

centerforconstitutionalrights

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ghost detainees

December 21, 2004

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

Re: Request Submitted Under the Freedom of Information Act

Dear Freedom of Information Officer:

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

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

Background on Records Requested

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

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

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

² *Id.*

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

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

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

³ Dana Priest and Scott Higham, "At Guantánamo, A Prison Within A Prison; CIA Has Run a Secret Facility for Some Al Qaeda Detainees, Officials Say," Washington Post, December 17, 2004, at AO1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

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

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

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

¹⁰ *Id.*

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

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

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

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

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

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

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

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

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

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

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

¹⁷ In this Request, the terms "torture" and "cruel, inhuman or degrading treatment or punishment" have the meaning accorded them in the CAT, as interpreted by the United Nations Committee Against Torture. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, art. 1, S. Treaty Doc. No. 100-20 (1998), 1465 U.N.T.S. 85. The CAT defines "torture" as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." *Id.* The United Nations Committee Against Torture has held that the following techniques constitute "torture" as defined under the CAT: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill. *See* Report of the Committee Against Torture, U.N. GAOR, 52d Sess., Supp. No. 44, at para 257, U.N. Doc. A/52/44 (1997). Our use of these terms also encompasses torture and/or "cruel inhuman or degrading treatment or punishment" under any other United States constitutional or statutory provision.

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

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

RECORD REQUESTS

Please disclose the following records:

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

¹⁸ CAT, art. 3.

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

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

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

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

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

Fee Waiver

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

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

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

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

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

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

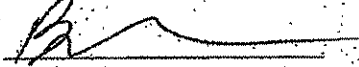
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If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision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

Thank you for your prompt attention to this matter.

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

Signed by:

A handwritten signature in black ink, appearing to be 'B. Olshansky', written over a horizontal line.

BARBARA OLSHANSKY
RACHEL MEEROPOL
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Central Intelligence Agency



Washington, D.C. 20505

2 February 2005

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

Reference: F-2005-00498

Dear Ms. Olshansky:

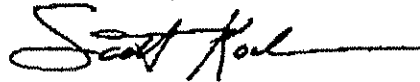
This is in response to your Freedom of Information Act (FOIA) request, dated 21 December 2004, in which you requested certain documents pertaining to "unregistered, CIA and/or 'ghost' detainees." We will begin processing your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA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

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

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

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

Sincerely,

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

Scott Koch
Information and Privacy Coordinator



October 7, 2003

Via Facsimile & U.S. Mail

Information and Privacy Coordinator
Central Intelligence Agency
Washington DC 20505

Re: Request Submitted Under the Freedom of Information Act

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The Request is submitted on behalf of the following organizations (collectively, "Requesters"):

American Civil Liberties Union (ACLU);
Center for Constitutional Rights (CCR);
Physicians for Human Rights (PHR);
Veterans for Common Sense (VCS); and
Veterans for Peace (VFP).

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

Records Requested

Recent news reports indicate that individuals apprehended after September 11, 2001, and held by the United States at military bases or detention facilities outside the United States ("Detainees") have in some cases been tortured or subjected to interrogation techniques that are prohibited by international and United States law. News reports also

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PRESIDENT

RONY D. ROMERO
EXECUTIVE DIRECTOR

KENNETH B. CLARK
CHAIR, NATIONAL
ADVISORY COUNCIL

RICHARD ZACKS
TREASURER

indicate that the United States has rendered¹ Detainees and other individuals to foreign powers known to employ torture and illegal interrogation techniques. The Request seeks records relating to the treatment of Detainees and the rendition of Detainees and other individuals.

Both international and United States law unequivocally prohibit the use of torture. The Convention Against Torture (“CAT”), which the United States has signed and ratified, prohibits the use of torture and the infliction of other cruel, inhuman or degrading treatment or punishment.² The prohibition against torture is also codified in United States law at 18 U.S.C. § 2340A.

The CAT further provides that “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State whether there are

¹ In this Request, “rendition” means the transfer of a person by the United States to a “foreign power,” as defined in 50 U.S.C. § 1801, without prior review by an immigration or Article III judge.

² In this Request, the terms “torture” and “cruel, inhuman or degrading treatment or punishment” have the meaning accorded them in the CAT, as interpreted by the United Nations Committee Against Torture. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, art. 1, S. Treaty Doc. No. 100-20 (1998), 1465 U.N.T.S. 85. The CAT defines “torture” as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” *Id.* The United Nations Committee Against Torture has held that the following techniques constitute “torture” as defined under the CAT: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill. See Report of the Committee Against Torture, U.N. GAOR, 52d Sess., Supp. No. 44, at para 257, U.N. Doc. A/52/44 (1997). Our use of these terms also encompasses torture and/or “cruel inhuman or degrading treatment or punishment” under any other United States constitutional or statutory provision.

substantial grounds for believing that he would be in danger of being subjected to torture.”³ This provision is implemented in United States law by the Foreign Affairs Reform and Restructuring Act of 1998, which states that “[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”⁴

After the release of news reports indicating abuse of Detainees, the President assured the public that “[t]he United States is committed to the world-wide elimination of torture and we are leading this fight by example.”⁵ William J. Haynes, General Counsel for the Department of Defense, has confirmed that “it is the policy of the United States to comply with all of its legal obligations in its treatment of detainees,” including its obligations under the CAT.⁶ Mr. Haynes has also asserted that “[i]f the war on terrorists of global reach requires transfer of detained enemy combatants to other countries for continued detention on our behalf, U.S. Government instructions are to seek and obtain appropriate assurances that such enemy combatants are not tortured.”⁷

These assurances, while welcome, have failed to address the numerous credible reports recounting the torture and rendition of Detainees. Nor have they explained what measures, if any, the United States has taken to ensure compliance with its legal obligations with respect to the use of

³ CAT, art. 3.

⁴ Pub. L. No. 105-277, § 2242(b), 112 Stat. 2681 (1999) (codified as Note to 8 U.S.C. § 1231).

