



UNC
SCHOOL OF LAW

Human Rights Policy Lab

**BRINGING HUMAN RIGHTS HOME: RIGHTS TO
REPARATIONS AND REPAIR FOR CIA EXTRAORDINARY
RENDITION SURVIVORS**

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Introduction

2021 marked the 20-year anniversary of the attacks on the World Trade Center on September 11, 2001. Upon seeing the collapse of the Twin Towers, emotions of fury and fear ran through America's core. Emotions that were more than warranted, but emotions that when left unchecked can swell into violent actions. It is difficult to suggest that what happened to 9/11 victims, survivors, and impacted families can be healed, but an attempt must be made, and a step toward further mending this wound is accounting for the retaliatory violent actions America took in the midst of grappling with its unchecked anger and fear.

Following 9/11, the Central Intelligence Agency (CIA) began the process of revamping its torture infrastructure with the help of psychologists, academics, think tank analysts and government operative, producing what came to be known as the CIA's rendition, detention, and interrogation (RDI) program; today more aptly referred to as the CIA torture program.¹

President George W. Bush strengthened the United States torture infrastructure on September 17, 2001, when he signed a Memorandum of Notification granting the CIA authority to capture and detain suspected terrorist and deny them human rights protections granted under the Geneva Convention.²

In 2009, President Barack Obama issued Executive Order 13491 mandating the CIA "close as expeditiously as possible any detention facilities that it currently operates and shall not operate any such detention facility in the future."³ While many of the black sites were shut down, Guantanamo Bay is presently open and holding detainees.⁴ The order also established a Senate

¹ David Hoffman *et al*, *Report to the Special Committee of the Board of Directors of the American Psychological Association* at 1 (2016).

² *Id.*

³ Exec. Order No. 13491, 74 Fed. Reg. 4894 (Jan. 22, 2009).

⁴ Video Interview with Mansoor Adayfi, Survivor of Guantanamo Bay Torture (Nov. 12, 2021).

Select Committee on Intelligence tasked with reviewing the CIA's torture program for efficacy.⁵ The Senate Select Committee Report revealed the CIA's RDI program (torture program) was little more than a government sanctioned torture program that acted in violation of numerous international and domestic laws.⁶ The details of the report revealed the scope of the harms that took place at CIA black sites and the parties responsible for the creation and continuation of government sanctioned torture.⁷ Some of the private parties implicated in the transportation of detainees had ties to North Carolina.⁸

In addition to the individual attorneys providing representation to Guantanamo Bay detainees, the various international and national groups, including the ACLU, the Center on Constitutional Rights, and North Carolina Stop Torture Now advocating for survivors of the CIA's Extraordinary Rendition program, students at the University of North Carolina School of Law (UNC Law) continue to seek acknowledgement and accountability for the survivors and victims.

For over a decade, UNC law students have been working on collecting narratives of survivors of the CIA Extraordinary Rendition program and advocating for legal redress, accountability, and reparations for survivors. This paper builds on the work of previous students, continuing the fight for reparations and redress for survivors of extraordinary rendition.

People across the world and in North Carolina are committed to the ongoing battle for reparations. While it may take decades to achieve reparations, accountability, and justice, as has

⁵ See Exec. Order No. 13491, *supra* note 3, at 4894.

⁶ S. REPT. NO. 113-288, at 1 (2014).

⁷ *Id.*

⁸ See North Carolina Commission of Inquiry on Torture, *Torture Flights: North Carolina's Role in the CIA Rendition and Torture Program* 9 (Sep. 2018), <http://www.nctorturereport.org/>.

been the case in the past,⁹ this policy project is committed to pressing forward, no matter how long it takes. Justice demands nothing less.

This policy paper proceeds in six chapters. **Chapter One** explains the extraordinary rendition program following 9/11, focusing on North Carolina's role in the extraordinary rendition program. **Chapter Two** highlights torture survivors' stories. **Chapter Three** analyzes psychologists' role within the torture program and explains the psychological repercussions and consequences of the torture methods used. **Chapter Four** examines the Islamophobic underpinnings of the CIA's torture program and describes North Carolina's related responsibility. **Chapter Five** reviews the ongoing failure of the state of North Carolina to address its obligations for its role in extraordinary rendition and to acknowledge and repair survivors' harms. Further, this chapter examines the woeful role of the media, particularly in North Carolina, for its dereliction in educating its readership about human rights violations. **Chapter Six** describes survivors' rights to reparations, including a comparative analysis of what reparations look like globally. Finally, **Chapter Seven** concludes the paper by explaining the continued importance of accountability and reparations.

⁹ For example, following the attack on Pearl Harbor in 1941, individuals of Japanese descent were held in internment camps based on the widespread suspicion that they were acting as espionage agents. Over 100,000 individuals were held in horrible conditions and subjected to horrendous treatment. Finally, in 1988, over 40 years after the internment camps closed, President Ronald Reagan signed the Civil Liberties Act, which offered a formal apology and paid \$20,000 to each survivor. See Isabella Rosario, *The Unlikely Story Behind Japanese Americans' Campaign for Reparations*, NPR (Mar. 24, 2020), <https://www.npr.org/sections/codeswitch/2020/03/24/820181127/the-unlikely-story-behind-japanese-americans-campaign-for-reparations>. Additionally, in 1932, a study began to record the natural history of syphilis. The initially involved 600 black men, 399 who had syphilis and 201 who did not. Researchers told the men they were being treated for "bad blood," a term used to describe several ailments, including syphilis, anemia, and fatigue. The men were promised free medical exams, free meals, and burial insurance. However, the men did not receive any medical treatment at all, despite a vaccine being widely available. 30 years later, necessary medical care was finally granted to survivors and family members of the study, a lawsuit resulted in a \$10 million settlement, and in 1997, President Bill Clinton issued a formal Presidential Apology for the study. See *The Tuskegee Timeline*, CDC, <https://www.cdc.gov/tuskegee/timeline.htm> (last updated Apr. 22, 2021).

Chapter One: The Making of The Extraordinary Rendition Program and North Carolina's Crucial Role

I. Background on CIA Extraordinary Rendition

A. Extraordinary Rendition After 9/11

Before 9/11, the rendition program allegedly focused on rendering terror suspects to so-called “justice” – loose courts of law where trials were pretend.¹ After 9/11, the Bush Administration and the CIA radically expanded the purpose of its rendition program.² The focus became the unlawful transportation of suspected terrorists to torture, rather than to any form of justice.³ Despite international treaties condemning torture, President Bush granted the CIA broad authority to unlawfully transfer suspected terrorists to third-party countries.⁴ The suspects were handed into the custody of foreign governments solely to be detained, interrogated, and tortured – disposing of the criminal prosecution process entirely.⁵

The CIA had the authority to conduct these purported “enhanced interrogation techniques” without approval from the White House, Department of Justice, or the Department of State.⁶ The biggest differences between renditions before 9/11 and after 9/11 is that after 9/11, the numbers of individuals rendered expanded dramatically, “each rendition no longer required

¹ Stephen Grey, *Five Facts and Five Fictions About CIA Rendition*, FRONTLINE, <https://www.pbs.org/frontlineworld/stories/rendition701/updates/updates.html>.

² Comm. on Legal Affairs and Human Rights, *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, ¶ 35 Doc. 10957 (June 12, 2006) (prepared by Rapporteur Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe).

³ Grey, *supra* note 1 (Chapter 1).

⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, art. 3. [hereinafter CAT].

⁵ Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* 15 (2013), available at <https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf> [hereinafter Open Society Justice Initiative].

⁶ *Id.*

presidential approval, and it was no longer a requirement that prisoners be ‘wanted’ for some offense in the country where they were sent.”⁷ Between 2001 and 2009, more than 500 suspected terrorists were rendered to or from the United States, with more than 150 going through the black sites, rendered to foreign governments, or both.⁸ Due to the program’s secrecy, these figures could be an understatement.

Periods of detainee custody varied from a few months to sixteen years and beyond, with many of the detainees still in custody or “missing” today.⁹ Further, many individuals rendered to black sites were completely innocent. It has been reported by the CIA’s Office of the Inspector General that the CIA abducted and detained the wrong people – innocent individuals who had no information and were detained only based off a vague association with terrorism.¹⁰ “Individuals were captured and transferred for detention and interrogation with the goal of gathering intelligence on [terrorist organizations], *without regard to articulated or verifiable evidence of criminal conduct.*”¹¹ Therefore, under the guise of anti-terrorism, the CIA tortured innocent people for no legitimate reason, depriving them of control over their bodies, mentally and physically, both at the black site and during transport.

B. Enhanced Interrogation Techniques on the Planes

Torture did not begin upon arrival at the black site. Rendition in and of itself amounts to torture; further, the planes used to transfer often-innocent suspects themselves served as torture

⁷ See also Comm. on Legal Affairs and Human Rights, Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states, ¶ 35 Doc. 10957 (June 12, 2006) (prepared by Rapporteur Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe).

⁸ Grey, *supra* note 1 (Chapter 1). *But see* Open Society Justice Initiative, *supra* note 5, at 16. These numbers have been disputed by the United States government. For example, President Bush claimed only around a hundred detainees were held under the CIA program, with only about a third of them questioned using enhanced interrogation techniques.

⁹ North Carolina Commission of Inquiry on Torture, *Torture Flights: North Carolina’s Role in the CIA Rendition and Torture Program* 30 (Sep. 2018), <http://www.nctorturereport.org/>.

¹⁰ Open Society Justice Initiative, *supra* note 5 (Chapter One), at 15.

¹¹ Marty, *supra* note 7 (Chapter 1), at ¶ 37 (emphasis added).

sites. Torture began during capture, occurred during transport on the planes, and persisted throughout detainment. Because of the illegal purposes, unlawful style, and horrendous conduct on the flights, the airplanes used in the CIA's extraordinary rendition program are commonly referred to as "torture taxis."¹² Torture on the planes included, but was not limited to:

- hooding,
- total body restraint (including shackling),
- sensory deprivation (goggles, earphones, etc.),
- physical assault, and
- sexual assault.¹³

Some survivors have shared their common experiences while on the planes.

[They] were stripped naked before being given absorbent plastic underpants, a pair of knee length cotton trousers to wear over them, a cotton shirt, and a pair of blue overalls. They were handcuffed and their hands were strapped to a belt around their waist, their legs were shackled together and to the belt. Foam earplugs were inserted in their ears. They were blindfolded and had their mouths covered with a surgical facemask, presumably to prevent them from talking. They were then hooded, and tape or a bandage was wrapped around the hood to prevent movement. Finally, a pair of heavy, sound-deadening headphones were placed over the hood.¹⁴

The transportation portion of the extraordinary rendition process centered around rendering victims unable to move, see, or hear, and creating in them a state of powerlessness through trauma.¹⁵ This was often accomplished by forcibly removing a detainees' clothing with scissors or knives,¹⁶ photographing the detainees naked, forcing a suppository into their rectum, putting them in a diaper, blindfolding them, having their heads covered, and/or shackling them.¹⁷

¹² "Torture taxi" is a term first coined by Jane Mayer in *Outsourcing Torture: The Secret History of America's "Extraordinary Rendition" Program*, NEW YORKER (Feb. 6, 2005), <https://www.newyorker.com/magazine/2005/02/14/outsourcing-torture>.

¹³ North Carolina Commission of Inquiry on Torture, *supra* note 9 (Chapter 1), at 30.

¹⁴ *United States of America: Below the Radar: Secret Flights to Torture and "Disappearance"*, AMNESTY INT'L 12 (2006).

¹⁵ James E. Pfander, *Const. Torts & The War on Terror*, 35 (2017).

¹⁶ *See, e.g.*, 3 Decl. of Abou Elkassim Britel, ¶¶ 11, 14. Abou Elkassim Britel was kidnapped and taken to an airport bathroom where his clothing was sliced off, and he was grabbed so hard that he thought he would suffocate. Once on the plane, he was photographed and forced to wear a diaper, blindfold, shackles, tape over his mouth, and metallic slip binding his arms and feet. He had to sit without moving and without using the bathroom for nine hours and was beaten if he did move.

¹⁷ *Id.*

The extraordinary rendition program allowed the United States to largely outsource torture to other countries,¹⁸ but each flight had its own rendition team, with twelve U.S. personnel, who conducted the renditions during transportation to the black sites.¹⁹ Therefore, no matter how allegedly outsourced the torture conducted at the black sites was, the kidnapping, torture, and unlawful transfer of victims that occurred on the planes falls squarely on the United States and no one else.

C. Enhanced Interrogation Techniques at the Black Sites

Individuals subjected to the torture program were secretly held in black sites throughout Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, and Guantánamo Bay, among other places.²⁰ There were many forms of so called “enhanced interrogation techniques” conducted at the black sites, including:

- Waterboarding;
- walling (quickly pulling the detainee forward and then thrusting him against a flexible false wall);
- water dousing;
- stress positions (forcing the detainee to remain in body positions designed to induce physical discomfort);
- wall standing (forcing the detainee to remain standing with his arms outstretched in front of him so that his fingers touch a wall four to five feet away and support his entire body weight);
- cramped confinement in a box;
- insult/facial slaps (repeatedly slapping the detainee on the face with fingers spread);
- facial hold (holding a detainee’s head temporarily immobile during interrogation with palms on either side of the face);
- abdominal slaps (like facial slaps);
- attention grasp (grasping the detainee with both hands, one hand on each side of the collar, and quickly drawing him toward the interrogator);
- forced nudity;
- sleep deprivation (up to 96 hours) while being vertically shackled;
- continuous exposure to white noise/loud sounds and light;

¹⁸ Deborah M. Weissman, *et al.*, *The North Carolina Connection to Extraordinary Rendition and Torture*, U.N.C. L. SCH. 37 (Jan. 2012), <https://law.unc.edu/wp-content/uploads/2019/10/renditionreportjan2012.pdf> [hereinafter the NC Connection].

¹⁹ North Carolina Commission of Inquiry on Torture, *supra* note 9, at 10.

²⁰ Open Society Justice Initiative, *supra* note 5, at 16.

