

**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

07 CV 5435 (LAP)

DECLARATION OF MARGARET L. SATTERTHWAITE
PART 1 OF V: EXHIBITS A-Z

I, **MARGARET L. SATTERTHWAITE**, under penalty of perjury, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am a licensed attorney and Co-Director of the International Human Rights Clinic at New York University School of Law. The International Human Rights Clinic is part of Washington Square Legal Services, Inc., under whose auspices I am co-counsel in this case.

2. I submit this declaration in support of Plaintiffs' Opposition to the Central Intelligence Agency's (CIA) Motion for Summary Judgment and Cross Motion for Partial Summary Judgment. Specifically, I submit this declaration to call to the Court's attention official government statements—the large majority of which originate from the

CIA and the Executive Branch—pertaining to the U.S. government’s rendition, secret detention and interrogation program.

The End of CIA Secret Detention, Rendition and “Enhanced Interrogation Techniques”: 2006—2009

3. On September 6, 2006, then-President Bush confirmed that the CIA had operated a “separate” detention and interrogation program and transferred fourteen detainees from CIA custody to Guantánamo Bay, emptying the CIA prisons at that time. Attached hereto as Exhibit A is a true and correct copy of News Release, White House Office of the Press Secretary, President Discusses Creation of Military Commissions to Try Suspected Terrorists (Sept. 6, 2006) [hereinafter *White House News Release*].

4. President Bush’s September 6, 2006, announcement was prompted by the Supreme Court’s decision in *Hamdan v. Rumsfeld* which, according to the White House, jeopardized the continuance of the secret detention and interrogation program.

a. Attached hereto as Exhibit B is a true and correct copy of relevant passages of *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), where the Supreme Court expressly rejects the view “that the war with al Qaeda evades the reach of” (at 628) Common Article 3 of the Geneva Conventions. *See id.* at 628-632 .

b. *White House News Release*, Exhibit A.

c. Attached hereto as Exhibit C is a true and correct copy of News Release, White House Office of the Press Secretary, Press Conference of the President (Sept. 15, 2006).

5. The decision in *Hamdan v. Rumsfeld* required the U.S. government to reverse its previous analysis that Common Article 3 did not apply to “War on Terror”

detainees and to enact new measures to authorize the CIA's detention and interrogation activities through the *Military Commissions Act of 2006* and Executive Order 13440 (2007).

a. Attached hereto as Exhibit D is a true and correct copy of Press Release, White House Office of the Press Secretary, President Bush Signs Military Commissions Act of 2006 (Oct. 17, 2006).

b. Attached hereto as Exhibit E is a true and correct copy of relevant provisions of the *Military Commissions Act of 2006*, Pub. L. No. 109-366, 120 Stat. 2600 (2006), enacting Chapter 47A of title 10 of the United States Code (as well as amending section 2241 of title 28), § 6(a)(3)(A).

c. Attached hereto as Exhibit F is a true and correct copy of Exec. Order 13,440, 72 C.F.R. 40707 (2007).

6. Between September 6, 2006, and January 22, 2009, two detainees—Abd al-Hadi al-Iraqi and Muhammad Rahim al-Afghani—were announced to have been transferred from CIA custody to Guantánamo Bay.

a. Attached hereto as Exhibit G is a true and correct copy of News Release, U.S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), Defense Department Takes Custody of a High-Value Detainee (Apr. 27, 2007) [hereinafter *Defense Department Takes Custody of a High-Value Detainee* (2007)].

b. Attached hereto as Exhibit H is a true and correct copy of Interview by Charlie Rose with Michael Hayden, Dir., Cent. Intelligence Agency, on The Charlie Rose Show, PBS television broadcast (Oct. 22, 2007) [hereinafter *Director Michael Hayden's Interview with Charlie Rose*].

c. Attached hereto as Exhibit I is a true and correct copy of News Release, U.S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), Defense Department Takes Custody of a High-Value Detainee (Mar. 14, 2008) [hereinafter *Defense Department Takes Custody of a High-Value Detainee* (2008)].

7. On January 22, 2009, President Barack Obama signed Executive Order 13491 which revokes Executive Order 13440 (2007) and orders the CIA to close any detention facility it operated apart from those used for a short-term period. Attached hereto as Exhibit J is a true and correct copy of Exec. Order No. 13,491, 74 Fed. Reg. 4893 (Jan. 22, 2009).

8. On April 9, 2009, CIA Director Leon E. Panetta confirmed that the “CIA no longer operates detention facilities or black sites and has proposed a plan to decommission the remaining sites.” Attached hereto as Exhibit K is a true and correct copy of Statement by Leon E. Panetta, Dir., Cent. Intelligence Agency, to Employees, Cent. Intelligence Agency, Message from the Director: Interrogation Policy and Contracts (Apr. 9, 2009) [hereinafter *Statement to Employees by Director of the CIA Leon E. Panetta on the CIA’s Interrogation Policy and Contracts*].

9. By Executive Order 13491 (2009), the U.S. Government, its agencies and components, are required to comply with the Army Field Manual 2-2.23 in interrogations. Exec. Order No. 13,491, Exhibit J.

10. The CIA’s use of “enhanced interrogation techniques” ceased in January 2009.

a. *Statement to Employees by Director of the CIA Leon E. Panetta on the CIA’s Interrogation Policy and Contracts*, Exhibit K.

b. Attached hereto as Exhibit L is a true and correct copy of Statement by Leon E. Panetta, Dir., Cent. Intelligence Agency, to Employees, Cent. Intelligence Agency, Message from the Director: Release of Material on Past Detention Practices (Aug. 24, 2009) [hereinafter *Statement to Employees by Director of the CIA Leon E. Panetta on Release of Material on Past Detention Practices*].

11. On April 16, 2009, President Obama affirmed in a letter to the CIA that he had “prohibited the use of these interrogation techniques.” Attached hereto as Exhibit M is a true and correct copy of Statement by Leon E. Panetta, Dir., Cent. Intelligence Agency, to Employees, Cent. Intelligence Agency, Message from the Director: Release of Department of Justice Opinions (Apr. 16, 2009) [hereinafter *Statement to Employees by Director of the CIA Leon E. Panetta on the Release of Department of Justice Opinions*].

12. On April 16, 2009, President Obama ordered the release of a number of Department of Justice (DOJ) Office of Legal Counsel (OLC) memos concerning the CIA’s detention and interrogation activities, noting that “much of the information contained in the memos has been in the public domain.” *Statement to Employees by Director of the CIA Leon E. Panetta on the Release of Department of Justice Opinions*, Exhibit M.

13. On April 16, 2009, CIA Director Panetta noted in respect of the release that “This is not the end of the road on these issues. More requests will come—from the public, from Congress, and the Courts—and more information is sure to be released. We cannot control the debate about the past.” *Statement to Employees by Director of the CIA Leon E. Panetta on the Release of Department of Justice Opinions*, Exhibit M.

14. On August 24, 2009, CIA Director Panetta noted in respect of the further release of material on the CIA's detention and interrogation program that, "This is in many ways an old story. The outlines of prior interrogation practices, and many of the details, are public already." *Statement to Employees by Director of the CIA Leon E. Panetta on Release of Material on Past Detention Practices*, Exhibit L.

Number and Identities of Individuals Rendered, Secretly Detained, and Interrogated by the CIA

15. The first individual detained in the CIA's program was Abu Zubaydah and the CIA's program began with his apprehension in 2002.

a. *White House News Release*, Exhibit A.

b. Attached hereto as Exhibit N is a true and correct copy of Announcement from the Office of the Director of National Intelligence, Summary of the High Value Terrorist Detainee Program (undated) [hereinafter *ODNI Summary of the Program*].

c. Attached hereto as Exhibit O is a true and correct copy of General Michael Hayden, Dir., Cent. Intelligence Agency, A Conversation with Michael Hayden at the Council on Foreign Relations (Sept. 7, 2007) [hereinafter *A Conversation with Michael Hayden*].

d. *Director Michael Hayden's Interview with Charlie Rose*, Exhibit H.

e. Attached hereto as Exhibit P is a true and correct copy of Statement by Michael Hayden, Dir., Cent. Intelligence Agency, to Employees, Cent. Intelligence Agency, Director's Statement on the Taping of Early Detainee Interrogations (Dec. 6, 2007) [hereinafter *General Hayden Statement on the Taping of Early Detainee Interrogations*].

