

No. 07-1520

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

ZAYN AL ABIDIN MUHAMMAD HUSAYN,
PRISONER, Guantánamo Bay Naval Station, Guantánamo Bay, Cuba,
Petitioner/Plaintiff,

v.

ROBERT M. GATES,
SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA,
Respondent/Defendant.

**AMENDED PETITION FOR RELIEF UNDER THE DETAINEE
TREATMENT ACT OF 2005,
AND, IN THE ALTERNATIVE, FOR WRIT OF HABEAS CORPUS**

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February 21, 2008

1. Petitioner, Zayn Al Abidin Muhammad Husayn ("Abu Zubaydah") ("Petitioner"), seeks the Great Writ.

2. All of the information that appears in this Petition comes from sources in the public domain. The sources include newspapers, magazines, television programs, television interviews, written reports, and, in a very limited number of instances, anecdotal reports. No information contained in the Petition is based on counsel's access to or review of any classified information. Indeed, counsel have not yet received any classified information regarding this case, and have not yet had access to the Petitioner. All the information presented was obtained publicly and is set forth here to document Petitioner's need for a habeas corpus hearing. An index of the documents and sources is attached hereto as Exhibit 1.

3. In March 2002, Petitioner was living in Pakistan. Petitioner was well known in his community and widely believed to be mentally challenged. Petitioner was so well known, it is remarkable that the CIA was unable to locate him. A former FBI agent who has reviewed the file on Petitioner is on record stating: "This guy is insane, certifiable, split personality . . . He was like a travel agent, the guy who booked your flights . . . the greeter . . . Joe Louis in the lobby of

Caesar's Palace, shaking hands.”¹ Petitioner is said to have sustained a serious head injury in the years preceding the events of September 11, 2001.²

4. On or about March 28, 2002, Petitioner was attacked and shot three times by combined Pakistani and United States forces that, on information and belief, included agents of the Central Intelligence Agency (“CIA”). Wounded and in critical condition from gunshots to the groin, thigh, and stomach,³ Petitioner became a prisoner in a secret program conducted by the Central Intelligence Agency (“CIA”), initiated after September 11, in which alleged suspects were jailed and systematically tortured at secret prisons outside the United States known as “black sites.”⁴

5. Since March 2002, Petitioner has been held incommunicado in the unlawful custody of the CIA at various black sites around the world, including

¹ Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11*, at 100 (New York: Simon & Schuster 2006).

² *Id.* at 95.

³ Brian Ross, *CIA- Abu Zubaydah: Interview with John Kiriakou: Transcript*, ABC NEWS, Dec. 10, 2007, http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf.

⁴ Dan Froomkin, *Bush's Exhibit A for Torture*, Wash. Post, Dec. 18, 2007, <http://www.washingtonpost.com/wp-dyn/content/blog/2007/12/18/BL2007121800862.html>; *see also* Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, A1, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>.

Pakistan, Thailand, Diego Garcia, Poland and Northern Africa (most probably Morocco).⁵ During his captivity, Petitioner has been subjected to various forms of torture over extended periods of time, including, but not limited to, waterboarding, isolation, exposure to temperature extremes, and sleep and sensory deprivation.⁶

⁵ Dick Marty, *Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report*, Council of Europe Parliamentary Assembly, June 7, 2007, http://assembly.coe.int/CommitteeDocs/2007/Emarty_20070608_NoEmbargo.pdf; Brian Ross and Richard Esposito, *EXCLUSIVE: Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC News, Dec. 5, 2007, <http://abcnews.go.com/WNT/Investigation/story?id=1375123>; *CIA Shuffled Prisoners Out of Poland*, Global Pulse, Dec. 5, 2005, http://www.globalpulse.net/archives/security/cia_shuttled_pr_000087.php; Jason Burke, *Secret World of U.S. Jails*, Observer, June 13, 2004, <http://observer.guardian.co.uk/international/story/0,6903,1237589,00.html>; *Enforced Disappearance, Illegal Interstate Transfer, and Other Human Rights Abuses Involving the UK Overseas Territories: Executive Summary*, Reprieve, available at <http://www.reprieve.org.uk/documents/FinalReprieveFASCExecutiveSummary.pdf>.