- dietary manipulation (such as depriving or restricting provision of solid food for up to a month);
- exposure to cold temperatures;
- ongoing threats; and
- forced shaving.²¹

All these acts were authorized by the highest level of the United States government.²²

Many were specifically authorized by the Justice Department’s Office of Legal Counsel,²³ despite severe illegality at state, federal, and international levels.^{24 25}

II. North Carolina’s Role in the Torture Program

From at least 2001 to 2006, the State of North Carolina, its political subdivisions, and Aero Contractors, Ltd.,²⁶ assisted the CIA in its torture program by flying victims and survivors to black sites.²⁷ Aero Contractors “aided the CIA by operating the aircrafts used to commit violations of torture, abuse, extraordinary rendition, and secret detention.”²⁸ Yet, North Carolina and its accomplices have never acknowledged the part they played, apologized for their

²¹ *Human Rights Council Report: Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism* [A/HRC/13/42] 4–19, Jan. 6, 2010. See also Open Society Justice Initiative, *supra* note 9 (Chapter 1), at 16-18.

²² Anita L. Allen & Seema Saifee, *Twenty years later: School faculty reflect on 9/11’s impact on the law*, U. of Pa. L (Sept. 10, 2021), [https://www.law.upenn.edu/live/news/13913-twenty-years-later-law-school-faculty-reflect-on-;](https://www.law.upenn.edu/live/news/13913-twenty-years-later-law-school-faculty-reflect-on-) Grey, *supra* note 1 (Chapter 1). For example, the United States’ government stated that it had chosen not to apply the Geneva Conventions. This is one of many international treaties disregarded and violated by the United States during its torture program at Black Sites.

²³ Open Society Justice Initiative, *supra* note 14, at 16-17 (stating that then-Assistant Attorney General Jay Bybee of the Office of Legal Counsel authorized the CIA to 10 specific interrogation methods on its detainees, including waterboarding, cramped confinement in a box, cramped confinement in a dark space, walling, stress positions, wall standing, sleep deprivation, attention grasp, facial hold, and facial/insult slap).

²⁴ See e.g., Open Society Justice Initiative, *supra* note 9 (Chapter 1), at 18 (discussing how one suspected terrorist shared important information through non-abusive interrogation but shut down and stopped talking after being subjected to harsh interrogation techniques).

²⁵ Allen & Saifee, *supra* note 22 (Chapter 1).

²⁶ Hereinafter Aero Contractors.

²⁷ UNC Human Rights Policy Lab, *Report on Reparations for Victims of Extraordinary Rendition and Torture*, U.N.C. L. SCH. 1 (Jun. 2019), <http://www.law.unc.edu/documents/academics/humanrights/reparationsfortorture.pdf> [hereinafter Report on Reparations].

²⁸ *Id.*

participation, or provided survivors and victims with any form of reparation or accountability.²⁹ Aero Contractors has not faced any liability for supplying the torture taxis.³⁰

Aero Contractors, Ltd., is an allegedly private North Carolina charter and CIA-affiliated company located at Johnston County Airport in Smithfield, North Carolina.³¹ It is believed to be a CIA shell company.³² Founded in 1979 by a former chief pilot for the CIA who directed flights during the Vietnam War, Aero Contractors has since been affiliated with the CIA.³³ Before assisting in the unlawful transport and torture of individuals between 2001 and 2006, Aero Contractors' work for the government related to U.S. troop operations and providing transportation for foreign dignitaries visiting America.³⁴ However, just one month after 9/11, in October 2001, Aero Contractors shifted its work for the government to the unlawful transportation of detainees.³⁵ During the rendition program's years, Aero Contractors operated exclusively for the United States government.³⁶

As a business, Aero Contractors relies on North Carolina state and local resources.³⁷ During the rendition program years, North Carolina financed Aero Contractors' construction of a hangar at the North Carolina Global TransPark in nearby Kinston, North Carolina, which allowed for further renditions to occur out of both Smithfield and Kinston.³⁸ Additionally,

²⁹ *Id.*

³⁰ Deborah M. Weissman, *et al.*, *Understanding Accountability for Torture: The Domestic Enforcement of International Human Rights Treaties*, U.N.C. L. SCH. 90 (2017), <https://law.unc.edu/wp-content/uploads/2019/10/understanding-accountability-for-torture.pdf> [hereinafter *Understanding Accountability for Torture*].

³¹ *Id.* See also *The NC Connection*, *supra* note 18 (Chapter 1), at 11.

³² *Understanding Accountability for Torture*, *supra* note 30 (Chapter 1), at 5.

³³ *The NC Connection*, *supra* note 18 (Chapter 1), at 11-12.

³⁴ *Understanding Accountability for Torture*, *supra* note 39, at 11.

³⁵ *North Carolina Commission of Inquiry on Torture*, *supra* note 18, at 14.

³⁶ *The NC Connection*, *supra* note 18 (Chapter 1), at 11-12.

³⁷ *North Carolina Commission of Inquiry on Torture*, *supra* note 9 (Chapter 1), at 14.

³⁸ *Id.*

Johnston County provided site safety inspections.³⁹ Moreover, Aero Contractors' employees are residents of Johnston County; they are not CIA or other governmental personnel.⁴⁰

At least two aircrafts registered to Aero Contractors^{41 42} participated in the rendition program.⁴³ Many of the flights at issue were intentionally disguised through filing "dummy" flight plans registered to dummy entities operated by Aero Contractors.^{44 45} The pilots, who were Aero Contractors' employees, would deviate from the route stated on the flight plan and instead take passengers to the black sites.⁴⁶ Flying undeclared routes is not only reckless and dangerous but a violation of international aviation law under the Convention on Civil Aviation.⁴⁷

These aircrafts departed from Johnston County Airport (or from nearby Kinston) and made domestic stops, most often at Washington Dulles Airport, before flying internationally.^{48 49} A small number of Aero Contractors personnel were on the planes from North Carolina to Washington Dulles Airport. At Dulles, a CIA rendition team of twelve U.S. personnel would get on the flight.⁵⁰ Four to six of these individuals would be dressed in all black, have their faces covered, and use torture methods discussed above for the entirety of the flight to the black sites.⁵¹

³⁹ *Id.* at 11, 25.

⁴⁰ *Id.*

⁴¹ See North Carolina Commission on Inquiry on Torture, *supra* note 9 (Chapter 1), at 21. This plane could transport a maximum of 18 passengers and was initially registered to dummy corporation Premier Executive Transport Services by and for the benefit of the CIA.

⁴² See *id.* at 22. This plane could transport a maximum of 127 passengers and was initially registered to dummy corporation Stevens Express Leasing, Inc. by and for the benefit of the CIA. It was later re-registered to Premier Executive Transport Service and then again to Keeler & Tate Management.

⁴³ *Id.* at 21-22.

⁴⁴ *Understanding Accountability for Torture, supra* note 30 (Chapter 1), at 11-12. See also North Carolina Commission of Inquiry on Torture, *supra* note 9 (Chapter 1), at 21. These corporations include, but are not limited to Stevens Express Leasing, Inc., Aviation Specialties, Inc., Devon Holding and Leasing Inc., and Premier Executive Transport Service.

⁴⁵ North Carolina Commission of Inquiry on Torture, *supra* note 9 (Chapter 1), at 23.

⁴⁶ *Id.*

⁴⁷ *Id.* at 23, 24.

⁴⁸ *Id.* at 20.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

The torture methods used on the planes happened on an Aero Contractor's aircraft with Aero Contractors personnel on board. Not only was Aero Contractors personally complicit in the dummy flight plans, it also "was intricately involved in the extraordinary rendition of individuals to overseas facilities and black sites, and as a North Carolina-based charter, it could not have carried out these functions without the support and resources of the State of North Carolina."⁵²

III. Conclusion

Victims of the CIA's extraordinary rendition program suffered horrendous physical and mental torture at the hands of the United States, North Carolina, and Aero Contractors. The torture was abhorrent, as well as illegal on multiple levels. None of these parties has ever acknowledged or been held accountable for their actions, and none of these parties has ever offered reparations to those harmed. Aero Contractors remains in business, despite its violations of both aviation and human rights laws. North Carolina continues to support the company with its resources. This policy project aims to establish that reparations, accountability, and justice are not only possible, but necessary.

⁵² *Id.* at 25.

Chapter Two: Narratives of the Survivors of the CIA's Extraordinary Rendition Program

I. Introduction

There has been significant and detailed documentation on the histories, experiences, and current wants and needs of the survivors of the CIA's extraordinary rendition program.¹ In the fight for justice, it is critical to repeatedly spotlight the experiences of the survivors to ensure their stories are not forgotten. This is vital to obtain acknowledgement, accountability, and repair. For this Policy Project, the authors have chosen to highlight five survivors. These narratives and the specific requests of survivors help advocates know what to demand from those in power.

These five narratives are representative of all survivors of the CIA's extraordinary rendition program. The narratives highlighted here are not meant to stand alone but are a part of a "larger campaign for justice to achieve redress and social reconstruction for all those who have suffered torture and extraordinary rendition."² Readers can find more narratives here:

<https://law.unc.edu/wp-content/uploads/2019/10/extraordinaryrenditionandNC.pdf>. Redress and

¹ See Batt *et al.*, *Extraordinary Rendition and Torture Victim Narratives*, UNC SCHOOL OF LAW HUMAN RIGHTS POLICY LAB, <http://www.law.unc.edu/documents/academics/humanrights/extraordinaryrenditionandNC.pdf> (Dec. 2017); *Torture Flights: North Carolina's Role in the CIA Rendition and Torture Program*, NORTH CAROLINA COMMISSION OF INQUIRY ON TORTURE, https://www.nctorturereport.org/pdfs/NC_Torture_Report.pdf (Sept. 2018); Emerson *et. al.*, *A Call to Uphold the Core Universal Principles of Responsibility and Protection of Human Rights*, UNC SCHOOL OF LAW IMMIGRATION AND HUMAN RIGHTS POLICY CLINIC, <http://www.law.unc.edu/documents/clinicalprograms/ertorturencbrief.pdf>; *Prisoners*, THE RENDITION PROJECT, <https://www.therenditionproject.org.uk/prisoners/index.html>; Choe *et al.*, *Brief in Support of Abou ElKassim Britel's Request for Reparations and an Official Apology for Extraordinary Rendition and Torture*, UNC SCHOOL OF LAW HUMAN RIGHTS POLICY SEMINAR, <http://www.law.unc.edu/documents/academics/humanrights/britelbrief.pdf> (June 2014).

² Choe *et al.*, *Brief in Support of Abou ElKassim Britel's Request for Reparations and an Official Apology for Extraordinary Rendition and Torture*, UNC SCHOOL OF LAW HUMAN RIGHTS POLICY SEMINAR 5, <http://www.law.unc.edu/documents/academics/humanrights/britelbrief.pdf> (June 2014).

accountability for the harms done should not be one-size-fits-all, and advocates should try to seek various methods of relief.

Narratives harness power and can help to create social change. This report highlights five survivors of the CIA's extraordinary rendition program; highlighted in this report are: Mohamedou Ould Slahi, Mohamed Farag Ahmed Bashmilah, Khaled El-Masri, Mamdouh Habib, and Abou ElKassim Britel. They were selected because they have actively advocated for specific remedies to which they are entitled. Additionally, each of these survivors were rendered on Aero Contractors' aircrafts, which had a home base in Johnston County, North Carolina. The narratives of these five survivors should generate understanding and empathy from the reader and combat the common master narratives about the survivors of the extraordinary rendition program. By amplifying the true narratives of the survivors of the CIA's extraordinary rendition program, the authors hope survivors' voices are heard and that it creates a movement towards accountability and justice.

II. Individual Narratives of Survivors

A. Mohamedou Ould Slahi³

Mr. Slahi was detained, imprisoned, and tortured at Guantanamo Bay for over fourteen years without charges as a result of the United States' War on Terror. During his detainment, Mr. Slahi was subjected to multiple torture methods including, isolation, sleep deprivation, sexual abuse, forced stress positions, extreme temperature changes, threats to his family members, and prolonged time without being outside.⁴ The lasting physical and mental effects of the torture Mr.

³ See UNC School of Law Human Rights Policy Lab, *Extraordinary Rendition and Torture Victim Narratives* <https://law.unc.edu/wp-content/uploads/2019/10/extraordinaryrenditionandNC.pdf> (2017).

⁴ NPR Staff, *A 'Guantanamo Diary' From A Prisoner Still on the Inside*, NPR (Jan. 20, 2015), <https://www.npr.org/sections/parallels/2015/01/20/378525648/heavily-redacted-detainees-guantanamo-diary-goes-on-sale>.

Slahi was subjected to have remained a part of his life. Additionally, Mr. Slahi has been unable to obtain a passport to travel freely.⁵ Mr. Slahi continues to advocate for the restoration of his rights from Mauritania and from the United States. When asked if he would like an apology from the United States government, Slahi responded, “I want much less than that. I want them to let me be.”⁶

B. Mohamed Farag Ahmad Bashmilah⁷

From October of 2003 to March 27, 2006, Mr. Bashmilah was detained by the CIA without charges.⁸ He was subjected to a wide variety of torture techniques, including being shackled, cuffed, and chained to a wall and being subjected to severely cold temperatures and blaring loud noises for 24 hours a day.⁹ The detainment and torture had a significant psychological effect on Mr. Bashmilah which has continued since his release. His overall emotional, physical, and psychological health had deteriorated significantly and he suffers from social isolation because of the stigma surrounding his detainment.¹⁰ Mr. Bashmilah wants an acknowledgment from the United States of his innocence and of the United States’ egregious and unlawful mistake in detaining and torturing him.¹¹ Justice for Mr. Bashmilah would be accountability for those responsible for his illegal detainment, compensation for Mr. Bashmilah and his family, and termination of the extraordinary rendition program.

⁵ Ben Taub, *Guantanamo’s Darkest Secret*, THE NEW YORKER (Apr. 22, 2019), <https://www.newyorker.com/magazine/2019/04/22/guantanamos-darkest-secret>.

