



**FATE AND WHEREABOUTS UNKNOWN:
DETAINEES IN THE “WAR ON TERROR”**

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The Center for Human Rights and Global Justice (CHRGGJ) at NYU School of Law (<http://www.chrgj.org>) focuses on issues related to “global justice,” and aims to advance human rights and respect for the rule of law through cutting-edge advocacy and scholarship. The CHRGGJ promotes human rights research, education and training, and encourages interdisciplinary research on emerging issues in international human rights and humanitarian law. Philip Alston is the Center’s Faculty Director; Smita Narula is Executive Director; Margaret Satterthwaite is Research Director; and Jayne Huckerby is Associate Research Scholar.

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About this Briefing Paper

This is the first in a series of Briefing Papers that will address “disappearances” in the “War on Terror.” This Paper presents factual summaries of individuals who may be in secret detention sites. Forthcoming Briefing Papers will address: the wider range of practices that may violate human rights law concerning enforced disappearances; international and regional law relevant to “disappearances”; domestic law applicable to “disappearances”; and legal standards governing collaboration by states in the human rights violations of other states.

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I. OVERVIEW

Introduction

It has been widely reported that the United States is holding detainees in secret locations. Less is known about who these individuals are. In this Briefing Paper, the Center for Human Rights and Global Justice presents the stories of 28 individuals who may have been “disappeared” by the U.S. government. Their stories are drawn from media accounts, human rights reports, and in some cases, interviews with legal representatives. While the level of certainty about the status of these individuals varies, the facts in each case are sufficient to indicate that each may have been a victim of an enforced disappearance by the United States. The Center for Human Rights and Global Justice calls on the United States government to clarify the fate of these individuals by disclosing, at minimum, their detention status, and for those who have been detained, their location and basis for detention.

What are enforced disappearances?

Under international human rights law, enforced disappearances happen when individuals are deprived of their liberty by state agents and the state fails to provide information about their fate or whereabouts; through these actions, detainees are placed outside the protection of law.¹ Despite this relatively simple definition, a variety of terms are routinely used by the media, human rights organizations, and governments to describe the U.S. practice of “disappearing” individuals in the “War on Terror.” Terms such as “ghost detainees,” “secret prisoners,” and references to “detainees in black sites” are common and may seem interchangeable. In part, this variety of terms accurately reflects the range of practices reportedly being used by the U.S. in its anti-terror campaign. In part, however, the way the terms are used demonstrates the confusion that results when secret policies are only partially known: informed discussion is difficult without complete information, and human rights standards may seem irrelevant if the fate of individuals is not considered paramount.

Legally, different standards sometimes apply to different kinds of enforced disappearance: “disappearances” may take place in settings that have a different status under international, regional and domestic law (i.e. they may take place on or off the battlefield); they may be carried out by different kinds of officials (i.e. military officials or intelligence agents, or both working together); and they often entail varying levels of U.S. involvement and cooperation with foreign governments (i.e. U.S. officials may directly apprehend and detain an individual in another country, or they may take custody from local officials and transfer the individual, or they may request that certain actions be taken by other governments). Each of these factors has an impact on the relevant rules under domestic and international law. As a practical matter, different procedures are subject to varying levels of scrutiny, oversight and accountability structures. In the end, what matters is that all of these practices may place the United States in violation of the international prohibition on enforced disappearances and relevant domestic standards.

How are people “disappeared” in the “War on Terror”?

Media accounts and research carried out by human rights organizations indicate that a variety of practices – through which the United States may be violating the prohibition on “disappearances” – are used by the United States in the “War on Terror.” The following practices may entail “disappearances”:

- (1) **Individuals are held in U.S.-controlled secret detention facilities (“black sites”) or in foreign facilities run with U.S. involvement.²**
- (2) **Individuals are held in foreign facilities at the direction of the United States.**
- (3) **Individuals are extraordinarily rendered.**
- (4) **Individuals are detained in conflict zones and are not properly registered – i.e. CIA “ghosts” held in military facilities.³**

The legal prohibition on “disappearances” is implicated in different ways in each of these four practices. While not every instance of each practice will amount to a “disappearance,” some will. This is because, regardless of the method, individuals count as “disappeared” when they are deprived of their liberty by state agents and the state fails to provide information about their fate or whereabouts, placing them outside the protection of law. This Briefing Paper will only address individuals possibly subject to the first practice (i.e. individuals held in U.S.-controlled secret detention facilities (“black sites”) or in foreign facilities run with U.S. involvement).

As will be demonstrated through the cases presented in Part II of this Briefing Paper, these practices are closely related, and are not mutually exclusive. Indeed, in some cases a single individual may have been subject to two or three of these practices. See, for example, the case of Ibn al-Shaikh al-Libi in Part II of this Briefing Paper.

In addition to these modes of disappearance, another set of practices implicates the U.S. as a collaborator in violating the prohibition on “disappearances” by other states. Detainees in a variety of countries have reportedly been apprehended by U.S. agents, or by foreign agents with U.S. officials present, and then placed into unacknowledged detention in those states. Others have been interrogated by U.S. officials while they were being held by foreign governments without access to the outside world. When the U.S. takes such actions, it is colluding in the “disappearance” of the individual by the foreign state.⁴ The case of Abdullah Khadr demonstrates this practice.

Abdullah Khadr

Canadian citizen Abdullah Khadr has recently returned to Canada after having been detained in Pakistan for 18 months without charge.⁵ During his detention in Pakistan, according to his lawyer, Dennis Edney, Abdullah Khadr was tortured repeatedly.⁶ Khadr was first taken into custody in Islamabad, Pakistan, on October 12, 2004, where he was held for 20 days before being transferred to a prison in Rawalpindi, where he was detained until December 2005.⁷

When he was initially detained, Khadr was made to stand for 48 hours straight; he also was hooded, stripped of his clothes, and “beaten about the head causing bleeding.”⁸ Khadr reported to his attorney that he was sexually abused and threatened with sexual assault during this period.⁹ He was held in Islamabad for 18 more days, during which he was repeatedly interrogated by Pakistani and U.S. officials; the sessions extended on average for 10 hours per day.¹⁰ The U.S. officials involved in his interrogation (ranging from 3-5 in number each time) introduced themselves to Khadr as “spies,” but did not explain for which U.S. agency they worked.¹¹ Khadr alleges that both U.S. and Pakistani interrogators “screamed at” and “slapped [him] around the face and head” during this period.¹² After he had been detained in Islamabad for 20 days, Khadr was transferred to a prison in Rawalpindi.¹³ There, Khadr was questioned numerous times by an individual who identified himself by name and explained that he was an FBI agent; this agent was accompanied by a senior agent.¹⁴ The FBI agent asked Khadr to sign a waiver form agreeing to speak to him without counsel and Khadr signed the form.¹⁵ The FBI agent requested that Khadr become a witness in an as-yet-uncharged terrorism-related case to be brought in the United States; the agent offered Khadr a two-year sentence in exchange for this testimony.¹⁶

Abdullah Khadr is one of four sons of Ahmed Said Khadr, a well known terrorism suspect who was killed during a gun battle with Pakistani authorities in 2003.¹⁷ Each of his brothers has been arrested at one time or another in connection with the “War on Terror”; his youngest brother is currently detained at Guantánamo Bay Naval Station.¹⁸

Concerning the role of the Canadian government, Khadr told his attorney that Canadian officials visited him in prison many times, beginning in January 2005 and ending with his release.¹⁹ At one point, representatives of Canada’s intelligence agency, the CSIS, questioned him for three consecutive days, which was followed by another three days of questioning by Royal Canadian Mounted Police (RCMP) officials.²⁰ The CSIS officials recommended that Khadr comply with FBI requests to become a witness.²¹ Khadr told the *Globe and Mail* that he was questioned about the connections of other Canadians to possible terrorist activities; he named several individuals who were victims of extraordinary rendition or who were imprisoned and tortured, including Maher Arar and Abdullah Almalki.²²

Canadian officials apparently never advised Khadr's family or legal counsel about his detention in Pakistan.²³ Indeed, he was never given access to an attorney during his detention, and was not informed of the reasons for his detention.²⁴ In addition, Khadr was never allowed to have access to his family; no government ever informed them of his whereabouts or even whether he was alive or dead.²⁵ Reports in the press indicate that the United States may be preparing to seek the extradition of Abdullah Khadr on as-yet unspecified charges.²⁶

How do the different practices relate to each other?

The example of extraordinary rendition and U.S.-run secret detention facilities

It is clear that "extraordinary rendition" and secret detention facilities are related systems. One report notes, for example, that the secret detentions system is "augmented" by the practice of extraordinary renditions.²⁷ However, the exact nature of this relationship remains unclear. In part this lack of clarity owes to confusion over what is meant by "extraordinary rendition." The term "extraordinary rendition" refers to the transfer of an individual, with the involvement of the U.S. or its agents, to a foreign state in circumstances that make it more likely than not that the individual will be subjected to torture or cruel, inhuman or degrading treatment.²⁸ An "extraordinary rendition" can occur when the person is kept in either a known or unknown facility in a foreign state; the key test will be whether the individual is at risk of torture or cruel, inhuman or degrading treatment if transferred to a specific state. This is where the close relationship between "extraordinary renditions" and secret detention facilities comes into play; it has been recognized that keeping a person in *incommunicado* detention increases the risk that they will be subject to torture or cruel, inhuman or degrading treatment.²⁹ Therefore, the transfer of individuals to states known to hold individuals in secret detention may amount to extraordinary rendition.

In the U.S. context, "extraordinary renditions" are reportedly carried out by the Rendition Group in the Central Intelligence Agency (CIA) Counterterrorist Center.³⁰ This Rendition Group reportedly captures persons and transfers them to two potential destinations: a "black site," or CIA detention facility, such as those alleged to have been run in Eastern Europe, or a third country, often Egypt, Jordan, Morocco, Afghanistan and other countries to jails operated by these countries but with some degree of U.S. involvement.³¹ However, as the narratives of disappeared persons in Part II of this Briefing Paper show, the trajectory of movement is rarely this simple.

Who is held in the secret detention sites?

It is very difficult to obtain information about individuals who are being held in U.S. secret sites. In the remaining portion of this Briefing Paper, we will present narratives about individuals who may be in secret sites. We have divided the detainees into three categories, depending on the availability and quality of evidence concerning each case at this point in time:

- (a) **Individuals confirmed to be or to have been in U.S. detention who are probably held in U.S.-controlled secret locations or foreign facilities run with U.S. involvement.** Individuals in this category are those commonly referred to as "high-level detainees" suspected of being active with Al Qaeda or other well-known terrorist organizations. U.S. government sources, including the *9-11 Commission Report*³² and the White House website,³³ confirm that these detainees are or have been at some point in U.S. custody. Despite their U.S. custody having been acknowledged, no information is provided about their whereabouts, though media accounts suggest that they are being held in secret detention centers in foreign states.³⁴ Human Rights Watch has reported consistently on this category; a recent list published by the organization includes numerous examples.³⁵ Individuals in this category include Abu Zubaydah (Zain al-Abidin Muhahhad Husain), Ramzi Binalshibh, and Khalid Sheikh Mohammed.³⁶

(b) Individuals suspected of being in U.S. detention who are probably held in U.S.-controlled secret locations or foreign facilities run with U.S. involvement.

Individuals in this category are somewhat harder to identify than those in the first, since the U.S. has not acknowledged that it is holding them. Instead, these are individuals about whom there is substantial evidence that the United States is holding them in secret detention. This evidence consists of:

- i. Substantial evidence of apprehension by or with the involvement of U.S. agents, or apprehension by foreign agents followed by transfer to U.S. custody;
- ii. Substantial evidence that the U.S. suspects the individual of involvement in terrorist activities; and
- iii. Substantial evidence that the fate or whereabouts of the individual is unknown.

The U.S. has not acknowledged that it is detaining any of these individuals. Human Rights Watch includes several detainees in this category, including Ibn Shaikh al-Libi, Muhammed al-Darbi, and Musaad Aruchi.³⁷

(c) Individuals who may be in U.S. detention and who may be held in U.S.-controlled secret locations or foreign facilities run with U.S. involvement. This category consists of individuals about whom there is some evidence that the United States is holding them in secret detention. This evidence consists of:

- i. Some evidence of apprehension by or with the involvement of U.S. agents, or apprehension by foreign agents followed by transfer to U.S. custody;
- ii. Some evidence that the U.S. suspects the individual of involvement in terrorist activities; and
- iii. Some evidence that the fate or whereabouts of the individual is unknown.

The U.S. has not acknowledged that it is detaining any of these individuals. These persons are Suleiman Abdalla, Abu Naseem, and Aafia Siddiqui.

II INDIVIDUALS WHO MAY BE IN SECRET DETENTION

The narratives presented in this section are based on publicly available materials, augmented by interviews with legal representatives where noted. They have not been independently investigated.

(a) Individuals confirmed to be or to have been in U.S. detention who are probably held in U.S.-controlled secret locations or foreign facilities run with U.S. involvement

Mustafa al-Hawsawi

Mustafa Al-Hawsawi is a Saudi national.³⁸ He was arrested on March 1, 2003 in Rawalpindi, Pakistan.³⁹ The arrest is reported to have clearly involved U.S. agents, reportedly the CIA.⁴⁰ The U.S. also appears to have received some of the fruits of the raid; unidentified Pakistani officials reported that computer disks found during the raid were turned over to American intelligence agents.⁴¹ Al-Hawsawi was also reported to have been turned over to U.S. custody.⁴² He was then reportedly taken to Bagram Air Base and/or another detention facility in Afghanistan and held in solitary confinement.⁴³ In early March, 2003, another U.S. agency, this time the Federal Bureau of Investigation (FBI), stated in its weekly bulletin that al-Hawsawi was in U.S. custody; a report describing the content of the memo states that it indicated that al-Hawsawi had been transferred to a “secure site outside Pakistan where he is being interrogated.”⁴⁴ Intelligence sources have reported to the media that it was likely that even al-Hawsawi himself did not know where he was being held.⁴⁵

Although the FBI confirmed in a weekly law bulletin in March 2003 that al-Hawsawi had been arrested and was in U.S. custody, the U.S. government failed to confirm that Al-Hawsawi was in U.S. custody in the *9-11 Commission Report* released in June 2004.⁴⁶ On August 29, 2003, in the case of *U.S. v. Moussaoui* in the United States District Court for the Eastern District of Virginia, Judge Brinkema ordered a videotaped deposition of al-Hawawi for use at trial.⁴⁷ The U.S. has refused to give access to him in the case because of national security concerns.⁴⁸ Media reports have stated that al-Hawsawi remains in U.S. custody.⁴⁹

Abd al-Rahim al Nashiri (Abdulrahim Mohammad Abda al-Nasheri, Abu Bilal al-Makki, Mullah Ahmad Belal, Mullah Bilal)⁵⁰

Al Nashiri is a Saudi-born Yemeni national.⁵¹ He was reportedly arrested in the United Arab Emirates (U.A.E.)⁵² in November 2002.⁵³ On November 17, 2002, the U.S. Homeland Security Director, Tom Ridge, confirmed that a prisoner had been apprehended (without revealing that it was al Nashiri) and noted that “the prisoner was providing useful information.”⁵⁴ On November 21, 2002, U.S. officials disclosed that it was al Nashiri who had been arrested earlier in November 2002 and that he was being interrogated by U.S. authorities at an undisclosed location.⁵⁵ The *9-11 Commission Report* records that al Nashiri is in U.S. custody,⁵⁶ as does *George W. Bush: Record of Achievement, Waging and Winning the War on Terror*.⁵⁷

The location(s) of al Nashiri’s detention are not known. One account refers to a U.S. official’s confirmation that al Nashiri was held briefly in Afghanistan before being transferred to an undisclosed location.⁵⁸ This undisclosed location may be Poland; a recent news report indicates that al Nashiri was held in secret detention in Poland.⁵⁹ He is listed in this article in a group of 12 “high-value” detainees “held in CIA prisons.”⁶⁰ The same article indicates that “11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert” and that of these 11 persons, 10 were subjected to the CIA’s “enhanced interrogation techniques,” including waterboarding.⁶¹

Al Nashiri was subjected to at least nine interrogations between November 2002 and February 2004.⁶² It is unknown how many interrogations he has been subjected to since that date.

