# TORTURE FLIGHTS :

## NORTH CAROLINA'S ROLE IN THE CIA RENDITION AND TORTURE PROGRAM

**SEPTEMBER, 2018**

*"The use of torture compromises that which most distinguishes us from our enemies, our belief that all people, even captured enemies, possess basic human rights."*

*- Senator John McCain (1936 - 2018)*

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# THE COMMISSION

## Frank Goldsmith (Co-Chair)

Frank Goldsmith is a mediator, arbitrator and former civil rights lawyer in the Asheville, NC area. Goldsmith has represented detainees imprisoned at the U.S. Naval Base at Guantánamo Bay, Cuba, and is the author of a chapter in a book entitled "Obama's Guantánamo," a collection of perspectives from 14 lawyers. Among other professional honors, Goldsmith was inducted as a Fellow of the American College of Trial Lawyers, and has served on the boards of directors of a number of legal organizations and nonprofit groups.

## Robin Kirk (Co-Chair)

Robin Kirk is the Faculty Co-Chair of the Duke University Human Rights Center at the Franklin Humanities Institute and is a founding member of the Pauli Murray Project, an initiative of the center that seeks to examine the region's past of slavery, segregation and continuing economic inequality. An author and human rights advocate, Kirk directs Duke's Human Rights Certificate. She served as co-chair of the Durham City-County Committee on Confederate Monuments and Memorials and as a consultant to the Greensboro Truth and Reconciliation Commission

## Rev. Ben Boswell

Rev. W. Benjamin Boswell serves as the Senior Minister of Myers Park Baptist Church in Charlotte, NC. Previously, he served as an Infantry Officer in the North Carolina Army National Guard and as Adjunct Professor of Political Theology and Ethics at the John Leland Center for Theological Studies in Arlington, VA.

## James E. Coleman, Jr.

James E. Coleman, Jr. is the John S. Bradway Professor of the Practice of Law, Director of the Center for Criminal Justice and Professional Responsibility, and Co-Director of the Wrongful Convictions Clinic at Duke Law School. A native of Charlotte, North Carolina, Professor Coleman's experience includes private practice in Washington, D.C., a judicial clerkship for the U.S. District Court for the Eastern District of Michigan, a year as deputy general counsel for the U.S. Department of Education, and service as chief counsel for an investigation of two members of Congress by the U.S. House Ethics Committee.

## David M. Crane

David M. Crane was the founding Chief Prosecutor of the Special Court for Sierra Leone, an international war crimes tribunal, appointed to that position by UN Secretary-General Kofi Annan. Crane's mandate was to prosecute those who bore the greatest responsibility for war crimes during Sierra Leone's civil war in the 1990s. He served more than 30 years in the U.S. federal government as a senior intelligence officer and special operations officer, and is a retired Professor at Syracuse University College of Law. He lives in western NC.

## Jonathan Freeman

Jonathan Freeman is a fellow at the Truman National Security Project and an international consultant specializing on operations, strategy and political intelligence. He is a decorated combat veteran of Iraq and Afghanistan. Freeman has held appointments as the Deputy White House Liaison at the Department of Defense, and at USAID as the Senior Advisor in the Office of Civil Military Cooperation.





# THE COMMISSION

## Patricia McGaffagan

Patricia McGaffagan worked as a psychologist for twenty five years at the Johnston County, NC Mental Health Center. She is currently employed by the Department of Health and Human Services. McGaffagan has lived in Johnston County since 1981 and has worked to establish several non-profit organizations. These include Harbor, Inc., serving victims of domestic violence and rape, Habitat for Humanity, and the Johnston County Animal Protection League.

## Jomana Qaddour

Jomana Qaddour is a doctoral student at Georgetown University Law Center and the co-founder of Syria Relief & Development, a humanitarian organization that has distributed over $50 million worth of humanitarian and emergency relief to Syrians in the region. Previously, she worked as a senior policy analyst at the U.S. Commission on International Religious Freedom, covering Syria, Iraq, Turkey, and Egypt. Prior to that, she served as a senior research assistant for the Project on U.S. Relations with the Islamic World in the Center for Middle East Policy at the Brookings Institution, where she focused on Syria, Egypt, Palestinian politics, and Islamist movements. Qaddour holds a J.D. from the University of Kansas School of Law and an LLM from the Georgetown University Law Center.

## Dr. Annie Sparrow
**MBBS, MRCP, FRACP, MPH, MD**

Dr. Sparrow is an intensivist and global-health specialist who provides public-health expertise in many of the world's most devastating combat zones. She is Assistant Professor at the Department of Population Health Sciences & Policy at the Icahn School of Medicine at Mount Sinai in New York City, where she teaches human rights and humanitarian aid in complex emergencies. Sparrow worked with Human Rights Watch as its first researcher with medical training in Darfur and Syria. She has testified before the International Criminal Court and the House Foreign Affairs Committee.

## Colonel Lawrence Wilkerson (Ret.)

Lawrence Wilkerson's last positions in government were as Secretary of State Colin Powell's Chief of Staff (2002-05), and Associate Director of the State Department's Policy Planning staff under the directorship of Ambassador Richard N. Haass. Previously, Wilkerson served 31 years in the U.S. Army. He is Distinguished Adjunct Professor of Government and Public Policy at the College of William & Mary.

### Advisor

## Jennifer Daskal

Ms. Daskal is an Associate Professor of Law at American University Washington College of Law in Washington, DC, where she teaches and writes in the fields of criminal, national security, and constitutional law. From 2009-2011, Daskal was counsel to the Assistant Attorney General for National Security at the Department of Justice.



# NCCIT FOREWORD

**September 1, 2018**

As I write this, our nation's flags fly at half-mast and the late Senator John McCain is being honored at a memorial service attended by three former presidents at Washington's National Cathedral. His relationship with torture was intimate, not only because he was a torture survivor, but also because in the experience of being tortured he came to realize the importance of the prohibition against cruelty to our nation's character and global role. In his last book, *The Restless Wave*, written in contemplation of his own death, he addressed the reasons that impelled him so implacably and consistently to oppose the use of torture by the United States. He wrote:

> The moral values and integrity of our nation, and the long, difficult, fraught history of our efforts to uphold them at home and abroad, are the test of every American generation. Will we act in this world with respect for our founding conviction that all people have equal dignity in the eyes of God and should be accorded the same respect by the laws and governments of men? That is the most important question history ever asks of us. Answering in the affirmative by our action is the highest form of patriotism.... [1]

When the United States tortured, we did so in direct violation of that "founding conviction." But the evidence shows that we damaged the nation in other ways as well, and that the harm is not merely relegated to the past but continues to this day. Our use of torture and our failure to hold ourselves accountable for the crimes of torture continue to damage our national character, our laws and the rule of law, the fabric of human rights and international law, our foreign policy, and our national security.

This is the context in which this report by the North Carolina Commission of Inquiry on Torture, or NCCIT, must be understood. When those North Carolina citizens who established the Commission acted, they did so motivated by the understanding that the torture of even a few people violates the equal dignity of all, by the desire to step in and stand up when government had demonstrated that it could not be prodded or trusted to investigate its own wrongdoing, and to advance the principle of accountability without which all law is hollow. Above all, they were determined that, to the degree that it was in their power, the state they loved would not be tainted by torture. This is indeed, as Senator McCain said, an example of "the highest form of patriotism."

This seminal report, *Torture Flights: North Carolina's Role in the CIA Rendition and Torture Program*, presents NCCIT's investigatory findings on the issue of whether individuals or business entities located in the state of North Carolina, and acting out of its territory, participated in the U.S. Government's CIA-led torture program during the George W. Bush administration. The sobering finding, amply documented in these pages, is that they did. The connection between North Carolina and the government-sponsored torture of the era is clear: aircraft operated by at least one local company, based at North Carolina airfields that were subsidized by North Carolina revenues and subject to a measure of North Carolina regulation, and flown by North Carolina pilots, were engaged in the transport of dozens of captive individuals to multiple foreign sites, some managed by U.S. officials, others by foreign governments, to be tortured.

Were the value *Torture Flights* to stand only on these findings, the report would be considered a significant achievement. Not only does it document North Carolina's connection to torture, but it helps illuminate one of the least known aspects of the CIA's infamous "Rendition, Detention, and Interrogation" program, the rendition element. Now, thanks to this report, we understand better the "torture taxi" system that transported the prisoners and the network of private contractors that were engaged in this activity, both important cogs in the machinery of torture. The report is useful, too, in helping to alert and to demonstrate to state officials across the country how illegal activity at the federal level may come to implicate state actors in potential liability. Indeed, because the commission of torture or conspiring in the commission of torture is a crime in North Carolina (as it is in every state), it would be surprising if North Carolina state authorities would not now launch their own investigation to determine whether or not state laws were broken or whether evidence relevant to open investigations in other countries should not be sought.



NCCIT FOREWORD

# NCCIT FOREWORD

But as important as the contents of *Torture Flights* are, an equally important story is to be found in the story behind the story, that is, the character, grit, and persistence of the North Carolina citizens whose tenacity to uncover how their state was used in the RDI program led to the formation of the NCCIT. When concerned citizens first learned that rendition flights involved in the RDI program operated out of North Carolina, these individuals acted and have not stopped acting: they investigated, protested, cajoled, disrupted, rallied others to their cause, called on local and state authorities to perform their duties, organized, fundraised, and helped launch the NCCIT.

Theodore Roosevelt, that most energetic of American presidents, admired courage, action, and the pursuit of justice, and he expected every citizen to embody these values. This is how he put it: "The first duty of an American citizen, then, is that he shall work in politics; his second duty is that he shall do that work in a practical manner; and his third is that it shall be done in accord with the highest principles of honor and justice."[2] Torture Flights and the NCCIT are many things, but they also represent citizen behavior at the highest pitch of civic responsibility, models of grass-roots citizen engagement and action, and an inspiration to all Americans to fulfill their non-delegable public duties.

In the end, what did the NCCIT identify as the task ahead? In the Report's Conclusion, the authors state: "we must fully account for what we did, identify the people responsible, hold them to account, and through these actions make vivid our vow that it will not happen again." Just so. One can hardly find a more impressive example of citizens acting in accordance with their civic duties or in pursuit of a more important cause. Teddy Roosevelt and John McCain would approve. We all should.

**Alberto Mora**

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Former General Counsel, Department of the Navy 2001 - 2006

[1] JOHN MCCAIN AND MARK SALTER, THE RESTLESS WAVE (2018).

[2] Theodore Roosevelt, The Duties of American Citizenship, (Buffalo, New York, January 26, 1893), quoted in JON MEACHAM, THE SOUL OF AMERICA (2018). The text of the speech may be found at https://glc.yale.edu/duties-american-citizenship.

# EXECUTIVE SUMMARY

In the wake of the attacks of September 11, 2001, the U.S. government ushered in a large-scale program of secret detention and torture that relied significantly on the State of North Carolina. Six days after the attacks, President George W. Bush signed a covert memorandum that authorized the Central Intelligence Agency (CIA) to seize, detain, and interrogate suspected terrorists around the world. This report investigates North Carolina's role in that illegal program.

The program made use of Department of Defense facilities, a network of ten CIA-controlled secret prisons or black sites in six countries, and the facilities of foreign governments. In what was called the Rendition, Detention, and Interrogation (RDI) program, the CIA abducted and imprisoned at least 119 individuals before the practice was officially ended and repudiated by Executive Order in 2009. Given that detainees were also handed over to foreign governments, and the secrecy surrounding the program, the number of affected individuals is likely far higher.

Within weeks of the RDI program's authorization, Aero Contractors, Ltd. (Aero), based in Smithfield, NC, began operating the first of two aircraft for extraordinary, or violent and secret, renditions. Between September 2001 and March 2004, Aero-operated aircraft – a Gulfstream V turbojet and Boeing 737 business jet – were used in more than 80% of identified RDI renditions. Over the full length of the program, Aero transported 34 of the known 119 CIA prisoners, plus at least 15 of those sent by the CIA to foreign custody, on 69 identified rendition circuits. These flights, using North Carolina's public infrastructure and flown by its citizens, implicate North Carolina directly in abduction, forced disappearance, and torture.

Since 2005, North Carolina anti-torture activists from across the political spectrum have protested these actions. Motivated by diverse ethical and religious beliefs as well as a firm commitment to the rule of law, activists from North Carolina Stop Torture Now have joined with the North Carolina Council of Churches and many other allies. Citizens have pressured public officials at all levels of government to investigate the state's complicity in the CIA's illegal and immoral program.

Citizen-led activism culminated in 2015 in the creation of the North Carolina Commission of Inquiry on Torture (NCCIT), a non-governmental organization dedicated to transparency and accountability regarding the state's participation in U.S. torture. The NCCIT launched officially in 2017 with a blue-ribbon panel of Commissioners who have expertise in domestic and international law, military operations, human rights, interfaith religious dialogue, psychology, and public health.

The Commission initiated a large-scale investigation into North Carolina's involvement in torture and rendition. *Torture Flights: North Carolina's role in the CIA rendition and torture program* details the results of that investigation and makes recommendations for future action. The report draws on original research and expert testimony provided at public hearings as well as the extensive data compiled by The Rendition Project, the Bureau of Investigative Journalism, and the Human Rights Policy Lab of the University of North Carolina School of Law, among other sources.

*Torture Flights* provides the most comprehensive research to date on North Carolina's complicity in the rendition phase of the RDI program. The Senate Select Committee on Intelligence "Torture Report," a redacted Executive Summary of which was released in 2014 while the full report remains classified, focused on the detention and interrogation of detainees who were held in CIA custody. *Torture Flights* demonstrates that that program depended upon both North Carolina's private citizens and public infrastructure.

Further, *Torture Flights* builds on the Senate's work





# EXECUTIVE SUMMARY

by addressing renditions themselves as an integral component of a system to break individuals down through violent interrogations. As the report details, Aero transported at least 49 individuals, who were forcibly seized without any due process, in a manner that itself amounted to torture and cruel, inhuman or degrading treatment. Preparation for "rendition" involved physical and sometimes sexual assault, drugging, and sensory deprivation. Rendition flights were experiences of prolonged pain, dread, and terror. The whereabouts of the individuals flown by Aero, who were citizens of 16 countries and included a 16-year-old student and a pregnant woman, were not disclosed, not even to their families. They were "disappeared" for months if not years, causing agony to them and their loved ones. Even today, the fates of eight of those rendered by Aero remain unknown.

Many of the prisoners were taken to CIA "black sites," where they experienced beatings, prolonged stress positions, temperature extremes, long-term isolation, various water tortures, mock execution, and sexual abuse. In violation of international law, the CIA transported some prisoners to foreign custody where they were subject to torture and abuse. Kidnapping, torture, and secret detention occurred without respect for victims' innocence or guilt and absent any legal process for them to contest their abductions.

Survivors of the RDI program and their families continue to suffer from these experiences. Torture and prolonged detention have left lasting physical, emotional, and social injuries. This in turn harms relationships and livelihoods, which then amplifies the psychological damage. To resume meaningful and secure lives, survivors need medical, psychological and social support, guaranteed legal status, and economic opportunity.

This report also carefully considers the moral and legal responsibility of North Carolina for its involvement in CIA-sponsored activities. The federal government has international law obligations under both the Convention Against Torture and the International Covenant on Civil and Political Rights not only to prevent torture, but also to provide accountability and redress for torture. It did none of these and therefore has failed to meet its international obligations. Given that the federal government has abdicated responsibility, North Carolina can and should fill the gap. Its role as home to Aero obligates it to do so. State and federal laws against conspiracy and corruption are among those instruments that apply to Aero's activities.

As this report documents, Aero's central role in the CIA rendition and torture program is beyond dispute. But instead of holding Aero accountable, the State of North Carolina and Johnston County until now have effectively endorsed its activities. This support has taken the form of hosting the company's headquarters at the Johnston County Airport and providing it with various airport and other county services. Since Aero's participation in criminal abduction and assault was publicly revealed, the State of North Carolina has made several grants to the county airport, at least one of which was specifically used to fortify the perimeter of only Aero's corner of the facility.

*Torture Flights* concludes with specific recommendations directed at federal and state officials as well as toward North Carolina citizens, whose engagement has kept the spotlight on Aero's activities and whose continued attention is needed to ensure accountability. The recommendations seek to increase transparency about the program and accountability for the illegal actions; provide acknowledgment, redress and reparations to its victims; and prevent the future use of torture. As the report notes, additional research is also needed on the involvement of other North Carolina private corporations and public airports in extraordinary renditions in order to complete the record of the RDI program. At the broadest level, the goal is to ensure that neither the federal government nor the state of North Carolina engage in or support torture again.



# FINDINGS

## CHAPTER 1 · THE U.S. GOVERNMENT'S RENDITION, DETENTION, AND INTERROGATION (RDI) PROGRAM

· Post-9/11, the U.S. government (USG) used "extraordinary rendition" to secretly apprehend, detain, and transfer individuals suspected of terrorism to foreign custody for interrogation and/or to CIA custody in CIA-run prisons or "black sites." From 2002-2008, the CIA held at least 119 detainees in ten CIA prisons in six country locations in the CIA detention and interrogation program.

· These unlawful renditions were conducted with the authorization, facilitation, and participation of three main actors: the U.S. Government, foreign states, and private actors. The U.S. Government authorized and coordinated renditions through the use of "Rendition Teams," which included medical personnel in order to monitor individuals throughout the rendition, complete a preliminary medical examination and cavity search, administer sedatives, and provide necessary medical care. Foreign states detained individuals and provided airport tarmacs where they were prepared for transfer, and/or airports and airspace for rendition flights. The CIA used two separate and parallel systems to transport detainees via private aircraft, the first of which involved the use of planes owned by CIA shell companies and operated by North Carolina-based Aero Contractors, Limited ("Aero"), in particular N379P and N313P.

· While some information on the CIA Rendition, Detention and Interrogation program (the RDI program) has been officially acknowledged — it was the subject of a 6,700-page study by the U.S. Senate Select Committee on Intelligence (SSCI), the redacted summary of which was released in December 2014 — much remains unknown.

· In particular, because the SSCI study does not address rendition to foreign custody for interrogation, or torture by proxy, there is no official account of those victims who were sent to foreign custody and not subsequently returned to U.S. custody. As the SSCI study is focused at the federal level, it also does not examine in detail the critical roles of states or private companies, such as Aero.

· Outside of the United States, the role of North Carolina and private entities in the rendition and torture program — and the illegality of their actions — have been in the public eye and under some degree of legal scrutiny. Prominent inquiries in the Council of Europe and European Parliament, as well as cases before the European Court of Human Rights, have highlighted the illegality of the CIA program and exposed the use of North Carolina-based rendition aircraft. Three cases have been submitted to African and Inter-American bodies involving individuals transported on N379P and N313P. In 2007, a German court issued arrest warrants for North Carolina-based "ghost pilots" in connection with the detention and rendition of Khaled El-Masri, including the four pilots that operated N313P.

· Domestically, however, there has been a glaring lack of accountability. Investigations in the United States have been compromised (e.g., via CIA destruction of videotapes of detainee interrogations) and limited in scope. And cases involving individuals connected to Aero-operated flights have not proceeded in U.S. courts due to claims of "state secrets."

## CHAPTER 2 · NORTH CAROLINA'S ROLE IN TORTURE · HOSTING AERO CONTRACTORS, LTD.

· Private companies were critical to the RDI program. From 2001 until 2004, Aero operated two aircraft owned by a series of CIA shell companies — a Gulfstream V originally numbered N379P and a 737 Boeing Business Jet originally numbered N313P — on behalf of the CIA. Aero used two airports in North Carolina for these purposes: Johnston County Airport (JNX) in Smithfield, N.C. for N379P and Kinston Regional Jetport (located in the Global TransPark, a facility run by the state Global TransPark Authority) for N313P.

· Aero Contractors, a private company closely associated with the CIA, operated aircraft for the rendition program that were registered and re-registered to a series of dummy corporations also connected to the CIA. Aero supplied an estimated 40-50 pilots to fly the rendition missions, as well as other personnel for maintenance and administration of the aircraft.

· Aero transported 49 individuals to interrogations in foreign custody and/or CIA custody in "black sites." This includes 34 of the at least 119 individuals known to have been in direct CIA custody, and at least 15 more who were rendered by the CIA to foreign custody. In the period from September 2001 to March 2004, Aero was responsible for over 80% of identified U.S. government renditions.

· In particular, the aircraft N379P is linked to 26 rendition circuits between October 2001 and March 2004, while the aircraft N313P was used for six rendition circuits between September 2003 and March 2004.

· State officials allowed construction of a hangar purpose-built for the rendition aircraft N313P. Even after Aero's role in the CIA program had come to light, local and state authorities continued





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to lease space to the company, provide public airport services and facilities for rendition flights, and provide grants to fortify the company's perimeter at its airport headquarters. Local and state officials also have, to date, refused to investigate allegations of complicity by Aero Contractors in kidnapping and torture.

## CHAPTER 3 · OTHER NORTH CAROLINA CONNECTIONS TO POST-9/11 U.S. TORTURE

· Available evidence suggests that Blackwater employees provided security on CIA secret detainee transport flights during a period when Blackwater was headquartered in North Carolina.

· There is an unconfirmed suggestion that Centurion Aviation Services, an aviation company based in Fayetteville, North Carolina, participated in RDI. Since the NCCIT itself is unable to ascertain all the facts, we urge the North Carolina state government to investigate.

· Personnel at Fort Bragg, also in Fayetteville, were instrumental in the repurposing of techniques designed to protect American service personnel as techniques of torture.

· Units under the Joint Special Operations Command (JSOC), headquartered at Ft. Bragg, participated in activities constituting torture.

## CHAPTER 4 · WHO WERE THOSE RENDERED BY AERO CONTRACTORS?

· The NCCIT has compiled a database on the 49 prisoners known to have been transported for the CIA by Aero. The database includes the key facts that could be identified such as nationality, country of capture, Aero-operated rendition aircraft, flight logs, length and places of detention, current status, whether the detainee was ever charged with a crime and/or tried, and whether he or she has received restitution from any country. In addition, the NCCIT has obtained and published narratives on the cases of 37 of the 49 Aero-rendered individuals.

· Those harmed by the RDI program were as young as 16 and as old as 56 at the time of their renditions. They came from countries around the world. They were held in CIA black sites, DoD facilities, and foreign proxy nations' prisons. The one female was pregnant when she was seized, tortured, and rendered. Of the 49 prisoners, 13 remain in detention at Guantánamo, some for as many as 16 years and counting.

· At least four of the 49 prisoners have died, one while in detention. Three were killed post-detention, the first in a re-capture operation after his escape, the second in a US drone strike, and the third in the conflict in Yemen. None of them received any acknowledgement or apology from the U.S government for their wrongful capture and torture before they died, nor have their families been acknowledged.

· To date, neither the U.S. government nor its private partners have acknowledged to these detainees or their families, nor to any of the RDI victims and survivors, the irregular abduction, detention without charge or trial, and torture to which it subjected them. Nor have the U.S government and private companies such as Aero provided any form of financial compensation or other redress.

## CHAPTER 5 · RENDITION AS TORTURE

· The process of rendition itself was designed as an integral part of the overall CIA RDI program of creating learned helplessness by subjecting the victim to psychological and physical coercion and total lack of control. From the moment a rendition team seized an individual, the system was aimed at creating terror, pain, dread, and uncertainty. The intent of rendition was to set the psychological stage for subsequent interrogation and detention.

· Beginning well before flights took off, rendition teams operating in complete silence deprived individuals of all control: hooding them and covering their ears, stripping them naked, beating them, performing forced body cavity searches, shackling with painful ankle and wrist restraints, diapering, forcibly inserting anal suppositories and administering involuntary sedation. Prisoners experienced several of these techniques as sexual assault, and the flights themselves as potentially leading to their deaths. These renditions constituted torture and/or cruel, inhuman or degrading treatment.

· Despite U.S. assertions to the contrary, rendering individuals to foreign custody or CIA black sites violated the U.S.'s international legal obligations. These include the prohibition on torture and the duty of non-refoulement (the requirement not to deliver captives to a country where they are liable to be abused and/or tortured).

## CHAPTER 6 · ONGOING CHALLENGES FOR SURVIVORS

· Upon arrival at black sites or foreign proxy prisons, the RDI program of physical and psychological torture unfolded further. In addition to blindfolding, hooding, and physical assault, detainees were held in solitary confinement and in constant darkness, deprived of indication of time or day, subjected to temperature extremes and sleep deprivation, and exposed to painfully loud music. They were stripped naked and shackled for consecutive



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days, strung from the ceiling by their arms shackled behind the back, and forced into stress positions for prolonged periods. They suffered simulated drowning and other mock executions, prolonged isolation, threats of rape, anal "feeding," cigarette burns to the body, slashing with a sharp object, and fondling of genitals.

· The horrific ensemble of rendition, secret indefinite detention, and torture scarred victims deeply, often permanently. While in detention, several detainees attempted suicide, some multiple times. Survivors of RDI suffer long-lasting, even permanent, psychological effects. These consequences include PTSD; alternating between detachment and paranoia; difficulty interacting with and connecting to people, including family; and a "phobia of hope," or a terror of thinking about the future.

· The 13 Aero-rendered detainees who remain in detention at Guantánamo are now being subjected to indefinite detention and isolation, which aggravates psychological damage done by torture.

· The impact of RDI on wives, siblings, parents, and children of victims is painful, and has touched entire communities. Former detainees face enormous challenges rebuilding family relationships and reintegrating into communities, including isolation in countries far from their places of origin, ongoing surveillance, and the suspicion that accompanies disappearance and unacknowledged secret imprisonment.

· Former RDI detainees continue to have severe difficulties. Many have struggled to obtain official identification documents, maintain housing, open a bank account, or find employment.

## CHAPTER 7 · COSTS AND CONSEQUENCES OF THE CIA'S TORTURE AND RENDITION PROGRAM

· The U.S. government's use of torture has undercut national security and hindered its ability to counter terrorism. It produced faulty intelligence that contributed to costly military involvement, harmed counterterrorism partnerships, and energized terrorist recruitment.

· Torture and the lack of accountability for it have lowered the United States' moral standing in the world, which in the past has been used to promote human rights, international cooperation, and the rule of law. As other nations have been held partially accountable, or have in a few cases held themselves accountable, for collaborating with the U.S. on torture and secret detention, the gap between the U.S. and other democratic nations on torture has widened.

· Tolerance of official torture has degraded our society morally and spiritually. Most faith and philosophical traditions speak against torture and call for protecting the dignity of every human being. The practice of torture by our government, and the lack of consequences for those responsible, have contributed to undermining the civilized norms of American society.

· U.S. torture has damaged the rule of law. It has interfered with efforts to hold perpetrators responsible for the violence committed against the United States on September 11, 2001 and other occasions.

· The U.S. government's insistence on attempting to hide its torture program from public scrutiny has prevented survivors from seeking redress for the wrongs committed against them. International law obligations have been flouted, and judicial independence weakened.

· Surprisingly little effort has been made to understand the extent to which Americans' unusually high level of acceptance of official torture may be based on racism against Muslims. Rectifying the abuses of RDI and efforts to counteract the dehumanization that occurred must include an official acknowledgment that it was aimed at Muslims.

· North Carolina has been damaged by its facilitation of the U.S. torture program, including by making its citizens unwitting enablers of torture through the misuse of public airports.

## CHAPTER 8 · NORTH CAROLINA PUBLIC OPPOSITION TO THE RDI PROGRAM, AND OFFICIALS' RESPONSES

· North Carolina has witnessed continuous citizen activism against torture since 2005. Its aim has been to persuade local, state, and federal officials to investigate North Carolina's involvement in the RDI program, in particular the role played by Aero, and to prevent further state participation in torture. In addition to North Carolina Stop Torture Now, others with key roles have included organizations and individuals from the faith, peace, civil liberties, academic, and legal communities.

· Thousands of North Carolinians have advocated for action on the state's role in torture to a range of authorities including local, state, and federal government officials, as well as to the United Nations and foreign governments. Citizen advocates have written letters and petitions to government officials; delivered a "people's indictment" to executives of Aero and others; held vigils, marches, rallies and other visibility actions; conducted meetings with elected officials including governors, attorneys general, U.S.





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Congress members, and state legislators; organized educational conferences; published op-eds and letters in local and national media outlets; and obtained media coverage. This committed advocacy reached an international audience and contributed to the creation of the North Carolina Commission of Inquiry on Torture (NCCIT), whose public hearings in 2017 were attended by over 200 people.

· Official responses to North Carolina citizen advocacy have included public silence and non-responses, dismissals by state officials on grounds of lack of jurisdiction, and the monitoring and arrest of citizen advocates rather than investigation of Aero. Groups of citizens have twice been arrested for misdemeanor trespass after peaceful protesting at Aero headquarters. State, Johnston County, and Raleigh law enforcement officials have collaborated to monitor protestors.

· State officials' refusal to reject torture has left North Carolina's public discourse and policy to local elected leaders sympathetic to the RDI program. The Johnston County Commissioners have publicly and repeatedly endorsed Aero and even torture. Those Commissioners and the Johnston County Airport Authority have repeatedly refused to adopt policies prohibiting torture-related missions from their airport.

· State legislators have provided the only positive response to citizens, and it is now over a decade old. In 2006, 12 state legislators asked the SBI Director to investigate Aero Contractors and, following the SBI's claim of a lack of jurisdiction, 22 state legislators wrote to N.C. Attorney General Roy Cooper, refuting this claim and restating the call for investigation. In the 2007-08 session, legislators also introduced the related bills HB 1682, "NC No Place for Torture Act" and HB 2417, "Crimes of Torture and Enforced Disappearance," but they were unsuccessful.

· Official silence on the state's involvement in torture continues: in response to public records requests sent by the NCCIT to a total of seven governmental entities, four have provided no records. These are the Governor's office, the Johnston County Commissioners, Johnston County Sheriff Bizzell, and Johnston District Attorney Susan Doyle. Records delivered by the NC Department of Justice, the Global TransPark Authority, and the Johnston County Airport Authority reveal a consistent pattern of non-response to citizens' requests for action.

## CHAPTER 9 · NORTH CAROLINA'S OBLIGATIONS UNDER DOMESTIC AND INTERNATIONAL LAW, THE BASIS FOR FEDERAL AND STATE INVESTIGATION, AND THE NEED FOR ACCOUNTABILITY

· The post-9/11 rendition, detention, and interrogation program violated the United States' international law and treaty obligations. These obligations include the prohibition on torture and cruel, inhuman or degrading treatment or punishment, as well as incommunicado detention. They also include the prohibition on transfer or refoulement of individuals to situations where they may be in danger of torture (e.g., rendition to foreign custody). Moreover, the obligations include the duty to impose accountability for rendition, secret detention, and torture, and the right to an effective remedy.

· Legally, no war, no state of exception, and no imperative reason of national security can justify torture. Likewise, they cannot justify cruel, inhuman, or degrading treatment or punishment (CIDTP), nor transfer to torture, enforced disappearance, or the failure to prevent, investigate, and punish these actions.

· The U.S. government is liable for the actions of private individuals or entities acting under its instruction or control, including private companies such as Aero that appear to act effectively as an arm of the government.

· The acts of Aero and its employees, agents and collaborators in North Carolina appear to have been taken in furtherance of an unlawful conspiracy to violate the Convention Against Torture and the federal Torture Law by systematically implementing the RDI program. In addition, offenses that were subject to the special aircraft jurisdiction of the U.S. took place during flights operated by these North Carolina co-conspirators.

· The state of North Carolina has the jurisdiction to prosecute North Carolinian actors who conspired to carry out kidnappings and renditions through the RDI program.

· The North Carolina State Bureau of Investigation would have jurisdiction to investigate Aero's role in RDI abuses if called upon to do so by law enforcement officers of the state and approved by the Governor.

· Despite the clarity of the illegality, no law enforcement authority has accepted responsibility for investigating and prosecuting the crimes that originated on North Carolina's soil. This failure to pursue justice is an important part of the persistent lack of accountability for the CIA RDI program.



# RECOMMENDATIONS

## RECOMMENDATIONS FOR FEDERAL GOVERNMENT

### To enhance transparency and promote accountability for the RDI program·

**1**. Declassify the entire Senate Select Committee Report (SSCI Report) on the Detention and Interrogation Program with minimal redactions or victims' families.
**2**. Conduct a thorough investigation into the CIA program of rendering individuals to foreign governments for torture (which was not covered by the SCCI report), including information regarding the chain of command and structure of the program.
**3**. Request that foreign governments that participated in the RDI program by receiving, detaining, or interrogating rendered prisoners (all of which was outside the focus of the SSCI report) provide records to help understand the scope of renditions to foreign custody, who was rendered, where and how long they were held, and what was done to them.
**4**. Declassify and make public information about the role of Aero Contractors, Ltd. (and other North Carolina-based contractors) in the RDI program, the nature of any contracts or directives they had, and what specifically they were requested to do.
**5**. In all government investigations of the RDI program, including those conducted previously and going forward, make any findings public and available widely on the web, to the extent possible.
**6**. Declassify and make public information about the training on SERE techniques that took place at Fort Bragg, and the ways in which those trainings contributed to abuses in Guantánamo, Iraq, and Afghanistan.
**7**. Thoroughly investigate and prosecute any acts of torture or conspiracy to commit torture that are or have been identified, including those committed by government officials and policymakers regardless of their rank and status, as required by the United States' international law obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
**8**. Stop asserting the "state secrets" privilege to prevent legitimate legal claims from being heard.

### To provide acknowledgment, redress and reparations·

**1**. Acknowledge and apologize for the harms that have resulted from the RDI program in a way that avoids re-traumatizing survivors and victims' families.
**2**. Provide reasonable reparations for survivors of the RDI program and victims' families (for medical care and rehabilitation, language training, access to education, resettlement of family).
**3**. Work with countries where former detainees now reside to ensure they can access adequate medical care and are provided meaningful work opportunities.
**4**. Reinstate the position at the State Department responsible for detainee transfer out of Guantánamo.
**5**. Discontinue pressure on foreign nations that have received detainees to withhold from them, without compelling rationale, identity and travel documents.

### To prevent this from happening again·

**1**. Provide government-wide training about the illegality of torture, its ineffectiveness, and its costs to national security.
**2**. Ensure interrogations are carried out in ways that are both effective and non-coercive, consistent with the recommendation of the High Value Interrogation Group (HIG). Train military and civilian interrogators accordingly.
**3**. Establish a Special Inspector General for the prevention of torture with the authority to investigate across the entire federal government.
**4**. Strengthen laws regarding the use of private contractors, including requiring transparency in their operations (e.g. requiring that their work for the government is subject to Freedom of Information Act requests).
**5**. Provide guidance on the obligations of state and local authorities to assist in carrying out obligations under CAT and ICCPR.
**6**. Establish a comprehensive study on the effects of the torture used in the RDI program to understand the long-term impact, including the extent of the human and security costs.
**7**. Institute whistleblower protections to enable those with knowledge of illegal acts in the Government to come forward, including the following:

- Examine and remedy perverse incentives against speaking up.
- Institute legal protections for anyone who blows the whistle on torture.
- Set up government-wide awards to acknowledge those who stand up to cruelty.

## RECOMMENDATIONS FOR STATE AND LOCAL GOVERNMENTS AND LAW ENFORCEMENT OFFICIALS

### To enhance transparency and promote accountability for the RDI program·

**1**. Establish a governor-led task force to investigate the role of Aero and other private contractors operating in the State during the period in which the RDI program was operational (2001 - 2006) and make the results available to the public.
**2**. Submit a formal request to the Federal Government asking for details on the role of Aero (and other North Carolina based private contractors) in the RDI program.
**3**. Pass legislation strengthening North Carolina state law surrounding private contractors, using lessons learned in the above investigations. Include the following:

**a**. Require private contractors to comply with all state, federal, and local laws including a prohibition on private contractors participating in inhumane or unlawful transport and treatment of detainees.
**b**. Authorize suspension of support to contractors that have or are accused of violations of state, federal and international law.
**c**. Require a response to reasonable requests for information on private contracts with the Federal Government.

**4**. Investigate and prosecute to the fullest extent allowed by law anyone who violates or violated North Carolina law that is designed to protect against torture and abuse, including laws that criminalize kidnapping, aggravated assault, false imprisonment, and conspiracies to commit such unlawful acts.
**5**. If law enforcement personnel empowered to investigate fail to do so, enact in law a specific mandate for the Attorney General to convene a grand jury for investigating and prosecuting conspiracy to kidnap for torture.
**6**. Conduct a financial audit of Aero Contractors, Ltd. to determine profits made from complicity in RDI.

### To provide acknowledgment, redress and reparations·

**1**. Acknowledge via a public statement from the Governor and Attorney General that the events of rendition, disappearance, and torture took place, note violations, and apologize to the survivors and victims' families.
**2**. Establish a permanent site in the state or incorporate into an existing site (museum, library, etc.), a place where the story of the RDI program, with emphasis on the victims, can be told and education materials made available.
**3**. Designate, via legislation, a day for North Carolina to remember the survivors of U.S. torture, specifically the 49 harmed with state resources.
**4**. Establish a marker or monument to those harmed by North Carolina's involvement in torture (e.g., the Highway Historical Marker Advisory Committee could recommend a plaque of acknowledgment in Johnston County).
**5**. Work with health professionals, including North Carolinians, to develop ways to offer meaningful treatment to RDI survivors.

### To prevent this from happening again·

**1**. Support the establishment of a torture survivor center in the state for refugees and asylum seekers.
**2**. Explore partnerships with North Carolina universities, Red Cross and/or hospitals with programs to educate citizens on human rights and torture.
**3**. Pass legislation (including strengthening private contractor laws noted above) that prevents North Carolina from ever being used again to support illegal and inhumane policies such as torture and rendition and instead fosters an ethical and pro-human rights business environment.
**4**. Provide guidance on the obligations of state and local law-enforcement authorities to assist in carrying out obligations under CAT and ICCPR.
**5**. Call for active citizen engagement in the issue, such as by supporting programs that promote human rights and educate the public about the moral and security costs of torture.
**6**. Adopt policies by airport authorities that prohibit participation by any airport tenants or users in aviation that furthers conspiracies to kidnap for torture or other human rights violations.

## RECOMMENDATIONS FOR CITIZENS

**1**. Create a citizens' fund to help the victims and their families who suffered from North Carolina's involvement in RDI.
**2**. Write to survivors and victims' families with a commitment to renew pressure on federal and local authorities to officially acknowledge and provide appropriate redress for the RDI violations committed against them. Engage with elected officials on the State and Federal recommendations.
**3**. Raise funds for a comprehensive public study of renditions to foreign custody.
**4**. Establish a North Carolina university scholarship for the study of the nexus among torture, human rights, racism and national security.
**5**. Help educate fellow citizens about the costs of engaging in a systematic secret torture program, and the dangers of allowing racism and dehumanization of Muslims to be used to justify policies of indefinite detention and torture.
**6**. Organize a mobile exhibition about North Carolina's involvement in torture to educate the public and start a dialogue on concrete steps that could be taken to make the state a human rights leader.



RECOMMENDATIONS

RECOMMENDATIONS



CHAPTER ONE

# THE U.S. GOVERNMENT'S RENDITION, DETENTION, AND INTERROGATION (RDI) PROGRAM

On September 17, 2001, in the aftermath of the events of September 11, President Bush signed a classified, covert action memorandum authorizing the Central Intelligence Agency (CIA) to seize and detain suspected terrorists.[100] By the following month, October 2001, Aero Contractors, Limited ("Aero") had begun to operate a Gulfstream V turbojet, aircraft N379P, out of North Carolina in the United States to secretly transfer individuals suspected of terrorism between countries and jurisdictions without legal process.[101] The program was only suspended by Executive Order 13491 in 2009.[102] This chapter of the report provides an overview of the program, with special attention to the partnerships that made it possible.

Aero's N379P was one of multiple airplanes used in the CIA operations. "Rendition" is an umbrella term that refers to any transfer of a person between governments.[103] "Extraordinary rendition" is the secret and forcible transfer of an individual between States or legal jurisdictions outside of the law. Through the RDI program of extraordinary rendition, the U.S. government worked with private U.S. corporations, such as Aero, and foreign agents to transfer suspected terrorists through two interlinked detention systems for coercive interrogation. The flights carried suspected terrorists either to foreign (non-U.S.) custody or to CIA custody in CIA-run secret prisons or "black sites."[104] The program of transferring individuals to and among these two systems for interrogations using torture is referred to in this report by the CIA's name: the Rendition, Detention, and Interrogation (RDI) program.

The RDI program developed out of the U.S. law enforcement practice of "rendition to justice" of the late 1980s and 1990s, in which "suspects were apprehended by covert CIA or FBI teams and brought to the United States or other states (usually the states having an interest in bringing the person to justice) for trial or questioning."[105] In the new RDI program, however, the CIA gained unprecedented authority to operate its own "black sites."

