EXHIBIT
AA
SEN. ROCKEFELLER: This hearing will come to order. I would severely hope that there would be a couple other members. I think it would be courteous and in their interest and in the national interest if several of our members showed up. If they're a few minutes late, that's okay. If they don't show up, that's not so okay. And we might have something more to say about that.

In any event, we're presented with the full array of our national intelligence structure. And the intelligence community (sic) meets to hear from this community, intelligence community, about security threats facing our nation. It is appropriate that we begin this annual threat hearing and that we do it in public. We do it every year. Sometimes they've gone on for a long time. And what we've done this is time is to ask each of you, with the exception of the director, to hold your comments to five minutes, which will be very interesting in the case of the CIA, to see if that can actually be done. (Laughter.)

But anyway, you're the folks that keep us safe. We in Congress authorize and appropriate funds for what you do. The American people have a right to know where our resources are going insofar as that's appropriate, what intelligence officials consider to be the greatest threats, and what actions our government is taking to prevent those threats.

And as we've learned many times, our intelligence programs will only be successful if the American people are informed. It's a relative statement, but they have to feel that they're a part of this equation, and that's what helps us get appropriations and gets bills passed, hopefully, and makes the process work.

Today the committee will want to hear how our intelligence community assesses the immediate threats from terrorist organizations. We do
The Army Field Manual describes a subset of that universe. I've heard no one claim that the Army Field Manual exhausts all the tools that could or should be legitimately available to our republic to defend itself when it comes to questioning people who would intend our republic harm. What I would say is the Army Field Manual meets the needs of America's Army and, you know, give that to you in maybe three or four different senses.

It meets the needs of America's Army in terms of who's going to do it, which in the case of the Army Field Manual would be a relatively large population of relatively young men and women who've received good training but not exhaustive training in all potential situations. So the population of who's doing it is different than the population that would be working for me inside the CIA interrogation program.

The population of who they do it to would also be different. In the life of the CIA detention program we have held fewer than a hundred people. And only -- actually, fewer than a third of those people have had any techniques used against them -- enhanced techniques -- in the CIA program. America's Army literally today is holding over 20,000 detainees in Iraq alone. And so again there's a difference in terms of who's doing it, against whom you're doing it, and then finally in the circumstances under which you're doing the interrogation.

And I know there can be circumstances in military custody that are as protected and isolated and controlled as in our detention facilities, but in many instances that is not the case. These are interrogations against enemy soldiers, who almost always will be lawful combatants, in tactical situations, from whom you expect to get information of transient and tactical value. None of that applies to the detainees we hold, to the interrogators we have, or the information we are attempting to seek.

And so I would subscribe and support -- in fact, CIA had a chance to comment on the Army Field Manual during its development -- that the Army Field Manual does exactly what it does -- exactly what it needs to do for the United States Army. But on the face of it it would make no more sense to apply the Army's field manual to CIA -- the Army Field Manual on interrogations, then it would be to take the Army Field Manual on grooming and apply it to my agency, or the Army Field Manual on recruiting and apply it to my agency, or for that matter, take the Army Field Manual on sexual orientation and apply to my agency.

This was built to meet the needs of America's Army. We should not confine our universe of lawful interrogation to a subset of those techniques that were developed for one purpose.

SEN. ROCKEFELLER: I'm way over my time, I apologize to my colleagues.

And I call on the vice chairman.

SEN. BOND: Thank you very much, Mr. Chairman.

Following up on that, I'd like to ask Director Hayden for his comments because we've spoken about this issue and your belief that the CIA's program was essential.
Now the attorney general has publicly said that the CIA is no longer using waterboarding as one of its techniques.

I'd like your views on -- from your professional perspective on why you think enhanced techniques are so critical in collecting intelligence and what you would say to those who think the Army Field Manual will be just as effective, because that provision that was added in conference is out of scope and when the conference comes, when the bill comes to the Senate, I intend to attempt to strike that.

What arguments, Director Hayden? Excuse me. I'm going to say -- I'm sorry. General Hayden's had the shot. Let me direct that to Director McConnell. My apologies. I want to get another view in the game.

MR. MCCONNELL: Senator Bond, I would associate myself with the comments just made by Director Hayden with regard to lawful techniques that could be used to protect the country under -- in the appropriate circumstances. You mentioned waterboarding. That is not currently in the program that we use. The question that's always asked, is that a lawful technique, and I think as you saw the reports or participated in the hearing that the attorney general participated in last week, if there was a reason to use such a technique, you would have to make a judgment on the circumstances and the situation regarding the specifics of the event, and if such a desire was generated on the part of -- in the interests of protecting the nation, General Hayden would have to first of all have a discussion with me and we would have a dialogue about whether we should go forward and seek legal opinion. Once we agreed to that, assuming we did, we would go to the attorney general who'd making a ruling on the specifics of the situation. At that point it would be taken to the president for a decision. If a decision was taken, then the appropriate committees of the Congress would be so notified.

So in managing the process there is a universe of lawful techniques. They should be considered in defense of the nation and appropriately administered, given that we would have to use such a technique.

GEN. HAYDEN: Can I add to that, Mr. Vice Chairman?

SEN. BOND: Please.

GEN. HAYDEN: Just to put this into scale -- and I know this is -- look, this is a very difficult issue not just for the committee, but for the Senate, for the government, for my agency and for the people in my agency and for the nation at large. But let me just try to frame the discussion by pointing out a few facts.

I mentioned just a minute or two ago that in the life of the CIA detention program we've detained fewer than a hundred people. Of the people detained, fewer than a third have had any of what we call the enhanced interrogation techniques used against them. Let me make it very clear and to state so officially in front of this committee that waterboarding has been used on only three detainees. It was used on Khalid Sheikh Mohammed, it was used on Abu Zubaydah, and it was used on Nashiri. The CIA has not used waterboarding for almost five years. We used it against these three high-value detainees because of the circumstances of the time.

Very critical to those circumstances was the belief that additional catastrophic attacks against the homeland were imminent. In addition to
that, my agency and our community writ large had limited knowledge about al Qaeda and its workings.

Those two realities have changed. None of us up here are going to make the claim -- and I'm sure we'll get this question before we're done this morning -- "Is America safe?" And we will answer, "It is safer, but it is not yet safe." So this will never get to zero. But the circumstances under which we're operating, we believe, are, frankly, different than they were in late 2001 and early 2002.

We also have much more extensive knowledge of al Qaeda. And I've told this to the committee in other sessions. Our most powerful tool in questioning any detainee is our knowledge, that we are able to bring that knowledge to bear.

SEN. BOND: General, excuse me for interrupting. In the eight seconds I have left, I wanted to fire off a question to you and Director Mueller. We're debating retroactive immunity. People keep telling me it's wrong. I used to be a lawyer. I believe that the private parties did nothing wrong. The committee approved 13-to-2 supporting civil liability reform. How important is the support of the private parties to your agencies in getting the operational successes?

MR. MUELLER: Well, I would say, in protecting the homeland it's absolutely essential. In this -- it's absolutely essential we have the support, willing support of communication carriers. In this day and age, our ability to gain intelligence on the plans, the plots of those who wish to attack us is dependent upon us obtaining information relating to cell phones, the Internet, e-mail, wire transfers, all of these areas. My concern is that if we do not have this immunity, we will not have that willing support of the communication carriers.

I know there has been some discussion of having the government substituted as a party, but I do think that that includes -- if that were passed, it would be a disincentive still to the communication carriers to give us the support we need to do our jobs. It would entail depositions. It would entail public hearings. And there would be a substantial disincentive to corporations, communication carriers, to assist us willingly at a time when we need it more than ever. And consequently, I strongly support the provision for giving immunities to -- immunity to the communication carriers so that we do have the support of those carriers and remove the disincentives. GEN. HAYDEN: Mr. Vice Chairman, I'd support it in two jobs, the current one and one -- job once removed at NSA, strongly support what Director Mueller has just stated with regard to carriers. But there are other relationships that we have that enable American intelligence that I'm more familiar with in my current job at the CIA.

And let me reinforce one thing that Director Mueller pointed out.