⁶ David Johnston, *At a Secret Interrogation, Disputes Flared Over Tactics*, N.Y. TIMES, Sept. 10, 2006, <http://www.nytimes.com/2006/09/10/washington/10detain.html?pagewanted=1>; Dan Eggen and Walter Pincus, *FBI, CIA Debate Significance of Terror Suspect: Agencies Also Disagree On Interrogation Methods*, Wash. Post, Dec. 18, 2007, at A1, <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/17/AR2007121702151.html>; see also Brian Ross and Richard Esposito, *CIA's Harsh Interrogation Techniques Described – Sources Say Agency's Tactics lead to Questionable Confessions, Sometimes to Death*, ABC News, Nov. 18, 2005, <http://abcnews.go.com/WNT/Investigation/story?id=1322866>; Dick Marty, *Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report*, Council of Europe Parliamentary Assembly, June 7, 2007, http://assembly.coe.int/CommitteeDocs/2007/Emarty_20070608_NoEmbargo.pdf.

Indeed, the government has admitted to waterboarding Petitioner. The government also has admitted to videotaping hundreds of hours of Petitioner's torture and interrogations and destroying same.⁷ In addition to his torture, he has been subjected to cruel, inhumane, and degrading treatment and physical and psychological interrogation techniques specifically designed to isolate him from the world, reduce him to a state of learned helplessness, and render him wholly dependent on his captors.⁸ He has now been imprisoned without charge for nearly six years.

6. Currently, Petitioner is being held virtually incommunicado in Respondent's unlawful custody at Guantánamo.

7. Respondent Gates, U.S. Secretary of Defense, is either ultimately responsible for or has been charged with the responsibility of maintaining the custody and control of Petitioner at Guantánamo.

⁷ Scott Shane and Mark Mazetti, *CIA Tapes Lived and Died to Save Image*, N.Y. Times, Dec. 30, 2007, at A1, http://www.nytimes.com/2007/12/30/washington/30intel.html?_r=1&oref=slogin.

⁸ Jane Mayer, *The Black Sites: A rare look inside C.I.A.'s secret interrogation program*, The New Yorker, Aug. 13, 2007, http://www.newyorker.com/reporting/2007/08/13/070813fa_fact_mayer; Katherine Eban, *Rorschach and Awe*, Vanity Fair, July 17, 2007, <http://www.vanityfair.com/politics/features/2007/07/torture200707>.

I.
JURISDICTION

8. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §§ 2241 and 2242. Petitioner also relies upon 28 U.S.C. §§ 1331, 1651, 2201, and 2202; 5 U.S.C. § 702; as well as the Fifth, Sixth, and Eighth Amendments to the United States Constitution; the International Covenant on Civil and Political Rights; the American Declaration on the Rights and Duties of Man; and customary international law. Because he seeks declaratory relief, Petitioner also relies on Fed. R. Civ. P. 57.

9. This Court is empowered under 28 U.S.C. § 2241 to grant the Writ of Habeas Corpus and to entertain this Petition. This Court is further empowered to declare the rights and other legal relations of the parties herein by 28 U.S.C. § 2201, and to effectuate and enforce declaratory relief by all necessary and proper means by 28 U.S.C. § 2202, as this case involves an actual controversy within the Court's jurisdictions.

II.
PARTIES

10. On information and belief, Petitioner was born in Riyadh, Saudi Arabia, on March 12, 1971. Presently, Petitioner is incarcerated and held in Respondent's unlawful custody at Camp VII, Guantánamo.

11. Robert M. Gates (“Respondent”) is the Secretary of the United States Department of Defense. Respondent Gates has been charged with maintaining the custody and control of the Petitioner. He is sued in his official capacity.

III. STATEMENT OF FACTS

12. Petitioner is not, and never has been, an enemy alien, lawful or unlawful belligerent, or combatant of any kind.

13. Petitioner is not, and never has been, an “enemy combatant” who was “part of or supporting forces hostile to the United States or coalition partners in Afghanistan. He was never engaged in an armed conflict against the United States there.” See *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

14. At the time of his detention, Petitioner was not a member of either the Taliban or al Qaeda. He did not cause or attempt to cause any harm to American personnel or property at any time prior to his illegal detention. Petitioner did not have a weapon when he was taken into illegal custody. Petitioner was not in Afghanistan at the time of his detention, but was taken into custody in Pakistan after he was wrongfully attacked, shot, and severely injured by U.S. forces, including the CIA.