16. The United States used “rendition” to transfer terrorism suspects to third countries and worked with foreign partners to apprehend and render individuals to CIA detention.

a. Attached hereto as Exhibit Q is a true and correct copy of Press Release, White House Office of the Press Secretary, Press Gaggle with Scott McClellan and a Senior Administration Official (Aug. 14, 2003).

b. Attached hereto as Exhibit R is a true and correct copy of Press Release, White House Office of the Press Secretary, President's Press Conference (Mar. 16, 2005).

c. Attached hereto as Exhibit S is a true and correct copy of Testimony of DCI Goss Before Senate Armed Services Committee (as prepared for delivery) (Mar. 17, 2005).

d. Attached hereto as Exhibit T is a true and correct copy of Press Release, White House Office of the Press Secretary, Press Conference of the President (Apr. 28, 2005).

e. Attached hereto as Exhibit U is a true and correct copy of Condoleezza Rice, U.S. Secretary of State, Remarks Upon Her Departure for Europe at Andrews Air Force Base, Dec. 5, 2005.

f. Attached hereto as Exhibit V is a true and correct copy of Press Release, White House Office of the Press Secretary, Press Briefing by Scott McClellan (Dec. 6, 2005).

g. Attached hereto as Exhibit W is a true and correct copy of Press Release, White House Office of the Press Secretary, Press Gaggle by Tony Snow (June 7, 2006).

h. *White House News Release*, Exhibit A

- i. *ODNI Summary of the Program*, Exhibit N.
- j. *A Conversation with Michael Hayden*, Exhibit O.
- k. *Director Michael Hayden's Interview with Charlie Rose*, Exhibit H.

l. Attached hereto as Exhibit X is a true and correct copy of Fax from [Redacted] Assoc. General Counsel, CounterTerrorism Center, CIA, to Dan Levin, Acting Assistant Attorney General, Office of Legal Counsel, Dep't of Justice, containing Background Paper on CIA's Combined Use of Interrogation Techniques (Dec. 30, 2004) [hereinafter *CIA Background Paper*] at 2.

17. From March 2002 until May 30, 2005, the CIA had detained 94 individuals in its detention and interrogation program; by August 31, 2006, the CIA had detained 96 individuals (and had "fewer than 20" in custody at that time); by July 20, 2007, it had detained 98 individuals; and by October 22, 2007, the CIA had detained "fewer than 100."

a. Attached hereto as Exhibit Y is a true and correct copy of Memorandum from Steven G. Bradbury, Principal Deputy Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to John A. Rizzo, Senior Deputy Gen. Counsel, Cent. Intelligence Agency, Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees (May 30, 2005) [hereinafter *May 30, 2005 Art. 16 Techniques Memo*] at 5.

b. Attached hereto as Exhibit Z is a true and correct copy of Memorandum from Steven G. Bradbury, Acting Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to John A. Rizzo, Acting Gen. Counsel, Cent. Intelligence Agency, Re:

Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities (Aug. 31, 2006) [hereinafter *August 31, 2006 DTA Confinement Conditions Memo*] at 2.

c. Attached hereto as Exhibit AA is a true and correct copy of Memorandum from Steven G. Bradbury, Principal Deputy Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to John A. Rizzo, Gen. Counsel, Cent. Intelligence Agency, Re: The Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques that May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees (July 20, 2007) [hereinafter *July 20, 2007 Techniques Memo*] at 5.

d. Attached hereto as Exhibit BB is a true and correct copy of Statement by Gen. Michael V. Hayden, Dir., Cent. Intelligence Agency, to Employees, Cent. Intelligence Agency, Director's Statement on the CIA's Terrorist Interrogation Program (Oct. 5, 2007) [hereinafter *General Hayden Statement to CIA Employees on the CIA's Terrorist Interrogation Program*].

e. *Director Michael Hayden's Interview with Charlie Rose*, Exhibit H.

18. At least 19 of the individuals detained in the CIA's program have been confirmed by name. Those who have been named by the U.S. government include: (1) Muhammad Rahim al-Afghani (Mohammed Rahim); (2) Ali Abdul-Hamid al-Fakhiri (Ali Abd-al-Hamid al-Fakhiri, Ibn al-Shaykh al-Libi); (3) Ali Abd al-Rahman al-Faqasi al-Ghamdi (Abu Bakr al Azdi); (4) Mustafa al-Hawsawi (Hashim 'Abd al-Rahman, Zahir, Ayyub, Muhammad Adnan); (5) Abd al-Hadi al-Iraqi (Abu Abdullah, Abdal Hadi al Iraqi); (6) Abu Faraj al-Libi (Mustafa al-'Uzayti, Mahfuz, 'Abd al-Hafiz, Abu

Hamada, Tawfiq); (7) Abd al-Rahim al-Nashiri (Abd al-Rahim Hussein Muhammad Abdu, Mulla Bilal, Bilal, Abu Bilal al-Makki, Khalid al-Safani, Amm Ahmad (“Uncle Ahmad”)); (8) Ramzi bin al-Shibh (Abu Ubaydah, ‘Umar Muhammad ‘Abdallah Ba’ Amar); (9) Ali Abdul Aziz Ali (‘Ammar al-Baluchi); (10) Mohamed Farik Amin (Zubair); (11) Waleed Muhammad bin Attash (Khallad Bin ‘Attash, Silver); (12) Gouled Hassan Dourad (Guleed Hassan Ahmad, Hanad); (13) Ahmed Khalfan Ghailani (Haytham al-Kini); (14) Hassan Ghul; (15) Riduan Isamudin (Hambali) (Riduan bin Isomuddin, Encep Nurjaman); (16) Majid Khan (Yusif); (17) Mohammed Nazir Bin Lep (Lillie, Lilie, Li-Li); (18) Khalid Sheikh Mohammed (Mukhtar); and (19) Abu Zubayda (Hani, Tariq, Zayn al-‘Abidin Abu Zubaydah).

a. *White House News Release*, Exhibit A.

b. Attached hereto as Exhibit CC is a true and correct copy of Office of the Director of National Intelligence, *Biographies of High Value Terrorist Detainees Transferred to the US Naval Base at Guantánamo Bay (Sept. 6, 2006)* [hereinafter *Biographies of High Value Terrorist Detainees*].

c. *Defense Department Takes Custody of a High-Value Detainee* (2007), Exhibit G.

d. *Director Michael Hayden’s Interview with Charlie Rose*, Exhibit H.

e. *Defense Department Takes Custody of a High-Value Detainee* (2008), Exhibit I.

f. Attached hereto as Exhibit DD is a true and correct copy of relevant pages from the NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE U.S., 9-11 COMMISSION REPORT (2004) at 434-436.

g. *May 30, 2005 Art. 16 Techniques Memo*, Exhibit Y at 7.

h. Attached hereto as Exhibit EE is a true and correct copy of relevant pages from *United States v. Paracha*, 2006 U.S. Dist. LEXIS 1, *11-12 (S.D.N.Y. 2006).

i. Attached hereto as Exhibit FF are relevant pages from Substitution for the Testimony of Khalid Sheikh Mohammed, Exhibit 941 for Defendant, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1; Substitution for the Testimony of Mustafa Ahmed al-Hawsawi, Exhibit 943 for Defendant, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1; Substitution for the Testimony of Walid Muhammad Salih Bin Attash (“Khallad”), Exhibit 945 for Defendant, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 1-2; Substitution for the Testimony of Riduan Isamuddin (“Hambali”), Exhibit 946 for Defendant, *United States v. Moussaoui*, (E.D. VA. 2003), Cr. No. 01-455-A, at 2.

j. Attached hereto as Exhibit GG are relevant pages from REPORT OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE, POSTWAR FINDINGS ABOUT IRAQ’S WMD PROGRAMS AND LINKS TO TERRORISM AND HOW THEY COMPARE WITH PREWAR ASSESSMENTS (2006) at 79-82.

19. As of May 30, 2005, the CIA had “employed enhanced techniques to varying degrees in the interrogations of 28” of 94 detainees and as of July 20, 2007, the CIA had “used enhanced techniques with a total of 30” of the 98 individuals detained in the program’s history. As of October 22, 2007, such techniques had been used against “less than a third” of the individuals detained by the CIA.

a. *May 30, 2005 Art. 16 Techniques Memo*, Exhibit Y at 5.

b. *July 20, 2007 Techniques Memo*, Exhibit AA at 5.

c. *General Hayden Statement to CIA Employees on the CIA's Terrorist Interrogation Program*, Exhibit BB.

d. *Director Michael Hayden's Interview with Charlie Rose*, Exhibit H.

