

No. 20-827

IN THE
Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

ZAYN AL-ABIDIN MUHAMMAD HUSAYN,
AKA ABU ZUBAYDAH, ET AL.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**BRIEF OF THE BUREAU OF INVESTIGATIVE
JOURNALISM AND THE RENDITION
PROJECT AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENTS**

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INTEREST OF AMICI CURIAE¹

The Bureau of Investigative Journalism (“TBIJ”) is a public interest non-profit media organization based in London.² It focuses on in-depth, rigorous investigations. The Rendition Project is a collaborative academic research initiative run by Professor Ruth Blakeley at the University of Sheffield and Doctor Sam Raphael at the University of Westminster, which collates, publishes and analyses data and documents relating to the CIA’s Rendition, Detention and Interrogation (“RDI”) program.³

In 2011, Doctor Crofton Black, then of the NGO Reprieve, began a collaboration with Doctor Raphael and Professor Blakeley to collate and analyze all available public source information on the CIA’s RDI program. The resulting database and website were first published in May 2013.⁴ In 2014, Doctor Black began working with TBIJ. Following the publication of the United States Senate Select Committee on Intelligence’s Executive Summary of their report into

¹ No counsel for any party authored this brief in whole or in part, and no one other than amici curiae or their counsel contributed money to fund the preparation or submission of this brief. Pursuant to this Court’s Rule 37.3, all parties have separately consented to the filing of this brief.

² <https://www.thebureauinvestigates.com/>.

³ <https://www.therenditionproject.org.uk/index.html>.

⁴ Ian Cobain and James Ball, *New light shed on US government’s extraordinary rendition programme: Online project uncovers details of way in which CIA carried out kidnaps and secret detentions following September 11 attacks*, THE GUARDIAN, May 22, 2013, <https://www.theguardian.com/world/2013/may/22/us-extraordinary-rendition-programme>.

the secret detention program in December 2014,⁵ Doctor Black, Doctor Raphael and Professor Blakeley continued to collaborate, developing their analysis of the public record and correlating it with the declassified Executive Summary. Their findings were ultimately published in a joint study by The Rendition Project and TBIJ in July 2019.⁶

⁵ SENATE SELECT COMMITTEE ON INTELLIGENCE, COMMITTEE STUDY OF THE CIA'S DETENTION AND INTERROGATION PROGRAM, EXECUTIVE SUMMARY, approved December 13, 2012, updated for release April 3, 2014, declassification revisions December 3, 2014 (hereinafter "SSCI Executive Summary"), <https://www.therenditionproject.org.uk/documents/RDI/141209-SSCI-Torture-Report-Executive-Summary-Redacted.pdf>.

⁶ Sam Raphael, Crofton Black & Ruth Blakely, CIA TORTURE UNREDACTED (The Rendition Project, 2019) (hereinafter "CIA TORTURE UNREDACTED"), <https://www.therenditionproject.org.uk/documents/RDI/190710-TRP-TBIJ-CIA-Torture-Unredacted-Full.pdf>. This 400-page study was preceded by a number of shorter articles, freely available on The Bureau of Investigative Journalism website. These include: Crofton Black, *Revealed: Only 29 Detainees From Secret CIA Torture Program Remain In Guantánamo Bay*, TBIJ, (Jan. 15, 2015), <https://www.thebureauinvestigates.com/stories/2015-01-15/revealed-only-29-detainees-from-secret-cia-torture-program-remain-in-guant%C3%A1namo-bay>; Crofton Black, *A List Of The 28 Detainees Held By CIA's Detention Program In 2006—Its "Final" Year* TBIJ (Jan. 15, 2015), <https://www.thebureauinvestigates.com/stories/2015-01-15/a-list-of-the-28-detainees-held-by-cias-detention-program-in-2006-its-final-year>; Crofton Black, *Exclusive: US Senate Intelligence Committee Corrects CIA Torture Report After Bureau Probe*, TBIJ (Feb. 13, 2015), <https://www.thebureauinvestigates.com/stories/2015-02-13/exclusive-us-senate-intelligence-committee-corrects-cia-torture-report-after-bureau-probe>; Crofton Black, *Legal Case Demands Details About How CIA Used Windowless Warehouse In Lithuania As Secret Prison*, TBIJ (Sept. 2, 2015), <https://www.thebureauinvestigates.com/stories/2015-09-02/legal-case-demands-details->

Aside from the database, website and report, Doctor Raphael, Professor Blakeley and Doctor Black have published a number of shorter peer-reviewed academic studies of the RDI program.⁷ Doctor Black is the joint author, with Edmund Clark, of *Negative Publicity: Artefacts of Extraordinary Rendition* (Aperture 2016), an award-winning book of documents and photographs relating to the RDI program.⁸ The material

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⁷ Sam Raphael, Crofton Black, Ruth Blakeley & Steve Kostas, *Tracking rendition aircraft as a way to understand CIA secret detention and torture in Europe*, 20(1) INT’L J. HUM. RTS. 78 (2016); Ruth Blakeley & Sam Raphael, *Human Rights Fact-Finding and the CIA’s Rendition, Detention and Interrogation Programme: A Response to Cordell*, 21(2) INT’L AREA STUD. REV. 169 (2018); C. Black, *Foreign ‘liaison partners’ and the CIA’s economy of detention*, in EXTRAORDINARY RENDITION: ADDRESSING THE CHALLENGES OF ACCOUNTABILITY, (Elspeth Guild, Didier Bigo & Mark Gibney, eds., Routledge 2018).

⁸ This work won the Rencontres d’Arles Photo-Text Book Award in 2016 and the New York International Center of Photography’s Infinity Award for Documentary and Photojournalism in 2017. For its public reception, see discussions in *The Financial Times Magazine* (<https://www.ft.com/content/90796270-ebc3-11e5-888e-2eadd5fbc4a4>), *Vice* (<https://www.vice.com/en/article/jmayag/negative-publicity-edmund-clark-crofton-black>), *The British Journal of Photography* (<https://www.1854.photography/2016/08/long-read-edmund-clark-and-crofton-black-on-the-war-on-terror/>), the website of the Magnum Foundation (<https://www.magnumfoundation.org/news/2018/3/27/a-conversation-with-redaction-edmund-clark-and-crofton-black-explore->

contained in it has formed the basis for numerous international art exhibitions and installations.

INTRODUCTION AND SUMMARY OF ARGUMENT

On September 6, 2006, President George W. Bush announced to the world what many already knew: “In addition to the terrorists held at Guantanamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency.”⁹

It was the first official public acknowledgement that the CIA operated an RDI program, in which suspected terrorists captured overseas were held incommunicado in secret locations—“black sites”—outside the U.S. The program was, at that moment, on pause: all of its remaining prisoners had been moved into the custody of the Department of Defense, or dispersed abroad, in the days before the announcement was made.

physical-traces-of-rendition), The Paris Review (<https://www.theparisreview.org/blog/2016/06/17/extraordinary-rendition/>), Slate (<https://slate.com/culture/2016/04/edmund-clark-photographs-secret-detention-sites-in-his-book-with-crofton-black-negative-publicity-artefacts-of-extraordinary-rendition.html>), 1000 Words Magazine (<https://www.1000words-mag.com/edmund-clark-and-crofton-black/>) and The Intercept (<https://theintercept.com/2016/03/05/redaction-art-how-secrets-are-made-visible/>), among others.