15. From the time of his initial detention in Pakistan to the present, Petitioner has not been afforded any procedures that would satisfy even the most

basic notions of due process and procedural fairness, let alone the requirements imposed by the Due Process Clause of the Fifth Amendment to the United States Constitution. Had Petitioner received a hearing consistent with the standards and procedures specified by Respondent for Combatant Status Review Tribunals, or had those procedures been consistent with the Constitution and laws of the United States, Respondent would not have been able to prove by any standard that Petitioner either was, or should be classified as, an “enemy combatant.”

A. NEITHER THE CONGRESSIONAL AUTHORIZATION FOR THE USE OF MILITARY FORCE NOR THE EXECUTIVE ORDER OF NOVEMBER 13, 2001, AUTHORIZED PETITIONER’S DETENTION

16. In the wake of the September 11, 2001, attacks on the United States, a Joint Resolution of Congress authorized President Bush to use force against the “nations, organizations, or persons” that “planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons.” Authorization for Use of Military Force, Pub. Law 107-40, 115 Stat. 224 (Sept. 18, 2001) (“AUMF”). Petitioner did not participate in an armed conflict against the United States nor was he arrested during the course of an armed conflict. He did not plan, authorize, commit, or aid any attacks on the United States, nor has he “harbored” persons who did. Therefore, he is not properly detained pursuant to the AUMF.

17. On November 13, 2001, President Bush issued a Military Order authorizing Respondent Rumsfeld to detain indefinitely “any individual who is not a United States citizen with respect to whom [the President] determine[s] from time to time in writing” that there is “reason to believe . . . at the relevant times:”

- i. is or was a member of the organization known as al Qaeda;
- ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefore, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii).

Military Order, Detention, Treatment, and Trial of Certain Non-Citizens in the War against Terrorism, 66 Fed. Reg. 57,833 (Nov. 13, 2001) (“Military Order”).

Pursuant to the plain language of the Order, President Bush must make in writing the determination contemplated by the Military Order. The Military Order was neither authorized nor directed by Congress and is beyond the scope of the AUMF.

18. On information and belief President Bush has never certified or determined in any manner, whether in writing or otherwise, that Petitioner is subject to the Executive Order.

19. Petitioner is not properly subject to detention pursuant to the Executive Order issued by President Bush.

20. Petitioner has not been, and is not being, detained lawfully either pursuant to the Executive Order, President Bush's authority as Commander-in-Chief and/or under the laws and usages of war.

B. PETITIONER'S SEIZURE IN PAKISTAN AND TRANSFER TO THE CUSTODY OF THE CIA

21. Petitioner was captured March 28, 2002, in Faisalbad, Pakistan.⁹ He suffered three gunshot wounds after being attacked by Pakistani and American forces during his capture and arrest.¹⁰

22. Former CIA agent John Kiriakou, who was a co-leader of the team of American and Pakistani forces that shot and took custody of Petitioner, described Petitioner as "a very friendly guy," who wrote poetry and was keen to talk about

⁹ *United States' "Disappeared" CIA Long-term "Ghost Detainees"*, Human Rights Watch, available at <http://www.hrw.org/backgrounder/usa/us1004/index.htm>; Dan Eggen and Walter Pincus, FBI, *CIA Debate Significance of Terror Suspect: Agencies Also Disagree on Interrogation Methods*, Wash. Post, Dec. 18, 2007, at A1, <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/17/AR2007121702151.html>; John F. Burns, *A Nation Challenged: The Fugitives; In Pakistan's Interior, a Troubling Victory in Hunt for Al Qaeda*, N.Y. Times, April 14, 2002, <http://query.nytimes.com/gst/fullpage.html?res=9A00EFDA123CF937A25757C0A9649C8B63>.

