

TORTURE BY THE UNITED STATES OF AMERICA: THE SURVIVORS' PERSPECTIVE

**Submitted to the United Nation's Committee Against Torture
in Response to the May 6, 2005 Second Periodic Report of the
United States of America to the Committee Against Torture,**

By

**THE TORTURE ABOLITION AND SURVIVOR SUPPORT
COALITION INTERNATIONAL**

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EXECUTIVE SUMMARY

1. The Torture Abolition and Survivor Support Coalition International, TASSC, is a non-profit organization based in Washington D.C., and was founded by and for survivors of torture from around the world. TASSC is dedicated to the abolition of torture by any nation, in any region.

2. After reviewing the May 6, 2005 Second Periodic Report of the United States of America to the Committee Against Torture, TASSC makes a number of observations. Specifically, the report fails in two respects. First, the definition of torture set forth in the Convention Against Torture, (CAT), has been improperly altered by the current U.S. administration. As a result, many of the ongoing interrogation methods have been unilaterally deemed “less than torture” and hence omitted from the report. TASSC submits that many of these practices clearly constitute torture, and proffers first hand survivor accounts to clarify this issue. Secondly, the U.S. report characterizes specific incidents of torture as the individual actions of a “few bad apples”, as opposed to government policy. Again, TASSC challenges this assertion, and presents evidence that the United States has been involved in torture, either directly or by proxy, for decades.

3. In this report, TASSC sets forth a number of case histories of survivors of torture from Latin America and other regions. These personal accounts shed crucial light on the devastating physical and psychological effects of interrogation methods such as “water-

boarding,” dog attacks, short shackling, “stress and duress” positions, combined sensory assaults, and the “water pit.” Such methods fall well within the CAT definition of torture.

4. The TASSC report also documents the U.S. practice, either directly or “by proxy,” of identical torture techniques in other nations in the past. This strongly indicates long-term government policy and command responsibility for current CAT violations. TASSC’s position is further corroborated by recently declassified U.S. documents.

5. “Extraordinary renditions” by the United States are also discussed in light of this history. TASSC submits that torture is in fact the intended goal of such renditions, which constitute “torture by proxy.”

6. In this report, TASSC also documents the U.S. practice of ghost prisoners in the current “war against terror,” and traces U.S. involvement in the same actions throughout Latin America and Vietnam. This is a form of psychological torture for both the detainee and his or her family members.

7. TASSC further presents evidence that current U.S. torture practices were authorized at the highest levels, and sets forth declassified documents in support of this position.

8. Contrary to declarations made in the U.S. report, there exist no adequate legal remedies for the detainees at this time. De facto immunity has long existed for persons living outside the United States. This reality has been worsened by recent legislation.

I. INTRODUCTION:

The Torture Abolition and Survivor Support Coalition International, TASSC, is a non-profit organization based in Washington DC. It was established in 1998 by Sister Dianna Ortiz, an Ursuline nun who suffered severe torture in Guatemala. All staff members are survivors of psychological or physical torture, including Orlando Tizon from the Philippines, Emmy Áviles Bretón of Mexico, and Jennifer Harbury, whose husband was tortured to death in Guatemala. Our membership consists of well over 200 survivors from around the world and, sadly, continues to grow. As our name suggests, our organization is dedicated to the abolition of torture by any nation, in any corner of the globe.

We have been monitoring the practice of torture and cruel and degrading treatment by United States officers and agents abroad for many years now. We have also carefully reviewed the May 6, 2005 Second Periodic Report presented to the Committee Against Torture. Our comments here are limited to the current U.S. treatment of the detainees currently held in the “war against terror.” Based on the information we have long compiled from survivors themselves, witnesses, declassified government documents, and other credible sources, we find a number of statements in the 2005 report to be disturbingly evasive and incomplete. We note, for example, that throughout the U.S. report, cases of clear torture and abuse are either proffered as examples of mere individual misconduct instead of official policy, or are omitted outright by the use of

sanitized language or skewed definitions. Today, moreover, it is clear that no adequate legal remedies or mechanisms for official accountability exist in the United States. Accordingly, we wish to comment on the following issues:

1. **Specific Techniques and Their Physical and/or Mental Psychological Impact**
2. **Renditions and Refoulement**
3. **Disappearances or “Ghost Prisoners”**
4. **Official Policy and Authorization (Command Responsibility)**
5. **Absence of Adequate Legal Remedies and Accountability**

It is our hope that our comments, clarifications, and additional documentation, are of assistance to the Committee Against Torture in evaluating the Second Periodic Report of the U.S., dated May 6, 2006, and in continuing the crucial international efforts to abolish torture. Should further information or materials be of use to this Committee, please do not hesitate to contact us at the above address and telephone number.

II. IS THIS TORTURE?

Specific U.S. Techniques and Their Physical and/or Psychological Impact.

When the photographs of U.S. torture practices in Abu Ghraib prison were broadcast around the world in 2004, numerous additional reports by investigators, soldiers and detainees were made public.¹ Although most U.S. citizens reacted with shock and outrage, many survivors of torture from Latin America and other nations were left with a grim sense of déjà vu. They had endured precisely the same techniques, often in the presence of obvious U.S. intelligence agents.

In response to the public uproar over the Abu Ghraib images, high-level U.S. officials declared that 1.) the depicted “abuses” were the actions of individual, undisciplined soldiers, and did not reflect government policy and 2.) the interrogation practices, such as water-boarding, did not amount to torture. The U.S. report reflects these positions.

Whether or not current U.S. interrogation techniques constitute torture is discussed in this section. We note, at the outset, that the U.S. report either omits or fails to adequately address many of the standard and authorized methods being used on the detainees in the “war against terror.” These are omitted because of the U.S. government’s official conclusion that such actions fall short of actual torture. TASSC challenges this assertion.

¹ Hundreds of photographs depicting far worse treatment remain secret, although certain members of Congress were afforded a viewing. They emerged from the room pale and shocked. “The Roots of Torture,” by Barry, Hirsh and Isikoff, Newsweek Magazine, May 24, 2004. See <http://www.msnbc.msn.com/id/4989422/>

As noted above, many torture survivors have personally experienced these very methods, and can describe the realities in grim detail. The information they provide is crucial to any accurate evaluation and determination as to whether such treatment constitutes torture. The sanitized and evasive language used by U.S. officials is highly deceptive. We therefore document below the psychological and physical suffering inflicted by these techniques.

Some of these cases set forth may have occurred before the Convention Against Torture, (“CAT”) gained full effect in the United States. However, other treaties, as well as binding international customary law, and U.S. domestic law certainly banned the use of torture throughout all relevant time frames. Thus the survivor testimonies and accounts also give important information about official U.S. intent, knowledge, long time policy, and de facto impunity.