⁹ “President Discusses Creation of Military Commissions to Try Suspected Terrorists,” Sept. 6, 2006, <https://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

By the time of this announcement in September 2006, public awareness of the RDI program was already growing. Prisoners who had passed through the black sites were beginning to talk to lawyers, NGOs and the press. Journalists had identified and published a number of articles revealing aircraft associated with the program, correlating records of their movements with known prisoner movements.¹⁰ Khaled el-Masri, a German citizen mistakenly held by the CIA in Afghanistan, had sued CIA director George Tenet.¹¹ An Italian prosecutor had issued arrest warrants for 22 members of a CIA rendition team who had carried out an operation in Milan in 2003.¹² Police were also investigating in Spain.¹³ And in November 2005, the Washington Post had run a piece by Dana Priest, telling the world that

¹⁰ Scott Shane, Stephen Grey & Margot Williams, *C.I.A. Expanding Terror Battle Under Guise of Charter Flights*, N.Y. TIMES, May 31, 2005, <https://www.nytimes.com/2005/05/31/us/cia-expanding-terror-battle-under-guise-of-charter-flights.html>; Stephen Grey & Andrew Buncombe, *How Britain helps the CIA run secret torture flights*, THE INDEPENDENT, Feb. 10, 2005, <https://www.independent.co.uk/news/how-britain-helps-the-cia-run-secret-torture-flights-1529825.html>.

¹¹ Decl., *El-Masri v. Tenet*, No. 1:05-cv-1417 (E.D. Va. filed Apr. 6, 2006), <https://www.therenditionproject.org.uk/documents/RDI/060406-El-Masri-v-Tenet-Declaration-of-El-Masri.pdf>.

¹² *Italy warrants for 22 purported CIA operatives*, CNN International, Dec. 23, 2005, <http://edition.cnn.com/2005/WORLD/europe/12/23/italy.warrants2/>.

¹³ Stephen Grey & Renwick McLean, *Spain Looks into C.I.A.'s Handling of Detainees*, N.Y. TIMES, Nov. 14, 2005, <https://www.nytimes.com/2005/11/14/world/europe/spain-looks-into-cias-handling-of-detainees.html>.

[t]he CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe, according to U.S. and foreign officials familiar with the arrangement. The secret facility is part of a covert prison system set up by the CIA nearly four years ago that at various times has included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe.¹⁴

Days after this article, Human Rights Watch explicitly identified two of these Eastern European democracies as Poland and Romania.¹⁵

Fifteen years later, the sea of secrecy surrounding these initial glimpses of the landscape of the RDI program has receded. There is now such a mass of data in the public domain about the RDI program that it is a matter of public record not only who was held in it, but—to a large extent—when each prisoner arrived in it, when they left, where they were captured, where they were released to, and which of the several sites they were held in.¹⁶

In dozens of instances, this mass of data has made it possible to reconstruct prisoners' journeys into, be-

¹⁴ Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST., Nov. 2, 2005, <https://www.washingtonpost.com/archive/politics/2005/11/02/cia-holds-terror-suspects-in-secret-prisons/767f0160-cde4-41f2-a691-ba989990039c/>.

¹⁵ News Release, Human Rights Watch, Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe (Nov. 6, 2005), <https://www.hrw.org/news/2005/11/06/human-rights-watch-statement-us-secret-detention-facilities-europe>

¹⁶ CIA TORTURE UNREDACTED, *supra*, at 71-135.

tween and out of the black sites. These reconstructions are based on incontrovertible documentary evidence: declassified U.S. government documents, discovery from legal proceedings, contracts, invoices, flight logs, and landing records.

One such reconstruction, long in the public domain, concerns Zayn al-Abidin Muhammad Husayn, also known as Abu Zubaydah. As outlined in detail below, Abu Zubaydah, like seven other prisoners, was held in Poland, in a site which opened in December 2002 and closed in September 2003. He was transported to Poland from a black site in Thailand, on a Gulfstream jet registered N63MU, contracted by the U.S. government to perform prisoner transfers (“renditions”). The public record shows the date on which Abu Zubaydah arrived at the Polish black site. It shows the aircraft’s contracting chain, which companies participated in the rendition, and how much each company charged. It shows which other renditions the same plane, and the same companies, were associated with, when, and where. It shows the date on which Abu Zubaydah was transferred out of Poland. It shows in which other locations he was subsequently held (Guantanamo Bay, Morocco, Lithuania and Afghanistan), and when; it shows where those held alongside him in Poland were later held, and when. It shows how many prisoners were held in the black sites at any one time, and where. The entire evolution of the black site program, in fact, is a matter of public record.

The government asserts that the “public knowledge” that Poland hosted a black site where prisoners, including Abu Zubaydah, were secretly held is not knowledge at all, but merely the product of “speculation, unofficial statements by former foreign officials, and the judgment of a foreign tribunal that

deemed Poland’s refusal to confirm or deny alleged intelligence cooperation as warranting an adverse inference that Poland did host a CIA facility.”¹⁷ This description mischaracterises the evidence. Contrary to this erroneous portrayal, the evidence showing that Poland hosted a black site for the CIA is detailed, systematic and data-driven, and is confirmed by multiple official documents emanating from various branches of the U.S. government itself. It does not rely on speculation, unofficial statements by foreign officials or adverse inferences from a refusal to confirm or deny.

I. Argument

A. Historical Summary

As noted above, the identification of Poland as a black site host has been in the public domain since 2005.¹⁸ And since then, a long succession of studies, declassified documents, lawsuits and investigations have added more and more data confirming that this identification is correct. No data has emerged to challenge this identification.

Between 2005 and 2014, a gradual clarification of knowledge around the events concerning the Polish black site occurred. This had many drivers, including articles by investigative journalists,¹⁹ public reports

¹⁷ Pet. 2.

¹⁸ News Release, Human Rights Watch, *supra* note 15.

¹⁹ Tom Hundley, *Remote Polish airstrip holds clues to secret CIA Flights*, CHI. TRIB., Feb. 6, 2007, <https://www.chicagotribune.com/news/ct-xpm-2007-02-06-0702060187-story.html>; Adam Goldman, *The hidden history of the CIA’s prison in Poland*, WASH. POST., Jan. 23, 2014, https://www.washingtonpost.com/world/national-security/the-hidden-history-of-the-cias-prison-in-poland/2014/01/23/b77f6ea2-7c6f-11e3-95c6-0a7aa80874bc_story.html.

by the Council of Europe,²⁰ public reports by the European Parliament,²¹ a public report by The Constitution Project,²² legal filings on behalf of Abu Zubaydah and al-Nashiri at the European Court

²⁰ The Parliamentary Assembly of the Council of Europe (PACE) is the parliamentary arm of the Council of Europe, a 47-nation international organization dedicated to upholding human rights, democracy and the rule of law. In 2005, PACE appointed a Swiss former prosecutor, Dick Marty, to investigate reports in the media concerning the RDI program. For the two reports, *see* PACE, Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States*, Doc. 10957, June 12, 2006, <https://www.therenditionproject.org.uk/documents/RDI/060612-PACE-Alleged-Secret-Detentions-Report.pdf>; PACE, Committee on Legal Affairs and Human Rights, *Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report*, June 11, 2007, <https://www.therenditionproject.org.uk/documents/RDI/070711-PACE-Secret-Detentions-and-Illegal-Transfers-Second-Report.pdf>.

²¹ European Parliament, *Resolution on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners*, P6_TA(2007)0032, Feb. 14, 2007, <https://www.therenditionproject.org.uk/documents/RDI/070214-European-Parliament-Resolution-on-Rendition.pdf>; European Parliament, *Draft Report on Alleged Transportation and Illegal Detention of Prisoners in European Countries by the CIA: Follow-Up of the European Parliament TDIP Committee Report, 2012/2033(INI)*, May 3, 2012, <https://www.therenditionproject.org.uk/documents/RDI/120502-LIBE-Draft-Report-on-Transportation-and-Illegal-Detention.pdf>.

²² THE CONSTITUTION PROJECT, *THE REPORT OF THE CONSTITUTION PROJECT'S TASK FORCE ON DETAINEE TREATMENT* (2013), <https://www.therenditionproject.org.uk/documents/RDI/130416-The-Constitution-Project-Detainee-Treatment-Report.pdf>.

of Human Rights (ECtHR)²³ and the unearthing by the NGO Reprieve of a large dossier of logistical records relating to the RDI program.²⁴ Throughout this period, the public record around who was held in Poland, when, where prisoners held there were moved to and from, and how they were transferred, became more detailed and accurate.