Ramzi Binalshibh (bin al-Shibh)

Ramzi Binalshibh was an alleged co-conspirator in the September 11 attacks.⁶³ Following a tip from U.S. intelligence personnel, he was arrested in Karachi, Pakistan, on September 11, 2002 by Pakistani military and police officials.⁶⁴ Later the following day, Binalshibh was conclusively identified by American agents.⁶⁵ According to Pakistani officials, four FBI agents observed the raid from a car as it was carried out.⁶⁶ Binalshibh was then allegedly taken with other detained Al-Qaeda members to a secret military facility near Karachi's airport.⁶⁷

On September 15, 2002, German Interior Minister Otto Schily stated that the German government would seek to have Binalshibh extradited to Germany, which had already issued an international arrest warrant naming him.⁶⁸ On the same day, Pakistani authorities were cited as saying that there had already been a "high-level" decision to ensure the U.S. took custody, not Germany.⁶⁹

Pakistani authorities then reportedly handed Binalshibh over to U.S. custody, and he was flown out of Pakistan on the following day on September 16, 2002.⁷⁰ Media sources report that he was subsequently transported to a secret CIA installation in Thailand, and was later moved to another undisclosed location.⁷¹ Binalshibh has allegedly been in U.S. custody at undisclosed locations since his initial transfer to U.S. custody.⁷²

The United States District Court trying Zacarias Moussaoui decided in April of 2004 to allow Moussaoui to take testimony from Binalshibh and two other alleged Al Qaeda members.⁷³ On July 14, 2003, Attorney General Ashcroft refused a court order mandating access to Binalshibh for a videotaped deposition.⁷⁴ In September 2004, the United States Court of Appeals for the Fourth Circuit held that Moussaoui could instead submit written questions intended for Binalshibh.⁷⁵ The U.S. government formally acknowledged that Binalshibh was in U.S. custody as of July 2004 in the *9-11 Commission Report*⁷⁶ and reaffirmed this by including reference to his apprehension on the White House website.⁷⁷ The *9-11 Commission Report* refers to 41 interrogation sessions with Binalshibh between July 2002 and July 2004.⁷⁸

Waleed Mohammed bin Attash (Tawfiq bin Attash, Tawfiq Attash Khallad)⁷⁹

Waleed Mohammed bin Attash is described as a "Saudi citizen of Yemeni descent."⁸⁰ He was reportedly arrested in Karachi, Pakistan on April 29, 2003⁸¹ by Pakistani officials.⁸² After his arrest, bin Attash was reportedly held at an undisclosed location in Pakistani custody until at least May 1, 2003.⁸³ It has been reported that bin Attash was initially subjected to interrogation by Pakistani intelligence officials before being given to "U.S. agents for questioning in the presence of Pakistani officials."⁸⁴ Bin Attash was reported to have been subsequently transferred to U.S. custody and subject to interrogation in an undisclosed location.⁸⁵

That bin Attash is in U.S. custody was confirmed in the *9-11 Commission Report*.⁸⁶ His location remains unconfirmed. It is reported that, at some point, bin Attash was in Poland; a recent news report indicates that bin Attash was held in secret detention in Poland.⁸⁷ He is listed in this article in a group of 12 "high-value" detainees "held in CIA prisons."⁸⁸ The same article indicates that "11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert" and that of these 11 persons, 10 were subjected to the CIA's "enhanced interrogation techniques," including waterboarding.⁸⁹

Ahmed Khalfan Ghailani

Ghailani is a Tanzanian national.⁹⁰ On July 24, 2004,⁹¹ Ghailani was arrested along with his wife (an Uzbek national),⁹² his children,⁹³ and others in Gujrat, Pakistan.⁹⁴ The U.S. is reported to have been involved in the following stages of Ghailani's treatment:

- Providing intelligence leading to arrest: a Pakistani official told the press that Ghailani was seized "following a joint Pakistani-U.S. intelligence operation" and that "The

operation to capture Ghailani...was supervised by agents of Pakistan's Inter-Services Intelligence agency and coordinated with CIA and FBI officials.”⁹⁵

- Receiving, before July 30, 2004, computers and disks confiscated in the raid.⁹⁶
- Confirming the identity of Ghailani after his arrest.⁹⁷
- “Participating” in the interrogation of Ghailani after the arrest while Ghailani was being held by the Pakistani authorities at an undisclosed location.⁹⁸
- Taking Ghailani into custody “shortly” after his arrest, reportedly after he had been held by Pakistan for a week.⁹⁹ The apprehension of Ghailani is listed on the White House website in a document entitled *George W. Bush: Record of Achievement, Waging and Winning the War on Terror*.¹⁰⁰
- Transporting Ghailani out of Pakistan to an undisclosed location.¹⁰¹ On January 25, 2005 Pakistani security officials confirmed that Ghailani had been transported out of Pakistan by plane in the custody of the U.S. months earlier.¹⁰² Another report puts this date at early August 2004, when Ghailani was reportedly handed over to a CIA team and flown out of the country on an unmarked plane.¹⁰³ When questioned about the incident, the U.S. embassy in Pakistan refused to comment.¹⁰⁴
- Reportedly holding Ghailani in Poland.¹⁰⁵ This recent *ABC News* report lists Ghailani in a group of 12 “high-value” detainees “held in CIA prisons.”¹⁰⁶ The same article indicates that “11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert” and that of these 11 persons, 10 were subjected to the CIA’s “enhanced interrogation techniques,” including waterboarding.¹⁰⁷

The U.S. has at no stage brought Ghailani before a U.S. court, despite the fact that on December 16, 1998, Ghailani was indicted on nine counts in the Southern District of New York for his involvement in the U.S. Embassy bombings in Tanzania and Kenya.¹⁰⁸ A bench warrant was also issued for his arrest at this time.¹⁰⁹

Hassan Ghul

Hassan Ghul, a Pakistani citizen,¹¹⁰ was reportedly arrested on January 23, 2004 in Iraq.¹¹¹ The *9-11 Commission Report* confirms that Ghul is in U.S. custody.¹¹² A recent news report indicates that Ghul was held in secret detention in Poland.¹¹³ He is listed in this article in a group of 12 “high-value” detainees “held in CIA prisons.”¹¹⁴ The same article indicates that “11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert” and that of these 11 persons, 10 were subjected to the CIA’s “enhanced interrogation techniques,” including waterboarding.¹¹⁵

Hambali (Riduan Isamuddin)

Hambali (an Indonesian)¹¹⁶ and his wife Noralwizah Lee Abdullah (a Malaysian national)¹¹⁷ were arrested on August 11, 2003 in Aytthaya, Thailand in a “joint operation” of which the U.S. was a part.¹¹⁸

The arrest of Hambali was formally announced on August 14, 2003 by White House Press Secretary Scott McClellan.¹¹⁹ At this press conference, U.S. officials refused to give significant additional details of the arrest, except to state that Hambali was in U.S. custody.¹²⁰ Hambali’s detention in U.S. custody was also confirmed in the *9-11 Commission Report*¹²¹ and the *George W. Bush: Record of Achievement, Waging and Winning the War on Terror*. The CIA is the U.S. agency to which Hambali was allegedly “handed over” after the arrest.¹²²

Hambali's location has not been disclosed. The following potential locations are identified in media sources:

- A report dated September 17, 2003 states that "Hambali is now being held in a secret location in U.S. custody. Thailand has said he is being interrogated by Thai authorities as well as representatives of other 'allied nations.'" ¹²³
- On September 27, 2003, it is reported in the Australian press that Hambali is in Bagram Air Base, Afghanistan being interrogated by U.S. officials. ¹²⁴
- An article dated October 6, 2003 and a number of subsequent sources record that Hambali is being held in detention on Diego Garcia. ¹²⁵
- On October 13, 2004, it is reported that the "Central Intelligence Agency runs a top-secret interrogation facility in Jordan" at which Hambali is being held. ¹²⁶ When questioned about rumors of the torture of Hambali in Jordan, an Indonesian spokesman stated he could not confirm Hambali's presence in Jordan. ¹²⁷
- An *ABC News* report dated December 5, 2005 describes the fate and whereabouts of Hambali in the following terms: "In U.S. custody. Kept isolated from other high-value targets."¹²⁸ This same article lists Hambali in a group of 12 "high-value" detainees "held in CIA prisons." The same article indicates that "11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert" and that of these 11 persons, 10 were subjected to the CIA's "enhanced interrogation techniques," including waterboarding.

Khalid Sheikh Mohammed

Khalid Sheikh Mohammed is a Kuwaiti national of Pakistani origin. ¹²⁹ U.S. authorities believe he was the chief intellectual author of the 9-11 attacks on the United States, among other terrorist acts. ¹³⁰ As such, he was the target of much surveillance and at least one failed attempt to arrest him prior to his final apprehension. ¹³¹ In September 2002, Pakistani authorities tried and failed to apprehend him, but succeeded in detaining his two school-age sons, Yusif al-Khalid (then 9 years of age) and Abed al-Khalid (then 7 years of age). The two boys were reportedly held by Pakistani authorities until their father was arrested in March 2003; at that time they were handed over to the CIA for interrogation. ¹³²

United States and Pakistani officials announced that Mohammed's arrest occurred on March 1, 2003 in Rawalpindi, Pakistan. ¹³³ The arrest reportedly occurred without incident and was carried out by Pakistani and American agents in a joint operation. ¹³⁴ Mohammed was reportedly hooded and transported by car away from the site of his arrest. ¹³⁵ However, some sources have suggested that the arrest actually occurred much earlier than March 1, 2003. ¹³⁶ After his arrest, Mohammed was detained and interrogated by Pakistan's Inter Services Intelligence (ISI). ¹³⁷ On or about March 9, 2003, after Pakistani interrogations, Mohammed was reportedly transferred to American custody at Chaklala Air Force Base in Rawalpindi and subsequently transported to Bagram Air Base, Afghanistan. ¹³⁸ While being interrogated at Bagram, Mohammed was made aware that his sons were being held (by U.S. or Pakistani agents) and that his actions might affect their release. ¹³⁹ After a few days at Bagram, reports state that he was transferred to an undisclosed location. ¹⁴⁰ At some point after his transfer to American custody, it is reported that Mohammed was interrogated in Thailand, although it is not clear whether this was before or after his transfer to Bagram. ¹⁴¹ Reports have also indicated that he was at some point held on the Indian Ocean island of Diego Garcia, a U.K. territory leased by the U.S. for use as a naval base. ¹⁴² Despite these reports, the Pentagon, the CIA and the British government have both explicitly denied the existence of detention facilities on Diego Garcia. ¹⁴³

Mohammed's detention in U.S. custody as of July 2004 was confirmed in the *9-11 Commission Report*. ¹⁴⁴ The report includes information about 82 interrogations of Mohammed between March 12, 2002

and July 2004, and cites widely to the fruits of those interrogations.¹⁴⁵ The United States government has provided extracts of interrogations of Mohammed to a German court in the trial of Mounir el-Motassadeq in Hamburg, Germany.¹⁴⁶

A recent news report indicates that Mohammed was held in secret CIA detention in Poland.¹⁴⁷ He is listed in this article in a group of 12 “high-value” detainees “held in CIA prisons.”¹⁴⁸ The same article indicates that “11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert” and that of these 11 persons, 10 were subjected to the CIA’s “enhanced interrogation techniques,” including waterboarding.¹⁴⁹

Abu Zubaydah (Abu Zubaida,¹⁵⁰ Zayn al-Abidin Mohammed Husayn,¹⁵¹ Zain al-Abidin Muhahhad Husain¹⁵²)

Abu Zubaydah is a Palestinian who was born in Saudi Arabia.¹⁵³ Zubaydah was reportedly arrested on March 27, 2002 in Faisalabad, Pakistan.¹⁵⁴ The *9-11 Commission Report* records that Zubaydah is in U.S. custody,¹⁵⁵ as does *George W. Bush: Record of Achievement, Waging and Winning the War on Terror*.¹⁵⁶

The arrest reportedly involved the U.S. on many levels, including: providing assistance in the lead-up to the arrest (e.g. it is reported that “using ‘extremely sensitive methods’ – FBI-speak for telephone intercepts and locator devices – Pakistani and American investigators zeroed in on at least two houses in Faisalabad...”) ¹⁵⁷; and involvement in the actual carrying out of the arrest (e.g. one report recalls the experience of Tsadiqui Hussain, the police chief of Faisalabad, Pakistan, of having “members of Pakistani military intelligence, accompanied by American CIA and FBI personnel wearing bulletproof vests”¹⁵⁸ arrive at the police station before the arrest, and another report describes the arrest as being carried out “by a joint team of American and Pakistani special forces”).¹⁵⁹ The U.S. also reportedly received most of the material seized in the operation.¹⁶⁰

Zubaydah was reportedly rushed to a hospital(s) to address his gunshot wounds sustained during the arrest operation.¹⁶¹ One news source suggests that Zubaydah was probably taken to a hospital at either Dalbandin or Jacobabad, two military bases which the U.S. has used.¹⁶² It is reported that after his arrest Zubaydah was subjected to a “brief” interrogation by Pakistani officials and then handed over to “the Americans.”¹⁶³ On April 3, 2002 Donald Rumsfeld stated that the U.S. was “holding” Zubaydah and that Zubaydah was receiving medical care.¹⁶⁴ On the same day, the Defense Secretary denied that U.S. officials had plans to torture Zubaydah, or that it would allow him to be tortured.¹⁶⁵

There are a number of potential locations at which Zubaydah may have been kept at different stages in his detention. One press account suggests that Zubaydah was allegedly transferred to Bagram Air Base, Afghanistan, and then again to Jordan where he was detained in various facilities in the capital Amman and the eastern desert portion of the country.¹⁶⁶ His potential transfer to Jordan is especially relevant because Zubaydah had previously been sentenced to death there for alleged terror activities.¹⁶⁷ An *ABC News* report dated December 5, 2005, sheds more light on the places of Zubaydah’s detention and the significance of the case of Zubaydah in the development of the secret detention system:

According to sources directly involved in setting up the CIA secret prison system, it began with the capture of Abu Zabayda in Pakistan. After treatment there for gunshot wounds, he was whisked by the CIA to Thailand where he was housed in a small, disused warehouse on an active airbase. There, his cell was kept under 24-hour closed circuit TV surveillance and his life-threatening wounds were tended to by a CIA doctor specially sent from Langley headquarters to assure Abu Zubaydah was given proper care, sources said. Once healthy, he was slapped, grabbed, made to stand long hours in a cold cell, and finally handcuffed and strapped feet up to a water board until after 0.31 seconds he begged for mercy and began to cooperate.¹⁶⁸

This same report indicates that, in addition to Thailand, Zubaydah was held in secret detention in Poland.¹⁶⁹ He is listed in this article in a group of 12 “high-value” detainees “held in CIA prisons.”¹⁷⁰ The

same article indicates that “11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert” and that of these 11 persons, 10 were subjected to the CIA’s “enhanced interrogation techniques,” including waterboarding.¹⁷¹

In late 2002, CIA officials said that Zubaydah was one prospective defendant to be tried before a military commission.¹⁷² However, subsequently the CIA decided “interrogation was to be given priority over prosecution.”¹⁷³ The detention of Zubaydah re-ignited a previous debate between the CIA and FBI over harsh interrogation techniques.¹⁷⁴ The disagreement eventually led to the FBI Director to “hold back” FBI involvement.¹⁷⁵

- (b) Individuals suspected of being in U.S. detention who are probably held in U.S.-controlled secret locations or foreign facilities run with U.S. involvement.