Certain legal memoranda, written by government attorneys, have proffered official reasoning and definitions with regards to the use of torture. These memos added a number of special requirements to the definition of torture set forth in the CAT, as well as in the corresponding domestic statute, 18 USC 2340 et seq.. However, these amount to mere opinion and advice. In the United States only the judicial branch can interpret existing laws, and only the legislature can change or add to them.² Moreover, not even the President can be above the law. As for the CAT, the very doctrine of command responsibility, together with the Nuremberg principles, place legal responsibility squarely on the President as Commander in Chief of the Armed Forces.

We note, finally, that the U.S. reservations to the Convention Against Torture in no way alter our conclusions about the nature of these techniques. The United States constitution bans all forms of cruelty to any person in U.S. control or custody. Supreme Court decisions have repeatedly ruled unconstitutional official abuses far less severe than the interrogation methods being used today. All of the techniques described below are in blatant violation of clear constitutional standards.³ Although the constitution has been held to apply only within U.S. territories,⁴ no such geographical limitation was included in the U.S. reservations. Claims of the intent to do so lead to a failure of logic. The U.S. Congress cannot be presumed, in the absence of express language, to have intended a new treaty to have zero impact on the legal status quo.

The following information sheds light on the realities of current U.S. interrogation methods.

A. “WATER- BOARDING”

² Although these re-definitions were later eased, the problem is still reflected in the U.S. report.

³ See, for example, *Hudson v. McMillian*, 503 US 1, (1992) and *Hope v. Pelzer*, 536 US 730, (2002), regarding beatings and uncomfortable positions.

⁴ *U.S. v. Verdugo-Urquidez*, 494 US 259 (1990).

In 2003, in the early phase of the “war against terror,” U.S. troops captured Mr. Khalid Sheikh Mohammad, a suspected Al Qaeda leader. In the enthusiastic public announcements that followed, official sources acknowledged that Mr. Mohammad was in the hands of U.S. intelligence officials, and that the interrogation methods being used included “water-boarding”.⁵ According to CIA spokespersons, this method consists of holding the detainee’s head under water, until he “thinks he is going to drown”. In other versions, it consists of pouring volumes of water directly into the face of the detainee until, once again, he thinks he is going to drown. According to high-level U.S. officials, including Attorney General Alberto Gonzales and CIA Director Porter Goss, this method falls short of torture. We believe the following accounts by survivors offer clarification.

1. *Otoniel De La Roca Mendoza:*

Mr. De La Roca Mendoza is a citizen of Guatemala. He was secretly detained and tortured by the U.S. backed Guatemalan military in 1988, during the internal conflict in that country. The “methods” used on him included electrical shocks, beatings, asphyxiations with a rubber hood filled with pesticides, and water-boarding. This last method consisted of military intelligence agents plunging his head first into a large vat of water. He states that as he was held down, the water filled his nose and mouth and went into his head. There was terrible pain. This grew even worse as more water filled his throat and lungs, and he felt that his eardrums would burst from the pressure. He finally lost consciousness. In short, he did not merely “think he was going to drown”. He began to truly drown. When he awakened, the process was repeated. He survived three of these drowning sessions and remembers this treatment with horror. An American agent was aware of the situation but failed to assist or protect him.⁶

2. *Ines Murillo:*

Ines Murillo is a citizen of Honduras. She was abducted and secretly detained for 78 days by members of Battalion 316 in Honduras in 1983. She spent part of this time in the military INDUMIL center, and has reported that an American intelligence agent called “Mr. Mike” repeatedly visited this location while she and others were being tortured. The CIA has admitted that one of their agents often visited this secret prison.⁷ Ms. Murillo has confirmed that she endured “water boarding” during her interrogations, and remembers these sessions with horror. “Mr. Mike” made no effort to rescue Ms. Murillo or report her situation to the courts or her family members. Instead, he continued to visit, advise, and receive information.

3. *Earlier Description:*

⁵ “Harsh Methods Cited in Top Qaeda Interrogations,” by James Risen, New York Times, May 13, 2004. <http://www.nytimes.com/2004/05/13/politics/13DETA.html?ex=1144296000&en=e343d35ca18a9188&ei=5070>

⁶ Interview with and note by Mr. De La Roca Mendoza.

⁷ “Unearthed, Fatal Secrets,” by Gary Cohn and Ginger Thompson, Baltimore Sun Special Report, June 11-18, 1995. See <http://www.baltimoresun.com/news/local/bal-negroponte1a,0,3704648.story>

The use of “water-boarding” was also used by the French military in Algiers in response to the growing FLN attacks. An Algerian newspaper editor, named Henri Alleg, described his water-boarding as follows:

“I tried, by contracting my throat, to take in as little water as possible and resist suffocation by keeping air in my lungs...but I couldn’t hold on for more than a few moments. I had the impression of drowning, and a terrible agony, that of death itself, took possession of me.”⁸

Ironically, while this method were forcefully rejected by the people of France some 40 years ago, the same technique is now openly used and defended by U.S. intelligence officials.⁹ General Aussaresses, who carried out torture in Algeria, later taught at the U.S. School of the Americas.¹⁰

There can be no doubt that water-boarding constitutes both physical and psychological torture under the definitions provided in Article 1 of the Convention Against Torture. It certainly inflicts extreme physical pain. Moreover, it is a slow motion mock execution, and inflicts mental anguish far more severe than a mere threat to kill or to inflict bodily harm. Indeed, as U.S. Senator John McCain has noted, water-boarding is a very “exquisite” form of torture.¹¹

B. “STRESS POSITIONS”

Throughout the “war against terror” there have been frequent official references to “stress and duress” positions. These were clearly visible in many of the photographs from Abu Ghraib, and were described in detail in later statements and reports. The types of stress positions are too numerous to list here, but the following should make clear that they constitute torture as defined by the CAT.

1. *Abu Ghraib: The “Man on the Box”*

One of the most searing images in the Abu Ghraib photographs is that of a hooded man standing on a box, arms outstretched and dangling wires. According to U.S. officials, the man was merely told that if he moved his arms, he would receive electrical shocks

⁸ Alfred McCoy, “A Question of Torture,” (Metropolitan Books 2006), quoting Henri Alleg, (“The Question”, 61; interview in *The Battle of Algiers*; and Shatz, “The Torture of Algiers,” 570)

⁹ Other Forms of asphyxiation are being used today by the U.S. as well. For example, General Abed Mowhush was suffocated to death in Iraq when he was battered then stuffed into a sleeping bag head first. See, “Negligent Homicide Found in General’s Death,” by John Sarche, *Boston Globe*, January 22, 2006, http://www.boston.com/news/nation/articles/2006/01/22/negligent_homicide_found_in_iraqi_generals_death/

¹⁰ http://www.americas.org/item_8526

¹¹ “History of an Interrogation Technique: Water Boarding,” Brian Ross, ABC News, Nov. 29, 2005. See <http://abcnews.go.com/WNT/Investigation/story?id=1356870>

through the wires. One detainee, in fact, received electrical shocks so strong he fainted.¹² The threat was not an empty one, as officials tried to suggest.