In December 2014, the declassified Executive Summary of the Senate Select Committee on Intelligence’s report, COMMITTEE STUDY OF THE CIA’S DETENTION AND INTERROGATION PROGRAM, conclusively confirmed the principal findings around Poland—referred to as “Detention Site Blue”—that had been established by investigators between 2005 and 2014.²⁵ It also added new information.

It is now definitively established that the Polish site operated between December 2002 and September 2003, and that during this period it held a total of eight prisoners. The public record indicates that these prisoners were Abu Zubaydah, Abd al-Rahim al-Nashiri, Ramzi bin al-Shibh, Khaled Sheikh Mohammed, Abu Yasir al-Jaza’iri, Walid bin Attash, Ammar al-Baluchi and Samr al-Barq.²⁶

²³ Application, *Husayn (Abu Zubaydah) v. Poland*, No. 7511/13 (Eur. Ct. H.R.); Application, *al Nashiri v. Poland*, No. 28761/11 (Eur. Ct. H.R.).

²⁴ Peter Finn & Julie Tate, *N.Y. billing dispute reveals details of secret CIA rendition flights*, WASH. POST, Aug. 31, 2011, https://www.washingtonpost.com/world/national-security/ny-billing-dispute-reveals-details-of-secret-cia-rendition-flights/2011/08/30/gIQAbggXsJ_story.html.

²⁵ SSCI Executive Summary, *supra*.

²⁶ CIA TORTURE UNREDACTED, *supra*, at 110.

It was, at the time, the most important of the CIA's black sites, to where the few prisoners deemed most significant were sent.²⁷ And it was also one at which unauthorized enhanced interrogation techniques were practiced, leading to investigation by the CIA's Office of the Inspector General.²⁸ In September 2003, the site was closed, and its prisoners dispersed to other prisons in Morocco, Romania and Guantánamo Bay.²⁹

B. Public documents pertaining to Abu Zubaydah's transfer into Poland already existed in 2013.

Abu Zubaydah's application to the ECtHR, made on March 26, 2013, included a detailed account of the principal evidence showing that he was transferred into Poland on December 4-5, 2002.³⁰ This evidence includes:

- A report prepared by the CIA Office of Inspector General, that provides information about the movement of Abu Zubaydah from one site to another.³¹

²⁷ SSCI Executive Summary, *supra*, at 57.

²⁸ SSCI Executive Summary, *supra* at 69-70.

²⁹ CIA TORTURE UNREDACTED, *supra*, at 114, 328-29; Application at ¶¶104-116, *Husayn (Abu Zubaydah) v. Poland*, No. 7511/13 (Eur. Ct. H.R.).

³⁰ Application at ¶¶50-71, *Husayn (Abu Zubaydah) v. Poland*, No. 7511/13 (Eur. Ct. H.R.).

³¹ CIA OFFICE OF INSPECTOR GENERAL, SPECIAL REVIEW, COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001–OCTOBER 2003) (2003-7123-IG), May 7, 2004 (hereinafter "CIA OIG Report 2004"), <https://www.therenditionproject.org.uk/documents/RDI/040507-CIA-OIG-Special-Review-Detention-Interrogation-Activities-Redacted.pdf>.

- A report prepared by the DOJ Office of Professional Responsibility, that provides information about the movement of Abu Zubaydah from one site to another.³²
- A 110-page “Vaughn Index”³³ of CIA internal communications (“cables”), emails, reports and other documents, disclosed by the CIA to the ACLU in response to FOIA request F-2004-01456, which provides information about the closure of a CIA black site.³⁴
- A 17-page list of CIA cables released in the course of *ACLU v. Department of Defense*, providing information about the closure of a CIA black site.³⁵
- Documents, including invoices and contracts, disclosed by the parties in the course of the *Richmor v. Sportsflight* civil lawsuit concerning

³² DOJ OFFICE OF PROFESSIONAL RESPONSIBILITY, REPORT: INVESTIGATION INTO THE OFFICE OF LEGAL COUNSEL’S MEMORANDA CONCERNING ISSUES RELATING TO THE CENTRAL INTELLIGENCE AGENCY’S USE OF ‘ENHANCED INTERROGATION TECHNIQUES’ ON SUSPECTED TERRORISTS, July 29, 2009 (hereinafter “DOJ OPR Report 2009”) <https://www.therenditionproject.org.uk/documents/RDI/090729-DoJ-OPR-Investigation-into-DoJ-EIT-Memos.pdf>.

³³ A “Vaughn Index” is a type of disclosure made by an agency withholding documents in response to a Freedom of Information Act request. It identifies the withheld documents and puts on record the reasons for nondisclosure.

³⁴ <https://www.therenditionproject.org.uk/documents/RDI/091120-ACLU-v-DoD-Vaughn-Index-FOIA-Release.pdf>.

³⁵ CIA cable list produced by the U.S. Government, *ACLU v. Dep’t of Def.*, No. 04-cv-4151 (S.D.N.Y. May 18, 2009), http://www.aclu.org/torturefoia/legaldocuments/torturefoia_list_20090518.pdf.

breach of contract between two companies participating in the rendition program, showing how the government organized a number of rendition flights, what their routes were and how much they cost.³⁶

- Other invoicing and contractual material relating to the logistics of prisoner transfer movements within the RDI program, obtained and disclosed by Reprieve in 2011, showing how the government organized a number of rendition flights, what their routes were and how much they cost.³⁷
- Flight plan messages disclosed by the European Organisation for the Safety of Air Navigation (EuroControl), showing how falsified flight plans were filed by aircraft carrying out renditions, to disguise actual movements.³⁸
- Flight plan messages disclosed by the Polish Air Navigation Services Agency (PANSNA) to the Helsinki Foundation for Human Rights in

³⁶ See generally, briefing by the parties and record on appeal, *Richmor Aviation, Inc. v. Sportsflight Air, Inc.*, No. 509735, (N.Y. App. Div.).

³⁷ This material has been published on the Rendition Project website and is referenced below where appropriate.

³⁸ Euro Control Flight Plan Messages, <https://www.therenditionproject.org.uk/documents/RDI/021204-Universal-Weather-AFTN-SITA-text-N63MU.pdf>. EuroControl is an international body supporting air traffic management in and around European airspace. See <https://www.eurocontrol.int/about-us>.

2009³⁹ and 2010,⁴⁰ showing the actual movements of several aircraft carrying out renditions.

- Landing records disclosed by the Polish Border Guard to the Helsinki Foundation for Human Rights in 2010, showing the actual movements of several aircraft carrying out renditions.⁴¹

As Abu Zubaydah's ECtHR application demonstrates in detail, the 2004 CIA OIG Report and 2009 DOJ OPR Report, taken alongside the two lists of cables disclosed by the CIA to the ACLU, show that Abu Zubaydah and another prisoner, Abd al-Rahim al-Nashiri, were moved from one detention site to another on December 4-5, 2002.⁴² This transfer signalled the closure of the first site and the opening of the second. Other incontrovertible evidence, discussed below, shows that those black sites were in Thailand and Poland, respectively.

C. Summary of evidence from these documents

To summarize the evidence referenced in the ECtHR application: on November 15, 2002, Abd al-Rahim al-Nashiri was brought to the site where Abu

³⁹ <https://www.therenditionproject.org.uk/documents/RDI/090916-PANSA-Poland-FOI-Response-Sep-09.pdf>.

⁴⁰ <https://www.therenditionproject.org.uk/documents/RDI/100602-PANSA-Poland-FOI-Response-Jun-10.pdf>.