These are very fragile relationships. We lost industrial cooperation, at CIA, with partners on the mere revelation of the SWIFT program in public discourse. Not because they were doing anything related to that program whatsoever but just the fear that the vulnerability they would have to their smooth functioning of their business had caused people, who are otherwise patriotic and committed, to back away from their totally lawful cooperation with our agency.
SEN. BOND: Thank you.

My apologies, Mr. Chairman, but I thought that was important to get that in.

SEN. ROCKEFELLER: You bet, it's very important. I appreciate it.

And going on the early bird rule, as we always do, Senator Feinstein.

SEN. DIANNE FEINSTEIN (D-CA): Thank you very much, Mr. Chairman.

General Hayden, I wasn't going to discuss this but since it was raised, it is true that you have briefed the Intelligence Committee on the interrogation techniques which are called enhanced, which I call coercive. And they have changed and they have been reduced in number.

I'd like to ask this question. Who carries out these techniques? Are they government employees or contractors?

GEN. HAYDEN: At our facilities during this, we have a mix of both government employees and contractors. Everything is done under, as we've talked before, ma'am, under my authority and the authority of the agency. But the people at the locations are frequently a mix of both. We call them bluebaggers and greenbaggers.

SEN. FEINSTEIN: And where do you use only contractors?

GEN. HAYDEN: I'm not aware of any facility in which there were only contractors.

And this came up, and I know --

SEN. FEINSTEIN: (Off mike) -- anywhere in the world? GEN. HAYDEN: Oh, I mean, I'm talking about our detention facilities.

And I want to make something very clear because I don't think it was quite crystal clear in the discussion you had with Attorney General Mukasey. We are not outsourcing this. This is not where we would turn to Firm X, Y or Z and say, this is what we would like you to accomplish; go achieve that for us and come back when you're done. That is not what this is. This is a governmental activity under governmental direction and control, in which the participants may be both government employees and contractors, but it's not outsourced.

SEN. FEINSTEIN: I understand that.

GEN. HAYDEN: Okay, good.

SEN. FEINSTEIN: Is not the person that carries out the actual interrogation -- not the doctor or the psychologist or the supervisor or anybody else but the person that carries out the actual interrogation -- a contractor?

GEN. HAYDEN: Again there are times when the individuals involved are contractors, and there are times when the individuals involved have been government employees. It's been a mix, ma'am.
Document #3

(FOIA DOC 65)

PAGE 1

Denied in Full
MEMORANDUM FOR: The National Security Advisor

SUBJECT:  [Redacted]
3. As you know, beginning in September 2002 the Justice Department authorized CIA in its discretion, to employ on selected HVDs waterboard.

CIA has reserved use of these techniques to elicit ongoing threat information from the most hardcore, senior terrorist figures that have been captured—men such as Khalid Sheik Muhammad, Abu Zubaydeh, and others.

Key members of Congress have been briefed from the beginning—CIA informed the leadership of the Congressional Intelligence Committees of the existence and nature of the Program when it commenced in late 2002, in early 2003 when members of the leadership changed, and again in September 2003.
Denied in Full
Document #3

(FOIA DOC 65)

PAGES 6-8

Denied in Full
Other Document #7
Document #7
(FOIA DOC 73)

PAGES 1 TO 23

Denied in Full
Document #7

(FOIA DOC 73)

PAGES 25 TO 43

Denied in Full
Other Document #25
Denied in Full
- The use of the following techniques in the interrogation of al-Qa'ida detainees by the CIA:
  - the water board
Other Document #29
These enhanced techniques include:

Water Board
Denied in Full
Enhanced Techniques

These include:

Waterboard
Document #45

(FOIA DOC 92)

PAGES 4 TO 7

Denied in Full
Document #45

(FOIA DOC 92)

PAGES 9 TO 11

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Other Document #65
Document #65

(FOIA DOC 86)

PAGES 1 TO 9

Denied in Full
these techniques are:

Water-board
Denied in Full
Document #65
(FOIA DOC 86)

PAGES 15 TO 38

Denied in Full
Denied in Full
Other Document #45
Other Document #67
These techniques are:

Water-board
Denied in Full
Other Document #85
Document #85
(FOIA DOC 4)

PAGE 1

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Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA officers may use only Permissible Interrogation Techniques, which comprise the (a) Standard Techniques and (b) Enhanced Techniques.
In each instance the use of Enhanced Techniques must be approved by Headquarters in advance.
Denied in Full
Other Document #87
Denied in Full
These techniques are: **water-board**
Document #87

(FOIA DOC 8)

PAGES 15 TO 17

Denied in Full
Document #87

(FOIA DOC 8)

PAGES 19 TO 22

Denied in Full
Other Document #101
Document #101

(FOIA DOC 22)

PAGES 2 TO 3

Denied in Full
Other Document #103
Waterboard
Other Document #119
Document #119

(FOIA DOC 84)

PAGES 1 TO 13

Denied in Full
These techniques are: [redacted].
Document #119

(FOIA DOC 84)

PAGES 15 TO 42

Denied in Full
Other Document #129
MEMORANDUM FOR: Deputy Director for Operations
               Director, DCI Counterterrorist Center
               Senior Deputy General Counsel

FROM: Deputy Director of Central Intelligence

SUBJECT: Interrogation of Abu Zubaydah

methods include enhanced interrogation
board water

00128
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Approval. Accordingly, in view of the grave danger to the United States and its citizens, I have approved the implementation of the enhanced interrogation techniques described above.
Other Document #131
Document #131

(FOIA DOC 116)

PAGES 2 TO 5

Denied in Full
Denied in Full
Denied in Full
Denied in Full
Denied in Full
Interview Report #103
5 September 2003

INTERVIEW REPORT

INTERVIEWEE: Scott W. Muller

(U) Review of Interrogations for Counterterrorism Purposes
INTERVIEWEE: Scott W. Muller

5. CTS got a report from the OGC Attorney who had reviewed the videotapes.
the Agency approved the use of the waterboard on Khalid Shaykh Muhammad (KSM). Al-Nashiri had been waterboarded, he pays attention to the use of the waterboard because it is controversial.
detainees have undergone the waterboard.
Document #103

(FOIA DOC 103)

PAGES 5 TO 25

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Cable #333
Document #333

(FOIA DOC 333)

PAGE 2

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SPECIAL REVIEW

OFFICE OF INSPECTOR GENERAL
CENTRAL INTELLIGENCE AGENCY

CENTRAL INTELLIGENCE AGENCY

COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES
(SEPTEMBER 2001 – OCTOBER 2003)

7 May 2004
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DOJ LEGAL ANALYSIS

36. The ensuing legal opinions focus on the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (Torture Convention), especially as implemented in the U.S. criminal code, 18 U.S.C. 2340-2340A.

37. (U//FOUO) The Torture Convention specifically prohibits "torture," which it defines in Article 1 as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction. [Emphasis added.]

Article 4 of the Torture Convention provides that states party to the Convention are to ensure that all acts of "torture" are offenses under their criminal laws. Article 16 additionally provides that each state party "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to acts of torture as defined in Article 1."

38. (U//FOUO) The Torture Convention applies to the United States only in accordance with the reservations and understandings made by the United States at the time of ratification.\textsuperscript{16} As explained to the Senate by the Executive Branch prior to ratification:

Article 16 is arguably broader than existing U.S. law. The phrase "cruel, inhuman or degrading treatment or punishment" is a standard formula in international instruments and is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. To the extent the phrase has been interpreted in the context of those agreements, "cruel" and "inhuman" treatment or punishment appears to be roughly equivalent to the treatment or punishment barred in the United States by the Fifth, Eighth and Fourteenth Amendments. "Degrading" treatment or punishment, however, has been interpreted as potentially including treatment that would probably not be prohibited by the U.S. Constitution. [Citing a ruling that German refusal to recognize individual's gender change might be considered "degrading" treatment.] To make clear that the United States construes the phrase to be coextensive with its constitutional guarantees against cruel, unusual, and inhumane treatment, the following understanding is recommended:

"The United States understands the term 'cruel, inhuman or degrading treatment or punishment,' as used in Article 16 of the Convention, to mean the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States."\textsuperscript{17} [Emphasis added.]