20. Apart from the individuals detained in the CIA program, the approximate number of renditions performed by the CIA is "mid-range," or "two figures."

a. *A Conversation with Michael Hayden*, Exhibit O.

k. *Director Michael Hayden's Interview with Charlie Rose*, Exhibit H.

Further Details Concerning "Initial Conditions": "Capture," "Rendition" and "Reception at Black Site"

21. The first phase of the CIA interrogation process is aimed at setting the "Initial Conditions" and consists of "Capture;" "Rendition;" and "Reception at Black Site." *CIA Background Paper*, Exhibit X at 1-2.

22. In the "rendition" phase, when a detainee is flown into a black site, "[d]uring the flight, the detainee is securely shackled and is deprived of sight and sound through the use of blindfolds, earmuffs, and hoods. There is no interaction with the HVD during this rendition movement except for periodic discreet assessments by the on-board medical officer... Upon arrival at the destination airfield, the HVD is moved to the Black Site under the same conditions and using appropriate security procedures." In addition, detainees are also "securely shackled" and "deprived of sight and sound through the use of blindfolds, earmuffs, and hoods" during the flight. The individual may be sedated "to protect either the subject or the rendition security team."

a. *CIA Background Paper*, Exhibit X at 2.

b. Attached hereto as Exhibit HH is a true and correct copy of Fax from [Redacted] to Dan Levin, Office of Legal Counsel, Dep't of Justice, containing OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention, Dec. 2004 (Jan. 15, 2005) [hereinafter *December 2004 OMS Guidelines*] at 5.

23. The British Island territory of Diego Garcia was used for rendition flights. Attached hereto as Exhibit II is a true and correct copy of Statement by Gen. Michael Hayden, Dir., Cent. Intelligence Agency, to Employees, Cent. Intelligence Agency, Director's Statement on the Past Use of Diego Garcia (Feb. 21, 2008).

24. In the "Reception at Black Site," phase of interrogation, there is facial and head shaving; multiple nude pictures are taken; a medical officer conducts a medical assessment; and a psychologist conducts a psychological assessment. *CIA Background Paper*, Exhibit X at 2-3.

The Use of "Enhanced Interrogation Techniques" Against Individuals in CIA Detention

August 1, 2002 Memos and the Application of Specific Techniques in the Interrogation of Abu Zubaydah

25. On August 1, 2002, Jay S. Bybee, Assistant Attorney General issued a *Memorandum for Alberto R. Gonzales Counsel to the President, Re: Standards of Conduct for Interrogation under 18 U.S. C. §§ 2340-2340A*.

a. Attached hereto as Exhibit JJ is a true and correct copy of Memorandum from Jay S. Bybee, Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to

Alberto R. Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A (Aug. 1, 2002) [hereinafter *Bybee August 1, 2002 Memo*].

b. *See also* attached hereto as Exhibit KK a true and correct copy of Letter from John Yoo, Deputy Assistant Attorney Gen., Dep't of Justice, to John A. Rizzo, Acting Gen. Counsel, Cent. Intelligence Agency (July 13, 2002); and attached hereto as Exhibit LL a true and correct copy of Letter from John Yoo, Deputy Assistant Attorney Gen., Dep't of Justice, to the Honorable Alberto R. Gonzales, Counsel to the President (Aug. 1, 2002).

26. In June 2004, the DOJ withdrew the *Bybee August 1, 2002 Memo*, following questions about the “appropriateness and relevance of the non-statutory discussion...and also about various aspects of the statutory analysis” and issued a superseding *Memorandum for James B. Comey, Deputy Attorney General Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A* on December 30, 2004, which was made public “Because of the importance of—and public interest in—these issues.” Attached hereto as Exhibit MM is a true and correct copy of Memorandum from Daniel Levin, Acting Assistant Attorney Gen., to James B. Comey, Deputy Attorney Gen., Re: *Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A* (Dec. 30, 2004) at 1-2.

27. After his apprehension in late March 2002, Abu Zubaydah was taken to a secret CIA facility where he was initially interrogated by Federal Bureau of Investigation (FBI) agents, until “Within a few days, CIA personnel assumed control over the interview.” Prior to early June 2002, “the CIA shaved Zubaydah’s head, sometimes deprived Zubaydah of clothing, and kept the temperatures in his cell cold.” Attached

hereto as Exhibit NN is a true and correct copy of relevant passages of U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., A REVIEW OF THE FBI'S INVOLVEMENT IN AND OBSERVATIONS OF DETAINEE INTERROGATIONS IN GUANTANAMO BAY, AFGHANISTAN, AND IRAQ (2008) [hereinafter DOJ OIG, *FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*] at 67-77, 357-361.

28. Cable traffic between the field and CIA headquarters related to the content of videotapes of interrogations subsequently destroyed by the CIA commences on April 13, 2002—at this time according to the CIA Office of the Inspector General, only Abu Zubaydah, was in CIA custody.

a. Attached hereto as Exhibit OO is a true and correct copy of Letter from Lev L. Dassin, Acting United States Attorney, to Hon. Alvin K. Hellerstein, United States District Court Southern District of New York (May 18, 2009).

b. Attached hereto as Exhibit PP is a true and correct copy of the SPECIAL REVIEW, INSPECTOR GENERAL, CENTRAL INTELLIGENCE AGENCY, COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001 - OCTOBER 2003) (May 7, 2004) [hereinafter *CIA OIG Special Review*] at 7.

29. On August 1, 2002, Jay S. Bybee, Assistant Attorney General issued a Memorandum for John Rizzo, Acting General Counsel of the CIA concerning *Interrogation of al Qaeda Operative* memorializing “previous oral advice of July 24, 2002 and July 26, 2002” concerning the use of ten interrogation techniques against Abu Zubaydah: the attention grasp; walling; facial hold; facial slap (insult slap); cramped confinement; wall standing; stress positions; sleep deprivation; placement in a confinement box with an insect (due to Zubaydah’s fear of insects); and the waterboard,

which the CIA intended to use in “some combination” and in an “escalating fashion.” Attached hereto as Exhibit QQ is a true and correct copy of Memorandum from Jay S. Bybee, Assistant Attorney Gen., Office of Legal Counsel, Dep’t of Justice, to John Rizzo, Acting Gen. Counsel, Cent. Intelligence Agency, Interrogation of al Qaeda Operative (Aug. 1, 2002) [hereinafter *August 1, 2002 Zubaydah Memo*].

30. The techniques are derived from the Survival, Evasion, Resistance, Escape (“SERE”) training program and a SERE training psychologist was involved with Zubaydah’s “interrogations since they began” and prior to August 1, 2002.

- a. *August 1, 2002 Zubaydah Memo*, Exhibit QQ at 1.
- b. *CIA OIG Special Review*, Exhibit PP at 13-14.

31. Prior to August 1, 2002, the CIA had already “previously kept him [Zubaydah] awake for 72 hours” and a psychological assessment of Zubaydah sent to John Yoo on July 24, 2002 was based on sources that included “direct interviews with and observations of the subject.”

- a. *August 1, 2002 Zubaydah Memo*, Exhibit QQ at 3.
- b. Attached hereto as Exhibit RR is a true and correct copy of Fax from [Redacted], to John Yoo, containing Psychological Assessment of Zain al-‘Abedin al-Abideen Muhammad Hassan, a.k.a. Abu Zubaydah (July 24, 2002) [hereinafter *Psychological Assessment of Zubaydah*] at 2.

32. The “enhanced techniques” were actually utilized against Zubaydah, and the “psychologist/interrogators...led each interrogation of Abu Zubaydah...where EITs were used.”

a. Attached hereto as Exhibit SS is a true and correct copy of Cent. Intelligence Agency, CIA Business Plan Discussing RDI Program (Mar. 7, 2003) at 13.

b. *CIA OIG Special Review*, Exhibit PP at 35.

33. Zubaydah was waterboarded at least 83 times in a manner that “was different from the technique as described in the DoJ opinion and used in the SERE training” with the last waterboard session on Zubaydah characterized by the OLC as “the unnecessary use of enhanced techniques.”

a. *CIA OIG Special Review*, Exhibit PP at 36-37, 90, 103-104.

b. *May 30, 2005 Art. 16 Techniques Memo*, Exhibit Y at 31 n. 28.

c. Attached hereto as Exhibit TT is a true and correct copy of Letter from Jack L. Goldsmith III, Office of the Assistant Attorney Gen., to Scott Muller, Gen. Counsel, Cent. Intelligence Agency (May 27, 2004) [hereinafter *May 27, 2004 Goldsmith Letter*].

