

**TO THE HONORABLE MEMBERS OF THE INTER-AMERICAN COMMISSION ON
HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES**

**PETITIONERS' FINAL OBSERVATIONS ON THE MERITS
PETITION No. 1638-11, MOHAMED et al. v. UNITED STATES OF AMERICA**

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Submitted: December 30, 2020

TABLE OF CONTENTS

TABLE OF CONTENTS ii

INTRODUCTION..... 1

FACTUAL AND LEGAL BACKGROUND..... 1

 A. Petitioners Were Subjected to the U.S. Program of Extraordinary Rendition, Secret Detention and interrogation 1

 1. Mohamed Bashmilah 1

 2. Abou Elkassim Britel 7

 3. Binyam Mohamed..... 11

 4. Bisher Al-Rawi 17

 B. U.S. Courts Denied Petitioners Civil Redress for Their Forced Disappearance, Arbitrary Detention, Torture and Inhumane Treatment 21

 C. The CIA Used Unlawful Rendition, Arbitrary Detention, Forced Disappearance and Torture as a Matter of Policy..... 22

 1. The CIA RDI Program 22

 2. The CIA RDI Program’s Authorization and Operation 23

 3. Foreign-State Cooperation with the CIA RDI Program..... 25

 D. The United States Congress Has Granted Immunity to U.S. Officials Involved in Forced Disappearance, Torture and Other Human Rights Violations 28

 E. The United States has not Conducted an Adequate and Effective Investigation into Abuses Committed as Part of the RDI Program..... 29

 F. The United States Has Not Held Any Senior U.S. Official Criminally Responsible for Authorizing and Implementing the Program 30

 G. U.S. Courts Have Repeatedly Denied Civil Redress to Victims and Survivors of the RDI Program..... 31

 H. The United States Has Not Provided Any Guarantees of Non-Repetition 32

LEGAL ARGUMENT..... 33

 A. Violations of the American Declaration..... 33

 1. Violations of Petitioners’ Rights to Life, Liberty, and Personal Security (Torture and Other Cruel, Inhuman, or Degrading Treatment) 33

 2. Violations of Petitioners’ Rights to Personal Liberty and Security (Arbitrary Arrest and Detention) 39

 3. Violations of Petitioners’ Rights not to be Forcibly Disappeared 44

 4. Violations of Petitioners’ Rights to Asylum 46

 5. Violations of Petitioners’ Rights to Truth..... 47

 B. The United States is Responsible for the Rights Violations Committed By its Agents and Because it Failed to Act with “Due Diligence” to Protect Petitioners 49

 1. U.S. Responsibility for the Acts of its Agents and Contractors..... 49

 2. U.S. “Due Diligence” Responsibility..... 50

 3. U.S. Responsibility for Extraterritorial Rights Violations 51

C. The United States Violated Petitioners’ Substantive Right to a Remedy 52

1. Articles XVIII and XXIV Guarantee an Effective Right of Access to a Tribunal and, Where Appropriate, the Enforcement of Remedies 52

2. The United States Denied Petitioners’ Their Right to Remedy 54

CONCLUSION AND PETITION FOR RELIEF 55

INTRODUCTION

Binyam Mohamed, Abou El Kassim Britel, Bisher Al-Rawi, and the widow of Mohamed Bashmilah,¹ seek redress for violations of the American Declaration of the Rights and Duties of Man (“American Declaration”) committed by the United States pursuant to its Extraordinary Rendition, Secret Detention, and Interrogation program² (“RDI Program”). The United States subjected these four men to its RDI Program and, as a result, each of them suffered extensive violations of their rights guaranteed by the American Declaration, including specifically their rights to personal liberty and security (Articles I and XXV); their right not to be forcibly disappeared (Articles I, XVII, and XXVI); and their right to truth and to a substantive remedy for these violations (Articles XVIII and XXIV). In addition, Petitioners Britel and Mohamed suffered violations of their rights to asylum (Article XXVII). The United States and other state and non-state actors committed these violations, including senior government officials, CIA personnel and U.S. contractors, and foreign government agents. The United States is responsible for these violations directly, and because it failed to act with due diligence to protect Petitioners from violations committed by private and foreign-state actors who acted at the behest of or in collaboration with the United States to implement the RDI Program.

Petitioners request that the Commission provide them and their families with what they have sought for decades: the truth, an acknowledgement of the harms caused to them by the United States, and an apology for the violations of their rights.

FACTUAL AND LEGAL BACKGROUND

A. PETITIONERS WERE SUBJECTED TO THE U.S. PROGRAM OF EXTRAORDINARY RENDITION, SECRET DETENTION AND INTERROGATION

1. Mohamed Bashmilah

Mohamed Farag Ahmed Bashmilah bravely sought justice for the U.S. government’s violations of his rights until his death during the civil war in Yemen a few years ago. Mr. Bashmilah’s widow is continuing this case in his name.³

Mr. Bashmilah was a citizen of Yemen. In late 2003, Mr. Bashmilah lived and ran a business venture in Indonesia with his wife, an Indonesian national. In 2003, Mr. Bashmilah was fined and sentenced to deportation by the Indonesian government for forging an Indonesian identity card.

¹ Mr. Bashmilah’s widow would prefer that the Commission and the parties in this case keep her name confidential. Her name was provided to the Commission in Petitioners’ Reply to United States’ Observations on the Petition’s Admissibility, dated December 18, 2018.

² U.S. government documents described this program as the CIA’s “Rendition, Detention, and Interrogation” or “RDI” program, or “RDI”. See e.g., Senate Select Comm. on Intelligence, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program*, S. Report No. 113-228 (2012) [“Senate Torture Report”]. Petitioners described that same program as the CIA’s Extraordinary Rendition, Secret Detention and Interrogation program but use the term “RDI Program” here and throughout.

³ Unless otherwise stated, the following allegations are based on Mr. Bashmilah’s declaration, exhibits, and other documents filed in *Mohamed v. Jeppesen Dataplan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008). Filings available at <https://www.therenditionproject.org.uk/documents/legal-cases-jeppesen.html#Jeppesen-Docs>.

Mr. Bashmilah chose to leave Indonesia for Jordan, where his mother had gone to seek medical care.

Petitioner's Abduction, Detention and Torture in Jordan

In September 2003, upon his arrival in Amman from Indonesia, Jordanian officials confiscated Mr. Bashmilah's passport. On October 21, 2003, Jordanian officials apprehended, detained and interrogated Mr. Bashmilah, accusing him of involvement in arms-trafficking from Indonesia to Malaysia and of being a member of Al-Qaeda. When he denied these accusations, Jordanian officials struck Mr. Bashmilah so forcefully that he fell to the floor. They then kicked him as he lay there. After interrogating Mr. Bashmilah, the officials handcuffed and blindfolded him before forcing him into a vehicle. Jordanian officials drove him to the apartment where he, his wife, and his mother were staying while they prepared for his mother's heart surgery. Once there, the Jordanian officials who drove him searched the apartment without a warrant, damaging his property in the process. The officials restrained Mr. Bashmilah in a painful position as they conducted their search. Mr. Bashmilah's wife and his mother were also present at this time. After they became distressed by the Jordanian officials' brutal treatment of Mr. Bashmilah, the officials locked them in a room. They also forcefully slapped the two women.

Following their search, the officials blindfolded Mr. Bashmilah and transported him back to the facility where Mr. Bashmilah had initially been detained and interrogated. There, Jordanian officials confiscated his possessions and forced him to strip naked. The officials then forced Mr. Bashmilah against a wall and took pictures of his naked body. They then dressed Mr. Bashmilah in a uniform, took his fingerprints and footprints, and placed him in a solitary-confinement cell.

In the evening, Jordanian officials at the facility handcuffed and blindfolded Mr. Bashmilah and brought him to a room for interrogation. Two officials demanded that Mr. Bashmilah "confess," and threatened to rape his wife and mother if he did not do so. Mr. Bashmilah fainted. The officials revived him. Mr. Bashmilah promised to confess to whatever the officials wanted if they did not harm his wife and mother. The officials continued to interrogate Mr. Bashmilah, forcefully slapping him as they did so. After the officials threatened further sexual violence against his wife, Mr. Bashmilah agreed to confess. After signing a confession, the officials placed Mr. Bashmilah back into solitary confinement.

Jordanian officers allowed Mr. Bashmilah to meet with his wife and mother a few days later. They took Mr. Bashmilah to a large hall and forced him to run in circles. They beat him with canes when he slowed, and forced him to run until he collapsed with exhaustion. Jordanian guards also humiliated Mr. Bashmilah by forcing him to imitate the sounds of animals. They hung him upside down by his ankles, shackled to a chain, and left him hanging for twenty minutes, slapping and beating him until he was numb with pain. The guards threatened to shock Mr. Bashmilah. Mr. Bashmilah told the guards that he would "confess," believing doing so would end his torture.

On October 25, 2003, one of the guards brought Mr. Bashmilah from his cell to meet with one of his interrogators. Mr. Bashmilah told him he was ready to confess. Although the interrogator asked Mr. Bashmilah a series of yes-or-no questions, the interrogator recorded lengthy responses. The interrogator instructed Mr. Bashmilah to confess to knowing members of Al-Qaeda. When Mr. Bashmilah said that he did not know them, or refused to confess to knowing them, guards kicked

or slapped him. The interrogator threatened to hand Mr. Bashmilah to U.S. intelligence agents. After two-hours of interrogation and cruel, inhuman, and degrading treatment, Mr. Bashmilah signed a confession that he did not read. The Senate Torture Report confirmed that Mr. Bashmilah was detained by U.S. agents based on “speculative” information. Senate Torture Report at 16, n. 32.⁴

Transfer to the Exclusive “Authority and Control” of the United States in Jordan

At around 1.30am on October 26, 2003, Jordanian officials removed Mr. Bashmilah from his cell and informed him that he was being released. They returned Mr. Bashmilah’s wedding ring. The guards placed his other belongings, including personal documents, in an envelope which they withheld from him. The guards blindfolded Mr. Bashmilah and tied his hands. While in the detention facility, Mr. Bashmilah heard a man with a U.S. accent speaking English with a man with a Jordanian accent. Mr. Bashmilah also saw a white man in sunglasses holding the envelope with his belongings. Mr. Bashmilah thought Jordanian officials were transferring him to U.S. custody, as one of his interrogators had earlier threatened he would. His guards forced him into the back of a vehicle. Men speaking English, one with a U.S. accent, drove Mr. Bashmilah to an airport. At the airport, still blindfolded and handcuffed, Mr. Bashmilah was placed in a room.

Mr. Bashmilah was then forcefully transferred to another room. There his clothes were cut from his body. Bright lights were shone into his face. Mr. Bashmilah could sense that there were about three other people in the room with him. He saw two of them. They were masked and dressed in black clothing. They beat and kicked Mr. Bashmilah. One of them roughly penetrated Mr. Bashmilah’s anus with a finger, causing Mr. Bashmilah such severe pain that he almost fainted. They dressed Mr. Bashmilah in a diaper and cropped sweatshirt and sweatpants, no footwear. They bound Mr. Bashmilah’s arms and legs to his torso, causing him extreme pain.

Unlawful Rendition by United States to Afghanistan

A CIA rendition team forced Mr. Bashmilah inside an aircraft and strapped him to a metal gurney, for the duration of the four-hour flight. The rendition team repeatedly kicked and beat Mr. Bashmilah. Flight records have confirmed that a plane departed Amman at 4.15am on October 26, 2003, for Kabul, Afghanistan, landing there at 8.25am on October 26, 2003.

After landing, U.S. agents transported Mr. Bashmilah to a U.S.-run facility near the airport. U.S. agents detained him there from October 26, 2003 to April 24, 2004. The facility has since been identified as a CIA black-site prison, known as the “Dark Prison.” *See* Senate Torture Report at 458.

Arbitrary Detention, Interrogation and Torture in Afghanistan

At the Dark Prison, medical personnel examined Mr. Bashmilah. An interrogator then attempted to question him, but Mr. Bashmilah was too fearful and distressed to answer questions. Mr. Bashmilah was placed alone in a tiny, windowless cell (2 x 3 meters). He had an uncovered metal bucket to use as a toilet, a thin foam mattress, and a thin blanket. In the pitch-black, Mr. Bashmilah heard the screams of other detainees. A U.S. official told Mr. Bashmilah only detainees who did not cooperate would be tortured.

⁴ Mr. Bashmilah is known as “Mohammad al-Shomaila” in the Senate Torture Report.

For fifteen days, Mr. Bashmilah was forced to wear the same soiled diaper that the CIA rendition team had dressed him in. Prison guards also shackled him and chained one of his arms to the wall of his cell. Mr. Bashmilah was kept in darkness for the first ten days. Thereafter, his cell was continually lit. After fifteen days, guards gave him clothes and unchained Mr. Bashmilah's hands. After an additional two weeks, his guards unshackled his legs. Western rap and Arabic music were blasted into his cell at deafening levels twenty-four hours a day, seven days a week for the first month of his detention. The cell was frigid. Mr. Bashmilah, a devout Muslim, was unable to practice his religion because of the conditions of his detention.

Severely traumatized by his rendition, interrogation, and torture, Mr. Bashmilah attempted to commit suicide three times: by strangling himself, overdosing on the pills he was given, and cutting his wrists. Mr. Bashmilah also repeatedly banged his head against his cell walls in an attempt to lose consciousness. Guards intervened to prevent Mr. Bashmilah from killing himself. After an evaluation by individuals who identified themselves as mental health professionals, Mr. Bashmilah was moved to another cell. Inside, guards chained his hands and shackled his feet. The cell was under constant surveillance. Mr. Bashmilah was held in solitary for two more months in this second cell before guards transferred him to a third solitary-confinement cell. The conditions of his confinement in all three were cruel, inhuman, and degrading. Mr. Bashmilah only left his cell for interrogation, bathing, once-weekly outdoor-time, and for medical evaluations.

U.S. agents repeatedly interrogated Mr. Bashmilah about the identities of certain individuals, who Mr. Bashmilah did not know.

Unlawful Rendition by the United States to CIA “Detention Site Orange”

On or about April 24, 2004, at around 12.00 p.m., guards took Mr. Bashmilah from his cell to an interrogation room. There Mr. Bashmilah was stripped naked and medically examined. He was told that he was going to a “better place.” Mr. Bashmilah thought he was going to be transported to Guantanamo.

He was dressed in a diaper and cropped clothes, handcuffed, blindfolded, and hooded. Headphones were placed over his ears. Mr. Bashmilah was then forced onto the floor of a vehicle. He could sense others beside him. They were driven to an airport, where Mr. Bashmilah was forced inside an aircraft. The plane was airborne for several hours. After it landed, Mr. Bashmilah was transferred to a helicopter. The helicopter flew for several hours. After it landed, Mr. Bashmilah was forced into a vehicle and driven for some time to a U.S.-run facility, which Mr. Bashmilah later learned was located in Afghanistan. This site was referred to as CIA “Detention Site Orange” in the Senate Torture Report. *See* Senate Torture Report at 62.

Detention, Interrogation, Torture and Other Cruel, Inhuman, and Degrading Treatment in CIA “Detention Site Orange”

At Detention Site Orange, a man who Mr. Bashmilah recognized from the Dark Prison stripped and photographed him naked. Medical staff examined Mr. Bashmilah and left him naked in a cell for several days. The cell had a toilet and wash basin. White noise was piped into the cell twenty-four hours a day. Mr. Bashmilah was handcuffed and chained to the wall of the cell. Guards interfered with his religious practice. The weight of the chain also prevented Mr. Bashmilah from

praying properly. Mr. Bashmilah was under constant surveillance. One of Mr. Bashmilah's U.S. interrogators told him that this would be his "permanent home."

Distressed by the conditions of his confinement, Mr. Bashmilah attempted suicide for a fourth time by cutting his wrists with a piece of metal he had taken with him from the "Dark Prison." Using his blood, he wrote "this is unjust" and "I am innocent" on the cell walls. Guards prevented him from killing himself and treated his wounds. Mr. Bashmilah also went on a hunger strike to protest his continued confinement and the tortuous conditions. Guards stopped his protest after ten days by strapping him to a chair, forcing a tube into his stomach through his nose, and forcibly feeding him. The procedure was excruciating; Mr. Bashmilah screamed in pain. The guards forcibly fed Mr. Bashmilah twice a day for three days until he gave up his hunger strike.

Around September 2004, guards transferred Mr. Bashmilah to another cell where he remained in solitary confinement until his release from U.S. custody on May 5, 2005. The cell was small (2 x 4 meters). Guards kept Mr. Bashmilah under constant surveillance via video camera. The cell had a toilet, a wash basin, and a filthy mattress. Guards shackled Mr. Bashmilah's legs. Guards did not subject Mr. Bashmilah to sensory deprivation by loud music or white noise and did not interfere with Mr. Bashmilah's religious practice, although he suspected they still gave him the wrong prayer schedule. U.S. agents continued to interrogate Mr. Bashmilah.

Release from U.S. Custody and Unlawful Rendition by the United States to Yemen

On May 5, 2005, the CIA rendered Mr. Bashmilah to Yemen for continued detention. Instructions for his release from U.S. custody to Yemen came "from Washington." Amnesty International confirmed that the United States instructed Yemen to detain Mr. Bashmilah upon his transfer from their custody. Before his rendition, U.S. agents dressed Mr. Bashmilah, handcuffed and hooded him, then forced him into an aircraft bound for Sana'a, Yemen. The flight took seven hours. When it landed, Yemeni officers took custody of Mr. Bashmilah. The next day, they flew him to Aden. Once there, Yemeni agents detained Mr. Bashmilah at Fateh Prison.

Detention, Trial and Release in Yemen

At the United States' behest, Yemen detained Mr. Bashmilah from May 5, 2005 until March 27, 2006.

On February 13, 2006, the Special Penal Court in Yemen tried Mr. Bashmilah for forgery for using a false identity document in Indonesia. Mr. Bashmilah was not legally represented. Mr. Bashmilah plead guilty to forgery, explaining that he had already been punished for this offence in Indonesia with a fine and a deportation order. Mr. Bashmilah was sentenced to two years' imprisonment but due to time-served, the court ordered his immediate release. Yemen released Mr. Bashmilah on March 27, 2006.

Efforts of Mr. Bashmilah's Family to Find Him.

When Jordanian and U.S. agents detained Mr. Bashmilah in Jordan in October 2003, his wife and mother attempted to secure his release. Mr. Bashmilah's sudden disappearance, and the failure of Jordanian and U.S. officials to explain his disappearance, caused his family severe mental pain and suffering. Their campaign for answers, and for his release, continued for the duration of Mr. Bashmilah's forced disappearance and secret detention. Mr. Bashmilah's mother liaised with the

embassy of Yemen in Jordan in October 2003, and secured a brief visit with Mr. Bashmilah before he was unlawfully rendered to Afghanistan. When Mr. Bashmilah's mother attempted to visit him again in Jordan, she was informed by the Yemeni Ambassador that he had "left the Kingdom." Mr. Bashmilah's mother enquired after his whereabouts to the Yemeni Foreign Ministry.

Mr. Bashmilah's mother and wife suffered severe mental and physical pain and suffering as a consequence of Mr. Bashmilah's forced disappearance. They were hospitalized at least once due to this distress. Mr. Bashmilah's wife eventually returned to Indonesia, where she suffered extreme financial hardship in her husband's absence. Mr. Bashmilah's father died, leaving Mr. Bashmilah's mother without emotional or financial support. The fact that Mr. Bashmilah's father died without an opportunity to say goodbye, and not knowing whether his son was dead or alive, caused Mr. Bashmilah extreme distress in the years following his release.

Mr. Bashmilah's Account of his Abduction, Unlawful Rendition, Arbitrary Detention, Forced Disappearance, and Torture Have Been Corroborated

Corroboration by the United States

The Senate Torture Report confirmed that U.S. agents detained Mr. Bashmilah based on "speculative" information only, and that he was "wrongfully detained." Senate Torture Report at 15-16, n. 32-33. The report also confirmed that the CIA held Mr. Bashmilah for 540-549 days. *Id.* at 460.

Corroboration by other states, and international bodies

Jordan confirmed to the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment that Mr. Bashmilah was "...brought in to the Department for questioning on 21 October 2003."

In correspondence to the U.N. Office of the High Commissioner for Human Rights dated March 22, 2007, Jordan confirmed that officials interrogated Mr. Bashmilah at the General Intelligence Department on October 21, 2003. Jordan denied that it detained Mr. Bashmilah, stating in a letter dated November 17, 2003 to the Embassy of the Republic of Yemen, that Mr. Bashmilah "...was ordered to leave the Kingdom, which he did on 26 October, 2003."

On March 27, 2006, the Embassy of the Republic of Yemen in France informed the Council of Europe that Yemeni authorities received Mr. Bashmilah from U.S. authorities on May 5, 2005 and that Mr. Bashmilah had since been held by them for questioning. The Embassy further confirmed that on March 5, 2005, the United States informed the Central Organization for Political Security in Yemen that Mr. Bashmilah was being held in U.S. custody.

