempted to link many individuals, including Habib, to the terrorist hijackers involved, as well as to “various proscribed groups including Al-Qaida, Lashkar-e-Tayiba of Pakistan and Al Gamma Al Islamia of Australia . . .”¹³

9. Habib was captured while on a bus leaving from Quetta to Karachi, where he intended to fly to Sydney, and had purchased an airline ticket for that purpose. While on the bus, at around

⁸ HABIB & COLLINGWOOD, *supra* note 2, at 8.

⁹ *Id.*

¹⁰ *Id.* at 9.

¹¹ *Id.*, at 15.

¹² *See supra* note 3, at para. 2.

¹³ *Supra* note 3, at para. 3.

3:00am, in the middle of his journey near the small town of Khuzdar, “three men wearing ordinary clothes got on board, led by an unusually big Pakistani.”¹⁴ Eventually, the men ordered Habib to get off the bus, and subsequently transferred him – with cloth hoods placed on his head – to a “compound enclosed by a high fence with spikes on top”.¹⁵

10. Habib was taken to a Pakistani jail in Islamabad where he was temporarily detained until mid-November of the same year.¹⁶ At first, he attempted to bargain his way out of the situation, asking a jail guard how much money would be sufficient for his release along with that of two foreign individuals who had also been on the bus and ordered off with him. The guard had demanded 3,000 US dollars, which the three of them collectively did not have. Eventually, Habib signed a blank check, and handed it to the guard, who, instead told him to return to his cell.

11. Although Habib was confident in the authenticity of his Australian passport, due to the unlawful circumstances of his capture and detention, he feared that he would be held in detention for an indefinite period of time. He had thoughts of escaping. After remaining in detention for three whole days, Habib states that he “lost it . . . and ended up swearing and yelling at the guards.”¹⁷ As a result of this response, Habib was beaten in his cell as a means of retaliation by the Pakistani guards.

12. The next morning, Habib found his hands shackled and head hooded, as he was crammed into another car for transportation to another detention facility in Pakistan. He later described to his U.S. attorney, Joseph Margulies, that he was constantly electrocuted upon being “suspended

¹⁴ HABIB & COLLINGWOOD, *supra* note 2, at 85.

¹⁵*Id.*, at 86.

¹⁶ See *supra* note 3, at *Timeline of Key Events*.

¹⁷ HABIB & COLLINGWOOD, *supra* note 2, at 89.

from hooks on the wall with his feet resting on the side of a large cylindrical drum.”¹⁸ In his own words, he describes the physical discomfort of the facility as he remembers it more generally:

The conditions were terrible – two thin blankets and no mattress on a concrete floor. We never changed our clothes. I was still wearing the same tracksuit I’d been abducted in, so I was filthy. We were always shackled and handcuffed. When I was taken out of the cell, I was led on a chain like a dog – frequently kicked and hit with the butt of a gun as I was dragged along. The chain was attached to my handcuffed hands. If I went to the toilet, the guard clipped the chain to a post outside the toilet, keeping my hands outstretched in front of me, which meant that I couldn’t reach the water for cleaning myself. It was disgusting.¹⁹

13. This marked the beginnings of Habib’s capture and of his torture, though he would soon find himself being shifted from site to site without any prior knowledge of his whereabouts or detention time in each.

14. Around November 20, 2001, Habib was rendered to Egypt, where his detention lasted until April 12, 2002.²⁰ He was then flown to the Bagram Airfield base in Afghanistan, though the aircraft in which he was rendered was Aero Contractors-operated jet N379P.²¹ The aircraft had departed from its home base at Johnston County Airport to Washington Dulles International Airport, where it remained for just over two hours before flying to Cairo, Egypt and picking up Habib and one other detainee.²² His torture continued on the plane as he endured the pain of being “shackled in a foetal position . . . beaten and given electric shocks by the American guards” if he asked for anything.²³ Given what has been written about the experiences of other detainees such as Habib, it is reasonable to assume that there were several other methods of torture inflicted on him during the duration of this flight in particular.

¹⁸ JOSEPH MARGULIES, *GUANTANAMO AND THE ABUSE OF PRESIDENTIAL POWER* 184 (2006) [hereinafter MARGULIES, *GUANTANAMO*].

¹⁹ HABIB & COLLINGWOOD, *supra* note 2, at 92.

²⁰ *See supra* note 3, at *Timeline of Key Events*.

²¹ *See supra* note 4, at para. 3.

²² *See supra* note 4, at para. 2.

²³ *Supra* note 4, at para. 2.

15. Subsequent to his detention at Bagram, which occurred until the first week of May, Habib was transferred to his final facility at Guantanamo Bay. He remained at Guantanamo until the time of his release in January 2005.²⁴ Habib became convinced that he would never get to see his family and loved ones again.

IV. Methods of Interrogation and Experiences of Torture

16. At the outset of Habib's initial abduction in Pakistan, and thus, early on in his long and arduous journey as a victim of torture, he was aware of the post-September 11 conditions as they tainted public perceptions of him in Pakistan and aggravated the suffering he would likely experience as a result. To some extent, classifying the acts that Habib was subjected to as 'torture' seems to be an inadequate condemnation of their degree of heinousness. Methods of interrogation that he was forced to undergo were acts of de-humanization, and, in certain circumstances, perhaps he would have rather desired to be found dead than alive. Habib maintains that "he would have signed anything 'to survive'"²⁵ the series of interrogations. Lying throughout the course of his torture was something, he believed, would grant him some rest.

17. Habib's lawyers have alleged that the United States sent terror suspects like him to Egypt knowing that they would be subjected to methods of interrogation that were not allowed in the United States.²⁶ Egypt in fact was said to have had a "history of torture", according to credible reports developed by the State Department in the early 2000s.²⁷ Habib endured among the worst acts of torture during his rendition and detention in Egypt. He believed that rather than taking interest in where he had been, the Egyptian authorities only wanted Habib to confess to his terrorist

²⁴ See *supra* note 3, at *Timeline of Key Events*.

²⁵ *Supra* note 3, at para. 3.

²⁶ See Raymond Bonner, *Detainee Says He Was Tortured While in U.S. Custody*, N.Y. TIMES para. 5 (Feb. 13, 2005), <http://www.nytimes.com/2005/02/13/world/middleeast/detainee-says-he-was-tortured-while-in-us-custody.html> [<https://perma.cc/6U9T-2AZJ>].

²⁷ *Id.* at para. 28.

allegations in order for them to sell the information to Australia and the United States.²⁸ While in Egyptian custody, Habib underwent horrific torture as a result of not having confessed to or explaining anything during his interrogation sessions. He was repeatedly beaten with a stick or a bar. He was sexually assaulted with a rod that was inserted up his rectum. He was smeared with fake menstrual blood.²⁹

18. In a press statement, Habib said, “They play with your mind – they gave me drugs, they gave me electric shocks, they dragged me and put my head in water”.³⁰ The drugs he would be administered disoriented him further, inducing the sensation of his blood boiling.³¹ Any needles he was injected with were purposely done so in the same place on his body such that it became “terribly painful”.³² He experienced recurring diarrhea and “splitting headaches” because of them.³³ Electric shocks involved using an electric prod to come into contact with every part of his body, including his testicles. On other occasions, Habib was burnt with cigarettes. Authorities also poured buckets of hot water over him, and would immediately throw him into a freezing cold room if he was found to have lapsed into a state of unconsciousness. He was threatened with dogs that were trained specifically to attack him sexually.

19. On frequent occasions where Habib was ruthlessly beaten, he was said to have bled “from his nose, mouth, and ears when he was asleep.”³⁴ Other prisoners described him as “haggard-looking”, and as he was unable to walk, he always needed to be held up.³⁵

²⁸ See HABIB & COLLINGWOOD, *supra* note 2, at 118.

²⁹ See MARGULIES, GUANTANAMO, *supra* note 18, at 133.

³⁰ Cameron Stewart, *Mamdouh Habib hails US admission of torturing terror suspects*, AUSTRALIAN para. 10 (Dec. 11, 2014, 12:00AM), <http://www.theaustralian.com.au/in-depth/terror/mamdouh-habib-hails-us-admission-of-torturing-terror-suspects/news-story/b2aa3aff911231f092345d07d312c1ca> [<https://perma.cc/3JWA-LAH8>].

³¹ See HABIB & COLLINGWOOD, *supra* note 2, at 152.

³² *Id.* at 155-56.

³³ *Id.*, at 152.

³⁴ MARGULIES, GUANTANAMO, *supra* note 18, at 187.

³⁵ *Id.*

20. There were also times where Habib would be made to stand in a room where water rose around him in an attempt to drown him. “Every time I began to drown,” he said, “they hauled me out, revived me, and put me back in I got to the stage where I didn’t care anymore; I’d relax and close my eyes and start to drown, hoping that I would die.”³⁶

21. Before relaying the extent of Habib’s torture at Guantanamo, it is worth reiterating the fact that the torture he suffered in Egypt would not have occurred had Aero and the CIA not subjected him to the extraordinary rendition program in the first place. They had deliberately transferred him to a site in Egypt with the knowledge and forethought that he would in fact be tortured there.

22. Disturbing accounts of Habib’s experiences continue throughout his detention at Guantanamo. He recounted a time when he was “sexually humiliated by a female interrogator who reached under her skirt and threw what appeared to be blood in his face.”³⁷ He also endured great pains of psychological torture at Guantanamo, as on several occasions, he was forced to observe photographs of his wife’s face that had been superimposed on images of nude women next to Osama bin Laden.³⁸

23. There were times at Guantanamo when the vent in Habib’s cell had air pumped from a machine in which the toxic odor of a cleaning fluid caused suffocating and “horrible-smelling fumes”.³⁹ The experience was so unbearable for a detainee in the cell opposite from him, that it caused the detainee to commit suicide by hanging himself. The incident caused a violent uproar amongst fellow inmates, many of whom decided to go on a hunger strike in sheer protest.⁴⁰

³⁶ HABIB & COLLINGWOOD, *supra* note 2, at 119.

³⁷ *Supra* note 3, at para. 8.

³⁸ *See supra* note 3, at para. 8.

³⁹ HABIB & COLLINGWOOD, *supra* note 2, at 160.

⁴⁰ *Id.*

24. One of the most de-humanizing experiences that Habib can recount is his treatment at Guantanamo by guards and interrogators who never called him by his name. He was simply acknowledged as ‘661’.⁴¹

25. In all of these situations, as the extent of this physical and psychological torture would continue until Habib admitted whatever it was that the officials were questioning him about at the time, any confessions he made were not in fact accurate.⁴² Furthermore, despite the false and wrongful accusations, Habib was never formally charged with any crimes. It is worth noting that Habib would not have suffered this torture at Guantanamo Bay – and all detention sites preceding it – had he not been extraordinarily rendered by Aero Contractors and the CIA in the first place. Their complicity and deliberation in transferring him to such sites stemmed from their knowledge that he would suffer a merciless fate.

V. Post-Release Circumstances

26. Habib arrived in Sydney on the afternoon of Friday, January 28, 2005 after his release and repatriation from Guantanamo Bay.⁴³ It happened to be the same day as his daughter, Maryam’s, birthday.⁴⁴ Since then, Habib has taken a number of active initiatives to make his story known. His memoir, which was published just three years after his release, can be understood as being his most honest and poignantly written narrative. As the ‘Introduction’ to this current compilation explained, Habib also brought a series of lawsuits as a means of holding the governments of each country in which he was rendered, detained, and tortured accountable for their actions. In the process, he “vowed to continue his legal quest to seek compensation”.⁴⁵ In the 2010 landmark

⁴¹ See HABIB & COLLINGWOOD, *supra* note 2, at 155.

⁴² *Id.*, at 186.

⁴³ *Id.*, at 231.

⁴⁴ *Id.*, at 231.

⁴⁵ Stewart, *supra* note 30, at para 2.

litigation of *Habib v. Commonwealth of Australia*, Habib claimed that Australian intelligence agents had partaken in his interrogations, and that Australian officials had “encouraged his rendition to Egypt and prolonged detention through transfer to Guantanamo Bay.”⁴⁶ In December 2011, Habib’s efforts culminated further as he enabled the Australian Inspector-General of Intelligence Services to release a report that acknowledged his experiences while in detention.⁴⁷ It has also been reported that the Australian government supposedly paid him an “undisclosed amount of money” to dismiss his case against them.⁴⁸

27. Australia’s involvement with the extraordinary rendition and torture program, and with Habib’s site-to-site transfers, are comparable to Aero’s facilitation and treatment of him and other detainees.

28. Habib continues to express gratitude to his wife, Maha, for her unconditional support. His courage and determination enabled him to run as an independent political candidate in New South Wales’ State Parliament election of 2007.⁴⁹ Although he was only able to retain four percent of the vote, his campaign became a platform for his commitment to the anti-torture and anti-terror movement, and also for the end to the U.S. occupation in Iraq.⁵⁰

29. “My life can never be the same after Egypt and Guantanamo,” Habib writes. “I will always have to live with the memories of those terrible places . . . [but] I am grateful to be once again with my family; grateful to be able to enjoy simple things like fishing, coaching my daughter’s soccer team on Saturday mornings, and enjoying a barbecue in the garden.”⁵¹

⁴⁶ *Supra* note 3, at para. 11.