¹⁰ David Johnston, *At a Secret Interrogation, Dispute Flared Over Tactics*, N.Y. TIMES, Sept. 10, 2006, <http://www.nytimes.com/2006/09/10/washington/10detain.html?pagewanted=1>; *Pakistan: Musharraf's Risky Gambit*, Newsweek, Oct. 29, 2007, <http://www.newsweek.com/id/64441> (noting that "Pakistan's own Inter-Services Intelligence directorate was kept largely in the dark about the operation").

current events and compare and contrast the differences and similarities between Islam and Christianity.¹¹

23. Unclassified sources in the United Kingdom and elsewhere say that prior to Petitioner's arrest, Petitioner was a well-known figure who helped facilitate travel to and from Afghanistan after the Taliban became the *de facto* government in that country. Travelers from the United Kingdom who were familiar with Petitioner say he acted much like a travel agent. They described him as gregarious and friendly. Some have remarked that it was curious that Petitioner and his whereabouts were known to so many but not the CIA. Indeed, the fact that Petitioner's phone number is so well known supports accounts that Petitioner served as a travel agent.¹² Witnesses familiar with Petitioner and the CIA's allegations deny that Petitioner was a member of or associated with al Qaeda, as does Petitioner.

24. CIA agent Kiriakou stated that Petitioner "was shot in the thigh, the groin, and the stomach with an AK-47." In the same interview, Kiriakou stated: "[Petitioner] was almost killed. And later that night one of the doctors, the

¹¹ Brian Ross, *CIA-Abu Zubaydah: Interview with John Kiriakou: Transcript*, ABC News, Dec. 10, 2007, http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf

¹² Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11*, at 84 (New York: Simon & Schuster 2006).

Pakistani doctor who was treating him, told me that he had never seen wounds so severe where the patient had lived.” Kiriakou offered the following account of Petitioner’s injuries: “One of the things that sticks in my mind—from those—those days and nights was how much blood he lost. There was blood everywhere. It was all over him. It was all over the bed. It pooled underneath the bed. It was all over us every time we had to move him. It was really an incredible amount of blood that he lost.” Kiriakou claims to have been the first person to speak to Petitioner when he came out of his coma.¹³

25. The Government concedes that Petitioner was grievously injured, but contends that gunfire was exchanged during the raid.¹⁴ Petitioner, however, denies that he or anyone with him in the guest house had weapons: “When our house was raided, we had no guns, so all we could do was fight with our hands. One of us had a knife, and he got killed. So, the statement that gunfire was

¹³ Brian Ross, *CIA-Abu Zubaydah: Interview with John Kiriakou: Transcript*, ABC News, Dec. 10, 2007, http://abcnews.go.com/images/Blotter/brianross_kiriakou_transcript1_blotter071210.pdf.

¹⁴ *Unclassified Summary of Evidence for Combatant Status Review Tribunal* (19 March 2007), available at <http://www.defenselink.mil/news/ISN10016.pdf>.

exchanged was incorrect. The gunfire only came from the soldiers who attacked our house.”¹⁵

26. On information and belief, Petitioner was transferred to the custody of the CIA and flown out of Pakistan three days after being shot.¹⁶

27. On April 3, 2002, Donald Rumsfeld stated that the U.S. was “holding” Petitioner, who was receiving medical care.¹⁷ Human Rights Watch and the British Broadcasting Corporation both reported that Petitioner was held in Pakistan under CIA control.¹⁸

¹⁵ Unclassified Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10016 (27 March 2007), *available at* http://www.defenselink.mil/news/transcript_ISN10016.pdf.

¹⁶ Dan Eggen and Walter Pincus, *FBI, CIA Debate Significance of Terror Suspect: Agencies Also Disagree on Interrogation Methods*, Wash. Post, Dec. 18, 2007, at A1, <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/17/AR2007121702151.html>; *CIA Used Banned Cold War “Brainwashing” Techniques on Detainees*, Leveymag’s Journal, Dec. 18, 2007, <http://journals.democraticunderground.com/leveymg/336>.

¹⁷ *Fate and Whereabouts Unknown: Detainees in the War on Terror*, NYU School of Law: Center for Human Rights and Global Justice, Dec. 17, 2005, <http://www.chrgj.org/docs/Whereabouts%20Unknown%20Final.pdf>.