⁵ Statement by the President, United Nations International Day in Support of Victims of Torture, (June 26, 2003), at <http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html>

⁶ Letter from William J. Haynes II, General Counsel of the Department of Defense, to the Honorable Patrick J. Leahy, United States Senator (June 25, 2003), at <http://www.hrw.org/press/2003/06/tortureday.htm>.

⁷ Letter from William J. Haynes II, General Counsel of the Department of Defense, to Kenneth Roth, Executive Director, Human Rights Watch (April 2, 2003), at <http://www.hrw.org/press/2003/04/dodltr040203.pdf>

torture and the infliction of cruel, inhuman or degrading treatment or punishment.

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

I. Records concerning the treatment of Detainees in United States custody

Discussing the treatment of individuals detained by the United States at Bagram Airbase in Afghanistan, a December 2002 article from the Washington Post reports:

Those [detainees] who refuse to cooperate inside this secret CIA interrogation center are sometimes kept standing or kneeling for hours, in black hoods or spray-painted goggles, according to intelligence specialists familiar with CIA interrogation methods. At times they are held in awkward, painful positions and deprived of sleep with a 24-hour bombardment of lights – subject to what are known as “stress and duress” techniques. . . .

According to Americans with direct knowledge and others who have witnessed the treatment, captives are often “softened up” by MPs and U.S. Army Special Forces troops who beat them up and confine them in tiny rooms. The alleged terrorists are commonly blindfolded and thrown into walls, bound in painful positions, subject to loud noises and deprived of sleep.

Dana Priest & Barton Gellman, *U.S. Decries Abuse but Defends Interrogations*, Washington Post, Dec. 26, 2002, at A01. A March 2003 article from The New York Times reports:

Two former prisoners [at Bagram], Abdul Jabar and Hakkim Shah . . . said the conditions to which they themselves were subjected at the time included standing naked, hooded and shackled, being kept immobile for long periods and being deprived of sleep for days on end.

Such accounts appear to raise troubling questions about the conditions of detention and the interrogation of prisoners in the fight against terror

Mr. Jabar and Mr. Shah said they had been made to stand hooded, their arms raised and chained to the ceiling, their feet shackled, unable to move for hours at a time, day and night.

Mr. Jabar said he endured this treatment for 13 days. The prisoners, he said, were freed from their standing position only to eat, pray and go to the bathroom.

Mr. Shah said he had spent 16 days in the upstairs rooms, standing for 10 of them until his legs became so swollen that the shackles around his ankles tightened and stopped the blood flow . .

He said he was naked the entire time and allowed to dress only when he was taken for interrogation or to the bathroom. Mr. Shah said the cold kept him awake, as did the American guards, who kicked and shouted at him to stop him falling asleep.

None of four former prisoners interviewed said they had been beaten. But some said they had been kicked by their guards and interrogators, either to prevent them from sleeping or during their interrogations.

Carlotta Gall, *Death of an Afghan in Custody*, N.Y. Times, Mar. 4, 2003, at A14.

The Washington Post article cited above suggests that the maltreatment of detainees may be accepted and even encouraged by senior officials:

“If you don’t violate someone’s human rights some of the time, you probably aren’t doing your job.” said one official who has supervised the capture and transfer of accused terrorists. “I don’t think we want to be promoting a view of zero tolerance on this. That was the whole problem for a long time with the CIA.”

At a Sept. 26 joint hearing of the House and Senate intelligence committees, Cofer Black, then head of the CIA Counterterrorist Center, spoke cryptically about the agency's new forms of "operational flexibility" in dealing with suspected terrorists. "This is a very highly classified area, but I have to say that all you need to know: There was a before 9/11, and there was an after 9/11," Black said. "After 9/11 the gloves come off."

Priest & Gellman, *supra*.

Please disclose the following records:

1. All records setting forth or discussing the legality or appropriateness of subjecting Detainees to torture or other cruel, inhuman or degrading treatment or punishment. Please include all records discussing the legality or appropriateness of the following methods: using "stress and duress" techniques on Detainees; using force against them; subjecting them to physical injury; requiring them to stand or kneel for prolonged periods; depriving them of sleep, food or water; holding them in awkward and painful positions for prolonged periods; denying them painkillers or medical treatment; administering or threatening to administer mind altering substances, "truth serums" or procedures calculated to disrupt the senses or personality; subjecting them to prolonged interrogation under bright lights; requiring them to be hooded, stripped, or blindfolded; binding their hands and feet for prolonged periods of time; isolating them for prolonged periods of time; subjecting them to violent shaking; subjecting them to intense noise; using cold air to chill them; or threatening harm to them or other individuals.
2. All records setting forth or discussing policies, procedures or guidelines⁸ relating to the torture or other cruel, inhuman or degrading treatment or punishment of Detainees, including but not limited to policies, procedures or guidelines relating to the methods listed in Paragraph 1, above.

⁸ In this Request, the phrase "policies, procedures or guidelines" means policies, procedures or guidelines that were in force on September 11, 2001 or that have been put in place since that date.

3. All records relating to measures taken, or policies, procedures or guidelines put in place, to ensure that Detainees were not, are not or will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment. Please include all records indicating how any such policies, procedures or guidelines were, are or will be communicated to personnel involved in the interrogation or detention of Detainees.
4. All records indicating or discussing actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 2, above.
5. All records relating to investigations, inquiries, or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 2, above, including but not limited to records indicating the existence of such investigations, inquiries or disciplinary proceedings.
6. All records relating to the actual or alleged torture or other cruel, inhuman or degrading treatment or punishment of any Detainee.
7. All records relating to policies, procedures or guidelines governing the role of health personnel in the interrogation of Detainees, including but not limited to the role of health personnel in the medical, psychiatric, or psychological assessment of Detainees immediately before, during or immediately after interrogation. Please include all records indicating how any such policies, procedures or guidelines were, are or will be communicated to personnel involved in the interrogation or detention of Detainees.
8. All records relating to medical, psychiatric or psychological assessment of any Detainee or guidance given to interrogators by health personnel immediately before, during or immediately after the interrogation of any Detainee.
9. All records indicating whether and to what extent the International Committee for the Red Cross ("ICRC") had, has or will have access to Detainees, including but not limited to records related to particular decisions to grant or deny the ICRC access to any Detainee or group of Detainees.