Muhammad al-Darbi

Muhammad al-Darbi, a Yemeni national,¹⁷⁶ was apprehended in Yemen in August 2002.¹⁷⁷ The circumstances of his apprehension are unreported and the extent of his involvement in terrorist activities is unclear.¹⁷⁸ Information leading to his apprehension may have come, in part,¹⁷⁹ from interrogations at Bagram Air Base, Afghanistan¹⁸⁰; a facility where the use of torture and cruel, inhuman and degrading treatment in interrogation has been reported.¹⁸¹ Al-Darbi himself is also reported to have been interrogated by U.S. officials.¹⁸² He reportedly “remain(s) under CIA control.”¹⁸³

Adil al-Jazeera (Adil Amin)

Adil al-Jazeera, an Algerian national, was arrested on June 17, 2003 in Hayatabad Peshawar, the capital of Pakistan's North West Frontier Province.¹⁸⁴ The U.S. was again reported to have been involved in the arrest, although this time, rather than the CIA, the arrest was reportedly made by Pakistani security personnel accompanied by FBI agents.¹⁸⁵ In terms of the basis for his arrest, it is reported that officials believed him to be an Al Qaeda “facilitator.”¹⁸⁶ However, at the time of his arrest, Al-Jazeera did not appear on the FBI's Most Wanted Terrorists list.¹⁸⁷

After his arrest, according to an anonymous intelligence official, he was interrogated in Pakistan.¹⁸⁸ There are allegations that he was subjected to ill treatment in this time in detention.¹⁸⁹ He was then reportedly flown out of Peshawar on an American plane on July 13, 2003.¹⁹⁰ He was allegedly blindfolded with his hands tied behind his back while he boarded the plane.¹⁹¹ This plane was allegedly headed for Bagram, Afghanistan.¹⁹² Al-Jazeera’s wife has not been formally informed of her husband’s detention and after receiving a few letters from him originating from Bagram Air Base has not heard from him since.¹⁹³ It has been reported that he has “possibly” been transferred to Guantánamo Bay Naval Station.¹⁹⁴

Yassir al-Jazeera (al-Jaziri)

Yassir al-Jazeera, a Moroccan citizen, was arrested in Lahore on March 15, 2003.¹⁹⁵ A newspaper report indicated that the team that arrested al-Jazeera consisted of two officials from the FBI and four officials from Pakistani security service agencies.¹⁹⁶ Another report, citing an unnamed Pakistani official, indicated that while the FBI assisted with intelligence-gathering in relation to al-Jazeera, no U.S. agents were on-site at the raid.¹⁹⁷ This report was echoed by CNN.¹⁹⁸ Another suspected terrorist, Gulzaib Khan (Jaffer), was apprehended in the same raid.¹⁹⁹

Al-Jazeera was not on the FBI list of most wanted terrorists at the time, but was characterized as “one of the top seven” officials of the Al-Qaeda network by Pakistani Information Minister Sheikh Rashid Ahmed.²⁰⁰ He allegedly played a role in Al Qaeda’s communication networks.²⁰¹ Al-Jazeera was taken to

an “undisclosed location” following his arrest,²⁰² and was reported to have been jointly interrogated by FBI agents and Pakistani intelligence officials.²⁰³

Ibn al-Shaikh al-Libi

Ibn al-Shaikh al-Libi is a Libyan national.²⁰⁴ Al-Libi’s arrest by Pakistani forces most likely occurred on November 11, 2001.²⁰⁵ The arrest reportedly occurred in Pakistan while al-Libi was fleeing the fighting in Tora Bora.²⁰⁶ What happened to al-Libi next provides great insight into the relationship between secret detention and extraordinary rendition and the agencies involved in these practices:

- Before al-Libi comes into U.S. custody, the CIA reportedly has access to al-Libi in **Pakistan**.²⁰⁷
- Al-Libi, in U.S. custody, is reportedly then transferred to **Afghanistan**; according to media reports, al-Libi was at some point held in U.S. custody at the airport in Kandahar, Afghanistan prior to January 5, 2002.²⁰⁸ According to unidentified U.S. authorities’ statements to the media, by January 9, 2002 al-Libi was transferred to the U.S.S. Bataan, an amphibious assault ship positioned in the Arabian Sea.²⁰⁹ Al-Libi’s interrogation on the U.S.S. Bataan was reportedly initially directed by the FBI²¹⁰ Al-Libi reportedly came under the control of the CIA during January of 2002 after a dispute between the CIA and the FBI over who would have control over al-Libi.²¹¹ However, a recent news account of this stage of al-Libi’s detention identifies the role of military in this process; it records that al-Libi was “initially held by the United States military in Afghanistan, and was debriefed there by CIA officers.”²¹²
- It is reported that al-Libi was then transferred from Afghanistan to **Egypt** for “further interrogation” in January 2002.²¹³ This transfer is alleged to have occurred “because the White House had not yet provided detailed authorization for the CIA to hold him.”²¹⁴ It has also been reported that immediately prior to his alleged transfer to Egypt, the FBI and CIA feuded over the use of harsh interrogation methods.²¹⁵ The CIA reportedly won the dispute, and initiated the transfer to Egypt.²¹⁶ It is during this time in Egyptian custody that al-Libi is alleged to have made “detailed” statements about alleged ties between Iraq and Al Qaeda, upon which the U.S. relied “so heavily” as “foundation” for its claims about links between Iraq and Al Qaeda involving both training and illicit weapons.²¹⁷ Al-Libi is reported to have later retracted these statements on the basis that “he had fabricated them to escape harsh treatment.”²¹⁸
- By late 2002, al-Libi is believed to be in CIA custody and is reported to be included on a list of prospective persons to be tried by military tribunals.²¹⁹ However, this did not result, as interrogation of al-Libi was reportedly prioritized over prosecution.²²⁰ In late September of 2002, President Bush issued an Executive Order freezing al-Libi’s assets.²²¹
- After a year or so in Egypt, in February 2003, al-Libi is then reportedly returned to U.S. custody when he was transferred to **Guantánamo Bay Naval Station**.²²² In January 2004, al-Libi is reported to have withdrawn his statements concerning ties between Iraq and Al Qaeda.²²³
- The current location of al-Libi is unknown.²²⁴ The *9-11 Commission Report* did not confirm U.S. custody of al-Libi.²²⁵ An *ABC News* report indicates that al-Libi has at some point been held in **Poland**.²²⁶ He is listed in this article in a group of 12 “high-value” detainees “held in CIA prisons.”²²⁷ The same article indicates that “11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert” and that of these 11 persons, 10 were subjected to the CIA’s “enhanced interrogation techniques,” including waterboarding.²²⁸

Abu Faraj al-Libbi (al-Libi, al-Liby)

On May 2, 2005 Abu Faraj al-Libbi was arrested in Mardan, Pakistan by “members of the (Pakistani) security forces aided by U.S. intelligence.”²²⁹ Pakistani authorities announced the arrest two days later.²³⁰ After his arrest, it is reported that al-Libbi was airlifted to Islamabad where he was interrogated by both Pakistani and U.S. agents²³¹ at an undisclosed location.²³² On 6 May 2005, Amnesty International stated that Abu Faraj al-Libbi, 42, was being held in *incommunicado* detention in Pakistan.²³³ Reports indicate that after being interrogated in Pakistan, al-Libbi was transferred to U.S. custody in early June 2005.²³⁴ An Amnesty International report indicates that this was U.S. military custody.²³⁵ Amnesty International also stated that:

On 6 June the Pakistani authorities confirmed that Abu Faraj al-Libbi had been handed over to U.S. custody in response to a request from the U.S. authorities, saying that he had been taken out of Pakistan on a plane by U.S. officials and sent to an unknown destination at the beginning of June. One Pakistani intelligence official said he did not know where al-Libbi had been taken, while another said that he would be taken to a U.S. detention facility where other suspects are held so that interrogators could “verify very quickly” information he had given the Pakistani authorities.²³⁶

There are numerous sources that refer to the potential location(s) of al-Libbi’s detention. For example, (unspecified) intelligence sources are reported to have told Adnkronos International (AKI) that al-Libbi was “likely” to be interrogated in Morocco and Jordan before being transferred to Guantánamo Bay Naval Station.²³⁷ An e-mail dated 7 June 2005, from Col. James Yont, U.S. military spokesperson based in Afghanistan, to the Associated Press, is said to indicate that al-Libbi was taken “directly from Pakistan to the U.S. and was not brought to Afghanistan.”²³⁸

It is reported by *ABC News* that at some point al-Libbi was held in secret detention in Poland.²³⁹ He is listed in this article in a group of 12 “high-value” detainees “held in CIA prisons.”²⁴⁰ The same article indicates that “11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert” and that of these 11 persons, 10 were subjected to the CIA’s “enhanced interrogation techniques,” including waterboarding.²⁴¹

Abdul Rahim al-Sharqawi (Riyadh the facilitator)

Abdul Rahim al-Sharqawi was reportedly arrested in January, 2002²⁴² in Karachi, Pakistan.²⁴³ One news report indicates that al-Sharqawi was arrested by “Pakistani forces.”²⁴⁴ Another report discusses the relationship between the U.S. and Pakistan in counter-terrorism activities and states in this context, that “it is also believed that Pakistani authorities aided in the capture of Abdul Rahim al-Sharqawi....”²⁴⁵ A number of sources refer to the lack of information surrounding the precise circumstances of al-Sharqawi’s apprehension.²⁴⁶ However, one report suggests that some information leading up to al-Sharqawi’s arrest was gained from responses to advertisements placed in Pakistani papers promising compensation for information regarding suspicious foreigners.²⁴⁷

The U.S. did not confirm custody of al-Sharqawi in the *9-11 Commission Report*.²⁴⁸ However, some media reports refer to al-Sharqawi as being “known to be in custody” in a context which suggests that this is U.S. custody.²⁴⁹ Another report describes al-Sharqawi’s custody in slightly different terms, noting that “...al-Sharqawi reportedly is in the custody in an unidentified country where U.S. officials have access to him.”²⁵⁰

As this latter report suggests, the location of al-Sharqawi is unknown.²⁵¹ On December 1, 2005 Human Rights Watch suggested that al-Sharqawi was “possibly transferred to Guantánamo.”²⁵² A recent *ABC News* report suggests that al-Sharqawi was held in secret detention in Poland.²⁵³ He is listed in this article in a group of 12 “high-value” detainees “held in CIA prisons.”²⁵⁴ The same article indicates that “11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert” and that of these 11 persons, 10 were subjected to the CIA’s “enhanced interrogation techniques,” including waterboarding.²⁵⁵

Ali Abdul Aziz Ali (Ammar al Baluchi)

Ali Abdul Aziz Ali is a Pakistani national²⁵⁶ apprehended in Karachi, Pakistan on April 29, 2003.²⁵⁷ He was reportedly apprehended and interrogated initially by Pakistani authorities,²⁵⁸ and transferred to U.S. custody on May 2, 2003.²⁵⁹ A media report detailing the handover of Ali Abdul Aziz Ali describes Pakistani law-enforcement officials as confirming that he was “given into the custody of U.S. authorities (FBI or CIA agents) for further interrogation.”²⁶⁰ Another report indicates that Ali Abdul Aziz Ali was taken into FBI custody.²⁶¹

The U.S. government has neither confirmed nor denied that Ali Abdul Aziz Ali is in U.S. custody. The *9-11 Commission Report* cites to information from an “interrogation of” Ali Abdul Aziz Ali on February 11, 2004, but it is not stated that he is in U.S. custody.²⁶² However, in *U.S. v. Paracha*, a 2005 New York District Court case, the U.S. provided sworn statements taken from him.²⁶³ The judge in this case refused to allow Ali Abdul Aziz Ali as a live witness citing national security reasons.²⁶⁴ The exact phrasing of Ali Abdul Aziz Ali’s statements made “during his interrogation by U.S. forces”²⁶⁵ was kept secret as the sworn statement read aloud in court was a paraphrased summary.²⁶⁶

Despite providing the statement of Ali Abdul Aziz Ali (and of Majid Khan, see below), the U.S. refused to either confirm or deny that Ali Abdul Aziz Ali is in the custody of the U.S.²⁶⁷ Ali Abdul Aziz Ali is presumed by news sources to be in U.S. custody in an undisclosed location.²⁶⁸

Mohammad Farik Amin (Zubair)

Mohamad Farik Amin, a Malaysian citizen, was reportedly arrested in 2003 in Southern Thailand.²⁶⁹ Sources vary on the exact date of his arrest, but it is alleged to have occurred between June and July 2003.²⁷⁰

In terms of U.S. involvement, one news report describes the arrest as a “low key” “covert joint Thai-CIA operation.”²⁷¹ The Deputy Prime Minister of Malaysia has further stated that both Amin and Mohamad Nazir bin Lep were arrested by U.S. officials and were (as at August 19, 2003) being interrogated.²⁷²

The location of Amin is unknown, although it was reported that at some point Amin, along with Hambali and bin Lep, was in Bagram Air Base, Afghanistan being interrogated by U.S. officials.²⁷³ One source also believes that he, along with Hambali and bin Lep, has been held at Diego Garcia.²⁷⁴ In August 2003 Malaysia urged the U.S. to hand Amin over to Malaysian authorities.²⁷⁵

Musaad Aruchi (Musab al-Baluchi, al-Balochi, al-Baloshi)²⁷⁶

Musaad Aruchi was reportedly arrested in Karachi, Pakistan on June 12, 2004, by Pakistani paramilitary forces in an “operation supervised by the CIA.”²⁷⁷ The importance of U.S. involvement to the operation is clear from media accounts; the operation reportedly employed sophisticated American eavesdropping technology and computerized identification systems and was funded by the CIA.²⁷⁸

It is reported that Pakistani authorities held Aruchi for three days before he was flown in an unmarked CIA plane from a Pakistani air force base to a location that U.S. officials did not disclose.²⁷⁹

Abdul Aziz

Abdul Aziz was reportedly arrested on December 14, 2001.²⁸⁰ His nationality is not known.²⁸¹ In one account Aziz is described as one of the “battlefield detainees” held by U.S. troops in Afghanistan, many of whom “have been or are being interrogated by CIA, Defense Intelligence Agency, FBI and Army officials.”²⁸²

Abu Faisal

Abu Faisal was reportedly arrested on December 12, 2001 in Afghanistan or Pakistan.²⁸³ His nationality is not known.²⁸⁴ As with Abdul Aziz, one media account describes Faisal as one of the “battlefield detainees” held by U.S. troops in Afghanistan, many of whom “have been or are being interrogated by CIA, Defense Intelligence Agency, FBI and Army officials.”²⁸⁵

Majid Khan

Majid Khan, a Pakistani national, was initially detained by Pakistani authorities early in 2003,²⁸⁶ reportedly at some point between March and April.²⁸⁷ Numerous reports indicate that Khan is being held in U.S. custody in an undisclosed location.²⁸⁸ This is also suggested by the fact that the U.S. was able to produce sworn statements from Khan (and Ali Abdul Aziz Ali as discussed above) in the case of *U.S. v. Paracha*,²⁸⁹ although the Government has not confirmed or denied that Khan is in custody.²⁹⁰

Mohammad Naeem Noor Khan (Abu Talaha)

It is widely reported that Mohammad Naeem Noor Khan, a Pakistani national,²⁹¹ was arrested on July 13, 2004 in Lahore, Pakistan.²⁹² However, it should also be noted that during court proceedings regarding his detention, Khan’s lawyer alleged that he was arrested earlier: on May 5, 2004.²⁹³

Information leading to Khan’s arrest was allegedly gained from interrogations of Malaysian students who had allegedly been previously detained *incommunicado*, threatened with torture, and subsequently released by Pakistani authorities during September 2003.²⁹⁴ It has also been reported that the CIA was involved in Khan’s arrest: one account indicates that Khan was “captured with the help of the CIA”²⁹⁵; another indicates that the CIA provided information that led to Khan’s arrest.²⁹⁶

The fate and whereabouts of Khan remain unknown, despite court proceedings in Pakistan brought by Khan’s lawyer, requesting the location of his detention and detail of the charges being brought against him.²⁹⁷ It is unclear even whether there have been charges brought against Khan; one Pakistani official familiar with Khan’s interrogation has told the press that “Nothing very incriminating was found to connect him with any terrorist act or to the planning of an act, hence we are still not sure if he’ll be prosecuted or not.”²⁹⁸ Some sense of the type of interrogation to which Khan has been subjected can be gleaned from a media report from August 8, 2005, in which Khan is characterized as initially “a hard nut to crack.”²⁹⁹

On December 1, 2005, Human Rights Watch, citing various media sources, described the fate of Khan as follows: Khan “...was held by Pakistani authorities, and likely transferred to U.S. custody. (Possibly in joint U.S.-Pakistani custody).”³⁰⁰ There have also been reports that Khan has been working undercover as a double agent after his arrest; the source of this news was reportedly the U.S. government itself who leaked the name of Khan to the U.S. media.³⁰¹

Mohamad Nazir bin Lep (aka Lillie, Lilie, or Li-Li)

Mohamad Nazir bin Lep, a Malaysian, was reportedly arrested on 11 August 2003³⁰² in Bangkok, Thailand, after he was “lured to the capital.”³⁰³ His arrest preceded the arrest of Hambali (see above), with whom he was alleged to have been associated,³⁰⁴ by a few hours.³⁰⁵ It is reported that bin Lep watched the arrest of Mohamad Farik Amin (Mohamad Zubair) (see above) earlier in 2003.³⁰⁶