⁴⁷ See Natalie O’Brien, *Mamdouh Habib’s legal case in Egypt on verge of collapse*, SYDNEY MORNING HERALD (Nov. 23, 2014), <http://www.smh.com.au/national/mamdouh-habibs-legal-case-in-egypt-on-verge-of-collapse-20141119-11pxjs.html> [<https://perma.cc/YT9N-6HWP>].

⁴⁸ *Id.* at para. 5.

⁴⁹ See HABIB & COLLINGWOOD, *supra* note 2, at i.

⁵⁰ *Id.*, at 251.

⁵¹ *Id.*, at 256.

VI. Laws Condemning Extraordinary Rendition, Torture, and Detention

A. International Law Violations

30. United States government officials responsible for Habib’s torture, at Guantanamo Bay and other detention facilities and black sites, must be held accountable for their heinous conduct.⁵²

There are in fact no legal exceptions to the prohibition and condemnation of torture under the auspices of international law. Furthermore, it is without doubt that these various coercive tactics were “inconsistent with our values as Americans, and their consequences present lasting challenges for us as a country and for the individuals involved”.⁵³

31. The existence of the extraordinary rendition and torture program has undermined the integrity of democratic institutions and has also contributed to the development of the anti-Islamic narrative that continues to stigmatize victims of torture like Habib. Its “weapon of choice” has been described as the “invocation and manipulation” of the rule of law.⁵⁴ Those who were opposed to the so-called threat of “Islamization”⁵⁵ have made attempts to circumvent pre-existing legal mechanisms, and also devise new frameworks that might classify torture as falling outside the purview of international law altogether.

32. Prior to discussing specific international human rights instruments of which torture is a blatant violation, it is worth noting the way in which the rule of law has been perceived as a limiting factor of the exercise of governmental power. In a portion of his dissent in *Olmstead v.*

U.S., decided nearly nine decades ago, Justice Brandeis ardently stated:

⁵² See Derek Summerfield, *Fighting “Terrorism” With Torture: Torture Is A Form Of Terrorism: There Are No Justifications For It*, 326 BRIT. MED. J. 773, 773 (2003).

⁵³ Matt Apuzzo *et al.*, *How US Torture Left a Legacy of Damaged Minds*, N.Y TIMES para. 10 (Oct. 9, 2016), <https://www.nytimes.com/2016/10/09/world/cia-torture-guantanamo-bay.html> [<https://perma.cc/CKF2-8YEH>] (quoting Ben Rhoades, the deputy national security adviser).

⁵⁴ JOSEPH MARGULIES, *WHAT CHANGED WHEN EVERYTHING CHANGED: 9/11 AND THE MAKING OF NATIONAL IDENTITY* 165-66 (2013) [hereinafter MARGULIES, *WHAT CHANGED*].

⁵⁵ *Id.* at 166.

In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that, in the administration of the criminal law, the end justifies the means – to declare that the Government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution. Against that pernicious doctrine, this Court should resolutely set its face.⁵⁶

33. While these words were crafted for the purpose of defining both a general right to privacy, and the extent to which a government’s wire-tapping operations constituted an unreasonable search and seizure, they can be understood as having much broader implications. The government is expected to abide to a similar set of obligations in the context of human rights treaty provisions that are set out to protect and vindicate the rights of citizens. There is a range of international and regional human rights instruments that condemn not only torture, but also virtually any form of “cruel, inhuman, or degrading punishment or treatment.”⁵⁷ This prohibition is stated explicitly in Article 5 of the United Nations Declaration of Human Rights (UDHR), which the United Nations General Assembly had adopted in 1948 under the stewardship of Eleanor Roosevelt.⁵⁸ Although the UDHR is not a binding treaty, many human rights bodies and international jurists interpret its provisions to be a reflection of customary international law.⁵⁹ The “right to be free from torture” has achieved customary status in the international legal community under the UDHR’s auspices “by virtue of its wide acceptance” as a human rights norm.⁶⁰

⁵⁶ *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

⁵⁷ American Convention on Human Rights art. 5, Aug. 27, 1979, 1144 U.N.T.S. 144, 149.

⁵⁸ See *Champions of Human Rights: Eleanor Roosevelt (1884-1962)*, UNITED HUM. RTS., <http://www.humanrights.com/voices-for-human-rights/eleanor-roosevelt.html> [https://perma.cc/SK4G-C58N].

⁵⁹ See Deborah M. Weissman *et al.*, *Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 18-19 (2013), <http://www.law.unc.edu/documents/clinicalprograms/obligationsandobstaclesncreport.pdf> [hereinafter Weissman *et al.*, *Obligations and Obstacles*].

⁶⁰ Hilary Charlesworth, *Universal Declaration of Human Rights (1948)*, OXFORD PUB. INT’L L. para. 16 (accessed Apr. 16, 2017), <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e887> [https://perma.cc/YCH3-6NSY].

34. Article 5 of the American Convention on Human Rights goes on to state that “[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”⁶¹ In 1994, Congress passed a federal anti-torture statute that criminalized the act of American government officials to torture individuals outside of the country.⁶² It did so as part of the United States’ obligations under the 1984 United Nations Convention Against Torture (CAT), which it had signed in 1988.⁶³

35. While no single definition of torture holds predominance in international law, the CAT’s definition of it is the one looked on to most widely by human rights activists and scholars. Under Article 1 of the CAT, torture is defined as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him . . . information or a confession, punishing him for an act he . . . has committed or is suspected of having committed, or intimidating or coercing him . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁶⁴

36. It is fairly clear from this definition that there are four essential elements associated with the crime of torture in a universal legal framework. The text of this provision alone underscores: (1) the nature of the act in question (“severe pain or suffering, whether physical or mental”); (2) intent behind its commission (“intentionally inflicted on a person”); (3) purpose behind its commission (“obtaining from him or a third person information or a confession, punishing him for an act he or third person has committed . . .”); and (4) the involvement of public officials (“or any other person acting in an official capacity”).⁶⁵ Although this definition appears to read as all-

⁶¹ American Convention on Human Rights, *supra* note 58.

⁶² See MARGULIES, GUANTANAMO, *supra* note 18, at 89.

⁶³ See *id.*; see also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 113 [hereinafter Convention against Torture].

⁶⁴ Convention against Torture, *supra* note 63, at 113-114.

⁶⁵ Convention against Torture, *supra* note 63, at 114.

encompassing, the challenges associated with its applicability remain tied to the fact that it falls outside the purview of torture's definition under international customary law. However, for the purposes of conveying the extent to which the conduct afflicted on Habib constituted torture, these four elements can nonetheless be used as guidelines.

37. It is without question that the hands of American public officials instigated Habib's suffering. It is also undeniable that the pain he endured was "severe", on a mental, psychological, and physical level. Furthermore, as the element of 'intent' remains fundamental to the enhanced interrogation tactics that were implemented on Habib, the violent acts incurred on him were a result of a pre-planned attack on his personal liberty and sense of dignity. All acts – including the reason behind his initial capture in Pakistan – were committed because of his alleged association to militant groups that had fled an imminent conflict in neighboring Afghanistan.⁶⁶ To distinguish one type of interrogation technique as more or less tortuous than another would detract from the notion that torture is in fact torture, and, thus, inexcusable irrespective of the degree. Finally, the nature of Habib's detention and transfer among black sites and facilities, as facilitated by aircrafts operated by Aero Contractors – is a violation of the CAT in and of itself.

38. In its entirety, the program of extraordinary rendition also violates the terms of the 1966 International Covenant on Civil and Political Rights (ICCPR), which the United States, as a member state to the treaty, must not derogate from under any circumstances.⁶⁷ In other words, the ICCPR has served as a binding agreement, and has even gone so far as to preclude torture as a justified action in times of public emergency.⁶⁸ Torture in the international legal arena qualifies as

⁶⁶ See MARGULIES, GUANTANAMO, *supra* note 18, at 184.

⁶⁷ See Deborah M. Weissman *et al.*, *The North Carolina Connection To Extraordinary Rendition and Torture*, UNC SCH. L. IMMIGRATION & HUM. RTS. POL. CLINIC 1, 7 (2012), <http://www.law.unc.edu/documents/clinicalprograms/finalrenditionreportweb.pdf> [hereinafter Weissman *et al.*, *The North Carolina Connection*].

⁶⁸ See Geoffrey Wallace, *International Law and Public Attitudes Toward Torture: An Experimental Study*, 67 CAMBRIDGE U. PRESS 105, 108 (2013).

a war crime and “crime against humanity”,⁶⁹ due to its status as a “grave breach”⁷⁰ of the 1949 Geneva Conventions and their Additional Protocols that were enacted in subsequent decades. Its existence has also been closely associated to national security threats. Some of America’s most powerful public officials have outwardly expressed the “need to work on the ‘dark side’ to defeat terrorists”, while also viewing the Geneva Conventions’ provisions as “obsolete” with regards to the war on terror.⁷¹

39. However, one of the most concerning issues with regards to these violations has been the nation’s reliance on state secrecy doctrines to immunize agents of extraordinary torture and rendition from accountability mechanisms altogether.⁷² Consequently, this guise of state secrecy has also denied victims like Habib of opportunities to seek redress in the United States for the crimes to which they have been subjected.

40. The implementation of international treaty obligations that are imposed on State parties with federal structures, such as the United States, is expected to occur at the level of individual states like North Carolina as well. Hence, it is critical that North Carolina does its part to abide to treaty obligations, especially “in areas of substantive law for which they are responsible under [American] constitutional law”, so as to render the nation’s treaty compliance more meaningful.⁷³

41. Additionally, “whatever its utility for philosophers,”⁷⁴ torture as a manifestation of the ticking time bomb thought experiment can provide no sound basis for policy. The rationale behind this is straightforward: bureaucracies of torture that are borne out of institutionalized and political

⁶⁹ *Id.*; see also Rome Statute of the International Criminal Court art. 7 § 1(f) (1988) (classifies torture as a ‘crime against humanity’).

⁷⁰ Wallace, *supra* note 68, at 108.

⁷¹ *Id.*, at 109.

⁷² See *supra* note 67, at 5.

⁷³ See *supra* note 67, at 7.

⁷⁴ John W. Schiemann, *No, Donald Trump, torture doesn’t work*, POLITICO para. 12 (Dec. 2, 2016, 5:24 AM), <http://www.politico.com/agenda/story/2016/12/no-donald-trump-torture-doesnt-work-000249> [<https://perma.cc/ZL8T-YYVK>].

notions of torture eventually end up torturing innocents. As a tragic result, the “morass of false and ambiguous information” that is generated inevitably end up “exceeding even their own guidelines and limits on torture’s brutality.”⁷⁵

42. The details of the degree of physical, mental, and psychological violence inflicted on Habib undeniably constitute acts of torture under the rule of law. However, in spite of former President Obama’s Executive Order 13491 (“Order”), which banned the United States government’s use of torture, there is grave concern as to its lasting impact in this current political administration.⁷⁶ President Trump has already “vowed to reinstate torture, including treatment that would be ‘a hell of a lot worse than waterboarding.’”⁷⁷ This public condonation of torture not only poses as a grave sign of disrespect towards innocent civilians like Habib, but it also reinforces the fact that the United States government was and continues to be actively aware of its stake in the extraordinary torture and rendition program.

B. Federal Law Violations

43. Under Amendment 8 of the United States Constitution, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”⁷⁸ The Supremacy Clause states that all contents of this living, breathing document “shall be the supreme Law of the Land”, and, as such, the United States shall not derogate from them.⁷⁹ This includes, but is not limited to, torture and all other forms of cruel, unusual, and/or degrading punishments inflicted on another human being.

⁷⁵ *Id.*

⁷⁶ See Douglas Johnson *et al.*, *The Strategic Costs of Torture: How “Enhanced Interrogation” Hurt America*, FOREIGN AFFAIRS para. 1 (Sept. 2016), <https://www.foreignaffairs.com/articles/united-states/strategic-costs-torture> [<https://perma.cc/98Z3-J4LX>].

⁷⁷ *Id.* at para. 2.

⁷⁸ U.S. CONST. amend. VIII.

⁷⁹ U.S. CONST. art. VI, para. 2.

44. The Supremacy Clause also makes explicit the fact that the “Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State . . .” which ascribes equal value to ratified treaties as enacted federal statutes.⁸⁰ Therefore, not only do international treaties bind the constitutions, laws, and courts of state jurisdictions, but under the auspices of the Supremacy Clause, they also bind state and local officials to their legal obligations.⁸¹ This language also requires Aero Contractors, and North Carolina’s own state and local public officials, to abide to the obligations of international treaties. As Aero functions as both a private entity as well as a government contractor, it must be held “similarly responsible” for the crimes against humanity that it and its employees committed in violation of international human rights treaties and federal law.⁸²

45. Additional federal laws that expressly condemn torture as flagrant violations of human rights include the Alien Tort Statute (“ATS”), Torture Victims Protection Act (“TVPA”) of 1991 and the Federal Torture Statute (“FTS”) of 1994, among others.