According to the Senate Select Committee on Intelligence (SSCI) inquiry into the CIA's detention and interrogation program, the CIA held at least 119 individuals in direct CIA custody between 2002 and 2008.[106] However, expert testimony before the North Carolina Commission of Inquiry on Torture (NCCIT) indicates that the actual number of individuals affected by the program is likely far higher. This is because of poor record keeping on the part of the CIA, the lack of research on and acknowledgment of detainees rendered to foreign custody, and knowledge of additional detainee renditions without corresponding flight paths, which indicates the existence of additional rendition aircraft.[107] Therefore, the true number of individuals subject to the RDI program — and in particular the number, identities, and whereabouts of those rendered to foreign custody for detention or interrogation — remains unknown.

*The true number of individuals subject to the RDI program — and in particular the number, identities, and whereabouts of those rendered to foreign custody for detention or interrogation — remains unknown.*

What is known is that the SSCI inquiry found "at least 26" of the

*Aero Contractors security gate at Johnston County Airport.*

*Photo courtesy: NCSTN*






*According to U.S. government documents, upon abducting targeted individuals, rendition teams prepared them for flight by hooding them, performing body cavity searches, applying ankle and wrist restraints, and administering sedation, all without permission or explanation.*[116]

CIA's estimated 119 detainees were victims of mistaken identity or other errors, a tally that reflects only those determined by the CIA itself not to meet its criterion for detention.[108] Among these 26 are individuals who were rendered on Aero-operated flights.[109]

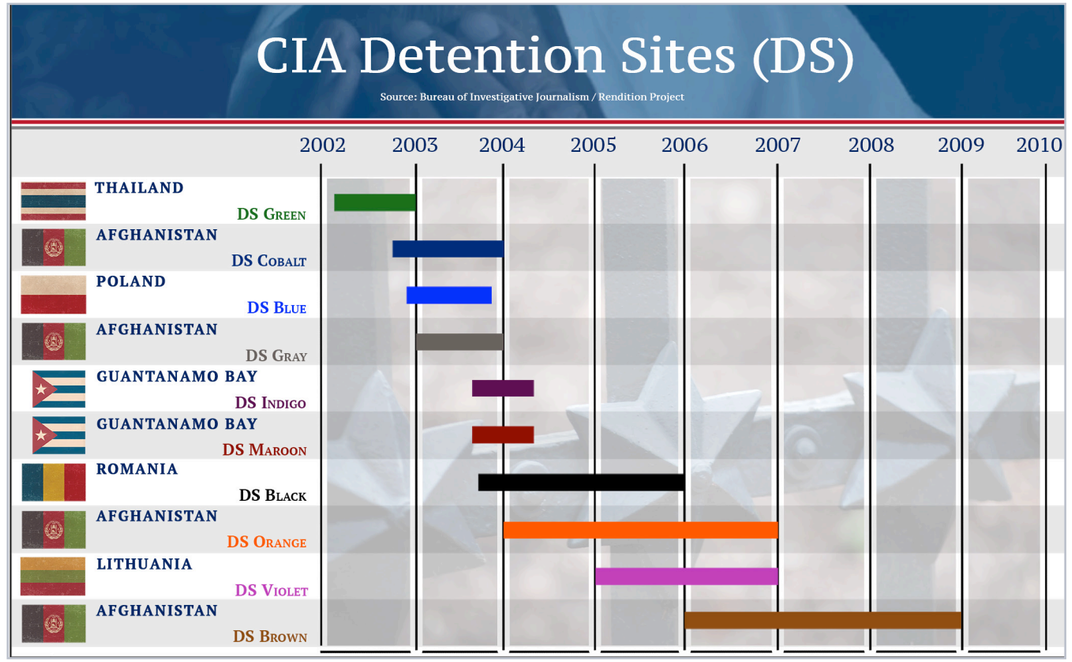
Torture and ill-treatment were hallmarks of rendition to both foreign government custody and CIA secret detention. The "two programs entailed the abduction and disappearance of detainees and their extra-legal transfer on secret flights to undisclosed locations around the world, followed by their incommunicado detention, interrogation, torture, and abuse."[110]

Transferring individuals to foreign custody was an "integral component of the CIA program."[111] The U.S. government handed individuals over for coercive interrogation by intelligence agencies in countries such as Egypt and Jordan.[112] Starting with the apprehension of Abu Zubaydah in March 2002,[113] the U.S. government also began to render individuals to CIA-run prisons. Between 2002 and 2008, the CIA would go on to hold at least 119 individuals[114] in ten CIA "black sites" in six countries around the globe: one in Thailand, one in Poland, one in Romania, one in Lithuania, two in Guantánamo Bay, and four in Afghanistan.[115] Because the CIA ran a "black site" network throughout the RDI program, detainees were often transferred multiple times between these various sites, as well as to foreign custody, during their detention.

According to U.S. government documents, upon abducting targeted individuals, rendition teams prepared them for flight by hooding them, performing body cavity searches, applying ankle and wrist restraints, and administering sedation, all without permission or explanation.[116] The CIA considered abduction and rendition to be integral to the interrogation process by making detainees disoriented, helpless, and afraid. The protocols of rendition (discussed further in Chapters 4 and 5 of this

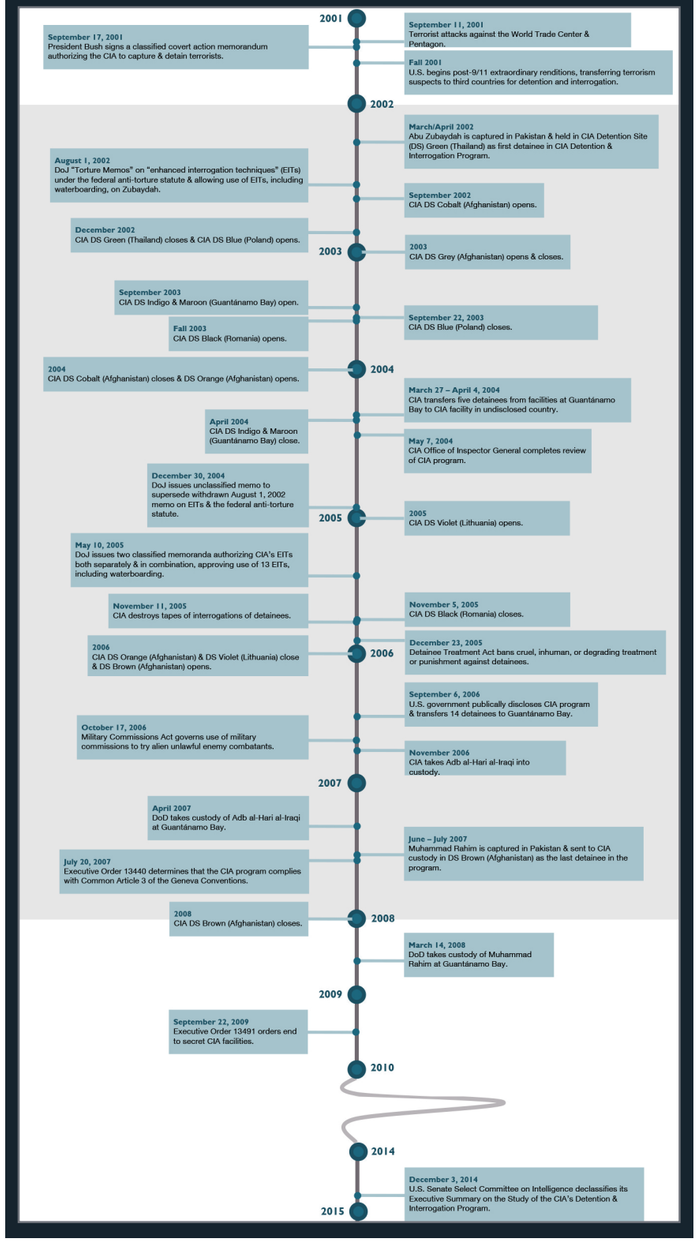
*Torture and ill-treatment were hallmarks of rendition to both foreign government custody and CIA secret detention.*

*Source: Color Keys for Detention Sites from the Senate Intelligence Committee Reports on Detention and Interrogation Program*



## OVERVIEW OF THE CIA RENDITION, DETENTION, AND INTERROGATION PROGRAM

*Between 2002 and 2008, the CIA held at least 119 detainees in ten CIA prisons in six country locations and transferred an unknown number of terrorism suspects to third countries for detention and interrogation. Aero Contractors, Inc. transported 34 of the detainees that were sent to CIA prisons and nine of the individuals transferred to custody of third countries.*




report) "generally create[d] significant apprehension in the [detainee] because of the enormity and suddenness of the change in environment, the uncertainty about what will happen next, and the potential dread [a detainee] might have of U.S. custody."[117]

Once in CIA "black sites," individuals were tortured through so-called "enhanced interrogation techniques" (EITs), including facial slaps, waterboarding, solitary confinement, wall standing, stress positions, sleep deprivation, diapering, rectal feeding, and use of insects.[118] Such techniques could be as repetitive as they were torturous. For example, one CIA detainee, Khalid Shaikh Muhammad, was subjected to "183 applications of the waterboard"[119] on 15 different documented occasions.[120]

### 'ENHANCED INTERROGATION TECHNIQUES (EIT)'

Designed by two military psychologists who sought to instill a sense of learned helplessness among detainees, in which individuals would become "passive and depressed in response to adverse or uncontrollable events,"[121] EITs, often used in conjunction, included:

- *walling*
- *sleep deprivation*
- *solitary confinement*
- *stress positions*
- *rectal feeding*
- *nudity*
- *waterboarding*

These brutal techniques are considered acts of torture or cruel, inhuman, or degrading treatment and are illegal under U.S. and International Law.[122]

According to official figures, "at least 39" of the at least 119 individuals in CIA custody were subject to EITs.[123] However, the actual identities, numbers, and whereabouts of individuals in the CIA program and those subject to torture and abuse remain unknown because the CIA "never conducted a comprehensive audit or developed a complete and accurate





list of the individuals it had detained or subjected to its enhanced interrogation techniques."[124] Nor is the scope of detainee experience fully documented, given that detainees faced "harsher"[125] confinement conditions and interrogations that were "brutal and far worse"[126] than what the CIA had officially indicated to policymakers and other government officials.

Individuals rendered to foreign government custody similarly faced torture and other abuse. According to one U.S. official involved in rendering individuals to foreign governments: "We don't kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them."[127]

### BEYOND THE CIA: FOREIGN GOVERNMENTS, PRIVATE ACTORS, AND U.S. LOCAL AND STATE OFFICIALS

Three main entities carried out the post-9/11 RDI program: the U.S. government, foreign governments, and private actors. Both of the interconnected systems of extraordinary rendition and CIA secret detention relied heavily on the co-operation of foreign governments that were willing to provide structural support and personnel. Reflecting the reliance of the U.S. government on these foreign partners, a Council of Europe inquiry into *"Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states"* described the CIA's program as a "network that resembles a 'spider's web' spun across the globe." According to testimony before the NCCIT, foreign governments participated in the RDI program by: [128]

- *Hosting one or more CIA "black sites"*
- *Hosting one or more US military detention sites*
- *Abducting and initially detaining prisoners, before they were rendered to a CIA "black site" or to foreign custody*
- *Receiving detainees via the CIA, who had been abducted elsewhere but not held by the CIA directly*
- *Receiving detainees via the CIA, who had been held by the CIA in one or more "black sites"*
- *Providing refueling stops for rendition circuits*
- *Providing 'rest and relaxation' for rendition crews during, or after, rendition operations.*


*Photo courtesy: Fred Seggie | World Air Images | Airliners.net*

*The CIA rendition aircraft N379P*

***Aero operated-aircraft, the Gulfstream V N379P , and Boeing 737 N313P conducted "over 80%" of identified U.S. government renditions between September 2001 and March 2004.***

Private actors were ubiquitous in the U.S. government's post-9/11 RDI program. To design the program, the CIA contracted two psychologists, James Mitchell and John "Bruce" Jessen, to devise its interrogation tactics. Shortly after the psychologists "formed a company specifically for the purpose of conducting their work with the CIA" in 2005, the "CIA outsourced virtually all aspects of the program."[129] Private aircraft companies also played a central role, primarily in the transport of individuals as well as in providing other associated logistical support.

Post-9/11, the U.S. government utilized two distinct and parallel aviation systems that involved private actors to transport individuals to foreign custody and/or to CIA custody.[130] The first system, lasting from 2001 to 2004, involved the use of planes owned by CIA shell companies (e.g., Stevens Express Leasing, Inc.; Premier Executive Transport Services, Inc. (PETS); Rapid Air Transport, Inc.; Path Corporation; Aviation Specialties).[131] These planes were typically operated by a series of real companies (such as Aero Contractors, Limited, Pegasus Technologies, and Tepper Aviation), that were responsible for "maintenance, providing hangars and arranging the logistical details for each flight circuit."[132]

The second system, in place from 2002 to 2006,[133] also relied on private companies and was organized through a "prime contract" between the CIA and DynCorp Systems and Solutions, LLC (and its corporate successor Computer Sciences Corporation (CSC)).[134] Through this arrangement, DynCorp/CSC entered into agreements with aircraft brokers that in turn contracted with aircraft operating companies to supply the planes.[135]

In the first phase of extraordinary rendition when individuals were transported to foreign custody, the use of civilian aircraft owned by shell companies and operated by private entities was critical to the covert nature of the program. It enabled "the CIA [to] avoid] the duty to provide the information required by States

concerning government or military flights."[136] Of these real private companies, North Carolina-based Aero was particularly critical to the RDI program. According to testimony provided to the NCCIT, "[i]t is now clear that Aero Contractors aircraft played an absolutely central role in the CIA's torture program especially during the first years of its operation."[137] Indeed, Aero operated-aircraft, the Gulfstream V N379P and Boeing 737 N313P conducted "over 80%" of identified U.S. government renditions between September 2001 and March 2004.[138]

Trip planning services for "a number of" identified rendition circuits on Aero-operated aircraft N313P and N379P were provided by Jeppesen Dataplan, Inc.,[139] a company with headquarters in San Jose, California.[140] The role of Jeppesen Dataplan, Inc. is described in a 2007 federal lawsuit on behalf of five extraordinary rendition victims against the company. The lawsuit states that "in knowingly providing flight and logistical services to the CIA for the rendition program, the company facilitated and profited from Plaintiffs' forced disappearances, torture, and other inhumane treatment."[141]

As is further described in Chapters 2 and 8, within the United States, host states for these private companies also enabled these abuses, including by allowing companies to use public airports and by failing to investigate allegations about the use of public resources to this end.

*Additionally, because that inquiry was focused at the federal government level, it does not examine the role of states such as North Carolina without whose participation the program could not have been carried out.*

## NORTH CAROLINA AND THE RDI PROGRAM · GAPS IN INFORMATION AND ACCOUNTABILITY

Despite the myriad crimes associated with the RDI program, no U.S. executive agency nor any U.S. state has held accountable anyone involved in the RDI program. Domestically, efforts to ensure accountability, including for North Carolina's role in the RDI program, have been frustrated on many levels. Chapter 8 of this report examines the extensive role that North Carolinians have played in continuing to press for transparency and an end to torture.

With respect to intra-agency accountability, at the time of the program's operation, the "CIA avoided, resisted, and otherwise impeded oversight of the CIA's Detention and Interrogation Program by the CIA's Office of Inspector General."[142] While the May 2004 report by that same office contains some criticism of the CTC (Counterterrorist Center) Detention and Interrogation Program,[143] it nonetheless concludes that there is no need for

*Source: Senate Intelligence Committee, Bureau of Investigative Journalism / Rendition Project*






*Transparency and accountability for illegal and immoral components of the RDI program require full disclosure of the role of states within the United States; the contribution of private companies to official rendition, detention, and interrogation; the routes and processes of rendition; and the full identities and fates of those affected.*

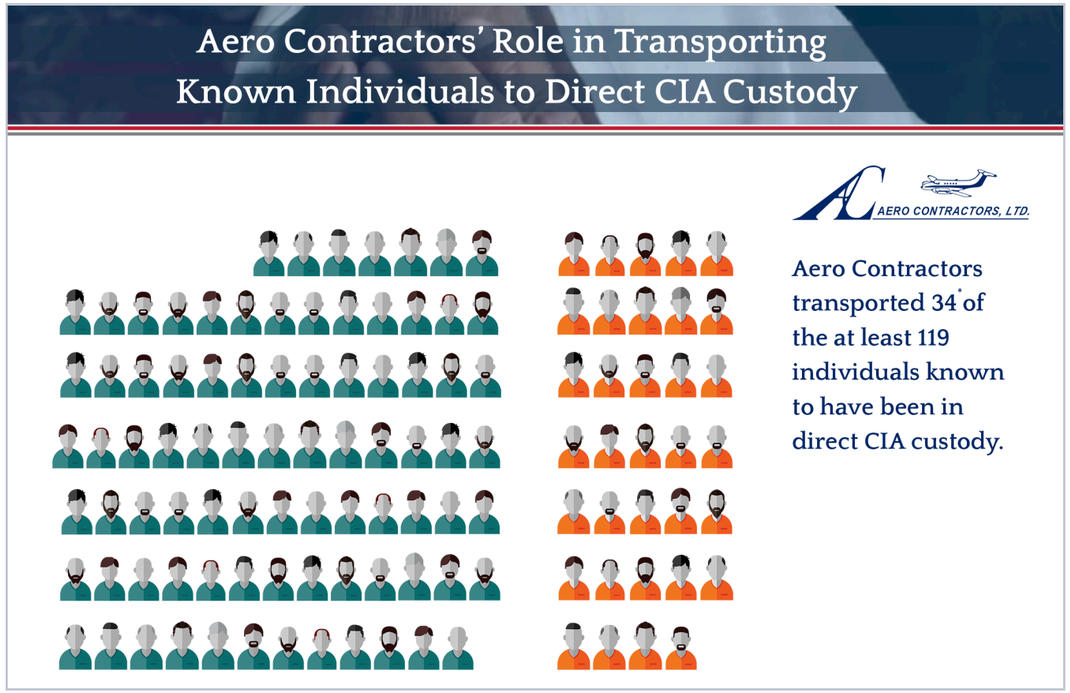
"separate investigations or administrative action."[144] Other agency actions that impeded accountability include the CIA's destruction of tapes documenting CIA interrogation in November 2005.[145] An investigation into the tapes' destruction ended without bringing criminal charges against participants.[146]

With respect to Congress, on December 9, 2014, the SSCI released a redacted version of its declassified Executive Summary on the Study of the CIA's Detention and Interrogation Program.[147] But the full study, which was the product of more than five years of investigation and totals more than 6,700 pages, remains classified. Additionally, because that inquiry was focused at the federal government level, it does not examine the role of states such as North Carolina, upon whose participation the program depended.

Cases involving rendition victims — including several individuals transported on Aero-operated flights — have for the most part not proceeded in U.S. courts because the U.S. government has argued they should be dismissed on the basis of the "state secrets" privilege, in order to protect national security. When applied too broadly, this argument can prohibit accountability for illegal government actions. For example, on December 6, 2005, the American Civil Liberties Union (ACLU) filed a lawsuit against former Director of the CIA George Tenet, three private aviation companies (including Aero Contractors), and several unnamed defendants in the U.S. District Court for the Eastern District of Virginia. The suit, which was ultimately unsuccessful,[148] concerned the rendition of Khaled El-Masri from Skopje, Macedonia to Afghanistan on N313P.[149] On May 30, 2007, the ACLU filed another lawsuit that was also ultimately unsuccessful[150] against Jeppesen Dataplan, Inc. in U.S. District Court for the Northern District of California on behalf of three victims of the "extraordinary rendition" program.[151] The complaint was amended August 1, 2007 to add two additional victims.[152] All five victims had been transported on aircraft N379P and N313P.[153]

Although the RDI program ended in 2009 and its initial legal underpinnings have been rescinded, there remain significant information and accountability gaps regarding the program's scope, participants, and effects. Transparency and accountability for illegal and immoral components of the RDI program require

*Source: Bureau of Investigative Journalism / Rendition Project*





full disclosure of the role of states within the United States; the contribution of private companies to official rendition, detention, and interrogation; the routes and processes of rendition; and a full accounting of the fates of those affected.

In addition, investigation of the treatment of these individuals that were rendered by the CIA to foreign custody for interrogation by allied intelligence services is still needed. The SCCI inquiry focused solely on those that were brought directly to CIA custody, meaning that "there's still no official account of the hundreds, perhaps thousands, of other victims of torture that the CIA is responsible for."[154]

This failure to provide justice for victims of the RDI program and accounting of what happened is far from inevitable. Outside of the United States, the role of North Carolina and private entities in the RDI program — and the illegality of their actions — have been in both the public eye and scrutinized by courts and other legal institutions. For example:

- *High-profile inquiries in the Council of Europe and European Parliament have exposed North Carolina-based rendition aircraft. On November 7, 2005 the Parliamentary Assembly of the Council of Europe appointed an inquiry into "alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states."[155] On June 7, 2006, the first report of the Council of Europe inquiry[156] addressed rendition circuits involving N313P and N379P and identified N379P as "one of the most notorious 'rendition' aircraft."[157] On June 8, 2007, a second report of the Council of Europe inquiry[158] discussed "CIA-linked aircraft in Romania, including N313P, N379P and N85VM."[159] On January 26, 2006, the European Parliament set up the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners,[160] which addressed the role of Aero Contractors and aircraft N313P and N379P[161] and issued its final report on January 30, 2007.[162]*

- *The European Court of Human Rights has decided five landmark cases that relate to North Carolina's role in the RDI program. On December 13, 2012, the European Court of Human Rights delivered its judgment in Case of El-Masri v. The Former Yugoslav Republic of Macedonia, observing that "[s]hackled and hooded, and subjected to total sensory deprivation, the applicant was forcibly marched to a CIA aircraft (a Boeing 737 with the tail number N313P)" at Skopje Airport in Macedonia.[163] On July 24, 2014, the European Court of Human Rights delivered judgments in Case of Husayn (Abu Zubaydah) v. Poland[164] (that references the flight on which Zubaydah was transferred from detention in Poland on 22 September 2003 as N313P) and Case of Al Nashiri v. Poland[165] (that references the flight on which Al Nashiri was transferred from detention in Poland on 6 June 2003 as N379P). On May 31, 2018, the Court delivered judgments in Case of Abu Zubayah v. Lithuania[166] (referencing Aero Contractors, Ltd. and flights N379P and N313P) and Case of Al Nashiri v. Romania[167] (stating in relation to N379P that "it was also established that it had been one of the most notorious rendition aircraft used by the CIA for transportation of its prisoners.").[168]*

- *Three cases have been submitted to African and Inter-American bodies involving individuals rendered on N379P and N313P. On April 9, 2008, a complaint was filed in the Inter-American Commission on Human Rights against the U.S. on behalf of Khaled El-Masri,[169] who was transported on aircraft N313P. On December 10, 2009, a complaint was filed in the African Commission on Human and Peoples' Rights on behalf of Mohammed Abdullah Saleh Al-Asad against The Republic of Djibouti. The complaint includes Mr. Al-Asad's transfer on N379P.[170] On November 14, 2011, a complaint was filed in the Inter-American Commission on Human Rights against the United States on behalf of Binyam Mohamed, Bisher al-Rawi, Abou Elkassim Britel, and Mohamed Bashmilah,[171] who were transported on aircrafts N379P and N313P.*

- *Foreign entities (e.g., courts, political authorities) have also addressed circumstances that encompass North Carolina's role in the RDI program. For example, on January 31, 2007, a German court issued arrest warrants for 13 people in connection with the detention and rendition of Khaled El-Masri, including "the four pilots" that operated N313P.[172] In May 2018, the U.K. government settled a case with, and apologized to, Abdel Hakim Belhadj and Fatima Boudchar for the circumstances regarding their rendition to Libya in 2004.[173]*

## CONCLUSION

There have been serious failures and omissions of transparency and accountability with respect to the U.S. post-9/11 program of extraordinary rendition, secret detention, and torture. The important, yet partial, official transparency that has occurred involves solely the CIA black site portion of the program. No formal accounting has occurred of those individuals transferred by the CIA to foreign custody for torture and unlawful detention. Nor has there been official accounting for the very significant role of private actors such as Aero Contractors in the RDI program. The lack of transparency and accountability undercuts the rule of law at the state and federal level.





CHAPTER TWO

# NORTH CAROLINA'S ROLE IN TORTURE: HOSTING AERO CONTRACTORS, LTD.

Publicly available information and testimony to the Commission indicate that North Carolina played a critical role in enabling the U.S. RDI program. To date, the Commission has confirmed that at least 49 individuals were rendered by North Carolina-operated planes and pilots. This chapter focuses on the role of Aero Contractors, Ltd. and the county and state entities and officials responsible for hosting the company at public airports.

> *The Commission has confirmed that at least 49 individuals were rendered by North Carolina-operated planes and pilots.*

According to testimony provided to the Commission, "research shows conclusively that aircraft operated by Aero Contractors played a central role in the CIA torture program."[200] From 2001 until 2004, Aero Contractors operated two aircraft owned by a series of CIA shell companies — a 737 Boeing Business Jet originally numbered N313P and a Gulfstream V originally numbered N379P — on behalf of the CIA.[201] Aero Contractors utilized two airports in North Carolina for these purposes: Johnston County Airport (JNX) in Smithfield, N.C. for N379P[202] and Kinston Regional Jetport at the state-run Global TransPark for N313P.[203]

The individuals linked to Aero-operated rendition flights and associated rendition circuits are identified below. Also identified here and listed in the appendix are the rendition aircrafts ownership and registration information, which demonstrate ownership of the aircraft by various CIA shell companies, as well as the extent to which "[i]n order to maintain the secrecy of the CIA's torture program, a number of aircraft involved were re-registered at various times, to ensure that they were given new tail numbers."[204]

## AERO CONTRACTORS· A "MAJOR DOMESTIC HUB OF THE CENTRAL INTELLIGENCE AGENCY'S SECRET AIR SERVICE"[205]

Aero Contractors was formed on September 28, 1979.[206] It is incorporated in Delaware as a "[c]ontract aviation services" business,[207] and its filings with the North Carolina Department of State list four corporate addresses in Smithfield, North Carolina.[208] Its founder was Jim Rhyne, "a legendary C.I.A. officer and chief pilot for Air America, the agency's Vietnam-era air company."[209] Aero Contractors' involvement in clandestine transfer of individuals pre-dated 9/11, as the company operated rendition flights in the 1990s for the U.S. government.[210]

Aero Contractors' role in operating rendition aircraft on behalf of the CIA to transfer detainees to foreign custody and/or CIA custody is now well-documented. In 2005, it was first reported

> *When the Central Intelligence Agency wants to grab a suspected member of Al Qaeda overseas and deliver him to interrogators in another country, an Aero Contractors plane often does the job. If agency experts need to fly overseas in a hurry after the capture of a prized prisoner, a plane will depart Johnston County and stop at Dulles Airport outside Washington to pick up the C.I.A. team on the way.*[211]

> *When the Central Intelligence Agency wants to grab a suspected member of Al Qaeda overseas and deliver him to interrogators in another country, an Aero Contractors plane often does the job.*

According to a University of North Carolina School of Law report: "Aero served as a CIA-affiliated company that flew under the CIA's direction"[212] as the "operating company" of aircraft that were "registered to dummy corporations."[213] Using these aircraft, Aero Contractors' role included: "provid[ing] and/or operat[ing] the transportation necessary to capture and transfer the [detainees] to overseas detention facilities and 'black sites.'"[214] A 2006 report by Rapporteur Giovanni Claudio Fava, on behalf of the European Parliament Temporary Committee on the Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, similarly describes Aero Contractors as the "operating company of the following shell companies" of the CIA: Stevens Express Leasing, Inc., Premier Executive Transport Service (PETS), Aviation Specialties, Inc., and Devon Holding and Leasing, Inc.[215]

Aero Contractors' personnel were also deeply involved in the RDI program. "Usually, a small number of Aero personnel would fly the plane from North Carolina (either Kinston or Smithfield) to Dulles International Airport, where it would pick up a 'rendition

> *"We are the bus drivers in the war on terror. I didn't used to check who was in the back."*



***Local and state officials in North Carolina are implicated in the activities of Aero Contractors, Ltd. These officials, for example, permitted North Carolina's public airports to be used for rendition flights, leased space and/or allowed a hangar to be built for rendition aircraft, and refused to investigate allegations of the involvement of Aero Contractors, Ltd. in the RDI program.***[231]

team' made up of approximately 12 U.S. officials."[216] Interviews "with former CIA pilots, 2005-2006," have linked Aero Contractors' pilots to the RDI program. ""We are the bus drivers in the war on terror. I didn't used to check who was in the back,' one former Aero Contractors pilot recalled."[217] The same account states that "former pilots from Aero Contractors" had "gotten their jobs responding to advertisements for CIA pilots, and they had their interviews down in Langley, Virginia."[218]

The crews of N313P have been described as "CIA pilots," who flew from Johnston County, NC, to Dulles International Airport to pick up "men and women . . . from the Rendition Group."[219] It has been estimated that "at least 40 to 50 pilots flew Aero planes for CIA 'renditions.'"[220] Despite having used aliases in flight manifests, three of the pilots identified as having been implicated in the renditions of Binyam Mohamed (from Morocco to Afghanistan) and Khaled El-Masri (from Macedonia to Afghanistan) in January 2004 are reported to be employees of Aero Contractors and in 2007 were

***The pilots flew in and out of at least one eastern European CIA black site under cover of "dummy" flight plans that falsely listed nearby destinations in order to conceal the true purpose of these missions, according to a Council of Europe Report.***[222]

reported to "live within a 30-minute drive of the guarded Aero hangar and offices at the rural Johnston County airport."[221]

While there is no direct evidence that Aero personnel knew they were implicated in torture, there are indications of conscious participation in illegal activity. For example, the pilots flew in and out of at least one eastern European CIA "black site" under cover of "dummy" flight plans that falsely listed nearby destinations in order to conceal the true purpose of these missions, according to a Council of Europe Report.[222] False flight plans are a violation under international aviation law.[223]

In addition to investigative reporting and testimony before the Commission, described above and further below, there are a number of U.S. government documents and statements of Aero Contractors' representatives that confirm the close relationship between Aero Contractors and the government:

- *Aero Contractors representatives have publicly confirmed that the U.S. government is a long-held client,*[224] *for which it does "most of" its work*[225] *and that this work is "sensitive in nature."*[226]

- *In 2005, Robert Blowers, then-assistant general manager of Aero Contractors, stated that Aero Contractors had "leased" two aircraft N379P and N313P "for about a year, in about 2002 or 2003" from Premier Executive Transport Services (PETS),*[227] *a company that has been repeatedly identified as a CIA shell company.*[228]

- *A 2007 CIA Inspector General "Report of Investigation on the Rendition and Detention of German Citizen Khalid Al-Masri" [referred to elsewhere in the present report as Khaled El-Masri] refers to his January 2004 "rendition" and states that "Al-Masri was taken into CIA custody and transported from [redacted] aboard an Agency aircraft."*[229] *This "Agency aircraft" has been identified as N313P, owned by PETS, and operated by Aero Contractors for the rendition of Mr. Al-Masri from Skopje, Macedonia to Afghanistan.*[230]

## THE ROLE OF LOCAL AND STATE OFFICIALS

Local and state officials in North Carolina are implicated in the activities of Aero Contractors, Ltd. These officials permitted North Carolina's public airports to be used for rendition flights, leased space and/or allowed a hangar to be built for rendition aircraft, and refused to investigate allegations of the involvement of Aero Contractors, Ltd. in the RDI program.[231]

*The Johnston County Airport Authority:* The Johnston County Airport Authority began leasing airport space to Aero's founder in 1993 under a self-renewing contract.[232] The airport provides disaster recovery guarantees, protective fencing and access control, security, and runway services. Johnston County has provided permits for construction work and safety inspections at Aero's premises.[233]

*Global TransPark Authority:* Kinston Regional Jetport is located in the North Carolina Global TransPark, "a 2500-acre multi-modal industrial park and airport,"[234] near Kinston in Lenoir County, NC.[235] The North Carolina Global TransPark Authority (GTPA) — a state agency[236] — is "responsible for planning, building, and operating" the facility.[237] The GTPA was chaired by former North Carolina governors from 2002-2009.[238][239] Aero Contractors had lease agreements dated July 2, 2002[240] and January 15, 2004[241] with the GTPA. It also entered into an agreement on January 15, 2004 to "construct a new aircraft hangar" on the premises;[242] with "credit extended by North Carolina,"[243] such that Aero agreed to reimburse the GTPA for amounts paid to design and build the hangar.[244] Prior to the hangar's construction and pending its completion, reportedly





"Aero Contractors stored the $50-million-plus aircraft [N313P] outside at the North Carolina Global TransPark (GTP) site of the jetport."[245]

The construction of the 20,000 square foot hangar was completed in October 2004.[246] Under the January 15, 2004 lease, Aero Contractors also received a credit against the rent for the "appropriate proportion" of the $60,000 "up fit costs" as described in the earlier 2002 commercial lease agreement.[247] GTPA purchased the hangar and accessories from Aero for $1.5 million on Oct. 8, 2007.[248] It is uncertain whether this represented a profit for Aero.

While Aero Contractors' known rendition aircraft were based at just two North Carolina airports, the company has utilized a large number of other North Carolina airports, linking citizens all across the state to the company's secret activities.[249]

## AERO CONTRACTORS-OPERATED RENDITION AIRCRAFT

As of 2005, media reporting identified at least 26 planes owned by the CIA through a number of shell companies, and "the facility that turns up most often in records of the 26 planes is little Johnston County Airport."[250] The analysis of The Rendition Project and The Bureau of Investigative Journalism presented to the Commission has connected 19 aircraft to the "CIA's torture program," of which "two were

***At least 26 planes were owned by the CIA through a number of shell companies, and "the facility that turns up most often in records of the 26 planes is little Johnston County Airport.***[250]

operated by the North Carolina-based company Aero Contractors" : N313P and N379P. Contractors"[251] — N313P and N379P.

### *N313P-N4476S-N720MM*

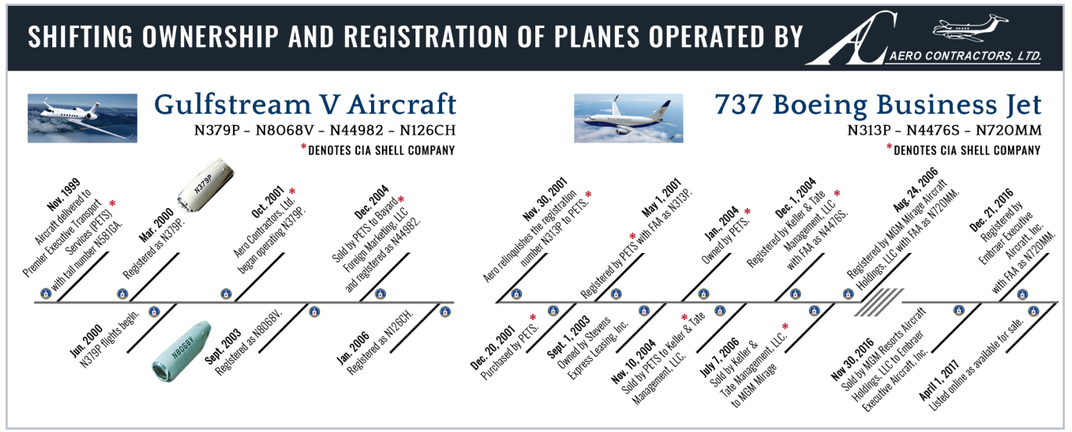
Aero Contractors operated a 737 Boeing Business Jet registered with the Federal Aviation Administration (FAA) as N313P, a jet which "flew for the CIA for more than four years."[252] Until July 2006, it was "linked to the CIA . . . through front companies and post office boxes in the Washington, D.C. area."[253] A review of Federal Aviation Administration (FAA) records and other reporting reveals numerous sales and registrations of the aircraft that would make it more difficult to trace its use.

The details of the relationship between Aero Contractors, PETS, and Keeler & Tate Management, LLC are also set out in the December 6, 2005 complaint *Khaled El-Masri v. George J. Tenet et al.* concerning the rendition of German citizen Khaled El-Masri on board N313P, which states that the defendant, Aero, was "contracted by defendant PETS to operate the above-mentioned Boeing business jet, and specifically to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan"[254] . The complaint identifies Keeler & Tate Management, LLC as the "corporate successor" to PETS.[255]

### *N379P-N8068V-N44982-N126CH*

Aero Contractors also operated a Gulfstream V aircraft registered with the FAA as N379P and then subsequently re-registered as N8068V, N44982, and N126CH.[256] Aero Contractors operated N379P during the RDI program from October 2001 onward.[257] It is an aircraft that Dick Marty, former member of the Council of Europe, describes as "one of the most notorious 'rendition' aircraft"[258] in the context of a Council of Europe inquiry into "Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states." The shifting ownership and registration information is as follows: Gulfstream V N379P was owned by the CIA shell company PETS until December 1, 2004.[259] During the early years of the RDI program, the aircraft operated from its base at the Johnston County Airport under tail numbers N379P and N8068V, and it was registered twice more in 2004 and 2006.

*Source: Federal Aviation Administration (FAA)*





## INDIVIDUALS RENDERED ON AERO CONTRACTORS-OPERATED FLIGHTS

According to testimony provided to the Commission:

- *Aero reportedly rendered "at least 49 individuals – and likely more," including to interrogations in foreign custody and/or CIA custody in "black sites."*[260] *This figure is based on 32 identified circuits that are linked to 69 individual renditions (individuals were sometimes rendered more than once on Aero aircraft).*[261] *Aero's two aircraft reportedly "rendered prisoners into the CIA black site network from a number of locations around the world, including Egypt, The Gambia, Morocco, Malawi, Iraq, UAE, Jordan, Djibouti, and Macedonia."*[262]

- *Approximately one-third of the individuals in direct CIA custody during the RDI program were reportedly transported by Aero Contractors. Specifically, testimony presented to the Commission indicates Aero transported 34 out of the 119 individuals known to have been in direct CIA custody.*[263] *According to this testimony, Aero Contractors aircraft were "central to the rendition of so-called 'High-Value Detainees' (HVDs) between CIA 'black sites.' Many HVDs were held in multiple 'black sites,' and were rendered between them on numerous occasions."*[264]

- *The other 15 of the 49 prisoners were reportedly rendered by Aero Contractors to "proxy detention or U.S. military detention."*[265]

- *In addition, North Carolina Stop Torture Now has identified a further 77 flight circuits undertaken by the aircraft N379P and N313P between September 11, 2001 and June 10, 2005 that resemble rendition circuits (e.g., involve countries that hosted CIA "black sites"), the purposes of which have not yet been confirmed, including whether/which individuals were transported on these flights.*[266]

- *Four of the six*[267] *rendition circuits that have been linked to N313P*[268] *are as follows:*

| CIRCUIT DATES | DETAINEES | LOCATIONS |
|---|---|---|
| September 20-25, 2003 [269] | High-Value Detainees | Afghanistan, Poland, Romania, Morocco, and Guantánamo Bay |
| January 5-10, 2004 [270] | Hassan bin Attash<br>li al-Hajj al Sharqawi<br>Binyam Mohammed | Jordan to Afghanistan<br>Jordan to Afghanistan<br>Morocco to Afghanistan |
| January 15-28, 2004 [271] | Khaled el-Masri | Macedonia to Afghanistan |
| March 6-14, 2004 [272] | Abdel Hakim Belhadj<br>Fatima Boudchar<br>Yunus Rahmatullah<br>Amanatullah Ali | Thailand to Libya (via Diego Garcia)<br>Thailand to Libya (via Diego Garcia)<br>Iraq to Afghanistan<br>Iraq to Afghanistan |

Aircraft N379P has been linked to 26 rendition circuits between December 2001 and March 2004, according to the Rendition Project.[273] The identified flights often involve renditions of more than one person, as well as "more than one rendition operation per circuit."[274] The Rendition Project has identified some of these rendition circuits as follows:

| CIRCUIT DATES | DETAINEES | LOCATIONS |
|---|---|---|
| December 18-20, 2001 [275] | Ahmed Agiza<br>Mohamed el-Zery | Sweden to Egypt<br>Sweden to Egypt |
| January 9-15, 2002 [276] | Mohammed Saad Iqbal Madni | Indonesia to Egypt (via Diego Garcia) |
| February 6-16, 2002 [277] | Ali al-Hajj al-Sharqawi | Afghanistan to Jordan (possible) |
| April 8-15, 2002 [278] | Mohammed Saad Iqbal Madni<br>Mamdouh Habib | Egypt to Afghanistan (via Uzbekistan)<br>Egypt to Afghanistan (via Uzbekistan) |





| CIRCUIT DATES | DETAINEES | LOCATIONS |
|---|---|---|
| May 22-26, 2002 [279] | Abou Elkassim Britel | Pakistan to Morocco |
| July 17-23, 2002 [280] | Binyam Mohamed and two others<br>Unidentified detainee | Pakistan to Morocco<br>Southeast Asia to Egypt or Morocco (via Diego Garcia) |
| September 11-19, 2002 [281] | Ramzi bin al-Shibh<br>Hassan bin Attash | Afghanistan to Jordan and/or Morocco<br>Afghanistan to Jordan and/or Morocco |
| November 12-18, 2002 [282] | Abd al-Rahim al-Nashiri | Afghanistan to Thailand (possible) |
| December 8-17, 2002 [283] | Bisher al-Rawi<br>Jamil el-Banna | The Gambia to Afghanistan (via Egypt)<br>The Gambia to Afghanistan (via Egypt) |
| February 6-13, 2003 [284] | Ramzi bin al-Shibh | Morocco to Poland (possible) |
| March 1-9, 2003 [285] | Khaled Sheikh Mohammed | Afghanistan to Poland |
| June 3-7, 2003 [286] | Abd al-Rahim al-Nashiri<br>Ramzi bin al-Shibh | Poland to Morocco<br>Poland to Morocco |
| October 24-30, 2003 [287] | Mohamed Farag Ahmad Bashmilah | Jordan to Afghanistan |
| January 20-29, 2004 [288] | Khaled al-Maqtari | Iraq to Afghanistan |
| March 6-13, 2004 [289] | Gouled Hassan Dourad | Djibouti to Afghanistan, Morocco or Guantánamo Bay (possible) |

## CONCLUSION

Aero Contractors' central role in the CIA's RDI program has been confirmed by investigative reporting, testimony before the Commission, and reports such as those by the European Parliament Temporary Committee on the "Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners." That role would not have been possible without the use of state and local infrastructure, including Johnston County Airport and the Global TransPark in Kinston, NC. State and county officials approved upgrades to these facilities such as hangar construction and security enhancements during the period that the RDI program was operational. The available information also points to several areas for more investigation. These include but are not limited to the potential role of other North Carolina airports in the RDI program, the purposes of and passengers on other Aero-operated flights conducted during this period, and the knowledge of North Carolina's public officials of the nature of Aero's operations.