In terms of U.S. involvement, the Deputy Prime Minister of Malaysia has stated that both bin Lep and Amin were arrested by U.S. officials and were (as at August 19, 2003) being interrogated.³⁰⁷ The interrogation of bin Lep has been referred to in the media; one account relies on intelligence sources to state that information “extracted by Thai and U.S. intelligence officials” from bin Lep aided in the apprehension of Hambali;³⁰⁸ another refers more generally to the “confessions” of bin Lep (and Amin).³⁰⁹ The location of bin Lep is unknown, although it is reported that at some point bin Lep, along with Hambali and Amin, was in Bagram Air Base, Afghanistan being interrogated by U.S. officials.³¹⁰ One source also

believes that he, along with Hambali and Mohammad Farik Amin, has been held at Diego Garcia.³¹¹ In August 2003 Malaysia urged the U.S. to hand bin Lep over to Malaysian authorities.³¹²

Tariq Mahmud (Mahmood)

Tariq Mahmud, a dual British and Pakistani national,³¹³ was reportedly arrested in October 2003³¹⁴ in Pakistan.³¹⁵ He was arrested on suspicion of links to Al Qaeda.³¹⁶ Mahmud was allegedly seized in “an operation involving Pakistani and American intelligence officials.”³¹⁷ It has also been reported that there was possible U.K. involvement,³¹⁸ although Pakistani and U.S. sources deny reports that British officials were involved in the arrest.³¹⁹ It is reported that Mahmud was arrested when a friend made contact with him in Pakistan; that friend was also arrested at the same time as Mahmud, and both were then “hooded, cuffed and taken to an undisclosed location.”³²⁰ That friend was subsequently released from detention; it is alleged that during this detention he was interrogated by Pakistani ISI, CIA and MI6 (British) officers.³²¹

Mahmud however was not released and his location is unknown. On October 30, 2003, *BBC News* referred to statements of Masood Khan, a spokesman for Pakistan's Ministry of Foreign Affairs, to the effect that Mahmud was in the “custody of the Pakistani security agencies.”³²² On the same day, however, *The Telegraph* reported that Mahmud had been arrested by Pakistani security forces and then handed over to “United States forces operating in the region.”³²³ The same article refers to information from sources that Mahmud is being held at Bagram Air Base, Afghanistan and may be sent from there to Guantánamo Bay Naval Station. Pakistani and U.S. sources have denied that Mahmud had been moved to Bagram Air Base, Afghanistan.³²⁴ According to Abd al-Rahman Siddique (Mahmud’s solicitor in Pakistan) in the course of legal proceedings in Pakistan in December, 2004, Pakistani authorities first denied that they had arrested Mahmud before then claiming that Mahmud had actually been arrested on December 10, 2003 and was in prison “in the Punjab.”³²⁵ The effect of this, according to al-Rahman Siddique, is that Mahmud had at the time “been arrested unlawfully and detained without charge for nearly three months.”³²⁶ Mahmud did not appear in court in these proceedings.³²⁷

However, despite the assertions of the Pakistani government, Mahmud’s brother, Tahir Mahmud told Aljazeera.net in December 2003 that:

I have no reason to believe the Pakistani authorities when they say that my brother is still in Pakistan. They have changed their story more than once, and no one from his legal team or from the British Foreign Office have seen him which leads me to believe he is in American custody in Guantánamo Bay Naval Station.³²⁸

This speculation has been echoed in the media; on January 12, 2005, *The Times* reported that:

The Foreign Office also said that it was unaware of the whereabouts of Tariq Mahmood, a Birmingham taxi driver and British citizen who may be in Guantánamo.³²⁹

Mohammed Omar Abdel Rahman (Asadullah)

Mohammed Omar Abdel Rahman, an Egyptian national, is one of the sons of Omar Abdul Rahman, who is serving a life sentence in the United States for his 1995 conviction of conspiring to destroy New York landmarks.³³⁰ There are conflicting reports about the location and timing of the arrest: some reports indicate that he was apprehended in Kabul, Afghanistan in November 2001.³³¹ Other reports state that he was not apprehended until February 2003 in Quetta, Pakistan.³³²

Rahman’s family repeatedly sought information from U.S. authorities about his whereabouts and status; these efforts were unsuccessful.³³³ After they read media reports that Rahman had been apprehended in Afghanistan by the Northern Alliance, his family sought assistance from a lawyer, who sent letters to Attorney General John Ashcroft and Secretary of Defense Donald Rumsfeld.³³⁴ In the letter, the family requested that U.S. authorities notify them if Rahman was handed over to their custody, and asked

that Rahman not be interrogated without his lawyers present.³³⁵ According to Amnesty International, reports surfaced in December 2001 stating that Rahman has been transferred to U.S. custody.³³⁶ On January 28, 2002, the U.S. Department of Justice replied to the lawyers' letter.³³⁷ In full, the letter read as follows:

Your letter of November 30, 2001, to the Attorney General advising that you have been retained by the family of Ahmed Abdul Rahman to represent him has been referred to the Criminal Division for response. Receipt of your letter, and your request concerning any potential interrogation of Ahmed Abdul Rahman by agencies of the United States in the event he is taken into custody in Afghanistan, is herewith acknowledged.³³⁸

A recent news report indicates that Rahman was held in secret CIA detention in Poland.³³⁹ He is listed in this article in a group of 12 "high-value" detainees "held in CIA prisons."³⁴⁰ The same article indicates that "11 top al Qaeda suspects have now been moved to a new CIA facility in the North African desert" and that of these 11 persons, 10 were subjected to the CIA's "enhanced interrogation techniques," including waterboarding.³⁴¹

(c) Individuals who may be in U.S. detention and who may be held in U.S.-controlled secret locations or foreign facilities run with U.S. involvement

Suleiman Abdalla (Suleiman Abdalla Salim Hemed³⁴²)

In March 2003, reports surfaced about the apprehension of an unnamed Al Qaeda suspect of Yemeni origin in Somalia. Initial reports were that the individual was picked up on March 18, 2003 with the assistance of Somali warlords in Mogadishu.³⁴³ Injured by the militia force that abducted him, the detainee was taken to a hospital in Mogadishu,³⁴⁴ and was later handed over to the FBI.³⁴⁵ Kenyan Foreign Minister Kalonzo Musyoka claimed that Kenyan officers had carried out the arrest in conjunction with the Somalis, he added that "there were other interested parties involved."³⁴⁶ Eyewitnesses also reported that "six armed U.S. officials in plain clothes had been present when the man was picked up" in Somalia.³⁴⁷ In May 2003, Minister Musyoka told the *New York Times* that the Kenyans had carried out the raid "and handed [the detainee] over to the United States."³⁴⁸

On March 26, 2003, Kenyan Minister for Security Chris Murungaru named the individual detained in Somalia as a Yemeni national named Suleiman Abdalla.³⁴⁹ The Kenyan government also stated that Abdalla was being transported to the U.S. for trial in connection with the terrorist attacks in East Africa in 1998.³⁵⁰ *The Guardian* reported in May 2003 that Kenya had handed Suleiman Abdalla "to U.S. agents" in March 2003.³⁵¹

The relationship between U.S. officials and specific Somali warlords is contested. Some reports have identified Mohammed Dheere as the warlord who helped capture Suleiman Abdalla.³⁵² *The New York Sun* reported that Somali gunmen claim that U.S. agents "regularly visit Mr. Dheere at his Mogadishu home and an AP reporter saw two of the alleged agents, dressed in regular clothing, moving through Mogadishu using a team of bodyguards belonging to Bashir Rageth, a wealthy businessman closely associated with Mr. Dheere."³⁵³

In May 2003, a spokesperson for the U.S. military's anti-terrorism task force in the Horn of Africa indicated to Voice of America (VOA) that the task force had played a role in the apprehension of several suspects by Kenyan officers in Somalia; unnamed military sources told the news agency that Suleiman Abdalla had been taken from Somalia to Kenya, and was later "transported to the United States for interrogation and prosecution."³⁵⁴ VOA also reported that "The Horn of Africa task force spokesman has not responded to inquiries about the man."³⁵⁵ In a report filed later concerning the existence of secret detention facilities, VOA reported that the "FBI has denied knowledge of any transfer [of Abdalla] and a Justice Department spokesman tells VOA the suspect is still in Africa."³⁵⁶

Abu Naseem

Abu Naseem is a Tunisian national who was arrested by Pakistani authorities on June 17, 2003 in Peshawar, Pakistan.³⁵⁷ Several reports indicate that he was arrested on the same day as Adil Al-Jazeera (see separate entry in this report), in a different location in Peshawar.³⁵⁸ A single report indicates that Abu Naseem was arrested one week before Al-Jazeera.³⁵⁹ Abu Naseem was reportedly suspected of providing forged documents for Al-Qaeda,³⁶⁰ and of facilitating other Qaeda operations.³⁶¹

The *Chicago Tribune* reported that Abu Naseem was detained and questioned by Pakistani security forces, “but it wasn’t immediately clear whether [Abu Naseem and Al-Jazeera] were in Pakistani custody or handed over to U.S. officials.”³⁶² Pakistani officials told the *Daily Times* of Pakistan that the U.S. had been “informed of the arrests.”³⁶³ Reports indicate that Al-Jazeera was subsequently transferred to Bagram Air Base, Afghanistan.³⁶⁴ No information is available about whether Naseem was similarly transferred; at the time of his arrest, CBS reported that “Nearly 500 al Qaeda suspects have been arrested in Pakistan and most of them have been handed over to the United States.”³⁶⁵

Aafia Siddiqui

Aafia Siddiqui was last seen in Pakistan, getting into a cab with her three children.³⁶⁶ This was reportedly in either March³⁶⁷ or early April 2003.³⁶⁸ Her three children were aged 7 years, 5 years and 6 months at that time.³⁶⁹ Siddiqui and her children were taking the taxi from her mother’s home to the train station; this was to be one leg of a journey to visit an uncle in Islamabad.³⁷⁰ None of the four have been seen since. A week after the incident, Siddiqui’s mother, Ismet Siddiqui, claimed that an “intelligence agency official” warned her not to draw attention to her daughter’s disappearance.³⁷¹

An article in the Pakistani Urdu press reports that Siddiqui was stopped and arrested by officers of a law enforcement agency, taken to some unknown place and after “strict” initial investigation sent to the United States in “strict custody”.³⁷² Based on this article, Ismet Siddiqui flew to the United States to try and locate her daughter.³⁷³ On arrival at JFK International Airport, New York, Ismet Siddiqui was detained for questioning by the FBI, NYPD and Homeland Security.³⁷⁴ The CIA was allegedly not present during this questioning.³⁷⁵ While in the United States, Ismet Siddiqui was subpoenaed to appear before a grand jury.³⁷⁶ The Siddiqui family hired Elaine Sharp to represent them, and Ms. Sharp was present during interviews of Ismet Siddiqui with the U.S. Attorney and FBI. In the course of these interviews, according to Ms. Sharp the U.S. Attorney and FBI emphatically stated that they did not know where Aafia Siddiqui was and stated that she was not in U.S. custody.³⁷⁷ Ms. Sharp does not take the latter as a definitive statement, noting that it does not exclude the possibility, for example, that Siddiqui is being held by another country with the U.S. being granted access to her.³⁷⁸ According to Ms. Sharp it is also notable that at no stage during these discussions, or indeed at any stage, has such a statement been given by, or on behalf of, the CIA.³⁷⁹

The reports detailing the circumstances of Siddiqui’s disappearance have been confusing.³⁸⁰ On March 18, 2003, the FBI issued an alert requesting information on Siddiqui and her estranged husband Mohammed Khan.³⁸¹ It is alleged that this attention to Siddiqui came about because Khalid Shaik Mohammed provided her name to his U.S. interrogators, although it has also been reported that the FBI had paid attention to Siddiqui and her husband at an earlier stage.³⁸² The *Boston Globe* surmises that Siddiqui had been “sought by Pakistani and U.S. authorities since March 2003”.³⁸³ In portrayals of Siddiqui as a terrorist threat, a number of themes became prevalent.³⁸⁴ According to her mother’s lawyer, two are particularly problematic: the attempt to portray Siddiqui as a microbiologist (when her field is cognitive neuroscience)³⁸⁵ and the allegations that Siddiqui was active in the diamond trade in Liberia to raise funds for al Qaeda.³⁸⁶ Ms. Sharp disputes these allegations and believes misinformation is being circulated in an attempt to find the “new face” of al Qaeda, i.e. the female face.³⁸⁷

With regard to her disappearance, it is reported that initially a spokesperson for the interior ministry of Pakistan and two unnamed U.S. officials confirmed information in the Urdu press that Siddiqui and her children were “picked up” by Pakistani authorities and taken into U.S. custody.³⁸⁸ On April 3,

2003, Chicago NBC (drawing on a report in the *Press Trust of India*) also records that “U.S. intelligence officials are reportedly interrogating a Pakistani woman...”.³⁸⁹ The article identifies this woman as Siddiqui.³⁹⁰ On May 1, 2003, *Newsweek* stated that “Inside sources claim that Afia had been ‘picked up’ by intelligence agencies on the way to the airport and initial reports suggest she was handed over to the FBI.”³⁹¹

However, both Pakistani and American officials are alleged to have later “backtracked” on any form of acknowledgement of Siddiqui’s fate.³⁹² On April 1 and 2, 2003, the Pakistani Interior Minister Faisal Saleh Hayat is reported to have stated that Siddiqui had not been arrested.³⁹³ Another “senior” Pakistani source is alleged to have told the *Associated Press* that “she has apparently gone underground.”³⁹⁴ Likewise, the FBI has denied any knowledge of Aafia’s location.³⁹⁵ At a press conference on May 26, 2004, Attorney General Ashcroft and FBI Director Robert Mueller III firmly indicated that the FBI was still seeking custody of Siddiqui when it identified her as one of seven persons who presented a “clear and present danger” to the United States.³⁹⁶ However, two days later, on May 28, 2004, a Pakistani “interior ministry spokesman” is alleged to have confirmed that “Dr. Aafia Siddiqui, allegedly involved in terrorist activities, had been arrested in 2003 from Karachi and handed over to the U.S. authorities”.³⁹⁷ It is alleged that this hand over occurred because Siddiqui had retained her United States nationality.³⁹⁸ The same article also states, on the basis of information from “another interior ministry official,” that “Pakistani intelligence officials had interrogated her but her links with Al Qaeda could not be established.”³⁹⁹ There are also suggestions in the press that Siddiqui has been killed by the Pakistani ISI⁴⁰⁰ or that her disappearance has been the result of domestic violence.⁴⁰¹

¹ See e.g. U.N. General Assembly, *Declaration on the Protection of All Persons from Enforced Disappearance*, A/RES/47/133 (1992). (“Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,”); Article 2 of the *Draft International Convention for the protection of all persons from enforced disappearances*, E/CN.4/2005/WG.22/WP.1/REV.4 (Sept. 23, 2005) available at <http://www.ohchr.org/english/issues/disappear/group/index.htm> (defining “enforced disappearance” for the purpose of the Convention as “...the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”).

² See generally Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST., Nov. 2, 2005, at A1.

