

Rendition and the “Black Sites”

Between 2001 and 2006, the skies over Europe, Asia, Africa and the Middle East were crisscrossed by hundreds of flights whose exact purpose was a closely held secret. Sometimes the planes were able to use airports near major capitals, while on other occasions the mission required the pilots to land at out-of-the-way airstrips.

The planes were being used by the CIA to shuttle human cargo across the continents, and the shadowy air traffic was the operational side of the U.S. government’s anti-terrorist program that came to be known as “extraordinary rendition.”

After the September 11, 2001, terrorist attacks, the Bush administration resolved to use every available means to protect the United States from further attack. The extraordinary rendition program, used previously by President Bill Clinton, quickly became an important tool in that effort. In the years since, numerous investigations and inquiries have found evidence of illegal acts in the form of arbitrary detention and abuse resulting from the program. These, in turn, have led to strained relations between the United States and several friendly countries that assisted the CIA with the program.

The program was conceived and operated on the assumption that it would remain secret. But that proved a vain expectation which should have been apparent to the government officials who conceived and ran it. It involved hundreds of operatives and the cooperation of many foreign governments and their officials, a poor formula for something intended to remain out of public view forever. Moreover, the prisoners transported to secret prisons for interrogations known as “black sites” would someday emerge. Many were released, and others faced charges, providing them a public platform from which to issue statements about the rendition program and their treatment.

The extraordinary rendition program required secrecy for two principal reasons: First, it allowed the CIA to operate outside of legal constrictions; controversial interrogation techniques were approved for use by the CIA on a limited number of “high-value detainees,” and records show that the CIA had flight data falsified to limit the ability of outside actors, including rights groups, to track the movement of detainees. Second, the CIA operated the “black sites” — the secret prisons abroad — typically on the basis of agreements between CIA officials and their counterparts, intelligence officials in the host countries. The decision to bypass regular diplomatic channels, which would involve the wider political leadership of each country, was designed to keep the existence of the secret prisons entirely out of domestic politics,

bilateral relations, and the media. However, the CIA's effort to keep hundreds of flights, prisons in numerous countries, and the mistreatment of detainees secret failed in the end, leaving the participating countries to cope with questions about the international legal violations that occurred. Allies such as Poland and Lithuania continue to face significant legal and political problems stemming from their participation. There have been numerous reports released and lawsuits filed against governments in Europe, in some cases prompting official government investigations into complicity with the rendition program that clash with the pact of secrecy relied upon by the CIA and the U.S. government.

The investigation of extraordinary rendition by the Task Force uncovered many new details regarding the black sites in Poland and Lithuania, countries that were visited by Task Force staff. In Poland, an official investigation has been hampered by the U.S. government's refusal to share information, even as Polish prosecutors issued indictments against top Polish officials for their role in facilitating the black site there. The secrecy imposed by the CIA also resulted in political attempts to derail the investigation entirely. Polish prosecutors have, at various times, been caught in the difficult position of handling information classified by the United States and Poland. The prosecutors also had to judge to what extent they could share such information with counsel for detainees who were held in Poland, who have a legal right to access such information. The Lithuanian prosecutors faced many of the same problems, although unlike the Poles, they based their investigation on a parliamentary report asserting that black sites did exist in Lithuania. The Lithuanian prosecutors suspended their investigation in early 2011 without a public rationale; although they acknowledged the existence of the sites, they initially claimed to Task Force staff that they had "proven" that no detainees had been held there. They later amended their position to say that they simply did not have evidence of detainees being held in the black sites — although human rights groups have insisted that such evidence exists. The Lithuanian prosecutors also provided Task Force staff with new details about the suspected black sites, even describing the "cell-like structures." Other Lithuanian officials gave the Task Force full accounts of how noted intelligence officials came to exceed their authority by concluding agreements on their own with the CIA to host the black sites. These officials also described the many legislative and political changes that have been made in Lithuania to ensure that such acts are not repeated. Former senior CIA officials — including the former head of covert operations in Europe, Tyler Drumheller, and the former chief of analysis at the counterterrorist center, Paul Pillar — also gave Task Force staff a broader understanding of the CIA's internal operations and deliberations.

Because the United States has declined to hold an official inquiry of its own, the Task Force's meetings and interviews abroad were essential to gaining a greater understanding of the founding and operation of the black sites. However, the Task Force staff found that the investigations abroad and elsewhere have been frustrated in part due to the United States' refusal to respond to information requests regarding renditions, and in part because of the limited or nonparticipation of government officials with knowledge of the agreements. As a result, allied governments have been caught in the difficult position of being held accountable both by their citizens and by international organizations, while also being discouraged from making any public disclosures through direct and indirect warnings from the United States.

A Brief History of the Rendition Program

While it is difficult to pinpoint precisely when the United States first began using rendition as an anti-terror technique, the Task Force concludes that it was “well in place” by the late 1980s or early 1990s.¹ But the nature of the program changed significantly over time.

In 1989, William Webster, former CIA and FBI head, stated in an interview that the United States had created the term “rendition” to describe the act of capturing and bringing back to the United States a terror suspect.² In 1992, President George H.W. Bush issued National Security Directive 77 (NSD-77), whose title and contents remain classified, but NSD-77 was referenced by President Clinton in President Decision Directive 39 in 1995, which stated that

[r]eturn of terrorist suspects from overseas by force may be effected without the cooperation of the host government, consistent with the procedures outlined in National Security Directive-77, which shall remain in effect.³

This technique was used to bring Ramzi Yousef, perpetrator of the 1993 World Trade Center bombings, from Pakistan to the United States in 1995, where he stood trial.

Michael Scheuer, head of the CIA’s bin Laden Unit from 1996 to 1999, summarized why extraordinary rendition was embraced, saying that the United States knew the whereabouts of many dangerous militants, but did not want them in the United States. The solution was to send them to a third country where they could be held secretly.⁴ In 1995, the Clinton administration approved a new agreement with Cairo to send abducted Islamic militants to Egyptian custody.⁵ It was well-known that the mukhabarat — the Egyptian secret police — used torture methods on prisoners and committed extrajudicial killings; that was clearly asserted in the Department of State (DOS) human rights report on Egypt from 1995.⁶ Among the individuals rendered by the CIA to Egypt during the Clinton administration were Talaat Fouad Qassem, who was arrested in Croatia in September 1995, and Shawki Salama Attiya, arrested in Albania in 1998.⁷ Both men (along with four of Attiya’s cohorts) were transferred by CIA officials to Cairo.⁸ Qassem “disappeared” after his return to Egypt, and is suspected to have been executed.⁹ Attiya alleged that upon return to Egypt, he was tortured by being suspended by various limbs, made to stand in knee-deep filthy water, and given electric shocks to his genitals — a technique later also alleged by Ahmed Agiza and Muhammed Alzery upon their renditions to Egypt in 2001.¹⁰

Edward Walker, the former ambassador to Egypt who knew about the program, has said that the human rights reports were correct, that the “Chinese walls” at the embassy only came together at the ambassadorial level and that the DOS diplomats working on human rights reports might have been “upset” if they knew what was going on.¹¹ The negotiations, in Egypt’s case, were conducted between top CIA officials and the longtime chief of Egyptian intelligence, Omar Suleiman.¹² Walker described Suleiman as one who understood the negative aspects of torture, but was “not squeamish” about using it for intelligence gathering.¹³ Suleiman remained chief of Egyptian intelligence and oversaw post-September 11 renditions to Egypt until January 2011, when he briefly held the position of vice president before Hosni Mubarak’s overthrow in February 2011.¹⁴

The rendition program was expanded under Clinton to include Syria, Jordan and Morocco, which also used torture in their treatment of prisoners, and numerous reports state that these

four countries have, to date, received the most U.S.-sponsored renditions.¹⁵ A former FBI official said about the program that from the beginning, the CIA “loved that these guys would just disappear off the books, and never be heard of again. ... [T]hey were proud of it.”¹⁶ It is important to note, however, that Michael Scheuer testified before Congress in 2007 that interrogation was specifically not the objective in rendering these individuals under the Clinton administration, in part because of the possibility that torture would be used and the evidence would be unreliable. The purpose of the program at that time, according to Scheuer, was to “take these men off the street” and seize any documents or other information on their persons, and the individuals would then be returned to countries in which there was some type of outstanding legal process for them.¹⁷ This was confirmed to Task Force staff by former CIA deputy director Paul Pillar, who says that renditions before September 11 had “nothing to do with interrogation.”¹⁸ Former FBI interrogator Ali Soufan also stated to Task Force staff that early renditions were always to the suspects’ countries of origin, “or [where they were] wanted” on criminal charges.¹⁹ According to Richard Clarke, former director of the Central Intelligence Agency, “President Clinton approved every ‘snatch’ that he was asked to review.”²⁰ In 2004, George Tenet testified before Congress there had been more than 70 renditions prior to September 11, 2001.²¹ Some of those renditions were to U.S. custody, however.

Expansion of the Program Post–September 11

After September 11, President George W. Bush authorized a huge range of covert operations, including the creation of joint operations centers in other states to capture terrorists abroad, render and interrogate them.²² These operations included the re-conceptualized rendition program. Through the newly expanded network, members of the “Rendition Group” at the CIA’s counterterrorism center were authorized to capture suspects all over the world.²³ According to CIA officers:

Members of the Rendition Group follow a simple but standard procedure: Dressed head to toe in black, including masks, they blindfold and cut the clothes off their new captives, then administer an enema and sleeping drugs. They outfit detainees in a diaper and jumpsuit for what can be a day-long trip. Their destinations: either a detention facility operated by cooperative countries in the Middle East and Central Asia, including Afghanistan, or one of the CIA’s own covert prisons — referred to in classified documents as “black sites.”²⁴

CIA flights could transfer suspected terrorists from numerous different countries to either the custody of third countries such as Egypt and Syria, or to secret CIA facilities within third countries, to remain within CIA custody throughout. The latter locations became known as “black sites” [see below]. The two methods were not necessarily mutually exclusive; there are several examples of suspects who were apparently rendered to black sites as well as third country facilities.²⁵ Further, the case-by-case approval given by the president to previous rendition operations was replaced after September 11 by a grant of blanket authority to the CIA for the detention and transfer of suspects.²⁶ Although the president and top administration officials continued to receive frequent briefings from the CIA, this broad authority may have contributed to renditions and lengthy detention based on patchy intelligence or mistaken identities. As former CIA official Tyler Drumheller stated in an interview with Task Force staff:

“There was a tendency — [whether] CIA, State Department, Pentagon — to run immediately to the White House. Everyone wanted to be the first person to reach the President, and once you tell the President something, especially President Bush, it’s very hard to go back and say ‘you know, we hadn’t quite checked it out enough’ ... and they often didn’t.”²⁷

“The European Parliament issued a report in 2007 after an investigation, which estimated that the CIA had flown as many as 1,245 extraordinary rendition flights between September 2001 and February 2007.”

Due to the secrecy of the program, it is difficult to accurately estimate how many individuals were subject to extraordinary rendition post-September 11. The European Parliament issued a report in 2007, culminating an investigation, which estimated that the CIA had flown as many as 1,245 extraordinary rendition flights between September 2001 and February 2007, including flights to countries where suspects are known to be subject to torture.²⁸ The high figure may comport with the allegation that suspects were often flown to multiple sites over a short period of time in order to “disorient” them.²⁹ This number of actual rendition flights is disputed, however, by former CIA Director Michael Hayden, who said that many of those flights carried equipment, documents and people not associated with the rendition program.³⁰ Hayden also stated in 2007 that “apart from that 100 that we’ve detained [at CIA facilities], the number of renditions is actually even a smaller number, mid-range two figures,” placing the actual number of CIA detainees at around 150, including suspects known to have been sent to Afghanistan, Guantánamo Bay, or U.S. custody elsewhere.³¹ This figure would appear to comport with the statement in the May 30, 2005, memorandum from Steven Bradbury, former head of DOJ’s Office of Legal Counsel (OLC), to John Rizzo, former counsel for the CIA, that up to that point, there had been 94 detainees in CIA custody.³² There are allegations of abuse in both Afghanistan and Guantánamo Bay in connection with previously rendered detainees, particularly between 2002 and 2006. The number of extraordinary renditions to foreign custody in third countries was estimated at 53, in a 2008 report by the New America Foundation.³³ The report said, “[a]ll individuals for whom the rendition destination is known were sent to countries that have been criticized by the State Department’s annual Country Reports on Human Rights Practices, which document ‘torture or other cruel, inhuman or degrading treatment or punishment.’ ”³⁴

In interviews with *The Washington Post*, unnamed U.S. officials involved with the rendition program confirmed that the purpose of transfers to countries that torture was explicitly to utilize those methods: “We don’t kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them.”³⁵ The temptation, according to another official, is “to have these folks in other hands because they have different standards.”³⁶ A large number of current and former detainees have alleged torture arising from their renditions to foreign custody.³⁷ Drumheller explained to Task Force staff that in his view, “It’s wrong and misguided to send people to places like Egypt, thinking you’re going to get a great truth — you don’t. And no military commander would ever go into combat based on this [evidence], because they know they can’t verify it.”³⁸

A striking confirmation of the extraordinary rendition program was provided in February 2011, by Karl Rove, who acknowledged in an interview that detainees had been rendered to Egypt and other countries during the Bush administration, saying that “we take steps to make sure that they are not treated inhumanely.”³⁹ The State Department had noted in its 2002 human rights report that imprisonment in Egypt frequently involved prisoners being stripped, blindfolded,

suspended from the ceiling or door frame; beaten with whips, fists, metal rods; subjected to electric shocks; and doused with cold water.⁴⁰

Even apart from the numerous allegations by detainees of torture after rendition, there are acknowledgements by U.S. government officials that use of methods eschewed by the United States to obtain information was the primary goal of the renditions. Omar Suleiman's personal relationship with the United States was cited by DOS as "probably the most successful element of the [U.S.-Egypt] relationship."⁴¹ On one reported occasion, when the CIA "asked for a DNA sample from a relative of Al Qaeda leader Ayman Al-Zawahiri, Suleiman offered the man's whole arm instead."⁴² When asked in 2007 whether individuals were likely to be tortured if sent to Egypt, former CIA official Bob Baer replied, "Oh, absolutely, no doubt at all. ... If you never want to hear from them again, send them to Egypt. That is pretty much the rule."⁴³ Former FBI agent Ali Soufan, who interrogated a number of "high value detainees" (HVDs) around the world, noted to Task Force staff that "[i]t's an assumption that when you take [detainees] to countries like this, you're taking them to be interrogated by someone else — you believe that someone else can get information that you cannot get."⁴⁴

According to reports, when President Obama and Vice President Biden (who had years of foreign-policy experience) were briefed on the CIA's practice of sending suspects to "friendly intelligence services in places like Egypt and Jordan," Biden scoffed, "Come on ... you turn these people over to other countries so they can be tortured."⁴⁵ CIA Director Michael Hayden protested this statement, since the CIA retains "moral and legal responsibility" for everyone subjected to rendition, and the Bush administration had repeatedly emphasized their position that rendition was not for the express purpose of torture.⁴⁶ As journalist James Mann put it, "Biden was speaking in plain English, Hayden in the CIA's standard legalistic formulations."⁴⁷

In a report based on 2007 interviews with the 14 HVDs at Guantánamo Bay about their time in CIA custody, the International Committee of the Red Cross (ICRC) described the transfer process:

Throughout their detention, the fourteen were moved from one place to another and were allegedly kept in several different places of detention, probably in different countries. ... The transfer procedure was fairly standardized in most cases. The detainee would be photographed, both clothed and naked prior to and again after transfer. ... The detainee would be made to wear a diaper and dressed in a tracksuit. Earphones would be placed over his ears, through which music would sometimes be played. He would be blindfolded with at least a cloth tied around the head and black goggles. In addition, some detainees alleged that cotton wool was also taped over their eyes prior to the blindfold and goggles being applied. ... The detainee would be shackled by hands and feet and transported to the airport by road and loaded onto a plane. He would usually be transported in a reclined sitting position with his hands shackled in front. ... The detainee was not allowed to go to the toilet and if necessary was obliged to urinate or defecate into the diaper. ... On some occasions the detainees were transported lying flat on the floor of the plane and/or with their hands cuffed behind their backs. When transported in this position the detainees complained of severe pain and discomfort. ..."⁴⁸ Additionally, "the detainees were kept in continuous solitary confinement and incommunicado detention."⁴⁹

In 2010, it was reported that certain HVDs who had arrived at Guantánamo Bay in 2003 had been secretly removed and transferred to black sites abroad specifically to avoid the Supreme Court’s ruling granting them access to lawyers and *habeas corpus* hearings.⁵⁰ Flight data published by the European Parliament seemed to confirm that detainees including Abu Zubaydah, Abd al-Rahim al-Nashiri, Ramzi bin al Shibh and Mustafa Ahmed al Hawsawi, arrived in Guantánamo Bay on September 23, 2003, and were kept at a CIA facility there named “Strawberry Fields.”⁵¹ However, the Supreme Court had begun to consider whether Guantánamo detainees should have access to U.S. courts, and the administration was reportedly afraid that such access would be granted by the Court the following summer.⁵² According to al-Nashiri’s lawyer, Nancy Hollander, “[t]here was obviously a fear that everything that had been done to them might come out.”⁵³ In anticipation of the Court’s ruling of June 2004, the four detainees were moved from Guantánamo Bay on March 27 on a flight that landed in Rabat, Morocco.⁵⁴

Diplomatic Assurances

The Bush administration’s principal defense to accusations that extraordinary rendition included detainee abuse was the system of requiring “diplomatic assurances,” by which the detaining third countries guarantee (despite known practices), that they will not abuse the specific individuals being transferred.⁵⁵ The recently discovered files of Moussa Koussa, Muammar el-Gaddafi’s former intelligence chief and minister of foreign affairs, illustrate this tactic. One letter from the CIA to Koussa discusses the rendition of el-Gaddafi opposition figure Sami Al Saadi from Hong Kong to Libya, and notes that if the CIA were to underwrite the cost of a private charter flight for the rendition, “we must have assurances ... that [Al Saadi] and his family will be treated humanely and that his human rights will be respected.”⁵⁶

Former CIA director Porter Goss testified before Congress that while “[w]e have a responsibility of trying to ensure that [detainees] are properly treated, and we try and do the best we can to guarantee that ... once they’re out of our control, there’s only so much we can do.”⁵⁷ Alberto Gonzales, when asked about torture in the rendition program during his confirmation hearings for the post of attorney general in January 2005, “chuckled and noted that the administration ‘can’t fully control’ what other nations do.”⁵⁸

The implications of this ambiguity became apparent when the details of Maher Arar’s rendition came to light. Arar, a Canadian citizen of Syrian descent, was detained in New York during a layover at John F. Kennedy Airport while on his way back to Canada from a family vacation in Tunisia in September 2002. After several weeks of detention, Arar was deported to Syria via Jordan despite telling U.S. officials he would be tortured in Syria. He was imprisoned and tortured for nearly a year in Syria before being released and returned to Canada. Arar claimed that while in Syria, he was imprisoned in an unlit “grave” that was three feet wide, six feet deep and seven feet high, with a metal door.⁵⁹ He further described the cell as having a small opening in the ceiling with bars and that occasionally cats would urinate through the opening into the cell.⁶⁰ Arar claimed to have been beaten with fists and a two-inch thick electric cable, and threatened with being hung upside-down, given electric shocks, and placed in a “spine-breaking chair.”⁶¹ To minimize the torture, Arar stated that he falsely confessed to having trained with terrorists in Afghanistan, where he has never actually been.⁶² Arar also attested to having been regularly placed in a room where he could hear the screams of other detainees who were being tortured.⁶³ Arar believes that he did not see the sun for six months

and lost approximately 40 pounds while detained.⁶⁴ Arar's rendition to Syria occurred only three months after John Bolton, the U.S. ambassador to the U.N., labeled Syria as part of the "Axis of Evil" — states "that sponsor terror and pursue weapons of mass destruction."⁶⁵

Former congressman William Delahunt (D-MA) discussed the general practice of obtaining such assurances, and explained at a 2008 congressional hearing that

[the assurances provided regarding Arar] were ambiguous as to the source and the authority of the person within Syria providing them. And it appeared that no one checked to determine the sufficiency of these assurances. So to sum it up, there was nothing particularly assuring about these assurances. And yet we sent Mr. Arar to Syria on the basis of those assurances. ... [T]he Arar case demonstrates the dangerous practice of relying on these diplomatic assurances.⁶⁶

Clark Kent Ervin, the former inspector general for the Department of Homeland Security (DHS), gave a harsher assessment in congressional testimony about the Arar case. According to Ervin, "[T]here is no question but that given everything we know, the intention here was to render him to Syria, as opposed to Canada, because of the certainty that he would be tortured in Syria and he would not be in Canada."⁶⁷ Ervin said he thought there should be a criminal inquiry into whether U.S. officials had violated 18 U.S.C. § 2340(a), which prohibits conspiracy to torture. No inquiry has ever occurred.

Drumheller, who was the former head of CIA covert operations in Europe from 2001 to 2005, confirmed that diplomatic assurances regarding a detainee's treatment were not taken seriously. "You can say we asked them not to do it. ... [But] [i]f you know that this is how this country has treated people in the past, you have to be honest that that is going to be a part of it."⁶⁸ He later told Task Force staff that with regard Egypt, Morocco, and other countries where torture is routine, "[y]ou can't really use [diplomatic assurances]."⁶⁹

The current administration tacitly admitted the legal problems with diplomatic assurances in 2009, when DOS spokesman Ian Kelly stated that the State Department would be responsible for implementing a "monitoring mechanism" to augment diplomatic assurances and "make sure, after the prisoner is transferred, that he or she is not being abused."⁷⁰ Speaking at a press briefing, Kelly said that a process for ensuring that U.S. consular officers could visit detainees transferred to third countries was essential, along with the extra safeguard of speaking with them "in confidence" in case of bugged cells.⁷¹ The introduction of such a monitoring system would strengthen the value of diplomatic assurances, although clearly it would provide no remedies for the abuses that occurred under diplomatic assurances for years after September 11, 2001.

Applicable Law

The two major potential legal violations associated with rendition are (1) arbitrary detention, and (2) torture or cruel, inhuman, or degrading treatment (CID). Arbitrary detention is a violation of the International Covenant on Civil and Political Rights, to which the United States is a party.⁷² In many cases, rendition also led to the practice of enforced disappearances. The prohibition on enforced disappearance violates international humanitarian law in both international and noninternational armed conflicts, according to the Geneva Conventions.⁷³ The International Convention for the Protection of All Persons Against Enforced

Disappearances, to which the United States is not a party but which codifies binding customary international law, states that “[t]he widespread or systematic practice of enforced disappearance constitutes a crime against humanity.”⁷⁴ The United States regularly condemns other countries for engaging in enforced disappearance in DOS’s annual human rights reports.

Regarding torture and CID, the Convention Against Torture (CAT) specifically provides in Article 3 that no state “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.” This principle, referred to by international lawyers as the principle of “nonrefoulement,” is also considered to be customary international law, which is binding upon all states.⁷⁵ The United States has said that in determining whether there are “substantial grounds,” it would use the “more likely than not” standard, meaning that the decision would hinge on whether it was “more likely than not” that an individual would be subjected to torture if sent to another state.⁷⁶ This is the standard that U.S. immigration courts rely on to make determinations regarding whether it is permissible under CAT to expel asylum-seekers to their native countries or to other states. The State Department conducts thorough human rights analyses each year, determining whether states use torture/CID, and at least some of the states in which torture/CID is in widespread practice, by our own account, are states to which we’ve rendered detainees.⁷⁷

The United States has maintained that while as a matter of policy it does not send anyone to areas where they would be mistreated or tortured, it does not have a legal obligations to prevent refoulement.⁷⁸ Former Bush administration officials argued that for the purpose of rendition, the CAT’s prohibition on refoulement does not apply extraterritorially to the transfer of detainees (in U.S. custody) from locations outside the United States to a third country.⁷⁹ The U.N. special rapporteur on torture, Juan Mendez, specifically rejects this interpretation of the prohibition on nonrefoulement, stating that it “violates the object and purpose of the Convention Against Torture, making it illegal.”⁸⁰

The CAT also prohibits the actual commission of torture or CID, which is alleged to have been perpetrated by CIA officials in the black sites. Those countries that allegedly hosted such prisons, as well as countries that assisted the United States with the extraordinary rendition program, have been censured by institutions including the European Parliament, the Council of Europe, and the United Nations.⁸¹ A number of these allies and former allies have conducted internal investigations, as mentioned, and several have cases pending against them before the European Court of Human Rights.⁸²

On March 19, 2004, Jack Goldsmith, then head of the Office of Legal Counsel at the Department of Justice (DOJ), drafted a confidential memo allowing the CIA to transfer detainees out of Iraq for interrogation.⁸³ Although the memo limited the duration of the transfer to a “brief but not indefinite period,” the memo also allowed permanent removal of detainees determined to be “illegal aliens” under “local immigration law.”⁸⁴ Although the memo was reportedly never finalized or signed, a substantially similar March 18, 2004, memo concluded that “Al Qaeda operatives captured in occupied Iraq lack ‘protected person’ status” under the Geneva Conventions.⁸⁵ It is unclear whether the March 19 memo was ever explicitly used to justify detainee transfers out of Iraq by the CIA [see discussion below on black sites in Iraq], although at least one intelligence official has stated that “the memo was a green light” for such transfers, and the military transferred at least two detainees from Iraq to Afghanistan: Amanatullah Ali, and Yunus Rahmatullah.⁸⁶ Additionally, a Swiss intelligence cable published

by Swiss newspaper *SonntagsBlick* in 2006 reported that Egyptian officials had proof that there were 23 Iraqi and Afghan detainees being held for interrogation at a CIA facility in Romania [see “Romania” section below].⁸⁷ The transfer of Iraqi citizens or Al Qaeda detainees captured in connection with the armed conflict in Iraq would be prohibited by Article 49 of the Fourth Geneva Convention, which provides that “[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”⁸⁸ Further, Goldsmith’s March 19 draft memo acknowledges that “violations of Article 49 may constitute ‘grave breaches’ of the Convention, art. 147, and therefore ‘war crimes’ under federal criminal law, 18 U.S.C. § 2441.”⁸⁹

International Cooperation

A long roster of allies was necessary to operate the rendition program.⁹⁰ In addition to Egypt, Syria, Morocco and Jordan, countries including the U.K.,⁹¹ Canada,⁹² Italy,⁹³ Germany,⁹⁴ and Sweden⁹⁵ have acknowledged collaboration with the rendition program.⁹⁶ Their assistance ranged from capturing suspects and turning them over to U.S. custody, and assisting in interrogations and abuse, to allowing stopovers of known CIA flights carrying detainees. In February 2013, the Open Society Justice Initiative released a report detailing the involvement of 54 countries with the extraordinary rendition program.⁹⁷

Examples of the many roles played by allies are evident in well-documented individual stories; these include Maher Arar (mentioned above), Binyam Mohammed, Khaled El-Masri, Ibn al-Shaykh al-Libi, Abu Omar, Ahmed Agiza, and Muhammed Alzery. Their stories have been verified by numerous sources, including other governments, and in part even by the U.S. government. The details of their allegations are below.

- In 2007, the Canadian government undertook a full inquiry into the CIA’s rendition of Maher Arar from JFK Airport in New York to Syria. The commission of inquiry determined that Canadian government officials had known that Arar was in danger of rendition by the United States along with torture, and Arar was formally cleared of any terrorism charges. The commission also found that Canada had provided the United States with false information leading to Arar’s rendition, stating that “[t]here is no evidence to indicate that Mr. Arar ... committed any offence or that his activities were a threat to the security of Canada.”⁹⁸ Finally, the commission concluded that 17 of the techniques used against Arar in Syria constituted torture.⁹⁹ The Canadian government paid Arar \$9.8 million in damages, along with a formal apology.¹⁰⁰
- Abdel Hakim Belhadj and Sami Al Saadi, both Libyan nationals, were arrested in Bangkok and Hong Kong (respectively) and rendered to Libya along with members of their families. [For further details and Task Force interviews with Belhadj and Al Saadi, see Libya case study in Chapter 8]. Belhadj has filed legal proceedings (currently pending) in the United Kingdom against the government, U.K. security forces, an MI6 official, and former Foreign Secretary Jack Straw for the administration and approval of his rendition and alleged torture.¹⁰¹
- Binyam Mohammed, an Ethiopian national and U.K. resident, was arrested at Karachi Airport in Pakistan on suspicion of being an Al Qaeda operative who had attended

weapons training camps.¹⁰² While imprisoned in Pakistan, Mohammed was interrogated by an American who identified himself as an FBI agent, and asked repeatedly about his links to Al Qaeda.¹⁰³ Mohammed was held in Pakistan for a period of time, where he claims to have been beaten by Pakistani authorities with a “thick wooden stick” while he was chained in his cell, fed only every other day, given limited access to toilet facilities, and subjected to mock executions.¹⁰⁴ Mohammed was also interrogated by at least one MI5 officer while in Pakistan, who alluded to his forthcoming rendition.¹⁰⁵ Documents published by the U.K. Foreign Office in 2010 show that “MI5 was aware that Mohamed was being continuously deprived of sleep, threatened with rendition and subjected to previous interrogations that were causing him ‘significant mental stress and suffering.’”¹⁰⁶ In July 2002, Mohammed was rendered by the CIA to Morocco, where he was further interrogated by U.S. officials.¹⁰⁷ Mohammed also claims that Moroccan prison officials beat him, subjected him to sleep deprivation, and cut his chest and penis repeatedly with a scalpel.¹⁰⁸ Mohammed has said that “[a]bout once a week ... I would be taken for interrogation, where they would tell me what to say. They said if you say this story as we read it, you will just go to court as a witness and all this torture will stop. I eventually repeated what was read out to me.”¹⁰⁹ Telegrams from MI5 to the CIA in November 2002 confirm MI5’s participation in Mohammed’s interrogation; the telegrams provided numerous questions for interrogators to put to Mohammed, along with large files of information and photos to be shown during interrogation.¹¹⁰ When Mohammed was eventually transferred to Afghanistan in January 2004, a female military police officer (MP) took photos of his injuries.¹¹¹ However, Mohammed was held in the “Dark Prison” near Kabul, where he was allegedly beaten further, starved and deprived of sleep before being sent to Bagram.¹¹² Mohammed was transferred to Guantánamo Bay in September 2004.¹¹³ The U.S. government charged Mohammed with terrorism-related offenses, which were later dropped before he was released in 2009.¹¹⁴

“In addition to Egypt, Syria, Morocco and Jordan, countries including the U.K., Canada, Italy, Germany, and Sweden have acknowledged collaboration with the rendition program.”

