



25 June 2009

Mr. Martin Scheinin  
Special Rapporteur on the Promotion  
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**RE: Mr. Abou Elkassim Britel, Italian citizen currently detained in Morocco  
and a victim of “extraordinary rendition” and torture**

This communication concerns the government of the **United States of America**, state party to the International Covenant on Civil and Political Rights since 8 September 1992 (Reservations, articles 5-7,10 (2.3), 15 (1) , 19, 20, 27, 47) and Convention Against Torture since 21 October 1994 (Reservations, articles 1, 3, 10-14, 16, 30)

And the **Government of Morocco**, state party to the International Covenant on Civil and Political Rights since 3 May 1979 and Convention Against Torture since 21 June 1993 (Reservations, article 30(1))

And the **Government of Italy**, state party to the International Covenant on Civil and Political Rights since 15 September 1978 and Convention Against Torture since 12 January 1989

And the **Government of Pakistan**

*(This case is also being submitted to the Special Rapporteur on Torture.)*

Mr. Special Rapporteur,

We write regarding the case of Mr. Abou Elkassim Britel, an Italian citizen of Moroccan origin who is currently detained at the Oukasha prison in Casablanca, Morocco.

We wish to bring this case to your attention because of the nature of your mandate and our serious concerns that Mr. Britel, is one of the few known victims of the United States’ “extraordinary rendition” program, and the only European citizen, who, to our knowledge, is still detained.

We request that as a matter of urgency you take up Mr. Britel’s case with the governments of the United States, Morocco, Pakistan and Italy, and clarify with them the allegations contained in this letter. In particular, we ask that you fully investigate the circumstances

leading up to Mr. Britel's current incarceration in Morocco. We provide fuller requests at the end of this communication.

We **enclose** copies of the following relevant documentation:

- a) Legal complaint filed on 30 May 2007 in *Binyam Mohamed et al v. Jeppesen Dataplan, Inc.*, No. C07-02798 JW (N.D. Cal. Civ. R.1-1 filed 30 May 2007) ("Mohamed et. al");
- b) Declaration of Abou Elkassim Britel filed in support of Plaintiff's Opposition to the United States' Motion to Dismiss or, in the alternative, for Summary Judgment, dated 2 November 2007;
- c) Declaration of Steven Macpherson Watt filed in support of Plaintiff's Opposition to the United States' Motion to Dismiss or, in the alternative, for Summary Judgment dated 14 December 2007;
- d) Office of the Examining Judge for Preliminary Investigations, dated 29 September 2006, No 9745/06 GIP (copy of original with translation);
- e) European Parliament, Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, Working Document No 7 on "extraordinary rendition", dated 16 November 2006;
- f) European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, (2006/2200(INI), February 2007 at ¶¶ 63 – 65);
- g) Letter from Mr. Mohammed Essabar to Ms. Khaddija Anna Lucia Pighizzini dated 15 April 2009;
- h) Letter from Italian special operations police ("DIGOS") dated 10 February 2003.

Further information on the U.S. litigation and related advocacy can be found at [www.aclu.org/rendition](http://www.aclu.org/rendition).

## THE AUTHORS OF THIS COMMUNICATION

The American Civil Liberties Union Foundation (ACLU) is a non-profit legal organization that educates the public about human rights and civil liberties, employing lawyers who provide legal representation free of charge in cases involving civil and human rights violations in the United States. Importantly for purposes of the present appeal, the ACLU has filed two federal court cases challenging the "extraordinary rendition" program, and another before the Inter-American Commission on Human Rights. In addition, we have been involved in other advocacy efforts to end the program, including public education and outreach and legislative advocacy.

Alkarama (Dignity) for Human Rights is a human rights organization devoted to promoting and protecting human rights in the Arab world, including Morocco. Alkarama participates in all United Nations human rights procedures, including submission of communications and reports to the Special Procedures and Treaty bodies as well as the newly established Universal Periodic Review (UPR).

## SUMMARY OF FACTS

Mr. Britel is a 42 year old Italian citizen of Moroccan origin, married to an Italian citizen. He was arrested and detained in Pakistan on immigration charges on 10 March 2002. After several months in Pakistani detention, Mr. Britel was transferred to U.S. custody. On 24 May 2002 U.S. officials dressed Mr. Britel in a diaper and overalls, and shackled and blindfolded him before flying him to Morocco. Once in Morocco, he was detained incommunicado by Moroccan internal intelligence service (DST) at Témara detention center. There, he was beaten, deprived of sleep and food, and threatened with sexual torture, including sodomy with a bottle and castration. After being released on 11 February 2002 and re-detained on 16 May 2003, Mr. Britel was coerced through torture into signing a false confession, convicted of terrorism-related charges, and sentenced to fifteen years in a Moroccan prison, which was reduced on appeal to nine years. He remains imprisoned at Oukasha prison in Casablanca.

## KEY FACTS RELATING TO MR. BRITEL’S “EXTRAORDINARY RENDITION”, TORTURE AND ARBITRARY DETENTION

The following information is largely drawn from Documents (a) and (b); Legal complaint filed on May 30, 2007 in *Binyam Mohamed et al v. Jeppesen Dataplan, Inc.*, No. C07-02798 JW (N.D. Cal. Civ. R.1-1 filed May 30, 2007) (“Mohamed et. al”) and the Declaration of Abou Elkassim Britel filed in support of Plaintiff’s Opposition to the United States’ Motion to Dismiss or, in the alternative, for Summary Judgment, dated 2 November 2007:

1. Mr. Abou Elkassim Britel was born in Morocco in 1967 and emigrated to Italy in 1989. In 1995, he married his wife Khadija Anna Pighizzini, an Italian citizen, and became a naturalized Italian citizen in 1999.
2. Initially, Mr. Britel worked at a poultry shop and he later qualified as an electrician. In 2000, Mr. Britel and his wife began translating Islamic books and texts from Arabic to Italian. They set up a website entitled “Islamiqra,” on which they published these translations as well as commentaries aimed at promoting a better understanding and acceptance of Islam.
3. On 17 June 2001, Mr. Britel traveled from his home in Bergamo, Italy to Iran to seek financial support for his translation work and to conduct further research on Islamic issues. From Iran, Mr. Britel traveled to Pakistan for the same professional reasons.

### MR. BRITEL’S DETENTION, INTERROGATION AND TORTURE IN PAKISTAN

4. On 10 March 2002, Mr. Britel was apprehended by agents of the Pakistani police force on immigration charges, detained and interrogated at a facility in Lahore, Pakistan known as “Garden Town.” Following his initial apprehension and continuously thereafter, Mr. Britel asserted his Italian citizenship and requested that he be afforded legal representation and assistance from the Italian Embassy. These requests were denied.
5. During his detention and interrogation in Pakistan, Mr. Britel was physically and psychologically tortured. His interrogators beat him severely, sometimes with a

cricket bat, and accused him of being a “terrorist fighter.” Mr. Britel’s hands and feet were bound and he was hung from the walls or ceiling of his cell for extensive periods of time. He was denied access to a toilet. His interrogators threatened to rape the women in his family and frequently told him that he would be subjected to worse torture, even death.