10. All records indicating whether and to what extent any other non-governmental organization or foreign government had, has or will have access to Detainees, including but not limited to records related to particular decisions to grant or deny them access to any Detainee or group of Detainees.

II. Records concerning the death of Detainees in United States custody

News reports indicate that a number of Detainees have died while held at Bagram Air Base in Afghanistan. A March 2003 article from The New York Times reports:

The United States military has begun a criminal investigation into the death of an Afghan man in American custody in December, a death described as a "homicide" by an American pathologist.

A death certificate, dated Dec. 13 and signed by Maj. Elizabeth A. Rouse, a pathologist with the Armed Forces Institute of Pathology, based in Washington, says the man died as a result of "blunt force injuries to lower extremities complicating coronary artery disease."

The Afghan, known by the single name Dilawar, a 22-year-old farmer and part-time taxi driver from this village in eastern Afghanistan, died in December while being held in the main United States air base at Bagram, north of Kabul. . .

Chris Kelly, public affairs director at the Armed Forces Institute of Pathology, speaking from Washington, said Major Rouse had taken part in the autopsies of two Afghan men who died in custody at Bagram last year, one of whom was Mr. Dilawar. . . .

[Another] Afghan man also died in American custody on Dec. 3. He was Mullah Habibullah, brother of a former Taliban commander. He was about 30, from the southern province of Oruzgan, and was held in the same detention center at Bagram.

His family said no American official had given them any information or explanation about the death, which was learned from the International Committee of the Red Cross.

Gall, *supra*; see also Barbara Starr, *Afghan detainees' deaths ruled homicides*, CNN.com, Mar. 5, 2003 (noting that the "criminal investigation" into the deaths of two Afghan detainees was in its final stages, and relating the acknowledgement of one senior military official that "[t]his investigation may not go well for us."); April Witt, *U.S. Probes Death of Prisoner in Afghanistan*, Washington Post, June 24, 2003, at A18 (reporting the death of an Afghan man held at a United States holding facility near Asadabad, in the eastern province of Konar, Afghanistan).

Please disclose:

11. All records, including autopsy reports and death certificates, relating to any deaths of Detainees.
12. All records relating to investigations, inquiries, or disciplinary proceedings initiated as a result of any deaths of Detainees, including but not limited to records indicating the existence of such investigations, inquiries, or disciplinary proceedings.

III. Records related to the rendition of Detainees and other individuals

News reports indicate that individuals have been rendered to foreign powers known to employ torture or illegal interrogation techniques. One news report states:

In other cases, usually involving lower-level captives, the CIA hands them to foreign intelligence services – notable those of Jordan, Egypt, and Morocco – with a list of questions the agency wants answered. These "extraordinary renditions" are done without resort to legal process and usually involve countries with security services known for using brutal means. . . .

According to one official who has been directly involved in rendering captives into foreign hands, the understanding is, "We don't kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them."

Priest & Gellman, *supra*; see also David E. Kaplan, Aamir Latif, Ilana Ozeron, Laurie Lande, Monica M. Ekman, *Playing Offense: The inside story of how U.S. terrorist hunters are going after al Qaeda*, U.S. News & World Report, June 2, 2003 (“The CIA has helped move dozens of detainees not only to Jordan but also to Egypt, Morocco, and even Syria.”). Statements of senior officials suggest that the United States may be complicit in the torture of rendered individuals:

The CIA’s participation in the interrogation of rendered terrorist suspects varies from country to country.

“In some cases [involving interrogations in Saudi Arabia], we’re able to observe through one-way mirrors the live investigations,” said a senior U.S. official involved in Middle East security issues. “In others, we usually get summaries. We will feed questions to their investigators. They’re still very much in control.”

Id. Another news report quotes Vince Cannistraro, former director of the CIA’s counterterrorism center, on the treatment of a Guantanamo Bay Detainee who was sent to Egypt for “failing to cooperate”: “They promptly tore his fingernails out and he started telling things.” Tom Brune, *An Aggressive Interrogation*, *Newsday*, Mar. 4, 2003, at A05.

We are interested in obtaining records indicating the circumstances under which the United States has rendered Detainees or other individuals to foreign powers that are known or suspected to use torture or to inflict cruel, inhuman or degrading treatment or punishment.

Please disclose:

13. All records setting forth or discussing the legality or appropriateness of the rendition of individuals who may be tortured or subjected to cruel, inhuman or degrading treatment or punishment after their rendition.
14. All records setting forth or discussing policies, procedures or guidelines relating to the rendition of individuals who may be tortured or subjected to cruel, inhuman or degrading treatment or punishment after their rendition.
15. All records relating to measures taken, or policies, procedures or guidelines put in place, to ensure that rendered individuals were

not, are not, or will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment after their rendition. Please include all records indicating how any such policies, procedures or guidelines were, are or will be communicated to personnel involved in the interrogation, detention or rendition of individuals.

16. All records relating to actual or possible violations of, or deviations from the policies, procedures or guidelines referred to in Paragraph 14, above.
17. All records relating to the involvement of United States personnel in the interrogation of individuals after they have been rendered.
18. All records relating to investigations, inquiries or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 14, above, including but not limited to records indicating the existence of such investigations, inquiries or disciplinary proceedings.
19. All records relating to the actual or alleged torture or cruel, inhuman or degrading treatment or punishment of any Detainee after his rendition.
20. All records related to assurances sought or obtained from foreign powers to whom individuals have been rendered regarding the treatment of those individuals.
21. All records indicating whether and to what extent the ICRC or other non-governmental organizations had, have, or will have access to individuals after they have been rendered.