- Khaled El-Masri, a German citizen, was captured in Macedonia in December 2003 because his name was identical to a known Al Qaeda member. He was interrogated by Macedonian officials (who thought his German passport was a forgery), then transferred to U.S. custody in January 2004 and rendered to Afghanistan. El-Masri was sent to the “Salt Pit” prison [see “Afghanistan,” below], where he was interrogated and claims to have been repeatedly tortured by U.S. officials via beatings, sodomy, and malnourishment. In March 2004, the CIA discovered that El-Masri’s passport was genuine, but debated about how to release him while El-Masri staged a hunger strike to protest his imprisonment. CIA Director George Tenet discovered El-Masri’s wrongful imprisonment in April 2004, and El-Masri was released on May 28, 2004, after two orders were issued by then–National Security Advisor Condoleezza Rice. El-Masri was flown to Albania and abandoned on a rural road without funds. He was eventually picked up by Albanian authorities and reunited with his family, who had moved to Lebanon in the interim period. El-Masri has filed numerous suits against the U.S. government, and several European countries (Germany and Spain among them) have launched inquiries and/or warrants for the arrests of the CIA agents involved in the rendition. In an interview with Task Force staff, former CIA official Drumheller reiterated that Germany had been concerned since 2001 about the U.S. rendition program: “They knew we had this capability, from the 90s, and [the Germans] were worried about

the FBI (rather than the CIA) coming into Germany and arresting people on German soil,” a concern that was neatly sidestepped by El-Masri’s arrest in Macedonia.¹¹⁵ Actions on El-Masri’s behalf in Macedonia and before the European Court of Human Rights have been pending for years, after a lawsuit in the U.S. Court of Appeals for the Fourth Circuit was dismissed when the U.S. government invoked the state-secrets privilege. Angela Merkel, the German chancellor, has stated publicly that Condoleezza Rice acknowledged to the German government that El-Masri’s rendition was a mistake, and that he should not have been held or rendered at all.¹¹⁶ While the State Department and the CIA reportedly “quibbled” over whether to issue an apology for El-Masri’s rendition and detention, no such statement has ever been made by the U.S. government.¹¹⁷ El-Masri’s lawyer, Manfred Gnjidic, testified in a court declaration that El-Masri had provided hair samples for radioactive isotope analysis to the Munich prosecutor’s office to assist in their inquiry, and the results showed that El-Masri had spent time in a South Asian country during the time in question and had been “deprived of food for an extended period.”¹¹⁸

- Ibn al-Shaykh al-Libi, a Libyan citizen, has been described as a member of the Libyan Islamic Fighting Group and also as a member of Al Qaeda, although the evidence currently suggests that he was not a member of either group. Al-Libi was one of the leaders of the Al Qaeda-linked Khalden training camp in Afghanistan. He was detained in December 2001 and rendered to Egypt. Once there, al-Libi was tortured, including being put into a small box for 17 hours, struck on his chest, and badly beaten.¹¹⁹ He subsequently made a false confession stating that Saddam Hussein had provided Al Qaeda operatives with information about the use of biological and chemical weapons.¹²⁰ This “confession” was then used as part of the justification for the invasion of Iraq by the United States in March 2003, despite the fact that the information had been debunked by the U.S. Defense Intelligence Agency a full year earlier: “[I]t is ... likely this individual is intentionally misleading the debriefers. Ibn al-Shaykh has been undergoing debriefs for several weeks and may be describing scenarios to the debriefers he knows will retain their interest. Saddam’s regime is intensely secular and is wary of Islamic revolutionary movements.”¹²¹ In an interview with Task Force staff, Colonel Lawrence Wilkerson confirmed that senior Bush administration officials had eagerly used al-Libi’s confession, with Colin Powell only later finding out that the confession was elicited through torture.¹²² [See Chapter 7 for more on efficacy of torture.] al-Libi was subsequently forcibly disappeared, possibly rendered to Mauritania, Poland, Morocco, Jordan, and back to Afghanistan before finally being returned to Libya (probably sometime in 2006).¹²³ He died in Abu Salim Prison in 2009 under disputed circumstances: while the el-Gaddafi government stated that he committed suicide, U.S. officials, as well as rights group, were skeptical.¹²⁴ Two weeks before his death, al-Libi was visited at Abu Salim by workers from Human Rights Watch, who claim that al-Libi told them that he had been tortured in U.S. custody.¹²⁵ Following the Libyan revolution, an inquiry was begun by the new government into the circumstances of al-Libi’s death.¹²⁶ According to Human Rights Watch, who visited al-Libi’s family in Tripoli, photographs have emerged of al-Libi in his cell when he was allegedly found dead by guards.¹²⁷ The photographs show a severely bruised al-Libi with his head resting in the loop of a sheet tied around a wall in his cell, with his feet flat on the ground and knees bent.¹²⁸ al-Libi’s family is reportedly consulting forensic specialists to learn if the photographs depict an individual who has committed suicide.¹²⁹
- Abu Omar, an Egyptian cleric abducted from Italy in February 2003 by CIA agents (who believed that he was plotting a bomb attack against American school children) and

rendered to Egypt, where he was interrogated and tortured for 14 months (seven months in the custody of the Egyptian General Intelligence Service, and seven months at the State Security Investigation Service’s (SSI) national headquarters) before being released without charge in February 2007.¹³⁰ Italian police later identified the CIA agents involved in the rendition, and they were tried and convicted *in absentia* for their roles in the operation in 2009. The convictions were upheld by Italy’s highest criminal court on September 19, 2012.¹³¹ [See “Legal and Political Consequences of the Rendition Program,” below.]

- Muhammed Alzery and Ahmed Agiza, Egyptian nationals, were rendered from Sweden to Egypt in December 2001, where they were imprisoned. Both men have said that almost immediately upon arrival in Egypt, they were tortured with “excruciatingly painful” electrical charges attached to their genitals, and Alzery claimed that he was forced to lie on “an electrified bed frame.”¹³² Alzery was released in October 2003, and Agiza in August 2011. The cases of Alzery and Agiza were widely publicized after a Swedish television network aired a documentary on their deportations in 2004.¹³³ Both the U.N. Committee Against Torture and the Human Rights Committee found that Sweden had violated obligations under the CAT and the International Covenant on Civil and Political Rights in deporting Agiza and Alzery.¹³⁴ In 2008, Alzery and Agiza were awarded 3 million kroner (roughly \$450,000) each in settlements from the Swedish Ministry of Justice for the wrongful treatment they received in Sweden and the subsequent torture in Egypt.¹³⁵

Public Recognition of the Extraordinary Rendition Program

Both Secretary of State Condoleezza Rice and President George W. Bush confirmed the use of rendition in 2005 and 2006 speeches, respectively, with Rice stating that “[r]endition is a vital tool in combating transnational terrorism.”¹³⁶ The House Committee on Foreign Affairs held a hearing in 2007 on extraordinary rendition, during which much of the detail about the length and breadth of the rendition program was publicly stated for the first time. Congressman Bill Delahunt, chairman of the Subcommittee on International Organizations, Human Rights, and Oversight, said during the hearing, “These renditions not only appear to violate our obligations under the U.N. Convention Against Torture and other international treaties, but they have undermined our very commitment to fundamental American values.”

Further information came to light in two reports issued by the Council of Europe in 2006 and 2007, and one released by the European Parliament in 2007. The 2006 Council of Europe report, presented by Swiss senator Dick Marty, followed a months-long investigation triggered by media reports in November 2005 about the existence of CIA secret prisons in Europe [see “Black Sites,” below]. This report stated that it was clear that arbitrary and unlawful arrests and renditions had been carried out in Europe.¹³⁷ Moreover, the renditions “were made possible either by seriously negligent monitoring or by the more or less active participation of one or more government departments of Council of Europe member states.”¹³⁸ The 2007 Council of Europe report benefited from greater investigation, and concluded that the existence of CIA detention centers in Poland and Romania was considered “factually established.”¹³⁹ This second report also noted that other European states may have hosted secret detention facilities for the HVDs, and criticized national governments’ invocations of “state secrets” to avoid cooperation with judicial or parliamentary proceedings.¹⁴⁰

Also released in 2007, the European Parliament report analyzed a large amount of flight data and commented that data on detainee transfers seemed to match with media reports about detainees held in Poland.¹⁴¹ The European Parliament report, like the Council of Europe reports, characterized extraordinary rendition as “an illegal instrument used by the U.S.A. in the fight against terrorism” and condemned both the cooperation of European states with the program and the lack of cooperation from European Parliament members in the inquiry.¹⁴² Jozef Pinior, member of the European Parliament investigative committee and now a Polish senator, said in an interview with Task Force staff, “We spent nearly two years on the investigation, and invited to Brussels, people who knew something about these sites in the different European states.”¹⁴³ Although the Polish government did not cooperate at the time, Pinior described “secret hearings” during the European Parliament investigation in Warsaw with Polish intelligence officials whose identities he could not disclose. “After these hearings, I could say that [a black site] was created in Poland, and the site contained prisoners from Afghanistan.”¹⁴⁴

A 2010 report by the U.N. Human Rights Council on secret detention discussed use of the black sites at length, including publicizing a finding that use of the black sites “clearly fell within [the definition of] arbitrary detention.”¹⁴⁵ The U.N. report also listed known evidence for the various rendition sites.¹⁴⁶

In 2011, Reprieve, a British human rights organization, discovered a legal dispute over unpaid bills between two small aviation companies in upstate New York.¹⁴⁷ Court documents revealed the details of numerous CIA rendition flights between 2002 and 2005.¹⁴⁸ Lawyers for both companies, Richmor Aviation and Sportsflight (which hired planes from Richmor and then allegedly breached payment contracts), acknowledged the nature of the flights. One attorney stated, “Richmor Aviation entered into a contract with Sportsflight to provide rendition flights for detainees. ... I saw the various invoices from Richmor that were submitted to Sportsflight [and] it was amazing to me that no one from the United States government ever said boo to me about any of this.”¹⁴⁹ Indeed, *Richmor v. Sportsflight Aviation* is the only known rendition-related case in which the U.S. government has failed to invoke the “state secrets” privilege, in what was an apparent oversight.¹⁵⁰ Flight logs and transcripts of court proceedings were also included among the documents in the public record. One such transcript noted Richmor’s president, Mahlon Richards, testifying that passengers were “government personnel and their invitees,” and confirming that his planes flew “terrorists” and “bad guys.”¹⁵¹ The Richmor documents confirmed many of the conclusions set forth by the Council of Europe and the European Parliament regarding the movement of specific detainees and the countries involved in the rendition program.

Finally, in February 2012, the European Parliament’s Civil Liberties Committee launched an effort to follow-up on the 2007 report, with a hearing on March 27 at which members of various human rights organizations investigating rendition spoke about new evidence for the European black sites.¹⁵² The purpose of the initiative was to penetrate the “law of silence among governments” on the topic, according to committee member Hélène Flautre.¹⁵³ Committee members visited Lithuania in April 2012. The report, released in September 2012, focused on renditions to Lithuania, Poland and Romania, and found that no EU member state has fulfilled its legal obligation to hold an open and effective investigation into collaboration with the CIA rendition program.¹⁵⁴

The Black Sites

President Bush publicly acknowledged for the first time, in September 2006, that certain suspected terrorists had been held outside the United States, although he refused to divulge the locations of their detention or any details of the prisoners’ confinement.¹⁵⁵ CIA use of secret prisons abroad, however, had actually begun in early 2002, and by the time of Bush’s speech, reports indicate that the “black sites” had been closed. According to unnamed sources, initially the CIA considered keeping detainees on ships in international waters, but “discarded” the idea. (The capture of Ahmed Warsame in 2010 raises the question of whether the idea was entirely discarded, though he was likely detained by Joint Special Operations Command forces rather than the CIA).¹⁵⁶

After 2001, the United States established detention facilities for CIA captives from Afghanistan and elsewhere. Congress approved an expenditure of “tens of millions of dollars” to establish CIA secret prisons including the Salt Pit, outside Kabul, but further facilities were deemed necessary.¹⁵⁷ From the available information, it is apparent that the CIA used a secret facility in Thailand for several months beginning in March/April 2002, to interrogate Zayn Al-Abedin Muhammed Al-Husayn (more commonly known as Abu Zubaydah), Abd al-Rahim al-Nashiri, and possibly Ramzi bin al Shibh.¹⁵⁸ A similar facility was established in Poland in 2002, and approximately \$100 million for the costs was “tucked inside the classified annex of the first supplemental Afghanistan appropriation.”¹⁵⁹ It is not clear whether this figure was to fund operations at all of the black sites, including the Salt Pit and the Dark Prison in Afghanistan and the facilities in Thailand, Poland, Lithuania and Romania, or whether further funds were necessary as the facilities were opened and closed in turn. It is generally understood that the Thai facility was closed in 2003, soon after the Polish facility was opened. A Romanian facility was used from about 2003 to 2006, and a facility was also used in Lithuania between 2005 and 2006.¹⁶⁰ Credible reports also alleged the existence of secret detention facilities in Kosovo and Eastern Africa, as well as additional unsubstantiated reports involving sites in Ukraine, Bulgaria and Macedonia.¹⁶¹

Former CIA official Drumheller objected to the proposition of CIA secret prisons. “People say that you can’t equate this with the Soviets, [but] of course you can. ... When you have an intelligence service [that] gets caught up in detentions and interrogation, then you’re moving towards having a secret police, and that’s really what you don’t want to have. The [FBI] and the military have a long tradition of training — they have career interrogators, that’s what they do. And so the idea that you can take a bunch of CIA guys and you give them some training, and say ok, now you’re going to be an interrogator; under any circumstances ... it’s a mistake.”¹⁶²

Afghanistan

The CIA has used sites in Afghanistan for interrogation and detention of terror suspects since the U.S. invasion in the fall of 2001. The three well-known secret prisons were called “The Hangar,” the Dark Prison, and the Salt Pit, although it cannot be definitively established that the Dark Prison and the Salt Pit were separate facilities.¹⁶³ The Hangar is understood to be located on Bagram Air Base, where the U.S. military also held detainees from the battlefield. The CIA facility was reported as a “prison within a prison,” where the Red Cross had no access to CIA detainees.¹⁶⁴ Former detainee Mohamed Bashmilah described the Hangar as having “makeshift cages” in which prisoners were kept, and being forced to listen to loud

music, including American rap and Arab folk songs, 24 hours a day.¹⁶⁵ Another former detainee recalled that they were held in barbed-wire cages measuring six feet by 10 feet, and furnished with a mattress and a bucket for a toilet.¹⁶⁶ Although it is difficult to ascertain which detainees were held at the CIA facility at Bagram, it is known that Ibn al-Shaykh al-Libi, Binyam Mohammed, and Omar al-Faruq were among them.¹⁶⁷ Omar al-Faruq escaped from the Hangar in July 2005 with three other detainees, and was eventually killed by British forces in Iraq in 2006.¹⁶⁸