6. In April 2002, after many weeks of torture, Mr. Britel falsely confessed to his involvement in terrorist activity. Shortly after this false confession, Mr. Britel was brought before U.S. officials who fingerprinted and photographed him. They told him his Pakistani interrogators would kill him if he did not cooperate.
7. On 5 May 2002, Mr. Britel was transferred from the Lahore detention facility to the headquarters of the Pakistani intelligence services in Islamabad.

#### **INTERROGATIONS BY U.S. INTELLIGENCE SERVICES – 2002**

8. On four separate occasions, he was blindfolded and taken from this facility to a house where he was interrogated by agents of the U.S. intelligence services. These interrogations focused on Mr. Britel’s alleged association with Osama Bin Laden. Mr. Britel’s repeated requests to his U.S. interrogators to contact the Italian Embassy were refused.
9. At what transpired to be his final interrogation session, Mr. Britel met with an American who said that his name was “David Morgan.” Mr. Morgan told Mr. Britel that he had been tasked with writing a profile on him for “Washington.” Mr. Morgan asked Mr. Britel a number of questions about his personal life and filled out a form with the answers Mr. Britel provided. Mr. Britel reiterated his request to meet with the Italian Embassy but again was denied such a meeting. Mr. Morgan, however, suggested that Mr. Britel could meet with the Moroccan ambassador. This meeting never eventuated. After this meeting, Mr. Britel was told by one of his Pakistani custodians that he would soon be released and allowed to return to Italy. This never happened.

#### **MR. BRITEL’S RENDITION FROM PAKISTAN TO MOROCCO**

10. On the night of 24 May 2002, Mr. Britel was handcuffed, blindfolded, and taken by car to an airport somewhere on the outskirts of Lahore. After approximately one half hour, someone grabbed him from behind and held him so tightly around his neck that he thought he would suffocate. Mr. Britel was escorted to what he later discovered to be a bathroom where his clothes were cut off with a box cutter. At one point his blindfold was removed and he saw four or five men dressed in black from head to toe, with only their eyes showing. These men examined and photographed Mr. Britel and then dressed him in a diaper and a torn t-shirt. Mr. Britel was blindfolded again and placed in a metallic slip which was chained to the shackles that bound his hands and feet.
11. Mr. Britel was dragged onto an aircraft and forced on his back. Shortly thereafter, he heard another passenger being brought on board. Mr. Britel was ordered not to move

from his position on the floor of the aircraft; when he did move, he was hit or kicked. He was denied permission to go to the bathroom for the entire duration of the flight. During this time his back began to hurt and he asked, but was denied, permission to turn over. Tape was placed over his mouth instead. He was left like this until the plane landed in Rabat, Morocco on 25 May 2002. Flight records verify this account (see Document (b), Legal complaint filed on May 30, 2007 in *Binyam Mohamed et al v. Jeppesen Dataplan, Inc.*, No. C07-02798 JW (N.D. Cal. Civ. R.1-1 filed May 30, 2007) (“Mohamed et. al”) at ¶ 94).

**MR. BRITEL’S DETENTION, INTERROGATION AND TORTURE IN MOROCCO AND ENFORCED DISAPPEARANCE: MAY 2002-FEBRUARY 2003**

12. Following his arrival in Rabat, U.S. officials involved in his rendition from Pakistan transferred Mr. Britel to the custody of agents of the Moroccan intelligence services. They drove Mr. Britel to the notorious Témara detention center. Until 11 February 2003 (some 8 ½ months), Mr. Britel was held in total isolation in a tiny cell, deprived of both sleep and adequate food. During this time, Mr. Britel underwent intensive interrogation about his private life and people he allegedly associated with in Italy. At this time, his interrogators also pressured him to act as an informant following his eventual release.
13. While being interrogated, Mr. Britel was subjected to torture and other forms of cruel, inhuman or degrading treatment. He was handcuffed and blindfolded and beaten severely on all parts of his body. His interrogators threatened him with even worse torture, including castration and a technique routinely employed by the Moroccan intelligence services known as “bottle torture,” whereby a bottle is forced into the detainee’s anus. His interrogators also repeatedly made threats against Mr. Britel’s wife and sisters.
14. From the time of his initial apprehension in Pakistan and throughout his detention in Pakistan and Morocco, Mr. Britel’s family had no idea of his whereabouts. On 7 June 2002—after Mr. Britel had been rendered to Morocco—his brother, based in Italy, received a phone call from a man claiming that he had been detained with Mr. Britel in Islamabad. No member of Mr. Britel’s family was ever officially made aware of his location.

**MR. BRITEL’S RELEASE, ARREST, DETENTION AND TRIAL: FEBRUARY 2003-MAY 2003**

15. On 11 February 2003, without explanation or charge, Mr. Britel was released from the Témara detention center. He was blindfolded, driven from the facility to his family’s house in Kenitra, Morocco, and immediately released. On 26 February 2003, Mr. Britel’s wife, Ms. Pighizzini Britel, arrived in Morocco to meet with her husband; this was the first time she had seen him since he left Italy in 2001.
16. Mrs. Britel observed that her husband exhibited both physical and psychological signs of his torture. He suffered from dizziness and chronic diarrhea, and his left eye and ear were permanently damaged. Mrs. Britel also noticed that large portions of his skin had turned black and blue and that no hair grew in these areas.

17. Even after his release, agents of the Moroccan intelligence services continued to harass Mr. Britel, calling around to see him and insisting that he tell nobody about his imprisonment and torture in Témara. A Moroccan official would call and meet with him at least once a week, and during their meetings attempt to pressure him into agreeing to collaborate with Moroccan intelligence upon his return to Italy. Under this constant pressure, Mr. Britel remained in a fragile psychological state.
18. Fearful for his own safety and that of his family, Mr. Britel attempted to return home immediately to Italy with his wife, but his plans suffered numerous administrative hurdles and delays. As his passport had been confiscated in Pakistan, he was unable to freely leave Morocco and enter Italy. However, after several months, with the assistance of the Italian embassy in Rabat, on 12 May 2003, Mr. Britel received necessary travel documentation. These documents allowed him to leave Morocco and enter Italy and were valid through 24 May 2003.
19. Not wishing to fly to Italy from Morocco without an escort from the Italian embassy, Mr. Britel instead decided to travel overland to Italy via Melilla, a town on the border between Morocco and Spain. Because Mrs. Britel had already purchased a return ticket, they decided to travel separately and that Mrs. Britel would leave Morocco only after she had heard that her husband had made it safely across the Moroccan border. That same day, 12 May, Mr. Britel took a bus towards the Moroccan border town of Nador. Concerned that the documentation he had would not allow him to leave Morocco and enter Italy, Mr. Britel called his wife and family multiple times over the course of his journey. His last call to them was made on 15 May 2003.

### **RE-ARREST ON 16 MAY 2003**

20. On the evening of 16 May 2003, Casablanca was bombed in a suspected terrorist attack. Earlier that day, when Mr. Britel reached the Melilla border crossing he was stopped and detained for six hours without any explanation. He was then handcuffed, forced into a car, and driven to the Témara detention centre. On 17 May 2003, the day after the bombings, Mrs. Britel heard that an Italian of Moroccan descent had been arrested in the town of Melilla. She feared the worst.