*Protestors outside the gate of Aero Contractors, Ltd.*

*Photo courtesy: NCSTN*



CHAPTER THREE

# OTHER NORTH CAROLINA CONNECTIONS TO POST-9/11 U.S. TORTURE

This chapter addresses potential and actual involvement by parties in the state of North Carolina in the United States' post-9/11 torture program – beyond the CIA's use of North Carolina airports for extraordinary rendition flights conducted by Aero Contractors. In addition to considering the role of other private contractors, the chapter discusses torture-related activity in which U.S. military personnel based at Fort Bragg, North Carolina, were reportedly involved.[300]

## POSSIBLE RDI ROLES FOR OTHER PRIVATE NORTH CAROLINA COMPANIES

Besides Aero Contractors, the Commission has identified Blackwater and Centurion as two NC-based private corporations whose possible connections to the RDI program deserve further investigation.

*Blackwater:* The security firm Blackwater[301] was a major contractor for both the Department of Defense (DoD) and CIA during the rendition, detention, and interrogation period, while the company was based at Moyock, NC. According to the New York Times, Blackwater assisted with detainee transfers after 2001. The New York Times reported that former Blackwater employees said they provided security on CIA flights transporting detainees. According to these employees, they were "handpicked by senior Blackwater officials on several occasions to participate in secret flights transporting detainees around war zones."[302]

The relationship between Blackwater and the CIA was reportedly very close, in part due to Blackwater's tendency to hire former CIA officials.[303] For example, in 2005 Blackwater hired Enrique "Ric" Prado, former chief of operations for the CIA's Counterterrorism Center (CTC), which ran the RDI program, and J. Cofer Black, CTC's former director.[304] While these hires, in and of themselves, do not in any way establish participation by Blackwater in extraordinary renditions, they do indicate a close relationship that would facilitate such participation.

*Centurion:* Centurion Aviation Services is an aviation company based in Fayetteville, NC. The NCCIT has received information that suggests, but does not confirm, that Centurion participated in RDI. Because Centurion is a North Carolina-based company and the NCCIT itself is unable to ascertain all of the facts, the Commission urges the North Carolina state government to investigate.

According to flight logs from the Federal Aviation Administration and Eurocontrol that the NCCIT obtained, Centurion Aviation operated two aircraft that visited locations key to the RDI program while that program was in operation. The aircraft had tail numbers N475LC and N478GS.

For example, according to the flight logs, during the period 2003-2006, N478GS visited Islamabad twice, Iraq seven times, Egypt 11 times, Jordan once, Bucharest twice, and Bagram once.[305] Those locations were all significant in the RDI program and were common destinations for the RDI-connected aircraft of Aero Contractors and other companies – Islamabad and Iraq as prisoner pick-up points; Egypt and Jordan as foreign proxies to which prisoners were delivered for torturous interrogations; and Bucharest and Bagram as locations of CIA dark prisons.[306] A news account indicates that on Dec. 6, 2004, N478GS was arriving in Romania from Bagram Airport in Afghanistan when it had an accident while landing in Bucharest, destroying its wheels and a fuel tank.[307] The news account further indicates that on board were seven American passengers who disappeared quickly after the accident, one reportedly carrying a gun. The CIA's Romanian "black site" was functioning during this period; it operated in Bucharest from 2003 to 2005.[308]

*Personnel at Fort Bragg were instrumental in the development and use of abusive techniques against prisoners held post-9/11 in DoD facilities.*[310]

A European Parliament body, the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP), included these two aircraft on a list "used by the CIA for 'extraordinary renditions'" and described their numerous stopovers at Shannon Airport and other European and non-European airports.[309]

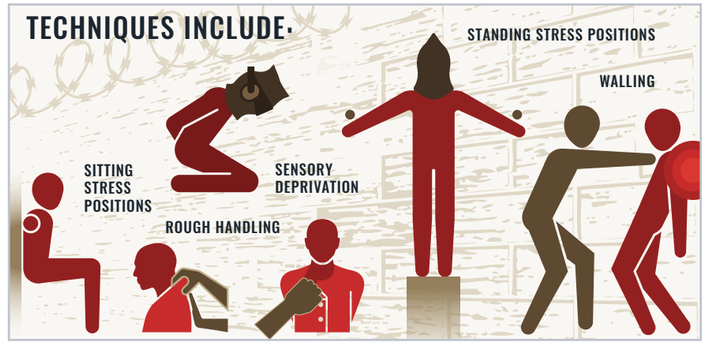
## FORT BRAGG, JOINT SPECIAL OPERATIONS COMMAND (JSOC), AND PRISONER ABUSE

Although this report is primarily focused on CIA-led abuse, programs of torture and abuse were implemented by the U.S. military as well. Of particular relevance to this report, personnel at Fort Bragg were instrumental in the development and use of abusive techniques against prisoners held post-9/11 in DoD facilities.[310] Key personnel included the Chief of the Psychological Applications Directorate at the U.S. Army's Special Operations Command, Col. Louie "Morgan" Banks. Col. Banks was the senior Army Survival, Evasion, Resistance and Escape (SERE) Psychologist. SERE teaches U.S. service members how to resist interrogations "by enemies that [do] not abide by the Geneva Conventions."[311]






*Photo courtesy: The Fayetteville Observer*




*Graphic elements courtesy: QUIT | Quaker Initiative to End Torture | www.quit-torture-now.org*

Working with the Joint Personnel Recovery Agency, a military program that reintegrates American prisoners of war, Col. Banks organized a September 16, 2002 training program for military psychologists at Fort Bragg on the application of SERE techniques to individuals detained post-9/11 by the U.S.[312] As opposed to teaching U.S. military personnel how to resist illegal and abusive techniques, the training program conveyed how the techniques could be applied to overcome an individual's resistance.[313] The techniques included "rough handling," walling, sleep deprivation, exploitation of phobias, threatening with dogs, subjection to cold temperatures, and invasion of personal space by females.[314] Attending the training were Dr. John Leso, an Army psychologist, and psychiatrist Paul Burney, lead members of the first Behavioral Science Consultation Team (BSCT) at Guantánamo Bay.[315]

Following the training, Drs. Leso and Burney wrote a memo proposing the use of SERE-based strategies and techniques on Guantánamo detainees. This memo formed the basis for authorization of those techniques by Secretary of Defense Rumsfeld on December 2, 2002.[316] Psychological disorganization, intense fear, and anxiety were among the objectives of the techniques, which included prolonged isolation, removal of clothing, exposure to cold, the use of stress positions, threats of pain or death, 20-hour interrogations to prevent sleep, and hooding.[317]

First applied at Guantánamo, these abusive techniques spread from there to Afghanistan and Iraq, where they came to the world's attention in the Abu Ghraib disaster. A prime factor in this spread was adoption of the techniques by Special Forces members from Fort Bragg, North Carolina. At Camp Nama, a secretive U.S. detention facility in Baghdad, Iraq, a number of abuses were inflicted by Special Operations Forces (SOF) elite members under the Joint Special Operations Command (JSOC), which is headquartered at Fort Bragg.[318] Personnel at Camp Nama included members of units such as SEAL Team 6, DELTA Force, and Army Rangers.[319] According to a U.S. interrogator who served at Camp Nama and was interviewed for the Human Rights Watch report *No Blood, No Foul*, the task force was comprised of U.S. military special forces from Fort Bragg and CIA personnel, and most were highly secretive about their identity[320]

Detainees were brought to Camp Nama by a joint U.S.-U.K. special forces unit called Task Force 121.[321] Its successor, Task Force 6-26, engaged in kicking, punching and hooding detainees, beating them with rifle butts, and using detainees as targets for the "High Five Paintball Club".[322] Members of two units also witnessed detainees being subjected to electric shocks and prolonged confinement in kennel-sized cells.

Lt. Col. Banks' role extended beyond the September 2002 Fort Bragg training. He was the key DoD partner to the American Psychological Association (APA) Ethics Director in a behind-the-scenes collaboration to prevent the APA from adopting a policy that would constrain psychologists' ability to participate in DoD interrogations. At the time, DoD regulations allowed use of techniques designed to cause psychological or physical distress, in contravention of psychologists' fundamental ethical responsibility to "do no harm."[323] Col.Banks also participated[324] in a 2004 Army Inspector General investigation,[325] which found, despite extensive evidence to the contrary, that there was no systemic abuse in Iraq or Afghanistan, including Abu Ghraib.[326]

## CONCLUSION

North Carolina has multiple demonstrated and reported connections to the systematic use of torture after 9/11 as implemented by the CIA and also by agencies and personnel overseen by the DoD. As far as is known, the DoD and CIA programs of detainee abuse and torture were developed and administered in an organizationally separate manner. However, some detainees to whom North Carolina owes particular acknowledgment and redress were passed between and harmed by both programs. For example, Mohamedou Ould Slahi was rendered by Aero Contractors for the CIA from Jordan to Afghanistan before being rendered to Guantánamo, where he was tortured by DoD personnel. And Khaled al-Maqtari was tortured at Abu Ghraib (operated by a U.S. Army unit) before being rendered by Aero Contractors for the CIA from Iraq to Afghanistan, where he was held and tortured by the CIA. As the state of North Carolina considers how to address its responsibility to victims of the RDI program, it must recognize the multi-agency history of their abuse.



CHAPTER FOUR

# WHO WERE THOSE RENDERED BY AERO CONTRACTORS?

Who were the 49 detainees harmed by North Carolina's involvement in the U.S. rendition and torture program? This chapter provides an overview of the 48 men and one woman identified as having been transported by Aero Contractors to CIA "black sites," Department of Defense-operated facilities, or into foreign custody for interrogation and torture. More detailed information on 37 of those abducted, including the legal issues that pertain to each case, is available in the University of North Carolina School of Law Human Rights Policy Lab report, Extraordinary Rendition and Victim Torture Narratives (2017). [400]

The overview provided below and the longer narratives on the detainees were created using information in the public domain, and reflect the collective efforts of journalists, lawyers, former CIA operatives, and the detainees themselves. The chapter also draws on the investigative efforts and compilation work of the Rendition Project, the Bureau of Investigative Journalism, and Amnesty International.

Some of individuals extraordinarily rendered by the CIA have received national and international attention in major publications such as The Guardian (UK), The Intercept, The Washington Post, The New York Times, the BBC, and Harper's Magazine. But publicly available information is scarce for many other detainees, some of whom disappeared while in CIA custody.

Since the full SSCI "Torture Report" remains classified, it is impossible to provide a complete account of the detainees' lives pre-abduction, their treatment during rendition and detention, their later lives, or their current situations. The SSCI report also does not address those transferred to foreign custody. Nonetheless, the available information allows considerable insight into what these 49 human beings experienced when they were caught up in the CIA's RDI program and rendered by Aero Contractors.

*The youngest, Hassan bin Attash, was a 16-year-old student when CIA agents abducted him; the eldest, Saifullah Abdullah Paracha, has been detained without trial since 2003 and is now 70 years old. Fatima Boudchar, the only woman, was pregnant during her abduction.*[401]

## OVERVIEW OF DETAINEES

Detainees rendered by North Carolina-based planes and personnel ranged widely in age and occupation. The youngest, Hassan bin Attash, was a 16-year-old student when CIA agents abducted him; the eldest, Saifullah Abdullah Paracha, has been detained without trial since 2003 and is now 70 years old. Fatima Boudchar, the only woman, was pregnant during her abduction.[401] The group of individuals had diverse backgrounds – commercial, academic, military, and civil society. Among them were philanthropists, businessmen, community leaders, soldiers, rice merchants, students, and teachers. Mamdouh Habib, an Egyptian with legal residency in Australia, described himself as a waiter, delivery boy, and salesman, "selling everything from Scotch whiskey to ladders" in various countries in Europe and the Middle East.[402]

The 49 detainees were citizens of 16 countries, including Afghanistan, Algeria, Egypt, Iraq, Italy, Jordan, Kuwait, Libya, Mauritania, Morocco, Pakistan, Palestine, Saudi Arabia, Somalia, and Yemen. Two held dual citizenship: one in Ethiopia and the United Kingdom, and the other in Kuwait and Germany. Citizenship is unknown in six cases.[403]

In many cases, targeted individuals were kidnapped in their home countries. Others were seized when traveling abroad or through coordinated secret arrangements made between the United States and foreign governments. As discussed further in Chapter 1, The Rendition Project has tracked 32 Aero Contractors circuits linked to 69 individual renditions (Aero transported some detainees more than once).[404] Eighteen detainees were seized in Pakistan, the most frequent country of abduction, by either Pakistanis or CIA Rendition Teams.[405] Other countries of abduction were Djibouti, Egypt, The Gambia, Georgia, Indonesia, Iraq, Jordan, Macedonia, Mauritania, Malawi, Morocco, Senegal, Sweden, Tanzania, Thailand, and the United Arab Emirates.

Some of the 49 prisoners rendered by Aero are suspected of involvement in the 9/11 attacks, the USS Cole bombing, or other terrorist acts. The CIA classifies as "High Value Detainees" Khaled Sheik Mohammed, Walid bin Attash, Ramzi bin al-Shibh, Hassan Dourad, Abd Al Rahim Al-Nashiri, Mustafa Al Hawsawi, Ammar Al-Baluchi (born Ali Abdul Aziz Ali), and Abu Zubaydah. Six of the eight are being prosecuted by military commissions. Most of the 49, however, were never charged with a crime. These include Mohamedou Ould Slahi, a well-educated engineer with a wide social network, and Abou ElKassim Britel, a scholar and translator of Islamic religious material.[406] The only thing all detainees had in common was their Muslim identity.

There were several cases of mistaken identity among the 49. Khaled El-Masri, a German citizen, was seized in Macedonia and rendered to Afghanistan because he had the same name as a known terrorism





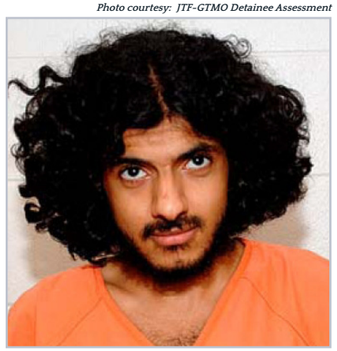
suspect.[407] Laid Saidi "was subjected to ice water baths and 66 hours of standing sleep deprivation before being released because the C.I.A. discovered he was not the person he was believed to be."[408]

Jamil el-Banna and Bisher al-Rawi were businessmen, snatched in The Gambia on a trip to check up on a peanut oil factory they were establishing there.[412] They were not released until five years later, even though no charges were filed against them. El-Banna still suffers from suicidal tendencies, PTSD, and severe depression.[413]

Regardless of actual guilt or innocence, none of the 49 was ever afforded due process, and those still detained in Guantánamo seem unlikely to receive it. Saifullah Paracha, a Pakistani with U.S. residency, is accused of "offering to use his business to help Al Qaeda smuggle weapons into the US."[414] Imprisoned since 2003, he has never been charged with a crime.[415] Nor has he been able to obtain appropriate medical care for his diabetes, heart condition, and other medical conditions.[416] He does not trust the doctors in Guantánamo and resists the protocol of being treated while shackled.

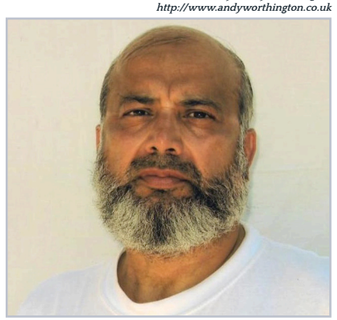
*Hassan bin Attash, the youngest detainee, abducted by the CIA at age 16.*

*Photo courtesy: JTF-GTMO Detainee Assessment*



*The oldest detainee, Saifullah Abdullah Paracha has been detained without trial since 2003, is now 70 years old.*

*Photo courtesy: Andy Worthington http://www.andyworthington.co.uk*



### THE OTHER KHALED EL-MASRI

In a case of mistaken identity, Khaled El-Masri was extraordinarily rendered by the Kinston-based N313P aircraft to the notorious 'Salt Pit' CIA "black site" in Afghanistan.[409] During his rendition, he was hooded, diapered, and secured in a spread-eagle position, where he then received two injections that caused him to lose consciousness. Detained without explanation or charge, El-Masri embarked on a hunger strike to protest his conditions. Thirty-seven days into his hunger strike, having lost over 60 pounds, El-Masri was force-fed liquid through his nose. After 5 months in secret detention, during which his family had no idea of his whereabouts, El-Masri was abandoned in an Albanian forest.

Life following his disappearance and CIA detention has been extremely difficult for Khaled El-Masri. He has received no apology, explanation or compensation from the U.S, or Germany, where he was a legal resident.[410] His ordeal resulted in severe psychological trauma, and he now lives apart from his family and is unemployed. In its recent decision on his case against Macedonia for assisting the CIA in his rendition and detention, the European Court of Human Rights awarded Mr. El-Masri EUR 60,000.[411]

*Photo courtesy: Getty Images*

## EXPERIENCE DURING RENDITION

Testimonies about abductions and transports disclose painful experiences that were not only the prelude to secret detention, violent interrogation, and torture. Abduction and rendition were also terrifying and degrading in and of themselves, amounting to psychological torture. The violent and abusive nature of extraordinary renditions is examined in further detail in Chapter 5 of this report.

## EXPERIENCE IN CAPTIVITY

Detainees were rendered by Aero Contractors to countries around the world, including Afghanistan, Algeria, Egypt, Guantánamo Bay (Cuba), Iraq, Jordan, Libya, Morocco, Poland,

## FATIMA BOUDCHAR

Photo courtesy: Ian Davidson / Alamy Stock Photo

*London — 10th May 2018 Fatima Boudchar (pictured with son Abderrahim) wins torture case compensation and apology from the UK government following her torture in Libya .*

The experiences of Fatima Boudchar, summarized from the University of North Carolina School of Law report on Extraordinary Rendition and Torture Victim Narratives:

Fatima Boudchar (also spelled Bouchar), the only woman in the group, was four-and-a-half months pregnant when she and her husband, Abdel Hakim Belhadj, an anti-Gaddafi activist, were abducted in Bangkok and rendered to Libya in March 2004.[417] Boudchar, a Moroccan citizen, had married Belhadj the previous year. Shortly after Boudchar became pregnant, they suspected they were being monitored by the Libyan government and decided to seek asylum in the UK by traveling from their home in China to Malaysia and submitting themselves to immigration authorities there.[418] On March 7, 2004, Malaysia authorities put Boudchar and her husband on a standard commercial flight bound for London with a stop in Bangkok.[419]

On landing in Bangkok, they were taken to a U.S.-run detention facility and immediately separated.[420] Although her abductors knew she was pregnant, they chained her to the wall by her wrist and ankle and struck her in the abdomen.[421] Barely able to sit or lie down on the floor, she experienced great pain, compounded by temperature extremes and a lack of food.[422] She was kept under constant surveillance through a camera in her cell, where guards would burst in each time she moved.[423]

After several days she was wrapped from head to toe in tape and brought back to the airport.[424] There, the tape was cut from her body but left on her eyes[425] In preparation for the 17-hour rendition flight to Libya that followed, her clothes were cut off and someone pressed a finger painfully into her belly button. She received an injection and was re-taped to a stretcher from her feet to her neck.[426] Her head was also re-taped, this time with one eye open, and she was left that way for the entire flight, a condition she describes as excruciating. Unaware of her husband's whereabouts or where she would be sent,[427] she only realized they were both being rendered upon arrival, when she heard him "grunting" with pain.[428] Throughout this ordeal she was terrified that, as a result of the abuse, she would lose her baby.[429]

On arrival in Tripoli, Boudchar was brought to Tajoura prison and kept blindfolded and bound for several more hours. Within four days, her interrogations began, twice per day for two to three hours at a time.[430] A prison doctor told her that she and the baby were very weak and that her womb was too dry to allow the baby proper movement and development. She was finally released on June 21, 2004, but not permitted to leave the country. Three weeks later, on July 14, she gave birth to her son, Abderrahim, who weighed 4 pounds (1.8 kg).[431] To put this in context, an average baby at birth weighs about 7.5 pounds (3.5kg) .

Romania, and Thailand.[432] Actual periods of custody range from a few months to 16 years and counting. Given that they are not advised of why or how long they will be held, detainees experience "prolonged" detention as "indefinite."

Most were detained, at some point, at one of the four "black sites" in Afghanistan, including at the infamous site known as the Salt Pit or the Dark Prison.[433] The Salt Pit was among the most brutal CIA secret prisons.[434] Other frequently used prisons for Aero-related detainees were in Pakistan, where at least six detainees were kept for indeterminate periods, and in Morocco, where at least eight detainees were held.

Detainee testimony and reports by the SSCI and other investigative bodies reveal that while being held in U.S. or foreign custody, detainees experienced a wide range of extreme abuses. These include blindfolding, hooding, forced nudity (both alone and in front of other detainees), being held in a pitch-black cell without indication of time or day, physical assault, exposure to extreme temperatures, sleep deprivation, exposure to painfully loud music, cigarette burns, being suspended by arms bound behind one's back, having to maintain stress positions for prolonged periods of time, being shackled naked for consecutive days, simulated drowning and other mock executions, threats of rape, rectal "feeding" and other forms of rape and sexual assault, including genital manipulation.[435]

Mamdouh Habib, who was detained in Pakistan, Egypt, two "black sites" in Afghanistan, and finally Guantánamo Bay, describes being "sexually humiliated by a female interrogator who reached under her skirt and threw what appeared to be blood in his face."[436] He also endured psychological abuse at the naval base when, on several occasions, he was forced to look at photographs of his wife's face superimposed on images of nude women next to Osama bin Laden.[437]





## CURRENT STATUS

Of the Aero-linked detainees, 23 have been released, and 14 remain in either U.S. or foreign detention (13 at Guantánamo Bay and one in Israel). The status of eight is unknown,[442] including two rendered to the Palestine Branch in Damascus, under the control of Assad's intelligence forces and well-known as the worst secret prison in Syria.

Six of the 13 men still in detention at Guantánamo have been charged under the U.S. Military Commission System. Several detainees handed to other governments have had trials in courts in Egypt, Libya, Yemen and Algeria, although the legitimacy of some of those trials is dubious. For example, Ahmed Agiza was found guilty of terrorism-related charges in a military tribunal in Egypt that lasted no more than six hours and denied him the opportunity to call his own witnesses or appeal the ruling.[443] Swedish authorities conceded this was an unfair trial and, in 2012, granted him permanent residency.[444] Four years after CIA agents abducted Abdel Hakim Belhadj in Thailand in 2004, he was given a 15-minute trial in Libya, after which he was detained for two more years.[445]

Four of the 49 detainees are dead. One, Ibn Sheikh Al-Libi, died in detention in Libya in 2009 under opaque circumstances: Libyan authorities claim he committed suicide, while other reports suggest he died from untreated tuberculosis.[446] Another, Omar al-Faruq, was killed in Baghdad in 2006, more than a year after escaping from a CIA "black site" in Afghanistan.[447] Hassan Ghul was killed by a targeted U.S. drone strike in October 2012 in Pakistan, six years after his release.[448] Mohammed Bashmilah died in Yemen in June 2016.[449] None of them received any form of apology from the U.S government for their wrongful capture and torture before they died. To date, neither the U.S. government nor its partners have acknowledged to their families – such as Al-Libi's widow and small child, or Bashmilah's widow – the irregular abduction, detention without charge or trial, and torture. Nor have the U.S government and private companies such as Aero Contractors, Ltd. provided the families with any form of financial compensation or other redress.

Of those released, only seven are known to have received compensation, all by RDI partner governments (the U.K., Sweden, and Australia) and apparently in significant part to avoid lawsuits and the accompanying document discovery. For example, Mamdouh Habib received an out-of-court settlement from the Australian government.[450] In May 2018 – nearly 14 years after their renditions – Fatima Boudchar and Abdel Hakim Belhadj received an apology from the U.K. government for its role in their ordeals.[451] The Swedish government has compensated Ahmed Agiza and Mohamed el-Zery.[452]

## ABU ZUBAYDAH

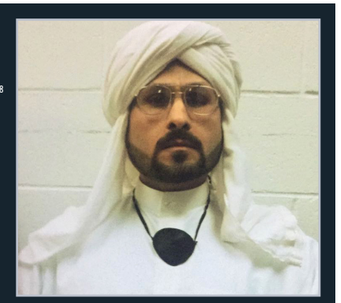


Photo courtesy: the family of Abu Zubaydah

Abu Zubaydah was the first CIA detainee to be subjected to waterboarding.[438] After his initial capture in Pakistan, where he suffered gunshot wounds, he was rendered to various "black sites," including those in Thailand, Poland, Guantánamo (twice), and Lithuania. In CIA custody, he was subjected to temperature extremes, insufficient food, and extensive isolation as well as being waterboarded 83 times.[439] Current CIA Director Gina Haspel was once in charge at the "black site" in Thailand where Abu Zubaydah was tortured.[440] Haspel's tenure there is believed to have begun after he was tortured; however, her reported leadership coincides with the torture of other detainees, including Aero rendition victim Abd al-Rahim al-Nashiri.[441]

*Detainees experienced a wide range of extreme abuses. These include blindfolding, hooding, forced nudity – both alone and in front of other detainees, being held in a pitch black cell without any indication of time or day, physical assault, exposure to extreme temperatures, sleep deprivation, exposure to painfully loud music, cigarette burns, being suspended by arms bound behind one's back, having to maintain stress positions for prolonged periods of time, being shackled naked for consecutive days, simulated drowning and other mock executions, threats of rape, rectal "feeding" and other forms of rape and sexual assault, including genital manipulation.*

## CONCLUSION

Detainees rendered on Aero-operated planes varied in background, education, profession, socio-economic status, citizenship, and place of residency. The one thing they had in common was that they were all Muslim. And they were transported across a network of prisons and "black sites" that one detainee referred to as "the endless world tour I was forcibly taking."[453] The overview of detainees' backgrounds and experiences provided above reveals the global scope of the CIA program and Aero's flight circuits. Regardless of age or gender, detainees experienced terror and abuse during abduction, extralegal transportation, and secret detention.



*TABLE SOURCE: SEE ENDNOTES | APPENDIX C*

| NAME | LENGTH OF DETENTION (LENGTH IN CIA CUSTODY IN PARENTHESES) | NATIONALITY | COUNTRY OF CAPTURE | CHARGED | PLACES OF DETENTION | CURRENT STATUS |
|---|---|---|---|---|---|---|
| Abd al-Rahim al-Nashiri | 16+ years (CIA 1394 days) | Saudi Arabia | Dubai, UAE | Yes | UAE, Afghanistan (COBALT), Thailand (GREEN), Poland (BLUE), Morocco, Guantánamo (INDIGO/MAROON), Romania (BLACK), Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Abd Al-Salam Al-Hilah | 12+ years (CIA 590-599 days) | Yemen | Egypt | No | Egypt; Afghanistan (COBALT/GRAY, ORANGE, and other); Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Abdel-Hakim Belhadj | 6 years | Libya | Thailand | Yes | Thailand (Bangkok); Libya (Tajoura Prison); | Released - UK<br>Libya (Abu Salim Prison) |
| Abdul Halim Dalak | Unknown | Unknown | Pakistan | Unknown | Pakistan, Syria (Palestine Branch) | Unknown |
| Abou El-Kassim Britel | 9 years | Italy | Pakistan | Yes | Pakistan (Lahore, Islamabad); Morocco (Temara Prison, Sale Prison, other prisons) | Released - Italy |
| Abu 'Abdallah | Unknown (CIA 870-872 days) | Unknown | Iraq | Unknown | Iraq, Afghanistan (COBALT) | Unknown |
| Abu Yasir Al-Jazairi | Unknown (CIA 1026-1069 days) | Algeria | Pakistan | Unknown | Pakistan; Afghanistan (COBALT/GRAY); Poland (BLUE); or Romania (BLACK) [possibly]; Afghanistan (ORANGE) Guantánamo (INDIGO/MAROON) [possibly]; Morocco [possibly] | Unknown |
| Abu Zubaydah | 16+ years (CIA 1619 days) | Saudi Arabia | Pakistan | No | Pakistan, Thailand, Poland, Morocco, Lithuania, Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Ahmed Agiza | 9 years | Egypt | Sweden | Yes | Egypt | Released - Egypt |
| Amanatullah Ali | 10 years, 8 months | Pakistan | Iraq | No | Iraq (Camp Nama), Afghanistan (COBALT & Bagram) | Released - Unknown |
| Ammar al-Baluchi (birth name Abd al Aziz Ali) | 15+ years (CIA 1207 days) | Kuwait | Pakistan | No | Pakistan; Afghanistan (COBALT/GRAY); Morocco, Romania (BLACK); unknown; Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Asadallah | 7 years, 6 months (CIA 150-159 days) | Egypt | Pakistan | Yes | Pakistan, Afghanistan (COBALT); Egypt | Released |
| Aso Hawleri | Unknown (CIA 10-19 days) | Unknown | Iraq | Unknown | Unknown | Unknown |
| Binyam Mohamed | 6 years, 10 months (CIA 110-119 days) | Ethiopia/UK | Pakistan | No | Pakistan (Karachi, Islamabad), Morocco, (Temara Prison, unknown site), Afghanistan (COBALT, Bagram), Guantánamo Bay Detention Center | Released - UK |
| Bisher al-Rawi | 5 years, 6 months (CIA 1-9 days) | Iraq | Gambia | No | Gambia, Afghanistan (1: Unknown-Outside Kabul; 2: Bagram), Guantánamo Bay Detention Center | Released - UK |
| Fatima Boudchar | 3 months | Morocco | Thailand | No | Thailand (Bangkok); Libya (Tajoura Prison); Libya (Abu Salim Prison) | Released - UK |
| Gouled Hassan Dourad | 14+ years (CIA 900-909 days) | Somalia | Djibouti | No | Djibouti, Guantánamo Bay (INDIGO/MAROON - Possible), Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Hassan bin Attash | 15+ years (CIA 120-129 days) | Saudi Arabia | Pakistan | No | Pakistan; Afghanistan (COBALT, Bagram); Jordan | Detained - Guantánamo Bay Detention Center |
| Hassan Ghul | 3.5 years (CIA 940-949 days) | Pakistan | Iraq | No | Iraq, Afghanistan (COBALT/GRAY), Romania, (BLACK) | Deceased after release |
| Hiwa Rashul | Unknown (CIA 110-119 days) | Iraq | Iraq | Unknown | Iraq, Afghanistan (COBALT/GREY) | Unknown |
| Ibn Sheikh Al-Libi | 7 years, 6 months (CIA 460-469 days) | Libya | Pakistan | Yes | Pakistan; Afghanistan (DoD); Egypt; Afghanistan (COBALT/GRAY); Guantánamo (INDIGO/MAROON); Morocco; Libya | Deceased |
| Jamal Boudraa | 8 years (CIA 630-631 days) | Algeria | Georgia | Yes | Georgia; Afghanistan (other and COBALT/GRAY); Algeria | Released - Algeria |
| Jamil el-Banna | 5 years, 1 month(CIA 1-9 days) | Jordan-Palestine | The Gambia | No | The Gambia, Afghanistan (COBALT, Bagram), Guantánamo Bay Detention Center | Released - UK |
| Jamil Qasim Saeed Mohammed | Unknown | Unknown | Pakistan | Unknown | Jordan | Unknown |
| Khaled al-Maqtari | 3 years, 4 month (CIA 950-958 days) | Yemen | Iraq | No | Iraq (U.S. military base, Abu Ghraib), Afghanistan (COBALT, other), Yemen | Released - Yemen |
| Khaled El-Masri | 5 months (CIA 125 days) | Kuwait/Germany | Macedonia | No | Macedonia, Afghanistan (COBALT) | Released - Austria |
| Khaled Sheikh Mohammed | 15+ years (CIA 1280-1282 days) | Pakistan | Pakistan | Yes | Pakistan; Afghanistan (COBALT/GRAY/BROWN); Poland (BLUE); Romania (BLACK); Lithuania (VIOLET), Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Laid Saidi | 1 year, 2 months (CIA 465-469 days) | Algeria | Tanzania | No | Tanzania; Malawi; Afghanistan (other, COBALT/GRAY and ORANGE), Algeria | Released - Algeria |
| Mamdouh Habib | 3 years,3 months | Egypt | Pakistan | No | Pakistan, Egypt, Afghanistan (Bagram, Kandahar), Guantánamo Bay Detention Center | Released - Australia |
| Mohamed El-Zery | 1 year, 10 months | Egypt | Sweden | No | Egypt | Released - Egypt |
| Mohamed Farag Ahmad Bashmilah | 2 years, 6 months (CIA 550-559 days) | Yemen | Jordan | Yes | Jordan, Afghanistan (COBALT, likely other), Yemen | Deceased after release |
| Mohamedou Ould Slahi | 15 years | Mauritania | Senegal | No | Mauritania, Jordan, Afghanistan (Bagram), Guantánamo Bay Detention Center | Released - Mauritania |
| Mohammed Al-Asad | 2 years, 9 months (CIA 480-489 days) | Yemen | Tanzania | Yes | Djibouti, Afghan black site, Eastern European black site (likely), Yemen | Released - Yemen |
| Mohammed Saad Iqbal Madni | 7 years | Pakistan | Indonesia | No | Indonesia, Afghanistan (Bagram), Guantánamo | Released - Pakistan |
| Muhammad Ibrahim | Unknown (CIA 260-269 days) | Unknown | Unknown | Unknown | Unknown | Unknown |
| Mustafa Ahmad | 15+ years (CIA 1280-1282 days) | Saudi Arabia al-Hawsawi | Pakistan | Yes | Pakistan, Afghanistan (COBALT), Guantánamo Bay Detention Center, Lithuania (VIOLET), and (likely) Morocco or Romania | Detained - Guantánamo Bay Detention Center |
| Mustafa Salim Ali el-Madaghi | 5 years | Libya | Mauritania | Yes | Mauritania, Morocco, Libya | Released - Libya |
| Omar al-Faruq | 4 years, 3 months (CIA 410-419 days) | Iraq | Indonesia | Unknown | Afghanistan (Bagram) | Deceased |
| Omar Ghramesh | Unknown | Unknown | Pakistan | No | Pakistan, Syria (Palestine Branch) | Unknown |
| Pacha Wazir | 8 years (CIA 330-339 days) | Afghanistan | UAE | No | Morocco, Afghanistan (Panjshir, Bagram, & 'Hotel California') | Released - Afghanistan |
| Ramzi bin al-Shibh | 16+ years (CIA 1305 days) | Yemen | Pakistan | Yes | Afghanistan (Dark Prison), Morocco, Poland, Guantánamo, Romania | Detained - Guantánamo Bay Detention Center |
| Saifullah Abdullah Paracha | 12+ years | Pakistan | Thailand | No | Afghanistan (Bagram), Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Salah Nasir Salim Ali Qaru | 2 years, 6 months (CIA 600-606 days) | Yemen | Indonesia | Yes | Indonesia; Jordan; Afghanistan (COBALT/GRAY and ORANGE); Yemen | Released - Yemen |
| Saleh Hadiyah Di'ki | 7 years, 4 months (CIA 213 days) | Libya | Mauritania | Yes | Morocco, Afghanistan (COBALT/ORANGE), Libya | Released - Libya |
| Samr Al-Barq | 15+ years (CIA 88-89 days) | Palestine | Pakistan | No | Pakistan, Afghanistan (COBALT/GRAY), Poland (BLUE), Romania (BLACK), Jordan, Isreal | Detained - Israel (2013) |
| Sanad Al-Kazimi | 14+ years (CIA 270-273 days) | Yemen | Dubai, UAE | No | Dubai, Afghanistan (COBALT/GREY)(Potentiall ORANGE), Guantanmo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Sharqawi Abdu Ali Al Hajj | 13+ years (CIA 120-129 days) | Yemen | Pakistan | No | Pakistan, Jordan, Afghanistan (COBALT, Bagram), Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Walid bin Attash | 15+ years (CIA 1207-1209 days) | Yemen | Pakistan | Yes | Pakistan, Afghanistan (COBALT/GREY), Poland (BLUE), Romania (BLACK), Guantánamo Bay Detention Center | Detained - Guantánamo Bay Detention Center |
| Yunus Rahmatullah | 10+ years | Pakistan | Iraq | No | Iraq (Camp Nama & Aby Ghraib), | Released - Pakistan |





| TRIAL | RESTITUTION | IN SSCI REPORT | FURTHER NOTES |
|---|---|---|---|
| No | Yes | Yes | Charged with war crimes by US Military Commission. In 2014, the European Court of Human Rights ordered Poland to pay compensation (received by family). In 2018, the ECHR ruled that his rights were violated by Romania. |
| No | No | Yes | |
| Yes | Yes | No | Convicted of armed insurrection against the Libyan regime. Trial lasted 15 minutes. UK government apologized and provided compensation. |
| Unknown | No | No | |
| Yes | No | No | Charged with involvement in Casablanca bombings in Morocco. Trial declared unfair by international observer. |
| Unknown | No | Yes | |
| Unknown | Unknown | Yes | |
| No | Awarded, not disbursed | Yes | In 2014, European Court of Human Rights ordered Poland to pay compensation (awaiting disbursement). In 2018, ECHR ruled that his rights were violated by Lithuania. |
| Yes | Yes | No | Charged with membership of a banned Islamic organization in Egypt. Conducted by an Egyptian Military Tribunal, trial lasted 6 hours. Sentenced to 25 years. Released to Egypt, then obtained full residency in Sweden a year later. Compensated by Sweden. |
| No | No | No | |
| Expected | No | Yes | |
| Yes | No | Yes | Charged with sedition in Manhattan Federal Court. |
| Unknown | No | Yes | |
| No | Yes | Yes | Compensated by UK government. |
| No | Yes | Yes | Compensated by UK government. |
| No | Yes | No | UK government apologized and provided compensation. |
| No | No | Yes | |
| No | No | Yes | |
| No | No | Yes | |
| Unknown | Unknown | Yes | |
| Yes | No | Yes | Sentenced to life imprisonment in Libya. |
| Yes | No | Yes | Charged in Algeria for being a member of a terrorist organization. Sentenced to 5 years imprisonment. |
| No | Yes | Yes | Compensated by UK government. |
| Unknown | Unknown | No | |
| No | No | Yes | |
| No | No | Yes | European court ordered Macedonia to compensate him; not received. Macedonia has formally apologized. |
| Expected | No | Yes | Charged with criminal offenses and assisting 9/11 attacks, by a US Military Commission. |
| No | No | Yes | |
| No | Yes | No | Compensated by Australian government. |
| No | Yes | No | Compensated by Swedish government. |
| Yes | No | Yes | Charged with criminal offenses and assisting 9/11 attacks, by a US Military Commission. |
| No | No | No | |
| Yes | No | Yes | Charged with making false statements to obtain a Tanzanian passport. |
| No | No | No | |
| Unknown | Unknown | Yes | |
| Expected | No | Yes | Charged with criminal offenses and assisting 9/11 attacks, by a US Military Commission. |
| Yes | No | No | Charged with attempting to overthrow the Libyan government. Sentenced to life imprisonment. Released after overthrow of Gaddafi. |
| No | No | Yes | Escaped from detention and was shot and killed during an operation to arrest him. |
| Unknown | No | No | |
| No | No | Yes | |
| Expected | No | Yes | Charged with criminal offenses and assisting 9/11 attacks, by a US Military Commission. |
| No | No | No | |
| Yes | No | Yes | Charged with forging travel documents. |
| Yes | No | Yes | Charged with attempting to overthrow the Libyan govt. Sentenced to life. Considered a summary trial with no due process. |
| No | No | Yes | |
| No | No | Yes | |
| No | No | Yes | |
| Expected | No | Yes | Charged with criminal offenses and assisting 9/11 attacks, by a US Military Commission. |
| No | No | No | |



CHAPTER FIVE

# RENDITION AS TORTURE

This chapter discusses how renditions, as practiced by the CIA using Aero Contractors' aircraft, constituted torture or cruel, inhuman or degrading treatment. Extraordinary or secret, forcible renditions were explicitly designed as integral parts of the RDI program. Their function was to instill "learned helplessness" in detainees as a prelude to their coercive interrogation.