³ See generally Jane Mayer, *A Deadly Interrogation: Can the C.I.A. Legally Kill a Prisoner?*, NEW YORKER, Nov. 14, 2005, at 44 (discussing the practice, particularly with respect to the death of Manadel al-Jamadi); HUMAN RIGHTS FIRST, *BEHIND THE WIRE: AN UPDATE TO ENDING SECRET DETENTIONS* 6 (2005), available at http://www.humanrightsfirst.org/us_law/PDF/behind-the-wire-033005.pdf (providing overview of the practice of ghosting in military facilities); HUMAN RIGHTS WATCH, *THE UNITED STATES’ “DISAPPEARED”: THE CIA’S LONG-TERM “GHOST DETAINEES”* [hereinafter HUMAN RIGHTS WATCH, *THE UNITED STATES’ “DISAPPEARED”*]: 5-15 (outlining practice of keeping CIA prisoners in military detention generally). See also the following Department of Defense documents released to the American Civil Liberties Union (ACLU) pursuant to a *Freedom of Information Act* request, all available at <http://www.aclu.org/torturefoia/released/030905/>: Transcript of deposition of Brig. Gen. Janis L. Karpinski, Appendix to Fay/Jones/Kern Report (July 18, 2004); Statement of MNF-I, C2, IMIR CW2, Annex to Fay/Jones/Kern Report (June 16, 2004); Sworn Statement of E-5, 519th MI Bn, Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of 372nd MP Co SPC, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of [UNREADABLE], Annex to Fay/Jones/Kern Report; Sworn Statement of Deputy CJ2, CJTF-7, Annex to Fay/Jones/Kern Report; Sworn Statement of SGT, 372nd MP, Camp Victory, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn Statement of SPC/E4, B Co., 66th MI Group, 202nd MI BN, Annex to Fay/Jones/Kern Report (May 24, 2004); Sworn Statement of SGT, Member of GTMO team, “Shut Up Group,” Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of CW2, A/519th MI Bn, Annex to Fay/Jones/Kern Report (May 19, 2004); Sworn Statement of SGT, 372nd MP Co, Annex to Fay/Jones/Kern Report (May 7, 2004); Statement of B/Co, 470th MI Grp. SGT, Annex to Fay/Jones/Kern Report (May 18, 2004). In terms of the numbers involved see Josh White, *Army, CIA Agreed on ‘Ghost’ Prisoners*, WASH. POST, Mar. 11, 2005, at A16 (noting that “Defense Department officials have said that there were as many as 100 ghost detainees held in prisons in Iraq but that the detainees slipped through the cracks and were not part of any official agreement. A Navy report issued yesterday said there was evidence of about 30 ghost detainees, but Pentagon officials said they could find no evidence of a signed agreement.”); *Former U.S. Army Interrogator Describes the Harsh Techniques He Used in Iraq, Detainee Abuse by Marines and Navy Seals and Why “Torture is the Worst Possible Thing We Could Do”* (Democracy Now! radio & television broadcast, Nov. 15, 2005), transcript available at <http://www.democracynow.org/article.pl?sid=05/11/15/1632233> (former interrogator Tony Lagouranis noting that non-registration of prisoners “happened pretty often”).

⁴ The legal standards and implications for these collaborations will also be addressed in a future CHRGI Briefing Paper.

⁵ Email from Dennis Edney to Margaret Satterthwaite, dated December 14, 2005 (on file with authors).

⁶ Michael Friscolanti & Natalie Alcoba, *Khadr Says Ottawa Knew of His ‘Torture,’* National Post, Dec. 8, 2005.

⁷ Email from Dennis Edney, *supra* note 5.

⁸ Email from Dennis Edney, *supra* note 5.

⁹ Email from Dennis Edney, *supra* note 5. See also Colin Freeze, *Mounties Bring Khadr Home*, GLOBE AND MAIL UPDATE, Dec. 8, 2005.

¹⁰ Email from Dennis Edney, *supra* note 5.

¹¹ Email from Dennis Edney, *supra* note 5.

¹² Email from Dennis Edney, *supra* note 5.

¹³ Email from Dennis Edney, *supra* note 5.

¹⁴ Email from Dennis Edney, *supra* note 5.

¹⁵ Email from Dennis Edney, *supra* note 5.

¹⁶ Email from Dennis Edney, *supra* note 5.

- ¹⁷ *Abdullah Khadr Now a Free Man in Toronto*, CBC NEWS, Dec. 7, 2005.
- ¹⁸ Abdullah Khadr is one of four sons of Ahmed Said Khadr, a well known terrorism suspect who was killed during a gun battle with Pakistani authorities in 2003.
- ¹⁹ Email from Dennis Edney, *supra* note 5.
- ²⁰ Email from Dennis Edney, *supra* note 5.
- ²¹ Email from Dennis Edney, *supra* note 5.
- ²² Freeze, *supra* note 9.
- ²³ Email from Dennis Edney, *supra* note 5.
- ²⁴ Friscolanti & Alcoba, *supra* note 6.
- ²⁵ Email from Dennis Edney, *supra* note 5.
- ²⁶ CBC NEWS, *supra* note 17.
- ²⁷ Douglas Jehl & David Johnston, *CIA Now Acting Independently to Move Prisoners*, INT’L HERALD TRIB., Mar. 7, 2005, at 4.
- ²⁸ See generally *Torture by Proxy: International and Domestic Law Applicable to “Extraordinary Renditions”* (New York: ABCNY & NYU School of Law, 2004); *Beyond Guantánamo: Transfers to Torture One Year After Rasul v. Bush* (New York: NYU School of Law, 2005) (noting that the definition of Extraordinary Rendition uses the ‘more likely than not’ standard for assessing an individual’s risk upon transfer because this is the test that the U.S. employs when assessing that risk; however, the relevant human rights treaties contain significantly more protective standards concerning the level of risk of torture or CID treatment that an individual faces upon transfer).
- ²⁹ See e.g. jurisprudence of the Human Rights Committee on the relationship between *incommunicado* detention and torture or cruel, inhuman or degrading treatment outlined in *Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46, E/CN.4/2002/71*, paras 17 – 25 (2002).
- ³⁰ Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake: German Citizen Released After Months in Rendition*, WASH. POST., Dec. 4, 2005, at A1.
- ³¹ *Id.*
- ³² NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., 9-11 COMMISSION REPORT (2004).
- ³³ See George W. Bush, “Record of Achievement: Waging and Winning the War on Terror,” available at <http://www.whitehouse.gov/infocus/achievement/chap1.html>. (last visited Dec. 12, 2005) [hereinafter “George W. Bush, Record of Achievement”].
- ³⁴ See Priest, *supra* note 2.
- ³⁵ See Human Rights Watch, List of “Ghost Prisoners” Possibly in CIA Custody, <http://hrw.org/english/docs/2005/11/30/usdom12109.htm> (last updated Dec. 1, 2005) [hereinafter “Human Rights Watch, List of “Ghost Prisoners””].
- ³⁶ See Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.
- ³⁷ See Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.
- ³⁸ *Pakistan’s ISI Breaks Silence on al-Qaeda Captures, Shows Videos of Raid*, AGENCE FRANCE-PRESSE, Mar. 10, 2003, available at http://www.prisonplanet.com/pakistans_isi_breaks_silence_on_al_qaeda_captures.htm.
- ³⁹ He was arrested along with Khalid Sheikh Mohammed. See *id.* See also HUMAN RIGHTS WATCH, THE ROAD TO ABU GHRAIB 12 n.27 (2004), available at <http://www.hrw.org/reports/2004/usa0604/usa0604.pdf>; HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, 24-42.
- ⁴⁰ See *U.S. Says 9/11 Financier Caught*, BBC NEWS, Mar. 4, 2003, available at http://news.bbc.co.uk/1/hi/world/south_asia/2819317.stm (referring to “the pre-dawn raid by U.S. and Pakistani forces”). See also *Pakistan’s ISI Breaks Silence on al-Qaeda Captures, Shows Videos of Raid*, *supra* note 38 (referring to statement of a Pakistani official (given on condition of anonymity) that although the raid was led by Pakistani Inter Service Intelligence (ISI) forces, CIA operatives were posted outside the house during the raid).
- ⁴¹ See *Pakistan’s ISI Breaks Silence on al-Qaeda Captures, Shows Videos of Raid*, *supra* note 38 (noting that paper documents were kept in the custody of the ISI). This report of the U.S. taking the computer disks is verified by another media report which refers in general terms to the contents of these disks: see further *FBI Warns Mohammed Arrest May Speed Attacks*, FOX NEWS, Mar. 6, 2003, <http://www.foxnews.com/story/0,2933,80381,00.html>.
- ⁴² *FBI Warns Mohammed Arrest May Speed Attacks*, *supra* note 41.
- ⁴³ See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42; Daniel McGrory, *Al-Qaeda Financier on CIA’s ‘Ghost’ List*, AUSTRALIAN, Oct. 14, 2004, at World 9.
- ⁴⁴ See *FBI Warns Mohammed Arrest May Speed Attacks*, *supra* note 41.
- ⁴⁵ See McGrory, *supra* note 43.
- ⁴⁶ NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32. See also HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.
- ⁴⁷ See Motion by Zacarias Moussaoui to Bring the Mujahid Mustafa Ahmed Hawsawi to Testify at the World Top Circus Trial of Zacarias Moussaoui (Unsealed in Redacted Form 3/21/2003) *U.S. v. Moussaoui*, No. CR. 01-455-A,

2003 WL 22258213 (E.D.Va. Aug. 29, 2003) at <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/docs/68342/1.pdf>; Order as to Zacarias Moussaoui (Signed by Judge Leonie M. Brinkema) (Unsealed in Redacted Form 09/03/2003) *U.S. v. Moussaoui*, No. CR. 01-455-A, 2003 WL 22258213 (E.D.Va. Aug. 29, 2003) at <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/docs/69134/1.pdf>; Memorandum Opinion as to Zacarias Moussaoui (Signed by Judge Leonie M. Brinkema) (Unsealed in Redacted Form 09/03/2003) *U.S. v. Moussaoui*, No. CR. 01-455-A, 2003 WL 22258213 (E.D.Va. Aug. 29, 2003) at <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/docs/69131/1.pdf>. See generally Kevin Bohn, *Judge Sets Deadline in Terror Case*, CNN.COM, Sept. 9, 2003, <http://www.cnn.com/2003/LAW/09/09/moussaoui.detainees/>. See generally *U.S. v. Moussaoui*, No. CR. 01-455-A, 2003 WL 22258213 (E.D.Va. Aug. 29, 2003), available at <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/DocketSheet.html>.

⁴⁸ See Bohn, *supra* note 47.

⁴⁹ See e.g., Michael Isikoff, *Got Him, Now What?*, NEWSWEEK, May 16, 2005, at 24.

⁵⁰ Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35; NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 436.

⁵¹ See *U.S.: Top al Qaeda Operative Arrested*, CNN.COM, Nov. 22, 2002, available at <http://archives.cnn.com/2002/US/11/21/alqaeda.capture/index.html>.

⁵² See George W. Bush, Record of Achievement, *supra* note 33.

⁵³ Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35. See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.

⁵⁴ See ‘*Al-Qaeda Gulf Chief*’ Held by US, BBC NEWS, Nov. 22, 2002, available at http://news.bbc.co.uk/1/hi/world/middle_east/2501121.stm.

⁵⁵ *Id.*

⁵⁶ See NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 436. See also HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.

⁵⁷ George W. Bush, Record of Achievement, *supra* note 33; Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.

⁵⁸ See ‘*Al-Qaeda Gulf Chief*’ Held by US, *supra* note 54.

⁵⁹ Brian Ross & Richard Esposito, *Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS, Dec. 5, 2005, <http://abcnews.go.com/WNT/Investigation/story?id=1375123>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 193 (2004).

⁶³ NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 161-168 (2004). See also HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.

⁶⁴ See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42; Kamran Khan & Peter Finn, *Pakistanis Detail Capture of Key 9/11 Suspect*, WASH. POST, Sept. 15, 2002, at A1, available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A18781-2002Sep14¬Found=true>. The sons of Khalid Sheikh Mohammed were reportedly detained in the same raid. See Jess Bravin & Gary Field, *How Do U.S. Interrogators Make a Terrorist Talk?*, WALL STREET J., Mar. 4, 2003, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/news/archive/2003/03/04/financial1321EST0127.DTL>.

⁶⁵ See Khan & Finn, *supra* note 64.

⁶⁶ *Id.* In a subsequent raid the same day, FBI agents left the area of the raid once fighting began, and then returned after the surrender of the terror suspects, see *id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See *U.S. Whisks Binalshibh Out of Pakistan*, FOX NEWS, Sept. 16, 2002, available at <http://www.foxnews.com/story/0,2933,63192,00.html>.

⁷¹ See Raymond Bonner, Don Van Natta, Jr., & Amy Waldman, *Threats and Responses: Interrogations; Questioning Terror Suspects in a Dark and Surreal World*, N.Y. TIMES, Mar. 9, 2003, at 1.

⁷² See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3.

⁷³ See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42. See also generally *U.S. v. Moussaoui*, No. CR. 01-455-A, 2003 WL 22258213 (E.D.Va. Aug. 29, 2003), available at <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/DocketSheet.html>.

⁷⁴ See Toni Locy, *Ashcroft Defies Moussaoui Case Order*, USA TODAY, July 15, 2003; *Ashcroft Defies Court Order*, UNITED PRESS INT’L, July 15, 2003. See also *U.S. v. Moussaoui*, No. CR. 01-455-A, 2003 WL 22258213 (E.D.Va. Aug. 29, 2003), available at <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/DocketSheet.html>.

⁷⁵ See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42. See also Motion by Zacarias Moussaoui to Bring the Mujahid Mustafa Ahmed Hawsawi to Testify at the World Top Circus Trial of Zacarias Moussaoui (Unsealed in Redacted Form 3/21/2003), *U.S. v. Moussaoui*, No. CR. 01-455-A, 2003 WL

22258213 (E.D.Va. Aug. 29, 2003), available at <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/docs/68342/1.pdf>. See also generally *U.S. v. Moussaoui*, No. CR. 01-455-A, 2003 WL 22258213 (E.D.Va. Aug. 29, 2003), available at <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/DocketSheet.html>.

⁷⁶ See NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 434 (2004).

⁷⁷ See George W. Bush, Record of Achievement, *supra* note 33.

⁷⁸ See HUMAN RIGHTS WATCH, THE UNITED STATES' "DISAPPEARED," *supra* note 3, at 24-42.

⁷⁹ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 434 (2004); Human Rights Watch, List of "Ghost Prisoners," *supra* note 35.

⁸⁰ See Kevin Johnson & Toni Locy, *FBI Chief Says the War with Al-Qaeda is Not Over*, USA TODAY, Apr. 30, 2003, available at http://www.usatoday.com/news/washington/2003-04-30-mueller-usat_x.htm; James Risen, *Aftereffects: Manhunt; A Top Qaeda Member, Tied to 9/11, Is Captured*, N.Y. TIMES, May 1, 2003, at A1; *The War With Al Qaeda*, DISCOVERY TIMES, Apr. 11, 2005, available at http://times.discovery.com/convergence/huntforosama/timeline/timeline_2003.html.

⁸¹ See HUMAN RIGHTS WATCH, THE UNITED STATES' "DISAPPEARED," *supra* note 3, at 24-42; Human Rights Watch, List of "Ghost Prisoners," *supra* note 35.

⁸² Johnson & Locy, *supra* note 80.

⁸³ See Elaine Shannon, *Al-Qaeda Moneyman Caught*, TIME ONLINE, May 1, 2003, available at <http://www.time.com/time/nation/article/0,8599,448922,00.html>.

⁸⁴ See HUMAN RIGHTS WATCH, THE UNITED STATES' "DISAPPEARED," *supra* note 3, at 24-42 (citing Azfar-ul-Ashfaque, '50 More al-Qaeda Men Hiding in Karachi,' NEWS, May 2, 2003).

⁸⁵ Johnson & Locy, *supra* note 80.

⁸⁶ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 434 (2004). See also HUMAN RIGHTS WATCH, THE UNITED STATES' "DISAPPEARED," *supra* note 3, at 24-42 (2004).

⁸⁷ Ross & Esposito, *supra* note 59.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See About.com, *Ahmed Khalfan Ghailani: FBI Most Wanted Terrorists*, <http://crime.about.com/od/fbimostwantedterrorist/p/ghailani.htm> (last visited Dec. 14, 2005).

⁹¹ Human Rights Watch, List of "Ghost Prisoners," *supra* note 35.

⁹² See Kamran Khan, *Pakistan Holds Top Al Qaeda Suspect*, WASH. POST, July 30, 2004, at A10, available at <http://www.washingtonpost.com/wp-dyn/articles/A25194-2004Jul29.html>; *Pakistan Captures High-Level al Qaeda Operative*, CNN.COM, Aug. 3, 2004, available at <http://www.cnn.com/2004/WORLD/asiapcf/07/29/pakistan.alqaeda.capture/>.

⁹³ See *Al-Qaeda Suspect Cooperating*, NEWS24.COM, July 29, 2004, available at http://www.news24.com/News24/World/News/0,,2-10-1462_1565508,00.html.

⁹⁴ See *Khalfan Ghailani in U.S. Hands*, DAILY TIMES (Pakistan), Mar. 7 2005, available at http://www.dailytimes.com.pk/default.asp?page=story_26-1-2005_pg7_4; *Pakistan Captures High-Level al Qaeda Operative*, *supra* note 92. Ghailani's capture was first announced by Pakistan's Interior Minister on July 29, 2004. See *Pakistan Nabs Top Al Qaeda Suspect*, PEOPLE'S DAILY ONLINE, Aug. 4, 2004, available at http://english.people.com.cn/200408/04/eng20040804_151810.html.