### **MR. BRITEL'S TORTURE, TRIAL AND SENTENCING IN MOROCCO: MAY 2003-PRESENT**

21. Mr. Britel was held incommunicado at Témara detention center for four months. He was held under inhumane conditions throughout this time and, eventually, under torture and duress, signed a confession that he was never permitted to read. He was refused access to a lawyer prior to his trial. No prosecution witnesses were presented for cross examination and no witnesses or documentary evidence were allowed to be presented by the defense.
22. On 16 September 2003, Mr. Britel was tried for his alleged involvement in terrorist activities. Mrs. Britel arrived in Morocco on 28 September and visited him at the Salé prison near Rabat, where he was then held. Mr. Britel was extremely thin and Mrs. Britel could see that his wrists bore deep marks from his handcuffs.

23. On 2 October 2003, Mr. Britel was convicted and sentenced to fifteen years for involvement in terrorist activities. As noted by the lawyer who represented Mr. Britel, during his trial, Mr. Mohammed Essabar, the procedures followed failed to comport with universally accepted fair trial standards. In particular, Mr. Essabar noted that in convicting Mr. Britel, the court relied upon confessions he had made while he was interrogated under torture at the Témara detention center.
24. On appeal, Mr. Britel's sentence was reduced to nine years imprisonment. Since his sentence began, Mr. Britel has gone on several hunger strikes to protest his torture, conditions of confinement and failure of the Moroccan authorities to afford him due process during his trial.<sup>1</sup>
25. Mr. Britel is serving his sentence at the Oukasha prison in Casablanca. Mrs. Britel has visited her husband there on numerous occasions, the most recent visit having taken place in April 2009. Mrs. Britel observed first-hand the inhumane conditions of her husband's confinement and his deteriorating physical and psychological health. He has permanent scarring and suffers from terrible pain in his bones and has permanent damage to an eye and ear. His immune system appears compromised as he often falls ill. Mr. Britel also has a chronic urinary tract infection and suffers from skin rashes.

#### **OTHER LEGAL DEVELOPMENTS**

26. On 29 September 2006, following a six-year long criminal investigation in Italy into Mr. Britel's suspected involvement in terrorist activities, the examining judge dismissed his case, finding a complete lack of any evidence linking Mr. Britel with any criminal, let alone terrorist-related, activity.
27. In January 2007, 62 members of the Italian Parliament, 25 Italian Senators and 12 members of the European parliament supported a request calling on Moroccan authorities to pardon Mr. Britel and Italy petitioned the King of Morocco to have Mr. Britel pardoned, released from prison and immediately returned to Italy. To date, Moroccan authorities have failed to act upon these diplomatic efforts and since January 2007, so far as we are aware, the Italian government has done nothing further to represent Mr. Britel's interests.
28. In 2006, a European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners condemned "the extraordinary rendition of Italian citizen Abou Elkassim Britel, who was arrested in Pakistan in March 2002 by the Pakistani police and interrogated by US and Pakistani officials, and subsequently rendered to the Moroccan authorities and imprisoned in the detention facility 'Témara', where he remains detained."
29. In May 2007, the ACLU filed a civil suit on behalf of Mr. Britel and four other men who had been subjected to the U.S. "extraordinary rendition" program. In this suit, Mr. Britel and the other plaintiffs sued Jeppesen Dataplan, Inc., a wholly owned

<sup>1</sup> Souad Mekhennet, Hunger Strike by Hundreds of Islamists in Moroccan Jails, NY Times, June 21, 2008, available at <http://www.nytimes.com/2008/06/21/world/africa/21morocco.html>.

subsidiary of the Boeing Aerospace Corporation for its participation in their forced disappearance and torture. Specifically, the suit alleges that by knowingly providing flight and logistical support services to the aircraft used by the CIA to transport Mr. Britel to Morocco, Jeppesen was complicit in these human rights violations.

We now wish to provide relevant, contextual information concerning Mr. Britel's case which supports our request for your intervention.

## **THE WIDESPREAD NATURE OF TORTURE AND INHUMANE TREATMENT OF PRISONERS IN MOROCCO**

Mr. Britel's account of his torture and other inhumane treatment by Moroccan authorities is consistent with the reported widespread and systemic use of such practices by agents of the Moroccan government. Reports by the U.S. State Department and non-governmental organizations spanning the years of Mr. Britel's detention in Morocco have documented the persistence of torture and other forms of ill treatment in Moroccan detention facilities. The U.S. Department of State has long documented the prevalence of torture and other forms of inhumane treatment in Morocco, particularly for detainees in the custody of the country's security and intelligence services. For instance, reports for 2002 and 2003, noted that members of the security forces "tortured or otherwise abused detainees," while the failure to prosecute such cases "raised concerns regarding the [Moroccan] Government's commitment to resolving the problem." These reports also list several documented killings of prisoners by security personnel and note that the use of torture by security personnel became even more commonplace following the passage of a new "antiterrorist" law in May 2003. The use of confessions extracted under torture is also well documented: and that "[a]ttorneys for some persons convicted under the new anti-terrorism law claimed their clients were convicted on the basis of confessions coerced by torture."

International non-governmental organizations reported similar findings during this period. For example, in July 2004, the International Federation for Human Rights (FIDH) released an investigative report on Moroccan human rights abuses associated with counter-terrorism efforts. The report detailed gross human rights abuses by Moroccan authorities and specifically highlighted conditions at the Témara detention center during the periods when Mr. Britel was detained.<sup>2</sup> The FIDH investigation found lengthy periods of solitary confinement, abuse and torture to be endemic at the facility; "The cells, in the basement, are lit day and night. During any movement, as for interrogations, detainees are blindfolded. Interrogations are often very long, 16 hours a day we are told, with the policemen relaying each other. Insults and blows are usual, and individuals are sometimes stripped. Finally, several cases of torture by electricity were pointed out." The report also noted several cases of detainees having been burned with cigarettes and "kept strung up for hours or subjected to torture by [being] forced to swallow water." The report also documents that detainees were threatened with rape and that some were sodomized with bottles. Finally, the FIDH report highlights several cases of suspicious deaths in custody.<sup>3</sup>

<sup>2</sup> International Federation for Human Rights, *Morocco: Human Rights abuses in the fight Against Terrorism* (July 2004), available at <http://www.fidh.org/IMG/pdf/maroc379-2.pdf>

<sup>3</sup> See also, Amnesty International: Report 2003 (Morocco/Western Sahara section, covering events from January-December 2002), available at <http://asiapacific.amnesty.org/report2003/mar-summary-eng> (noting that: "scores of detainees were tortured or ill-treated in custody in order to extract confessions or to force them to sign statements which they rejected or denied." And in 2003, that: "an alarming upsurge in the number of allegations of torture and ill-treatment" over the previous two-year period and stated that many suspects were "reportedly



Given Mr. Britel's own account of his treatment, his wife's first-hand and very recent observations of the conditions under which he is currently detained, and the long documented history of torture and abuse in detention facilities run by the Moroccan government, we have a firm foundation for believing that Mr. Britel has been and is currently being subjected to treatment that constitutes inhumane treatment rising to the level of torture. In addition, the complete lack of treatment for his torture at the hands of agents of the Pakistani, U.S. and Moroccan intelligence services have only served to exacerbate his current physical and psychological health.