Definitions of Each of the “Enhanced Interrogation Techniques” for Zubaydah and Other Detainees

34. Following the *August 1, 2002 Zubaydah Memo*, on July 29, 2003, the Attorney General was informed that the CIA had used “enhanced interrogation techniques” (including waterboarding) on detainees other than Zubaydah and then “confirmed that DoJ approved of the expanded use of various EITs.” According to Jack Goldsmith III, Assistant Attorney General, this meant that the Attorney General “expressed the view that the legal principles reflected in DOJ’s specific original advice [on Zubaydah] could appropriately be extended to allow use of the same approved techniques (under the same conditions and subject to the same safeguards) to other individuals besides the subject of DOJ’s specific original advice.”

a. *CIA OIG Special Review*, Exhibit PP at 43.

b. Attached hereto as Exhibit UU is a true and correct copy of Memorandum from Jack Goldsmith III, Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice to John Helgerson, Inspector Gen., Cent. Intelligence Agency, Re: "Special Review: Counterterrorism Detention and Interrogation Activities" (June 18, 2004) [hereinafter *June 18, 2004 Goldsmith Memo*].

c. *May 27, 2004 Goldsmith Letter*, Exhibit TT at 1.

35. The CIA's Special Review, identifies the "10 EITs the Agency described to DOJ" as follows (emphasis in original) (*CIA OIG Special Review*, Exhibit PP at 14-15):

a. The attention **grasp** consists of grasping the detainee with both hands, with one hand on each side of the collar opening, in a controlled and quick motion. In the same motion as the grasp, the detainee is drawn toward the interrogator.

b. During the **walling** technique, the detainee is pulled forward and then quickly and firmly pushed into a flexible false wall so that his shoulder blades hit the wall. His head and neck are supported with a rolled towel to prevent whiplash.

c. The **facial hold** is used to hold the detainee's head immobile. The interrogator places an open palm on either side of the detainee's face and the Interrogator's fingertips are kept well away from the detainee's eyes.

d. With the **facial or insult slap**, the fingers are slightly spread apart. The interrogator's hand makes contact with the area between the tip of the detainee's chin and the bottom of the corresponding earlobe.

e. In **cramped confinement**, the detainee is placed in a confined space, typically a small or large box, which is usually dark. Confinement in the smaller space lasts no more than two hours and in the larger space it can last up to 18 hours.

f. **Insects** placed in a **confinement** box involve placing a harmless insect in the box with the detainee.

g. During **wall standing**, the detainee may stand about 4 to 5 feet from a wall with his feet spread approximately to his shoulder width. His arms are stretched out in front of him and his fingers rest on the wall to support all of his body weight. The detainee is not allowed to reposition his hands or feet.

h. The application of **stress positions** may include having the detainee sit on file floor with his legs extended straight out in front of him with his anus raised above his head or kneeling on the floor while leaning back at a 45 degree angle.

i. **Sleep deprivation** will not exceed **11** days at a time.

j. The application of the **waterboard** technique involves binding the detainee to a bench with his feet elevated above his head. The detainee's head is immobilized and an interrogator places a cloth over the detainee's mouth and nose while pouring water onto the cloth in a controlled manner. Airflow is restricted for 20 to 40 seconds and the technique produces the sensation of drowning and suffocation.

Application of Specific Techniques in the Interrogation of Ramzi Binalshib

36. Ramzi Binalshib was captured in September 2002 and was interrogated by CIA and FBI officials in a “CIA-controlled facility,” at which detainees were “manacled to the ceiling and subjected to blaring music around the clock” and Binalshib himself was “naked and chained to the floor” when the FBI interviewed him. DOJ OIG, *FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, Exhibit NN at 74, 361.

Application of Specific Techniques in the Interrogation of Abd al-Rahim Al-Nashiri

37. By November 2002, Abd al-Rahim Al-Nashiri was in CIA detention, and “psychologist/interrogators began Al-Nashiri’s interrogation using EITs immediately upon his arrival.” Al-Nashiri underwent “interrogation with the HVT interrogators.”

a. Attached hereto as Exhibit VV is a true and correct copy of Cent. Intelligence Agency, Spot report discussing interrogation of Al-Nashiri (Nov. 20, 2002).

b. Attached hereto as Exhibit WW is a true and correct copy of Email with Attachment, Spot Report Regarding Interrogation of Al-Nashiri (Jan. 22, 2003, 06:54:55 EST).

c. *CIA OIG Special Review*, Exhibit PP at 4, 35-6.

38. The “psychologist/interrogators...led each interrogation of Al-Nashiri...where EITs were used.” *CIA OIG Special Review*, Exhibit PP at 35.

39. On the twelfth day of his interrogation, Al-Nashiri was subjected to “two applications of the waterboard...during two separate interrogation sessions. Enhanced interrogation of Al-Nashiri continued through 4 December 2002,” after which he

“subsequently received additional EITs” and the “interrogation team continued EITs on Al-Nashiri for two weeks in December 2002.” *CIA OIG Special Review*, Exhibit PP at 36, 41, 90.

40. Al-Nashiri was subjected to five “specific unauthorized or undocumented techniques,” including: use of a semi-automatic handgun and a power drill to frighten Al-Nashiri during an interrogation sometime between December 28, 2002 and January 1, 2003; threats against family members; blowing of cigar smoke in Al-Nashiri’s face in December 2002; “potentially injurious stress positions;” and a “stiff brush that was intended to induce pain.” *CIA OIG Special Review*, Exhibit PP at 41-44.

CIA Guidelines on Interrogation, January 28, 2003

41. Prior to January 2003, the CIA CTC and Office of General Counsel “disseminated guidance via cables, e-mail, or orally on a case-by-case basis to address requests to use specific interrogation techniques.” *CIA Special Review*, Exhibit PP at 29.

42. On January 28, 2003, the Director of Central Intelligence issued *Guidelines on Interrogations Conducted Pursuant to the [redacted]* which were in force until at least May 10, 2005. The Guidelines refer to “Permissible Interrogation Techniques” as encompassing both “Standard Techniques” and “Enhanced Techniques” and list what each of these techniques involves, along with the approval process for utilizing such techniques.

a. Attached hereto as Exhibit XX is a true and correct copy of Guidelines on Interrogations Conducted Pursuant to the [Redacted] (Jan. 28, 2003) [hereinafter *2003 DCI Interrogation Guidelines*].

b. Attached hereto as Exhibit YY is a true and correct copy of Memorandum from Steven G. Bradbury, Principal Deputy Assistant Attorney Gen., Office of Legal Counsel, to John A. Rizzo, Senior Deputy Gen. Counsel, Cent. Intelligence Agency, Re: Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques That May Be Used in the Interrogation of a High Value al Qaeda Detainee (May 10, 2005) [hereinafter *May 10, 2005 Techniques Memo*] at 7.

43. The CIA's "Standard Techniques" include "the use of isolation; sleep deprivation not to exceed 72 hours; reduced caloric intake...deprivation of reading material, use of loud music or white noise...and the use of diapers..." and the "Enhanced Techniques" are "the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation beyond 72 hours, the use of diapers for prolonged periods, the use of harmless insects, the water board, and such other techniques as may be specifically approved..." *2003 DCI Interrogation Guidelines*, Exhibit XX at 1, 2.

44. According to the *2003 DCI Interrogation Guidelines*, the use of each enhanced interrogation technique "must be approved by Headquarters in advance" in writing (e.g. cable) and "Whenever feasible, advance approval is required for the use of Standard Techniques."

- a. *2003 DCI Interrogation Guidelines*, Exhibit XX at 1, 3.
- b. CIA Business Plan Discussing RDI Program, Exhibit SS at 16.
- c. *December 2004 OMS Guidelines*, Exhibit HH at 9.

45. The CIA's "enhanced interrogation techniques" were to be used in combination and in an "escalating fashion."

- a. CIA Business Plan Discussing RDI Program, Exhibit SS at 19.
- b. *CIA Background Paper*, Exhibit X at 18.
- c. *May 10, 2005 Techniques Memo*, Exhibit YY at 7.

Application of Specific Techniques in the Interrogation of Khalid Sheikh Mohammed

46. In March 2003, Khalid Sheikh Mohammed was waterboarded 183 times “in a manner inconsistent with the SERE application of the waterboard and the description of the waterboard in the DOJ OLC opinion, in that the technique was used... a large number of times.”

- a. *CIA OIG Special Review*, Exhibit PP at 44-5, 91.
- b. *May 27, 2004 Goldsmith Letter*, Exhibit TT.