Fee Waiver

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

. that work to an audience.” *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The ACLU is a nationwide, not-for-profit, non-partisan organization with over 400,000 members dedicated to the principles of liberty and equality. It has long believed that our nation’s commitment to civil liberties values is enhanced by adherence to appropriate international human rights norms, including the prohibition against torture.

The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its heavily subscribed website, www.aclu.org. The website addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains hundreds of documents that relate to the issues addressed by the ACLU. The website includes features on information obtained through the FOIA. *See, e.g.*, www.aclu.org/patriot_foia. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail. On account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.⁹

CCR is a legal and public education not-for-profit organization that engages in litigation, legal research, and the production of publications in the fields of civil and international human rights. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination. These materials are available through CCR’s

⁹ The following are recent examples of requests in which agencies did not charge the ACLU fees associated with responding to a FOIA request: (1) The Office of Science and Technology Policy in the Executive Office of the President has told the ACLU that it will waive the fees associated with a FOIA request submitted by the ACLU in August 2003; (2) The Federal Bureau of Investigation did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (3) The Office of Intelligence Policy and Review did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; and (4) The Office of Information and Privacy in the Department of Justice did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

Development and Education & Outreach Departments. CCR also operates a website, www.ccr-ny.org, that addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public.

PHR is a not-for-profit organization whose mission is to promote health by protecting human rights. It uses scientific methods and clinical medical skills to investigate allegations of human rights violations. PHR has conducted medical investigations of torture throughout the world and played a lead role in developing the principal international instrument for the medical evaluation of torture, the Istanbul Protocol. PHR publishes newsletters, reports, and informational materials for the public, many of which are available on its website, www.phrusa.org. The website contains a section on torture and the means for preventing it. PHR also distributes an email newsletter free of charge to the public.

VCS, a Washington D.C. based, non-profit, United States veterans' organization, is committed to providing a voice of reason on issues of war and national security from the unique perspective of those who have served their country in uniform. VCS stands firm on the principal that our nation's precious youth should only be committed to battle under the gravest of circumstances and therefore seek to return our country to a time when war is truly the policy of last resort. To this purpose, it informs fellow citizens of the terrible costs of war, by challenging policies that abuse the trust of military service members and by speaking out in defense of the values espoused in their oath to support and defend the Constitution of the United States. VCS disseminates information through its website, www.veteransforpeace.org, news briefings, media interviews, published editorials and direct contact through email to the general membership.

VFP is a not-for-profit, non-partisan organization of United States war veterans who served from World War II through Gulf War I. There are 85 VFP chapters across the nation, from Alaska to Florida. VFP consists of men and women who, having dutifully served their nation, now embrace a greater responsibility to serve the cause of world peace. To this end they work with others to: (1) increase public awareness of the costs of war; (2) restrain the United States government from intervening, overtly and covertly, in the internal affairs of other nations; (3) end the arms race and reduce and eventually eliminate nuclear weapons; (4) seek justice for veterans and victims of war, and (5) abolish war as an instrument of national policy. VFP disseminates information through its website,

www.veteransforpeace.org, listserves to the general on-line membership, chapter contacts, and a quarterly newsletter.

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

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

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

* * *

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

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

Thank you for your prompt attention to this matter.

Please respond to Amrit Singh, Staff Attorney, American Civil Liberties Union Foundation, 125 Broad Street, 18th Floor, New York, NY 10004, telephone (212) 549-2609.

Signed by:

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May 25, 2004

VIA FACSIMILE AND OVERNIGHT DELIVERY

Robert T. Herman
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Re: Freedom on Information Act Request

Dear Mr. Herman:

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and corresponding regulations. The request is submitted on behalf of the following organizations (collectively, "Requesters"): American Civil Liberties Union ("ACLU"), Center for Constitutional Rights ("CCR"), Physicians for Human Rights ("PHR"), Veterans for Commons Sense ("VCS") and Veterans for Peace ("VFP").

I. Records Sought

Requesters seek records concerning the treatment of individuals apprehended after September 11, 2001, and held in United States custody in military bases or detention facilities outside the United States ("Detainees"). Over the past months, it has become clear that many Detainees have been subjected to illegal interrogation, physical abuse, and even torture at the hands of United States personnel. In order to shed light on the policies and practices of the United States government with respect to Detainees, Requesters seek the following records:

- a) Records concerning the treatment of Detainees in United States custody;
- b) Records concerning the deaths of Detainees in United States custody; and
- c) Records related to the rendition of Detainees and other individuals to foreign powers known to employ torture or illegal interrogation techniques.

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To assist you in your search for records, Requesters have attached an appendix listing some of the records that fall within the scope of this request. See Appendix A. The list is meant only to provide guidance and is not exhaustive.

As you know, Requesters previously sought records from the Central Intelligence Agency ("Agency") relating to the treatment of Detainees through a FOIA request filed on October 7, 2003 ("First Request").¹ The instant request seeks, in addition to all of the records sought by the First Request, records that may have been generated or obtained since October 7, 2003.