⁶ Mohamedou Ould Slahi, Testimony from the North Carolina Commission of Inquiry on Torture (2017).

⁷ See UNC School of Law Human Rights Policy Lab, *Extraordinary Rendition and Torture Victim Narratives* (2017) <https://law.unc.edu/wp-content/uploads/2019/10/extraordinaryrenditionandNC.pdf> Sect. III(2) 9-13.

⁸ *Mohamed Farag Ahmad Bashmilah: Plaintiff*, ACLU, <https://www.aclu.org/bio/mohamed-farag-ahmad-bashmilah?redirect=national-security/biography-plaintiff-mohamed-farag-ahmad-bashmilah>.

⁹ Emerson et. al, *A Call to Uphold the Core Universal Principles of Responsibility and Protection of Human Rights*, UNC SCHOOL OF LAW IMMIGRATION AND HUMAN RIGHTS POLICY CLINIC 12, <http://www.law.unc.edu/documents/clinicalprograms/ertorturencbrief.pdf>.

¹⁰ Bashmilah Decl., *Mohamed et al. v. Jeppesen Dataplan, Inc.*; Civil Action No. 5:07-cv-02798., 51.

¹¹ *Id.*

C. **Khaled El-Masri**¹²

Mr. El-Masri was detained in Macedonia and Afghanistan from December 31, 2003, through May 28, 2004.¹³ Mr. El-Masri was mistakenly detained because he had the same name as a known terrorist suspect.¹⁴ A CIA investigative document revealed that the CIA “quickly concluded he was not a terrorist,” but justified his detainment “despite the diminishing rationale by insisting that they knew he was bad.”¹⁵ Since his release, Mr. El-Masri has seen a significant decline in his mental health and has been convicted of two crimes that led to his incarceration in Germany.¹⁶ Mr. El-Masri has stated that he wants three things from the United States: (1) acknowledgement of their responsibility for his illegal detainment and torture; (2) an explanation; and (3) an apology.¹⁷

D. **Mamdouh Habib**¹⁸

In October 2001, Mr. Habib was captured by the United States in Pakistan and was transferred to Egypt where he was tortured through the CIA’s extraordinary rendition program.¹⁹ After being transferred to Guantanamo Bay, he remained there until his release to Australia on January 27, 2005.²⁰ Since his detainment, Mr. Habib has suffered from post-traumatic stress disorder, depression, mental distress, memory loss, nightmares, and flashbacks.²¹ Physically, Mr.

¹² See Individual Narratives *supra* note 7 (Chapter 2) at Sect. III(3) 13-16.

¹³ *Statement: Khaled El-Masri*, ACLU, <https://www.aclu.org/other/statement-khaled-el-masri>.

¹⁴ *Torture Flights: North Carolina’s Role in the CIA Rendition and Torture Program*, NORTH CAROLINA COMMISSION OF INQUIRY ON TORTURE 28-29 https://www.nctorturereport.org/pdfs/NC_Torture_Report.pdf (Sept. 2018).

¹⁵ Jamil Dakwar, *New CIA Torture Documents Confirm Chilling Details of Khaled El-Masri’s ‘Kafka-esque’ Ordeal*, ACLU, <https://www.aclu.org/blog/national-security/torture/new-cia-torture-documents-confirm-chilling-details-khaled-el-masris> (Jun. 27, 2016).

¹⁶ Batt, *supra* note 1 (Chapter 2) at 427.

¹⁷ *Statement: El-Masri*, *supra* note 13 (Chapter 2).

¹⁸ See UNC School of Law Human Rights Policy Lab, *Extraordinary Rendition and Torture Victim Narratives* <https://law.unc.edu/wp-content/uploads/2019/10/extraordinaryrenditionandNC.pdf> (2017).

¹⁹ Batt, *supra* note 1 (Chapter 2) at 515.

²⁰ *Mamdouh Habib*, WITNESS TO GUANTANAMO, <https://witnessstoguantanamo.com/videos/mamdouh-habib/>.

²¹ *Mamdouh Habib*, RENDITION PROJECT, <https://www.therenditionproject.org.uk/prisoners/mamdouh-habib.html>.

Habib still suffers from scarring, burns, and sore ribs.²² Mr. Habib desires accountability, compensation, and justice from the countries that played a role in the horrific events that happened to him. In addition, Mr. Habib’s memoir, *My Story: the Tale of a Terrorist Who Wasn’t* shows a willingness to share his story in order to gain acknowledgement and recognition of the harm he endured and a desire that it never happen again.

E. Abou ElKassim Britel²³

Mr. Britel was unlawfully detained for almost ten years in Morocco on false terrorism charges.²⁴ The lingering physical and emotional effects of his torture and detainment on his daily life are vast and he suffers from an array of physical and mental health conditions.²⁵ In addition to the physical and mental health struggles, Mr. Britel and his wife have suffered social ostracism and marginalization.²⁶ Mr. Britel has expressed that he would like to be able to work again and provide for his family as he did prior to his detention.²⁷ In addition, Mr. Britel desires justice and accountability for the wrongs perpetrated against him.²⁸ Mr. Britel and his wife take comfort in knowing that advocacy groups are working to share Mr. Britel’s story. In an interview with N.C. Stop Torture Now, Mr. Britel said, “Despite the burden that I carry because the wrong that was done to me, it felt good to know that somebody was thinking of me . . . sharing this injustice with me from a different angle, so to speak.”²⁹

²² *Id.*

²³ See Individual Narratives *supra* note 7 at Sect. III(5) 20-26.

²⁴ Choe *et al.*, *Brief in Support of Abou ElKassim Britel’s Request for Reparations and an Official Apology for Extraordinary Rendition and Torture*, UNC SCHOOL OF LAW HUMAN RIGHTS POLICY SEMINAR, <https://law.unc.edu/wp-content/uploads/2019/10/britelbrief.pdf>.

²⁵ *Id.* at 21.

²⁶ *Id.* at 22.

²⁷ *Id.* at 23.

²⁸ *Id.*

²⁹ *Id.*

III. Summary of the Overarching Themes Connecting the Survivors Stories

Ethical Loneliness, a book written by Professor Jill Stauffer,³⁰ describes the concept of “ethical loneliness,” which victims of human rights violations experience when they are refused acknowledgment and accountability by the state.³¹ Professor Stauffer says,

Ethical loneliness is the isolation one feels when one, as a violated person or as one member of a persecuted group, has been abandoned by humanity, or by those who have power over one’s life’s possibilities. It is a condition undergone by persons who have been unjustly treated and dehumanized by human beings and political structures, who emerge from that injustice only to find that the surrounding world will not listen or cannot properly hear their testimony – their claims about what they suffered and about what is now owed them – on their own terms.³²

This loneliness is not solely because of the oppression that victims face and the dehumanization that they experience, but also because of the “failure of just-minded people to hear well – from those who have suffered – what recovery or reconciliation . . . would require.”³³

Based on the narratives of the survivors of the CIA’s extraordinary rendition program, it is evident that the survivors could be experiencing this concept of ethical loneliness. The survivors endured severely unjust and dehumanizing treatment at the hands of the United States and other countries around the world during their unlawful detainment and torture.

Additionally, after their release, they have repeatedly been denied access to accountability, acknowledgment, and justice from those in power and have suffered from the stigma of being groundlessly labeled as “dangerous” and a “terrorist.” The actual experience and fear of social and political ostracization hinders survivors’ ability to share their story.

Additionally, many survivors have sought justice through legal action. In the United States, their

³⁰ Professor Stauffer is a philosopher and professor at Haverford College where she specializes in human rights, ethics, peace, and justice. Isabel Rose, *Solitary Confinement Policy Project*.

³¹ *Id.*

³² Jill Stauffer, *Ethical Loneliness: The Injustice of Not Being Heard* 1 (2015).

³³ *Id.* at 2.

efforts have been shut down as the U.S. invoked the state secrets privilege.³⁴ Former CIA Director Mike Pompeo claimed, “protection would be lost . . . if the government were forced to confirm or deny the accuracy of speculation or unauthorized disclosures.”³⁵ These repeated efforts to silence the survivors of the CIA’s extraordinary rendition program contribute to their experience of ethical loneliness.

The world and those in positions of power need to hear and understand the survivors’ experiences; we all need to understand what survivors are owed. Professor Stauffer explains,

failure to hear [the narratives] will matter to those who do not listen and those who are not heard, not only because stories without an audience do not survive but also because being heard or ignored impacts how the past resonates in the present – it affects the human processes of revision.³⁶

It is critical that as a society, we listen to and acknowledge the experiences of these survivors and to their suggestions for reparations so we can ensure these injustices are not committed again and that accountability is maintained

A. The Effects of the Torture

Each of the five survivors highlighted above discussed having severe physical and mental pain as a direct result of the torture they endured during their detainment. The lingering psychological effects of the torture continue to plague the survivors. Many reported experiencing signs of Post-Traumatic Stress Disorder including depression, nightmares, memory loss, distress, and flashbacks. Physically, the survivors experienced a range of struggles after their release, including lingering health problems directly linked to the torture they endured.

³⁴ Risen *et al.*, *State Secrets Privilege Invoked to Block Testimony in CIA Torture Case*, THE NEW YORK TIMES (Mar. 8, 2017).

³⁵ *Id.*

³⁶ Stauffer, *supra* note 32 (Chapter 2) at 2.

In addition to the physical and mental health struggles, many survivors have suffered socially because of the stigma surrounding their detainment. The survivors and their families experienced ostracization from their normal circles when their friends discovered that they were detained and tortured. Not only have the survivors suffered socially, but many reported that they have struggled to find employment since their release, either because of negative stigma or because of their lingering physical or mental pain. Lastly, the survivors reported difficulty finding or being able to travel to receive proper medical care to address these struggles. Each survivor endured their own form of detainment and torture, but many of the survivors are experiencing similar physical, mental, and social struggles as they have rejoined society.

B. The Survivor's Current Circumstances

The five survivors highlighted above each had their own view of reparations. Many of the survivors want to be able to move on with their lives. To them, this means having their official documents returned, being able to travel freely, not being subjected to monitoring, etc. Furthermore, the survivors desire specific reparations from the governments that were responsible for their detainment and torture. The survivors desire an explanation from the United States regarding why they were targeted, detained, and tortured when many of them were known to be innocent. In addition to an explanation, they would like an acknowledgment of the harms they endured; some survivors even asked for an official apology for the wrongs inflicted upon them. Lastly, many of the survivors desire accountability and justice for the harms they experienced.

The stories of Mr. Slahi, Mr. Bashmilah, Mr. El-Masri, Mr. Habib, and Mr. Britel and those similarly situated deserve to be heard and to be used to bring about change and reconciliation. While the harms that were perpetrated against the survivors of the program can

never be undone, the narratives of these survivors should continue to be uplifted to serve as a catalyst for change. These narratives should yield public reckoning and governmental accountability, as well as reparations for torture survivors, including the restoration of the survivors' personal liberties (such as their passports and other official documents) and a public apology from the United States Government acknowledging the United States' role in the extraordinary rendition program and accepting responsibility for the harms perpetrated against these survivors.

Chapter Three: Psychologists' Role in Developing Torture

James Elmer Mitchell and John “Bruce” Jessen are widely considered the chief architects of the CIA torture program.¹ Mitchell and Jessen designed a system of interrogation methods, euphemistically named “enhanced interrogation techniques” (EITs), based on pseudo-science.² These EITs, now widely acknowledged as torture methods, were employed on detainees during the rendition, interrogation, and detention portions of their capture.³ Mitchell and Jessen’s involvement in the CIA torture program was so pervasive that by 2005, the two psychologists had operational control over 85 percent of the CIA’s torture program.⁴ Due to the amount of control Mitchell and Jessen had over the torture program, the psychologists were able to falsify the scientific data that justified the program’s continued operation.⁵

I. The CIA’s Chief Torture Architects

Mitchell and Jessen’s professional relationship started in the 1980s, when they both worked at the Air Force Survival, Evasion, Resistance, and Escape (SERE) school in Spokane, Washington.⁶ SERE is a military training program developed to “immunize potential high value U.S. captives against torture.”⁷ The resistance portion of the SERE program aimed to expose students to “physical and psychological pressures of torture in a controlled environment.”⁸ These

¹ See, Hoffman, *supra* note 1 (Introduction) at 128.

² Brief for Physicians for Human Rights *et al.*, as Amici Curiae Supporting Respondents at 12, United States v. Zayn Al-Abidin Muhammad Husayn, No. 20-827 (S.Ct. Aug. 20, 2021); See North Carolina Commission of Inquiry on Torture at 16.

³ *Id.*

⁴ S. REPT. NO. 113-288, at 11 (2014).

⁵ *Id.*

⁶ Complaint and Demand for Jury Trial, Salim v. Mitchell, 2:15-CV-286-JLQ (E.D. Wash. Oct. 13, 2015); see also, Hoffman, *supra* note 1 at 127.

⁷ Senate Armed Services Committee (110th Cong.), Inquiry into the Treatment of Detainees in U.S. Custody (Nov. 20, 2008),

⁸ *Id.*

physical pressures or techniques included walling, stress positions, sleep deprivation, abdomen and face slaps, isolation, degradation (treating students like animals), and until 2007, in rare situations, waterboarding.⁹ The controlled nature of the program is critical for ensuring student safety and accomplishing the overall purpose of the program.¹⁰ SERE's objective was defensive in nature, to develop mentally strong soldiers.¹¹ Absent control, the program would equate to torture that put students' safety at risk, rather than providing a learning experience.¹² In their roles in the SERE program, Mitchell and Jessen pushed the limits of ethically permissible behavior, occasionally placing students in danger.¹³

September 11 changed the focus of psychology in the military, paving a way for Mitchell and Jessen to share and receive recognition for their fringe and unethical psychology practices. After 9/11, at the request of the CIA, Mitchell and Jessen reviewed the Manchester Manual, which was a set of documents found in an al-Qaeda operatives' home. With the CIA, they theorized that al-Qaeda operatives possess special training to resist interrogation.¹⁴ The CIA contracted Mitchell and Jessen to produce a report entitled, *Recognizing and Developing Countermeasures to Al-Qa`ida Resistance to Interrogation Techniques: A Resistance Training Perspective*.¹⁵ Thus commenced Mitchells and Jessen's relationship with the CIA, during which they conducted experiments on the effectiveness of their EITs to induce detainees' state of learned helplessness and break down the detainees' resistance posture.¹⁶ However, the science at

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ S. REPT. NO. 113-288, at 42 (2014).