## THE U.S. "EXTRAORDINARY RENDITION" PROGRAM

Mr. Britel's apprehension, forcible disappearance, *incommunicado* detention and interrogation under torture were carried out as part of a broader counter-terrorism program initiated and developed by the United States in the aftermath of the September 11 terrorist attacks. This program, commonly known as the "extraordinary rendition" program, was devised and developed by the government of the United States in cooperation with governments around the world.

### BACKGROUND INFORMATION ON THE US "EXTRAORDINARY RENDITION" PROGRAM

Beginning in the early 1990s and continuing to this day, the CIA, together with other U.S. government agencies, has developed an intelligence-gathering program involving the apprehension and transfer of foreign nationals suspected of involvement in terrorism to detention and interrogation in countries where, in the United States' view, U.S. federal and international legal safeguards do not apply. Pursuant to this program, suspects are secretly detained at facilities outside U.S. sovereign territory, run by either U.S. or foreign authorities, where U.S. or foreign intelligence agents interrogate them. In all instances, detention and interrogation methods are employed that fail to adhere to recognized international standards, including torture.

While the United States' engagement in rendition -- the extra-legal transfer of an individual from one State to another -- has a long history,<sup>4</sup> "extraordinary rendition," and specifically, the U.S. "extraordinary rendition" program -- the transfer of terrorist suspects for secret detention and harsh interrogation outside the United States -- does not.

The roots of the current program can be traced to the Reagan administration, when rendition was employed to affect the transfer of terrorism suspects to stand trial in the United States. During the Clinton presidency this practice was expanded to affect the transfer of suspects from one country to another where they were expected to stand trial.<sup>5</sup> Testifying before a hearing of the Joint House/Senate Intelligence Committee in October 2002, George J. Tenet, then Director of Central Intelligence, described rendition as a key counterterrorism tool, and

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tortured while held in secret and unacknowledged detention by the Directorate for the Surveillance of the Territory (the internal intelligence service)."

<sup>4</sup> Michael John Garcia, *Renditions: Constraints Imposed by Laws on Torture*, CRS Reports for congress, 12 October 2007 available at <http://fas.org/sgp/crs/natsec/RL32890.pdf>.

<sup>5</sup> Margaret Satterthwaite, *Rendered Meaningless: Extraordinary Rendition and the Rule of Law*, 75 GEO. WASH. L. REV. 1333 (2006). See also, *Extraordinary Rendition in US Counterterrorism Policy: The Impact on Transatlantic Relations: Before H. Subcomm. on International Organizations, Human Rights, and Oversight and H. Subcomm. on Europe, Comm. on Foreign Affairs*, 110th Cong. 18-45 (2007) (Testimony of Michael Scheuer) available at <http://foreignaffairs.house.gov/110/34712.pdf>.

testified that in an unspecified period before September 11 2001, the United States had undertaken seventy such renditions. Since this time, the initial objectives of CIA renditions -- the transfer of suspects to stand trial -- have altered significantly and are now aimed at the clandestine apprehension, transfer, detention, and interrogation of foreign nationals suspected of involvement in terrorism outside the United States.<sup>6</sup> Thus, it is the transfer of individuals to detention and interrogation outside the United States, and entirely outside the rule of law, that makes rendition, as practiced by the United States in the post 9/11 era, “extraordinary.”

The program serves two discrete functions: it permits agents of the United States to apprehend and detain foreign nationals whom it considers terrorist suspects outside U.S. sovereign territory; and it permits those agents, either on their own or through counterparts in foreign intelligence agencies, to employ interrogation methods prohibited under U.S. or international law as a means of obtaining information from suspects. Memoranda prepared by the U.S. Department of Justice’s Office of Legal Counsel have consistently advanced the position that foreign nationals held at such facilities, outside U.S. sovereign territory, are not protected by the U.S. Constitution or by U.S. obligations under international law, and that U.S. officials cannot, therefore, be held accountable in U.S. courts for actions carried out in relation to such persons. For example, government lawyers have consistently advanced this argument in habeas corpus proceedings brought on behalf of foreign nationals detained and interrogated at Guantánamo.<sup>7</sup> In short, the extraordinary rendition program has been developed to enable U.S. officials to detain and interrogate terrorism suspects outside the rule of law and to evade accountability for their unlawful acts in U.S. courts.

The program has enabled the United States to apprehend and transport terrorism suspects, such as Mr. Britel, to detention and interrogation facilities in Morocco, Egypt, Afghanistan, Syria, Jordan, and other countries where the U.S. Department of State, Human Rights Watch, Amnesty International, and other international and national human rights organizations have reported that the use of torture is routine.<sup>8</sup> Other suspects have been transferred to detention and interrogation outside the United States in facilities -- so-called “black sites” -- run by the CIA.<sup>9</sup> Ultimately, many of the men subjected to the program are held in indefinite detention either at Guantánamo or in the custody of foreign governments.<sup>10</sup>

Since October 2001, the media has reported on the existence of the program and many of its operational details. Following these initial reports, literally thousands of press reports and a handful of books about the “extraordinary rendition” program have been published; documentaries and films have been aired worldwide; criminal investigations have commenced; and inter-governmental and national-level inquiries, as well as human rights organizations, have reported on the rendition program.<sup>11</sup> One of the facets of the program

<sup>6</sup> See, Testimony of Michael Scheuer, *Id.*

<sup>7</sup> See, e.g., Brief, United States of America, in *Boumediene, et al. v. Bush*, Oct. 2007 (WL 695614) (Nos. 06-1195 & 06-1196) available at <http://www.usdoj.gov/osg/briefs/2007/3mer/2mer/2006-1195.mer.aa.pdf>.

<sup>8</sup> See e.g., U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Right Practices 1999-2008, Near East and North Africa available at <http://www.state.gov/g/drl/rls/hrrpt/>; Human Rights Watch, World Reports 1999-2008 available at <http://www.hrw.org/doc/?t=pubs>; Amnesty International World Reports 1999-2008 available at <http://thereport.amnesty.org/en/regions/middle-east-north-africa/morocco>.

<sup>9</sup> See, Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post., Nov. 2, 2005 A01.

<sup>10</sup> See e.g. Amnesty International, *USA: Below the Radar – Secret Flights to Torture and ‘Disappearance’* (2006) available at [http://www.amnestyusa.org/stoptorture/pdf/below\\_the\\_radar\\_full\\_report.pdf](http://www.amnestyusa.org/stoptorture/pdf/below_the_radar_full_report.pdf).

<sup>11</sup> For a non-exhaustive list of these media reports, books, documentaries and reports, see, Declaration of Steven Macpherson Watt in Support of Plaintiffs’ Opposition to United States’ Motion to Dismiss, or, in the alternative,

that has enabled these investigations and that has resulted in the exposure of what the United States intended to be a covert operation is the discovery of a fleet of some twenty-six aircraft used by the CIA in the program.

