1	BETTS, PATTERSON & MINES P.S.	
2	Christopher W. Tompkins (WSBA #116	86)
	CTompkins@bpmlaw.com	
3	701 Pike Street, Suite 1400	
4	Seattle, WA 98101-3927	
5	BLANK ROME LLP	
6	Henry F. Schuelke III (admitted pro hac	vice)
	HSchuelke@blankrome.com	
7	1825 Eye St. NW	
8	Washington, DC 20006	
9	James T. Smith (admitted <i>pro hac vice</i>)	
10	Smith-jt@blankrome.com	
	Brian S. Paszamant (admitted <i>pro hac vi</i>	ce)
11	Paszamant@blankrome.com Jeffrey N. Rosenthal (admitted pro hac v	vice)
12	Rosenthal-j@blankrome.com	
13	One Logan Square, 130 N. 18th Street	
14	Philadelphia, PA 19103	
15	Attorneys for Defendants Mitchell and Jo	essen
16		
17		DISTRICT COURT FRICT OF WASHINGTON
	1	OKANE
18		
19	SULEIMAN ABDULLAH SALIM, et al.,	NO. 2:15-cv-286-JLQ
20		DEFENDANTS DESPONSE TO
21	Plaintiffs,	DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF
	V.	UNDISPUTED MATERIAL FACTS
22	JAMES E. MITCHELL and JOHN	
23	JESSEN,	Note on Motion Calendar:
24	Defendants.	July 28, 2017, 9:30 a.m., at
25		Spokane Washington
26		_
۵۷		Betts
	DEFENDANTS' RESPONSE TO	Patterson

Mines 701 Pike Street, Suite 1400 Seattle, Washington 98101-3927

(206) 292-9988

139114.00602/105802090v.1

PLAINTIFFS STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants James Elmer Mitchell and John "Bruce" Jessen (collectively, "Defendants") respectfully submit this *Response to Plaintiffs' Statement of Undisputed Facts* submitted in support of *Plaintiffs' Motion for Partial Summary Judgment* ("Plaintiffs' Motion"). As set forth in *Defendants' Response to Plaintiffs' Motion for Partial Summary Judgment*, Defendants contend that many of the facts asserted below are not relevant, and have no bearing on the merits of Plaintiffs' Motion. Defendants address the accuracy of these asserted facts in case the Court finds these facts material and/or rejects Defendants' legal arguments.

Defendants address two discrete sets of facts asserted by Plaintiffs in support of Plaintiffs' Motion in order to limit repetitious responses below. First, many of the facts asserted by Plaintiffs concern the capture, treatment, interrogation, or responses to interrogation of Abu Zubaydah ("Zubaydah"), the first prisoner captured by the CIA. The enhanced interrogation techniques ("EITs") suggested to the CIA by Defendants were specifically intended for Zubaydah only, although they were later expanded for use on other High Value Detainees ("HVDs") such as Zubaydah. The facts asserted by Plaintiffs concerning Zubaydah's capture, treatment, interrogation and response to interrogation are not relevant to the resolution of the issues presented in Plaintiffs' Motion, which addresses solely Defendants' alleged liability under "aiding and abetting." FED. R. CIV. P. 56(e)(1);

¹ Conversely, information concerning Zubaydah is relevant to issues raised in Defendants' pending *Motion for Summary Judgment* (ECF 169), which addresses additional legal issues, including the CIA's command and control of Defendants.

26

FED. R. EVID. 401, 402. In addition, such facts are more prejudicial than probative in this context, and should be excluded from consideration under Rule 403 of the Federal Rules of Evidence. Defendants refer below to these multiple grounds for their objection to facts asserted concerning Zubaydah's capture, detention, interrogation, and response to interrogation shorthand as "Objection—Zubaydah."

Plaintiffs make factual Second, numerous assertions concerning waterboarding. Waterboarding, generally or of other detainees, is not relevant to the resolution of the issues presented in Plaintiffs' Motion, FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402, because Plaintiffs were not waterboarded. See Defs.' Resp. to Pls.' SOF ¶ 25. In addition, facts related to waterboarding are more prejudicial than probative in light of the fact that Plaintiffs were not waterboarded, and should be excluded from consideration under Federal Rule 403. Defendants refer below to these multiple grounds for their objection to facts asserted concerning waterboarding shorthand as "Objection—waterboarding."