¹⁵ See Complaint and Demand for Jury Trial, *supra* note 20 at 12.

¹⁶ *Id.*

the foundation of Mitchell and Jessen’s enhanced interrogation program is widely recognized as pseudo-science.¹⁷

A. The Pseudo-Science Behind the Rendition, Detention, and Interrogation Program

Mitchell and Jessen relied on Martin Seligman’s theory of learned helplessness to develop their enhanced interrogation program.¹⁸ Seligman first theorized learned helplessness in 1967 while conducting inhumane electric shock experiments on dogs.¹⁹ The experiments revealed that when subject to unavoidable and unpredictable electric shocks, dogs’ efforts to escape avoidable, predictable electric shocks waned.²⁰ Seligman hypothesized that if a human were exposed to uncontrollable events, the person would “learn” that their behavior has little to no impact on the outcome of the event, which would subsequently cause the individual to believe they are helpless.²¹ In 2002, Seligman accepted a CIA invitation to speak on his theory of learned helplessness in the context of resisting interrogation at the Navy SERE school in San Diego.²² The presentation was attended by CIA contracted psychologists, Mitchell and Jessen who used the theory of learned helplessness to justify the application of reverse engineered SERE resistance-building techniques in a coercive interrogation setting.²³

Mitchell and Jessen theorized that subjecting a detainee to mental and psychological pressures would “break” a detainee’s “resistance posture” thereby “creat[ing] a state of learned helplessness and dependence conducive to the collection of intelligence.”²⁴ ²⁵ When a detainee’s

¹⁷ *Id.* at 13

¹⁸ S. REPT. NO. 113-288, at 42 (2014).

¹⁹ Journal of Experimental Psychology: General 1976, Vol. 105, No. 1, 3-46 Learned Helplessness: Theory and Evidence Steven F. Maier and Martin E.P. Seligman pg. 3.

²⁰ *Id.*

²¹ *Id.*

²² S. REPT. NO. 113-288, (2014).

²³ *Id.*

²⁴ See North Carolina Commission of Inquiry on Torture, *supra* note 4 at 34.

²⁵ *Id.*

resistance posture is broken, the interrogator can then “establish absolute control,” “induce dependence to meet needs,” “elicit compliance,” and “shape cooperation.”²⁶ According to the CIA, the goal “was to reach the stage where we have broken any will or ability of the subject to resist or deny providing U.S. information.”²⁷ Mitchell and Jessen reverse-engineered the aforementioned SERE program techniques to create EITs.²⁸ These EITs would be employed as the mental and psychological pressures that would subsequently induce a detainee’s state of learned helplessness.²⁹

B. Mitchell and Jessen: Theorist & Practitioners

Mitchell’s and Jessen’s role in the development of the CIA’s torture program spanned beyond theorizing the pseudo-science that fueled EITs.³⁰ In their role as interrogators, Mitchell and Jessen themselves tortured detainees in CIA “black sites.”³¹ Specific accounts of run-ins with Mitchell and Jessen include that of Abu Zubaydah, the CIA’s first detainee and an al-Qaeda operative, who Mitchell waterboarded 83 times.³² Following Mitchell’s initial interrogation of Zubaydah, CIA officers cabled CIA headquarters to suggest Mitchell and Jessen’s roles include “shap[ing] compliance of high-value captive[s] prior to debriefing by substantive experts.”³³ Thus, they consistently acted as interrogators prior to the detainee’s interaction with other CIA officials.³⁴

²⁶ Brief for Physicians for Human Rights *supra* note 1 (Chapter 3) at 12.

²⁷ S. REPT. NO. 113-288, at 46 (2014); *see also* Brief for Physicians for Human Rights *supra* note 1 (Chapter 3) at 19.

²⁸ *See* North Carolina Commission of Inquiry on Torture, *supra* note 4 at 34.

²⁹ Senate Armed Services Committee (110th Cong.), Inquiry into the Treatment of Detainees in U.S. Custody (Nov. 20, 2008),

³⁰ *See* Hoffman, *supra* note 1 (Introduction) at 124-125.

³¹ S. REPT. NO. 113-288, at 65 (2014).

³² Scott Shane, Waterboarding Used 266 Times on 2 Suspects, N.Y. TIMES (April. 19, 2009) <https://www.nytimes.com/2009/04/20/world/20detain.html>.

³³ S. REPT. NO. 113-288, at 114 (2014).

³⁴ *Id.*

A year later Mitchell and two other CIA officials waterboarded Khalid Shaikh Mohammed, a senior al-Qaeda official, 183 times over a 15-day period.³⁵ At one point Mitchell waited for Mohammed to begin speaking before pouring water down his throat.³⁶ Mohammed's EIT plan, as charted by Mitchell, included "nudity, standing sleep deprivation, the attention grabbing and insult slap, the facial grab, the abdominal slap, the kneeling stress position, and walling."³⁷ These are limited accounts that fail to scratch the surface of Mitchell's and Jessen's torturous actions. In the eyes of the CIA the two were indispensable and integral to the continued operation of the torture program.³⁸

C. Psychological Persecution: Psychologists as Oppressors and the Harms of Torture

1. Impact on the Detainee: Biological, Psychological, Social & Spiritual Impacts

Torture is a complete attack of a person's humanity, which consists of their biopsychosocial and spiritual self.³⁹ Bio represents the body.⁴⁰ The body is wired to survive, and when a person undergoes torture, the body creates physical responses that help the person survive the pain.⁴¹ However, these protective measures imprint and can have lasting impacts.⁴² This means that when the traumatic experience stops, the body does not always recalibrate.⁴³ The psycho refers to the mind and examines the mental impacts of torture.⁴⁴ Torture has a lasting psychological impact including depression and post-traumatic stress disorder.⁴⁵ For example, days of sleep deprivation are known to cause attention deficits, impaired memory, and speech

³⁵ See Shane *supra* note 32 (Chapter 3).

³⁶ S. REPT. NO. 113-288, at 114 (2014).

³⁷ *Id.*, at 84-85 (2014).

³⁸ *Id.*

³⁹ Video Interview with Dr. Kathryn Porterfield, Clinical Instructor, Department of Psychiatry at NYU Grossman School of Medicine (Oct. 4, 2021).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

impairments; weeks of sleep deprivation can result in symptoms that mirror paranoid schizophrenia.⁴⁶ Following torture, survivors continue to experience blame, shame, and negative thoughts.⁴⁷

Torture imprints on a person's conception of self and their role in society, which impairs the survivor's ability to interact with others.⁴⁸ Humans are wired to attach and need others to "survive and thrive."⁴⁹ Moreover, the style of torture imposed by the United States was specifically designed to be spiritually degradative.⁵⁰ These torturous experiences reframe a person's conception of who they are and how they fit into the community, especially if they are denied redress.⁵¹ To heal such pain, an individual must take steps to rebuild their biopsychosocial selves; however, this is extremely difficult, and as a result, many individuals are resigned to living lives disjointed from society.⁵² These facts have been painfully demonstrated through a review of the circumstances of Abou Elkassim Britel. Britel's life after undergoing extreme torture at the hands of the CIA encapsulates the impacts of a destroyed biopsychosocial and spiritual self.⁵³

II. Collusion between the American Psychological Association & United States Government

A. The History of Psychology in the United States

The relationship between psychologists and the United States' governmental agencies and organizations is long documented and can be credited with helping establish the moral practice framework that guides American psychologists. This framework can help explain the

⁴⁶ See Brief for Physicians for Human Rights *supra* note 1 (Chapter 3) at 14.

⁴⁷ *Id.*

⁴⁸ See Vide Interview, Dr. Porterfield, *supra* note 39.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Video Interview with Khadija Anna Lucia Pighizzini, Wife of CIA Torture Survivor (Nov. 23, 2021).

American Psychological Association's failure to take action when psychologists began building a CIA torture program. During the Cold War, the CIA feared that the Soviet Union was weaponizing mind control, and the Agency began funding research into understanding mind control using electroshock therapy and LSD.⁵⁴ The result was the 1953 MKUltra program.⁵⁵ The U.S. Military began shoveling money into psychological research at universities and organizations throughout the United States, causing the psychology community to shift focus to researching LSD, mind control, and interrogation.⁵⁶ This also allowed the CIA to share responsibility in the event the public uncovered the project.⁵⁷ This framework of "financial incentives and collegial manipulation" is how the CIA, to this day, manipulates the scientific community into acting outside of its ethical oath.⁵⁸

B. The Collusion that Allowed Psychologist's to Disregard Ethical Obligations

The American Psychological Association (APA) facilitated the continuation of the United States post-9/11 torture infrastructure by colluding with the Department of Defense and by altering its Ethics Code to give the program renewed ethical and legal footing when public backlash threatened the torture program's survival.⁵⁹ In 2004, the APA developed the Psychological Ethics and National Security (PENS) Task Force to guide policy development "on the role of psychologists in interrogations at foreign detention centers for the purpose of U.S. national security."⁶⁰ The Task Force primarily consisted of government psychologists and behavioral scientists with deep connections to "intelligence gathering, detainee interrogations,

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Stephen Soldz, All the President's Psychologist, April 2015 at 10.

⁶⁰ See Soldz, *supra* note 59 at 10.

and related [DOD operations].”⁶¹ The meeting resulted in the publication of the PENS Report, which was subsequently adopted, absent standard voting procedure by the APA’s Ethics Committee, as a part of the Ethics Code.⁶² This officially engrained the motivations and objectives of the DOD into the ethical standards that guide American psychologists.⁶³

III. The Legal Implications of the Psychologists’ Involvement in Torture

A. The Department of Justice’s Re-Interpretation of the Law

Mitchell’s and Jessen’s enhanced interrogation program violated U.S. and international human rights laws, which universally recognize torture as intentionally-caused physical and mental pain, suffering, and abuse.⁶⁴ Yet neither have been brought to justice, in part because, at the time, the government worked to bend the laws to comport with the government’s needs.⁶⁵ This included memos (termed the “Torture Memos”) that ultimately concluded that enhanced interrogation did not constitute torture under international or U.S. law.⁶⁶ This provided the government with the legal loophole it needed to continue torturing detainees.⁶⁷ Throughout the memo, Yoo, the then-Deputy Assistant Attorney General, explained that his legal interpretation was dependent on CIA-provided “facts,” most prominently, the CIA’s claim that the torture program was producing valuable information and that it was medically safe. Both of these “facts” were untrue.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See Brief for Physicians for Human Rights *supra* note 1 (Chapter 3) at 27.

⁶⁵ The Center for Victims on Torture, https://www.cvt.org/CIA_Torture_Fact10 (last visited Nov. 25, 2021).

⁶⁶ *Id.*

⁶⁷ Jack Goldsmith, *The Terror Presidency: Law and Judgement Inside the Bush Administration*, W.W. Norton (Sept. 2007).

1. The Torture Memos' Obscure Legal Analysis

The Torture Memos essentially redefined torture under the Convention Against Torture and the Federal Torture Act, which provided interrogators with possible defenses to acts of torture.⁶⁸ The U.N. Convention Against Torture (“the Convention”) defines torture as intentionally caused physical and mental pain, suffering, and abuse, and the Convention “has made the absolute prohibition against torture an accepted principle of customary international law.”⁶⁹ The United States ratification of the Convention was subject to a limitation on the definition of torture.⁷⁰ This limitation is reflected in the U.S. Torture Convention Implementation Act of 1994, also known as the Torture Act.⁷¹ Even under this limitation, however, Mitchell and Jessen are still guilty of torture.⁷²

The Federal Torture Act “prohibits [acts, or attempted acts of torture] committed by public officials under color of law against persons within the public official’s custody or control.”⁷³ Torture is defined as “acts specifically intended to inflict severe physical or mental pain or suffering.”⁷⁴ Severe mental pain or suffering is further defined to include “prolonged mental harm caused by or resulting from... the infliction of severe physical pain or suffering,” “the application of procedures calculated to disrupt profoundly the senses or the personality,” or the “threat of imminent death;” or the threat to commit any of the aforementioned acts.⁷⁵

⁶⁸ *Id.*

⁶⁹ *See* Brief for Physicians for Human Rights *supra* note 1 (Chapter 3) at 32.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ 18 U.S.C. §§ 2340-2340A (2004).

⁷⁴ *Id.*

⁷⁵ *Id.*

However, “pain and suffering incidental to lawful sanctions” is not prohibited.⁷⁶ The Torture Memos significantly contorted these definitions to provide the CIA with legal protection.⁷⁷

Mitchell’s and Jessen’s acts were committed under color of law, not incidental to lawful sanctions, and thus constitute torture. The actions Mitchell and Jessen took were supported by toothless memos, not law. These memos were withdrawn, and departments were instructed not to act in accordance with them a year after they were received. Moreover, the memos directly conflict with pervasive understandings of the Convention and the Federal Torture Act. Absent a legal foundation for the government entity backing the torture, the actor is not acting in accordance with a legally sanctioned activity – they are simply acting under the claim that they have the authority to comport in such a way. Enhanced interrogation techniques imposed severe physical pain on detainees and caused lasting mental harm. Mitchell and Jessen not only developed these techniques, which would at minimum make them guilty of conspiracy, they employed these techniques on detainees, some who died. This makes Mitchell and Jessen guilty of torture.

IV. Conclusion

Neither Mitchell nor Jessen spent a day in jail for torturing people; the families of the victims of 9/11 have yet to receive justice for the attacks; the survivors of the U.S. torture program, some of whom are still being detained, continue to live with the mental, physical, and social pain of their experience; and, the United States government has denied the innocent any expungement and has never apologized.⁷⁸ The victims of the U.S. Torture Program – both the

⁷⁶ *Id.*

⁷⁷ *See* Bybee, *supra* note 23 (Chapter 1) at 1.

