

BETTS, PATTERSON & MINES P.S.

Christopher W. Tompkins (WSBA #11686)

CTompkins@bpmlaw.com

701 Pike Street, Suite 1400

Seattle, WA 98101-3927

BLANK ROME LLP

Henry F. Schuelke III (admitted *pro hac vice*)

HSchuelke@blankrome.com

1825 Eye St. NW

Washington, DC 20006

James T. Smith (admitted *pro hac vice*)

Smith-jt@blankrome.com

Brian S. Paszamant (admitted *pro hac vice*)

Paszamant@blankrome.com

Jeffrey N. Rosenthal (admitted *pro hac vice*)

Rosenthal-j@blankrome.com

One Logan Square, 130 N. 18th Street

Philadelphia, PA 19103

Attorneys for Defendants Mitchell and Jessen

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

SULEIMAN ABDULLAH SALIM,
et al.,

Plaintiffs,

v.

JAMES E. MITCHELL and JOHN
JESSEN,

Defendants.

NO. 2:15-cv-286-JLQ

**DEFENDANTS' STATEMENT OF
UNDISPUTED FACTS**

Note on Motion Calendar:
July 28, 2017, 9:30 a.m., at
Spokane Washington

DEFENDANTS' STATEMENT OF
UNDISPUTED FACTS
NO. 2:15-cv-286-JLQ

Betts
Patterson
Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988

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1 Defendants James Elmer Mitchell and John “Bruce” Jessen, by their
2 undersigned attorneys, pursuant to Local Rule 56.1(a), submit this Statement of
3 Undisputed Facts in Support of their Motion for Summary Judgment.

4 **I. DR. MITCHELL CONTRACTS WITH THE GOVERNMENT**

5 1. Drs. James Elmer Mitchell (“Dr. Mitchell”) and John “Bruce” Jessen
6 (“Dr. Jessen”) are psychologists. (Tompkins Decl. Exh. 1, Deposition of Dr.
7 James Elmer Mitchell (“Mitchell Tr.”) at 23:5-9; Exh. 2, Deposition of Dr. John
8 Bruce Jessen (“Jessen Tr.”) at 18:1-6.)

9 2. On August 8, 2001, the United States Government (“U.S.” or the
10 “Government”) contracted with Dr. Mitchell as an independent contractor to
11 “identify reliable and valid methods of conducting cross-cultural psychological
12 assessments.” (*Id.*, Exh. 7 at US Bates 000025.)¹

13 3. The contract’s term was September 1, 2001 until August 31, 2002.
14 (*Id.*, Exh. 7 at US Bates 000027.)

15 4. On September 11, 2001, Al-Qaida attacked the United States
16 resulting in the death of thousands of innocent American civilians. *See*
17 Defendants’ Motion to Take Judicial Notice filed May 22, 2017, ECF No. 165.
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21

22 ¹ The parties have stipulated that all documents produced by the U.S. are
23 authentic and meet the admissibility requirements of Federal Rule of Evidence
24 803(6). Tompkins Decl. Exh. 3, Deposition of Jose Rodriguez (“Rodriguez Tr.”)
25 at 79:6-21, 118:12-119:9.)
26

1 5. In response, the Department of Justice’s (“DOJ”) Office of Legal
2 Counsel (“OLC”) conducted an extensive analysis of President George W. Bush’s
3 authority to use “[f]orce” to “both retaliate for [the September 11] attacks, and to
4 prevent and deter future assaults on the Nation.” (Tompkins Decl., Exh. 10 at US
5 Bates 000560.)

6 6. On September 17, 2001, President Bush signed a Memorandum of
7 Notification that expressly authorized the Central Intelligence Agency (“CIA”)
8 “to capture and detain individuals who pose a continuing, serious threat of
9 violence or death to U.S. persons and interests or who are planning terrorist
10 activities” (“MON”). (*Id.*, Exh. 9 at US Bates 000289; Declaration of John
11 Rizzo (“Rizzo Decl.”) ¶ 4.)

12 7. Pursuant to the MON, the Director of the CIA directed the CIA’s
13 Counterterrorism Center (“CTC”) to establish a program “to capture, detain, and
14 interrogate the highest-value al-Qa’ida operatives to obtain critical threat and
15 actionable intelligence.” (Tompkins Decl., Exh. 34 at US Bates 001631.)

16 8. One purpose of the program was to collect threat and actionable
17 intelligence. (*Id.*)

18 9. CTC is the organization within the CIA that carries out covert action,
19 foreign intelligence operations, and counter-terrorism analysis. (Tompkins Decl.,
20 Exh. 3, Rodriguez Tr. at 20:12-17.)

21 10. The CIA, as part of this program, began building secret detention
22 facilities referred to as “black-sites.” (Rizzo Decl. at ¶¶ 5-6.)

1 11. On December 21, 2001, the U.S., specifically the CIA's Office of
2 Technical Service ("OTS"), entered into another contract with Dr. Mitchell, this
3 time for him to provide "consultation and research on counterterrorism and
4 special ops." (Declaration of Jose Rodriguez ("Rodriguez Decl."), Exh. A at US
5 Bates 000037; Tompkins Decl., Exh. 3, Rodriguez Tr. at 23:19-24.)

6 12. This contract's term was January 1, 2002 until December 31, 2002.
7 (Rodriguez Decl., Exh. A at US Bates 000039.)

8 13. The contract indicates that Dr. Mitchell was eligible for this contract
9 because he was "an expert in conducting applied research in high-risk operational
10 settings to provide consultation and research in the area of counter-terrorism and
11 covert action/covert influence operations." (*Id.*, Exh. A at US Bates 000042.)

12 14. By June 13, 2002, Dr. Mitchell's contract was again expanded for
13 him to serve as a "consultant to CTC special programs." (Tompkins Decl., Exh. 8
14 at US Bates 000061-64).

15 15. The daily rate Mitchell negotiated with the CIA was less than other
16 deployed psychologists were paid to do behavioral consultation on interrogations
17 at places like Gitmo. (Tompkins Decl., Exh. 1, Mitchell Tr. at 218:12-220:8.)

18 16. At the time, Dr. Mitchell had 13 years of experience in the U.S. Air
19 Force's ("USAF") Survival, Evasion, Resistance, and Escape ("SERE") training
20 program. (Tompkins Decl., Exh. 25 at US Bates 001352.)

21 17. Dr. Mitchell was the SERE Psychologist for the USAF Survival
22 School from 1989 until 1996. In addition, for over six years, Dr. Mitchell was
23 part of a counterterrorism unit which relied on SERE training to protect classified
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1 information. In both assignments, he was responsible for becoming familiar with
2 different ways that foreign and domestic enemy organizations approached
3 interrogations. (*Id.*, Exh. 1, Mitchell Tr. at 46:2-14; 58:19-20; 59:16-20; 129:2-
4 3.)

5 18. Dr. Mitchell often collaborated with Dr. Jessen, who was at the time
6 employed by the Department of Defense (“DoD”) and who had 19 years of SERE
7 experience. (Tompkins Decl., Exh. 25 at US Bates 001352.)

8 19. The SERE training program falls under the DoD Joint Personnel
9 Recovery Agency (“JPRO”). JPRO is responsible for SERE training, which is
10 offered by the U.S. Army, Navy, and Air Force to personnel who face the greatest
11 risk of being captured during military operations. SERE students are taught how
12 to survive in various terrain, evade and endure captivity, resist interrogation in
13 “hostile” areas, and conduct themselves to prevent harm to themselves and fellow
14 prisoners of war. (*Id.*, Exh. 25 at US Bates 001352; Exh. 34 at US Bates 001633;
15 Exh. 2, Jessen Tr. at 62:22-63:2; Exh. 1, Mitchell Tr. at 58:5-13.)

16 20. At SERE, Dr. Jessen monitored students for problems experienced
17 while going through the program. He also helped design advanced courses that
18 specifically prepared trainees for capture by terrorist groups. To create these
19 advanced courses, Dr. Jessen was required to know and understand the
20 techniques, tactics, and procedures of the various terrorist groups. (*Id.*, Exh. 2,
21 Jessen Tr. at 30:5-21, 34:3-35:11, 71:22-73:6.)

22 21. Pursuant to the December 21, 2001 contract, Dr. Mitchell was
23 commissioned to review the “Manchester Manual” and other Al-Qa’ida
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1 documents. The Manchester Manual had been stolen from the Army Special
2 Operations School at Fort Bragg and contained instructions for resistance to
3 interrogation. (*Id.*, Exh. 2, Jessen Tr. at 68:18-69:16, 76:14-24; Exh. 1, Mitchell
4 Tr. at 163:22-164:6; Exh. 20 at US Bates 001099.)

5 22. Dr. Mitchell asked if Dr. Jessen could help in this review, which the
6 CIA permitted. (Tompkins Decl. Exh. 2, Jessen Tr. at 68:18-69:16, 76:14-24.)

7 23. After conducting the review, Drs. Mitchell and Jessen drafted a
8 paper on Al-Qa'ida's resistance to interrogation techniques, titled "Recognizing
9 and Developing Countermeasures to Al-Qa'ida Resistance to Interrogation
10 Techniques: A Resistance Training Perspective" (the "Resistance Training
11 Perspective Paper"). (*Id.*, Exh. 25 at US Bates 001352; Exh. 23 at US Bates
12 001148-57; Exh. 2, Jessen Tr. at 69:17-23.)

13 24. In the Resistance Training Perspective Paper, Drs. Mitchell and
14 Jessen identified ways to identify whether a subject was using the resistance
15 techniques articulated in the Manchester Manual during interrogations, and
16 identified countermeasures the interrogator could use to combat such resistance
17 techniques. None of the countermeasures consisted of coercive pressures—
18 physical or otherwise. (*Id.*, Exh. 2, Jessen Tr. at 77:16-78:12; Exh. 23 at US
19 Bates 001148-57; Exh. 20 at US Bates 001099.)

22 **II. ABU ZUBAYDAH IS CAPTURED**

23 **A. Zubaydah Is Captured and Hospitalized.**

24 25. Abu Zubaydah ("Zubaydah") was captured by the U.S. on March 27,
25 2002. (*Id.*, Exh. 25 at US Bates 001351.)

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1 26. Zubaydah was the first so-called High-Value Detainee (“HVD”) to
2 be captured. (Rodriguez Decl. ¶ 15; Rizzo Decl. ¶ 7; Tompkins Decl., Exh. 4,
3 Deposition of John Rizzo (“Rizzo Tr.”) at 18:21-25, 19:1; Exh. 3, Rodriguez Tr.
4 at 146:15-24.)

5 27. HVD has a very specific meaning. An HVD is defined as an enemy
6 of the United States, in particular, someone who is believed to have intelligence
7 involving threats to the United States, its people, or its interests overseas.
8 (Tompkins Decl., Exh. 3, Rodriguez Tr. at 145:1-13, 145:5-9.)

9 28. Zubaydah was injured during his capture; a number of bullets caused
10 a large leg wound. As a result, Zubaydah was provided with medical care.
11 (Rizzo Decl., Exh. L at US Bates 001850; Tompkins Decl., Exh. 25 at US Bates
12 001352.)

13
14 **B. Dr. Mitchell Is Contacted.**

15 29. In anticipation of Zubaydah’s release from the hospital, the CIA and
16 Federal Bureau of Investigation (“FBI”) assembled a team that would formally
17 interrogate Zubaydah at a different site. (Tompkins Decl., Exh. 25 at US Bates
18 001352; Exh. 20 at US Bates 001099.)

19 30. A CTC attorney recommended that Dr. Mitchell be made part of the
20 interrogation team. (*Id.*, Exh. 20 at US Bates 001099.)
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1 31. OTS had previously recommended Dr. Mitchell to CTC/LGL.² CTC
2 decided to hire him to provide psychological consultation to CTC to support its
3 efforts to debrief and interrogate Zubaydah. (Rodriguez Decl. ¶¶ 12, 14;
4 Tompkins Decl., Exh. 3, Rodriguez Tr. at 26:3-10, 32:18-20, 36:25-37:2.)

5 32. The CIA thereafter asked Dr. Mitchell if he would deploy with the
6 interrogation team to observe Zubaydah's interrogations and help the CIA
7 psychologist that was tasked to develop countermeasures to Zubaydah's
8 resistance. Dr. Mitchell agreed to be part of the interrogation team. (Tompkins
9 Decl., Exh. 1, Mitchell Tr. at 214:2-11; 217:14-21.)

10 33. Simply stated, the CIA determined it needed to do something
11 different from what had been done. (*Id.*, Exh. 3, Rodriguez Tr. at 37:3-23.)

12 34. On April 1, 2002, a cable was sent from CIA Headquarters ("HQS")
13 to the black-site where Zubaydah was being held, GREEN. The cable transmitted
14 the paper Drs. Mitchell and Jessen had drafted entitled Recognizing and
15 Developing Countermeasures to Al-Qa'ida Resistance to Interrogation
16 Techniques: A Resistance Training Perspective. The information was sent "at
17 the request of CTC/OPS and ALEC³ . . . for _____⁴ use with the interrogation of
18
19

20 _____
21 ² The abbreviation "CTC/LGL" refers to CTC's legal department.
22 (Declaration of James Elmer Mitchell ("Mitchell Decl.") ¶ 8.)

23 ³ ALEC was a CIA station dedicated exclusively to finding Osama Bin
24 Ladin. (Tompkins Decl., Exh. 3, Rodriguez Tr. at 208:23-209:3.)

25 ⁴ Blanks such as this indicate a redaction in the underlying document.
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1 Abu Zubaydah.” (*Id.*, Exh. 49 at US Bates 002006-14; Exh. 3, Rodriguez Tr. at
2 182:15-21.)

3 35. On April 3, 2002, Dr. Mitchell signed a proposed contract
4 modification to provide on-site “psychological consultation to CTC in debriefing
5 and interrogation operations for Quick Response Tasking.” (*Id.*, Exh. 21 at US
6 Bates 001101.)

7 36. On April 3, 2002, CTC met with several senior operational and
8 security individuals to develop an interrogation strategy for Zubaydah. The
9 strategy was then communicated to GREEN via cable. (Tompkins Decl., Exh. 45
10 at US Bates 001923-25.)

11 37. The cable stated that an “operational psychologist, _____ office
12 of security, _____ and an OTS/OAD _____ contract psychologist
13 Mitchell who has extensive military background in interrogation” would travel to
14 GREEN to assist in planning Zubaydah’s interrogation. (*Id.*, Exh. 45 at US Bates
15 001923-25.)

16 38. The cable also indicated that the CIA expected the interrogation to
17 be difficult because Zubaydah had likely received counter-interrogation training.
18 (*Id.*, Exh. 45 at US Bates 001923-25; Rizzo Decl., Exh. D at US Bates 001608.)

19 39. On April 4, 2002, Dr. Mitchell’s December 21, 2001, contract with
20 the CIA was modified to reflect CTC’s hiring him to provide additional services.
21 (Rodriguez Decl., Exh. B at US Bates 000047.)
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1 **III. PLANNING FOR ZUBAYDAH'S INTERROGATION – APRIL 2002**

2 40. From the outset, the CIA established that the CIA's Station
3 Representative was responsible for all activities at GREEN. (*Id.*, Exh. C at US
4 Bates 001779-82.)

5 41. At GREEN, the Chief of Base reported to the Station Representative,
6 who reported to the Chief of Station, who reported back to personnel at CIA
7 Headquarters. (Mitchell Decl. ¶ 6.)

8 42. In April 2002, Dr. Mitchell became part of the psychological team
9 monitoring Zubaydah's interrogation. This team was led by a full-time CIA
10 officer who was a psychologist. (Rodriguez Decl. at ¶¶ 17, 22; Tompkins Decl.,
11 Exh. 41 at US Bates 001777-78; Exh. 3, Rodriguez Tr. at 149:19-23; Exh. 1,
12 Mitchell Tr. at 214:2-11, 217:14-21, 232:4-233:16.)

13 43. Dr. Mitchell's role was to observe the interrogation conducted by the
14 CIA and make recommendations to CTC as to how Zubaydah's resistance to
15 interrogation could be overcome. (Rodriguez Decl. at ¶¶ 17, 22; Tompkins
16 Decl., Exh. 41 at US Bates 001777-78; Exh. 3, Rodriguez Tr. at 149:19-23; Exh.
17 1, Mitchell Tr. at 214:2-11, 217:14-21, 232:4-233:16.)