47. According to the CIA, waterboarding was used on three detainees—Khalid Sheikh Mohammed, Abu Zubaydah and Abd al-Rahim Al-Nashiri— and waterboarding was last used in the March 2003 interrogation of Khalid Sheikh Mohammed.

- a. *May 30, 2005 Art. 16 Techniques Memo*, Exhibit Y at 6.
- b. Attached hereto as Exhibit ZZ is a true and correct copy of *Hearing of the Senate Select Committee on Intelligence Annual Threat Assessment*, 110th Cong. 23-26 (2008).

48. The known dates of cable traffic regarding the waterboarding of Khalid Sheikh Mohammed range from March 1, 2003, to September 24, 2003 and the majority of the cables—47 out of 49—are from March 2003. Attached hereto as Exhibit AAA is a

true and correct copy of Vaughn Indexes of Document Nos. 303-351, *Amnesty Int'l v. CIA, et al.*, 07 Civ. 5435 (LAP) (S.D.N.Y. Sept. 22, 2009).

49. Another “specific unauthorized or undocumented technique” was used against Khalid Sheikh Mohammed when agency personnel made threats against family members during his interrogation, stating “that if anything else happens in the United States, ‘We’re going to kill your children.’” *CIA OIG Special Review*, Exhibit PP at 43.

The Application of Identified Techniques to Detainees: June 2003—September 2004

50. A 2003 memorandum entitled *Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa’ida Personnel* was understood by the CIA’s Office of General Counsel to embody “DOJ agreement that the reasoning of the classified 1 August 2002 OLC opinion extends beyond the interrogation of Abu Zubaydah and the conditions that were specified in that opinion” and to have been “prepared with OLC’s assistance and received the concurrence of your office [the OLC] in June 2003.” The OLC has stated that the bullet points contained in the document “did not and do not represent an opinion or a statement of the view of this Office.”

a. Attached hereto as Exhibit BBB is Fax from Scott W. Muller, Office of Gen. Counsel, Cent. Intelligence Agency, for John Yoo, Office of Legal Counsel, Dep’t of Justice, Re: *Legal Principles Applicable to CIA Detention and Interrogation of Capture Al-Qa’ida Personnel* (Apr. 28, 2003).

b. Attached hereto as Exhibit CCC is Fax for [Redacted] and Patrick Philbin, Re: *Bullet Points: Final Summary* (June 16, 2003).

c. Attached hereto as Exhibit DDD is a true and correct copy of Letter from Scott W. Muller, Office of Gen. Counsel, Cent. Intelligence Agency, to the Honorable Jack L. Goldsmith III, Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, containing Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel (Mar. 2, 2004) [hereinafter *Mar. 2, 2004 Muller Letter*].

d. *CIA OIG Special Review*, Exhibit PP at 23.

e. Attached hereto as Exhibit EEE is a true and correct copy of Letter from Jack L. Goldsmith III, Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to Scott W. Muller, Gen. Counsel, Cent. Intelligence Agency (June 10, 2004).

f. *June 18, 2004 Goldsmith Memo*, Exhibit UU.

51. The *Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel* do not contemplate the application of specific techniques to a specific detainee(s), but instead address the use of the "following techniques and of comparable approved techniques in the interrogation of al-Qa'ida detainees by the CIA...": isolation; "reduced caloric intake"; "deprivation of reading material"; "loud music or white noise"; "the attention grasp"; "walling"; "the facial hold"; "the facial slap (insult slap);" "the abdominal slap;" "cramped confinement;" "wall standing;" "stress positions;" "sleep deprivation"; "the use of diapers"; "the use of harmless insects"; and "the water board." *Mar. 2, 2004 Muller Letter*, Exhibit DDD at 8.

52. By March 2, 2004, the CIA had added "two standing stress positions involving the detainee leaning against a wall" and "two uses of water not involving the waterboard" (water "pouring, flicking, or tossing" or "water PFT" and "water dousing") to its list of interrogation techniques. *Mar. 2, 2004 Muller Letter*, Exhibit DDD at 2.

53. In July 2004, the CIA's "authorized techniques" for the interrogation of a detainee were the nine techniques (except the waterboard) in the *August 1, 2002 Zubaydah memo* and the twenty-four interrogation techniques "approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense," subject to the limitations, assumptions and safeguards in respect of each set of techniques.

a. Attached hereto as Exhibit FFF is a true and correct copy of Memorandum from Scott W. Muller to John Bellinger (July 2, 2004).

b. Attached hereto as Exhibit GGG is a true and correct copy of Letter from Jack L. Goldsmith III, Assistant Attorney Gen., to Scott W. Muller, Gen. Counsel, Cent. Intelligence Agency (July 7, 2004).

c. Attached hereto as Exhibit HHH is a true and correct copy of Letter from John D. Ashcroft, Attorney Gen., to John E. McLaughlin, Acting Dir. of Cent. Intelligence, Cent. Intelligence Agency (July 22, 2004).

54. On July 22, 2004, Daniel B. Levin Acting Assistant Attorney General requested Scott W. Muller, General Counsel, CIA for a "precise description" of the waterboard technique, noting that "[a]s you know, the CIA Office of Inspector General...raised several questions about whether the technique, as actually used, confirms to the description" in the *August 1, 2002 Zubaydah Memo*, and requesting "information about the facts and circumstances" of the detainee the CIA proposed to subject to waterboarding. Attached hereto as Exhibit III is a true and correct copy of Letter from Daniel B. Levin Acting Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to Scott W. Muller, Gen. Counsel, Cent. Intelligence Agency (July 22, 2004).

55. On August 5, 2004, Associate General Counsel, CIA, advised Daniel B. Levin, Acting Assistant Attorney General that “approvals for use of the waterboard last for only 30 days;” “the number of waterboard sessions on a given day may not exceed four;” that the “OMS has not established any time limit for a waterboard session;” and that “the time of total contact of water with the face will not exceed 40 seconds.” Attached hereto as Exhibit JJJ is a true and correct copy of Letter from Assoc. Gen. Counsel, Cent. Intelligence Agency, to Dan Levin, Acting Assistant Attorney Gen., Office of Legal Counsel, Dep’t of Justice (Aug. 5, 2004).

56. On August 6, 2004, Daniel B. Levin, Acting Assistant Attorney General, confirmed to John A. Rizzo, Acting General Counsel, CIA, the DOJ’s advice that “although it is a close and difficult question, the use of the waterboard technique in the contemplated interrogation of [redacted]” (emphasis in original) would be legal, subject to a number of conditions, including that “As we understand the facts, the detainees previously subjected to the technique ‘are in good physiological and psychological health.’” Attached hereto as Exhibit KKK is a true and correct copy of Letter from Daniel B. Levin, Acting Assistant Attorney Gen., Office of Legal Counsel, Dep’t of Justice, to John A. Rizzo, Acting Gen. Counsel, Cent. Intelligence Agency (Aug. 6, 2004).

57. On August 26, 2004, Daniel B Levin, Acting Assistant Attorney General advised John A. Rizzo, Acting General Counsel, CIA, that the use of four particular interrogation techniques (dietary manipulation, nudity, water dousing, and abdominal slaps) on an unnamed detainee were legal “based on, and limited by” a number of conditions. Attached hereto as Exhibit LLL is a true and correct copy of Letter from

Daniel Levin, Acting Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to John A. Rizzo, Acting Gen. Counsel, Cent. Intelligence Agency (Aug. 26, 2004).

58. On September 6, 2004, Daniel B. Levin, Acting Assistant Attorney General, advised John A. Rizzo, Acting General Counsel, CIA, that “the use of twelve particular interrogation techniques (attention grasp, walling, facial hold, facial slap (insult slap), cramped confinement, wall standing, stress positions, sleep deprivation dietary manipulation nudity, water dousing, and abdominal slap)” on an unnamed detainee would be legal “based on, and limited by” a number of conditions. Attached hereto as Exhibit MMM is a true and correct copy of Letter from Daniel B. Levin, Acting Assistant Attorney Gen., to John A. Rizzo, Acting Gen. Counsel, Cent. Intelligence Agency (Sept. 6, 2004).

59. On September 20, 2004, Daniel B. Levin, Acting Assistant Attorney General, advised John A. Rizzo, Acting General Counsel, CIA, that “the use of twelve particular interrogation techniques (attention grasp, walling, facial hold, racial slap (insult slap), cramped confinement, wall standing, stress positions, sleep deprivation, dietary manipulation, nudity, water dousing, and abdominal slap)” on an unnamed detainee would be legal, “based on, and limited by” a number of conditions. Attached hereto as Exhibit NNN is a true and correct copy of Letter from Daniel B. Levin, Acting Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to John A. Rizzo, Acting Gen. Counsel, Cent. Intelligence Agency (Sept. 20, 2004).