⁷⁸ Center for Victims on Torture, <https://www.cvt.org/CIATortureFact11>, (last visited Nov. 25, 2021).

families of victims of 9/11 and survivors of torture – need redress and deserve justice; it is the duty of U.S. citizens and residents of North Carolina help them obtain both.

Chapter Four:

An Analysis of the Islamophobic Underpinnings of the CIA’s Extraordinary Rendition Program

I. The War on Muslims Following 9/11

Although Islamophobia in the United States did not originate with 9/11, the fear and anguish that the jihadist attack inflicted upon the nation prompted the American administration to lash out indiscriminately at those who they deemed responsible.¹ Following 9/11, President Bush announced “[a] war against all those who seek to export terror and a war against those governments that support or shelter them.”² Colloquially, the nationalist counter-terrorism campaign came to be known as the “war on terror.”³ However, in their execution, the prevailing U.S. efforts on this front resembled a “war on Islam,” of which the CIA E&T Project virtually became the pinnacle.

A. The Islamophobic Formation of the CIA’s Extraordinary Rendition Targets

After 9/11, fear, wariness, and hatred of Muslims skyrocketed in the U.S. The FBI noted that national hate crimes against Muslims increased by 1,600 percent compared to the prior year.⁴ “[D]ata showed there were 481 incidents made up of 546 offenses having 554 victims of crimes motivated by bias toward the Islamic religion.”⁵ While President Bush denounced these

¹ See generally Imran Awan & Irene Zempi. *A WORKING DEFINITION OF ISLAMOPHOBIA*, (Nov. 2020), <https://www.ohchr.org/Documents/Issues/Religion/Islamophobia-AntiMuslim/Civil%20Society%20or%20Individuals/ProfAwan-2.pdf>. But see Timo Pieters. *Islamophobia: The origins of a confusing concept*, EUR. ACAD. OF RELIGION & SOC’Y (Oct. 23, 2020), <https://europeanacademyofreligionandsociety.com/news/islamophobia-the-origins-of-a-confusing-concept/> [https://perma.cc/38X6-L22H] (“The main problem [with the term ‘islamophobia’] is that it fails to distinguish between prejudice and discrimination against Muslims as people, prejudice against Islam, and informed criticism of Islam or Islamism as a set of ideas and practices.”).

² *The Global War on Terrorism: The First 100 Days*, U.S. DEP. OF STATE ARCHIVES (2001-2009) <https://2001-2009.state.gov/s/ct/rls/wh/6947.htm> [].

³ *War on terror*, Wikipedia, https://en.wikipedia.org/wiki/War_on_terror [https://perma.cc/298G-JBLG] (last visited Nov. 17, 2021).

⁴ See *FBI Uniform Crime Reporting*, at <https://ucr.fbi.gov/hate-crime/2001>.

⁵ See *id.*

attacks, the new rhetoric and security-focused policies coming from his administration disproportionately discriminated against well-adjusted Muslim citizens, Muslim immigrants, and Muslim foreign nationals.⁶ Roughly twenty policies were introduced in the first twelve months after 9/11; of these, fifteen were targeted at Muslims living in the United States.^{7 8 9}

B. The CIA's Torture Methods as Proof of American Islamophobia

Accounts of CIA torture methods in Guantanamo show that blatant animus towards Islam was a central part of the project:

Islamophobia cannot be divorced from the government's Extraordinary Rendition and Torture program. The religion of the detainees was a critical factor that motivated those who perpetrated torture and influenced their willingness to engage in such acts, the methods of torture that were used, and the extent of torture that was carried out. CIA officials stated their belief that it was necessary to enhance the torture of Muslim detainees based upon the government's interpretation of Islam. Indeed, it was more than just a tactic used by some interrogators; it was policy.¹⁰

⁶ See Bush denounces Muslim harassment, September 17, 2001, <http://www.cnn.com/2001/US/09/17/gen.hate.crimes/>;

• Muhammad Fazi *et al.*, *Post-9/11 U.S. Immigration Laws and Implications for Muslims*, 57 HONG KONG J. OF SOC. SCIS. 265, 266–68 (2021), <https://ssrn.com/abstract=3923624>; *What It Meant To Be Muslim After 9/11*, NPR (Sept. 9, 2021), <https://www.npr.org/2021/09/09/1035578745/what-it-meant-to-be-muslim-in-america-after-9-11> [<https://perma.cc/BG29-3843>].

• See generally *The 9/11 Effect*, Ctr. For Const. Rts. (last visited Nov. 18, 2021), <https://ccrjustice.org/home/what-we-do/projects/911-effect> ;

• *Turkmen v. Ashcroft*, CTR. FOR CONST. RTS. (last modified Sept. 20, 2021), <https://ccrjustice.org/home/what-we-do/our-cases/turkmen-v-ashcroft> [<https://perma.cc/Z4VY-R5QY>].

• *But see* “And we must be mindful that as we seek to win the war that we treat Arab Americans and Muslims with the respect they deserve.” —Statement from President Bush (Sept. 13, 2001). Press Release, White House Office of the Press Sec’y.

⁷ See Fazi *supra* note 6 (Chapter 4) at 267.

⁸ See Deborah Weissman *et al.*, *Extraordinary Rendition and Torture: What the Narratives of Victims Reveal and Require*, UNC SCH. OF L.: HUM. RTS. POL’Y LAB (Nov. 2017) at 15, <http://www.law.unc.edu/document/s/academics/humanrights/narrativethemes.pdf>.

⁹ See generally Kam C. Wong, *The USA Patriot Act: A Policy of Alienation*, 12 MICH. J. OF RACE & L. 161 (2006), https://repository.law.umich.edu/mjrl/vol12/iss1/5?utm_source=repository.law.umich.edu%2Fmjrl%2Fvol12%2Fiss1%2F5&utm_medium=PDF&utm_campaign=PDFCoverPages.

¹⁰ Weissman *et al.*, *supra* note 8 (Chapter 4) at 15.

The Senate Report on the treatment of detainees “revealed practices specifically targeting religion.”¹¹ Training slides for interrogation personnel were also found that identified “religious disgrace”—such as sexual assault by a female, forced nudity, or forced shaving.¹² Additionally, CIA officials attempted to keep detainees from practicing Islam. Mohamedou Ould Slahi, who wrote of his experiences as a victim of CIA torture in *Guantanamo Diary*, described the punishments he endured for engaging in Islamic religious activities.¹³ The guards were specifically ordered to deny his ability to engage in any activity associated with Islam.¹⁴ “They threatened him with beatings and also threatened to dump ice water over him while they held him in a freezing room.”¹⁵ “On one occasion, he was punched in the mouth for attempting to pray.”¹⁶ During Ramadan, Slahi was also forbidden to fast and was fed by force.¹⁷

Detainee accounts show that the CIA used torture methods designed to degrade and disrespect sacred Muslim beliefs. The Quran was used to inflict psychological damage:

[The Quran] has been handled with disrespect by guards and interrogators—written in, ripped or cut with scissors, squatted over, trampled, kicked, urinated and defecated on, picked up by a dog, tossed around like a ball, used to clean soldiers’ boots, and thrown in a bucket of excrement.¹⁸

Further, the CIA “exploited Islamic rules about ritual impurity to torment detainees.”¹⁹ One group of prisoners were forced to “bow down and prostrate themselves inside a makeshift satanic shrine, where interrogators made them repeat that Satan, not Allah, was their God.”²⁰ Another

¹¹ *Id.* at 17 (citing *Inquiry Into the Treatment of Detainees in U.S. Custody* 88-89 (2009)). See Michael Peppard, *The Secret Weapon: Religious Abuse in the ‘War on Terror’* Commonwealth Mag. (Nov. 30, 2008), <https://www.commonwealmagazine.org/secret-weapon>.

¹² *Id.*

¹³ Mohamedou Ould Slahi, *Guantanamo Diary*, 252 (2015).

¹⁴ Weissman *et al.*, *supra* note 8 (Chapter 4) at 17 (citing Slahi *supra* note 13 (Ch. 4) at 334).

¹⁵ *Id.* (citing Slahi *supra* note 13 (Ch.4) at 231).

¹⁶ *Id.* (citing Slahi *supra* note 13 (Ch. 4) at 252).

¹⁷ *Id.* at 17 (citing Slahi *supra* note 13 (Ch. 4) at 231).

¹⁸ Weissman *et al.*, *supra* note 8 (Chapter 4) at 17–18 (citing Michael Peppard, *The Secret Weapon, Religious Abuse in the War on Terror*, Nov. 30, 2008, at <https://www.commonwealmagazine.org/secret-weapon>).

¹⁹ Weissman *et al.*, *supra* note 8 (Chapter 4) at 18.

²⁰ See Peppard *supra* note 18 (Chapter 4) (quotation marks omitted).

group of detainees recounted, and the FBI corroborated, that they were “draped in Israeli flags during interrogation.” One inmate in particular, named Jumah al-Dossari, was tortured by a female interrogator, who attempted to sexually defile him in a religiously charged way.²¹ She had al-Dossari’s clothing cut off and then removed her own and stood over him.²² “Just before wiping what she said was menstrual blood on his face, she kissed the crucifix on her necklace and said, ‘This is a gift from Christ for you Muslims.’”²³ Another interrogator remarked to al-Dossari that “a holy war was occurring, between the Cross and the Star of David on the one hand, and the Crescent on the other.”²⁴

II. Conclusion

In addition to its legal obligations, the United States has a moral duty to provide reparations to its Muslim victims — specifically, reparations that are custom-tailored to counteract the evil and the stigmatizing effect of their faith-based persecution. Because of Guantanamo, there are somewhere between 119-800 Muslim men that continue to suffer from the trauma that they experienced as detainees and the stigma that they live with as “terrorists,” even after they were cleared for release. To produce the most appropriate rehabilitative remedy, the U.S. should focus on methods that serve to publicly disavow the State-perpetuated narrative that any Muslim could be a terrorist. It is important to make known that Muslim victims were undeserving of the treatment they received and that the U.S. should never have allowed them to be punished for their faith. The U.S. needs to demonstrate its symbolic commitment to honoring Muslims’ human rights by way of closing Guantanamo.²⁵ Today, almost forty Muslim men

²¹ *See id.*

²² *See id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

remain there—many without charge.²⁶ As long as Guantanamo remains open, it serves as a “shameful icon of imprisonment without charge or trial” — a physical symbol of the U.S.’s willingness to violate Muslims without cause.²⁷

²⁶ *Guantanamo by the Numbers*, ACLU MULTIMEDIA (last updated May 2018), <https://www.aclu.org/issues/national-security/detention/guantanamo-numbers> [<https://perma.cc/2SSK-MS3L>].

²⁷ See GUANTANAMO CLOCK, www.closeguantanamo.org

Chapter Five: The Ongoing Failure of the State of North Carolina and State Media to Address Extraordinary Rendition and Torture

As discussed in Chapter I, Section II, North Carolina played a significant role in the extraordinary rendition program. In facilitating the CIA's crimes, North Carolina was not only complicit in illegal human rights abuses, but it also inflicted damage on its own reputation and turned its taxpayers into accomplices of torture.¹ The State's government and leaders acted as co-conspirators with the CIA in human rights abuses and have consistently failed to take accountability for these actions.² These failures exist on the part of North Carolina generally despite public outcry, as covered in Section I. Additionally, North Carolina's media outlets have also failed to properly address the State's part in post-9/11 torture and extraordinary rendition programs, as discussed in Section II.

I. North Carolina's Failure

Because of North Carolina's role in the CIA's torture and extraordinary rendition programs, State elected officials have three legal obligations, which they have ignored for over a decade: 1) report Aero to the federal government for investigation (under CAT and ICCPR); 2) conduct its own investigation of the unlawful conduct and refer the results to the federal government to prosecute; and 3) prosecute Aero under state law, in cases where its conduct also violates state law.³ Among other actions they must take to remedy the damage that the state has allowed, it is crucial that North Carolina prosecute those responsible under state law, so that it

¹ *See id.* at 49.

² *Id.*

³ N.C. COMM'N OF INQUIRY ON TORTURE, *Torture Flights: North Carolina's Role in the CIA Rendition and Torture Program*, www.nctorturereport.org (Sept. 2018) at p. 63, https://www.nctorturereport.org/pdfs/NC_Torture_Report.pdf.

can both send a message that North Carolina will not allow the illegal abuse of human rights and kickstart the legal and social processes of accomplishing accountability at the federal level.⁴

A. North Carolina’s Citizens Public Opposition to the RDI Program

Frustrated and discouraged by a lack of action on the part of their federal and state government, vocal groups of N.C. citizens and other human rights defenders have, since 2005, “worked to expose and end North Carolina’s central role in the ongoing U.S. torture program.”⁵ Largely led by North Carolina Stop Torture Now, the individuals fighting the anti-torture campaign are motivated by a variety of ethical, conscientious, and religious beliefs that torture is immoral and abhorrent.⁶ They advocate that North Carolina not only has a duty to provide remedy for the harms it has inflicted but also to take action that will lead to accountability at the federal level.

For over a decade, these opponents to torture have “repeatedly engaged with elected officials and staff, including governors, attorneys general, U.S. Congress members, and state legislators” in order to accomplish restorative and rehabilitative justice for the victims of their state and federal governments.⁷ They’ve utilized a wide array of actions in attempts to garner attention and push for a state response. Their efforts include petitions, demonstrations, educational conferences, alliance building, postcard campaigns, religious witness, research projects, formal requests for investigation, protests, letters, hearings, collaboration with the local press, requests to meet with officials, and commission reports.⁸ In Johnston County, where Aero

⁴ *See id.* at Ch. 9, p. 57–63.

⁵ *See id.* at 50, and Ch. 8 generally.