On December 20, 2005 the government of Yemen confirmed in correspondence to the United Nations Permanent Mission to the Republic of Yemen that the United States delivered Mr. Bashmilah to Yemen; that Mr. Bashmilah had been detained by the Yemeni authorities for questioning and to verify the allegations made against him by the United States; and that on November 10, 2005, the Yemeni authorities received files on Mr. Bashmilah from the United States authorities.

The U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment have publicly confirmed the content of the December 20, 2005 letter.

Corroboration by Public Reporting

Mr. Bashmilah's account is corroborated by correspondence between inter-governmental bodies throughout the period of his detention, including the Parliamentary Assembly Committee on Legal Affairs and Human Rights of the Council of Europe; several U.N. Special Rapporteurs and other U.N. entities; and governmental departments in Indonesia, Jordan, Yemen, and the United States.

The North Carolina Commission of Inquiry on Torture, which focused on uncovering North Carolina's role in the RDI Program, found that Aero Contractors, based in Smithfield, NC, operated aircraft for the CIA's rendition program and was responsible for the renditions of at least 15 men, including Mr. Bashmilah. *See* Torture Flights: North Carolina's Role in the CIA Rendition and Torture Program 25 (N.C. Comm. of Inquiry on Torture 2018) ["N.C. Report"].

The Rendition Project's *CIA Torture Unredacted* report confirmed Mr. Bashmilah's account with those of two other men with whom he was detained, flight records, and other documentary evidence. *See* Sam Raphael, Crofton Black and Ruth Blakeley, *CIA Torture Unredacted* 224-227 (The Rendition Project, 2019) ["Torture Unredacted Report"].

The Continuing Harms to Mr. Bashmilah

Mr. Bashmilah's health deteriorated significantly while he was detained. After he was released from custody in Yemen, Mr. Bashmilah continued to suffer severe mental and physical pain because of his arbitrary and prolonged secret detention, and torture by U.S. agents. Mr. Bashmilah also suffered financial damage due to loss of reputation as a businessman, and because his passport was never returned to him. Mr. Bashmilah's suffering, and that of his family, was increased by the lack of redress or acknowledgement by the United States.

Mr. Bashmilah passed away during the civil war in Yemen.

2. Abou Elkassim Britel⁵

Abou Elkassim Britel was born in Morocco in 1967. He moved to Italy in 1989 and became a naturalized Italian citizen in 1999. Mr. Britel married his wife, also an Italian citizen, in 1995. In 2000, the Britels set up a business together translating Islamic texts from Arabic to Italian. In 2001, Mr. Britel traveled to Iran seeking financial support for his Islamic translation business and to conduct research for his translation projects. He traveled to other countries in the Middle East and to Pakistan for the same professional reasons.

⁵ Unless otherwise stated Mr. Britel's account of his forced disappearance, secret detention and torture is based on the complaint, Mr. Britel's sworn declaration, and other documents filed in *Mohamed v. Jeppesen Dataplan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008), filings available at <https://www.therenditionproject.org.uk/documents/legal-cases-jeppesen.html#Jeppesen-Docs>; Brief in Support of Abou Elkassim Britel's Request for Reparations and an Official Apology for Extraordinary Rendition and Torture (June 2014) ["UNC Brief ISO Britel"] (citing to Order of Dismissal, Dr. Francesca Morelli, Office of the Judge for Prelim. Investigations, Tribunal of Brescia, Sept. 29, 2006).

Mr. Britel's Arbitrary Detention, Interrogation and Torture in Pakistan

On March 10, 2002, Pakistani police officers detained Mr. Britel in Lahore, ostensibly on immigration charges. Mr. Britel informed Pakistani officials that he was an Italian citizen and requested consular assistance and representation. The officials denied his requests.

Mr. Britel was secretly detained in Lahore for nearly two months. During this time, Pakistani officials physically and psychologically tortured Mr. Britel and repeatedly interrogated him. They hung him by his hands from the ceiling for prolonged periods and beat him. They subjected Mr. Britel to sleep deprivation and denied him access to a toilet. They also repeatedly threatened to harm his family and told him that they would subject him to even worse forms of torture. They even threatened to kill him.

In April 2002, after weeks of torture, Mr. Britel falsely confessed to Pakistani officials that he was a terrorist. He did so because he thought it would end his torture. Soon after he made his false confession, U.S. officials met with Mr. Britel. They photographed and fingerprinted Mr. Britel, telling him he had to cooperate with the Pakistanis, or that he would be killed.

On May 5, 2002, Pakistani officials transferred Mr. Britel from Lahore to Islamabad and to the headquarters of Pakistani intelligence services, where Pakistani officials continued his secret detention. They brought Mr. Britel to meet with U.S. officials on four separate occasions. The U.S. officials interrogated Mr. Britel about his alleged ties to Osama bin Laden. He asked the U.S. officials to contact the Italian embassy on his behalf, but they refused. At his final interrogation by U.S. officials, his interrogators told Mr. Britel that he would soon be released and returned to Italy. Instead, the United States rendered Mr. Britel from Pakistan to Morocco for detention, interrogation and torture by Moroccan agents.

Unlawful Rendition by the CIA to the Custody of Moroccan Intelligence Services

On May 24, 2002, Pakistani officials handcuffed and blindfolded Mr. Britel, forced him into a vehicle, and drove him to an airport. There, Mr. Britel was held in a small bathroom. Four or five men dressed in black outfits and ski masks sliced Mr. Britel's clothes from his body and then blindfolded him. He was then stripped naked, photographed, and dressed in a diaper and ripped t-shirt. The men blindfolded Mr. Britel, placed him in a metallic slip, and then chained his hands and shackled his feet.

Mr. Britel was then forced onto a small plane and, once inside, strapped to a seat. Mr. Britel could sense that there was at least one other person detained in the plane with him. During the flight, Mr. Britel was hit or kicked if he moved from his position. Mr. Britel was in pain for the duration of the hours-long flight. His captors refused Mr. Britel's repeated requests to change positions to ease his pain and taped his mouth shut to stop him asking.

Flight records show that a Boeing 737 business plane owned by a U.S.-based corporation, Premier Executive Transportation Services, Inc., and operated by another U.S.-based corporation, Aero Contractors Limited—registered by the U.S. Federal Aviation Administration ("FAA") as N379P—flew Mr. Britel from Islamabad to Rabat. These records also note that the plane originated in Washington, D.C. and flew to Frankfurt and Dubai on May 23. The plane took off from Islamabad, Pakistan in the evening of May 24, 2004, and landed at the Rabat airport at 7.03 a.m.

on May 25, 2004. The plane left Rabat just under an hour later, flying to Porto, Portugal before flying to Washington, D.C. on May 26, 2004. See N.C. Report at 14, 20; *Rendition Circuit: 22-26 May 2002, Rendition of Abou Elkassim Britel, Pakistan to Morocco*, The Rendition Project, available at <https://www.therenditionproject.org.uk/flights/renditions/N379P-020522.html> (last visited Dec. 29, 2020); Giovanni Claudio Fava, Report on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners, Temp. Comm., Eur. Parl. Assembly, Doc. No. 2006/2200(INI) (2007) [“Fava Report 2007”].

Arbitrary Detention, Interrogation and Torture in Morocco by Moroccan Intelligence Services

When Mr. Britel’s plane landed in Rabat on May 25, 2002, CIA operatives transferred Mr. Britel to the custody of Moroccan intelligence services. Moroccan officials transported Mr. Britel to Témara, a secret detention facility controlled by the National Surveillance Directorate, a Moroccan domestic intelligence agency. Moroccan officials held Mr. Britel at the Témara prison for more than eight months. There, Moroccan officials subjected Mr. Britel to solitary confinement and sleep deprivation. They also deprived him of adequate food and water. Moroccan officials interrogated Mr. Britel repeatedly at Témara, often under torture. Officials pressured Mr. Britel to become an informant for them and interrogated him about his private life and contacts in Italy. Moroccan intelligence officials physically and psychologically tortured Mr. Britel, beating him while threatening to inflict worse harms, including threats of genital mutilation and “bottle torture.” Interrogators also threatened to harm Mr. Britel’s female relatives in Morocco. As a result of the torture at Témara, Mr. Britel suffered, and for months after continued to suffer, dizziness and chronic diarrhea. His left ear and eye were permanently damaged and parts of his skin are permanently discolored.

For eight months, Moroccan officials held Mr. Britel incommunicado, denying him access to counsel, to the Italian embassy, and to family or friends.

Temporary Release, Arbitrary Detention in Morocco and Trial

On February 11, 2003, Mr. Britel was released from Témara without charge, but Moroccan officials continued to meet with him on a weekly basis to ensure that he remained silent about his torture and to provide them with information. Mr. Britel’s wife traveled from Italy to meet with him and to help arrange for his return to Italy with the assistance of the Italian Embassy in Rabat. On May 12, 2003, the Embassy provided Mr. Britel with documentation allowing him to travel to and enter Italy. Mr. Britel, fearful of flying, decided to travel overland via Melilla on the Spanish-Moroccan border. His wife planned to follow him, once she knew that he had departed Morocco safely.

On May 16, 2003, Moroccan authorities arrested and detained Mr. Britel at the border between Spain and Morocco. Moroccan officials held him for more than six hours without explanation. Then they handcuffed Mr. Britel, forced him into a vehicle, and drove him to Témara prison. There, Moroccan officials again held Mr. Britel incommunicado and in cruel, inhuman, and degrading conditions for four months. They denied him access to counsel and to the Italian embassy. Moroccan officials tortured Mr. Britel into signing a confession. On September 5, 2003, they transferred him to the Salè prison.

A Moroccan court convicted Mr. Britel of terrorist-related charges after a hastily convened trial. Moroccan authorities denied Mr. Britel access to an attorney before and during his trial. An observer from the Italian Embassy reported that the trial did not comply with fair trial standards. In particular, Mr. Britel's conviction was based in part on the tortured confession he signed at Témara. He was sentenced to fifteen years' imprisonment, reduced to nine years on appeal. Mr. Britel served his sentence at Salè and Ain Bourja prisons and others throughout Morocco.

Legal and Administrative Proceedings in Italy and Europe

In September 2006, an Italian judicial investigation into Mr. Britel's detention was closed citing a complete lack of evidence linking Mr. Britel with any criminal activity.

Following the dismissal of the Italian investigation, in January 2007, the EU Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners called for the Italian government to seek Mr. Britel's release from Morocco. *See Fava Report 2007*. This was supported by 62 members of Italian Parliament, 25 Italian Senators, 12 members of the European Parliament, and requested the Italian government seek a pardon for Mr. Britel. In 2011, the King of Morocco finally pardoned Mr. Britel, and on April 14, 2011, Mr. Britel was released from prison and was able to return to Italy.

Corroboration of Mr. Britel's Account of His Abduction, Unlawful Rendition, Arbitrary Detention, Forced Disappearance and Torture

Mr. Britel's abduction and forced disappearance, unlawful rendition, secret detention and torture have been corroborated by a number of inter-governmental and non-governmental inquiries and investigations.

In 2007, Rapporteur Giovanni Claudio Fava, of the European Parliament condemned the U.S. practice of extraordinary rendition as "an illegal instrument used by the United States in the fight against terrorism" and condemned the rendition of Mr. Britel. In his report, Rapporteur Fava urged the Italian government to petition Morocco for Mr. Britel's release. *See Fava Report 2007*.

In a report, *Extraordinary Rendition: A Review of Ireland's Human Rights Obligations*, the Irish Human Rights Commission cited the Fava report, noting that aircraft that had participated in renditions, including Mr. Britel's, had stopped over in Ireland during other documented rendition flights. *See Extraordinary Rendition: A Review of Ireland's Human Rights Obligations 35* (Irish Human Rights Comm., 2007).

The North Carolina Commission of Inquiry on Torture, which focused on uncovering North Carolina's role in the RDI Program, found that Aero Contractors, based in Smithfield, NC, operated aircraft for the CIA's rendition program and was responsible for the renditions of least 15 men, including Mr. Britel. *See N.C. Report at 6, 14, 20*.

The Rendition Project documented the flight paths of the aircraft that the CIA used to render Mr. Britel from Pakistan to Morocco, tracing its route from Washington, D.C. to Pakistan and onto Morocco. The dates and times documented closely match Mr. Britel's recollections. *Rendition Circuit: 22-26 May 2002, Rendition of Abou Elkassim Britel*. The Rendition Project's report, *CIA Torture Unredacted*, also corroborated Mr. Britel's rendition circuit and provides further

corroboration of the U.S. government's covert relationship with Morocco in rendering and secretly detaining suspected terrorists to the Kingdom. See Torture Unredacted Report at 122-23, 302.

The Senate Torture Report confirmed Mr. Britel's account of the procedures followed by CIA operatives and others before and during his unlawful rendition from Pakistan to Morocco See Senate Torture Report at 64, n. 318. See also Memo to Dep't of Justice Command Ctr.: Dan Levin 2-3 (2004), available at <https://www.aclu.org/sites/default/files/torturefoia/released/082409/olcremand/2004ole97.pdf> ["Levin Memo"].

Morocco's role in the RDI Program is well-documented. See Torture Unredacted Report at 122-23 (Morocco played a significant role in secretly holding CIA detainees following the September 11 attacks: at least six CIA detainees were rendered for proxy detention in Moroccan custody and the testimony of these detainees indicate they were held at Témara). Morocco also unlawfully rendered men to the CIA, allowed CIA agents access to the Témara prison, and allowed these agents to participate in interrogations there. See e.g. *id.*; Katherine Hawkins, *Return of the Renditioned*, Foreign Policy (Sept. 7, 2011), available at http://www.foreignpolicy.com/articles/2011/09/07/return_of_the_renditioned; Aida Alami, *Morocco Crushed Dissent Using a U.S. Interrogation Site*, *Rights Advocates Say*, N.Y. TIMES (Jan. 17, 2015), available at <https://www.nytimes.com/2015/01/18/world/us-tactics-in-morocco-said-to-enable-torture.html>.

The Continuing Harms to Mr. Britel

Mr. Britel suffered and continues to suffer physically, psychologically and emotionally from the trauma of his unlawful rendition, secret detention, and torture. To this day, Mr. Britel continues to suffer from a number of symptoms traceable to the time of his detention and torture in Morocco. These symptoms include chronic dizziness and diarrhea, permanent skin discoloration, and visual impairments. He has trouble concentrating and difficulty remembering to take daily medications or attend regular appointments. He has trouble sleeping and a diminished appetite. He suffers extreme fatigue and weakness in his limbs. Mr. Britel has been diagnosed with mental illnesses associated with torture, including depression and anxiety. Additionally, he suffers from symptoms related to Post-Traumatic Stress Disorder (PTSD). Mr. Britel and his wife also suffered and continue to suffer from social isolation and stigmatization since Mr. Britel's return home; people are fearful of associating with the family due to the unfounded allegations made against him by the United States and other state actors.

3. Binyam Mohamed⁶

Binyam Mohamed, an Ethiopian national, became a British Resident in 1994 when his family fled Ethiopia and sought political asylum there. In the summer of 2001, Mr. Mohamed traveled to Afghanistan for health reasons.

⁶ Unless otherwise stated, Mr. Mohamed's account of his forced disappearance, secret detention and torture, are based on the filings in *Mohamed v. Jeppesen Dataplan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008), filings available at <https://www.therenditionproject.org.uk/documents/legal-cases-jeppesen.html#Jeppesen-Docs>; Torture Unredacted Report at 236-38.

Mr. Mohamed's Abduction, Arbitrary Detention and Torture in Pakistan

In early 2002, following the U.S. coalition's invasion of Afghanistan, Mr. Mohamed fled the country and attempted to return home to the United Kingdom via Pakistan. On April 10, 2002, as he was boarding his flight to the U.K., Pakistani officials seized Mr. Mohamed at the Karachi airport on purported immigration charges. They detained him for seven days at Landi Prison before transferring him to an interrogation center run by the Pakistani Intelligence Services (ISI).

While Mr. Mohamed was held there, Pakistani intelligence officials rendered him to proxy detention and interrogation: for three months, U.S. agents, with the collaboration of the British Security Service ("MI5"), repeatedly interrogated him about his supposed ties to Al-Qaeda while he was held incommunicado. Mr. Mohamed's U.S. and British interrogators repeatedly threatened him with torture by foreign security forces if he did not cooperate, including Jordan's GID. One U.S. agent stated, "[i]f you don't talk to me, you're going to Jordan. We can't do what we want here, the Pakistanis can't do exactly what we want them to. The Arabs will deal with you." Pakistani security personnel also tortured Mr. Mohamed by beating him with a leather strap and hanging him by his hands from the ceiling of his cell for an entire week. A Pakistani official pressed a gun to Mr. Mohamed's chest. Mr. Mohamed stood paralyzed with fear for at least five minutes, certain he would die.

Mr. Mohamed's interrogators denied his repeated requests to meet with a lawyer for the three months of his detention. On July 19, 2002, Pakistani officials transported Mr. Mohamed from Karachi to Islamabad, where he was detained in a Special Branch facility until July 21, 2002.

Transfer to Exclusive "Authority and Control" of the United States in Pakistan and Unlawful Rendition by the CIA from Pakistan to Morocco

On July 21, 2002, Pakistani officials transported Mr. Mohamed from the Special Branch facility to what appeared to him to be a military airport. It was located on the outskirts of Islamabad, most likely the Pakistani Air Force base at Nur Khan. Once there, Pakistani officials transferred Mr. Mohamed to the exclusive authority and control of a CIA rendition team—all of whom were dressed in black and wearing masks. They stripped Mr. Mohamed naked and photographed him. One of them inserted their fingers into his anus, causing him intense pain. They then dressed Mr. Mohamed in a tracksuit, headphones, and a blindfold, rendering him senseless. They shackled Mr. Mohamed, forced him inside an aircraft and strapped him to a seat. Mr. Mohamed was unable to move for the duration of the ten-hour flight.

Flight records have confirmed that a Gulfstream V aircraft registered with the U.S. Federal Aviation Administration, N379P, left Islamabad on July 21, 2002 at 5.35 pm arriving in Rabat, Morocco early the next morning, 22 July 2002, at 3.42 am.

The procedures followed by the CIA rendition team were consistent with U.S. policies and procedures for rendition operations. *See e.g.*, Levin Memo at 2-3.

Unlawful Rendition by CIA from Pakistan to Morocco

The CIA unlawfully rendered Mr. Mohamed from Pakistan to Morocco, a country known for its use of torture. *See* Bureau of Democracy, Hum. Rts. and Lab., *Country Reports on Human Rights Practices: Morocco* § 1(c), U.S. Dep't of State (Mar. 31, 2003), *available at*

<https://2009-2017.state.gov/j/drl/rls/hrrpt/2002/18284.htm> ["U.S. Morocco Report 2002"]. The CIA rendered Mr. Mohamed to Morocco for secret detention and interrogation by Moroccan intelligence officials using methods, including torture, prohibited by U.S. and international law.

The United States knew that Moroccan authorities used torture and other cruel, inhuman, and degrading methods during its detention and interrogation of persons, who they suspected of terrorism. The United States rendered at least six men, including Mr. Mohamed, to Morocco for detention and interrogation. Moroccan authorities detained, interrogated and tortured all six at Témara Prison. *See* Torture Unredacted Report at 122-23. Morocco granted CIA agents access to that prison and participated in interrogations of men who the United States had rendered there. *See id.*; Hawkins, *Return of the Renditioned*; Alami, *Morocco Crushed Dissent Using a U.S. Interrogation Site*.

Arbitrary Detention, Interrogation and Torture by Proxy in Morocco

For the next 18 months, July 2002–January 2004, Moroccan government agents held Mr. Mohamed incommunicado at a number of Moroccan prisons, where they interrogated and tortured him.

When Moroccan government agents held him at Témara, Mr. Mohamed experienced what he described as a “softening up process.” His guards threatened him with torture and rape. They also held Mr. Mohamed incommunicado in solitary confinement in cruel, inhuman, and degrading conditions.

The worst period of Mr. Mohamed’s torture began on August 6, 2002 and lasted for several months. During this time, masked men, dressed in military uniform, repeatedly severely beat Mr. Mohamed, until he vomited and fell to the ground in pain. The beatings were so severe that they broke his bones and Mr. Mohamed would often lose consciousness. His torturers also used a scalpel during torture sessions, using it first to cut his clothes off, and then, once he was naked, to cut his body. They first carved an inch-long incision on the right side of Mr. Mohamed’s chest. Mr. Mohamed screamed in pain. For two hours, his torturers scored his entire body with the blade, including his penis. Mr. Mohamed’s torturers also poured a hot stinging liquid into the open wounds on his penis. Mr. Mohamed remembers his torturers commenting it would be better if they just cut his penis off, as he would only breed terrorists. They repeatedly threatened him with death, electrocution, and rape.