\textsuperscript{17} (U//FOUO) S. Treaty Doc. No. 100-20, at 15-16.
39. (U//FOUO) In accordance with the Convention, the United States criminalized acts of torture in 18 U.S.C. 2340A(a), which provides as follows:

Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

The statute adopts the Convention definition of "torture" as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." 18 "Severe physical pain and suffering" is not further defined, but Congress added a definition of "severe mental pain or suffering:"

[T]he prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality. ... 19

These statutory definitions are consistent with the understandings and reservations of the United States to the Torture Convention.

---

18 (U//FOUO) 18 U.S.C. 2340(1).
40. (U//FOUO) DOJ has never prosecuted a violation of the torture statute, 18 U.S.C. § 2340, and there is no case law construing its provisions. Issues under U.S. and international law to DOJ's OLC in the summer of 2002 and received a preliminary summary of the elements of the OLC legal memorandum set out OLC's conclusions regarding the proper interpretation of the torture statute and concluded that "Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering whether mental or physical." Also, OLC stated that the acts must be of an "extreme nature" and that "certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture." Further describing the requisite level of intended pain, OLC stated:

Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.

OLC determined that a violation of Section 2340 requires that the infliction of severe pain be the defendant's "precise objective." OLC also concluded that necessity or self-defense might justify interrogation methods that would otherwise violate Section 2340A.22 The August 2002 OLC opinion did not address whether any other provisions of U.S. law are relevant to the detention, treatment, and interrogation of detainees outside the United States.23

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21 (U//FOUO) Ibid., p. 1.
22 (U//FOUO) Ibid., p. 39.
23 (U//FOUO) OLC's analysis of the torture statute was guided in part by judicial decisions under the Torture Victims Protection Act (TVPA) 28 U.S.C. 1350, which provides a tort remedy for victims of torture. OLC noted that the courts in this context have looked at the entire course
41. (U//FOUO) A second unclassified 1 August 2002 OLC opinion addressed the international law aspects of such interrogations.24 This opinion concluded that interrogation methods that do not violate 18 U.S.C. 2340 would not violate the Torture Convention and would not come within the jurisdiction of the International Criminal Court.

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24 (U//FOUO) OLC Opinion by John C. Yoo, Deputy Assistant Attorney General, OLC (1 August 2002).
SPECIAL REVIEW

PAGES 21 TO 22

Denied in Full
45. (TS) The DCI briefed appropriate senior national security and legal officials on the proposed EITs. In the fall of 2002, the Agency briefed the leadership of the Congressional Intelligence Oversight Committees on the use of both standard techniques and EITs.
SPECIAL REVIEW

PAGES 24 TO 35

Denied in Full
interrogators administered the waterboard to Al-Nashiri

Videotapes of Interrogations

77. [REDACTED] decided to videotape the interrogation sessions.

An OGC attorney reviewed the videotapes

78. [REDACTED] OIG reviewed the videotapes in May 2003.
Waterboard Technique

99. (For) interrogators used the waterboard on Khalid Shaykh Muhammad
100. (TS) Cables indicate that Agency interrogators applied the waterboard technique to Khalid Shaykh Muhammad.
waterboard session of Abu Zubaydah.
waterboard on Abu Zubaydah
SPECIAL REVIEW

PAGES 86 TO 89

Denied in Full
222. (TS) The waterboard has been used on three detainees: Abu Zubaydah, Al-Nashiri, and Khalid Shaykh Muhammad.

223. (TS) Interrogators applied the waterboard to Abu Zubaydah.
Policy Considerations

227. (U//FOUO) Throughout its history, the United States has been an international proponent of human rights and has voiced opposition to torture and mistreatment of prisoners by foreign countries. This position is based upon fundamental principles that are deeply embedded in the American legal structure and jurisprudence. The Fifth and Fourteenth Amendments to the U.S. Constitution, for example, require due process of law, while the Eighth Amendment bars "cruel and unusual punishments."

228. (U//FOUO) The President advised the Senate when submitting the Torture Convention for ratification that the United States would construe the requirement of Article 16 of the Convention to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture" as "roughly equivalent to" and "coextensive with the Constitutional guarantees against cruel, unusual, and inhumane treatment."81 To this end, the United States submitted a reservation to the Torture Convention stating that the United States considers itself bound by Article 16 "only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th, 8th and/or 14th Amendments to the Constitution of the United States." Although the Torture Convention expressly provides that no exceptional circumstances whatsoever, including war or any other public emergency, and no order from a superior officer, justifies torture, no similar provision was included regarding acts of "cruel, inhuman or degrading treatment or punishment."

81 (U//FOUO) See Message from the President of the United States Transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Sen. Treaty Doc. 100-20, 100th Cong., 2d Sess., at 15, May 23, 1988; Senate Committee on Foreign Relations, Executive Report 101-30, August 30, 1990, at 25, 29, quoting summary and analysis submitted by President Ronald Reagan, as revised by President George H.W. Bush.
229. (U//FOUO) Annual U.S. State Department Country Reports on Human Rights Practices have repeatedly condemned harsh interrogation techniques utilized by foreign governments. For example, the 2002 Report, issued in March 2003, stated:

[The United States] have been given greater opportunity to make good on our commitment to uphold standards of human dignity and liberty... [N]o country is exempt from scrutiny, and all countries benefit from constant striving to identify their weaknesses and improve their performance... [T]he Reports serve as a gauge for our international human rights efforts, pointing to areas of progress and drawing our attention to new and continuing challenges.

In a world marching toward democracy and respect for human rights, the United States is a leader, a partner and a contributor. We have taken this responsibility with a deep and abiding belief that human rights are universal. They are not grounded exclusively in American or western values. But their protection worldwide serves a core U.S. national interest.

The State Department Report identified objectionable practices in a variety of countries including, for example, patterns of abuse of prisoners in Saudi Arabia by such means as "suspension from bars by handcuffs, and threats against family members... [being] forced constantly to lie on hard floors [and] deprived of sleep..." Other reports have criticized hooding and stripping prisoners naked.

230. (U//FOUO) In June 2003, President Bush issued a statement in observance of "United Nations International Day in Support of Victims of Torture." The statement said in part:

The United States declares its strong solidarity with torture victims across the world. Torture anywhere is an affront to human dignity everywhere. We are committed to building a world where human rights are respected and protected by the rule of law.
Freedom from torture is an inalienable human right. Yet torture continues to be practiced around the world by rogue regimes whose cruel methods match their determination to crush the human spirit.

Notorious human rights abusers have sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors.

The United States is committed to the worldwide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment.
SPECIAL REVIEW

PAGES 95 TO 109

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Appendix A
PROCEDURES AND RESOURCES

1. A team, led by the Deputy Inspector General, and comprising the Assistant Inspector General for Investigations, the Counsel to the Inspector General, a senior Investigations Staff Manager, three Investigators, two Inspectors, an Auditor, a Research Assistant, and a Secretary participated in this Review.

2. OIG tasked relevant components for all information regarding the treatment and interrogation of all individuals detained by or on behalf of CIA after 9/11. Agency components provided OIG with over 38,000 pages of documents. OIG conducted over 100 interviews with individuals who possessed potentially relevant information. We interviewed senior Agency management officials, including the DCL, the Deputy Director of Central Intelligence, the Executive Director, the General Counsel, and the Deputy Director for Operations. As new information developed, OIG re-interviewed several individuals.
Appendix C
SPECIAL REVIEW

APPENDIX C
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Appendix D
SPECIAL REVIEW

APPENDIX D
PAGES 1 TO 3

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Appendix E
1. Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA officers may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques consist of both (a) Standard Techniques and (b) Enhanced Techniques.
Enhanced Techniques

the water board,
SPECIAL REVIEW

APPENDIX E
PAGES 3 TO 4

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Appendix F
SPECIAL REVIEW

APPENDIX F
PAGES 1 TO 11

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SPECIAL REVIEW

OFFICE OF INSPECTOR GENERAL
CENTRAL INTELLIGENCE AGENCY

COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES
(SEPTEMBER 2001 – OCTOBER 2003)

7 May 2004
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DOJ LEGAL ANALYSIS

36. (TS) The ensuing legal opinions focus on the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (Torture Convention),\textsuperscript{15} especially as implemented in the U.S. criminal code, 18 U.S.C. 2340-2340A.