46. Under the ATS, 28 U.S.C. § 1350, non-U.S. citizens who have suffered egregious human rights violations have the capacity to sue government officials and private actors in U.S. courts.⁸³ This federal law was adopted as part of the Judiciary Act of 1789 for the purpose of granting non-U.S. citizens the power to sue for violations of customary international law that have been perpetrated in other parts of the world.⁸⁴

47. In 2010, five individuals who were detained within the CIA’s torture and extraordinary rendition program filed a suit against the United States and one of its corporations, Jeppesen

⁸⁰ Weissman *et al.*, *Obligations and Obstacles*, *supra* note 105, at 36.

⁸¹ *Id.*, at 36-37.

⁸² *Id.*

⁸³ See *The Alien Tort Statute: Protecting the Law that Protects Human Rights*, CTR. CONST. RTS. para. 1 (2013), <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/alien-tort-statute-protecting-law-protects> [<https://perma.cc/2P93-APSH>].

⁸⁴ *Id.*

Dataplan.⁸⁵ Like Aero Contractors, Jeppesen Dataplan had been providing “flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subjected to torture.”⁸⁶ The suit was in fact brought within the purview of the ATS, and was marshaled under claims for the “forced disappearance” and the “torture and other cruel, inhuman or degrading treatment” of the detainees.⁸⁷ If Habib were to file a suit against Aero for possessing actual or constructive knowledge that its services were being used to transport him from North Carolina to black sites globally, such a suit would surely present a valid and cognizable cause of action.⁸⁸

48. The TVPA was promulgated for the purpose of executing the United States’ obligations under the United Nations Charter and other international mechanisms that pertained to the protection of human rights “by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.”⁸⁹ Under this rule of law, the very least that Habib would be entitled to seek as a form of redress is compensation. It defines torture much along the same lines as the CAT does, though it expands the “mental pain or suffering” elements to include not only “the intentional infliction or threatened infliction of severe physical pain or suffering”, but also “the [threatened] administration or application . . . of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality” and “the threat of imminent death”.⁹⁰ Given the egregious and almost fatal nature of a great many offences inflicted on Habib, his suffering would more than likely qualify as a “threat of imminent death”

⁸⁵ The five individuals who stood as the Plaintiffs-Appellants in the 9th Circuit opinion were Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Farag Ahmad Bashmilah, and Bisher Al-Rawi. Narratives written about all of them, with the exception of Agiza, have also been included in this collective report. *See* Brief of Plaintiffs-Appellants, Mohamed *et al.*, v. Jeppesen Dataplan, No. 08-15693 (9th Cir. Sept. 8, 2010).

⁸⁶ *Id.* at 13526.

⁸⁷ *Id.* at 13526.

⁸⁸ *See* Al Shimari v. CACI Premier Tech., 758 F.3d 516 (4th Cir. 2014) (No. 15-1831).

⁸⁹ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, pmb., 106 Stat. 73, 73 (1992).

⁹⁰ *Id.* at § 3(b)(2)(C).

for the purposes of classifying it as torture. However, the TVPA as a whole establishes a ten-year statute of limitations, which means that any action(s) concerning the U.S. government's liability under this law should have been commenced within ten years after Habib's cause(s) of action arose.⁹¹

49. These expanded definitions of torture are mirrored in the FTS, which specifies that alleged offenders of torture can be either U.S. nationals, or anyone present in the United States, irrespective of their nationality.⁹² It also states that anyone who "commits or attempts to commit torture" outside the United States "shall be fined under this title or imprisoned not more than 20 years, or both".⁹³ The fact that no American public official responsible for Habib's torture has been prosecuted under this and other federal statutes demonstrates a blatant disregard for their existence.

C. North Carolina Law Violations

50. Given North Carolina's chilling associations to the extraordinary rendition and torture program, and the traumatic experiences of Habib and others, it is disturbing to think that there has been little to no pressure placed on its public officials. However, the reality is that "North Carolina has not been prevented from acting [in matters of foreign affairs] because of the federal government's refusal to act".⁹⁴ This lack of federal action should not be used as a justification for North Carolina's obligation to comply with its own independent human rights standards. More importantly, a cause of action intended to hold Aero Contractors accountable for Habib's rendition already exists under North Carolina state law.

⁹¹ See *id.* at § 2(c) ("No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.").

⁹² Federal Torture Statute, 18 U.S.C. § 2340(A) (1994).

⁹³ *Id.*

⁹⁴ Deborah M. Weissman, *North Carolina is bound to act on torture*, NCCIT para. 7 (Feb. 20, 2016), <http://www.nccit.org/blog/no-moving-on>.

51. Under Article I, § 19 of the North Carolina Constitution, “no person shall be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property . . .”⁹⁵ There are separate state provisions that pertain more specifically to issues of kidnapping, involuntary servitude, trafficking, and criminal conspiracy, all of which directly relate to Aero Contractor’s role in the planes’ operation in association to the torture and rendition program.⁹⁶

52. Section 14-39 of the North Carolina General Statutes criminalizes the act of kidnapping, holding that any person shall be found guilty if their “confinement, restraint or removal” of another has been detected for the purpose of “[f]acilitating the commission of any felony or . . . flight . . . following the commission of a felony”.⁹⁷ While the term ‘torture’ is not made explicit in the language of this section’s provisions, it also criminalizes any act of committing “serious bodily harm to or terrorizing the person so confined, restrained or removed”.⁹⁸ Furthermore, the North Carolina legislature has acknowledged degrees of kidnapping by including a separate provision that classifies the offense of first-degree kidnapping as one in which the abducted individual fails to be transported to a safe place, or has been “seriously injured or sexually assaulted”.⁹⁹

53. The extent of torture incurred by Habib on the Aero-operated aircraft associated with North Carolina’s Johnston County airport has undoubtedly violated these criminal state provisions. Under a separate statutory provision, the CIA agents responsible for Habib detention and transport on these planes have also committed the offense of “felonious restraint” by unlawfully-restraining him without his consent.¹⁰⁰ Pursuant to North Carolina law, while this offense is considered to be

⁹⁵ N.C. CONST. art. 1, § 19.

⁹⁶ See N.C. GEN. STAT. § 14-39 (2016) (“Kidnapping”); see also N.C. GEN. STAT. § 14-2.4 (2016) (“Punishment for conspiracy to commit a felony”).

⁹⁷ N.C. GEN. STAT., *supra* note 96, at § 14-39(a)(2).

⁹⁸ N.C. GEN. STAT., *supra* note 96, at § 14-39(a)(3).

⁹⁹ N.C. GEN. STAT., *supra* note 96, at § 14-39(b).

¹⁰⁰ N.C. GEN. STAT., *supra* note 96, at § 14-43.3.

a lesser offense of kidnapping altogether, it has been explicitly classified as a Class F felony nonetheless.¹⁰¹

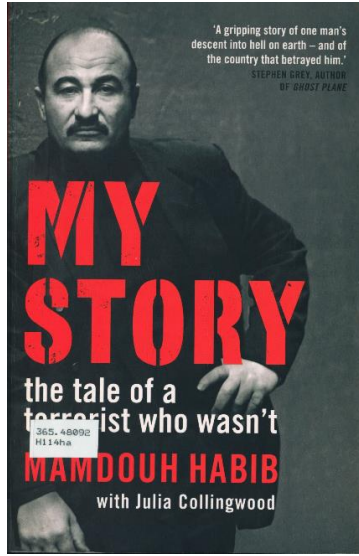
VII. Conclusion

54. Habib’s narrative is intended to underscore the necessity to seek accountability for the harms he suffered. By developing a factual record about the intricacies of the extraordinary rendition and torture program, it is undeniable that the U.S. government by its officials and agencies, as well as the state of North Carolina and its political subdivisions and Aero Contractors have violated a series of peremptory norms from which there can be no derogation. As these entities have “failed to investigate or provide any opportunity for redress”, it is now the responsibility of civil society, international organizations, investigative journalists, policy-makers, and private institutions to help restore the goals of international human rights laws.¹⁰²

VIII. Appendix

¹⁰¹ See N.C. GEN. STAT., *supra* note 96, at § 14-43.3.

¹⁰² Weissman *et al.*, *The North Carolina Connection*, *supra* note 67, at 7.



Abdel-Hakim Belhadj

I. Introduction

1. Before Abdel-Hakim Belhadj was captured in Libya, he was a part of a group that sought justice and opposed the known dictator, and enemy of the United States, Muammar Gaddafi. Belhadj had never been involved with any kind of terrorist activity. He was kidnapped, rendered, and tortured because of his role as a dissident and someone who was active in resisting Gaddafi and Gaddafi's repressive and hurtful practices enacted against the people of Libya. For his opposition, he was kidnapped; his captors flew him and his then-pregnant wife, Fatima Bouchar, on a plane operated by Aero Contractors headquartered in Johnston County, NC and delivered them to be tortured in Libya. There, in one of Gaddafi's prisons, having been rendered by U.S. officials and its contractor-agents, Belhadj suffered the exact kind of torture that he opposed and the oppression he was committed to ending. Despite their horrifying experiences, Belhadj and Bouchar continue even today to attempt to obtain accountability from those governments involved in their treatment. They are passionate about making their story heard and obtaining acknowledgement. The couple rejected a settlement offered by the UK government that failed to include an official apology for their treatment; in their view, without an acknowledgment of the torture they suffered, a settlement would be without meaning. It is the goal of this narrative to discuss the mistreatment of Belhadj and the violations of international, federal, and domestic law committed by the United States government.

II. Facts

2. Abdel-Hakim Belhadj is a Libyan citizen born on May 1, 1966.

3. Belhadj was active in efforts to oppose the rule of Muammar Gaddafi (Colonel Gaddafi) in Libya. He was living in Libya in 1988, when he left the country and became active with the Libyan Islamic Fighting Group (LIFG) aimed ending Colonel Gaddafi's regime.¹ He describes a life of suffering and intolerable repression under Gaddafi.² He is married to Fatima Bouchar.
4. In the 1990s, the LIFG functioned as an opposition movement in Libya.³ By 2001, it appeared that their efforts had been unsuccessful. Belhadj was forced to flee Libya, and moved to Afghanistan.⁴
5. After September 11, 2001, Afghanistan was no longer a safe place for Belhadj and he was again forced to flee.⁵ He and his wife, looking for safety, traveled through Malaysia and arrived in China in 2003.⁶
6. Belhadj and Bouchar had been in China for less than a year.⁷ Bouchar was pregnant at the time.⁸ However, fearful that they were under surveillance by Gaddafi's authorities, in February 2004 they decided to leave China and to seek asylum in the United Kingdom by traveling first through Malaysia.⁹
7. Upon trying to leave Malaysia, Belhadj was denied exit from Malaysia and detained by immigration authorities there. Eventually, Malaysian authorities told them they could

¹ The Rendition Project, "Abdel Hakim Belhadj and Fatima Bouchar," *The Rendition Project* (last visited Feb. 4, 2017), https://www.therenditionproject.org.uk/prisoners/belhadj_bouchar.html.

² Human Rights Watch, "Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya" 92, *Human Rights Watch* (Sept. 5, 2012), <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>

³ *Id.*

⁴ *Id.* Abdul-Hakim Belhaj, Fatima Boudchar v. The Rt. Hon. Jack Straw MP *et al.* [2014] EWCA (Civ) 1394 [8]

⁵ *Id.*

⁶ *Id.*

⁷ Reprieve, "Abdul-Hakim Belhaj and Fatima Boudchar," *Reprieve* (last visited Feb 4, 2017), <http://www.reprieve.org.uk/case-study/abdul-hakim-belhaj/>.

⁸ *Id.*

⁹ Reprieve, *supra* note 7.

travel to the United Kingdom by way of Bangkok.¹⁰ On March 7, 2004, Belhadj and his pregnant wife were then put on a plane bound for London on a standard commercial flight with a stop in Bangkok. However, when they landed in Bangkok, they were detained and taken to a U.S.-run detention facility and immediately separated.¹¹ Belhadj's pregnant wife was dragged away.¹²

8. Belhadj's experience in Bangkok was terrifying. Belhadj describes his ordeal: he was stripped naked, "blindfolded, hooded, forced to wear ear defenders, and hung from hooks in his cell wall for what seemed to be hours."¹³
9. He was severely beaten. His captors removed the ear defenders in order to blast him with loud, deafening music. His captors also interrogated him while the ear defenders were off.¹⁴
10. Belhadj said that he believes his captors drugged him at one point, and inserted needles into his back.¹⁵
11. His captors interrogated him mostly in English.¹⁶
12. He lost consciousness many times.¹⁷

¹⁰ Reprive, *supra* note 7.

¹¹ Ian Cobain, "Special Report: Rendition Ordeal that Raises New Questions About Secret Trials," *The Guardian* (Apr. 8, 2012), <https://www.theguardian.com/world/2012/apr/08/special-report-britain-rendition-libya>. The facility was likely "within the perimeter of Don Muang international airport." *Id.*

¹² Human Rights Watch, "Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya" 93 *Human Rights Watch* (Sept. 5, 2012), <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Rendition Project, *supra* note 1.