60. In September 2004, Daniel B Levin, Acting Assistant Attorney General provided a memorandum to the Attorney General and Deputy Attorney General concerning “Status of interrogation advice” in which he noted, *inter alia*, that he had

“written letters as to three detainees to date.” Attached hereto as Exhibit OOO is a true and correct copy of Memorandum from Daniel B. Levin, Acting Assistant Attorney Gen. to Attorney Gen. and Dep. Attorney Gen., Re: Status of Interrogation Advice (Sept. 2, 2004).

The Application of Identified Techniques to Detainees: December 2004—November 2007

61. In December 2004, the CIA’s Office of Medical Services (OMS) issued its revised OMS *Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention* for application in three contexts, including “during the period of rendition and initial interrogation,” and “during the more sustained period of debriefing at an interrogation site...” The OMS had earlier issued draft guidelines on September 4, 2003 and final guidelines on May 17, 2004.

a. *December 2004 OMS Guidelines*, Exhibit HH at 1.

b. *CIA OIG Special Review*, Exhibit PP, Appendix F, Draft OMS Guidelines on Medical and Psychological Support to Detainee Interrogations (Sept. 4, 2003).

c. Attached hereto as Exhibit PPP is a true and correct copy of Fax to Dan Levin, Acting Assistant Attorney Gen., containing OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention (May 17, 2004) (Oct. 18, 2004).

62. The *December 2004 OMS Guidelines* identify the following techniques: shaving; stripping; hooding; isolation; white noise or loud music; “continuous light or darkness”; “uncomfortably cool environment”; “dietary manipulation;” “shackling in upright, sitting, or horizontal position;” sleep deprivation; attention grasp; facial hold;

insult (facial) slap; abdominal slap; water dousing and tossing; stress positions (“on knees, body slanted forward or backward; leaning with forehead on wall;” “leaning on fingertips against wall”); walling; “cramped confinement (Confinement boxes);” and waterboard, noting that the waterboard is “by far the most traumatic of the enhanced interrogation techniques” and providing the most recent CTC December 2004 guidelines on the use of waterboarding. *December 2004 OMS Guidelines*, Exhibit HH at 8, 17, 19-20.

63. As of December 30, 2004, the CIA’s interrogation process consisted of “three separate phases”: “Initial Conditions;” “Transition to Interrogation;” and “Interrogation” (itself consisting of three techniques: “Conditioning Techniques,” “Corrective Techniques” and “Coercive Techniques”). The “Conditioning Techniques” are nudity, sleep deprivation, and dietary manipulation. The “Corrective Techniques” are the insult slap; abdominal slap; facial hold; and attention grasp, and these are “not used simultaneously but are often used interchangeably during an individual interrogation session” and while the detainee is subject to the conditioning techniques. The “Coercive Techniques” are “walling, water dousing, stress positions, wall standing, and cramped confinement” and they are “typically not used in combination, although some combined use is possible.” *CIA Background Paper*, Exhibit X at 1, 3-8.

64. The CIA has provided a “day-to-day-look” at a “prototypical interrogation,” advising that during the first three interrogation sessions, the detainee remains in sleep deprivation, dietary manipulation and is nude. *CIA Background Paper*, Exhibit X at 9-17.

65. Detainees in the CIA's program also "underwent horizontal sleep deprivation." Attached hereto as Exhibit QQQ is a true and correct copy of Fax from [Redacted], Cent. Intelligence Agency, to Steven Bradbury, Office of Legal Counsel, Dep't of Justice (Apr. 22, 2005) [hereinafter *April 22, 2005 Waterboard, Sleep Deprivation and Dietary Manipulation Fax*] at 2.

66. Dietary manipulation and sleep deprivation are "the two interrogation techniques [the CIA] use in conjunction with the waterboard." *April 22, 2005 Waterboard, Sleep Deprivation and Dietary Manipulation Fax*, Exhibit QQQ at 3-4.

67. Sleep deprivation "has proven to be the most indispensable to the effectiveness of the interrogation program, and its absence would, in all likelihood, render the remaining techniques of little value." *July 20, 2007 Techniques Memo*, Exhibit AA at 11.

68. As of May 10, 2005, thirteen techniques were authorized for use against a specific detainee: dietary manipulation, nudity, attention grasp, facial hold, facial (insult) slap, abdominal slap, cramped confinement, wall standing, stress positions, water dousing, sleep deprivation, and waterboarding. *May 10, 2005 Techniques Memo*, Exhibit YY.

69. On May 10, 2005, Steven G. Bradbury, Principal Deputy Assistant Attorney General also issued a memorandum on interrogation techniques, that explicitly "addresses the combinations without reference to any particular detainee" in principal reliance on the CIA's *Background Paper on CIA's Combined Use of Interrogation Techniques* (undated, but transmitted Dec. 30, 2004). Attached hereto as Exhibit RRR is a true and correct copy of Memorandum from Steven G. Bradbury, Principal Deputy

Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to John A. Rizzo, Senior Deputy Gen. Counsel, Cent. Intelligence Agency, Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees (May 10, 2005) at 3, 10.

70. On May 30, 2005, Steven G. Bradbury, Principal Deputy Assistant Attorney General prepared a memorandum that generally analyzes "certain 'enhanced interrogation techniques' employed by the Central Intelligence Agency ('CIA') in the interrogation of high value al Qaeda detainees," providing "where appropriate...more detailed background information regarding specific high value detainees who are representative of the individuals on whom the techniques might be used." The techniques analyzed are: nudity, dietary manipulation, sleep deprivation, shackling, facial (insult) slap, abdominal slap, facial hold, attention grasp, walling, water dousing, stress positions, cramped confinement, and water boarding. *May 30, 2005 Art. 16 Techniques Memo*, Exhibit Y.

71. On July 20, 2007, after *Hamdan v. Rumsfeld* and the enactment of the Detainee Treatment Act 42 U.S.C.A. § 2000dd, Steven G. Bradbury, Principal Deputy Assistant Attorney General issued a memorandum to John A. Rizzo, General Counsel, CIA that considers the lawfulness of the CIA's proposal to use six "enhanced interrogation techniques," both individually and in combination in its interrogation program. The CIA proposed two "conditioning techniques" (dietary manipulation and extended sleep deprivation) and four "corrective techniques" (facial hold, attention grasp, abdominal slap, and insult (or facial) slap). *July 20, 2007 Techniques Memo*, Exhibit AA.

72. On June 11, 2009, the DOJ OLC withdrew the *July 20, 2007 Techniques Memo*. Attached hereto as Exhibit SSS is a true and correct copy of Memorandum from David J. Barron, Acting Assistant Attorney Gen., to the Attorney Gen., Re: Withdrawal of Office of Legal Counsel Opinion (June 11, 2009).

73. In August and November 2007, the OLC authorized the extension of a technique against an unnamed detainee on at least three occasions. While the detainee is unnamed, based on official government statements, it appears to be Muhammad Rahim al-Afghani because according to such statements, the CIA detention program was empty on September 6, 2006 (see above paragraph 3), closed by April 9, 2009 (see above paragraph 8), and during that period only two individuals were announced to have been transferred from CIA custody to Guantánamo Bay— Abd al-Hadi al-Iraqi (in April 2007) and Muhammad Rahim al-Afghani (in March 2008) (see above paragraph 6).

a. Attached hereto as Exhibit TTT is a true and correct copy of Letter from Steven G. Bradbury, Principle Deputy Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to [Redacted], Assoc. Gen. Counsel, Cent. Intelligence Agency (Aug. 23, 2007).

b. Attached hereto as Exhibit UUU is a true and correct copy of Letter from Steven G. Bradbury, Principle Deputy Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to [Redacted], Assoc. Gen. Counsel, Cent. Intelligence Agency (Nov. 6, 2007).

c. Attached hereto as Exhibit VVV is a true and correct copy of Letter from Steven G. Bradbury, Principle Deputy Assistant Attorney Gen., Office of Legal Counsel,

Dep't of Justice, to [Redacted], Assoc. Gen. Counsel, Cent. Intelligence Agency (Nov. 7, 2007).