In September 2002, Moroccan officials transferred Mr. Mohamed to a second detention facility, where he was arbitrarily detained and tortured until January 2004. In his cell, Mr. Mohamed was handcuffed and fitted with earphones and made to listen to extremely loud music and the sounds of pornographic films day and night, depriving him of sleep for days. He was held in solitary in damp and moldy cells with open sewage for more than a month. Fearing that his captors had drugged his food, Mr. Mohamed began a hunger strike, but his captors forcibly fed him.

Mr. Mohamed’s interrogators also continued to use the scalpel torture on him and threatened him with other torture methods. His interrogators demanded that he confess to being a senior Al-Qaeda operative.

Transfer to the Exclusive “Authority and Control” of the United States in Morocco

On the evening of January 21, 2004, Moroccan officials handcuffed and blindfolded Mr. Mohamed, forced him inside a vehicle, and drove him to an airstrip. There, his blindfold was removed and he was able to see that he had been turned over to five U.S. agents. They all spoke American-accented English. The CIA rendition team was dressed in black, wearing masks and boots. They subjected Mr. Mohamed to the standardized CIA rendition procedures, cutting off his clothing and photographing his nude body. Because of the injuries Mr. Mohamed had sustained, this process took approximately 30 minutes to complete. Later, one of the team took additional photographs of Mr. Mohamed “to show Washington” that his wounds were healing, they said.

Unlawful Rendition by the CIA from Morocco to Afghanistan

After the CIA rendition team had prepared Mr. Mohamed, they forced him into a plane and flew him to Afghanistan. Flight records have confirmed that Mr. Mohamed was flown from Rabat, Morocco on January 22, 2004 at 2.05 a.m. aboard a Boeing-737, registered with the F.A.A. N313P, that landed in Kabul, Afghanistan, the same day at 9.58 a.m.

The United States secretly rendered Mr. Mohamed from Morocco to Afghanistan. It did not inform Mr. Mohamed of the reason for his rendition or detention, nor did it charge him with a crime. It denied him access to a lawyer and an opportunity for him to challenge the basis of his detention.

Arbitrary Detention, Interrogation and Torture at the “Dark Prison” in Afghanistan

Once in Afghanistan, U.S. agents transported Mr. Mohamed to the “Dark Prison”—a secret CIA-run detention facility. The CIA held him there from January 2004 until late May 2004. In the Dark Prison, CIA agents interrogated and tortured him. They beat Mr. Mohamed repeatedly, bashing his head against concrete walls until he began to bleed. They held him for twenty-three hours a day alone in a tiny, pitch-black cell, chained to the floor, and largely immobilized. Unable to see, Mr. Mohamed often spilled the contents of the bucket he had to use as a toilet, over his blanket. Eventually Mr. Mohamed’s captors reduced the periods of darkness to twelve-hours a day. Prison guards confined Mr. Mohamed in extremely cold temperatures with nothing but shorts, a thin shirt, and a bed sheet. They often hung him by his hands from a pole in his cell for days at a time. Mr. Mohamed’s legs swelled and he lost feeling in his wrists and hands.

CIA agents subjected Mr. Mohamed to sensory deprivation. They pumped frightening sounds, including the screams of women and children, at ear-shattering levels into his cell twenty-four-hours a day. To compound Mr. Mohamed’s suffering, masked guards visited his cell to make sure he remained awake. Mr. Mohamed did not sleep properly for the entire time he was in the Dark Prison.

Mr. Mohamed’s captors deprived him of adequate food and water. They fed him a bare minimum quantity of raw rice, beans, and bread on an irregular basis. Mr. Mohamed lost between forty and sixty pounds in four months partly because of the food deprivation.

CIA agents repeatedly interrogated Mr. Mohamed. Delirious and weakened by these interrogations and torture sessions, Mr. Mohamed fabricated stories about individuals in pictures his interrogators displayed in a desperate bid to end his torture.

In May 2004, Mr. Mohamed's torturers permitted him to go outside without his blindfold. This was the first time Mr. Mohamed had seen the sun in two years.

Transfer to Bagram Air Base

In late May 2004, Mr. Mohamed's captors blindfolded him, placed headphones over his head, and handcuffed and shackled him before forcing him into a helicopter. Once inside, they bound Mr. Mohamed to other detainees aboard. Mr. Mohamed was then flown to what he later learned was Bagram Air Base, a U.S. military-run facility located on the outskirts of Kabul.

The International Committee of the Red Cross ("ICRC") identified two U.S.-run detention facilities at the Bagram Air Base—one official "Detention Facility in Parwan" and the other a secret facility where abuse of detainees occurred. This second, secret facility was called the "Tor Jail" which translates to the "black jail." See Hilary Andersson, *Red Cross Confirms 'Second Jail' at Bagram, Afghanistan*, BBC: News, May 11, 2010, http://news.bbc.co.uk/2/hi/south_asia/8674179.stm.

Arbitrary Detention, Interrogation and Torture at Bagram Air Base

The U.S. military held Mr. Mohamed at the Bagram Air Base from May to September 2004. Upon arrival, Mr. Mohamed's captors left him for many hours tied, blindfolded, and wearing earphones, unable to use the bathroom nor pray. For two days, Mr. Mohamed slept on the bare ground. After two days, guards gave him one thin blanket to sleep on. At Bagram, guards forced Mr. Mohamed and eight to ten other men to shower in front of them while they commented on which "PUAC" (Prisoner Under American Custody) was "worth" raping. U.S. agents repeatedly interrogated Mr. Mohamed. Each session lasted from 6-12 hours. During one of these sessions, Mr. Mohamed's interrogators forced him to sign a false confession about Jose Padilla, a man whom he had never met.

At Bagram, Mr. Mohamed received his first communication with the outside world since his abduction in Pakistan. In late May or June, 2004, Mr. Mohamed met with a representative of the ICRC who was investigating his disappearance. Before this time, Mr. Mohamed's Pakistani, Moroccan, and U.S. captors had refused his repeated requests to communicate with his family, lawyer, or consulate.

Transfer to Guantanamo

In September 2004, U.S. officials flew Mr. Mohamed with eight other men aboard a military aircraft (call-sign RCH948Y) to the U.S. military detention facility at Guantanamo Bay, Cuba. The U.S. military arbitrarily detained, interrogated, and tortured Mr. Mohamed for more than four years at Guantanamo. The conditions under which the U.S. military arbitrarily detained and interrogated Mr. Mohamed were cruel, inhuman, and degrading, rising to the level of torture. See e.g. Towards the Closure of Guantanamo, Inter-Am. Comm'n H.R., OAS/Ser.L/V/II, doc. 20/15 (2015) ["Closure of Guantanamo Report"].

Shortly after his arrival at Guantanamo, U.S. officials charged Mr. Mohamed with conspiracy under then-President Bush's Military Order. This was the first charge made against him, after more than two years of detention. The United States eventually dropped these charges.

Release Without Charge

On February 23, 2009, the United States released Mr. Mohamed, returning him to the United Kingdom without charge. In November 2010, the U.K. government compensated Mr. Mohamed and two other survivors of the CIA's RDI Program for its role in their forced disappearances, arbitrary detention and torture. *Binyam Mohamed v. Secretary of State* [2010] EWCA Civ 65, T1/2009/2331 [Appendix, paras. iv-x].

Efforts by Family to Locate Mr. Mohamed

Beginning in June 2002, Mr. Mohamed's brother and sister who reside in the United States attempted to locate Mr. Mohamed after his forced disappearance in Pakistan. In the summer of 2002, two FBI agents visited them. Mr. Mohamed's brother and sister asked the agents about their brother's whereabouts. The FBI agents told them that their brother might be in the custody of the Pakistani government and that they should inquire at the Pakistan consulate, which they did to no avail. From the summer of 2002 to December, 2003, Mr. Mohamed's sister contacted the FBI ten times, seeking information about her brother's whereabouts. The FBI provided no information, told her to stop calling, and that she should address her inquiries to the Pakistan consulate.

In 2005, three years after his abduction in Pakistan, the ICRC advised Mr. Mohamed's siblings that the United States had been holding Mr. Mohamed at Guantanamo since September 2004.

Corroboration of Mr. Mohamed's Account of His Abduction, Unlawful Rendition, Arbitrary Detention, Forced Disappearance, and Torture

Corroboration by the United States

The Senate Torture Report confirmed that Mr. Mohamed was subject to the RDI Program. Mr. Mohamed's name appears 31 times in the report, often in association with information the report characterizes as inaccurate. Senate Torture Report at 98.

Corroboration by the European Parliament, the Council of Europe, the U.K. Government and Human Rights Organizations

The European Parliament and Council of Europe determined that a known rendition plane (N379P) was used to unlawfully render Mr. Mohamed to Morocco and another known rendition plane (N313P) rendered him to Afghanistan before rendering another individual, Khaled El-Masri.

Based on its examination of 42 classified CIA documents turned over to it by MI5, the English High Court confirmed that the CIA was involved in Mr. Mohamed's arbitrary detention and torture. In sum, the Court concluded:

- U.S. authorities had developed a "new strategy" for "interviews" designed by an expert "interviewer";
- Under this "new strategy," Binyam Mohamed had been "subjected to continuous sleep deprivation";
- Mr. Mohamed was also subject to "threats and inducements" and that his "fears of being removed from United States custody and 'disappearing' were played upon";
- The "stress brought about by these deliberate tactics was increased by him being shackled during his interviews";

- Binyam Mohamed was being kept under self-harm observation and that the “interviews” were “causing him significant mental stress and suffering”;
- The CIA-provided reports made clear that the above-described treatment was occurring and the effect of that intentional treatment upon Mr. Mohamed;
- The reported treatment, if administered by the U.K. would have been a breach of law, and that the treatment could “easily be contended to be at the very least cruel, inhuman and degrading treatment. . . by the United States authorities.”

Binyam Mohamed v. Secretary of State, ¶¶ iv-x.

The U.K. Parliament’s Security and Intelligence Committee confirmed that an MI5 officer interviewed Mr. Mohamed for three hours while he was detained in Karachi.

The Director General of the U.K. Security Services confirmed that U.S. authorities controlled Mr. Mohamed’s detention in Pakistan and had plans to render him to Afghanistan in 2002.

The Continuing Harms to Mr. Mohamed

Mr. Mohamed suffered and continues to suffer physically, psychologically, and emotionally from the trauma of his unlawful rendition, secret detention, and torture. To this day, Mr. Mohamed continues to suffer from a number of symptoms traceable to the time of his detention and torture in Morocco. These symptoms include chronic dizziness and diarrhea, and permanent skin discoloration. He has trouble concentrating and difficulty remembering to take daily medications or attend regular appointments. He also has trouble sleeping and has a diminished appetite. He suffers extreme fatigue and weakness in his limbs. Mr. Mohamed has been diagnosed with mental illnesses associated with torture, including depression and anxiety. In addition, he suffers from symptoms related to Post-Traumatic Stress Disorder (PTSD). Mr. Mohamed also suffers from social isolation and stigmatization since his return home; people are fearful of associating with him due to the unfounded allegations made against him by the United States and other state actors.

4. Bisher Al-Rawi⁷

Bisher Al-Rawi is an Iraqi citizen who fled to the United Kingdom after his father was detained and tortured by Saddam Hussein’s secret police. Mr. Al-Rawi and his family obtained legal residency in the U.K. in 1985. Mr. Al-Rawi worked as an interpreter, and on numerous occasions did so for British intelligence, including MI5. Mr. Al-Rawi often served as an intermediary between MI5 and a Muslim cleric with suspected Al-Qaeda ties, Abu Qatada. In 2002, Mr. Al-Rawi, together with his brother Mr. Wahab Al-Rawi, and three mutual friends, began a mobile peanut-oil processing business based in the Gambia.

Mr. Al-Rawi’s Abduction, Arbitrary Detention and Torture in The Gambia

In November 2002, Mr. Al-Rawi traveled to The Gambia for his new business venture. Around this time, MI5 sent a telegram to the CIA that falsely stated that Mr. Al-Rawi was an “Islamic

⁷ Unless otherwise stated, the following allegations are based on Mr. Al-Rawi’s declaration, exhibits, and other documents filed in *Mohamed v. Jeppesen Dataplan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008). Filings available at <https://www.therenditionproject.org.uk/documents/legal-cases-jeppesen.html#Jeppesen-Docs>.

extremist.” MI5 eventually realized their mistake but the exculpatory information was never relayed to the CIA. Instead, MI5 relayed Mr. Al-Rawi’s flight information to the CIA without the customary disclaimer that the information “must not be used as the basis of overt, covert or executive action.” Indeed the U.K. inquired in that same telegram if the Gambians would be able to “cover” the individuals while they were in the country. U.S. authorities relayed the information to the Gambian security services who detained Mr. Al-Rawi for questioning when he arrived at Banjul Airport on November 8, 2002. In their report, the U.K Parliamentary Intelligence and Security Committee concluded that U.S. authorities “instigated the men’s arrest.” The Gambians communicated their detention of Mr. Al-Rawi to the United States, which forwarded it on to the United Kingdom by November 11, 2002.

Gambian security service officials transported Mr. Al-Rawi and his colleagues to the headquarters of the Gambian Intelligence Agency. There, Gambian officials interrogated Mr. Al-Rawi and his companions about the reasons for their travel and their supposed plan to build a terrorist camp in The Gambia. Gambian officials did not charge the men, nor did they explain why they were detaining them. The next morning, two U.S. officials arrived and photographed Mr. Al-Rawi and his companions. They also participated in Mr. Al-Rawi’s interrogation. For the next two weeks, Mr. Al-Rawi was held incommunicado. Although Mr. Al-Rawi himself did not ask for consular assistance, believing it would be futile, his companions asked their captors numerous times to contact the British consulate. The U.S. officials denied their requests and mocked them for asking for consular assistance. They told them that British officials had arranged for their arrest and detention.

Mr. Al-Rawi was separated from some of his companions and transferred to a CIA-run “safehouse.” U.S. officials controlled the interrogations there. Mr. Al-Rawi was held in a small, hot and windowless cell. His captors interrogated him about his relationship with MI5 and Abu Qatada. His U.S. interrogators asked Mr. Al-Rawi if he would be willing to work for them in the U.K.

Transfer to the Exclusive Authority and Control of the United States in The Gambia

On December 8, 2002, Gambian officials transported Mr. Al-Rawi to the Banjul airport. At the airport, supervised by U.S. officials, Gambian officials hooded him, cuffed his hands behind his back, and shackled him before taking him to a dark room on the perimeter of the airport. There, a CIA rendition team cut his clothes off, leaving him naked. They dressed him in a diaper and restrained him, inserted earplugs, and placed a blindfold and goggles over his eyes. The procedures followed were consistent with CIA policy and practice on renditions. Levin Memo at 2-3.

Unlawful Rendition by the CIA to Afghanistan

The CIA rendition team forced Mr. Al-Rawi onto a plane and strapped him onto a stretcher-like platform once inside. For the duration of the nine-hour journey, Mr. Al-Rawi was immobilized. His captors denied him food and water and access to a toilet. Mr. Al-Rawi felt the small plane land once before it reached its final destination.

Flight records have confirmed that on December 8, 2002, a Gulfstream V aircraft, registered with the FAA, N379P, departed Banjul airport at 9.45 p.m. and landed in Cairo, Egypt at 3.45 a.m. the

next day. An hour later, that same aircraft left Cairo to land in Kabul, Afghanistan at 9.04 a.m. the same day.

Mr. Al-Rawi's Arbitrary Detention, Interrogation and Torture in Afghanistan

In Afghanistan, Mr. Al-Rawi's captors held him in a secret CIA-run prison that Mr. Al-Rawi and other men held there knew as the "Dark Prison." The CIA detained and tortured Mr. Al-Rawi for two weeks. His captors shackled, handcuffed, and held him incommunicado in solitary confinement twenty-four hours a day. They deprived Mr. Al-Rawi of food and water and gave him an uncovered metal bucket to use as a toilet. The cell was frigid but prison personnel did not provide him with adequate clothing and blankets to combat the cold. Loud sounds and strange music were blasted into his cell, preventing Mr. Al-Rawi from sleeping. In the rare moments when the tape would end, and the loud music stopped, Mr. Al-Rawi could hear his friend Jamil El-Banna calling his name. Fearing retaliation by his guards, Mr. Al-Rawi did not respond. Jamil eventually stopped calling out to him.

Transfer to Bagram Air Base

After two weeks, Mr. Al-Rawi's captors hooded, handcuffed, and shackled him. The guards severely beat him, forced Mr. Al-Rawi into the back of a truck, and threw other bodies on top of him, suffocating him. Mr. Al-Rawi sustained cuts and bruises all over his body and his vision was impaired for hours. After the truck came to a halt, Mr. Al-Rawi's captors forced him into a helicopter and flew him to what he later learned was Bagram Air Base. During the flight, Mr. Al-Rawi feared he would be thrown to his death.

On January 4, 2003, an ICRC representative met with Mr. Al-Rawi at the base; the first person other than his captors and torturers since he was apprehended and detained in The Gambia.

Arbitrary Detention, Interrogation and Torture at Bagram Air Base

For more than two months, the U.S. military arbitrarily detained Mr. Al-Rawi at Bagram, interrogated him, and subjected him to physical and psychological torture. They beat him, dragged him along the floor, deprived him of access to a toilet, shower, or clean clothes, held him in a squalid cell, and forced him to undergo prolonged periods of isolation and sleep deprivation. They threatened Mr. Al-Rawi with death and with transfer to another country to be tortured.

Unlawful Rendition to Guantánamo

On February 7, 2003, the U.S. military unlawfully rendered Mr. Al-Rawi from Afghanistan to Guantánamo Bay, Cuba. Shortly before his rendition there, U.S. officials held Mr. Al-Rawi in solitary confinement, deprived him of food, and shaved off his hair and beard. Immediately before he was forced into a large aircraft, U.S. officials handcuffed and shackled him, forced a bag on his head, placed darkened goggles on his eyes, and headphones over his ears. Once inside the aircraft, U.S. officials strapped Mr. Al-Rawi to a seat and immobilized him for the duration of the twenty-four-hour flight.

The U.S. military arbitrarily detained, interrogated, and tortured Mr. Al-Rawi at Guantanamo for more than four years. The conditions under which the military arbitrarily detained and interrogated Mr. Al-Rawi there were cruel, inhuman, and degrading, rising to the level of torture. *See e.g.*

Closure of Guantanamo Report. Mr. Al-Rawi summed up his experience for those four years, as living “in the shadows, where one can’t feel quite alive, but one does not die.”

Release Without Charge

On March 30, 2007, more than four years after he was arbitrarily arrested and detained in The Gambia, U.S. officials released Mr. Al-Rawi from Guantanamo, returning him to his home in England without charge.

Mr. Al-Rawi’s Family’s Efforts to Find Him

After Mr. Al-Rawi’s abduction in The Gambia, his mother filed a habeas corpus petition in the High Court but the Gambian government did not respond to it.

In January 2003, Amnesty International discovered that Mr. Al-Rawi had been secretly transferred from The Gambia to the U.S. Air Force Base at Bagram without extradition or deportation proceedings and despite his mother’s habeas petition.

The United States continued to refuse to confirm Mr. Al-Rawi’s whereabouts, despite repeated requests for this information for the duration of his detention. Mr. Al-Rawi’s family first learned of Mr. Al-Rawi’s whereabouts when the ICRC contacted them to advise them that the United States was detaining Mr. Al-Rawi at Guantanamo Bay, Cuba.

Mr. Al-Rawi’s Account of His Abduction, Unlawful Rendition, Arbitrary Detention, Forced Disappearance and Torture Have Been Corroborated

Corroboration by the United States

The Senate Torture Report confirmed that Mr. Al-Rawi was subject to the RDI Program and held in U.S. custody. Senate Torture Report at 458.

Combatant Status Review documents confirmed that the U.S. military detained Mr. Al-Rawi at Guantanamo. Memorandum for Commander, SOUTHCOM, Recommendation for Continued Detention Under DoD Control (CD) for Guantanamo Detainee, ISN US9IZ-000906 (S) (2005), available at <https://wikileaks.org/gitmo/pdf/iz/us9iz-000906dp.pdf>.

Corroboration by the Council of Europe, the U.K. and Human Rights Organizations

The Council of Europe confirmed that British and U.S. intelligence services cooperated and shared information before Mr. Al-Rawi’s arrest in the Gambia. The Council of Europe described the arrest and detention of Mr. Al-Rawi as “an example of (ill-conceived) cooperation between the services of a European country (the British MI5) and the CIA in abducting persons.” Dick Marty, *Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States*, Comm. L. Aff. & Human Rights, Eur. Parl. Assembly, Doc. 10957 (2006), ¶ 163 [“Marty Report 2006”].

