

October 7, 2003

Via Facsimile & U.S. Mail

**Re: Request Submitted Under the Freedom of Information Act**

Dear Freedom of Information Officer:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The Request is submitted on behalf of the following organizations (collectively, “Requesters”):

American Civil Liberties Union (ACLU);  
Center for Constitutional Rights (CCR);  
Physicians for Human Rights (PHR);  
Veterans for Common Sense (VCS); and  
Veterans for Peace (VFP).

We are filing the Request simultaneously with the Department of Defense (including its components, the Departments of the Army, Navy, and Air Force, and the Defense Intelligence Agency), the Department of Justice (including its components, the Federal Bureau of Investigation and Office of Intelligence Policy and Review), the Department of State, and the Central Intelligence Agency. In separate letters, we have applied for expedited processing pursuant to 5 U.S.C. § 552(a)(4)(E).

**Records Requested**

Recent news reports indicate that individuals apprehended after September 11, 2001, and held by the United States at military bases or detention facilities outside the United States (“Detainees”) have in some cases been tortured or subjected to interrogation techniques that are prohibited by international and United States law. News reports also indicate that the United States has rendered<sup>1</sup> Detainees and other individuals to foreign powers known to employ torture and illegal interrogation

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<sup>1</sup> In this Request, “rendition” means the transfer of a person by the United States to a “foreign power,” as defined in 50 U.S.C. § 1801, without prior review by an immigration or Article III judge.

techniques. The Request seeks records relating to the treatment of Detainees and the rendition of Detainees and other individuals.

Both international and United States law unequivocally prohibit the use of torture. The Convention Against Torture (“CAT”), which the United States has signed and ratified, prohibits the use of torture and the infliction of other cruel, inhuman or degrading treatment or punishment.<sup>2</sup> The prohibition against torture is also codified in United States law at 18 U.S.C. § 2340A.

The CAT further provides that “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State whether there are substantial grounds for believing that he would be in danger of being subjected to torture.”<sup>3</sup> This provision is implemented in United States law by the Foreign Affairs Reform and Restructuring Act of 1998, which states that “[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which

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there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”<sup>4</sup>

After the release of news reports indicating abuse of Detainees, the President assured the public that “[t]he United States is committed to the world-wide elimination of torture and we are leading this fight by example.”<sup>5</sup> William J. Haynes, General Counsel for the Department of Defense, has confirmed that “it is the policy of the United States to comply with all of its legal obligations in its treatment of detainees,” including its obligations under the CAT.<sup>6</sup> Mr. Haynes has also asserted that “[i]f the war on terrorists of global reach requires transfer of detained enemy combatants to o[i]f .6 Tc-0.0001each requires tranwith al6n terrorists of global rea4require(and )Tj4 T inf5





Priest & Gellman, *supra*.

Please disclose the following records:

1. All records setting forth or discussing the legality or appropriateness of subjecting Detainees to torture or other cruel, inhuman or degrading treatment or punishment. Please include all records discussing the legality or appropriateness of the following methods: using “stress and duress” techniques on Detainees; using force against them; subjecting them to physical injury; requiring them to stand or kneel for prolonged periods; depriving them of sleep, food or water; holding them in awkward and painful positions for prolonged periods; denying them painkillers or medical treatment; administering or threatening to administer mind altering substances, “truth serums” or procedures calculated to disrupt the senses or personality; subjecting them to prolonged interrogation under bright lights; requiring them to be hooded, stripped, or blindfolded; binding their hands and feet for prolonged periods of time; isolating them for prolonged periods of time; subjecting them to violent shaking; subjecting them to intense noise; using cold air to chill them; or threatening harm to them or other individuals.
2. All records setting forth or discussing policies, procedures or guidelines<sup>8</sup> relating to the torture or other cruel, inhuman or degrading treatment or punishment of Detainees, including but not limited to policies, procedures or guidelines relating to the methods listed in Paragraph 1, above.
3. All records relating to measures taken, or policies, procedures or guidelines put in place, to ensure that Detainees were not, are not or will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment. Please include all records indicating how any such policies, procedures or guidelines were, are or will be communicated to personnel involved in the interrogation or detention of Detainees.

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<sup>8</sup> In this Request, the phrase “policies, procedures or guidelines” means policies, procedures or guidelines that were in force on September 11, 2001 or that have been put in place since that date.