18 44. While in this role, Dr. Mitchell reported directly to HQS and Jose
19 Rodriguez ("Rodriguez"), who was aware of Mitchell's activities. (Rodriguez
20 Decl. ¶ 18)

21 45. Rodriguez was CTC's Chief Operating Officer from September 2001
22 – May 2002, when he became the Director of CTC. In these roles he had a
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1 reporting channel to the Director of the CIA. (Rodriguez Decl. ¶ 4; Tompkins
2 Decl., Exh. 3, Rodriguez Tr. at 19:4-7, 20:6-11, 21:10-14.)

3 46. On April 7, 2002, the three-member behavior interrogation team
4 (including Dr. Mitchell) viewed the holding compound and interrogation room
5 where Zubaydah would be transferred after he was released from the hospital.
6 They suggested several environmental modifications to create an atmosphere that
7 enhances the strategic interrogation process. (Tompkins Decl., Exh. 48 at US
8 Bates 001999-2000; Rizzo Decl., Exh. A at US Bates 001825-28.)
9

10 47. The CIA psychologist was in charge of the behavioral side of the
11 interrogation. (Tompkins Decl., Exh. 41 at US Bates 001777-78; Exh. 1, Mitchell
12 Tr. at 236:11-18.)

13 48. The recommended modifications included painting the room white,
14 installing halogen lights in both the holding cell and the interrogation room,
15 installing a white curtain to partition off the holding cell from the interrogation
16 room, building a vestibule to provide added control of potential orientation cues,
17 the placement of short nap carpeting on the walls of the interrogation room and
18 the sanding of the holding cell bars. (Tompkins Decl., Exh. 48 at US Bates
19 001999-2000.)
20

21 49. Around the same time, while Zubaydah was still in the hospital, he
22 was strategically permitted to establish a relationship of respect and tolerance
23 with his then interrogators so that he would be more willing to disclose
24 information that would be shameful or difficult. Despite these efforts, Zubaydah
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1 provided only what was regarded as “disposable information” that confirmed
2 historical events and activities. (Rizzo Decl., Exh. A at US Bates 001825-28.)

3 50. As a result, CTC further developed the details of the contemplated
4 next stage of Zubaydah’s interrogation. According to Zubaydah’s then-existing
5 interrogation plan, he would be transported from the hospital to the interrogation
6 room at detention site GREEN in a state of pharmaceutical unconsciousness to
7 decrease security concerns and disorient him when he awakened. (*Id.*, Exh. A at
8 US Bates 001825-28; Tompkins Decl., Exh. 1, Mitchell Tr. at 223:11-224:17.)

9 51. The physical environment in the interrogation room was meant to
10 further disorient Zubaydah and remove his ability to control the environment.
11 This was done through the use of bright (not physically harmful) lights in an all-
12 white environment, white noise produced by sound “masking equipment” (not
13 physically harmful), no natural light, and no routine schedule. Additionally,
14 Zubaydah was to be kept awake for one-two days, and interrogators were not to
15 respond to his requests or demands. (Tompkins Decl., Exh. 55 at US Bates
16 002169-72; Rizzo Decl. ¶ 10; Rodriguez Decl. ¶ 21.)

17 52. The goal of this stage of interrogation was to develop three
18 psychological conditions, one of them being helplessness, to enhance Zubaydah’s
19 cooperation and willingness to discuss vital intelligence. The purpose was to
20 reduce Zubaydah’s “sense of hope that his well-honed counter-measure
21 interrogation skills will help him from disclosing important intelligence” by
22 making it difficult for him to concentrate, plan or resist the interrogation process.
23 (Tompkins Decl., Exh. 55 at US Bates 002169-72; Rodriguez Decl. ¶ 20.)
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1 **IV. HELPLESSNESS AND LEARNED HELPLESSNESS**

2 53. “Helplessness” as used by psychologists has two different meanings.
3 One meaning is the feeling of helplessness that occurs when people are placed in
4 a situation that they feel they cannot escape. When experiencing helplessness,
5 people often have a difficult time organizing and executing a course of action.
6 The goal of SERE training is to induce a feeling of helplessness so that the trainee
7 can learn how to continue to search for a way out despite the helpless feeling.
8 (Tompkins Decl., Exh. 1, Mitchell Tr. at 76:3-77:20, 103:18-22.)
9

10 54. The other meaning is “learned helplessness” as discussed by Dr.
11 Martin Seligman (“Dr. Seligman”). This is a profound level of helplessness that
12 leads to a feeling of depression, passivity, and withdrawal. This level of
13 helplessness would be catastrophic in SERE training because the trainee would no
14 longer seek a solution. (Tompkins Decl., Exh. 1, Mitchell Tr. at 77:6-20, 273:23-
15 274:6, 247:10-277:10.)

16 55. Dr. Mitchell explained that the Army Field Manual used by the U.S.
17 today contains guidance about placing an interrogation subject into a “temporary”
18 situation they “perceive[] to be helpless,” and then giving them a way out of the
19 situation by answering questions. Drs. Mitchell and Jessen explained
20 helplessness in the same way to the CIA. (Tompkins Decl., Exh. 1, Mitchell Tr.
21 at 274:10-276:16; Tompkins Decl., Exh. 2, Jessen Tr. at 160:19-161:2.)
22

23 56. Drs. Mitchell and Jessen did not advocate for the use of “learned
24 helplessness.” (Tompkins Decl., Exh. 1, Mitchell Tr. at 76:3-79:5; 87:17-88:16;
25 97:6-100:24.)
26

1 57. CIA officers often misused the term “learned helplessness” in
2 documents because they did not understand the distinction between helplessness
3 to induce cooperation—as is utilized in SERE—and “learned helplessness,” as
4 described by Dr. Seligman, which would inhibit cooperation. (Tompkins Decl.,
5 Exh. 2, Jessen Tr. at 161:20-164:9)

6 58. Drs. Mitchell and Jessen would correct the CIA whenever the term
7 “learned helplessness” was “used inappropriately.” (Tompkins Decl., Exh. 1,
8 Mitchell Tr. at 103:13-104:12; 108:1-20; 274:10-277:10; Tompkins Decl., Exh. 2,
9 Jessen Tr. at 160:13-163:22; 163:23-164:23; 166:21-167:11; 168:10:169:24.)

10
11 **V. INITIAL LEGAL APPROVAL OF NONTRADITIONAL**
12 **INTERROGATION TECHNIQUES**

13 59. In or around early April 2002, attorneys and other personnel from
14 CTC met with John Rizzo (“Rizzo”), who was then the CIA’s Chief Legal
15 Officer, to provide a briefing. During the briefing, CTC personnel told Rizzo that
16 CTC had “devised an interrogation plan for Zubaydah that contemplated the use
17 of certain nontraditional interrogation techniques.” Following this meeting, Rizzo
18 assumed responsibility for determining the legality of the proposed techniques
19 and answering legal questions posed by Rodriguez and other CIA personnel.
20 (Rizzo Decl. ¶¶ 9, 11; Tompkins Decl., Exh. 4, Rizzo Tr. at 18:18-25, 19:1-5;
21 170:10-15.)

22 60. Rizzo subsequently instructed CTC attorneys (referred to herein as
23 “CTC/LGL”) to research whether the contemplated proposed non-traditional
24

1 interrogation techniques were legal. (Rizzo Decl. ¶ 12; Tompkins Decl., Exh. 4,
2 Rizzo Tr. at 30:21-25, 31:5.)

3 61. CTC/LGL preliminarily concluded that the techniques proposed by
4 CTC appeared to be lawful; however Rizzo also wanted to confer with the DOJ to
5 secure a written opinion regarding the techniques' legality. (Rizzo Decl. ¶¶ 12-
6 14; Tompkins Decl., Exh. 4, Rizzo Tr. at 28:23-25, 29:1, 31:8-10, 47:4-19,
7 49:16-25, 182:18-23.)

8 62. CTC/LGL sent a cable to GREEN in April 2002. The cable stated:
9 "At this time, none of the interrogation methods described by _____ [not Drs.
10 Mitchell or Jessen] nor any of the methods discussed at headquarters with the
11 interrogation team, would appear to violate these [legal] prohibitions; nor would
12 they appear to violate any of the additional provisions of the U.S. Federal (or
13 state) law that apply to the conduct of interrogations by USG personnel." The
14 legal provisions at issue included the Geneva Conventions and 18 U.S.C.
15 §§ 2340-2340B of the U.S. Code. But, the cable also stated that "a more detailed
16 response with any necessary legal fine-tuning" would be provided "next week,"
17 and advised that, going forward, the interrogation team should consult closely
18 with CTC/LGL regarding Zubaydah's interrogation. (Rizzo Decl. ¶ 12;
19 Tompkins Decl., Exh. 55 at US Bates 002169-72; Exh. 4, Rizzo Tr. at 31:13-17.)

20 63. On April 16, 2002, Rizzo met with the National Security Council's
21 ("NSC") Legal Advisor, John Bellinger ("Bellinger"), OLC Deputy Assistant
22 Attorney General John Yoo ("Yoo"), and two CTC attorneys. During the
23 meeting, Rizzo explained that the CIA had developed a strategy for Zubaydah's
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1 interrogation and he described the then-current strategy. (Rizzo Decl. ¶ 16-17;
2 Tompkins Decl., Exh. 4, Rizzo Tr. at 199:7-24.)

3 64. CTC attorneys in attendance also outlined the effects of the
4 interrogation strategy. Specifically, CTC attorneys outlined the effects of learned
5 helplessness, citing the psychologist who had developed the theory for them, who
6 was not Drs. Mitchell or Jessen. (Rizzo Decl. ¶ 18; Tompkins Decl., Exh. 4,
7 Rizzo Tr. at 200:1-12; Exh. 11 at US Bates 000648-49.)

8 65. Rizzo asked that the OLC assess the legality of the interrogation
9 strategy and issue a memorandum opinion. (Rizzo Decl. ¶ 19.)

10 66. The CIA did not have a role in the OLC's internal deliberations
11 about the legality of the interrogation strategy, except to respond to requests for
12 additional information. Rizzo's office did provide the OLC with requested
13 information on a number of occasions. (Rizzo Decl. ¶ 21; Tompkins Decl., Exh.
14 4, Rizzo Tr. at 31:18-22, 33:10-14 (referencing a "back and forth" between OLC
15 and the CIA); Tompkins Decl., Exh. 34 at US Bates 001631.)

17 **VI. IMPLEMENTING THE INITIAL PHASE OF ZUBAYDAH'S**
18 **INTERROGATION IN APRIL 2002**

19 67. In April 2002, the Zubaydah interrogation team followed the
20 interrogation plan that had been approved. (Tompkins Decl., Exh. 53 at US Bates
21 002144.)

22 68. The interrogation team was ultimately made up of two FBI Special
23 Agents, an interrogator from the CIA's Office of Security, CIA psychologists,
24

1 substantive and reports officers, and medical personnel. (Tompkins Decl., Exh.
2 54 at US Bates 002167.)

3 69. Dr. Mitchell was one of two SERE psychologists on the
4 interrogation team. Dr. Jessen was not the other SERE psychologist. (Tompkins
5 Decl., Exh. 29 at US Bates 001590; Exh. 2, Jessen Tr. at 102:22-103:4; Mitchell
6 Decl. ¶ 3.)

7 70. In fact, at the time, Dr. Mitchell's contract was expanded to "serve as
8 both a consultant to CTC special programs as well as conduct specialized training
9 as required." (Tompkins Decl., Exh. 8 at US Bates 000061-64.)

10 71. CTC's primary interrogator was in charge of and responsible for all
11 aspects of Zubaydah's interrogation. He or she was the leader of the interrogation
12 team and "in some respects the de facto chief of the CIA base ["COB"]" where
13 Zubaydah was being held, GREEN. (Rodriguez Decl., ¶ 19; Exh. C at US Bates
14 001779-82; Tompkins Decl., Exh. 54 at US Bates 002167.)

15 72. HQS provided all members of the interrogation team with legal and
16 policy guidance. (Tompkins Decl., Exh. 54 at US Bates 002167.)

17 73. The interrogation team was specifically told that they were not
18 "limited to the use of traditional law enforcement methods" because Zubaydah
19 was "not entitled to the legal protections of the Geneva Conventions." (*Id.*)

20 74. This phase of Zubaydah's interrogation began on or around April 17,
21 2002. (*Id.*, Exh. 53 at US Bates 002144.)

22 75. "Based upon the collective judgment of the expert personnel
23 engaged in [the] interrogation," the team employed "lawful" interrogation
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1 methods to “maximize the psychological pressure upon [] Zubaydah (as validated
2 by the training methods employed for U.S. Special Forces).” (Tompkins Decl.,
3 Exh. 54 at US Bates 002167.).

4 76. Dr. Mitchell and the other SERE trained psychologist (not Dr.
5 Jessen) assisted the team in identifying Zubaydah’s resistance methods and
6 strategies, assessing the impact of these methods and strategies on the
7 interrogators, and designing effective countermeasures. They also assessed,
8 targeted, and monitored Zubaydah’s psychological status, tendencies, and
9 vulnerabilities. (*Id.*, Exh. 29 at US Bates 001590; Exh. 2, Jessen Tr. at 102:22-
10 103:4; Mitchell Decl. ¶ 3.)

11 77. Each interrogation session was carefully planned in advance. Before
12 each interrogation session, the entire team met as a group to develop the strategy
13 for each particular interrogation. During the meetings, the team would prepare
14 the requirements for the particular sessions; read and prepare reports concerning
15 Zubaydah, the interrogation process and the intelligence product; and address any
16 other matters that may have arisen. After each interrogation session, the team
17 reviewed the results of the session and began planning the next session.
18 (Tompkins Decl., Exh. 54 at US Bates 002168.)

19 78. The interrogation team constantly updated HQS on the status of
20 Zubaydah’s interrogation to ensure that the team was “always within both our
21 legal and moral requirements.” (Rodriguez Decl. ¶ 24; Exh. E at US Bates
22 002001-05.)

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1 79. In fact, after each interrogation, the interrogator would prepare a
2 formal interrogation report for HQS that set forth any intelligence produced
3 during the session. The interrogation team also prepared twice-daily situation
4 reports to HQS, and the FBI representatives provided a separate daily situation
5 report to FBI headquarters. (Tompkins Decl., Exh. 54 at US Bates 002168.)

6 80. By the end of April 2002, the CIA officers involved in Zubaydah's
7 interrogation were requesting approval from HQS to potentially employ
8 additional interrogation tactics "to move Abu Zubaydah, subject, into more
9 forthcoming posture in regard to future terrorist attacks in [the Continental US]".
10 (*Id.*, Exh. 42 at US Bates 001821.)

11 **VII. MAY 2002 ADJUSTMENT TO ZUBAYDAH'S INTERROGATION**

12 81. On May 8, 2002, the interrogation team held an all-hands meeting to
13 review the strategy for Zubaydah's interrogation process and to make adjustments
14 as necessary based on Zubaydah's emerging resistance posture as well as
15 comments and input from both CIA and FBI Headquarters on potential
16 modifications to the proposed plan. (*Id.*, Exh. 47 at US Bates 001931.)

17 82. As a result, the team reviewed Zubaydah's day-to-day treatment and
18 his environment to assess what, if anything, could be adjusted further to lower his
19 resistance posture. "The team decided that the most important issue is to interfere
20 with subject's sleep in order to degrade his ability to maintain his full mental
21 capacities. The more we can tire him out, the more we can disrupt his ability to
22 predict what will happen to him and to think clearly." (*Id.*, Exh. 47 at US Bates
23 001934.)

1 83. The team also reiterated its commitment to “keep headquarters fully
2 informed on every step of the interrogation.” (Tompkins Decl., Exh. 47 at US
3 Bates 001934.)

4 84. Also in May 2002, HQS ordered the Zubaydah interrogation team
5 “to . . . press [Zubaydah] for threat related information.” (*Id.*, Exh. 50 at US
6 Bates 002016.)