37. (U//FOUO) The Torture Convention specifically prohibits "torture," which it defines in Article 1 as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction. [Emphasis added.]

Article 4 of the Torture Convention provides that states party to the Convention are to ensure that all acts of "torture" are offenses under their criminal laws. Article 16 additionally provides that each state party "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to acts of torture as defined in Article 1."

38. (U//FOUO) The Torture Convention applies to the United States only in accordance with the reservations and understandings made by the United States at the time of ratification. As explained to the Senate by the Executive Branch prior to ratification:

Article 16 is arguably broader than existing U.S. law. The phrase "cruel, inhuman or degrading treatment or punishment" is a standard formula in international instruments and is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. To the extent the phrase has been interpreted in the context of those agreements, "cruel" and "inhuman" treatment or punishment appears to be roughly equivalent to the treatment or punishment barred in the United States by the Fifth, Eighth and Fourteenth Amendments. "Degrading" treatment or punishment, however, has been interpreted as potentially including treatment that would probably not be prohibited by the U.S. Constitution. [Citing a ruling that German refusal to recognize individual's gender change might be considered "degrading" treatment.] To make clear that the United States construes the phrase to be coextensive with its constitutional guarantees against cruel, unusual, and inhumane treatment, the following understanding is recommended:

"The United States understands the term 'cruel, inhuman or degrading treatment or punishment,' as used in Article 16 of the Convention, to mean the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States." [Emphasis added.]

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17 (U//FOUO) S. Treaty Doc. No. 100-20, at 15-16.
39. (U//FOUO) In accordance with the Convention, the United States criminalized acts of torture in 18 U.S.C. 2340A(a), which provides as follows:

Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

The statute adopts the Convention definition of "torture" as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." 18 "Severe physical pain and suffering" is not further defined, but Congress added a definition of "severe mental pain or suffering;"

The prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality. . . . 19

These statutory definitions are consistent with the understandings and reservations of the United States to the Torture Convention.

18 (U//FOUO) 18 U.S.C. 2340(1).
40. (U//FOUO) DOJ has never prosecuted a violation of the torture statute, 18 U.S.C. §2340, and there is no case law construing its provisions. An unclassified 1 August 2002 OLC legal memorandum set out OLC’s conclusions regarding the proper interpretation of the torture statute and concluded that “Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering whether mental or physical.”20 Also, OLC stated that the acts must be of an "extreme nature" and that "certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture." Further describing the requisite level of intended pain, OLC stated:

Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.21

OLC determined that a violation of Section 2340 requires that the infliction of severe pain be the defendant's "precise objective." OLC also concluded that necessity or self-defense might justify interrogation methods that would otherwise violate Section 2340A.22 The August 2002 OLC opinion did not address whether any other provisions of U.S. law are relevant to the detention, treatment, and interrogation of detainees outside the United States.23

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21 (U//FOUO) Ibid., p. 1.
22 (U//FOUO) Ibid., p. 39.
23 (U//FOUO) OLC’s analysis of the torture statute was guided in part by judicial decisions under the Torture Victims Protection Act (TVPA) 28 U.S.C. 1350, which provides a tort remedy for victims of torture. OLC noted that the courts in this context have looked at the entire course...
41. (U//FOUO) A second unclassified 1 August 2002 OLC opinion addressed the international law aspects of such interrogations. This opinion concluded that interrogation methods that do not violate 18 U.S.C. 2340 would not violate the Torture Convention and would not come within the jurisdiction of the International Criminal Court.

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of conduct, although a single incident could constitute torture. OLC also noted that courts may be willing to find a wide range of physical pain can rise to the level of "severe pain and suffering." Ultimately, however, OLC concluded that the cases show that only acts "of an extreme nature have been redressed under the TVPA's civil remedy for torture." White House Counsel Memorandum at 22 - 27.

24 (U//FOUO) OLC Opinion by John C. Yoo, Deputy Assistant Attorney General, OLC (1 August 2002).
SPECIAL REVIEW

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Denied in Full
briefed appropriate senior national security and legal officials on the proposed EITs. In the fall of 2002, the Agency briefed the leadership of the Congressional Intelligence Oversight Committees on the use of both standard techniques and EITs.
interrogators administered the waterboard to Al-Nashiri

Videotapes of Interrogations

77. The decided to videotape the interrogation sessions.

An OGC attorney reviewed the videotapes.

78. OIG reviewed the videotapes in May 2003
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Waterboard Technique

99. TS interrogators used the waterboard on Khalid Shaykh Muhammad
100. (TS//SI) Cables indicate that Agency interrogators applied the waterboard technique to Khalid Shaykh Muhammad
waterboard on Abu Zubaydah
SPECIAL REVIEW

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222. (TS) The waterboard has been used on three detainees: Abu Zubaydah, Al-Nashiri, and Khalid Shaykh Muhammad.

223. (TS) Interrogators applied the waterboard to Abu Zubaydah.
Khalid Shaykh Muhammad received applications of the waterboard.
Policy Considerations

227. (U//FOUO) Throughout its history, the United States has been an international proponent of human rights and has voiced opposition to torture and mistreatment of prisoners by foreign countries. This position is based upon fundamental principles that are deeply embedded in the American legal structure and jurisprudence. The Fifth and Fourteenth Amendments to the U.S. Constitution, for example, require due process of law, while the Eighth Amendment bars "cruel and unusual punishments."

228. (U//FOUO) The President advised the Senate when submitting the Torture Convention for ratification that the United States would construe the requirement of Article 16 of the Convention to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture" as "roughly equivalent to" and "coextensive with the Constitutional guarantees against cruel, unusual, and inhumane treatment." To this end, the United States submitted a reservation to the Torture Convention stating that the United States considers itself bound by Article 16 "only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th, 8th and/or 14th Amendments to the Constitution of the United States." Although the Torture Convention expressly provides that no exceptional circumstances whatsoever, including war or any other public emergency, and no order from a superior officer, justifies torture, no similar provision was included regarding acts of "cruel, inhuman or degrading treatment or punishment."

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81 (U//FOUO) See Message from the President of the United States Transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Sen. Treaty Doc. 100-20, 100th Cong., 2d Sess., at 15, May 23, 1988; Senate Committee on Foreign Relations, Executive Report 101-30, August 30, 1990, at 25, 29; quoting summary and analysis submitted by President Ronald Reagan, as revised by President George H.W. Bush.
229. (U//FOUO) Annual U.S. State Department Country Reports on Human Rights Practices have repeatedly condemned harsh interrogation techniques utilized by foreign governments. For example, the 2002 Report, issued in March 2003, stated:

[The United States] have been given greater opportunity to make good on our commitment to uphold standards of human dignity and liberty . . . . [N]o country is exempt from scrutiny, and all countries benefit from constant striving to identify their weaknesses and improve their performance . . . . [T]he Reports serve as a gauge for our international human rights efforts, pointing to areas of progress and drawing our attention to new and continuing challenges.

In a world marching toward democracy and respect for human rights, the United States is a leader, a partner and a contributor. We have taken this responsibility with a deep and abiding belief that human rights are universal. They are not grounded exclusively in American or western values. But their protection worldwide serves a core U.S. national interest.

The State Department Report identified objectionable practices in a variety of countries including, for example, patterns of abuse of prisoners in Saudi Arabia by such means as "suspension from bars by handcuffs, and threats against family members, . . . [being] forced constantly to lie on hard floors [and] deprived of sleep . . . ." Other reports have criticized hooding and stripping prisoners naked.

230. (U//FOUO) In June 2003, President Bush issued a statement in observance of "United Nations International Day in Support of Victims of Torture." The statement said in part:

The United States declares its strong solidarity with torture victims across the world. Torture anywhere is an affront to human dignity everywhere. We are committed to building a world where human rights are respected and protected by the rule of law.
Freedom from torture is an inalienable human right. Yet torture continues to be practiced around the world by rogue regimes whose cruel methods match their determination to crush the human spirit.

Notorious human rights abusers have sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors.