The U.K. Parliamentary Intelligence and Security Committee confirmed that the United States advised the U.K. government that it intended to conduct a “Rendition to Detention” operation involving Al-Rawi. The Committee also notes that the U.K. government claimed to have protested

that operation. Report on Rendition (Intelligence and Sec. Comm., 2007), *available at* <https://fas.org/irp/world/uk/rendition.pdf>.

The ICRC investigated Mr. Al-Rawi's detention and confirmed that the U.S. military detained him at Bagram Air Base and later transferred him to Guantanamo.

The Rendition Project confirmed the timeline of Mr. Al-Rawi's ordeal and the locations of his detention. Torture Unredacted Report at 181.

The Continuing Harms to Mr. Al-Rawi

Mr. Al-Rawi continues to suffer the physical and psychological effects of his forced disappearance, arbitrary detention, and torture by the United States. In an interview with PBS in 2007, Mr. Al-Rawi described some of these long-term effects: "I think the psychological effect of this experience, in my opinion, far outweighs the physical.... Psychological you live with all your life." He continued, "They degraded people, hurt people, tortured people, dehumanized people. All of that I truly believe was unnecessary and uncalled for. And the effects of this on people were great." Reflecting on his experience, he emphasized his concern for the continued lack of justice and accountability, and how many individuals subject to the RDI Program are still completely unaccounted for. He stated, "I am very lucky I am here speaking to you today. Many others we haven't heard of and we probably will not hear of [those] who have gone through this procedure. They have no one fighting for them -- at least nobody visibly fighting for them. There's nothing that could be done for them." *Extended Interviews: Bisher Al-Rawi*, PBS (Oct. 8, 2007), *available at* <http://www.pbs.org/frontlineworld/stories/rendition701/interviews/bisher.html>.

B. U.S. COURTS DENIED PETITIONERS CIVIL REDRESS FOR THEIR FORCED DISAPPEARANCE, ARBITRARY DETENTION, TORTURE AND INHUMANE TREATMENT

On May 30, 2007, Mr. Mohamed, Mr. Bashmilah, Mr. Britel and Mr. Al-Rawi, filed a civil suit in U.S. federal court against Jeppesen Dataplan, Inc. ("Jeppesen") for Jeppesen's key role in their forced disappearances, secret detention, and torture. As alleged in the complaint, Jeppesen aided and abetted the violations of the men's rights under U.S. and international law by providing the CIA with flight plans, airspace clearance, and other navigational and logistical support to facilitate rendition flights. The U.S. government intervened in the lawsuit to assert the state secrets privilege, arguing that the case should be dismissed because further consideration of the case would be harmful to U.S. national security interests. In 2008, the district court dismissed the suit, but a three-judge panel of the Ninth Circuit reversed and found that the state secrets doctrine did not bar the case. *Mohamed v. Jeppesen Dataplan, Inc.*, 579 F.3d 943, 952-57 (9th Cir. 2010) In an *en banc* hearing, the Court of Appeals for the Ninth Circuit dismissed the case and reversed the panel, stating that "we are bound to follow the Supreme Court's admonition that 'even the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that [state] secrets are at stake.'" The U.S. Supreme Court declined to review the lower court's decision in 2011. No U.S. court has considered the merits of the men's credible claims of forced disappearance, secret detention, and torture by the United States and its proxies. *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1073 (9th Cir. 2010), *cert. denied*, 536 U.S. 1002 (2011). As a consequence, Petitioners and other similarly situated victims and survivors of CIA secret

detention, interrogation, and torture have no right of civil redress against the United States, its officials, agents, or contractors in U.S. courts.

C. THE CIA USED UNLAWFUL RENDITION, ARBITRARY DETENTION, FORCED DISAPPEARANCE AND TORTURE AS A MATTER OF POLICY⁸

The CIA and other state and non-state actors violated Mr. Bashmilah's, Mr. Britel's, Mr. Mohamed's, and Mr. Al-Rawi's rights pursuant to a U.S. government program or policy of forced disappearance, unlawful rendition, arbitrary detention, and torture. That program was authorized at the highest levels of the U.S. government, and designed, implemented, and managed by the government's agents and contractors as well as foreign-state actors and contractors. The program operated both within the United States and extraterritorially.

1. The CIA RDI Program

After the September 11 attacks against the United States, President Bush issued a presidential finding ("the Presidential Finding") authorizing the CIA to *pursue* and kill Al-Qaeda leadership and others who were found to pose "a continuing, serious threat of violence or death to U.S. persons and interests or planning terrorist activities." Senate Torture Report at 9. In practice, CIA officials were given nearly unfettered freedom to abduct any individual in the world who, in their judgment, qualified as an "Al-Qaeda affiliate." See James Risen & David Johnston, *Threats and Responses: Hunt for al-Qaeda; Bush has Widened Authority of CIA to Kill Terrorists*, N.Y. Times (Dec. 15, 2002), available at <https://www.nytimes.com/2002/12/15/world/threats-responses-hunt-for-al-qaeda-bush-has-widened-authority-cia-kill.html>. This broad authorization spawned the CIA's RDI Program. Little is publicly known about what quantum of evidence was required by the CIA to designate individuals as so-called high value targets subject to the RDI Program. On more than one occasion, the United States transferred individuals into the RDI Program based on a foreign government's "speculative" information. Senate Torture Report at 16, n. 32. The CIA also appears to have used foreign-state generated "confessions" and "intelligence" as evidence of who was a member of or affiliated with Al-Qaeda. The United States provided significant funding to many of the foreign states who collaborated with the CIA in the RDI Program.

The United States has also used bounties on identified or suspected terrorists to encourage foreign state participation in the program and other counterterrorism efforts. In 2001, the United States revived its "Rewards for Justice Program," which rewarded individuals who provide information leading to the "identification or location of an individual who holds a key leadership position in a terrorist organization." The USA Patriot Act allocated 25 million U.S. dollars for information leading to the "the capture of Usama bin Laden and other key Al-Qaeda leaders." Off. of the Spokesman, Rewards for Justice Fact Sheet (2001), available at <https://2001-2009.state.gov/r/pa/prs/ps/2001/6846.htm>. Although the United States claims that it used these awards for information on previously-identified and high-level terrorism leadership, men detained at Guantanamo who do not meet this criteria allege that foreign governments "sold [them] into capture." Associated Press, *Guantanamo Inmates Say They Were 'Sold': Warlords, Others 'Trumped up Charges for U.S. Cash Rewards*, NBC News (May 31, 2005),

⁸ Unless otherwise stated, the following is based on filings in *Mohamed v. Jeppesen Dataplan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008). Filings available at <https://www.therenditionproject.org.uk/documents/legal-cases-jeppesen.html#Jeppesen-Docs>.

http://www.nbcnews.com/id/8049868/ns/world_news/t/guantanamo-inmates-say-they-were-sold/#.X4nR3XhKiko. One man, an Afghan refugee who was living in Pakistan, “accused the country’s intelligence service of trumping up evidence against him to get bounty money from the U.S.” The man testified before the Combatant Status Review Tribunal that ““when [he] was in jail, [his captors] said [he] needed to pay them money and if [he] didn’t pay them, they’d make up wrong accusations about [him] and sell [him] to the Americans and [he’d] definitely go to Cuba.”” Another stated, ““It’s obvious. They knew Americans were looking for Arabs, so they captured Arabs and sold them—just like someone catches a fish and sells it.”” This detainee claims he was “seized by ‘mafia’ operatives somewhere in Europe and sold to Americans because he was in the wrong place at the wrong time—an Arab in a foreign country.” *Id.*

2. The CIA RDI Program’s Authorization and Operation

The authorization and operational policies of the CIA’s RDI Program were memorialized in U.S. government documents, the statements of U.S. officials, U.S. government reports, and Congressional testimony. Inter-governmental organizations, including the United Nations, the Council of Europe, the European Parliament, and the International Criminal Court have relied on these reports—and other evidence from partner states of rendition flight records and cooperation with the CIA—while investigating the United States’ policy of unlawful rendition, arbitrary detention, and torture. U.S. government documents corroborating these details include:

- CIA Office of Inspector General Special Review of Counterterrorism Detention and Interrogation Activities (Sept. 2001 – Oct. 2003) (May 7, 2004)
- Senate Committee on Armed Services’ Inquiry into the Treatment of Detainees in U.S. Custody (Nov. 20, 2008)
- Report of the Department of Justice’s Office of Professional Responsibility Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on Suspected Terrorists (July 2009)
- Senate Select Committee on Intelligence’s Executive Summary to The Senate Select Committee on Intelligence’s Study of the Central Intelligence Agency’s Detention and Interrogation Program

While the full report remains classified, the Senate Torture Report’s partially redacted Executive Summary documents the CIA’s role in devising, developing, and implementing its RDI Program. The report “is the most comprehensive review ever conducted” of the detention and interrogation components of the program, with over six million pages of material reviewed, including CIA operational cables, reports, memoranda, intelligence products, and numerous interviews conducted of CIA personnel by various entities within the CIA. Senate Torture Report at 9.

The Senate Torture Report focused on the detainee treatment element of the program and did not have the scope to investigate the rendition portion; still, the Report confirmed that the CIA held at least 119 men in the program. Senate Torture Report at 9, n.5; 64, n. 318. *See id.* at 11 (describing Presidential Memorandum of Notification (“MON”) authorizing the CIA to capture persons suspected of being members of or associated with the Al-Qaeda terrorist organization and the CIA’s establishment of a network of secret prisons to detain captured suspects); 15, n. 29 (CIA forms the “Rendition, Detention, and Interrogation Group” to conduct and oversee renditions); 64,

n. 318 (collecting and summarizing CIA detainees' descriptions of CIA rendition process); 14, n. 26, 28; 458 (Appendix 2, listing names of 119 men who the CIA unlawfully rendered, forcibly disappeared, secretly detained, interrogated, and tortured in CIA "black site" prisons). *See also* Central Intelligence Agency, Background Paper on CIA's Combined Use of Interrogation Techniques 2-3 (2004), https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC001126.pdf (describing the CIA rendition process as a key component of the CIA's unlawful rendition and torture program) ["CIA RDI Procedures Memo"]. There were most certainly more than 119 individuals who were subjected to extraordinary rendition; those who were not held in a CIA-run facility were not included in the Senate Torture Report, including petitioner Mr. Britel who was held in Morocco. *See* Open Society Justice Initiative, Globalizing Torture: CIA Secret Detention and Extraordinary Rendition 30-60 (Open Society Foundations, 2012) <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf> ["Globalizing Torture Report"] (listing 136 individuals captured and unlawfully rendered by the CIA); Torture Unredacted Report at 10, 22 (covering 120 individual renditions in the report but noting that there were "significant omissions" from the list of 119).

The United States was compelled to produce some key RDI documents in the discovery phase of the *Salim v. Mitchell* litigation. 268 F. Supp. 3d 1132 (E.D. Wash. 2017). The case involved three individuals' claims against James Mitchell and John Bruce Jessen, the CIA contractors and psychologists who designed the "enhanced interrogation techniques" used by the CIA, its agents, and contractors in the RDI Program. During discovery, two senior CIA officials, Jose Rodriguez, then-head of the CIA's Counter Terrorism Center, and John Rizzo, then-Acting General Counsel for the Agency, also provided deposition testimony on the creation, authorization and implementation of the RDI Program. *See* Rodriguez Deposition Transcript and Rizzo Deposition Transcript, *Salim v. Mitchell*, 268 F. Supp. 3d 1132 (E.D. Wash. 2017), *available at* www.torturedatabase.org.

Although the Senate Torture Report does not use these terms, it documents the CIA's use of arbitrary detention, forced disappearances and torture as policy. *See* Senate Torture Report at 32, 37. As authorized by the Presidential Finding, the CIA secretly detained suspected terrorists in CIA-run "black site" prisons or prisons run by foreign governments. *See e.g.*, Senate Torture Report at 11-14, 49-50, 96-97. No judicial authorization for the capture and detention of suspects was obtained by the CIA, and agents denied the detainees any due process protections, access to counsel or the ICRC, or any judicial review of their detentions or pre-transfer opportunity to make out a claim of *refoulement*. *See also* U.N. Human Rights Council, *A Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, ¶¶ 98-164, U.N. Doc. A/HRC/13/42 (May. 20, 2010) ["U.N. Secret Detention Report 2010"] (documenting CIA's prolonged secret detention policy).

The Senate Torture Report focused extensively on the program created by the CIA that utilized torture and other cruel, inhuman, and degrading treatment on foreign nationals. Twelve specific torture methods, which the CIA referred to as "enhanced interrogation techniques," were used on captured detainees: "(1) the attention grasp, (2) walling, (3) facial hold, (4) facial slap, (5) cramped confinement, (6) wall standing, (7) stress positions, (8) sleep deprivation, (9) waterboard, (10) use of diapers, (11) use of insects, and (12) mock burial." *See* Senate Torture report at 32, 37. While

the report did not explicitly label the “enhanced interrogation techniques” as torture, one of the report’s main findings was that “the interrogations of CIA detainees were brutal and far worse than the CIA represented” and the CIA used techniques that were physically harmful and used against medical advice on detainees with physical injuries. *See* Senate Torture Report at 32-33, n. 139.

The CIA and its agents and contractors used many of these methods until the end of the CIA’s unlawful rendition and torture program in 2008. *See e.g.*, Senate Torture Report at 49-171. The report acknowledges that the CIA held at least 119 men in secret CIA-run prisons and notes many of them were subject to harsh interrogation techniques. *See* Senate Torture report at 458. *See also id.* at 49-62 (describing interrogations and conditions of detention at CIA facilities). The true number of tortured individuals is unknown, and the Senate Torture Report confirmed that CIA record-keeping for the program was poor. Senate Torture Report at xxi; 9 n. 5; 50; 64 n. 318 (Appendix 2 does not include individuals who the CIA rendered to foreign governments for detention, interrogation, and torture). Finally, the Senate Torture Report documented the serious physical and mental damage inflicted upon the men during their prolonged secret detention and torturous interrogation methods. *See e.g., id.* at 16 n. 32; 33; 109-10; 132.

In sum, the Senate Torture Report confirmed that from 2002 to 2008, the CIA used unlawful rendition, forced disappearance, arbitrary and incommunicado detention, torture, and other cruel, inhuman, and degrading treatment as a matter of policy.

3. Foreign-State Cooperation with the CIA RDI Program

The RDI Program relied on the cooperation and collaboration of foreign state actors and contractors to apprehend, detain, interrogate, and torture suspected terrorists. As the Senate Torture Report concluded, “To encourage governments to clandestinely host CIA detention sites, or to increase support for existing sites, the CIA provided millions of dollars in cash payments to foreign government officials.” Senate Torture Report at xxv-xxvi. The CIA targeted those they suspected to be associated with Al-Qaeda, though the Presidential Finding made clear that only those individuals posing “a continuing, serious threat of violence or death to U.S. persons and interests or planning terrorist activities” were eligible for CIA detention. Senate Torture Report at 9. The CIA appears to have used its foreign collaborators to obtain—or, often, to manufacture through coerced confessions—information demonstrating such a “continuing, serious threat.” Once so designated, these individuals were as vulnerable to abduction, transfer, and secret detention as were known Al-Qaeda leadership. Indeed, initial sorting of detainees for the program was often initiated by other intelligence agencies, including foreign-state agencies. It is likely that many governments (including, e.g. Jordan, Pakistan, The Gambia, and Morocco) were on the lookout for individuals in whom—they believed or hoped—the United States would have great interest. According to the U.N. Secret Detention Report, the CIA ran its proxy detention system through foreign detention centers or agreements with foreign agencies. U.N. Secret Detention Report 2010, ¶ 36. And broadly, the functioning of the RDI Program—including proxy detention and torture—was a matter of policy for the CIA and United States government: men, including Petitioners, were rendered to third nations to facilitate the interrogations of terrorist suspects. *See generally* Jane Mayer, *Outsourcing Torture: The Secret History of America’s “Extraordinary Rendition” Program*, *New Yorker* (Feb. 7, 2005), available at <https://www.newyorker.com/magazine/2005/02/14/outourcing-torture> (explaining the RDI Program’s design—transferring suspects from one foreign state to another for interrogation and

prosecution—and the “unstated purpose of such renditions”: interrogations using torture and cruel, inhuman, and degrading treatment); Globalizing Torture Report (“Both the secret detention program and the extraordinary rendition program...entailed the abduction and disappearance of detainees and their extra-legal transfer on secret flights to undisclosed locations around the world, followed by their incommunicado detention, interrogation, torture, and abuse.”).

The collaboration of Jordan, Pakistan, and Morocco with the United States in the implementation of the RDI Program is well-documented.

a. Jordan’s Cooperation with the CIA RDI Program

Cooperation with the United States regarding security and intelligence issues deepened after the September 11 attacks; a significant component of this cooperation was Jordan’s participation in the RDI Program. Amnesty Int’l, *Jordan: “Your Confessions are Ready for You to Sign”: Detention and Torture of Political Suspects*, AI Index MDE 16/005/2006 (July 23, 2006) [“Amnesty Int’l Jordan Report”]. Amnesty International has described Jordan as a “hub” in the RDI Program. *Id.* at 33. A former senior counter-terrorism official at the CIA, involved in creating the Program, stated: “Jordan is at the top of our list of foreign partners...We have similar agendas, and they are willing to help any way they can.” *Id.* (internal citations omitted). Human Rights Watch concluded that the Jordanian security services “acted as a true proxy jailer for the CIA: primarily serving the CIA’s interests, rather than collaborating with the agency for its own security reasons.” Double Jeopardy: CIA Renditions to Jordan 24 (Human Rights Watch, 2008), available at <https://www.hrw.org/report/2008/04/07/double-jeopardy/cia-renditions-jordan#>.

Jordan served as a site for the apprehension, transfer, and continued detention of victims of the CIA’s RDI Program. *See* Torture Unredacted Report at 45, 58, 361, 364. Jordan also allowed for the use of its airports and airspace to facilitate extraordinary rendition flights and related operations. Globalizing Torture Report at 87. The United Nations’ Joint Study on Secret Detention documented that at least 15 prisoners were rendered by the CIA to Jordan between 2001 and 2004. *Id.* The Council of Europe has also recognized Jordan’s substantial role in the program. In one report on the RDI Program, the Council identified Jordan as a “Detainee Transfer/Drop-off Point” for the Program. Marty Report 2006 at 17. Thus, the United States would often “arrange” for Jordan to “pick up” suspects, or receive suspects from other RDI foreign-partner countries for interrogation. This arrangement was strategic, because “[i]f you send a prisoner to Jordan you get a better interrogation” Amnesty Int’l Jordan Report at 33-34 (internal citations omitted).

b. Pakistan’s Cooperation with the CIA RDI Program

Following the September 11 terrorist attacks, Pakistan grappled with its untenable relationship with the Taliban and Al-Qaeda, without the resources or political will to do so. The United States stepped in with strategic and financial support in exchange for its cooperation, particularly with the RDI Program.

“Pakistan has provided more support, captured more terrorists and committed more troops than any other nation in the GCTF (Global Counter-terrorism Force).” Touqir Hussain, *U.S.-Pakistan Engagement: The War on Terrorism and Beyond*, U.S. Inst. of Peace, 5-6 (Aug. 2005) (internal citations omitted). By 2005, Pakistan itself had “arrested more than seven hundred terror suspects”. Touqir Hussain at 6. And, for its part:

[T]he United States extended grants to Pakistan equaling \$1 billion and wrote off \$1 billion in debt. In June 2003, the U.S. announced a \$3 billion assistance package for Pakistan to start in October 2004...with roughly equal amounts going to economic aid and security assistance.” Touqir Hussain at 6.

Beyond economic and military cooperation, “Pakistan captured, detained, interrogated, tortured, and abused individuals subjected to CIA secret detention and extraordinary rendition operations. It also permitted its airspace and airports to be used for flights associated with these operations.” Globalizing Torture Report at 98. Pakistan became a main recipient of U.S. bounties for terror suspects. The influx of U.S. bounties to Pakistan was so significant following the September 11 attacks, that it created a “black market in abductions.” The United States advertised \$5,000 bounties in Afghanistan for information on Al-Qaeda or Taliban fighters as well as \$25 million-dollar bounties for high-level terrorist “masterminds.” News of these rewards spread quickly in Pakistan too. In 2006, then-President Pervez Musharraf claimed Pakistani intelligence agents had earned “bounties totaling [sic] millions of dollars.” Tom Burgis, *US Fuels Pakistan Bounty Market*, Financial Times (Sep. 28, 2006), <https://www.ft.com/content/bbd820b2-4f3a-11db-b600-0000779e2340>. In the *Ameziane* case, the Commission noted that the U.S. government did not controvert the allegation that the United States offered Pakistan such bounties. *Ameziane v. United States*, Case 12.865, Inter-Am. Comm’n H.R., Report No. 29/20, OEA/Ser.L/V/II, doc. 39 ¶ 105-109 (2020).