7 85. HQS recognized that this required “an increase in the pressure of the
8 interrogations.” HQS then proposed and approved certain techniques to increase
9 the pressure on Zubaydah. One such technique was the use of the confinement
10 box, which HQS noted had been discussed, but additional details were still being
11 worked on regarding the specifics of how the confinement box should be
12 implemented. (*Id.*)

13 86. A follow-up cable from HQS provided detailed guidance regarding
14 the application of the confinement box. HQS indicated that “consultation with
15 OTS ____ (psychological), OMS (medical), and CTC/UBL (operational) have
16 determined that from a medical and psychological perspective, use of the box
17 with Abu Zubaydah is allowable.” Specifically, OMS and OTS concluded that
18 “the box under the criteria outlined below will not inflict severe physical or
19 mental pain and suffering as defined under the U.S. criminal law.” CTC/LGL
20 also concurred that the confinement box could be used. (*Id.*, Exh. 39 at US Bates
21 001767.)

22 87. The specific restrictions imposed were the same as used in the SERE
23 program: the box could be used a maximum of 19 total hours in any 24 hour
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1 period, with a maximum of 8 continuous hours at any one time. (Tompkins
2 Decl., Exh. 39 at US Bates 001767.)

3 88. HQS noted that in SERE, 5,000-6,000 U.S. Military personnel
4 undergo this training each year. And of those few that are unable to complete the
5 box training, it is usually because they have a preexisting condition that is
6 aggravated by the box. HQS also noted that “clearly, unlike the participants in
7 SERE training, AZ will not have provided his consent for the use of this—or any
8 other—technique.” Still, HQS concluded that the use of the box was permissible.
9 (*Id.*)

10
11 **VIII. JUNE 2002 PLANNING FOR THE NEXT PHASE OF ZUBAYDAH’S**
12 **INTERROGATION**

13 89. In early June 2002, HQS held a meeting to discuss the next phase of
14 Zubaydah’s interrogation. The meeting was attended by CTC, CTC/UBL,
15 CTC/LGL, Security Officers, Dr. Mitchell, and representatives from OTS.
16 (Rodriguez Decl., Exh. F at US Bates 001642; Tompkins Decl., Exh. 24 at US
17 Bates 001159.)

18 90. At the meeting, “all parties were in agreement that AZ is withholding
19 critical information, particularly on direct threats against U.S. interests both
20 domestically and overseas.” (Rodriguez Decl. ¶ 26; Exh. F at US Bates 001642;
21 Tompkins Decl., Exh. 24 at US Bates 001159.)

22 91. HQS believed that “the interrogations need[ed] to take a harder line
23 and move away from the current status, which resembles more of a debriefing.”
24 (Rodriguez Decl., Exh. F at US Bates 001642.)
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1 92. Rodriguez and others within CTC began considering whether other
2 potential interrogation techniques existed that could be used on Zubaydah to
3 secure the critical desired information. They knew they needed to “do something
4 different.” (Rodriguez Decl. ¶ 29; Tompkins Decl., Exh. 3, Rodriguez Tr. at
5 153:10-24.)

6 93. A variety of interrogation plans were shortly thereafter presented and
7 discussed. For example, an individual other than Defendants proposed an
8 “isolation option” that called for Zubaydah to be placed in pseudo-isolation for
9 three weeks with limited visits from medical and security personnel. (Rodriguez
10 Decl. ¶ 27; Exh. F at US Bates 001642; Tompkins Decl., Exh. 1, Mitchell Tr. at
11 249:4-9; Ex. 70 at US Bates 001642 (reprocessed to indicate “not Drs. Mitchell
12 and Jessen”).)

13 94. HQS subsequently approved the isolation option. HQS also
14 approved the careful introduction of interrogation post-isolation. Specifically,
15 after the isolation phase, interrogators would be reintroduced into the scenario to
16 press Zubaydah “hard on direct threat information against U.S. interests and
17 return the situation to a full-fledged interrogation.” (Rodriguez Decl., Exh. F at
18 US Bates 001642-43; Tompkins Decl, Ex. 79 at US Bates 001642-43
19 (reprocessed).)

20 95. The COB where Zubaydah was being detained was responsible for
21 all aspects of the interrogation, including making immediate decisions in response
22 to the fluid nature of the interrogation. (*Id.*, Exh. F at US Bates 001644;
23 Tompkins Decl, Ex. 79 at US Bates 001644 (reprocessed).)
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1 96. Zubaydah's isolation began on June 18, 2002. (Tompkins Decl.,
2 Exh. 38 at US Bates 001668.)

3 97. Also in late June, Rodriguez asked Mitchell to consult with CTC to
4 consider what other potential interrogation techniques could be used upon
5 Zubaydah to overcome his resistance and secure the desired information. At the
6 time, Rodriguez was convinced that only the CIA—and not the FBI—could
7 effectively interrogate Zubaydah given the critical information sought to be
8 obtained. (Rodriguez Decl. ¶ 32-33.)

9
10 **IX. JULY 2002 MEETINGS AT CIA HQS**

11 98. After Zubaydah's isolation began, the interrogation team, including
12 Mitchell, returned to CIA HQS for a meeting to "further refine tactics if subject
13 does not make significant progress during this period." (Tompkins Decl., Exh. 37
14 at US Bates 001665; Ex. 79 at US Bates 001643 (reprocessed); Rodriguez Decl.,
15 Exh. F at US Bates 001643.)

16 99. The meeting occurred during the first week of July. Those present
17 included, CTC, CTC/COPS, CTC/UBL, CTC/LGL, AZ Interrogation Team
18 (including Mitchell), FBI Special Agents, FBI Officers, OTS/OAD, OMS, and the
19 Office of Security. (Tompkins Decl., Exh. 24 at US Bates 001158-59; Rizzo
20 Decl. ¶ 24.)

21
22 100. All parties in attendance at the meeting agreed that Zubaydah was
23 "withholding critical information, particularly on direct threats against U.S.
24 interests both domestically and overseas and information about Al-Qa'ida
25 presence in the U.S." (Tompkins Decl., Exh. 24 at US Bates 001158-59.)
26

1 101. The major focus of the meeting was to consider the next phase of
2 Zubaydah’s interrogation, which “would be the last hard push in the
3 interrogations” and would concentrate on “pending terrorist attacks planned
4 against the United States or our interests overseas”. (Tompkins Decl., Exh. 24 at
5 US Bates 001159; Exh. 1, Mitchell Tr. at 251:6-253:4.)

6 102. The CIA was looking to “change the dynamics of the
7 interrogations[.]” It believed that pressure upon Zubaydah must be increased,
8 was intent upon increasing such pressure to secure the desired information, and
9 was interested in learning what types of such pressure might be applied.
10 (Rodriguez Decl. ¶ 36.)

11 103. During this meeting attendees suggested a variety of coercive
12 approaches. (Tomkins Decl., Exh. 20 at US Bates 001099.)

13 104. Dr. Mitchell mentioned the potential use of various techniques that
14 had been used for years on trainees at SERE. These techniques included only: (1)
15 attention grasp; (2) walling; (3) facial hold; (4) facial slap/insult slap; (5) cramped
16 confinement; (6) wall standing; (7) stress positions; (8) sleep deprivation; (9)
17 water board; (10) use of diapers; (11) insects; and (12) mock burial. (Rodriguez
18 Decl. ¶ 37; Tompkins Decl., Exh. 3, Rodriguez Tr. at 41:3-6; Exh. 1, Mitchell Tr.
19 at 402:11-15.)

20 105. Mitchell mentioned these techniques because he understood that the
21 CIA had already decided to use coercive pressures on Zubaydah, and believed
22 that the CIA should consider using coercive techniques that had been shown over
23 the last 50 years to not cause the effects the CIA wanted to avoid—such as severe
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1 pain and suffering. (Tompkins Decl., Exh. 1, Mitchell Tr. at 188:20-189:7,
2 189:16-22, 192:6-18, 192:24-193:7.)

3 106. Dr. Mitchell thought when he proposed these techniques that they
4 could be applied safely. (Tompkins Decl., Exh. 1, Mitchell Tr. at 291:14-17.)

5 107. At this time Dr. Mitchell had no belief that he would become the
6 interrogator. (*Id.*, Exh. 1, Mitchell Tr. at 205:3-20, 258:1-7, 267:12-16, 278:2-
7 279:7; Exh. 2, Jessen Tr. at 113:23-114:19.)

8 108. Mitchell explained that the particular goal of these techniques would
9 be to dislocate Zubaydah's expectations and overcome his resistance and thereby
10 motivate him to provide the information the CIA was seeking. Mitchell further
11 explained that in working to achieve this goal, the interrogation could produce a
12 range of mental states in Zubaydah, including, but not limited to, fear,
13 helplessness, compliancy, or false hope. Mitchell explained that the mental state
14 that a particular subject might experience would vary based on a number of
15 factors, such as the circumstances of the interrogation and the subject's abilities
16 and past experiences. (Rodriguez Decl. ¶ 38.)

17 109. Dr. Mitchell warned the CIA that it did not want to create learned
18 helplessness, as described by Dr. Seligman, in the detainee because it would
19 impair the ability of a person to provide intelligence. (Tompkins Decl., Exh. 1,
20 Mitchell Tr. at 76:3-77:21, 108:1-20.)

21 110. Dr. Mitchell explained that to avoid learned helplessness, the
22 techniques could not be overused. He explained that once Zubaydah displays a
23 sense of helplessness he must be given a way out by answering a question. If
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1 Zubaydah was not given a way out, then the learned helplessness as described by
2 Dr. Seligman could occur—in which case Zubaydah might be psychologically
3 unable to answer the question. (Tompkins Decl., Exh. 1, Mitchell Tr. at 274:10-
4 277:10.)

5 111. The purpose of the proposed interrogation techniques was to get
6 Zubaydah to answer the question and move him into a position where he would
7 cooperate so that the CIA could use social influence techniques to get more
8 details and information. (*Id.*, Exh. 1, Mitchell Tr. at 271:21-272:7; 274:10-
9 277:10.)

10 112. At the time, CTC/LGL emphasized that the CIA “should not rule out
11 any method of interrogation whatsoever, so long as the interrogation team
12 believes it will be effective.” The interrogation team was specifically told to
13 “rule out nothing whatsoever that you believe may be effective; rather, come back
14 and we will get you the approvals.” (*Id.*, Exh. 24 at US Bates 001160.)

15 113. Dr. Mitchell understood that the CIA was going to conduct its own
16 due diligence on the proposed techniques and make a determination about
17 whether they could be legally applied to Zubaydah. (*Id.*, Exh. 1, Mitchell Tr. at
18 190:2-10, 196:2-17.)

19 114. At the conclusion of this meeting that occurred the first week of July,
20 Rodriguez, on behalf of CTC, asked Mitchell to consider working with the CIA to
21 use some or all of the techniques he had mentioned to interrogate Zubaydah.
22 (Rodriguez Decl. ¶ 39; Tompkins Decl., Exh. 3, Rodriguez Tr. at 55:6-56:1.)
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1 115. Dr. Mitchell requested that CTC hire Dr. Jessen to assist him with
2 CTC's specific request to interrogate Zubaydah. (Rodriguez Decl. ¶ 40;
3 Tompkins Decl., Exh. 3, Rodriguez Tr. at 159:10-22.)

4 116. Rodriguez approved Dr. Mitchell's request to hire Dr. Jessen.
5 (Rodriguez Decl. ¶ 41.)

6 117. At the time, Dr. Jessen was working for the DoD. He received a call
7 from the CIA asking if he could come to CIA HQS. (Tompkins Decl., Exh. 2,
8 Jessen Tr. at 105:19-106:23; Exh. 25 at US Bates 001352.)

9 118. Once Dr. Jessen received permission from his commander, he met
10 Dr. Mitchell and CIA officers at CIA HQS. Dr. Jessen was advised that Dr.
11 Mitchell had already been asked to help interrogate the detainee using techniques
12 from the SERE school. Dr. Jessen was then asked if he would assist. (*Id.*, Exh. 2,
13 Jessen Tr. at 105:19-106:23.)

14 119. Once Dr. Jessen agreed to assist, he was heavily briefed by CIA
15 analysts about Zubaydah. (*Id.*, Exh. 2, Jessen Tr. at 110:11-111:12.)

16 120. Dr. Jessen resigned from the DoD and was hired as an independent
17 contractor, effective July 22, 2002. Dr. Jessen's contract with the CIA obligated
18 him to "provide consultations and recommendations" for "applying research
19 methodology" and "advice" to the Zubaydah interrogation team. (Rodriguez
20 Decl. ¶ 41; Exh. H at US Bates 000086-95; Tompkins Decl., Exh. 2, Jessen Tr. at
21 102:22-103:4, 108:14-20; Exh. 30 at US Bates 001592; Declaration of John
22 "Bruce" Jessen ("Jessen Decl.") ¶ 3.)
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1 121. By January 1, 2003, Dr. Jessen was serving as a “consultant to CTC
2 special programs.” (Tompkins Decl., Exh. 75, at US Bates 000110-17.)

3 122. In the week that followed, Dr. Mitchell and Rodriguez had many
4 discussions at CIA HQS about the proposed interrogation techniques’ usage and
5 efficacy. (Rodriguez Decl. ¶ 43.)

6 123. On July 8, 2002, another meeting was held at CIA HQS to discuss
7 further Zubaydah’s interrogation. In attendance were representatives from the
8 CIA’s ALEC Station, OTS, OMS, CTC/LGL, an FBI Official, and the FBI
9 interrogators that had interrogated Zubaydah. Both Drs. Mitchell and Jessen, as
10 well as Rodriguez and Rizzo, were present at the meeting. (Rodriguez Decl. ¶ 44;
11 Exh. I at US Bates 001656; Rizzo Decl. ¶ 24; Tompkins Decl., Exh. 4, Rizzo Tr.
12 at 181:10-13; Exh. 1, Mitchell Tr. at 402:11-403:10.)

13 124. During this meeting, “a series of approaches/methods that would be
14 employed [upon Zubaydah] in an ‘increased pressure phase’ were presented.”
15 The interrogation techniques previously mentioned by Dr. Mitchell were also
16 further discussed. (Rodriguez Decl., Exh. J at US Bates 001110; Exh. I at US
17 Bates 001657.)

18 125. After the meeting, Rodriguez requested Drs. Mitchell and Jessen
19 provide him with a written list identifying the potential interrogation techniques
20 for the CIA to consider, describing how they could be implemented, and
21 identifying their intended effects upon Zubaydah. (Rodriguez Decl. ¶ 46;
22 Tompkins Decl., Exh. 3, Rodriguez Tr. at 59:1-10; Exh. 1, Mitchell Tr. at 266:12-
23 17.)
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1 126. Rodriguez asked Dr. Mitchell to prepare this document because the
2 CIA was searching for a “new way of doing things, and this seemed like the
3 appropriate way to go,” but explained that the CIA needed more specific
4 information about the interrogation techniques Dr. Mitchell had mentioned.
5 (Tompkins Decl., Exh. 3, Rodriguez Tr. at 155:20-156:12.)

6 127. Drs. Mitchell and Jessen drafted a list of certain techniques utilized
7 at the SERE school (the “July 2002 Memo”). The techniques had existed and had
8 been used at the SERE school for many years. Drs. Mitchell and Jessen did not
9 create or design the techniques, but simply transferred their knowledge of the
10 techniques used at SERE onto the list and provided it to Rodriguez. This was the
11 extent of Drs. Mitchell and Jessen’s involvement in the “design” or “architecture”
12 of the CIA’s program. (Tompkins Decl., Exh. 2, Jessen Tr. at 114:20-115:11,
13 117:14-118:9, 143:17-24; 154:4-8, 276:3-21; Exh. 1, Mitchell Tr. at 185:11-
14 186:19, 278:2-279:7, 317:10-19, 325:14-24, 326:19-327:14; Exh. 3, Rodriguez
15 Tr. at 183:22-184:17.)

16 128. A reproduction of that list was sent in an email on July 9, 2002
17 bearing the subject “Description of Physical Pressures.” In the list, Mitchell
18 reiterated that
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20 [t]he aim of using these techniques is to dislocate the subject’s
21 expectations concerning how he is apt to be treated and instill fear
22 and despair. The intent is to elicit compliance by motivating him to
23 provide the required information, while avoiding permanent physical
24 harm or profound and pervasive personality change.
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1 (Rodriguez Decl. ¶ 47; Exh. J at US Bates 001109-10; Tompkins Decl., Exh. 3,
2 Rodriguez Tr. at 156:24-157:3.)

3 129. The list contained a description of the proposed techniques and their
4 contemplated use. (Rodriguez Decl., Exh. J at US Bates 001109-10.)