⁴¹ <https://www.therenditionproject.org.uk/documents/RDI/100723-SG-Poland-FOI-Response-Jul-10.pdf>.

⁴² Application at ¶¶50-71, *Husayn (Abu Zubaydah) v. Poland*, No. 7511/13 (Eur. Ct. H.R.).

Zubaydah was then being held.⁴³ The DOJ OPR Report states that subsequently, on a redacted date in 2002, “both al-Nashiri and Abu Zubaydah were moved to another CIA black site.”⁴⁴ The reference for this statement is the 2004 CIA OIG Report, paragraph 76, which states that “enhanced interrogation of Al-Nashiri continued through 4 December 2002, [2 lines redacted].”

Significant additional material corroborates this evidence that the two prisoners were moved on December 4, 2002. The “Vaughn Index” contains a cable from Headquarters to Field, dated December 3, 2002, with the subject line “Closing of facility and destruction of classified information.”⁴⁵ The 17-page list of CIA cables, meanwhile, shows that cables were sent daily, sometimes multiple times per day, from Field to Headquarters between April 13, 2002, and December 4, 2002.⁴⁶ After December 4, 2002, no cables in that set of documents were sent from Field to Headquarters.⁴⁷

That the cables ceased because al-Nashiri and Abu Zubaydah were moved on December 4, 2002, is further corroborated by flight records and other aviation-related documents recording a prisoner transfer on this date. These documents—from multiple independent but mutually supporting sources—record the movements of N63MU, a jet leased by the U.S. government to carry out rendition flights. This was no one-off:

⁴³ CIA OIG Report 2004, *supra*, at 35-36 ¶76.

⁴⁴ DOJ OPR Report 2009, *supra*, at 85 (citing CIA OIG Report 2004 at ¶76).

⁴⁵ Vaughn Index, *supra*, at 15 (Doc. No. 8).

⁴⁶ CIA cable list, *supra*, at 1-16.

⁴⁷ *Id.* at 16.

N63MU carried out multiple rendition missions on behalf of the U.S. government between 2002 and 2006.

Again, the evidence underlying the proposition that N63MU travelled from Thailand to Poland on December 4-5, 2002, in the context of the RDI program, is laid out in detail in Abu Zubaydah's ECtHR application. In summary:

- N63MU's mission was contracted by DynCorp Systems & Solutions, LLC, of Alexandria, Virginia, as part of a contract entitled Single Entity Aircraft Charter Agreement LT050602 (LT050602 Charter Agreement).⁴⁸
- Documents disclosed in the course of the *Richmor v. Sportsflight* civil lawsuit in New York State show that the LT050602 Charter Agreement between DynCorp and an aircraft broker, Capital Aviation, was executed on June 17, 2002.⁴⁹ It was initially intended to cover the services of one particular aircraft, a Gulfstream jet registered as N85VM and managed by an aircraft operating company called Richmor Aviation, although on occasion other aircraft such as N63MU could act as substitutes for N85VM when it was unavailable.⁵⁰

⁴⁸ DynCorp Systems & Solutions LLC was a prime contractor for rendition logistics. CIA TORTURE UNREDACTED, *supra*, at 45-48.

⁴⁹ Single Entity Aircraft Charter Agreement No. LT050602, ROA 742-750, *Richmor Aviation*, No. 509735 (N.Y. App. Div.), <https://www.therenditionproject.org.uk/documents/RDI/020617-Dyncorp-Capital-Contract-LT050602.pdf>

⁵⁰ *Cf. id.* at ROA 745 ¶6.

- As is made clear in trial transcripts and discovery exchanged in the course of the *Richmor* litigation, under the auspices of the charter agreement, numerous rendition missions were performed by N85VM and other aircraft organized by DynCorp and latterly by Computer Sciences Corporation on behalf of the CIA:⁵¹ “It was ultimately learned that the flights [under this contract] would be going to and from Guantánamo Bay and would be used for assorted rendition missions.”⁵²
- For the mission to move al-Nashiri and Abu Zubaydah, LT050602 “trip 24”, DynCorp paid two brokers, Capital Aviation and AirMarketing, \$339,808.83 for 52.3 flying hours.⁵³ Capital Aviation and AirMarketing shared brokering services for this trip: they located the aircraft and paid its operating company, FirstFlight Management/Airborne Inc., for flying time and fees. Airborne Inc. charged the brokers \$4,900 per hour for the use of the plane,⁵⁴ and the brokers in turn charged DynCorp \$5,450.⁵⁵

⁵¹ Computer Sciences Corporation, a government contractor, bought DynCorp Systems & Solutions in 2004, and continued to manage a part of the rendition program until 2006.

⁵² Br. for Def.-Aplt. at 2, *Richmor Aviation*, No. 509735, (N.Y. App. Div. filed May 23, 2011).

⁵³ Capital Aviation Receipt Trip 24, <https://www.therenditionproject.org.uk/documents/RDI/030124-Capital-Aviation-Receipt-Trip-24.pdf>.

⁵⁴ AirMarketing Invoice 22731, <https://www.therenditionproject.org.uk/documents/RDI/021210-AirMarketing-Invoice-22731.pdf>

⁵⁵ Capital Aviation Receipt Trip 24, *supra* note 53.

- Two invoices, 22731 and 23109, from AirMarketing Services, sent after completion of the mission and dated December 10, 2002, and January 16, 2003, respectively, bill for the charter of N63MU between December 3 and 6, 2002 (flying hours, commission, services, expenses, landing fees, catering and international fees).⁵⁶ The route is cited as IAD (Washington Dulles) / PANC (Anchorage) / RJBB (Osaka) / VTBD (Bangkok) / OMDM (Minhad, UAE) / EPSY (Szymany) / EPWA (Warsaw) / EGGW (London Luton) / IAD (Washington Dulles). Invoice 23109 attests that this mission was a “Government trip.”⁵⁷
- Invoice, LT-050602-1203, from Capital Aviation to DynCorp dated January 7, 2003, gives the same itinerary for N63MU over the same period of time.⁵⁸
- Flight plan data disclosed to the Parliamentary Assembly of the Council of Europe by EuroControl shows that in the course of its journey, N63MU filed false flight plans.⁵⁹ These false flight plans gave the impression that N63MU

⁵⁶ AirMarketing Invoice 22731, *supra* note 54; AirMarketing Invoice 23109, <https://www.therenditionproject.org.uk/documents/RDI/030116-AirMarketing-Invoice-23109.pdf>.

⁵⁷ AirMarketing Invoice 23109, *supra* note 56.

⁵⁸ Capital Aviation Invoice LT-050602-1203, <https://www.therenditionproject.org.uk/documents/RDI/030107-Capital-Aviation-Invoice-1203.pdf>.

⁵⁹ Euro Control Flight Plan Messages, *supra* note 38.

was flying from Dubai to Vienna and from Vienna to London Luton, thus omitting Poland from the record of the aircraft's movements.⁶⁰

- N63MU's landing in Szymany, Poland is confirmed, however, by a letter from the Polish Border Guard to the Helsinki Foundation of Human Rights, Warsaw, dated July 23, 2010.⁶¹ According to this letter, N63MU arrived in Szymany on December 5, 2002, with eight passengers and four crew, and departed from Szymany on the same day with no passengers and four crew.

D. Analysis of flight operations in the context of the rendition, detention and interrogation program

It is important to bear in mind that the black site network was just that—a network. Its individual sites did not operate in isolation from one another but were interacting elements of a single system.⁶² The weight of evidence demonstrating that Poland hosted a black site is bolstered by correlations with movements into and out of other sites. These movements—on aircraft

⁶⁰ *Id.* Flight plans record a departure airport, “ADEP”, and a destination airport, “ADES”. The first falsified flight plan states that on leaving the airport with code OMDB (Dubai, United Arab Emirates) the aircraft was bound for “LOWW”, the airport code for Vienna, Austria. *Id.* at 1. The second falsified flight plan states that N63MU left LOWW (Vienna, Austria) bound for EGGW (London Luton). *Id.* at 2. The aircraft, however, never went to Vienna, as the invoices show.