2. Requesters Are Entitled To Expedited Processing.

Expedited processing is warranted where there is a "compelling need" by organizations "primarily engaged in disseminating information and the information [requested] is relevant to the subject of public urgency concerning an actual or alleged Federal Government activity." 32 C.F.R. § 1900.34(c), (c)(2). Each of the Requesters is "primarily engaged in disseminating information," see Appendix C (description of Requesters' media and publication activities), and the records in question involve the Department's actual and alleged treatment of Detainees. In addition, the records sought relate to a breaking news story of general public interest; accordingly, the records are "relevant to a subject of public urgency" within the meaning of applicable regulations. 32 C.F.R. § 1900.34(c)(2). The instant request clearly meets these standards. See, e.g., Douglas Jehl and Eric Schmitt, *CIA Bid to Keep Some Detainees Off Abu Ghraib Roll Worries Officials*, NYTimes.Com, May 25, 2004; John Barry et al., *The Roots of Torture: The Road to Abu Ghraib Began After 9/11, When Washington Wrote New Rules to Fight a New Kind of War*, Newsweek.com, May 24, 2004 (tracing news coverage uncovering abuse of Detainees in Iraq and Afghanistan); Douglas Jehl and Eric Shmitt, *Dogs and Other Harsh Tactics Linked to Military Intelligence*, NYTimes.com, May 22, 2004; Scott Higham, et al., *Prison Visits By General Reported in Hearing*, WashingtonPost.com, May 23, 2004; Bradley Graham, *Number of Army Probes of Detainee Deaths Rises to 33*, WashingtonPost.com, May 22, 2004; Douglas Jehl and Eric Schmitt, *Afghan Policies On Questioning Taken to Iraq: Harsher Interrogation Practices are Cited*, NYTimes.com, May 21, 2004; David Rose and Gaby Hinsliff, *U.S. Guards 'Filmed Beatings' at Terror Camp*, Observer.Guardian.uk.com, May 16, 2004 (British military interrogator posted to Abu Ghraib "made an official complaint to U.S. authorities" regarding the maltreatment of Detainees "as long ago as last March"); R. Jeffrey Smith, *Knowledge of Abusive Tactics May Go Higher*, WashingtonPost.com, May 16, 2004; Charlie Savage, *As Threats to U.S. Changed, So Did Prison Tactics*, BostonGlobe.com, May 16, 2004 (military whistleblower turned in photographs of abuse of prisoners to officials in Abu Ghraib in January, 2004); Douglas Jehl, *Earlier Jail Seen as Incubator for Abuses in Iraq*, NYTimes.com, May 15, 2004 (International Committee for the Red Cross report citing abuse of

¹ The previous request was filed by the Agency under Request No. F-2004-00066.

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prisoners submitted to government in February, 2004); Mitch Frank, *A Pattern of Abuse?*, Time.com, May 9, 2004 ("For two years reports have piled up about 'stress and duress' techniques military and CIA officers are using on al-Qaeda and Iraqi captives"); Dana Priest and Joe Stephens, *Pentagon Approved Tougher Interrogations*, WashingtonPost.com, May 9, 2004. See also Appendix A-B (further listing of news articles). In view of these concerns, expedited processing is appropriate in this case. See Appendix B-C.

3. Requesters Are Entitled To A Fee Waiver.

Requesters are entitled to a fee waiver because disclosure of the requested records is in the public interest and "likely to contribute significantly to the public understanding of the activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii). As indicated above and in the attached Appendices, innumerable media reports reflect the extraordinary public interest in the records sought. All of the Requesters are not-for-profit organizations and this request is not "primarily in the commercial interest" of any Requester; *id.*; see also Appendix B (description of individual organizations).

Requesters are entitled to a statutory limitation on fees because the records are not sought for commercial use and, as described in the attached appendices, each of the requesters is a "representative of the news media" within the meaning of the statute and relevant regulations. See Appendix C (description of Requesters' media and publication activities). Requesters seek records for purposes of publication and to further non-commercial interests that will significantly contribute to the public understanding of government conduct.

* * * *

If the request is denied in whole or part, Requesters ask that the Agency justify all deletions by reference to specific exemptions of FOIA. Requesters expect the Agency to release all segregable portions of otherwise exempt material, and reserve the right to appeal a decision to withhold any information or to deny the within applications for expedited processing and waiver of fees.

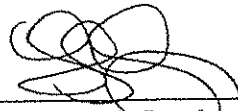
Thank you for your consideration of this request. Kindly direct all future responses to Jennifer Ching, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., One Riverfront Plaza, Newark, New Jersey, telephone (973) 596-4721.

GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

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May 25, 2004
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Under penalty of perjury, I hereby affirm that the foregoing and attached Appendices are true and correct to the best of my knowledge and belief.

Signed by:



Lawrence S. Lustberg
Jennifer Ching
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GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

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cc: Leonard S. Rubenstein
Physicians for Human Rights

Wilson Powell
Veterans for Peace

Charles Sheehan Miles
Veterans for Common Sense

WILMERHALE

April 25, 2006

Catherine Kane Ronis

Via Facsimile, Email and U.S. Mail

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

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

Dear Freedom of Information Officer:

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

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

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

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Definitions

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

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

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

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

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

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

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

Scope of Request

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

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

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

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

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

Background

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

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

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

WILMERHALE

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Records Requested

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

Fee Waiver

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

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

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

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

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

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

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

Expedited Processing

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

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

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

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

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

* * *

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

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

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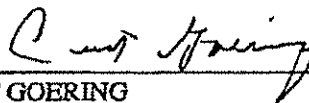
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Page 8

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

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

Sincerely,



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WILMERHALE

April 25, 2006

Catherine Kane Ronis

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

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

Dear Freedom of Information Officer:

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

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

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

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

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

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Definitions

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

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

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

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

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

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

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

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

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Memoranda of Understanding

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

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

² *Id.*

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

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

Records Requested

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

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

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

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

⁵ *Id.*

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

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Department of Defense Detainee Reporting

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

Records Requested

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

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

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

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

United States Report to the Committee Against Torture

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

Records Requested

All records reflecting:

- 5. Communications regarding the United States' Second Periodic Report to the Committee Against Torture, including but not limited to:
 - (a) Communications regarding whether any individual, place of detention, or practice should be mentioned or discussed in the report to the Committee Against Torture.
 - (b) Communications with a foreign government, or agency of a foreign government, regarding any provision of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment relating to apprehension, transfer and detention, (including Articles 1, 3, 5, 16), or whether any individual, place of detention, or practice should be mentioned or discussed in the report.
 - (c) Proposed language or earlier drafts of the report to the Committee Against Torture.