The United States is committed to the worldwide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment.
SPECIAL REVIEW

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Appendix A
PROCEDURES AND RESOURCES

1. A team, led by the Deputy Inspector General, and comprising the Assistant Inspector General for Investigations, the Counsel to the Inspector General, a senior Investigations Staff Manager, three Investigators, two Inspectors, an Auditor, a Research Assistant, and a Secretary participated in this Review.

2. OIG tasked relevant components for all information regarding the treatment and interrogation of all individuals detained by or on behalf of CIA after 9/11. Agency components provided OIG with over 38,000 pages of documents. OIG conducted over 100 interviews with individuals who possessed potentially relevant information. We interviewed senior Agency management officials, including the DCI, the Deputy Director of Central Intelligence, the Executive Director, the General Counsel, and the Deputy Director for Operations. As new information developed, OIG re-interviewed several individuals.
Appendix B
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SPECIAL REVIEW

APPENDIX D
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Appendix E
1. Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA officers may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques consist of both (a) Standard Techniques and (b) Enhanced Techniques.
the water board.
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Appendix F
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APPENDIX F
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EXHIBIT
CC
[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MAJID KHAN,

Petitioner,

v.

ROBERT M. GATES,

Respondent.

MOTION TO DECLARE INTERROGATION METHODS
APPLIED AGAINST PETITIONER CONSTITUTE TORTURE

Petitioner Majid Khan ("Petitioner" or "Majid"), a prisoner at the U.S. Naval Station at Guantánamo Bay, Cuba ("Guantánamo"), who seeks review under the Detainee Treatment Act of 2005 ("DTA"), Pub. L. No. 109-148, §§ 1001-1006, 119 Stat. 2680, 2739-45, moves by and through his undersigned counsel for an order declaring that the interrogation methods applied against him by U.S. personnel constitute torture and other forms of impermissible coercion.¹

¹ Counsel for Respondents do not consent to this motion seeking a declaration that Petitioner’s interrogations by U.S. personnel while in secret CIA detention and elsewhere constitute torture.
PRELIMINARY STATEMENT

Unlike other Guantánamo prisoners, Majid Khan has long had legal resident status in the United States and strong voluntary ties to this country. Majid is a twenty-seven-year-old U.S. resident and asylee-holder and a citizen of Pakistan, an ally of the United States. He grew up in the suburbs of Baltimore, Maryland, and has had political asylum in this country since 1998. He graduated from Owings Mills High School in 1999, purchased a home near Baltimore, opened a bank account, and worked for the State of Maryland and Electronic Data Systems. He paid thousands of dollars in taxes to the Internal Revenue Service. His family still resides legally near Baltimore; and some of his family members are U.S. citizens. Majid’s only home is in this country.

On March 5, 2003, Majid was detained in Karachi, Pakistan. Notwithstanding his substantial, voluntary ties to this country, Petitioner was transferred to CIA custody for detention and interrogation at secret prisons overseas. Majid was forcibly disappeared by the CIA. He did not reemerge until September 6, 2006, when he was transferred to the U.S. Naval

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2 Petitioner’s background, secret detention and interrogation are set forth in detail in the Declaration of Gitanjali S. Gutierrez ("Gutierrez Declaration"), attached hereto as Exhibit 1.
Station at Guantánamo Bay, Cuba, where he remains imprisoned without charge or trial.

Majid then filed a petition for a writ of habeas corpus in the U.S. District Court for the District of Columbia on September 29, 2006, challenging his indefinite detention in military custody. See Khan v. Bush, No. 06-1690 (RBW) (D.D.C.). In April 2007, he appeared before a CSRT and was subsequently found to be properly detained as an “enemy combatant.” On August 14, 2007, a few days after the CSRT determination was announced, Majid filed this DTA action challenging that determination and preserving all other legal claims, including his right to habeas relief.

**Majid’s Secret Detention and Interrogations Using Torture and Cruel, Inhuman and Degrading Treatment, and Other Impermissible Forms of Coercion**

From March 2003 until the present day, the United States has imprisoned and interrogated Petitioner Majid Khan and other individuals in secret detention using methods that include torture, cruel, inhuman and degrading treatment, or other unlawful coercion to extract confessions and other incriminating information from them. U.S. interrogators applied techniques against Majid long-viewed as abhorrent by our Nation and our Anglo-American jurisprudence,
Further, these incidents were not isolated acts of rogue CIA agents or contractors. Rather, the secret detention and interrogation regime to which U.S. personnel subjected Majid was a carefully developed program calculated and designed deliberately to apply techniques euphemistically referred to as “enhanced interrogation methods” or “alternative interrogation methods” under conditions of careful monitoring by It was, by all accounts, a program of U.S. government torture.

CSRT Consideration of Information Related to Petitioner Extracted By Torture or Other Forms of Impermissible Coercion

Respondents have refused to produce any “government information” in this case. Rather, on September 27, 2007, they filed a pending omnibus Motion to

3 Further details of this program and the interrogation techniques CIA agents applied against other individuals are set forth in the Declaration of J. Wells. Dixon ("Dixon Declaration"), attached hereto as Exhibit 2.
Stay Orders to File Certified Index to Record, and have not made any further submissions to the record. Despite Respondents’ failure to produce the government information, however, Petitioner Khan hereby submits documents he prepared and presented during his CSRT proceeding that confirm that the tribunal and reviewing authorities were presented with evidence that U.S. personnel extracted information from Petitioner Khan during his imprisonment in U.S. custody that was obtained through torture, cruel, inhuman or degrading treatment, and unlawful coercion.4

Because this Court must determine whether Petitioner’s CSRT complied with its own regulations – including the requirement that the CSRT assess whether any statements were obtained through coercion and the probative value of such information – and whether these regulations are consistent with the Constitution and laws of the United States, this Court should grant the requested relief and declare that the interrogation methods applied against Petitioner Khan constitute torture and other forms of impermissible coercion.

ARGUMENT

I. Information Related to Petitioner Indisputably Was Obtained Through Torture, Cruel, Inhuman and Degrading Treatment and Unlawful Coercion

A. Torture is Clearly Defined Under U.S. Law

Under the applicable definitions, the tactics used against Majid constitute torture and unlawful coercion. The Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, 120 Stat. 2600, prohibits torture and cruel, inhuman and degrading treatment if it inflicts "severe physical or mental pain or suffering." The MCA incorporates by reference the definitions of 18 U.S.C. § 2340(2), which provide, inter alia, that:

"severe mental pain or suffering" means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

* * *

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering....

Although the MCA does not provide further guidance concerning the standard to be used to define torture or impermissible coercion, military and federal court decisions have categorized many of the various methods of interrogation and
coercion used against Petitioner as torture or impermissible coercion.⁵

B. U.S. Personnel Tortured Petitioner and Other Detainees to Obtain Information Related to Petitioner's Status

Information related to Petitioner that U.S. interrogators obtained from Petitioner Khan and other detainees was indisputably extracted through torture, cruel, inhuman and degrading treatment and unlawful coercion. During Petitioner's most shocking period of interrogations, he was submitted to interrogation tactics that have long been prohibited by U.S. civil and military law.

Most notably, for example, Petitioner Khan

⁵ See, e.g., United States v. Lee, 744 F.2d 1124 (5th Cir. 1984) (affirming conviction for “water torture” perpetrated against criminal defendants by a county sheriff and two deputies); United States of America v. Chinsaku Yuki, Manilla (1946) (military commission convened by Commanding General Phillipines-Ryukus Command convicted Sergeant-Major Chinsaku Yuki of the Kempentai of using “water torture” against individuals in his custody), NARA NND 775011 Record Group 331 Box 1586.
In addition to these extreme tactics, throughout his imprisonment, Respondents and other government agencies have subjected Petitioner Khan to a variety of other forms of torture, cruel, inhuman and degrading treatment, and other lesser forms of impermissible coercion. These methods have included:

Petitioner seeks a declaratory ruling from this Court that each of these methods constitute torture in violation of the MCA and other federal law.
C. Petitioner's CSRT Considered Information Obtained By Or Derived From Torture or Other Impermissible Forms of Coercion

Petitioner placed before his CSRT panel credible and detailed information concerning the torture used against him while in U.S. custody, including the

No question arises that the CRST panel and reviewing authorities were aware of this information. Yet, a serious risk exists that Majid's CSRT, in reaching its final determination, relied in whole or in part upon information obtained unlawfully from Majid or other individuals. Furthermore, information acquired through torture and other unlawful techniques led interrogators to discover additional information that was likely produced in Petitioner's CSRT as part of the government information affirming Petitioner's "enemy combatant" classification.