¹⁶ *Id.*

¹⁷ *Id.*

13. After several days of this torture, Belhadj was loaded back onto an aircraft for a 17-hour rendition to Tripoli, Libya.¹⁸ He later learned that his wife was forced onto this plane as well.¹⁹
14. Analysis of flight data shows that the couple were kidnapped and flown on a Boeing 737 with registration number N313P operated by Aero Contractors located in Johnston County, NC, United States that flew from the county airport in Johnston County, NC.²⁰
15. Belhadj provides a description of the torture he experienced during this 17-hour flight. He was handcuffed and blindfolded, and hooded and shackled to the floor of the plane. He was forced to crouch over in a painful stress position, and was unable to sit or lie.²¹ He was forced to drink water but prevented from using the bathroom. If he let out a painful groan, his captors kicked him.²² He was beaten by his captors prior to landing.²³
16. As a result of having been extraordinarily rendered by the U.S.CIA on the Boeing N313P that flew from the airport in Johnston County, NC, United States, Belhadj suffered ongoing torture and cruelty. Once in Libya, Gaddafi's police took him and his wife to Gaddafi's Tajoura prison.²⁴ Tajoura was run by Moussa Koussa, Gaddafi's Head of Libyan Intelligence.²⁵

¹⁸ *Id.*

¹⁹ *Id.* The exact number of days is uncertain, because while Belhadj and Bouchar reported being held in Bangkok for five or six days, flight records indicate they were there for one to two days. For more on potential explanations for this discrepancy, see *id.*

²⁰ *Id.*; United States Central Intelligence Agency (CIA) memo, "Schedule for the Rendition of Abdullah Al-Sadiq," (Mar. 6, 2004); CIA memo, "Planning for the Capture and Rendition of Abdullah Al-Sadiq," (Mar. 6, 2004).

²¹ The Rendition Project, *supra* note 1.

²² *Id.*

²³ Human Rights Watch, "Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya" 94, *Human Rights Watch* (Sept. 5, 2012), <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>

²⁴ *Id.*

²⁵ *Id.*

17. While Belhadj's wife was released after about four months, Belhadj was detained in Tajoura for four years and tortured and interrogated repeatedly.²⁶
18. He was savagely beaten. His captors hung him from the walls. They isolated him from human contact and he was deprived of any daylight for at least one and a half years.²⁷ He was not allowed to bathe for three of those years.²⁸
19. He was held, tortured and interrogated by Gaddafi's secret police, but was interrogated by both American and British agents as well.²⁹ These interrogations often occurred at night while he was deprived of sleep and forced to stand.³⁰
20. He was held in solitary confinement for over three years during which time he was denied any contact with his family.³¹
21. In an interview with the Independent, an online British newspaper, Belhadj described a visit from British intelligence agents who came to interrogate him while he was in Tajoura.³² The agents questioned him over two sessions that each lasted about two hours about members of LIFG in England.³³ They told him that if he named these individuals as being involved with Al Qaida, they would be returned from England to Libya and Belhadj's own conditions would improve.³⁴ Belhadj told the agents, as he told everyone

²⁶ See Reprieve, *supra* note 7; The Rendition Project, *supra* note 1.

²⁷ Reprieve, *supra* note 7. Human Rights Watch, "Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya" 99

²⁸ *Id.*

²⁹ The Rendition Project, *supra* note 1.

³⁰ Human Rights Watch, "Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya" at 100.

³¹ Human Rights Watch, "Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya" at 99.

³² Kim Sengupta, "Libyan Rebel Leader Says M16 Knew he was Tortured," *The Independent* (Sept. 5, 2011), <http://www.independent.co.uk/news/world/africa/libyan-rebel-leader-says-mi6-knew-he-was-tortured-2349778.html>.

³³ *Id.*

³⁴ *Id.*

else who had asked him, that “LIFG had no link with Al Qaida.”³⁵ He said, “I knew making a link would stop what was happening to me, but I was not going to do it.”³⁶

22. After four years of detention, torture, cruelty and isolation, in Tajoura, Belhadj was convicted in court for armed insurrection against the regime. His trial lasted only fifteen minutes. He was further deprived of the right to consult with a lawyer.³⁷ The only evidence allowed was a report from the Libyan security services, and Belhadj had no opportunity to offer evidence on his own behalf.³⁸

23. Belhadj was sentenced to death. However, he was instead transferred to Abu Salim prison, where he was held for two more years in isolation and in the dark.³⁹

24. There, his captors continuously beat him until March 23, 2010, when he was finally released as part of a release of hundreds of prisoners negotiated by Saif al-Islam, Gaddafi’s son, and his foundation that was geared toward national reconciliation and social peace.⁴⁰

25. While Belhadj testified about his rendition and torture to a researcher from *Human Rights Watch* in 2009, it was not until 2011 that significant documentary evidence of American and British involvement was found.⁴¹

26. In September 2011, Peter Bouckaert, the *Human Rights Watch* emergencies director, discovered the “Tripoli Documents” while examining the Libyan government’s external

³⁵ *Id.*

³⁶ *Id.*

³⁷ Reprieve, *supra* note 7.

³⁸ *Id.*

³⁹ The Rendition Project, *supra* note 1.

⁴⁰ *Id.*; Human Rights Watch, “Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi’s Libya,” *Human Rights Watch* (Sept. 5, 2012), <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>; Salah Sarrar, “Ex-Islamists Walk Free from Libyan Jail,” *Reuters Africa* (Sept. 1, 2010),

<http://af.reuters.com/article/topNews/idAFJOE68003B20100901?pageNumber=1&virtualBrandChannel=0>.

⁴¹ The Rendition Project, *supra* note 1.

security building in Tripoli.⁴² These documents provided evidence of communications between Moussa Koussa (Gaddafi's Head of Libyan Intelligence), the United States Central Intelligence Agency (CIA), the United Kingdom's secret intelligence service M16, and intelligence agencies of other countries.⁴³

27. These documents, and other sources, revealed that while UK officials were directly involved in the rendition and torture of Belhadj and Bouchar, the United States was fully implicated throughout.⁴⁴ In addition to having been kidnapped and extraordinarily rendered as set out in paragraphs 13-15 above and the harsh interrogation undertaken by U.S. officials as stated in paragraph 18 above, the documents describe U.S. offers to transfer detainees from U.S. to Libyan custody, and U.S. requests for detention and interrogation of other suspects.⁴⁵ The documents show that "the US sought promises of humane treatment from a government well known to practice torture," said Bouckaert.⁴⁶ The United States was fully aware that Gaddafi often used torture to interrogate his dissidents, and efforts seeking such assurances cannot be viewed as anything but perfunctory.⁴⁷

28. Specifically, evidence shows that the US government "sent a series of faxes to the Libyan authorities detailing US arrangements for Belhadj's extradition from Malaysia and

⁴² *Id.*; Aljazeera, "The Tripoli Documents," *Aljazeera* (Dec. 18, 2013), <http://www.aljazeera.com/programmes/peopleandpower/2013/12/tripoli-documents-2013121719193205924.html> (including scans of the original documents; *see also* Human Rights Watch, *supra* note 40).

⁴³ *Id.*

⁴⁴ Reprieve, *supra* note 7; Human Rights Watch, "US/UK: Documents Reveal Libya Rendition Details," *Human Rights Watch* (Sept. 8, 2011), <https://www.hrw.org/news/2011/09/08/us/uk-documents-reveal-libya-rendition-details>.

⁴⁵ Human Rights Watch, *supra* note 44.

⁴⁶ *Id.*

⁴⁷ *Id.*

transfer to US custody.”⁴⁸ They also emphasized the U.S. commitment to rendering him to Libyan custody.⁴⁹

29. Moreover, as noted above, flight records indicated that Aero Contractors, a North Carolina-based company, was responsible for the aircrafts and flights that rendered Belhadj to torture.⁵⁰
30. Based upon the torture and detention they suffered, Belhadj and Bouchar, represented by Cori Crider of the human rights organization Reprieve and Sapna Malik of the London-based law firm Leigh Day, have lodged a judicial review claim with the high court of London to challenge the decision not to bring charges against government officials for the violations they suffered.⁵¹
31. Lawyers for Belhadj and Bouchar had filed suit in the High Court of Justice of England and Wales against former foreign secretary Jack Straw and members of various UK intelligence agencies after the UK government refused to apologize or acknowledge its involvement.⁵² Belhadj and Bouchar refused to settle their case without an admission of liability from the British government.⁵³ They have asked for an apology and a token payment from each of the defendants.⁵⁴
32. Despite various attempts by the UK government to thwart the legal proceedings,⁵⁵ Belhadj and Bouchar have persisted in their efforts to obtain accountability. At the time of this writing, the UK Supreme Court has finally acknowledged that, at least with regard

⁴⁸ Belhadj v. Straw [2014] EWCA (Civ) 1394 [9].

⁴⁹ *Id.*

⁵⁰ Cobain, *supra* note 11.

⁵¹ Reprieve, *supra* note 7.

⁵² Cobain, *supra* note 11; *see also* Belhadj v. Straw [2014] EWCA (Civ) 1394 [8].

⁵³ Reprieve, *supra* note 7; Belhadj v. Straw at [26].

⁵⁴ Reprieve, “Supreme Court Rules Against UK Government in M16-CIA Torture Case,” *Reprieve* (Jan. 17, 2017), <http://www.reprieve.org.uk/press/supreme-court-rules-uk-government-mi6-cia-torture-case/>.

⁵⁵ Cobain, *supra* note 11.

to British torturers, their case will proceed.⁵⁶ The Court ruled that ministers could not claim “state immunity” or avoid trial based on the doctrine of “foreign acts of state.”⁵⁷ Moreover, the facts as presented in the case clearly implicate the United States in the rendition and torture they suffered. However, no U.S. officials or judicial authority have made any effort to acknowledge the torture suffered by Belhadj and his wife or offer any measure of accountability and repair.

33. Belhadj and Bouchar have been living in Libya with their children since 2012.⁵⁸

34. Belhadj, in an October 2014 interview with Guardian after winning the earlier round in his legal battle, explained his desire for redress and said, “I’m not interested in taking revenge for the past ... I feel I am getting closer to realizing justice in my case.”⁵⁹

III. Violations of International, Federal, and State Law

35. The treatment of Belhadj violated several international human rights treaties, as well as provisions of United States federal and North Carolina state law.

A. International Law

36. Article 5 of the Universal Declaration of Human Rights, adopted by the United States, provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶⁰ The physical and psychological abuse of Belhadj clearly violates this provision. Physically, his captors beat him severely, blasted him with

⁵⁶ Owen Bowcott & Ian Cobain, “Jack Straw and UK Government Must Face Kidnap and Torture Claims, Court Rules,” *The Guardian* (Jan. 17, 2017), <https://www.theguardian.com/world/2017/jan/17/libyan-dissident-abdel-hakim-belhaj-wins-right-to-sue-uk-government-over-rendition>.

⁵⁷ *Id.*

⁵⁸ Cobain, *supra* note 11.

⁵⁹ *Id.*

⁶⁰ Universal Declaration of Human Rights, art. 5, Dec. 10, 1948, 217 A (III).

deafeningly loud music, forced him into painful stress positions, and deprived of sleep and daylight. Psychologically, he was constantly interrogated, humiliated, stripped naked, deprived of human contact, confined to the dark, and held in solitary confinement for several years. This treatment is clearly cruel, inhuman, and degrading torture.

37. Article 7 of the International Covenant on Civil and Political Rights, signed and ratified by the United States, states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶¹ The extraordinary rendition and torture of Belhadj clearly violates this provision as well.

38. The Convention Against Torture (CAT), signed and ratified by the United States, creates a non-derogable prohibition on torture.⁶² It states that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”⁶³ CAT defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁶⁴ The torture of Belhadj violated this non-negotiable ban on torture. As stated, Belhadj was subjected to both

⁶¹ International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.

⁶² Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment, art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁶³ *Id.*

⁶⁴ *Id.* at art. 1.

physical and mental torture, that caused him severe pain and suffering, both at the time and years later. It was intentionally committed by his captors to attempt to obtain information from him.

39. CAT also provides that no state party shall extradite a person to another State where there are “substantial ground for believing that he would be in danger of being subjected to torture.”⁶⁵ The United States clearly violated this provision of CAT when it made arrangements to transfer Belhadj to Libya. The United States was fully aware of the gross human rights violations, including torture, that were committed by Gaddafi in Libya, and they still assisted with the extradition of Belhadj to his custody.

40. Under the Supremacy Clause, international human rights treaty laws entered into by the United States bind private actors, as well as the state of North Carolina. Furthermore, Aero would not have been able to conduct the rendition flight of Belhadj without state government resources and authorization. Therefore, Aero, and the state of North Carolina and its political subdivisions violated U.S.-ratified international human rights treaties as well for their role in rendering Belhadj to be tortured and torturing Belhadj during the rendition flight itself.

B. United States Federal Law

41. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, U.S. federal law prohibits torture outside of the United States if the offender is a “national of the United States” or “present in the United States.”⁶⁶ “Torture” is defined as “an act committed by a person acting under the color of law specifically

⁶⁵ *Id.* at art. 3.

⁶⁶ 18 U.S.C. §2340A(a-b).

intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.”⁶⁷ U.S. government officials likely violated this law when they were involved in kidnapping, detaining, interrogating and torturing Belhadj at sites outside of the United States.