In the Dark Prison near Kabul Airport, there were “no lights, heat, or decoration,” with detainees being held in constant pitch blackness and cold temperatures.¹⁶⁹ Similar in description to the Hangar, the cells were roughly five by nine feet, contained a bucket to be used as a toilet, and loud rock music was played continuously.¹⁷⁰ Detainees were subjected to sleep deprivation for days at a time and reported being “chained to walls, deprived of food and drinking water.”¹⁷¹

According to former detainee Binyam Mohammed, he was chained up to the point where “My legs had swollen. My wrists and hands had gone numb. ... There was loud music, [Eminem’s] Slim Shady and Dr. Dre for 20 days. ... [Then] they changed the sounds to horrible ghost laughter and Halloween sounds. [At one point, I was] chained to the rails for a fortnight.”¹⁷² Similarly, both Khalid al-Sharif and Mohammed Shoroeiya described the cells and interrogation rooms where they were held as “in total darkness,” with “loud, Western music blaring constantly.”¹⁷³ Al-Sharif and Shoroeiya also stated that their cells contained buckets to be used as toilets.¹⁷⁴ Majid al-Maghrebi, another Libyan national allegedly held at the Dark Prison, commented that “[i]t was so dark I couldn’t find the bucket to use as a toilet. I banged my head against the wall.”¹⁷⁵ The Libyan detainees detailed how they were chained to their cell walls for the first few months of their detention; sometimes by one or both hands, and several long periods with both hands and feet bound to a metal ring in the wall. Al-Sharif recalled a two-week period when he was shackled by all fours to the wall, and released only for 30 minutes each day to eat one meal and use the bucket.¹⁷⁶ Al-Maghrebi said that when he called for a doctor due to severe illness, the “doctor” removed his clothes, “shackled him to the wall naked, and took away his blankets” for the night.¹⁷⁷

The claims of former detainees regarding the Dark Prison have been consistent, both regarding their treatment and noting that while the guards were Afghans, the interrogators and supervisors were American and did not wear military uniforms.¹⁷⁸ Most of the former detainees were able to identify that they were being held in Afghanistan due to various factors including the shapes of the buildings, the soil, and the Dari-speaking guards.¹⁷⁹ Aside from frequent beatings, shaving of body hair, lack of food, and being shackled in stress positions, former detainees described three different “torture instruments” at the Dark Prison: the waterboard (although neither al-Sharif nor Shoroeiya knew the term “waterboard” [see Chapter 8]), a small box, and a wooden wall.¹⁸⁰ The small box was described by Shoroeiya as being roughly one square meter; when he was squeezed into it on one occasion, the box was locked and he was prodded with “long thin objects” through holes in the box.¹⁸¹ The wooden wall had a foam-covered ring that would be placed around detainees’ necks, presumably to hold them in place as they were subsequently beaten against the wall.¹⁸² Detailed death threats were also used on detainees, according to al-Sharif.¹⁸³

Detainees held in the Dark Prison between 2002 and 2004 included Binyam Mohammed, Bisher al-Rawi, Jamil el-Banna, Hassan bin Attash, Laid Saidi, Abdul Salam Ali al-Hila,

Khalid al-Sharif (currently commander of the Libyan National Guard; see “Legal and Political Consequences of Rendition,” below), and Mohammed Shoroeyia.¹⁸⁴

The use of cold temperatures played a large role in the third known Afghan black site — the Salt Pit.¹⁸⁵ The Salt Pit was reportedly a former brick factory located northeast of Kabul Airport.¹⁸⁶ In November 2002, an Afghan militant named Gul Rahman was brought to the prison, where he died in CIA custody a few hours later from hypothermia.¹⁸⁷

Other detainees reported similar treatment: “I was left naked, sleeping on the barren concrete,” and hung up naked for “hours on end,” said Ghairat Baheer, who was held at the same time as Rahman.¹⁸⁸ El-Masri claimed that his cell at the Salt Pit was “cold and dirty,” and that he was brutally beaten and told that by an interrogator that “[y]ou are here in a country where no one knows about you, in a country where there is no law. If you die, we will bury you, and no one will know.”¹⁸⁹

It is unclear when each of the Afghan black sites was closed, but officials insist that they have not been used subsequent to President Obama’s 2009 executive order shutting all CIA detention facilities.¹⁹⁰

Iraq

In 2004, an investigation by Major General George Fay concluded: “The CIA conducted unilateral and joint interrogation operations at Abu Ghraib ... [which] contributed to a loss of accountability and abuse at Abu Ghraib. No memorandum of understanding existed on the subject interrogation operations between the CIA and CJTF-7 [Combined Joint Task Force 7], and local CIA officers convinced military leaders that they should be allowed to operate outside the established local rules and procedures.”¹⁹¹

In 2005, however, it was reported that the CIA had signed a memorandum of understanding (MOU) with military intelligence officials at Abu Ghraib prison in Iraq, authorizing the CIA to “hide certain detainees at the facility without officially registering them.”¹⁹² According to Colonel Thomas Pappas, a military intelligence officer at Abu Ghraib, the CIA requested in September 2003 that “the military intelligence officials ‘continue to make cells available for their detainees and that they not have to go through the normal inprocessing procedures.’ ”¹⁹³

The most notable CIA detainee in Iraq was Manadel al-Jamadi, an Iraqi national who died during interrogation in 2003.¹⁹⁴ Al-Jamadi was brought to Abu Ghraib in military custody, after allegedly being beaten and doused with cold water by Navy SEALs and CIA personnel at Baghdad Airport, although he was “walking fine” upon arrival.¹⁹⁵ He was never “checked into” the prison via any booking process; he was “basically a ‘ghost prisoner,’ ” according to a government investigator.¹⁹⁶ Al-Jamadi was shackled in “strappado” fashion, with hands tied behind his back and shackled up to a window behind him while being interrogated by CIA officer Mark Swanner.¹⁹⁷ Less than an hour later, al-Jamadi was dead, bleeding profusely and with severe bruising to his face.¹⁹⁸ Several Navy SEALs received administrative punishment for al-Jamadi’s abuse (and that of other prisoners). However, Swanner never faced charges, and Walter Diaz, an MP on duty at the time who deduced that al-Jamadi was dead, claims that the CIA covered up their own involvement: “They tried to blame the SEALs. The CIA had a big

role in this.”¹⁹⁹ After al-Jamadi’s death, the CIA reportedly issued a memo ordering agents to stop all interrogations, although the scope of the order is not known.²⁰⁰

In 2011, Attorney General Eric Holder assigned federal prosecutor John Durham to lead a new inquiry into whether the deaths of al-Jamadi in Iraq and Gul Rahman in Afghanistan may have constituted war crimes.²⁰¹ The inquiry followed a lengthy “preliminary review” by the Justice Department into the CIA’s rendition, detention, and interrogation program, ordered by Holder to determine whether “any unauthorized interrogation techniques were used by CIA interrogators” outside “the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees.”²⁰² Although Swanner was part of the investigation, the investigation ended in August 2012 without charges being filed.²⁰³ DOJ’s inquiry was seemingly the last possibility of any criminal charges being filed in the United States as a result of CIA abuse.²⁰⁴

The CIA’s role in Iraq is discussed in greater detail in Chapter 3.

Thailand

The southern provinces of Thailand have been plagued by separatist violence from Muslim insurgents for more than a hundred years.²⁰⁵ The 1902 annexation of Pattani, inhabited largely by Malay Muslims, and subsequent human rights violations sparked tensions between the Muslim minorities in the south and the Buddhist majority in the remainder of the country.²⁰⁶ These tensions were exacerbated after 2001 with the implementation of Thaksin Sinawatra’s suppressive policies towards the Muslim South, which triggered violent riots.²⁰⁷ Although scholars generally agree that the Muslim insurgency remains a local movement, they note that Thai militants “increasingly use the language of jihadi extremism.”²⁰⁸

The Thai struggle with Muslim insurgents, combined with the positive, long-standing relationship between the CIA and Thai intelligence counterparts built during the Vietnam War and its aftermath, may account for the decision to establish the first black site for high value detainees in that country.²⁰⁹ As recounted to the Council of Europe investigators by one CIA official, “In Thailand, it was a case of ‘you stick with what you know.’ ”²¹⁰ This is similar to the reasons for the initial rendition collaboration with Egypt.

It is difficult to identify the precise location of the CIA site in Thailand, due to conflicting details gleaned from former detainees and individuals involved in the renditions. The first individual rendered to Thailand was Abu Zubaydah, who was arrested in Pakistan on March 28, 2002.²¹¹ FBI interrogator Ali Soufan, who questioned Abu Zubaydah, stated that he arrived at an overseas location to participate in the detention on March 30 (he does not name the country) and took an additional flight from the international airport to reach the detention facility, which he describes as a “very primitive place” with a snake problem.²¹² The 2007 Council of Europe report noted that the exact location of the black site was publicly alleged to be in Udon Thani in northeast Thailand, “near to the Udon Royal Thai Air Force Base”²¹³ and possibly connected to the Voice of America relay station in that area.²¹⁴ This could well be the facility to which Soufan was referring, and in which Abu Zubaydah was held. Shot three times in the thigh, groin and stomach during the arrest raid in Pakistan and critically injured, Abu Zubaydah was attended in Thailand by a Johns Hopkins trauma surgeon who was specially flown to the Thai hospital where the CIA temporarily moved him from the detention facility on or around March 30.²¹⁵ According to a source with knowledge of the flight, 19 individuals,

including medical personnel, landed at the military side of Don Mueang International Airport on March 31, 2002.²¹⁶ Media coverage on videotapes that were destroyed by the CIA also indicates that Abd al-Rahim al-Nashiri (alleged mastermind of the USS Cole bombing who was arrested in Dubai in November 2002), was held in Thailand briefly between detention at the Salt Pit in Afghanistan and the black site in Poland.²¹⁷ He was held in the same facility as Abu Zubaydah, where their interrogations were recorded on video.²¹⁸ Incidentally, both CIA Director Michael Hayden and CIA officer Jose Rodriguez stated that the videotapes were destroyed in November 2005 — the same month that Dana Priest of *The Washington Post* wrote a comprehensive story about the CIA holding detainees in prisons abroad.²¹⁹

Evidence exists for another detention site in Thailand for CIA detainees: Libyan national Abdel Hakim Belhadj claims that in 2004, he and his wife were arrested at Don Mueang Airport and held for several days in a prison “within minutes of” the airport.²²⁰ Additionally, while Abu Zubaydah was transferred to Thailand “within three days” of his arrest, the videotapes made by the CIA (in part to document his treatment in case he died in custody²²¹) did not begin until April 13.²²² It has been reported that Belhadj and Abu Zubaydah could have been held in a Thai facility near or on the military side of the Bangkok airport.²²³ However, the three-day delay before Abu Zubaydah’s CIA tapes begin could also be ascribed to his hospital stay. There have also been reports of a prison nicknamed “Cat’s Eye,” but is unclear whether this name refers to a facility near Bangkok or to the alleged facility in Udon Thani.²²⁴

In June and August 2003, alleged Al Qaeda operatives Mohammed Farik Amin (“Zubair”), Bashir bin Lep (“Lillie”), and Riduan Isamuddin (“Hambali”) were arrested in joint U.S.-Thai operations. Thai authorities confirmed that after their arrests, the three men were “interrogated at a secret location” by “allied countries.”²²⁵ According to their Guantánamo files, the three men did not arrive at Guantánamo Bay until September 2006.²²⁶ They have been classified among the 14 HVDs, several of whom were rendered to multiple black sites, and it is therefore possible that they were briefly held at the Thai black site before being rendered elsewhere.²²⁷

In terms of treatment at the Thai black site(s), the since-destroyed CIA videos show the waterboarding “and other forms of coercion”²²⁸ of al-Nashiri and Abu Zubaydah, and were described by former CIA officer Jose Rodriguez as “ugly visuals.”²²⁹ The videos were also reported to show Abu Zubaydah “vomiting and screaming.”²³⁰ After being medically treated by the CIA to keep him alive for interrogation, Abu Zubaydah was subjected to several, if not all, of the techniques authorized by the August 1, 2002, memo from DOJ’s Office of Legal Counsel.²³¹ This included being “slapped, grabbed, made to stand long hours in a cold cell,”²³² along with water dousing, similar to the treatment of Gul Rahman in Afghanistan: “spraying him with extremely cold water from a hose while he was naked and shackled by chains attached to a ceiling in his cell.”²³³ Abu Zubaydah was also waterboarded 83 times in August 2002, and it is likely that this occurred in Thailand.²³⁴ Abu Zubaydah owed this treatment to the fact that “Bush administration officials kept insisting that Abu Zubaydah was a member of Al-Qaeda, and they inflated his importance, not only publicly but in classified memos. ... None of this was true, nor should it ever have been believed,” according to former FBI interrogator Ali Soufan.²³⁵ “He wasn’t even an Al Qaeda member,” Soufan added in an interview with Task Force staff.²³⁶ Even prior to the OLC memo, the CIA subjected Abu Zubaydah to techniques including loud music blasted in his cell, forced nudity, sleep deprivation — over the objections of Soufan and other FBI interrogators present.²³⁷ Rodriguez ordered the destruction of

the videos in 2005, saying that he wanted to protect the interrogators on the video.²³⁸ That revelation triggered a DOJ investigation that resulted in no charges, despite the potential of the tapes as evidence in the forthcoming military commission proceedings.²³⁹

The facility where al-Nashiri and Abu Zubaydah's interrogations were taped was reportedly closed in 2003, after Thai officials took issue with "published reports reveal[ing] the existence of the site in June 2003."²⁴⁰

Poland

In December 2002, al-Nashiri and Abu Zubaydah were transferred from Thailand to a new facility in Poland, just days after that facility was opened.²⁴¹ Unlike the uncertainty over the location of the Thai facility, the Polish facility is widely reported to have been located in Stare Kiejkuty (in northeastern Poland), on the grounds of a Polish intelligence training center.²⁴² According to the Council of Europe, "[t]he secret detention facilities in Europe were run directly and exclusively by the CIA," while local personnel had "no meaningful contact with the prisoners and performed purely logistical duties such as securing the outer perimeter."²⁴³

According to a 2007 Council of Europe report, one incentive for Poland's participation in the rendition program was U.S. support of Poland's inclusion in the "lucrative" NATO Integrated Air Defense System, which pulled Poland further away from "communist remnants."²⁴⁴ However, there are reasons for believing that Poland's acquiescence to the establishment of the black site went deeper than monetary compensation. A CIA official told the Council of Europe that "we have an extraordinary relationship with Poland. My experience is that if the Poles can help us they will. Whether it's intelligence, or economics, or politics or diplomacy — they are our allies."²⁴⁵ A source close to the Polish investigation into its collaboration with the rendition program told Task Force staff that Poland's willingness to cooperate with Washington in providing a black site was centered on its great desire to be close allies with the United States, following the collapse of the Soviet Union: "The problem is that Poland always looked to the United States as a beacon of what was right, what was aspirational, what is ethically correct. To us, when we heard about the Russians, torturing and kidnapping and killing ... we thought, the United States is our model."²⁴⁶

In 2002, then-Prime Minister Leszek Miller reportedly authorized Polish intelligence officials to assist the CIA in establishing the new detention facility.²⁴⁷ Such assistance included "purely logistical duties such as securing the outer perimeter," and allowing American "special purpose" planes to land on Polish territory.²⁴⁸ Pinior, a former member of the European Parliament (MEP), also maintains that during the European Parliament investigation, he found out about a document signed by Miller, regarding the treatment of any corpses within the CIA facility.²⁴⁹ The document was not signed by U.S. officials, allegedly to hide "traces of evidence" of the agreement.²⁵⁰ "To my knowledge, it was a document signed by the Prime Minister [Miller] with instructions for the construction of a CIA site on Polish territory, and there is a paragraph in the instructions which described the situation for what is to be done in situations involving corpses."²⁵¹ If Pinior's recollection is accurate, the only plausible explanation is the CIA's anticipation of detainee deaths in custody.