The treatment victims experienced on these flights clearly violated federal and international law against torture and abuse. It also violated the ban on enforced disappearance as well as the *non-refoulement* ban.[500] The latter prohibits transfer of individuals to situations in which they are at risk of torture and cruel, inhuman or degrading treatment or punishment, enforced disappearance, or arbitrary or proxy detention.

Furthermore, by not providing redress for rendition victims, the United States is in violation of its obligation to ensure a right to remedy under international human rights law. The U.S. government also bears responsibility for the subsequent treatment of individuals that it rendered to foreign custody. This report considers those obligations in more detail in Chapter 9.

As testimony before the Commission emphasized, violations of binding international legal obligations occurred at all stages of the RDI program, including victims' "initial apprehension and treatment on tarmacs of foreign airports by CIA Rendition Teams, on rendition flights, in secret detention, through interrogation using brutal tactics referred to as "enhanced interrogation techniques", and in the failure to get justice."[501]

## RENDITION IN THE RDI PROGRAM: AN INTEGRAL PIECE, DESIGNED TO CREATE PSYCHOLOGICAL AND PHYSICAL HELPLESSNESS

As noted in Chapter 1, the first step in the RDI program was extraordinary rendition, the covert extralegal transfer of an individual between States or legal jurisdictions. These renditions were conducted with the authorization, facilitation, and participation of the U.S. government, foreign states, and private actors.

The U.S. government authorized and coordinated renditions through arrangements with local authorities to seize individuals and hand them over to a U.S. "Rendition Team," which assaulted detainees both before and during flights. The team included a medical officer to monitor individuals throughout the rendition, complete a preliminary medical examination and cavity search, and administer sedatives.[502] The presence of a medical officer raises questions about possible violations of medical ethics during renditions. This topic deserves further investigation.

In addition to simply acting as a mode of transportation, the renditions themselves were integral to the control and dehumanization of detainees. In documents from the period of the

*In addition to simply acting as a mode of transportation, the renditions themselves were integral to the control and dehumanization of detainees.*

RDI program, the CIA identified rendition as a key component to interrogation on the basis that "[e]ffective interrogation is based on the concept of using both physical and psychological pressures in a comprehensive, systematic, and cumulative manner to influence [detainee] behavior, to overcome a detainee's resistance posture. The goal of interrogation is to create a state of learned helplessness and dependence conducive to the collection of intelligence in a predictable, reliable, and sustainable manner."[503] Experienced military intelligence officials testified to the Commission about the flaws in this reasoning and the ineffectiveness, as well as illegality and immorality, of abusive interrogation methods.[504]

Khadija Anna Pighizzini, wife of RDI survivor Abou ElKassim Britel, described to the Commission her husband's experience of his rendition, as it had been relayed to her: "The protocol is precise and designed to induce terror in the victim, with the horrible fear that he is about to be killed. Kassim is no exception: he [was] terrified, he [did] not understand, [and thought[ maybe his life [would] end there."[505]

*"The protocol is precise and designed to induce terror in the victim, with the horrible fear that he is about to be killed. Kassim is no exception: he [was] terrified, he [did] not understand, [and thought[ maybe his life [would] end there."*[505]

## THE RENDITION EXPERIENCE AND HOW IT VIOLATED THE PROHIBITION ON TORTURE

Rendition as developed by the CIA and its partners and experienced by affected individuals violates U.S. obligations to prohibit torture and cruel, inhuman or degrading treatment or punishment.[506] This section draws on survivor testimony, official documents from the RDI program, and expert witnesses to the Commission. Together, they afford insight into the experience of being prepared for rendition; the experience on board rendition flights, of which some prisoners had several; and the ongoing





### BASHMILAH'S ACCOUNT OF HIS RENDITION FROM JORDAN TO AFGHANISTAN | OCT. 2003 | ON BOARD AERO PLANE N379P TESTIMONY GIVEN BY DR. SAM RAPHAEL, THE RENDITION PROJECT, TO NCCIT.[511]

*Photo courtesy: andyworthington.co.uk*


*Photo courtesy: Fred Seggie | World Air Images | Airliners.net*

I was driven for about thirty minutes to the airport. At the airport I was pulled from the car and placed in a room. I was seated on a chair with my hands still in cuffs and my blindfold still on. Very shortly thereafter, I was taken violently to another room where my clothing was rapidly cut off until I was entirely naked. My blindfold was taken off and strong light beams were directed at my face while someone put their hand over my eyes. I was not able to see clearly because of this, but I could see some things in the room by peeking through the fingers of the hand over my face. There were at least three people there. One of them was the one holding me from behind and covering my eyes with his hand. I didn't see the person holding me, but the other two that I did see were dressed head to toe in black, with black masks covering their faces and surgical gloves on their hands. They beat me and kicked me, roughing me up badly. Another person took pictures of me, and then one of them forcefully stuck his finger into my anus. I was in severe pain and began to faint.

After this ordeal I was put in a diaper like a baby and dressed in a blue shirt and pants that came below the knee, to about the mid-shin. Both the shirt and the pants had been cut to be about three-quarters length and were made of sweatshirt material. I was forced to go without shoes. They stuffed my ears with spongy material and taped all around that before putting headphones on. They blindfolded me by putting dressing, like you would on a wound, over my eyes and then taping over it. Later this tape was painfully removed, and with it clumps of my hair. They tied my legs together and chained them to my waist. Then they tied my hands together and also chained them to my waist. I was also hooded. I was in a lot of pain at this time, but I was mostly worried about my mother and wife because I did not know what was happening to them.

I was taken up six or seven steps to get on board a plane where I was forced to lie on my back. I was then strapped across the chest and legs to a metallic board, which was like a hospital gurney. This plane traveled for about four hours before landing. During the flight, I suffered pain in my head, sides, and knees from blows and kicks from the men who prepared me for the transfer and forced me onto the plane.

*The definition of torture under international law: "any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession."*

psychological effects of rendition.

It is important to recall the definition of torture under international law: "any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession."[507] Consistent with that definition, the U.S. government has acknowledged that rendition was an intentional and key component of a three-phase interrogation process -- rendition, reception and detention at the "black site," and interrogation itself -- that began with controlling the "[i]nitial [c]onditions" of the individual.[508] This report thus builds on the SSCI Report, which focused on detention and interrogation, by examining the key role of rendition in the program.

## PROTOCOLS OF SEIZURE AND TRANSPORT

The Rendition Project has compiled direct testimony of former detainees as well as information released during court proceedings by detainees testifying against their captors in European courts. Dr. Sam Raphael's presentation of these findings before the Commission revealed a common set of protocols of seizure and transport experienced by detainees.[509] These findings are consistent with the protocol for renditions described in CIA documents stipulating the treatment of individuals in preparation for and during their transfers (discussed below).

Abduction teams operated in silence and anonymity, hiding their faces under black masks and communicating solely with hand gestures. Detainees report that abducting agents failed to disclose their authorization and refused to provide the reason for abduction, where detainees would be taken, or how long they would be held.

In other words, the abductions constituted forced disappearance.[510]

Individuals have described violent treatment upon being seized, even before being rendered on flights operated by Aero Contractors. Mohammed Bashmilah's account of the forced removal of his clothing followed by his diapering, blindfolding, earphones, and forcible restraint corresponds to other detainee narratives.

Jamil el-Banna stated that "he was stripped, his captors cut his clothing off, and he was restrained down from feet, torso, and chest on a stretcher while completely immobilizing him to be taken aboard an aircraft."[512] These experiences match that of Mohamedou Ould Slahi, who testified regarding his rendition experience at the Commission hearings. Mr. Slahi detailed being prepared for his second rendition by being blindfolded, stripped of his clothes, diapered, dragged onto a plane, and finally shackled onto that plane.[513] In addition to the fear and absence of any personal control he experienced,[514] Mr. Slahi characterized his rendition as "the boundary between death and life."[515]

*Mr. Slahi characterized his rendition as "the boundary between death and life."*

*Photo courtesy: ACLU via Youtube video*

***Mr. Mohamedou Ould Slahi is a Mauritanian citizen who was rendered by Aero Contractors and detained at Guantánamo Bay detention camp without charge from 2002 until his release in October 2016.***

*Detainees report that abducting agents failed to disclose their authorization and refused to provide the reason for abduction, where detainees would be taken, or how long they would be held.*

Detainees reported that they were given injections or had pellets (presumably suppositories) forced into their rectum, in some instances multiple times. Notwithstanding the presence of medical personnel and because these procedures took place without consent, detainee accounts also describe that they experienced the removal of their clothes, cavity searches, diapering, painful restraints, beatings, and the forcible insertion of rectal suppositories "as sexual assault."[516]

Violent treatment continued during the Aero Contractors-operated flights. Khaled El-Masri explained that "[i]n the airplane, he was thrown to the floor with his arms and legs secured to the sides of the plane in a spread-eagled position," and later he received "two injections, one in the left arm and one in the right arm, at different times during the flight. Eventually, the men guarding him put something over his nose that made him feel light-headed and lose consciousness."[517]

A 2004 CIA memorandum on the treatment of detainees during rendition also describes the procedures, although some of the information has been redacted: "the detainee is securely shackled and is deprived of sight and sound through the use of blindfolds, ear muffs, and hoods. [REDACTED] There is no interaction with the HVD during this rendition movement except for the periodic, discreet assessments by the on-board medical officer."[518] In sum, according to detainee testimony, U.S. rendition teams used the following techniques: [519]

- *cut off detainees' clothes;*
- *forcibly diapered them;*
- *hooded or taped their heads, or otherwise deprived them of visual and auditory senses;*
- *restrained and forced them onto planes;*
- *physically beat them; and*
- *forcibly sedated them without consent or apparent medical purpose.*

## THE EFFECTS OF SEIZURE AND TRANSPORT ON DETAINEES

Dr. Katherine Porterfield, psychologist and expert on the effects of torture on individuals, described to the Commission the severe pain and suffering, in many cases both physical and mental, as follows: "[b]eing rendered was an experience, as I have heard it described, that involved total and complete physical, psychological and spiritual coercion and control."[520] Dr. Porterfield further testified that "the experience on the flights was, in some situations, as terrifying, degrading, and painful as torture that took place in other locations. It is almost meaningless to delineate between the transport experiences and the detention experiences of many of the individuals."[521]

The federal statute prohibiting torture includes in its definition of severe mental pain and suffering that which results from the "threat of imminent death" or from "the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality."[522] Rendition Teams appear to have violated both of these prohibitions in some cases.





*"The experience on the flights was, in some situations, as terrifying, degrading, and painful as torture that took place in other locations. It is almost meaningless to delineate between the transport experiences and the detention experiences of many of the individuals."*

The violence continued after rendition flights landed at their destination. For example, Mr. el-Banna described being dragged from the plane and thrown into a waiting vehicle. He was later forcefully thrown on the ground.[523] Regarding his post-rendition treatment, Mr. Bashmilah described, "The maltreatment I suffered during my first three months in Afghanistan had a serious impact on my mental state, which was already extremely bad following my torture in Jordan and rendition to Afghanistan. [ . . . ] I became so depressed that I tried to take my life three separate times during the first few months that I was in detention."[524]

The testimony of Dr. Porterfield further supports the conclusion that the renditions themselves were a form of torture and abuse, with ongoing mental injury for affected individuals. Dr. Porterfield testified that:

> *individuals with multiple transports experienced these flights as highly anxiety-provoking because, having been moved by airplane before to a place where they were tortured, each subsequent flight presented a recapitulation of the path towards pain, humiliation and loss of bodily control. Thus, for some, the airplanes became a starting point — in fact, merely being told that they would be transported became a starting point for the fear and arousal cascade that I mentioned earlier. I will paraphrase, but I was told that the planes were 'a torture chamber in the sky.' One individual believed he would be executed on or when he left the plane, a thought that I believe clinically led this man to have long standing symptoms long after he had been flown.*[525]

*"I was told that the planes were 'a torture chamber in the sky.' "*

## RENDITION AND ENFORCED DISAPPEARANCE

Although the United States is not a signatory to the International Convention for the Protection of All Persons Against Enforced Disappearance (2006), it is worth noting that extraordinary renditions meet the definition of enforced disappearance stipulated by the Convention. Detainees were abducted and transferred by "agents of the State" or "persons acting with the authorization, support, acquiescence of the state"; rendition and receiving teams deprived detainees of their liberty and concealed their fate; and rendition placed detainees "outside the protection of the law."[526]

Both the European Court of Human Rights and UN Working Group on Arbitrary Detention have also issued rulings and opinions, respectively, that extraordinary rendition and the captivity that followed constituted "forced disappearance."[527] In its Opinion regarding Mr. Ibn Al-Shaykh al-Libi et al, the UN Working Group on Arbitrary Detention "found that the secrecy surrounding the detention and inter-State transfer of suspected terrorists could expose the persons affected to torture, forced disappearance, and extrajudicial killing."[528]

## RENDITION AND VIOLATIONS OF THE PROHIBITION ON TRANSFER OR *REFOULEMENT*

Rendition to foreign custody also infringed the international law requirement of *non-refoulement*. Under international law, States are prohibited from surrendering or transferring individuals to another State or another State's authority when there are substantial grounds for believing that an individual is at risk of torture, egregious abuse, or other serious human rights violations.

The United States is bound by the obligation of *non-refoulement* derived from the International Covenant on Civil and Political Rights (ICCPR)[529] and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). As a party to CAT, the United States is explicitly bound not to transfer to torture under article 3(1) as follows: "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."[530] Under ICCPR Article 2 — in conjunction with Articles 6 (right to life) and 7 (prohibition on cruel, inhuman or degrading treatment or punishment) — the United States also has "an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant."[531]

Additionally, international human rights law proscribes *refoulement* to enforced disappearances,[532] as well as to proxy detention, "where persons are transferred from one State to another outside the realm of any international or national legal procedure [. . .] for the specific purpose of secretly detaining them, or to exclude the possibility of review by the domestic courts of the State having custody of the detainee."[533] The prohibition of *refoulement* has also been interpreted to apply to a range of serious human rights violations that are implicated by the RDI program, including flagrant denial of the right to a fair



> *The United States' practice of 'extraordinary rendition' constitutes a violation of article 3 of the Convention against Torture and article 7 of ICCPR."* [543]

trial,[534] risks of violations to the rights to life,[535] or prolonged solitary confinement.[536]

Further "[a]s an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of *non-refoulement* is characterized by its absolute nature without any exception."[537] Under international human rights law, States "must apply the principle of non-refoulement in any territory under its jurisdiction or any area under its control or authority, or on board a ship or aircraft registered in the State party."[538]

International law prohibiting *refoulement* requires that when an individual is transferred, both the transfer and any detention must be in accordance with basic procedural safeguards, including "an opportunity for effective, independent, and impartial review of the decision to expel or remove"[539] and "clear and transparent procedures with adequate judicial mechanisms for review before individuals are deported."[540] In the absence of such safeguards, as well as being a violation of non-refoulement, "the removal of a person outside legally prescribed procedures amounts to an unlawful detention in violation of article 9 (1) of the ICCPR, and raises other human rights concerns if a detainee is not given a chance to challenge the transfer."[541]

Rendition under the CIA RDI program constituted violations of the U.S.'s *non-refoulement* obligations because no detainee was granted access to these procedural or substantive guarantees before being transferred to foreign custody.[542] Indeed, international and regional bodies have repeatedly determined the extraordinary rendition component of the CIA's program to infringe international human rights law. For example, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has determined that the "United States practice of 'extraordinary rendition' constitutes a violation of article 3 of the Convention against Torture and article 7 of ICCPR."[543] And the European Court of Human Rights has similarly held that Macedonia violated Article 3 of the European Convention on Human Rights[544] by handing over Khaled El-Masri to the U.S. government and subjecting El-Masri to "extraordinary rendition," defined as "an extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there was a real risk of torture or cruel, inhuman or degrading treatment."[545] Other cases have also determined that countries that allowed rendition of individuals to U.S. secret detention facilities were in breach of human rights law.[546]

## RENDITION AND U.S. RESPONSIBILITY FOR THE FATE AND TREATMENT OF INDIVIDUALS TO FOREIGN CUSTODY

Under international law, the United States is also liable for the treatment of individuals after they were rendered to foreign custody. For example, in the *Case of El-Masri v. The Former Yugoslav Republic of Macedonia*, the European Court of Human Rights noted that Macedonian authorities "actively facilitated" the detention of El-Masri in Afghanistan by the United States "by handing him over to the CIA, despite the fact that they were aware or ought to have been aware of the risk of that transfer."[547] As a result, the Court "considers [. . . ] that the responsibility of the respondent State is also engaged in respect of the applicant's detention between 23 January and 28 May 2004,"[548] which are the dates corresponding to El-Masri's transport to Skopje Airport, flight to Afghanistan, and subsequent detention and interrogation there.[549] With respect to the time period over which a State's liability extends, the Court concluded that "in the case of a series of wrongful acts or omissions, the breach extends over the entire period starting with the first of the acts and continuing for as long as the acts or omissions are repeated and remain at variance with the international obligation concerned."[550]

The Commission heard testimony about the subsequent treatment of detainees who had been rendered on Aero-operated flights, including the treatment of Sharqawi Abdu Ali Al Hajj. His treatment included "continuous torture and interrogation" at the hands of the Jordanian General Intelligence Department – an agency "known to routinely violate human rights."[551] Al Hajj was later rendered again to Bagram Airbase in Afghanistan which was "a location known to host horrendous torture atrocities during the Global War on Terror."[552] Because its practice of *refoulement* was "part of a series of wrongful acts or omissions,"[553] the U.S. government violated the prohibition on *refoulement*.[554]

> *The U.S. government violated the prohibition on refoulement.*

## CONCLUSION

Renditions conducted within the RDI program were much more than transport. They were intentionally designed to constitute the first phase of coercive interrogation and, as such, to be terrorizing and dehumanizing in and of themselves. Without any legal remedy, explanation, or recourse, detainees were subject to physical and mental pain and suffering. Detainees were deprived of their liberty and knowledge of their fates and were placed outside the protection of the law. When they transported individuals to foreign custody, where detainees faced the clear risk of torture and abuse, those who designed and operated rendition flights also violated the prohibition against *refoulement*. Whether the targeted individuals were rendered to CIA "black sites," DoD facilities, or foreign custody, the U.S. government maintains legal responsibility for detainees' treatment prior to and aboard rendition flights, and at the site of reception.





CHAPTER SIX

# ONGOING CHALLENGES FOR SURVIVORS

The experience of rendition and the subsequent treatment of detainees in foreign or U.S. custody have long-lasting effects on the individuals who lived through them, as well as on their families and communities. Expert testimony before the Commission indicated that "being rendered and tortured was a severely traumatizing, destabilizing and damaging experience for the [individuals] who suffered it and these experiences of rendition and torture have left long lasting biopsychosocial consequences in the survivors."[600]

This chapter draws on evidence-based research on the effects of torture as well as testimony provided during the Commission's public hearings. In addition, interviews with survivors and major media reports on the lives of both former and current detainees are useful in understanding the repercussions of the RDI program for those who survived it.

The chapter also includes examples of current challenges and needs expressed by some of the 49 detainees rendered by Aero Contractors. Former RDI detainees and their families have identified five areas that present the most significant challenges to their resumption of meaningful and secure lives. The special needs of those who remain in detention at Guantánamo are addressed at the end of this chapter.

## PRIORITIES OF SURVIVORS OF RENDITION, DETENTION, AND INTERROGATION

The priorities of survivors of the CIA program are

- *medical, psychological, and social treatment and support*
- *family reunification and social re-integration*
- *legal status, full rights of citizenship or residency*
- *professional employment and access to financial institutions*
- *acknowledgment or accountability for their mistreatment.*

Although these categories are addressed individually below, they result directly or indirectly from the RDI experience and are interrelated. Inability to overcome one of these challenges often exacerbates the other problems, compounding the violations of human rights. For example, enforced disappearance, rendition, and prolonged captivity cause profound psychological suffering as well as long gaps in employment, lost wages, and damaged relationships. The physical and psychological effects of torture complicate family reunification and viability of employment. Forced displacement through repatriation to a foreign country compounds psychological suffering, limits access to support services, and inhibits family reunification. These challenges may also be termed "post-torture psychosocial stressors," as described in a study of survivors of torture in South Korea.[601]

## PHYSICAL, PSYCHOLOGICAL, AND SOCIAL CHALLENGES

Survivors of the CIA program confront ongoing physical, mental, emotional, and social challenges. Release in and of itself does not restore the individual's psychological well-being nor reverse the physiological, psychological, and social damages incurred. The U.S. government has not provided any mental health, medical, or social services to survivors of the RDI program.

Torture harms victims physically and psychologically. Detainees and their families attest to lasting physical and mental suffering.[602] Physical suffering results from torture and abuse, lengthy imprisonment, inadequate medical care during detention, and release without access to adequate medical care. For example, Mustafa al Hawsawi had to undergo reconstructive bowel surgery after forced "anal feeding."[603] Mohamedou Ould Slahi testified at the Commission hearings on his need for advanced medical

> *Abou Elkassim Britel "speaks little; it is clear that he has had a terrible experience. He is tense, he is always cold. He needs medical care, and a lot of attention and patience."*

care as a result of his imprisonment in Jordan, Afghanistan, and Guantánamo Bay.[604] Saifullah Paracha needs heart surgery.[605]

Physical and mental suffering take many forms in survivors and are often interrelated. The long-term physical effects of torture interfere with work and daily living, including interacting meaningfully with families and communities. Those effects include headaches, persistent pain, hearing loss, visual problems, cardiovascular/respiratory problems, sexual difficulties, and neurological damage.[606] Psychological consequences of rendition and torture that may also have physical components include post-traumatic stress disorder (PTSD), alternating between detachment and paranoia, obstruction of human interaction and connection, and "phobia of hope" or a terror of thought of the future.[607] Research on the effects of torture also underscores that both physical and psychological torture have a physiological impact. Even though their end results are not the same, both real and mock executions produce physiological responses and tremendous fear. Indeed, the line between psychological and physical torture is blurry, prompting psychologists such as Dr. Rona M. Fields to conclude that victims can be profoundly harmed by both types of torture.[608]

> *"How will we live? We both ask, each on our own.*
> *'I look at him, but I do not recognize him.*
> *He gets nervous over a trifle; he cannot go out,*
> *but the house is also foreign to him. He suffers — suffers and does not talk about it. .....*
>
> *Day after day I realize that this condition will no longer leave us: continuous forgetfulness,*
> *the humiliation when objects fall from his hands*
> *as he is about to grasp them. He carries a huge weight that he cannot share."* [612]

Khadija Anna Pighizzini testified to the Commission that her husband, former detainee Abou Elkassim Britel, "speaks little; it is clear that he has had a terrible experience. He is tense, he is always cold. He needs medical care, and a lot of attention and patience." She added that since returning home, her husband has trouble interacting with his family and others, forgetfulness, and "alternating moments of frenetic activity with others of great passivity." As a result, he is unemployed and his wife has taken on household responsibilities.[609]

The mental suffering individuals experienced during and after their detention is profound, and the range of psychological effects cannot be reduced to a single diagnostic category. Clinically, the way torture affects an individual depends on a variety of factors, including the context and length of the torture, the survivor's culture, and the chronic pain, social isolation, unemployment, and poverty that result from prolonged detention and abuse. Survivors experience a multitude of symptoms and conditions, including anxiety, depression, insomnia, nightmares, intrusive memories of the torture, anger, guilt, shame, memory and cognitive impairment, and, sometimes, psychosis.[610]

Evidence of detainees' mental deterioration and suffering has been documented in legal briefs, media accounts, interviews with psychologists, and detainee and family member testimony. Martha Rayner, attorney for Sanad Ali Kazimi, says of his experience, "It's so traumatic, he can barely speak of it [. . .] He breaks down in tears."[611] In her testimony to the Commission, Khadija Anna Pighizzini also addressed the lasting effects of her husband's detention and torture:

> *How will we live? We both ask, each on our own. I look at him, but I do not recognize him. He gets nervous over a trifle; he cannot go out, but the house is also foreign to him. He suffers — suffers and does not talk about it. He sleeps many hours a day. Nothing seems to awaken him from his state; he struggles, but every crowded place causes him anguish. He shuns people, preferring solitude.*
> *We struggle to understand each other. Day after day I realize that this condition will no longer leave us: continuous forgetfulness, the humiliation when objects fall from his hands as he is about to grasp them. He carries a huge weight that he cannot share.*[612]

Jamil el-Banna reported similar, ongoing problems resulting from torture and secret detention after the CIA rendered him to an Afghan "black site" in 2003. "I've lost the ability to focus and to remember. I could put this phone down here and then forget where I put it. Previously my memory was excellent [. . .] I also have night terrors. My wife knows this best. I wake up scared, lost and sweating. In those moments, I'm remembering

*Photo courtesy: Khadija Anna Pighizzini*

***Former detainee Abou Elkassim Britel***

those situations. My back is in pain. I can't stand for more than 10 minutes. I'm taking pills. Sometimes I can't sleep because I get extremely worried."[613]

Mental health professionals Dr. Katherine Porterfield and Dr. Stephen Soldz provided testimony to the Commission about the combined neurological and social effects of torture on those who experience it. Dr. Porterfield testified that CIA-style torture "led to post-traumatic symptoms that were severe, chronic and more globally impairing than I have seen in many other survivors of torture."[614] She had treated survivors of torture by various other governments, and observed among RDI survivors "unusually severe and pervasive" symptoms, including "a chronic condition of whipsawing between over- and under-arousal" that manifested as "almost catatonic detachment and bodily collapse in some cases vs. anxious, on-edge states of paranoia and vigilance" in others. Dr. Porterfield continued:

> *In my experience, the rupture of human connection was so profound in individuals subjected to this systematic man-made program that [they] expressed a deep inability to imagine connection or even a modicum of normal human interaction in the future [. . .] They reported pain when feeling anything resembling "trust" because it triggered in them a reminder than human connection can bring severe pain and humiliation [. . .]*
> *A third area of severe impairment that I witnessed was what I came to call a "phobia of hope." [. . .] I believe it clinically originated in the specific experience of the torturing interrogation – the repeated experiences of questioning, coupled with bodily pain and annihilation of the sense of self-autonomy combined to make these men terrified of conversations about their future because it brought them back to previous states of dependence on someone with total bodily control over them. This has led some individuals to literally plead to not be made to think about the future. This was some of the most disturbing clinical symptomatology I had ever witnessed.*[615]





> *"A third area of severe impairment that I witnessed was what I came to call a 'phobia of hope.'" ...*
>
> *This has led some individuals to literally plead to not be made to think about the future. This was some of the most disturbing clinical symptomatology I had ever witnessed.* [615]

> *CIA-style torture "led to post-traumatic symptoms that were severe, chronic and more globally impairing than I have seen in many other survivors of torture."* [614]

## ONGOING EFFECTS OF RDI ON FAMILIES: FAMILY REUNIFICATION AND SOCIAL REINTEGRATION

The impact of RDI program on wives, siblings, parents, and children of victims has been pernicious and widespread.[616] It is worth noting that Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance defines "victims" as "the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance."[617] "Any individual" is usually taken to include close family members. Thus, the number of survivors of the RDI program greatly exceeds the 119 documented detainees in the SSCI Report (also, see Chapter 1 for more on the U.S. government's failure to account to the full number of detainees in the RDI program).

Former detainees face the immense challenge of rebuilding their relationships with their families and communities. This challenge takes different forms depending upon the conditions of release, particularly whether the former captive is released to a host country or repatriated to their country of origin.[618]

The conditions imposed by the U.S. government on detainees who are transferred out of U.S. custody typically include some form of probation such as surveillance, monitoring, enforced reporting, or arbitrary "house calls" by police.[619] For former detainees, surveillance is a barrier to family integrity, old and new friendships, and secure relationships. For survivors who are repatriated, both the individuals and their families confront the difficulty of re-establishing relationships under duress. Survivors sent to host countries report extreme feelings of isolation, especially when they have been sent to countries where they do not speak the language, share religious or cultural practices, or have any family members. The combination of being marked as a former detainee and ongoing probation conditions exacerbates former detainees' social exclusion.[620]

Survivors frequently suffer their own altered status within their families. Men may no longer be able to provide financially for their loved ones, suffering a special humiliation from the loss of breadwinner status, which may be compounded by dependency on other family members. Former detainees face the challenge of coming to terms with missed events such as the births or deaths of family members, in addition to the day-to-day struggle with the physical and psychological effects of prolonged detention and torture.

RDI survivors consistently report nightmares, depression, isolation, anxiety, intrusive thoughts, hypervigilance, irritability, difficulty concentrating, inability to schedule appointments, memory problems, and insomnia. Compounded by the stressors of new post-detention environments, these conditions significantly reduce survivors' ability to function in all realms of life.

## LEGAL STATUS AND CIVIL RIGHTS

As noted above, the ad hoc nature of detainee release from the CIA program means that survivors may be repatriated to their country of origin, country of residence, or to a third-party state.[621] In each of these situations, survivors' legal status may be precarious. When detainees are repatriated to their country of origin, the U.S. government typically imposes ongoing restrictions that infringe on the survivor's full rights of citizenship. These include the suspension of a passport or other documentation that would allow a former detainee to travel for personal, professional, or medical reasons.

For example, Mohamedou Ould Slahi, who testified at the Commission's public hearings and was transferred from Guantánamo home to Mauritania, has not been able to get a passport yet. This is a serious problem due to his need to travel



> *I want an apology. It is only fair to say that someone who has done something wrong must apologize."* [630]

for medical care, some of which is related to his RDI experience.[622]

When detainees have been released to third-party states, the agreement between the U.S. and the receiving country varies.[623] Some agreements have been for two to three years, seemingly absent any planning for when the initial time period expires. During this initial placement, the legal circumstances vary, although former detainees experience restrictions on movement and temporary residency status that prohibit their full participation in society. Here, too, they are closely monitored, forced either to report regularly to authorities or placed under surveillance.

Depending on the country, a national ID card is often a prerequisite for access to basic rights such as marriage, registration of children, primary school, and access to health care and other social services. The ID card is also often needed to obtain a driver's license that might offer freedom of movement and economic opportunity. With neither documentation nor guaranteed status, those who are released from Guantánamo or RDI detention often cannot take such ordinary steps of civic life as obtaining a cell phone, renting or buying a house, or opening a bank account.[624]

## PROFESSIONAL AND FINANCIAL OPPORTUNITIES

One of the most urgent challenges survivors face is employment and how to support themselves and their families.[625] The lack of an official record of the program and the experiences of each captive, including whether the individual was ever charged with a crime, have varied effects. Even detainees never charged with a crime are stigmatized, labeled terrorists, and struggle to explain gaps in their employment history.

The challenge of economic stability may be further compounded by the long gap many detainee families faced without their primary breadwinner and by considerable debts incurred through legal fees. Re-entry to the labor market after many years of absence may require remedial professional training, higher education, or both. Given the physical and mental harm caused by torture and other degrading treatment, few survivors are able to maintain a job without ongoing psychological and social support, let alone to advance their careers.[626] Survivors often require flexible jobs and employers who are willing to provide them with sufficient time off to address psychological effects of their experience and who understand their possible physical limitations. Jobs that may be flexible are rarely sufficiently well-paying to meet survivors' needs.

Survivors also seek access to financial institutions to resume careers or to rebuild a measure of financial security for themselves and their families. For example, detainees express great frustration with the difficulty of opening a bank account (which, as noted above, likely requires a residential address and an official ID document) or in gaining access to credit.

## NEED FOR ACKNOWLEDGMENT AND APOLOGY

Survivors face the dual challenges of having to account for their missing years — to extended family, friends, colleagues, potential employers, government authorities — without receiving official documentation of their experience and suffering. The failure by the U.S. to acknowledge that it subjected specific individuals to rendition, secret detention, and torture has profound and lasting negative consequences for survivors.

While the Senate Report found that 26 RDI prisoners were either described in the CIA's own documents as mistakenly detained or were effectively treated as such by being given money upon release, no RDI survivor has received an official apology.[627] Many have requested one. Mohammed Bashmilah, whose 19 months of solitary confinement in two CIA "black sites" drove him to multiple suicide attempts, asked his attorney in 2014 if the Senate Report meant he might receive an apology or compensation. Neither was forthcoming, and Mr. Bashmilah, who was living in Yemen, was killed in the conflict there in 2016.[628] Thus an apology to him is no longer possible, but his widow still seeks "truth, admission of wrongdoing, and an apology for what the U.S. government did to Mohammed and his family."[629]

Abou Elkassim Britel has also spoken of his desire for an apology: "The wrong has been done, sadly. What I can ask now is for some form of reparation so that I can have a fresh start and try to forget, even if it won't be easy [ . . .] I want an apology. It is only fair to say that someone who has done something wrong must apologize."[630]

Some survivors are wary of any contact with the US government for fear of recapture or of further stigmatization for having been a CIA target. For others, however, official documentation and the transparency it would afford, along with acknowledgment of wrongdoing, would be a necessary first step toward addressing the harms they suffered and continue to suffer.

## CHALLENGES FACED BY THOSE STILL IN DETENTION

Detainees whom the U.S. government continues to hold in Guantánamo Bay suffer from their own set of challenges. Many of those challenges, especially the psychological ones, are compounded by the individuals' prolonged and indefinite detention (often without charge) and their deterioration from confinement and torture.

Thirteen of the 49 Aero-rendered detainees are still in custody. Eight of those 13 are classified as "High Value Detainees" and currently detained in the secretive Camp 7 at Guantánamo.[631] Here, they are held in "near solitary confinement," according to the testimony of defense counsel Lt. Col. Sterling Thomas, and





*Photo courtesy: Getty Images*

*Former detainee Binyam Mohamed.*

> *Eight of those 13 are classified as "High Value Detainees" and currently detained in the secretive Camp 7 at Guantánamo.* [631]

still allegedly suffer torture and abuse.[632] These detainees cannot speak with family members and only have contact with their attorneys on a limited basis. Lt. Col. Thomas also testified that "several detainees, including [his client] Mr. al Baluchi's co-defendant, Ramzi Bin al Shibh, have also alleged that the guard force is using noises and vibrations to replicate techniques used against them by the CIA, which result in constant sleep deprivation and related physical and psychological disorders."[633] Lt. Col. Thomas added that Mr. al Baluchi has been denied adequate medical treatment.[634]

As the Center for Victims of Torture (CVT) explained in a recent legal filing, all of the men remaining at Guantánamo face serious medical consequences "associated with the agonizing uncertainty of indefinite detention."[635] According to CVT, the uncertainty and unpredictability of indefinite detention is so extreme, and the loss of control over detainees' lives so complete, "that it seriously harms healthy individuals, independent of other aspects or conditions of detention." Indeed, "medical examinations have documented indefinite detention leading to profound depression and vegetative symptoms, with all the attendant degradation of multiple aspects of health." These include: [636]

- *severe and chronic anxiety and dread*
- *pathological levels of stress that have damaging effects on the core physiologic functions of the immune and cardiovascular systems, as well as on the central nervous system*
- *depression and suicide*
- *post-traumatic stress disorder (PTSD)*
- *enduring personality changes and permanent estrangement from family and community that compromise any hope of the detainee regaining a normal life following release.*

Of course, these effects are worse for detainees who were tortured or similarly traumatized before being subjected to indefinite detention: "Lacking any control, and having no sense of what will happen next, re-stimulates the kinds of experiences [survivors] suffered."[637]

Moreover, like other challenges discussed above, the effects of indefinite detention are not limited to survivors themselves. "When a loved one is indefinitely detained, families are separated; parents, spouses, and children can suffer — and have suffered — similar feelings of uncertainty, unpredictability, and uncontrollability, leading to the physical and psychological effects described above."[638] For both detainees and their families, regular communication and in-person visits would be essential to restore relationships and to assist the captive individual in developing and maintaining human connections essential for recovery from severe trauma.

For survivors of the CIA RDI program who remain detained indefinitely at Guantánamo, rehabilitation services are inadequate or lacking in many instances. Indeed, according to CVT, rehabilitation cannot occur while indefinite detention persists.[639] At minimum, survivors must be given a sense of control over key aspects of their lives, have their sense of safety restored, be offered trusted and consistent human connections, and be treated by skilled and experienced providers.[640] In many ways, CVT has argued, Guantánamo "is the antithesis" of these basic requirements:

> *The military is in complete control over all aspects of detainees' lives. The men remain held captive — indefinitely, with all the attendant health consequences — by the government responsible (directly or indirectly) for their torture, and in a setting both replete with common triggers of PTSD symptoms and one that will forever be synonymous with torture. According to former Guantánamo medical personnel, trust is essentially nonexistent. That is not surprising given the role that some psychologists and psychiatrists played in the design and implementation of abuses detainees suffered.*[641]

## CONCLUSION

Survivors of the CIA's RDI program face ongoing challenges at many levels. Release, the first step away from abuse, constitutes neither physical nor psychological relief, rehabilitation, nor promise of a viable future. Damage to survivors' legal, economic, physical and psychological health, family, and social needs are deeply intertwined and long lasting. The deaths of detainees without having received acknowledgment or redress emphasize the point that justice delayed will sooner or later be justice denied.



CHAPTER SEVEN

# COSTS AND CONSEQUENCES OF THE CIA'S TORTURE AND RENDITION PROGRAM

Beyond the obvious costs to the victims, the RDI program imposed painful costs on the State of North Carolina and on the nation. The federal government's use of torture undercut national security in numerous and profound ways. It undermined the United States' moral standing in the world, which is critical to promoting international cooperation and the rule of law. Among other costs, the program produced faulty intelligence; eroded key counterterrorism partnerships; turned terrorists into martyrs, and led to infighting, rather than critically needed cooperation, amongst the nation's intelligence agencies. The use of torture continues to impede ongoing efforts to prosecute those responsible for the 9/11 attacks and other heinous acts. In addition, participation in torture damages perpetrators and their communities including, in this case, the State of North Carolina. This chapter addresses each of those costs in turn.

*Traditional interrogation techniques are most likely to achieve the disclosure of useful and accurate information: building rapport, taking advantage of the captive's desire for normal human interaction, demonstrating awareness of and respect for the subject's culture, background, and motivations, and showing awareness of possible evidence of criminal activity by the suspect.*[706]

## YIELDED FAULTY INTELLIGENCE

Torture produces information that may be inaccurate, unhelpful, and even misleading for intelligence-gathering purposes. In an effort to make the torture stop, the individual being harmed may say anything, including what the interrogator appears to want to hear, whether or not it is accurate. This is illustrated repeatedly by CIA documents quoted in numerous places in the declassified summary of the SCCI Report. For example, "[Hambali] said he merely gave answers that were similar to what was being asked and what he inferred the interrogator or debriefer wanted, and when the pressure subsided or he was told that the information he gave was okay, [Hambali] knew that he had provided the answer that was being sought."[700]

The use of torture in the RDI program led intelligence officials to chase false leads and reach faulty conclusions.[701] Perhaps the most infamous example with long-lasting consequences was Ibn Sheikh al-Libi's testimony, obtained under torture and later recanted. His false testimony concerning Iraq's "weapons of mass destruction" and relationship with al-Qaeda resulted in Secretary of State Colin Powell's false claims in front of the United Nations that helped propel the U.S. to war in Iraq. "A year later al-Libi retracted his statement. The US Defense Intelligence Agency (DIA) later opined that al-Libi's information was not correct and that he had made the confession either under duress or to get better treatment."[702, 703]

The SSCI Report provides extensive analysis of the claim that information the U.S. learned from torture was useful in pursuing terrorists. Among 20 examples of purported RDI counterterrorism successes examined, the SSCI Report found that in some there was no relationship between the cited successes and information acquired from tortured detainees, while in all of the remaining cases the information acquired from torturing detainees was already available to the intelligence community from other sources, or was acquired from detainees prior to the use of torture.[704] Regarding the interrogation of Abd al-Rahim al-Nashiri, recently released cables indicate that "the waterboarding and other brutal treatment of Mr. Nashiri produced little or no new intelligence about existing plots or imminent attacks."[705]

As Ali Soufan, a former FBI interrogator with extensive experience questioning members of al-Qaeda, testified to the Senate Judiciary Committee, the so-called "enhanced interrogation techniques" are ineffective and unreliable. Soufan explained that traditional interrogation techniques are most likely to achieve the disclosure of useful and accurate information: building rapport, taking advantage of the captive's desire for normal human interaction, demonstrating awareness of and respect for the subject's culture, background, and motivations, and showing awareness of possible evidence of criminal activity by the suspect.[706] Using physical or mental torture undermines all of these dynamics of successful interrogation.