“People have been seized by Pakistani police, border guards and bounty hunters eager to claim rewards offered for suspected terrorists.” Burgis, *Pakistan Bounty Market*. Abductees were handed over to Pakistani Intelligence, which held them in sites “run by the local intelligence services but where the CIA clearly had access.” See Torture Unredacted Report at 55. Many of these prisoners were in turn passed on to U.S. operatives. By 2006, Pakistan turned over at least 369 individuals to the United States. Burgis, *Pakistan Bounty Market*. There is evidence that Pakistan arbitrarily arrested many of them and then “groomed” them in Pakistani jails to “appear more like potential terrorists before being sold to American personnel.” Burgis, *Pakistan Bounty Market* (internal citations omitted). See also Amnesty Int’l, *Pakistan: Human Rights Ignored in the “War on Terror,”* AI Index ASA 33/036/2006 (Sep. 28, 2006).

c. Morocco’s Cooperation with the CIA RDI Program

According to the Open Society Justice Initiative, “Morocco detained and tortured and extraordinarily rendered individuals, and hosted secret CIA detention. It also permitted use of its airspace and airports for flights associated with CIA extraordinary rendition operations.” Globalizing Torture Report at 97. Morocco was a key proxy detention partner of the CIA, detaining at least six prisoners for the agency between 2002 and 2005. Torture Unredacted Report at 122 (detailing Morocco’s relationship with the United States and its participation with the CIA in detaining and torturing terror suspects). Multiple detainees’ “accounts of the layout of the prison, and the abuse to which they were subjected, matches with what is known about the Témara facility,” in which both Mr. Britel and Mr. Mohamed were held. *Id.* at 123. In State Department country reports contemporaneous to the *refoulement*, rendition and detention of Petitioners, the

United States reported that torture occurred within Morocco’s prison system and incommunicado detention and forced disappearances were regular practices, particularly at the Témara prison. U.S. Morocco Report 2002; Bureau of Democracy, Hum. Rts. and Lab., *Country Reports on Human Rights Practices: Morocco*, U.S. Dep’t of State (Feb. 25, 2004) available at <https://2001-2009.state.gov/p/nea/ci/mo/79308.htm> [“U.S. Morocco Report 2003”]. The CIA knew this as Moroccan intelligence gave the CIA access to Moroccan prisons, including Témara, and authorized CIA agents to participate in interrogations. See Torture Unredacted Report at 122-23.

D. THE UNITED STATES CONGRESS HAS GRANTED IMMUNITY TO U.S. OFFICIALS INVOLVED IN FORCED DISAPPEARANCE, TORTURE AND OTHER HUMAN RIGHTS VIOLATIONS

The United States has erected legislative barriers that inhibit government investigations and prosecutions and that prevent redress for victims and survivors. The Detainee Treatment Act of 2005 (DTA) and the Military Commissions Act of 2006 (MCA) were enacted to shield U.S. agents responsible for the unlawful rendition, detention, and interrogation of men in connection with U.S. counter-terrorism operations. The DTA provides a defense to U.S. officials allegedly involved in these practices where they “did not know that the practices were unlawful and [that] a person of ordinary sense and understanding would not [have known] the practices were unlawful.” The DTA also provides that “[g]ood faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful.” Detainee Treatment Act, Pub. L. No. 109-148, 119 Stat. 2680, 2740 § 1004(a) (2005).

The MCA extended the reach of the DTA to apply retroactively, and was specifically focused on the treatment of men detained by the United States at Guantanamo Bay. Military Commissions Act, Pub. L. 109-366, 120 Stat. 2600, 2636 § 8(b) (2006). It also prohibits U.S. courts from considering any civil claims brought “against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States” as an “enemy combatant.” MCA, 119 Stat. 2636, § 7(a)(2). The DTA and MCA

...contain broad and retroactive language stripping the federal courts of jurisdiction to hear “any other action against the [U.S.] or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of [a non-U.S. citizen]” determined to be an “unlawful enemy combatant,” and creating a complete defense to civil or criminal actions against U.S. agents for harms relating to “detention and interrogation of [non-U.S. citizens].” *Ameziane*, ¶ 108.

Amnesty laws like the DTA and MCA bar victims and survivors’ access to justice, inhibit criminal investigations into credible allegations of human rights violations, and violate international human rights laws. See generally Closure of Guantanamo Report; *Ameziane*, ¶ 277.

E. THE UNITED STATES HAS NOT CONDUCTED AN ADEQUATE AND EFFECTIVE INVESTIGATION INTO ABUSES COMMITTED AS PART OF THE RDI PROGRAM

Despite credible allegations of serious violations of humanitarian and human rights law committed as part of the RDI Program, including those documented in the Senate Torture Report, the United States has not conducted any criminal investigation, let alone an adequate and effective investigation into these allegations.

The investigation of Bush-era officials for human rights abuses was not a political priority of the Obama Administration. Then President-elect Obama asserted in early 2009 his “belief that we need to look forward as opposed to looking backwards” with regard to the Bush Administration’s RDI Program and broader abuse of detainees. David Johnston and Charlie Savage, *Obama Reluctant to Look Into Bush Programs*, N.Y. Times (Jan. 11, 2009), available at <https://www.nytimes.com/2009/01/12/us/politics/12inquire.html>.

The U.S. Department of Justice conducted a limited criminal investigation into detainee abuses. In 2009, then-Attorney General Eric Holder opened the investigation, designating Assistant U.S. Attorney John Durham to investigate violations of federal laws “in connection with the interrogation of specific detainees” by U.S. officials. See Eric Holder, Att’y Gen., Regarding a Preliminary Review into the Interrogation of Certain Detainees, Dep’t of Justice News (Aug. 24, 2009), available at <https://www.justice.gov/opa/speech/attorney-general-eric-holder-regarding-preliminary-review-interrogation-certain-detainees>). The investigation excluded from its scope interrogation methods approved for use by the Office of Legal Counsel. In 2001, then-Attorney General Holder limited the scope of the investigation even further to the deaths of two men and whether the United States had authorized their torture. See Eric Holder, Att’y Gen., Regarding Investigation into the Interrogation of Certain Detainees, Dep’t of Justice News (June 30, 2011), available at <https://www.justice.gov/opa/pr/statement-attorney-general-regarding-investigation-interrogation-certain-detainees>.

Investigators did not interview any torture survivors or their family members or any other witnesses. Nor were senior U.S. officials interviewed. Holder shielded from eventual prosecution anyone who, “acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees.” Holder, Preliminary Review. Attorney General Holder closed the investigation in 2012, citing insufficient evidence and the Department of Justice ultimately declined to prosecute anyone, even for the deaths of two detainees; Eric Holder, Att’y Gen., Closure of Investigation into the Interrogation of Certain Detainees, Dep’t of Justice News (Aug. 30, 2012), available at <https://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-closure-investigation-interrogation-certain-detainees>. See generally Denial of Justice: The United States’ Failure to Prosecute Senior Officials for Torture (Harvard Law School, Int’l Hum. Rts. Clinic 2015) available at <https://www.aclu.org/other/human-rights-program-harvard-law-school-denial-justice-united-states-failure-prosecute-senior> (submitted to the Inter-American Commission on Human Rights during the 156th Ordinary Period of Sessions, Oct. 23, 2015) (demonstrating that no senior officials have been investigated or prosecuted for their role in the torture program) [“HLS Denial of Justice Submission”].

President Obama admitted in 2014 that the U.S. “tortured some folks” and the U.S. “crossed a line” in using the enhanced interrogation techniques that “any fair-minded person would believe were torture.” See Josh Gerstein, *Obama: “We Tortured Some Folks”*, Politico (Aug. 1, 2014), available at <https://www.politico.com/story/2014/08/john-brennan-torture-cia-109654>. This admission did not lead to new investigations.

In 2014, the Senate Torture Report was released. While detailing and corroborating victims and survivors’ allegations of serious rights violations committed within the RDI Program, the research conducted to write the report was neither an adequate nor an effective investigation. Indeed, the Senate Torture Report confirmed that the CIA actively impeded any investigation or oversight from the White House, Congress, or the CIA Inspector General. See Senate Torture Report at xiii-xvii. The CIA destroyed videotapes of its interrogations of detainees following a Senate proposal to establish an independent commission to investigate abuses of detainees, and just after a prominent U.S. newspaper revealed the existence of CIA run secret prisons to the public. See Senate Torture Report at 443-44 (detailing the internal CIA emails discussing the need to destroy the tapes after Senator Levin’s amendment to form a commission); Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post. (Nov. 2, 2005) available at <https://www.washingtonpost.com/archive/politics/2005/11/02/cia-holds-terror-suspects-in-secret-prisons/767f0160-cde4-41f2-a691-ba989990039c/>.

In 2015, the United States reported to the Human Rights Committee that nearly 200 investigations of abuse of detainees by Department of Defense (DOD) officers resulted in non-judicial punishment or administrative action. Only 70 resulted in trial by courts-martial. See One-Year Follow-up Response of the United States of America to Priority Recommendations of the Human Rights Committee on its Fourth Periodic Report on Implementation of the International Covenant on Civil and Political Rights, Permanent Mission of the United States to Geneva, ¶ 8 (Mar. 31, 2015), available at <https://2009-2017.state.gov/documents/organization/242228.pdf>; See also Situation in the Islamic Republic of Afghanistan, ICC-02/17, ¶ 306 (Nov. 20, 2017), https://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF [“2017 ICC Prosecutor Request”].

F. THE UNITED STATES HAS NOT HELD ANY SENIOR U.S. OFFICIAL CRIMINALLY RESPONSIBLE FOR AUTHORIZING AND IMPLEMENTING THE PROGRAM

The Obama Administration did not prosecute any officials who had designed, directed, and committed human rights abuses: President Obama in fact noted the “tough job” the Bush-era agents and officials faced and characterized them as “real patriots.” *Id.* And, because of the lack of an adequate and effective investigation, the U.S. government has not held any senior U.S. official criminally responsible for crimes they committed in authorizing and implementing the RDI Program. See Press Release, Inter-American Comm’n on Human Rights, IACHR Calls on the United States to Investigate and Punish Acts of Torture Established in the Senate Intelligence Committee Report, Organization of American States, Press Release No. 152/14 (December 12, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/152.asp [“IACHR on Senate Torture Report”].

The Senate Torture Report made clear that the CIA rarely reprimanded, held accountable, or removed from positions of responsibility any CIA officers or contractors that were found to have

violated CIA policies, and even in cases of “death or injury of CIA detainees,” there was rarely “appropriate, effective, or in many cases, any corrective action.” Senate Torture Report at xxiii.

Similarly, the ICC Prosecutor found no investigations or prosecutions of CIA officials most responsible for the crimes committed and highlighted the Committee Against Torture’s concern about the Obama Administration’s decision not to prosecute any alleged perpetrators of torture in U.S. custody abroad. 2017 ICC Prosecutor Request, ¶ 312, 324.

The United States has also interfered in foreign and international criminal cases seeking to block investigations and prosecutions of CIA officials and others responsible for unlawful rendition, detention, and torture.⁹ Most recently, the United States imposed sanctions on two ICC officials in an effort to prevent the investigation or prosecution of CIA and U.S. military officials involved in war crimes in Afghanistan. See Elliot Seltzer, *Trump Signs Executive Order Authorizing Sanctions Against International Criminal Court*, Lawfare (June 11, 2020), available at <https://www.lawfareblog.com/trump-signs-executive-order-authorizing-sanctions-against-international-criminal-court>.

G. U.S. COURTS HAVE REPEATEDLY DENIED CIVIL REDRESS TO VICTIMS AND SURVIVORS OF THE RDI PROGRAM

Federal courts have repeatedly dismissed or refused to hear claims brought by individuals who the United States and foreign governments detained and tortured. To block U.S. courts considering the merits of their claims, the U.S. has intervened to invoke the “state secrets” privilege and qualified immunity defenses. Federal courts have largely agreed with the government’s position, and summarily dismissed all but one suit. See *El-Masri v. United States*, 479 F.3d 296, 313 (4th Cir. 2007); *Mohamed v. Jeppesen*, 614 F.3d 1070 (9th Cir. 2010) ; *Padilla v. Yoo*, 678 F.3d 748, 750 (9th Cir. 2012); *Ali v. Rumsfeld*, 649 F.3d 762, 770, 774 (D.C. Cir. 2011) ; *Rasul v. Myers*, 563 F.3d 527, 530 (D.C. Cir. 2009); *Arar v. Ashcroft*, 585 F.3d 559, 574 (2d Cir. 2009). See generally Appendix C, HLS Denial of Justice Submission (analyzing cases).

Salim v. Mitchell is the one exception. Two survivors and one victim of the RDI Program sued James Mitchell and John Bruce Jessen, CIA contractors who designed and helped implement the program. The District Court denied defendants’ summary judgment motion. *Salim*, 268 F. Supp. 3d at 1145-50, and, on the eve of trial, settled the litigation on confidential terms. See Sheri Fink, *Settlement Reached in C.I.A. Torture Case*, N.Y. Times (Aug. 17, 2017), available at <https://www.nytimes.com/2017/08/17/us/cia-torture-lawsuit-settlement.html>.

⁹ See e.g., Giles Tremlett, *Wikileaks: US pressured Spain over CIA rendition and Guantánamo torture*, The Guardian (Dec. 1, 2010), available at <http://www.guardian.co.uk/world/2010/nov/30/wikileaks-us-spain-guantanamo-rendition>; Von John Goetz and Matthias Gebauer, *US Pressured Italy to Influence Judiciary*, DER SPIEGEL: Int’l, (Dec. 17, 2010), available at <http://www.spiegel.de/international/europe/0,1518,735268,00.html>; Bob Egelko, *WikiLeaks Cables Recount How U.S. Pressured Allies*, S.F. Chronicle (Mar. 6, 2011), http://articles.sfgate.com/2011-03-06/opinion/28661808_1_wikileaks-cables-wikileaks-disclosures-cia-agents; Von John Goetz and Matthias Gebauer, *Cables Show Germany Caved to Pressure from Washington*, DER SPIEGEL: Int’l (Dec. 9, 2010), available at <http://www.spiegel.de/international/germany/0,1518,733860,00.html>.

H. THE UNITED STATES HAS NOT PROVIDED ANY GUARANTEES OF NON-REPETITION

The United States has not provided the Petitioners and their families, or any victims and survivors of the CIA's RDI Program with any effective guarantees that the United States will not repeat the violations it committed as part of the program.

Although the United States under the Obama Administration adopted certain measures aimed at ending the United States' use of torture and other ill-treatment, none of these measures provided a sufficient guarantee of non-repetition. *See* Exec. Order No. 13491, 74 Fed. Reg. 4893 (Jan. 27, 2009) ["E.O. 13491"]; Memorandum for Eric H. Holder, Jr., Att'y Gen., Withdrawal of Office of Legal Counsel CIA Interrogation Opinions (Apr. 15, 2009), *available at* <https://www.justice.gov/file/18511/download> (withdrawing Bush Administration White House legal opinions authorizing torture and cruel, inhuman, or degrading treatment). President Obama utilized executive orders to effectively halt the RDI Program but did so without a larger guarantee of non-repetition. *See* E.O. Ensuring Lawful Interrogations; Exec. Order No. 13493, 74 Fed. Reg. 4901 (Jan. 27, 2009) ["E.O. 13493"]. Executive Orders can easily be rescinded by future administrations.

The 2015 McCain-Feinstein Anti-Torture Amendment restricted interrogation techniques to those authorized in the U.S. Army Field Manual and required ICRC access to detainees. National Defense Authorization Act for Fiscal Year 2016, S.1356, 114th Congress § 1045 (2015). This protects detainees from many forms of torture, but its application is cabined to detainees in U.S. custody or in U.S.-controlled facilities. The use of and reliance on foreign states to carry out torture and incommunicado detention, which characterized the CIA's RDI Program, was not sufficiently limited by the amendment. Further, while ICRC access is a crucial safeguard, it does not—by itself—guard against arbitrary detention.

During his election campaign in 2016, President Trump pledged to bring back torture. *See* Elizabeth Grimm Arsenault, *Donald Trump and the Normalization of Torture*, Lawfare (Nov. 13, 2016), <https://www.lawfareblog.com/donald-trump-and-normalization-torture>; Adam Serwer, *Can Trump Bring Back Torture?*, The Atlantic (Jan. 26, 2017), *available at* <https://www.theatlantic.com/politics/archive/2017/01/trump-torture/514463> (quoting Trump on the campaign trail saying "torture works"). Once in office, the Trump Administration reportedly considered overriding E.O. 13491 and drafted a new order that would reinstate the "enhanced interrogation" program, including CIA-run "black site" prisons. *See* Charlie Savage, *Trump Poised to Lift Ban on C.I.A. 'Black Site' Prisons*, N.Y. Times (Jan. 25, 2017), *available at* <https://www.nytimes.com/2017/01/25/us/politics/cia-detainee-prisons.html>. Additionally, in May 2017, President Trump nominated Gina Haspel to serve as Director of Central Intelligence. The U.S. Senate voted to confirm Haspel's nomination despite her admittedly integral role in the CIA's RDI Program, including running the agency's first secret prison in Thailand and destroying video-recordings of CIA torture. *See* Nicholas Fandos, *Senate Confirms Gina Haspel to Lead C.I.A. Despite Torture Concerns*, N.Y. Times (May 17, 2018), *available at* <https://www.nytimes.com/2018/05/17/us/politics/haspel-confirmed.html>.

During her confirmation, Haspel refused to acknowledge that the CIA used torture, insisting only that the CIA would never revive a program of torture under her leadership. *See* Matthew

Rosenberg, Nicholas Fandos and Charlie Savage, *Gina Haspel Vows at Confirmation Hearing That She Would Not Allow Torture by C.I.A.*, N.Y. Times (May 9, 2018), available at <https://www.nytimes.com/2018/05/09/us/politics/gina-haspel-confirmation-hearing-live.html>.

The Trump Administration also nominated numerous other people with ties to the RDI Program to senior positions, including in the Department of Justice, the Department of Transportation, and the judiciary. See Benjamin Haas, *Trump's Torture Appointees*, Just Security (Mar. 15, 2018), available at <https://www.justsecurity.org/53882/torture-appointees>. The Trump administration signaled its intent to prevent further transparency on the RDI Program and U.S. torture committed with it. See Mark Mazzetti, Matthew Rosenberg & Charlie Savage, *Trump Administration Returns Copies of Report on C.I.A. Torture to Congress*, N.Y. Times (June 2, 2017), available at <https://www.nytimes.com/2017/06/02/us/politics/cia-torture-report-trump.html>.

LEGAL ARGUMENT

A. VIOLATIONS OF THE AMERICAN DECLARATION

In its Report on Admissibility, the Commission determined that the following alleged violations of the American Declaration were admissible: **Articles I and XXV (violations of the right to life, liberty, and personal security); XVIII (violations of the right to a fair trial); XXV (violations of the right of protection from arbitrary arrest); XXVI (violations of the right to due process of law) and XXVII (violations of the right to asylum)**. The United States, through the actions of its agents, and foreign officials acting at the behest or with the knowledge or acquiescence of the United States, is responsible for the violations of Petitioners' rights guaranteed by these articles.

Pursuant to the RDI Program, the United States acted in close cooperation with state and non-state actors, including foreign-state actors, to carry out its objectives: the rendition to secret detention, interrogation, and torture of persons whom the CIA suspected of involvement in terrorism. Some foreign state actors apprehended individuals for the CIA, held them secretly, and interrogated them using torture. Other foreign state actors shared information with the CIA that they obtained from individuals they tortured. The CIA intended that foreign state actors detain and torture these individuals or knew that they would use torture and other abusive methods on persons who the CIA rendered to them.

1. Violations of Petitioners' Rights to Life, Liberty, and Personal Security (Torture and Other Cruel, Inhuman, or Degrading Treatment)

The United States, its agents, and foreign officials acting at the behest of or in collaboration with the United States violated Articles I and XXV of the American Declaration by subjecting Mr. Bashmilah, Mr. Britel, Mr. Mohamed, and Mr. Al-Rawi to torture and other cruel, inhuman, and degrading treatment. Petitioners have suffered and (those who remain living) continue to suffer severe physical, psychological, and other damage as a result of their torture and other ill-treatment.

a. The American Declaration Prohibits Torture and Other Cruel, Inhuman, or Degrading Treatment

Articles I and XXV of the American Declaration guarantee Petitioners the right to life and to humane treatment. These articles prohibit torture, and other forms of cruel, inhuman, or degrading treatment ("CIDT"), as well as any other conduct that severely damages an individual's physical,

mental, or moral integrity. The prohibition of torture is a non-derogable, *jus cogens* norm. *Ameziane*, ¶ 138; *Chahal v. UK*, App No. 22414/93, 23 Eur. H.R. Rep 413, ¶ 79 (1996); Closure of Guantanamo Report, ¶ 111.