According to 2007 Council of Europe report: "[T]he CIA determined that the bilateral arrangements for operation of its HVD programme had to *remain absolutely outside of the*

mechanisms of civilian oversight. For this reason the CIA’s chosen partner intelligence agency in Poland was the Military Information Services (Wojskowe Służby Informacyjne), whose officials are part of the Polish Armed Forces and enjoy ‘military status’ in defence agreements under the NATO framework.”²⁵² From 2002 until possibly 2005, between eight and 12 HVDs were allegedly held in Poland, including al-Nashiri, Khalid Sheikh Mohammed (KSM), Abu Zubaydah, Ramzi bin al Shibh, Walid bin Attash, Abu Yasir Al-Jazairi, and Ahmed Khalfan Ghailani.²⁵³ A 2009 FOIA release of flight data from the Polish Air Navigation Services Agency shows CIA-operated planes arriving at Szymany Airport (near Stare Kiejkuty) in 2003 from Afghanistan and Morocco that correspond with the movements of several of these detainees.²⁵⁴ Notably, the flight data shows that four of these flights arrived at Szymany despite having flight plans for Warsaw, and two more were allowed landing at Szymany without *any* flight plans.²⁵⁵ The data further illustrates how Jeppesen International Trip Planning (which planned the rendition flights in conjunction with the CIA) requested, and was granted by Poland Civil Air, the dummy landing permits for Warsaw, which would later be cited in the flight plans.²⁵⁶ Each of the flights was operated by Stevens Express Leasing Inc., described as a CIA “shell company” (existing only on paper) by the European Parliament and media outlets.²⁵⁷

“Although KSM was told by interrogators that he would not be allowed to die, he ‘would be brought to the verge of death and back again.’”

The Polish flight data, in conjunction with previously discovered rendition flight data, illustrates aspects of Polish cooperation with the CIA. Direct involvement by the Department of State (DOS) has never been proven regarding the rendition program, and former DOS legal advisor Harold Hongju Koh stated in an interview with Task Force staff that many renditions during the Bush administration “took place without State Department awareness.”²⁵⁸ However, the Richmor documents include DOS authorization letters sent to flight crews prior to each flight, from an official named Terry Hogan.²⁵⁹ The letters described the flights as “global support for U.S. embassies worldwide.”²⁶⁰ No current or former DOS official by that name has ever been located, and the letters are reported to have been forged.²⁶¹

In describing an Eastern European CIA facility that was likely the Polish black site, Jane Mayer relies on accounts from former CIA officials: “The newer prison . . . was far more high-tech than the prisons in Afghanistan, and more intensely focused on psychological torment. The cells had hydraulic doors and air-conditioning. Multiple cameras in each cell provided video surveillance of the detainees. In some ways, the circumstances were better: The detainees were given bottled water.”²⁶²

The bottled water allowed KSM an attempt at identifying one of his prisons. In his 2007 interviews with the International Committee of the Red Cross (ICRC) at Guantánamo Bay, KSM reported that “on one occasion a water bottle was brought to me without the label removed. It had email address ending in ‘.pl.’ ”²⁶³ However, KSM’s other descriptions of the facility differ somewhat from Mayer’s — specifically, he described an “old style” central heating system common to former communist countries, along with cells of roughly three meters by four meters with wooden walls.²⁶⁴ If KSM’s account is correct, the CIA may have had reason to plan for the possibility of corpses. Although KSM was told by interrogators that he would not be allowed to die, he “would be brought to the verge of death and back again.”²⁶⁵ KSM was famously waterboarded 183 times, according to the CIA Inspector General report.²⁶⁶ Based on the publicly-reported chronology of his detention, this most likely occurred in Poland. KSM told the Red Cross,

“I would be strapped to a special bed, which could be rotated to a vertical position. A cloth would be placed over my face. Cold water from a bottle that had been kept in a fridge was then poured onto the cloth by one of the guards so that I could not breathe. ... Injuries to my ankles and wrists also occurred during the waterboarding as I struggled in the panic of not being able to breathe.”²⁶⁷

KSM also described frequent beatings, stress positions, and being doused with cold water from a hose in his cell.²⁶⁸ He closed his ICRC interview by asserting:

During the harshest part of my interrogation, I gave a lot of false information in order to satisfy what I thought the interrogators wanted to hear in order to make the ill-treatment stop. I later told the interrogators that their methods were stupid and counterproductive. I'm sure the false information ... wasted a lot of their time and led to several false red-alerts being placed in the U.S.²⁶⁹

The CIA IG report identifies several other episodes of detainee mistreatment, which most likely occurred in Poland. Around the end of December 2002 (after al-Nashiri had been transferred to Poland), a CIA debriefer used an unloaded handgun to “frighten Al-Nashiri into disclosing information.”²⁷⁰ On what was probably the same day, the same debriefer “entered the detainee’s cell and revved [a power drill] while the detainee stood naked and hooded.”²⁷¹ In another incident, the debriefer threatened to produce al-Nashiri’s mother and family members, reportedly so that al-Nashiri would “infer, for psychological reasons ... [that his interrogation could include] sexually abusing female relatives” in front of him.²⁷² CIA officials say that both the debriefer and the CIA official in charge of the prison were disciplined for these incidents.²⁷³ Al-Nashiri also told the ICRC that he was “threatened with sodomy” and the arrest and rape of his family.²⁷⁴ On at least one occasion, al-Nashiri was forced into a “strappado” position, being “lifted off the floor by his arms while his arms were bound behind his back with a belt.”²⁷⁵ According to court papers, Abu Zubaydah and Walid bin Attash also reported further mistreatment in Poland.²⁷⁶ A source close to the Polish investigation told Task Force staff that “there is a scenario that I can accept, that [a detainee] was tortured by CIA people only in a closed room, and the Poles were outside and they did not know — but what the Poles did know is that he was held illegally.”²⁷⁷ In September 2010, the Open Society Justice Initiative filed an application before the European Court of Human Rights to open a suit against Poland for the mistreatment of al-Nashiri while in Polish territory.²⁷⁸ Legal action for mistreatment has also been taken in Poland on behalf of Abu Zubaydah.²⁷⁹

The Polish government conducted an internal investigation when news reports surfaced naming Poland as a potential CIA black site, and concluded in November 2005 that there was no evidence of secret detention facilities in Poland.²⁸⁰ During Foreign Minister Stefan Meller’s visit to Washington in 2005, the Polish Ministry of Foreign Affairs asked to keep “in close contact” to coordinate their public stance on Poland’s involvement in the rendition program.²⁸¹ Although Prime Minister Miller and former President Aleksander Kwasniewski were kept apprised of the CIA facility, Miller continuously denied the existence of the prison, saying that “democratic countries have a whole range of other instruments which can be used very effectively in situations when they are under threat.”²⁸²

But things changed in March 2008 when the new Prime Minister Donald Tusk issued an order to the appellate prosecutor’s office in Warsaw, launching an official inquiry into the

role of the Polish authorities in the rendition program. The investigation was unprecedented, given that the United States has resisted all attempts, domestic or international, to officially investigate the black sites, either in the form of detainee lawsuits or official inquiries.²⁸³

The Polish investigation is aimed at identifying whether public officials abused their powers by allowing the establishment of an extraterritorial zone under the control of a foreign state’s jurisdiction.²⁸⁴ The prosecutor’s investigation, which is still pending, proceeded for four years largely in secret except for the granting of “victim status” to al-Nashiri and Abu Zubaydah, upon their application.²⁸⁵ The granting of victim status gave credence to al-Nashiri and Abu Zubaydah’s claims of mistreatment on Polish territory, following the review of the evidence in their applications by Jerzy Mierzewski, the first prosecutor heading the investigation, and then Waldemar Tyl, the second prosecutor.²⁸⁶ Receiving victim status also allowed lawyers for Abu Zubaydah and al-Nashiri full access to the public and classified portions of the Polish prosecutor’s investigative files.²⁸⁷ The sudden removal of Mierzewski as prosecutor in May 2011 was reported to be connected to the publication of a memo in which several Polish experts in international law provided Mierzewski with opinions on various questions of law raised by the investigation. Sample questions and answers included:

“The granting of victim status gave credence to al-Nashiri and Abu Zubaydah’s claims of mistreatment on Polish territory.”

Question: Whether there are any provisions of public international law that allow exclusion of an existing detention centre for persons suspected of terrorist activities from jurisdiction of the State in which such a centre has been set up, and if so, which of those provisions are binding on the Republic of Poland.

Answer: *There are no such provisions. Setting up of such a centre would violate the constitution and it would be a crime against the sovereignty of the Republic of Poland.*

Question: In light of public international law, what influence does the fact of being detained [i.e. caught] outside a territory that is occupied, taken or that is a place of military activities has on the status of a person suspected of terrorist activities?

Answer: *Such detention may be qualified as unlawful kidnapping.*

Question: Whether regulations issued by the U.S. authorities concerning persons found to conduct terrorist activities and their practical application conform with the public humanitarian international law provisions ratified by Poland?

Answer: *No. Those regulations are often in contradiction with international law and human rights.*²⁸⁸

Sources close to the Polish investigation, however, told Task Force staff that Mierzewski was removed after he refused to follow orders on the running of the investigation from a superior at the appellate prosecutor’s office, in what would constitute an illegal intervention.²⁸⁹ Whatever the reason for Mierzewski’s removal, access to the investigative files for the victims’ lawyers was severely restricted by the new prosecutor, Waldemar Tyl, and human rights groups active in Poland suspected that former Prime Minister Miller, once again gaining power in Poland, used his influence to slow the investigation.²⁹⁰ Although the current prosecutors insisted to Task Force staff that “it is not legal to refuse defense lawyers access

to evidence of the case,” they later qualified that requests for access by the lawyers would be “postponed for further review” if the requests “obstructed secret procedures.”²⁹¹ It was not explained how this qualification was consistent with the “full access” to which lawyers are legally entitled.

In a broad interview with Task Force staff, Polish prosecutors Waldemar Tyl, Dariusz Korneluk and Szymon Liszewski stated that they believed that the investigation would be completed sometime in 2012.²⁹² However, they noted that their attempts to request information from the United States for the investigation, pursuant to the Polish-U.S. Mutual Legal Assistance Treaty, had caused delays: “The first request was rejected [by DOJ in October 2010], and the reason given was the safety of the state. As far as the second one is concerned we are still waiting for a response.”²⁹³ The prosecutors said to Task Force staff that the refusal of the United States to provide any assistance to their inquiry made their task “difficult,” as dispositive information about the passengers on CIA planes would likely only be available from the United States.²⁹⁴

Despite this challenge, it was announced on February 11, 2012, that the investigation had been transferred from the appellate prosecutor’s office in Warsaw to the appellate prosecutor’s office in Krakow.²⁹⁵ An indictment filed against Zbigniew Siemiatkowski (former head of Polish intelligence) became public on March 27, 2012, and although the file had been transferred to Krakow soon after the indictment was filed, detainee lawyers were able to meet with the new prosecutors shortly afterwards.²⁹⁶ According to Siemiatkowski, the indictment included allegations of violating international law by “unlawfully depriving prisoners of their liberty” and allowing corporal punishment in connection with the site at Stare Kiejkuty.²⁹⁷ Charges were reportedly being considered against Siemiatkowski’s deputy, Colonel Andrzej Derlatka, and former Prime Minister Leszek Miller, and in May 2012 former President Kwasniewski commented that “[o]f course, everything went on behind my back” despite records of conversations showing that he and Miller were well informed about the site.²⁹⁸ In response to a question about U.S.-Polish relations following the indictment, Prime Minister Donald Tusk said, “Poland is the political victim of the indiscretion of some members of the U.S. administration a few years ago. ... [We will] no longer be a country where politicians — even if they are working arm-in-arm with the world’s greatest superpower — could make some deal somewhere under the table and then it would never see daylight.” In February 2013, however, a major Polish newspaper announced that the charges against Siemiatkowski would be dropped by the Krakow prosecutors, despite charges reportedly having been drawn up against him. At the time, prosecutors declined to comment.²⁹⁹

Romania

The existence of a black site in Romania was reported in November 2005 by Human Rights Watch, at the same time of the revelation of the site in Poland.³⁰⁰ After two years of investigation, the 2007 Council of Europe report announced that there was sufficient “evidence to state that secret detention facilities run by the CIA did exist in Europe from 2003 to 2005, in particular in Poland and Romania.”³⁰¹ Multiple sets of flight data, including those contained in the Richmor documents, show the landing of CIA-contracted flights in Bucharest.³⁰² Additionally, documents issued by Poland’s Border Guard Office in July 2010 show at least one flight from Szymany airport to Romania on September 22, 2003, carrying five passengers upon departure after the plane had arrived at Szymany without passengers.³⁰³

In response to the release of the flight data, the Romanian government acknowledged that planes leased by the CIA landed in Bucharest, but denied that the planes transferred detainees or that Romania hosted a black site.³⁰⁴ A 2006 inquiry by the Romanian senate found that the allegations regarding a black site in Bucharest were “unfounded,” although no other information regarding the inquiry was made public.³⁰⁵ Indeed, Romanian authorities indicated to Swiss senator Marty during the Council of Europe investigation that “CIA activities [in Romania] now fall unambiguously under the secrecy regime instituted under the NATO Security Policy.”³⁰⁶ Marty also noted that “[a]s in several other Eastern European countries who adopted more stringent secrecy policies as part of their NATO accession, Romania’s legislation on classified information was expedited through Parliament and criticised by civil society for being unbalanced.”³⁰⁷ Beyond abbreviated statements and provision of select flight data to the Council of Europe and the media, Romania’s official position on the black site has remained a “sweeping, categorical denial of all the allegations, in the process overlooking extensive evidence to the contrary from valuable and credible sources.”³⁰⁸ This position stands in contrast to the official investigations undertaken by prosecutors in Poland and Lithuania, and is much more similar to the position taken by the United States on the subject.