74. A January 15, 2009, *Memorandum for the Files Re: Status of Certain OLC Opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001* confirms that the DOJ OLC withdrew the *Bybee August 1, 2002 Memo* (see paragraph 26 above). Attached hereto as Exhibit WWW is a true and correct copy of Memorandum from Steven G. Bradbury, *Memorandum for the Files Re: Status of Certain OLC Opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001* (Jan. 15, 2009).

Confinement Conditions

75. Before January 2003, confinement conditions were developed by officers "assigned to manage detention facilities." *CIA OIG Special Review*, Exhibit PP at 27.

76. On January 28, 2003, then-Director of Central Intelligence, George Tenet issued *Guidelines on Confinement Conditions for CIA Detainees* to govern confinement conditions; these guidelines had to be signed, acknowledged and complied with by the "Responsible CIA Officer for the Detention Facility." Attached hereto as Exhibit XXX is a true and correct copy of George Tenet, Dir. of Cent. Intelligence, *Guidelines on Confinement Conditions for CIA Detainees* (Jan. 28, 2003).

77. As at August 31, 2006, the six standard conditions of confinement at CIA facilities were "blocking detainees' vision by covering their eyes with some opaque material;" an initial act of facial and head shaving; keeping "the detainees isolated from the outside world and from one another;" use of white noise; illumination of detainees' cells 24-hours-a-day; and the use of leg shackles.

a. *August 31, 2006 DTA Confinement Conditions Memo*, Exhibit Z.

b. Attached hereto as Exhibit YYY is a true and correct copy of Letter from Steven G. Bradbury, Acting Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice, to John A. Rizzo, Acting Gen. Counsel, Cent. Intelligence Agency (Aug. 31, 2006).

78. On October 31, 2006, then-Director of Central Intelligence George Tenet signed *Updated Guidelines on Confinement Conditions for CIA Detainees*, as a response in part to the *CIA OIG Special Review*. Attached hereto as Exhibit ZZZ is a true and correct copy of Memorandum from [Redacted], Chief, Legal Group, CIA CounterTerrorism Center, to Inspector Gen., Subject: [Redacted] Updated DCIA Guidelines on Confinement Conditions, Responsive to Recommendation 1 of the Inspector General's Special Review of Counterterrorism Detention and Interrogation Activities (2003-7123-IG) (Nov. 1, 2006).

79. The "standard conditions of CIA detention" listed in the October 27, 2006 *Updated Guidelines on Confinement Conditions for CIA Detainees*, that were forwarded to George Tenet for approval include shaving, use of white light, noise and shackling. Attached hereto as Exhibit AAAA is a true and correct copy of Memorandum from [Redacted], Chief [Redacted], CIA CounterTerrorism Center, to Dir., Cent. Intelligence Agency, Re: Updated Guidelines on Confinement Conditions for CIA Detainees (Oct. 27, 2006).

Interrogation Personnel

80. Prior to the “rendition” of an individual there is a medical examination, and during the “rendition movement” there are “periodic, discreet assessments by the on-board medical officer.” *CIA Background Paper*, Exhibit X at 2.

81. A medical officer and a psychologist conduct an “intake evaluation,” by which they each interview an individual on their arrival at a CIA “black site.” The “careful evaluation” by OMS is a “precondition for use of any of the enhanced techniques.”

- a. *2003 DCI Interrogation Guidelines*, Exhibit XX at 2.
- b. *CIA Background Paper*, Exhibit X at 3.
- c. *December 2004 OMS Guidelines*, Exhibit HH at 9.
- d. *July 20, 2007 Techniques Memo*, Exhibit AA at 11.

82. Medical and psychological personnel were required to be on site during interrogations involving the use of “enhanced interrogation techniques,” and are “physically present or otherwise observing” whenever “corrective techniques” are applied so as to intervene if there is an “unexpectedly painful or harmful psychological effect on the detainee.”

- a. *2003 DCI Interrogation Guidelines*, Exhibit XX at 2.
- b. *December 2004 OMS Guidelines*, Exhibit HH
- c. *CIA Background Paper*, Exhibit X at 12, 14.
- d. *July 20, 2007 Techniques Memo*, Exhibit AA at 11.

83. After November 2002, individuals had to attend a “pilot...two-week Interrogator Training Course” to certify as an interrogator. As of 2006 and 2007, it was reported that CIA interrogators must undergo either “240” or “250” hours of specialized training and are “trained and certified in a course that lasts approximately four weeks.”

- a. *CIA OIG Special Review*, Exhibit PP, at 12.
- b. *White House News Release*, Exhibit A.
- c. *ODNI Summary of the Program*, Exhibit N.
- d. *July 20, 2007 Techniques Memo*, Exhibit AA at 7.
- e. *A Conversation with Michael Hayden*, Exhibit O.

84. The average age of a CIA interrogator authorized to use “enhanced interrogation techniques” is 43 and “many possess advanced degrees in psychology.”

- a. *July 20, 2007 Techniques Memo*, Exhibit AA at 7.
- b. *A Conversation with Michael Hayden*, Exhibit O.

85. Interrogation teams were supported by “analysts” or “debriefers” who were not permitted to apply interrogation techniques. *CIA OIG Special Review*, Exhibit PP at 6, 82.

“Recordkeeping” of Interrogations and Destruction of Records

86. The CIA created contemporaneous records for each interrogation session that used an enhanced interrogation technique, “setting forth the nature and duration of each such technique employed, the identities of those present, and a citation to the required Headquarters approval cable.” *2003 DCI Interrogation Guidelines*, Exhibit XX at 3.

87. Psychological assessments of individuals in the CIA’s detention and interrogation program were shared with DOJ OLC. *Psychological Assessment of Zubaydah*, Exhibit RR.

88. The interrogations of individuals in the CIA program, including Abu Zubaydah, were taped in 2002 and subsequently destroyed by the CIA in 2005.

a. *General Hayden Statement on the Taping of Early Detainee Interrogations*, Exhibit P.

b. *CIA OIG Special Review*, Exhibit PP at 36-37.

89. As of May 7, 2004, there were “92 videotapes, 12 of which include EIT applications” of the interrogation of Abu Zubaydah. The CIA has destroyed 92 videotapes of its interrogations.

a. *CIA OIG Special Review*, Exhibit PP at 36.

b. Attached hereto as Exhibit BBBB is a true and correct copy of Letter from Lev Dassin, U.S. Attorney, to Judge Alvin Hellerstein (Mar. 2, 2009).

Information About and From Detainees

90. The CIA has provided comprehensive information about detainees, including that purportedly gleaned from interrogations, such as previous plots and plots allegedly disrupted as a result of the interrogation. These plots include the “Bojinka” plot; 2002 “West Coast Airliner Plot;” the “2004 UK Urban Targets Plot;” the “2003 Karachi Plot;” the “Heathrow/Canary Wharf plot;” the “Library Tower plot;” 2002 “Arabian Gulf Shipping Plot;” the “Straits of Hormuz Plot;” the “Tall Buildings Plot;” the “Second Wave;” the “Camp Lemonier Plot;” a plot to cut the lines of a suspension bridge and a “train track plot where the operative would loosen the spikes in an attempt to derail the train.” The CIA has also provided comprehensive information on individuals arrested as a result of information gleaned from interrogations, including the fact that the interrogation of Abu Zubaydah allegedly led to “a raid that netted Ramzi Bin Al-Shibh” and that Khalid Sheikh Mohammed’s interrogation led to the detention of a number of individuals, including Hambali and Amar al Baluchi and the discovery of a 17 member “Guraba Cell.”

- a. *Psychological Assessment of Zubaydah*, Exhibit RR.
- b. *CIA Business Plan Discussing RDI Program*, Exhibit SS at 13.
- c. Attached hereto as Exhibit CCCC is a true and correct copy of Memorandum for the Record, Meeting with [Redacted], on Interview with a Senior CIA Officer regarding CIA RDI Program (July 17, 2003) at 2-4.
- d. *CIA OIG Special Review*, Exhibit PP at 85-91.

e. Attached hereto as Exhibit DDDD is a true and correct copy of Cent. Intelligence Agency, Re: Khalid Shaykh Muhammad: Preeminent Source on Al-Qa'ida (July 13, 2004).

f. *May 30, 2005 Art. 16 Techniques Memo*, Exhibit Y at 10, 11.

g. Attached hereto as Exhibit EEEE is a true and correct copy of Cent. Intelligence Agency, Directorate of Intelligence, Detainee Reporting Pivotal for the War Against Al-Qa'ida (June 3, 2005).

h. *August 31, 2006 DTA Confinement Conditions Memo*, Exhibit Z at 2-3.

i. *White House News Release*, Exhibit A.

j. *ODNI Summary of the Program*, Exhibit N at 3-5.

k. *Biographies of High Value Terrorist Detainees*, Exhibit CC.