5 130. Dr. Mitchell provided this “suggested” list and the techniques
6 described therein solely for potential use during Zubaydah’s interrogation.
7 (Tompkins Decl., Exh. 3, Rodriguez Tr. at 159:3-6, 175:15-19; Exh. 1, Mitchell
8 Tr. at 191:15-192:5, 265:20-266:3.)

9 131. The techniques, which have later been referred to as Enhanced
10 Interrogation Techniques (“EITs”) were exclusively: (1) attention grasp; (2)
11 walling; (3) facial hold; (4) facial slap/insult slap; (5) cramped confinement; (6)
12 wall standing; (7) stress positions; (8) sleep deprivation; (9) water board; (10) use
13 of diapers; (11) insects; and (12) mock burial. (Rodriguez Decl., Exh. I at US
14 Bates 001657-59; *Rizzo* Decl. ¶ 40; Exh. D at US Bates 001595.)

15 132. The CIA thereafter sent out a cable, the date of which is redacted,
16 discussing the “Next Phase of the Abu Zubaydah Interrogation” that explained
17 that the increased pressure was “intended to press Abu Zubaydah on two areas for
18 which we are certain he is withholding information: 1) terrorist support networks
19 within the United States and 2) plans to conduct attacks within the United States
20 or against our interest overseas.” (*Id.* at US Bates 001656-57.)

21 133. The cable further explained that “the ‘increased pressure phase’ will
22 follow a general strategy involving a menu of pre-approved techniques,” and that
23 the techniques were “designed to not/not cause severe physical harm.” It also
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1 explained that a “medical expert with SERE experience will be present
2 throughout their implementation.” (*Id.* at US Bates 001657.)

3 134. The cable also contained descriptions of the EITs consistent with Dr.
4 Mitchell’s July 2002 Memo. (*Id.* at US Bates 001657-59; Tompkins Decl., Exh.
5 3, Rodriguez Tr. at 59:19-60:2.)

6 135. And the cable indicated that, according to CTC/LGL, only two of the
7 techniques—water board and mock burial—required Attorney General approval
8 because “[t]he remaining can be approved by CIA’s legal staff.” (Rodriguez
9 Decl., Exh. I at US Bates 001657-59.)

10 136. After this cable, the CIA held an additional meeting with the
11 Zubaydah interrogation team, including Drs. Mitchell and Jessen. At the meeting,
12 the various facets of the next phase of Zubaydah’s interrogation were discussed.
13 The “team emphasized current HQS thinking re: this phase in light of the absolute
14 need to gain critical threat information re: possible imminent terrorist operations
15 being planned against U.S. interests. In this connection the team outlined the
16 specific interrogation techniques to be implemented consistent with the
17 established legal guidance/parameters as discussed during 8 July HQS meeting.”
18 (Tompkins Decl., Exh. 43 at US Bates 001846.)

19 137. The CIA—not Drs. Mitchell or Jessen—determined which of the
20 proposed methods of interrogation would be used on Zubaydah. (Rodriguez
21 Decl. ¶ 48.)

22 138. At this time, the Zubaydah interrogation team was “look[ing]
23 forward to receipt of the cable which details the techniques and the concurrent
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1 authorities which CTC/LGL is working to obtain.” The “implementation of the
2 Post-Isolation phase [would] commence once we received HQS authorization.”
3 (Tompkins Decl., Exh. 43 at US Bates 001847.)

4 **X. DOJ LEGAL APPROVAL TO USE EITS ON HVD ZUBAYDAH**

5 139. The CIA, not Drs. Mitchell or Jessen, determined what approvals
6 from other parts of the United States Government were required before one or
7 more of the EITs could be applied to Zubaydah. (Rizzo Decl. ¶ 30; Tompkins
8 Decl., Exh. 4, Rizzo Tr. at 170:3-6.)

9 140. On July 13, 2002, Rizzo met with Yoo, Bellinger, Bellinger’s deputy
10 Bryan Cunningham, Assistant Attorney General for the Criminal Division
11 Michael Chertoff, OLC Acting Assistant Attorney General Daniel Levin, and a
12 CTC attorney from his office. (Rizzo Decl. ¶ 28; Exh. J at US Bates 1760-65.)

13 141. During this meeting, Rizzo provided a full briefing about the various
14 EITs with particular emphasis on the water board and mock burial process. Rizzo
15 and his attorneys specifically indicated the following:

- 16 • The CIA and FBI staff employees engaged in the interrogation
17 of [] Zubaydah are complemented by expert personnel who
18 possess extensive experience, gained within the Department of
19 Defense, on the psychological and physical methods of
20 interrogation and the resistance techniques employed as
21 countermeasures to such interrogation.
- 22 • Although the interrogation process has produced a limited
23 amount of success to date, [] Zubaydah remains adroit at
24 applying a host of resistance techniques. He is the author of a
25 seminal Al-Qa’ida manual on resistance to interrogation
26 methods, and that the Agency assesses he continues to
withhold critical, actionable information about the identities of

1 Al-Qa'ida personnel dispatched to the United States and about
2 planned Al-Qa'ida terrorist attacks. Simply stated, countless
3 more Americans may die unless we can persuade [Zubaydah]
4 to tell us what he knows.

- 5 • The interrogation process previously had been briefed to the
6 Office of Legal Counsel (who subsequently briefed the
7 Assistant Attorney General for the Criminal Division), as well
8 as to the Assistant to the President for National Security
9 Affairs, the Legal Advisor to the National Security Council,
10 and the White House Counsel. The process had been
11 thoroughly reviewed as well by CIA's Acting General
12 Counsel and by the Chief Legal Advisor to the
13 Counterterrorist Center, and the interrogation team remains
14 authorized to employ all methods lawfully permitted.
- 15 • Nonetheless, the interrogation team now had concluded that
16 the use of more aggressive methods is required to persuade []
17 Zubaydah to provide the critical information needed to
18 safeguard the lives of innumerable innocent men, women, and
19 children within the United States and abroad. In light of the
20 exceptionally grave, lethal, and imminent risks to the citizens
21 of the United States, and the Agency's assessment that []
22 Zubaydah continues to withhold critical information that
23 would permit the United States to avert those risks, CIA had
24 reviewed the team's proposals and wished to secure
25 concurrence from the NSC and the Department of Justice. We
26 also wished to present the proposals to the FBI Chief of Staff
so that the FBI could determine whether to participate in the
next phase as well.
- We emphasized that clearly it is not our intent to permit []
Zubaydah to die in the course of such activities, and that we
would have appropriately trained medical personnel on-site to
ensure the availability to emergency response should he suffer
a potentially lethal consequence. Nonetheless, we noted that
the risk is ever-present that [] Zubaydah may suffer a heart
attack, stroke or other adverse event regardless of the

1 conditions of his detention and questioning; indeed, that
2 potential is always present whenever an individual is under
3 detention.

4 (Rizzo Decl., Exh. J at US Bates 001761-62.)

5 142. The CIA lawyers explained that the techniques were based upon the
6 SERE program. (Tompkins Decl., Exh. 3, Rodriguez Tr. at 96:21-25; Exh. 4,
7 Rizzo Tr. at 151:9-22.)

8 143. Furthermore, during the meeting, Yoo expressed that he “was most
9 interested in the long term impact of each of the techniques CIA is proposing to
10 apply to AZ.” Yoo also “[i]nformally . . . agree[d] that the [proposed] techniques
11 . . . with the exception of the water board and mock burial, do not cause
12 prolonged mental harm and are not controversial.” (Rizzo Decl., Exh. G at US
13 Bates 001913.)

14 144. As for the water board and mock burial, Yoo did not rule out the
15 techniques, but requested additional information. (*Id.*)

16 145. Rizzo thereafter worked to provide OLC with more information and
17 to get all questions about the EITs answered. Specifically, HQS, at Rizzo’s
18 direction, requested that SERE psychologists “comment on the short and long
19 term psychological effects of the water board and mock burial and, if available,
20 statistics on what long term mental health issues resulted from using these
21 techniques in SERE training.” (Rizzo Decl. ¶ 41; Exh. G at US Bates 001913;
22 Exh. L at US Bates 001852; Tompkins Decl., Exh. 4, Rizzo Tr. at 173:10-11,
23 174:9-25.)
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1 146. During this time, other medical professionals familiar with the SERE
2 program were at GREEN, including at times a third SERE psychologist. Some of
3 these individuals had undergone SERE training that was conducted by the CIA
4 when the CIA had its own SERE program, which had been discontinued before
5 Dr. Mitchell began working for the CIA. (Mitchell Decl. ¶¶ 4-5.)

6 147. This information was needed so that Rizzo could provide it to OLC
7 to enable the CIA to “obtain the needed approvals.” (Rizzo Decl. ¶ 41; Exh. G at
8 US Bates 001913.)

9 148. At the same time, HQS was conferring with JPRA—the
10 governmental agency within the DoD entrusted with overseeing and ensuring the
11 safety of all SERE programs—about the EITs. JPRA indicated that “the water
12 board and mock burial are no longer being used because they are extremely
13 effective, preventing the student from learning the fundamentals of resistance in a
14 measured way.” HQS was also conducting its own research on the subject.
15 (Rizzo Decl. ¶ 40; Exh. G at US Bates 001913-14; Tompkins Decl., Exh. 40 at
16 US Bates 001771.)

17 149. JPRA concluded that no long-term psychological effects resulted
18 from use of the EITs. (Rizzo Decl. ¶ 40; Exh. D at US Bates 001595; Tompkins
19 Decl., Exh. 4, Rizzo Tr. at 172:8-24.)

20 150. During the EIT assessment and approval process, Rizzo ensured that
21 a memorandum prepared by OTS titled “Psychological Terms Employed in the
22 Statutory Prohibition on Torture” was provided to the OLC. The OTS Memo
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1 discussed the proposed EITs and explained that the EITs may impact detainees
2 differently than they impact volunteers in the SERE school, stating:

3 However, while the interrogation techniques mentioned above
4 (attention grasp, walking, facial hold, facial slap (insult slap),
5 cramped confinement, wall standing, stress positions, sleep
6 deprivation, waterboard, and mock burial) are administered to
7 student volunteers in the U.S. in a harmless way, with no measurable
8 impact on the psyche of the volunteer, we do not believe we can
9 assure the same here for a man forced through these processes and
10 who will be made to believe this is the future course of the remainder
11 of his life. While CIA will make every effort possible to ensure that
12 the subject is not permanently physically or mentally harmed, some
13 level of risk still exists. The intent of the process is to make the
14 subject very disturbed, but with the presumption that he will recover.

15 (Rizzo Decl. ¶ 38; Tompkins Decl., Exh. 11 at US Bates 000661-62.)

16 151. Rizzo wanted to ensure that the CIA was not overselling the
17 significance of the EITs use during SERE training and to clarify that the
18 experience of Zubaydah exposed to the proposed EITs might not be identical to
19 the experience of SERE trainees. (Rizzo Decl. ¶ 39; Tompkins Decl., Exh., 4,
20 Rizzo at Tr. 33:1-14; Exh. 11 at US Bates 000661-62.)

21 152. On July 17, 2002, Rodriguez and Rizzo were informed that National
22 Security Advisor Condoleezza Rice had approved use of the EITs upon Zubaydah
23 pending DOJ approval of the techniques. (Rizzo Decl. ¶ 33; Exh. J at US Bates
24 001761; Rodriguez Decl. ¶ 51.)

25 153. On July 23, 2002, a cable was sent to HQS with additional
26 information stating:

 A bottom line in considering the new measures proposed for use at
 _____ is that subject is being held in solitary confinement, against his

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1 will, without legal representation, as an enemy of our country, our
 2 society and our people. Therefore, while the techniques described in
 3 HQS meetings and below are administered to student volunteers in
 4 the U.S. in a harmless way, with no measurable impact on the psyche
 5 of the volunteer, we do not believe we can assure the same here for a
 6 man forced through these processes and who will be made to believe
 7 this is the future course of the remainder of his life. Station,
 8 ____ COB and _____ Personnel will make every effort possible to
 insure [sic] that subject is not permanently physically or mentally
 harmed but we should not say at the outset of this process that there
 is no risk.

9 (Tompkins Decl., Exh. 40 at US Bates 001770-71.)

10 154. The cable went on to provide comments from the Zubaydah
 11 interrogation team members to help HQS. The comments were:

12 IC SERE Psychologists Feedback: Our assumption is the objective
 13 of this operation is to achieve a high degree of confidence that
 14 subject is not holding back actionable information concerning threats
 15 to the United States beyond that which subject has already provided.
 16 Given his demonstrated abilities, his current level of confidence, and
 17 his reluctance to provide threat information – again beyond that
 18 which he has already provided – IC SERE psychologists recommend
 19 using an escalating interrogation strategy that has a high probability
 20 of overwhelming subject’s ability to resist. To accomplish this, the
 21 escalation must culminate with pressure which is absolutely
 22 convincing. We propose to employ the pressures/techniques
 23 identified at HQS (minus the mock burial . . .) in concerted fashion
 24 to overwhelm subject’s ability to resist by leading him to believe that
 25 he cannot predict or control what happens to him. The plan is to
 26 rapidly overwhelm subject, while still allowing him the option to
 choose to cooperate at any stage as the pressure is being ratcheted
 up. The plan hinges on the use of an absolutely convincing
 technique. The waterboard meets this need. Without the
 waterboard, the remaining pressures would constitute a 50 percent
 solution and their effectiveness would dissipate progressively over

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1 time as subject figures out that he will not be physically beaten and
2 as he adapts to cramped confinement.

3 (Tompkins Decl., Exh. 40 at US Bates 001771.)

4 155. The IC SERE psychologists—in this case Drs. Mitchell and Jessen—
5 were not aware of specific statistics regarding long term mental health outcomes
6 or consequences from use of the water board in training, but knew that the Navy
7 and JPRA had not reported any significant long term mental health consequences
8 from its use. They suggested that additional information could be obtained from
9 two specific individuals: a JPRA SERE psychologist and a West Coast Navy
10 SERE school psychologist. (*Id.* at US Bates 001771-72.)

11 156. Still, the IC SERE psychologists—again Drs. Mitchell and Jessen—
12 noted that “any physical pressure applied to extremes can cause severe mental
13 pain or suffering. Hooding, the use of loud music, sleep deprivation, controlling
14 darkness and light, slapping, walling, or the use of stress positions taken to
15 extreme can have the same outcome. The safety of any technique lies primarily
16 in how it is applied and monitored.” (*Id.* at US Bates 001772.)

17 157. The information provided by Drs. Mitchell and Jessen and others
18 about the EITs was provided to CIA lawyers. The CIA lawyers then provided
19 information to the OLC in an iterative process that went “back and forth.” Drs.
20 Mitchell and Jessen had no direct contact with the OLC. (Tompkins Decl., Exh.
21 4, Rizzo Tr. at 35:22-38:25.)

22 158. On July 24, 2002, Yoo called Rizzo and advised that United States
23 Attorney General John Ashcroft had authorized him to inform Rizzo that the first
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1 six EITs (attention grasp, walling, facial hold, facial slap, cramped confinement,
2 and wall standing) were lawful and could be used on Zubaydah. (Rizzo Decl. ¶
3 34; Tompkins Decl., Exh. 11 at US Bates 000660.)

4 159. On July 25, 2002, Rizzo had word of such approval sent by cable to
5 the facility where Zubaydah was being held, GREEN. (Rizzo Decl. ¶ 35;
6 Rodriguez Decl. ¶ 53; Exh. K at US Bates 001162-66, Tompkins Decl., Exh. 11
7 at US Bates 000660.)

8 160. The approval cable stated, “this cable provides formal authorization
9 to proceed with portions of the next phase of the interrogation of Abu Zubaydah.”
10 It further explained that “it was not intended, however, that Abu Zubaydah
11 actually suffer severe physical or mental pain” from the interrogation techniques.
12 (Rodriguez Decl., Exh. K at US Bates 001162-63.)

13 161. The cable explained the approval as follows:

14 We have secured formal approval from the acting General Counsel
15 to employ the confinement box, as described in ref, in the course of
16 the interrogation of Abu Zubaydah. We also have secured formal
17 approval from the Attorney General to employ the following
18 techniques, . . . the attention grasp, walling, facial hold, facial slap
19 (insult slap), cramped confinement, wall standing, stress positions,
20 sleep deprivation, use of diapers, and use of harmless insects. We
21 note that these techniques are used on U.S. military personnel during
22 SERE training (with the exception of diapers and real insects . . .).