According to the Council of Europe report, a select group of Romanian officials (including, President Ion Iliescu, Minister of National Defense Ioan Talpes, and Head of Military Intelligence Sergiu Tudor Medar) were involved in the CIA collaboration, thereby “short-circuit[ing] the classic mechanisms of democratic accountability.”³⁰⁹ The collaboration was “withheld” from Romania’s Supreme Council of National Defense and civilian intelligence agencies, as well as “senior figures in the Army.”³¹⁰ The Council of Europe also noted that according to sources, the majority of detainees brought to Romania were extracted “from the theater of conflict,” referring to transfers from Afghanistan and Iraq.³¹¹ This allegation is supported by the 2007 Swiss intelligence cable stating Egyptian counterparts had unequivocally confirmed that there were 23 Iraqi and Afghan detainees being held for interrogation at a CIA facility in Mihail Kogalniceanu Air Base.³¹²

By the latter account, it is likely that detainees were interrogated at Mihail Kogalniceanu in addition to a separate detention facility. In 2009, *The New York Times* published an account of former CIA agent Kyle “Dusty” Foggo’s role in the building of three black sites, including “a renovated building on a busy street in Bucharest, Romania.”³¹³ The paper quoted sources saying that the sites “were designed to appear identical,” and Foggo relied on contractors to provide “toilets, plumbing equipment, stereos, video games, bedding, night vision goggles, earplugs and wrap-around sunglasses” to equip the sites.³¹⁴

In December 2011, a joint investigation by the Associated Press and German media outlet ARD Panorama claimed to have located the black site in Bucharest.³¹⁵ Former intelligence officials reportedly “described the location of the prison and identified pictures of the building,” which was used as the headquarters of ORNISS — the National Registry Office for Classified Information, where secret Romanian, NATO and EU information is stored.³¹⁶ The building itself is on a residential street in Bucharest, where CIA officials shuttled detainees in vans after arrival in Bucharest.³¹⁷ The report asserted that the prison, code-named “Bright Light,” opened in the fall of 2003, after the Polish facility was closed, and that “[t]he basement consisted of six prefabricated cells, each with a clock and arrow pointing to Mecca. ... The cells were on springs, keeping them slightly off balance and causing disorientation among some detainees.”³¹⁸ Former officials further confirmed that in the first month of detention, detainees “endured sleep deprivation and were doused with water,

slapped or forced to stand in painful positions.”³¹⁹ The Romanian government dismissed the AP report, and all details contained therein, as “pure speculation.”³²⁰

The identities of detainees held in Romania have not been confirmed, but they are reported to have included Khalid Sheikh Mohammed, Walid bin Attash, Ramzi bin al Shibh, Abd al-Rahim al-Nashiri and Abu Faraj al-Libi.³²¹ Disappointingly, the European Parliament Civil Liberties, Justice, and Home Affairs Committee’s current renewal of its 2007 investigation has not encouraged Romania toward limited information disclosure or more thorough internal inquiries. Tasked with debating the text of the new European Parliament report in July 2012, Romanian MEPs proposed numerous amendments to the report, including the proposed deletion of a call for Romania to undertake an independent inquiry.³²² The Romanian MEPs also criticized the report for a lack of judicial evidence, despite the fact that they have steadfastly refused to undertake any judicial process by which such evidence could be uncovered.³²³

Thomas Hammarberg, the Council of Europe’s commissioner for human rights, submitted a confidential memorandum to the prosecutor-general of Romania in March 2012 (made public in December 2012) that detailed his findings regarding the Romanian black site.³²⁴ In his memo, Hammarberg named the September 22, 2003, flight from Poland as the first rendition that opened the Romanian black site.³²⁵ He also provided details on the practice of filing “dummy” flight plans as “part of a system of cover-up frequently used in relation to CIA flights,” saying that the CIA’s contractor, Jeppesen International Trip Planning, had deliberately avoided listing Bucharest as an express destination.³²⁶ Hammarberg expressed his concern that the HVDs held in Romania were likely subjected to “enhanced interrogation techniques” that might “have ramifications for compliance with the [European Convention on Human Rights], including the use of blindfolding or hooding, forced shaving of hair, indefinite periods of incommunicado solitary confinement, continuous white noise, continuous illumination using powerful light bulbs, and continuous use of leg shackles (in some instances for 24 hours a day).”³²⁷ He concluded that

sufficient evidence has now been amassed to allow us to consider the existence of a CIA Black Site in Romania as a proven fact, and to affirm that serious human rights abuses took place there. ... In order to fulfil Romania’s positive obligations under the European Convention on Human Rights, I believe it is now imperative that the Romanian authorities conduct a prosecutorial investigation capable of leading to the identification and punishment of those responsible, whoever they might be.³²⁸

In August 2012, the Open Society Justice Initiative filed an application on behalf of al-Nashiri before the European Court of Human Rights (ECHR), collecting flight data on renditions to and from Romania from the Richmor documents and Eurocontrol (the European Organisation for the Safety of Air Navigation).³²⁹ If the application is accepted (a similar application against Poland was accepted by the ECHR in June 2012), Romania may be compelled to produce further information about Bright Light and the detainees held there.

Lithuania

In 2009, it was reported for the first time by ABC News that Lithuania had provided at least one secret prison (disguised as a riding school) for the CIA to detain and interrogate up to eight HVDs.³³⁰ The report included details regarding flights from Afghanistan to Vilnius, and stated that Lithuania was likely the last black site to be opened in Eastern Europe, after the

closure of the Polish site in late 2003 or early 2004.³³¹ The Lithuanian Parliament (Seimas) immediately undertook an investigation into the allegations, which was closely followed by the U.S. government.³³² Correspondence from the U.S. embassy in Lithuania, from 2010, commented that “many thought” the investigation was “ill-advised.”³³³ Additionally, after President Dalia Grybauskaitė called “for more accountability” on the secret prisons, the U.S. embassy commented that “[s]he did not seem to be aware of how this could affect relations with the U.S.”³³⁴

Headed by Arvydas Anusauskas, chairman of the Committee on National Security and Defense (CNSD), the CNSD held a number of hearings at which 55 former and current officials with potential knowledge of the CIA program were interviewed.³³⁵ Former director general of the state security department, Meļys Laurinkus and his deputy Dainius Dabašinskas, admitted to knowledge of the program.³³⁶ Additionally, Laurinkus discussed the receipt of the proposal from the United States, and recounted his consultation with then-President Rolandas Paksas on the matter.³³⁷ All other former officials, including Paksas, denied any knowledge of the CIA program.³³⁸

Even without the cooperation of most government officials, the conclusions of the CNSD were startling. On the question of whether CIA detainees were subject to transportation and confinement in Lithuania, the CNSD found that it was impossible to establish whether detainees were brought into Lithuania; however, “conditions for such transportation did exist.”³³⁹ The CNSD highlighted several CIA-related flights to Lithuania that had not been reported to the Council of Europe in their inquiry, including three flights for which no customs inspections were carried out.³⁴⁰ In fact, the state border guard security was prevented from making inspections by the State Security Department (SSD) — it was found “that oral arrangements had been made [by the SSD] with representatives of the airport and aviation security.”³⁴¹ ABC News also reported that the CIA submitted false flight plans to European aviation authorities, similar to the practice in Poland. “Planes flying into and out of Lithuania, for example, were ordered to submit paperwork that said they would be landing in nearby countries, despite actually landing in Vilnius. ... Finland and Poland were used most frequently as false destinations.”³⁴²

Jonas Markevicius, President Grybauskaitė’s special advisor on national security, confirmed to Task Force staff that after the reports of the secret facilities surfaced, the president had been concerned “about the ability of special services to manipulate gaps in the law.”³⁴³ These concerns were validated, he said, when the CNSD found that “flights had avoided border guard inspectors.”³⁴⁴ At the time, “there was no procedure of scrutinizing SSD actions,” and Markevicius insisted that there would have been “no way to authorize the action, [which] was illegal from the beginning.”³⁴⁵ This lack of formal review over the SSD decision to cooperate with the CIA also concerned Anusauskas, who told Task Force staff: “There were gaps and problems in intelligence control ... and high level accountability. The previous intelligence laws allowed agencies to act independently, and information provided to the political authorities was simply not sufficient.”³⁴⁶ Meanwhile, embassy correspondence showed the United States’ continued alarm at Grybauskaitė’s forthright public comments on her suspicions that detention facilities existed:

Rather than help quiet a story that does not reflect favorably on Lithuania, her comments instead have suggested that there may be a kernel of truth to the allegation, and have reignited a parliamentary investigation that in the end likely will result in another inconclusive finding. ... The president’s comments are all the more puzzling given her concerns about Russian influence in the Lithuanian media, as the story tends to cast doubt on the strength of the U.S.-Lithuanian relationship.³⁴⁷

Grybauskaitė's comments may have been particularly troubling to U.S. officials, given that CIA officials spoke highly of their Lithuanian counterparts. "We didn't have to [offer any incentives to be allowed to establish a facility.] ... They were happy to have our ear."³⁴⁸ Lithuania had also joined NATO in April 2004, along with Romania.³⁴⁹

The CNSD was similarly candid about the existence of secret CIA detention sites in Lithuania, establishing that "the SSD had received a request from the partners to equip facilities in Lithuania suitable for holding detainees, and that "in the course of the project, facilities suitable for holding detainees were equipped, taking account of the requests and conditions set out by the partners."³⁵⁰ The CIA detention program in Lithuania began with use of a facility named "Project No. 1" in or near Vilnius in 2002.³⁵¹ The CNSD also outlined the launch of a second facility in Antaviliai, named "Project No. 2," and situated in a former riding school.³⁵² Although the CNSD could find no evidence in their final report that any detainees were actually held in either facility, Project No. 2 has received the most scrutiny, and much more is known about its provenance.

According to the former owner of the riding school, he responded to an ad looking for land, which had been posted on the Internet by the U.S. embassy in Vilnius.³⁵³ The land was actually bought by Elite LLC, an apparent CIA shell company, on March 5, 2004.³⁵⁴ Elite was incorporated on July 9, 2003.³⁵⁵ Its initial member was Star Group Finance and Holdings, Inc. (Panama) and its initial registered agent was the Federal Research Corporation of Washington, D.C. Elite LLC had vested power of attorney in a purported Lithuanian national by the name of Valdas Vitkauskas.³⁵⁶ However, according to Lithuanian reporter Egle Digryte, journalists attempting to look for Vitkauskas found that he had no Social Security number and had paid no taxes as of 2006.³⁵⁷ Moreover, the address listed for him was a student dormitory where the exasperated guard told Digryte that "no one by that name" had ever lived there, and that she "wasn't the first" to look for him there.

After the purchase of the riding school by Elite Corp for two million litas (roughly \$700,000), the former owner said that he continued to "work with the Americans" for about a year on changing the electricity to make it U.S.-compatible.³⁵⁸ This comports with the ABC News report, which describes the renovated facility as being composed of

" 'prefabricated pods' to house prisoners, each separated from the other by five or six feet. Each pod included a shower, a bed and a toilet. Separate cells were constructed for interrogations. ... All the electrical outlets in the renovated structure were 110 volts, meaning they were designed for American appliances." ³⁵⁹

According to the CNSD, the layout and operation of the facility "allowed for the performance of actions by officers of the partners [CIA] without the control of the SSD and use of the infrastructure at their discretion."³⁶⁰

The final question addressed by the CNSD was whether the Lithuanian state institutions considered the activities of the CIA relating to secret detention on Lithuanian territory.³⁶¹ The CNSD found that "Mėlys Laurinkus, [Lithuanian military commander] Arvydas Pocius, [and] Dainius Dabašinskas, had knowledge of Project No. 2 at the time of launching and running thereof."³⁶² However, there was no evidence that Paksas or President Valdas Adamkus were informed about the specific operations at Project No. 2.³⁶³

The CNSD concluded their report with the proposal to refer the question of charges (misuse

of office or abuse of power) against Laurinkus, Pocius, and Dabašinskas to the prosecutor general’s office, along with recommendations to strengthen oversight of the SSD.³⁶⁴ According to Lithuanian officials, those recommendations have been fully implemented. Anusauskas provided details of reforms including “procedures whereby intelligence needs are formulated by the political power, rather than the SSD;” the creation of an “Intelligence Coordination Group” under presidential authority; and a new draft law on intelligence to improve parliamentary control over the SSD.³⁶⁵ However, Anusauskas admitted that the “classification of information led to the conclusion of ‘no evidence’ that detainees had been held in Lithuania.”³⁶⁶ Similar to the Polish inquiry, Anusauskas confirmed that the CNSD “had asked the USG for information through diplomatic channels, but received an answer of ‘no comment.’ ”³⁶⁷

The release of the CNSD report caused a political flurry in Lithuania. Laurinkus, who was then serving as ambassador to Georgia, was recalled by President Grybauskaitė.³⁶⁸ Foreign Minister Vygaudas Usackas resigned in January 2010 after Grybauskaitė publicly declared her mistrust of him.³⁶⁹ While Grybauskaitė stated that the CNSD report supported her suspicions that detention facilities had existed in Lithuania, Usackas contradicted this interpretation, emphasizing that “conclusions of the commission show that they haven’t found any facts which would prove that Lithuanian territory was used for any kind of detention contrary to international obligations.”³⁷⁰ Usackas was ambassador to the United States from 2001 to 2006, when the alleged negotiations and operations of the sites in Lithuania took place. However, he asserted that “[t]he facts announced by [news reports] came from a time when I was not foreign minister. I had no clue about it.”³⁷¹

Following the referral from the CNSD, the prosecutor general’s office opened a criminal inquiry in January 2010, regarding whether SSD officials had colluded with the CIA in the rendition program.³⁷² Irmantas Mikelionis, of the Organized Crime and Corruption Investigation Unit of the prosecutor general’s office, stated that compared to the CNSD investigation, prosecutors had “access to [a] larger amount of documents and materials, they interviewed many individuals with access to classified information, and so they could reach a more objective decision.”³⁷³ During the prosecutor general’s investigation, the European Committee for the Prevention of Torture (CPT), a treaty-monitoring body, requested and was granted access to the two purported detention sites.³⁷⁴ The CPT report confirms many of the details provided by ABC News and the Seimas Report, including that Project No. 1 “consisted of a small, single-storey, detached building located in a residential area in the centre of Vilnius,” while Project No. 2 was located 20 kilometers outside of Vilnius.³⁷⁵

Despite the CPT’s findings, as well as the 2010 publication of the U.N. Report on Secret Detentions (which also found that Lithuania had participated in the CIA rendition program), the prosecutor general’s office concluded its inquiry in January 2011, citing a lack of information. This was explained in 2012 remarks by President Grybauskaitė, who said that

“the legal investigation, no doubt, stalled due to the fact that we did not receive additional information from the United States. ... What concerns prosecutors and other investigators [is that] we had no access to full information due to the other country’s refusal to provide it.”³⁷⁶

In the hope that the investigation would be reopened, further information was provided to the prosecutor general's office in September 2011, by NGOs Amnesty International and Reprieve. The Amnesty International report outlined new flight data for CIA flights landing in Vilnius and further evidence linking Abu Zubaydah to the Vilnius detention site. In particular, the organizations presented flight data showing that Abu Zubaydah was rendered from Morocco to Lithuania on a Boeing 737 in February 2005 — evidence that had been previously unavailable.³⁷⁷ The prosecutor general spent several weeks considering the possibility of reopening the investigation, but ultimately declined to do so, initially offering no public explanation for the decision.

Deputy Prosecutor General Darius Raulušaitis attempted to explain the refusal in an interview with Task Force staff, stating that by the date of Abu Zubaydah's alleged flight to Lithuania in February 2005, "there were no conditions to keep individuals in the facility — they had been removed."³⁷⁸ This assertion is at odds with statements by CIA officials and flight data showing CIA-related flights into Lithuania from 2004 until at least March 2006.³⁷⁹ He added that the "conditions" were "not particularly meant for detention — it was not necessarily a jail." Mikelionis agreed, saying that the facility "could just as well have been meant to hold valuables."³⁸⁰ Citing state secrets, neither Raulušaitis nor Mikelionis could provide any further details on the investigation, including the number of individuals interviewed, the number of documents examined, and the completion of any forensic tests.