4. All records indicating or discussing actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 2, above.
5. All records relating to investigations, inquiries, or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 2, above, including but not limited to records indicating the existence of such investigations, inquiries or disciplinary proceedings.
6. All records relating to the actual or alleged torture or other cruel, inhuman or degrading treatment or punishment of any Detainee.
7. All records relating to policies, procedures or guidelines governing the role of health personnel in the interrogation of



the acknowledgement of one senior military official that “[t]his investigation may not go well for us.”); April Witt, *U.S. Probes Death of Prisoner in Afghanistan*, Washington Post, June 24, 2003, at A18 (reporting the death of an Afghan man held at a United States holding facility near Asadabad, in the eastern province of Konar, Afghanistan).

Please disclose:

11. All records, including autopsy reports and death certificates, relating to any deaths of Detainees.
12. All records relating to investigations, inquiries, or disciplinary proceedings initiated as a result of any deaths of Detainees, including but not limited to records indicating the existence of such investigations, inquiries, or disciplinary proceedings.

### **III. Records related to the rendition of Detainees and other individuals**

News reports indicate that individuals have been rendered to foreign powers known to employ torture or illegal interrogation techniques. One news report states:

In other cases, usually involving lower-level captives, the CIA hands them to foreign intelligence services – notable those of Jordan, Egypt, and Morocco – with a list of questions

The CIA's participation in the interrogation of rendered terrorist suspects varies from country to country.

"In some cases [involving interrogations in Saudi Arabia], we're able to observe through one-way mirrors the live investigations," said a senior U.S official involved in Middle East security issues. "In others, we usually get summaries. We will feed questions to their investigators. They're still very much in control."

*Id.* Another news report quotes Vince Cannistraro, former director of the CIA's counterterrorism center, on the treatment of a Guantanamo Bay Detainee who was sent to Egypt for "failing to cooperate": "They promptly tore his fingernails out and he started telling things." Tom Brune, *An Aggressive Interrogation*, Newsday, Mar. 4, 2003, at A05.

We are interested in obtaining records indicating the circumstances under which the United States has rendered Detainees or other individuals to foreign powers that are known or suspected to use torture or to inflict cruel, inhuman or degrading treatment or punishment.

Please disclose:

13. All records setting forth or discussing the legality or appropriateness of the rendition of individuals who may be tortured or subjected to cruel, inhuman or degrading treatment or punishment after their rendition.
14. All records setting forth or discussing policies, procedures or guidelines relating to the rendition of individuals who may be tortured or subjected to cruel, inhuman or degrading treatment or punishment after their rendition.
15. All records relating to measures taken, or policies, procedures or guidelines put in place, to ensure that rendered individuals were not, are not, or will not be tortured or subjected to cruel, inhuman or degrading treatment or punishment after their rendition. Please include all records indicating how any such policies,

16. All records relating to actual or possible violations of, or deviations from the policies, procedures or guidelines referred to in Paragraph 14, above.
17. All records relating to the involvement of United States personnel in the interrogation of individuals after they have been rendered.
18. All records relating to investigations, inquiries or disciplinary proceedings initiated in relation to actual or possible violations of, or deviations from, the policies, procedures or guidelines referred to in Paragraph 14, above, including but not limited to records indicating the existence of such investigations, inquiries or disciplinary proceedings.
19. All records relating to the actual or alleged torture or cruel, inhuman or degrading treatment or punishment of any Detainee after his rendition.
20. All records related to assurances sought or obtained from foreign powers to whom individuals have been rendered regarding the treatment of those individuals.
21. All records indicating whether and to what extent the ICRC or other non-governmental organizations had, have, or will have access to individuals after



PHR is a not-for-profit organization whose mission is to promote health by protecting human rights. It uses scientific methods and clinical medical skills to investigate allegations of human rights violations. PHR has conducted medical investigations of torture throughout the world and played a lead role in developing the principal international instrument for the medical evaluation of torture, the Istanbul Protocol. PHR publishes newsletters, reports, and informational materials for the public, many of which are available on its website, [www.phrusa.org](http://www.phrusa.org). The website contains a section on torture and the means for prev

We also request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii). This Request aims at furthering public understanding of government conduct, and specifically to help the public determine whether or not the government’s commitment to domestic and international proscriptions against torture is honored in practice.

As indicated above, numerous news articles reflect the significant public interest in the records we seek. *See* articles cited *supra*; *see also* *Answers about Torture*, Washington Post, Mar. 16, 2003, at B06 (“The Bush administration has categorically denied that it is torturing people. But it has offered no details regarding its policies toward interrogations. . . . The secrecy surrounding U.S. policy makes any objective assessment of these allegations impossible. . . . The public is entitled to a fuller understanding.”).

Please respond to Amrit Singh, Staff Attorney, American Civil Liberties Union, 125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004, telephone (212) 549-2609.

Signed by:

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