(*Id.* at US Bates 001163-64.)

23 162. The cable further specified that “a medical expert with SERE
24 experience will be present throughout the implementation” of the techniques.

1 And it provided instructions on how each approved interrogation technique was to
2 be applied. (Rodriguez Decl., Exh. K at US Bates 001164; Rizzo Decl. ¶ 36.)

3 163. At this time, the CIA was still waiting for “final justice department
4 approval for the use of the water board and/or the use of mock burial as part of a
5 threat and rescue scenario.” The CIA “defer[red] to _____ as to whether to
6 await that approval before commencing the next phase of the interrogation.”
7 (Rodriguez Decl., Exh. K at US Bates 001164.)

8 164. Around this time, the OLC advised the CIA that approval of the
9 remaining EITs would be delayed if the “mock burial” technique remained part of
10 the EITs. As a result, the CIA withdrew its request for approval of the “mock
11 burial” technique. (Rizzo Decl. ¶ 37; Rodriguez Decl. ¶ 55; Tompkins Decl.,
12 Exh. 4, Rizzo Tr. at 55:12-22, 56:4-25, 57:1-2; Exh. 3, Rodriguez Tr. at 69:18-
13 24.)

14 165. On August 1, 2002, Rizzo received a formal, confidential
15 memorandum from OLC Assistant Attorney General Jay S. Bybee (the “Bybee
16 Memo”). The memorandum concluded that ten of the EITs that the CIA had
17 proposed (attention grasp, walling, facial hold, facial slap, cramped confinement,
18 wall standing, stress positions, sleep deprivation, insects placed in a confinement
19 box, and the water board) did not violate the prohibition against torture
20 established by 18 U.S.C. § 2340A. (Rizzo Decl. ¶ 42; Exh. I at US Bates 000178-
21 95.)

22 166. By August 2, 2002, the Zubaydah interrogation team learned that the
23 Attorney General had approved all of the remaining EITs (as mock burial had
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1 been abandoned), including the water board, “but that final approval is in the
2 hands of the policy makers.” (Tompkins Decl., Exh. 36 at US Bates, 001653-54.)

3 167. On August 3, 2002, Rizzo had the August 1, 2002 Bybee Memo
4 converted into a cable that was sent to GREEN, the black-site where Zubaydah
5 was being detained, authorizing the EITs. The cable, explained that

6 the legal conclusions are predicated upon the determinations by the
7 interrogation team that ‘Abu Zubaydah continues to withhold critical
8 threat information,’ including the identities of Al-Qa’ida operatives
9 in the United States, that in ‘order to persuade him to provide’ those
10 identities, the use of more aggressive techniques is required, and that
11 the use of those techniques will not engender lasting and severe
12 mental or physical harm.

13 (Rizzo Decl. ¶ 44; Exh. J at US Bates 001761; Tompkins Decl., Exh. 4, Rizzo Tr.
14 at 44:1-3; Exh. 11 at US Bates 000672-73.)

15 168. The legal conclusion further turned on the following factors:

- 16 • The absence of any specific intent to inflict severe physical or
17 mental pain or suffering. In a letter dated 13 July 2002, OLC
18 advised CIA that ‘specific intent can be negated by a showing
19 of good faith . . . if, for example, efforts were made to
20 determine what long-term impact, if any, specific conduct
21 would have and it was learned that the conduct would not
22 result in prolonged mental harm, any actions taken relying on
23 that advice would have to undertake [sic] in good faith. Due
24 diligence to meet this standard might include such actions as
25 surveying professional literature, consulting with experts, or
26 evidence gained from past experience.
- We understand from OTS _____, OMS, and the SERE
psychologists on the interrogation team that the procedures
described above should not rpt not produce severe mental
physical pain or suffering; for example, no severe physical
injury (such as the loss of a limb or organ) or death should

1 result from the procedures; nor would they be expected to
2 produce prolonged mental harm continuing for a period of
3 months or years (such as the creation of persistent
4 posttraumatic stress disorder), given the experience with these
procedures and the subject's resilience to date.

5 (Rizzo Decl., Exh. J at US Bates 001763-64.)

6 169. The cable contained detailed guidance concerning the approved
7 usage of the water board. (Rizzo Decl. ¶ 44; Exh. J at US Bates 001763-64.)

8 170. The cable confirmed that should any member of the team
9 interrogating Zubaydah (including appropriately trained medical personnel) or
10 any on-site personnel request that Zubaydah's interrogation be halted, all
11 members of the interrogation team as well as CIA HQS would be consulted. It
12 also confirmed that the final decision to halt or recommence EIT use would lie
13 exclusively with HQS, or if HQS was unavailable, the CIA's Chief of Base (at
14 GREEN) and Senior CTC Officer. (Rizzo Decl. ¶ 46; Exh. J at US Bates 001764;
15 Tompkins Decl., Exh. 4, Rizzo Tr. at 60:10-25; Rodriguez Decl. ¶¶ 58-61.)

16 171. The DOJ's determination of the EITs' legality and the related
17 (modified and approved) Zubaydah interrogation plan was promptly conveyed to
18 Drs. Mitchell and Jessen verbally by the COB at GREEN. (Rodriguez Decl. ¶ 62;
19 Tompkins Decl., Exh. 2, Jessen Tr. at 150:2-14.)

20 172. The COB explained to Drs. Mitchell and Jessen the upper and lower
21 limits of what the DOJ had determined was permissible. (Tompkins Decl., Exh.
22 2, Jessen Tr. at 149:19-150:14.)
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1 173. Drs. Mitchell and Jessen relied upon the DOJ's legality assessment.
 2 (Tompkins Decl., Exh. 2, Jessen Tr. at 148:6-149:7, 181:3-6, 184:1-7, 212:10-11,
 3 215:21-216:8, 251:10-252:6; Tompkins Decl., Exh. 46 at US Bates 001927.)

4 174. As Attorney General Eric Holder explained in an April, 16, 2009,
 5 press release, "[i]t would be unfair to prosecute dedicated men and women
 6 working to protect America for conduct that was sanctioned in advance by the
 7 Justice Department." And according to Rizzo, this protection should further
 8 extend to "contractors retained by the [CIA] to help carry out the terrorist
 9 interrogation program described in the OLC opinions in question." (Tompkins
 10 Decl., Exh. 68 at MJ00023566-68.)

11 175. The CIA consulted with SERE psychologists and interrogators other
 12 than Defendants regarding detainee interrogations. (Tompkins Decl., Exh. 30 at
 13 US 001591-93; Mitchell Decl. ¶¶ 3-5.)

14 **XI. APPLICATION OF THE EITS TO ZUBAYDAH**

15 176. The CIA determined what was done to Zubaydah, how it would be
 16 done, and when it would be done. (Tompkins Decl., Exh. 3, Rodriguez Tr. at
 17 174:24-175:3, 175:21-25.)

18 177. The CIA, through HQS, the CTC and the COB of GREEN,
 19 maintained complete operational control over Drs. Mitchell and Jessen while they
 20 interrogated Zubaydah, whether using EITs or otherwise. (Rodriguez Decl. ¶ 68;
 21 Exh. Q at US Bates 001891; Exh. P at US Bates 001916; Tompkins Exh. 31 at
 22 US Bates 001594.)

23 178. Drs. Mitchell and Jessen reported directly to GREEN's COB. (*Id.*)
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1 179. GREEN's COB, in turn, reported to Rodriguez, who was keenly
2 aware of, and approved of, all of Drs. Mitchell and Jessen's activities.
3 (Rodriguez Decl. ¶ 69.)

4 180. GREEN's COB was responsible for ensuring that all on-site staff
5 and support, including Drs. Mitchell and Jessen, complied with all applicable
6 regulations, guidelines, standard operating procedures and the applicable,
7 approved interrogation plan. (Rodriguez Decl. ¶ 69; Exh. P at US Bates 001921;
8 Tompkins Decl., Exh. 32 at US Bates 001625.)

9 181. The Zubaydah interrogation team did not apply any EITs to
10 Zubaydah until it received express HQS approval. Rather, they stood ready to
11 initiate the next phase of the interrogation process if they "received the
12 appropriate approvals/authorities and related ____ cables outlining the specific
13 techniques to be used during upcoming phase." (Tompkins Decl., Exh. 46 at US
14 Bates 001927; Exh. 4, Rizzo Tr. at 60:10-25.)

15 182. The Zubaydah interrogation team prepared for Zubaydah's
16 forthcoming interrogation and developed "protocols for [a] large confinement box
17 and [wound] dressing changes during the next phase of interrogation."
18 (Tompkins Decl., Exh. 56 at US Bates 002215-16.)

19 183. The Zubaydah interrogation team also talked through the
20 interrogation strategy and then conducted multiple walk-throughs with security
21 staff and OMS, during which they choreographed using the large and small
22 confinement boxes, the water board, and emergency medical procedures.
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1 (Tompkins Decl., Exh. 35 at US Bates 001651-52; Exh. 36 at US Bates 001653-
2 54.)

3 184. On August 4, 2002, all members of the Zubaydah interrogation team
4 “read and reviewed HQS[’s] formal approval cable to proceed with the next phase
5 of interrogations.” (Rizzo Decl. ¶ 47; Exh. K at US Bates 001755-56; Rodriguez
6 Decl. ¶ 63.)

7 185. Then, before commencing Zubaydah’s interrogation, in accordance
8 with the new plan, the team again reviewed the procedural steps of the
9 interrogation to ensure that everyone understood their respective roles and did not
10 have any concerns. (Rizzo Decl., Exh. K at US Bates 001755-56.)

11 186. Zubaydah’s subsequent interrogation using EITs was conducted
12 entirely at the behest of, and within the control of, HQS and CTC. (Rodriguez
13 Decl. ¶ 65.)

14 187. The first session of the so-called Aggressive Phase commenced on
15 August 4, 2002 at 11:50 Hours. The session “went exactly as expected and
16 discussed/scripted” during the team meetings. (Rizzo Decl., Exh. K at US Bates
17 001755-56.)

18 188. EITs were applied to Zubaydah in varying combinations on the first
19 day and then the days thereafter. (Tompkins Decl., Exh. 51 at US Bates 002020-
20 21.)

21 189. GREEN’s COB provided HQS, and specifically Rodriguez, with
22 detailed correspondence regarding interrogations on both a daily and as needed
23 basis. (Rodriguez Decl. ¶ 71.)
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1 **XII. HQS CONTINUES EITS AFTER DRS. MITCHELL AND JESSEN**
 2 **WANT TO STOP**

3 190. After six days of applying EITs to Zubaydah, on August 11, 2002,
 4 the interrogation team sent HQS an update indicating that the team collectively
 5 thought it was highly unlikely Zubaydah had actionable new information about
 6 current threats to the United States. On the other hand, the team thought that
 7 Zubaydah was withholding information about his involvement in past operations.
 8 (Tompkins Decl., Exh. 57 at US Bates 002341.)

9 191. In a matter of days, Drs. Mitchell and Jessen specifically
 10 recommended that EITs, including the water board not be used on Zubaydah
 11 anymore. Rodriguez was aware of this recommendation. (Rodriguez Decl. ¶ 72;
 12 Tompkins Decl., Exh. 3, Rodriguez Tr. at 113:6-13; Exh. 2, Jessen Tr. at 147:18-
 13 148:5; Exh. 1, Mitchell Tr. at 294:16-22, 295:11-296:10.)

14 192. In a cable, Zubaydah's interrogation team specifically indicated that
 15 they did not recommend escalating the pressure on Zubaydah because they did
 16 not want to risk "going beyond legal authorities." (Tompkins Decl., Exh. 57 at
 17 US Bates 002341.)

18 193. The interrogation team also requested that HQS send someone to
 19 observe the interrogations during the week of August 12, 2002, so that the HQS
 20 team could obtain
 21

22 an 'on-the-ground appreciation for the tactics/techniques being used
 23 as a way of assuring HQS that techniques are being applied to the
 24 letter/intent of the law, allow HQS team the opportunity to discuss
 25 team concerns regarding positive/negative impact of increased
 26 psychological pressure to achieve our goals re: actionable threat

1 information, and reinforce team request for clarification of the end
2 game strategy re: subject.’

3 (Tompkins Decl., Exh. 57 at US Bates 002341.)

4 194. HQS nevertheless demanded that Drs. Mitchell and Jessen continue
5 to apply the water board to Zubaydah. (*Id.*, Exh. 2, Jessen Tr. at 147:18-148:5.)

6 195. In a cable, HQS ordered:

7 1. Action Required: Please stay the course, medical situation
8 permitting, and be certain you have our support.

9 2. Much appreciate ref detailed, timely reporting of your work at
10 _____. We read carefully the week’s interrogation results, and your
11 recently submitted preliminary analysis of the interrogation situation.
12 We see this point as still early in the phase two process, and while
13 the work is difficult, we see some positive trends. You are
14 succeeding in placing effective interrogation stress on Abu Zubaydah
15 in keeping with the interrogation guidelines. Abu Zubaydah is
16 feeling the increased pressure. Most importantly, he has begun to
17 share disseminable information – at the end of the week. While the
18 value of this information is modest, it is verifiable and can be used as
19 the basis for future interrogations. It may clear the way for more
20 significant progress. The bottom line, in our view is that ref
21 developments are encouraging and more than justify staying the
22 course. Our assessment remains that Abu Zubaydah is in possession
23 of critical information.

24 3. Because of this, we believe that the aggressive phase must
25 continue.

26 4. We know this is a very difficult assignment. Your task is unique,
stressful on the participants, as well as terribly important and
sensitive. You are doing this work far from home and your
colleagues. Don’t let this distance lead you to think that you have
anything but our complete support.

(Tompkins Decl., Exh. 58 at US Bates 002344.)

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1 196. HQS further remarked that the interrogation team's reporting was
2 "excellent" and scheduled a videoconference to view the application of EITs to
3 Zubaydah on August 13, 2002. (Tompkins Decl., Exh. 58 at US Bates 002344.)

4 197. On August 11, 2002, the interrogation team again told HQS that they
5 did not think Zubaydah possessed any further information about new or current
6 threats against the United States. (*Id.*, Exh. 59 at US Bates 002346.)

7 198. On August 13, 2002, HQS acknowledged that the interrogation team
8 believed that Zubaydah had no additional information on current threats. Still,
9 HQS ordered that the interrogation continue and provided additional information
10 for use in the ongoing interrogation. (*Id.*, Exh. 60 at US Bates 002351.)

11 199. After watching a videoconference during which EITs were applied to
12 Zubaydah on August 13, 2002, HQS directed the interrogation team to "continue
13 with the aggressive interrogation strategy for the next 2-3 weeks." At the time,
14 "the HQS consensus" was that Zubaydah possessed additional information that
15 was "critical to saving American lives." (*Id.*, Exh. 61 at US Bates 002356.)

16 200. In particular, CTC analysts remained concerned that Zubaydah was
17 not "compliant" because when Zubaydah was captured, the CIA had discovered
18 tapes that Zubaydah had pre-recorded to celebrate another major attack on the
19 U.S. CTC feared that another attack had been planned and Zubaydah was not
20 providing the information about that planned attack. (*Id.*, Exh. 3, Rodriguez Tr.
21 at 114:19-115:1, 176:14-177:3.)

22 201. HQS directed the interrogation team to continue water boarding
23 Zubaydah and apply all the "pressures we have the legal authorities to bring to
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1 bear” and reassured them: “rest assured that every action the ____ team has taken
2 with Abu Zubaydah falls well within these legal parameters.” (Tompkins Decl.,
3 Exh. 61 at US Bates 002357; Exh. 3, Rodriguez Tr. at 176:6-13; Tompkins Decl.,
4 Ex. 2, Jessen Tr. at 147:18-148:5.)

5 202. HQS ordered the interrogation team to continue to use “pressures ...
6 against Abu Zubaydah” so that “stress remains on him to be compliant and to
7 produce actionable information.” (*Id.*, Exh. 61 at US Bates 002357.)