Obviously this constitutes both psychological and physical torture. It was not, however, the random idea of the individual soldiers on duty. This technique has been used for decades and was promptly recognized by intelligence officials. "Was that something that [an MP] dreamed up by herself? Think again," says Darius Rejali, an expert on the use of torture by democracies. "That's a standard torture. It's called 'the Vietnam.' But it's not common knowledge. Ordinary American soldiers did this, but someone taught them."¹³

2. *Standing and Other Stress Positions*

Many of the detainees have been forced to stand motionless for long periods of time, or have been shackled and left hanging by their hands and feet.¹⁴ The hanging positions speak for themselves, as they inflict severe pain as well as injury to the limbs. The standing position is perhaps more subtle, yet can also be excruciating if maintained for a long period. Although the Secretary of Defense, Donald Rumsfeld, noted in one memo that he himself often stood for eight hours at a time¹⁵, he failed to observe a key difference. He may well stand for long periods at work, but he is constantly moving. When a detainee is forced to stand motionless, fluids build up in the feet and the legs, causing great swelling and pain. If left in this position for long enough, this can cause kidney and other complications. U.S. agents are well aware of this.

a. *Herbert Anaya:*

Herbert Anaya was the director of the Human Rights Commission in El Salvador when he was abducted and secretly detained by the police in 1986. Through family connections, his wife Mirna learned that he was being held at the Policia de Hacienda headquarters, and that two American advisers were working there. She sent a lawyer to see her husband and attempted to arrange his release. When the lawyer asked for Mr. Anaya, the Salvadoran guard at first denied permission. When the lawyer persisted, an American then came to the door. The lawyer repeated his request, and the American told him to wait. When the lawyer finally was allowed to see Mr. Anaya, he was seated behind a desk. He had been forced to stand for a long period with no toilet privileges or sleep. His feet were so swollen it was impossible to force his shoes back onto his feet.¹⁶

¹² "The Man in the Hood," by Donovan Webster, *Vanity Fair*, Feb. 2005, <http://www.vanityfair.com/commentary/content/printables/050124roco01?print=true>

¹³ "The Roots of Torture," by Barry, Hirsh and Isikoff, *Newsweek*, May 24, 2004, <http://www.msnbc.msn.com/id/4989422/>

¹⁴ In US Report, *Brutal Details of 2 Afghan Inmates Deaths*, by Tim Golden, *New York Times*, May 20, 2005, see <http://www.nytimes.com/2005/05/20/international/asia/20abuse.html?ex=1274241600&en=4579c146cb14cfd6&ei=5088>

¹⁵ "The Torture Papers," edited by Karen Greenburg, (Cambridge University Press, 2005). See also, *Ali v. Rumsfeld*, (filed N.D. Ill. Mar. 1, 2005)

¹⁶ Interview by Jennifer Harbury with Mirna Anaya, widow of Herbert Anaya, Nov. 2003.

Before his 1987 assassination, Mr. Anaya produced a remarkable report on the torture techniques being carried out at Mariona prison. These included affidavits by the survivors, and sketches depicting the techniques they had endured. One sketch shows an obvious “Yankee” administering electrical shocks to a young prisoner. (Affidavit of Jose Ruben Carillo Cubas.) The other images reflect painful “stress” positions identical to those now used by the U.S. government in the “war against terror.”¹⁷

b. *Ines Murillo*:

The background information about Ms. Murillo’s case is set forth above. During one session, her hands and feet were bound together and she was suspended from the ceiling. The pain was severe.¹⁸ This technique, called the “scorpion”, was also inflicted on Mr. Aboud Saleh in Abu Ghraib. (Under a deluge of combined techniques, he admitted that he was Osama Ben Laden in disguise.¹⁹)

C. METAL SHIPPING CONTAINERS

The prison uprising at Qala –I-Jangi, Afghanistan, (during which CIA agent Mike Spann perished), was followed by heavy combat with the Taliban. Numerous Taliban and Al Qaeda members surrendered to General Dostum, who was working closely with the U.S. forces. The prisoners were packed into metal containers on the back of trucks, and transported without air vents, food or water. The drivers were told not to stop. When the convoy arrived and the containers were opened, scores of prisoners were found dead of asphyxiation and dehydration. According to the Afghan Organization of Human Rights, approximately one thousand prisoners died.²⁰ Although U.S. intelligence agents and “special operatives” were collaborating closely on all aspects of the uprising, battle, and transfer, they said that they had no knowledge of the use of containers. Journalists were reminded that this was a traditional Afghan warlord torture technique.²¹

Later disclosures, however, show that U.S. interrogators were punishing certain detainees in Afghanistan and other locations by holding them in small hot shipping containers.²² Moreover, the CIA transported John Walker Lindh, the “American Taliban”, in a shipping container²³ shortly after the prison uprising. The use of extreme heat is also reported in declassified U.S. files.²⁴

¹⁷ “Torture in El Salvador,” 1986, Comision de Derechos Humanos de El Salvador.

¹⁸ Ines Murillo, see “Unearthed Secrets, supra.

¹⁹ “Iraqis Tell of Abuse, from Ridicule to Rape Threat,” by Ian Fisher, New York Times, May 14, 2004.

See

<http://www.nytimes.com/2004/05/14/international/middleeast/14PRIS.html?ex=1144296000&en=6533ad9b079b23ea&ei=5070>

²⁰ “The Death Convoy of Afghanistan,” Deghanpisheh, Barry and Gutman, Newsweek, August 26, 2002.

See http://www.truthout.org/docs_02/08.21A.death.convoy.p.htm

²¹ prison uprising and death convoy

²² U.S. v. Lindh, Proffer of Facts, pg. 18. See:

<http://files.findlaw.com/news.findlaw.com/hdocs/docs/lindh/uslindh61302dstat.pdf>

²³ “A Secret World of US Interrogations”, by Dana Priest, Washington Post, May 11, 2004,

<http://www.washingtonpost.com/wp-dyn/articles/A15981-2004May10.html> See also, “U.S. Decries Abuse But defends Interrogations,” by Dana Priest, *Washington Post*, Dec. 26, 2002,

This “baking” technique was used by the U.S. long before the “war on terror.” Col. Anne Wright witnessed prisoners held in sweltering covered boxes by U.S. soldiers in Granada, and quickly ordered a halt to the shocking practice.²⁵

There can be little doubt that a person held in a tiny metal container left out in a hot sun will suffer severe psychological and physical pain.