Beginning in 2004, reports have been published identifying a network of aviation corporations run by the CIA. Some of these corporations own the aircraft used to transport rendition victims around the world, while others furnish the personnel to fly them.<sup>12</sup> Although many of these corporations appear to be CIA front companies, the CIA has also contracted with legitimate U.S.-based corporations to provide flight and logistical support services to the aircraft and crew, most notably Jeppesen Dataplan Inc., a wholly owned subsidiary of the Boeing Aerospace Company.<sup>13</sup>

### **OFFICIAL U.S. ACKNOWLEDGEMENT OF THE RENDITION, DETENTION AND INTERROGATION PROGRAM**

Despite widespread media coverage of the “extraordinary rendition” program, as well as criminal investigations and public inquiries into the program in Europe and Canada,<sup>14</sup> U.S. officials initially said little about the program or its objectives. In September 2006, however, President Bush announced the transfer of fourteen so-called “high-value detainees” from secret overseas prisons run by the CIA to Guantanamo for further detention and eventual trial by military commission.<sup>15</sup> In announcing these transfers, President Bush publicly acknowledged the existence of the rendition program, including the existence of secret overseas detention facilities operated by the CIA and the interrogation of terrorist suspects at

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Summary Judgment, in *Mohammed et al., v. Jeppesen*, Dec. 14, 2007 (N.D. Ca. 2005) (No. 5:07-cv-02798) (“Declaration of Steven Macpherson Watt”)

<sup>12</sup> See e.g., Trevor Paglen & A.C. Thompson, *Torture Taxi: On the Trial of the CIA’s Rendition Flights* (2006); Stephen Grey, *Ghost Plan: The True Story of the CIA Torture Program* (2006); See also, Council Of Europe’s Parliamentary Assembly Committee on Legal Affairs and Human Rights (Rapporteur Dick Marty), *Alleged Secret Detentions and Unlawful Inter-state Transfers Involving Council of Europe Member States* (June 12, 2006), available at <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf>; Council Of Europe’s Parliamentary Assembly Committee on Legal Affairs and Human Rights (Rapporteur Dick Marty), *Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report* (June 11, 2007), available at <http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf> (discussing worldwide “spider web” of CIA flights ); *Working Document No. 7 on ‘Extraordinary Renditions’* (Nov. 16, 2006), available at

[http://www.europarl.europa.eu/comparl/tempcom/tdip/working\\_docs/pe380593\\_en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380593_en.pdf); *Working Document No. 8 on the Companies Linked to the CIA, Aircraft Used by the CIA and the European Countries in which CIA Aircraft Have Made Stopovers* (Nov. 16, 2006), available at

[http://www.europarl.europa.eu/comparl/tempcom/tdip/working\\_docs/pe380984\\_en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380984_en.pdf) ; and *Working Document No. 9 on Certain European Countries Analysed During the Work of the Temporary Committee* (Feb. 26, 2007), available at [http://www.europarl.europa.eu/comparl/tempcom/tdip/working\\_docs/pe382420\\_en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe382420_en.pdf).

<sup>13</sup> See e.g., Declaration of Sean Belcher in Support of Plaintiffs’ Opposition to United States’ Motion to Dismiss, or, in the alternative, Summary Judgment, in *Mohammed et al., v. Jeppesen*, Oct. 15, 2007 (N.D. Ca. 2005) (No. 5:07-cv-02798) available at

[http://www.aclu.org/pdfs/safefree/mohamed\\_v\\_jeppesen\\_declaration\\_sean\\_belcher.pdf](http://www.aclu.org/pdfs/safefree/mohamed_v_jeppesen_declaration_sean_belcher.pdf) (Mr Belcher is a former employee of Jeppesen Dataplan Inc.); See also, Council Of Europe, 2007 Report, *supra n.12* at ¶ 185 (identifying Jeppesen as the “... aviation services provider customarily used by the CIA ...”).

<sup>14</sup> Stephen J. Toope, Commissioner of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar Report (2005) available at [http://www.ararcommission.ca/eng/ToopeReport\\_final.pdf](http://www.ararcommission.ca/eng/ToopeReport_final.pdf).

<sup>15</sup> George Bush, President, United States of America, President Discusses Creation of Military Commissions to Try Suspected Terrorists (Sept. 6, 2006) transcript available at <http://www.whitehouse.gov/news/releases/2006/09/print/20060906-3.html>.

those sites using “an alternative” set of techniques. The President also indicated that although no other suspects were then held by the CIA, the program itself would remain operative.<sup>16</sup>

Since September 2006, President Bush and other senior members of the administration, including the current Director of Central Intelligence, General Michael Hayden, have publicly discussed the program and defended its utility on numerous occasions.<sup>17</sup> While the President and others have disclosed that the program exists, and confirmed that its purpose is the detention and interrogation of persons suspected of involvement in terrorist activities, they have repeatedly denied that detainees are tortured in the program or sent to countries where they will be subjected to such mistreatment.<sup>18</sup> Their assertions, however, conflict with the testimony of individuals who have been subject to the program, including Mr. Britel, as well as the findings of journalists and numerous overseas governmental investigations and inquiries.

### **THE UNITED STATES’ FAILURE TO CONDUCT AN INVESTIGATION INTO THE OPERATION OF THE RENDITION PROGRAM**

Evidence suggests that since September 11, the use of “extraordinary rendition” by the United States has been both widespread and systemic. Although the precise number of individuals subjected to the program is not known, U.S. officials have publicly stated that at least “several dozen”<sup>19</sup> or “mid-range two figures”<sup>20</sup> have been rendered. However, in 2005, the Prime Minister of Egypt, Ahmed Nazif, stated that Egypt alone had assisted the United States with “60 or 70” renditions since September 11.<sup>21</sup> Investigative journalists have reported that as many as 100 or 150 men have been subjected to extraordinary rendition;<sup>22</sup> the Council of Europe and European Parliament have identified 18 men, mainly European nationals and legal residents, who had been rendered; and, in a report published in 2007, six human rights

<sup>16</sup> *Id.* Media reports citing US officials, confirm that the program was still in operation after this announcement. Mark Mazzetti, *CIA Secretly Held Qaeda Suspect, Official Say*, N.Y. TIMES, Mar. 15, 2008 (reporting on the detention and interrogation of Muhammad Rahim, an Afghan citizen, by the CIA for at least six months in the summer of 2007).

<sup>17</sup> *See*, Declaration of Steven Macpherson Watt, *supra* n. 11, at ¶ 3.

<sup>18</sup> Both President Bush and CIA Director Hayden have openly admitted, however, that an “alternative” set of procedures has been employed during interrogations and they have acknowledged also that detainees are indeed sent to countries where there is a likelihood of torture but that international accountability should torture eventuate is avoided through the procurement of so-called “diplomatic assurances” from the government concerned before the transfer takes place. Bush, *President Discusses Creation of Military Commissions to Try Suspected Terrorists*, *supra* n.15 at ¶ 16; Hayden, *A Conversation with Michael Hayden*, *supra* n. 11 at ¶¶ 22, 23.