8 203. Drs. Mitchell and Jessen were “responsible for ensuring that Abu
9 Zubaydah remain[ed] compliant through the pressures while _____ [] head[ed] up
10 the substantive interrogations.” Meanwhile, the CIA’s ALEC station supported
11 the interrogation through focused requirements and immediate feedback on
12 Zubaydah’s disclosures. There was also someone present from the CIA at
13 Zubaydah’s interrogations to provide legal and operational guidance. (*Id.*)

14 204. On August 16, 2002, in response to the interrogation team’s request
15 that HQS view the interrogations on-the-ground, a HQS team arrived at GREEN
16 to discuss the general strategy for the current phase of Zubaydah’s interrogation.
17 (*Id.*, Exh. 62 at US Bates 002367.)

18 205. The HQS team participated in the daily strategy meeting about
19 Zubaydah’s interrogations and then became actively involved in Zubaydah’s
20 interrogation. (Tompkins Decl., Exh. 62 at US Bates 002367; Exh. 63 at US
21 Bates 002373; Rodriguez Decl. ¶ 73.)

22 206. On August 19, 2002, the water board was applied to Zubaydah while
23 CTC/LGL and GREEN’s COB observed. During the technique, Zubaydah was
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1 instructed that “revealing the requested information would stop the procedure.”
2 (Tompkins Decl., Exh. 64 at US Bates 002380; Exh. 1, Mitchell Tr. at 296:13-
3 297:9.)

4 207. The aggressive phase of Zubaydah’s interrogation ended on August
5 23, 2002—after 19 days of interrogation using EITs—because HQS viewed
6 Zubaydah as being “in a state of complete subjugation and total compliance.”
7 (Tompkins Decl., Exh. 65 at US Bates 002382; Rodriguez Decl. ¶ 74.)

8 208. HQS indicated that “the aggressive phase at _____ should be used
9 as a template for future interrogation of High Value Captives. Psychologists
10 familiar with interrogation, exploitation and resistance to interrogation should
11 shape compliance of high value captives prior to debriefing by substantive
12 experts.” (Tompkins Decl., Exh. 51 at US Bates 002023.)

14 **XIII. EITS ARE EXPANDED FOR USE ON OTHER HVDS**

15 209. Within a few months of the August 1, 2002 Bybee Memo, the OLC
16 confirmed that EITs could be used on other HVDs. (Rizzo Decl. ¶ 50; Tompkins
17 Decl., Exh. 4, Rizzo Tr. at 62:9-12; Rodriguez Decl. ¶ 76.)

18 210. EITs—the specific techniques Dr. Mitchell listed in the July 2002
19 Memo—were contemplated for use only on HVDs. (Tompkins Decl., Exh. 3,
20 Rodriguez Tr. at 76:20-77:1, 165:7-20, 184:19-25, 186:17-20; Exh. 4, Rizzo Tr.
21 at 62:13-25, 63:17, 65:5-15.)

22 211. Drs. Mitchell and Jessen were contracted to support the CTC with
23 regard to HVDs. (Tompkins Decl. Exh., 3, Rodriguez Tr. at 182:2-7; DDO
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1 Death Investigation, Exh. 22 at US Bates 001124 (describing Jessen as “involved
2 in the use of enhanced interrogation techniques with high value targets”).

3 212. Rodriguez described the results Drs. Mitchell and Jessen achieved as
4 “incredible”—providing the CIA with “intelligence ... that we didn’t have
5 before.” (Tompkins Decl., Exh. 3, Rodriguez Tr. at 134:2-10.)

6 213. According to Dr. Mitchell’s “Contract Performance Report” for the
7 period January 1, 2003, to December 31, 2003, Dr. Mitchell’s performance was
8 “Exceptional,” and he “consistently met the highest standards of professionalism
9 and competence.” (Tompkins Decl., Exh. 78 at US Bates 001911.)

10 214. Rodriguez also testified that Defendants’ evaluation of the EITs’
11 effectiveness was “not problematic” because the CIA “also played a role in
12 assessing their effectiveness.” (Tompkins Decl., Exh. 3, Rodriguez Tr. at 132:2-
13 9.)

14 215. During their time working for the CIA in 2002 through January
15 2003, Drs. Mitchell and Jessen spent at least 80% of their time deployed outside
16 the U.S. In fact, during this timeframe, Dr. Jessen spent 98% of his time
17 deployed outside the U.S. (Mitchell Decl. ¶ 9; Jessen Decl. ¶ 4.)

18 **XIV. APPROVAL PROCESS FOR EITS**

19 216. Dr. Mitchell and Jessen did not decide to whom (*i.e.*, which HVDs)
20 the EITs would be applied. (Tompkins Decl., Exh. 3, Rodriguez Tr. at 125:23-
21 126:3, 174:6-10; Tompkins Decl., Exh. 34 at US Bates 001631-32.)

1 217. Before EITs could be applied to any detainee, the CIA had to grant
2 specific legal approval. (*Id.*, Exh. 3, Rodriguez Tr. at 167:15-19, 169:4-8; Exh. 4,
3 Rizzo Tr. at 60:10-25, 85:1-12, 187:2-25, 188:1-7.)

4 218. The CIA advised Drs. Mitchell and Jessen, and all other CIA officers
5 involved in the EIT Program (*i.e.*, the program wherein EITs were applied to
6 Zubaydah and other HVDs), that EITs were not authorized for use without
7 specific and prior HQS approval. (*Id.*, Exh. 30 at US Bates 001593.)

8 219. It was important to “fully document in advance any decision to
9 employ any [EITs]” and the criteria that were employed in making those
10 decisions. (*Id.*, Exh. 52 at US Bates 002030.)

11 220. The use of specific EITs would be authorized only where, “in light
12 of the specific interrogator’s experience with those procedures and the specific
13 detainee’s own characteristics”, the techniques would not cause severe physical
14 injury, death, or prolonged mental harm continuing for a period of months or
15 years. (Tompkins Decl., Exh. 52 at US Bates 002029; Tompkins Decl., Exh. 1,
16 Mitchell Tr. at 158:17-159:1; 409:21-410:3.)

17 221. All cables from a black-site were reviewed by the Chief of Base
18 prior to being sent to HQS. (*Id.*, Exh. 2, Jessen Tr. at 143:5-13.)

19 222. Rodriguez explained that cables requesting approval for the
20 application of EITs would go to multiple people in the chain of command at CIA
21 HQS, including Rodriguez, who had to approve any such requests. (*Id.*, Exh. 3,
22 Rodriguez Tr. at 167:16-19, 167:20-168:3.)
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1 223. For certain techniques, specifically water boarding, the Director of
2 the CIA would also have to approve, in advance, usage of the technique. (*Id.*,
3 Exh. 3, Rodriguez Tr. at 166:17-167:7.)

4 224. The CIA put this detailed approval process in place because the CIA
5 considered EITs serious and did not want them applied without approval of the
6 “highest levels of the agency.” (*Id.*, Exh. 3, Rodriguez Tr. at 167:7-14.)

7 225. Drs. Mitchell and Jessen understood that they were the only
8 individuals authorized to administer EITs until around November-December
9 2002. (Mitchell Decl. ¶ 10; Jessen Decl. ¶ 5.)

10 226. The CIA conducted training in “High-Value Target” interrogation
11 techniques in late 2002. The training was designed, developed, and conducted by
12 individuals other than Drs. Mitchell and Jessen from CTC, and Drs. Mitchell and
13 Jessen played no role in the interrogation training. Individuals from JPRA were
14 instructors at this training. (Tompkins Decl., Exh. 66 at US Bates 002595-663;
15 Exh. 67 at US Bates at 2667.)

16 227. Although this approval process was in place starting in 2002, on
17 January 31, 2003, CIA Director Tenet, upon the advice of the CIA’s then-General
18 Counsel Scott Muller, sent formalized guidelines for interrogations of detainees
19 held pursuant to the MON to all CIA black-sites (“Guidelines”). The CTC/LGL
20 Department drafted these guidelines. (Rizzo Decl. ¶ 51; Exh. L at US Bates
21 001856; Exh. N at US Bates 001170-74; Tompkins Decl., Exh. 4, Rizzo Tr. at
22 63:18-22, 81:4-19, 186:4-21; Exh. 3, Rodriguez Tr. at 170:17-171:9)

1 228. The Guidelines distinguished between “Standard Techniques” and
2 “Enhanced Techniques.” Standard Techniques were determined by HQS and
3 included isolation, sleep deprivation (up to 72 hours), reduced diet, loud music,
4 and the use of diapers. Whenever feasible, Standard Techniques required
5 advanced approval, and “required _____ in cable traffic.” (Rizzo Decl., Exh. N
6 at US Bates 001171-72; Tompkins Decl., Exh. 4, Rizzo Tr. at 189:6-24.)

7 229. “Enhanced Techniques” also were determined by HQS and included
8 the attention grasp, walling, facial hold, facial slap, abdominal slap, cramped
9 confinement, wall standing, stress positions, sleep deprivation (beyond 72 hours),
10 use of diapers for prolonged periods, use of harmless insects, and the water board.
11 “Enhanced Techniques” required advanced approval. They also could only be
12 used “with appropriate medical and psychological participation[.]” And the
13 participating medical personnel was selected by HQS. (Rizzo Decl., Exh. N at
14 US Bates 001170-74; Tompkins Decl., Exh. 4, Rizzo Tr. at 190:13-25, 191:1-21;
15 Exh. 3, Rodriguez Tr. at 80:15-20.)

16 230. The Guidelines were sent to all CIA locations, including COBALT,
17 and all CIA personnel involved in interrogations or detentions was required to
18 review and acknowledge them. (Rizzo Decl. ¶ 56; Exh. L at US Bates 001856.)

19 231. Drs. Mitchell and Jessen were not aware that the Guidelines were
20 sent to COBALT in January 2003. (Mitchell Decl. ¶ 12; Jessen Decl. ¶ 8.)

21 **XV. PROCEDURE FOR APPLICATION OF EITS**

22 232. Drs. Mitchell and Jessen were under the direct operational
23 supervision of the Chief and Deputy Chief of the CIA’s Rendition, Detention and
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1 Interrogation Group (“RDI”), who determined how, when, where, for how long,
2 and in what capacity, Drs. Mitchell and Jessen were deployed. (Tompkins Decl.,
3 Exh. 31 at US Bates 001594.)

4 233. The COB at each black-site was responsible for the overall
5 management and supervisory duties of an interrogation team, including Drs.
6 Mitchell and Jessen, and for the specific interrogation plan. (Rodriguez Decl. ¶
7 77-78; Tompkins Decl., Exh. 33 at US Bates 001628.)

8 234. Drs. Mitchell and Jessen reported to the COB. All communications
9 between the field and HQS flowed through the COB up the chain to the Chief of
10 Station, then to CTC, and then to the Director of the CIA. (Tompkins Decl., Exh.
11 2, Jessen Tr. at 151:12-23.)

12 235. As independent contractors, Drs. Mitchell and Jessen did not make
13 decisions. The CIA hires independent contractors who are subject matter experts.
14 Drs. Mitchell and Jessen gave the CIA knowledge that it did not possess and
15 made recommendations, but the ultimate decision makers were always the CIA
16 staff and CTC leadership.

17 Q: Were they – did you tell them that they were not, that they were
18 not the ones to decide who the enhanced interrogation techniques
19 would be used on? A: They were contractors, independent
20 contractors. Everybody knows that independent contractors don’t
21 make decisions, that the staff people are the ones making decisions.

22 (Tompkins Decl., Exh. 3, Rodriguez Tr. at 126:6-17, 160:15-19; Tompkins Decl.,
23 Exh. 1, Mitchell Tr. at 248:21-23, 253:22-257:19.)

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1 236. Rodriguez testified that Drs. Mitchell and Jessen acted under the
2 direction of the CIA. (*Id.*, Exh. 3, Rodriguez Tr. at 181:19-25, 250:5-19; Exh. 33
3 at US Bates 001628.)

4 237. More specifically, Drs. Mitchell's and Jessen's responsibilities
5 included only the following:

- 6 a. Conduct psychological interrogation assessment of a detainee and
7 report the findings of the assessment to HQS;
- 8 b. Assist the interrogation team in developing an interrogation plan
9 based upon the PIA;
- 10 c. Monitor the psychological progress of the detainee during the
11 interrogation process;
- 12 d. Assist the team interrogation with planning the transition of a
13 detainee towards debriefing;
- 14 e. Act as a member of the interrogation team providing psychological
15 advice to the interrogators and the team leader; and
- 16 f. Act as an active member of the interrogation team with "hands-on"
17 the detainee during the interrogation process.

18
19 (Tompkins Decl., Exh. 30 at US Bates 001592.)

20 238. Interrogation plans, or changes to an interrogation plan, were
21 approved by the COB and then approved by all of his or her superiors. (*Id.*, Exh.
22 2, Jessen Tr. at 151:12-23; Tompkins Decl., Exh. 3, Rodriguez Tr. at 246:2-12
23 (stating the CIA "were the ones that provided [Drs. Mitchell and Jessen] the plan.
24

1 We were the ones that told them, look, we can use these interrogation techniques
2 on these [specific] individuals”); Tompkins Decl., Exh. 73 at MJ000022623.)

3 239. “Prior to an interrogation team using EITs, the Site Manager, in
4 coordination with the interrogation team, formulate[d] an interrogation plan,
5 submit[ed] the plan to HQS for approval by the [Director], and approval authority
6 must be submitted to the Site prior to any methods being used. A detailed
7 interrogation after action report [was] submitted at the conclusion of each
8 interrogation session.” (Tompkins Decl., Exh. 34 at US Bates 001635.)

9 240. Interrogation decisions were made by the “interrogation team,”
10 which itself was required to “consult closely with CTC/LGL as to the specific
11 means and methods envisioned” to “ensur[e] the fullest possible acquisition of
12 critical intelligence and the full legal protection of our officers.” (Tompkins
13 Decl., Exh. 55 at US Bates 002171.)

14 241. The interrogation process entailed an ongoing “discussion,” with
15 CIA cables refining the proposed interrogation plan and “request[ing] HQS
16 concurrence.” (Tompkins Decl., Exh. 50 at US Bates 002018; Tompkins Decl.,
17 Exh. 40 at US Bates 001770-72, Tompkins Decl., Exh. 51 at US Bates 002019;
18 Tompkins Decl., Exh. 1, Mitchell Tr. at 248:14-17.)

19 242. The CIA maintained control over whether any EIT was used upon an
20 HVD, including Zubaydah, and under what circumstances. Indeed, CTC was
21 “[c]learly ... in charge of the operation,” and was also “providing the legal
22 oversight.” (Tompkins Decl., Exh. 30 at US Bates 001593; Exh. 31 at US Bates
23 001594; Exh. 3, Rodriguez Tr. at 181:4-13; Exh. 4, Rizzo Tr. at 192:23-25,
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1 193:1-17; Exh. 69, Exhibit 20 to the Mitchell Tr.; Rodriguez Decl. ¶ 78; Exh. Q
2 at US Bates 001891; Tompkins Decl., Exh. 34 at US Bates 001635-36.)

3 243. The purpose of the EITs was to get the detainee to cooperate and
4 talk. They were applied starting with the least intrusive, and throughout the
5 interrogation, the detainee was constantly asked if they would cooperate.
6 (Tompkins Decl., Exh. 2, Jessen Tr. at 122:14-123:16, 124:1-11, 126:10-14.)

7 244. During the HVD interrogations, the CIA required a medical doctor
8 be present in the room when any EITs were being used to make sure that no harm
9 came to the detainee and that if there was a medical emergency, there would be
10 someone that could treat it. (*Id.*, Exh. 3, Rodriguez Tr. at 170:6-16.)

11
12 **XVI. MVD/LVD PROGRAM IS DEVELOPED SEPARATELY**

13 245. Drs. Mitchell and Jessen were initially contracted for Zubaydah's
14 interrogation. Only after Zubaydah's interrogation did they learn that the CIA
15 had interrogation efforts at other locations. (Tompkins Decl., Exh. 2, Jessen Tr.
16 at 138:1-11, 139:14-22; Exh. 4, Rizzo Tr. at 180:1-2.)

17 246. In fact, they did not find out that interrogations were going on at
18 other locations until they arrived at those locations. (*Id.*, Exh. 2, Jessen Tr. at
19 267:21-268:6; 269:12-13; 270:2-4; Exh. 4, Rizzo Tr. at 204:3-10; Rodriguez
20 Decl. ¶¶ 95-96.)