42. Other provisions of federal law also prohibit torture and place restrictions on interrogation, including the Torture Victims Protection Act of 1991⁶⁸, War Crimes Act of 1996⁶⁹, Detainee Treatment Act of 2005⁷⁰, and Section 1045 of the National Defense Authorization Act of 2016.⁷¹ US government officials likely violated these laws when they were involved in detaining, interrogating and torturing Belhadj at sites outside of the United States. Federal law also applies to the state of North Carolina, and, in particular, Aero, because of the Supremacy Clause. North Carolina actors and Aero likely violated the federal law noted as well for their role in detaining and rendering Belhadj to be tortured.

C. North Carolina State Law

43. North Carolina state law prohibits the actions committed against Belhadj as well. Article 1, Section 19 of the North Carolina Constitution provides that “no person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or

⁶⁷ *Id.* at §2340(1).

⁶⁸ 106 Stat. 73 (1992) (establishing a civil action for recovery of damages from an individual who engages in torture).

⁶⁹ 110 Stat. 2104 (1996) (providing that the United States code would reflect the obligations of the United States under the Geneva Convention to provide criminal penalties for certain war crimes, which include torture).

⁷⁰ 119 Stat. 2739 (2006) (part of the Department of Defense Appropriations Act of 2006, prohibits cruel, inhuman, or degrading treatment or punishment of detainees and provides for “uniform standards” for interrogation).

⁷¹ H.R. 1735 (2016) (placing limits on interrogation).

in any manner of deprived of his life, liberty, or property.”⁷² Aero Contractors used North Carolina state resources, staff, and money to operate the airplanes that rendered Belhadj to Libya. The 17-hour rendition flight itself involved torture; Belhadj was handcuffed and blindfolded, hooded and shackled to the floor of the plane in a stress position, and beaten over the course of the long flight. He was forced to drink water but prevented from using the bathroom. These actions constitute torture, and took place right on the plane that was operated by Aero out of the Johnston County airport in North Carolina. Aero’s actions clearly violate the North Carolina Constitution.

44. North Carolina statutes also prohibit kidnapping, involuntary servitude, and human trafficking and conspiracy to do the same.⁷³ The prohibition extends to corporations, in that “any firm or corporation convicted of kidnapping shall be punished by a fine . . . and its charter and right to do business in the State of North Carolina shall be forfeited.”⁷⁴ Aero’s actions, as noted above, violate these provisions because they aided and abetted and conspired in North Carolina to assist in the kidnapping of Belhadj.

45. As noted, the treatment of Belhadj violates the United States’ claimed commitment to the non-derogable prohibition on torture, among other significant human rights values. These egregious human rights violations have been harmful not only to Belhadj as an individual, but also the state of North Carolina and the United States as a whole. Belhadj is entitled to remedy and repair from the United States, the state of North Carolina and its political subdivisions, and Aero Contractors.

⁷² N.C. CONST. ART. 1 §19.

⁷³ N.C. Gen. Stat. §14-39 (2017).

⁷⁴ *Id.*

Appendix

Aljazeera, “The Tripoli Documents,” *Aljazeera* (Dec. 18, 2013), <http://www.aljazeera.com/programmes/peopleandpower/2013/12/tripoli-documents-2013121719193205924.html>.

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The Rendition Project, “Abdel Hakim Belhadj and Fatima Bouchar,” *The Rendition Project* (last visited Feb. 4, 2017), https://www.therenditionproject.org.uk/prisoners/belhadj_bouchar.html.

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United States Central Intelligence Agency (CIA) memo, “Planning for the Capture and Rendition of Abdullah Al-Sadiq,” (Mar. 6, 2004).

Universal Declaration of Human Rights, Dec. 10, 1948, 217 A (III).

Fatima Bouchar

I. Introduction

1. Fatima Bouchar is one of the only women to have been identified as a victim of extraordinary rendition and torture in the CIA Torture and Extraordinary Rendition Program. She was four months pregnant when she was captured, interrogated, and tortured for many months. Her captors flew her and her husband, Abdel Hakim-Belhadj, on a plane operated by Aero Contractors headquartered in Johnston County, NC and delivered them to be tortured in Libya. There, in one of Gaddafi's prisons, Bouchar was tortured while pregnant to the point that her baby was struggling to survive. Despite their horrifying experiences, Belhadj and Bouchar continue even today to attempt to obtain accountability from the governments involved in their treatment. They are passionate about making their story heard and obtaining acknowledgement. The couple rejected a settlement offered by the UK government that failed to include an official apology for their treatment; in their view, without an acknowledgment of the torture they suffered, a settlement would be without meaning. It is the goal of this narrative to discuss the mistreatment of Bouchar and the violations of international, federal, and domestic law committed by the United States government.

II. Facts

2. Fatima Bouchar is a Moroccan citizen.¹ In 2003, she married Abdel-Hakim Belhadj, who was active in efforts to oppose the rule of Muammar Gaddafi (Colonel Gaddafi).²

¹ The Rendition Project, "Abdel Hakim Belhadj and Fatima Bouchar," *The Rendition Project* (last visited Feb. 4, 2017), https://www.therenditionproject.org.uk/prisoners/belhadj_bouchar.html.

² *Id.*

Bouchar's husband was in danger because of his opposition activities and they sought a safe place to live, traveling through Malaysia before moving to China.³

3. In 2004, Belhadj and Bouchar had been in China for less than a year.⁴ Bouchar was 30 years old and about four months pregnant at the time.⁵ However, fearful that they were under surveillance by Gaddafi's authorities, in February 2004 they decided to leave China and to seek asylum in the United Kingdom by traveling first through Malaysia.⁶
4. Upon trying to leave Malaysia, Belhadj and Bouchar were denied exit from Malaysia and detained by immigration authorities there. Bouchar was detained and interrogated there for two weeks and held in deplorable conditions while she was pregnant.⁷
5. Eventually, Malaysian authorities told them they could travel to the UK by way of Bangkok.⁸ On March 7, 2004, a pregnant Bouchar and her husband were then put on a plane bound for London on a standard commercial flight with a stop in Bangkok. However, when they landed in Bangkok on they were taken to a U.S.-run detention facility and immediately separated.⁹ Bouchar, in her pregnant state, was dragged away.¹⁰
6. Bouchar was terrified upon being separated from her husband. She feared he was going to be killed and she would never see him again.¹¹

³ *Id.*

⁴ Reprieve, "Abdul-Hakim Belhaj and Fatima Boudchar," *Reprieve* (last visited Feb 4, 2017), <http://www.reprieve.org.uk/case-study/abdul-hakim-belhaj/>.

⁵ *Id.*; The Rendition Project, *supra* note 1; Stephen Glover, "First the disgrace, then the cover-up," *Daily Mail* (April 9, 2012), <http://www.dailymail.co.uk/debate/article-2127441/Torture-claims-First-disgrace-cover-up.html>.

⁶ Reprieve, *supra* note 7.

⁷ *Id.*

⁸ *Id.*

⁹ Ian Cobain, "Special Report: Rendition Ordeal that Raises New Questions About Secret Trials," *The Guardian* (Apr. 8, 2012), <https://www.theguardian.com/world/2012/apr/08/special-report-britain-rendition-libya>. The facility was likely "within the perimeter of Don Muang international airport." *Id.*

¹⁰ Human Rights Watch, "Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya" 93 *Human Rights Watch* (Sept. 5, 2012), <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>

¹¹ *Id.*

7. Bouchar's own experience in Bangkok was terrifying. She was blindfolded and made to wear ear defenders and thus suffered extreme sensory deprivation.¹² Her captors used a plastic tie to bind her legs from her ankles to her knees and cuffed her wrists.¹³
8. She was transported in a truck for about thirty minutes, and then bound to a stretcher and carried to a cell before her restraints were removed.¹⁴
9. She describes her captors as "dressed in black with balaclavas on, speaking English with American accents."¹⁵
10. While pregnant, a fact known to her captors, she was chained to the wall in her cell by her wrist and opposite ankle.¹⁶ She was barely able to sit or lie down on the floor, and could not move. She experienced great pain.¹⁷
11. There was a camera in the room, and every time she attempted to move, her captors would rush in causing her fear and anxiety.¹⁸
12. During this period, she was given no food whatsoever and experienced extreme fluctuations in temperature.¹⁹
13. To this day, the torture and inhumane treatment Bouchar experienced has caused her to continue to suffer greatly. She finds it difficult to discuss her experiences in Bangkok.²⁰

¹² The Rendition Project, *supra* note 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Human Rights Watch, "Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi's Libya" 96 *Human Rights Watch* (Sept. 5, 2012), <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>

¹⁷ *Id.*

¹⁸ Cobain, *supra* note 11.

¹⁹ The Rendition Project, *supra* note 1.

²⁰ Reprieve, *supra* note 7.

14. After several days of this torture, three Americans forced Bouchar back onto a stretcher. They took tape and wound it around her body from head to toe for the trip back to the Bangkok airport.²¹
15. Bouchar describe her captors as “two tall, thin men and an equally tall woman.”²² Mostly they were silent, and she never saw their faces because they were still dressed all in black and always wore black balaclavas.²³
16. Her captors bound one of her hands tightly against her womb and she was unable to move.²⁴ They plastered tape all around and across her face as well. Because her right eye was open when they taped her face, it was taped over while opened causing extreme discomfort and anxiety.²⁵
17. When she was brought to the Bangkok airport, her captors cut the tape from her body but left it on her face, so that her right eye was taped open for the entirety of the 17-hour rendition flight that followed, to Tripoli, Libya.²⁶ She was also hooded and unable to see, hear or move.²⁷ She described the experience as “agony.”²⁸
18. Before the flight, her captors cut her clothes off and someone pressed their finger sharply into her belly button, which she described as “excruciating.”²⁹ Someone injected her in her arm, and re-taped her to a stretcher from her feet to her neck.³⁰

²¹ The Rendition Project, *supra* note 1; Cobain, *supra* note 11.

²² Cobain, *supra* note 11.

²³ *Id.*

²⁴ The Rendition Project, *supra* note 1.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Human Rights Watch, “Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi’s Libya” 94, *Human Rights Watch* (Sept. 5, 2012), <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>

²⁸ *Id.*; Cobain, *supra* note 11.

²⁹ The Rendition Project, *supra* note 1.

³⁰ *Id.*

19. Analysis of flight data shows that Bouchar and her husband were kidnapped and flown on the Boeing 737 with registration number N313P operated by Aero Contractors headquartered in Johnston County, NC, United States and that flew from the county airport in Johnston County.³¹
20. Bouchar was completely unaware of where she was going or that her husband was on the same flight.³² Only upon landing in Tripoli did she hear her husband grunting with pain nearby and realize he was there.³³ She was terrified that as a result of the abuse she had suffered, she had lost her baby.³⁴
21. In Libya, Gaddafi's police took Bouchar and her husband to Gaddafi's Tajoura prison.³⁵ Tajoura was run by Moussa Koussa, Gaddafi's Head of Libyan Intelligence.³⁶ Her captors kept Bouchar blindfolded and bound for several hours upon arrival.³⁷
22. After four days, her captors began interrogation sessions. Bouchar was interrogated twice a day for up to five hours each time.³⁸ She was psychologically tortured.³⁹
23. She was refused a medical examination for 2 months.⁴⁰ When she was finally seen by a doctor, the doctor reported that she and the baby were both very weak and her womb was "too dry" to allow the baby to move around properly.⁴¹

³¹ *Id.*

³² Cobain, *supra* note 11.

³³ *Id.*

³⁴ Belhaj v. Straw [2014] EWCA (Civ) 1394 par.13.

³⁵ The Rendition Project, *supra* note 1.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*; Cobain, *supra* note 11.

³⁹ The Rendition Project, *supra* note 1.

⁴⁰ *Id.*

⁴¹ *Id.*

24. At one point, the interrogators brought a cot, baby clothes, nappies (diapers), bed cover, and baby bath into the cell.⁴² Bouchar was terribly frightened and said that she “really thought [she] was going to have to have [her] baby there, and that [they] would both be held there.”⁴³
25. On June 21, 2004, after four months of harrowing detention and torture, Bouchar was released.⁴⁴ However, she was not permitted to leave the country.⁴⁵
26. She gave birth to her son, Abdurahim, on July 14, 2004.⁴⁶ Bouchar said, “after the terror of the abduction and the CIA prison he was born weighing only four pounds.”⁴⁷
27. Bouchar’s husband Belhadj was detained in Tajoura for four more years and tortured and interrogated repeatedly.⁴⁸ He was finally released on March 23, 2010, as part of a release of hundreds of prisoners negotiated by Saif al-Islam, Gaddafi’s son, and his foundation that was geared toward national reconciliation and social peace.⁴⁹
28. While Bouchar’s husband testified about his and Bouchar’s rendition and torture and provided specific and detailed information to a researcher from *Human Rights Watch* in 2009, it was not until 2011 that significant documentation and evidence of American and British involvement was found.⁵⁰

⁴² Cobain, *supra* note 11.

⁴³ *Id.*

⁴⁴ The Rendition Project, *supra* note 1.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Owen Bowcott & Ian Cobain, “Jack Straw and UK Government Must Face Kidnap and Torture Claims, Court Rules,” *The Guardian* (Jan. 17, 2017), <https://www.theguardian.com/world/2017/jan/17/libyan-dissident-abdel-hakim-belhaj-wins-right-to-sue-uk-government-over-rendition>.