\P	Plaintiffs' Undisputed Material	Defendants' Response and
	Facts and Supporting Evidence	Supporting Evidence
1.	Defendants "played a significant	Disputed. Plaintiffs
	and formative role in the	mischaracterize the citation to the
	development of [CIA	deposition of James Elmer
	Counterterrorism Center (CTC)'s]	Mitchell ("Dr. Mitchell") as
	detention and interrogation	testimony when it is, in fact, part
	program." Deposition of James	of a question posed by Plaintiffs'
	Elmer Mitchell 335:22–24 (Ladin	attorney. Dr. Mitchell did not
	Decl., Exh. A, cited hereinafter as	adopt or agree with the
	"Mitchell Dep.").	characterization. Deposition of
		James Elmer Mitchell ("Mitchell
		Dep.") 335:22–24.
2.	When the CIA captured its first	Not contested for purposes of
	prisoner, Abu Zubaydah, the CIA	Plaintiffs' Motion for Partial

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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\P	Plaintiffs' Undisputed Material	Defendants' Response and
1	Facts and Supporting Evidence	Supporting Evidence
	Counterterrorism Center had no	Summary Judgment ("Plaintiffs'
	experience or expertise on	Motion"). Objection—Zubaydah.
	interrogation. Deposition of Jose	interior j. Cojection Zuouyuum.
	Rodriguez 46:23–48:4 (Ladin	
	Decl., Exh. B, cited hereinafter as	
	"Rodriguez Dep.").	
3.	Defendants had never interrogated	Disputed. Plaintiffs imply that
	a prisoner before Abu Zubaydah.	Defendants Dr. Mitchell and John
	Deposition of John "Bruce" Jessen	"Bruce" Jessen ("Dr. Jessen")
	116:3–8 (Ladin Decl., Exh. C,	(collectively, "Defendants") were
	cited hereinafter as "Jessen Dep.").	not qualified to conduct
		interrogations. Although
		Defendants had not "done
		interrogations of live terrorists
		before", Dr. Jessen had extensive
		experience designing advanced
		courses that specifically prepared
		trainees for capture by terrorist
		groups and Dr. Mitchell had
		extensive experience as part of a
		counterterrorism unit studying how enemy organizations
		approached interrogations.
		Defendants Statement of
		Undisputed Facts (" <u>Defs.' SOF</u> ")
		(ECF No. 170) ¶¶ 17, 20; Jessen
		Dep. 116:3-8.
4.	Before the aggressive phase began,	Disputed. These
	Defendant Mitchell recommended	recommendations were made by a
	that Abu Zubaydah's sleep be	three-member behavioral team led
	disrupted, that he not be provided	by a CIA employed psychologist,
	with any amenities, and that noise	of which Dr. Mitchell was merely
	be fed into Abu Zubaydah's cell.	one member. Defs.' SOF ¶¶ 46-
	Am. Answer, ECF No. 77 ¶ 34.	51. Objection—Zubaydah.
5.	The plan was that "white noise	Not contested for purposes of