Both Mikelionis and Raulušaitis did, however, insist strongly to Task Force staff that following their "exhaustive" investigation, they came to the "categorical conclusion that no persons have been secretly detained in the Republic of Lithuania."³⁸¹ When asked how such a conclusion could be proven, Raulušaitis stated that after "all necessary procedural inquiries ... the officers made a categorical conclusion that no person who'd been secretly transported had been detained in the secret sites indicated in the CNSD report, nor in any other possible sites."³⁸² The prosecutors refined this statement in a later clarification, saying, "It is more accurate to say: there is no evidence that any persons were secretly detained in Lithuania." However, they once again made the "categorical" assertion to representatives of the European Parliament's Civil Liberties Committee in April 2012, that they had proven that "no detainees have been detained in the facilities of Projects No. 1 or No. 2 in Lithuania."³⁸³

The divergent voices within the Lithuanian government — from Grybauskaitė to Anusauskas and Raulušaitis — on the subject of alleged CIA sites have kept the debate in the headlines. In its 2012 report, the European Parliament's Civil Liberties Committee found that "the layout of [Project No. 2] and installations inside appears to be compatible with the detention of prisoners," and called for "the Lithuanian authorities to honour their commitment to reopen the criminal investigation into Lithuania's involvement in the CIA programme if new information should come to light, in view of new evidence provided by the Eurocontrol [flight] data."³⁸⁴ In addition, the filing of an application against Lithuania before the European Court of Human Rights by lawyers for Abu Zubaydah may yield the disclosure of further evidence or new detainee names associated with the two detention sites.³⁸⁵

Morocco

Flight records and reports from CIA officials have indicated that a prison near Rabat, Morocco, was used as a proxy detention site for detainees including Ramzi bin al Shibh, Binyam Mohammed, and Abou Elkassim Britel.³⁸⁶ Both Mohammed and Britel appear to have been

brutally tortured in Moroccan custody. Britel, an Italian citizen of Moroccan origin, was captured in Pakistan in March 2002, and rendered by the CIA to Morocco two months later.³⁸⁷ Britel was imprisoned in Morocco until February 2003, when he was briefly released.³⁸⁸ During his imprisonment, Britel claims to have been repeatedly beaten as well as subjected to a Moroccan interrogation technique known as "bottle torture," whereby a bottle is forced into the anus of a prisoner.³⁸⁹ Britel was released without charge in February 2003, but was re-arrested in May 2003 while he was traveling back to Italy, on suspicion of involvement in the recent Casablanca bombings.³⁹⁰ Britel claims that he was once again held in inhumane conditions and forced to sign a confession that he had not read. After a trial that failed to comport with international fair-trial standards, Britel was sentenced to 15 years in prison, which was reduced to nine years after appeal.³⁹¹ In 2006, a six-year long Italian criminal investigation into Britel (which was influential in the Moroccan charges) was dismissed for a lack of any evidence of criminal or terrorist activity by Britel.³⁹² Britel was finally released from Morocco in April 2011, and returned to Italy.³⁹³ While imprisoned, he was a plaintiff in the lawsuit filed by several detainees against aviation company Jeppesen Dataplan, which organized his flight to Morocco in 2002.³⁹⁴

Bin al Shibh and Mohammed were also held in Morocco between 2002 and 2003.³⁹⁵ It has been reported that the CIA began building its own prison in Morocco, similar to the black sites, in 2003, but it is unclear whether the prison was completed or if detainees were held there.³⁹⁶

Kosovo

In 2005, allegations surfaced in Europe that the United States was using a NATO military base in Kosovo (Camp Bondsteel) for secret detentions related to the "War on Terror."³⁹⁷ Alvaro Gil-Robles, the human rights commissioner for the Council of Europe, visited Camp Bondsteel in September 2002. He described the prisoners' situation as similar to Guantánamo Bay: "Each prisoner hut was surrounded with barbed wire, and guards were patrolling between them. Around all of this was a high wall with watchtowers."³⁹⁸ At the time, the camp was under the control of NATO Kosovo Force (KFOR) troops, and Gil-Robles described the prisoners as "Kosovo Albanians or Serbs, and there were four or five North Africans. Some of them wore beards and read the Koran."³⁹⁹

These details were partially supported by the periodic review of the Kosovo criminal justice system by the Organization for Security and Cooperation in Europe (OSCE) covering March 2002 through April 2003.⁴⁰⁰ The report states that the OSCE was concerned with arrests made by KFOR in September 2002 and again in March 2003 and noted that some of the detentions breached international human rights standards. The OSCE was "particularly concerned about the treatment of five Algerian nationals, three of whom were detained for more than 30 days."⁴⁰¹ When the OSCE interviewed the five Algerian detainees, they were informed "that the line of interrogation had little to do with security issues in Kosovo and was more related to their possible connections to Islamic activists in Bosnia-Herzegovina, Algeria, or the Al Qaeda terrorist network. If true, this could be contrary to KFOR's own Directive 42, which states that "the fact that a person may have information of intelligence value by itself is not a basis for detention."⁴⁰² The fact that the OSCE had some degree of access to the detainees, however, suggests that they were not necessarily being held by the CIA at the time.⁴⁰³

In 2005 and 2006, the Council of Europe's Committee on the Prevention of Torture submitted seven requests for information to NATO on the detentions at Camp Bondsteel, but failed

to receive any response.⁴⁰⁴ Before the 2006 and 2007 Council of Europe reports on secret detention were released, the Council's secretary-general, Terry Davis, threatened to "go public" about the secret detentions at Camp Bondsteel if NATO failed to cooperate with the investigation.⁴⁰⁵ The 2006 report described Kosovo as a "black hole" for the investigation, and stated that "[the lack of cooperation] is frankly intolerable, considering that the international intervention in this region was meant to restore order and lawfulness."⁴⁰⁶ The report also cited the 2005 Swiss intelligence cable intercepted from Egyptian intelligence, which appeared to confirm that there was a secret interrogation center in Kosovo, in addition to Mauritania, Ukraine, Macedonia and Bulgaria.⁴⁰⁷ There is no further information about the latter three sites. Ibn al-Shaykh al-Libi, Abdullah Mohammed Omar al-Tawaty and Saleh Hadiyah Abu Abdallah Di'iki (also Libyan nationals) were reportedly held in Mauritania, with Di'iki being initially arrested in Mauritania and allegedly interrogated by both Mauritanian and American officials before being transferred to Morocco and Afghanistan.⁴⁰⁸

Djibouti

Limited information exists about the use of Djibouti, on the Horn of Africa, by the CIA, but it has been reported that Camp Lemonnier, the U.S. naval base, was used for interrogations of several detainees, including Mohammed al-Asad, Suleiman Abdallah [see "Somalia," below], Gouled Hussein Dourad, Mohammed Ali Issa, and Abdulmalik Mohammed.⁴⁰⁹ Al-Asad is the only known detainee to have identified Djibouti as the site of one of his prisons.⁴¹⁰ After his arrest in Tanzania in 2003, al-Asad claims that he was flown to Djibouti and placed in a small cell in a prison with a photograph of Djibouti President Ismail Omar Guelleh on a wall.⁴¹¹ Al-Asad stated that a guard also told him that he was being held in Djibouti, and al-Asad's father was given the same information by Tanzanian authorities.⁴¹² During their investigation, U.N. officials received information "proving that [al-Asad] had been transferred by Tanzanian officials by plane to Djibouti on 27 December 2003."⁴¹³

During his detention in Djibouti, al-Asad claims to have been interrogated by a white English-speaking woman identifying herself as American.⁴¹⁴ Al-Asad said he was held for two weeks in the prison, without being given a change of clothes, before being taken to an airport where his clothes were torn off and he was assaulted by a team of "black-clad men masked with balaclavas" — a description that applies to the CIA "Rendition Group."⁴¹⁵

Flight records from the Richmor legal documents show numerous CIA-contracted flights to Djibouti from Egypt, Afghanistan and Cyprus in 2003 and 2004.⁴¹⁶ In 2005, General John Abizaid (then commander of U.S. Central Command), commented before the Senate Armed Services Committee that "Djibouti has given extraordinary support for U.S. military basing, training, and counter-terrorism operations."⁴¹⁷

In January 2013, it was reported that three European men (two from Sweden and one from the UK) with Somali backgrounds had been arrested in August 2012 while traveling through Djibouti.⁴¹⁸ Accused of supporting extremist group Al Shabab, the men were first interrogated by U.S. agents in Djibouti for several months before being secretly indicted by a federal grand jury and flown to the United States to stand trial.⁴¹⁹ They appeared in a New York courtroom for the first time on December 21, 2012.⁴²⁰ This case bears greater resemblance to traditional renditions conducted pre-September 11, in which suspects captured overseas (with or without cooperation from the host government) were transferred to the United States to stand trial.

Although due process concerns remain, there are no reported allegations of mistreatment of the three men aside from extended secret detention.⁴²¹

Somalia

In July 2011, after an extensive investigation on the ground in Mogadishu, Jeremy Scahill of *The Nation* published new information about alleged CIA counterterrorism operations in Somalia. These operations including a training center for Somali intelligence agents and operatives at Mogadishu’s international airport, composed of “more than a dozen buildings behind large protective walls and secured by guard towers ... [containing] eight large metal hangars” with CIA aircraft.⁴²² The training center is said to have been completed in spring 2011.⁴²³ According to Somali counterterrorism officials and other operatives interviewed by Scahill, the CIA also presently uses a secret prison in the Somali National Security Agency headquarters to hold terror suspects and those with ties to Al Shabab.⁴²⁴ Similar to the closed black sites, the prison is staffed by Somali guards, but CIA officials pay the salaries of the officials and “directly interrogate” detainees, who include individuals rendered from Kenya to Mogadishu by the CIA.⁴²⁵ The prison

consists of a long corridor lined with filthy small cells infested with bedbugs and mosquitoes. One said that when he arrived in February, he saw two white men wearing military boots, combat trousers, gray tucked-in shirts and black sunglasses. The former prisoners described the cells as windowless and the air thick, moist and disgusting. Prisoners, they said, are not allowed outside. Many have developed rashes and scratch themselves incessantly. Some have been detained for a year or more. According to one former prisoner, inmates who had been there for long periods would pace around constantly, while others leaned against walls rocking.⁴²⁶

The existence of both sites was confirmed by a U.S. official, who stated that “[i]t makes complete sense to have a strong counterterrorism partnership” with the Somali government.⁴²⁷ One of the alleged inmates of the prison was Ahmed Abdullahi Hassan, a Kenyan citizen suspected of involvement with Al Qaeda in East Africa, who was captured in Nairobi in 2009 and “disappeared” for nearly two years.⁴²⁸ The Kenyan government denied any knowledge of his whereabouts.⁴²⁹ In 2011, a man who had been released from the Mogadishu prison described being imprisoned with Hassan, who told him that he had been tied up and flown to Mogadishu (which he recognized by the smell of the sea), and interrogated by Somalis and “white men” constantly after his arrival.⁴³⁰ Hassan’s lawyers in Kenya (hired by his family after his disappearance) plan to file a *habeas* petition in order to compel the production of information about Hassan’s whereabouts and reasons for detention.⁴³¹ According to Scahill, a U.S. official denied that Hassan had been rendered by the CIA, but acknowledged that the U.S. was involved in his capture and detention, implying that the Mogadishu prison is being used as a proxy detention site rather than a traditional black site.

In June 2012, a report by investigator Clara Gutteridge detailed how a Tanzanian national, Suleiman Abdallah, had been captured in Mogadishu in 2003 by a warlord and transferred to American custody, after which he was rendered through Kenya and Djibouti. Abdallah was imprisoned for five years at U.S. prisons in Afghanistan, including the Dark Prison and Bagram. The reasons for his detention were not clear; one report by a Kenyan minister claimed that Abdallah was being extradited to the United States for charges related to the 1998 embassy

“Somali warlords would send captured locals to the CIA for cash payments.”

bombings in Kenya and Tanzania, but he never arrived in the United States. Gutteridge described how Abdallah was essentially “disappeared”; his name “appeared in the margins of a confession barred by a Kenyan court in 2005 for having been obtained through torture.”⁴³² Abdallah was released from Bagram in 2008 without explanation for either his detention or his release.⁴³³ However, one possible explanation, as Gutteridge explains, was the bounty system (similar to that in Afghanistan) that developed in Somalia in 2002, whereby Somali warlords would send captured locals to the CIA for cash payments.⁴³⁴ Both Abdallah and Hassan’s stories appear to confirm that CIA operations in Somalia include both proxy detention and rendition.

Legal and Political Consequences of the Rendition Program

The extraordinary rendition program has triggered a number of lawsuits in the United States and abroad, along with investigations and official inquiries that continue more than six years after the black sites were allegedly closed.

- Former detainees Khaled El-Masri and Maher Arar filed lawsuits in U.S. district court against, respectively, George Tenet (former director of the CIA) and John Ashcroft (former attorney general), alleging violations of U.S. and international laws in connection with their renditions and torture. Both cases were eventually dismissed by judges after the U.S. government argued that adjudicating the cases would compromise state secrets.⁴³⁵ However, Arar received an apology by Democratic and Republican members of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties for his treatment and the fact that he was barred from entering the United States to testify before the committee in person.⁴³⁶
- Former detainees Binyam Mohammed, Abou Elkassim Britel, Ahmed Agiza, Mohamed Bashmilah, and Bisher al-Rawi filed a lawsuit in 2007 in U.S. district court against Jeppesen Dataplan, a Boeing subsidiary, alleging knowing participation in the CIA detainee transfers to potential torture and cruel, inhuman or degrading treatment.⁴³⁷ In earlier media reports, a Jeppesen employee recalled that “Bob Overby, the managing director of Jeppesen International Trip Planning, said, “We do all of the extraordinary rendition flights — you know, the torture flights. Let’s face it, some of these flights end up that way.”⁴³⁸ The lawsuit was eventually dismissed after the U.S. government intervened and asserted the state-secrets privilege.⁴³⁹
- Lawyers for El-Masri also filed an application against the United States in 2009 before the Inter-American Court of Human Rights alleging violations of the American Declaration of the Rights and Duties of Man, including kidnapping and torture. The United States never responded to the application.⁴⁴⁰
- In 2009, after a three-year trial, an Italian court convicted 23 U.S. citizens (22 alleged CIA agents and one U.S. Air Force officer) for their roles in the rendition and subsequent torture of Abu Omar.⁴⁴¹ The agents, who were all tried *in absentia*, included former CIA Milan chief Robert Lady, despite attempts by at least one defendant to halt the prosecution via invocation of diplomatic immunity.⁴⁴² Lady was sentenced to seven years in prison, while the remaining agents were sentenced to five years each.⁴⁴³ All 23 individuals are now considered fugitives under Italian law.⁴⁴⁴ To pay the €1.5 million (approximately \$2

million) in damages awards to Abu Omar, Lady’s property in Italy was seized. In February 2013, a Milan appeals court vacated acquittals (previously based on diplomatic immunity) for three U.S. citizens in the same case, including the former CIA station chief in Rome, Jeffrey Castelli, and instead convicted them *in absentia*. Castelli was sentenced to seven years, and the other two officials were sentenced to six years each. On February 12, 2013, Italy’s former military intelligence chief Nicolas Pollari and his deputy, Marco Mancini, were both sentenced to 10 years and nine years in prison, respectively, for their roles in the Abu Omar rendition. Unlike the CIA officials convicted *in absentia*, Pollari and Mancini will serve their sentences in Italy if they lose the appeals process.⁴⁴⁵