¹⁸ *United States’ “Disappeared” CIA Long-term “Ghost Detainees”*, Human Rights Watch, *available at* <http://www.hrw.org/backgrounder/usa/us1004/index.htm>.

C. PETITIONER BECOMES A GHOST PRISONER AT CIA BLACK SITES AROUND THE WORLD

28. Over the next four years, Petitioner was jailed at various CIA prisons around the world.

29. Video cameras were set up to record Petitioner twenty-four hours a day, including when he was interrogated and tortured.¹⁹

30. At one point in the early weeks of his interrogation, Petitioner was taken to a hospital for medical treatment because he nearly died from infected wounds.²⁰

31. On information and belief, US officials deliberately withheld painkillers from Petitioner as an interrogation device.²¹

32. Petitioner initially was interrogated in a safe house in Thailand and was kept there for at least a “few weeks” after his capture.²² Investigators from the

¹⁹ Scott Shane and Mark Mazetti, *CIA Tapes Lived and Died to Save Image*, N.Y. Times, Dec. 30, 2007, at A1, http://www.nytimes.com/2007/12/30/washington/30intel.html?_r=1&oref=slogin.

²⁰ David Johnston, *At a Secret Interrogation, Dispute Flared Over Tactics*, N.Y. Times, Sept. 10, 2006, 8655-8657, <http://www.nytimes.com/2006/09/10/washington/10detain.html?pagewanted=1>.

²¹ *United States' "Disappeared" CIA Long-term "Ghost Detainees,"* Human Rights Watch, <http://www.hrw.org/backgrounders/usa/us1004/index.htm>; Serrin Turner & Stephen J. Schullhoffer, *The Secrecy Problem in Terrorism Trials*, Brennan Center for Justice, 55 (2005), http://brennan.3cdn.net/6a0e5de414927df95e_1bm6iy66c.pdf (stating, “For nearly forty-eight hours, around the clock, Zubaydah’s condition went from complete relief when the [narcotic] drip was on to utter agony when it was off.”).

Council of Europe were told that Thailand hosted the first CIA “black site,” and that Petitioner was held there after his capture in 2002. CIA sources indicated that Thailand was used because of the ready availability of the network of local knowledge and bilateral relationships that dated to the Vietnam War.²³

33. After Thailand, on information and belief, Petitioner was transferred to Diego Garcia in the Indian Ocean and then taken to a secret CIA prison in Poland.²⁴ Sources in the CIA named Poland as a “black site” where both Petitioner

²² David Johnston, *At a Secret Interrogation*, Dispute Flared Over Tactics, N.Y. Times, Sept. 10, 2006, <http://www.nytimes.com/2006/09/10/washington/10detain.html?pagewanted=1>.

²³ “One CIA source told us: “In Thailand, it was a case of ‘you stick with what you know’;” however, since the allegations pertaining to Thailand were not the direct focus of our inquiry, we did not elaborate further on these references in our discussions. The specific location of the “black site” in Thailand has been publicly alleged to be a facility in Udon Thani, near to the Udon Royal Thai Air Force Base in the north-east of the country. This base does have long-standing connections to American defence [sic] and intelligence activities overseas: during the Vietnam War it served as both a deployment base for the US Air Force and the Asian headquarters of the CIA-linked aviation enterprise, Air America.” Dick Marty, *Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report*, Council of Europe Parliamentary Assembly, June 7, 2007, http://assembly.coe.int/CommitteeDocs/2007/Emarty_20070608_NoEmbargo.pdf

²⁴ *Enforced Disappearance, Illegal Interstate Transfer, and Other Human Rights Abuses Involving the UK Overseas Territories: Executive Summary*, Reprieve, <http://www.reprieve.org.uk/documents/FinalReprieveFASCExecutiveSummary.pdf>; Ian Cobain, *Claims of secret CIA jail for terror suspects on British island to be investigated*, The Guardian (Oct. 19, 2007), <http://www.guardian.co.uk/world/2007/oct/19/alqaida.usa>.

and Khalid Sheikh Mohamed were held and questioned using “enhanced interrogation techniques.”²⁵

34. The secret detention facilities in Europe were run directly and exclusively by the CIA. Based on information and belief, the local staff had no meaningful contact with the prisoners and performed purely logistical duties such as securing the outer perimeter.²⁶