Steven Kleinman, U.S. Air Force Colonel and expert in interrogation, human intelligence, and survival and resistance training, testified to the NCCIT that behavioral science researchers have "uniformly concluded that torture is an ineffective means of gathering reliable information."[707] Kleinman detailed the ways in which torture, first, undermines and corrupts memory and, second, diminishes cooperation by the person who experiences it. Core attributes of





*The use of torture shifted attention from the heinous acts of al-Qaeda and others responsible for 9/11 to the misdeeds of the United States in response.*

torture, such as infliction of fear and pain and manipulation of the body's circadian rhythms, impede accurate recall. Interrogations that feature "leading and loaded questions" can "permanently alter memory."[708] Moreover, coercive interrogation techniques that aim to break the subject's will by producing debility, dependence upon the interrogator, and dread of what else might happen may make the subject feel helpless; however, they also increase his or her antagonism toward the interrogator. Kleinman emphasized that extensive empirical research and field validation studies demonstrate that rapport-based, information-gathering methods are dramatically and consistently superior in eliciting accurate and comprehensive information.[709]

The Commission is aware that some former CIA officials and government officials have disputed the conclusions of the SSCI Report.[710] Given this crucial discrepancy, it is essential for the public to have access to the full 6,700+-page investigative report, which remains classified.

## HARMED COUNTERTERRORISM PARTNERSHIPS

As information regarding the torture and RDI program came to light, international partners withdrew their cooperation with the United States in a variety of contexts.[711] Key allies refused to extradite individuals suspected of terrorism to the U.S. after they became aware of practices in the torture program.[712] Diplomats spent their time defending the U.S. practices rather than pursuing proactive policies designed to address ongoing threats.[713]

International partnerships were strained on various fronts. Britain released detainees of interest in Iraq because it did not have facilities to detain them, and it feared the U.S. would not respect the captives' fundamental human rights.[714] The Netherlands delayed sending troops to Afghanistan from 2003 to 2006 in part because of concerns with the United States' use of torture.[715] Australian, Canadian, British, and New Zealand military lawyers approached Alberto Mora, then General Counsel to the U.S. Navy, and warned him in 2005 that their cooperation with the U.S. on the whole range of war on terror activities would decline if the U.S. continued to engage in torture.[716] These concerns undoubtedly made U.S. efforts to suppress terrorism more difficult.

## ENERGIZED TERRORIST RECRUITMENT

The use of torture shifted attention from the heinous acts of al-Qaeda and others responsible for 9/11 to the misdeeds of the United States in response. Not only did this weaken international support for the U.S. in the wake of the horrific attacks, but it turned the torture victims into martyrs and eroded the moral authority of the U.S.[717] Rather than rallying behind the America in its effort to address the terrorist threat and the atrocities perpetrated by terrorists, populations around the world focused on the abusive actions of the U.S..[718] Revelation of U.S. torture at Abu Ghraib prison in Iraq and at Guantánamo Bay was used almost immediately by insurgents in both Afghanistan and Iraq to recruit militants. Many members of al-Qaeda in Iraq, and its successor organization, ISIS, have specifically stated they are acting in response to American abuses of prisoners in Abu Ghraib and at Guantánamo.[719]

## EXACERBATED TENSIONS BETWEEN AGENCIES AND DAMAGED INSTITUTIONS

According to the SSCI Report, the RDI program hindered the national security missions of the FBI, State Department, and the Office of the Director of National Intelligence (ODNI). To maintain sole control over the RDI program, the CIA restricted information sharing, provided inaccurate information, and prevented these agencies from getting access to detainees.[720]

Of particular concern, the initiation of the torture program led to a split between the FBI and CIA, with FBI agents often being excluded from and/or unwilling to participate in abuse perpetrated by

### "THE STRATEGIC COSTS OF TORTURE"

BY DOUGLAS A JOHNSON, ALBERTO MORA, AND AVERELL SCHMIDT

*Photo courtesy: Christian Johnson | Xianstudio.com*

Our team of researchers at the Carr Center for Human Rights Policy at the Harvard Kennedy School [. . .] has found that Washington's use of torture greatly damaged national security. It incited extremism in the Middle East, hindered cooperation with U.S. allies, exposed American officials to legal repercussions, undermined U.S. diplomacy, and offered a convenient justification for other governments to commit human rights abuses.

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the CIA.[721] This meant that the CIA was operating without the knowledge and expertise that could have been provided by the FBI based on its long experience with interrogation of hostile and challenging subjects.[722]

The secret renditions also led to direct conflict between the U.S. Department of State and the CIA. When the International Committee of the Red Cross wrote to the U.S. government with a detailed list of individuals being detained under the control of the CIA in a redacted country, the State Department told the ICRC that U.S. policy was to encourage that country and all countries to give the ICRC access to detainees.[723] At the same time, the CIA repeatedly directed the same country to deny the ICRC access. According to the SSCI Report, the contradiction "created significant tension" between the country involved and the U.S.[724] Such episodes seriously impede the U.S. government's ability to persuade other nations to cooperate, and to refrain from holding individuals in secret detention.


*Photo courtesy: NCSTN*

*Citizens vigil at the Johnston County Airport.*

> *"The continuing legal effort to evade accountability for the use of torture and to prohibit foreign torture victims to seek civil redress in federal courts has weakened the rule of law, drained the crime of torture of its gravity, and diminished judicial independence."*[730]

## HINDERS PROSECUTIONS

Torture and the prohibition on the use of evidence obtained from torture has significantly interfered with efforts to hold individuals responsible for the atrocities committed against the United States on September 11, 2001 and other terrorist acts.[725] In regular legal proceedings, information obtained from suspects through torture cannot be used in court. The fact that so much information was obtained by torture has mired the Guantánamo trials in discovery battles. In cases such as the 9/11 proceedings against Khalid Sheik Mohammed, Walid bin al-Attash, Ramzi bin al-Shibh, Ammar al-Baluchi, and Mustafa al-Hawsawi, the U.S. government's desire to keep secret the details of the RDI program has led to protracted legal battles over what information defense attorneys and their clients can access and whether capital cases should proceed when the defense counsel's right to discovery is significantly limited.[726]

As recently declassified and released transcripts of arguments in Guantánamo Bay's death penalty military commission cases reveal, "When the public and accused terrorists aren't allowed to listen, the legal arguments are often about the CIA's secret overseas prison network, the circumstances of Guantánamo detention and how now outlawed Bush-era interrogation methods might affect future justice."[727]

Testifying before the Commission on behalf of his client, Ammar al-Baluchi, Lt. Col. Sterling Thomas noted that the "locations of Mr. al Baluchi's torture and identity of his torturers (beyond the understanding that they were affiliated with the CIA) are considered to be classified information by the United States government. Even defense counsel holding Top Secret security clearances, including myself, are barred from accessing that information." Thomas also testified to the "use of torture-derived evidence in the military commissions proceedings by the U.S." and to the "withholding and destruction of exculpatory evidence" from his client, who may face the death penalty.[728]

The use of torture in the RDI program has made it difficult to prosecute those involved in the 9/11 attacks and other acts of terrorism, creates enormous challenges for prosecutors and defense counsel alike, and continues to hamstring efforts to obtain justice for the victims of terrorism.

## UNDERMINES THE RULE OF LAW

The use of torture was so clearly illegal and indefensible that when sued over it, the U.S. government hid its actions by resorting to a distortion of the "state secrets" doctrine. By stretching the doctrine far beyond its original purpose, the government claimed immunity for itself and private defendants on the grounds that a judicial proceeding would compromise national security by forcing the revelation of state secrets. Such a self-serving approach further eroded the credibility of the U.S.' claimed adherence to human rights and the rule of law. The Commission heard testimony from ACLU attorney Steven Watt, who summarized four cases brought by victims and survivors of the RDI program in U.S. courts between 2004 and 2015. All four cases were dismissed on the basis of immunity or "state secrets," "without any consideration of whether the men were in fact forcibly disappeared and tortured," and despite the fact that much information about the cases was already in the public domain.[729]

In testimony before the Commission, Alberto Mora noted that "the continuing legal effort to evade accountability for the use of torture and to prohibit foreign torture victims to seek civil redress in federal courts has weakened the rule of law, drained the crime of torture of its gravity, and diminished judicial independence."[730]





> *The use of torture in the RDI program has made it difficult to prosecute those involved in the 9/11 attacks and other acts of terrorism, creates enormous challenges for prosecutors and defense counsel alike, and continues to hamstring efforts to obtain justice for the victims of terrorism.*

**GENERAL ASSEMBLY OF NORTH CAROLINA**
**SESSION 2007**

**H** **2**

**HOUSE BILL 1682**
**Committee Substitute Favorable 5/17/07**

| | | |
|---|---|---|
| Short Title: | Study/NC No Place for Torture Act. | (Public) |
| Sponsors: | | |
| Referred to: | | |

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO STUDY THE MOST APPROPRIATE PENALTIES FOR LEGISLATION MAKING TORTURE, ENFORCED DISAPPEARANCE, AND RELATED ACTS UNLAWFUL IN NORTH CAROLINA, RECOGNIZING THE SEVERITY OF THESE CRIMES WHILE MAKING THE SENTENCING CONSISTENT WITH SENTENCES IMPOSED FOR RELATED CRIMES SUCH AS KIDNAPPING.

The General Assembly of North Carolina enacts:

**SECTION 1.** The North Carolina Sentencing and Policy Advisory Commission shall study the most appropriate penalties for legislation making torture, enforced disappearance, and related acts crimes in North Carolina, recognizing the severity of these crimes while providing for sentencing that is consistent with the sentences imposed for related crimes such as kidnapping.

**SECTION 2.** The Sentencing Commission shall report its findings and recommendations to the General Assembly, including recommended language for a bill to be introduced in the 2008 Regular Session of the 2007 General Assembly. The report and recommendations shall be delivered to the Speaker of the House of Representatives and the President Pro Tempore of the Senate not later than January 31, 2008. The report and recommendations may be included in the report to the General Assembly required by G.S. 164-36(a), provided the report and recommendations required by this act are delivered no later than January 31, 2008.

**SECTION 3.** This act is effective when it becomes law.

*Credit: North Carolina General Assembly*

*N.C. House Bill 1682, the "N.C. No Place for Torture Act" (introduced in the N.C. House of Representatives)...[876] ... the "only [. . .] state bill to address violations in the post-9/11 U.S. rendition and torture programs."*

## DEGRADES OUR SOCIETY MORALLY AND SPIRITUALLY

Torture is widely considered immoral on religious, philosophical, and humanitarian grounds. Most faith and philosophical traditions speak against the practice of torture by calling for protection of the dignity and life of every human being. Torture denies that sanctity and dignity, and therefore is deemed morally wrong in all circumstances and situations. Torture humiliates and dehumanizes people by stripping them of their dignity. It not only demeans the victims, but it degrades the humanity of those who carry out the violent and inhumane actions.[731]

Political scientist Alfred McCoy argues that the use of torture signals social and political decline:

> *torture reveals a more complex pathology amid imperial retreat or defeat, involving as it does an unsettling mixture of arrogance and insecurity, a sense of superiority and savagery, as well as a legalistic mentality and an inescapable criminality [. . .] The repeated use of torture, despite the legal complications involved, seems more comprehensible when understood as an artifact of empire [. . .] [T]he use of torture by dying empires and the moral damage that comes with it, seems like both a manifestation of and causal factor for imperial decline.*[732]

## RELIES ON AND WORSENS RACISM, ETHNOCENTRISM, AND ISLAMOPHOBIA

Innocent or guilty of terrorist connections, what unites all known RDI victims is their Muslim identity. As Dr. Maha Hilal wrote to the NCCIT, the now-discredited legal rationale for RDI – that anything short of organ failure or death would not constitute torture[733] – was drawn up specifically for those deemed "enemy combatants," a category entirely populated by Muslims.[734] Yet surprisingly little effort has been made to understand the extent to which Americans' unusually high level of acceptance of official torture[735] may be based on Islamophobia and related forms of discrimination.

Islamophobia, or unfounded fear and

hostility toward Muslims leading to discrimination and even violence, is high in the U.S. Around 40% of respondents to a 2016 poll had an unfavorable view of Islam.[736] Senior U.S. officials who have defended the CIA torture program are also associated with anti-Muslim organizations and individuals, and demonization of Muslims has become increasingly common in American political discourse.[737] Widely viewed TV shows and films[738] have popularized torture and equated Muslims with terrorists in many Americans' minds, facilitating the idea that "they all have it coming."

Dr. Hilal writes to the NCCIT: "Rectifying the abuse of CIA torture must necessarily include an acknowledgment of who was tortured – Muslims – and what mechanisms need to be put in place to remedy the deep levels of dehumanization that have long justified their torture."[739] A danger in allowing a torture program directed against Muslims to remain unaccountable is that it expands the definition of what is considered allowable government treatment of Muslim populations.


Photo courtesy: NCSTN

*A vigil outside the office of the U.S. Attorney for the Eastern District of North Carolina, 2015.*

*"Rectifying the abuse of CIA torture must necessarily include an acknowledgment of who was tortured – Muslims – and what mechanisms need to be put in place to remedy the deep levels of dehumanization that have long justified their torture."*[739]

## ERODES INTERNATIONAL MORAL LEADERSHIP

America's reputation — including its commitment to the rule of law, promotion of civil liberties, and support for human rights — has long been an important source of its influence and soft power. Both have been significantly eroded by U.S. support for and use of torture, and the U.S.' failure to provide accountability and redress.[740]

The gap between the U.S. and other democratic nations over torture is widening. Countries that aided the U.S. with the RDI program have been held accountable, or are holding themselves to account. In 2014, the European Court of Human Rights (ECHR) found that Poland and Macedonia's facilitation of U.S. policy violated Article 3 of the European Convention on Human Rights which prohibits torture. The court's vote was unanimous in this matter, and reads in part:

*The treatment to which the applicants had been subjected by the CIA during their detention in Poland had amounted to torture. It was true that the interrogations and, therefore, the ill-treatment of the applicants at the detention facility had been the exclusive responsibility of the CIA and it was unlikely that the Polish officials had witnessed or known exactly what had happened inside it. However, under Article 1 of the Convention, taken together with Article 3, Poland had been required to take measures to ensure that individuals within its jurisdiction were not subjected to torture or inhuman or degrading treatment or punishment. For all practical purposes, Poland had facilitated the whole process, had created the conditions for it to happen and had made no attempt to prevent it from occurring. Accordingly, the Polish State, on account of its acquiescence and connivance in the CIA rendition programme had to be regarded as responsible for the violation of the applicants' rights committed on its territory.*[742]

More recently, the ECHR ruled that Lithuania and Romania violated the rights of two al-Qaeda terror suspects by allowing the CIA to torture them and ordered that both countries pay monetary damages to the two, both of whom remain detained at Guantánamo.[743]

In the U.K., progress has been made, although full accountability has yet to be achieved. Prime Minister Theresa May recently apologized for the U.K.'s wrongdoing in the case of two Libyans,





*The RDI program relied heavily on North Carolina's public infrastructure, military installations, and private corporations. As such, the program damaged the State of North Carolina and implicated its citizens in torture and other human rights violations.*

Abdel Hakim Belhaj and Fatima Boudchar, who, after torture by the CIA in Thailand, were rendered aboard the Kinston-based N313P aircraft to Libya and handed over to security agents of Muammar Gaddafi, the dictator opposed by Belhaj[744] (see Chapter 4). Further, the U.K. Parliamentary Intelligence and Security Committee (ISC) has found that U.K. intelligence agencies partnered with the U.S. to commit various acts of rendition and torture in Guantánamo, Iraq and Afghanistan.[745] The findings identify 128 incidents of mistreatment reported by foreign intelligence officers and 13 incidents witnessed by British intelligence officers. According to Dominic Grieve, the committee chairman, the "U.K. tolerated actions, and took others, that we regard as inexcusable."[746] He also claimed the U.K. government has been hesitant in fully cooperating with the ISC inquiry, and this has undermined the work of the committee.[747] Prime Minister May prevented the committee from requesting evidence from four intelligence officers who had pertinent information concerning the incidents.[748]

## DAMAGE TO NORTH CAROLINA

The RDI program relied heavily on North Carolina's public infrastructure, military installations, and private corporations. As such, the program damaged the State of North Carolina and implicated its citizens in torture and other human rights violations. The failure to account fully for North Carolina's role in the RDI program extends those damages into the present.

### RDI Harms North Carolina's Reputation

Through a series of media reports,[749] there is growing national and international awareness of the state's rendition history and refusal to investigate rendition flight allegations. Fifteen years of official tolerance for torture-related activities from public airports have likely affected North Carolina's national and international image. Economic development plans that involve partners from anti-torture countries could be endangered, particularly as other countries pursue the kinds of accountability measures noted above.

### RDI Turns All NC Taxpayers into Accomplices of Torture

Since Aero's role in torture was revealed, the North Carolina Department of Transportation has given several grants to the Johnston County Airport for maintenance and security without requiring the airport authority to take action regarding criminal activity by its tenant, Aero Contractors.[750] State elected officials oversaw the Kinston Global TransPark, funded by state taxes, while Aero operated an important rendition aircraft based there. Through these activities, all taxpaying residents of North Carolina became complicit in the hosting of torture infrastructure.

### RDI Alienates Citizens from the State

A considerable level of frustration is felt by local citizens when their governments persistently fail to uphold the rule of law.[751] When elected officials refuse to acknowledge the concerns of their constituents, public distrust grows, and some citizens are alienated from the political process. Most elected officials have been silent on the role of North Carolina's public and private infrastructure and employees in the CIA program (Chapter 8 addresses the role of state authorities in more detail). The exception has been Johnston County commissioners' defense of Aero Contractors and torture. The combination of silence and support for torture stifles valuable public debate on what constitutes the public good and how the State of North Carolina should fulfill its obligations to both its citizens and the rule of law.

## CONCLUSION

The CIA's secret rendition and torture program substantially damaged the reputation of the United States, its national security, and its democracy. These negative effects are ongoing, and are unlikely to be repaired without: a thorough, public accounting for what occurred; substantial criminal and financial punishments for the persons responsible for carrying out the torture program, which are required as matters of state, federal, and international law; and appropriate redress for the individuals who suffered rendition and torture without due process of law. The lack of accountability increases the likelihood of the use of torture as U.S. policy in the future. It also weakens the ability of the United States to convince other governments not to torture.

Furthermore, because the RDI program relied so heavily on North Carolina's infrastructure and public and private actors, the abuses of the program also damage the reputation of the state and make its citizens unwittingly complicit in violations of human rights.

CHAPTER EIGHT

# NORTH CAROLINA PUBLIC OPPOSITION TO THE RDI PROGRAM, AND OFFICIALS' RESPONSES

Since 2005, members of the public in North Carolina, largely led by North Carolina Stop Torture Now (NCSTN) and various allies, "have worked [. . .] to expose and end North Carolina's central role in the ongoing U.S. torture program."[800] NCSTN is "a grassroots coalition of individuals representing [. . .] a diversity of faith, human rights, peace, veteran, and student groups across the state"[801] From the beginning, this opposition has been motivated by the belief that torture is immoral. Participants from across the political spectrum have grounded their abhorrence of torture in a variety of strong conscientious, religious, and ethical beliefs.

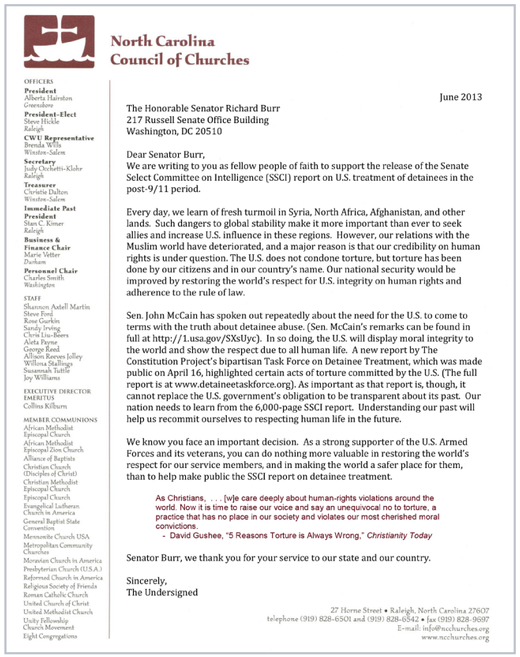
Through a wide range of actions, citizens have mounted persistent and vigorous public challenges for over 12 years to North Carolina's role in the RDI program. They have directed requests for action to officials at the local, state, federal, and international levels. Yet government responses range from failure to respond to requests for information to refusal to investigate or issue apologies; instead, local and state authorities have subjected local activists to monitoring and arrest.

No judicial, legislative, or executive official at the local or state level has taken seriously the duty to investigate whether egregious crimes, including conspiracies to kidnap and commit torture, have occurred within North Carolina's jurisdiction. This remains the case even though there is now ample evidence of the state's involvement in the CIA torture and rendition program.

*For over a decade, torture opponents repeatedly engaged with elected officials and staff, including governors, attorneys general, U.S. Congress members, and state legislators, to challenge the role of North Carolina in facilitating the RDI program.*

## PUBLIC CHALLENGES TO NORTH CAROLINA'S ROLE IN THE RDI PROGRAM

For over a decade, torture opponents repeatedly engaged with elected officials and staff, including governors, attorneys general, U.S. Congress members,[802] and state legislators, to challenge the role of North Carolina in facilitating the RDI program. Demands for government transparency have been paramount. At the federal level, for example, in April 2009 NCSTN called on the Obama administration to publicly disclose "how U.S. torture policies were formulated, how these policies were implemented and executed, the scope of the practices (the numbers affected and the breadth of the torture), the fate of the victims, and other relevant information."[803] Advocates, including the North Carolina Council of Churches, also demanded transparency in August 2013, when they delivered a letter to U.S. Senator Richard Burr that was signed by more than 190 faith leaders from across North Carolina, among whom were 18 heads of judicatories or denominations.[804] Activists have made repeated requests for a legislative remedy at both the state[805] and federal level (e.g., a Commission of Inquiry).[806]



North Carolina Council of Churches

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June 2013

The Honorable Senator Richard Burr
217 Russell Senate Office Building
Washington, DC 20510

Dear Senator Burr,
We are writing to you as fellow people of faith to support the release of the Senate Select Committee on Intelligence (SSCI) report on U.S. treatment of detainees in the post-9/11 period.

Every day, we learn of fresh turmoil in Syria, North Africa, Afghanistan, and other lands. Such dangers to global stability make it more important than ever to seek allies and increase U.S. influence in these regions. However, our relations with the Muslim world have deteriorated, and a major reason is that our credibility on human rights is under question. The U.S. does not condone torture, but torture has been done by our citizens and in our country's name. Our national security would be improved by restoring the world's respect for U.S. integrity on human rights and adherence to the rule of law.

Sen. John McCain has spoken out repeatedly about the need for the U.S. to come to terms with the truth about detainee abuse. (Sen. McCain's remarks can be found in full at http://1.usa.gov/SXs0yc). In so doing, the U.S. will display moral integrity to the world and show the respect due to all human life. A new report by The Constitution Project's bipartisan Task Force on Detainee Treatment, which was made public on April 16, highlighted certain acts of torture committed by the U.S. (The full report is at www.detaineetaskforce.org). As important as that report is, though, it cannot replace the U.S. government's obligation to be transparent about its past. Our nation needs to learn from the 6,000-page SSCI report. Understanding our past will help us recommit ourselves to respecting human life in the future.

We know you face an important decision. As a strong supporter of the U.S. Armed Forces and its veterans, you can do nothing more valuable in restoring the world's respect for our service members, and in making the world a safer place for them, than to help make public the SSCI report on detainee treatment.

As Christians, . . . [w]e care deeply about human-rights violations around the world. Now it is time to raise our voice and say an unequivocal no to torture, a practice that has no place in our society and violates our most cherished moral convictions.
- David Gushee, "5 Reasons Torture is Always Wrong," *Christianity Today*

Senator Burr, we thank you for your service to our state and our country.

Sincerely,
The Undersigned

27 Horne Street • Raleigh, North Carolina 27607
telephone (919) 828-6501 and (919) 828-6542 • fax (919) 828-9697
E-mail: info@ncchurches.org
www.ncchurches.org

*Courtesy: North Carolina Council of Churches*

***A copy of the letter delivered to U.S. Senator Richard Burr in August 2013, demanding government transparency.***





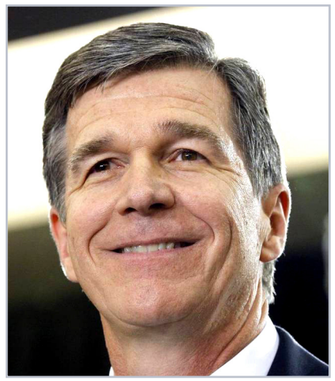

*Photo courtesy: Chris Seward | Creative Commons*

***North Carolina Governor, Roy Cooper.***

in the RDI program as well as for a demonstrated commitment to prevent future such abuses. These requests have gone to prior Governors (Easley and Perdue), former Attorney General Cooper, the State Bureau of Investigation (SBI), the Global TransPark Authority (GTPA), and individual state legislators. For example, in September 2006, the N.C. Council of Churches sent letters to state officials requesting investigation of Aero Contractors.[807] In March 2007, a press conference at the N.C. General Assembly announced a "letter from 75 non-profit organizations requesting an investigation of Aero, delivered to Governor Easley, Attorney General Cooper, SBI Director Pendergraft, U.S. Attorney for Eastern District of N.C. George Holding, Johnston County Board of Commissioners, [GTPA] Board members, and N.C. General Assembly members."[808] Within weeks, on May 2, 2007, NCSTN and allies provided documentation of Aero's "involvement in rendition to torture" to Attorney General Cooper's office.[809]

State-level pressure continued. On July 2, 2009, NCSTN and N.C. Council of Churches members, as well as Johnston County residents, met with then-Governor Beverly Perdue's staff members "to encourage the Governor to end North Carolina's support for the extraordinary rendition program and investigate Aero's role in it."[810] On January 19, 2012, NCSTN and allies delivered copies of a "70-page dossier on Aero's alleged role in rendition flights, prepared by University of North Carolina law school faculty members and students on behalf of anti-torture activists" to "officials from the governor's office and state attorney general, who accepted them politely but made no promises."[811] And in April 2014, activists gathered at the N.C. Department of Justice to remind then-Attorney General Cooper of his "special obligation to investigate the North Carolina links to enforced disappearance, secret detention and torture the report is nearly certain to document."[812]

*"Two of us appeared in front of the [Johnston County] Commissioners nearly every month for over 2 years."*

Concern has been expressed with special persistence at the county level. Since 2006, NCSTN and allies have repeatedly met with the Johnston County Board of Commissioners (the Board) to address the implications of Aero Contractors operating rendition aircraft out of the Johnston County Airport in Smithfield, N.C.[813] For example, according to Allyson Caison's testimony to the North Carolina Commission of Inquiry on Torture (NCCIT):

> *Two of us appeared in front of the [Johnston County] Commissioners nearly every month for over 2 years. We were not allowed to speak until the end of the meeting, which meant sitting through countless hours of county business for our chance to speak. Chuck Fager of Quaker House wrote a newsletter every month for the Commissioners on the latest news of torture and accountability from around the world. Each time as he addressed the Commissioners he asked them to investigate Aero Contractors.*[814]

Yet as the selected examples below illustrate, the Board at best failed to provide an effective response, and at worst expressed support for Aero. While as recently as May 2018, the Board reportedly denied any link between the Johnston County Airport and rendition,[815] this intransigence is consistent with its earlier approaches:

### February 2, 2009

Anti-torture activists attended a Board meeting to request that the Commissioners "direct the Johnston County Airport Authority to adopt a pledge to prohibit future rendition flights and seek information about past flights originating from JNX [Johnston County Airport]."[816] This pledge would require updated registers of aircraft including flight plans, names of the crew and passengers, and the purpose of the flights.[817]

### March 2, 2009

Approximately two dozen anti-torture activists sought information about whether the Board of Commissioners would investigate Aero Contractors or take any other type of action.[818] In response, the Board "took no action except to promise to raise the issue with Congressman Etheridge as private citizens."[819]

### June 1, 2009

NCSTN representatives "revisited the Johnston County Board of Commissioners [ . . .] to advocate for an investigation of Aero Contractors."[820] Chairman Wade Stewart stated "his and the Commission's stalwart support for Aero Contractors [. . .] even endorsing an expansion of the extraordinary rendition program to capture adversaries in North Korea and Iran."[821]

### October 3, 2011

At a Board meeting, an NCSTN representative read portions of a letter written by Khadija Anna L. Pighizzini, the wife of Abou Elkassim Britel, "a victim of an "extraordinary rendition

conducted by the CIA in May 2002."[822] The Board refused to provide the apology requested by Ms. Pighizzini.

### March 5, 2018

NCSTN organized 26 individuals to attend a meeting of the Johnston County Commissioners to present "new evidence about the magnitude of Aero Contractors' role in the CIA's rendition program," which included testimony that was offered during the NCCIT hearings.[823] In response, "the Commissioners asked what laws were broken at their airport, said there was no direct evidence linking their airport to the 49 renditions presented, and said they deal with local matters, not federal."[824] After the meeting, NCSTN sent further information to them, including flight logs that evidenced the rendition routes that included departures from, and landings in, Johnston County Airport and Kinston Regional Airport.[825]

### April 26, 2018

Jeff Carver, the Chair of the Board, met with NCSTN activists and allies to respond to issues raised at the March 5, 2018 meeting, explaining that: he would not ask Sheriff Bizzell and District Attorney Doyle to take action; he would not contact North Carolina Attorney General Stein or Governor Cooper to request an investigation; and that he "will not support a policy that says anything negative about Aero."[826]

### May 7, 2018

Anti-torture citizens attended a Board meeting at which the commissioners "disputed that there is evidence linking Aero to torture" and "responded negatively to [. . .] requests for investigation of Aero and an anti-torture flight policy for their airport."[827]

North Carolinians have also expressed opposition at the international level to the role of North Carolina in the RDI program, with requests for information and investigation of cases connected to Aero. For example, in August 2007, NCSTN joined Action by Christians Against Torture-Germany in sending letters to Chancellor Merkel, then-U.S. Secretary of State Condoleezza Rice, and then-U.S. Attorney General Alberto Gonzales. The letters urged further action on arrest warrants issued by the Munich public prosecutor as part of an investigation into the Khaled El-Masri case.[828]

At the level of the United Nations, the University of North Carolina Human Rights Policy Lab called upon the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for a full and independent investigation of the case of Abou Elkassim Britel.[829] As a result, eight U.N. mandate holders sent a letter to several governments, including the U.S., requesting information regarding Mr. Britel's case. Specifically, they inquired about any steps taken to establish inquiries to identify and hold responsible public officials accountable, and to provide reparations, rehabilitation, and compensation to victims of the RDI program.[830]


Photo courtesy: NCSTN

*40 deliver "citizens' indictment" to Aero Contractors in 2005*

*Motivated by faith and moral conviction, persistent anti-torture witness has been carried out by Baptists, Catholics, Episcopalians, Jews, Methodists, Muslims, Presbyterians, Quakers, and Unitarians.*


Photo courtesy: NCSTN

*NCSTN adopted the highway fronting Aero Contractors, Ltd.*






Photo and information from www.johnstonnc.com

*The current Johnston County Commissioners and year sworn into office (from left to right) : Larry Wood (2016) | Ted G. Godwin (2012), Vice Chairman | Jeffrey P. Carver (2003), Chairman | Allen L. Mims, Jr. (1998) | Cookie Pope (1994) | Lee Jackson (2017) | Chad M. Stewart (2013).*

## NATURE OF PUBLIC OPPOSITION IN NORTH CAROLINA TO THE RDI PROGRAM

Local actors expressed concerns about the lack of government accountability and the impact of U.S. torture on survivors in a myriad of ways, including through:

### Visibility actions

In November 2005, NCSTN delivered a "people's indictment" to the headquarters of Aero in Smithfield, N.C.[831] and subsequently continued further visibility actions such as vigils, marches, and rallies. For example, in January 2014, at an event organized by NCSTN, the N.C. Council of Churches, Quaker House, and Veterans for Peace, people carried signs outside Senator Burr's office urging him "to support the release of a critical report on the use of torture on terrorism suspects."[832] Also, NCSTN adopted the highway fronting Aero's property[833] and cleaned up the roadside for four years as a way "to remind Johnston County motorists and residents that the road to a clean community conscience must travel through a thorough investigation of the airport's link to the immoral, illegal and ineffective U.S. program of enforced disappearance, secret detention and torture."[834]

### Activities of religious witness

Members of congregations across North Carolina have held educational discussions, signed letters and delivered petitions to elected officials, and displayed banners. Motivated by faith and moral conviction, persistent anti-torture witness has been carried out by Baptists, Catholics, Episcopalians, Jews, Methodists, Muslims, Presbyterians, Quakers, and Unitarians.

Photo courtesy: www.johnstonnc.com

*Johnston County Commissioner Allen L. Mims, Jr.*

*Commissioner Allen Mims said, "I feel pretty certain what they are doing at the airport is legal."*

### Citizen petition and postcard campaigns

Citizens have collected signatures on petitions and passed out educational materials in Johnston County on several occasions.[835] For example, at the 2011 North Carolina State Fair, attendees were invited to sign a petition directed at Governor Perdue and Attorney General Cooper "endors[ing] [. . .] the North Carolina Commission of Inquiry on Torture to reveal the truth about whether our state has been used as a base for kidnapping and torture," and ending with a "call [. . . ] to investigate Aero Contractors."[836]

### Educational conferences

North Carolina advocates hosted four major educational conferences at Duke University in Durham, N.C. in September 2007, May 2008, April 2010, and March 2011,[837] as well as a panel following the hearings of the NCCIT.[838]

### Media

Media engagement has included authoring letters to the editor and op-eds,[839] as well as providing interviews to reporters about anti-torture efforts in the state.[840] The NCCIT hearings also garnered significant media coverage.[841]

### Formation of North Carolina Commission of Inquiry on Torture (NCCIT)

North Carolina advocates supported the creation of the NCCIT by successfully lobbying cities and counties to adopt resolutions in support of the NCCIT.[842] For example, the city of Durham,[843] Orange County,[844] the municipal government of Carrboro,[845] and the Town of Chapel Hill[846] issued such resolutions and proclamations. NCSTN also met with staff members of newly-elected N.C. Attorney General Josh Stein in March 2017 to present the case against Aero and ask him to express support for the NCCIT's work.[847]



### Alliance-building

In addition to the groups highlighted throughout, in 2012, NCSTN worked with the Beloved Community Center, American Friends Service Committee, and others to host an event in Greensboro, N.C. entitled "Our Responsibility to Oppose the Abuse of State Power,"[848] which addressed links between torture and mass incarceration of black youth and immigrants.[849] Other allies include the ACLU, Amnesty International, Center for Constitutional Rights, Center for the Victims of Torture, Code Pink, Human Rights First, Human Rights Watch, the National Religious Campaign Against Torture, Quaker House, Veterans for Peace, and Witness Against Torture.[850]

## OFFICIAL RESPONSES – AND NON-RESPONSES – TO PUBLIC OPPOSITION TO TORTURE IN NORTH CAROLINA

Official responses to public opposition to North Carolina's role in the RDI program have consisted of refusals to respond or inadequate responses, monitoring of local anti-torture advocates rather than investigation of the program, and failure to pass relevant state legislation. This approach has largely left North Carolina's official public discourse about torture and the RDI program to those sympathetic to the state's role in the RDI program.

In particular, the Johnston County Commissioners have repeatedly and publicly endorsed Aero and its activities. For example, in February 2012, Commissioner Allen Mims told the Washington Post that Aero had been an upstanding local corporate citizen. "Mims suggested that he would not be disappointed to learn that the company had helped the CIA in its pursuit of suspected terrorists [. . .] 'I'd rather that the CIA do it that way than put a terrorist on a Delta flight and endanger the rest of us.'"[851] And in December 2014, after partial release of the Senate "Torture Report," Chair Tony Braswell called Aero "a good corporate citizen." Johnston County Commissioner Allen Mims said, "I feel pretty certain what they are doing at the airport is legal."[852]

NORTH CAROLINA GLOBAL TRANSPARK

*Photo courtesy: danielrosecenter.org*

*Former Global TransPark Vice-Chair Eugene A. Conti Jr.*

In reality, however, the program was blatantly illegal. The legal obligations of the State and Aero are explored in detail in Chapter 9.

Officials' refusal to provide information, including when information requests have been made through official channels, has been ubiquitous. For example, state officials have been substantially non-responsive to public records requests. The NCCIT sent public records requests to seven entities in May 2017,[853] and out of these, only Attorney General Josh Stein's office, the GTPA, and the Johnston County Airport Authority have provided records.[854] Sheriff Bizzell has not responded, the Johnston County Commissioners responded that they planned to "review and respond as soon as possible,"[855] the Johnston County District Attorney's Office responded that "there are no records in the custody and control of the Johnston County District Attorney's Office that would be responsive to your request,"[856] and Governor Cooper's office responded that it was "unable to locate any public records in our possession that were responsive to your May 26th request re Aero Contractors."[857]

> ***National public officials have refused requests from citizens of North Carolina for an apology to victims of the RDI program.***

At the federal level, information requests are also blocked. For example, in response to a letter from a group of U.N. mandate holders requesting information on "the alleged detention and torture"[858] of Mr. Britel, the U.S. Representative to the U.N. Human Rights Council responded that the U.S. government was "unable to provide any additional information responsive to your inquiry."[859]

On yet other occasions, officials have refused to engage meaningfully with members of the public. For example, in 2007, the legal counsel for the GTPA explained in an email chain with its Communications Manager and Executive Director that the GTPA did not have to "interact with or debate things" with NCSTN.[860] Indeed earlier – in May 2006 – NCSTN representatives had attended the GTPA's annual board meeting and raised "the issue of Aero Contractors' involvement in kidnapping and torture" and requested "referral for investigation to the SBI."[861] Yet three days later, the GTPA Executive Director refused this request.[862] Furthermore, one month later, "Mr. Conti [Global TransPark Vice-Chair] declined a request to discuss the problem with Gov. Easley"[863] (then also Chair of the Board of the GTPA).[864]

> ***Instead of investigating Aero Contractors, or apologizing to victims, state officials have monitored and impeded advocates.***

At the state level, requests to investigate Aero Contractors have been repeatedly denied or referred to the federal level with unknown results. For example,





in April 2006, NCSTN and the N.C. Council of Churches met with then-N.C. Governor Easley's Chief of Staff, asking the Governor to encourage the Attorney General to investigate the link between Aero and rendition.[865] In response, an advisor to Easley informed NCSTN "there were no grounds to attempt to break GTPA's lease with Aero, nor to launch a criminal investigation of Aero, because North Carolina's U.S. Senators and President Bush had indicated that the U.S. government does not engage in torture."[866]

In October 2006, the SBI responded to a joint letter from twelve N.C. state legislators requesting that the SBI investigate Aero[867] by claiming "a lack of jurisdiction."[868] When 22 N.C. legislators, led by Representative Paul Luebke (D-N.C., 30th District), continued to pursue this matter,[869] the General Counsel to then-N.C. Attorney General Cooper responded that the SBI had referred the investigation of Aero to the FBI, and that "[t]he Attorney General and the SBI stand ready to assist the FBI in any criminal investigation [. . . ]"[870] Following up, U.S. Representative Melvin L. Watt (D-N.C., 12th District), during a U.S. House Judiciary Committee hearing in April 2008, asked then-FBI Director Robert Mueller for information regarding a criminal investigation of Aero,[871] and was informed a week later that the FBI was "awaiting the Department [of Justice]'s advice on how best to proceed."[872] Subsequently, on March 10, 2009, state representatives Harrison (D-N.C., 57th District), Jones (D-N.C., 60th, District), and Luebke (D-N.C., 30th District) wrote a letter to U.S. Representatives Butterfield, Miller, Price, and Watt, referencing the above sequence of events, requesting that they "write to the Department of Justice and ask for a full and transparent investigation of Aero Contractors," and concluding with "the rule of law at a minimum demands an investigation."[873] The status of the investigation as referred to the FBI is not publicly known.