⁹⁵ Khan, *supra* note 92.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Khalfan Ghailani in U.S. Hands*, *supra* note 94.

¹⁰⁰ George W. Bush, Record of Achievement, *supra* note 33; Human Rights Watch, List of "Ghost Prisoners," *supra* note 35.

¹⁰¹ Anwar Iqbal, *Pakistan Hands Over 1998 Bomber To U.S.*, UNITED PRESS INT'L, Mar. 8, 2004, available at <http://www.cageprisoners.com/articles.php?id=2739>.

¹⁰² See Munir Ahmad, *Tanzanian al-Qaida Suspect on FBI Most-Wanted List Handed to U.S. Months Ago, Pakistani Officials Say*, ASSOCIATED PRESS, Jan. 25, 2005.

¹⁰³ Iqbal, *supra* note 101.

¹⁰⁴ See Mathew Pennington, *Tanzanian al-Qaida Suspect on FBI Most-Wanted List Has Been Flown Out of Pakistan, Officials Say*, ASSOCIATED PRESS, Jan. 25, 2005; *Suspect in East Africa Attacks Handed to U.S.*, L.A.TIMES, Jan. 26, 2005.

¹⁰⁵ Ross & Esposito, *supra* note 59.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See *USA v. Hage, et al*, No. 1:98-cr-01023-KTD, SDNY (filed 09/21/1998) full docket text for document 31, 12/16/1998 ("(S3) SUPERSEDING INDICTMENT as to Wadih El Hage (1) count(s) 1sss, 228sss-235sss, 236sss-

238sss, Fazul Abdullah Mohammed (2) count(s) 1ss, 2ss-3ss, 4ss-216ss, 217ss-227ss, Mohamed Sadeek Odeh (3) count(s) 1ss, 2ss-3ss, 4ss-216ss, 217ss-227ss, Mohamed Rashed Daoud Al-'Owhali (4) count(s) 1ss, 2ss-3ss, 4ss-216ss, 217ss-227ss, Usama Bin Laden (5) count(s) 1s, 2s-3s, 4s-216s, 217s-227s, Muhammad Atef (6) count(s) 1s, 2s-3s, 4s-216s, 217s-227s, Mustafa Mohamed Fadhil (7) count(s) 1, 3, 217-227, Khalfan Khamis Mohamed (8) count(s) 1, 3, 217-227, Ahmed Khalfan Ghailani (9) count(s) 1, 3, 217-227, Fahid Mohammed Msalam (10) count(s) 1, 3, 217-227, Sheikh Ahmed Salim Swedan (11) count(s) 1, 3, 217-227 (rag)"); About.com, *supra* note 90; *Al Qaeda Suspect Handed Over to the US*, DAWN ONLINE EDITION, Jan. 26, 2005, available at <http://www.dawn.com/2005/01/26/top5.htm>; *Pakistan Interrogates al-Qaida Suspect*, ASSOCIATED PRESS, July 30, 2004, available at <http://www.msnbc.msn.com/id/5550599/>.

¹⁰⁹ See *USA v. Hage, et al*, No. 1:98-cr-01023-KTD, SDNY (filed 09/21/1998) full docket text of Oral order, 12/16/1998 ("ORAL ORDER as to Mustafa Mohamed Fadhil, Khalfan Khamis Mohamed, Ahmed Khalfan Ghailani, Fahid Mohammed Msalam, Sheikh Ahmed Salim Swedan, A bench warrant (sic) has been issued for the above stated defendants. (Entered by Judge Leonard B. Sand) (mr)").

¹¹⁰ James Gordon Meek, *Rummy Points To Al Qaeda In Iraq Carnage*, DAILY NEWS (New York), Feb. 23, 2004, available at <http://www.globalsecurity.org/org/news/2004/040223-iraq-alqaeda.htm>.

¹¹¹ Human Rights Watch, List of "Ghost Prisoners," *supra* note 35 (citing statements of President Bush to the press in Little Rock, Arkansas on January 26, 2004 describing the arrest); Dana Milbank, *Bush Hails Al Qaeda Arrest In Iraq; President Defends U.S. Intelligence*, WASH. POST, Jan. 27, 2004, at A13; Walter Pincus, *Al Qaeda Figure Captured; Senior Associate of Bin Laden Found in Iraq*, WASH. POST, Jan. 24, 2004, at A9.

¹¹² NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 435 (2004).

¹¹³ Ross & Esposito, *supra* note 59.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See *Praise Caution at Hambali Arrest*, CNN.COM, Feb. 26, 2004, available at <http://edition.cnn.com/2003/WORLD/asiapcf/southeast/08/15/hambali.reax/>; Scott McClellan, White House Press Secretary, Briefing with Senior Administration Officials on the Capture of Suspect in the Marriott Hotel Bombing in Jakarta (Aug. 14, 2003) [hereinafter "Scott McClellan, Briefing on the Capture of Suspect in the Marriott Hotel Bombing in Jakarta"].

¹¹⁷ See Sean Yoong, *Hambali's Wife May Have Information on Jemahh Islamiyah, Malaysia's Deputy Leader Says*, ASSOCIATED PRESS, Aug. 18, 2003. After her arrest, Hambali's detained wife was transferred to Malaysia on August 16, 2003. She was originally detained for two months without trial under the Internal Security Act (ISA). The Minister of Home Affairs subsequently issued a renewable two year order for detention without trial. See generally Marhalim Abas, *Hambali's Wife Under I.S.A.*, Global News Wire – Asia Africa Intelligence Wire, THE NEW STRAITS TIMES PRESS (Malaysia), Aug. 19, 2003; Leslie Lau and Nirmal Ghosh, *Hambali's wife held without trial under ISA*, THE STRAIT TIMES (Singapore), Aug. 19, 2003; Jasant Singh, *Malaysia places wife of Southeast Asian terror suspect into detention without trial*, ASSOCIATED PRESS, Oct. 15, 2003; Sean Yoong, *Hambali's wife may have information on Jemahh Islamiyah, Malaysia's deputy leader says*, ASSOCIATED PRESS, Aug. 18, 2003; *Indonesian police chief refused access to Hambali*, ABC RADIO AUSTRALIA NEWS; Oct. 17, 2003; *Malaysian Police Decide on Manner of Detention For Hambali's Wife*, Global New Wire, WORLD NEWS CONNECTION, Aug. 18, 2003; Amnesty International, *Urgent action, Malaysia: Fear of torture or ill-treatment/incommunicado detention: Noralwiesh Lee Abdullah* (Aug. 20, 2003), available at <http://web.amnesty.org/library/Index/ENGASA280222003?open&of=ENG-MYS>.

¹¹⁸ See Scott McClellan, Briefing on the Capture of Suspect in the Marriott Hotel Bombing in Jakarta, *supra* note 116 (with senior administration official declining to share details of the operation and merely confirming that "It did involve others").

¹¹⁹ *Id.* See further *Hambali's Capture & Jemaah Islamiah*, (Sunday Sunrise, Apr. 11, 2005), available at http://seven.com.au/sundaysunrise/features_030817_islamiah (explaining, *inter alia*, the U.S. approach of initially keeping the arrest secret).

¹²⁰ See Scott McClellan, Briefing on the Capture of Suspect in the Marriott Hotel Bombing in Jakarta, *supra* note 116.

¹²¹ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 435 (2004).

¹²² See *Praise Caution at Hambali Arrest*, *supra* note 116. See generally Jason Burke, *Secret world of U.S. jails*, OBSERVER, Jun. 13, 2004, available at <http://observer.guardian.co.uk/international/story/0,6903,1237589,00.html> (noting that Hambali was "passed to the Americans following arrest by Thai security forces"). Note that subsequent to Hambali's arrest, both Indonesia and the Philippines have reportedly been denied direct access to Hambali and have instead been allowed to relay written questions to be put to him. See e.g. Shawn Donnan, *Indonesian Anger Grows over U.S. Delay in Allowing Access to Hambali*, FINANCIAL TIMES, Feb. 5, 2004; Jim Gomez, *U.S. won't give Philippines immediate access to suspect Hambali*, ASSOCIATED PRESS, September 15, 2003; Marian Wilkinson, *U.S. Denies Indonesia Access to Hambali*, SYDNEY MORNING HERALD, Sept. 22, 2003.

¹²³ See *United States Pays 10 Mln Dlr Bounty for Hambal'ai Capture: Thai PM*, AGENCE FRANCE PRESS, Sept. 17, 2003, available at http://quickstart.clari.net/qs_se/webnews/wed/au/Othailand-us-attacks.RfcP_DSH.html.

¹²⁴ Kimina Lyall, *Hambali Moved II Front Line to Bangladesh, Pakistan*, WEEKEND AUSTRALIAN, Sept. 27, 2003 (citing a senior Asian intelligence officer and also recording that the U.S. was “providing country specific information from their interrogations to their regional allies”).

¹²⁵ See Simon Elegant & Andrew Perrin, *Asia’s Terror Threat*, TIME ASIA, Oct. 6, 2003. See further HUMAN RIGHTS FIRST, ENDING SECRET DETENTIONS 4, 20 (2004), available at http://www.humanrightsfirst.org/us_law/PDF/EndingSecretDetentions_web.pdf.

¹²⁶ See Yossi Melman, *CIA Holding Al-Qaida Suspects in Secret Jordanian Lockup*, HA’ARETZ, Oct. 13, 2004, available at <http://w3ar.com/a.php?k=1460>.

¹²⁷ See *Gov’t Unable to Confirm Hambali’s Reported Presence in Jordan*, ANTARA (Indonesia), Oct. 15, 2004.

¹²⁸ Ross & Esposito, *supra* note 59.

¹²⁹ See *Profile: Al-Qaeda ‘Kingpin’*, BBC NEWS, Mar. 5, 2003, available at http://news.bbc.co.uk/2/hi/south_asia/2811855.stm.

¹³⁰ *Id.* French authorities have issued an arrest warrant for Muhammad in connection with a suicide bomb attack on a synagogue in Djerba, Tunisia. *Id.*

¹³¹ See Olga Craig, *CIA Holds Young Sons of Captured al-Qaeda Chief*, SUNDAY TELEGRAPH (U.K.), Mar. 9, 2003, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=%2Fnews%2F2003%2F03%2F09%2Fwalqa09.xml>.

¹³² See *id.* CIA officials told Craig that “‘We are handling them with kid gloves. After all, they are only little children,’ said one official, ‘but we need to know as much about their father’s recent activities as possible. We have child psychologists on hand at all times and they are given the best of care.’” *Id.*

¹³³ See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.

¹³⁴ See Mark Bowden, *The Dark Art of Interrogation*, ATLANTIC MONTHLY, Oct. 2003, available at <http://www.theatlantic.com/doc/prem/200310/bowden>.

¹³⁵ *Id.*

¹³⁶ See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.

¹³⁷ See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.

¹³⁸ See Bowden, *supra* note 134.

¹³⁹ See Craig, *supra* note 131.

¹⁴⁰ See Bowden, *supra* note 134.

¹⁴¹ See Burke, *supra* note 122. Support for this course of events is also increased by the fact that the United States reportedly has a secret detention facility in Thailand. See HUMAN RIGHTS FIRST, *supra* note 125, at 11.

¹⁴² See Linda S. Heard, *Diego Garcia: Paradise Isle or Britain’s Shame*, GULF NEWS (Dubai), Jul. 6, 2004, available at http://www.humanrightsfirst.org/us_law/detainees/end_abuse/scottish_mp_statement.htm.

¹⁴³ See HUMAN RIGHTS FIRST, *supra* note 125, at 16; Heard, *supra* note 142.

¹⁴⁴ See NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 436.

¹⁴⁵ See HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at n.165 (“The first interrogation report referred to is dated March 12, 2002, followed by August 13, 2002, October 31, 2002, March 24, 2003, and March 27, 2003. Thereafter, the frequency of the reports cited picks up, with two in April 2003, six in March, six in June, twelve in July, five in August, six in September, four in October, six in November, five in January 2004, seven in February, two in March, six in April, two in May, and two in July.”).

¹⁴⁶ See Mark Landler, *Threats and Responses: The Courts; German 9/11 Retrial Gets Exculpatory Evidence from U.S.*, N.Y. TIMES, Aug. 12, 2004, at A16.

¹⁴⁷ Ross & Esposito, *supra* note 59.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See George W. Bush, Record of Achievement, *supra* note 33.

¹⁵¹ See Tim McGirk, *Anatomy of a Raid: Inside the Capture of al-Qaeda Chief Abu Zubaydah and His Terror Network; Can he lead us to Osama bin Laden?*, TIME ASIA, Apr. 8, 2002, available at <http://www.time.com/time/asia/magazine/article/0,13673,501020415-227584,00.html> (noting that this is his “real name”).

¹⁵² Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.

¹⁵³ See Burke, *supra* note 122 (describing Zubaydah as “Palestinian-born”); *Key al-Qaeda recruiter captured*, BBC NEWS, Apr. 3, 2002, available at <http://news.bbc.co.uk/1/hi/world/americas/1907400.stm> (stating that Zubaydah is “believed to have been born of Palestinian parents in Saudi Arabia....”).

¹⁵⁴ Burke, *supra* note 122.

¹⁵⁵ See NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 435.

¹⁵⁶ George W. Bush, Record of Achievement, *supra* note 33; Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.

¹⁵⁷ McGirk, *supra* note 151.

¹⁵⁸ *Id.*

¹⁵⁹ See Burke, *supra* note 122.

- ¹⁶⁰ McGirk, *supra* note 151 (referring to the “trove” of material found and stating that “Most of this cache was flown back to the U.S. for analysis”).
- ¹⁶¹ *Id.* Burke, *supra* note 122.
- ¹⁶² McGirk, *supra* note 151.
- ¹⁶³ *See* Burke, *supra* note 122.
- ¹⁶⁴ *See* HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.
- ¹⁶⁵ *See* US: *No Plans to Torture Abu Zubaydah*, UNITED PRESS INT’L, Apr. 3, 2002, available at http://www.highbeam.com/library/doc0.asp?DOCID=1G1:84373034&refid=ip_almanac_hf.
- ¹⁶⁶ Burke, *supra* note 122.
- ¹⁶⁷ *See* ‘Key’ *al-Qaeda Recruiter Captured*, *supra* note 153.
- ¹⁶⁸ Ross & Esposito, *supra* note 59.
- ¹⁶⁹ *Id.*
- ¹⁷⁰ *Id.*
- ¹⁷¹ *Id.*
- ¹⁷² Tim Golden, *Threats and Responses: Tough Justice; Administration Officials Split Over Stalled Military Tribunals*, N.Y. TIMES, Oct. 25, 2004, at A1.
- ¹⁷³ *Id.*
- ¹⁷⁴ *See* HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.
- ¹⁷⁵ *See* HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42.
- ¹⁷⁶ Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.
- ¹⁷⁷ Dana Priest, *CIA Puts Harsh Tactics on Hold*, WASH. POST, Jun. 27, 2004, at A1; Dana Priest & Barton Gellman, *U.S. Decries Abuse But Defends Interrogations: ‘Stress and Duress’ Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities*, WASH. POST, Dec. 26, 2002, at A1.
- ¹⁷⁸ Muhammad Al-Darbi is variously referred to as “an al Qaeda member” (Dana Priest & Susan Schmidt, *Al Qaeda Threat Has Increased, Tenet Says; Panel Told Recent Attacks Evoke Pre-9/11 Dangers*, WASH. POST, Oct. 18, 2002, at A1); a “suspected al-Qaeda member” (Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35) and “al Qaeda leader(s)” (Priest & Gellman, *supra* note 177).
- ¹⁷⁹ Priest & Gellman, *supra* note 177 (referring more generally to the capture of Muhammad al-Darbi, among others, as being “... partly the result of information gained during interrogations”).
- ¹⁸⁰ Paul Vallely, *The Invisible Cost of this War*, INDEPENDENT (UK), Jun. 26, 2003. *See* Priest & Gellman, *supra* note 177 (referring more generally to the capture of Muhammad al-Darbi, among others, as being “... partly the result of information gained during interrogations”).
- ¹⁸¹ *See e.g.* Priest & Gellman, *supra* note 177 (referring to the treatment given to prisoners at the “secret CIA interrogation center” at Bagram Air Base). *See also* Vallely, *supra* note 180.
- ¹⁸² Priest & Schmidt, *supra* note 178 (referring to information obtained by U.S. officials from “interviews with Muhammad Darbi”).
- ¹⁸³ Priest, *supra* note 177; Priest & Gellman, *supra* note 177.
- ¹⁸⁴ *See* Cageprisoners.com, Prisoners: *Ghost: Adil a-Jazeera*, available at <http://www.cageprisoners.com/prisoners.php?id=1366> (last visited Dec. 12, 2005); Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35; HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42. *See also* ‘Key’ *al-Qaeda Suspect Questioned*, BBC NEWS, June 19, 2003, available at http://news.bbc.co.uk/1/hi/world/south_asia/3003348.stm.
- ¹⁸⁵ ‘Key’ *al-Qaeda Suspect Questioned*, *supra* note 184.
- ¹⁸⁶ *Id.*
- ¹⁸⁷ *See* *Alleged Qaeda Big Goes To Bagram*, CBS NEWS, July 14, 2003, available at <http://www.cbsnews.com/stories/2003/07/14/attack/main563079.shtml>.
- ¹⁸⁸ *Investigators Gleaning Info from Qaeda Suspects*, DAILY TIMES (PAKISTAN), June 20, 2003, available at http://www.dailytimes.com.pk/default.asp?page=story_20-6-2003_pg7_50. *See also* *Alleged Qaeda Big Goes To Bagram*, *supra* note 187.
- ¹⁸⁹ HUMAN RIGHTS WATCH, THE UNITED STATES’ “DISAPPEARED,” *supra* note 3, at 24-42 (citing Amnesty International, *Urgent Action: America: Incommunicado Detention / Fear of Ill-Treatment, Adil al-Jazeera* (July 16, 2003), available at <http://web.amnesty.org/library/index/ENGAMR511032003>).
- ¹⁹⁰ *See* *Alleged Qaeda Big Goes To Bagram*, *supra* note 187.
- ¹⁹¹ *Id.*
- ¹⁹² *Id.*
- ¹⁹³ Cageprisoners.com, *supra* note 184.
- ¹⁹⁴ Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.
- ¹⁹⁵ Noshad Ali, *Top Al Qaeda Man Among Two Arrested*, DAILY TIMES (Pakistan) Mar. 16, 2003 available at: http://www.dailytimes.com.pk/default.asp?page=story_16-3-2003_pg1_4; Hamish McDonald, *Pakistan’s Cities Hiding Senior Al-Qaeda*, SYDNEY MORNING HERALD, Mar. 17, 2003, available at:

- <http://www.smh.com.au/articles/2003/03/16/1047749667017.html>; *Al-Qaeda Terrorist Nabbed in Pakistan* (Yassir Al-Jazeera), ASSOCIATED PRESS, Mar. 15, 2003.
- ¹⁹⁶ Ali, *supra* note 195.
- ¹⁹⁷ Michael Dorgan, *Suspected al-Qaeda Member Arrested in Pakistan*, KNIGHT-RIDDER NEWS SERVICE, Mar. 16, 2003 (citing an unnamed Pakistani police official).
- ¹⁹⁸ CNN Saturday Night, Mar. 15, 2003 (transcript no. 031505CN.V88).
- ¹⁹⁹ Ali, *supra* note 195.
- ²⁰⁰ *Id.*
- ²⁰¹ Hamish McDonald, *supra* note 195.
- ²⁰² Ali, *supra* note 195.
- ²⁰³ Scott Baldauf, *Terror Funding Hurt by Al Qaeda Arrest in Pakistan*, CHRISTIAN SCIENCE MONITOR, Mar. 17, 2003.
- ²⁰⁴ Al-Libi was formerly a top 25 al-Qaida leader, who allegedly coordinated logistics and finances for attacks. See MSNBC, *Al-Qaida killed/captured, available at* http://www.msnbc.com/modules/wtc/wtc_globaldragnet/custody_alqaida.htm (last visited Dec. 12, 2005).
- ²⁰⁵ See Dana Priest, *Al Qaeda-Iraq Link Recanted; Captured Libyan Reverses Previous Statement to CIA, Officials Say*, WASH. POST, Aug. 1, 2004, at A20, available at <http://www.washingtonpost.com/wp-dyn/articles/A30909-2004Jul31.html> (reporting the date to be November 11, 2001). This date was also given in the list of secret detainees released by Human Rights Watch. Human Rights Watch, List of "Ghost Prisoners," *supra* note 35.
- ²⁰⁶ See THE HUMAN RIGHTS WATCH, THE ROAD TO ABU GHRAIB 12 n.27 (2004), available at <http://www.hrw.org/reports/2004/usa0604/usa0604.pdf>.
- ²⁰⁷ See Priest, *supra* note 205.
- ²⁰⁸ See HUMAN RIGHTS WATCH, THE UNITED STATES' "DISAPPEARED," *supra* note 3, at 24-42. Other sources state that he was held at Kandhar until at least January 9, 2002. See U.S. *Seeks Access to Taleban Ministers*, BBC NEWS, Jan. 9, 2002, available at http://news.bbc.co.uk/1/hi/world/south_asia/1748578.stm. However, other sources cite that by January 9, 2002 he was already on the USS Bataan. See *Myers: Intelligence Might Have Thwarted Attacks; Senior Taliban Fighters Taken Into Custody*, CNN.COM, Jan. 9, 2002, available at <http://archives.cnn.com/2002/WORLD/asiapcf/central/01/08/ret.afghan.attacks/>.
- ²⁰⁹ See HUMAN RIGHTS WATCH, THE UNITED STATES' "DISAPPEARED," *supra* note 3, at 24-42; *Myers: Intelligence Might Have Thwarted Attacks; Senior Taliban Fighters Taken Into Custody*, *supra* note 208.
- ²¹⁰ See Michael Hirsh, John Barry, & Daniel Klaidman, *A Tortured Debate*, NEWSWEEK, June 21, 2004 (noting that "FBI officials brought their plea to retain control over al-Libi's interrogation up to FBI Director Robert Mueller").
- ²¹¹ See Priest, *supra* note 205.
- ²¹² Douglas Jehl, *Qaeda-Iraq Link U.S. Cited Is Tied to Coercion Claim*, N.Y. TIMES, Dec. 9, 2005, available at <http://nytimes.com/2005/12/09/politics/09intel.html?hp&ex=1134104400&en=6d17d434a1d2e517&ei=5094&partner=homepage>.
- ²¹³ *Id.* On the transfer to Egypt, see generally Hirsh, Barry, & Klaidman, *supra* note 210.
- ²¹⁴ Jehl, *supra* note 212.
- ²¹⁵ Priest, *supra* note 177. See also HUMAN RIGHTS WATCH, THE UNITED STATES' "DISAPPEARED," *supra* note 3, at 24-42.
- ²¹⁶ Hirsh, Barry, & Klaidman, *supra* note 210. See also HUMAN RIGHTS WATCH, THE UNITED STATES' "DISAPPEARED," *supra* note 3, at 24-42.
- ²¹⁷ Jehl, *supra* note 212.
- ²¹⁸ *Id.*
- ²¹⁹ Golden, *supra* note 172.
- ²²⁰ *Id.*
- ²²¹ See *Myers: Intelligence Might Have Thwarted Attacks; Senior Taliban Fighters Taken Into Custody*, *supra* note 208.
- ²²² Jehl, *supra* note 212.
- ²²³ *Id.*
- ²²⁴ *Id.*
- ²²⁵ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32.
- ²²⁶ Ross & Esposito, *supra* note 59.
- ²²⁷ *Id.*
- ²²⁸ *Id.*
- ²²⁹ Amnesty International, *Urgent Action: Pakistan/USA: Incommunicado detention / Fear of "disappearance" / Fear of torture or ill-treatment / Fear of forcible transfer* (May 6, 2005), available at <http://web.amnesty.org/library/Index/ENGASA330072005> [hereinafter "Urgent Action, May 6, 2005."]
- ²³⁰ *Id.*
- ²³¹ *Id.*
- ²³² *Id.*
- ²³³ *Id.*

- ²³⁴ *Britain & U.S. to Quiz Al Qaeda 'No. 3'*, CAGEPRISONERS.COM, Aug. 6, 2005, available at <http://www.cageprisoners.com/articles.php?id=7741>; Daniel McGrory, *Britain Turns to 'Torture Evidence,'* AUSTRALIAN, Aug. 3, 2005, at 8; *Pakistan Hands AlQaeda Suspect to US*, AGENCE FRANCE-PRESSE, June 6, 2005.
- ²³⁵ Amnesty International, *Urgent Action: Pakistan/USA: Further Information On: Incommunicado detention / Fear of "disappearance" / Fear of torture or ill-treatment / Fear of forcible transfer* (July 5, 2005), available at <http://web.amnesty.org/library/Index/ENGASA330182005?open&of=ENG-PAK>, [hereinafter "Urgent Action, July 5, 2005."]
- ²³⁶ *Id.*
- ²³⁷ *Britain & U.S. to Quiz Al Qaeda 'No. 3'*, *supra* note 234.
- ²³⁸ Human Rights Watch, List of "Ghost Prisoners," *supra* note 35. See also Amnesty International, Urgent Action, July 5, 2005, *supra* note 235.
- ²³⁹ Ross & Esposito, *supra* note 59.
- ²⁴⁰ *Id.*
- ²⁴¹ *Id.*
- ²⁴² See David E. Kaplan, *Playing Offense: The Inside Story of How U.S. Terrorist Hunters Are Going After al Qaeda*, U.S. NEWS AND WORLD REP., June 6, 2003, at 8, available at <http://www.usnews.com/usnews/news/articles/030602/2terror.htm>; Human Rights Watch, List of "Ghost Prisoners," *supra* note 35.
- ²⁴³ See Kaplan, *supra* note 242.
- ²⁴⁴ *Id.*
- ²⁴⁵ See also Anti-Defamation League, *Pakistan: Friend or Foe of the United States*, http://www.adl.org/Terror/tu/tu_1103_pakistan.asp (posted Nov. 11, 2003).
- ²⁴⁶ See also *id.*
- ²⁴⁷ See Kaplan, *supra* note 242.
- ²⁴⁸ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32.
- ²⁴⁹ *Second American Taliban May Be at Guantanamo*, CHINA DAILY ONLINE, Apr. 4, 2002 at http://www.chinadaily.com.cn/en/doc/2002-04/04/content_114232.htm; Int'l Policy Inst. for Counter-Terrorism, *Suspected bin Ladin Lieutenant Handed Over to United States*, <http://www.ict.org.il/spotlight/det.cfm?id=761> (posted Apr. 1, 2002).
- ²⁵⁰ See *Al-Qaida Killed/Captured*, *supra* note 204.
- ²⁵¹ See generally Anti-Defamation League, *supra* note 245 (noting that "He is being held in an undisclosed location").
- ²⁵² Human Rights Watch, List of "Ghost Prisoners," *supra* note 35.
- ²⁵³ Ross & Esposito, *supra* note 59.
- ²⁵⁴ *Id.*
- ²⁵⁵ *Id.*
- ²⁵⁶ NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32.
- ²⁵⁷ Human Rights Watch, List of "Ghost Prisoners," *supra* note 35; B. Raman, *Terrorist Army Active in Pakistan*, PIONEER, July 2, 2003. See also NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32 (on Ali Abdul Aziz Ali generally); Shannon, *supra* note 83 (regarding the arrest and on Ali Abdul Aziz Ali generally); Zahid Hussain, *Al Qaeda Arm in Pakistan Is Tied to 12 Years of Plots and Attacks*, WALL STREET JOURNAL, Aug. 6, 2004, at A1 (on Ali Abdul Aziz Ali generally).
- ²⁵⁸ B. Raman, *supra* note 257.
- ²⁵⁹ See Arman Sabir & Tahir Siddiqui, *3 Al Qaeda suspects Given to U.S. Officials*, DAWN, May 2, 2003, available at <http://www.dawn.com/2003/05/03/top10.htm>.
- ²⁶⁰ *Id.*
- ²⁶¹ B. Raman, *supra* note 257.
- ²⁶² NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *supra* note 32, at 434 (2004).
- ²⁶³ *Pakistani Suspect Allowed to Use Qaeda Statements*, DAILY TIMES, Nov. 9, 2005, available at http://www.dailytimes.com.pk/default.asp?page=2005\11\09\story_9-11-2005_pg7_44.
- ²⁶⁴ See Michelle Garcia, *Terror Suspect Can Use Operatives' Statements*, WASH. POST, Nov. 9, 2005, at A04; *Pakistani Suspect Allowed to Use Qaeda Statements*, *supra* note 263.
- ²⁶⁵ See *Trial Focuses On Father-Son Ties To Al-Qaeda*, ASSOCIATED PRESS, Nov. 11, 2005, available at http://wcbstv.com/topstories/local_story_323172436.html.
- ²⁶⁶ See *id.*
- ²⁶⁷ See Garcia, *supra* note 264.
- ²⁶⁸ See *Trial Focuses On Father-Son Ties To Al-Qaeda*, *supra* note 265; Christine Kearney, *Accused al Qaeda Supporter Testifies in New York*, REUTERS, Nov. 17, 2005; Larry Neumeister, *Statements From al-Qaida Prisoners Loom as Key Evidence in New York Trial*, NEWSDAY, Nov. 8, 2005. See also Shannon, *supra* note 83.
- ²⁶⁹ Richard C. Paddock, *Setbacks to Terrorists Won't Halt Attacks, Officials Say*, L.A. TIMES, Aug. 17, 2003, at A4.