<sup>19</sup> Michael Duffy & Timothy J. Burger, *Ten Questions for John Negroponte*, TIME, Apr. 16, 2006, at 6, available at <http://www.time.com/time/printout/0,8816,1184080,00.html>.

<sup>20</sup> Hayden, *A Conversation with Michael Hayden*, *supra* n. 11 at ¶ 23.

<sup>21</sup> Interview between NBC’s Tim Russert and Egyptian Prime Minister Ahmed Nazif, *Meet the Press*, 15 May 2005, transcript available at <http://www.msnbc.msn.com/id/7862265/>; *See also*, Human Rights Watch, *Black Hole: The Fate of Islamists Rendered H*, BLACK HOLE: THE FATE OF ISLAMISTS RENDERED TO EGYPT (May, 2005) available at <http://hrw.org/reports/2005/egypt0505/> (based on interviews with exiled activists, Egyptian lawyers, human rights groups, and family members of current detainees, as well as reviews of English and Arabic press accounts, identifying at least 63 individuals who have been rendered to, and in a few cases from, Egypt since 1995 [see Appendix I]. Human Rights Watch notes that the United States was actively involved in these cases.).

<sup>22</sup> Jane Mayer, *Outsourcing Torture: The Secret History of America’s “Extraordinary Rendition” Program*, New Yorker, Feb. 14, 2005, at 106; *see also*, Priest, *CIA Holds Terror Suspects in Secret Prisons*, *supra* n.9.

organizations listed the names of 39 men they believed had been rendered and remain in CIA custody.<sup>23</sup>

Despite these reports substantiating the widespread and systemic nature of the practice, no investigation has been launched into either those involved in devising and developing the program or those individual agents of the CIA who are personally responsible. The United States has also stymied other governments' efforts to investigate and prosecute U.S. officials involved in the program.<sup>24</sup>

## **MR. BRITEL'S "EXTRAORDINARY RENDITION", SUBSEQUENT TRIAL AND DETENTION IN MOROCCO VIOLATE INTERNATIONAL HUMAN RIGHTS LAW**

Mr. Britel, as a victim of the U.S. "extraordinary rendition" program, was subject to numerous human rights violations, including his rights to be free from enforced disappearance, prolonged arbitrary detention and torture. His subsequent criminal trial in Morocco and his current conditions of confinement also violate fundamental human rights guarantees, specifically Mr. Britel's right to a fair trial, and to be free from torture and other forms of cruel, inhuman or degrading treatment or punishment. As detailed below, the governments of the United States, Pakistan and Morocco are responsible for the violation of these rights.

### **MR. BRITEL'S ENFORCED DISAPPEARANCE**

The International Convention for the Protection of All Persons from Enforced Disappearance prohibits the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, and the subsequent refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person. The U.N. Human Rights Committee ("HRC") has also determined that enforced disappearance violates article 9(1) of the International Covenant on Civil and Political Rights.<sup>25</sup> The prohibition of enforced disappearance is a *jus cogens* norm of international law and a non-derogable right, equally applicable in time of peace and war or other state of emergency.

<sup>23</sup>Amnesty International et al, *Off the Record: US Responsibility for Enforced Disappearances in the "War on Terror"*, (2007) available at <http://hrw.org/backgrounders/usa/ct0607/ct0607web.pdf> (presenting information on 39 detainees suspected to have been held at CIA "black site" detention facilities outside the United States and who remain unaccounted for).

<sup>24</sup> See e.g., Germany Drops Pursuit of CIA Kidnappers, *Der Spiegel*, Sept. 24, 2007 available at <http://www.spiegel.de/international/germany/0,1518,507455,00.html>; Times Online, Italian Judge Orders First "Rendition Trial" of CIA Agents, Feb. 16, 2007 available at <http://www.timesonline.co.uk/tol/news/world/europe/article1395637.ece>

<sup>25</sup> See e.g., *Bleier Lewenhoff v. Uru.*, HRC, ¶ 14, U.N. Doc. CCPR/C/OP/1 at 109 (1985); *Quinteros v. Uru.*, HRC, ¶ 13, U.N. Doc. CCPR/C/OP/2 at 138 (1990); *Bautista de Arellana v. Colom* HRC, ¶ 9, U.N. Doc. CCPR/C/55/D/563/1993 (1995). See also, Inter-American Convention; *Goiburú et al. v. Paraguay*, Inter-Am. Ct. H.R., (*Merits, Reparations and Costs*) (2006) (comparing the US "extraordinary rendition" program to the "atrocious and inhuman methods and practices" of Operation Condor) (Separate Opinion of Judge Antônio Augusto Cançado Trindade at ¶¶ 54, 55, 59).

As described, the entire “extraordinary rendition” program is aimed at forcibly disappearing, secretly detaining and torturing those individuals that the U.S. government suspects of having been involved in terrorism. The program has the effect of placing individuals, such as Mr. Britel, beyond the reach of legal protections, rendering them particularly vulnerable to torture and other unlawful methods of detention and interrogation.

From 10 March 2002 – 24 May 2002, Mr. Britel was apprehended and secretly detained by agents of the Pakistani government. The U.S. government knew of, collaborated in and effectively controlled Mr. Britel’s secret detention in Pakistan. The U.S. also knew of, collaborated in and controlled Mr. Britel’s *incommunicado* detention in Morocco and Moroccan authorities facilitated this detention.

From the time of his initial apprehension in Pakistan until many months after his rendition to detention in Morocco, Mr. Britel’s wife and family had no official confirmation of his whereabouts. The governments of Pakistan, the United States and Morocco all participated in Mr. Britel’s secret detention. These governments, knew of his whereabouts yet none of them disclosed this information to Mr. Britel’s wife and family.

### **MR. BRITEL’S TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT**

Article 2 of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) prohibits any 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. Article 7 of the ICCPR also prohibits such acts. In addition, both treaties prohibit any act that constitutes cruel, inhuman or degrading treatment or punishment. Like the prohibition on enforced disappearance, the prohibition of torture and other cruel, inhuman or degrading treatment is a *jus cogens*, non-derogable right.

Article 3 of CAT also explicitly prohibits the removal of any person, regardless of status, to a country where there is a substantial likelihood that they will be tortured. The HRC has found that the prohibition of *non-refoulement* is encompassed by article 7 (prohibition of torture and other cruel, inhuman or degrading treatment).

The severe mistreatment to which Pakistani, United States and Moroccan authorities subjected Mr. Britel constitute cruel, inhuman, and degrading treatment rising to the level of torture. Mr. Britel’s current conditions of confinement in Morocco also violate, at a minimum, his right to be free from cruel, inhuman or degrading treatment.