National public officials have refused requests from citizens of North Carolina for an apology to victims of the RDI program. For example, in November 2016, a petition with more than 1,000 signatures calling on President Obama to acknowledge the mistreatment of Abou Elkassim Britel and provide an official apology,[874] was emailed to the National Security Council of the White House. The response, in January 2017, was "that the signatures and the call for an apology had been logged, but that no action would be taken."[875]

Legislative efforts to address North Carolina's role in the RDI program have similarly stalled. These include N.C. House Bill 1682, the "N.C. No Place for Torture Act" (introduced in the N.C. House of Representatives) and its successor N.C. House Bill 2417, "Crimes of Torture and Enforced Disappearance" (introduced in the N.C. General Assembly).[876] According to testimony submitted to the NCCIT by Representative Verla C. Insko of the N.C. House of Representatives, it was partly in response to the SBI's refusal to investigate, as discussed above, that twelve members of the North Carolina House of Representatives sponsored N.C. House Bill 1682, as the "only [. . .] state bill to address violations in the post-9/11 U.S. rendition and torture programs." The bill would have done three things: "It amended North Carolina law to identify torture, kidnapping and enforced disappearance as felonies. It gave the State jurisdiction to investigate. It empowered the convening of a grand jury to investigate, with concurrence of the North Carolina Attorney General."[877]

After the bill was filed in the N.C. House of Representatives on April 18, 2007,[878] NCSTN representatives and allies met with then-Attorney General Cooper's senior staff to provide documentation of Aero's involvement in rendition to torture, inform them of the bill, request that the Attorney General issue a supportive statement, and invite him to attend a press conference on the bill scheduled for mid-May.[879] After being re-referred to the Committee on Rules, Calendar, and Operations of the House on May 24, 2007,[880] the N.C. Sentencing and Policy Advisory Commission's Torture Offenses Subcommittee met on January 18, 2008 to consider the bill and recognized Aero as the "prototype offender" for whom the bill was designed.[881] The bill was then introduced as House Bill 2417 in 2008[882] and would have created "the statutory criminal offenses of torture and enforced disappearance" as offenses for which "an investigative grand jury may be

FEDERAL TORTURE ACT – 18.U.S.C. 2340A

**OFFICES OF THE UNITED STATES ATTORNEYS**

*Photo courtesy: Deposit Photos.com*

**Section 2340A of Title 18, United States Code, prohibits torture committed by public officials under color of law against persons within the public official's custody or control. Torture is defined to include acts specifically intended to inflict severe physical or mental pain or suffering. (....) The statute applies only to acts of torture committed outside the United States. There is Federal extraterritorial jurisdiction over such acts whenever the perpetrator is a national of the United States or the alleged offender is found within the United States, irrespective of the nationality of the victim or the alleged offender.**



*There is strong concern about possible continued clandestine use of Aero and the Johnston County Airport, among other infrastructure in the state, for missions involving torture or other grave human rights violations.*

convened as recommended by the North Carolina Sentencing and Policy Advisory Commission."[883] However, the bill "was never brought to a vote."[884]

Instead of investigating Aero Contractors, or apologizing to victims, state officials have monitored and impeded advocates. During the November 2005 delivery of "citizens' indictments" to Aero executives, county commissioners, and airport officials, 14 NCSTN members were arrested for trespass; they were subsequently convicted in January 2006.[885] When activists attempted to deliver "citizens' arrests" of "three Aero pilots indicted in Germany for their participation in the kidnapping, extrajudicial detention and transport of Khaled El-Masri" on April 9, 2007,[886] eight activists were arrested, three of whom were subsequently convicted of criminal trespass on May 10, 2007.[887] Further, when NCSTN requested an investigation of Aero, GTPA Executive Director Darlene Waddell instead accused NCSTN of "attempting to undercut job creation at the Global TransPark."[888] In January 2012, upon learning that advocates planned to deliver a report by the UNC School of Law Human Rights Policy Lab to representatives of the Governor and Attorney General, the Raleigh Police Department produced an internal memo on NCSTN and its members for the SBI in consultation with the Johnston County Sheriff's Department and the Smithfield Police Department.[889]

## OBSTACLES TO ACTION CITED BY NORTH CAROLINA OFFICIALS

### Lack of authority for investigation and criminal prosecution

It appears that the crimes of rendition to torture in which Aero is involved could be prosecuted in federal court under the federal Torture Act (18.U.S.C. 2340A), or under state laws that prohibit conspiracy to engage in kidnapping, assault or other crimes (further discussed in Chapter 9).[890] However, staff of both Attorney General Cooper and Attorney General Stein have told NC Stop Torture Now members that the law does not give the Attorney General original jurisdiction with respect to Aero's activities at the Johnston County Airport or the Kinston Global TransPark. It was precisely this obstacle that led state legislators to introduce HB 1682 (which became HB 2417), which would have provided the Attorney General authority to investigate the ongoing crimes allegedly being committed by Aero personnel.

Yet during the two sessions in which the bill was considered and despite citizens' requests (see above), the N.C. Department of Justice failed to support this expansion of the Attorney General's investigative authority, even though it has supported such expansions in other matters.[891] As has been observed, the problem appears to lie less in the availability of legal remedies than in marshalling political will.[892] And as further discussed in Chapter 9, the Commission believes that there is already a basis for prosecution under current state law.

### Concern about challenging a Federal government policy

State officials appear reluctant to criticize federal government actions. But the state could deal with Aero's criminal activities as violations by a public contractor registered to do business in North Carolina, rather than as a federal policy outside the state's purview.[893] In fact, as the Commission's public records request has revealed, when state legislators asked the SBI to investigate Aero, the response drafted by Attorney General Cooper's general counsel — while not ultimately used — suggested considering Aero's role in rendition flights as a case of corruption by a government contractor.[894]

Moreover, the apparent unwillingness to critique the federal government is a selective one. Attorney General Cooper made it a priority to tackle public corruption at all levels of government.[895] Upon a valid request, the SBI conducts investigations into government official misconduct, including misdeeds by U.S. Congresspersons and local officials. For example, one category of misconduct is the misuse of prisoners or inmates.[896]

### Concern about political costs

It is possible that state officials have been reluctant to speak out because they fear political costs to their other priorities. However, if North Carolina's Governor and Attorney General took steps to prevent renewed use of their state by federal agencies for torture-related activities, they would likely receive support from a broad array of organizations and individuals, including faith communities and military veterans, both powerful constituencies in North Carolina.

## CONCLUSION

Since 2005, North Carolinians of different religious, political and racial backgrounds have called upon local and state officials to investigate the state's role in rendition to torture. Some state and federal legislators have responded positively, but the state of North Carolina has failed to check the use of its facilities for grave human rights abuses. The silence of the Attorney General's office and four successive governors has meant that the only official voice on the matter is that of the Johnston County Commissioners, some of whom have repeatedly defended Aero and even torture in public. There is strong concern about possible continued clandestine use of Aero and the Johnston County Airport, among other infrastructure in the state, for missions involving torture or other grave human rights violations. It is past time for the state of North Carolina to acknowledge and account for the violations of law and humanity that have taken place, in order to prevent a possible reoccurrence.





CHAPTER NINE

# NORTH CAROLINA'S OBLIGATIONS UNDER DOMESTIC AND INTERNATIONAL LAW, THE BASIS FOR FEDERAL AND STATE INVESTIGATION, AND THE NEED FOR ACCOUNTABILITY

The United States' rendition and torture program violated international law, federal law, and the laws of North Carolina. This chapter summarizes the laws governing torture and the seizure and transportation of people for the purpose of using torture as an interrogation tool. In doing so, it outlines areas of legal liability and responsibility for the State of North Carolina.

## THE GOVERNMENT'S PURPORTED LEGAL JUSTIFICATION

The government's decision to engage in extraordinary rendition and torture was accompanied by a series of legal memoranda, including the now infamous (and withdrawn) "Torture Memos" of August 2002[900] prepared by the Office of Legal Counsel of the Department of Justice. These and other memoranda concluded that the Geneva Conventions did not apply to al-Qaeda and the Taliban;[901] that torture only occurs when it is intended to inflict "physical pain . . . equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death;"[902] and that the proposed so-called "enhanced interrogation techniques" (EITs)[903] were legally permissible. The Torture Memos have been extensively criticized by legal scholars,[904] rejected as authority by a federal court,[905] found to be an exercise of "poor judgment" by the Justice Department's Office of Professional Responsibility,[906] and at least partially disavowed by later memoranda from Bush administration legal counsel.[907]

*In its initial report to the U.N. Committee Against Torture, the U.S. government recognized that such understanding does not "exempt any state or local officials from the [CAT]'s requirements regarding the prohibition, prevention, and punishment of torture."*

Via Executive Order 13491 of September 22, 2009, President Barack Obama set limits, in accordance with the humane treatment obligations of international law, on the interrogation techniques that could be used by officials and ordered the shuttering of any CIA detention facilities.[908] This is for good reason. Notwithstanding the initial legal apparatus used to justify the RDI program, it is clear that the program entailed violations of the law.

The next sections evaluate the legal obligations to address and prevent rendition and torture under international, federal, and state law.

## INTERNATIONAL LAW AND THE RDI PROGRAM

U.S. obligations under international law comprise a series of complementary protections under international human rights, humanitarian, refugee, and criminal law. These obligations derive both from treaties that the United States has ratified, as well as from customary international law, meaning norms that are binding on all nations although not necessarily always codified in law.[909]

The U. S. is a party to a number of the core international human rights treaties, including particularly for the purposes of assessing the illegality of the RDI program, the International Covenant on Civil and Political Rights (ICCPR),[910] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[911] According to both international and domestic laws, when the U.S. ratifies human rights treaties, ratification binds state and local authorities,[912] consistent with their various competences, in addition to the federal government.[913] U.S. federalism, as well as the U.S. government's declaration that these treaties are not self-executing[914] — meaning they need implementing legislation to be able to be directly enforced in U.S. courts — do not affect "U.S. obligations under international law, but they can affect how they get domestically implemented and judicially enforced."[915]

When the U.S. government ratified the ICCPR and CAT, it also indicated that its consent was subject to the understanding that these treaties "shall be implemented by the United States Government to the extent that it exercises legislative and judicial

jurisdiction over the matters covered by the Convention and otherwise by the state and local governments."[916] Known as the federalism understanding, this understanding does not affect the extent to which the U.S. government and its subdivisions — including state and local authorities in North Carolina — are required to comply with the obligations in these treaties.[917] In fact, in its initial report to the U.N. Committee Against Torture, the U.S. government recognized that such understanding does not "exempt any state or local officials from the [CAT]'s requirements regarding the prohibition, prevention, and punishment of torture or cruel, inhuman or degrading treatment or punishment."[918]


Photo courtesy: Google Street View

*The CIA "Black Site" in Romania. Code named "Bright Light."*

### U.S. HUMAN RIGHTS OBLIGATIONS DURING THE 'WAR ON TERROR'

A range of core international obligations relevant to the RDI program are absolute and non-derogable (cannot be set aside). Specifically, neither war nor state of exception or emergency, nor national security concerns, can justify torture or cruel, inhuman or degrading treatment or punishment,[919] transfer to torture or cruel, inhuman or degrading treatment or punishment,[920] and enforced disappearances.[921] The obligation not to torture, for example, applies wherever the U.S. government operates, whether on U.S. soil or elsewhere.[922] As such, this obligation applies "to what happened on U.S. territory (e.g., authorizations through Torture Memos, trainings of interrogators, use of airports) but also extraterritorially wherever the [U.S. Government] exercised effective control over an individual [—] e.g., in CIA 'black sites' in locations such as Thailand and Poland, as well on rendition aircraft even when in the airspace(s) of another country or in international airspace."[923]

Importantly, the United States' human rights obligations continued to apply during the so-called "war on terror,"[924] despite U.S. government assertions to the contrary.[925] As the Commission heard, "just as no state, group or individual is above the law, so too can no person be placed outside the law. Acts such as enforced disappearance in CIA "black sites" or efforts to create a legal fiction of 'human rights free zones' that give a blank check to interrogations provided they are not on U.S. soil tried to do this and in so doing, infringed international human rights law."[926]

> ***In addition to regulating the activities or omissions of its own officials, under international law the United States is also required to regulate those of private actors, such as corporations.***

In addition to regulating the activities or omissions of its own officials, under international law the United States is also required to regulate those of private actors, such as corporations. This means, for example, that the United States will be "liable for the actions of other individuals or groups acting under its instruction, direction, control, or acquiescence, including private actors such as companies that act effectively as an arm of the government."[927] Under Article 1 of CAT, the U.S. government is responsible for torture by State and non-State actors, including private contractors working for the U.S. government, where torture is "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[928] In addition, even if the private actor is found not to be acting at the direction of the U.S. government, the U.S. government nonetheless is required to exercise due diligence to prevent human rights abuses by non-State actors, to investigate and prosecute these perpetrators, to assist and protect victims, and to ensure remedies. As the Commission heard, "under human rights law that binds the United States and all of its governmental authorities, a government can't violate rights, outsource to private actors to do so, or turn a blind eye when private actors do — either at the time these things are happening or afterward in failing to investigate, prosecute, and punish."[929]

### THE RDI PROGRAM AND VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

According to testimony before the Commission:

> *Program planning, execution, and failure to investigate and punish, all engage international law obligations that bind the United States. For example, what happened to individuals at all stages in the program — including in the lead up to rendition flights (including their initial apprehension and treatment on tarmacs of foreign airports by CIA Rendition Teams), on rendition flights, in secret detention and through interrogation using brutal tactics referred to as EITs, and in the failure to get justice — engages international law obligations that bind the United States and was in clear violation of human rights treaties.*[930]





> ***With regard to conditions of confinement, detainees in one prison were "kept in complete darkness and constantly shackled in isolated cells with loud noise or music and only a bucket to use for human waste." Conditions at this facility were such that one senior CIA officer described the "black site" as "itself an enhanced interrogation technique."***

The RDI program violated multiple human rights.[931] This section focuses specifically on how interrogation techniques, conditions of confinement, and the incommunicado nature of detention in the CIA "black sites" — as well as in foreign custody — violated prohibitions on torture, prohibitions on cruel, inhuman, or degrading treatment or punishment, and prohibitions on enforced disappearances.

### INTERROGATION, CONFINEMENT, AND THE PROHIBITION ON TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The U.S. government is bound by the prohibition on torture and cruel, inhuman or degrading (CID) treatment or punishment under CAT, as well as Article 7 of the ICCPR.[932] The prohibition of torture has also been universally recognized as a norm of customary international law.[933] The absolute nature of the prohibition renders irrelevant any discussion of the efficacy of conditions of confinement or interrogation tactics, as "[t]he absolute ban on torture means that from a legal perspective there is simply no room for discussions about whether torture does or does not work."[934]

Interrogation and conditions of confinement during the RDI program

> ***International human rights bodies have condemned the U.S. interrogation techniques.***

fell woefully short of international law requirements in CAT including protecting both the "physical and mental integrity of individuals,"[935] even taking into account the U.S. government's relevant reservations and understandings to these treaties (e.g., its reservations to the meaning of cruel, inhuman, and degrading treatment in the ICCPR[936] and CAT,[937] as well as its understanding on the definition of torture in CAT).[938]

Government documents describing the interrogation process,[939] accounts of individuals in the RDI program, and the inquiry by the Senate Select Committee on Intelligence reveal that the interrogation and conditions of confinement in CIA "black sites" amounted to illegal severe pain or suffering, either physical, mental, or in many cases both. For example, detainees in CIA "black sites" were subjected to "rectal rehydration" and "rectal feeding" and put in ice water "baths."[940] Detainees received either direct death threats or threats of "harm to their families — including threats to harm the children of a detainee, threats to sexually abuse the mother of a detainee, and a threat to 'cut [a detainee's] mother's throat.'"[941] Sleep deprivation "involved keeping detainees awake for up to 180 hours, usually standing or in stress positions, at times with their hands shackled above their heads."[942] With regard to conditions of confinement, detainees in one prison were "kept in complete darkness and constantly shackled in isolated cells with loud noise or music and only a bucket to use for human waste."[943] Conditions at this facility were such that one senior CIA officer described the "black site" as "itself an enhanced interrogation technique."[944] Mental suffering was severe: "Throughout the program, multiple CIA detainees who were subjected to the CIA's enhanced interrogation techniques and extended isolation exhibited psychological and behavioral issues, including hallucinations, paranoia, insomnia, and attempts at self-harm and self-mutilation."[945]

International human rights bodies have condemned the U.S. interrogation techniques, calling on the government as early as 2006 to "rescind any interrogation technique, including methods involving sexual humiliation, 'waterboarding,' 'short shackling' and using dogs to induce fear, that constitutes torture or cruel, inhuman or degrading treatment or punishment, in all places of detention under its de facto effective control, in order to comply with its obligations under the Convention."[946]

The European Court of Human Rights also concluded that interrogation techniques used against detainees in CIA "black sites" comprise human rights violations. For example, in the *Case of Al-Nashiri v. Poland*, the Court stated that regardless of "when, how and in what combination" particular interrogation techniques were utilized,[947] both the interrogations and various aspects of detention "were applied in a premeditated and organized manner, on the basis of a formalized, clinical procedure, setting out a "wide range of legally sanctioned techniques" and specifically designed to elicit information or confessions or to obtain intelligence from captured terrorist suspects."[948] On this basis, the Court found that the treatment to which Abd al Rahim Al-Nashiri was subjected "amounted to torture within the meaning of Article 3 of the Convention."[949]



### *CIA "BLACK SITES" AND THE PROHIBITION ON ENFORCED DISAPPEARANCES*

Detention in CIA "black sites," as well as in many foreign custody arrangements in the RDI program, also violated the international human rights law prohibition on enforced disappearances.

While the U.S. government has not ratified the core human rights treaty proscribing enforced disappearances[950] and has stated that "enforced or involuntary disappearances are not synonymous with acts of torture,"[951] the prohibition has repeatedly been read into CAT and the ICCPR[952] by the bodies charged with monitoring the treaties. For example, enforced disappearances can, in certain circumstances, violate the right to life guaranteed by Article 6 of the ICCPR. They always violate "the right to liberty and security of the person and the prohibition of arbitrary arrest or detention."[953] In addition, the U.N. Human Rights Committee found that "[e]very instance of secret detention is by definition incommunicado detention. Prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and may in itself constitute such treatment."[954] Enforced disappearance may also "amount to torture or other form of ill-treatment, and at the same time violates the right to the protection of family life" for family members of the disappeared.[955]

Individuals held in CIA "black sites" — and often those rendered to foreign custody for detention and interrogation — were held in secret, i.e., incommunicado, detention in unknown locations and without information about their fate disclosed,[956] amounting to an enforced disappearance.

### *VIOLATIONS OF THE RIGHT TO REMEDY*

According to the testimony before the Commission, "[a]cross all of the human rights treaties, there is also a right to an effective remedy, including reparation and compensation for violations that are committed. This means that the human rights treaties that the United States has ratified govern what the government does or does not do long after the program itself has ended."[957] Indeed, a right to remedy is found in the both ICCPR[958] and CAT.[959] As testimony before the Commission highlighted, neither the Bush nor Obama administration criminally prosecuted any officials for violations of international law committed during the CIA RDI program.[960] Furthermore, both administrations claimed the "state secrets" privilege to block attempts by victims to remedy violations through civil litigation.[961]

This testimony also highlighted that "[w]hile official acknowledgment of the CIA RDI program through the Senate Torture Report has allowed for a successful settlement remedy against two CIA-contracted psychologists, James Mitchell and John 'Bruce' Jessen, on behalf of two survivors of the CIA Torture Program, Suleiman Abdullah Salim and Mohamed Ahmed Ben Soud, and the family of Gul Rahman, who froze to death in a secret CIA prison in November 2002,"[962] a remedy for many victims of rendition under the CIA RDI program remains impossible until the U.S. government fully investigates those renditions.[963] This failure of the U.S. government authorities at all levels to investigate and prosecute allegations of human rights violations in the RDI program — including allegations of abuses faced by those rendered to foreign custody — is itself a breach of its binding obligations under human rights treaties.[964]

*This failure of the U.S. government authorities at all levels to investigate and prosecute allegations of human rights violations in the RDI program — including allegations of abuses faced by those rendered to foreign custody — is itself a breach of its binding obligations under human rights treaties.*[964]

## FEDERAL LAW AND THE RDI PROGRAM

### *INVESTIGATION AND PROSECUTION OF TORTURE-RELATED CRIMES UNDER FEDERAL LAW*

Both United States Attorneys (the chief federal prosecutors in the various judicial districts) and specialized attorneys of the U.S. Department of Justice have the responsibility to investigate crimes falling under their jurisdictions. Under 28 U.S.C. § 547, United States Attorneys have a duty to prosecute offenses against the United States; that "carries with it the authority necessary to perform this duty."[965] According to the United States Attorney Manual, "[t]he United States Attorney, as the chief federal law enforcement officer in his district, is authorized to request the appropriate federal investigative agency to investigate alleged or suspected violations of federal law."[966] This plenary authority within each district is exercised under the supervision and direction of the Attorney General.[967]

The authority, discretionary power, and responsibilities of the United States Attorney with relation to criminal matters include: (a) investigating suspected or alleged offenses against the United States; (b) causing investigations to be conducted by appropriate federal law enforcement agencies; (c) declining to prosecute; (d) authorizing prosecution; (e) determining the manner of prosecuting and deciding trial related questions; and (e) dismissing prosecutions.[968]

In addition, the Human Rights and Special Prosecutions Section of the Criminal Division of the U.S. Department of Justice is charged with "investigat[ing] and, where appropriate, prosecut[ing] cases against human rights violators and other international criminals."[969] This includes individuals who have violated federal criminal laws, including laws prohibiting torture and war crimes. The principal statutes under which this Section operates are the Extraterritorial Torture Law, The War Crimes Act, 18 U.S.C. § 2441, and 18 U.S.C. §§ 2340-2340A (the "Torture Act"), which is discussed in what follows.[970]



CHAPTER 9 · NORTH CAROLINA'S OBLIGATIONS UNDER DOMESTIC AND INTERNATIONAL LAW, ET AL.

*Nevertheless, there can be no dispute that the conduct described in the Report that was carried out by U.S. nationals under the U.S. Rendition, Detention & Interrogation program between 2001 and 2006 violated the Torture Act.*

## FEDERAL OFFENSES IMPLICATED BY THE U.S. RENDITION, DETENTION AND INTERROGATION PROGRAM

### *The Torture Act*

By far, the broadest federal authority to prosecute human rights violations outside the United States is the Torture Act, which implements United States' obligations under CAT. The Act criminalizes the commission of torture and other cruel and inhuman treatment, the attempt to commit such acts, and conspiracy to commit such acts.[971] It applies to acts of torture and other cruel and inhuman treatment committed outside the United States by a U.S. national or by an offender who is physically present in the United States and therefore subject to its jurisdiction, without regard to the nationality of the offender or the victim.

Torture is defined under the Act as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." "Severe mental pain or suffering" means:

> *(A) the intentional infliction or threatened infliction of severe physical pain or suffering;*
> *(B) the administration or application, or threatened administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or*

EXCERPTS FROM THE WAR CRIMES ACT - 18 U.S.C. § 2441

**OFFICES OF THE UNITES STATES ATTORNEYS**

*Photo courtesy: Joint Task Force Guantánamo | Flickr.com*

(a) OFFENSE.—
Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(B) CIRCUMSTANCES.
The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

.....

(D) COMMON ARTICLE 3 VIOLATIONS

(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term "grave breach of common Article 3" means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

(A) Torture.—
The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(B) Cruel or inhuman treatment.—
The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

.....

(2)Definitions.
In the case of an offense under subsection (a) by reason of subsection (c)(3)—

.....

(D) the term "serious physical pain or suffering" shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

(i) a substantial risk of death;
(ii) extreme physical pain;

.....



*It seems likely that a conspiracy was formed between those who regularly provided and operated aircraft used in the RDI program and those responsible for the kidnapping and torture that was carried out under the program.*

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

The Act went into effect on November 20, 1994. To date, there has been only one prosecution under it.[972] Nevertheless, there can be no dispute that the conduct described in the Report that was carried out by U.S. nationals under the U.S. Rendition, Detention & Interrogation program between 2001 and 2006 violated the Torture Act.

### Conspirators and Accomplices

Federal law also provides a basis for prosecuting conspirators and accomplices. Conspiracy requires proof that the individual charged entered an agreement with others to engage in unlawful conduct. The government must also prove an overt act by one of the co-conspirators in furtherance of the agreement. This requirement can be satisfied by virtually any act committed by a co-conspirator, including buying fuel in North Carolina for one of the aircraft used to ferry officials and detainees under the program. From the evidence developed before the Commission, it seems likely that a conspiracy was formed between those who regularly provided and operated aircraft used in the RDI program and those responsible for the kidnapping and torture that was carried out under the program.

A person charged with a conspiracy may also be convicted of other substantive crimes committed by the group, including torture and kidnapping. The defendant can be convicted for the offense that he or she personally commits; for participation in the crime as an accomplice; and under the federal Pinkerton Rule. Under that rule, a person charged with a criminal conspiracy may also be liable for the substantive offenses committed by co-conspirators, whether or not he or she assisted in their commission (or even knew about them).[973]

The federal government can also prosecute accomplices who aid and abet or attempt to aid and abet principals to a crime.[974] "The government must prove that the defendant associated with the criminal venture, purposefully participated in the criminal activity, and sought by his [or her] actions to make the venture successful."[975] The evidence of accomplice liability does not have to be substantial:

> *A [person] associates with a criminal venture if he shares in the criminal intent of the principal, and the [person] participates in criminal activity if he has acted in some affirmative manner designed to aid the venture. . . . The level of participation may be of relatively slight moment. . . . Also, it does not take much evidence to satisfy the facilitation element once the [person's] knowledge of the unlawful purpose is established.*[976]

If the government establishes that the individual is an accomplice to a federal offense, he or she is treated as a principal and is punished accordingly.[977]

### Special Aircraft Jurisdiction of the United States

The "special aircraft jurisdiction of the United States" allows the federal government to prosecute certain criminal offenses that take place aboard a "civil aircraft of the United States" or any U.S. military aircraft, while the aircraft is in flight anywhere in the world.[978] The jurisdiction is also implicated when the proscribed offense takes place during the flight of any other aircraft that is leased without a crew to a lessee who has its principal place of business in the United States or who is a permanent resident of the United States. Crimes that can be prosecuted under this special aircraft jurisdiction include assault (18 U.S.C. § 113), maiming (18 U.S.C. § 114), and sexual abuse offenses (18 U.S.C. §§ 2241-2244).[979] The United States prosecuted Richard Reid (the so-called "shoe bomber") and Umar Farouk Abdulmutallab, who attempted to detonate explosives that lined his underwear on a Northwest Airlines flight from Amsterdam to Detroit, under its special aircraft jurisdiction.[980]

## INVESTIGATION AND PROSECUTION OF CRIMES UNDER NORTH CAROLINA LAW

Local district attorneys have primary jurisdiction to investigate and prosecute crimes in North Carolina.[981] The North Carolina Attorney General is authorized to advise and assist local district attorneys in carrying out their prosecutorial responsibilities, but only if requested by them.[982] Under some enumerated circumstances, local district attorneys can request the Attorney General to prosecute individual cases, but the Attorney General retains the discretion to decline such requests.[983]

Similarly, local law enforcement agencies have the primary responsibility to investigate crimes in their jurisdictions.[984] However, the North Carolina State Bureau of Investigation, an independent investigative agency, has statewide jurisdiction to conduct investigations. "The services of employees of the Bureau may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the





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criminal law."[985] Enforcement officers include district attorneys, sheriffs, police departments, and judges.[986]

## CONSPIRACY UNDER NORTH CAROLINA LAW

A threshold question under North Carolina law is whether the state has territorial jurisdiction to prosecute any of the criminal conduct carried out under the RDI Program, which occurred outside the state. Generally, North Carolina has jurisdiction to prosecute only offenses that take place within the state, as well as any accessorial acts (planning or solicitation to commit offenses in North Carolina) that take place outside the state.[987] In addition, however, North Carolina has the jurisdiction to prosecute a member of a conspiracy in this state if any of the co-conspirators commit an overt act in North Carolina in furtherance of the conspiracy, even if the conspiracy was formed outside the state (State v. Drakeford).[988] This is the broadest and clearest possible basis for criminal liability in North Carolina for acts in North Carolina associated with the CIA's RDI program.[989]

In North Carolina, conspiracy is a common law offense. Its elements are (1) an agreement with at least one other person (2) to commit an unlawful act (3) with intent that the agreement be carried out.[990] A conspiracy is complete once the agreement is made, whether or not the planned offense ever occurs.[991] That means that the state does not have to have jurisdiction to prosecute the unlawful acts that were the object of the conspiracy. A person may be charged with conspiracy in North Carolina if any co-conspirator commits an overt act in North Carolina in furtherance of the unlawful agreement, even if the conspiracy was entered into outside the state.[992]

The acts of Aero Contractors and its employees, agents, and collaborators in North Carolina, described in detail in this report, were taken in furtherance of an unlawful agreement to violate CAT and the federal Torture Act.[993] These actors also were key participants in the unlawful kidnapping and renditions that systematically took place under the RDI program.[994] In addition, offenses that were subject to the special aircraft jurisdiction of the United States took place during flights on aircraft operated by these North Carolina co-conspirators. North Carolina has the jurisdiction to prosecute the co-conspirators in this state. Finally, other offenses that were a foreseeable consequence of the conspiracy, although not prosecutable in North Carolina, are relevant to show that the agreements under which the RDI program was carried out were unlawful.

The state of North Carolina has an obligation to do at least one of these things: report Aero's conduct to the federal government for investigation (under CAT and ICCPR); conduct its own investigation of the unlawful conduct and refer the results to the federal government to prosecute; prosecute under state law, in cases where the conduct also violates state law and prosecution is warranted.

*Photo courtesy: NCSTN*

*Aircraft N168D and N196D being serviced by Aero Contractors, Ltd.*

## CONCLUSION

It is clear that the RDI program was a scheme that violated numerous international, federal, and state laws. Further, it is clear that unlawful missions began in North Carolinians' own backyard, utilizing the facilities of taxpayer-supported public airports, aided and abetted by the acts and agreements of North Carolina residents. Yet despite the clarity of the illegality, no law enforcement authority has accepted responsibility for investigating and prosecuting the crimes that originated on North Carolina's soil. This failure to pursue justice is an important part of the persistent lack of accountability for the CIA RDI program. In order to fulfill the obligations of their offices, federal and state prosecutors and state and local law enforcement agencies should fully investigate and prosecute crimes covertly committed in North Carolina in the name of the people of this nation.[995]



# REPORT CONCLUSION

After the attacks of September 11, 2001, the US government embarked upon a large-scale, illegal and mostly secret program of torture, detention, and prolonged and often brutal incarceration. The State of North Carolina played a key role as home to airports, aircraft, logistics personnel, and pilots crucial to the operation.

In this report, we traced 49 cases of torture in which the state was directly involved. Many of the individuals abducted and detained suffered horribly. Today, some live without access to proper medical treatment, many live without adequate rehabilitation, and all continue to suffer. Out of all the testimony we collected for this report, the accounts from torture victims of their persistent physical and emotional pain were the most disturbing. Victims continue to experience trauma and other severe psychological harm. That harm reverberates through their families and communities. To date, the U.S. has provided no reparations to detainees or their loved ones. It has not even recognized this horrific treatment.

Torture advocates argue that abuses were necessary to keep America safe. In our extensive inquiries, we found no evidence to support this claim. To the contrary, every expert whom we consulted agreed that the use of torture and secret detention not only violated international legal obligations but also degraded our national security and safety. Among other consequences, torture generates false and misleading information. Victims told their torturers what they thought they wanted to hear in order to stop the torture. America's use of torture was also a moral fiasco, staining our democracy and commitment to human rights. Torture is wrong no matter where, when or how it is applied. Moreover, it is illegal, without exception.

*The Commission recognizes the continuing harm visited by the United States on the 49 detainees who, with North Carolina's assistance, were subjected to extraordinary rendition, kidnapping, unlawful detention, and torture. We recognize the aggravated harm that flows from the fact that our government has neither acknowledged injuring them nor offered any reparations. We further recognize that the injury was not only to these 49 individuals, but also to their families and communities. We deeply regret that local, state and federal agencies of the United States have ignored both the law and our moral obligation to take responsibility.*

North Carolina must hold accountable the individuals and entities that engaged in extraordinary rendition and used state resources to facilitate torture. Among them is Aero Contractors, Ltd. (Aero), a private company whose role in the CIA rendition and torture program is beyond dispute. The CIA used Aero to transport at least 49 human beings to "black sites" purpose-built for torture or to foreign proxy countries so that they would do the torture — in some cases, multiple times.

That horrific journey — in which detainees were deprived of sight, hearing and touch, diapered and even drugged, sexually or physically assaulted, unable to speak or see where they were, terrified and often in pain — was in itself torture. Many of these individuals were effectively "disappeared," a term originating in Latin America for illegal detention without legal oversight or acknowledgment that the person is in custody.

Once Aero delivered their human cargo to CIA "black sites", interrogators and guards often beat them; placed them in stress positions; and subjected them to





REPORT CONCLUSION

*The CIA rendered some people — a number we can't yet determine — to foreign custody in Syria, Jordan, Morocco, Egypt and perhaps other states to be tortured. To date, a full accounting of this program remains inappropriately hidden by our government.*

isolation, sleep deprivation, extremes of temperature and excruciatingly loud music, water tortures and sexual violation, among other abusive techniques. The CIA rendered some people — a number we can't yet determine — to foreign custody in Syria, Jordan, Morocco, Egypt and perhaps other states to be tortured. To date, a full accounting of this program remains inappropriately hidden by our government.

This all occurred without regard for a detainee's innocence or guilt. While some of the 49 documented cases may have involved individuals linked to terrorism – and torture even for them is unconditionally prohibited — a significant number were innocent, as indicated by their ultimate release. A few have received an apology or financial compensation from foreign governments, affirming the victim's innocence and wrongful detention, but nothing from the US government or any US state.

In fact, instead of holding Aero accountable, the State of North Carolina and Johnston County have effectively endorsed these abuses. This is reflected in the continued hosting of Aero's headquarters at the Johnston County Airport and decisions to provide other airport and county services in face of the shocking and public evidence of torture. Even after North Carolina residents repeatedly informed state authorities of Aero's participation in the torture program, the State of North Carolina approved a grant to the airport to fortify the company's perimeter. The state-run Global TransPark in Kinston, in addition to providing airport services to Aero, authorized the company to build a new hangar and occupy it rent-free.

In effect, taxpayer money continues to subsidize a company, Aero Contractors, that played a material and open role in facilitating torture, a violation of State and Federal law. Our public infrastructure has been subverted to support a program that led to profound suffering. To date, only a few low-level members of the military have been held accountable for their role in the American torture program. So long as the full scope of this program is kept secret and none of the leadership is held accountable, we will continue to face a grave danger that the United States will once again engage in torture — a threat that President Trump has openly contemplated — with the possibility of North Carolina again being used as a crucial launching platform.

The Commission recognizes the continuing harm visited by the United States on the 49 detainees who, with North Carolina's assistance, were subjected to extraordinary rendition, kidnapping, unlawful detention, and torture. We recognize the aggravated harm that flows from the fact that our government has neither acknowledged injuring them nor offered any reparations. We further recognize that the injury was not only to these 49 individuals, but also to their families and communities. We deeply regret that local, state and federal agencies of the United States have ignored both the law and our moral obligation to take responsibility.

Embedded in this report, however, is another story — one of citizens outraged by torture and determined to hold Aero and the State of North Carolina accountable. While the torture program was underway, North Carolinians joined other Americans and international partners to document what they could of the program and urge accountability. They insisted that the only way for the State of North Carolina and the United States to remove the stain of this dark legacy is to address it directly through the legal and political means available.

Indeed, much of what we know about the United States torture program and North Carolina's role in it comes from the determination of individuals, including citizens of North Carolina, to stop torture and insist on adherence to the rule of law. This Commission — and the people of this state — owe an enormous debt of gratitude to these individuals. It is only through their dedication to human rights — to human dignity — that we are able to shed light on this dark chapter and press for a full measure of justice for the victims.

Some injustices, such as the internment of Japanese-Americans, took our nation decades to address. Other crimes, such as lynching of African-Americans and atrocities against Native Americans, have yet to receive sufficient attention. We are certain that the only way to overcome brutal chapters in our history is to confront them with honesty and integrity and to ensure that those responsible are revealed and held to account. To do that, we must fully account for our actions, identify the people responsible, hold them to account, and through these actions make vivid our vow that it will not happen again. Collectively, we must seek truth and justice and find ways to heal the breach we have opened with other human beings.

# ENDNOTES

## CHAPTER 1 · THE U.S. GOVERNMENT'S RENDITION, DETENTION, AND INTERROGATION (RDI) PROGRAM

[100] Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* 11 [also "Senate Report"] (citing "DTS #2002-0371, [4]"), https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf *updated for release in 2014*.

[101] Dana Priest, *Jet is an Open Secret in Terror War,* Wash. Post, Dec. 27, 2004, at A01.

[102] Exec. Order 13,491, 3 C.F.R. 199 (2010).

[103] Human Rights Watch, Questions and Answers: U.S. Detainees Disappeared into Secret Prisons: Illegal Under Domestic and International Law (Dec. 9, 2005), https://www.hrw.org/legacy/backgrounder/usa/us1205/index.htm.

[104] *See, e.g.*, Dana Priest, *N.Y. Billing Dispute Reveals Details of Secret CIA Rendition Flights,* Wash. Post (Nov. 2, 2005).

[105] Comm. on Int'l Human Rights of The Assoc. of the Bar of the City of New York & Center for Human Rights and Global Justice, New York University School of Law, Torture by Proxy: International and Domestic Law Applicable to "Extraordinary Renditions" 15 (2004), *available at* http://www.pegc.us/archive/Authorities/ABCNY_20041029.pdf.

[106] *Sen. Dianne Feinstein, Foreword* to S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* 3 (2012, updated 2014), https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf [hereinafter "Foreword to Senate Report"]. *See* corrected version of list at *Appendix 2: CIA Detainees from 2002-2008*, S. Sel. Comm. on Intel. (Feb. 6, 2015) [hereinafter *"Appendix 2"*], http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=5871bb22-f4fb-4ec4-b419-99babb2eca3d (detailing the detainees subjected to CIA interrogation techniques between 2002 and 2008).

[107] Dr. Sam Raphael, Co-founder of the Rendition Project, *The Global CIA Rendition and Torture Program,* Witness Testimony to the N.C. Comm. of Inquiry on Torture (Nov. 30, 2017), http://www.nctorturereport.org.

[108] S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, at 12, 15-16.

[109] North Carolina Stop Torture Now, Detainees Transported by Aero Contractors for the CIA (2014), http://ncstn.org/content/wp-content/uploads/2015/05/CIA-detainees.pdf/.

[110] Open Society Foundations, Globalizing Torture: CIA Secret Detention and Extraordinary Rendition 11 (2013).

[111] Steven M. Watt, *Outsourced Terror: The Horrific Stories of CIA-sponsored Torture That Aren't in the Senate Report,* Slate (Dec. 9, 2014), http://www.slate.com/articles/news_and_politics/politics/2014/12/senate_torture_report_s_unnamed_victims_the_cia_had_hundreds_or_thousands.html *reprinted at* ACLU (Dec. 22, 2014), reprinted at Steven M. Watt, ACLU, The Horrific Stories of CIA-sponsored Torture that Aren't in the Senate Report (Dec. 22, 2014) https://www.aclu.org/blog/speakeasy/horrific-stories-cia-sponsored-torture-arent-senate-report.

[112] *See, e.g.* Priest, *N.Y. Billing Dispute Reveals Details of Secret CIA Rendition Flights.*

[113] Statement by Gen. Mike Hayden, Director of the CIA, to Employees, Taping of Early Detainee Interrogations (Dec. 6, 2007), https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2007/taping-of-early-detainee-interrogations.html (stating that the "CIA's terrorist detention and interrogation program began after the capture of Abu Zubaydah in March 2002").

[114] *Sen. Dianne Feinstein, Foreword* to Senate Report, S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, at 3. *See* corrected version of list at *Appendix 2: CIA Detainees from 2002-2008*, S. Sel. Comm. on Intel. (Feb. 6, 2015), http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=5871bb22-f4fb-4ec4-b419-99babb2eca3d.

[115] See Adam Goldman & Julie Tate, *Decoding the Secret Black Sites on the Senate's Report on the CIA Interrogation Program*, Wash. Post (Dec. 9, 2014), https://www.washingtonpost.com/news/worldviews/wp/2014/12/09/decoding-the-secret-black-sites-on-the-senates-report-on-the-cia-interrogation-program/?utm_term=.99f70acd29ab; Crofton Black, *Foreign Liaison Partners*, Extraordinary Renditions and Secret Detentions: Challenges to Democratic Control of Intelligence Services and Human Rights Remedies (Elspeth Guild, et al. eds.) (2018); Crofton Black & Sam Raphael, *Revealed: The Boom and Bust of the CIA's Secret Torture Sites*, Bureau of Investigative Journalism (Oct. 14, 2015), https://www.thebureauinvestigates.com/stories/2015-10-14/revealed-the-boom-and-bust-of-the-cias-secret-torture-sites; Sam Raphael et al., *Tracking Rendition Aircraft as a Way to Understand CIA Secret Detention and Torture in Europe*, 20 Int'l J. of Human Rts. 78 (2016).

[116] Central Intelligence Agency, OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention 1–3 (Dec. 2004), https://www.cia.gov/library/readingroom/docs/0006541536.pdf.

[117] *See* Memorandum from Central Intelligence Agency to Daniel Levin, Acting Assistant Att'y Gen., OLC, U.S. Dep't. of Justice 2 (Dec. 30, 2004), https://www.thetorturedatabase.org/document/fax-cia-olc-providing-generic-description-cias-combined-use-various-interrogation-technique.