D. DOG ATTACKS

The Abu Ghraib photographs also depicted U.S. soldiers allowing ferocious dogs to leap at terrified detainees. One prisoner was shown bleeding on the floor, having obviously been bitten. For some time U.S. officials insisted that this was a malicious “prank” invented by the soldiers on duty that night. However, a number of U.S. soldiers and interrogators later came forward and stated that in fact such tactics were authorized and approved by senior officers, and frequently utilized.²⁶ The technique, moreover, is not new.

1. Sister Dianna Ortiz

Sister Dianna Ortiz was a young American nun teaching school children to read and write in Guatemala in 1989. She was abducted and severely tortured by the U.S. backed military. Her captors, like the soldiers in Abu Ghraib, allowed a ferocious dog to attack her and she suffered other barbaric forms of torture as well, including multiple rapes and 111 cigarette burns to her back. Later, an obvious American entered the room speaking poor Spanish with a heavy American accent. He knew where to find her, and had clear authority over her torturers. When he demanded that she be turned over to him, they answered “Yes Boss”, and obeyed. Sister Dianna fears dogs to this day. Her combined

<http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A37943-2002Dec25¬Found=true>

²⁴ OD 000350 - 000351 Statement of 72nd MP Co., 0-3/NG; Annex to Fay/Jones/Kern Report. 6/6/2004. This report states that detainees were left out in sun to become dehydrated in prep for interrogations. Saw one detainee in interrogation was left with arms outstretched. See

<http://www.aclu.org/intlhumanrights/gen/13794res20050429.html>

²⁵ “Women Involved in Prisoner Abuses: Perpetrators, Enablers and Victims,” by Col. Ann Wright, May 19-20 2005, updated July 19, 2005 at pg.5. Note: The United States military has used manipulation of temperatures to weaken prisoners in many instances in the past. In one startling case, a Vietcong prisoner was kept in a cold room for four before thrown from a helicopter. “A Question of Torture,” by Alfred McCoy, (Metropolitan Books, 2006), at pg.70. This same technique is being used now. See, “CIA’s Harsh Interrogation Techniques Described,” by Brian Ross, ABC News, Nov. 18, 2005. See

<http://abcnews.go.com/WNT/Investigation/story?id=1322866>

²⁶ “Dogs and Other Harsh Tactics Linked to Military Intelligence,” by Douglas Jehl and Eric Schmitt, *New York Times*, May 22, 2004. See

<http://www.nytimes.com/2004/05/22/politics/22ABUS.html?ex=1400558400&en=dd60a221dcd039a6&ei=5007&partner=USERLAND> See also, <http://www.aclu.org/intlhumanrights/gen/13794res20050429.html>

and editorial of U.S interrogator Tony Lagouranis, *New York Times*, Feb. 28, 2006, at <http://www.nytimes.com/2006/02/28/opinion/28lagouranis.html?ex=1298782800&en=4783b895701b8e75&ei=5088&partner=rssnyt&emc=rss>

tortures left her, like all other survivors, with long-term trauma. As she has said, “One never heals from torture. One merely learns to cope with the aftermath.”²⁷

It is difficult to imagine a more severe form of psychological torture than this. Most certainly it falls well within the CAT definition.

E. THE “WATER PIT”

The CIA authorized many of the more shocking interrogation techniques that have been reported. As it turns out, a number of these are set forth in a U.S. training course for special operations agents. The objective of the course was to train the agents to withstand such methods should they ever fall captive and be tortured by enemy forces. One of the techniques in the course is called the “water-pit,” another consists of a mock burial. The water pit consists of placing a person in a pit of water so deep that he or she must hang onto overhead bars to keep from drowning.

Authorization was specifically requested for the use of the mock burials in Afghanistan during the “war against terror”. Government officials have not disclosed whether or not permission was granted for this method, or for the water pit.²⁸ However, Mr. Mamdouh Habib, who was “rendered” by the United States to cooperative Egypt interrogators, certainly endured the “water pit.” He reports that he was held in a room full of water so deep he was forced to stand on tip-toe to keep his head above water.²⁹ The water pit technique has been used before, and always by military interrogators working closely with U.S. intelligence agents. In short, wherever this technique originated, the U.S. has adopted and taught it wherever our intelligence branches have operated.

1. Efraín Bámaca Velásquez

Efraín Bámaca Velásquez was a Mayan resistance leader in Guatemala. He was captured in 1992 and secretly detained by the Guatemalan intelligence agents for more than two years. During that time he was severely and repeatedly tortured, then extra-judicially executed. As later disclosed by U.S. officials, his torturers were paid CIA informants.³⁰

In the ensuing political uproar, U.S., U.S. officials were forced to de-classify a number of government documents concerning the Bámaca case. The water pit used by Guatemalan agents working closely with the U.S. is described in detail in a Defense Department document describing conditions at the Retalhuleu military base.³¹

²⁷ “What Makes the Effects of Torture Linger?” Steve Friess, June 28, 2004. See <http://www.stevetriess.com/archive/usatoday/scienceoftorture.htm>

²⁸ “Harsh CIA Methods Cited in Top Qaeda Interrogations,” by James Risen, *New York Times*, May 13, 2004; and “A Tortured Debate,” by Hirsh, Barry and Klaidman, *Newsweek*, June 21, 2004.

²⁹ “Outsourcing Torture” by Jane Mayer, *New Yorker*, Feb. 14, 2005, See http://www.newyorker.com/fact/content/?050214fa_fact6

³⁰ This information is based on a collection of declassified U.S. documents and witness statements. Copies are attached or will be provided.

³¹ Department of Defense document of April 1994, entitled “Suspected Presence of clandestine cemeteries on a military installation.

“There were pits dug on the perimeter of the base, now filled with concrete that were once filled with water and used to hold prisoners. Reportedly there were cages over the pits and the water level was such that the individuals held within them were forced to hold on the bars in order to keep their heads above water and avoid drowning.”

This technique would clearly constitute psychological and physical torture.

F. SHORT-SHACKLING

Certain FBI agents working in Guantánamo were horrified when they witnessed the results of short-shackling, a method being utilized by the CIA and other intelligence agents there. The FBI agents wrote a number of memos to their supervisors on the subject, and in the end received orders not to participate. The technique consists of a combination of physical and sensory assaults. The naked detainee is bolted hands and feet to the floor in an uncomfortable position. Temperatures rise and fall, no food or water is provided, no toilet privileges granted, strobe lights flare and loud, irregular sounds and music are blasted at the prisoner. When the FBI agents entered the room the next morning, they found prisoners lying unconscious in a pool of filth. One man had pulled out clumps of his own hair.³²

The United Nations has long since ruled this combination of techniques to constitute torture:³³

“These methods include 1.) restraining in very painful positions, 2.) hooding under special conditions, 3.) sounding of loud music for prolonged periods, 4.) sleep deprivation for prolonged periods, 5.) threats, including death threats, 6.) violent shaking and 7.) using cold air to chill; and are in the Committee’s view...torture...This conclusion is particularly evident where such methods of interrogation are used in combination ...”