⁶ *See id.*

⁷ *See id.*

⁸ *See generally* Ch. 8 of NCCIT’s *Torture Flights*;

transported detainees in “torture taxis,” the effort has been especially fervent; activists have appeared before the Johnston County Commissioners “nearly every month for over two years.”⁹

B. Officials’ Responses to Public Opposition of the RDI Program

Officials on every level—county, state, and federal—who possess the powers of influence essential for effectuating remedial justice have ignored or refused to comply with the public’s requests, despite vehement campaign efforts.¹⁰

On county level, the Johnston County Board of Commissioners (who were witness to a multitude of other campaign efforts) “failed to provide an effective response.”¹¹ Instead, they publicly and repeatedly expressed support for Aero Contractors.¹² For example, in 2012, Johnston County Commissioner Allen Mims defended Aero to the Washington Post, and he remarked he would not be disappointed if Aero had helped the CIA in fighting terrorism. “I’d rather that the CIA do it that way than put a terrorist on a Delta flight and endanger the rest of us.”¹³ In May 2018, the Board went so far as to deny any link between the Johnston County Airport and rendition of torture suspects.¹⁴

On the state level, officials have substantially ignored, evaded, and denied human rights defenders’ requests for information or action. The North Carolina Commission on the Inquiry for Torture (NCCIT) reportedly sent public records requests to seven state entities in May 2017, but

⁹ *See id.* at 51.

We were not allowed to speak until the end of the meeting, which meant sitting through countless hours of county business for our chance to speak. Chuck Fager of Quaker House wrote a newsletter every month for the Commissioners on the latest news of torture and accountability from around the world. Each time as he addressed the Commissioners he asked them to investigate Aero Contractors.

See id.

¹⁰ *See id.* at 54–56.

¹¹ *See id.* at 51

¹² *See id.* at 51 (quoting Johnston Cty. Commissioner Allen Mims, who said he felt “pretty certain that what they [we]re doing at the airport [was] legal.”).

¹³ *See id.* (citing Joby Warrick, *Ten Years Later, CIA ‘Rendition’ Program Still Divides N.C. Town*, WASH. POST (Feb. 9, 2012), https://www.washingtonpost.com/world/national-security/ten-years-later-cia-rendition-program-still-divides-nc-town/2012/01/23/gIQAwrAU2Q_story.html?utm_term=.6f52e7fb2287);

¹⁴ *See id.* at 54.

only three provided any records.¹⁵ The NCCIT also reported that “requests to investigate Aero Contractors have been repeatedly denied or referred to the federal level with unknown results.”¹⁶ In 2007, the N.C. Governor’s office responded to grassroots requests for investigation by stating there were “no grounds to attempt to break [Global TransPark Authority] GTPA’s lease with Aero, nor to launch a criminal investigation of Aero, because North Carolina’s U.S. Senators and President Bush had indicated that the U.S. government does not engage in torture.”¹⁷

In a joint letter, sent in 2006, twelve North Carolina legislators also attempted to request that the State Bureau of Investigation investigate Aero Contractors. However, the SBI responded to the request claiming a lack of jurisdiction.¹⁸ Next, the General Counsel to then-N.C. Attorney General Cooper responded that the investigation of Aero had been referred to the FBI and that “[t]he Attorney General and the SBI stand ready to assist the FBI in any criminal investigation.”¹⁹ Following up, a U.S. representative from North Carolina asked then-FBI Director Robert Mueller during a U.S. House Judiciary Committee hearing in April 2008 for information regarding the investigation and was informed they were waiting for advice on how to proceed.²⁰ Subsequently, three other state representatives wrote a letter referring to the above

¹⁵ *See id.* at 22, 54.

¹⁶ *See id.* at 54.

¹⁷ *See id.* at 55.

¹⁸ *But see id.* at 63, 75 (“North Carolina has the jurisdiction to prosecute a member of a conspiracy in this state if any of the co-conspirators commit an overt act in North Carolina in furtherance of the conspiracy, even if the conspiracy was formed outside the state. This is the broadest and clearest possible basis for criminal liability in North Carolina for acts in North Carolina associated with the CIA’s RDI program . . . Acts in furtherance of a conspiracy could include the storage, maintenance, fueling, pre-flight preparation, and loading of aircraft, the filing of flight plans, the landing and departure of aircraft in furtherance of the conspiracy, and any other acts necessary to the objective of extraordinary rendition.”).

¹⁹ *See id.* at 55 (citing *Federal Bureau of Investigation (Part II): Hearing Before the H. Comm. on the Judiciary*, 110th Cong. (2008) (statement of Rep. Watt, Member, H. Comm. on the Judiciary), <https://www.gpo.gov/fdsys/pkg/CHRG-110hrg41904/html/CHRG-110hrg41904.htm>; Letter from Richard Powers, FBI Assistant Dir., Off. of Cong. Affairs, to Rep. Watt, Member, H. Comm. on the Judiciary (May 1, 2008), http://www.ncstn.org/PDF_Archives/FBI_ResponseToWatt.pdf; Letter from Rep. Harrison, Rep. Jones, and Rep. Luebke to Rep. Butterfield, Rep. Miller, Rep. Price, and Rep. Watts (March 10, 2009), <https://drive.google.com/drive/folders/1t-LO7iy2sQ51Zj3BNb7BhcqBgk7EXTZtA>).

²⁰ *See id.*

sequence of events, requesting the Department of Justice make “a full and transparent investigation of Aero Contractors,” and concluding with “the rule of law at a minimum demands an investigation.”²¹ In 2021, fifteen years after the initial letter was sent, the status of the investigation as referred to the FBI is not publicly known.²²

In an effort to investigate the institutional disregard for acknowledgement and reparations for Muslim victims, emails were sent to the North Carolina Attorney General Josh Stein and to North Carolina Governor Roy Cooper.²³ The emails requested any explanation and any opinions on the merits of the issue, as well as any plans for further action to help facilitate NCSTN’s sought-after goals.²⁴ In particular, the AG’s office was asked to comment on a passage from *Torture Flights* outlining NC’s legal obligations.²⁵ Both offices failed to give a response or issue formal notice of receipt for the emails.

II. State Media Failure: The Role of North Carolina’s News Media in Achieving Official Reparations

Mass media holds tremendous power to educate citizens and force accountability from governments.²⁶ This is true at international, national, state, and local levels. Since state and federal officials continue to disregard relentless grassroots demands for justice, the success of those demands may only be possible if state-level news media keeps the issue alive. In this case, the fundamental remedy sought is a public apology; the only way to achieve that goal is through a public campaign. Unfortunately, human rights defenders in North Carolina have achieved

²¹ See *id.*

²² See *id.*

²³ These emails were sent on Oct. 28, 2021. As of the drafting date of this publication—Nov. 21, 2021—the author has received no response for notice of receipt from either office. Correspondence on file with the authors.

²⁴ *Id.*

²⁵ Correspondence on file with the authors.

²⁶ Timothy Beasley, Robin Burgess, Andrea Prat; *Mass Media and Political Accountability*, London School of Economics (2002).

limited success in their attempts to form a steady, dedicated partnership with North Carolina's most prominent news source—the News & Observer—largely due to the stigma that apologies carry for politicians.

Effective state-level news media coverage is an essential link in the metaphorical chain that connects a grassroots effort to Washington, D.C., and the United States more generally. National change is instituted by efforts that start at the local level – which includes local and state news coverage.²⁷ The United States' government's federalist design renders U.S. media incredibly important for public education and governmental accountability. As a matter of course, when state representatives, officials, and U.S. congresspersons decide on which issues to give priority, they defer to issues that their respective state district brings to their attention. In practice, this often means elected officials give the most priority to issues their respective state and local media consistently and thoroughly cover.²⁸

Unfortunately, the efforts towards collaboration between North Carolina's news media and North Carolina Stop Torture Now and other human rights defenders have stalled. When the grassroots movement began, the News & Observer wrote a multitude of articles covering and elaborating on the finding of the Senate Report regarding extraordinary renditions and torture.²⁹ However, over the years, the News & Observer's coverage of the issue has dwindled, largely

²⁷ See President Barack Obama, *Real Change Starts from the Ground Up*, WHITE HOUSE BLOG (Jun. 6, 2016), <https://obamawhitehouse.archives.gov/blog/2016/06/06/real-change-starts-ground> [<https://perma.cc/U5U4-7YJN>] (“This lesson—that real change starts from the ground up—has driven my work as President.”).

²⁸ Interview with Professor Christina Cowger and Catherine Read on Oct. 22, 2021. *Of note: this statement is also corroborated by the author's experience working as a political intern in several representatives' offices.

²⁹ See generally Mandy Locke, *Airport Linked to Covert Flights*, NEWS & OBSERVER, (Mar. 9, 2005) at B1; Peggy Lim, *14 Aero Protestors Found Guilty*, NEWS & OBSERVER, (Jan. 6, 2006) at B1; Peggy Lim, *Coalition Wants Aero Investigated*, NEWS & OBSERVER, (Mar. 22, 2007) at B1.

halting by 2018³⁰ despite human rights defenders' ongoing efforts.³¹ Even more recently, a prisoner of Guantanamo was allowed to testify in court for the first time ever about his harrowing account of CIA torture; but, no North Carolina news media covered it.³²

In an effort to investigate the local media's disinterest in continuing to report on the movement for reparations, and as part of conducting this policy project, email inquiries were sent to the Executive for Media Inquiries of McClatchy, Susan Firey; the customer service of the News & Observer (N&O); and the Managing Editor of the N&O, Sharif Durhams.³³ The emails sought clarification on how the N&O makes decisions on which developments regarding the Guantanamo detainees to cover and what the N&O plans to focus on in the future regarding the same.³⁴ The N&O failed to respond to any of these inquiries.

A. A Path Forward: Pressure and Voice

Both the media and the public have a role to play in the dance towards government accountability and reparations for the victims of the CIA's extraordinary rendition and torture programs. While the media has the voice, power, and access to advocate for government accountability, the public, too, has power – in numbers and in ability to apply pressure to both

³⁰ See generally *Media*, N.C. Comm'n of Inquiry on Torture (last updated Sept. 2021), <http://www.nccit.org/nccitmedia> [<https://perma.cc/33XR-4XSU>]. McIntyre, *Torture and N.C. Culpability*, NEWS & OBSERVER; Deborah Weissman & Robin Kirk, *Shedding Light on N.C.'s 'Rendition' Connection*, NEWS & OBSERVER, (Jan. 15, 2012) at 19A; Nash Dunn, *Following Senate report, Johnston leaders tout reported CIA contractor as 'good corporate citizen'*, NEWS & OBSERVER, (Dec. 27, 2014), <http://www.newsobserver.com/news/local/counties/johnston-county/article10205018.html>; Allyson Caison & Josh McIntyre, *Torture and N.C. Culpability*, NEWS & OBSERVER (Jan. 2, 2015), <http://www.newsobserver.com/news/local/community/smithfield-herald/sh-opinion/article10209590.html>;

³¹ Interview with Professor Christina Cowger and Catherine Read on Oct. 22, 2021.

³² See *Prisoner gives a Guantanamo court the first account of CIA abuse*, Nat. Pub. Radio (Oct. 28, 2021) <https://www.npr.org/2021/10/28/1050317339/guantanamo-sentencing-majid-khan>. According to the minutes of the NCSTN November Meeting

³³ McClatchy Publishing Co., LLC, is the owner of the News & Observer and the Charlotte News & Observer. These emails were sent on Oct. 28, 2021. As of the drafting date of this publication—Nov. 21, 2021—the author has received no response for notice of receipt from either office. The author's draft of the emails are on file, available upon request.

³⁴ *Id.*

elected officials and to the media. Concerned citizens and groups should continue to insist that state and local news sources, such as the News & Observer, report on our state's egregious role in human rights violations as well as the appalling, continued failure to respond with an apology and reparations for those harmed.

Media pressure is essential in obtaining government accountability and transparency.³⁵ The media can expose government failures, such as the deplorable human rights violations discussed here.³⁶ This can alert and educate citizens who may then pressure their political representatives for a vigorous response or, alternatively, vote for new representatives who are more likely to push for accountability. Further, the media also holds power to influence policy and politics – both to bring issues to the government's attention and to pressure local, state, or national leaders to respond.³⁷ Mass media plays a tremendous role in our society; news outlets, such as the N&O have the responsibility to report on our government's actions – especially its transgressions. Failure to provide sufficient, continued coverage until the accountability is reached and reparations are issued constitutes a severe dereliction of duty on the part of the press and embodies an incredible disservice to the residents and governments of the United States. In North Carolina, the News & Observer must continue to report on the CIA's human rights violations in its post-9/11 extraordinary rendition and torture programs, demanding our State provide accountability for North Carolinians and those harmed by N.C.'s complicity in the CIA's torture of human beings. Until the N&O decides to fulfill this duty, the public should continue to

³⁵ Nigel Bowles, James T. Hamilton, David A. L. Levy; *Transparency in Politics and the Media: Accountability and Open Government*, I.B. Tauris (2013).

³⁶ *Id.*

³⁷ *Id.*

protest – write letters to editors, pressure media outlets, urge representatives to act, and provide a voice for those North Carolina has tried to render voiceless.

Chapter Six: Right to Reparations

International and Domestic Obligations to Provide Reparations to Victims of Torture and Extraordinary Rendition; Examples From Extraordinary Rendition Reparations Globally: A Comparative Analysis

I. Introduction

Generally, “extraordinary rendition” consists of “the practice of sending foreign criminal or terrorist suspects covertly to be interrogated in a country with less [transparency and/or] international oversight.”¹ In essence, it may be said that extraordinary rendition implicates two distinct obligations under international human rights law: A) the prohibition against torture and B) the obligation of non-refoulement.

This report highlights five survivors of the CIA’s extraordinary rendition program (*see* Chapter II). The unsettling reality is this: *innocent people were captured, rendered, tortured in secret, held in isolation, and deprived any semblance of due process; in some cases, these innocent people were victimized for decades.* The damage inflicted lingers today, and this project seeks to address the possibility of reparations for victims of extraordinary rendition by the CIA and other complicit government agencies in the post-9/11 counterterrorism context.