[118] See, *e.g.*, Memorandum from Jay S. Bybee, Assistant Att'y Gen., OLC, U.S. Dept of Justice, to John Rizzo, acting General Counsel of the CIA, Interrogation of al Qaeda Operative (Aug. 1, 2002), http://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-by-bee2002.pdf.

[119] S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, at 83 n.448 (citing redacted source).

[120] *Id.* at 85.

[121] S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, at 21.

[122] Human Rights First, Fact Sheet: 'Enhanced Interrogation' Explained, (Feb. 10, 2016), https://www.humanrightsfirst.org/resource/enhanced-interrogation-explained.

[123] S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, at 12.

[124] *Id.*

[125] *Id.* at 4.

[126] *Id.* at 3.

[127] Dana Priest & Barton Gellman, *U.S. Decries Abuse but Defends Interrogations: "Stress and Duress" Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities,* Wash. Post, Dec. 26, 2002, http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901356.html.

[128] Raphael, *The Global CIA Rendition and Torture Program*, Witness Testimony to the N.C. Comm. of Inquiry on Torture (Nov. 30, 2017), http://www.nccit.org/witnesstestimony/, at para. 20.

[129] S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, at 11.

[130] Sam Raphael, Crofton Black, Ruth Blakely, and Steve Kostas, *Tracking Rendition Aircraft as a Way to Understand CIA Secret Detention and Torture in Europe,* International Journal of Human Rights (2016), at 85, https://doi.org/10.1080/13642987.2015.1044772.

[131] *See* The Rendition Project, *The Corporate Network*, http://www.therenditionproject.org.uk/flights/companies/index.html (last visited July 15, 2018).

[132] Raphael et al., *Tracking Rendition Aircraft as a Way to Understand CIA Secret Detention and Torture in Europe*, 85.

[133] *Id.* at 85.

[134] *See generally Richmor Aviation, Inc. v. Sportsflight Air, Inc.*, 918 N.Y.S.2d 806 (N.Y. App. Div. 2011).

[135] Raphael et al., *Tracking Rendition Aircraft as a Way to Understand CIA Secret Detention and Torture in Europe*, 85. *See generally Richmor Aviation, Inc. v. Sportsflight Air, Inc.* [918 N.Y.S. 2d 806]; *The Corporate Network*, Rendition Project; Ian Cobain & Ben Quinn, *How U.S. Firms Profited from Torture Flights,* Guardian (Aug. 31, 2011), https://www.theguardian.com/world/2011/aug/31/us-firms-torture-flights-rendition; Ian Cobain & Ben Quinn, *Mundane Bills Bring CIA's Rendition Network into Sharper Focus,* Guardian (Aug. 31, 2011), https://www.theguardian.com/world/2011/aug/31/cia-rendition-flights-cost; Priest, *N.Y. Billing Dispute Reveals Details of Secret CIA Rendition Flights,* Wash Post; Clare Algar, *US Court Documents Reveal Inner Workings of CIA Renditions,* Guardian (Aug. 31, 2011), https://www.theguardian.com/commentisfree/2011/aug/31/documents-reveal-renditions-programme-business; Mark Thompson, *New Documents Offer Details on CIA Program That Critics Charge Abetted Torture*, Time (Aug. 31, 2011). ), http://nation.time.com/2011/08/31/new-documents-offer-details-on-cia-program-that-critics-charge-abetted-torture/. *See also* Amnesty International, *USA: Below the Radar: Secret flights to Torture and 'Disappearance'* 24 (Apr. 4, 2006), https://www.amnesty.org/en/documents/AMR51/051/2006/en/.

[136] Giovanni Claudio Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, Eur. Parliament, Working Document No. 4, Doc. 617722EN 2 (June 1, 2006), http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dt/617/617722/617722en.pdf.

[137] Raphael, *The Global CIA Rendition and Torture Program*, Witness Testimony to the N.C. Comm. of Inquiry on Torture, at para. 22. See also para. 32.

[138] *Id.* at para. 22.

[139] See Raphael et al., *Tracking Rendition Aircraft as a Way to Understand CIA Secret Detention and Torture in Europe,* 85 ("Other companies appearing in the data strings, such as Jeppesen International Trip Planning/Jeppesen Dataplan and Universal Weather and Aviation, were companies providing so-called trip planning services to a range of corporate and government clients. These companies were responsible for ensuring that the required flight plans were filed, overflight and landing authorisations received and hotel reservations booked."); The Rendition Project, *N379P-N8068V-N44982*, https://www.therenditionproject.org.uk/flights/aircraft/N379P.html ("Trip planning services for these renditions were provided be Jeppesen Dataplan, which also filed dummy flight plans to try and disguise the September 2003 renditions and those of Binyam Mohammed and Khaled el-Masri in January 2004."); *ACLU Fact Sheet on "Air CIA,"* ACLU, https://www.aclu.org/other/aclu-fact-sheet-air-cia (last visited July 15, 2018) ("Publicly available records demonstrate that Jeppesen, based in San Jose, CA, facilitated more than 70 secret rendition flights over a four-year period to countries where it knew or reasonably should have known that detainees are routinely tortured or otherwise abused in contravention of universally accepted legal standards."); *id.* ("Among the 15 aircraft serviced by Jeppesen are a Gulfstream V aircraft formerly registered with the Federal Aviation Administration as N379P and a Boeing-737 aircraft formerly registered with the FAA as N313P. The ACLU lawsuit charges that Jeppesen provided essential flight and logistical services to these two aircraft for all of the CIA flights involving the rendition of terror suspects."); Weissman et al., Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, 16, para. 19 (Jan. 2012), http://www.law.unc.edu/documents/clinicalprograms/finalrenditionreportweb.pdf ("At least from 2001 to 2006, logistical support and flight planning for Aero's domestic and international flights was provided by Jeppesen Dataplan, Inc. ('Jeppesen').").

[140] See, *e.g.*, Jane Mayer, *The C.I.A's Travel Agent*, New Yorker (Oct. 30, 2006), https://www.newyorker.com/magazine/2006/10/30/the-c-i-a-s-travel-agent.

[141] First Amended Complaint & Demand for Jury Trial, *Mohamed et al.* v. *Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (JW) (N.D. Cal. Aug. 1, 2007), para. 18.

[142] S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, at 8.

[143] CIA Office of the Inspector General, Special Review: Counterterrorism Detention and Interrogation Activities CIA (Sept. 2001 – Oct. 2003), 17 (May 7, 2004), http://graphics8.nytimes.com/packages/pdf/politics/20090825-DETAIN/2004CIAIG.pdf (The report acknowledges that: "The current CTC Detention and Interrogation Program has been subject to DoJ legal review and Administration approval but diverges sharply from previous Agency policy and rules that govern interrogations by U.S. military and law enforcement officers. Officers are concerned that public revelation of the CTC Program will seriously damage Agency officers' personal reputations, as well as the reputation and effectiveness of the Agency itself.").

[144] *Id.* at 90.

[145] S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, at 444.

[146] Statement of Attorney Gen. Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees, News, Dep't or Justice Office of Public Affairs (Aug. 30, 2012), https://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-closure-investigation-interrogation-certain-detainees.

[147] S. Sel. Comm. on Intel., *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*.

[148] On October 9, 2007, the U.S. Supreme Court denied the ACLU's cert petition asking the Court to review the lower court's decision dismissing the lawsuit on the grounds of state secrets. *See generally El-Masri v. Tenet*, ACLU, (updated June 1, 2011), https://www.aclu.org/cases/el-masri-v-tenet.

[149] Complaint at para. 11, *Khaled El-Masri v. George J. Tenet, et al.*, 437 F. Supp. 2d 530 (E.D. Va. 2006) (No. 1:05-cv-01417-TSE-TR). *See also id.*, para. 33 ("Aviation documents show that a Boeing business jet owned by defendant PETS and operated by defendant ACL, then registered by the FAA as N313P").

[150] On May 16, 2011, the U.S. Supreme Court denied the ACLU's cert petition asking the Court to review the lower court's decision dismissing the lawsuit on the grounds of state secrets. *See generally Mohamed et al. v. Jeppesen Dataplan, Inc.*, ACLU, https://www.aclu.org/cases/mohamed-et-al-v-jeppesen-dataplan-inc.

[151] Complaint & Demand for Jury Trial, *Mohamed et al. v. Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (JW) (N.D. Cal. May. 7, 2007).

[152] Amended Complaint & Demand for Jury Trial, *Mohamed et al. v. Jeppesen Dataplan, Inc.*, No. 5:07-cv-02798 (JW) (N.D. Cal. Aug. 1, 2007).

[153] *ACLU Fact Sheet on "Air CIA,"* ACLU, https://www.aclu.org/other/aclu-fact-sheet-air-cia.

[154] Watt, *The Horrific Stories of CIA-sponsored Torture That Aren't in the Senate Report*, ACLU (Dec. 22, 2014).

[155] *See generally* Comm. on Legislative Affairs and Human Rights, Parliamentary Assembly of the Council of Eur., Timeline: The Council of Europe's Investigation into CIA Secret Prisons in Europe (24 June 2014), http://assembly.coe.int/nw/xml/News/News-View-en.asp?news-id=5722&lang=2.

[156] *See* Dick Marty, Comm. on Legislative Affairs and Human Rights, Parliamentary Assembly of the Council of Eur., Alleged Secret Detentions and Unlawful Inter-state Transfers Involving Council of Europe Member States 12 para. 39 (June 12, 2006), http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf.

[157] *Id.* at para. 51.

[158] Comm. on Legislative Affairs and Human Rights, Parliamentary Assembly of the Council of Eur., Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report (Nov. 6, 2007), Doc. 11302, http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=11555&lang=EN.

[159] *Id.* at. fn. 201.

[160] *See generally*, European Parliament/Legislative Observatory, *Procedure File*, http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=537045.

[161] Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, Eur. Parliament, Working Document No. 4, Doc. 617722EN 2 (June 1, 2006), http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dt/617/617722/617722en.pdf.

[162] *Id.*

[163] *Case of El-Masri v. The Former Yugoslav Republic of Macedonia*, Eur. Ct. H.R., (Dec. 13, 2012), App. No. 39630/09 (Dec. 13, 2012), ¶ 205.

[164] *Case of Husayn (Abu Zubaydah) v. Poland*, Eur. Ct. H.R., App. No. 7511/13 (July 24, 2015).

[165] *Case of Al Nashiri v. Poland*, Eur. Ct. H.R., App. No. 28761/11 (July 24, 2015).

[166] *Case of Zubaydah v. Lithuania*, Eur. Ct. H.R., App. No. 46454/11 (May 31, 2018).

[167] *Case of Al Nashiri v. Romania*, Eur. Ct. H.R., H.R., App. No. 33234/12 (May 31, 2018).

[168] *Id.* at para. 106.

[169] Petition alleging violations of the human rights of Khaled El-Masri by the United States of America with a request for an investigation and hearing on the Merits, Inter-Am. Comm'n H.R. (ser. B) (Apr. 9, 2008).

[170] Communication 383/10, *Mohammed Abdullah Saleh Al-Asad v. The Republic of Djibouti* (Dec. 10, 2009); Request for Review of the Commission's Decision (Dec. 2, 2014).

[171] Petition alleging violations of the human rights of Binyam Mohamed et al. by the United States of America with a request for an investigation and hearing on the Merits, Mohamed et al. v. United States, Inter-Am. Comm'n H.R. (ser. B) (Nov. 14, 2011).

[172] Mark Lander, *German Court Challenges C.I.A. Over Abduction,* N.Y. Times (Feb. 1, 2007). *See also* Bob Drogin & John Goetz, *'Ghost Pilots' of the CIA's Rendition Team: The Times Traces the Identities of Three Facing Kidnapping Charges in Germany Related to a 2003 Operation*, L.A. Times (Feb. 18, 2007), http://articles.latimes.com/2007/feb/18/world/fg-pilots18; *"Human Cargo": Binyam Mohamed and the Rendition Frequent Flier Programme*, Reprieve (June 2008), https://www.therenditionproject.org.uk/pdf/PDF%20100%20[Reprieve,%20Jun%202008.%20Human%20Cargo,%20report%20on%20Binyam].pdf.

[173] Statement of Jeremy Wright, Attorney General for England and Wales, to the House of Commons, Belhaj and Boudchar Litigation (May 10, 2018), https://hansard.parliament.uk/commons/2018-05-10/debates/B9AD50CD-9D54-41DA-A18B-1526E7658593/BelhajAndBoudcharLitigationUpdate.

## CHAPTER 2 · NORTH CAROLINA'S ROLE IN TORTURE · HOSTING AERO CONTRACTORS, LTD.

[200] Dr. Sam Raphael, Co-founder of the Rendition Project, *The Global CIA Rendition and Torture Program*, Witness Testimony to the N.C. Comm. of Inquiry on Torture, at para. 32 (Nov. 30, 2017), http://www.nctorturereport.org.

[201] *Id.*, at para. 18.

[202] See Weissman et al., Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, para. 38 (Jan. 2012), http://www.law.unc.edu/documents/clinicalprograms/finalrenditionreportweb.pdf; Stephen Grey, Ghost Plane: The True Story of the CIA Torture Program 28, 124-25 (2007); Trevor Paglen & A.C. Thompson, Torture Taxi 80-81 (2006).

[203] Scott Shane, Stephen Grey & Margot Williams, *C.I.A. Expanding Terror Battle Under Guise of Charter Flights*, N.Y. Times (May 31, 2005); *Kinston Regional Jetport*, N.C. Global Transpark, https://www.ncgtp.com/grow/Pages/jetport-sio.aspx

[204] Dr. Sam Raphael, *The Global CIA Rendition and Torture Program*, at para. 19.

[205] Shane, Grey & Williams, *C.I.A. Expanding Terror Battle Under Guise of Charter Flights*, N.Y. Times (May 31, 2005), https://www.nytimes.com/2005/05/05/31/us/cia-expanding-terror-battle-under-guise-of-charter-flights.html . *See also* N379P-N8068V-N44982, The Rendition Project, https://www.therenditionproject.org.uk/flights/aircraft/N379P.html (describing Aero Contractors as a "nominally independent company that worked exclusively for the CIA.").

[206] N.C. Dept. of the Sec'y of State, Aero Contractors Limited (Sept. 28, 1979), https://www.sosnc.gov/online_services/search/Business_Registration_Results.

[207] Weissman et al., Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at para. 25. *See also* Complaint at para. 11, *Khaled El-Masri v. George J. Tenet, et al.*, 437 F. Supp. 2d 530 (E.D. Va. 2006) (No. 1:05-cv-01417-TSE-TR) [hereinafter Complaint, *El-Masri*] ("Defendant Aero Contractors Limited ("ACL") is a corporation doing business in North Carolina, with corporate headquarters at Johnston County Airport, North Carolina.")

[208] N.C. Dept. of the Sec'y of State, Aero Contractors Limited (Sept. 28, 1979)

[209] Shane, Grey & Williams, *C.I.A. Expanding Terror Battle Under Guise of Charter Flights. See also* Joby Warrick, *Ten Years Later, CIA 'Rendition' Program Still Divides N.C. Town*, Wash. Post (Feb. 9, 2012), https://www.washingtonpost.com/world/national-security/ten-years-later-cia-rendition-program-still-divides-nc-town/2012/01/23/gIQAwrAU2Q_story.html?utm_term=.006d3abd67ea.

[210] *See further* Stephen Grey, Ghost Plane: The True Story of the CIA Torture Program 142–143 (2006).

[211] Shane et al., *C.I.A. Expanding Terror Battle Under Guise of Charter Flights*; *see also* Weissman et al., Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at para. 42.

[212] Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at para. 18.

[213] *Id.*

[214] *Id.* at para. 36.

[215] *See* Giovanni Claudio Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, Eur. Parliament, Working Document No. 4, Doc. 617722EN 2 (June 1, 2006), http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dt/617/617722/617722en.pdf.

[216] *See* Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at para. 42 (further noting that: "Four to six of these officials would be dressed all in black with their faces covered, and would prepare the individual for rendition in the method described below.").

[217] Grey, Ghost Plane: The True Story of the CIA Torture Program, at 125 (2006).

[218] *Id.*

[219] *Id.* at 28.

[220] Peggy Lim, *Book Ties Johnston Firm to CIA Activity*, News & Observer, Oct. 24, 2006, at B3 (citing Stephen Grey, Ghost Plane: The True Story of the CIA Torture Program).

[221] See Bob Drogin & John Goetz, *'Ghost Pilots' of the CIA's Rendition Team: The Times Traces the Identities of Three Facing Kidnapping Charges in Germany Related to a 2003 Operation*, L.A. Times (Feb. 18, 2007). "[F]light records show that Aero Contractors, based in Smithfield, N.C., operated the plane that carried Binyam Mohamed from Morocco to the Dark Prison, and Khalid El Masri from Macedonia to Afghanistan. The charter aircraft company has flown scores of missions for the CIA and has played a key support role in counter-terrorism operations since the Sept. 11 attacks, according to former agency officials." *Id. See generally* Reprieve, *"Human Cargo": Binyam Mohamed and the Rendition Frequent Flier Programme*, (2008), https://www.therenditionproject.org.uk/pdf/PDF%20100%20[Reprieve,%20Jun%202008.%20Human%20Cargo,%20report%20on%20Binyam].pdf. "Aero Contractors has been associated with the CIA by media in the US and Europe, and is believed to have been the employer of three of Binyam Mohamed's rendition crew." *Id. See also* Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at para. 33. "Numerous journalistic accounts have found that the names listed in flight manifests relating to extraordinary rendition flights and the capture and transfer of individuals for interrogation through torture were aliases of actual Aero pilots or employees." *Id. See also* Grey, Ghost Plane: The True Story of the CIA Torture Program, at 28; Mark Lander, *German Court Challenges C.I.A. Over Abduction*, N.Y. Times (Feb. 1, 2007).

[222] Dick Marty, Comm. on Legislative Affairs and Human Rights, Parliamentary Assembly of the Council of Eur., Alleged Secret Detentions and Unlawful Inter-state Transfers Involving Council of Europe Member States, para. 185 (June 12, 2006), http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf

[223] See Weissman et al., Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at para. 61–69.

[224] Shane et al., *C.I.A. Expanding Terror Battle Under Guise of Charter Flights*, N.Y. Times (May 31, 2005), https://www.nytimes.com/2005/05/31/us/cia-expanding-terror-battle-under-guise-of-charter-flights.html. "We've been doing business with the government for a long time, and one of the reasons is, we don't talk about it,' said Robert W. Blowers, Aero's assistant manager." *Id.*

[225] *Id.* "Aero's president, according to corporate records, is Norman Richardson, a North Carolina businessman who once ran a truck stop restaurant called Stormin' Norman's. Asked about his role with Aero, Richardson said only: 'Most of the work we do is for the government. It's on the basis that we can't say anything about it.'" *Id.*

[226] Mandy Locke, *Airport Linked to Covert Flights*, News & Observer, Mar. 9, 2005, at B1.

[227] *Id.*

[228] *See, e.g., The Corporate Network*, The Rendition Project (last visited July 15, 2018), http://www.therenditionproject.org.uk/flights/companies/index.html; Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners 4; Priest, *Jet is an Open Secret in Terror War*; Shane, Grey & Williams, *C.I.A. Expanding Terror Battle Under Guise of Charter Flights*; Amnesty Int'l, USA: Below the Radar: Secret flights to Torture and 'Disappearance' 23.

[229] Office of the Inspector General, Central Intelligence Agency, Report of Investigation on the Rendition and Detention of German Citizen Khalid Al-Masri 8 (2007), https://www.thetorturedatabase.org/files/foia_subsite/pdfs/cia_production_c06541725_report_of_investigation_the_rendition_and_detention_of_khalid_al-masri.pdf.

[230] Compliant *El-Masri Khaled El-Masri v. George J. Tenet*, 437 F. Supp. 2d 530 (E.D. Va. 2006) (No. 1:05-cv-01417-TSE-TR) ("ACL was contracted by defendant PETS to operate the above-mentioned Boeing business jet, and specifically to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan."); *id.* para 33 ("Aviation documents show that a Boeing business jet owned by defendant PETS and operated by defendant ACL, then registered by the FAA as N313P."); Amnesty Int'l, USA: Below the Radar: Secret flights to Torture and 'Disappearance' 23 ("Premier was the listed owner of only two planes: the Gulfstream jet most frequently identified with rendition operations, originally registered as N379P; and a Boeing 737, initially N313P, which appeared regularly in locations such as Afghanistan, Libya, Jordan, Baghdad, Germany and the UK, and which Amnesty International believes was used to render Khaled el-Masri from Macedonia to Afghanistan in January 2004."); Shane et al., *C.I.A. Expanding Terror Battle Under Guise of Charter Flights* (explaining that the aircraft on which Khaled el-Masri was rendered to the CIA was operated by Aero Contractors and owned by Premier Executive Transport Services, "one of the C.I.A.-linked shell companies"); Paglen & Thompson, Torture Taxi 13 (2006) (identifying PETS as the owner of N313P). Contractors and owned by Premier Executive Transport Services, "one of the C.I.A.-linked shell companies"); Paglen & Thompson, Torture Taxi, at 13 (identifying PETS as the owner of N313P).

[231] *See following* notes 244–50.

[232] See Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at paras 22; and Aero Contractors Limited lease with Johnston County Airport Authority, May 4, 2000.

[233] See Weissman et al., Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at para 72.

[234] N.C. Global Transpark, https://www.ncgtp.com/Pages/default.aspx#/ (last visited July 15, 2018).

[235] *Kinston Regional Jetport*, N.C. Global Transpark; *About Lenoir County,* Lenoir County, North Carolina, http://www.co.lenoir.nc.us/links.html/



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[237]*See* Long-term Premises Lease (Ground Lease) between N.C. Global TransPark Authority and Aero Contractors Ltd., Recitals (Jan. 15, 2004).
[238]Press Release, State of N.C., Office of the Governor, Easley Appoints Members to Global Transpark Authority Board Of Directors (Mar. 27, 2002), http://digital.ncdcr.gov/cdm/ref/collection/p16062coll5/id/1418 ("The Governor [Michael F. Easley] will serve as chair of the board."); Press Release, State of N.C., Glob. TransPark Auth., Commerce Overseas Corporation Moving to Global Transpark (Aug. 9, 2007), http://www.nceast.org/files/8513/9964/8548/GTPPressRelease1.pdf ("Michael F. Easley Governor and Chairman").
[239]N.C. Global Transpark, North Carolina Global TransPark Authority Development Highlights (last visited July 15, 2018), http://www.ncleg.net/documentsites/committees/JointAppropriationsTransportation/2011%20Session/2011-03-23%20Meeting/GTP%20Strategic%20Plan/Appendix%20B%20(1).
[240]*See* Long-term Premises Lease, at sections 3.1, 7.3 (Jan. 15, 2004); *see also* Peggy Lim, *Germany Wants Suspected CIA Team*, News & Observer, Feb. 1, 2007, at A1.
[241]Global TransPark leased about five acres to Aero Contractors. *See* Long-term Premises Lease (Ground Lease) between N.C. Global TransPark Authority and Aero Contractors Ltd., at Section 2.1.
[242]*See id.* at Exhibit B: Hangar Agreement with Specifications and Drawings.
[243]Weissman et al., Univ. of N.C. School of Law, The North Carolina Connection to Extraordinary Rendition and Torture, at 11 ("North Carolina extended credit to Aero for the construction of a hangar at the Global TransPark Authority in Kinston. Johnston County facilitated Aero's operations by providing permits for construction work and by conducting site safety inspections of Aero's premises.").
[244]Long-term Premises Lease (Ground Lease) between N.C. Global TransPark Authority and Aero Contractors Ltd., Exhibit B: Hangar Agreement with Specifications and Drawings, at Section 2.
[245]Clayton Hallmark, *What is Aero Contractors? Here's the Rundown*, St Louis Media Ctr (Nov. 19, 2005), (on file with authors).
[246]*Global TransPark Chronology*, N.C. Global Transpark, https://www.ncgtp.com/Pages/default.aspx#/, at 3.
[247]*See* Long-term Premises Lease (Ground Lease), at Section 3.1. See also Charlie Kraebel, *Controversial Charter Firm No Longer Flying From GTP*, The Free Press (Mar. 23, 2007), http://www.ncstn.org/PDF_Archives/Aero%20No%20Longer%20Flying%20from%20GTP.pdf ("As far as Aero's status with the GTP, the company hasn't made any rental payments from its own coffers since November 2004. Instead, the company is working through about $60,000 in credit Aero received for building a hangar in 2004 to house the Boeing business jet, GTP officials said."); Peggy Lim, *Coalition Wants Aero Investigated*, News & Observer, Mar. 22, 2007, at B1 ("But records obtained by The News & Observer show that Aero has made no rental payments from its own coffers to Global TransPark since November 2004. Instead, Aero is whittling through about $60,000 in credit the company received for building a hangar in 2004 to house the Boeing business jet.").
[248]Letter from Darlene A. Waddell, Exec. Director, Global TransPark Authority to Bryan Lasyone, Aero Contractors Limited (July 11, 2007) (received pursuant to public records request from NCCIT to North Carolina Global TransPark Authority on May 24, 2017); *see also*, Minutes of Executive Committee, GTPA Board, Oct. 12, 2007.
[249]FAA flight logs supplied to North Carolina Stop Torture Now (on file with author). During the period while they were employed for renditions, N379P and N313P visited the Charlotte, Elizabeth City, Fayetteville, Franklin County, Raleigh, and Wilmington airports on a total of at least 22 occasions. Other aircraft operated by Aero have used at least nine other public airports around the state.
[250]Shane et al., *C.I.A. Expanding Terror Battle Under Guise of Charter Flights*; *see also* Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners (there are "26 planes are registered to shell companies and sometimes supported by operating companies," among the "51 airplanes alleged to be used [by the CIA] in the extraordinary renditions."); Grey, Ghost Plane: The True Story of the CIA Torture Program 124 (2006).
[251]Raphael, *The Global CIA Rendition and Torture Program*, Witness Testimony to the N.C. Comm. of Inquiry on Torture, at para. 18.
[252]Matt Tinoco, *Want to Buy an Old CIA Rendition Jet?* Mother Jones (Apr. 5, 2017), http://www.motherjones.com/politics/2017/04/cia-rendition-plane-for-sale/.
[253]See John Crewdson, *Second Plane Suspected of CIA Flights*, Chicago Times (Sept. 13, 2006), http://articles.chicagotribune.com/2006-09-13/news/0609130189_1_plane-cia-landed.
[254]Complaint, *El-Masri*, at para. 11. *See also id.*, para. 33 ("Aviation documents show that a Boeing business jet owned by defendant PETS and operated by defendant ACL, then registered by the FAA as N313P.").
[255]*Id.* at para. 10.
[256]*N379P-N8068V-N44982*, The Rendition Project.
[257]Dana Priest, *Jet is an Open Secret in Terror War*, Wash. Post. Dec. 27, 2004, at A01
[258]*See Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, 12 June 2006, Doc. 10957 (2006) para. 151 (also identifying N379P as the rendition aircraft for Ahmed Agiza and Mohammed Alzery (El Zari, El-Zery)); *Temporary Committee on the Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners*, Eur. Parl. Doc. 617722EN, at 7 ("Gulfstream V N379P-N8068V-N44982 · Owned by Premier Executive (the main CIA shell company). The registration of this aircraft has been changed three times to make it untraceable . . . The most frequent destinations outside Europe were: Uzbekistan, Egypt, Jordan, United Arab Emirates, Pakistan, Morocco, Georgia, Afghanistan, Gambia, Algeria, Lebanon, Azerbaijan, Libya and Guantánamo."); Grey, Ghost Plane: The True Story of the CIA Torture Program, at 117–118; Paglen & Thompson, Torture Taxi, at 80–81.
[259]Priest, *Jet is an Open Secret in Terror War*.
[260]Dr. Sam Raphael, *The Global CIA Rendition and Torture Program*.
[261]*Id.* at para. 23.
[262]*Id.* at para. 26.
[263]*Id.*, at para. 24.
[264]*Id.* at para. 28.
[265]*Id.*, at para. 25.
[266]North Carolina Stop Torture Now submission (on file with author).
[267]Raphael, *The Global CIA Rendition and Torture Program*, Appendix B.
[268]*Aircraft Profile: N313P-N4476S*, The Rendition Project, *https://www.therenditionproject.org.uk/flights/aircraft/N313P.html*.
[269]*Id.*; *Rendition Circuit: 20-25 September 2003, Rendition of 'High-Value Detainees' between Afghanistan, Poland, Romania, Morocco and Guantánamo Bay,* The Rendition Project, https://www.therenditionproject.org.uk/flights/renditions/N313P-030920.html (last visited July 15, 2018).
[270]*Aircraft Profile: N313P-N4476S; Rendition Circuit: 5-10 January 2004, Rendition of Hassan bin Attash and Ali al-Hajj al-Sharqawi from Jordan to Afghanistan*, The Rendition Project, https://www.therenditionproject.org.uk/flights/renditions/N313P-040105.html (last visited July 15, 2018).
[271]*Aircraft Profile: N313P-N4476S*, The Rendition Project, *https://www.therenditionproject.org.uk/flights/aircraft/N313P.html*; *Rendition Circuit: 15-28 January 2004, Multiple Renditions of Binyam Mohamed (Morocco to Afghanistan) and Khaled el-Masri (Macedonia to Afghanistan),* The Rendition Project, https://www.therenditionproject.org.uk/flights/renditions/N313P-040115.html (last visited July 15, 2018).
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[273]Raphael, *The Global CIA Rendition and Torture Program*, Appendix B.
[274]*N379P-N8068V-N44982*, The Rendition Project
[275]*Id.*; *Rendition Circuit: 18-20 December 2001, Rendition of Mohamed el-Zery and Ahmed Agiza, Sweden to Egypt*, The Rendition Project, https://www.therenditionproject.org.uk/flights/renditions/N379P-011218.html (last visited July 15, 2018).
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[283]*N379P-N8068V-N44982; Rendition Circuit: 8-17 December 2002, Rendition of Bisher al-Rawi and Jamil el-Banna, The Gambia to Afghanistan (via Egypt),* The Rendition Project, https://www.therenditionproject.org.uk/flights/renditions/N379P-021208.html (last visited July 15, 2018).
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## CHAPTER 3 · OTHER NORTH CAROLINA CONNECTIONS TO POST-9/11 U.S. TORTURE

[300]U.S. SENATE COMMITTEE ON ARMED SERVICES, *Inquiry into the Treatment of Detainees in U.S.A. Custody*, https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf.
[301]Eric Schmitt and Carolyn Marshall, *In secret unit's 'black room,' a grim portrait of U.S. abuse*, NEW YORK TIMES (Mar. 19, 2006), https://www.nytimes.com/2006/03/19/world/middleeast/In-secret-units-black-room-a-grim-portrait-of-us-abuse.html.
[302]Blackwater was founded by Erik Prince in 1997, and was renamed Xe in 2009 and then Academi in 2011. Prince reportedly became a CIA asset in 2004 (Adam Ciralsky, *Tycoon, Contractor, Soldier, Spy*, VANITY FAIR (Jan, 2010), https://www.vanityfair.com/news/2010/01/blackwater-201001) and worked with the CIA on a secret post-9/11 assassination program (Ciralsky; also Jeremy Scahill, *Notorious Mercenary Erik Prince is Advising Trump from the Shadows*, THE INTERCEPT ( Jan. 17, 2107), https://theintercept.com/2017/01/17/notorious-mercenary-erik-prince-is-advising-trump-from-the-shadows/). In 2010, Prince sold Blackwater/Xe, and he is now chairman of a Hong Kong-based but Africa-focused security, aviation, and logistics company called Frontier Services Group. Reportedly, the Trump Administration is considering proposals developed by Prince and a retired CIA officer to create a global, private spy network and a new global rendition unit (Matthew Cole and Jeremy Scahill, *Trump White House Weighing Plans for Private Spies to Counter 'Deep State' Enemies*, THE INTERCEPT (Dec. 4, 2017), https://theintercept.com/2017/12/04/trump-white-house-weighing-plans-for-private-spies-to-counter-deep-state-enemies).
[303]James Risen and Mark Mazzetti, *Blackwater Guards Tied to Secret Raids by CIA*, NEW YORK TIMES (Dec. 11, 2009), https://www.nytimes.com/2009/12/11/us/politics/11blackwater.html.





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[305]Jeremy Scahill, *Blackwater: CIA Assassins?*, THE NATION (Aug. 31, 2009), https://www.thenation.com/article/blackwater-cia-assassins/; also Ciralsky, *Tycoon, Contractor, Soldier, Spy*, VANITY FAIR.
[306]U.S. SEN. COMM. ON ARMED SERVICES, *Inquiry into the Treatment of Detainees in U.S.A. Custody*, 39–49. The Guantánamo Bay detention camp is operated by the multi-service Joint Task Force Guantánamo under U.S. Southern Command. In the relevant period, Abu Ghraib was operated by the U.S. Army. Major General Geoffrey Miller, who commanded the Guantánamo Bay detention camp in 2002 and 2003, also served as a key link between that facility and Abu Ghraib, and abusive techniques were used against prisoners in Abu Ghraib "shortly after Miller and a team of experts visited in 2003 to help obtain more information during interrogations" (Josh White, *General Who Ran Guantánamo Bay Retires*, WASH. POST (Aug 1, 2006), http://www.washingtonpost.com/wp-dyn/content/article/2006/07/31/AR2006073101183.html). U.S. military detention operations at Bagram Air Base in Afghanistan during that period were run by the U.S. Army, although there was reportedly also a black site inside Bagram operated by the U.S. Defense Intelligence Agency and U.S. Special Operations Forces. *See, e.g.*, Marc Ambinder, *Inside the Secret Interrogation Facility at Bagram*, THE ATLANTIC (May 14, 2010), https://www.theatlantic.com/politics/archive/2010/05/inside-the-secret-interrogation-facility-at-bagram/56678/ and Alisa J. Rubin, *Afghans Detail Detention in 'Black Jail' at U.S. Base*, NEW YORK TIMES (Nov. 28, 2009), https://www.nytimes.com/2009/11/29/world/asia/29bagram.html.
[307]U.S. SEN. COMM. ON ARMED SERVICES, *Inquiry into the Treatment of Detainees in U.S.A. Custody*, xiii.
[308]*Id.*, at 40, 43.
[309]*NCCIT Remarks* (Dec. 1, 2017) (Mark Fallon, former NCIS Special Agent), http://www.ncci.org/witnesstestimony/.
[310]U.S. SEN. COMM. ON ARMED SERVICES, *Inquiry into the Treatment of Detainees in U.S.A. Custody*, at 45–47.
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[312]*Id. See also Health Professionals Abet Torture: Testimony to the North Carolina Commission of Inquiry on Torture* (Nov. 31, 2017) (Dr. Stephen Soldz, Director, Social Justice and Human Rights Program, Boston Graduate School of Psychoanalysis), http://www.nccit.org/witnesstestimony/.
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[314]Schmitt and Marshall, *In secret unit's 'black room,' a grim portrait of U.S. abuse*, NEW YORK TIMES.
[315]HUMAN RIGHTS WATCH, NO BLOOD, NO FOUL (2006), https://www.hrw.org/report/2006/07/22/no-blood-no-foul/soldiers-accounts-detainee-abuse-iraq, 8.
[316]Ian Cobain, *Camp Nama: British personnel reveal horrors of secret U.S. base in Baghdad*, GUARDIAN (Apr. 1, 2013), https://www.theguardian.com/world/2013/apr/01/camp-nama-iraq-human-rights-abuses.
[317]Schmitt and Marshall, *In secret unit's 'black room,' a grim portrait of U.S. abuse*.
[318]Spencer Ackerman, *How the Pentagon's Top Killers Became (Unaccountable) Spies*, WIRED (Feb. 13, 2012), https://www.wired.com/2012/02/jsoc-ambinder/.
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[321]Ian Cobain, *Camp Nama: British personnel reveal horrors of secret U.S. base in Baghdad*, GUARDIAN (Apr. 1, 2013), https://www.theguardian.com/world/2013/apr/01/camp-nama-iraq-human-rights-abuses.
[322]Schmitt and Marshall, *In secret unit's 'black room,' a grim portrait of U.S. abuse*.
[323]DAVID HOFFMAN ET AL., INDEPENDENT REVIEW RELATING TO APA ETHICS GUIDELINES, NATIONAL SECURITY INTERROGATIONS, AND TORTURE (July 2, 2015), at 12, https://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf.
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[325]ARMY INSPECTOR GENERAL, DETAINEE OPERATIONS INSPECTION (July 21, 2004), http://hrlibrary.umn.edu/OathBetrayed/Mikolashek%20Report.pdf.
[326]Stephen Soldz and Steven Reisner, *Attacks on Hoffman Report from Military Psychologists Obfuscate Detainee Abuse: A Rebuttal to Banks et al. and APA's Division 19 Task Force* * January 2016), http://www.ethicalpsychology.org/materials/Rebuttal-to-Hoffman-Report-Critics.pdf.

## CHAPTER 4 · WHO WERE THOSE RENDERED BY AERO CONTRACTORS?

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[401]*Id.*, at 258, 145, 550. See also, Saifullah Paracha, Reprieve, https://reprieve.org.uk/case-study/saifullah-paracha/.
[402]*Id.*
[403]NCCIT Detainee Spreadsheet. https://docs.google.com/spreadsheets/d/1eZGp1u2K-wSunlxa4WMyoRwkt6gvvxj92FUQrawMJCgE/edit#gid=965798575.
[404]Dr. Sam Raphael, Co-Founder of the Rendition Project, *The Global CIA Rendition and Torture Program*, Witness Testimony to the N.C. Comm. of Inquiry on Torture (Nov. 30, 2017), http://www.nctorturereport.org.
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## CHAPTER 5 · RENDITION AS TORTURE

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## CHAPTER 6 · ONGOING CHALLENGES FOR SURVIVORS

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## CHAPTER 7 · COSTS AND CONSEQUENCES OF THE CIA'S TORTURE AND RENDITION PROGRAM

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## CHAPTER 8 · NORTH CAROLINA PUBLIC OPPOSITION TO THE RDI PROGRAM, AND OFFICIALS' RESPONSES

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[852]Nash Dunn, *Following Senate report, Johnston leaders tout reported CIA contractor as 'good corporate citizen,* News & Observer (Dec. 27, 2014), http://www.newsobserver.com/news/local/counties/johnston-county/article10205018.html.

[853]*See* Letter from Catherine Read, Exec. Dir., NCCIT, On Behalf of the Comm'rs of the Comm'n to Hon. Josh Stein, N.C. Att'y Gen. (May 24, 2017) (on file with author); Letter from Catherine Read, Exec. Dir., NCCIT, On Behalf of the Comm'rs of the Comm'n to Hon. Susan Doyle, District Att'y, Judicial District 11B (May 24, 2017) (on file with author); Letter from Catherine Read, Exec. Dir., NCCIT, On Behalf of the Comm'rs of the Comm'n to Johnston C'ty Airport Auth. (May 22, 2017) (on file with author); Letter from Catherine Read, Exec. Dir., NCCIT, On Behalf of the Comm'rs of the Comm'n to County Comm'n of Johnston C'ty (May 22, 2017) (on file with author); Letter from Catherine Read, Exec. Dir., NCCIT, On Behalf of the Comm'rs of the Comm'n to N.C. Global TransPark Auth. (May 24, 2017) (on file with author); Letter from Catherine Read, Exec. Dir., NCCIT, On Behalf of the Comm'rs of the Comm'n to Hon. Roy Cooper, Governor of N.C. (May 24, 2017) (on file with author); Letter from Catherine Read, Exec. Dir., NCCIT, On Behalf of the Comm'rs of the Comm'n to Hon. Steve Bizzell, Sheriff of Johnston C'ty (May 22, 2017) (on file with author).

[854]*See* Letter and accompanying documents from Sophia Campbell, Pub. Records Manager, N.C. Dep't of Transp. to Catherine Read, Exec. Dir., NCCIT (July 6, 2017) (on file with author); Letter and accompanying documents from Sophia Campbell, Pub. Records Manager, N.C. Dep't. of Transp. to Catherine Read, Exec. Dir., NCCIT (Dec. 20, 2017) (on file with author); Letter and accompanying documents from Philip Lanier, Airport Dir., Johnston C'ty Reg'l Airport, to Catherine Read, Exec. Dir., NCCIT (Feb. 8, 2018) (on file with author).

[855]Email from Paula G. Woodard, Clerk to the Bd., Johnston C'ty to "Ms. Read," Exec. Dir., NCCIT (Aug. 1, [2017]) (on file with author).

[856]Letter from Susan I. Doyle, Johnston C'ty Dist. Att'y to Catherine Read, Exec. Dir., NCCIT (June 12, 2017) (on file with author).

[857]Email from Charles Epstein, Pub. Records, to Catherine Read, Exec. Dir., NCCIT (Feb. 19, 2018) (on file with author); Follow-up email from Christina Cowger, NCSTN, to Charles Epstein, Pub. Records (Apr. 18, 2018) (on file with author); Email from Charles Epstein, Pub. Records, to Christina Cowger, NCSTN (Apr. 18, 2018) (on file with author) (stating he "will go through . . . records and look into it").