United States Report to the Human Rights Committee

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

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Records Requested

All records reflecting:

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

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

The Convention on the Protection of all Persons from Enforced Disappearance

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

Records Requested

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

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

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Fee Waiver

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

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

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

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

Expedited Processing

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

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Page 9

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

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

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

* * *

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

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

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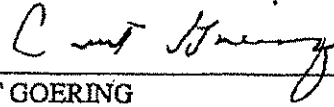
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Page 10

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

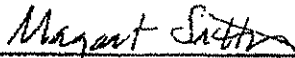
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Sincerely,



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Central Intelligence Agency



Washington, D.C. 20505

2 February 2005

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

Reference: F-2005-00498

Dear Ms. Olshansky:

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

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

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

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

Sincerely,

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

Scott Koch
Information and Privacy Coordinator

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

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

MARGARET L. SATTERTHWAITÉ
Clinic Director

SMITA NARULA
Clinic Director

December 28, 2007

Via Facsimile and U.S. Mail:

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

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

Dear Freedom of Information Act Officer:

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

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

Records Requested

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

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

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

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

1. The spring 2004 report by the Office of the Inspector General (OIG) on the CIA's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The existence of this document was publicly revealed in October 2007 by the *New York Times*.
 - o "A report by Mr. Helgerson's office completed in the spring of 2004 warned that some C.I.A.-approved interrogation procedures appeared to constitute cruel, inhuman and degrading treatment, as defined by the international Convention Against Torture." Mark Mazzetti and Scott Shane, *C.I.A. Watchdog Becomes Subject Of C.I.A. Inquiry*, N.Y. Times, October 12, 2007, at A1.
2. The list of "erroneous renditions" compiled by the CIA's OIG. This list was described by several intelligence officials in a December 2005 article in the *Washington Post*.
 - o "The CIA inspector general is investigating a growing number of what it calls 'erroneous renditions,' according to several former and current intelligence officials. One official said about three dozen names fall in that category; others believe it is fewer. The list includes several people whose identities were offered by al Qaeda figures during CIA interrogations, officials said." Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, Wash. Post, December 4, 2005, at A1.
3. The fax sent by the CIA to the Royal Canadian Mounted Police Criminal Intelligence Directorate (RCMP CID) in the afternoon or evening of Oct. 3, 2002, asking a number of questions about Maher Arar. The existence of this document was publicly acknowledged in the official report of the Canadian Government's inquiry into the rendition of Mr. Arar.
 - o "Late in the afternoon of October 3, the CIA sent a fax to RCMP CID, asking a number of questions about Mr. Arar." Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar, Addendum: Disclosure of Information Authorized by the Federal Court of Canada in accordance with Sections 38.04 and 38.06 of the Canada Evidence Act 157 (2006) (based on 2005 testimony of Gar Parady, Director General of the Consular Affairs Bureau of Foreign Affairs and International Trade Canada (DFAIT)) (Transcripts of Testimony available at <http://www.ararcommission.ca/eng/14b.htm>).
4. The document sent by the CIA to the RCMP CID, the Canadian Security Intelligence Service (CSIS), and Project A-O Canada on Nov. 5, 2002 in response to requests for information on the whereabouts of Mr. Arar. The existence of this document was publicly acknowledged in the official report of the Canadian Government's inquiry into the rendition of Maher Arar.
 - o "On November 5, the CIA sent CSIS and Project A-O Canada a written response to CSIS' [*sic*] October 10 request for information about the circumstances of Mr. Arar's removal." Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar, Addendum: Disclosure of Information Authorized by the Federal Court of Canada in accordance with Sections 38.04 and 38.06 of the Canada Evidence Act 307 (2006). "An identical reply was also sent to RCMP Headquarters." *Id.* at 180

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

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

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

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

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

Fee Waiver

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

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

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

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

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

Expedited Processing

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

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

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

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

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

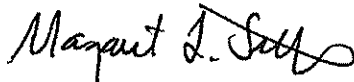
* * *

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

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

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

Sincerely,



Margaret L. Satterthwaite
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Brian Feldman, Esq., Assistant United States Attorney
Emily E. Daughtry, Esq., Special Assistant United States Attorney
Kyle DeYoung, Esq., WilmerHale
Emi Maclean, Esq., Center for Constitutional Rights

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

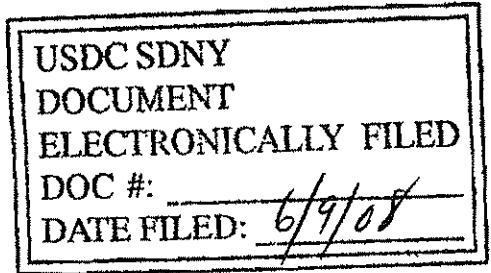
AMNESTY INTERNATIONAL USA, CENTER
FOR CONSTITUTIONAL RIGHTS, INC., and
WASHINGTON SQUARE LEGAL SERVICES,
INC.,

Plaintiffs,

v.

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

Defendants.



ECF CASE

**STIPULATION AND ORDER
BETWEEN PLAINTIFFS AND
THE CENTRAL INTELLIGENCE
AGENCY REGARDING
PROCEDURES FOR
ADJUDICATING SUMMARY
JUDGMENT MOTIONS**

07 CV 5435 (LAP)

WHEREAS, Plaintiffs filed a complaint in this action seeking the release of certain records by, inter alia, the Central Intelligence Agency ("CIA") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"); and

WHEREAS, the allegations in the complaint concern, inter alia, a FOIA request dated December 21, 2004, sent by plaintiff the Center for Constitutional Rights, Inc., to the CIA, and two FOIA requests dated April 25, 2006, sent by plaintiffs Amnesty International USA and Washington Square Legal Services, Inc., to the CIA, (collectively, the "FOIA Requests"); and

WHEREAS, Plaintiffs filed an additional FOIA request with the CIA seeking specific documents that are known or believed to be in the CIA's possession on December 28, 2007 (the "Specific Documents Request"); and