- Four applications have been filed in the European Court of Human Rights (ECHR) on behalf of Khaled El-Masri (against Macedonia), Abu Zubaydah (against Lithuania), and al-Nashiri (against Poland and Romania), alleging violations of the European Convention on Human Rights, including the prohibition of torture/CID and the right to liberty and security of person.⁴⁴⁶ El-Masri’s application was accepted by the ECHR, and arguments were heard on May 16, 2012. On December 13, 2012, the ECHR ruled in favor of El-Masri, finding that El-Masri was subjected to techniques amounting to torture by the CIA following his capture in Skopje, and that Macedonia bore responsibility for El-Masri’s rendition to Afghanistan and treatment over his entire period of detention in Macedonia and Afghanistan.⁴⁴⁷ El-Masri was also awarded €60,000 (roughly \$80,000) in compensation, to be paid by the government of Macedonia. The ruling was viewed as an historic judgment, and U.N. special rapporteur on human rights and counter-terrorism, Ben Emmerson, described it as “a key milestone in the long struggle to secure accountability of public officials implicated in human rights violations committed by the Bush administration CIA in its policy of secret detention, rendition and torture.”⁴⁴⁸
- In 2010, the U.K. government came to a settlement worth “millions” of pounds in a lawsuit filed by a dozen former detainees, including Binyam Mohammed, Bisher al-Rawi, Jamil el-Banna, Richard Belmar, Omar Deghayes, and Martin Mubanga.⁴⁴⁹ The suit alleged the complicity of MI-5 and MI-6 in interrogation and torture prior to the claimants’ detention at Guantánamo Bay.⁴⁵⁰ In contrast to the U.S. lawsuits, the U.K. Court of Appeals ruled that the government could not assert state secrets or use secret evidence in its defense, ruling that “allegations of wrongdoing had to be heard in public.”⁴⁵¹ Additionally, the British Crown Prosecution Service is currently investigating whether MI-6 and its former head were involved in the rendition of Abdel Hakim Belhadj to Libya, and Belhadj has filed a lawsuit on the issue against former Foreign Secretary Jack Straw and MI-6.⁴⁵²
- On December 13, 2012, it was announced that the U.K. government had paid £2.2 million (approximately \$3.55 million) to Libyan national Sami Al Saadi [see Chapter 8, on Consequences] to settle his legal claims over MI-6’s involvement in his rendition to Libya and subsequent torture in 2004.⁴⁵³ The U.K. government admitted no liability in the settlement, although Al Saadi commented that “I started this process believing that a British trial would get to the truth in my case. But today, with the government trying to push through secret courts, I feel that to proceed is not best for my family. I went through a secret trial once before, in Gaddafi’s Libya. In many ways, it was as bad as the torture. It is not an experience I care to repeat.” Also in December 2012, it was reported that Al Saadi had filed a lawsuit against the Hong Kong government for its involvement in his rendition. That case is currently pending.⁴⁵⁴

- An All-Party Parliamentary Group on Extraordinary Rendition (APPG), headed by Conservative MP Andrew Tyrie, has held hearings since 2006 on the U.K.'s involvement in the extraordinary rendition program. The APPG issued a report in 2011 titled "Account Rendered," which summarized their conclusions that "Britain was drawn into" the extraordinary rendition program and "mixed up in wrongdoing."⁴⁵⁵ The APPG also continues to push for an official government inquiry, following the very brief existence of the Gibson Inquiry in 2011 whose credibility was questioned by NGOs, and which ultimately could not proceed at the same time as the government investigation into Belhadj's allegations.⁴⁵⁶
- The 2007 annual report of the U.K. House of Commons' Foreign Affairs Committee examined the torture and CID allegation in connection with the rendition program, as well as purported U.K. involvement in the program. The committee concluded that "the Government has a moral and legal obligation to ensure that flights that enter U.K. airspace or land at U.K. airports are not part of the 'rendition circuit,' " and that "given the clear differences in definition, the U.K. can no longer rely on U.S. assurances that it does not use torture."⁴⁵⁷
- In December 2009, lawyers for Mohammed al-Asad filed suit against Djibouti before the African Commission for Human and Peoples' Rights, alleging Djibouti's complicity in al-Asad's rendition and abuse.⁴⁵⁸ The Commission has taken preliminary steps to accept the case, although it remains to be seen whether the case will progress. This suit is the first involving an African nation's role in the CIA rendition program.⁴⁵⁹

Reports have also shown the United States' increasing frustration and concern about investigations and lawsuits abroad, and a concerted effort by the U.S. government to halt such inquiries through political and diplomatic pressure.

- The most egregious example of a deliberate effort to impose secrecy is the German investigation into the rendition of Khaled El-Masri. A 2010 report by *Der Spiegel* details the negotiations between the U.S. State Department, the political leadership of Germany, and German prosecutors.⁴⁶⁰ In one cable, Deputy U.S. Ambassador John Koenig wrote directly to Secretary of State Condoleezza Rice that he had asked Angela Merkel's office to "weigh carefully at every step of the way the implications for relations with the U.S.," following the issuance by the German prosecutor of arrest warrants for the 13 CIA agents involved in El-Masri's abduction.⁴⁶¹ According to another cable, Bavarian state officials called the U.S. embassy and emphasized that they had "no role" in the prosecutor's decision to issue the warrants.⁴⁶² U.S. officials were reportedly most concerned that the warrants would be enforced outside of Germany, and were reassured by both the German Ministry of Justice and the Foreign Ministry that the cases "would not be handled as routine," and would take into account any foreign policy consequences.⁴⁶³ On that issue, Koenig helpfully "pointed out that [the United States'] intention was not to threaten Germany ... but reminded [Merkel's office] of the repercussions to U.S.-Italian bilateral relations in the wake of [the Italian arrest warrants issued the previous year]."⁴⁶⁴ Ultimately, the pressure yielded results: Justice Minister Brigitte Zypries decided that because the United States would not recognize the validity of the arrest warrants, it was not worth the effort to pursue charges or extradition.⁴⁶⁵
- In 2005, Spanish police opened an investigation into rendition flight stopovers (including

the flight carrying Khaled El-Masri) in Mallorca, with the inquiry eventually being sent to Spain’s national court to determine the facts of the flights and whether CIA operatives used false identities without the permission of the Spanish government.⁴⁶⁶ In 2010, the Spanish National Court’s Office of the Prosecutor requested arrest warrants for the 13 CIA agents involved in El-Masri’s rendition.⁴⁶⁷ U.S. officials were reportedly alarmed when German and Spanish prosecutors began comparing information on the rendition flights, commenting that “[t]his co-ordination among independent investigators will complicate our efforts to manage this case at a discreet government-to-government level.”⁴⁶⁸ Officials in the prosecutor’s office did, however, accede to U.S. concerns regarding the Spanish investigation: U.S. embassy officials noted, following a meeting with one of the prosecutors, that “[t]he prosecutors do not intend to request information on this case from the embassy or from the U.S. government in general.”⁴⁶⁹ Additionally, U.S. officials expressed a concern that surfaced in State Department communications about many countries’ rendition allegations — that they simply did not know the facts. “Our ability to beat down this story is constrained by the fact that we do not ourselves know, factually, what might have transpired five or six years ago.”⁴⁷⁰

- In 2008, U.K. Foreign Secretary David Miliband announced that the British territory of Diego Garcia had been used for rendition flight stopovers by the United States.⁴⁷¹ Miliband’s predecessor, Jack Straw, and former U.K. Prime Minister Tony Blair had previously been informed by the U.S. government that no rendition flights had been conducted through U.K. airspace.⁴⁷² Bellinger explained the discrepancy by stating that even though several previous inquiries on the use of U.K. airspace and territory for renditions had been conducted, the new information resulted from the CIA conducting a “more comprehensive record search” after “continuing allegations” about the use of Diego Garcia — despite the incidents occurring six years prior.⁴⁷³ Neither Bellinger nor Miliband provided any details about the detainees moved through Diego Garcia, including their previous and subsequent destinations.⁴⁷⁴ Bellinger stated that there had been no legal obligation to inform the British government of the flights through Diego Garcia, but that there would be no future such flights without U.K. permission.⁴⁷⁵ Andrew Tyrie, Conservative Party MP and head of the U.K.’s APPG, stated that “[t]his statement will leave the British public unwilling to trust other assurances we have received from the U.S.”⁴⁷⁶ Despite the diplomatic tension, the U.S. State Department’s focus was on stifling wide reporting of the story. DOS officials in London noted with evident relief that “U.K. media covered the story but for the most part didn’t have it on the front pages.”⁴⁷⁷ Unclassified DOS emails summarized the coverage of the Diego Garcia story, noting the benefit of competing headlines regarding fatal embassy burnings in Serbia.⁴⁷⁸
- In November 2009, U.S. District Court Judge Gladys Kessler in Washington, D.C., issued an opinion in the *habeas corpus* case of *Farhi Saeed Bin Mohammed v. Barack Obama*, which included a thorough assessment of the validity of Binyam Mohammed’s claims of torture.⁴⁷⁹ Kessler found that “Binyam Mohamed’s trauma lasted for two long years. During that time, he was physically and psychologically tortured. His genitals were mutilated. He was deprived of sleep and food. He was summarily transported from one prison to another. Captors held him in stress positions for days at a time. He was forced to listen to piercingly loud music and the screams of other prisoners while locked in a pitch-black cell. All the while, he was forced to inculcate himself and others in various plots to imperil Americans.”⁴⁸⁰ Kessler concluded that there was “no question that throughout his ordeal Binyam Mohamed was being held at the behest of the [United States],” and that any

information he gave during his various interrogations was not “reliable evidence.”⁴⁸¹ In 2010, Kessler’s opinion was relied upon by the U.K. Court of Appeal in determining that classified information given by the CIA to the Foreign Ministry would be made public as part of Mohammed’s suit to force the British government to disclose knowledge of his treatment.⁴⁸² Prior to the Court of Appeals’ decision, the Foreign Ministry received a letter from John Bellinger, the DOS legal adviser, stating that “[w]e want to affirm in the clearest terms that a decision that the public disclosure of these documents or of the information contained therein is likely to result in serious damage to U.S. national security and could harm existing intelligence information-sharing between our two governments.”⁴⁸³ The Court of Appeals found that the information amounted to evidence that Mohammed was indeed “subjected to torture.”⁴⁸⁴ The Court of Appeals, however, determined that there was “overwhelming” public interest in the information with minimal risk to national security, and the judgment publicly castigated the Foreign Office and MI-5’s failure to respect human rights, lying to Parliament, and “culture of suppression.”⁴⁸⁵ The White House heavily criticized the court’s decision, stating that “the court’s judgment will complicate the confidentiality of our intelligence-sharing relationship.”⁴⁸⁶

- Following the deportation of Ahmed Agiza and Muhammed Alzery, and subsequent torture in Egypt, the Swedish Ministry of Defense began requiring more details regarding U.S. flights and refueling stops in Sweden.⁴⁸⁷ The U.S. embassy noted that the ministry’s questions “appear[ed] to be directed at finding out whether [the] flight was for renditions or prisoner transfers connected with the war on terror — a sensitivity [one Swedish official] mentioned . . . explicitly.”⁴⁸⁸ The embassy commented that it was unclear whether “Sweden wants to make the clearance process so difficult that we will seek other refueling venues.”⁴⁸⁹ Sweden later awarded Alzery and Agiza 3 million kroner (approximately \$425,000) each in settlement for their treatment in Sweden and Egypt. Additionally, Agiza was granted residency in Sweden in 2012.⁴⁹⁰
- In 2007, the Irish Human Rights Commission (a government entity) issued a report entitled “Extraordinary Rendition: A Review of Ireland’s Human Rights Obligations,” which concluded that flights that were part of the CIA rendition circuits had landed at Shannon Airport without being subject to inspections or searches.⁴⁹¹ Following the report, the Irish government established a cabinet-level committee to review human rights policies and ensure that airport authorities had a mandate to search and inspect all aircraft transiting through Ireland.⁴⁹² A representative from the Irish Department of Foreign Affairs, however, explained to the U.S. embassy that the creation of the committee was merely to “assuage” the Green Party members of the governing coalition, and that the question of inspecting all aircraft was a “nonstarter.”⁴⁹³ This view was confirmed in 2010 by reports that the committee had met only three times over two years, without any progress.⁴⁹⁴ However, the Irish government did privately begin requesting further information from the United States about military flights through Shannon Airport, similar to the Swedish government, out of fear that renditions were being transited through Ireland.⁴⁹⁵ The U.S. embassy noted the new “cumbersome notification requirements,” and commented on the possibility of pulling out of Shannon as a transit hub.⁴⁹⁶
- In 2007, the Swiss Federal Council authorized a criminal investigation into the alleged unlawful use of Swiss airspace by 13 CIA agents for the rendition of Abu Omar.⁴⁹⁷ At the time, the U.S. embassy noted that Dick Marty (who spearheaded the Council of Europe reports) provided the impetus for the Swiss investigation, and that it was “difficult to say

what type of evidence the Swiss possess.”⁴⁹⁸ The investigation was suspended in November 2007, although the suspension was not announced by the Swiss federal prosecutor’s office until January 2008.⁴⁹⁹ No reason was given for the suspension, and a spokesperson for the prosecutor’s office stated that the office would “not provide any further information on this case until the circumstances allow.”⁵⁰⁰

- In 2011, Finland’s Ministry of Foreign Affairs asked the United States for clarification regarding an alleged rendition flight that landed in Helsinki, which was reportedly one of many between 2004 and 2006.⁵⁰¹ Media reports of rendition flights through Finland resulted in Finland delaying ratification of the U.S.-E.U. Mutual Legal Assistance Treaty for two years, from 2005 until 2007, with Finnish ministers expressing concern that United States rendition violated Finnish constitutional law.⁵⁰² There has been no reported response from the U.S. to Finland’s request for information regarding the flight.



In 2009, President Obama’s Interrogation and Transfer Policy Task Force announced that transfers “in which the United States moves or facilitates the movement of a person from one country to another or from U.S. custody to the custody of another country” would continue, but with stricter oversight of diplomatic assurances.⁵⁰³ The decision was immediately criticized by rights groups, and Amrit Singh of the Open Society Justice Initiative pointed out those diplomatic assurances, even with American or consular visits, had been “completely ineffective in preventing torture.”⁵⁰⁴ This conclusion was illustrated by the Canadian government’s investigation into the Maher Arar rendition; a Canadian consular official visited Arar several times, but Arar was forced by Syrian officials to speak in Arabic with a translator, and was often cut off in his responses to the official’s questions.⁵⁰⁵ The Arar Inquiry found that Arar was not in a position to be able to speak freely about his treatment in Syria with the consular official.⁵⁰⁶

In accordance with the statement by President Obama’s Task Force, there is evidence that a number of renditions and instances of proxy detention have taken place since 2009, most notably in the 2011 and 2012 reports regarding detentions in and renditions from Mogadishu. Harold Hongju Koh, the former DOS legal advisor, seemed to dispute this in an interview with Task Force staff, saying that during his time in the administration, the CIA had not conducted any unlawful renditions.⁵⁰