



APRIL 28, 2009

Statement on Torture Transparency, Accountability, and Restitution

To put a permanent end to torture by or at the behest of the U.S., North Carolina Stop Torture Now (NCSTN) calls on the White House, Congress, and the courts to insist on full openness and accountability in investigating and dealing with the acts of torture and other war crimes committed during the "war on terror." Torture accountability today will prevent torture tomorrow.

NCSTN congratulates President Obama for announcing policies that will lead to the closing of Guantanamo and an end to torture by uniformed U.S. personnel there and at other American facilities. The President's orders also halt the use of CIA "black sites" to detain and torture individuals. It should be noted, though, that the President has launched a study of extraordinary rendition – kidnapping and secretly transferring people for extrajudicial detention in third countries – rather than banning it outright.

NCSTN commends President Obama for releasing the so-called "torture memos," which make plain how Bush Administration attorneys sought to justify the barbaric tortures already being committed by the CIA¹. However, we cannot agree with the President's pledge not to prosecute CIA operatives who operated under orders. Without even investigating the circumstances in which torture took place, to assume that CIA agents and contractors acted in "good faith" when they executed orders to torture is terrible policy for the U.S. government. Whether this pronouncement also applies to those not officially employed by the CIA who may have participated in torture, such as the private employees of Aero Contractors and Centurion Aviation, is not yet clear. NCSTN hopes and expects that President Obama, upon consideration of all the evidence, will revise his position to incorporate these considerations.

NCSTN agrees with national organizations advocating full transparency: a detailed public disclosure of how U.S. torture policies were formulated, how these policies were implemented and executed, the scope of the practices (the numbers affected and the breadth of the torture), the fate of the victims, and other relevant information. We agree with former federal prosecutor Elizabeth de la Vega's statement² of our national needs regarding torture: "(1) a cohesive and irrefutable public narrative of the criminal activity; (2) an opportunity for victims to be heard in an open forum; (3) accountability for the perpetrators of these crimes, from Bush and Cheney on down."

¹ <http://www.nybooks.com/articles/22530>

² <http://www.truthout.org/042009R>

Further, as North Carolinians who love our state, we think it is absolutely essential that the public narrative of the criminal activity include a complete accounting for the use of North Carolina's airports, military bases, and other publicly owned and supported facilities to provide torture training and to maintain, service, and base "torture taxis" – that is, nominally private aircraft and their crews and pilots involved in the extraordinary rendition program³. For example, below is a partial list of those apparently rendered by Aero Contractors planes and crews.

"Good faith" is not a defense for torturing, any more than "good faith" can be claimed as a defense for rape if instituted as a policy of terror by a government. The notion that if a government orders torture, a person can rely on the order and torture in good faith, violates the most basic natural law arising out of the post-WWII Nuremberg trials and the Convention Against Torture.

In 1984, the U.S. became a signatory to the Convention Against Torture (CAT). The CAT requires that the U.S. have in place a law criminalizing torture within the jurisdiction of the U.S. and also criminalizing torture by U.S. nationals operating outside U.S. jurisdiction. Such a statute was enacted by Congress and is the law of our land (Torture Statute 8 U.S.C. § 2340A).

High-ranking attorneys for the Bush administration have violated the CAT and the precedents of the Nuremberg trials by providing a legal framework for torture that contradicts domestic law, international law, and natural law. We support independent, transparent public investigations carried out by special commissions of inquiry and/or independent prosecutors. As indicated by the U.N. Special Rapporteur on Torture, Manfred Nowak, prosecutions are required in order for the U.S. to meet its international obligations as a member of the world community⁴.

President Bush, Vice President Cheney, Donald Rumsfeld, Alberto Gonzales, high-ranking CIA operatives, and others who relied upon dubious and problematic legal justifications for torture should be investigated. We recognize that prosecution of high-ranking governmental officials is extraordinary and should not be undertaken lightly. However, torture as described in the recent report of the International Committee of the Red Cross⁵ and revealed in the newly released "torture memos" is horrifying and violates the core of the American spirit.

The public needs to know what was done in our name, just as the Germans needed to know what was done in their name and the people of the Soviet Union needed to know about the gulag.

Transparency is required and can be accomplished through several approaches:

First, all written documentation and reports should be thoroughly examined by our government officials. This includes the above-mentioned Red Cross report; the Office of Legal Counsel memos justifying torture; accounts by torturers and victims; criminal investigations in Germany, Italy and Spain; reports by European human rights agencies⁶;

³ www.newsobserver.com/100/story/544844.html,

www.sourcewatch.org/index.php?title=Category:Alleged_CIA_pilots

⁴ <http://news.bbc.co.uk/2/hi/americas/8006597.stm>

⁵ <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031502724.html>

⁶ E.g., <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=362> and <http://www.statewatch.org/cia/documents/working-doc-no-8-nov-06.pdf>

and the misleading statements of the Bush Administration. Regarding North Carolina's involvement in kidnapping for torture, NCSTN has prepared a well-documented packet that may serve as a starting point. We believe that a formal inquiry by the State of North Carolina is both vital and within the jurisdiction and capacity of the State, acting if necessary in concert with the FBI.

Second, a national "truth commission" or other independent commission of inquiry would help the U.S. public understand what happened. The scope and powers of such a commission need to be considered carefully, but a properly constituted truth commission would have the advantage of not limiting the focus of investigation to those under legal indictment. It is important, however, that immunity from prosecution not be granted as a condition of truth commission testimony.

Third, criminal prosecutions at all appropriate levels -- international, federal, and even state -- will provide accountability and transparency⁷.