[858]Letter from Chair-Rapporteur of the Working Grp. on Arbitrary Detention Seong-Phil Hong, Indep. Expert on the promotion of a democratic and equitable international order Alfred De Zayas, Chair-Rapporteur of the Working Grp. on Enforced or Involuntary Disappearances Ariel Dulitzky, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health Dainius Pūras, Special Rapporteur on the independence of judges and lawyers Gabriela Knaul, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Ben Emmerson, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Juan E. Méndez, & Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence Pablo De Grieff (June. 3, 2015) (on file with author).

[859]Letter from Keith M. Harper to Chair-Rapporteur of the Working Grp. on Arbitrary Detention Seong-Phil Hong, Indep. Expert on the promotion of a democratic and equitable international order Alfred De Zayas, Chair-Rapporteur of the Working Grp. on Enforced or Involuntary Disappearances Ariel Dulitzky, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health Dainius Pūras, Special Rapporteur on the independence of judges and lawyers Gabriela Knaul, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Ben Emmerson, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Juan E. Méndez, & Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence Pablo De Grieff (June. 3, 2015) (on file with author).

[860]Email from Jennifer Russo, Marketing and Commc'ns Manager, N.C. Global TransPark Auth., to Darlene Waddell, Exec. Dir., N.C. Global TransPark Auth. and Sharon Acree, Legal Couns. (June 5-6, 2007) (on file with author).

[861]*NCSTN Chronology. See also Group Wants Business Kicked Out of Kinston Industrial Park*, WRAL (May 2, 2006), http://www.wral.com/news/local/story/157670/; Caison & McIntyre, *Torture and N.C. Culpability*.

[862]*See NCSTN Chronology.*

[863]Information provided by NCSTN (Aug. 7, 2017) (on file with author).

[864]Press Release, State of N.C., Off. of the Governor (Mar. 27, 2002), http://digital.ncdcr.gov/cdm/ref/collection/p16062coll5/id/1418 ("The Governor [Michael F. Easley] will serve as chair of the board."). *See also* Press Release, State of N.C., Glob. TransPark Auth. (Aug. 9, 2007), http://www.nceast.org/files/8513/9964/8548/GTPPressRelease1.pdf.

[865]*See NCSTN Chronology. See also* Barbara Koeppel, *Aero's Cloaks and Daggers,* Consortium News (Aug. 26, 2006), http://www.consortiumnews.com/2006/082506a.html.

[866]*NCSTN Chronology.*

[867]*Id. See also* Letter from Rep. Luebke, et al., Members, H.R., to Robin Pendergraft, Dir. of the State Bureau of Investigation (Oct. 2, 2006), http://www.ncstn.org/PDF_Archives/GA2_PENDERGRAFT(SBI%20DIRECTOR)_20061002.pdf; Letter from seventeen State Reps. and five State Sens. to Roy Cooper, Att'y Gen. of N.C. (Jan. 18, 2007) (on file with author).

[868]*See* Letter from Robin Pendergraft, Dir. of the State Bureau of Investigation, to Rep. Luebke, Member, H.R. (Oct. 17, 2006), http://www.ncstn.org/PDF_Archives/Pendergraft_Response_20061017.pdf. *See also NCSTN Chronology.*

[869]NCSTN Chronology. *See also* Letter from Rep. Leubke et al., Members, H.R. and Senate, to Roy Cooper, N.C. Att'y Gen., Dep't of Justice (Jan. 18, 2007), http://www.ncstn.org/PDF_Archives/GA2COOPER%20AERO%20FINAL%20VERSION.pdf.

[870]Letter from J.B. Kelly, Gen. Couns., N.C. Att'y Gen. Off., to Rep. Luebke, Member, H.R. (Mar. 20, 2007), http://www.ncstn.org/PDF_Archives/CooperResponse20070320.pdf. *See also NCSTN Chronology.*

[871]*See Federal Bureau of Investigation (Part II): Hearing Before the H. Comm. on the Judiciary,* 110th Cong. (2008) (statement of Rep. Watt, Member, H. Comm. on the Judiciary), https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg41904/html/CHRG-110hhrg41904.htm. *See also NCSTN Chronology.*

[872]Letter from Richard Powers, FBI Assistant Dir., Off. of Cong. Affairs, to Rep. Watt, Member, H. Comm. on the Judiciary (May 1, 2008), http://www.ncstn.org/PDF_Archives/FBI_ResponseToWatt.pdf. *See also NCSTN Chronology.*

[873]Letter from Rep. Harrison, Rep. Jones, and Rep. Luebke to Rep. Butterfield, Rep. Miller, Rep. Price, and Rep. Watts (March 10, 2009), https://drive.google.com/drive/folders/1t-LO7iy2sQ51Zj3BN67BhcqBgk7EXTZtA.

[874]*See* Information provided by NCSTN (Aug. 7, 2017) (on file with author). In 2002, Aero-operated N379P transported Abou Elkassim Britel from Pakistan to Morocco, with the plane departing from and returning to Johnston County Airport, N.C. *See Rendition Circuit: 22-26 May 2002, Rendition of Abou Elkassim Britel, Pakistan to Morocco,* The Rendition Project, https://www.therenditionproject.org.uk/flights/renditions/N379P-020522.html (last visited June 30, 2018).

[875]Information provided by NCSTN (Aug. 7, 2017) (on file with author).

[876]*See* No Place for Torture Act, H.B. 1682, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007), http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?BillID=H1682&Session=2007; *see also* Crimes of Torture and Enforced Disappearance, H.B. 2417, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007), http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=HB+2417&submitButton=Go.

[877]Verla C. Insko, Democratic Whip, N.C. H.R., testimony before NCCIT public hearings (Dec. 1, 2017).

[878]H.B. 1682, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007).

[879]*See NCSTN Chronology.*

[880]H.B. 1682, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007).

[881]*NCSTN Chronology.*

[882]*NCSTN Chronology*; H.B. 2417, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007). The bill was entitled "Crimes of Torture and Enforced Disappearance," filed in the N.C. Gen. Assemb. on May 21, 2008, and re-referred to the Comm. on Appropriations on June 19, 2008.

[883]H.B. 2417, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007).

[884]Verla C. Insko, Democratic Whip, N.C. H.R., NCCIT testimony (Dec. 1, 2017), https://www.youtube.com/watch?v=3qERpulS6cc.

[885]*NCSTN Chronology. See also* Peggy Lim, *14 Aero Protestors Found Guilty.*

[886]Flyer, NCSTN, Human Rights Supporters Needed to Deliver Warrants to Aero Contractors for the CIA's Torture Flights (for event on April 9, 2007) (on file with author). Citizens' Warrant for Arrest, NCSTN, On behalf of the Citizens of N.C., the U.S., and Ger., Plaintiffs, v. Aero Contractors Ltd., Alias Capt. James Fairing, Alias Eric Matthew Fain, Alias Kirk James Bird, Defendants. In the U.S. Citizens' Ct. N.C. (on file).

[887]*See NCSTN Chronology.*

[888]Information provided by NCSTN (Aug. 4, 2017) (on file with author).

[889]Records obtained through public records request from NCDOJ, on file with NCCIT.

[890]*See* Frank Goldsmith, *Seeking Accountability for Torture*, Trial Briefs 28-30 (October 2017), http://www.ncaj.com/docDownload/825628

[891]*See* Email from Julia White, Att'y Gen. Roy Cooper's Senior Pol'y Advisor, to N.C. Dep't of Just. colleagues (June 18, 2008) (on file with author). In reference to the anti-torture bill: "Also, as far as I know our office did not have input into the language of the bill (though in an unrelated bill the AG has requested the ability of state prosecutors to convene investigative grand juries for public corruption and child predators)." *Id.*

[892]Goldsmith, *Seeking Accountability for Torture* 28.

[893]Presentation by NC SBI on "Public Official Misconduct Investigations" (April 7, 2014), https://www.ncleg.net/documentsites/committees/BCCI-6619/04-07-14/DOJ%20SBI%20Special%20and%20Financial%20Crime%20Investigations%204%202014%20comm.pdf.

[894]Draft letter from J. B. Kelly to concerned state legislators obtained via public records request (January 18, 2007) ("Specifically the use of investigative grand juries, if permitted by the Legislature would be critical in ferreting out corruption and other illegal acts by government employees and contractors. If government contractors are engaged in illegal activities in North Carolina, we are prepared to assist the appropriate law enforcement agencies in investigating those matters and seeking justice. And we encourage you to ensure the state law enforcement agencies have the tools and resources to investigate and prosecute complex and often multi-jurisdictional crimes").

[895]*NC Attorney General seeks new tools to fight public corruption*, WBTV (2013), http://www.wbtv.com/story/20670438/ag-cooper-seeks-new-tools-to-fight-public-corruption.

[896]*See* Presentation by N.C. State Bureau of Investigation on "Public Official Misconduct Investigations" (April 7, 2014), https://www.ncleg.net/documentsites/committees/BCCI-6619/04-07-14/DOJ%20SBI%20Special%20and%20Financial%20Crime%20Investigations%204%202014%20comm.pdf.



# ENDNOTES

## CHAPTER 9 · NORTH CAROLINA'S OBLIGATIONS UNDER DOMESTIC AND INTERNATIONAL LAW, THE BASIS FOR FEDERAL AND STATE INVESTIGATION AND THE NEED FOR ACCOUNTABILITY

[900]Memorandum from Jay S. Bybee, Assistant Att'y Gen., OLC, U.S. Dep't of Justice, to Alberto R. Gonzales, Counsel to the President, Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A 1 (Aug. 1, 2002), http://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-gonzales-aug2002.pdf ("Bybee I Memo"); Memorandum from Jay S. Bybee, Assistant Att'y Gen., OLC, U.S. Dep't of Justice, to John Rizzo, Acting General Counsel of the CIA, Interrogation of al Qaeda Operative (Aug. 1, 2002), http://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-bybee2002.pdf ("Bybee II Memo"). *See also* Human Rights Watch, No More Excuses: A Roadmap to Justice for CIA Torture (Dec. 1, 2015), https://www.hrw.org/report/2015/12/01/no-more-excuses/roadmap-justice-cia-torture.

[901]*See, e.g.*, Memorandum from Jay S. Bybee, Assistant Att'y Gen., OLC, U.S. Dep't of Justice, to Alberto R. Gonzales, Counsel to the President, and William J. Haynes II, General Counsel of the Department of Defense (Jan. 22, 2002), https://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/memo-laws-taliban-detainees.pdf.

[902]Bybee I Memo, at 1.

[903]Approved techniques for Abu Zubaydah included waterboarding, the attention grasp, walling, the facial hold, the facial slap, cramped confinement, wall standing, stress positions, sleep deprivations, use of diapers, and use of insects (Bybee II Memo); *see also* Senate Report, at 36–37 (citing "Email, subject: EYESONLY- Where we stand re: Abu Zubaydah; date: July 26, 2002").

[904]Adam Liptak, *The Reach of War: Penal Law; Legal Scholars Criticize Memos on Torture*, N.Y. Times, (June 25, 2004), https://www.nytimes.com/2004/06/25/world/the-reach-of-war-penal-law-legal-scholars-criticize-memos-on-torture.html.

[905]Johnny Dwyer, *Bush Torture Memo Slapped Down by Court*, Time (Nov. 3, 2008), http://content.time.com/time/nation/article/0,8599,1855910,00.html.

[906]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*, Department of Justice (2009), available at https://www.aclu.org/files/pdfs/natsec/opr20100219/20090729_OPR_Final_Report_with_20100719_declassifications.pdf; *see also* Marc Ambinder, *'Poor Judgment' – Yoo, Bybee, and the Torture Memos*, Atlantic (Feb. 19, 2010), https://www.theatlantic.com/politics/archive/2010/02/-poor-judgment-yoo-bybee-and-the-torture-memos/36276/.

[907]*See, e.g.*, Memorandum from Central Intelligence Agency to Daniel Levin, Acting Assistant Att'y Gen., OLC, U.S. Dep't of Justice (Dec. 30, 2004), https://www.thetorturedatabase.org/document/fax-cia-olc-providing-generic-description-cias-combined-use-various-interrogation-technique.

[908]Exec. Order 13491, 3 C.F.R. 199 (2010).

[909]Prof. Jayne Huckerby, Clinical Professor of Law & Director, Duke Law International Human Rights Clinic, *Applying International Law to U.S. Torture and NC's Role*, Witness Testimony to the N.C. Comm. of Inquiry on Torture (Dec. 1, 2017), http://www.nctorturereport.org.

[910]The United States ratified the ICCPR in 1992. Status Of Ratification Interactive Dashboard, *United Nations Office of the High Commissioner for Human Rights*, http://indicators.ohchr.org/ (last accessed on July 15, 2018).

[911]The United States ratified the CAT in 1994. *Id.*

[912]Prof. Deborah Weissman et al., Univ. of N.C. School of Law: Human Rights Policy Lab, Understanding Accountability for Torture: The Domestic Enforcement of International Human Rights Treaties (2016– 2017), http://www.law.unc.edu/documents/academics/humanrights/understanding-accountability-for-torture.pdf. *See also* Professor Jayne Huckerby, *Applying International Law to U.S. Torture and NC's Role*, Witness Testimony to the N.C. Comm. of Inquiry on Torture.

[913]U.S. Human Rights Council, *Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee*, ¶ 21, A/HRC/30/49 (Aug. 7, 2015).

[914]138 Cong. Rec. S4781-01 ("[T]he United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing."); Cong. Rec. S17486-01 ("[T]he United States declares that the provisions of Articles 1 through 16 of the Convention are not self-executing.").

[915]Prof. Jayne Huckerby, *Applying International Law to U.S. Torture and NC's Role*, Witness Testimony to the N.C. Comm. of Inquiry on Torture. *See also* Restatement (Fourth) of Foreign Relations (Am. Law Inst., Tentative Draft No. 2, March 20, 2017) § 110(1) ("Whether a treaty provision is self-executing concerns how the provision is implemented domestically and does not affect the obligation of the United States to comply with it under international law."); Restatement (Fourth) of Foreign Relations (Am. Law Inst., Tentative Draft No. 1, March 22, 2016) § 101(3) ("These limitations [including the self-execution doctrine] concern only the domestic enforcement of treaties and do not limit the extent to which the treaties are binding on the United States under international law.").

[916]*See also* U.S. reservations, declarations, and understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990), http://hrlibrary.umn.edu/usdocs/tortres.html; U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992), http://hrlibrary.umn.edu/usdocs/civilres.html).

[917]See U.N. Human Rights Comm., U.N. Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Addendum: United States of America, ¶ 4, HRI/CORE/1/Add.49 (July 29, 1994) ("This provision [federalism understanding] is not a reservation and does not modify or limit the international obligations of the United States under the Covenant."); U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Addendum: United States of America, ¶ 20, CAT/C/28/Add.5 (Feb. 9, 2000) ("[T]he "federalism" understanding does not detract from or limit the substantive obligations of the United States under the Convention."); U.N. Comm. on Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Addendum: United States of America, ¶ 167, CERD/C/351/Add.1 (Oct. 10, 2000) ("It is important to stress that this [federalism] understanding is not a reservation. It does not condition or limit the international obligations of the United States.").

[918]U.N. Committee Against Torture, *U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Addendum: United States of America*, ¶ 20, CAT/C/28/Add.5 (Feb. 9, 2000).

[919]*See, e.g.*, United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2(2), opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987; Committee against Torture, UN Doc. No. CAT/C/XXVII/Misc.7, Nov. 22, 200. *See also* Committee Against Torture U.N. Doc. No. A/52/44, ¶ 258 (1997) ("[A] State party to the Convention [against Torture] . . . is precluded from raising before [the] Committee [against Torture] exceptional circumstances as justification for acts prohibited by article I of the Convention. This is plainly expressed in article 2 of the Convention."); Committee Against Torture, U.N. Doc. No. A/51/44, paras.180-222 (1997), Inquiry under Article 20 (same).

[920]*See, e.g.*, U.N. Human Rights Comm., General Comment No. 20, *Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* HRI/GEN/1/Rev.9 (Vol. I) ¶ 9 (Mar. 10, 1992).

[921]*See, e.g.*, International Convention for the Protection of All Persons from Enforced Disappearance, art. 1(2), Dec. 23, 2010, 2716 U.N.T.S. 3; Declaration on the Protection of All Persons from Enforced Disappearance G.A. Res. 47/133, art. 7, Dec. 18, 1992.

[922]*See, e.g.*, U.N. Human Rights Comm., General Comment No. 31, *Nature of the General Legal Obligation on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 ¶ 10 (2004); U.N. Comm. Against Torture, General Comment No. 2, *Implementation of Article 2 by States Parties*, CAT/C/GC/2 ¶¶ 7, 16 (2008); *Case Concerning Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), I.C.J. Reports 2005, p. 168, at ¶¶ 216–217.

[923]Prof. Jayne Huckerby, *Applying International Law to U.S. Torture and NC's Role*.

[924]*See, e.g.*, U.N. Human Rights Comm., General Comment No. 31, ¶ 11.

[925]Reply of the Government of the United States of America to the Report of the Five UNCHR Special Rapporteurs on Detainees in Guantánamo Bay, Cuba, 22 (Mar. 10, 2006), https://www.state.gov/documents/organization/98969.pdf.

[926]Prof. Jayne Huckerby, *Applying International Law to U.S. Torture and NC's Role*.

[927]*Id.*

[928]Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.

[929]Prof. Jayne Huckerby, *Applying International Law to U.S. Torture and NC's Role*.

[930]*Id.*

[931]*Id.*

[932]*See* International Covenant on Civil and Political Rights (ICCPR), art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.

("[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.").

[933]*See, e.g.*, U.N. Comm. Against Torture, General Comment No. 2, ¶ 1 ("the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law.").

[934]Prof. Jayne Huckerby, *Applying International Law to U.S. Torture and NC's Role*.

[935]U.N. Comm. Against Torture, General Comment No. 2.

[936]Cong. Rec. S4781-01.

[937]Cong. Rec. S17486-01 ("[T]he United States considers itself bound by the obligation under Article 16 to prevent 'cruel, inhuman or degrading treatment or punishment,' only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.").

[938]Cong. Rec. S17486-01.

[939]*See, e.g.*, Memorandum from Central Intelligence Agency to Daniel Levin, Acting Assistant Att'y Gen.

[940]Senate Report, *Findings and Conclusions*, at 4.

[941]*Id.*

[942]*Id.* at 3.

[943]*Id.* at 4.

[944]*Id.*

[945]*Id.*

[946]U.N. Comm. Against Torture, *Conclusions and recommendations of the Committee against Torture: United States*, ¶ 24 CAT/C/USA/CO/2 (July 25, 2006). See also U.N. Comm. Against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶ 11, CAT/C/USA/CO/3-5 (Dec. 16, 2014), where "the U.N. again "expresse[d] grave concern over the extraordinary rendition, secret detention and interrogation programme operated by the United States Central Intelligence Agency (CIA) between 2001 and 2008, which comprised numerous human rights violations, including torture, ill-treatment and enforced disappearance of persons suspected of involvement in terrorism-related crimes."

[947]*Case of Al Nashiri v. Poland*, Eur. Ct. H.R., App. No. 28761/11 (July 24, 2015), ¶ 514.

[948]*Id.* at ¶ 515.

[949]*Id.* at ¶ 516. Similarly, in the *Case of Husayn (Abu Zubaydah) v. Poland*, Eur. Ct. H.R., App. no. 7511/13 (July 24, 2014), ¶511 (holding "it is immaterial whether in Poland the applicant was interrogated or 'only' debriefed as both procedures served the same purpose, the only difference being that the former had recourse to physically aggressive methods and the latter to the relatively lesser physical abuse combined with psychological pressure. In any event, both caused deep fear, anxiety and distress arising from the past experience of inhuman and degrading treatment in the hands of the interrogators, inhuman conditions of detention and disorientation of a detainee. In view of the foregoing, the Court concludes that the treatment to which the applicant was subjected by the CIA during his detention in Poland at the relevant time amounted to torture within the meaning of Article 3 of the Convention.").

[950]*See* International Convention for the Protection of All Persons from Enforced Disappearance.

*See generally* Human Rights Council, *Report of the Working Group on Enforced Disappearances: Addendum: Best practices on enforced disappearances in domestic legislation*, U.N. Doc. A/HRC/16/48/Add.3 (Dec. 28, 2010).

[951]United States Written Response to Questions Asked by the Committee Against Torture, Question 17 (Apr. 28, 2006).

[952]U.N. Human Rights Comm., General Comment No. 6, *Article 6 (Right to Life)*, ¶ 4 (Apr. 30, 1982).

[953]Joint Study, at ¶¶ 18–19.

[954]*Id.* at 2–3.

[955]*Id.* at 3.

[956]*Id.* at ¶ 9.

[957]Prof. Jayne Huckerby, *Applying International Law to U.S. Torture and NC's Role*.

[958]International Covenant on Civil and Political Rights, art. 2.

[959]Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14.

[960]Steven Watt, Senior Staff Attorney, ACLU Human Rights Program, *Accountability Through the Courts; Prospects for Legal Redress*, Witness Testimony to the N.C. Comm. of Inquiry on Torture (Dec. 1, 2017), http://www.nctorturereport.org.

[961]*Id.*

[962]*Id.*

[963]*Id.*

[964]Prof. Jayne Huckerby, *Applying International Law to U.S. Torture and NC's Role*.

[965]United States Attorney Manual (USAM) 9-2.001

[966]USAM 9-2.000, Authority of the U.S. Attorney in Criminal Division Matters/Prior Approvals. The U.S. Attorney's broad authority to investigate is set out in USAM 9-2.010. The official with this authority in eastern North Carolina is the United States Attorney for the Eastern District of North Carolina, located in Raleigh, NC.

[967]USAM 9-2.001. This means, in the case of torture involving government officials or agents, the Attorney General will exercise the ultimate discretion whether to prosecute.

[968]*Id.*

[969]*See*, https://www.justice.gov/criminal-hrsp.

[970]The War Crimes Act of 1996, 18 U.S.C. § 2441, criminalizes, among other things, "grave breach[es] of Common Article 3" of the Geneva Conventions, including torture, cruel or inhuman treatment, mutilation or maiming, intentionally causing serious bodily harm, and sexual assault or abuse. 18 U.S.C. § 2441(c)(3). However the scope of the statute is limited; "the person committing such war crime or the victim of such war crime [must be] a member of the Armed Forces of the United States or a national of the United States." *Id.* In addition, except in the case of murder, war crimes generally are subject to a five-year statute of limitations. This statute overlaps the Torture Act; it seems unlikely that a U.S. Attorney would prosecute a charge under the War Crimes Act that he or she declined to prosecute under the Torture Act.

[971]The conspiracy provision of the Torture Act was not enacted until October 26, 2001, and as a result, conspiracy to commit torture can be charged only for conduct that occurred after that date, which is most of the RDI program.

[972]*United States v. Belfast*, 611 F.3d 783 (11th Cir. 2010). The defendant, charged as Roy Belfast, was Charles Taylor, Jr., the Boston-born son of former Liberian president Charles Taylor. After his father was elected president in 1997, Charles Taylor, Jr., became head of the Liberian National Police and the Anti-Terrorist Unit, an elite military unit; these organizations were notorious for their human rights abuses. The United States arrested Taylor Jr. at the Miami International Airport when he entered the country on a fraudulent passport, and he was indicted for torture, conspiracy to commit torture, and use of a firearm during the commission of a violent crime in connection with his activities as head of the Anti-Terrorist Unit. Among the specific acts charged were use of electric shocks on the genitals, burning victims with cigarettes and hot irons, and rubbing salt into the wounds of his victims. All of these acts took place in Liberia and all of the victims were foreign nationals. A Miami jury convicted Taylor Jr. on October 30, 2008, of torture, conspiracy to torture, and illegal use of a firearm in the commission of a violent crime. On appeal, the Court upheld the broad extraterritorial reach of the Torture Act, the application of the Act to U.S. Nationals who tortured foreign nationals outside the United States, and its application to U.S. nationals who conspired with others to commit such unlawful acts.

[973]*Pinkerton v. United States*, 328 U.S. 640 (1946). The Court noted that a co-conspirator would not be liable for an offense committed by one of the co-conspirators that was not in furtherance of the conspiracy; an offense that did not come within the scope of the conspiracy; or an offense that was not reasonably foreseeable as a necessary or natural consequence of the conspiracy. 328 U.S. at 647. Liability for the substantive offenses committed by a co-conspirator exists if the government can prove (1) that the defendant was a member of the ongoing conspiracy at the time the offense was committed and (2) one of the other co-conspirators committed the substantive offense in furtherance of the criminal enterprise. If the co-conspirator assists in commission of the substantive offense, he or she also would be liable for the offense as an accomplice, independently of any unlawful agreement.

[974]Under 18 U.S.C. § 2, an accomplice is a person who (1) had the specific intent to facilitate the commission of a crime by another person, (2) had the intent required by the substantive offense, and (3) assisted or participated in the substantive offense, where someone else (the principal) actually committed the underlying offense (whether the identity of the principal is known or not). The necessary intent can be inferred from the accomplices' knowledge of the principal's criminal conduct.

[975]USAM 2474.

[976]*Id.*

[977]Under federal law, there must exist a guilty principal before accomplice liability attaches. However, the government does not have to prove that person's identity, only that the underlying offense was committed by someone. USAM 2479. Nor is it necessary to show that the accomplice knew the identity of the principal. *Id.* The accomplice can be convicted even if the principal has not been tried or was acquitted.

[978]49 U.S.C. § 46506. "An aircraft is "in flight" from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation. *Id. at* § 46501(1).

[979]Under 18 U.S.C. § 1201, the kidnapping of a person that takes place within the special aircraft jurisdiction of the United States is also a federal offense, even if the offense occurs outside the United States. However, the victim must be "a foreign official, an internationally protected person, or an official guest [in the United States] as defined in 18 U.S.C. § 1116(b)." 18 U.S.C. § 1201(a)(4). None of the individuals kidnapped in this program was a "person" within the meaning of this provision.

[980]In addition, Prof. Michael Struett argues that the RDI program clearly violated the U.S. Constitution, because the Bill of Rights places specific limits on the government's use of coercive force. "Specifically," Prof. Struett writes, "it requires that all persons detained should be brought before a judge, allowed to participate in their own defense, not be required to incriminate themselves, be judged by a jury of their peers, and not be subject to cruel and degrading treatment, including torture." Prof. Michael Struett, Witness Testimony to the N.C. Comm. of Inquiry on Torture (Dec. 1, 2017), http://www.nctorturereport.org.

[981]NC Gen. Stat. §7A-61 ("The district attorney shall . . . prosecute . . . all criminal actions . . . requiring prosecution in the superior and district courts of the district attorney's prosecutorial district . . . .").

[982]NC Gen. Stat. §114-2(3).

[983]NC Gen. Stat. §§ 114-11.6 This provision creates the Special Prosecution Division in the Department of Justice and provides that attorneys in that Division, "shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Attorney General approves."

[984]NC Gen. Stat. § 143B-917 ("[S]worn law enforcement officers of the Bureau may give assistance to sheriffs, police officers, district attorneys, and judges when called upon by them and so directed."). It is not clear whether the Attorney General can request the SBI to conduct investigations into alleged or suspected crimes under North Carolina law; this provision does not authorize such requests.

[985]NC Gen. Stat. § 143B-919(a) (2015).

[986]*See, Southern Railway Co. v. Mecklenburg County, 231 N.C. 148, 150 (1949)* ("The sheriff is the chief law enforcement officer of the county. . . . Yet it may not be gainsaid that the Legislature has authority to place any group of law enforcement officers in a county under the supervision of some other agency.") *See also,* NC Gen. Stat. § 160A-285 ("As a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law enforcement officers by statute and common law.").

[987]*State v. Darroch*, 305 N.C. 196 (1982).

[988]104 N.C. App. 298 (1991). North Carolina also has territorial jurisdiction to prosecute a continuing offense or a continuing criminal enterprise. A continuing offense is a "breach of the criminal law . . . which subsists for a definite period" or consists of numerous similar occurrences. State v. Manning, 139 N.C. App. 454, 467 (2000), *aff'd per curiam*, 353 N.C. 449 (2001). If any part of such a continuing offense takes place in North Carolina, the state has concurrent jurisdiction with other affected sovereigns. *State v. Johnson*, 212 N.C. 566, 570 (1937). N.C. Gen. Stat. § 14-7.20 provides that a person is guilty of the offense of a continuing criminal enterprise when the defendant:

a. commits any felony in G.S. Chapter 14 (which includes kidnapping, assault, and other crimes against persons),
b. that is part of a continuing series of violations of that Chapter,
c. undertaken in concert with five or more other persons,
d. over whom the person occupies a position of organizer, supervisor, or other position of management, *and*
e. the person obtains substantial income or resources from the continuing violations.

This provision arguably would apply to the managers of North Carolina-based Aero Contractors Limited, assuming they supervised five or more employees involved in the RDI program. However, a critical threshold question is whether the provision applies only if the Chapter 14 felonies are committed in North Carolina. One theory of liability is that these individuals are part of an enterprise that operates in North Carolina and within that enterprise they are accessories to felonies committed outside North Carolina. If such extraterritorial felonies count, the conduct carried out under the RDI program, during abductions, rendition flights, and torture and other mistreatment at the secret detention centers would constitute numerous felonies under Chapter 14, including kidnapping and assault.

[989]Acts in furtherance of a conspiracy could include the storage, maintenance, fueling, pre-flight preparation, and loading of aircraft, the filing of flight plans, the landing and departure of aircraft in furtherance of the conspiracy, and any other acts necessary to the objective of extraordinary rendition.

[990]The unlawful act does not have to be a criminal offense under North Carolina law. Thus, it arguably could involve violation of international norms, or of a federal statute, such as the federal prohibition on torture or the act that gives the United States jurisdiction over crimes committed during flights on aircraft based in the United States. Support for this broad proposition may be found in the fact that North Carolina's habitual felony statute counts felonies committed in other jurisdictions, including under federal law.

[991]*See State v. Morgan*, 329 N.C. 654, 658 (1991); *State v. Gallimore*, 272 N.C. 528, 532 (1968).

[992]*See State v. Goldberg*, 261 N.C. 181, 203 (1964); *State v. Drakeford*, 104 N.C. App. 298 (1991).

[993]As noted, it does not matter whether the unlawful agreement under which Aero and its agents acted was formed in North Carolina or outside the state.

[994]NC Gen. Stat. § 14-39 provides that:

(a) [a]ny person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

* * *

(3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person . . .

[995]Steven Watt, Senior Staff Attorney, ACLU Human Rights Program, *Accountability Through the Courts; Prospects for Legal Redress*, Witness Testimony to the N.C. Comm. of Inquiry on Torture (Dec. 1, 2017), http://www.nctorturereport.org.

## APPENDIX · A,B & C

[A1]Matt Tinoco, *Want to Buy an Old CIA Rendition Jet?* Mother Jones (Apr. 5, 2017), http://www.motherjones.com/politics/2017/04/cia-rendition-plane-for-sale/.

[A2]*FAA Documents for N313P*, https://www.documentcloud.org/documents/3523182-FAA-Registration-for-33010.html (last visited July 15, 2018). *See, e.g.*, Giovanni Claudio Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, Eur. Parliament, Working Document No. 4, Doc. 617722EN 2 (June 1, 2006), http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dt/617/617722/617722en.pdf. "Both planes were belonging to Steven Express, another shell company" which was "taken over by a lawyer, on behalf of Devon Holding, once again a shell company." *Id.*

[A3]*FAA Documents for N313P.*

[A4]*Id.*

[A5]Complaint *El-Masri Khaled El-Masri v. George J. Tenet*, 437 F. Supp. 2d 530 (E.D. Va. 2006) (No. 1:05-cv-01417-TSE-TR) ("ACL was contracted by defendant PETS to operate the above-mentioned Boeing business jet, and specifically to transport plaintiff from Skopje, Macedonia to detention and interrogation in Afghanistan."); *id.* at para 33 ("Aviation documents show that a Boeing business jet owned by defendant PETS and operated by defendant ACL, then registered by the FAA as N313P."); Amnesty International, *USA: Below the Radar: Secret flights to Torture and "Disappearance,"* 23 (Apr. 4, 2006).

[A6]*See, e.g.*, Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, at 2. "The other plane, the Boeing 737, was sold to Keeler and Tate Management, once again shell company without premises, without website, whose only property was the Boeing 737." *Id.*

[A7]*Aircraft Profile: N313P-N4476S*, The Rendition Project, https://www.therenditionproject.org.uk/flights/aircraft/N313P.html (last visited July 15, 2018). *See also* Amnesty International, *USA:*





# ENDNOTES



# ENDNOTES

*Below the Radar: Secret flights to Torture and "Disappearance,"* at 23, http://www.amnesty.eu/en/news/statements-reports/eu/torture/usa-below-the-radar-secret-flights-to-torture-and-disappearance-0168/#.W44C5ehKi-4. "Flight records show that the plane flew from Skopje to Kabul, touching down in Baghdad, on 24 January 2004, the day Khaled el-Masri was transferred from Macedonia to Afghanistan. Both planes had previously been registered by Stevens Express Leasing and Amnesty International has landing declarations showing that both continued to identify Stevens Express as their operator in 2003 and 2004. Stevens Express has an office address in Tennessee, but no actual premises, although it currently appears in US Federal Aviation Administration (FAA) records as the operator of four planes. Stevens Express was in turn incorporated by the same lawyer listed as the official representative of Devon Holding, another company identified with rendition flights. Premier Executive Transport ceased operations in late 2004; the Boeing's ownership was transferred in November 2004 to Keeler and Tate Management, another non-existent front company with no other planes, no website and no premises. A few days later, the Gulfstream was transferred to Bayard Foreign Marketing, a company whose named corporate officer, Leonard Bayard, cannot be found in any public record." *Id.*

[A8] *FAA Documents for N313P.*

[A9] Matt Tinoco, *Want to Buy an Old CIA Rendition Jet?*

[A10] *FAA Documents for N313P.*

[A11] Tinoco, *Want to Buy an Old CIA Rendition Jet?*

[A12] *FAA Documents for N313P.*

[A13] Amnesty International, *USA: Below the Radar: Secret flights to Torture and "Disappearance,"* at 34. *See also* Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, at 6.

[A14] *FAA Documents for N313P.*

[A15] *Id.*

[A16] *Id.*

[A17] *Id.*

[A18] Dana Priest, *Jet is an Open Secret in Terror War,* Wash. Post, Dec. 27, 2004, at A01. https://www.washingtonpost.com/archive/politics/2004/12/27/jet-is-an-open-secret-in-terror-war/260d0543-c0b5-4014-aeb1-969cab4ba5aa/?utm_term=.8f360afe937e.

[A19] *Id.*

[A20] *Id.*

[A21] *Id.*

[A22] *N379P-N8068V-N44982, The Rendition Project. https://www.therenditionproject.org.uk/flights/aircraft/N379P.html*

[A23] Priest, *Jet is an Open Secret in Terror War.*

[A24] *Id.*

[A25] *N379P-N8068V-N44982, The Rendition Project;* Fava, Temporary Committee on Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners, at 2. "Two days later the Premier Executive got rid of the aircraft and sold it to Bayard Foreign Marketing, another shell company. The name of the administrator, Leonard Bayard, has never been found in any public register." *Id.*

[A26] *Id.*

[A27] *N379P-N8068V-N44982, The Rendition Project.*





# PERSONAL NOTES

Please use this space to write down important reference numbers and personal notes.



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# APPENDIX


*Photo courtesy: Fred Seggie | World Air Images | Airliners.net*

*The CIA rendition aircraft in 2000, originally registered as N379P.*


*Photo courtesy: K Westl | Flickr.com*

*The same aircraft in 2003, now registered as N8068V.*

## APPENDIX A - RENDITION AIRCRAFT OPERATED BY AERO CONTRACTORS, LTD.

### N313P-N4476S-N720MM

Aero Contractors, Ltd. operated a 737 Boeing Business Jet registered with the Federal Aviation Administration (FAA) as N313P; a jet which "flew for the CIA for more than four years."[A1] A review of Federal Aviation Administration (FAA) records and other reporting reveals numerous sales and registrations of the aircraft that would make it more difficult to trace the its use. The shifting ownership and registration information is outlined below:

In terms of the plane's ownership, FAA records show that on November 30, 2001, Aero Contractors requested of the FAA that the U.S. registration number of N313P that it had reserved be "relinquished to the owner of the aircraft," PETS.[A2] FAA records and other reporting indicate that:

- *On December 20, 2001, PETS purchased the aircraft.*[A3]
- *On November 10, 2004, PETS sold the aircraft to Keeler & Tate Management, LLC.*[A4] *Keeler & Tate Management, LLC has been identified by the ACLU as the "corporate successor" to PETS*[A5] *and also as a shell company.*[A6] *The Rendition Project states that as of September 2003 "the aircraft was registered to Stevens Express Leasing, a CIA shell company" and "the ownership of the aircraft had been transferred to Premier Executive Transport Services" by January 2004.*[A7]
- *On July 6, 2006 Keeler & Tate Management, LLC sold the plane to MGM Mirage (which then sold it to MGM Mirage Aircraft Holdings, LLC on July 7, 2006).*[A8] *With this last sale, the CIA shell company ownership ended: "[i]ts time with The Company ended in 2006."*[A9] *On November 30, 2016, MGM Resorts Aircraft Holdings, LLC sold the plane to Embraer Executive Aircraft, Inc.* [A10]
- *The plane was on the market again in April 2017.* [A11]

**FAA records show the aircraft was·**

- *Registered as N313P on May 1, 2002 on application by PETS on December 20, 2001.*[A12] *Amnesty International reports that the plane was "[f]irst registered by Stevens Express Leasing Inc., and then re-registered on 1 May 2002 by Premier Executive Transport Services."* [A13]
- *Registered as N4476S on December 1, 2004 on application by Keeler & Tate Management, LLC.* [A14]
- *Registered as N4476S on August 8, 2006 on application by MGM Mirage Aircraft Holdings, LLC on July 7, 2006.*[A15]
- *Registered as N720MM on August 24, 2006 on application by MGM Mirage Aircraft Holdings, LLC.*[A16]

### N379P-N8068V-N44982-N126CH

Aero Contractors also operated a Gulfstream V aircraft registered with the FAA as N379P and then subsequently re-registered as N8068V, N44982, and N126CH.[A17] Aero Contractors operated N379P during the RDI program from October 2001 onward.[A18] The shifting ownership and registration information is as follows:

- *In 1998, PETS "ordered a new Gulfstream V . . . It was delivered in November 1999 with tail number N581GA."*[A19]
- *It was then registered as N379P in March 2000* [A20] *and "began flights in June 2000."* [A21]





# APPENDIX


*Photo courtesy: Blend Qatipi | Jetliners.net*

*The same aircraft in 2004, now registered as N44982.*


*Photo courtesy: Jim Revell*

*The same aircraft in 2006, now registered as N126CH.*

- *It was re-registered in December 2003 with tail number N8068V.* [A22]
- *Gulfstream V N379P was owned by the CIA shell company PETS until December 1, 2004.* [A23]
- *On December 1, 2004, the plane was transferred to a new owner, Bayard Foreign Marketing, LLC.,* [A24] *identified as another CIA shell company, which registered the plane as N44982.* [A25] *Reportedly the ownership transfer occurred after N379P was used to move "detainees to Guantánamo and other US military bases."* [A26]
- *It was re-registered again in January 2006 as N126CH.* [A27]

## APPENDIX B

The following documents are available online at ***nctorturereport.org:***

a) *Compendium of Torture Laws: Torture Laws, Statutes, and Treaties. UNC Chapel Hill Human Rights Policy Lab.*

b) *Compendium of Law Relevant to Acts Associated with the Process of Extraordinary Rendition. UNC Chapel Hill Human Rights Policy Lab. Spring 2018.*

c) *Extraordinary Rendition and Torture Victim Narratives. UNC School of Law Human Rights Policy Lab. December 2017.*

d) *NCCIT Witness Testimony. November 30 – December 1, 2017.*

## APPENDIX C

The NCCIT Detainee Spreadsheet was sourced from the following (available online):

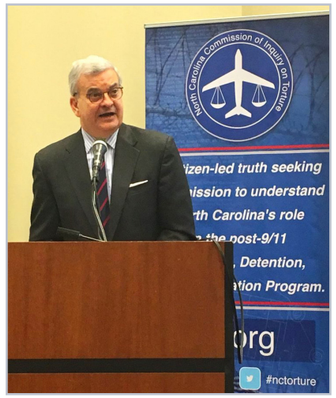
a) *Extraordinary Rendition and Torture Victim Narratives. UNC School of Law: Human Rights Policy Lab. December 2017.*

b) *"The Guantánamo Docket." The New York Times. Last Updated May 2, 2018.*

c) *The Rendition Project. Rendition Research Team, University of Kent.*

# NCCIT PUBLIC HEARINGS

NCCIT held a public hearing in Raleigh, N.C. on November 30th and December 1st, 2017. Here are photos of Commissioners, staff and witnesses.

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# NOVEMBER 30 - DECEMBER 1, 2017

Photo courtesy: NCCIT

*Members of the commission listening to testimony*


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