⁴⁸ See Reprieve, *supra* note 7; The Rendition Project, *supra* note 1.

⁴⁹ *Id.*; Human Rights Watch, “Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi’s Libya,” *Human Rights Watch* (Sept. 5, 2012), <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>; Salah Sarrar, “Ex-Islamists Walk Free from Libyan Jail,” *Reuters Africa* (Sept. 1, 2010),

<http://af.reuters.com/article/topNews/idAFJOE68003B20100901?pageNumber=1&virtualBrandChannel=0>.

⁵⁰ The Rendition Project, *supra* note 1.

29. In September 2011, Peter Bouckaert, the *Human Rights Watch* emergencies director, discovered the “Tripoli Documents” while examining the Libyan government’s external security building in Tripoli.⁵¹ These documents provided evidence of communications between Libyan Intelligence, the United States Central Intelligence Agency (CIA), the United Kingdom’s secret intelligence service M16, as well as intelligence agencies of other countries.⁵²
30. These documents, and other sources, revealed that while UK officials were directly involved in the rendition and torture of Belhadj and Bouchar, the United States was fully implicated throughout.⁵³ In addition to having been kidnapped and extraordinarily rendered as set out in paragraphs 16-19 above and the harsh interrogation undertaken by U.S. officials as stated in paragraph 21 above, the documents described US offers to transfer detainees from U.S. to Libyan custody, and U.S. requests for detention and interrogation of other suspects.⁵⁴ The documents show that “the US sought promises of humane treatment from a government well known to practice torture,” said Bouckaert.⁵⁵ The United States was very aware that Gaddafi often used torture to interrogate his dissidents, and efforts seeking such assurances cannot be viewed as anything but perfunctory.⁵⁶

⁵¹ *Id.*; Aljazeera, “The Tripoli Documents,” *Aljazeera* (Dec. 18, 2013), <http://www.aljazeera.com/programmes/peopleandpower/2013/12/tripoli-documents-2013121719193205924.html> (including scans of the original documents; *see also* Human Rights Watch, *supra* note 40).

⁵² *Id.*

⁵³ Reprieve, *supra* note 7; Human Rights Watch, “US/UK: Documents Reveal Libya Rendition Details,” *Human Rights Watch* (Sept. 8, 2011), <https://www.hrw.org/news/2011/09/08/us/uk-documents-reveal-libya-rendition-details>.

⁵⁴ Human Rights Watch, *supra* note 44.

⁵⁵ *Id.*

⁵⁶ *Id.*

31. Specifically, evidence shows that the U.S. government “sent a series of faxes to the Libyan authorities detailing US arrangements for Bouchar’s husband’s extradition from Malaysia and transfer to US custody.”⁵⁷ They emphasized the U.S. commitment to rendering him to Libyan custody.⁵⁸
32. Moreover, as noted above, flight records indicated that Aero Contractors, a North Carolina-based company, was responsible for the aircrafts and flights that rendered Bouchar to torture.⁵⁹
33. Belhadj and Bouchar, represented by Cori Crider of the human rights organization Reprieve and Sapna Malik of the London-based law firm Leigh Day, have lodged a judicial review claim with the high court of London to challenge the decision not to bring charges.⁶⁰
34. Lawyers for Belhadj and Bouchar had filed suit in the High Court of Justice of England and Wales against former foreign secretary Jack Straw and members of various UK intelligence agencies after the UK government refused to apologize or acknowledge its involvement.⁶¹
35. Belhadj and Bouchar refused to settle their case without an admission of liability from the British government.⁶² They have asked for an apology and a token payment from each of the defendants.⁶³

⁵⁷ Belhaj v. Straw [2014] EWCA (Civ) 1394 [9].

⁵⁸ *Id.*

⁵⁹ Cobain, *supra* note 11.

⁶⁰ *Id.*

⁶¹ Cobain, *supra* note 11; *see also* Belhaj v. Straw [2014] EWCA (Civ) 1394 [8].

⁶² Reprieve, *supra* note 7; Belhaj v. Straw at [26].

⁶³ Reprieve, “Supreme Court Rules Against UK Government in M16-CIA Torture Case,” *Reprieve* (Jan. 17, 2017), <http://www.reprieve.org.uk/press/supreme-court-rules-uk-government-mi6-cia-torture-case/>.

36. The UK government made various attempts to thwart the legal proceedings, including efforts to shunt the case into secret court hearings.⁶⁴
37. In December 2013, the High Court found that although Belhadj and Bouchar had a “potentially well-founded claim,” their case could not be heard because of the possibility of damage to relations between the United States and the United Kingdom.⁶⁵
38. On appeal to the UK Supreme Court, the Court reversed the decision of the High Court and Belhadj and Bouchar’s case was allowed to be heard.⁶⁶ The Court ruled that ministers could not claim “state immunity” or avoid trial based on the doctrine of “foreign acts of state.”⁶⁷ Moreover, the facts as presented in the case clearly implicate the United States in the rendition and torture they suffered.
39. Belhadj and Bouchar have been living in Libya with their children since 2012.⁶⁸ Bouchar said, “we have waited so long for this result that I had four more children in the meantime.”⁶⁹

III. Violations of International, Federal, and State Law

40. The treatment of Bouchar violated several international human rights treaties, as well as provisions of United States federal and North Carolina state law.

A. International Law

⁶⁴ Cobain, *supra* note 11.

⁶⁵ Reprieve, *supra* note 7.

⁶⁶ Bowcott & Cobain, *supra* note 47.

⁶⁷ *Id.*

⁶⁸ Cobain, *supra* note 11.

⁶⁹ Bowcott & Cobain, *supra* note 47.

41. Article 5 of the Universal Declaration of Human Rights, adopted by the United States, provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁷⁰ The physical and psychological abuse of Bouchar clearly violates this provision. Physically, her captors severely restrained her while she was pregnant, forced her into incredibly painful stress positions, deprived her of food, and subjected her to extreme fluctuations in temperature. Psychologically, she was constantly interrogated, monitored, humiliated, stripped naked, and deprived of human contact. She was also consistently terrified about the condition of her husband and baby. This treatment is clearly cruel, inhuman, and degrading torture.
42. Article 25 of the Universal Declaration of Human Rights provides that “motherhood and childhood are entitled to special care and assistance.”⁷¹ It is clear from the evidence that Bouchar, who was pregnant at the time that she was rendered and tortured, was not provided any kind of special care or assistance. She was tortured, restrained, and moved roughly while four months pregnant, and not provided medical assistance for most of the time she was held captive. The treatment of Bouchar likely violated this provision of the Universal Declaration of Human Rights.
43. Article 7 of the International Covenant on Civil and Political Rights, signed and ratified by the United States, states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁷² The torture of Bouchar clearly violates this provision as well.

⁷⁰ Universal Declaration of Human Rights, art. 5, Dec. 10, 1948, 217 A (III).

⁷¹ *Id.* at art. 25.

⁷² International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.

44. The Convention Against Torture (CAT), signed and ratified by the United States, creates a non-derogable prohibition on torture.⁷³ It states that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”⁷⁴ CAT defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁷⁵ The torture of Bouchar violated this non-negotiable ban on torture. As stated, Bouchar was subjected to both physical and mental torture, that caused her severe pain and suffering, both at the time and years later. It was intentionally committed by her captors to attempt to obtain information from her.

45. CAT also provides that no state party shall extradite a person to another State where there are “substantial ground for believing that he would be in danger of being subjected to torture.”⁷⁶ The United States clearly violated this provision of CAT when it made arrangements to transfer Bouchar to Libya. The United States was fully aware of the

⁷³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment, art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁷⁴ *Id.*

⁷⁵ *Id.* at art. 1.

⁷⁶ *Id.* at art. 3.

gross human rights violations, including torture, that were committed by Gaddafi in Libya, and they still assisted with the extradition of Bouchar to his custody.

46. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, approved by the United Nations in 2010, prohibits “punishment by close confinement or disciplinary segregation” for pregnant women in prison.⁷⁷ Pregnant women prisoners shall also “receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner.”⁷⁸ They shall be provided “adequate and timely food, a healthy environment, and regular exercise opportunities.”⁷⁹ While Bouchar was held in Gaddafi’s prisons, she was refused medical care for two months , food, a healthy environment, and any exercise opportunities. This harmed her health and the health of the baby to the point that at one point her womb was too dry for the baby to move around, and her baby was born at only four pounds. Bouchar was also punished with close confinement in the prison, because she was alone in the cell for long periods of time. It is likely the United States violated the provisions of the United Nations Rules in facilitating and assisting in the treatment of Bouchar.

47. Under the Supremacy Clause, international human rights treaty laws entered into by the United States bind private actors, as well as the state of North Carolina. Furthermore, Aero would not have been able to conduct the rendition flight of Bouchar without state government resources and authorization. Therefore, Aero, and the state of North Carolina and its political subdivisions violated U.S.-ratified international human rights treaties as

⁷⁷ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2010) at Rule 22.

⁷⁸ *Id.* at Rule 48.

⁷⁹ *Id.*

well for their role in rendering Bouchar to be tortured and torturing Bouchar during the rendition flight itself.

B. United States Federal Law

48. In addition to the U.S. Constitution, Eighth Amendment which prohibits cruel and unusual punishment, U.S. federal law prohibits torture outside of the United States if the offender is a “national of the United States” or “present in the United States.”⁸⁰ “Torture” is defined as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.”⁸¹ U.S. government officials likely violated this law when they were involved in kidnapping, detaining, interrogating and torturing Bouchar at sites outside of the United States.

49. Other federal law also prohibits torture and place restrictions on interrogation, including the Torture Victims Protection Act of 1991⁸², War Crimes Act of 1996⁸³, Detainee Treatment Act of 2005⁸⁴, and Section 1045 of the National Defense Authorization Act of 2016⁸⁵. US government officials likely violated these laws when they were involved in detaining, interrogating and torturing Bouchar at sites outside of the United States.

Federal law also applies to the state of North Carolina, and, in particular, Aero, because

⁸⁰ 18 U.S.C. §2340A(a-b).

⁸¹ *Id.* at §2340(1).

⁸² 106 Stat. 73 (1992) (establishing a civil action for recovery of damages from an individual who engages in torture).

⁸³ 110 Stat. 2104 (1996) (providing that the United States code would reflect the obligations of the United States under the Geneva Convention to provide criminal penalties for certain war crimes, which include torture).

⁸⁴ 119 Stat. 2739 (2006) (part of the Department of Defense Appropriations Act of 2006, prohibits cruel, inhuman, or degrading treatment or punishment of detainees and provides for “uniform standards” for interrogation).

⁸⁵ H.R. 1735 (2016) (placing limits on interrogation).

of the Supremacy Clause. North Carolina actors and Aero likely violated the federal law noted as well for their role in detaining and rendering Bouchar to be tortured.

C. North Carolina State Law

50. North Carolina state law prohibits the actions committed against Bouchar as well. Article 1, Section 19 of the North Carolina Constitution provides that “no person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner of deprived of his life, liberty, or property.”⁸⁶ Aero Contractors used North Carolina state resources, staff, and money to operate the airplanes that rendered Bouchar to Libya. The 17-hour rendition flight itself involved torture; her captors bound her with tape from head to toe, and her right eye was taped open for the entire agonizing 17 hours. She was hooded and unable to see, hear, or move, all while four months pregnant. These actions constitute torture, and took place right on the plane that was operated by Aero out of the Johnston County airport in North Carolina. Aero’s actions clearly violate the North Carolina Constitution.

51. North Carolina statutes also prohibit kidnapping, involuntary servitude, and human trafficking and conspiracy to do the same.⁸⁷ The prohibition extends to corporations, in that “any firm or corporation convicted of kidnapping shall be punished by a fine . . . and its charter and right to do business in the State of North Carolina shall be forfeited.”⁸⁸ Aero’s actions, as noted above, violate these provisions because they conspired in North Carolina to assist in the kidnapping of Bouchar.

⁸⁶ N.C. CONST. ART. 1 §19.

⁸⁷ N.C. Gen. Stat. §14-39 (2017).

⁸⁸ *Id.*

52. As noted, the treatment of Bouchar violates the United States' claimed commitment to the non-derogable prohibition on torture, among other significant human rights values. These egregious human rights violations have been harmful not only to Bouchar as an individual, but also the state of North Carolina and the United States as a whole. They must be remedied by the United States, the state of North Carolina and its political subdivisions, and Aero Contractors.

Appendix

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Ammar al-Baluchi

Introduction

1. Ammar al-Baluchi, also known as Ali Abdul Aziz Ali, was born in August 1977 in Kuwait.¹ Shortly before he was kidnapped, he worked as a technician for a computer company in Dubai.² He is the nephew of Khaled Sheikh Mohammed who is alleged by U.S. authorities to be “the mastermind” of the events of September 11, 2001.³ On April 30, 2003, Al-Baluchi was captured while in Pakistan by Pakistani forces and within a short time (likely two weeks), he was delivered to the custody of the CIA and extraordinarily rendered to various detention sites for interrogation by torture.⁴ In 2006, he was transferred to Guantánamo Bay, Cuba where he remains at the present time, detained in “Camp 7,” known as having the harshest conditions of confinement at Guantánamo, and whose existence was secret and classified until 2008.⁵

2. In 2009, while being detained in Guantánamo, the U.S. Attorney General Eric Holder stated that Mr. al-Baluchi would be tried in federal district court in New York City for alleged

¹ The Rendition Project, *Ammar Al-Baluchi* (last visited Dec. 2, 2017) at <https://www.therenditionproject.org.uk/prisoners/amm-al-baluchi.html>.