The prohibition of torture proscribes the intentional infliction of any act by a state agent or a private individual acting at the instigation of or with the acquiescence of the former that causes severe physical or mental pain and suffering, for an unlawful purpose such as to coerce information, to intimidate, or to punish. *Ameziane*, ¶ 138; Report on Terrorism and Human Rights, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.116, doc. 5 rev. 1 ¶ 154 (2002), available at <http://www.cidh.org/Terrorism/Eng/toc.htm> ["Terrorism and Human Rights Report"] (citing *Martín de Mejía v. Peru*, Case 10.970, Inter-Am. Comm'n H.R., Report No. 5/96, OEA/Ser.L/V/II.91, doc. 7 at 1185 (1996); see also U.N. Convention Against Torture, June 26, 1987, 1465 U.N.T.S. 85, art. 1 ["UNCAT"]).

The pain or suffering inflicted must meet a "minimum level of severity" to be considered torture or other CIDT. *Lizardo Cabrera v. Dom. Rep.*, Case 10.832, Inter-Am. Comm'n H.R., Report No. 35/96, OEA/Ser.L/V/II.95, doc. 7 rev. ¶ 78 (1997); *Ireland v. U.K.* (No. 5310/71), Eur. Ct. H.R., ¶ 162 (2018). Torture is an aggravated form of inhuman treatment intentionally inflicted for an unlawful purpose. CIDT differs from torture principally in the severity of the pain or suffering inflicted. Like torture, CIDT must meet a "minimum level of severity" of pain or suffering, but the conduct need not be inflicted for a specific purpose. *Lizardo Cabrera v. Dom. Rep.*, ¶ 80; *Ireland v. U.K.* Degrading treatment is mistreatment inflicted with the purpose of humiliation, or to compel a victim to act against their will or conscience, or conduct aimed at inducing fear, anxiety, feelings of inferiority and degradation. *Lizardo Cabrera v. Dom. Rep.*, ¶ 77, 79; *Tide Méndez v. Dom. Rep.*, Case 12.271, Inter-Am. Comm'n H.R., Report No. 64/12, OEA/Ser.L/V/II.124, doc. 5 ¶ 194 (2005); *Ireland v. U.K.*, ¶ 27; *The Greek Case*, App. No. 3321-23,44/67, Eur. Comm'n H.R. (1968).

In determining whether conduct amounts to torture or other CIDT, the Commission evaluates the totality of the circumstances rather than isolated incidents, *Lizardo Cabrera v. Dom. Rep.*, ¶ 78, as well as the duration of the mistreatment, its physical and mental effects, and the age, sex and health of the victim. In the recent case of *Ameziane v. U.S.*, the Commission recognized a list of treatment that constitutes torture or CIDT:

prolonged incommunicado detention; keeping detainees hooded and naked in cells and interrogating them under the drug pentothal; holding a person's head in water until the point of drowning; beating, cutting with pieces of broken glass, putting a hood over a person's head and burning him or her with lighted cigarettes; threats of a behavior that would constitute inhumane treatment; threats of removal of body parts, exposure to the torture of other victims; death threats. *Ameziane*, ¶ 141.

The Commission in its 2002 *Report on Terrorism and Human Rights* has also endorsed the 1986 findings of the UN Special Rapporteur on Torture classifying the following treatment as torture:

[...]prolonged denial of rest or sleep, food, sufficient hygiene, or medical assistance, total isolation and sensory deprivation, being held in constant uncertainty in terms of space and time, threats to torture or kill relatives, and simulated executions[...].

The Commission has also embraced the U.N. Human Rights Committee's list of similar conduct, including:

...beatings, electric shocks and mock executions, forcing prisoners to remain standing for extremely long periods of time, and holding persons incommunicado for more than three months while keeping that person blindfolded with hands tied together [...].

Terrorism and Human Rights Report, ¶ 162.

See also Agiza v. Sweden, U.N. Committee Against Torture, ¶ 10.2, 13.4, U.N. Doc. CAT/C/34/D/233/2003 (2005), *El-Masri v. Macedonia* (No. 39630/09), Eur. Ct. H.R., ¶¶ 21, 223 (2012) (hooding and other forms of sensory deprivation; handcuffing and shackling in painful positions; cavity search or administration of suppository or narcotics; severe beatings; and dressing detainees in humiliating clothing, including diapers).

Punitive conditions of confinement may also amount to CIDT:

lack of adequate infrastructure; lack of adequate ventilation and natural light; unsanitary cells; lack of beds; lack of adequate medical care or drinking water; lack of adequate sanitation...; lack of minimum privacy in sleeping quarters; very little and poor quality food; few chances to exercise;...collective punishment and other abuses; solitary confinement and incommunicado detention; and imprisonment in locations that are extremely far away from the family residence and in severe geographic conditions”.

Ameziane, ¶ 146; Report on Persons Deprived of Liberty, Inter-Am. Comm'n H.R., OAS/Ser.L/V/II, doc. 64 (2011), ¶ 434 [“Deprived of Liberty Report”].

Depending on context, the use of solitary confinement by itself may amount to torture. *Ameziane*, ¶ 152, Deprived of Liberty Report, ¶ 413; U.N. Hum. Rts. Comm., 44th Sess., CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman, or Degrading Treatment or Punishment), ¶ 6 (Mar. 10, 1992).

b. The Prohibition of Non-Refoulement

The right to humane treatment also prohibits states from rendering anyone to another country (1) for the purpose of that individual being tortured or otherwise mistreated there; and (2) where there is a substantial likelihood of that individual being tortured or otherwise mistreated or arbitrarily detained in the country of transfer. *Haitian Centre for Hum. Rts. v. U.S.*, Case 10.675, Inter-Am. Comm'n H.R., Report No. 51/96, OEA/Ser.L/V/II.95 doc. 7 rev. ¶ 167 (1997); *Decision as to the Merits*, Case 10.675, Report No. 51/96 (1997) [“*Interdiction of Haitians on the High Seas*”].

c. U.S. Officials, the CIA, and other U.S. agents tortured Petitioners and/or subjected them to other cruel, inhuman, and degrading treatment.

The United States, its agents, and contractors designed, authorized, and implemented the use of interrogation methods and a rendition, detention, and interrogation program for use on persons it

suspected were involved in terrorism. CIA agents and its contractors, with the consent and acquiescence of the United States, used these methods and methodology on Petitioners with the intent of inflicting severe physical and mental pain and suffering on persons the CIA targeted, to unlawfully render, arbitrarily detain, and interrogate them. Specifically, the objective or purpose of the RDI Program was to gather intelligence, and the application of the torture methods caused Petitioners severe pain and suffering, humiliation, and degradation. Senate Torture Report at xi-xii, xx-xxi.

Mohamed Farag Ahmad Bashmilah

U.S. officials and CIA agents subjected Mr. Bashmilah to the following abusive methods during their rendition of him from Jordanian to U.S. custody: forced stripping of clothes and photography of naked body; being dressed in clothing designed to cause humiliation, including a diaper which was left unchanged for 15 days; sensory deprivation during travel; having hands and feet shackled; being strapped to a plane seat; having mouth taped shut; being beaten and kicked; and being left naked for several days in an extremely cold cell. U.S. officials used these methods with the purpose of inducing “capture shock” to subdue him and to render him more compliant to detention and interrogation methods that the U.S. and its contractors would subject him to while in U.S. custody.

U.S. officials and CIA agents subjected Mr. Bashmilah to the following abusive methods over a period of 553-559 days, both in isolation, repeatedly, and/or in combination over prolonged periods: sensory deprivation (white noise and loud music, constant darkness) punitive disproportionate handcuffing and shackling; non-consensual and painful forced-feeding; prolonged incommunicado and secret solitary confinement; and sleep deprivation.

U.S. officials and CIA agents subjected Mr. Bashmilah to cruel, inhuman, and degrading conditions of confinement, including: lack of adequate toilet facilities (bucket); deprivation of adequate drinking water and food; lack of washing facilities; lack of exercise; lack of exposure to light; and lack of adequate accommodation for Mr. Bashmilah’s right to express his religion.

The CIA specifically approved the use of these methods on Mr. Bashmilah for the purposes of interrogating him and rendering him helpless. Senate Torture Report at 460, 16 n. 32 (referred to as Mohd al-Shomaila and Mohammad al-Shomaila at No. 89 in Appendix 2: CIA Detainees from 2002-2008).

Abou Elkassim Britel

U.S. officials and CIA agents subjected Mr. Britel to the following abusive methods during its rendition of him from Pakistan to Morocco: forced stripping of clothes and photography of naked body; being dressed in clothing designed to cause humiliation, including a diaper; having hands and feet shackled; being strapped to a plane seat; and having mouth taped shut. U.S. officials used these methods with the purpose of inducing “capture shock” to subdue him and to render him more compliant to detention and interrogation methods that the U.S. and its contractors would subject him to while in Moroccan custody. U.S. officials knew and intended that Moroccan officials would arbitrarily detain and interrogate Mr. Britel using methods including torture and other cruel, inhuman, and degrading treatment.

Binyam Mohamed

U.S. officials and CIA agents subjected Mr. Mohamed to the following abusive methods during its rendition of him from Morocco to Afghanistan: forced stripping of clothing; sensory deprivation; punitive, disproportionate handcuffing and shackling; stress positions; and unsanitary and degrading conditions of confinement. They used these methods with the purpose of inducing “capture shock” to subdue him and to render him more compliant to detention and interrogation methods that the U.S. and its contractors would subject him to while in U.S. custody.

U.S. officials and CIA agents subjected Mr. Mohamed to the following abusive methods over a period of 100-119 days while Mr. Mohamed was detained in a CIA-run facility in Afghanistan, in isolation, repeatedly, and/or in combination: severe beatings; sensory deprivation (darkness, loud noise); sleep deprivation, temperature manipulation (severe cold); and stress positions.

U.S. officials and CIA agents subjected Mr. Mohamed to cruel, inhuman, and degrading conditions of confinement by subjecting him to: deprivation of food and water (irregular supply of raw rice, beans); inadequate toilet, sanitation, and laundry facilities; unhygienic, frigid conditions; inadequate clothing and blankets in extremely cold temperatures; and lack of exposure to sunlight.

The CIA specifically approved the use of these methods on Mr. Mohamed to interrogate him and to render him helpless. Mr. Mohamed’s name appears in the Senate Torture Report document a total of 31 times. Senate Torture Report at 460 (No. 95 in Appendix 2: CIA Detainees from 2002-2008).

Bisher al-Rawi

U.S. officials and CIA agents subjected Mr. al-Rawi to the following abusive methods during its rendition of him from The Gambia to U.S. custody in Afghanistan: fear, humiliation, nudity; sensory deprivation; punitive, disproportionate handcuffing and shackling; stress positions; and unsanitary and degrading conditions of confinement. They used these methods with the purpose of inducing “capture shock” to subdue him and to render him more compliant to detention and interrogation methods that the U.S. and its contractors would subject him to while in U.S. custody.

U.S. officials and CIA agents subjected Mr. al-Rawi to the following abusive methods for 9 days in a U.S. detention center in Afghanistan and at Bagram Air Base, in isolation, repeatedly, and/or in combination: solitary confinement; sensory deprivation (darkness, loud music); punitive, disproportionate handcuffing and shackling; sleep deprivation; severe beatings; and stress positions.

U.S. officials and CIA agents subjected Mr. Al-Rawi to cruel, inhuman, and degrading conditions of confinement by depriving him of adequate food and water (fed once every one or two days); inadequate toilet facilities (bucket); no access to shower or clean clothes; unhygienic conditions; and inadequate clothing and blankets in frigid temperatures.

The CIA specifically approved the use of these methods on Mr. al-Rawi to interrogate him and to render him helpless. Senate Torture Report at 458 (No. 35 in Appendix 2: CIA Detainees from 2002-2008).

d. Foreign state actors acting at the behest of or in collaboration with the United States tortured Petitioners and/or subjected them to cruel, inhuman, or degrading treatment

Mohamed Bashmilah

Jordanian officials, for the purpose of furthering the RDI Program's objectives, subjected Mr. Bashmilah to the following abusive methods over a period of 5 days in custody before transferring him to the exclusive authority and control of the United States. Jordanian officials applied these methods in isolation, repeatedly, and/or in combination: severe beatings; stress positions; forced stripping of clothes; solitary confinement; threats of rape of family members; being forced to run in circles until he collapsed while being beaten with sticks; being forced to imitate animals in a degrading manner; being hung upside down by his ankles on a chain and beaten; and threats of shock by electric wires.

Abou Elkassim Britel

Pakistani officials, for the purpose of furthering RDI Program objectives, subjected Mr. Britel to the following abusive methods for 2.5 months, in isolation, repeatedly, and/or in combination: severe beatings; sleep deprivation; stress positions; threats of death and torture; food deprivation; denial of sanitation facilities; and cruel, inhuman, and degrading conditions of confinement.

Moroccan officials, at the behest of or in collaboration with the United States, for the purpose of furthering the RDI Program objectives, subjected Mr. Britel to the following abusive methods for more than a year in Témara Prison, in isolation, repeatedly, and/or in combination: solitary confinement; deprivation of food and water; severe beatings; and threats of torture, death, and harm to family members.

Binyam Mohamed

Moroccan officials, at the behest of the United States or for the purpose of furthering RDI Program objectives, subjected Mr. Mohamed to the following abusive methods over a period of 18 months in various detention facilities, in isolation, repeatedly, and/or in combination: severe beatings; nudity and humiliation; mutilation; death-threats and threats of torture, electrocution and rape; punitive and disproportionate shackling; sleep deprivation; sensory deprivation; unhygienic and damp living conditions; lack of sanitation; and non-consensual forced feeding.

Bisher al-Rawi

Gambian intelligence agents, at the behest of or in collaboration with the United States, subjected Mr. al-Rawi to the following abusive interrogation and detention methods over a period of one day before CIA agents and its contractors rendered Mr. al-Rawi to Afghanistan: sensory deprivation (hooding); punitive and disproportionate handcuffing and shackling; nudity and humiliation.

The United States, Foreign-state actors and others subjected Petitioners to severe physical and psychological pain and suffering for the purposes of furthering the objectives of the RDI Program. Petitioners have suffered and continue to suffer from the effects of this torture and inhumane treatment. Accordingly, the CIA's conduct amounted to torture and other cruel, inhuman, or degrading treatment in violation of Articles I and XXV of the American Declaration.

2. Violations of Petitioners' Rights to Personal Liberty and Security (Arbitrary Arrest and Detention)

a. Articles I and XXV Prohibit Arbitrary Arrest and Detention

Article I and XXV of the American Declaration guarantees “[e]very human being [] the right to [] liberty and the security of his person,” prohibiting states from arbitrarily arresting and detaining any individual. Detention is permissible only when it is carried out in accordance with established law and due process. *Michael Gayle v. Jamaica*, Case 12.418, Inter-Am. Comm. H.R., Report No. 92/05, OEA/Ser.L/V/II.124, doc. 5 ¶ 73 (2005) (states must “ensure[] against arbitrary arrest and detention by strictly regulating the grounds and procedures for arrest and detention under law.”) Individuals have, “the right to have the legality of [their] detention ascertained without delay by a court,” to be informed of the reason for detention, to be promptly notified of any charges, “and the right to be tried without undue delay, or otherwise, to be released.” Article XXVI also establishes fair trial rights: anyone accused of an offense has “the right to be given an *impartial and public hearing* and to be *tried by courts* previously established in accordance with pre-existing laws....” If a State denies an individual any one of these rights, the detention is arbitrary.

b. Article XXV Requires Judicial Review of Detention

The right of an individual to judicial review of their detention is absolute. It is a critical safeguard against arbitrary arrest and detention and other rights violations such as forced disappearance, torture and other ill-treatment. The review must be administered by an independent and impartial tribunal and be made immediately available: “[a] competent, impartial tribunal must determine the legality of detention immediately and any period of preventative detention without such a hearing is unlawful.” *See Velásquez-Rodríguez v. Honduras*, Inter-Am. Ct. H.R., Judgment (Merits), ¶ 155, 186 (July 29, 1988); *see also Biscet v. Cuba*, Case 12.476, Inter-Am. Comm. H.R., Report No. 67/06, ¶ 143 (2006) (any period of detention must be ordered by a competent authority, except where an individual is caught in the act of committing a crime). Four days of detention without judicial review can constitute a violation of Article XXV, *see* Terrorism and Human Rights Report, ¶ 122, and twenty days even where terrorism is alleged. *See Cantoral-Benavides v. Peru*, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶¶ 66 (Aug. 18, 2000). In *Maritza Urrutia v. Guatemala*, the Court held that a warrantless arrest followed by eight days of incommunicado detention was a violation of Article 7 of the American Convention. (*See Urrutia v. Guatemala*, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 103, ¶¶67-68 (Nov. 27, 2003).

Judicial review must not only be made “promptly available upon arrest or detention,” but *also* “at reasonable intervals when detention is extended.” *See Ameziane*, ¶ 119; *see also* Closure of Guantanamo Report, ¶ 92. Regular judicial review combats the significant concern that arbitrary detention facilitates other rights violations, including the infliction of inhumane treatment. (*See Urrutia v. Guatemala*, ¶ 87; *Gomez-Paquiayauri Brothers v. Peru*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 108 (July 8, 2004); *see also Ferreira Braga v. Brazil*, Case 12.019, Inter-Am. Comm’n H.R., Report 35/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1, ¶ 89 (July 18, 2008).

Habeas corpus may not be suspended or rendered ineffective. *See Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1), and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87, Inter-Am. Ct. H.R. (Ser. A) No. 8, ¶ 35 (Jan. 30, 1987).

Judicial review of arrest and detention are *non-derogable* and apply equally in times of war and peace. Terrorism and Human Rights Report, ¶ 61; *see also Ameziane*, ¶ 124 (citing Closure of Guantanamo Report. When “security measures are extended beyond a reasonable time they become serious violations of the right to personal liberty.”)

c. The United States Arbitrarily Detained Petitioners

The United States arbitrarily detained Petitioners by denying them due process of law, including judicial review of their detention. The United States also arbitrarily detained Petitioners by proxy through its creation and implementation of the RDI Program, and by collaborating with foreign-state actors to arbitrarily arrest and detain Petitioners and others by denying them due process of law. At the behest of or in collaboration with the United States, foreign-state actors arbitrarily detained Petitioners by denying them due process of law while in their custody. The United States intended for these individuals to be held without due process of law and thus violated Petitioners’ Article XXV rights via their foreign partners, Jordan, Pakistan, Morocco and The Gambia.

Mohamed Bashmilah

Mr. Bashmilah was held in secret. The United States refused him access to counsel, consular assistance or his family. The United States never charged Mr. Bashmilah with a crime and released him without charge.

On October 26 2003, Jordanian authorities transferred Mr. Bashmilah to the exclusive custody and control of the United States. U.S officials detained Mr. Bashmilah based on “speculative” evidence of his involvement in criminal activity, including a false confession that Jordanian authorities forced Mr. Bashmilah to sign. U.S. officials held Mr. Bashmilah without due process and did not allow him to seek review of its legality.

In Afghanistan, U.S. officials held Mr. Bashmilah incommunicado for 6 months at the Dark Prison without due process or review. During this period, the United States refused Mr. Bashmilah access to his family, counsel, consular assistance and representatives of the ICRC. It did not charge him with a crime.

On April 24 2004, U.S. officials secretly transferred Mr. Bashmilah from the Dark Prison to Detention Site Orange. The CIA held Mr. Bashmilah there incommunicado, without due process or judicial review of his detention for more than a year.

Abou Elkassim Britel

The United States arbitrarily detained and rendered Mr. Britel to proxy detention in Morocco in secret and without due process or judicial review. The United States denied him access to counsel, consular assistance, or his family. The United States never charged Mr. Britel with a crime.

Binyam Mohamed

The United States detained and rendered Mr. Mohamed in secret. The United States refused him access to counsel, consular assistance, or his family. The United States never charged Mr. Mohamed with a crime and released him without charge.

On July 21, 2002, following an initial period of detention by Pakistani authorities, Mr. Mohamed was transferred to the exclusive authority and control of U.S. agents at an airport outside of Islamabad. There, U.S. agents secretly detained Mr. Mohamed, forcing him onto a flight to Morocco, refusing to provide information on his detention or transfer to his family. During the United States' period of exclusive control of Mr. Mohamed's detention, the government refused to inform Mr. Mohamed of the reasons for his detention or to allow him access to judicial review.

On January 1, 2004, the United States rendered Mr. Mohamed from Morocco to Afghanistan and to the exclusive authority and control of the United States. The CIA secretly detained Mr. Mohamed for more than four months at the Dark Prison in Afghanistan. There, the CIA interrogated and tortured Mr. Mohamed and denied him access to a lawyer, the ICRC, and his family.

In late May 2004, U.S. agents transferred Mr. Mohamed to Bagram Air Base, a U.S. military-run detention facility in Afghanistan. The U.S. military secretly held Mr. Mohamed there for four more months. In late May or June of 2004, Mr. Mohamed also had his first contact with someone other than his captors and torturers, an ICRC representative.