Finally, other individuals detained in the secret detention and interrogation program include Ammar al Baluchi, Guantanamo Detainee ISN #10018, Mohd Farik bin Amin Zubair, Guantanamo Detainee ISN #10021, and Khalid Sheikh Mohammed, Guantanamo Detainee ISN #10024, whom Respondents have publicly alleged have information related to Petitioner's status
determination\textsuperscript{6} and upon whose statements Petitioner's CSRT may have relied upon in whole or in part.

III. THIS COURT SHOULD DECLARE PETITIONER'S INTERROGATION CONSTITUTE TORTURE

A. The CSRT Regulations and the MCA Prohibit Reliance Upon Information Obtained By Torture

It is unsettled to what extent the fundamental concerns underlying judicial reliance on torture and other impermissible forms of coercion are embodied within the judicial review available under the DTA.\textsuperscript{7} The Court should, however, rule whether or not the tactics applied to Petitioner constitute torture or impermissible coercion in order to conduct the review required even under the narrowest reading of the DTA.\textsuperscript{8}

This Court must determine whether the CSRT panel followed the procedures


\textsuperscript{7} To the extent that the DTA prohibits this Court from holding that Petitioner is unlawfully detained because the CSRT justified his enemy combatant status and detention pursuant to statements extracted through torture or other impermissible forms of coercion, the DTA review is an inadequate substitute for the writ of habeas corpus.

\textsuperscript{8} To the extent the Court requires further information prior to ruling on this motion concerning the interrogation tactics applied to Petitioner, discovery and an evidentiary hearing should be scheduled under appropriate procedures that afford Petitioner a meaningful opportunity to pursue his DTA claims and that safeguard national security concerns, if any, related to the interrogation methods applied in the CIA secret detention program.
set forth in the July 2006 Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants, attached hereto as Exhibit 5, in reaching its conclusion that Petitioner is properly detained as an “enemy combatant.” Pursuant to these regulations, the CSRT panel must have assessed “whether any statement derived from or relating to evidence regarding the status of Petitioner was obtained as a result of coercion and the probative value, if any, of such statement.” See Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants, at 30; see also DTA at § 1005(b)(1). It cannot be disputed that this Court has the authority to order the requested relief pursuant to the DTA, as well as the All Writs Act, 28 U.S.C. § 1651.

B. The Prohibition Against Judicial Reliance upon Information Obtained by or Derived From Torture and Other Lesser Unlawful Coercion is Deeply-Rooted

Our Nation’s fundamental traditions prohibit judicial reliance upon statements extracted through torture and other lesser forms of impermissible coercion to justify imprisonment of an individual. Torture has been illegal under

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9 The government conducted Petitioner’s CSRT on or around April 15-19, 2007, and the CSRT panel’s decision was finalized on or around August 9, 2007. Consequently, CSRT regulations promulgated in July 2006 were applicable to his proceeding.

10 To the extent that the DTA prohibits this Court from holding that Petitioner is unlawfully detained because the CSRT justified his enemy combatant status and detention pursuant to statements extracted through torture or other impermissible forms of coercion, the DTA review is an inadequate substitute for the writ of habeas corpus.
English common law for more than 350 years.\textsuperscript{11} Common law judges did not consider evidence against a defendant that investigators extracted through torture and unlawful coercion because the judges considered this information inherently unreliable and viewed judicial acquiescence in these practices as degrading the dignity of justice.\textsuperscript{12}

Our Founders shared this revulsion of judicial reliance upon statements extracted by torture or impermissible coercion and embodied protections against this practice within the Constitution.\textsuperscript{13} Our criminal law also prohibits acts of

\textsuperscript{12} Although the rare use of torture had a brief appearance in English Common Law during the period of the infamous Star Chamber, 5 William S. Holdworth, \textit{A History of English Common Law}, 184-85 (1924), it was used even under these universally condemned circumstances solely for purposes of investigation. At no point in English common law history were statements obtained through torture or other inhumane treatment used against criminal defendants. See, e.g., Michael Foster, \textit{A Report of Some Proceedings on the Commission for the Trial of Rebels in the Year 1746, in County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law} 244 (2d ed. Corrected, London, W. Strahan & M. Woodfall 1776) (spelling modernized).
\textsuperscript{13} The Fifth Amendment’s protection against self-incrimination was a direct response to the historical experience of the Star Chamber and intended to prohibit judicial reliance upon statements extracted through unlawful cruelty or coercion, including torture. See \textit{Michigan v. Tucker}, 417 U.S. 433, 440 (1974) (“The privilege against compulsory self-incrimination was developed by painful opposition to a course of ecclesiastical inquisitions and Star Chambers proceedings occurring several centuries ago.”). Further, constitutional prohibitions against unreasonable searches and seizures, cruel and unusual punishments, and the guarantee of due process, reflect the Founders’ antipathy to government cruelty and undue coercion within our Nation’s justice system. See, e.g., \textit{Gregg v. Georgia}, 428 U.S. 153, 169-170 (1976) (“The American draftsmen, who adopted the English phrasing in drafting the Eighth Amendment, were primarily concerned
torture during wartime and peacetime,\textsuperscript{14} as well as the introduction of statements obtained through torture or other impermissible coercion against criminal defendants.\textsuperscript{15} The government's apparent reliance upon information extracted using such tactics in the present case threatens the common law and constitutional prohibitions designed to protect individual liberty, to guard against tyranny, and to preserve the balance between the state and the individual that rests at the core of our Anglo-American legal traditions.

\textbf{Conclusion}

For the reasons set forth above, Petitioner respectfully urges the Court to grant Petitioner's motion and issue an order declaring that the interrogation methods applied against him by U.S. personnel constitute torture and other forms of impermissible coercion.


Dated: December 6, 2007

Respectfully submitted,

[Signature]

Gitanjali S. Gutiérrez [Bar No. 51177]

J. Wells Dixon [Bar No. 51138]
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
Tel: (212) 614-6485
Fax: (212) 614-6499

Counsel for Petitioner
CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2007, I caused the foregoing Petitioner's Motion to Declare Interrogation Methods Applied Against Petitioner Constitute Torture, with exhibits, to be filed and served on counsel listed below by causing an original and six copies to be delivered to the Court Security Office.

Robert M. Loeb, Esq.
U.S. Department of Justice
Civil Division, Room 7268
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

Gitanjali S. Gutierrez
EXHIBIT

DD
Other Document #85
Denied in Full
Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA officers may use only Permissible Interrogation Techniques, which comprise the (a) Standard Techniques and (b) Enhanced Techniques.

Enhanced Techniques include, but are not limited to, the water board;
In each instance the use of Enhanced Techniques must be approved by Headquarters in advance.
Document #85

(FOIA DOC 4)

PAGES 4 TO 8

Denied in Full
EXHIBIT
EE
Press Releases & Statements

Director's Statement on the Past Use of Diego Garcia

Statement to Employees by Director of the Central Intelligence Agency, General Mike Hayden on the Past Use of Diego Garcia

February 21, 2008

The British Government announced today that the United States recently provided information on rendition flights through Diego Garcia—a UK territory in the Indian Ocean—that contradicted earlier data from us. Our government had told the British that there had been no rendition flights involving their soil or airspace since 9/11. That information, supplied in good faith, turned out to be wrong.

In fact, on two different occasions in 2002, an American plane with a detainee aboard stopped briefly in Diego Garcia for refueling. Neither of those individuals was ever part of CIA’s high-value terrorist interrogation program. One was ultimately transferred to Guantanamo, and the other was returned to his home country. These were rendition operations, nothing more. There has been speculation in the press over the years that CIA had a holding facility on Diego Garcia. That is false. There have also been allegations that we transport detainees for the purpose of torture. That, too, is false. Torture is against our laws and our values. And, given our mission, CIA could have no interest in a process destined to produce bad intelligence.