⁶¹ <https://www.therenditionproject.org.uk/documents/RDI/100723-SG-Landing-Records-N379P-N313P-N63MU.pdf>.

⁶² See CIA TORTURE UNREDACTED, *supra*, at 55-58 for a brief outline; C. Black, *Foreign “liaison partners” and the CIA’s economy of detention*, *supra*.

with documented links to other such movements within the same program—show the breadth of the RDI program.

The Rendition Project hosts a publicly accessible dataset of thousands of flight records gathered by various investigators since the mid-2000s.⁶³ What has emerged clearly is that aircraft carrying out rendition missions for the CIA fall into two groups. One group, which we refer to as the Aero Contractors group, so-called after its North Carolina based operating company, comprised two jets, and was used more commonly in the earlier years of the program.⁶⁴ The second group, which we refer to as the DynCorp-CSC group, so-called after its two prime contractors, comprised multiple jets, and was used sparingly at the beginning of the program and more frequently towards the end of it.⁶⁵

All of the rendition missions which we have documented—which means 62 missions running from October 2001 to August 2006—were carried out by aircraft from one of these two groups.⁶⁶ These 62 missions involved 121 renditions of individuals in total.⁶⁷ In other words, we have located 121 instances where known dates of an individual’s transfer were matched

⁶³ <https://www.therenditionproject.org.uk/flights/flight-database.html>.

⁶⁴ CIA TORTURE UNREDACTED, *supra*, at 45-50.

⁶⁵ CIA TORTURE UNREDACTED, *supra*, at 45-50.

⁶⁶ *See infra*, I.D.i. and I.D.ii.

⁶⁷ CIA TORTURE UNREDACTED, *supra*, at 291.

by a mission carried out by a plane from one of these two groups.⁶⁸

In the case of the DynCorp-CSC group, all of the rendition missions we have linked to this group carry a single invoice number, the aforementioned LT050602.⁶⁹ This invoice number serves to tie all of those flights together into a single pattern of conduct, notwithstanding the fact that there were several successive contracts with different identifying numbers over the period.⁷⁰

Following the practice of the Parliamentary Assembly of the Council of Europe's investigators, we analyze prisoner transfers as "circuits," where a circuit comprises a completed movement of an aircraft from the U.S., through the locations where one or more prisoners were moved from and to, along with any other refuelling or rest stops that the aircraft was required to make, back to the U.S. As described in more detail in our study CIA TORTURE UNREDACTED, the following missions have been identified as transferring prisoners into or out of Poland, to and from other detention locations.

- Circuit 15, December 3-6, 2002, plane registered N63MU: prisoners transferred from Thailand to Poland;⁷¹

⁶⁸ For a complete list, see CIA TORTURE UNREDACTED, Appendix 2, *supra*, at 291-380.

⁶⁹ This number matches the initial DynCorp-Capital Aviation-contract. See Charter Agreement No. LT050602, *supra* note 49.

⁷⁰ CIA TORTURE UNREDACTED, *supra*, at 46-8.

⁷¹ *Id.* at 311.

- Circuit 17, Feb 6-13, 2003, plane registered N379P: prisoner transferred from Morocco to Poland;⁷²
- Circuit 19, March 1-9, 2003, plane registered N379P: prisoner transferred from Afghanistan to Poland;⁷³
- Circuit 20, March 23-28, 2003, plane registered N379P: prisoner transferred from Afghanistan to Poland;⁷⁴
- Circuit 23, June 3-7, 2003, plane registered N379P: prisoners transferred from Afghanistan to Poland and Poland to Morocco;⁷⁵
- Circuit 27, July 27–Aug 1, 2003, plane registered N379P: prisoners transferred from Afghanistan to Poland;⁷⁶ and
- Circuit 31, Sept 20-25, 2003, plane registered N313P: prisoners transferred from Poland to Romania, Morocco and Guantanamo Bay.⁷⁷

To illustrate the body of evidence tying these three aircraft to the RDI program, we will now offer a snapshot of the bigger picture.

i. The Aero Contractors group

Six of the circuits identified above involve the two aircraft registered at the time as N379P and N313P.

⁷² *Id.* at 314.

⁷³ *Id.* at 316.

⁷⁴ *Id.* at 317.

⁷⁵ *Id.* at 320-1.

⁷⁶ *Id.* at 323-4.

⁷⁷ *Id.* at 328-9.

We refer to these aircraft here as the “Aero Contractors” group. Overall, our research has documented the following renditions by these two aircraft.⁷⁸

RC No.	Prisoner	Rendition	Date	Aircraft
1	Jamil Qasim Saeed Mohammed	Pakistan to Jordan	10/23/01	N379P
2	Ahmed Agiza	Sweden to Egypt	12/18/01	N379P
2	Mhmd el-Zery	Sweden to Egypt	12/18/01	N379P
3	Mhmd Saad Iqbal Madni	Indonesia to Egypt (via Diego Garcia)	01/10/02	N379P
4	Ali al-Hajj al-Sharqawi	Pakistan or Afghanistan to Jordan	02/10/02	N379P
5	Mamdouh Habib	Egypt to Afghanistan (via Uzbekistan)	04/12/02	N379P
5	Mhmd Saad Iqbal Madni	Egypt to Afghanistan (via	04/12/02	N379P

⁷⁸ The “RC” number is the “Rendition Circuit” number in CIA TORTURE UNREDACTED, Appendix 2, *supra*. Full documentation for each circuit is referenced there.

RC No.	Prisoner	Rendition	Date	Aircraft
		Uzbeki- stan)		
7	Abou Elkassim Britel	Pakistan to Morocco	05/24/02	N379P
8	Moham- edou Ould Slahi	Jordan to Afghani- stan	07/19/02	N379P
8	Binyam Mohamed	Pakistan to Morocco	07/21/02	N379P
9	Umar Faruq	Indonesia to Egypt (via Diego Garcia)	09/15/02	N379P
9	Ramzi bin al-Shibh	Afghani- stan to Mo- rocco	09/17/02	N379P
9	Hassan bin Attash	Afghani- stan to Jor- dan	09/17/02	N379P
10	Umar Faruq	Egypt to Afghani- stan	09/29/02	N379P
10	Abd al- Salam al- Hilah	Egypt to Afghani- stan	09/29/02	N379P
14	Abd al- Rahim al- Nashiri	Afghani- stan to Thailand	11/15/02	N379P

RC No.	Prisoner	Rendition	Date	Aircraft
16	Bisher al-Rawi	The Gambia to Afghanistan (via Egypt)	12/08/02	N379P
16	Jamil el-Banna	The Gambia to Afghanistan (via Egypt)	12/08/02	N379P
16	Pacha Wazir	Morocco to Afghanistan	12/12/02	N379P
17	Ramzi bin al-Shibh	Morocco to Poland	02/07/03	N379P
17	Ibn Sheikh al-Libi	Egypt to Afghanistan	02/09/03	N379P
19	Khaled Sheikh Mohammed	Afghanistan to Poland	03/07/03	N379P
20	Abu Yasir al-Jaza'iri	Afghanistan to Poland	03/25/03	N379P
22	Laid Saidi	Malawi/Djibouti to Afghanistan	05/15/03	N379P
23	Walid bin Attash	Afghanistan to Poland	06/05/03	N379P