G. ATTACKS OR THREATS AGAINST FAMILY MEMBERS OR OTHERS

Perhaps the cruelest of the psychological tortures utilized today by the U.S. is the abuse or threat to abuse family members of the detainees. Even the threat to harm a complete stranger causes extreme psychological pain and suffering. The definitions set forth in the Convention Against Torture confirm this reality.

There have been several reports of precisely this method being used on the detainees. When Khalid Sheik Mohammad was captured, his elementary school age children were held “within access” of the U.S. military.³⁴ Similarly, U.S. interrogators “broke” an Iraqi

³² “Further Detainee Abuse Alleged,” by Carol Leonnig, Washington Post, Dec. 26, 2004; “Broad Use of Harsh Tactics is Described at Cuba Base,” Neil Lewis, New York Times, Oct. 17, 2004.

³³ U.N. Committee Against Torture, CAT/C/SR.297/ADD.1 Conclusions, par. 6-4.

³⁴ “How do U.S. Interrogators Make a Captured Terrorist Talk?” by Jess Bravin and Gary Fields, Wall Street Journal, March 4, 2003.

general by forcing him to watch while his frail adolescent son was soaked with water and left to shiver uncontrollably in the cold.³⁵ There have been recent reports as well that U.S. personnel have been seizing and imprisoning the wives of suspected insurgents, in order to force them to turn themselves in. In one case a note was left on the door telling the husband to come get his wife.³⁶

Survivors from other regions are in agreement that some of the most damaging psychological torture consisted of forcing them to watch or listen to another person being harmed. Sister Dianna can never forget the moment that her captors wrapped her hand around a machete and stabbed the battered woman at her side.³⁷ Others recall with horror, decades later, the times they watched others die, or heard desperate screams nearby.

Relatives of the “disappeared” in Latin America, forced to wonder year after year what where their loved ones are, and how they might be suffering still, would be the first to agree that this is psychological torture of the worst kind. Many organizations have defined this as torture.³⁸

There are countless other methods and combinations of methods that are being utilized at this time by U.S. interrogators. The above are but examples of documented techniques.

III. RENDITIONS AND REFOULEMENT

In many cases, the United States has been sending suspected Al Qaeda sympathizers and insurgents to other nations for interrogation, despite the fact that such nations are well known for their systematic use of torture. For example, many detainees have been sent to Egypt or Syria, although U.S. Department of State reports have long noted the pervasive use of torture by both governments.

These prisoner transfers are formally called “extraordinary renditions” but have been dubbed “torture by proxy,” appropriately enough, by concerned citizens and human rights organizations. According to credible sources, U.S. agents seize the suspect, bind and drug him, then transport him to the third nation in special CIA aircraft.³⁹ U.S. intelligence agents then turn him over, together with questions they seek to have answered. Sometimes the U.S. agent remains on the premises to listen, advise or even watch

³⁵ “Abu Ghraib: Breaking a General,” by Michael Hirsh, *MSNBC Newsweek*, Sept. 6, 2004. Confirmed in DOD 863-864 Sworn statement of personnel, A/302nd MI Bn; Annex to Fay/Jones/Kern Report 5/13/2004 Interrogator describes incident where 17 year old was made wet, had mud put on his face and was driven around in back of Humvee. He was placed where father ("General") could see him shivering, and then interrogators "broke" the General.” See <http://www.aclu.org/intlhumanrights/gen/13794res20050429.html>

³⁶ “How U.S. used Iraqi wives for ‘leverage’: Suspected insurgents’ spouses jailed to force husbands to surrender,” Associated Press, Jan. 27, 2006 See <http://www.msnbc.msn.com/id/11061831>

³⁷ “The Blindfold’s Eyes,” by Sister Dianna Ortiz with Patricia Davis, (Orbis Books, 2002).

³⁸ Human Rights Committee, Decision 21 1983, Communication 107/1981, case of Maria del Carmen Almeida de Quineteros (Uruguay) paragraph 14.

³⁹ “US Operating Secret Torture Flights”, Democracy Now, Nov. 17, 2004, “Terror Suspects Torture Claims have Mass. Link,” Farah Stockman, Boston Globe, Nov. 29, 2004.)

through two-way mirrors. In addition, the CIA keeps a pipeline to the secret police in such countries “well lubricated with large amounts of cash.”⁴⁰

One illustrative case is that of Mr. Maher Arar, a Syrian born Canadian citizen. Mr. Arar had lived in Canada since he was 17 years old, and was working in the computer industry. On September 26, 2002, he was returning from a vacation abroad with his family, and changed planes in JFK airport in New York City. He was seized by U.S. officials, held for days, then abruptly deported to Syria. There he was tortured for nearly a year and held in a tiny, lightless cell he called “the grave”. Because of the beatings he signed a confession, falsely admitting he had trained in Afghanistan, where he had never been. He was released ten months later at the insistence of his wife and the Canadian government.⁴¹ Syrian police have stated that they found no evidence that Mr. Arar had participated in any illegal activities.⁴² Moreover, they had not requested his extradition.

U.S. officials have responded to the Arar case with the same statements set forth in their Report to this Committee. Specifically, they stated that Mr. Arar was deported to Syria only after receiving assurances from Syrian officials that he would not be tortured.⁴³ This would seem rather disingenuous in light of Syria’s record of systematic torture. Moreover, if torture was not the U.S. objective, why was Mr. Arar sent on a costly flight to Syria instead of to his home country of nearby Canada?

There have been countless other cases of extraordinary renditions, including but not limited to the case of Mr. Mamdouh Habib, discussed above. These are too numerous to set forth here, but we note that several of these cases are now the subject of criminal investigations in Europe. Significantly, the United States continues to send its detainees to countries like Syria and Egypt despite the many documented cases of torture that have resulted from such renditions. In short, the “written assurances” are intended to merely deflect responsibility for the requested torture. This “wink and a nod” approach, or pretense, cannot be accepted as a valid defense to so serious a matter as torture.

Certainly the current U.S. practice of extraordinary rendition constitutes “refoulement” in violation of the Convention Against Torture. Given the obvious intent to have the detainee tortured by agents of a third country, and the many concrete steps taken to assure and support this objective, the practice also constitutes a conspiracy to commit torture in violation of U.S. criminal statute 18 USC 2340 et seq..

The “War on Terror” is not the first time that the United States has engaged in “torture by proxy,” or the use of third parties to carry out torture in return for funding, support, and legal impunity. Reports from many survivors of torture provide relevant and important information as to this long time practice.