WHEREAS, some records responsive to the FOIA Requests will be withheld, in whole or in part, pursuant to 5 U.S.C. § 552(b) and other applicable laws and regulations; and

WHEREAS, by December 2007, the CIA had identified approximately 7,800 records to be withheld (the "Withheld Records"); and

WHEREAS, after Plaintiffs and the CIA had substantially completed their negotiations regarding the procedures to be followed in litigating issues related to the Withheld Records and had identified a dispute over the CIA's obligations with respect to records related to open investigations of the CIA's Office of Inspector General ("OIG"), the parties learned that, between June 7, 2007 and December 1, 2007, the OIG had completed and closed investigations related to the subject matter of the FOIA Requests, and such files had not been searched or processed previously ("Additional OIG Records"); and

WHEREAS, Plaintiffs and the CIA intend to file motions for summary judgment with respect to CIA's processing of the FOIA Requests; and

WHEREAS, subject to the Court's approval, Plaintiffs and the CIA wish to stipulate to the procedures that will govern the adjudication of those summary judgment motions;

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs and the CIA, as follows:

1. The CIA's withholding of records that have been or currently are being litigated in *American Civil Liberties Union v. Dep't of Defense*, No. 04 Civ. 4151 (AKH) ("*ACLU v. DOD*"), will not be litigated in this action, except that this limitation shall not apply to those records that the Court in *ACLU v. DOD* has determined to be outside the scope of that litigation.

2. Except as provided in paragraphs 14-17 below, the following schedule will govern the CIA's summary judgment motion: the CIA will file its motion for summary judgment on April 21, 2008; Plaintiffs will file their cross-motion for summary judgment and their opposition to the CIA's motion for summary judgment ("Plaintiffs' Cross Motion") on May 14, 2008 or at a later date if so negotiated; the CIA will file its opposition to Plaintiffs' motion for summary judgment and its reply brief in support of its motion for summary judgment ("CIA

Opposition Brief") by June 13, 2008, or one month after Plaintiffs serve Plaintiffs' Cross Motion, whichever is later; and Plaintiffs will file their reply brief in support of their motion for summary judgment ("Plaintiffs' Reply Brief") by June 27, 2008, or one month after the CIA serves the CIA Opposition Brief, which is later.

3. The parties agree that in the context of the present litigation only, the term "Operational Files" will be defined as the files of the Directorate of the National Clandestine Service that, as per 50 U.S.C. § 43 1(b)(1), "document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services" as designated by the Director of the CIA.

4. The CIA will conduct a reasonable search of non-operational files of components within the CIA, and CIA will include in that search any records that originated in Operational Files but are included in the OIG's files with respect to investigations related to the subject matter of the FOIA Requests ("OIG Closed Investigative Files"); provided, however, that the CIA will not process at this time any records from the OIG Investigative Files if the investigation was still on-going as of December 1, 2007 ("Open Investigative Files").

5. The CIA agrees that the Open Investigative Files are not exempted from search, but the CIA contends that they were categorically exempt from disclosure pursuant to Exemption 7(A). Therefore, as part of the summary judgment briefing set forth above in paragraph 2, the parties will litigate as a threshold matter whether the Open Investigative Files were categorically exempt from disclosure pursuant to FOIA Exemption 7(A), as records compiled for law enforcement purposes the disclosure of which could reasonably be expected to interfere with enforcement proceedings. In limiting the summary judgment motions regarding the Open

Investigative Files to the Exemption 7(A) issue, the parties agree that they do not waive, and fully reserve, all arguments with respect to whether such records fall within the scope of the FOIA Requests or are otherwise exempt from disclosure under FOIA, and all arguments with respect to the process that should be followed in resolving the appropriateness of any FOIA exemption claimed with respect to any record contained in those files. Should the Court determine that these documents are not categorically exempt from disclosure pursuant to FOIA Exemption 7(A), the parties shall negotiate in good faith a schedule for processing the documents and, if necessary, a supplementary round of summary judgment briefing and shall submit a status update concerning the processing and briefing schedule no later than 30 days after the Court's ruling.

6. After processing the Withheld Records, the CIA asserts that a limited number of records potentially are not "agency" records within the meaning of 5 U.S.C. § 552 and may be subject to a Congressional privilege, and therefore not subject to disclosure under FOIA. Instead of addressing this issue as part of the summary judgment briefing set forth above in paragraph 2, the briefing will be confined to the issue of whether such documents are compelled to be disclosed pursuant to FOIA or whether such documents would otherwise be exempt from disclosure in their entirety pursuant to 5 U.S.C. § 552(b). In limiting the summary judgment motions regarding these documents to this issue, the parties agree that they do not waive, and fully reserve, all arguments with respect to whether such records constitute "agency" records or are otherwise subject to a Congressional privilege and therefore not subject to disclosure under FOIA. Should the Court determine that these documents are not exempt from disclosure in their entirety pursuant to 5 U.S.C. § 552(b), the parties shall negotiate in good faith a schedule for a supplementary round of summary judgment briefing to address the specific issue of whether

these records are properly withheld because they are protected by a Congressional privilege or because they do not constitute "agency" records within the meaning of 5 U.S.C. § 552 and shall submit a status update concerning the schedule for processing and briefing no later than 30 days after the Court's ruling.

7. The CIA has sorted the Withheld Records into the following categories: (a) records identified during the CIA's search of its Office of General Counsel ("OGC Records"); (b) records found in the closed OIG Investigative Files ("OIG Records"); and (c) all other records identified as responsive to the FOIA Requests ("Other Records"). Within these three categories, the Withheld Records will be divided further into the following subsets: (i) emails, (ii) cables, (iii) reports/memoranda and (iv) miscellaneous records, for a total of twelve separate subcategories of records.