II. International Law

Nations have obligations to each other through international law, formed through customs and treaties.² Customary international law stems from “evidence of a general practice accepted as law” that is not created by treaties.³ There are some rules (termed *jus cogen* norms) under international customary law that are so significant that states are not allowed to “contract” out of

¹ *See generally* Ingrid Detter Frankopan, *Extraordinary Rendition and the Law of War*, 33 N.C. J. INT’L L. 657 (2007).

² David Bederman & Chimene Keitner, *International Law Frameworks*, 17-18 (Foundation Press, 4th ed. 2016).

³ International Committee of the Red Cross, *Customary Law*, ICRC, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>; David Bederman & Chimene Keitner, *International Law Frameworks*, 17-19 (Foundation Press, 4th ed. 2016).

these practices, even by treaty.⁴ The prohibition of torture is one of the most universally recognized human rights and has attained status as a *jus cogens* norm; thus, there can be no derogation from restrictions against torture.⁵

Treaties serve as another way for nations to create and bind themselves to international law.⁶ A state is assumed to be legally bound once they sign the treaty.⁷ However, for a majority of international agreements, there is another step after the signing of the treaty – ratification, wherein a state makes clear its intent to be legally bound by the treaty.⁸ In many instances, there are delays between the signing of a treaty and the treaty’s ratification; however, during this interim period, “signatory states [must] refrain from acts that would defeat the object and purpose of the treaty, unless they make clear their intent not to ratify the instrument.”⁹

A. Torture

The principal international treaty on torture is the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).¹⁰ CAT defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹¹

⁴ *Id.* at 26.

⁵ Torture, Int’l Justice Resource Center, <https://ijrcenter.org/thematic-research-guides/torture/>.

⁶ David Bederman & Chimene Keitner, *International Law Frameworks*, 27 (Foundation Press, 4th ed. 2016).

⁷ *Id.* at 33.

⁸ *Id.*

⁹ *Id.*

¹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, June 26, 1987, 1465 U.N.T.S. 85.

¹¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, June 26, 1987, 1465 U.N.T.S. 85.

The United States ratified CAT in October 1994 and therefore is obligated to comply with its provisions.¹² Other treaties and international law that prohibit torture include the International Covenant on Civil and Political Rights (ICCPR), the Third and Fourth Geneva Conventions, the Lieber Code, the concept of *jus cogens*, and customary international law.¹³ Additionally, the United States has specifically stated in a report to the United Nations Committee against Torture, that the use of torture:

is categorically denounced as a matter of policy and as a tool of state authority . . . No official of the government, federal, state or local, civilian or military, is authorized to commit or to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form . . . Every act of torture within the meaning of the [Convention against Torture] is illegal under existing federal and state law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes.¹⁴

B. Extraordinary Rendition

The ACLU’s definition of extraordinary rendition (ER) is based off of the idea of non-refoulement: ER is “the practice of kidnapping or capturing people and sending them to countries that use torture or abuse in interrogations.”¹⁵ ER is inherently a form of torture.¹⁶ Article 3 of CAT specifically references “refouler” in its directive that “[n]o State Party shall expel, return, or extradite a person to another State where there are substantial grounds for believing that he

¹² FAQ: The Convention Against Torture, ACLU, <https://www.aclu.org/other/faq-convention-against-torture>.

¹³ See generally, International Covenant on Civil and Political Rights, opened for signature Dec. 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, adopted by the United States Sept. 8, 1992) [hereinafter ICCPR]; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in the Time of War, Aug. 12, 1949, 75 U.N.T.S. 287; Lieber Code, Article 16 (cited in Vol. II, Ch. 32, § 1010); IHL Database, *Rule 90. Torture and Cruel, Inhuman or Degrading Treatment*, ICRC, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule90; Torture, Int’l Justice Resource Center, <https://ijrcenter.org/thematic-research-guides/torture/>.

¹⁴ *Initial Report of the United States of America to the UN Committee Against Torture*, submitted by the United States of America, Oct. 15, 1999, available at https://1997-2001.state.gov/global/human_rights/torture_index.html.

¹⁵ *Extraordinary Rendition FAQs*, ACLU, available at <https://www.aclu.org/other/extraordinary-rendition-faqs#:~:text=Extraordinary%20rendition%20is%20the%20practice,torture%20or%20abuse%20in%20interrogation.>

¹⁶ *Id.*

would be in danger of being subjected to torture.”¹⁷ The European Commission defines non-refoulement as a core principle of human rights law that “prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment, or any other human rights violation.”¹⁸

Additional treaties and international law that prohibit ER include the Declaration Against Enforced Disappearance, the American Declaration, and the OAS Charter.¹⁹ The principle of non-refoulement is specifically stated in international treaties to which the United States is a party, such as CAT; it is also a part of customary international law, is binding on all states, and cannot be derogated from.²⁰

C. International Obligations to Offer Reparations

The term “reparations” has no formal definition, however, there are several guiding interpretations. The Rome Statute of the International Criminal Court defines reparations as the establishment of “principles relating to reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation.”²¹ The United States has not signed the Rome Statute, but the principles found within it are included in other documents onto which the United

¹⁷ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, June 26, 1987, 1465 U.N.T.S. 85.

¹⁸ European Commission, *Non-refoulement*, EU, https://ec.europa.eu/home-affairs/pages/glossary/non-refoulement_en.

¹⁹ *See generally*, Declaration on the Protection of All Persons from Enforced Disappearance, GA Res 47/133, UN GAOR, 47th sess, 92nd plen mtg, Agenda Item 97(b), UN Doc A/RES/47/133 (12 February 1993) [hereinafter ‘Enforced Disappearance Declaration’]; American Declaration on the Rights and Duties of Man, Res. XXX, Final Act of the Ninth International Conference of American States (Pan American Union), Bogota, Colombia, Mar. 30-May 2, 1948, 1 Annals of the O.A.S. 130 (1949), 43 Am. J. Int’l L. Supp. 133 (1949); OAS Charter, opened for signature April 30, 1948, 2 UST 2394, OASTS 1-C & 61 (entered into force Dec. 13, 1951) [hereinafter ‘OAS Charter’].

²⁰ European Commission, *Non-refoulement*, EU, https://ec.europa.eu/home-affairs/pages/glossary/non-refoulement_en.

²¹ Rome Statute of the International Criminal Court, July 17, 1998, UN Doc. A/CONF.183/9, 37 I.L.M. 999, available at <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf> [hereinafter ‘Rome Statute’].

States has signed. Thus, the Rome Statute provides guidance and influence.²² According to Oxford Public International Law, generally, the concept of reparations refers to compensation “given to one who has suffered legal injury at the hands of another; to make amends, provide restitution, or give satisfaction or compensation for a wrong inflicted; it also refers to the thing done or given to the injured party.”²³ The Gilder Lehrman Center at Yale, while researching the philosophy and ethics of reparations, states that reparations is what is “owed by the perpetrators of injustice to their victims, and, ideally, it is supposed to return these victims to the situation they were in before the injustice occurred.”

1. Sources of International Obligations for Reparations

The United States has signed and ratified many treaties and other international obligations that legally bind them to provide reparations to those it has harmed. The original idea of reparations started with the aspirational document, the Universal Declaration of Human Rights, and was later enshrined in ratified treaties such as the International Covenant on Civil and Political Rights.²⁴ The United Nations General Assembly also released a resolution – the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law²⁵ (the Resolution).²⁶ The Resolution provides that member states have the duty to “provide effective remedies to victims, including reparation[s].”²⁷ Section IX of the

²² See generally, Human Rights Watch, *Q&A: The International Criminal Court and the United States*, HRW (Sept. 2, 2020), <https://www.hrw.org/news/2020/09/02/qa-international-criminal-court-and-united-states>.

²³ Dinah Shelton, *Reparations*, OXFORD PUBLIC INT’L L. (Aug. 2015), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e392>.

²⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

²⁵ The Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 147, 21 March 2006, A/RES/60/147; 13 IHRR 907 (2006) [hereinafter ‘Basic Principles and Guidelines’].

²⁶ See *id.*

²⁷ See *id.*

Resolution more specifically defines what reparations for victims should entail, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.²⁸

2. Opportunities for Reparations in the International Sphere

Options for reparations within international law come from the United Nations Human Rights Council, Special Rapporteurs, Universal Periodic Reviews, and the United Nations Torture Fund, as well as international regional courts.²⁹ The United Nations Human Rights Council (HRC) is the monitoring and enforcement body for all human rights treaties. The HRC has a number of mechanisms at its disposal by which it can address human rights issues, including the HRC's Universal Periodic Review (UPR). The UPR is a review of the human rights records of Member States.³⁰ UPRs happen every five years and are based on information from national reports that are submitted by states, as well as reports from other stakeholders and non-governmental organizations.³¹ The outcome of a UPR is a report consisting of questions, comments, and recommendations, which the State has the responsibility to implement.³² During the last UPR, many countries such as Australia, Canada, Switzerland, and the United Kingdom called for the United States to take action to improve its human rights record.³³

²⁸ *See id.*

²⁹ *See generally*, The Association for Women's Rights in Development, *Human Rights Council (HRC)*, AWID, <https://www.awid.org/special-focus-sections/human-rights-council>; United Nations Human Rights Council, *Basic Facts About the UPR*, OHCHR, (2020), <https://www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx>; American Civil Liberties Union, *FAQs; United Nations Special Rapporteurs*, ACLU (2021), <https://www.aclu.org/other/faqs-united-nations-special-rapporteurs>; United Nations Human Rights Officer of the High Commissioner, *The United Nations Voluntary Fund for Victims of Torture*, OHCHR (2021), <https://www.ohchr.org/en/issues/torture/unvft/pages/index.aspx>.

³⁰ United Nations Human Rights Council, *Basic Facts About the UPR*, OHCHR, (2020), <https://www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx>.

³¹ *See* United Nations Human Rights Council, *Basic Facts About the UPR*, OHCHR, (2020), <https://www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx>; Universal Periodic Review, *What is the UPR?*, UNITED NATIONS (2021), <https://www.upr-info.org/en/upr-process/what-is-it>.

³² United Nations Human Rights Council, *Basic Facts About the UPR*, OHCHR, (2020), <https://www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx>.

³³ *Id.*

The United Nations Voluntary Fund for the Victims of Torture (the Fund) focuses global attention on rebuilding the lives of victims and their families and seeking redress for human rights violations they have suffered.³⁴ The Fund, established in 1981 by the UN General Assembly, receives voluntary contributions, mainly from Member States.³⁵ The Fund awards grants that contribute to access to remedies and reparations for almost 50,000 torture survivors each year, with the goal of promote “a victim-centered approach aimed at making a difference at the individual level.”³⁶ Member States of the United Nations should fulfill their obligations to donate to the Fund.. This would allow for more grants towards medical and psychological assistance for survivors, as well as help for their families, and legal assistance to help bring cases within the United States.

D. Conclusion

Despite gaps in the law and other associated challenges that survivors of extraordinary rendition face when seeking legal redress, international obligations require countries to offer reparations and remedies when they are in violation of international human rights norms. Success in attaining reparations for survivors depends on ordinary citizens continuing to push for accountability and redress from our governments.

III. Comparative Analysis

This section conducts a comparative analysis of court-ordered remedies in each of the following jurisdictions: A) the Inter-American Court of Human Rights (ACtHR), B) the European Court of Human Rights (ECtHR), and C) the African Court on Human and Peoples’ Rights (ACtHPR). This analysis includes remedies for torture, refoulement, and extraordinary

³⁴ United Nations Human Rights Officer of the High Commissioner, *The United Nations Voluntary Fund for Victims of Torture*, OHCHR (2021), <https://www.ohchr.org/en/issues/torture/unvft/pages/index.aspx>.

³⁵ *Id.*

³⁶ *Id.*

renditions to consider the widest possible sample. International courts are uniquely positioned to hear cases involving information that needs to be kept from the public; but, many of the reparations and trial methods adopted by regional courts provide learning opportunities for countries like the United States. Using their examples, it is possible to improve survivors' chances for meaningful remedy here in domestic courts.

A. Inter-American Court

Extraordinary rendition violates several provisions of the American Convention on Human Rights,³⁷ including the Right to Life,³⁸ the Right to Humane Treatment,³⁹ and the Right to Personal Liberty.⁴⁰ In some ways, the laws surrounding extraordinary rendition are most developed in the Inter-American system. They have developed a legal principle known as the “right to truth,” which has roots in Latin American states where State-sponsored disappearances caused a major problem throughout the 1970s and 1980s.⁴¹ The truth commissions of states like Argentina, Chile, and El Salvador in the 1980s invigorated a broader debate on accessing the truth as it related to “serious violations” of human rights and “enforced disappearances” generally.⁴² Furthermore, several Latin American states embedded a “right to know” in their domestic laws relating to missing persons or disappearances.⁴³ Several national courts began recognizing this “right to truth,” and the concept began to take root in the Inter-American system before developing further within the U.N. system.⁴⁴ The “right to truth” was imagined with two constitutive dimensions: 1) “the right of the victims and their family members to know the truth

³⁷ American Convention on Human Rights, signed 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).

³⁸ *Id.* Article 4.

³⁹ *Id.* Article 5.

⁴⁰ *Id.* Article 7.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

about the events that led to serious violations of human rights,” and 2) “the right to know the identity of those who played a role in the violations.”⁴⁵ The Commission also makes clear that this right to the survivor and their family is non-exclusive, and the right extends to “society as a whole.”⁴⁶

This is not only a move towards meaningful truth and reconciliation committees, but also a shift to a more survivor-centered approach to international human rights law.⁴⁷ It is a stark contrast with the prevailing theory of criminal justice in countries like the United States, which are much more perpetrator-centered and where the survivor’s role is secondary to crime control.⁴⁸ This interest in truth has spearheaded a shift away from the punitive human rights trials we witnessed in Nuremberg, for example, and demonstrates the capacity that human rights instruments have to repair damage done on a human level. These practices are essential for restoring the survivor’s sense of self, and helping to process and acknowledge the blamelessness of their situation.