- ²⁷⁰ See e.g. Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35 (giving date as June, 2003); Lyall, *supra* note 124 (referring to the “July arrest of Zubair Mohammed”); Vivian Ho, *Malaysia Wants U.S. to Hand Over Hambali Informers*, KYODO NEWS INT’L, Aug. 19, 2003 (noting that the arrest took place in June 2003).
- ²⁷¹ Nirmal Ghosh, *Money row led to capture of Hambali, says news report*, STRAITS TIMES (Singapore), Aug. 18, 2003.
- ²⁷² Ho, *supra* note 270.
- ²⁷³ Lyall, *supra* note 124 (citing a senior Asian intelligence officer and also recording that the U.S. was then “providing country specific information from their interrogations to their regional allies”).
- ²⁷⁴ Eddie Chua, *Hambali Gave RM 90,000 to MILF, Abu Sayyaf*, MALAY MAIL, Oct. 28, 2003.
- ²⁷⁵ Ho, *supra* note 270.
- ²⁷⁶ Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.
- ²⁷⁷ Kamran Khan, *Al-Qaeda Arrest in June Opened Valuable Leads*, WASH. POST, Aug. 3, 2004, at A1 (outlining details of the arrest and providing background information on his alleged terrorist connections).
- ²⁷⁸ Kamran Khan, *Pakistan Pressures Al Qaeda Military Operation Results In Terror Alert and Arrest*, WASH. POST, Aug. 6, 2004, at A1, available at <http://www.washingtonpost.com/wp-dyn/articles/A43940-2004Aug5.html>. See also Khan, *supra* note 277 (noting the use of “U.S. intelligence telephone and Internet intercepts” which enabled the tracing of Aruchi).
- ²⁷⁹ Khan, *supra* note 277. See further Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35 (citing various media sources pertaining to Musaad Aruchi).
- ²⁸⁰ See Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35 (noting that Abdul Aziz was listed as detained on a chart produced by in January 2002 by Kenton Keith, a spokesman at the U.S. Embassy in Islamabad). See further Bradley Graham & Walter Pincus, *Al-Qaeda Trainer in U.S. Hands*, WASH. POST, Jan. 5, 2002, at A1 (noting that “...Abdul Aziz and Abu Faisal -- were listed as detained in mid-December”).
- ²⁸¹ Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.
- ²⁸² Andrea Stone, *Path to Bin Laden May Lie Behind Bars; U.S. Interrogates al-Qaeda, Taliban Prisoners in Hope of Nailing Down War on Terror’s Prime Targets*, USA TODAY, Jan. 8, 2002, available at <http://www.usatoday.com/news/sept11/2002/01/08/prisoners-usat.htm>.
- ²⁸³ See Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35 (noting that Abu Faisal was listed as detained on a chart produced by in January 2002 by Kenton Keith, a spokesman at the U.S. Embassy in Islamabad). See further Graham & Pincus, *supra* note 280 (noting that “...Abdul Aziz and Abu Faisal -- were listed as detained in mid-December”).
- ²⁸⁴ Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35.
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- ²⁸⁶ See e.g. Daniel Klaidman, *Spilling Secrets?*, NEWSWEEK, Apr. 7, 2003, available at http://www.pnnewswire.com/cgi-bin/micro_stories.pl?ACCT=617800&TICK=NEWS&STORY=/www/story/03-30-2003/0001916405&EDATE=Mar+30,+2003 (recording that Khan “was recently detained by Pakistani authorities”).
- ²⁸⁷ Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35. For details of his alleged links to terrorism see, e.g., Phil Hirschorn, *Alleged Terrorist Operative Seeks Access to Top al Qaeda Captive*, CNN.COM, Jan. 9, 2004, <http://www.cnn.com/2004/LAW/01/09/alqaeda.suspect.motions/index.html>; Daniel Klaidman, Mark Hosenball, Michael Isikoff & Evan Thomas, *Al Qaeda in America: The Enemy Within*, NEWSWEEK, June 23, 2003; Julia Preston, *Man Helped Qaeda Figure, Jury Here Finds*, N.Y. TIMES, Nov. 24, 2005, at B1. See also John Kerin & Simon Kearney, *Terror Threat Man Known to Authorities*, AUSTRALIAN, Sept. 13, 2005, at 1 (noting that Khan is a distant relative of Iyman Faris, who was convicted in 2004 for his role in plotting to sabotage the Brooklyn Bridge in New York); Eric Lichtblau, *Threats and Responses: Terror; U.S. Cites al Qaeda in Plan to Destroy Brooklyn Bridge*, N.Y. TIMES, June 20, 2003, at A1.
- ²⁸⁸ Hirschorn, *supra* note 287 2004 (noting location not disclosed); *NY Case of Accused al Qaeda Supporter Nears End*, REUTERS, Nov. 21, 2005, available at <http://www.alertnet.org/thenews/newsdesk/N21315094.htm> (noting that Khan is being held in U.S. custody in undisclosed location); *Pakistani Denies Links to Terror Plot*, NATION ON WEB (Pakistan), Nov. 19, 2005, available at <http://www.nation.com.pk/daily/nov-2005/19/index16.php> (also noting that Khan is being held in U.S. custody in undisclosed location).
- ²⁸⁹ See *infra* notes 263 – 267 and accompanying text.
- ²⁹⁰ See Garcia, *supra* note 264.
- ²⁹¹ See *Al Qaeda Suspect Had Photos of Heathrow: Pakistan*, ASSOCIATED PRESS, Aug. 5, 2004, available at http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1091701023960_43?s_name=&no_ads=; Peter Graff, *Outing Mole a Blunder: Experts*, TORONTO STAR, Aug. 8, 2004.
- ²⁹² See Joseph Breaun, *Terrorists Surprisingly Easy to Turn: ‘Sing Like a Bird,’* NATIONAL POST (F/K/A FINANCIAL POST), Aug. 9, 2004. At the time of his arrest Khan was reportedly traveling to Lahore on a business trip. See Adrian Levy & Cathy Scott-Clark, *Afghanistan: ‘One Huge U.S. Jail,’* GUARDIAN (U.K.), Mar. 19, 2005; Human Rights Watch, List of “Ghost Prisoners,” *supra* note 35; Khan, *supra* note 277.
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- ²⁹³ See Raja Assad Hameed, *Interior Ministry Issued Notices in Naeem Noor Case*, NATION (Pakistan), Oct. 26, 2004,

at <http://nation.com.pk/daily/oct-2004/26/nationalnews1.php>.

²⁹⁴ Levy & Scott-Clark, *supra* note 292.

²⁹⁵ Douglas Jehl & David Rohde, *Threats and Responses: Intelligence; Captured Qaeda Figure Led Way To Information Behind Warning*, N.Y. TIMES, Aug. 2, 2004, at A1.

²⁹⁶ See *Al Qaeda Suspect Had Photos of Heathrow*, *supra* note 291.

²⁹⁷ See *Pakistan Confirms Handover of Alleged Al-Aq'idah Terrorist to US*, BBC MONITORING INT'L REP., Jan. 26, 2005.

²⁹⁸ Khan, *supra* note 277.

²⁹⁹ See Peter Taylor, *Crucible*, GUARDIAN (U.K.), Aug. 8, 2005, available at <http://www.guardian.co.uk/pakistan/Story/0,2763,1544710,00.html>.

³⁰⁰ Human Rights Watch, List of "Ghost Prisoners," *supra* note 35. See further *Leak Allowed at Qaeda Suspects to Escape*, USA TODAY, Aug. 10, 2004, available at http://www.usatoday.com/news/world/2004-08-10-pakistan-intel_x.htm (reporting that Khan was still in Pakistani custody); *Pakistan Court Orders Authorities to Explain Charges Against Suspected al-Qaida Computer Expert*, Lawyer Says, ASSOCIATED PRESS, Dec. 15, 2004 (detailing that on January 25, 2005 the Pakistani Deputy Attorney General for the region reportedly told the Lahore High Court that Khan was under the custody of "some agency" and characterizing this statement as potentially implying that he was still being held in Pakistan, or was at least in Pakistani custody).

³⁰¹ See Graff, *supra* note 292.

³⁰² Ho, *supra* note 270; Kimina Lyall, *Hambali Talks Under Grilling—Slaughter of Innocents*, AUSTRALIAN, Aug. 21, 2003. See also Human Rights Watch, List of "Ghost Prisoners," *supra* note 35 (identifying the date of arrest as August 2003).

³⁰³ Lyall, *supra* note 302.

³⁰⁴ See generally Ho, *supra* note 270; Elegant & Perrin, *supra* note 125; Lyall, *supra* note 302; Lyall, *supra* note 124.

³⁰⁵ See also Elegant & Perrin, *supra* note 125 (noting that Hambali was captured on August 11 2003).

³⁰⁶ Lyall, *supra* note 302.

³⁰⁷ Ho, *supra* note 270.

³⁰⁸ *Id.*

³⁰⁹ Elegant & Perrin, *supra* note 125.

³¹⁰ Lyall, *supra* note 124 (citing a senior Asian intelligence officer and also recording that the U.S. was then "providing country specific information from their interrogations to their regional allies").

³¹¹ Chua, *supra* note 274.

³¹² Ho, *supra* note 270.

³¹³ Human Rights Watch, List of "Ghost Prisoners," *supra* note 35.

³¹⁴ News reports contain discrepancies regarding the exact date of the arrest: see e.g.

Shaista Aziz, *Guantanamo fears for missing Briton*, AL JAZEERA, Dec. 24, 2003, available at <http://english.aljazeera.net/NR/exeres/089326D2-0706-40A6-A15B-2E690FEA7B98.htm>; (referring to information provided by Mahmud's lawyer that Mahmud was arrested on October 4, 2003); *Guantanamo Bay Travel Agency – A joint U.S. and UK Project*, Mar. 11, 2003, available at <http://www.cageprisoners.com/articles.php?id=121> (referring to the date of October 20, 2003).

³¹⁵ The location of this arrest is either identified as Rawalpindi (see e.g. Aziz, *supra* note 314 (referring to information provided by Mahmud's lawyer that Mahmud was arrested in Rawalpindi); *Pakistan grills British al-Qaida suspect*, Nov. 10, 2003, available at

<http://english.aljazeera.net/NR/exeres/1ED24A70-F5E4-46AF-A2D8-4A7A9D355D6B.htm> (stating that the arrest was in Rawalpindi, near Islamabad)) or Islamabad (see e.g. Human Rights Watch, List of "Ghost Prisoners" Possibly in CIA Custody, <http://hrw.org/english/docs/2005/11/30/usdom12109.htm> (last updated Dec. 1, 2005); *Briton held in Pakistan on terror charges*, THE INDEPENDENT (London), Oct. 30, 2003).

³¹⁶ See *Briton Arrested – In Brief*, THE TIMES (London), Oct. 31, 2003.

³¹⁷ *Briton arrested over 'terror links'*, BBC NEWS, Oct. 30, 2003, available at http://news.bbc.co.uk/2/hi/uk_news/england/west_midlands/3226315.stm; *Briton Arrested – In Brief*, THE TIMES (London), Oct. 31, 2003. See also *Terrorist Suspects kept in jail under 'draconian' ruling*, BELFAST TELEGRAPH (Northern Ireland), Oct. 30, 2003 (noting that Mahmud was "seized in Islamabad by Pakistani and U.S. intelligence").

³¹⁸ See *Guantanamo Bay Travel Agency – A joint U.S. and UK Project*, Mar. 11, 2003, available at <http://www.cageprisoners.com/articles.php?id=121> (describing the arrest as a "joint Pakistani/US/UK operation").

³¹⁹ See *Briton held in Pakistan on terror charges*, *supra* note 315.

³²⁰ *Guantanamo Bay Travel Agency – A joint U.S. and UK Project*, *supra* note 314.

³²¹ *Id.*

³²² *Briton arrested over 'terror links'*, *supra* note 317.

³²³ Sean O'Neill & Nick Britten, *Briton 'to be taken to Guantanamo Bay'*, THE TELEGRAPH, Oct. 30, 2003, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2003/10/30/wdelta130.xml&sSheet=/news/2003/10/30/ixnewstop.html>.

- ³²⁴ See *Briton held in Pakistan on terror charges*, *supra* note 315.
- ³²⁵ *Aziz*, *supra* note 314.
- ³²⁶ *Aziz*, *supra* note 314.
- ³²⁷ See *Aziz*, *supra* note 314.
- ³²⁸ *Aziz*, *supra* note 314.
- ³²⁹ Sean O’Neill, *Five still held without help or hope; Guantanamo*, THE TIMES, Jan. 12, 2005.
- ³³⁰ See John Mintz, *From Veil of Secrecy, Portraits of U.S. Prisoners Emerge*, WASH. POST, Mar. 15, 2002, at A3, available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A29096-2002Mar14¬Found=true>. See also Amnesty International USA, *Memorandum to the U.S. Government on the Rights of People in U.S. Custody in Afghanistan and Guantánamo Bay*, at <http://www.amnestyusa.org/countries/usa/document.do?id=807F25047CCE1E6F80256B97004FD0C0> (last viewed Dec. 13, 2005) [hereinafter “Amnesty International USA, Memorandum on the Rights of People in U.S. Custody”].
- ³³¹ See Mintz, *supra* note 330.
- ³³² See *Khalid makes confusing statements about Laden* (The Pakistan Newswire: March 5, 2003).
- ³³³ See Amnesty International USA, *Memorandum on the Rights of People in U.S. Custody*, *supra* note 330.
- ³³⁴ See Amnesty International USA, *Memorandum on the Rights of People in U.S. Custody*, *supra* note 330.
- ³³⁵ *Id.*
- ³³⁶ *Id.*
- ³³⁷ *Id.* (citing letter to legal team from James S. Reynolds, Chief, Terrorism and Violent Crime Section, Criminal Division, U.S. Department of Justice, Washington, DC, Jan. 28, 2002).
- ³³⁸ *Id.* (citing and quoting letter to legal team from James S. Reynolds, Chief, Terrorism and Violent Crime Section, Criminal Division, U.S. Department of Justice, Washington, DC, Jan. 28, 2002).
- ³³⁹ Ross & Esposito, *supra* note 59.
- ³⁴⁰ *Id.*
- ³⁴¹ *Id.*
- ³⁴² The name Suleiman Abdalla is used in some news reports (see, for example, *Kenya Names Held al-Qaeda Suspect, Prepares to Despatch [sic] him to U.S.*(AFX News Limited, Mar. 26, 2003); other reports use the name Suleiman Abdalla Salim Hemed (see, for example, Chris Tomlinson, *Mogadishu Warlords Root Out Al-Qaeda – For a Fee*, THE N.Y. SUN, Nov. 6, 2003).
- ³⁴³ See Salmon, *supra* note 343.
- ³⁴⁴ See *Kenya Questions al-Qaida Planner*, GUARDIAN, Mar. 21, 2003, available at <http://www.guardian.co.uk/alqaida/story/0,12469,918790,00.html>.
- ³⁴⁵ See Salmon, *Somalia*, *supra* note 343.
- ³⁴⁶ See *Kenya To Hand Over Al-Qaida Suspect To U.S. Courts*, SOMALILAND TIMES, Mar. 21, 2003, available at <http://www.somalilandtimes.net/2003/61/6106.htm>.
- ³⁴⁷ *Id.*
- ³⁴⁸ See Alan Cowell, *Threats and Responses: Terrorism; Kenyan Asks U.S. and Britain to Ease Their Security Alert*, N.Y. TIMES, May 24, 2003.
- ³⁴⁹ See *Kenya Hands Over Al-Qaeda Suspect to U.S.* (Xinhua General News Service, Mar. 19, 2003) (citing Kenyan Minister for Security Chris Murungaru); and *Kenya Names Held al-Qaeda Suspect, Prepares to Despatch [sic] him to U.S.*(AFX News Limited, Mar. 26, 2003) (not naming Kenyan official).
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- ³⁵⁴ See Alex Belida, *Pentagon/Horn of Africa* (Voice of America News, May 6, 2003).
- ³⁵⁵ *Id.*
- ³⁵⁶ See Alex Belida, *Secret Detainees* (Voice of America News, May 14, 2003).
- ³⁵⁷ *Investigators glean info from Qaeda suspects*, *supra* note 188.
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- ³⁵⁹ *Al-Qa’idah Men Arrested in Pakistan Termed “Facilitators”* (BBC MONITORING INTERNATIONAL REPORTS, July 17, 2003) (citing The News Website, Islamabad, July 17, 2003).
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- ³⁶⁷ Abbas, *supra* note 366; Mac Daniel, *Relatives of Wanted Alum Request Help*, BOSTON GLOBE, June 2, 2004 (stating that Siddiqui was "last seen in March 2003").
- ³⁶⁸ See *Pakistani 'al-Qaeda' Woman Named, supra* note 366.
- ³⁶⁹ See e.g. Khalid Hasan, *The strange story of Aafia Siddiqui*, DAILY TIMES (Pakistan), Nov. 1, 2004, available at http://www.dailytimes.com.pk/default.asp?page=story_1-11-2004_pg7_47
- ³⁷⁰ Telephone Interview with Elaine Sharp, Lawyer (Dec. 15, 2005). See also Abbas, *supra* note 366; Daniel, *supra* note 367.
- ³⁷¹ See e.g. Abbas, *supra* note 366.
- ³⁷² Copy of a relevant article was provided in Urdu to authors by Ms. Elaine Sharp on Dec. 15, 2005 and copy was translated into English and reviewed. Both copies on file with authors. See also Katherine Ozment, *Who's Afraid of Aafia Siddiqui?*, BOSTON MAGAZINE, Dec. 9, 2004; Cage Prisoners, *Report on Ghost Detention 16* (2005) available at <http://www.cageprisoners.com/media.php?section=Documents> (referring to the content of the Urdu press in general terms).
- ³⁷³ Telephone Interview with Elaine Sharp, *supra* note 370. See also Ozment, *supra* note 372.
- ³⁷⁴ Telephone Interview with Elaine Sharp, *supra* note 370. See also Ozment, *supra* note 372.
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- ³⁸¹ See FBI, *Seeking Information: Aafia Siddiqui*, available at <http://www.fbi.gov/terrorinfo/siddiqui.htm> (last visited Dec. 15, 2005); see generally Ragavan, *supra* note 380.
- ³⁸² See e.g. Daniel, *supra* note 367. For the response of the Siddiqui family's lawyer to the significance of the information of Khalid Shaik Mohammed see *supra* note 372; Ozment, *supra* note 372.
- ³⁸³ Daniel, *supra* note 367.
- ³⁸⁴ See Cage Prisoners, *supra* note 380, at 11 – 17 (2005).
- ³⁸⁵ Telephone Interview with Elaine Sharp, *supra* note 370. See also Ozment, *supra* note 372.
- ³⁸⁶ Telephone Interview with Elaine Sharp, *supra* note 370. For details of these allegations see e.g. Simpson, *supra* note 380. WALL STREET J., June 28, 2004. For the response of Ms. Sharp to these allegations see e.g. Ozment, *supra* note 372 (quoting Ms. Sharp's statement that "Aafia Siddiqui was here in June 2001 [the time Siddiqui was alleged to be in Monrovia]. And I can prove it").
- ³⁸⁷ Telephone Interview with Elaine Sharp, *supra* note 370.
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³⁹⁹ Staff Reporter, *supra* note 397.

⁴⁰⁰ *See e.g.* sources cited in Ozment, *supra* note 372.

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