35. The U.S. Government set out to secure permissions “from as many allied countries as possible” that would allow CIA agents to collaborate directly with foreign military officials, operate “on a no-questions-asked basis” at military installations, and travel free from inspection in military or civilian vehicles and aircraft.²⁷

36. These secret places of detention formed part of the “HVD” (High Value Detainees) program publicly referred to by the President of the United States on 6 September 2006.²⁸ The “HVD” program was set up by the CIA with the cooperation of official European partners belonging to Government services and kept secret for many years thanks to strict observance of the rules of confidentiality laid

²⁵ Marty, *supra* n.23.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

down in the NATO framework. The implementation of this program has given rise to repeated and serious breaches of human rights.²⁹

37. Detainees of the “HVD” program were subjected to inhuman and degrading treatment, sometimes protracted. Certain “enhanced” interrogation methods that were used against the prisoners in this program meet the definition of torture and inhuman and degrading treatment in Article 3 of the European Convention on Human Rights and the United Nations Convention against Torture. Furthermore, secret detention is contrary to international undertakings both of the United States and of the Council of Europe Member States.³⁰

38. On information and belief, after the disclosure of the CIA’s operation of black sites around the world, Petitioner was moved to another secret CIA prison in the North African desert in November or December 2005.³¹ According to another report, Zubaydah also is believed to have been transferred to Bagram Air Base, Afghanistan, and then to Jordan where he was detained in various facilities in the capital Amman and the eastern desert portion of the country.³²

²⁹ *Id.*

³⁰ *Id.*

³¹ Brian Ross and Richard Esposito, *EXCLUSIVE: Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC News, Dec. 5, 2007, 8711-8713, <http://abcnews.go.com/WNT/Investigation/story?id=1375123>.

³² Jason Burke, *Secret World of U.S. Jails*, Observer, June 13, 2004, <http://observer.guardian.co.uk/international/story/0,6903,1237589,00.html>.

39. The CIA's harsh treatment of Petitioner during his initial interrogation led to a dispute regarding acceptable interrogation methods between the FBI and the CIA.³³ Petitioner's initial interrogation by FBI agents followed usual protocol: they cleaned his wounds, spoke to him in languages with which he is familiar – Arabic and English – and tried to convince him they knew details of his activities.³⁴ According to officers who were present, Petitioner began to provide information during this initial FBI interrogation.³⁵

40. Subsequently, CIA officials, who were being pressed for information by Respondent's predecessor and other officials within the Executive Branch, felt Petitioner was not providing enough information under FBI questioning and took over the interrogation.³⁶

41. A. B. Krongard, who was Executive Director of the C.I.A. from 2001 to 2004, has stated publicly that the United States was not familiar with the use of torture and that "the agency turned to 'everyone we could, including our friends in Arab cultures,' for interrogation advice, among them those in Egypt, Jordan, and

³³ David Johnston, *At a Secret Interrogation, Dispute Flared Over Tactics*, N.Y. Times, Sept. 10, 2006, <http://www.nytimes.com/2006/09/10/washington/10detain.html?pagewanted=1>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

Saudi Arabia, all of which the State Department regularly criticizes for human-rights abuses.”³⁷

42. To assist in the interrogation of Petitioner, the CIA hired a group of retired military psychologists, who had undergone Survival, Evasion, Resistance, and Escape (“SERE”) training, to implement a regime of techniques that one well-informed former adviser to the American intelligence community describes as “a Clockwork Orange” kind of approach. “The program, known as SERE . . . was created at the end of the Korean War. It subjected trainees to simulated torture, including waterboarding (simulated drowning), sleep deprivation,³⁸ isolation, and exposure to temperature extremes, enclosure in tiny spaces, bombardment with agonizing sounds, and religious and sexual humiliation.” Although the SERE program was designed strictly for defense against torture regimes, “the CIA’s new team used its expertise to inflict abuse. ‘They were very arrogant, and pro-torture,’ a European official knowledgeable about the program said. ‘They sought to render

³⁷ Jane Mayer, *The Black Sites: A rare look inside C.I.A.’s secret interrogation program*, *The New Yorker*, Aug. 13, 2007, http://www.newyorker.com/reporting/2007/08/13/070813fa_fact_mayer.