As detailed, Mr. Britel was subjected to the following treatment:

- Repeated severe beatings, sometimes with a cricket bat;
- Severe kicks;
- Clothes cut off with a box cutter;
- Sensory deprivation during transfer, including hooding and blindfolding;
- Shackling of hands and feet and replacement of shackles with tight plastic bands;

- Hung from the walls or ceiling of his cell for extensive periods of time, with hands and feet bound;
- Threats of worse torture, including castration and a technique routinely used by Moroccan interrogators known as “bottle torture”, and death;
- Threats to his family, including the rape of his wife and sisters;
- Extreme sleep deprivation;
- Prolonged incommunicado detention for nearly one year;
- Inhumane conditions of confinement;
- Denial of adequate food, water and medical treatment for both physical and psychological injuries, including torture.

In addition, Mr. Britel’s right not to be sent to a country where there was a substantial likelihood of his being tortured was violated by the United States when agents of the government, acting in collaboration with Pakistan, rendered Mr. Britel from Pakistan to Morocco for detention and interrogation. From U.S. Department of State Human Rights Reports on Morocco as well as those of non-governmental organizations, the United States was aware, or reasonably should have been aware, of the likelihood of Mr. Britel being tortured there. Indeed, this was the U.S. government officials’ intention.

#### **MR. BRITEL’S CONFESSION OBTAINED UNDER TORTURE**

As set out above, Mr. Britel’s conviction was based, in part, on a confession he gave obtained as a result of torture. As the Special Rapporteur on Torture has recently highlighted, use of such evidence is never permissible under international law.<sup>26</sup>

#### **MR. BRITEL’S PROLONGED ARBITRARY DETENTION**

Article 9 of the ICCPR prohibits arbitrary arrest and detention. The U.N. Working Group on Arbitrary Detention has provided extensive guidance on the specific content of this norm, noting that a deprivation of liberty is arbitrary if it falls into one of three categories: (1) when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty; (2) when the deprivation of liberty results from the exercise of rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10, and 21 of the Universal Declaration of Human Rights or articles 12, 18, 19, 21, 22, and 25 of the ICCPR; or (3) when the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out by the Universal Declaration

<sup>26</sup> See, Human Rights Council Resolution 8/8, (adopted at its 28<sup>th</sup> meeting, on 18 June 2008) adopting, *inter alia*, the following:

*Recalling* also that the prohibition of torture has been recognized as a peremptory norm of international law,

...

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and **can thus never be justified**... (emphasis added)
2. *Condemns in particular any action or attempt by States or public officials to legalize, authorize or acquiesce in torture* under any circumstances, **including on grounds of national security** or through judicial decisions. (emphasis added)

...

6 (c) To ensure that **no statement established to have been made as a result of torture is invoked as evidence in any proceedings** (emphasis added)

*See also*, Report of the U.N. Special Rapporteur on Human Rights While Countering Terrorism to the U.N. Commission on Human Rights, Resolution No. E/CN.4/2006/98 (December 28, 2005)

and in the relevant international instruments accepted by the State concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.<sup>27</sup>

Although article 4 (non-derogable rights) of the ICCPR permits a state to derogate from this prohibition during war or other state of emergency, the HRC, emphasizing the absolute nature of judicial review of all deprivations of liberty, has clarified that preventive detention for national security purposes must be subject to judicial review.<sup>28</sup>

In addition, the HRC and other international human rights bodies have determined that prolonged *incommunicado* secret detention can itself constitute a form of torture or cruel, inhuman or degrading treatment.<sup>29</sup>

Mr. Britel was subjected to prolonged arbitrary detention by Pakistani, U.S. and Moroccan authorities. In collaboration with the United States, Pakistani officials arbitrarily detained, interrogated and tortured Mr. Britel for a period of two and a half months without charge, judicial review of his detention and without affording him access to legal or consular representation. Mr. Britel was also arbitrarily detained in Morocco by Moroccan authorities for eight months from May 2002 to February 2003 and for a further four months, from May, 2003 to September 2003. In Morocco, Mr. Britel was held *incommunicado*, tortured and denied access to legal and consular representation. No charges were brought against him. Nor was the basis of Mr. Britel's detention reviewed by a judge.

#### **MR. BRITEL'S RIGHT TO A FAIR TRIAL**

Article 14 of the ICCPR guarantees the right of an accused to a fair trial. The right is considered to start running not "only upon the formal lodging of a charge but rather on the date on which the State activities substantially affect the situation of the person concerned."<sup>30</sup> Thus, fair trial guarantees must be respected as soon as the investigation against the accused begins, through completion of the criminal trial.

The right to a fair trial encompasses three sets of rights: (1) pre-trial rights, including the prohibition on arbitrary arrest and detention, the right to counsel, the right to prompt appearance before a judge, the prohibition of *incommunicado* pre-trial detention and torture or other cruel, inhuman or degrading treatment while so detained; (2) rights during the hearing itself, including those rights particularized in article 14 of the ICCPR and article 15 of CAT (prohibition of evidence obtained through torture or other cruel, inhuman or degrading treatment); and (3) post-trial rights, including significantly those rights guaranteed by article 14(5) of the ICCPR, the right of the accused to have "his conviction and sentence reviewed by a higher tribunal according to law."

<sup>27</sup> See, Office of the High Commissioner for Human Rights, The Working Group on Arbitrary Detention *Fact Sheet No. 26*; See also, UN Human Rights Committee, General Comment 8, Article 9: Right to Liberty and Security of Persons, ICCPR Sixteenth Session, A/37/40 (1982).

<sup>28</sup> Human Rights Committee, Gen. Cmt. 8: Right to liberty and security of persons (Art. 9), A/37/40, ¶ 4 (1982).

<sup>29</sup> *El-Megreisi v. Libyan Arab Jamahiriya*, Communication No. 440/1990, U.N. Doc. CCPR/C/50/D/440/1990, ¶ 5.4 (1994); see also, Resolution 2004/41, emphasis added. See also "ICCPR General Comment 20 (Forty-fourth Session, 1992): Article 7: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment," A/47/40 (1992) 193, ¶ 6. ("Prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.")

<sup>30</sup> Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (N.P. Engel, Arlington: 1993)



As detailed, Mr. Britel's initial apprehension and detention during the entire period of his "extraordinary rendition" was wholly arbitrary under international law. Following his release from the program in February 2003, Mr. Britel was subjected to further violations of his right to a fair trial by Moroccan authorities. In particular, as Mr. Britel's lawyer during the trial documented, Mr. Britel's pre-trial rights following his arrest in May 2003 and rights during his criminal trial flouted basic fair trial procedures.<sup>31</sup> While in pre-trial detention, for example, Mr. Britel was held *incommunicado* and denied access to legal and consular representation. During his trial, Mr. Britel's eventual conviction was, in part, premised on a confession extracted through torture.

## **THE ITALIAN GOVERNMENT'S CRIMINAL INVESTIGATION INTO MR BRITEL, DIPLOMATIC EFFORTS TO SECURE HIS RELEASE AND THE EUROPEAN PARLIAMENTARY INQUIRY INTO HIS "EXTRAORDINARY RENDITION"**

On 29 September 2006, following a six-year criminal investigation in Italy into Mr. Britel's suspected involvement in terrorist activities, the examining judge dismissed his case, finding a complete lack of any evidence linking Mr Britel with any criminal, let alone terrorist-related, activity.<sup>32</sup>

In January 2007, 62 members of the Italian Parliament, 25 Italian Senators and 12 members of the European parliament supported a request calling on Moroccan authorities to pardon Mr. Britel and Italy petitioned the King of Morocco to have him pardoned, released from prison and immediately returned to Italy. To date, Moroccan authorities have failed to act upon these diplomatic efforts; and since January 2007, the Italian government has done nothing further to represent the interests of Mr. Britel.