Detainee "Disposition" After CIA Custody

91. The United States provided the right of access to the International Committee of the Red Cross (ICRC) for prisoners when they were transferred from CIA to Department of Defense custody post-September 6, 2006. *White House News Release*, Exhibit A.

92. Aside from the sixteen detainees from CIA custody transferred to Department of Defense custody at Guantánamo Bay post September 6, 2006, "many of them [CIA detainees] have been returned to their home countries for prosecution or detention by their governments." *White House News Release*, Exhibit A

Illegality in the CIA's Rendition, Secret Detention and Interrogation Program

93. On November 27, 2002 an FBI analysis of Guantánamo interrogation tactics, identified a number of examples “of coercive interrogation which are not permitted by the U.S. Constitution” including “use of stress positions,” “removal of all clothing,” “use of individual phobias...to induce stress,” “exposure to cold weather or water (with medical monitoring),” “Use of wet towel and dripping water to induce the misperception of drowning.” Attached hereto as Exhibit FFFF is a true and correct copy of SSA [Redacted] FBI (BAU) at Guantanamo Bay, Legal Analysis of Interrogation Techniques forwarded to Marion Bowman, Legal Counsel, FBIHQ (Nov. 27, 2002).

94. In relation to the August 2002 *Abu Zubaydah Memo*, the CIA Office of Medical Services was “neither consulted nor involved in the initial analysis of the risks and benefits of EITS nor provided with the OTS report cited in the OLC opinion...In retrospect...OMS contends that the reported sophistication of the preliminary EIT review was exaggerated, at least as it related to the waterboard, and that the power of this EIT was appreciably overstated in the report. Furthermore, OMS contends that....the SERE waterboard experience is so different from the subsequent Agency usage is to make it almost irrelevant. Consequently, according to OMS, there was no *a priori* reason to believe that applying the waterboard with the frequency and intensity with which it was used by the psychologist/interrogators was either efficacious or medically safe.” *CIA OIG Special Review*, Exhibit PP at 21.

95. The use of the “waterboard” technique against Abu Zubaydah and Khalid Sheikh Mohammed exceeded the scope of authorization provided by the DoJ. See above paragraphs 33 and 46 respectively.

96. In addition to the unauthorized use of the waterboard, the CIA also used the following “specific unauthorized or undocumented techniques”: threats, including those to kill children; blowing smoke; unauthorized stress positions; threats by hand gun and power drill; staging mock executions; pressure points or use of “hands to restrict the detainee’s neck at the carotid artery”; use of cold temperatures, showers, and nakedness; “water dousing;” and the “hard takedown.” *CIA OIG Special Review*, Exhibit PP at 41-45, 69-78.

97. The public documents pertaining to the interrogation of Abu Zubaydah and to other interrogations conducted prior to July 29, 2003 suggest that “enhanced interrogation techniques” may have been utilized prior to express authorization in respect of the specific detainee(s). See above paragraphs 27-31, 34.

98. On May 7, 2004, the CIA Office of Inspector General released its *Special Review: Counterterrorism Detention and Interrogation Activities 100-05 (September 201 – October 2003)* (May 7, 2004), documenting, *inter alia*, the use of unauthorized or undocumented techniques, referencing a number additional internal investigations, and noting that concerns of CIA officers that: “[a] number of Agency officers of various grade levels who are involved with detention and interrogation activities are concerned that they may at some future date be vulnerable to legal action”, as it “diverges sharply from previous Agency policy and practice, rules that govern interrogations by U.S. military and law enforcement officers, statements of U.S. policy by the Department of State, and public statements by very senior U.S. officials, including the President, as well as the policies expressed by Members of Congress, other Western governments, international organizations, and human rights groups. In addition, some Agency officers

are aware of interrogation activities that were beyond the scope of the written DOJ opinion. Officers are concerned that future public revelation of the CTC Program is inevitable and will seriously damage Agency officers' personal reputations, as well as the reputation and effectiveness of the Agency itself." *CIA OIG Special Review*, Exhibit PP at 101-02.

99. On June 18, 2004, the DOJ provided suggested modifications to the *CIA OIG Special Review*, however the CIA OIG determined against recalling the *Special Review* to integrate the comments.

a. *June 18, 2004 Goldsmith Memo*, Exhibit UU.

b. Attached hereto as Exhibit GGGG is a true and correct copy of Letter from Scott W. Muller, Gen. Counsel, Cent. Intelligence Agency, to Jack L. Goldsmith III, Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice (June 22, 2004).

c. Attached hereto as Exhibit HHHH is a true and correct copy of Letter from John L. Helgeson, Inspector Gen., Cent. Intelligence Agency, to Jack L. Goldsmith III, Assistant Attorney Gen., Office of Legal Counsel, Dep't of Justice (July 2, 2004).

100. On June 29, 2006 the Supreme Court decided *Hamdan v. Rumsfeld*, which, as noted above in paragraph 4, jeopardized the continuance of the secret detention and interrogation program.

101. In January 2008, the DOJ announced an investigation into the destruction of videotapes by CIA personnel. Attached hereto as Exhibit IIII is a true and correct copy of Press Release, U.S. Dep't of Justice, Statement by Attorney General Michael B. Mukasey Regarding the Opening of an Investigation Into the Destruction of Videotapes by CIA Personnel (Jan. 2, 2008).

102. On February 13, 2008, CIA Director General Hayden stated that waterboarding “is not included in the current program, and in my own view, the view of my lawyers and the Department of Justice, it is not certain that the technique would be considered to be lawful under current statute.” *General Hayden Statement on the Taping of Early Detainee Interrogations*, Exhibit P.

103. In May 2008, the DOJ OIG, released *FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, reporting *inter alia*, on grave concerns about the CIA’s aggressive interrogation techniques against Abu Zubaydah. *FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*, Exhibit NN at 67-75.

104. The DOJ Office of Professional Responsibility has submitted a report regarding OLC memoranda on “enhanced interrogation techniques” to Attorney General Eric Holder. Attached hereto as Exhibit JJJJ is a true and correct copy of Press Release, U.S. Dep’t of Justice, Statement of Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees (Aug. 24, 2009) [hereinafter *Holder Statement on Preliminary Review*].

105. On March 5, 2009, the U.S. Senate Select Committee on Intelligence announced that it would conduct a review of the CIA’s detention and interrogation program, in respect of which CIA Director Panetta stated “As I have said publicly, what I will not support is an inquiry designed to punish those who acted in accord with guidance from the Department of Justice.”

a. Attached hereto as Exhibit KKKK is a true and correct copy of Press Release, U.S. Senate Select Comm. on Intelligence, Feinstein, Bond Announce Intelligence Committee Review of CIA Detention and Interrogation Program (Mar. 5, 2009).

b. Attached hereto as Exhibit LLLL is a true and correct copy of Statement by Leon E. Panetta, Dir., Cent. Intelligence Agency, to Employees, Cent. Intelligence Agency, Message from the Director: Senate Review of CIA's Interrogation Program (Mar. 5, 2009).

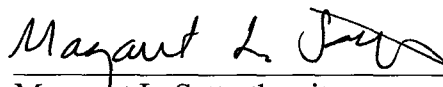
106. On August 24, 2009, Attorney General Eric Holder announced that he was "opening a preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations." *Holder Statement on Preliminary Review*, Exhibit JJJJ.

107. On August 24, 2009, Attorney General Eric Holder announced that the Special Task Force on Interrogations and Transfer Policies had "concluded that the Army Field Manual provides appropriate guidance on interrogation for military interrogators and that no additional or different guidance was necessary for other agencies" because of the "Task Force's unanimous assessment, including that of the Intelligence Community, that the practices and techniques identified by the Army Field Manual or currently used by law enforcement provide adequate and effective means of conducting interrogations." Attorney General Eric Holder also confirmed that the Task Force had proposed the establishment of a "specialized interrogation group, or High-Value Detainee Interrogation Group (HIG)" that would be an inter-agency unit administratively housed within the FBI. Attached hereto as Exhibit MMMM is a true and correct copy of Press Release, U.S.

Dep't of Justice, Special Task Force on Interrogations and Transfer Policies Issues Its
Recommendations to the President (Aug. 24, 2009).

I declare under penalty of perjury that, to the best of my knowledge, the facts
stated herein are true and correct.

DATED: Washington, D.C.
November 20, 2009



Margaret L. Satterthwaite