RC No.	Prisoner	Rendition	Date	Air-craft
23	Abd al-Rahim al-Nashiri	Poland to Morocco	06/06/03	N379P
23	Ramzi bin al-Shibh	Poland to Morocco	06/06/03	N379P
25	Hiwa Rashul	Iraq to Afghanistan	07/03/03	N379P
25	Saifullah Paracha	Thailand to Afghanistan	07/08/03	N379P
26	Asadallah	Afghanistan to Egypt	07/23/03	N379P
27	Samr al-Barq	Afghanistan to Poland	07/29/03	N379P
29	Sanad al-Kazimi	UAE to Afghanistan	08/14/03	N379P
30	Saleh Qaru	Jordan to Afghanistan	09/09/03	N379P
31	Abu Zubaydah	Poland to Guantánamo Bay	09/22/03	N313P
31	Khaled Sheikh Mohammed	Poland to Romania	09/22/03	N313P
31	Walid bin Attash	Poland to Romania	09/22/03	N313P

RC No.	Prisoner	Rendition	Date	Air-craft
31	Samr al-Barq	Poland to Romania	09/22/03	N313P
31	Abu Yasir al-Jaza'iri	Poland to Romania	09/22/03	N313P
31	Abd al-Rahim al-Nashiri	Morocco to Guantá-namo Bay	09/23/03	N313P
32	Abu Yasir al-Jaza'iri	Romania to Afghanistan (via Jordan)	10/26/03	N379P
32	Mhmd Bashmilah	Jordan to Afghanistan	10/26/03	N379P
32	Samr al-Barq	Romania to Jordan	10/26/03	N379P
32	Hiwa Rashul	Afghanistan to Iraq	10/29/03	N379P
32	Aso Hawl-eri	Afghanistan to Iraq	10/29/03	N379P
33	Ibn Sheikh al-Libi	Afghanistan to Guantá-namo Bay	11/22/03	N313P
33	Mustafa al-Hawsawi	Afghanistan to Guantá-namo Bay	11/22/03	N313P
34	Ramzi bin al-Shibh	Morocco to Guantá-namo Bay	12/03/03	N379P

RC No.	Prisoner	Rendition	Date	Aircraft
36	Mohammed al-Asad	Djibouti to Afghanistan	01/08/04	N313P
36	Ali al-Hajj al-Sharqawi	Jordan to Afghanistan	01/08/04	N313P
36	Hassan bin Attash	Jordan to Afghanistan	01/08/04	N313P
37	Binyam Mohamed	Morocco to Afghanistan	01/22/04	N313P
37	Saleh Di'iki	Morocco to Afghanistan	01/22/04	N313P
37	Jamal Boudraa	Afghanistan to Algeria	01/22/04	N313P
38	Khaled al-Maqtari	Iraq to Afghanistan	01/22/04	N379P
37	Hassan Ghul	Iraq to Afghanistan	01/24/04	N313P
37	Khaled el-Masri	Macedonia to Afghanistan	01/24/04	N313P
37	Mohammed Ibrahim (possible)	Jordan to Romania	01/24/04	N313P
37	Hassan Ghul	Afghanistan to Romania	01/26/04	N313P

RC No.	Prisoner	Rendition	Date	Aircraft
40	Abdel Hakim Belhadj	Thailand to Libya (via Diego Garcia)	03/08/04	N313P
40	Fatima Bouchar	Thailand to Libya (via Diego Garcia)	03/08/04	N313P
41	Gouled Dourad	Djibouti to Afghanistan	03/08/04	N379P
40	Yunus Rahmatullah	Iraq to Afghanistan	03/11/04	N313P
40	Abu Abdallah	Iraq to Afghanistan	03/12/04	N313P

ii. The DynCorp-CSC group

One of the rendition missions identified above as passing through Poland—the first one—was carried out by the DynCorp-CSC group. Overall, our research has documented the following renditions by aircraft contracted to operate within this group.

RC No.	Prisoner	Rendition	Date	Aircraft
6	Zakariya	Georgia to Afghanistan	04/30/02	N63MU
6	Jamal Bou-draa	Georgia to Afghanistan	04/30/02	N63MU

RC No.	Prisoner	Rendition	Date	Aircraft
6	al-Hawari	Georgia to Afghanistan	04/30/02	N63MU
11	Pachar Wazir	UAE to Morocco	10/06/02	N63MU
12	Maher Arar	US to Jordan (via Italy)	10/08/02	N829MG
13	Abd al-Rahim al-Nashiri	Dubai to Afghanistan	11/09/02	N85VM
15	Abd al-Rahim al-Nashiri	Thailand to Poland (via Dubai)	12/04/02	N63MU
15	Abu Zubaydah	Thailand to Poland (via Dubai)	12/04/02	N63MU
18	Abu Omar	Italy to Egypt (via Germany)	02/17/03	N85VM
21	Suleiman Abdullah	Djibouti to Afghanistan	03/28/03	N63MU
24	Zubair	Thailand to Afghanistan (via Sri Lanka)	06/19/03	N614RD

RC No.	Prisoner	Rendition	Date	Aircraft
28	Hambali	Thailand to Afghanistan (via Sri Lanka)	08/13/03	N85VM
28	Lillie	Thailand to Afghanistan (via Sri Lanka)	08/13/03	N85VM
35	Ali Saeed Awadh	Djibouti to Afghanistan	12/15/03	N85VM
39	Mohammed Ibrahim (possible)	Jordan to Romania	01/26/04	N85VM
42	Abu Zubaydah	Guantánamo Bay to Romania / Morocco	04/12/04	N85VM or N368CE
42/43	Mustafa al-Hawsawi	Guantánamo Bay to Romania / Morocco	04/12/04	N85VM or N368CE
42/43	Ramzi bin al-Shibh	Guantánamo Bay to Romania / Morocco	04/12/04	N85VM or N368CE
42/43	Ibn Sheikh al-Libi	Guantánamo Bay to Romania / Morocco	04/12/04	N85VM or N368CE

RC No.	Prisoner	Rendition	Date	Aircraft
42/43	Abd al-Rahim al-Nashiri	Guantánamo Bay to Romania	04/12/04	N85VM or N368CE
44	Mustafa el-Madaghi	Morocco to Libya	05/03/04	N85VM
45	Khaled el-Masri	Afghanistan to Albania	05/28/04	N982RK
46	Laid Saidi	Afghanistan to Tunisia and back	06/09/04	N982RK
47	Ali Saeed Awadh	Afghanistan to Djibouti	06/14/04	N85VM
48	Janat Gul	Afghanistan to Romania (via Jordan)	07/31/04	N288KA
49	Majid al-Maghrebi	Afghanistan to Libya	08/22/04	N63MU
49	Mhmd al-Shoroeiya	Afghanistan to Libya	08/22/04	N63MU
49	Saleh Di'iki	Afghanistan to Libya	08/22/04	N63MU
50	Laid Saidi	Afghanistan to Algeria	08/26/04	N308AB

RC No.	Prisoner	Rendition	Date	Aircraft
51	Ramzi bin al-Shibh	Morocco to Romania	10/01/04	N227SV
52	Mohammed Ibrahim	Romania to Jordan	10/20/04	N789DK
53	Sharif al-Masri	Afghanistan to Egypt	12/16/04	N227SV
54	Ibn Sheikh al-Libi	Morocco to Jordan	02/17/05	N724CL
55	Abu Zubaydah	Morocco to Lithuania	02/18/05	N787W H
55	Mustafa al-Hawsawi	Morocco to Lithuania	02/18/05	N787W H
56	Khalid al-Sharif	Afghanistan to Libya	04/21/05	N740JA
56	Mustafa al-Mehdi	Afghanistan to Libya	04/21/05	N740JA
57	Abu Faraj al-Libi	Afghanistan to Romania (via Jordan)	05/25/05	N450DR -N308AB
57	Abu Munthir al-Maghrebi	Tunisia to Romania	05/26/05	N308AB
58	Abd al-Rahim al-Nashiri	Romania to Lithuania	10/05/05	N308AB/ N787W H