³⁸ “Under President Bush’s new executive order, CIA detainees must receive the ‘basic necessities of life, . . . Sleep according to the order, is not among the basic necessities.” *Id.*

the detainees vulnerable – to break down all of their senses. It takes a psychologist trained in this to understand these rupturing experiences.”³⁹

43. Petitioner was interrogated by a team “overseen by James Elmer Mitchell, a consulting psychologist under contract to the CIA, who reportedly adapted ‘brainwashing’ techniques originally developed by the Chinese in the Korean War. . . . Mitchell and staff CIA psychologist, Bruce Jessen, took over the interrogation of [PETITIONER] in May, 2002, and for months subjected Zubaydah to a variety of extreme physical and psychological abuses . . .”⁴⁰ Neither individual had any proof that their tactics were effective. Steve Kleinman, an Air Force Reserve Colonel and expert in human-intelligence operations, found it astonishing that the CIA “chose two clinical psychologists who had no intelligence background whatsoever, who had never conducted an interrogation, . . . to do something that had never been proven in the real world.”⁴¹ Michael Tolince, former section chief of the FBI’s International Terrorism Operations, described the methods employed by Mitchell and Jessen as “voodoo science.”⁴² Speaking of

³⁹ *Id.*

⁴⁰ Katherine Eban, *Rorschach and Awe*, Vanity Fair, July 17, 2007, <http://www.vanityfair.com/politics/features/2007/07/torture200707>.

⁴¹ *Id.*

⁴² *Id.*

Mitchell and Jessen, Steve Kleinman has stated: "I think they have caused more harm to American national security than they'll ever understand."⁴³

44. The interrogation and torture of Petitioner by Mitchell and Jessen began in May 2002.

45. Prisoners in the CIA program were taken to their cells by guards who wore black outfits, masks that covered their whole faces, and dark visors over their eyes. Prisoners' clothes were cut up and torn off; many detainees were then kept naked for several weeks, going through months of solitary confinement and extreme sensory deprivation in cramped cells, shackled and handcuffed at all times. A common feature for many detainees was the four-month isolation regime. During this period of over 120 days, absolutely no human contact was granted with anyone but masked, silent guards.⁴⁴ There was a shackling ring in the wall of the cell, about half a meter up off the floor. Detainees' hands and feet were clamped in handcuffs and leg irons. Bodies were regularly forced into contorted shapes and chained to this ring for long, painful periods.⁴⁵

⁴³ *Id.*

⁴⁴ Dick Marty, *Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report*, Council of Europe Parliamentary Assembly, June 7, 2007, available at http://assembly.coe.int/CommitteeDocs/2007/Emarty_20070608_NoEmbargo.pdf.

⁴⁵ *Id.* at 16017.

46. Food was raw, tasteless and was often tipped out carelessly on a shallow dish so part of it would waste. Apart from a thin, foam mattress to lie on or rest against, many cells had a bare floor and blank walls. Detainees never experienced natural light or natural darkness, although most were blindfolded many times so they could see nothing. Moreover, the air in many cells came from a ventilation hole in the ceiling, which was often controlled to produce extremes of temperature: sometimes so hot one would gasp for breath, sometimes freezing cold.⁴⁶

47. Six of the “enhanced interrogation techniques” used by the CIA were described in an ABC News report in November 2005, summarised as follows: “water boarding” (induced fear of drowning on a detainee strapped to an inverted board); “cold cell” (naked at 50 degrees Fahrenheit, repeatedly doused with cold water); “long-time standing” (shackled in a stress position for up to 40 hours, causing extreme pain and sleep deprivation); “attention slap” (open-handed strike across the face); “belly slap” (hard, open-handed strike to the stomach); and “attention grab” (taking hold of the detainee’s shirt, shaking forcefully).⁴⁷

⁴⁶ *Id.* at 16016.

⁴⁷ See Brian Ross and Richard Esposito, *CIA’s Harsh Interrogation Techniques Described – Sources Say Agency’s Tactics Lead to Questionable Confessions, Sometimes to Death*, ABC News, Nov. 18, 2005, <http://abcnews.go.com/WNT/Investigation/story?id=1322866>.