⁴⁰ “Moving Targets,” by Evan Thomas and Mark Hosenball, Newsweek, Dec.1, 2003.

⁴¹ “Statement of Maher Arar,” Nov. 6, 2003; “His Year in Hell,” Sixty Minutes, CBS, Jan.21, 2004, “Canadian Man Deported by US Details Torture in Syria,” Democracy Now, Dec. 7, 2003.

⁴²“His Year in Hell,” Sixty Minutes, CBS, Jan. 21, 2004.

⁴³ “Man Deported After Syrian Assurances,” by Dana Priest, Washington Post, Nov. 19, 2003

Throughout the “Dirty Wars” in Latin America, the United States insisted that it was merely providing training (“professionalization”) and funding to military regimes, despite their clear involvement in widespread torture and extra-judicial executions. According to U.S. officials, there was no knowledge of or involvement in death squad activities or other violations. The following survivor accounts, however, suggest that in fact U.S. torture by proxy was quite common.

1. Efraín Bámaca Velásquez: U.S. officials have confirmed that Mr. Bámaca was tortured and extra-judicially executed by Guatemalan intelligence officials working as paid informants of the CIA. The CIA was notified of his March 12, 1992 capture and secret detention within days. The Agency was also aware that its own “assets” had falsely declared that Mr. Bámaca had been killed in combat, in order to secretly torture him for his information.⁴⁴ Regular bulletins about his situation were sent to the CIA and disseminated the Department of State, including a 1993 document confirming that Mr. Bámaca was still alive, and that 350 other prisoners were being secretly detained as well. Other documents confirm that all prisoners are routinely tortured and killed. Despite the numerous efforts of Mr. Bámaca’s wife, (U.S. citizen Jennifer Harbury), and concerned members of the U.S. Congress, the truth was withheld until March 1995. By then Mr. Bámaca and the others were dead.⁴⁵ Witness accounts and declassified documents show that during this three-year silence, Mr. Bámaca was battered and drugged repeatedly, injected with a toxic substance that caused his body to swell until one arm and leg apparently hemorrhaged, held in a full body cast to prevent his escape, then either thrown from a helicopter or dismembered. One of his torturers, Col. Julio Roberto Alpírez, also a paid CIA asset, reportedly received \$44,000 from the CIA shortly after he presided over a particularly brutal session.⁴⁶ Had the truth been told, these lives could have been saved. The CIA, however, chose to continue payments for information extracted through torture, and to shield the torturers.

2. Maria Guardado: Ms. Guardado is a citizen of El Salvador. In 1980 she was abducted by Salvadoran military agents and severely tortured. Her tortures included rape, burns, severe beatings that left broken bones, and impalement through the rectum. She consistently reports that during her torture, she heard a man’s voice with a heavy American accent. She recognized this accent from her experience with the many human rights workers from the United States living in El Salvador, as well as U.S. radio and television. The American man did not touch her himself, but he was supervising, asking who would brutalize her next, and what method should be used. Ms. Guardado was finally left for dead in a remote area. She survived when she managed to crawl to a roadside and flag down a passing vehicle.⁴⁷

3. Marvin Pérez: Mr. Pérez is a physician and was born and raised in Guatemala. In 1982 he was fourteen years old, when together with his sisters and young friends, he was

⁴⁴ See, CIA report, March 18, 1992.

⁴⁵ Combined declassified U.S. documents will be provided.

⁴⁶ “Shadowy Alliance, Special Report: In Guatemala’s Dark Heart,” CIA Lent Succor to Death,” New York Times, April 2, 1995.

⁴⁷ Affidavit of Maria Guardado.

abducted and secretly detained by the Guatemalan police. He and the others were brutally beaten and denied food for some time. Later they were taken one by one to an American official sitting behind a desk and surrounded by Guatemalan guards. He asked many detailed questions and threatened Marvin when he did not provide full answers. He bragged to another detainee that he had done intelligence work in Vietnam and could not be fooled easily. The man made no effort to assist the children or require their release.

4. Mr. “John Doe” (pseudonym): John Doe was severely tortured in Guatemala in the late 1980s by U.S. backed- military intelligence agents. He suffered drownings, hoodings, beatings, and other severe interrogation methods. During one session a tall man with a heavy American accent entered the cell and interrogated John about the relationship between the Guatemalan resistance movement and Cuba. The man had clear authority over the Guatemalan torturers. He requested photographs and then simply left John Doe to his fate.⁴⁸

5. Mr. “Robert Doe” (pseudonym): Mr. Robert Doe was severely tortured in Guatemala as well in 1969. Strange men with heavy American accents supervised one session of electrical shocks and pressured him to confess that he was plotting to overthrow both the Guatemalan and U.S. governments. On another occasion they wore false Red Cross uniforms and again pressured him to confess.⁴⁹

6. Ms. Ines Murillo was severely tortured in Honduras, as discussed above. A CIA agent regularly visited the premises to receive information and offer advice, but never reported her situation to her family, the courts of law, or the police.⁵⁰

7. Sister Dianna Ortiz: See Part II above. After Sister Dianna Ortiz was escorted from her torture cell by the obvious American, he placed her in a jeep and said he would take her to see a friend at the U.S. Embassy. Believing that she was about to be executed, she leaped from the vehicle and fled. She later approached Embassy officials and told them of her experiences, urging that the man be sent back for the many other prisoners in the torture center where she had been held. Because he had clear authority over the torturers, he could have saved lives. Instead of assisting or investigating, the Embassy denied any knowledge of such a person. Instead U.S. officials launched a smear campaign, and for many years insisted that Sister Dianna was mentally unstable.

8. “Operation Phoenix” was a U.S. intelligence operation in Vietnam. Certain persons believed to be sympathizers or members of the Viet Cong were abducted by a team lead by U.S. agents. The prisoners were then turned over to South Vietnamese team members for torture, “interrogation”, and execution. All information obtained through the use of torture was turned over to the U.S.. We note that a similar death squad, called the Scorpion, has been organized by the United States in Iraq. General Mowhush was tortured and killed by this unit in the presence of its U.S. leader.⁵¹

⁴⁸ Affidavit of John Doe.

⁴⁹ Affidavit of Robert Doe.

⁵⁰ See, “Unearthed Secrets”, supra.

⁵¹ “Documents Tell of Brutal Improvisation by Gis,” by Josh White, Washington Post, Aug.3, 2005.

9. U.S. agents reportedly taught electrical shock and other torture techniques to police in Brazil and Uruguay. Allegedly, U.S. funding was also provided in return for information extracted from the prisoners through the use of torture.⁵² (Mr. Doe, see above, was tortured with electrical shocks, under supervision of an American agent.)