In late 2007, CIA itself took a fresh look at records on rendition flights. This time, the examination revealed the two stops in Diego Garcia. The refueling, conducted more than five years ago, lasted just a short time. But it happened. That we found this mistake ourselves, and that we brought it to the attention of the British Government, in no way changes or excuses the reality that we were in the wrong. An important part of intelligence work, inherently urgent, complex, and uncertain, is to take responsibility for errors and to learn from them. In this case, the result of a flawed records search, we have done so.

Mike Hayden
EXHIBIT FF
HUMAN RIGHTS COUNCIL
Fourth regular session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the Opinions adopted by the Working Group on Arbitrary Detention at its forty-fourth, forty-fifth and forty-sixth sessions, held in November 2005, May 2006 and August 2006, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions is included in the report of the Working Group to the Human Rights Council at its fourth regular session (A/HRC/4/40).
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and redressed, if necessary by putting the perpetrators to justice. Yet, any procedure aiming to put right gross human rights violations, as such welcomed by the Working Group, shall scrupulously respect the rules and standards drawn up and accepted by the international community to respect the rights of any person charged of a criminal offence. The violation of the rights of the person charged may easily backfire. This is particularly true in the present case; any lack of respect for the rights of the leaders of the former regime in the criminal proceedings against them may undermine the credibility of the justice system of the newly emerging democratic Iraq.

39. The Working Group believes that under the circumstances the proper way to ensure that the detention of Saddam Hussein does not amount to arbitrary deprivation of liberty would be to see to it that his trial is conducted by an independent and impartial tribunal in strict conformity with international human rights standards.

40. On the basis of what precedes, the Opinion of the Working Group is that:

(a) It will not take a position on the alleged arbitrariness of the deprivation of liberty of Mr. Saddam Hussein during the period of international armed conflict;

(b) It will follow the development of the process and will request more information from both concerned Governments and from the source. In the meantime and referring to paragraph 17 (c) of its methods of work, it decides to keep the case pending until further information is received.

Adopted on 30 November 2005.

OPINION No. 47/2005 (YEMEN)


Concerning: Messrs. Walid Muhammad Shahir Muhammad al-Qadasi; Salah Nasser Salim’ Ali and Muhammad Faraj Ahmed Bashmilah.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted to the source the reply provided by the Government. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. The source reports that Mr. Walid Muhammad Shahir Muhammad al-Qadasi, a citizen of Yemen, was arrested in the Islamic Republic of Iran in late 2001. He was held there for about three months before being handed over, with other detained foreign nationals, to the authorities in Afghanistan, who in turn handed them over to the custody of the United States of America. He was held in a prison in Kabul, where he was blindfolded, interrogated, threatened with death and accused of belonging to Al-Qaida. Walid Muhammad Shahir Muhammad al-Qadasi and his fellow detainees were kept in underground cells, 10 of them in a cell measuring approximately two by three metres, and constantly exposed to loud music. After three months in detention in Kabul, he was transferred to a detention centre of the United States military forces at Baghram Air Base, outside Kabul. After a month there, Walid Muhammad Shahir Muhammad al-Qadasi was taken to the United States military base at Guantánamo Bay, Cuba.

6. Walid Muhammad Shahir Muhammad al-Qadasi was transferred from Guantánamo Bay to Yemen at the beginning of April 2004. On his arrival, he was detained in the Political Security Prison in Sana’a. He was denied access to a lawyer and not brought before a court. Walid Muhammad Shahir Muhammad al-Qadasi was visited in detention by representatives of the source in mid-April 2004. The prison staff informed the source that Walid Muhammad Shahir Muhammad al-Qadasi was under investigation and would be released as soon as the investigation was completed. Subsequently, he was transferred to Ta’iz prison, where a lawyer from the United States non-governmental organization Centre for Constitutional Rights met with him on 21 June 2005. He currently remains in detention there. He has not been charged with a criminal offence, nor been given the opportunity to challenge the legality of his detention. The Head of the Political Security Department in Sana’a informed the source that Walid Muhammad Shahir Muhammad al-Qadasi and other detainees who returned from Guantánamo Bay were being held at the request of the United States authorities and would remain detained in Yemen pending receipt of their files from these authorities for investigation.

7. With regard to Mr. Salah Nasser Salim ‘Ali, the source reports that he is a 27-year-old Yemeni citizen who lived in Jakarta until 19 August 2003. On that day he was detained in Jakarta by agents of the Indonesian police and taken to an immigration centre. After four days of detention, during which his passport expired, Salah Nasser Salim ‘Ali was told that he would be deported to Yemen, via Jordan. Upon arrival at the airport in Amman, however, he was taken to a detention facility of the Jordanian intelligence service, where he was interrogated about a past stay in Afghanistan and tortured repeatedly for four days.

8. As to Mr. Muhammad Faraj Ahmed Bashmilah, aged 37, the source reports that he is a Yemeni citizen, who also lived in Indonesia. In October 2003, he travelled to Jordan with his wife. On arrival at Amman airport, Jordanian immigration authorities took his passport. Three days later, on 19 October 2003, he was arrested by the Jordanian Da’irat al-Mukhabarat al-‘Amah (General Intelligence Department, who kept him in custody for four days. During this period he was allegedly repeatedly tortured.

9. The source further states that from detention in Jordan, Messrs. Salah Nasser Salim ‘Ali and Muhammad Farah Ahmed Bashmilah were transferred to a detention centre under United States control. They were taken blindfolded to this detention centre by a several hours’ long plane flight and detained underground, and are therefore not able to identify the location
of the detention centre. Both the forces in charge of transferring them thereto and those in charge of the detention centre were, however, from the United States. They were subsequently transferred, again blindfolded, by plane and helicopter, to a second detention centre under United States control. They are therefore not able to identify the location of the facility. In both places, the two men were interrogated about their activities in Afghanistan and Indonesia, and about their knowledge of other persons suspected of terrorist activities.

10. According to the source, Messrs. Salah Nasser Salim ‘Ali and Muhammad Farah Ahmed Bashmilah were kept in United States custody for 20 and 18 months, respectively. During this period, they were held in solitary confinement and incommunicado, without contact with anyone other than the prison guards, interrogators and interpreters. Western music was piped into their cells uninterruptedly, 24 hours a day. In the second facility they were given books, including the Koran, and videos, and had an opportunity to exercise. Salah Nasser Salim ‘Ali was visited by a doctor twice a month.

11. On or around 5 May 2005, without explanation, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim ‘Ali were transferred to Yemen, where they were detained in the central prison of Aden. They were subsequently briefly taken to Sana’a and back to Aden. They are currently detained at the Fateh political security facility in Aden, where they have received visits by their family.

12. The source states that neither Muhammad Farah Ahmed Bashmilah nor Salah Nasser Salim ‘Ali have been charged or tried with any offence, nor have they been informed of the reason for their continued detention. Representatives of the Yemeni authorities have told the source that the reason for their detention is that their transfer from United States detention was conditional upon them being held in Yemen.

13. According to the source, the detention of Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim ‘Ali is devoid of any legal basis and thus arbitrary. In particular, the three above-mentioned persons were released from United States custody without charges and were never charged with any criminal offence in Yemen, where they have been detained for 18 months (Walid Muhammad Shahir Muhammad al-Qadasi) and three months (Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim ‘Ali), respectively. No decision concerning their detention and or statement setting forth the grounds therefor has been issued by any Yemeni authority. They have not been informed of any charges against them, have not been provided with legal assistance, have not had the right to challenge the lawfulness of their detention, and have not had a single hearing in their case.

14. The source adds that the detention of Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim ‘Ali is in violation of Yemeni domestic law, as well, because, according to it, suspects have the right to see a judge or prosecutor within 24 hours of being detained, the right to challenge the legal basis of their detention and the right to seek prompt legal assistance. Furthermore, Yemeni law provides that detention is not permitted except for acts punishable by law.
15. In its reply to these allegations, the Government confirms that Messrs. Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim ‘Ali were handed over to Yemen by the United States. They are held in a security police facility because of their alleged involvement in terrorist activities related to Al-Qaida. The Government of Yemen adds that the “competent authorities are still dealing with the case pending receipt of their [the persons’] files from the United States of America authorities in order to transfer them to the Prosecutor”.