The five survivors of CIA extraordinary rendition this report highlights share one thing in common: they are seeking something more than monetary damages. They are seeking something more foundational and fundamental — something more central to their sense of self and their dignity. They are seeking the truth.

B. European Court

In most cases of forced disappearances and extraordinary renditions, the European Court has found violations of several articles of the European Convention on Human Rights –⁴⁹ most

⁴⁵ Inter-Am. Comm’n H.R., *The Right to Truth in the Americas*, OEA/Ser.L/V/II.152, doc. 2 P 14 (Aug. 13 2014).

⁴⁶ *Id.*

⁴⁷ *See Chapter Two* (setting forth the narrative accounts of some of the torture victims).

⁴⁸ *Id.*

⁴⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

notably the Right to Life,⁵⁰ the Prohibition of Torture,⁵¹ the Right to Liberty and Security,⁵² and Right to an Effective Remedy.⁵³ It has been noted that the European Court and the Human Rights Court share a particular frustration with their institutional inability to offer effective remedies to victims of gross human rights abuses.⁵⁴ It has been argued that these remedies have the potential to be more effectively enforced by member states themselves.⁵⁵

The European Commission, as a result of the “right to truth” developments in the Inter-American region, placed a newfound emphasis on addressing enforced disappearances and extraordinary renditions – especially when governments invoke state secrets provisions to avoid accountability and “to prevent judicial authorities from establishing the facts and prosecuting those guilty of offenses.”⁵⁶

Several years later, in the 2012 case of *El-Masri v. Macedonia*,⁵⁷ the European court reviewed the right to truth in the context of extraordinary rendition and doubled down on the right to truth as a remedy. Indeed, the European Court has argued that “the notion of an ‘effective remedy’ [for gross human rights violations] entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.”⁵⁸ The European Court has also recognized the need to compensate victims of human rights violations for legal fees, as many survivors combat these

⁵⁰ *Id.* Article 2.

⁵¹ *Id.* Article 3.

⁵² *Id.* Article 5.

⁵³ *Id.* Article 13.

⁵⁴ Nikolas Kyriakou, “Enforced Disappearance and its Contributions to International Human Rights Law, with Specific Reference to Extraordinary Rendition,” (2012) 13 *Melbourne J. of Int’l Law* 424, 435.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *El Masri v. Former Yugoslav Republic of Macedonia*, App. No. 39630/09, *Our. Ct. H.R.* (2012).

⁵⁸ *Aksoy v. Turkey*, 1996-VI *Eur. Ct. H.R.* 2260, 2287.

institutions for many years. The need to ensure that human rights violations do not repeat and that survivors and the public are privy to the truth of what happened is central to the European remedies' framework.

This push towards accountability, beginning in the Inter-American system and blending into the European system, has created one of the most important elements of extraordinary rendition reparations. Victims increasingly find satisfaction, guarantees of non-repetition, and forums for truth-seeking in the European Court, providing closure that is absent in United States domestic courts.⁵⁹

C. African Court

Extraordinary rendition also violates several of the specific rights recognized under the African Charter, including the Right to Freedom From Discrimination,⁶⁰ the Right to Equality before the Law and Equal Protection of the Law,⁶¹ the Prohibition of Torture and Cruel, Inhuman and Degrading Treatment,⁶² the Right to Personal Liberty and Protection from Arbitrary Arrest,⁶³ the Right to a Fair Trial,⁶⁴ and countless others. The Charter itself does not offer a framework for remedy of violations of human rights, but the Commission has exercised its interpretive authority to provide remedial frameworks for violations of the Charter.⁶⁵ The ultimate purpose of this restitution is to “restore the victims of extraordinary rendition to the original situation before he

⁵⁹ Kyriakou, *supra* note 54 (Chapter 6), at 53.

⁶⁰ African Charter on Human and Peoples' Rights [“Banjul Charter”] (Nairobi, Kenya, 27 June 1981), 21 I.L.M. 59 (1981), *entered into force* 21 Oct. 1986, Article 2.

⁶¹ *Id.* Article 3.

⁶² *Id.* Article 5.

⁶³ *Id.* Article 6.

⁶⁴ *Id.* Article 7.

⁶⁵ Brooke Kebede Abebe, “Extraordinary Rendition and Extraterritorial State Obligations in African Human Rights System,” (2018) 44, *available at* <http://etd.aau.edu.et/bitstream/handle/123456789/15155/Brook%20Kebede.pdf?sequence=1&isAllowed=y>.

or she is extraordinarily rendered,” including repatriation of physical, psychological, social, cultural, and spiritual aspects.⁶⁶

Extraordinary rendition poses a new, contemporary form of violations that was not envisioned when international human rights treaties and the African Charter were adopted. This creates a new challenge within human rights discourse; states are trying to get around their treaty obligations through exporting the locus of violations. In light of extraordinary renditions cases, the capture and handing over of individuals usually takes place within the territory of African states and later, the victim transfers to another (African or non-African) State, which creates a haze surrounding the location of and ensuing responsibility for the violation. Ultimately, given the language of the African Charter obligations clause, the precise remedy obligations of African states in cases of extraordinary rendition is debatable.⁶⁷

This does not necessarily mean that relief is not available through the African Court. The Court recognizes extraordinary rendition as a “trans-boundary phenomenon that entails/calls for extraterritorial obligations.”⁶⁸ Credible reports indicate that more than a dozen African states are “highly” engaged in extraordinary rendition.⁶⁹ The severity of the problem in Africa has made understanding extraordinary rendition remedy obligations critically important for the African Court.

The legal justification for reparations comes from three obligations encompassed by the language of the Charter and the Commission General Comments expanding on that language: the prohibition against torture, the prohibition against refoulement, and the obligation to remedy for

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 6.

⁶⁹ *Id.*

violations of human rights obligations.⁷⁰ Notably, the last of these obligations creates a binding expectation to remedy: “failure to remedy[] these abuses once [violations] have occurred amounts to a violation of the African Charter.”⁷¹ The African Court has awarded remedies in the forms of restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition, separately and in combination, for violations such as extraordinary rendition.⁷²

For additional analyses and information on reparations in a comparative setting, please see [Report on Reparations for Victims of Extraordinary Rendition and Torture](#).

IV. Conclusion and Recommendations

Ultimately, the United States needs to take several steps to match the principles of regional human rights courts to meet its human rights obligations under international law. The United States has overwhelmingly failed to acknowledge, compensate, or account for the harms caused to survivors of extraordinary rendition. The reasons for this lack of redress are multidimensional and complex. A “longstanding and deeply culturally embedded” American exceptionalism may explain our disregard for international law and human rights in the post-9/11 landscape.⁷³ Notably, “formalism in the interpretation of the state secrets privilege” was at its peak in the U.S. post-9/11, and shows a failure by the judiciary to “[play] any meaningful role in scrutinizing the action[s] of the executive branch.”⁷⁴ This is keenly apparent in the context of extraordinary renditions.

⁷⁰ Amnesty International, “United States of America Below the radar: Secret flights to torture and ‘disappearance,’” AI Index: AMR 51/051/2006, April 5 2006.

⁷¹ Abebe, *supra* note 65 at 40 (Note: non-refoulement is not explicitly mentioned in the Charter, but the obligation to not torture has been interpreted as encompassing the obligation of non-refoulement. *See* African Commission General Comment No. 3.).

⁷² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Section IX (Reparation for harm suffered), U.N.A/RES/60/147, (21 March 2006), Principle 18-23.

⁷³ Ruth Jamieson & Kieran McEvoy, *State Crime by Proxy and Juridical Othering*, 45 BRIT. J. CRIMINOLOGY 504, 519 (2005).

⁷⁴ *Id.*

Further, U.S. courts “have declined to expand a judicially created remedy to [these] new contexts” for fear that this would amount to judicial overreach in the absence of federal legislation addressing extraordinary rendition.⁷⁵ Courts have reasoned that extraordinary rendition is an area too close to executive branch foreign relations to be handled by the judiciary, so it is up to Congress to pass legislation addressing reparation possibilities for survivors.⁷⁶ Ironically, the very separation of powers which ensures rights for United States citizens has created a blind spot which allows the executive branch to trample on the human rights of non-citizens.

One solution is for “the United States . . . to look outside its borders to create a new legislative cause of action without the flaws of the existing causes of action.”⁷⁷ This may include additional procedural safeguards which respect state secrets to the degree that it is necessary, especially by employing closed hearings.⁷⁸ Alternatively, the United States could look to the examples set by the Inter-American and European Courts, which have made the “right to truth” the central consideration for their remedies. This “right to truth” extends beyond the survivor and their family and encompasses an obligation that the state has to the public: an obligation to be transparent and admit fault, and the subsequent obligation to ensure that this violation does not happen again. Finally, courts could choose to favor restoring victims over avoidance of stepping on the toes of the legislative branch. After all, when justice requires the creation of a remedy, the court is afforded a certain discretion to do so. The fact that United States judges have not

⁷⁵ Katie Reed, *Compensation for Extraordinary Rendition: A Comparative Study and the Need for a Domestic Cause of Action in the United States*, 27 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 131, 151 (2014).

⁷⁶ See *Arar v. Ashcroft*, 585 F. 3d 559, 574 (2d Cir. 2009).

⁷⁷ Federico Fabbrini, *The European Court of Human Rights, Extraordinary Renditions and the Right to the Truth*, 14 HUM. RTS. L. REV. 85, 96 (2013).

⁷⁸ *Id.*

employed their discretion to create a remedy exemplifies the unique indifference they seem to have for international law.

The individuals highlighted in this report, Mohamedou Ould Slahi, Mohamed Farag Ahmed Bashmilah, Khaled El-Masri, Mamdouh Habib, and Abou ElKassim Britel, are entitled to as transparent and non-combative a truth and reconciliation process as possible. We will continue to advocate on their behalf and seek remedies akin to those presented by the three regional human rights courts.

Chapter Seven: Conclusion

The Legacy of the CIA Extraordinary Rendition Program Almost Twenty Years Later

Though more than twenty years have passed since the September 11 Attacks, the United States government still has not offered the survivors of the CIA's extraordinary rendition program an official, public apology or even formally acknowledged the human rights violations that occurred under the auspices of intelligence gathering. The survivors are still, over two decades later, dealing with the aftermath of the torture they experienced.

This continued lack of public accountability directly harms survivors. In order to rebuild their lives, trust and support from the survivors' communities is crucial.¹ According to mental health professionals, societal integration is essential for torture victims in mending the shattered pieces of their lives.² Therefore, when survivors of torture are continually branded as terrorists, community support may be more difficult to achieve; as a result, treatment modalities are often rendered less effective.³ Because many survivors are still regarded with suspicion and distrust as a result of their detention by the CIA, the lack of official apology and public acknowledgment from the United States results in continued, direct harm to survivors.

Survivors and their families must navigate daily the biological, social, physical, and spiritual aftereffects of their detention at the hands of the CIA. Some survivors, like Mr. Britel and his wife, are still regarded with suspicion by their community for being labeled as alleged terrorists.⁴ Others, like Mr. Slahi, are unable to travel because of the transfer agreements

¹ Mary Fabri, Marianne Joyce, Mary Black, and Mario Gonzalez, *Caring for Torture Survivors: The Marjorie Kovler Center*, available at <http://www.heartlandalliance.org/kovler/news/caringfortorturesurvivors.pdf>, at 167.

² *Id.*

³ *Id.*

⁴ Video Interview with Khadijah Anna Britel, Wife of ER Survivor (Nov. 22, 2021).

negotiated between the U.S. and Mauritania (the third-party country that agreed to take Mr. Slahi) once he was released.⁵ Many are unable to work.⁶

The United States presents itself to the world as a country with strong, democratic institutions and an unwavering belief in the rule of law. Existing U.S. law and treaty obligations should have prevented the creation of the extraordinary rendition program.⁷ Despite the legal loopholes that the Office of Legal Counsel used between 2002 and 2007 to justify both the ER program and the so-called “enhanced interrogation techniques,” under any meaning of the word, CIA detainees were tortured.⁸

The continued lack of accountability and reckoning with the legacy of the CIA’s extraordinary rendition program actively undermines the United States’ standing as an advocate for international human rights.⁹ The 2014 Senate Report found that the “CIA’s Detention and Interrogation Program damaged the United States’ standing in the world and resulted in other significant monetary and non-monetary costs.”¹⁰ More broadly, the program caused immeasurable damage to the United States’ public standing, as well as to the United States’ longstanding global leadership on human rights in general and the prevention of torture in particular. Notably, to encourage governments to clandestinely host CIA detention sites, or increase support for existing sites, the CIA provided millions of dollars in cash payments to foreign government officials.¹¹ CIA Headquarters encouraged CIA Stations to construct “wish

⁵ Mr. Slahi is not permitted to get a Mauritanian passport due to the transfer agreement with the U.S.

⁶ Video Interview with Mansoor Adayfi, Survivor of Guantanamo Bay Torture (Nov. 12, 2021).

⁷ S. REPT. NO. 113-288, at 1 (2014).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

lists” of proposed financial assistance to entities of foreign governments and to “think big” in terms of that assistance.¹²

In addition to its gross immorality, the CIA’s extraordinary rendition Program was ineffective and did not result in any useful intelligence.¹³ American taxpayers directly, albeit unwillingly, funded the CIA’s ER program.¹⁴ CIA records indicate that their Detention and Interrogation Program cost well over \$300 million in non-personnel costs.¹⁵ This included funding for the CIA to construct and maintain detention facilities, including two facilities costing nearly \$1 million each that were never used, in part due to host country political concerns.¹⁶ Specifically, the “Enhanced Interrogation Techniques” (EITs) developed by psychologists Jessen and Mitchell, cost American taxpayers approximately \$80 million.¹⁷

The continued legacy of the extraordinary rendition program is an expensive stain on the United States reputation and conscience. Post-9/11 torture survivors are long overdue reparations and accountability for the harms they suffered in the name of Islamophobia and misplaced fear. Justice demands nothing less.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*



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