Fourth, justice must be provided to the survivors of torture and the families of those "disappeared" by the U.S. government⁸. Civil lawsuits by survivors should not be thwarted by the "State Secrets Doctrine," which President Bush utilized to block access to the U.S. judicial system. Human rights advocates, legal scholars, and fair-minded Americans hoped that President Obama would allow victims of torture to sue in our courts under the Alien Tort Act and other laws for recognition and restitution for their horrific injuries. Unfortunately, President Obama is also invoking "state secrets" to prevent these civil cases from going forward. In so doing, he attempts to limit transparency and deprive torture survivors of the justice mandated by our laws, human decency, and international standards.

Transparency will help us understand what is happening today with respect to our policy of torture. How many were tortured? Do we still "disappear" other human beings? Do we still engage in extraordinary rendition? What institutional changes must be put in place to avoid repetition of these practices? What has happened at Bagram, where upwards of 600 languish in indefinite U.S. detention⁹, and what is happening there today?

True forgiveness sets the heart, mind, and soul free. But forgiveness requires public knowledge of the wrongs done and their scope, and a sincere apology. And sometimes forgiveness requires the acceptance of punishment by the perpetrator. It is too early to forgive.

⁷ Congress may have given immunity to some perpetrators of the torture policy. These perpetrators can still be prosecuted under international laws or laws of other nations if they are seized in other jurisdictions outside the U.S.

⁸ <http://www.hrw.org/de/news/2007/06/06/leading-human-rights-groups-name-39-cia-disappeared-detainees>

⁹ <http://www.nytimes.com/2009/04/03/washington/03bagram.html>

In conclusion:

1. The U.S. government should ensure complete and open transparency with respect to its torture policies, procedures, and practices of the past years.
2. The U.S. government should hold policy-makers and leading administrators involved in the torture program accountable. It should determine, on a case-by-case basis under our laws, whether other perpetrators and participants in torture should be held accountable.
3. The State of North Carolina should investigate state involvement in extraordinary rendition and publicize the results with complete transparency. Restorative justice (restitution) should be provided by the State of North Carolina, the Global TransPark Authority, Johnston County and its airport authority, Aero Contractors, and any other private parties involved in conspiracy to kidnap, extrajudicially transport, and/or torture detainees.
4. The U.S. government should not use the State Secrets Doctrine to prevent survivors of torture from obtaining an adequate remedy for the horrific wrong that was done to them.
5. Extraordinary rendition should be outlawed by the U.S. Congress, whether or not it leads to inhumane treatment. Extrajudicial seizure, transport, and detention have no place under international law or basic human decency, and only further alienate the U.S. from the rest of the world community.

PARTIAL LIST OF DETAINEES EXTRA-JUDICIALLY TRANSPORTED BY AERO CONTRACTORS, LTD., OF NORTH CAROLINA

Source: 'Ghost Plane,' Stephen Grey, <http://www.ghostplane.net/timeline>

N379P (renumbered to N8068V in 2004) was a Gulfstream based at Smithfield, NC. N319P (renumbered to N4476S in 2004 or 2005) was a Boeing business jet based at Kinston, NC. Both aircraft were operated by Aero Contractors Ltd., as documented in 'Ghost Plane' and by the New York Times and other media. This is by no means a complete list of the detainees secretly transported by Aero Contractors.

10/23/2001	Jamil Qasim Saeed Mohammed, Pakistan-Jordan, N379P
12/12/2001	Ahmad Agiza and Mohammed el-Zary, Stockholm-Cairo, N379P
1/11/2002	Muhammad Saad Iqbal Madni, Indonesia-Egypt, N379P
3/28/2002	Abu Zubaydah, Pakistan-Thailand (CIA black site), possibly N379P
4/18/2002	Martin Mubanga, Zambia-Guantánamo, N379P
6/5/2002	Omar al-Faruq, West Java-Kabul, probably N379P
5/14/2002	Abu Abdul Halim Dalak, Omar Ghramesh, and un-named teenager, Pakistan-Syria, N379P
5/24/2002	Abu al-Kassem Britel, Pakistan-Morocco, N379P
7/19/2002	Mohamedou Ould Slahi, Jordan-Afghanistan, N379P
7/21/2002	Binyam Mohamed, Pakistan-Morocco, N379P
9/28/2002	Abdulsalam al-Hela, Egypt-Kabul, N379P
11/8/2002	Abd al-Rahim, al-Nashri, United Arab Emirates to CIA custody, possibly taken first to a CIA facility in Jordan. Two planes appear to have been involved, including N379P.
12/8/2002	Bisher al-Rawi and Jamil al Banna, Gambia-Afghanistan, N379P
7/22/2003	Saifulla Paracha, Thailand-Bagram, N379P
10/26/2003	Salah Nasser Salim Ali and Muhammad Bashmilah, Jordan-Afghanistan, N379P
1/7/2004	Abduh Ali Shaqawi and Hassan bin Attash, Jordan-Afghanistan, N313P

- 1/22/2004 Khaled al-Maqtari, Baghdad-Kabul, N313P (see <http://www.amnesty.org/en/library/info/AMR51/013/2008/en> regarding al-Maqtari's case. The human rights organization Reprieve indicates the plane was N313P, instead of N379P as reported by Amnesty International. Reprieve believes al-Maqtari was rendered to Afghanistan simultaneously with Binyam Mohamed and Khaled el-Masri, below.)
- 1/22/2004 Binyam Mohamed, Morocco-Afghanistan via Macedonia, N313P
- 1/23/2004 Khaled el-Masri, Macedonia-Afghanistan, N313P
- 3/3/2004 Mohamed al-Assad, Djibouti-Afghanistan, N379P
- 9/8-9/2004 Omar Deghayes, Libya-Guantanamo, N8068V (N379P re-registered as N8068V)
- 4/30/2005 Abu Faraj al Libbi, Pakistan-Afghanistan, N4476S (N313P renumbered to N4476S in 2004 or 2005)