16. In replying to the Government’s observations, the source informs that, as of 8 November 2005, the three men remain in detention, while the Government continues to state that it is awaiting the files concerning their cases from the United States authorities.

17. The Working Group, based on the above information provided by the source and the Government, which coincide, is in the position to render an Opinion.

18. The Government states that Messrs. Al-Qadasi, Bashmilah and Salim were handed over to Yemen by the United States. It is waiting for the files from the American authorities so as to transfer them to the prosecutor. This clearly shows that the Yemen authorities do not currently have any files on them.

19. The Working Group notes with concern that the transfers that the three persons experienced before being detained in Yemen occurred outside the confines of any legal procedure, such as extradition, and do not allow the individuals access to counsel or to any judicial body to contest the transfers.

20. No charges have been made by the Government of Yemen against these three men. They have not been informed of any accusation against them, nor have been brought before any judicial authority. No legal procedure has been followed to accuse them. Their deprivation of liberty is, as such, devoid of any legal basis.

21. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Messrs. Walid Muhammad Shahir Muhammad al-Qadasi, Muhammad Farah Ahmed Bashmilah and Salah Nasser Salim’Ali, is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

22. Consequent upon the Opinion rendered, the Working Group requests the Government:

To release the three above-mentioned persons, or otherwise subject them to a competent judicial authority, bringing these cases in conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 30 November 2005.
The Permanent Mission of the Republic of Yemen to the United Nations Office and Other International Organizations presents its compliments the Special Rapporteur on the question of Torture and to the Special Rapporteur on Human Rights and Terrorism and has the honor to attach herewith,

Our country's reply to the note verbale Ref. ALG/So214 (53-02) YEM12/2005 on the case of the two Yemeni citizens, Salah Nasser Ali (27 years old) and Muhammad Farah Ahmed Bashmilah (37 years old).

The Permanent Mission hopes that constructive dialogue and cooperation continue between our government and your Special Rapporteurs in a positive atmosphere so as to understand the conditions and circumstances of each case separately.

And as you all know, the cases related to international terrorism and its relation with external factors are extremely sensitive and it is difficult to settle them quickly and to come to clear facts.

The Permanent Mission of the Republic of Yemen avails itself of this opportunity to renew to the Special Rapporteur on the question of Torture and the Special Rapporteur on Human Rights and Terrorism the assurances of its highest consideration.

Geneva, December 20th 2005
الأخ الدكتور أبو بكر إبصار الله الغربي

وزير الخارجية

المحترم

بعد التحية:

ردًا على مذكرتك رقم رقم 10/14/2005/12/17 بتاريخ 7/10/2005

خصوص مذكرة اللفد العالم جنح بناء على بلاغ المقر الخاص بالتعذيب والمقرر الخاص بحقوق الإنسان والارهاب بشأن المواطنين إصلاح ناصر سالم

علي ومحمد فرج أحمد باشمره .. وبناه عليه ..

نود أفاداتكما بما يلي:

أولا:

فيما يتعلق بصحة الوقائع الواردة في البلاغ حول تعرضهما (المذكوران انفا) للضرب والاداء والتعذيب والتهديد بالتحرش والاحتجاز السري بمجلس عن العالم، من قبل السلطات الادونيسية والأردنية والأمريكية كما ورد في البلاغ، فهي من مسئولية المقرر الخاص بالتعذيب والمقرر الخاص بحقوق الإنسان والارهاب بمتابعة السلطات في البلدان المذكورة حول صحة الوقائع الواردة في البلاغ ..

ثانيا:

حول مزاعم التعرض للتعذيب أشار المذكوران انفا من خلال التحقيق معهما إلا أنهما قد تعرضوا للتعذيب من قبل السلطات المشار إليها انفا ..

ثالثًا:

النصوص القانونية:

تؤكد السلطات اليمنية بأنه لم يجري اعتقال المذكوران واتما سلما للسلطات اليمنية من السلطات الأمريكية تحت تهامة أتمامهما إلى ماوسمى بتنظيم ..
القاعدية، وقد قامت السلطات اليمنية باحتجازهما وفقًا لقانون الإجراءات الجزائية رقم (13) لسنة 1993 للتحقيق معهما والتأكد من صحة مناسبة اليهما من جانب السلطات الأمريكية، وقد جرى احتجازهما بناءً على مسوحات قانونية وفقًا للقانون الممارس بهما، ويخضع موضوعهما للمراجعة القانونية للتأكد من سلامة الإجراءات القانونية من قبل النائب العام، ومدى ملاءمة وتطبيق هذه الإجراءات للقانون وقد تسلمت السلطات اليمنية ملفاتهم من السلطات الأمريكية بتاريخ 10/نوفمبر/2005م، ويجري استكمال الإجراءات القانونية لاحتالهما إلى القضاء.

رابعة:

الرعاية الصحية وبرامج إعادة التأهيل:

يظل المعتقلون على نمط قضايا الرعاية الصحية وكذلك برامج إعادة التأهيل وفقًا للقانون سوى كان ذلك في مراكز الاحتجاز أو في السجون بناءً على قانون تنظيم السجون في حالة الأذى والحكم بالحبس، وكذلك تواجد داخلية تنظم وكر تلك هذه الرعاية، ويجري متابعتها والإشراف عليها من قبل النائب العام.

الاطلاق وإجراءاتكم ك..

وتقبلوا تحياتنا

iniz للجلالة مدير مكتب رئاسة الجمهورية

نيزك للنائب الوزير الداخلية

نيزك للكاتورة بحقوق الإنسان

18/12 2005 SUN 07:00 [TX/RX NO 8192] 2003
(Translated from Arabic)

Republic of Yemen

Office of the President

Central Political Security Department

Sir,

In response to your note No. 10/214/10, dated 7 December 2005, regarding a note from the Permanent Mission in Geneva about a report from the Special Rapporteur on torture and the Special Rapporteur on Human Rights and counter terrorism concerning Yemeni citizens Salah Nasser Salim Ali and Muhammad Faraj Ahmed Bashmilah, we should like to provide you with the following information:

1. With regard to the accuracy of the facts alleged in the report, namely, that the two men were beaten, verbally abused, tortured, threatened with sexual abuse and held in incommunicado detention by the Indonesian, Jordanian and United States authorities, it is up to the Special Rapporteur on torture and the Special Rapporteur on Human Rights and terrorism to check with the authorities of the countries concerned whether the facts alleged in the report are accurate.

2. With regard to the allegations about torture, both of the above-mentioned persons stated, when questioned, that they had not been tortured by any of the authorities mentioned above.

3. Legal basis:

The Yemeni authorities confirm that the two men were not arrested but rather were handed over to them by the United States authorities after having been accused of being members of the organization known as Al-Qa'ida. The Yemeni authorities detained them under

Mr. Abubakr Abdallah Al-Qirbi
Minister for Foreign Affairs

CHR/NONE/2005/426
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the Code of Criminal Procedures No. 13 of 1994, with a view to questioning them and verifying
the allegations made by the United States authorities. The legal basis on which they were held
was the aforementioned Code. The lawfulness of detention is subject to judicial review. Steps
are taken to verify that the Department of Public Prosecutions has followed the proper legal
procedures and that the procedures are consistent with the law. The Yemeni authorities received
the files on these two men from the United States authorities on 10 November 2005, and the
legal procedures are being completed pending their arraignment before the courts.

4. Medical treatment and rehabilitation programmes:

Under the Prisons Act, detainees awaiting trial are legally entitled to access to medical
treatment and rehabilitation programmes, whether at a detention centre or, if they have been
convicted and sentenced to imprisonment, at a prison. There are internal rules that regulate and
establish the parameters for such treatment. The Department of Public Prosecutions oversees the
implementation of these rules.

Accept, Sir etc.

(Signed): Ghalib Mathar al-Qamish
Chief
Central Department of Political Security

cc.: Director, Office of the President of the Republic
Minister for Internal Affairs
Minister for Human Rights