10. According to Florencio Caballero, a former member of Battalion 316 in Honduras, CIA agents were present during a meeting in which the execution of U.S.- born Father James Carney was planned and authorized. They were also present on the base where he was held and tortured, before being thrown from a helicopter. The U.S. was working very closely with Battalion 316 and other units in the Honduran military, in an effort to overthrow the Sandinista government in neighboring Nicaragua. Despite the notorious abuses by Battalion 316, U.S. intelligence agents continued funding, training, and full collaboration.

11. According to Mr. César Vielman Joya Martínez, an admitted member of the Salvadoran death squads stated that he shared an office with two American advisors, who had full access to all intelligence. Secret prisoners were held and tortured nearby and the situation was obvious. Nevertheless, the U.S. advisors continued funding, instructing Mr. Joya Martínez and the others not to tell them the “details.”⁵³

Sadly, most of the people abducted and “disappeared” by the death squads of Latin America were never seen again. Many were tossed from helicopters into the sea or lie in clandestine cemeteries to this day. They cannot now speak on this subject. However, amongst the rare survivors, the presence of the American intelligence agent was common. Unfortunately, most of this evidence lies in secret government files.

It would seem that U.S. officials have felt that so long as they did not use their own hands in acts of torture, that somehow they are innocent of any crimes. However, if a man seeking insurance money hires an assassin to shoot his wife, he is nevertheless guilty of murder. This is a basic legal principle, within the U.S. as well as abroad.

IV. “GHOST PRISONERS”

One of the most tragic photographs from Abu Ghraib depicted the bloodied body of a prisoner known only as “Jamadi.” He had died of head injuries inflicted by U.S. intelligence agents who had ordered the soldiers at Abu Ghraib not to register him on the prisoner list or to tell any one of his presence there. After he was found dead, CIA agents placed his corpse on a gurney with an IV in his arm, so that witnesses would think he was being taken away for medical care.⁵⁴ His death was never recorded in the prison logs.

⁵² “Hidden Terrors,” by A. J. Langguth, (Pantheon Books 1978).

⁵³ See affidavit of Ms. Bancroft.

⁵⁴ “Four Navy Commandos are Charged in Abuse,” Eric Schmitt, New York Times, Sept. 4, 2004, and “Photos of Dead May Indicate graver Abuses”, by James Risen, May 7, 2004.

This was the first “ghost prisoner” to come to world attention, but he was certainly not the only one. General Paul Kern testified that there might be as many as 100 U.S.- held “ghost prisoners.”⁵⁵ However, the number may well be far higher. Because of the clandestine status of these prisoners, it is impossible to ascertain their numbers. This practice is nothing short of kidnapping and arbitrary detention. Worse yet, the secret status of these prisoners invites torture, as in the case of Mr. Jamadi. The practice of “disappearances” constitutes psychological torture for both the detainee as well as his relatives.

The U.S. practice of secret detentions is not new. As made clear by the cases discussed above, the CIA and other U.S. intelligence agents were very closely involved in many cases of the “desaparecidos” of Latin America as well as Vietnam.

V. OFFICIAL POLICY AND COMMAND RESPONSIBILITY

The U.S. government, in its Second Report to the U.N. Committee Against Torture, omits many, if not most, of the acts of torture that have occurred during the “War Against Terror”. Even the cited cases are brushed aside as mere individual actions, as opposed to reflections of U.S. policy. Clearly this position is proffered in order to evade the legal consequences of command responsibility, and/or world censure for violations of long standing international law. This official claim, however, is untenable.

Much of evidence that the current torture techniques were authorized, ordered and condoned at the highest levels of the U.S. government remains concealed in classified documents and files. However, certain documents have been released which, taken together with witness reports and circumstantial evidence set forth above, give much clarity to this issue. Many of our human rights colleagues, especially the American Civil Liberties Union, have made excellent and ample presentations in this regard. TASSC simply summarizes the key points for consideration here.

1. The Executive Orders of President Bush: The original document remains classified and hence secret. However, other official documents obtained through the Freedom of Information Act by the ACLU, shed much light on its contents. A May 2004 email sent to the FBI leadership, for example, not only questions the ongoing torture by refers specifically to the President’s Order which apparently authorized such techniques.⁵⁶ It is believed that the President also authorized the broad expansion of extraordinary renditions,⁵⁷ as well as the secret detentions, (ghost prisoners).⁵⁸

⁵⁵ “Army Says CIA Hid More Iraqis than it Claimed,” Eric Schmitt and Douglas Jehl, New York Times, Sept. 10, 2004.

⁵⁶ See: ACLU announcement, <http://www.aclu.org/safefree/general/18769prs20041220.html> . See also, “President Authorized Abu Ghraib Torture,” by New Standard, Dec. 21, 2004.

⁵⁷ “Rule Change Let’s CIA Freely Send Suspects Abroad to Jails,” by Douglas Jehl and David Johnston, New York Times, March 6, 2005, <http://www.nytimes.com/2005/03/06/politics/06intel.html?ex=1267851600&en=716eddf5c82d9367&ei=5088&partner=rssnyt> . See also “CIA’s Assurances on Transferred Suspects Doubted,” by Dana Priest, Washington Post, March 17, 2005. <http://www.washingtonpost.com/wp-dyn/articles/A42072-2005Mar16.html>

2. Shortly after Sept. 11th, 2001, various memoranda from Administration attorneys offered legal arguments that would authorize torture and render irrelevant key international treaties such as the Geneva Conventions and the CAT. These arguments were accepted by the President and other Administration leaders. A number of military leaders and attorneys strongly opposed these changes, but were overruled.
3. In Oct. 2002, Mr. Rumsfeld issued a written authorization for many of the harsher methods. These were revised later, but the techniques continued.⁵⁹
4. General Sanchez, in Iraq, issued similar authorizations, which were also later revised.⁶⁰ Again, the abuse continued.
5. Mr. Rumsfeld, at the bottom of one page of techniques, hand wrote a comment asking why if he himself stood for eight hours a day, the detainees should not be forced to stand that long as well.⁶¹
6. Mr. Rumsfeld personally authorized the secret detention of at least one detainee.⁶²
7. The torture practices used at Abu Ghraib were identical to the methods used by U.S. interrogators throughout Iraq, Afghanistan and Guantánamo during the War Against Terror.⁶³ This consistency belies the claim that the Abu Ghraib guards were but a “few bad apples.”
8. The use of the same practices throughout all U.S. detention centers was so widespread and notorious as to make it impossible for high up U.S. officials to have been unaware.⁶⁴

⁵⁸ See, “Getting Away With Torture,” supra, (FN 19), citing John Barry, Michael Hirsh and Michael Isikoff, “The Roots of Torture,” Newsweek, May 24, 2004 [online], <http://msnbc.msn.com/id/4989422/site/newsweek/> (“According to knowledgeable sources, the president’s directive authorized the CIA to set up a series of secret detention facilities outside the United States, and to question those held in them with unprecedented harshness.”)