In September 2004, the U.S. military secretly rendered Mr. Mohamed from Afghanistan to Guantanamo Bay, Cuba. There, the U.S. military charged him with a crime: conspiracy under then-President Bush's Military Order. This charge was eventually dropped.

On February 23 2009, seven years after his abduction, the United States released Mr. Mohamed from Guantanamo without charge and returned him to the United Kingdom.

Bisher Al-Rawi

The United States detained Bisher Al-Rawi for more than four years. The United States held Mr. Al-Rawi in secret and denied him access to judicial review, counsel, and his family. On December 8, 2002, U.S. agents secretly rendered Mr. Al-Rawi from The Gambia to Afghanistan. The United States ignored the extradition or deportation process as well as the habeas petition Mr. Al-Rawi's mother had filed on his behalf in the Gambia High Court.

In Afghanistan, the CIA secretly held and tortured Mr. Al-Rawi at its Dark Prison. After two weeks there, the United States secretly transferred Mr. Al-Rawi to Bagram Air Base, where the U.S. military held Mr. Al-Rawi for more than two months incommunicado, denying him access to a lawyer and judicial review of his continuing detention. On January 4, 2003, Mr. Al-Rawi met with an ICRC representative, investigating his disappearance; this was Mr. Al-Rawi's first contact with the outside world since Gambian officials arrested him in December 2002.

On February 7, 2003, the United States secretly transferred Mr. Al-Rawi from Afghanistan to Guantanamo Bay, Cuba. The U.S. military detained him there for four years without charge, due process or judicial review.

d. The United States Arbitrarily Arrested and Detained Petitioners by Proxy

To carry out the RDI Program's main objective, intelligence-gathering, the United States relied upon and collaborated with foreign-state actors to capture, render, detain, interrogate, and torture foreign nationals living outside the United States, who the United States suspected were associated with Al-Qaeda. *See* Senate Torture Report 12-13; Torture Unredacted Report at 17-19; Globalizing Torture Report at 61-62; *see also supra* C (3) (Foreign-State Cooperation with the CIA RDI Program). Pursuant to the RDI Program, Jordan, Pakistan, Morocco, and The Gambia acted at the behest of and/or collaborated with the United States to arbitrarily arrest and detain Petitioners by proxy.

Mohamed Bashmilah

In September 2003, Jordanian government agents confiscated Mr. Bashmilah's passport when he arrived in Amman, Jordan from Indonesia. Acting at the behest of or in collaboration with the United States, Jordanian officials arbitrarily detained Mr. Mohamed on October 21, 2003, and tortured him into signing a false confession that he had not read. Jordanian officials shared that false confession with U.S. agents, and on October 26, 2003, U.S. officials apprehended Mr. Bashmilah in Jordan and rendered him from there to a U.S.-run detention facility in Afghanistan.

About Elkassim Britel

Pakistan

On March 10, 2002, at the behest of or in collaboration with the United States, Pakistani agents arbitrarily arrested and detained Mr. Britel. Pakistani government agents secretly detained and interrogated Mr. Britel at the United States' behest for two months, torturing him for a false confession.

In April 2002, Pakistan shared Mr. Britel's false confession with U.S. agents. U.S. agents participated in Mr. Mohamed's arbitrary detention, photographed, and fingerprinted him. Pakistan continued to hold Mr. Britel in incommunicado detention on behalf of the United States for two more months. During this period, U.S. agents visited Mr. Britel on four separate occasions and interrogated him about his alleged ties to Osama bin Laden.

On May 24, 2002, the United States unlawfully rendered Mr. Britel from Pakistan to Morocco for detention, interrogation and torture there.

Morocco

After rendering Mr. Britel to Morocco, CIA agents transferred him to the custody of agents of the Moroccan Intelligence Services, who arbitrarily detained, interrogated, and tortured Mr. Britel at the United States' behest at the Témara Prison for more than eight months. Moroccan agents shared information they obtained from Mr. Britel under torture with the United States. On February 11, 2003, Moroccan officials released Mr. Britel without charge.

Binyam Mohamed

Pakistan

On April 10, 2002, Pakistani agents apprehended and detained Mr. Mohamed. At the behest of or in collaboration with the United States, Pakistan secretly held Mr. Mohamed for three months. U.S. agents had unfettered access to Mr. Mohamed while he was detained in Pakistan. They repeatedly interrogated him. Neither Pakistani nor U.S. officials charged Mr. Mohamed with a crime, nor permitted him access to a lawyer, consular assistance, family members, or judicial review of his detention.

On July 21, 2002, after more than three months of U.S. proxy detention, Pakistani agents blindfolded, handcuffed, and transferred Mr. Britel to the exclusive authority and control of U.S. CIA agents. The United States then unlawfully rendered Mr. Britel from Pakistan to detention and interrogation in Morocco.

Morocco

In Morocco, CIA agents transferred Mr. Britel to Moroccan Intelligence agents, who arbitrarily detained, interrogated, and tortured Mr. Britel at the Témara Prison for more than a year. Morocco did not charge Mr. Britel with a crime, nor permit him access to a lawyer, consular assistance, family, or a court to challenge the lawfulness of his detention.

On January 21, 2004, Moroccan agents blindfolded, handcuffed, and transferred Mr. Mohamed to the exclusive authority and control of the United States, who unlawfully rendered him from Morocco to a CIA-run detention facility in Afghanistan.

Bisher Al-Rawi

On November 8, 2002, Gambian officials, at the behest of and in collaboration with the United States, arbitrarily arrested and detained Mr. Al-Rawi. The Gambia arbitrarily detained Mr. Al-Rawi for a month. It first detained Mr. Al-Rawi at the headquarters of the Gambian Intelligence Agency where two CIA agents repeatedly interrogated him alongside their Gambian counterparts. CIA agents mocked Mr. Al-Rawi's companions' (who were also arrested with Mr. Al-Rawi) repeated requests for consular assistance. At a U.S.-run 'safehouse' in The Gambia, U.S. agents detained and interrogated Mr. Al-Rawi about his relationship with MI5 and Abu Qatada. Neither Gambian nor U.S. officials charged Mr. Al-Rawi with a crime, nor did they permit him access to a lawyer, family members, or a court to challenge the lawfulness of his arrest or detention.

On December 8, 2002, Gambian agents blindfolded, handcuffed, and transferred Mr. Al-Rawi to the exclusive authority and control of the United States. U.S. agents then unlawfully rendered Mr. Al-Rawi from the Gambia to detention in a CIA-run detention facility in Afghanistan.

3. Violations of Petitioners' Rights not to be Forcibly Disappeared

a. Articles I, XVII, and XXVI Prohibit Forced Disappearance

“[T]he essential element [of a forced disappearance] is the deprivation of an individual’s liberty by agents of the State ostensibly under law, followed by the refusal or incapacity of the State to explain what occurred to the victim or to provide information regarding his whereabouts.” *Britton v. Guyana*, Case 12.264, Inter-Am. Comm. H.R., Report No. 01/06, OEA/Ser./L/V/II.114 doc. 5 rev. ¶ 19. *See also*, Inter-American Convention on Forced Disappearance of Persons art. 2, June 9, 1994, 33 I.L.M. 1429. A forced disappearance authorized by the State is a violation of Article I’s right to liberty. *See Godínez-Cruz v. Honduras*, Judgment, Inter-Am Ct. H.R. (ser. C) No. 5, ¶ 163 (Jan. 20, 1989) (“the kidnapping of a person is an arbitrary deprivation of liberty”); *Britton*, ¶ 27 (confirming that a forced disappearance violates Article I) and Articles XVII and XXVI, especially if a forced disappearance is accompanied by arbitrary and secret detention. *See Terrorism and Human Rights Report*, ¶ 168. A forced disappearance may be proved by demonstrating the existence of a systematic practice of disappearances authorized or tolerated by the State and linking that systemic practice to the individual’s disappearance. *See Velásquez-Rodríguez*, ¶ 124-26.

b. The RDI Program Facilitated a Policy of Forced Disappearances

Judge Antônio Augusto Cançado Trindade has compared the CIA’s RDI Program to programs of state-sponsored disappearances in Latin America in the 1970s and 1980s. *See Goiburú v. Paraguay*, Judgment, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (Ser. C.) No. 153, ¶ 54-56, 59 (Sept. 22, 2006) (noting that U.S. extraordinary rendition is simply the “atrocious and inhuman methods and practices” of Operation Condor “applied, in a different context, today!”). Numerous international bodies have likewise compared the RDI Program to a systemic practice of forced disappearance. *See* U.N. Secret Detention Report, ¶ 131; U.N. Committee Against Torture, Concluding Observations: United States, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006), ¶ 18 [“UNCAT Concluding Observations 2006”]; Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Martin Scheinin, U.N. Doc. A/HRC/6/17/Add.3, ¶ 36 (Nov. 22, 2007) (noting that extraordinary rendition and transferred for the purposes of detention and interrogation is impermissible under international law, and prolonged detention without charge may constitute forced disappearance). Indeed, in the Senate Torture Report the United States itself confirmed that the RDI Program was purposefully designed to facilitate abduction, secret detention, and interrogation. *See* Senate Torture Report at 11 (describing the Presidential Finding authorizing the CIA’s establishment of a network of secret prisons to detain captured suspects), 15 n. 29 (CIA forms the “Rendition, Detention, and Interrogation Group” to conduct and oversee renditions), 46 (detailing how torturous interrogation techniques would be broadly used following the torture of Abu Zubaydah).

c. U.S. Officials Forcibly Disappeared Petitioners

The United States and its agents and contractors orchestrated the forced disappearance of Petitioners. The United States kidnapped and secretly detained Petitioners as part of a widespread and systemic program or policy designed and implemented by U.S. officials, the CIA, its agents and contactors, and foreign-state actors to detain, interrogate, and torture persons the United States suspected of terrorism.

Mohamed Bashmilah

The United States forcibly disappeared Mr. Bashmilah when the CIA took custody of him from Jordanian authorities and held him incommunicado in U.S.-run facilities in Afghanistan. His family was unable to contact him or obtain any information about his whereabouts.

Abou Elkassim Britel

The United States forcibly disappeared Mr. Britel. The CIA kidnapped Mr. Britel and subjected him to extraordinary rendition by flying him to Morocco for proxy detention there. No information was provided to him or his family about his whereabouts or his alleged offenses, and Mr. Britel was held incommunicado, and denied access to counsel, consular services, and family members.

Binyam Mohamed

The United States forcibly disappeared Mr. Mohamed. Although apprehended and initially detained, interrogated, and tortured in Pakistan by Pakistani agents, CIA agents exercised authority and control over Mr. Mohamed's custody. CIA agents unlawfully rendered him from Pakistan to Morocco, where Moroccan officials, at the behest of or in collaboration with the United States, secretly detained, interrogated and tortured him. Morocco released Mr. Mohamed without charge from U.S. proxy detention to the exclusive authority and control of the United States, which unlawfully rendered him from Morocco to detention and interrogation in U.S.-run facilities in Afghanistan. In Afghanistan, the United States arbitrarily detained Mr. Mohamed, interrogated and tortured him. During this time, the United States did not acknowledge his whereabouts to Mr. Mohamed's family.

Bisher Al-Rawi

The United States forcibly disappeared Mr. Al-Rawi. U.S. agents controlled his capture and detention, interrogation and torture in The Gambia and in Afghanistan yet did not inform his family about his whereabouts despite their many requests for such information.

d. Foreign-State Actors Acting at the Behest of or in Collaboration with the United States Forcibly Disappeared Petitioners

Foreign-state agents in Jordan, Pakistan, Morocco, and The Gambia, acting at the behest of the United States and/or in collaboration with the CIA, violated Petitioners Bashmilah, Britel, Mohamed, and Al-Rawi's rights by forcibly disappearing them.

In Pakistan and Jordan, state officials, at the behest of or in collaboration with the United States, systematically and forcibly disappeared persons who the United States suspected to be associated with Al-Qaeda. Pakistan detained and interrogated Mr. Britel and Mr. Mohamed in secret and transferred them to the authority and control of CIA agents, who rendered them to detention and interrogation at U.S.-run black site prisons or to Guantanamo. Similarly, Jordanian officials forcibly disappeared Mr. Bashmilah when they detained, interrogated, and tortured him before transferring him secretly to a CIA rendition team. The Gambia forcibly disappeared Mr. Al-Rawi, at the behest or in collaboration with the United States. The collaboration of these foreign governments with the United States, including their role in the forced disappearance of Petitioners, is well-documented. *See supra* C (3) (Foreign-State Cooperation with the CIA RDI Program).

Although the foreign-state actors executed Petitioners' abductions, forced disappearances, and secret detentions, the United States orchestrated and controlled them, consistent with the RDI Program objectives. Petitioners' abductions, secret detentions, and torture, as well as the refusal of partner states to confirm Petitioners' whereabouts were a component part of the RDI Program of forced disappearance.

The CIA and foreign-state actors' abduction, secret detention, and rendition of Petitioners were carried out pursuant to the RDI Program, a widespread policy or practice of human rights violations, including unlawful rendition, arbitrary detention, forced disappearances, and torture. The CIA and foreign state actors collaborated in the implementation of the program: foreign state actors served as proxy detention sites for the CIA or otherwise disappeared Petitioners with the purpose of aiding the CIA and its RDI Program. Accordingly, the United States violated the prohibition of forced disappearances guaranteed by Articles I, XVIII, XXV, and XXVI of the American Declaration.

4. Violations of Petitioners' Rights to Asylum

a. Article XXVII Prohibits *Non-Refoulement*

Article XXVII prohibits "the transfer of a person to a country or territory where they would be likely to face persecution, torture, or cruel, inhuman, or degrading treatment or punishment." *Ameziane*, ¶ 256. The prohibition on *non-refoulement* is a non-derogable, *jus cogens* norm and creates erga omnes obligations for states. *See* Inter-Am. Ct. H.R., *Asylum and Its Impact for the Human Rights of Refugees Worldwide*, Advisory Opinion OC-25/18, ¶ 94, 107 (May 30, 2018) ["Asylum Advisory Opinion"]; Jean Allain, "The Jus Cogens Nature of Non-Refoulement" 13 Int'l J. Refugee L. 533 (2001); *Interdiction of Haitians on the High Seas*, ¶ 170. The prohibition encompasses transfers to other states when the transferring state knows that there is a substantial risk of torture or inhumane treatment there. *See e.g.*, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. Comm'n H.R., OEA/Ser.L/V/11.108 doc.40 rev., ¶ 154. (2000); *see also* UNCAT, art. 3. The prohibition applies to transfers made by a state within its territory and extraterritorially. *Asylum Advisory Opinion*, ¶ 99.

The right to *non-refoulement* encompasses procedural protections, including a transferee's right to a hearing before their transfer. *Ameziane*, ¶ 260; *Interdiction of Haitians on the High Seas*, ¶ 155. That hearing must be individualized and include a right of appeal from a decision to transfer. *Ameziane* at ¶ 262. The decision-maker must evaluate the risk of torture or other ill-treatment that a transferee would face if they were transferred, *id.*, ¶ 265, by assessing the transferring state's actual or constructive knowledge of those risks. If a state does not provide for such a hearing—or other procedural protections—this in itself constitutes a violation of the prohibition. *Id.*, ¶¶ 262, 264.

Both the U.N. Committee Against Torture and Human Rights Committee have found that the United States' post-September 11 rendition practices violated the absolute prohibition of *non-refoulement* guaranteed by UNCAT and the ICCPR. *See* UNCAT Concluding Observations 2006, ¶ 20; U.N. Human Rights Committee, *Concluding Observations: United States*,

CCPR/C/USA/CO/3/Rev.1, ¶ 16 (2006) (finding that U.S. conduct constituted a *refoulement* and violated prohibitions on torture in the ICCPR).

b. The United States Violated Mr. Britel's and Mr. Mohamed's Rights to *Non-Refoulement*

The CIA rendered Mr. Britel and Mr. Mohamed to Morocco. Both renditions violated Petitioners' rights to *non-refoulement* guaranteed by Article XXVII. Neither Petitioner was given a hearing to contest their transfer nor were they able to appeal the decision to transfer them, and there was no judicial review of those decisions. The CIA rendered the men to Morocco pursuant to the RDI Program, with the purpose of their continued detention, interrogation, and torture by Morocco. Because there was no judicial review of the renditions, no decision-maker evaluated the risk of torture Mr. Britel and Mr. Mohamed would face in Morocco. Therefore, the United States' summary transfer of Petitioners violated Article XXVII's prohibition on *non-refoulement*.

5. Violations of Petitioners' Rights to Truth

a. Article XVIII Guarantees a Right to Truth

Article XVIII guarantees victims and survivors of human rights violations, their families, and society as a whole a right to the truth about the circumstances of the violations and the persons responsible. This right obligates States to investigate violations and to prosecute and punish those responsible. The Right to Truth in the Americas, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.152, ¶¶ 14-15, 69-70 (Aug. 13, 2014) ["Right to Truth Report"]. To vindicate victims' and survivors' right to truth, a State must afford them and their families access to information in its custody about the violations, and "all society as well." *Id.* States must afford access to all information in its possession that allows these persons, "to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed in order to prevent reoccurrence of such acts in the future." *Id.*, ¶ 71. In sum, states must provide a "full, complete, and public truth as to the events transpired, their specific circumstances, and who participated in them." *Id.*, ¶ 124.

The Commission and Court have long recognized a right to truth, linking it to "judicial guarantees and judicial protection," as opposed to a right standing alone. *Id.*, ¶ 73; *see also Ameziane* at ¶ 236 (asserting the right to truth is "directly connected to the rights to judicial guarantees and judicial protection"); Case of *Gudiel Álvarez* ("Diario Militar") v. *Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012 Series C No. 253, at ¶ 228-29; *Bámaca-Velasquez* at ¶ 197.

States may not invoke national security or state secrecy to deny victims and their families' information regarding their claims of serious human rights violations. *Lund v. Brazil*, Case 11.552, Judgment, Inter-Am. Ct. H.R. Report No. 33/01, ¶ 202 (Nov. 24, 2010). And, because acts of torture and CIDT may constitute crimes against humanity and war crimes, there is an internationally recognized requirement that States investigate and punish perpetrators. *Ameziane*, ¶ 246. Investigations must be adequate and effective. In other words, they must be "undertaken in good faith and be diligent, exhaustive and impartial." All relevant leads must be followed and perpetrators brought to justice. Right to Truth Report, ¶ 77; *Romero y Galdámez v. El Salvador*, Case 11.481, Inter-Am. Comm'n H.R., Report No. 37/00, ¶ 80, (Apr. 13, 2000). Amnesty laws that purport to minimize justice and accountability for human rights violations are prohibited. As

the Commission has previously found, because the United States Detainee Treatment Act and Military Commissions Act provide a “complete defense” and prevent civil remedies and criminal prosecutions, they are impermissible limitations on the right to truth and thus violate this right. *Ameziane*, ¶¶ 241-42.

b. Victims’ Right to Truth

States must conduct prompt, impartial and exhaustive investigations into forced disappearances and other human rights violations. *Giménez v. Argentina*, Case 11.245, Inter-Am. Comm. H.R., Report No. 12/96, OEA/Ser.L/V/II.91, doc. 7 rev. ¶ 412 (Mar. 1, 1996); *Goiburú*, ¶ 88. Investigations must involve victims at all stages. In *Gonzalez Medina v. Dominican Republic*, the Court noted: “States have the obligation to guarantee the right of the victims or their family to take part in all stages of the respective proceedings, so that they can make proposals, receive information, provide evidence, formulate arguments and, in brief, assert their interests and rights” in order to further access to justice as well as uncovering details of what happened and facilitating reparations to victims and their families. *Gonzalez Medina v. Dom. Rep.*, Case 11.324, Judgement (Merits), Inter-Am. Ct. H.R., Report No. 111/09, ¶ 251 (Feb. 27, 2012); *see also. Bámaca Velásquez v. Guatemala*, Case 11.129, Judgement (merits), Inter-Am. Ct. H.R., Report No. 7/96, ¶ 182-83, 201 (Nov. 25, 2000); *Barrios Altos v. Peru*, Case 11.528, Inter-Am. Ct. H.R., Report No. 28/00, ¶ 48 (Mar. 14, 2001).

c. The United States Violated Petitioners’ Right to Truth

The United States continues to conceal information about its RDI Program and has actively blocked Petitioners’ attempts to uncover the truth about rights violations they suffered. The United States has only disclosed partial, heavily redacted information about its authorization and implementation of the program.¹⁰ Nor has it conducted an adequate or effective investigation into widespread allegations of human rights violations committed within the RDI Program. And, as a result, the United States has not held any U.S. officials, agents or contractors criminally accountable for designing, authorizing, or implementing the program. The United States has even blocked Petitioners and other victims’ and survivors’ attempts to secure civil redress for their injuries through invocation of the “states secrets” privilege and immunity defenses.