² Department of Defense (2007) *Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN10018*, [https://www.therenditionproject.org.uk/pdf/PDF%20215%20\[DoD%20CSRT%20Hearing%20Transcript%20-%20ISN%2010018%20Ammar%20Al-Baluchi%20\].pdf](https://www.therenditionproject.org.uk/pdf/PDF%20215%20[DoD%20CSRT%20Hearing%20Transcript%20-%20ISN%2010018%20Ammar%20Al-Baluchi%20].pdf).

³ *Id.* The Rendition Project, *Khaled Sheikh Mohammed* (last visited Dec. 2, 2017) at <https://www.therenditionproject.org.uk/prisoners/khaled-sheikh-mohammed.html>

⁴ The Rendition Project, *Ammar Al-Baluchi*, *supra* note 1. Greg Miller *et al.*, *CIA Misled on Interrogation Program, Senate Report Says*, Washington Post, Mar. 31, 2014, 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?utm_term=.e645495a9ba9. See The Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program 120 (hereinafter SSCI Report) (confirming al Baluchi’s capture in April 2003) at https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf.

⁵ The Guantánamo Docket, N.Y. Times, *Abd al Aziz Ali* (also known as Ammar Al Baluchi). This information is based on Department of Defense documents cannot be independently verified and contain some assertions that have been challenged by detainees or their lawyers or undermined by other evidence. See <https://www.nytimes.com/interactive/projects/guantanamo/detainees/10018-abd-al-aziz-ali/documents/5#search/p1/BALUCHI>. See Carol ‘Platinum’ Captives Held at Off-Limits Gtmo Camp, Miami Herald, July 30, 3103 at <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article1932471.html>.

terrorist acts related to 9/11.⁶ However, in April 2011, Holder retracted his decision to try Mr. al Baluchi in an Article III court and instead announced that he would be tried before a military commission in Guantánamo.⁷ He has been held in CIA custody for the past fourteen years and denied any semblance of due process since his capture.

3. Since his kidnapping in April 2003 and extraordinary rendition, Mr. al Baluchi was brutally tortured and has suffered unimaginable physical and mental degradation.⁸ His exact whereabouts from April 2003 to 2006 have been kept secret from the public and his defense counsel; thus, it is difficult to fully narrate his circumstances.⁹ Human Rights Watch lists him as one of the “ghost detainees—detainees who are not given any legal rights or access to counsel, and who are likely not reported to or seen by the International Committee of the Red Cross.”¹⁰

4. The Senate Select Committee Report on Intelligence found that the CIA provided inaccurate information pertaining to the interrogation of Mr. al Baluchi.¹¹

I. Detention and Torture in Detention Site COBALT/Afghanistan

5. Rendition flight research indicates that Mr. al Baluchi was initially delivered to Detention Site COBALT (also known as the Salt Pit) in Afghanistan, likely in May of 2003.¹² According to the Senate Select Committee on Intelligence, he was rendered to the custody of the CIA.¹³ The Senate report also documents that Mr. al Baluchi was immediately subjected to “enhanced

⁶ Guantanamo- Human Rights Watch, *Ali Abdul Aziz Ali (AKA, Ammar al-Baluchi)* Oct. 26, 2012, at <https://www.hrw.org/news/2012/10/26/ali-abdul-aziz-ali-aka-ammar-al-baluchi>.

⁷ *Id.* Mr. Al-Baluchi was to be tried along with four other co-defendants who also were determined to be tried before the military commission. *Id.*

⁸ Sterling R. Thomas, Lt Col, USAF, Defense Counsel for Mr. Ammar al Baluchi, Letter to North Carolina Commission of Inquiry on Torture, Nov. 28, 2017 (on file with authors).

⁹ *Id.*

¹⁰ Human Rights Watch, *List of “Ghost Prisoners” Possibly in CIA Custody* Nov. 30, 2005, at <http://pantheon.hrw.org/legacy/english/docs/2005/11/30/usdom12109.htm>.

¹¹ SSCI, *supra* note 4, at 289.

¹² The Rendition Report, *supra* note 1.

¹³ *Id.*

interrogation techniques” (EITs).¹⁴ He is reported to have “endured a regime that included being dunked in a tub filled with ice water. CIA interrogators forcibly kept his head under the water while he struggled to breathe and beat him repeatedly, hitting him with a truncheon-like object and smashing his head against a wall, officials said.”¹⁵ His torture continued even after it appeared that he had been cooperating prior to his having been turned over to the CIA and prior to the administration of “EITs” and had provided information to a foreign government officer who relied on “rapport-building techniques” in order to communicate with him.¹⁶ Mr. al Baluchi states that he fabricated inaccurate information during the CIA torture sessions.¹⁷ Despite repeated claims that the CIA obtained useful information from Mr. al Baluchi as a result of EITs (torture), the Senate report found that such claims were untrue.¹⁸

II. Extraordinary Rendition to Detention and Torture in Detention Site BLUE/Poland

6. Rendition records indicate that that Mr. al Baluchi was extraordinarily rendered from Afghanistan to the CIA black site, BLUE in Poland some time during the period from June 3-7, 2003 on a plane, tail number N379P operated by Aero Contractors, Inc., a North Carolina corporation headquartered in Smithfield, N.C.¹⁹

7. There is no documentation of Mr. al Baluchi’s experience while he was extraordinarily rendered on the Aero flight. However, descriptions from other extraordinary victims who were flown on Aero planes do not vary and establish that a standard operating procedure was used in

¹⁴ SSCI Report, *supra* note 4 at 241, 244.

¹⁵ Miller *et al.*, *supra* note 4. SSCI Report, *supra* note 4, at 245.

¹⁶ SSCI Report, *supra* note 4, 244 n.1379, 356 n.2004.

¹⁷ SSCI Report, *supra* note 4 at 388, 399.

¹⁸ SSCI Report at 479

¹⁹ See also The Rendition Project, *Testimony to NCCIT – Key Points Regarding Role of Aero Contractors*, Nov. 2017 (on file with authors). SSCI Report, *supra* note 4 at 388, 399. (observing that according to the Senate Select Committee on Intelligence Report, al Baluchi was rendered with Walid bin Attash first to COBALT. Documentation shows that bin Attash was then delivered to BLUE and that the two were held along side each other; thus, the assumption that al Baluchi was also delivered to BLUE.

each of these transfers. It is reasonable to assume that Mr. al Baluchi endured the same horrific abuse. The protocol during the transport process was aimed at forcing a state of learned helplessness upon detainees.²⁰ First, detainees would have their clothing forcibly removed with either knives or scissors.²¹ Next, the C.I.A. would take pictures of the now naked detainee and force a suppository into their rectum in order to sedate them for the duration of the transport.²² Finally, a detainee would be put in a diaper, dressed in non-descript clothing, blindfolded, have their head covered with a black hood, and shackled.²³ This process was methodical and deviously constructed to infantilize detainees and has been ruled by the European Court of Human Rights to constitute a form of torture.²⁴

8. Mr. al Baluchi in an unclassified statement filed on May 12, 2016 with the military commission at Guantánamo Bay, described the torture he suffered after the Aero plane delivered him to the CIA black site in Poland. He states that U.S. government agents shaved his head.²⁵ In his own words:

“and then they smashed my head against the wall repeatedly. It continued until I lost count at each session. As my head was being hit each time, I would see sparks of lights in my eyes. As the intensity of these sparks were increasing as a result of the repeated hitting then all of sudden I felt a strong jolt of electricity in my head. Then I couldn’t see anything everything went dark and I passed out.”²⁶

9. Mr. al Baluchi was then suspended from a ceiling in a dark and cold cell.²⁷ His legs were swollen, and the handcuffs were cutting his wrists which were pulled over his head.²⁸ Extremely

²⁰ James E. Pfander, *Const. Torts & The War on Terror*, 35 (2017). International Committee of the Red Cross: ICRC Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody (2007) [hereinafter ICRC].

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*; *El-Masri v. Macedonia*, Eur. Ct. Hum. Rts., No. 39630/09 (2012).

²⁵ Statement Ammar al Baluchi 1, filed May 12, 2016 attached as an Appendix to this narrative.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

loud sounds were blasted into the cell.²⁹ He continued to be intermittently hit on his head.³⁰ He notes that the torture he described in his written statement was only partial description of his suffering.³¹

10. In addition to the physical torture he experienced, he was threatened and taunted. Although thirsty and exhausted, if he asked for water, his captors brought a cup of water to his cell and then threw it on the floor.³² Mr. al Baluchi has great difficulty sleeping and suffers from psychological ailments and nightmares.³³

11. An Aero operated plane that flew from a political subdivision of the state of North Carolina delivered Mr. al Baluchi to the CIA black site where the above described torture took place.

III. Extraordinary Rendition to Detention and Torture in Detention Site Romania

12. Rendition flight records and journalist reports show that on Sept. 22, 2003, Mr. al Baluchi was flown from Kabul to a CIA black site in Romania.³⁴

13. Documents suggest that Mr. al Baluchi was extraordinarily rendered to Romania on an Aero-operated plane, tail number N313P that flew from Johnston County airport, in Johnston County, North Carolina.³⁵ The CIA has withheld any information about the details of the rendition, but as described above, it is likely that he was subjected to the same extraordinary operating procedures: his clothes were likely sliced or cut off of him, he would have had to stand naked and humiliated while the snatch team took pictures of him, and he would have had a

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 2.

³² *Id.* at 2.

³³ *Id.*

³⁴ Miller *et al.*, *supra* note 4, The Rendition Project: *Testimony*, *supra* note 19. It is possible that al Baluchi was rendered to Morocco from Afghanistan and then to Romania. See Rendition Project, *supra* note 1.

³⁵ The Rendition Project: *Testimony*, *supra* note 19.

suppository forcefully and painfully inserted into his rectum. He would have had to wear a diaper, blindfolded, hooded, and shackled, and prevented from moving or speaking during the duration of the flight.

14. Similarly, little is known about Mr. al Baluchi's treatment while in the black site in Romania. However, reports detail the condition of the prison. The Bureau of Investigative Journalism found the following: "...the site's own manager considered the prison to be dysfunctional. He was troubled by the "natural and progressive effects of long-term solitary confinement on detainees". And he was exasperated by the personnel deployed there, "more than a few" of whom he described as "basically incompetent". The quality of debriefers and security officers being sent to the site was degenerating..."³⁶ Other reports describe the horrific treatment of detainees who were "subjected to a month of sleep deprivation, stress positions, and other forms of physical interrogation."³⁷ The prison cells were reportedly resting on springs to keep detainees off balance and disoriented.³⁸ The site was shut down in November 2015.³⁹

IV. Summary of Ammar al Baluchi's Torture While in CIA Black Sites

15. Although it is not possible to account for Mr. al Baluchi's whereabouts from month-to-month or year-to-year, his attorney who represents him before the Guantánamo Bay military commissions reports that during the time he was held at black sites, two of which he was delivered to by Aero-operated planes, he suffered

among other methods -water torture, prolonged shackling in stress positions causing permanent nerve damage in his arms and legs, forced nudity, extreme

³⁶ Crofton Black, Sam Raphael, *The Boom and Bust of the CIA's Secret Torture Sites*, Oct. 14, 2015, at <https://www.thebureauinvestigates.com/stories/2015-10-14/revealed-the-boom-and-bust-of-the-cias-secret-torture-sites>.

³⁷ Asawin Subsaeng, *CIA Black Site in Romania: Hidden in Plain Sight*, Mother Jones, Dec. 9, 2011, at <http://www.motherjones.com/politics/2011/12/cia-black-site-romania-hidden-plain-sight/>.

³⁸ Adam Goldman, Matt Apuzzo, *Inside Romania's Secret CIA Prison*, The Independent, Dec. 8, 2011, at <http://www.independent.co.uk/news/world/europe/inside-romaniyas-secret-cia-prison-6273973.html>.

³⁹ Black and Raphael, *supra* note 36.

temperatures, prolonged sleep deprivation using loud music and constant light for over three years, and beatings severe enough to cause a traumatic brain injury.⁴⁰

V. Extraordinary Rendition to Guantánamo Bay

16. After having been held incommunicado for three and a half years by the CIA, in detention sites where he suffered horrendous torture and egregious human rights violations, Mr. al Baluchi was rendered to what is known as “Camp 7” where he remains.⁴¹ Department of Defense records document that he was extraordinarily rendered to Guantánamo Bay on September 4, 2006.⁴²

17. Camp 7 is known to be the harshest of the detention sites in Guantánamo; its very existence was classified and unknown until 2008.⁴³ Detainees are secluded and kept from outside contact. For example, Mr. al Baluchi was not allowed to see his attorney until 2008.⁴⁴ He is deprived of the right to telephone with family members or his lawyers, and have no opportunity to worship with others, to have meals, recreation, or educational opportunities with others.⁴⁵

18. Mr. al Baluchi has been held in near solitary confinement-like conditions for the past eleven years.⁴⁶ These circumstances are almost certain to cause severe mental suffering, including psychotic breaks, as well as serious physical ailments and violate the Convention Against Torture prohibiting torture and cruel, inhuman, and degrading treatment.⁴⁷

⁴⁰ 2017-11-28 NCCIT Thomas Testimony (*hereinafter Thomas Testimony*) (on file with authors) Miller *et al.*, *supra* note 4.