RC No.	Prisoner	Rendition	Date	Aircraft
58	Khaled Sheikh Mohammed	Romania to Lithuania	10/05/05	N308AB/ N787W H
59	3 prisoners	Romania to Afghanistan (via Jordan)	11/05/05	N1HC- N248AB
59	Ibn Sheikh al-Libi	Jordan to Afghanistan	11/05/05	N1HC- N248AB
60	Abd al-Rahim al-Nashiri	Lithuania to Afghanistan	03/25/06	N733MA /N740E H
60	Abu Zubaydah	Lithuania to Afghanistan	03/25/06	N733MA /N740E H
60	Khaled Sheikh Mohammed	Lithuania to Afghanistan	03/25/06	N733MA /N740E H
60	Mustafa al-Hawsawi	Lithuania to Afghanistan	03/25/06	N733MA /N740E H
61	Ibn Sheikh al-Libi	Afghanistan to Libya	04/12/06	N1HC
62	Abu Abdallah	Afghanistan to Saudi Arabia	07/26/06	N17ND

RC No.	Prisoner	Rendition	Date	Aircraft
62	Marwan al-Jabour	Afghanistan to Jordan	07/26/06	N17ND
62	Abd al-Bari al-Filistini	Afghanistan to Jordan	07/26/06	N17ND

This group comprises a total of 17 aircraft. N63MU, the aircraft identified as carrying out the rendition of Abu Zubaydah and al-Nashiri into Poland in December 2002, is also documented as having carried out circuits 6, 11, 21 and 49 in the above list.

There is therefore a detailed and consistent public record showing that the three aircraft identified as flying through Poland, at the time of specific rendition missions, also carried out multiple other rendition missions into other countries at different times.

It is implausible that the sustained correlation of data between dozens of prisoner movement dates and aircraft movement dates could be explained by some other cause. For each of the missions noted above, we offer an account of the evidence underlying its identification in Appendix 2 of CIA TORTURE UNREDACTED, including links to all cited documents.⁷⁹

⁷⁹ CIA TORTURE UNREDACTED, *supra*, at 291-380.

E. The SSCI Executive Summary and Poland: “Detention Site Blue.”

i. The SSCI Executive Summary and its color-coded pseudonyms

Many, but not all, of the rendition missions listed above had been identified by the time of Abu Zubaydah’s application to the ECtHR in May 2013. At that time, the public record reflected that Poland had hosted a black site, that this site had commenced operation on December 5, 2002, and finished operating on September 22, 2003, and that during the course of its operation it had held Abu Zubaydah and al-Nashiri, among others.⁸⁰

As outlined above, the data underlying these conclusions were drawn from declassified government documents and a panoply of contractual and logistical records.⁸¹

In December 2014, the Senate Select Committee on Intelligence released a redacted version of the Executive Summary of its study of the secret detention program.⁸² The process of the writing and eventual publication of this report has been widely recounted, not least in a major feature film.⁸³ The Senate report was prepared on the basis of “more than six million pages of CIA materials, to include operational cables, intelligence reports, internal memoranda and emails,

⁸⁰ See *supra*, I.B and I.C.

⁸¹ See *supra*, I.B and I.C.

⁸² See SSCI Executive Summary, *supra*.

⁸³ See THE REPORT (Vice Studios 2019).

briefing materials, interview transcripts, contracts, and other records.”⁸⁴

The SSCI Executive Summary, while not purporting to provide a complete record of events in the program as a whole or in any one location, offers detailed insights into some events in specific locations.⁸⁵ These locations are denoted throughout the report by pseudonymised but consistently applied color-codes: Detention Site Green, Detention Site Blue, Detention Site Cobalt and so on.⁸⁶

As was immediately recognized by journalists and others, these color-coded pseudonyms mapped precisely onto the list of detention sites already publicly known to have been in operation.⁸⁷ Indeed, the Washington Post provided a correlation of country locations

⁸⁴ SENATE SELECT COMMITTEE ON INTELLIGENCE, COMMITTEE STUDY OF THE CIA’S DETENTION AND INTERROGATION PROGRAM, Foreword 5, approved December 13, 2012, updated for release April 3, 2014, declassification revisions December 3, 2014 <https://www.therenditionproject.org.uk/documents/RDI/141209-SSCI-Torture-Report-Executive-Summary-Foreword.pdf>.

⁸⁵ See generally SSCI Executive Summary, *supra*, at 11-170.

⁸⁶ SSCI Executive Summary, *supra*, at 10.

⁸⁷ See, e.g., Adam Goldman & Julie Tate, *Decoding the secret black sites on the Senate’s report on the CIA interrogation program*, WASH. POST, Dec. 9, 2014, <https://www.washingtonpost.com/news/worldviews/wp/2014/12/09/decoding-the-secret-black-sites-on-the-senates-report-on-the-cia-interrogation-program>; Greg Miller & Adam Goldman, *Rise and fall of CIA’s overseas prisons traced in Senate report on interrogations*, WASH. POST, Dec. 11, 2014, https://www.washingtonpost.com/world/national-security/rise-and-fall-of-cias-overseas-prisons-traced-in-senate-report-on-interrogations/2014/12/11/067232b4-8143-11e4-9f38-95a187e4c1f7_story.html; *Detention Site Blues*, THE ECONOMIST, Dec. 11, 2014, <https://www.economist.com/europe/2014/12/11/detention-site-blues>.

and color codes on the very day that the SSCI Executive Summary was released.⁸⁸ The SSCI Executive Summary, in other words, demonstrated that the public record surrounding the black site network, as it stood in 2014, was already accurate.

The SSCI Executive Summary corroborated the following identifications and chronological data:

- Detention Site Green: Thailand, operational March 2002 to December 2002;
- Detention Site Cobalt: Afghanistan, operational September 2002 to April 2004;
- Detention Site Blue: Poland, operational December 2002 to September 2003;
- Detention Site Gray: Afghanistan, operational January 2003 to December 2003;
- Detention Site Black: Romania, operational September 2003 to November 2005;
- Detention Sites Indigo and Maroon: Guantánamo Bay, operational September 2003 to April 2004;
- Detention Site Orange: Afghanistan, operational April 2004 to September 2006;
- Detention Site Violet: Lithuania, operational February 2005 to March 2006; and
- Detention Site Brown: Afghanistan, operational March 2006 to March 2008.

ii. Data pertaining to Detention Site Blue corroborates data relating to Poland

⁸⁸ Goldman & Tate, *Decoding the secret black sites, supra*.

In relation to Detention Site Blue, the SSCI Executive Summary offers the following explicit information about prisoner movements:

- “In December 2002, when Detention Site Green was closed, al-Nashiri and Abu Zubaydah were rendered to Detention Site Blue.”⁸⁹ The first chronological reference to al-Nashiri’s detention in Site Blue in the SSCI Executive Summary is from December 5, 2002, consistent with his arriving at the site on that day.⁹⁰
- Ramzi bin al-Shibh was sent to Blue between February 1 and 9, 2003.⁹¹ An interrogation plan was prepared for him between March 1 and 9, 2003.⁹² By February 11, 2003, he was held in Blue.⁹³
- Khaled Sheikh Mohammed was sent to Blue in early March 2003. On March 6, 2003, he was being held in Cobalt.⁹⁴ He was in Blue by the following day, March 7, 2003.⁹⁵
- Abu Yasir al-Jaza’iri was transferred from Cobalt to Blue in March 2003.⁹⁶

As will be clear from comparison with the above list of identified renditions, each of these transfers coincides with a flight, on the relevant date, by one of

⁸⁹ SSCI Executive Summary, *supra*, at 67.

⁹⁰ *Id.* at 67, n. 338.

⁹¹ *Id.* at 75.

⁹² *Id.* at 76.

⁹³ *Id.* at 78.

⁹⁴ *Id.* at 83.

⁹⁵ *Id.* at 363.

⁹⁶ *Id.* at 103 n.606.

the aircraft known to have participated in the rendition program.