21 247. Drs. Mitchell and Jessen were not involved in developing any
22 interrogation program used at other locations and they did not provide
23 suggestions for any such program. (Tompkins Decl., Exh. 2, Jessen Tr. at
24 267:21-268:6; Exh. 4, Rizzo Tr. at 203:20-204:10; Rodriguez Decl. ¶¶ 95-96.)
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1 248. The interrogation program was compartmentalized and Drs. Mitchell
2 and Jessen did not have access to information outside their assignments. They
3 did not know what the CIA was doing elsewhere or to whom the CIA was doing
4 it. (Tompkins Decl., Exh. 2, Jessen Tr. at 200:10-24, 267:21-268:6, 278:1-7.)

5 249. A medium-value detainee (“MVD”) is defined as an enemy of the
6 U.S.: someone involved in war against the U. S. but who may not have the level
7 of intelligence that represents an immediate threat to our country. (*Id.*, Exh. 3,
8 Rodriguez Tr. at 145:14-21, 145:5-9.)

9 250. A low-value detainee (“LVD”) is also defined as an enemy of the U.
10 S., but is a lesser combatant, a facilitator person who is not as dangerous as a
11 MVD. (*Id.*, Exh. 3, Rodriguez Tr. at 145:25-146:4, 145:5-9.)

12 251. The CIA started classifying detainees as HVD, MVD, and LVD after
13 Zubaydah—the first HVD—was captured. (*Id.*, Exh. 3, Rodriguez Tr. at 146:15-
14 23.)

15 252. A detainee was categorized upon capture. (Tompkins Decl., Exh. 3,
16 Rodriguez Tr. at 164:6-15.)

18 **XVII. COBALT**

19 253. CTC approved the funding to establish a detention facility known as
20 COBALT in June 2002. COBALT was not designed to house HVDs. (Rodriguez
21 Decl., Exh. S at US Bates 001275; Tompkins Decl., Exh. 4, Rizzo Tr. at 85:16-
22 22.)

23 254. COBALT was not in the United States. (Tompkins Decl., Exh. 25 at
24 US Bates 001372.)

1 255. CIA Staff Officer (also known as the COB) was sent to COBALT in
2 approximately August 2002, about one month before it was operational.
3 (Tompkins Decl., Exh. 22 at US Bates 001113, 001116, 001123; Rodriguez
4 Decl., Exh. S at US Bates 001276; Jessen Decl. ¶ 7.)

5 256. COBALT's COB was responsible for the final construction details of
6 COBALT. (Tompkins Decl., Exh. 22 at US Bates 001123.)

7 257. The COB also was the COBALT "site manager" responsible for
8 detainee affairs, including coordinating interrogations and renditions at COBALT
9 and devising the operational procedures for COBALT. (Tompkins Decl., Exh. 22
10 at US Bates 001123-24.)

11 258. When detainees arrived at COBALT, it was the COB's responsibility
12 to interrogate them. (Rodriguez Decl., Exh. S at US Bates 001289, 001282.)

13 259. Before his deployment, the COB had been briefed on the CIA's
14 prohibition against torture, being vigilant to ensure there is no torture, and the fact
15 that it was permissible to use certain tactics in debriefing that cannot injure,
16 threaten with death, or induce lasting physical damage to the detainees.
17 (Rodriguez Decl., Exh. S at US Bates 001283.)

18 260. Yet, COB had no formal instruction relating to interrogations until
19 April 2003, although he had spent four days as a trainee during SERE training.
20 The SERE training provided the COB with some understanding as to how
21 prisoners would react to various handling, treatment, and interrogation methods.
22 (Rodriguez Decl., Exh. S at US Bates 001282; Tompkins Decl., Exh. 22 at US
23 Bates 001114.)
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1 261. From Mid-2002 through November 2002, COBALT's guidance on
2 what could be done during interrogations was based entirely on a cable drafted by
3 a CTC officer in July 2002 while interrogating a particularly obstinate detainee.
4 That officer proposed the use of darkness, sleep deprivation, solitary confinement,
5 and noise. CIA HQS approved that proposal because no permanent harm would
6 result from any of the proposed measures. (Tompkins Decl., Exh. 25 at US Bates
7 001391; Rodriguez Decl., Exh. S at US Bates 001284-85.)
8

9 262. The COB decided that the detainees in COBALT would remain in
10 darkness because there was only one light switch for all the lights in the cell area.
11 "Faced with the choice to keep them on all the time or off all the time, he chose
12 the latter." (Tompkins Decl., Exh. 18 at US Bates 001082; Exh. 22 at US Bates
13 001126.)

14 263. The COB also decided to play loud music at COBALT. When he
15 arrived at COBALT, the COB determined that detainees could be heard from
16 adjoining cells, so noise masking was necessary. The COB purchased the stereo.
17 (Tompkins Decl., Exh. 18 at US Bates 001082-83; Exh. 22 at US Bates 001114,
18 001126.)

19 264. The individuals managing COBALT, including the COB, reported to
20 the CIA every other day or when issues arose. Someone from Station
21 management visited COBALT about once a month. (Rodriguez Decl., Exh. S at
22 US Bates 001283.)
23

24 265. The interrogation methods used at COBALT were different than the
25 EITs:
26

- 1 a. When detainees first arrived at COBALT, the COB suggested and
2 participated in a “mock execution” in an attempt to shake up the
3 detainees. The COB also discharged a firearm while an officer lay
4 on the floor and chicken blood was splattered on the wall.
5 (Rodriguez Decl., Exh. S at US Bates 001324-25.)
6
7 b. A technique referred to as “water dousing” was utilized in which the
8 detainee is laid down on a plastic sheet or towel and water is poured
9 on the detainee from a container while the interrogator questions the
10 detainee. Water is applied so as not to enter the nose or mouth and
11 interrogators were not supposed to cover the detainee’s face with a
12 cloth. Water dousing was proposed by someone other than Drs.
13 Mitchell and Jessen in March 2003. (Tompkins Decl., Exh. 70 at
14 MJ00008347.)

15 **XVIII. SULEIMAN ABDULLAH SALIM**

16 266. In or around 1994, Suleiman Abdullah Salim (“Salim”) traveled to a
17 training camp in Afghanistan that was operated by an organization known as
18 Harkati Hansar, which the U.S. government considered a terrorist training camp.
19 (Tompkins Decl., Exh. 5, Deposition of Suleiman Abdullah Salim (“Salim Tr.”)
20 at 114:3-4, 114:19-20, 116:3-24 120:10-11; Exh. 26 at US Bates 1534.)
21

22 267. Salim was at the Harkati Hansar camp with Fahid Mohamed Ally
23 Msalam. Msalam was considered by the U.S. government to be a 1998 East
24 African embassy bombing fugitive. (*Id.*, Exh. 5, Salim Tr. at 120:10-11, 142:24-
25 143; Exh. 26 at US Bates 1534-1535.)
26

1 268. In 2003, Salim was arrested in Mogadishu, Somalia. He was taken
2 to COBALT shortly after his arrest. Salim was detained at COBALT for
3 approximately two months. (*Id.*, Exh. 5, Salim Tr. at 65:10-16; 93:19-94:10;
4 95:22-96:1.)

5 269. At COBALT, Salim was interrogated by CIA agents. Salim alleges
6 that CIA agents beat him in connection with the interrogation sessions, including
7 punching and kicking. (*Id.*, Exh. 5, Salim Tr. at 153:5-9, 153:22, 154:5-8,
8 158:22-24, 165:6-14.)

9 270. Salim asserts that he underwent the following interrogation
10 techniques during his detention at COBALT: being put in a box; being stripped
11 naked and having a light shined in his face; being put on the ground in a plastic
12 bag while water was poured on him; having his rectal area knocked with a plastic
13 water jug; being tied to a table and spun around; being placed in boxes—one
14 vertically oriented and one horizontally oriented; being tied or handcuffed to a
15 wall; being handcuffed while naked; receiving an injection that rendered him
16 unconscious, and having a cloth tied around his neck being punched while against
17 a wall, and being hung from a pipe. He was not water-boarded. (Tompkins
18 Decl., Exh. 5, Salim Tr. at 157:15-159:1, 166:20-168:12, 170:24-171:10; Rizzo
19 Decl., Exh. O at US Bates 001609.)
20

21 271. Documents produced by the CIA indicate that the interrogation
22 techniques to which Salim was subjected included sleep deprivation, nudity,
23 attention grasp, abdominal slap, facial slap, cramped confinement, water dousing,
24 and walling. (Rizzo Decl., Exh. O at US Bates 001609.)
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1 272. Salim does not know Defendants and was never in the same room as
2 Defendants. (Tompkins Decl., Exh. 5, Salim Tr. at 173:10-18; 241:12-242:7;
3 Exh. 71, Salim Interrogatories, Rog. 1.)

4 273. In or around March 2004, Salim was transferred from CIA custody
5 to DoD custody at Bagram Air Force Base in Afghanistan. This transfer was
6 made at the CIA's request. The CIA would only have relinquished custody in this
7 way for MVDs. (Tompkins Decl., Exh. 5, Salim Tr. at 96:2 -97:3; Exh. 3,
8 Rodriguez Tr. at 188:18-189:14; Exh. 27 at US Bates 001542-44.)

9
10 **XIX. MOHAMED AHMED BEN SOUD**

11 274. Mohamed Ahmed Ben Soud ("Ben Soud") was part of the Libyan
12 Islamic Fighting Group ("LIFG"). (Tompkins Decl., Exh. 6, Deposition of
13 Mohamed Ahmed Ben Soud ("Soud Tr.") at 22:17-22, 24:8-23, 43:5-12.)

14 275. Through his dealings with LIFG, Soud had meetings with Abu Faraj
15 al-Libi, who Ben Soud knew was a member of Al-Qa'ida. (Tompkins Decl., Exh.
16 6, Soud Tr. at 100:20-103:8.)

17 276. After September 11, 2001, members of LIFG started cooperating
18 with Al-Qa'ida. (*Id.*, Exh. 6, Soud Tr. at 116:19-117:13.)

19 277. Ben Soud was captured in Pakistan on April 3, 2003. (*Id.*, Exh. 6,
20 Soud Tr. at 97:6-9, 122:9-124:4, 132:6-12, 134:15-135:13, 156:11-18.)

21 278. Ben Soud was transferred to CIA custody about two weeks after his
22 capture and taken to COBALT, where he remained a little over one year. (*Id.*,
23 Exh. 6, Soud Tr. at 161:21-162:16, 184:16-24.)
24
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1 279. In the first weeks of his detention at COBALT, Ben Soud was kept
2 in darkness, with loud music playing. He also claims to have undergone the
3 following: being shackled to a chained ring in the wall, being thrown against a
4 wall, being deprived of food, having ice water poured on him, being slammed and
5 punched, having his jaw forcibly held, being forced to walk on his broken leg,
6 and being hung by his hands. He was not water-boarded. (*Id.*, Exh. 6, Soud Tr.
7 at 214:22-215:21.)

8 280. Document produced by the CIA state that the interrogation
9 techniques to which Ben Soud experienced included sleep deprivation, nudity,
10 dietary manipulation, facial hold, attention grasp, abdominal slap, facial slap,
11 stress positions, cramped confinement, water dousing, and walling. (Rizzo Decl.,
12 Exh. D at U.S. Bates 1609.)

13 281. Drs. Mitchell and Jessen did not interact with Ben Soud—in
14 interrogations or otherwise—at COBALT. (Tompkins Decl., Exh. 6, Soud Tr. at
15 298:16-299:15; Exh. 72, Soud Interrogatory Answer 1.)

16 282. Ben Soud was released to Libyan officials on August 22, 2004. (*Id.*,
17 Exh. 6, Soud Tr. at 97:6-9, 122:9-124:4.)

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19 **XX. PLAINTIFF GUL RAHMAN'S CAPTURE AND INTERROGATION**

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21 283. Gul Rahman (“Rahman”) was a suspected Afghan extremist
22 associated with the Hezbi Islami Gulbuddin organization and identified by CTC
23 as being close with individuals who were members of Al-Qa’ida. Rahman was
24 considered an Al Qa’ida facilitator and during his captivity admitted to fighting in
25 the jihad. (Rodriguez Decl., Exh. S at US Bates 001271, 001277, 001279;
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1 Tompkins Decl., Exh. 3, Rodriguez Tr. at 196:7-24; Exh. 17 at US Bates
2 001076.)

3 284. Rahman was captured in Pakistan during an early morning raid in
4 October 2002. (Rodriguez Decl., Exh. S at US Bates 001271, 1277.)

5 285. A fellow-detainee where Rahman was originally detained identified
6 Rahman. This precipitated Rahman's transfer to COBALT so that "HVTI
7 interrogators can quickly outline and implement an interrogation plan." The CIA
8 thought Rahman had a high level of information and Secretary of Defense Donald
9 Rumsfeld asked for frequent updates. (Rodriguez Decl., Exh. S at US Bates
10 001278; Tompkins Decl., Exh. 2, Jessen Tr. at 205:1-7; Exh. 13 at US Bates
11 001055.)

12 286. Dr. Jessen arrived at COBALT in early November 2002 to conduct
13 an evaluation of a specific detainee to determine if EITs should be considered.
14 The specific detainee was not Rahman. (Tompkins Decl., Exh. 22 US Bates
15 001124; Exh. 12 at US Bates 001048; Exh. 4, Rizzo Tr. at 103:24-25, 104:1-5;
16 Rodriguez Decl., Exh. S at US Bates 001289.)

17 287. While Dr. Jessen was there, Rahman arrived at COBALT.
18 (Tompkins Decl., Exh. 18 at US Bates 001087.)

19 288. It was the COB's responsibility to monitor COBALT. Dr. Jessen
20 was "not in charge." (Tompkins Decl., Exh. 2, Jessen Tr. at 184:16-185:2; Exh.
21 18 at US Bates 001082 (CIA Staff Officer (also known as COB) states, "he was
22 placed in charge of detainee affairs"); Rodriguez Decl., Exh. S at US Bates
23 001285.)

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1 289. COBALT's COB asked Dr. Jessen to help assess how the COB
2 could interrogate Rahman to get him to provide information. (Rodriguez Decl.,
3 Exh. S at US Bates 001289; Tompkins Decl., Exh. 2, Jessen Tr. at 184:16-185:2,
4 207:1-7, 209:17-23, 240:16-241:10.)

5 290. It was the COB's responsibility to propose interrogation techniques
6 to CTC for pre-approval. (Rodriguez Decl., Exh. S at US Bates 001331.)

7 291. Dr. Jessen observed the CIA interrogating Rahman twice and
8 consulted about the interrogations. COBALT's COB told Dr. Jessen that the CIA
9 wanted Dr. Jessen to assess whether EITs should be used on Rahman. (Tompkins
10 Decl., Exh. 2, Jessen Tr. at 184:16-185:2, 207:1-7, 240:16-241:10; Exh. 12 at US
11 Bates 001048.)

12 292. Dr. Jessen and the COB then interrogated Rahman over a 48-hour
13 period, during which they assessed Rahman's resistance techniques, and
14 concluded psychological and physiological pressures were unlikely to make
15 Rahman divulge information. (Rodriguez Decl., Exh. S at US Bates 001297-98;
16 Tompkins Decl., Exh. 16 at US Bates 001072-74; Exh. 12 at US Bates 001049.)

17 293. During one of the sessions, to assess Rahman's resistance posture,
18 Dr. Jessen used the least intrusive EIT, the facial slap, to see how Rahman would
19 respond. (Tompkins Decl., Exh. 2, Jessen Tr. at 211:7-13, 214:15-215:2; Exh. 12
20 at US Bates 001049.)

21 294. Dr. Jessen was authorized by COBALT's COB to apply the facial
22 slap because it was the only way Dr. Jessen could determine if Rahman would
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1 respond to EITs. (*Id.*, Exh. 2, Jessen Tr. at 211:7-13, 212:10-11, 214:15-215:2;
2 215:20-216:8.)

3 295. Dr. Jessen determined that Rahman was an excellent resister. He
4 was strong, centered, and focused. (*Id.*, Jessen Tr. at 204:5-24.)

5 296. According to Dr. Jessen, the use of physical pressures on a man like
6 Rahman would only irritate him or push him further away from cooperating. As
7 such, Dr. Jessen recommended that EITs not be used on Rahman. (*Id.*, Exh. 2,
8 Jessen Tr. at 205:1-7, 215:20-216:8, 242:18-22.)