⁴¹ Thomas Testimony, *supra* note 40.

⁴² The Rendition Project, *supra* note 1.

⁴³ Thomas Testimony, *supra* note 40.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ For a thorough description of the psychological and physical effects of torture, see UNC School of Law Immigration/Human Rights Policy Clinic, *Solitary Confinement as Torture*, 63-100 (2014) at <http://www.law.unc.edu/documents/academics/humanrights/solitaryconfinement/fullreport.pdf>.

19. In addition to solitary confinement, while detained in Camp 7, Mr. al Baluchi endures constant noises and vibrations designed to interfere with sleep, and which causes him physical and psychological problems.⁴⁸

20. Mr. al Baluchi was seen by one independent psychologist while at Camp 7 and his attorney submitted the following diagnosis:

traumatic brain injury, post-traumatic stress disorder, chronic headaches, chronic fatigue, vertigo and other pain. He has also been diagnosed by different doctors at different times with other mental and cognitive impairments such as anxiety, depression, memory loss, severe and permanent sleep problems, and extreme sensitivity to light. Finally, Mr. al Baluchi is so damaged by sleep deprivation that he is unable to sleep for more than 2-3 hours at any one time, sometimes going for days at a time without sleep. These conditions stem directly from his time in CIA custody and worsen every year without proper care.⁴⁹

21. However, since his capture, extraordinary renditions and detention including at Camp 7, Mr. al Baluchi has been denied medical care and treatment for these serious injuries and maladies he suffers as a result of the torture inflicted upon him.⁵⁰ His lack of medical care has created additional anxiety and suffering as he fears he is deteriorating to such an extreme that he will soon no longer benefit from treatment.⁵¹ Despite the inevitable brain damage one would suffer as a result of repeated “wallings,” at best, he is prescribed pain killers while being denied medical testing and meaningful or proper care.⁵² He receives no psychological treatment.⁵³

⁴⁸ Thomas Testimony, *supra* note 40 (citing Miami Herald, “Defense Lawyer to Guantanamo Judge: Secret Program May Be Depriving 9/11 Defendant of Sleep,” Oct. 25, 2015, available at <http://www.miamiherald.com/news/nationworld/world/americas/guantanamo/article41409666.html>.)

⁴⁹ *Id.* His attorney further cites as evidence of Mr. al Baluchi’s condition, Associated Press, “Prisoner Tells of ‘Mental Torture’ in Secret Guantanamo Camp,” June 2, 2016, available at <http://bigstory.ap.org/article/c5cb115da8734fdf86ce4a734b7a23cd/prisonertells-mental-torture-secret-Guantánamo-camp>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

22. Mr. al Baluchi is deteriorating while held in Camp 7. He has been held for more than fourteen years and has yet to face trial. His attorney has expressed his fear that he will soon no longer be able to assist in his defense, and that he will remain destroyed both psychologically and physically as a result of the egregious human rights violations he has endured without repair or reparation of any type.⁵⁴

VI. Violations of Law

A. International Law

23. Mr. al Baluchi's treatment was in violation of the following international regulations:
- a. Article 3 of the Universal Declaration guarantees the "right to life, liberty and security of person."⁵⁵
 - b. Article 5 of the Universal Declaration of Human Rights (UDHR), which states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁵⁶
 - c. Article 8 guarantees "the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."⁵⁷
 - d. Common Article 3 of the Geneva Conventions prohibits inhumane treatment of detainees.⁵⁸
 - e. Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁵⁹ In addition, the Human Rights Committee, the overseeing and interpretive body of the ICCPR,⁶⁰ has stated that "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement."⁶¹ Thus, the extradition, by the United States, of an individual to an area where it is known that they will be tortured by other parties is virtually no different than if the United States tortured the individual itself.

⁵⁴ *Id.*

⁵⁵ Universal Declaration of Hum. Rts. (hereinafter UDHR), art. 3, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948).

⁵⁶ *Id.* at art 5.

⁵⁷ *Id.* at art. 8.

⁵⁸ Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 2, 6 U.S.T. 3316, 75 U.N.T.S. 135, 136.

⁵⁹ International Covenant on Civil and Political Rights (hereinafter ICCPR), art. 7, opened for signature Dec. 16, 1966, S. Exec. Doc. C, D, E, F, 95-2 (1978), 999 U.N.T.S. 171.

⁶⁰ See Office of the United Nations High Commissioner for Human Rights, Human Rights Committee (May 28, 2017), <http://www2.ohchr.org/english/bodies/hrc/>.

⁶¹ U.N. Human Rights Comm., General Comment No. 20, ¶ 9, U.N. Doc. A/47/40 (1992).

24. Mr. al Baluchi's treatment was in violation of various provisions within the Convention against Torture (CAT) which defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."⁶² The provisions in violation include:

- i. Article 2(1) which states, "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."⁶³
- ii. Article 3(1) which states, "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."⁶⁴

25. In a document titled "'Legal Authority and Policy for Enteral Feeding at JTF-GTMO", an attorney from the Department of Defense admitted that "international law and certain medical ethical standards holds that the 'forced feeding' of a mentally competent person capable of making an informed decision is never acceptable."⁶⁵

26. The treaties outlined above are all binding at all levels, including federal, the state, of North Carolina and its political subdivisions. The "Supremacy Clause," the second clause of the

⁶² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter CAT), art. 1(1), opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988) [hereinafter CAT], 1465 U.N.T.S. 85.

⁶³ *Id* at art. 2(1).

⁶⁴ *Id* at art. 3(1).

⁶⁵ Jason Leopold, "The Military Admitted Force-Feeding Gitmo Detainees Violates International Law and Medical Ethics", *Vice* (Jan. 29, 2015), <https://news.vice.com/article/how-a-military-memo-could-save-the-nurse-who-refused-to-force-feed-guantanamo-detainees>.

United States Constitution, states that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁶⁶

27. In May 2003, Mr. al Baluchi was deprived of the guarantees to the “right to life, liberty and security of person” as provided under Article 3 of the UDHR when he was extraordinarily rendered into the custody of the CIA and subsequently detained without due process of law.

These violations include the processes of extraordinary rendition in and of themselves and which further facilitated and perpetuated the torture he suffered as a result of having been delivered to the various dark sites where he has been held.

28. Moreover, Mr. al Baluchi was deprived of his right to life, liberty and security of person without the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law as required under Article 8 of the UDHR when he was summarily detained, extraordinarily rendered without any process, and prohibited from speaking with any counsel until two years after his rendition to Guantanamo Bay in September 2006. Most telling is the fact that he was rendered to the custody of the U.S. military but stashed away in Camp 7 out of the view of the International Committee of the Red Cross, journalists, and other officials who might have visited the facility.

29. It is not known whether Mr. al Baluchi was rendered to third countries where he suffered torture. In the event that he was, the United States exposed him to the danger of torture or cruel, inhuman or degrading treatment or punishment of foreign nations through the process of extraordinary rendition in violation of Article 7 of the ICCPR, and Article 3(1) of CAT.

⁶⁶ U.S. CONST. art. VI, cl. 2.

30. In permitting the CIA and Aero Contractors to perform its extraordinary rendition program, with the breadth of discretion it held, the United States, the state of North Carolina and its political subdivisions, also failed to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction in violation of Article 2(1) of CAT. The transportation of detainees internationally, and the detainees held at the CIA dark sites are all operations performed under the control and/or within the jurisdiction of the United States.

31. Most importantly, Mr. al Baluchi was subjected to torture or to cruel, inhuman or degrading treatment or punishment during his detentions in patent violation of Article 5 of the UDHR, Article 7 of the ICCPR and CAT. He suffered a horrific protocol of hooding, shackling, immobilization, sensory deprivation, sexual humiliation. for the purposes of extraordinary rendition to torture accomplished through his kidnapping aboard Aero Contractor operated planes. Throughout his detention, he was subjected to continuous torture and interrogation including beatings, wallings, waterboarding, sensory overload, sensory deprivation, stress positions, and more. All of these acts are sufficient to constitute acts of torture as provided under the UDHR and CAT.

B. United States Federal Law

32. Mr. al Baluchi's treatment was in violation of numerous federal laws, including:
- a. Torture Victims Protection Act of 1991, which states: "An individual who, under actual or apparent authority, or color of law, of any foreign nation— subjects an individual to torture shall, in a civil action, be liable for damages to that individual."⁶⁷
 - b. 18 U.S. Code §2340A which states "Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years."⁶⁸ Torture under this statute is defined as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or

⁶⁷ Torture Victim Protection Act of 1991 1991 Enacted H.R. 2092, 102 Enacted H.R. 2092, 106 Stat. 73.

⁶⁸ 18 U.S. Code § 2340A.

suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control”.

c. War Crimes Act of 1996, prohibiting acts of torture, defined as, “An act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.”⁶⁹

33. The acts performed against Mr. al Baluchi of which are sufficient to constitute acts of torture under the definitions provided under Article 5 of the UDHR, Article 7 of the ICCPR and CAT, are also sufficient to constitute acts of torture as defined under Torture Victims Protection Act of 1991, 18 U.S. Code §2340A, and War Crimes Act of 1996. Therefore, the United States as well as Aero Contractors are liable to Mr. al Baluchi for the acts of torture committed against him during his detainment beginning on February 7, 2002. In addition, the guards who performed such acts of torture can be held criminally liable for the actions under 18 U.S. Code §2340A.

34. The acts performed against Mr. al Baluchi, including the failure to provide him with adequate medical care violated the U.S. Constitution, specifically the Fifth and Fourteenth Amendments, and particularly the Eighth Amendment which prohibits “cruel and unusual punishments.”

C. North Carolina State Law

35. The Rendition process, and detention of Mr. al Baluchi was in violation the North Carolina Constitution, which states “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”⁷⁰

⁶⁹ 18 U.S. Code § 2441.

⁷⁰ N.C. Const. art. 1, §19.

36. This process was also violation of North Carolina General Statute §14-39 regarding Kidnapping and Abduction, which states: “Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, . . . shall be guilty of kidnapping.”⁷¹ This statute extends liability to private companies in violation as well and includes conspiracy to commit such acts.

37. The acts performed upon Mr. al Baluchi, constituting acts of torture under International and Federal law, are sufficient to constitute acts of kidnapping act provided under of North Carolina General Statute §14-39, and the deprivation of the Due Process right guaranteed under the North Carolina Constitution.

VII. Conclusion

Mr. al Baluchi was extraordinarily rendered via a process outside of the law and without any legal protections with the full knowledge and intent that he would be tortured. He endured terrifying kidnapping, detention and torture, all of which was in patent violation of international, federal, and North Carolina state laws. As a result, he has suffered and will continue to suffer severe lifelong distress, and has been irreparably harmed. It is incumbent upon the United States, North Carolina and its political subdivisions, as well as Aero Contractors to admit wrongdoing via Congressional and other action, and take responsibility for the atrocities committed against Mr. al Baluchi and the countless other individuals that were harmed through acts of torture and extradition.

⁷¹ N.C. Gen. Stat. § 14-39.

Appendix Ammar al Baluchi



Photo from Rendition Project, Ammar al Baluchi

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CR-133-AAA

UNCLASSIFIED

END OF MAY EARLY JUNE 2003

Head Trauma (Injury) Incident 1

At the CIA Black site, in the very first days
After US Gov. Agents shaved my head, then they smashed
my head against the wall repeatedly.....

It continued until I lost count at each session.
As my head was being hit each time, I would see sparks of lights
in my eyes, as the intensity of these sparks were increasing as
a result of repeated hitting then all of sudden I felt a strong
jolt of electricity in my head then I couldn't see anything everything
went dark and I passed out.

Next thing I found myself in a different place suspended to
the ceiling in a dark cold cell. I don't know for how many hours
I was unconscious. Naked while my legs were swollen as a result of
extended standing. My legs couldn't support my body, the handcuffs were
cutting my wrists which were pulled over above my head. A very sharp
throbbing pain in my head. There was an extremely loud and disturbing
music with a mixture of grating screeching shrill sounds cutting into
my ears pounding my mind. As every now and then an agent would come

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UNCLASSIFIED

Continued "Head Injury Incident 1"

And hit the steel door with a metal bar in his/her hands making verbal threats pointing to the metal bar in addition to flashing a sharp light into my face. And when I indicate that I need water to drink someone would come and stand at the doorstep holding a cup/container of water showing it to me then he or she would spill it on the floor and leave.

After this particular head injury incident I lost my ability to sleep ever since. I was not able to have a normal or deep sleep. I am still reliving the nightmares of this incident ~~this~~ every night everytime I try to close my eyes it just ^{disturb} ~~disturb~~ and this was among many incidents.

AMMAR AL-BALUCHI

GWANTANAMO BAY

6th AUG 2015