8. CIA will identify a sample set of Withheld Records (the "Representative Set"), consisting of 100 OGC Records, 125 OIG Records and 25 Other Records. The 100 OGC Records selected for the Representative Set shall consist of 10 cables, 30 reports/memoranda (which shall be chosen by selecting every other record/memoranda in the OGC subcategory), 17 emails (which shall be chosen by selecting every third email in the OGC subcategory), and 43 miscellaneous records (which shall be chosen by selecting every other miscellaneous document in the OGC subcategory until the total number of OGC Records selected for the Representative Set equals 100). The 125 OIG Records selected for the Representative Set shall consist of 30 cables (25 of which shall be chosen by selecting every 146th cable in the OIG subcategory, and 5 of which shall be chosen by selecting every 728th cable in the OIG subcategory), 50 reports/memoranda (which shall be chosen by selecting every 11th record/memoranda in the OIG subcategory), 20 emails (which shall be chosen by selecting every 127th email in the OIG

subcategory); and 25 miscellaneous records (which shall be chosen by selecting every 60th miscellaneous record in the OIG subcategory until the total number of OIG Records selected for the Representative Set equals 125). The Other Records selected for the Representative Set shall consist of 2 cables, 2 emails, 15 reports/memoranda (which shall be chosen by selecting every other report/memoranda in the Other Records subcategory) and 6 miscellaneous documents (5 of which shall be chosen by selecting every 13th miscellaneous record in the Other Records subcategory, and the sixth of which will be the 31st miscellaneous record in the Other Records subcategory) until the total number of Other Records selected for the Representative Set equals 25).

9. If the CIA determines that any record selected for inclusion in the Representative Set using the process outlined above in paragraph 6 should not have been included in the set of Withheld Records because such document (a) is releasable in full, (b) is duplicative of another document already included among the Withheld Records, (c) is non-responsive; or (d) must be referred to another federal agency for processing and direct response to the Plaintiffs, the CIA shall then select for inclusion in the Representative Set the next document within that subcategory and notify Plaintiffs each time this process has occurred.

10. On March 31, 2008, the CIA submitted to Plaintiffs a draft index that includes record descriptions and claimed exemptions for each record in the Representative Set and shall submit a final index on or before April 21, 2008.

11. Between March 31, 2008, and April 20, 2008, the parties will meet and confer regarding their issues presented by the Representative Set and, if the parties agree, shall narrow the issues to be presented to the Court.

12. The CIA shall sort the Additional OIG Records into (i) emails, (ii) cables, (iii) reports/memoranda and (iv) miscellaneous records. From these Additional OIG Records, the CIA will identify a sample set of 50 records (the "Additional OIG Representative Set"). The parties will negotiate in good faith the manner in which the 50 records will be selected for inclusion in the Additional OIG Representative Set.

13. On May 30, 2008, the CIA shall submit to Plaintiffs a draft index that includes record descriptions and claimed exemptions for each record in the Additional OIG Representative Set and shall submit a final index for all such records challenged by Plaintiffs no later than the date of the CIA's Opposition Brief.

14. By June 4, 2008, the parties will meet and confer to determine which, if any, issues related to the records contained in the Additional OIG Representative Set will be the subject of litigation. Plaintiffs will provide a list to the CIA of challenged Additional OIG Records by June 9, 2008.

15. To the extent that the withholding of any record (or portion thereof) contained in the Additional OIG Representative Set is the subject of litigation (the "Challenged Additional OIG Records"), such withholdings will be addressed in the CIA Opposition Brief. In such circumstances, the Challenged Additional OIG Record shall be deemed included within the ambit of the CIA's motion for summary judgment, and the CIA will be entitled to place into the record evidence supporting its withholdings at the time it files the CIA Opposition Brief to the same extent it is permitted upon initially moving for summary judgment. The fact that the Additional OIG Records were not addressed in the CIA's initial moving papers shall not be deemed a waiver of any rights or arguments the CIA may have with respect to such Additional OIG Records.

16. In the event that there are any Challenged Additional OIG Records that are to be addressed in the CIA's Opposition Brief, the CIA will be entitled to file a sur-reply brief in support of its motion for summary judgment and in opposition to Plaintiffs' cross-motion for summary judgment unless Plaintiffs' Reply Brief merely incorporates by reference the arguments previously made in Plaintiffs' cross-motion and opposition. The sur-reply will be due four weeks after Plaintiffs' Reply Brief is filed.

17. In the event there is at least one Challenged Additional OIG Record, the schedule for filing the CIA Opposition Brief and the Plaintiffs' Reply Brief will be adjusted so that the CIA Opposition Brief and supporting documentation will be due no earlier than June 27, 2008. Once the parties determine the specific documents that will comprise the set of Challenged Additional OIG Records, however, the parties shall negotiate in good faith the additional amount of time the CIA will have to file the CIA Opposition Brief. To the extent the parties cannot agree upon a date for the filing of the CIA Opposition Brief, the issue will be resolved by the Court.

18. The parties shall limit the summary judgment briefing regarding the Withheld Records, Additional OIG Records, and Open Investigative Files, including Vaughn indices and declarations, to the records of the Representative Set, to the categorical exemptions pursuant to paragraphs 5 and 6 above, to the records of the Additional OIG Representative Set, and to the CIA's search obligations. However, should Plaintiffs prevail on any issue, the CIA shall apply such ruling to all substantively similar records (or information contained in such records) responsive to the FOIA Requests.

19. The CIA will not oppose Plaintiffs' application for leave to amend their Complaint in order to include the Specific Documents Request in this litigation. Should

Plaintiffs amend their Complaint to include the Specific Document Request, the parties shall negotiate in good faith a schedule for litigating that request.

20. The parties agree that nothing within this Stipulation and Order shall entitle Plaintiffs to attorneys fees under 5 U.S.C. 552(a)(4)(E); provided, however, that nothing in this Stipulation and Order shall be deemed to limit the parties' abilities to make arguments regarding attorneys fees with respect to subsequent orders of the Court.

21. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: New York, New York

April 21, 2008

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By:




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April 21, 2008

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SO ORDERED:


United States District Judge

June 9, 2008