9 297. Dr. Jessen recommended to COBALT's COB that he should
10 continue to interrogate Rahman very frequently to keep him off balance and that
11 he should continue with authorized deprivations. (*Id.*, Exh. 2, Jessen Tr. at
12 242:23-243:6.)

13 298. COBALT's COB relayed much of the information Dr. Jessen had
14 told him to HQS in a cable. The COB wrote all such cables and Dr. Jessen did
15 not review them prior to their issuance. (Tompkins Decl., Exh. 16 at US Bates
16 001072-74; Exh. 2, Jessen Tr. at 206:21-24, 233:6-12.)

17 299. The cables to HQS also indicated that two unauthorized techniques
18 had been used on Rahman: the cold shower and rough treatment (or hard
19 takedown). (Tompkins Decl., Exh. 16 at US Bates 001072-74; Rodriguez Decl.,
20 Exh. S at US Bates 001272.)

21 300. Dr. Jessen observed use of these techniques and advised COBALT's
22 COB that he should not use unauthorized techniques—but Dr. Jessen had no
23 power at that time to make the COB stop using those techniques. As soon as
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1 Jessen was able to raise the issue to CTC, he did. (Tompkins Decl., Exh. 2,
2 Jessen Tr. at 184:1-185:2; 193:10-14; 242:9-243:25; Exh. 12 at US Bates 001050-
3 51; Rodriguez Decl. ¶ 114.)

4 301. COBALT's COB used the hard takedown often in interrogations at
5 COBALT as "part of the atmospherics." (Rodriguez Decl., Exh. S at US Bates
6 001308.)

7 302. COBALT's COB ordered the hard takedown on Rahman so that
8 Rahman would think he was being brought to a different cell. (*Id.*)

9 303. Dr. Jessen specifically told COBALT's COB that he did not use the
10 hard takedown and that even if it was effective at dislocating Rahman's
11 expectations, for that to be useful, Rahman would have to be interviewed after it
12 was implemented instead of being placed back in his cell alone, which is what
13 COBALT's COB did with Rahman. (Tompkins Decl., Exh. 2, Jessen Tr. at
14 197:12-198:7, 217:17-218:9; Exh. 12 at US Bates 001050-51.)

15 304. Dr. Jessen also did not participate in Rahman's cold showers, which
16 were ordered by COBALT's COB. Moreover, on one instance, Dr. Jessen asked
17 the guards to give Rahman a blanket after a cold-shower. (Tompkins Decl., Exh.
18 12 at US Bates 001050-51; Exh. 2, Jessen Tr. at 212:4-14; Exh. 22 at US Bates
19 001132; Rodriguez Decl., Exh. S at US Bates 001305.)

20 305. Dr. Mitchell arrived at COBALT with another HVD while in route
21 to a different black-site for another operation. (Tompkins Decl., Exh. 15 at US
22 Bates 001067; Exh. 28 at US Bates 001548; Rodriguez Decl. ¶ 105.)
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1 306. After COBALT's COB reported on the status of Rahman's
2 interrogations, HQS asked Drs. Mitchell or Jessen to "administer a mental health
3 status exam and provide an assessment on interrogation measures required to
4 render [Rahman] compliant" before they departed COBALT. (Tompkins Decl.,
5 Exh. 15 at US Bates 001066.)

6 307. HQS directed Drs. Mitchell or Jessen to "send your evaluation to
7 HQS where determination of courses of action will be made." (*Id.*, Exh. 15 at US
8 Bates 001067.)

9 308. Dr. Mitchell did not interrogate Rahman or observe the application
10 of any EITs on Rahman, although Dr. Mitchell did observe one custodial
11 debriefing of Rahman. (*Id.*, Exh. 1, Mitchell Tr. at 318:21-319:14.)

12 309. Dr. Jessen conducted the HQS-requested mental status examination
13 and recommended a continued interrogation plan for Rahman. The result of the
14 examination was sent to HQS in a cable that stated:
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16 Because of his remarkable physical and psychological resilience and
17 determination to persist in his effective resistance posture employing
18 enhanced measures is not the first or best option to yield positive
19 interrogation results. In fact, with such individuals, increasing
20 physical pressures often bolsters their resistance. The most effective
21 interrogation plan for Gul Rahman is to continue the environmental
22 deprivations he is experiencing and institute a concentrated
23 interrogation exposure regimen. This regimen would ideally consist
24 of repeated and seemingly constant interrogations (18 coordinated
25 out of 24 hours per day). These interrogation sessions should be
26 coordinated and present with same set of key subject areas. . . . It
will be important to manage the deprivations so as to allow the
subject adequate rest and nourishment so he remains coherent and
capable of providing accurate information. The station physician

1 should collaborate with the interrogation team to achieve this
2 optimum balance.

3 (Rodriguez Decl., Exh. R at US Bates 001057-58; Exh. S at US Bates 001299.)

4 310. Others at the CIA concurred with Dr. Jessen's assessment.
5 (Tompkins Decl., Exh. 44 at US Bates 001865-70.)

6 311. After Jessen conducted Rahman's mental status examination of
7 Rahman, Drs. Mitchell and Jessen departed COBALT. (Tompkins Decl., Exh. 28
8 at US Bates 001548; Rodriguez Decl. ¶ 116.)

9 312. Neither Drs. Mitchell nor Jessen ever returned to COBALT.
10 (Tompkins Decl., Exh. 1, Mitchell Tr. at 319:18-22; Exh. 2, Jessen Tr. at 201:14-
11 21.)

12 313. At the time of their departure, Rahman had been detained for 10
13 days. (Rodriguez Decl., Exh. S at US Bates 001307.)

14 314. Before departing, both Drs. Mitchell and Jessen tried to secure
15 medical attention for Rahman. They each asked for a doctor to examine Rahman
16 multiple times, but their request was refused. (Tompkins Decl., Exh. 2, Jessen Tr.
17 at 213:23-214:10, 236:22-237:1; Rodriguez Decl. ¶ 106.)

18 315. Additionally, the physician's assistant at COBALT did not attend to
19 Rahman in the same manner and with the same standard of care as other
20 detainees. (Rodriguez Decl., Exh. S at US Bates 001274-75, 001332.)

21 316. During his time at COBALT, Dr. Jessen did not deny Rahman
22 clothing. But he did witness the COB use clothing to try to manipulate and
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1 motivate Rahman. (Tompkins Decl., Exh. 2, Jessen Tr. at 212:4-14; Exh. 12 at
2 US Bates 001050.)

3 317. On two occasions, Dr. Jessen requested additional clothing for
4 Rahman because he was cold. (*Id.*, Exh. 2, Jessen Tr. at 218:13-19.)

5 318. Before departing, Dr. Jessen also told COBALT's COB that he
6 needed to establish written operational procedures for COBALT regarding how
7 often detainees get water, the temperature of the facility, and how loud the noise
8 will be. (*Id.*, Exh. 12 at US Bates 001052.)

9 319. Dr. Jessen also told COBALT's COB he was concerned Rahman
10 was cold and shivering, could be "hypothermic," and told the guards to get him
11 blankets and insulation. (*Id.*, Exh. 2, Jessen Tr. at 195:11-197:11.)

12 320. After leaving COBALT, Dr. Jessen advised the most senior person
13 in the CTC about his concerns with COBALT and Rahman. (Tompkins Decl.,
14 Exh. 2, Jessen Tr. at 193:10-14; Rodriguez Decl. ¶ 114.)

15 321. Besides this brief time at COBALT, Dr. Jessen or Dr. Mitchell never
16 interacted with any other MVDs, including Plaintiffs. (Tompkins Decl., Exh. 2,
17 Jessen Tr. at 201:14-21; Mitchell Decl. ¶ 11.)

18 **XXI. GUL RAHMAN'S DEATH**

19 322. Several days after Drs. Mitchell and Jessen left COBALT, Rahman
20 allegedly threatened the guards and threw his food and waste bucket at the
21 guards. As a result, COBALT's COB approved or directed the guards to shackle
22 Rahman's hands and feet and connect the shackles with a short-chain. This
23 position forced Rahman to sit bare-bottomed on the concrete floor of his cell.
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1 (Rodriguez Decl., Exh. S at US Bates 001273, 001299, 001315, 001331;
2 Tompkins Decl., Exh. 14 at US Bates 001062-63.)

3 323. The temperature in COBALT at the time was near freezing.
4 (Rodriguez Decl., Exh. S at US Bates 001274.)

5 324. On a late November morning, Rahman was found dead in his cell.
6 (Rodriguez Decl., Exh. S at US Bates 001299; Tompkins Decl., Exh. 14 at US
7 Bates 001062.)

8 325. At the time, Rahman was wearing only a sweatshirt, sitting bare-
9 bottomed on the concrete floor of his cell. (Rodriguez Decl., Exh. S at US Bates
10 001273, 001299-1300.)

11 326. After Rahman's death, the CIA's Office of the Inspector General
12 ("OIG") conducted an investigation into the cause of Rahman's death. (Rizzo
13 Decl. ¶ 72; Rodriguez Decl., Exh. S at US Bates 001271, 001320.)

14 327. The OIG conducted interviews and the pathologist performed an
15 autopsy of Rahman, which indicated that his death was caused by hypothermia.
16 (Rodriguez Decl., Exh. S at US Bates 001273, 001323.)

17 328. The OIG concluded that HQS would not have approved several of
18 the interrogation techniques employed by COBALT's COB, including cold
19 showers, cold conditions, hard takedowns, and the short chain position.
20 (Rodriguez Decl., Exh. S at US Bates 001331.)

21 329. Rodriguez, head of CTC, never authorized EITs to be used on
22 Rahman. (Tompkins Decl., Exh. 3, Rodriguez Tr. at 172:14-22.)
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1 330. The OIG investigation concluded that Rahman died of hypothermia
2 because COBALT's COB ordered Rahman to be short chained such that he was
3 compelled to sit on the concrete floor of his cell clothed in only a sweatshirt.
4 (Rizzo Decl. ¶ 73; Rodriguez Decl., Exh. S at US Bates 001267-1334 at ¶ 173.)

5 331. The OIG investigation further found that an individual other than
6 Drs. Mitchell or Jessen was responsible for not providing adequate supervision of
7 COBALT's COB and the activities at COBALT. (Rizzo Decl. ¶ 74; Rodriguez
8 Decl., Exh. S at US Bates 001267-1334 at ¶ 180.)

9 332. The DOJ was apprised of the circumstances surrounding Rahman's
10 death. And, in 2005, the DOJ declined to prosecute anyone in connection with
11 Rahman's death. Then, in 2012, after a year-long special criminal investigation
12 into Rahman's death was conducted by Assistant United States Attorney John
13 Durham, the DOJ again declined to prosecute anyone in connection with
14 Rahman's death. (Rizzo Decl. ¶ 75; Rodriguez Decl., Exh. S at US Bates
15 001273-74.)

17 **XXII. RENDITION**

18 333. Drs. Mitchell and Jessen were not asked to provide any
19 recommendations relating to the capture or rendition of any CIA detainee,
20 including Zubaydah, nor did they. (Rodriguez Decl. ¶ 82.)

21 334. Likewise, Drs. Mitchell and Jessen did not participate in the capture
22 or rendition of any CIA detainee—including Plaintiffs. (Rodriguez Decl. ¶ 83;
23 Tompkins Decl., Exh. 3, Rodriguez Tr. at 214:8-11.)
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1 335. The CIA's capture and rendition program methodology was based on
2 detainee handling procedures used by the U.S. military and the U.S. Marshals
3 Service. (Tompkins Decl., Exh. 34 at US Bates 001633.)

4 **XXIII. MITCHELL, JESSEN & ASSOCIATES**

5 336. In March of 2005, Drs. Mitchell and Jessen formed *Mitchell, Jessen*
6 & Associates ("MJA") to provide "qualified interrogators, detainee security
7 officers for CIA detention sites, and curriculum development and training
8 services for the RDI program." From 2005 through 2009, MJA was paid
9 approximately \$72 million. (Tompkins Decl., Exh. 76 at US Bates 001906;
10 Tompkins Decl., Exh. 77 at US Bates 001908-10.)

11 337. Dr. Mitchell's profit percentage from MJA was in the "small single
12 digits." (Tompkins Decl., Exh. 73 at MJ00022930.)

13 **XXIV. FACTS RELATED TO INTERNATIONAL LAW**

14 338. The U.S. is engaged in a "non-international armed conflict" with Al-
15 Qaida, and it is that conflict in which the Defendants' alleged conduct occurred.
16 (Declaration of Professor Julian G. Ku ("Ku Decl."), Exh. 2 at p. 5.)

17 339. Common Article 3 to the Geneva Conventions of August 12, 1949
18 applies to non-international armed conflicts. (Ku Decl., Exh. 2 at p. 5.)

19 340. A majority of nation states have not enacted laws prohibiting human
20 experimentation in non-international armed conflicts. (Ku Decl., Exh. 3 at p. 7.)
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1 **XXV. RELEVANT PROCEDURAL HISTORY.**

2 341. On April 22, 2016, the Court held oral argument on Defendants’
3 Motion to Dismiss, ECF No. 27, in Spokane, Washington.

4 342. During that oral argument, the Court and counsel for the parties
5 discussed Plaintiffs’ allegations concerning aiding and abetting liability;
6 specifically, the Court observed that “no one would ever be convicted of aiding
7 and abetting by setting forth, here’s options that you can utilize” if they were not
8 also deciding who would be subjected to the program. (Tompkins Decl., Exh. 74
9 April 22, 2016, Tr. at 60:9-62:24.)
10

11 DATED this 22nd day of May, 2017.

12 s/ Christopher W. Tompkins
13 Christopher W. Tompkins, WSBA #11686
14 ctompkins@bpmlaw.com
15 **Betts, Patterson & Mines, P.S.**
16 701 Pike St, Suite 1400
Seattle, WA 98101

17 James T. Smith, admitted *pro hac vice*
18 smith-jt@blankrome.com
19 Brian S. Paszamant, admitted *pro hac vice*
20 paszamant@blankrome.com
21 Jeffrey N. Rosenthal, admitted *pro hac vice*
22 rosenthal-j@blankrome.com
23 **Blank Rome LLP**
130 N 18th Street
Philadelphia, PA 19103

24 Henry F. Schuelke III, admitted *pro hac vice*
25 hschuelke@blankrome.com
26 **Blank Rome LLP**

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1825 Eye St. NW
Washington, DC 20006

Attorneys for Defendants Mitchell and Jessen

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Betts
Patterson
Mines
701 Pike Street, Suite 1400
Seattle, Washington 98101-3927
(206) 292-9988

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

<p>Emily Chiang echiang@aclu-wa.org ACLU of Washington Foundation 901 Fifth Ave, Suite 630 Seattle, WA 98164</p>	<p>Paul Hoffman hoffpaul@aol.com Schonbrun Seplow Harris & Hoffman, LLP 723 Ocean Front Walk, Suite 100 Venice, CA 90291</p>
<p>Andrew I. Warden Andrew.Warden@usdoj.gov Senior Trial Counsel Timothy A. Johnson Timothy.Johnson4@usdoj.gov Trial Attorney United States Department of Justice Civil Division, Federal Programs Branch 20 Massachusetts Ave NW Washington, DC 20530</p>	<p>Steven M. Watt, admitted <i>pro hac vice</i> swatt@aclu.org Dror Ladin, admitted <i>pro hac vice</i> dladin@aclu.org Hina Shamsi, admitted <i>pro hac vice</i> hshamsi@aclu.org ACLU Foundation 125 Broad Street, 18th Floor New York, NY 10007</p>
<p>Avram D. Frey, admitted <i>pro hac vice</i> afrey@gibbonslaw.com Daniel J. McGrady, admitted <i>pro hac vice</i> dmcgrady@gibbonslaw.com Kate E. Janukowicz, admitted <i>pro hac vice</i> kjanukowicz@gibbonslaw.com Lawrence S. Lustberg, admitted <i>pro hac vice</i> llustberg@gibbonslaw.com Gibbons PC One Gateway Center Newark, NJ 07102</p>	<p>Anthony DiCaprio, admitted <i>pro hac vice</i> ad@humanrightslawyers.com Law Office of Anthony DiCaprio 64 Purchase Street Rye, NY 10580</p>

By s/ Shane Kangas
Shane Kangas
skangas@bpmlaw.com
Betts, Patterson & Mines, P.S.

DEFENDANTS' STATEMENT OF
UNDISPUTED FACTS

Betts
Patterson
Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988