- The transfer of Abu Zubaydah and al-Nashiri, arriving in Blue on December 5, 2002, coincides with the flight of N63MU from Thailand to Poland on December 4-5, 2002, discussed above.⁹⁷
- The transfer of Ramzi bin al-Shibh from detention in a foreign location to Blue between February 1 and 9, 2002, coincides with the flight of N379P from Morocco to Poland on February 7, 2003.⁹⁸
- The transfer of Khaled Sheikh Mohammed from Cobalt to Blue on March 6-7, 2003, coincides with the flight of N379P from Afghanistan to Poland on March 7, 2003.⁹⁹
- The transfer of Abu Yasir al-Jaza'iri from Cobalt to Blue in March 2003, coincides with the flight of N379P from Afghanistan to Poland on March 25, 2003.¹⁰⁰ Analysis of cable identifiers referenced in the Executive Summary shows that an EIT request from Blue, relating to Abu Yasir al-Jaza'iri, was sent between March 24 and 26, 2003.¹⁰¹

⁹⁷ CIA TORTURE UNREDACTED, Appendix 2, *supra*, at 311 (Circuit 15).

⁹⁸ *Id.* at 314 (Circuit 17).

⁹⁹ *Id.* at 316 (Circuit 19).

¹⁰⁰ *Id.* at 317 (Circuit 20).

¹⁰¹ SSCI Executive Summary, *supra*, at 103 n.606; CIA TORTURE UNREDACTED, Appendix 2, *supra* at 317 (Circuit 20).

Further findings relating to Poland emerge from comparison of the SSCI Executive Summary with other data:

- Analysis of cables referenced in the SSCI Executive Summary shows that the account of Khal-lad (also known as Walid) bin Attash being “threatened with rectal rehydration” came from Blue, timestamped July 22, 2003.¹⁰²
- Analysis of all cables sent from Detention Site Blue (“Blue Series”) cited in the SSCI Executive Summary shows that they constitute a numbered chronological sequence of 320 cables running from 10006, dated December 7, 2002, to 12825, dated September 13, 2003, matching the operational dates of the Polish Black Site which were from December 4, 2002, to September 22, 2003.¹⁰³
- “In [June] 2003, the CIA arranged for a ‘temporary patch’ involving placing two CIA detainees (Ramzi bin al-Shibh and ‘Abd al-Rahim al-Nashiri) within an already existing Country [X]

¹⁰² On identifying cable provenance and our resulting CIA cable database, see CIA TORTURE UNREDACTED, *supra*, at 32-35. In outline, the cables referenced in the SSCI Executive Summary fall into a discernible series of groups, correlating with the detention sites they were sent from. We refer to these groups according to the color code for the relevant site, hence we denote cables from Poland as “Blue Series.” The cable referenced here, from SSCI Executive Summary, *supra*, at 100 n.584, is Blue Series no. 12385, timestamped “222045ZJUL03,”—*i.e.* 2045 universal time on July 22, 2003.

¹⁰³ See *supra* note 79. For the database itself see <https://www.therenditionproject.org.uk/unredacted/the-data.html>.

detention facility.”¹⁰⁴ This coincides with the flight of N379P from Poland to Morocco on June 6, 2003.¹⁰⁵

- The CIA closed Blue in “[September] 2003.”¹⁰⁶ At this point prisoners were transferred to Detention Site Black¹⁰⁷ and to “CIA facilities on the grounds of, but separate from, the U.S. military detention facilities at Guantanamo Bay, Cuba.”¹⁰⁸ These three data points coincide with the flight of N313P on September 22-23, 2003, from Afghanistan to Poland, Romania, Morocco and Guantanamo Bay.¹⁰⁹

What emerges from the above analysis is that there is a clear and consistent mapping of events at Detention Site Blue as discussed in the SSCI Executive Summary, to events in Poland as documented in other public sources. The flights that have been identified match, in every instance, with the movements described, and cable correspondence matches, in every instance, with the timeline set out in public documents.

¹⁰⁴ SSCI Executive Summary, *supra*, at 139. For the methodology underlying the identification of the month as being June, see CIA TORTURE UNREDACTED, *supra*, at 25-26.

¹⁰⁵ CIA TORTURE UNREDACTED, Appendix 2, *supra*, at 320-21 (Circuit 23).

¹⁰⁶ SSCI Executive Summary, *supra*, at 74. For the methodology underlying the identification of the month as being September, see CIA TORTURE UNREDACTED, *supra*, 25-26.

¹⁰⁷ SSCI Executive Summary, *supra*, at 97.

¹⁰⁸ SSCI Executive Summary, *supra*, at 140.

¹⁰⁹ CIA TORTURE UNREDACTED, Appendix 2, *supra*, at 328-29 (Circuit 31).

II. Conclusion

Fifteen years after George W. Bush announced that the CIA had operated “a separate program” for the detention and interrogation of prisoners,¹¹⁰ the U.S. government finds itself in a strange and ultimately untenable position. Study after study, report after report, emerging from the CIA, DOJ and SSCI, along with flight record after flight record, flight invoice after invoice, have confirmed, in graphic and granular detail, what the world already knows: that the CIA had black sites in Thailand, Poland, Romania, Lithuania, Afghanistan and Guantánamo Bay.

It is not merely the case that international and national media have regularly discussed the location and operation of the various sites and treatment of the people held in them. It is also a fact that the underlying documents and datasets underpinning these discussions are themselves in the public domain, and in some cases have been for many years. The body of evidence underpinning Abu Zubaydah’s ECtHR application was already in the public domain in 2013; some of it was already public in 2010.

Far from being a product of airy speculation, public knowledge about the RDI program is grounded in information extracted from hundreds of documents. These documents themselves, and not just the conclusions that specialists have drawn from them, are freely available to the public. They can be searched and read by anyone with an internet connection. The searchable archive of documents relating to the RDI

¹¹⁰ “President Discusses Creation of Military Commissions to Try Suspected Terrorists”, Sept. 6, 2006, <https://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

program, maintained by The Rendition Project and built up between 2011 and 2019, now contains 938 items. These items range “from declassified CIA cables to rendition pilot flight logs, and from corporate invoices to the first-hand testimony of those held and tortured.”¹¹¹ All of these documents are freely and publicly accessible on The Rendition Project website, as is the full text of CIA TORTURE UNREDACTED. Many of these documents have been exhibited to the public in high-profile museums and galleries, including the International Center of Photography Museum, New York; the Imperial War Museum, London; the Zephyr Museum in Mannheim, Germany; the 2017 Fotografia Europea festival in Reggio Emilia, Italy and the 2018 Photography Triennale in Hamburg, Germany. Anyone who examines these documents will draw the same conclusions that have already been drawn by courts, in academic publications and in the media: Poland, Romania, Lithuania, Thailand and Afghanistan hosted black sites, and prisoners were held in them.

As a consistent, coherent body of evidence shows, the events recorded by the SSCI Executive Summary as occurring in Detention Site Blue occurred in Poland, where incontrovertible evidence establishes that Abu Zubaydah was held. It was in Poland that unauthorised interrogation techniques, including the use of a power drill, were practiced, leading to an inquiry by the CIA Office of Inspector General.¹¹² It was in Poland that the waterboard technique was adapted and extended, leading a medical officer to write that “in the new technique we are basically doing a series of

¹¹¹ <https://www.therenditionproject.org.uk/documents/index.html>.

¹¹² SSCI Executive Summary, *supra*, at 69-70.

near drownings.”¹¹³ And it was in reference to events in Poland, in January 2003, that the CIA’s chief of interrogations wrote to colleagues, “this is a train wreck [sic] waiting to happen.”¹¹⁴

The decision of the court of appeals should be affirmed.

Respectfully submitted,

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AUGUST 2021

¹¹³ *Id.* at 86.

¹¹⁴ *Id.* at 71.