In 2006, a European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners condemned "the extraordinary rendition of Italian citizen Abou Elkassim Britel, who was arrested in Pakistan in March 2002 by the Pakistani police and interrogated by U.S. and Pakistani officials, and subsequently rendered to the Moroccan authorities and imprisoned in the detention facility 'Témara ', where he remains detained; emphasizes that the criminal investigations in Italy against Abou Elkassim Britel were closed with no charges having been brought."<sup>33</sup>

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<sup>31</sup> See, Document (g) Letter from Mr. Essabar to Ms. Khaddija Anna Lucia Pighizzini dated April 15, 2009. Mr. Eassabar's observations are consistent with a pattern and practice of denial of due process during criminal trials in Morocco as documented in U.S. State Department human rights reports on Morocco and those of non-governmental organizations. See e.g., U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Right Practices, Morocco 2004, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27934.htm>. (documenting violations of the right to a fair public trial); FIDH report, *supra* n. 2 noting that: "[t]errorist suspects in Moroccan detention facilities [held during the same period as Mr. Britel] were routinely denied "the right to a lawyer or to legal assistance, the right to abstain from making an oral statement, and the right to a medical visit, which may be requested by the accused or ordered by the investigating magistrate if he observes results or indications of ill treatment."

<sup>32</sup> See, Document (c), Office of the Examining Judge for Preliminary Investigations, dated 29 September 2006, No 9745/06 GIP (copy of original with translation).

<sup>33</sup> See, Document (e), European Parliament Resolution on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners, (2006/2200(INI), February 2007 at ¶¶ 63 – 65.

## ATTEMPTS BY MR. BRITEL TO SEEK CIVIL REDRESS FOR HIS “EXTRAORDINARY RENDITION” IN U.S. COURTS

In May 2007, the ACLU filed a civil suit on behalf of Mr. Britel and four other men who had been subjected to the US “extraordinary rendition” program. In this suit, Mr. Britel and the other plaintiffs sued Jeppesen Dataplan, Inc., a wholly owned subsidiary of the Boeing Aerospace Corporation for its participation in their forced disappearance and torture. Specifically, the suit alleges that Jeppesen, by knowingly providing flight and logistical support services to the aircraft used by the CIA to transport Mr. Britel to Morocco, was complicit in these human rights violations.

On 19 October 2007, the United States government, invoking the state secrets privilege, requested that the court dismiss the case from the very outset, without consideration of any evidence supporting Mr. Britel’s claims, arguing that further litigation of the case in federal court would be harmful to U.S. national security interests. More specifically, the government argued that the litigation would embroil the court in issues concerning U.S. means and methods of intelligence gathering and U.S. relations with foreign powers.<sup>34</sup> In support of its invocation of the state secrets privilege, the government filed two affidavits setting out its position, only one of which was made public. In a brief opinion dated 9 February 2008, the District Court upheld the government’s position and dismissed the case, and in doing so, ignored a wealth of information in the public domain, including statements on the “extraordinary rendition” program from former President Bush and then Director of the CIA, describing in detail the parameters of the program and its operation.<sup>35</sup>

On 28 April 2009, a panel of the Ninth Circuit Court of Appeals reversed the District Court’s ruling and remanded the case for further proceedings.<sup>36</sup> On 12 June 2009, the U.S. government petitioned the court of appeals to request that it reconsider the panel’s ruling.<sup>37</sup> In its petition, the government adopted the same position on the states secrets privilege as previously adopted by the Bush administration; that the case against Jeppesen be dismissed because further consideration of the case in a U.S. court room would be harmful to U.S. national security interests. Legal proceedings are now stayed pending consideration of the government’s request.

## REQUESTS

As you will appreciate, extremely serious allegations have been raised concerning the treatment of Mr. Britel, including allegations of enforced disappearance, arbitrary detention and torture.

<sup>34</sup> *Binyam Mohamed v. Jeppesen Dataplan, Inc.*, No. C07-02798 JW (N.D. Cal. Civ. Feb 13, 2008). Judge James Ware granted the U.S. government’s motion to intervene and to dismiss or for summary judgment, holding that (1) government was entitled to intervene as of right and (2) court lacked subject matter jurisdiction. The decision reads, “The Court’s review of General Hayden’s public and classified declarations confirm that proceeding with this case would jeopardize national security and foreign relations and that no protective procedure can salvage this case . . .

<sup>35</sup> *Id.*, Plaintiffs’ Opposition to the United States’ Motion to Dismiss and Declarations in Support of Opposition available at <http://www.aclu.org/safefree/torture/rendition.html>.

<sup>36</sup> *See, Mohamed v. Jeppesen DataPlan Inc.*, available at [http://www.aclu.org/pdfs/safefree/mohamedvjeppesen\\_ninthcircuitopinion.pdf](http://www.aclu.org/pdfs/safefree/mohamedvjeppesen_ninthcircuitopinion.pdf)

<sup>37</sup> *See, United States Government, Petition for Rehearing or Rehearing En Banc* available at [http://www.aclu.org/pdfs/safefree/mohamedvjeppesen\\_enbanc.pdf](http://www.aclu.org/pdfs/safefree/mohamedvjeppesen_enbanc.pdf)

We request that as a matter of urgency you raise Mr. Britel's case with the governments of the United States, Morocco, Pakistan and Italy to clarify with them the allegations contained in this correspondence. In particular, we ask that there be prompt and independent investigations into the circumstances leading up to Mr. Britel's current incarceration in Morocco, including Mr. Britel's:

- (1) initial apprehension, arrest, detention, interrogation and treatment in Pakistan both by agents of the Pakistani and U.S. governments;
- (2) unlawful rendition from Pakistan to Morocco by agents of the U.S. government;
- (3) detention, interrogation and treatment in Morocco by agents of the Moroccan government, including any involvement of the United States and the Italian governments therein;
- (4) criminal trial in Morocco; and
- (5) current conditions of confinement and his physical and psychological well-being.

Further, in light of the information contained in this communication, we also ask that you request the governments of the United States, Morocco and Pakistan to investigate the allegations of enforced disappearance, prolonged arbitrary detention, torture and other cruel, inhuman or degrading treatment conditions of confinement and violations of due process made herein.

Finally, we request that you urge the government of Morocco to take steps aimed at protecting Mr. Britel's right to physical and mental integrity, in accordance with international human rights standards.

We wish to draw this serious case to your attention and appreciate any consideration or action that you deem appropriate. Please do not hesitate to contact the authors if you require any further information or clarification on any of the allegations made.

Yours faithfully,

**Steven Macpherson Watt**  
Senior Staff Attorney  
American Civil Liberties Union

**Rachid Mesli**  
Legal Director  
Alkarama for Human Rights