⁵⁹ See, “Getting Away With Torture,” Human Rights Watch, Supra. See also Schlesinger, et al., “Final Report of the Independent Panel to Review DoD Detention Operations” (“Schlesinger report”), August 2004, pp. 6-7.; J William J. Haynes II to the Secretary of Defense, memorandum, “Counter-Resistance Techniques,” November 27, 2002, Dana Priest, “CIA Puts Harsh Tactics on Hold,” The Washington Post, June 27, 2004; James Risen, David Johnston and Neil A. Lewis, “Harsh CIA Methods Cited in Top Qaeda Interrogations,” The New York Times, May 13, 2004.

⁶⁰ Lt. Ricardo Sanchez to Commander U.S. Central Command, memorandum, Interrogation and Counter-Resistance Policy, September 14, 2003 [online], <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=17851&c=206>

⁶¹ Hand written note on Dec. 2, 2002 memo from William Haynes.

⁶² “Rumsfeld Issued Order to Hide Detainee in Iraq,” Eric Schmitt and Tom Shanker, New York Times, June 17, 2004, at <http://www.nytimes.com/2004/06/17/politics/17abuse.html?ex=1144728000&en=0c1b674d8ae256f3&ei=5070>

⁶³ See generally, ACLU web posting of declassified documents, at <http://www.aclu.org/intlhumanrights/gen/13794res20050429.html>

⁶⁴ See generally, ACLU web posting of declassified documents, at <http://www.aclu.org/intlhumanrights/gen/13794res20050429.html>

Yet these practices continue.⁶⁵

9. As discussed above, the U.S. has been closely involved in identical torture practices for many decades. Some of these techniques were developed by the CIA, while others may have been adopted from other sources. However, the techniques have become an American trademark, and have been taught, condoned, and practiced wherever the CIA has been actively involved in local affairs. (See above examples.)

VI. LACK OF ADEQUATE U.S. LEGAL REMEDIES

After the United States ratified the Convention Against Torture, Congress passed the appropriate criminal statute banning acts of torture by U.S. officials or agents abroad (18 U.S.C. 2340 et seq.). Torture within the United States has been forbidden by the constitution since the days of the Founding Fathers. As stated by Patrick Henry himself, should these barbaric practices be permitted here, then “we are lost and undone.”⁶⁶ The new criminal statute adopted the definitions of psychological and physical torture set forth in the Convention.

Sadly, this new statute has been “interpreted” into non-existence throughout the war against terror. As the notorious legal memoranda reflect, Administration attorneys added new and stringent requirements to the statute’s definitions in order to prevent prosecutions. Of course, the executive branch can neither legislate nor adjudicate, yet this new interpretation has become de facto law. It is the duty of the Attorney General to seek or authorize indictments for criminal actions. Mr. Alberto Gonzales however, being the author of one of the memoranda, has of course failed to take any such action, thus giving the egregious crime of torture full immunity.

Court Martial proceedings do, of course, exist for military personnel who abuse the detainees. Hence the young soldiers in the Abu Ghraib photographs have been tried and punished. The higher up officials who ordered, devised, and authorized the torture techniques, however, remain untouched. Moreover, the Code of Military Justice does not apply to civilians, leaving officials like Mr. Rumsfeld, or a CIA Director, free from risk in most cases.

Normally, when the criminal laws somehow prove ineffective, the injured party may always resort to civil suits and seek redress or protection in the form of injunctive relief from the courts of law. Inmates in U.S. prisons certainly have the right to seek redress from the courts, and the right to access to the courts has long been deemed fundamental.

The U.S., however, has long set up barricades against such civil relief and protections, under the doctrine of official immunity. The case of Mr. *Bámaca*, for example, resulted in a unanimous and lengthy ruling by the Inter-American Court of the Organization of

⁶⁵ President Bush, for example, accepted the new legislation banning cruel and degrading treatment, yet reserved the right to act within his “presidential powers.”

⁶⁶ *Culombe v. Connecticut*, 367 US 568,581,n. 23 citing Patrick Henry at 3 Elliot’s Debates, (2nd Edition 1891), 447-448.

American States against the Guatemalan government in 2000. Because the U.S. has not accepted the jurisdiction of that court or any other international tribunal, Ms. Harbury filed a civil suit against named U.S. officials in 1996. The case remains pending a final decision on the question of official immunity some ten years later. Most of the other cases out of Latin America against U.S. officials have long since been dismissed on this or similar grounds. The detainees are now facing the same legal hurdles, and Mr. Maher Arar's case, for example, was just dismissed.

There is, of course, the Federal Tort Claims Act, which waives immunity for government torts. There are however, specific exceptions. Ironically, while the recent Supreme Court ruling in *Sosa v. Alvarez-Machain*⁶⁷ makes it possible for a survivor of torture to sue their foreign abusers in the U.S. courts, it also states that the Federal Torts Claims Act bars claims against U.S. officials acting abroad. Under the current government interpretation of the Alien Tort Claims Act, a survivor thus may sue the Salvadoran officer who tortured him or her, but not the CIA agent who was supervising the torture session. The *Bámaca* case is now pending a court decision on the government's motion to dismiss on this very issue.

To make matters worse, the recent McCain and Graham-Levin legislation has given de facto immunity to U.S. officials who carry out torture. Originally intended to supplement 18 U.S.C. 2340 et seq. by banning acts of cruel and degrading punishment, the McCain bill was subjected to last minute changes at the House-Senate conference committee. Now the intellectual authors of the current torture practices may defend against criminal charges by asserting that they were relying on the advice of counsel, such as Mr. Alberto Gonzales. Mr. Gonzales, of course, will simply state that he was giving his honest legal opinion. Meanwhile the Graham-Levin bill stripped the U.S. courts of jurisdiction to hear habeas corpus claims by the Guantánamo detainees, or any other complaint by them as to the conditions of their detention.

Lastly, the U.S. government states that persons harmed by U.S. agents abroad may seek restitution under our domestic laws. However, the statutes cited limit restitution to friendly parties. Most of the Abu Ghraib and other detainees have been sent home to their shattered lives with virtually nothing. The most telling example is that of the fifteen year old, "N" who was detained and sexually abused by U.S. agents in Iraq. Humiliated and traumatized, he was eventually cleared. Upon his release, the Americans gave him fifty dollars.⁶⁸

Respectfully Submitted,

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⁶⁷ 124 S. Ct. 2739 (June 29, 2004)

⁶⁸ See "The Man in the Hood", by Donovan Webster, Vanity Fair.
<http://www.vanityfair.com/commentary/content/articles/050124roco01>