The Senate Torture Report does not provide a “full, complete, and public truth” concerning the RDI Program. The report released to the public is only the executive summary of the actual report, which remains classified. And even the executive summary is heavily redacted. In particular, the summary names only certain senior U.S. officials involved in the program, but does not identify any perpetrators of torture. The names of foreign state actors who helped implement the program remain classified as do the countries that participated in the program by hosting CIA-run black site prisons or detaining and interrogating individuals for the United States. Indeed, the “study”

¹⁰ In addition to the Senate Torture Report, other partial and incomplete U.S. government reports on portions of the RDI Program include the CIA Office of Inspector General Special Review of Counterterrorism Detention and Interrogation Activities, Sept. 2001 – Oct. 2003 (May 7, 2004), Senate Committee on Armed Services’ Inquiry into the Treatment of Detainees in U.S. Custody (Nov. 20, 2008), and Report of the Department of Justice’s Office of Professional Responsibility Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on Suspected Terrorists (July 2009). Some of the reports were never officially released by the U.S. government, but only made public via leaks and other unofficial disclosures.

excludes from its remit anyone who was not held in a CIA detention facility, including Mr. Britel, and hundreds of other men who the United States rendered to proxy detention, interrogation, and torture in other states. See Steven M. Watt, *The Horrific Stories of CIA-Sponsored Torture That Aren't in the Senate Report*, ACLU (Dec. 22, 2014), available at <https://www.aclu.org/blog/speakeasy/horrific-stories-cia-sponsored-torture-arent-senate-report>. And, as the Commission itself has confirmed, the United States has not investigated or punished acts of torture highlighted in the executive summary. See IACHR on Senate Torture Report.

The United States also blocked Petitioners' attempt to uncover the truth of the violations committed against them by the United States and its contractors. When Petitioners sought civil redress, the U.S. judiciary summarily dismissed their claims. See *Mohamed*, 614 F.3d 1070, 1075, 1077, 1087-88 (9th Cir. 2010) *cert. denied*, 536 U.S. 1002 (2011). The dismissal meant that the courts would not consider any evidence or allow for discovery to uncover the truth of who had been involved in the violations of the rights of the Petitioners.

Counsel for Petitioners have also filed many dozens of requests under the Freedom of Information Act (FOIA) to obtain documents concerning the U.S. government's treatment of detainees specifically and the program of extraordinary rendition and secret detention more broadly. The U.S. government vigorously resisted all efforts to turn over documents, often asserting the *Glomar* response, which permits an executive branch agency to refuse to confirm or deny the existence of records if the FOIA inquiry itself would reveal intelligence "sources and methods." Although many records were disclosed following successful litigation, an even larger number were withheld or produced with many redactions. See generally *The Torture Database*, ACLU, available at <https://www.thetorturedatabase.org/>.

The United States' conduct in refusing to produce documents on the RDI Program, to adequately and effectively investigate human rights violations committed within the program, and to hold perpetrators criminally or civilly accountable violates Petitioners', their families', and society's right to truth guaranteed by the American Declaration.

B. THE UNITED STATES IS RESPONSIBLE FOR THE RIGHTS VIOLATIONS COMMITTED BY ITS AGENTS AND BECAUSE IT FAILED TO ACT WITH "DUE DILIGENCE" TO PROTECT PETITIONERS

1. U.S. Responsibility for the Acts of its Agents and Contractors

"[A]ny violation of rights...carried out by an act of public authority or by persons who use their position of authority is imputable to the State." *Velásquez-Rodríguez*, ¶ 172. A state is responsible for violations committed by its agents, including its officials, employees and contractors, and those who act at its "direction or control." See Int'l Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, art. 4, 8 UN GAOR Supp. (No. 10) at 43, U.N. Doc. A/56/10 (2001). Therefore, the United States is directly responsible for violations of the American Declaration that its agents and contractors carried out pursuant to the RDI Program.

2. U.S. “Due Diligence” Responsibility

A state is also responsible for rights violations when it fails to act with “due diligence” to protect rights, including under certain circumstances, rights violations committed by non-state actors. *See Velásquez-Rodríguez*, ¶ 166, 172; *Lenahan Gonzales v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, ¶ 118. *See also Ameziane* at ¶ 203; *González Pérez v. Mexico*, Case 11.565, Inter-Am. Comm’n H.R., Report No. 53/01, ¶ 83 (2000) (states have a due diligence obligation to prevent forced disappearances, arbitrary detention and torture). Responsibility attaches when the state 1) “knew or ought to have known of a situation presenting a real and immediate risk to the safety of an identified individual” and 2) “failed to take reasonable steps within the scope of its powers which might have had a reasonable possibility of preventing or avoiding that risk.” *See Pueblo Bello Massacre v Colombia*, Case 11.748, Judgement (Merits), Inter-Am. Ct. H.R., Report 41/02, ¶¶ 123-24 (Jan. 31, 2006). Reasonable steps that a state can take to meet its responsibility include legislation prohibiting violations, conducting adequate and effective investigations into rights violations, holding perpetrators accountable when rights violations are committed, and providing reparations and guarantees of non-repetition.

a. U.S. Failure to Conduct an Adequate and Effective Investigation

When rights violations are alleged, “due diligence” requires States to conduct an adequate and effective investigation into those violations; one that is “undertaken in good faith...[is] diligent, exhaustive and impartial.... [and] follow[s] every investigative lead that could help identify the authors of the crime and bring them to justice.” Right to Truth Report, ¶ 77; *Romero y Galdámez*, ¶ 80. Investigators must pursue all logical lines of inquiry to uncover the full truth of the circumstances surrounding the violations and the perpetrators. *Rochela Massacre v. Colombia*, Judgement (Merits), Inter-Am. Ct. H.R., Report No. 29/05, ¶¶ 163-64, (May 11, 2007); *see also Bulacio v. Argentina*, Case 11.752, Judgment, Inter-Am. Ct. H.R., Report No. 29/98, ¶ 112 (Sep. 18, 2003).

As discussed in relation to Petitioners’ right to truth, the United States has not conducted an adequate or effective investigation into the violations of Petitioners’ rights. *See* IACHR on Senate Torture Report. *See also Ameziane*, ¶ 107, 227, 244; U.N. Committee Against Torture, Concluding Observations on the Third to Fifth Periodic Reports of the United States of America, ¶¶ 9-10, 12, U.N. Doc. CAT/C/USA/CO/3-5 (Nov. 20, 2014); 2017 ICC Prosecutor Request at 142-44, 151-61 (noting that “no national investigations or prosecutions have been conducted or are ongoing against those who appear most responsible for the crimes allegedly committed by members of the US armed forces”). *See also* HLS Denial of Justice Submission, 16-20 (documenting the U.S. failure to prosecute and the inadequacy of the criminal investigations into U.S. torture).

b. U.S. Failure to Hold Perpetrators Accountable

“Due diligence” also requires that States hold perpetrators of rights violations accountable by criminally prosecuting them. *Lenahan Gonzales*, ¶ 126-27, 130; *Gelman v. Uruguay*, Judgment (Merits and Reparations), Inter-Am. Ct. H. R., Report No. 32/08, ¶¶ 189-91 (Feb. 24, 2011) (states must punish rights violations as an affirmative measure to protect rights and as part of their obligation to organize governmental structures to guarantee rights and to combat impunity). States must employ all legal means available to prosecute individuals. *Valle Jaramillo*, Case 0519/2001, Inter-Am. Comm’n H.R., Report No. 5/03, ¶ 101 (Nov. 27, 2008). Nor may States escape their

responsibility to prosecute perpetrators by enacting barriers—whether legal, procedural, or otherwise—to prosecutions, including amnesty laws or statutes of limitations, *Gelman*, at ¶¶ 225-229. This is especially heightened in cases involving human rights abuses and those that rise to crimes against humanity or war crimes. There is an internationally recognized requirement that States investigate and punish such crimes and “develop and appropriately exhaust hypotheses of criminal investigation regarding the commission of war crimes and crimes against humanity.” *Ameziane*, ¶ 246.

c. U.S. Failure to Provide Reparations or Guarantees of Non-Repetition

Finally, “due diligence” requires that states provide victims and survivors with reparations for rights violations and guarantees of non-repetition. *See Velásquez-Rodríguez*, ¶ 166, 172 (State responsibility incurs if states fail to “restore the right violated and provide compensation as warranted for damages resulting from the violation”). For survivors of arbitrary detention, forced disappearance, torture, and other egregious human rights violations, reparations may include restitution, compensation, rehabilitation, public acknowledgement of wrong-doing, and apologies. *See G.A. Res.*, 6-9, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, U.N. Doc. A/RES/60/147, ¶¶ 8-9 (Mar. 21, 2006); U.N. Convention Against Torture, *General Comment No. 3 (2012) Implementation of article 14 by States parties*, U.N. Doc. CAT/C/GC/3, ¶¶ 6-18 (Dec. 13, 2012).

The United States has not provided Petitioners or any other victim or survivor of the RDI Program with redress for the violations of their rights, nor provided them with effective guarantees that the United States will not repeat the violations it committed as part of that program. Accordingly, the United States is responsible for the rights violations alleged by Petitioners.

3. U.S. Responsibility for Extraterritorial Rights Violations

States are responsible for extraterritorial rights violations committed by state actors. *See Molina (Ecuador) v. Colombia*, Case IP-02, Inter-Am. Comm’n H.R., Report No. 112/10, ¶ 91 (Oct. 21, 2010) (“Each American State is obligated [] to respect the rights of all persons within its territory and of those present in the territory of another state but subject to the control of its agents.”); *see also Ameziane v. United States*, Report No. 17/12, ¶ 35 (Mar. 20, 2012), *Velásquez-Rodríguez*, ¶ 161-64; *Lenahan Gonzales*, ¶ 119. State responsibility also attaches for the extraterritorial activities of foreign actors when a state exercises effective control over the activities. *See Inter-Am. Ct. H.R., The Environment and Human Rights, Advisory Opinion OC-23/17*, ¶ 104(h) (Nov. 15, 2017) (state responsible for rights violations “when the State of origin exercises effective control over the activities [carried out] that caused the damage and consequent violation of human rights.”) Under the “activities” basis for extraterritorial jurisdiction, a factual or causal nexus must exist between the conduct occurring in or by the State and the extraterritorial rights violations. *Id.*, ¶¶ 95, 101-02.

a. The United States is Responsible for Extraterritorial Rights Violations Committed by its Agents and Contractors

The United States is responsible for Petitioners’ forced disappearances, arbitrary detention, and torture because these rights violations were committed by its agents—including the CIA and its contractors and Department of Defense officials and its contractors—pursuant to its RDI Program

when Petitioners were under their effective jurisdiction and control. And, because these rights violations were committed pursuant to a program that “constitutes a systemic practice on the part of the State, sanctioned by the highest levels of government,” the United States’ responsibility is aggravated. *Ameziane*, ¶ 277-78; *see generally* Closure of Guantanamo Report.

b. The United States is Responsible for Extraterritorial Rights Violations Committed by Foreign-State Actors and their Agents

The United States is also responsible for the rights violations committed by foreign state actors and their agents and contractors because the United States exercised effective jurisdiction and control over the RDI Program, and foreign state actors were acting at the behest of or in collaboration with the United States in carrying out that program’s objectives. The RDI Program was a systematic practice of forced disappearance, secret detention, and torture authorized by the United States and conducted in close collaboration with foreign governments. Agents of those governments, acting pursuant to the program and at the behest of the United States, forcibly disappeared Petitioners, and arbitrarily detained and tortured them in proxy detention. Because the United States exercised effective jurisdiction and control over the implementation of the program domestically and abroad, the United States is responsible for extraterritorial rights violations committed by foreign state actors pursuant to the program.

C. THE UNITED STATES VIOLATED PETITIONERS’ SUBSTANTIVE RIGHT TO A REMEDY

Articles XVIII and XXIV of the American Declaration guarantee Petitioners’ substantive right to a remedy, including reparations, for violations of their rights. U.S. courts have refused to provide Petitioners with reparations for the violation of their rights caused by the United States and those who acted at the behest of or in collaboration with the United States in implementation of the RDI Program. Accordingly, the United States violated and continues to violate Articles XVIII and XXIV of the American Declaration.

1. Articles XVIII and XXIV Guarantee an Effective Right of Access to a Tribunal and, Where Appropriate, the Enforcement of Remedies

Article XVIII guarantees every person the right to resort to the courts to ensure respect for legal rights and to obtain protection from any conduct that violates any fundamental rights. Article XXIV guarantees everyone the right to petition any competent authority, and to obtain a prompt decision from it. The Commission interprets Article XVIII in light of the more specific but analogous provisions of Articles 8 and 25 of the American Convention. *Maya Indigenous Communities v. Belize*, Case 12.053, Inter-Am. Comm’n H.R., Report No. 78/00, OEA/Ser.L/V/II.111, doc. 20, rev. ¶ 174 (2000).

Article 8 of the American Convention provides “the right to a hearing, with due guarantees . . . for the determination of rights.” States must provide a judicial forum for anyone who alleges violations of their fundamental rights and that forum must be capable of granting a remedy that effectively and adequately addresses any violation of the right alleged. *See e.g., Velásquez-Rodríguez*.

Article 25 guarantees effective recourse for “protection against acts that violate fundamental rights recognized by the constitution or laws of the state or by the Convention.” Together with Articles 1(1) and 2 of the Convention, Article 25 encompasses three separate but related rights: first, “the right of every individual to go to a tribunal when any of his rights have been violated”; second, the

right “to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not the violation has taken place”; and third, the right to have remedies enforced when granted. *Martí de Mejía*, §2(b).

The right to a remedy requires that states do more than simply ensure that individuals have access to the court system; a state must ensure that available remedies are “effective” in affording the individual whose rights have been violated adequate redress for the harm suffered. *See e.g., Mayagna Awas Tingni Community v. Nicaragua*, Case 11.577, Judgement, Inter-Am. Ct. H.R., Report No. 27/98 (Feb. 1, 2000). In *Gustavo Carranza v. Argentina*, the Commission found that Argentina had violated petitioner’s right to a remedy when its courts applied the political question doctrine and refused to decide a case on the merits. Case 10.087, Inter-Am. Comm’n H.R., Report No. 30/97, OEA/Ser.L/V/II.9, doc. 7 rev. (Sep. 30, 1997). In finding a violation of both Articles 8 and 25, the Commission, highlighting the need for “effective” judicial protection, elaborated on the nature of Article 25’s right to a remedy:

[T]he logic of every judicial remedy—including that of Article 25—indicates that the deciding body must specifically establish the truth or error of the claimant’s allegation. The claimant resorts to the judicial body alleging the truth of a violation of his rights, and the body in question, after a proceeding involving evidence and discussion of the allegation, must decide whether the claim is valid or unfounded. *Id.*, ¶ 73.

Applying this same analysis, the U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms has found that the U.S. state secrets doctrine violates victims’ rights of access to a remedy:

The blanket invocation of State secrets privilege with reference to complete policies, such as the United States[?] secret detention, interrogation and rendition programme or third-party intelligence (under the policy of ‘originator control’ ...) prevents effective investigation and renders the right to a remedy illusory. This is incompatible with Article 2 of the International Covenant on Civil and Political Rights. It could also amount to a violation of the obligation of States to provide judicial assistance to investigations that deal with gross human rights violations and serious violations of international humanitarian law.

U.N. Special Rapporteur, Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, ¶ 60, UN Doc. A/HRC/10/3 (Feb. 4, 2009).

The European Court also has recognized the importance of the right to a remedy and its importance in safeguarding other rights, even when a state raises national security concerns. In *Tinnelly and McElduff v. U. K.*, the applicants, Catholics based in Northern Ireland, lodged complaints under the Fair Employment (Northern Ireland) Act 1976, alleging that the U.K government had unlawfully discriminated against them in tendering for government contracts. Judgment, App. No. 20390/92, Eur. Ct. H.R. (1998).

The Secretary of State for Northern Ireland issued certificates under section 42 of the 1976 Act stating that the refusal to offer contracts was “an act done for the purpose of protecting national security or the protection of public safety or order.” *Id.*, ¶ 79. Under section 42(2) of the Act, the English court deemed these certificates conclusive evidence of the facts asserted. In an application for judicial review of the certification process, the domestic court stated that it could not look behind the terms of the certificate to examine the merits of the underlying factual basis for refusing the contracts on national security grounds. Nor did the court have sight of the relevant documents; rather, it dismissed the case on the ground that the section 42 certificates were conclusive on the issue of national security. In other words, there was no “independent judicial scrutiny of the facts grounding” the judge’s determination. *Id.*, ¶ 78.

On appeal, the European Court held that the certificates constituted a disproportionate restriction on the applicants’ right to a judicial determination on the issue and a violation of Article 6 of the European Convention. *Id.*, ¶¶ 72-79. Although the European Court accepted that the right to a remedy might be subject to certain limitations, including on national security grounds, it determined that where imposed, limitations must not restrict the exercise of the right in such a way that the very essence of the right is impaired. *Id.* The European Court added that any such limitation must pursue a legitimate state objective and that there must be a reasonable proportionality between this objective and the means employed to achieve it. *Id.*, ¶ 77. *See also Devenney v. U.K.*, Judgment, App. No. 24265/94, Eur. Ct. H.R. (2002); *Al-Nashif v. Bulgaria*, App. No. 50963/99, 36 Eur. Ct. H.R. 655 (2002).

2. The United States Denied Petitioners’ Their Right to Remedy

The United States denied Petitioners access to judicial remedies by failing to conduct an effective and adequate investigation into their allegations, to hold those accountable responsible, and denying Petitioners civil remedies in U.S. federal court.

Shortly after Petitioners filed their federal lawsuit, the United States intervened to seek immediate dismissal based on an evidentiary “states secrets” privilege, arguing that further litigation of Petitioners’ claims would cause harm to U.S. national security interests. In support, the United States produced two declarations, one public and the other for the judge alone. The full panel of the U.S. Court of Appeals for the Ninth Circuit, affirming the district court’s earlier dismissal, upheld invocation of the privilege, and dismissed Petitioners’ case on the pleadings.

In applying the state secrets privilege, the court of appeals did not independently consider whether the evidence that the government sought to have removed from the case was genuinely secret; whether disclosure of particular information would reasonably have caused harm to national security; and whether, even if state secrets were legitimately implicated, dismissal of Petitioners’ entire suit at the pleading stage was warranted. Moreover, the Court failed to consider adequately possible alternatives to dismissal of the case, including admission of state secrets evidence in camera or under seal, the appointment of a Special Master, the establishment of Protective Orders, and the possibility of holding an in-camera trial. *See Opening Brief for Plaintiff-Appellant*, Part III(c), *Mohamed*, 614 F.3d 1070 (9th Cir. 2010), *cert. denied*, 536 U.S. 1002 (2011).

Thus, the court of appeals did not even address the truth or falsity of Petitioners’ credible claims of forced disappearance and torture. The Court made no attempt to elucidate the “truth as to the

events that transpired, their specific circumstances, and who participated in” the violation of their rights. Finally, Petitioners’ suggestion that there were alternatives to dismissal that would have accommodated both the government’s national security interests and their own interests in the litigation proceeding were summarily dismissed. The Court simply held that Petitioners’ right to redress must be subordinated to the collective interest in national security. In so doing, the United States violated Petitioners’ substantive right to a remedy guaranteed by Articles XVIII and XXIV.

CONCLUSION AND PETITION FOR RELIEF

The facts alleged in their petition and these observations establish that the United States is responsible for violating Mr. Bashmilah’s, Mr. Britel’s, Mr. Mohamed’s and Mr. Al-Rawi’s rights guaranteed by Articles I, VIII, XVII, XVIII, XXIV, XXV and XXVI of the American Declaration. Thus, Petitioners request that the Commission:

1. Investigate, with hearings and witnesses as necessary, the facts alleged in their Petition and Final Observations on the Merits.
2. Declare that the United States is responsible for violating Petitioners’ rights to be free from torture, CIDT, arbitrary detention, and forced disappearance guaranteed under Articles I, VIII, XVII, XXV, XXVI, and XXVI, their rights to truth and to a substantive remedy protected under Articles XVIII and XXIV. In addition, declare that the United States is responsible for violating Petitioners Britel’s and Mohamed’s rights to asylum guaranteed under Article XXVII.
3. Declare that the RDI Program violates the American Declaration and provide Petitioners and other victims and survivors of the program with effective guarantees that the United States will not revive the program or any of its constituent parts; nor repeat the human rights violations that they gave rise to.
4. Recommend reparations that the Commission considers adequate and effective to redress the United States’ violations of Petitioners’ rights, including: requesting that the U.S. government and others responsible for violating Petitioners’ rights publicly acknowledge their responsibility; publicly apologize to them and their families for violating their rights; and provide Petitioners with compensation, rehabilitation, and effective guarantees of non-repetition.