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
- 3 -

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		generators" would disrupt Abu	Plaintiffs' Motion. Defendants
3		Zubaydah's ability to think and	further state that the interrogation
4		would "increase his sense of	plan for Zubaydah included the
		helplessness by highlighting his	use of "physically non-harmful"
5		inability to alter the environment	white noise generators to "be used
6		around him." The goal was to	in variable lengths of time[.]"
		emphasize that "the only	Ladin Decl., Exh. D at U.S. Bates
7		mechanism [Abu Zubaydah] has at	001826 at ¶ 3, 001828.
8		his disposal to control the	Objection—Zubaydah.
9		environment will be in providing	
9		vital intelligence," and that	
10		pleasing his interrogators was the only way to "earn basic privileges"	
11		and receive better conditions.	
		Ladin Decl., Exh. D at U.S. Bates	
12		001828.	
13	6.	Defendant Mitchell took part in	Defendants do not contest for
14		recommending sensory	purposes of Plaintiffs' Motion that
		deprivation, including painting the	these recommendations were made
15		cell white, installing halogen	by a three-member behavior team
16		lights, installing sound-dampening	led by a CIA employed
		carpeting, and "the sanding of the	psychologist, of which Dr.
17		holding cell bars to reduce AZ's	Mitchell was merely one member.
18		ability to stimulate his sensorium	Defs.' SOF ¶¶ 46-51. Objection—
19		via rubbing of the bars." Ladin	Zubaydah.
		Decl., Exh. E at MJ00022604;	
20		Ladin Decl., Exh. F at U.S. Bates 002000.	
21	7.	Abu Zubaydah was subsequently	Disputed to the extent that this
	' ·	kept naked in a cell lit by halogen	implies that the music or noise was
22		lamps for 24 hours per day, while	something other than "physically
23		being subjected constantly to rock	non-harmful" noise. Ladin Decl.,
24		music or other noise. Am.	Exh. D at U.S. Bates 001826 at ¶
		Answer, ECF No. 77 ¶ 38.	3. Disputed to the extent Plaintiffs
25		"	imply that either Defendant played
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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		I	
1	$\ \P \ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
ے ا			any role in determining that
3			Zubaydah would be kept naked, as
4			there is no support in the record
5			for Defendants' involvement in
3			that determination. Otherwise not contested for purposes of
6			Plaintiffs' Motion.
7			Objection-Zubaydah.
	8.	The "deliberate manipulation of	Disputed that "learned
8		the environment" in accordance	helplessness" as described by Dr.
9		with these recommendations was	Martin Seligman (" <u>Dr. Seligman</u> ")
10		"intended to cause psychological	was intended. Defs.' SOF ¶¶ 53-
		disorientation as well as an	56. Individuals affiliated with the
11		increased sense of learned	CIA often misused the term
12		helplessness." Ladin Decl., Exh. F	"learned helplessness" in
13		at U.S. Bates 002000.	documents because they did not
13			understand and appreciate the
14			distinction between helplessness to
15			induce cooperation—as utilized in the Survival Evasion Resistance
			and Escape ("SERE") training—
16			and "learned helplessness," as
17			described by Dr. Seligman, which
18			would inhibit cooperation. Defs.'
			SOF ¶ 57. Defendants do not
19			contest for purposes of Plaintiffs'
20			Motion that the underlying
21			document is accurately quoted.
		Daine disculate the	Objection—Zubaydah.
22	9.	During this phase, the	Disputed that "learned
23		"development of psychological dependence, learned helplessness	helplessness" as described by Dr. Seligman was pursued. Defs.'
24		and short term thinking" were	SOF ¶¶ 53-56. Individuals
		pursued by the deliberate	affiliated with the CIA often
25		environmental modifications and	misused the term "learned
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
- 5 -

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
$_{2}\parallel$		Facts and Supporting Evidence	Supporting Evidence
		sleep deprivation, which aimed to	helplessness" in documents
3		produce "disorientation by not	because they did not understand
4		allowing in natural light nor	and appreciate the distinction
5		routine of schedule." Ladin Decl.,	between helplessness to induce
ا ا		Exh. D at U.S. Bates 001826. The	cooperation—as utilized in SERE—and "learned
6		desired result was that "the early phases of the process will	helplessness," as described by Dr.
7		encourage the development of the	Seligman, which would inhibit
		necessary mindset where [the CIA	cooperation. Defs.' SOF ¶ 57.
8		prisoner] will have difficulty	Defendants do not contest for
9		concentrating, planning, and most	purposes of Plaintiffs' Motion that
10		importantly resisting the process."	the underlying document is
		Ladin Decl., Exh. D at U.S. Bates	accurately quoted. Objection—
11		001827.	Zubaydah.
12	10.	Eventually, the interrogation team	Disputed. The April 25, 2002
13		"substituted a stereo to play loud	Cable cited by Plaintiffs as support
		rock music to enhance his sense of	for this statement (US Bates
14		hopelessness." Ladin Decl., Exh. G at U.S. Bates 002146.	002146) states, "We have recently substituted a stereo to play loud
15		G at 0.5. Bates 002140.	rock music to enhance his sense of
			hopelessness." (emphasis added)
16			Disputed that the term "we"
17			denotes the interrogation team
18			because the sender of the cable is
			redacted. Ladin Decl., Exh. G at
19			U.S. Bates 002146. Disputed to
20			the extent this implies that the
21			music was something other than
			"physically non-harmful" noise.
22			Ladin Decl., Exh. D at U.S. Bates 001826 at ¶ 3. Objection—
23			Zubaydah.
24	11.	Defendant Mitchell decided that	Disputed. Plaintiffs
		he had sufficient "qualifications to	mischaracterize MJ00022632,
25		put together a psychologically	which states "[T]he question was
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
- 6 -

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		based interrogation program."	about my qualifications to put
3		Ladin Decl., Exh. E at	together a psychologically based
4		MJ00022632.	interrogation program that would
			condition Abu Zubaydah to
5			cooperate and then interrogate him
6			using it. I knew it would need to
			be based on what was called
7			'Pavlovian Classical Conditioning'
8			and I was very familiar with it
			because my early training was as a
9			behavioral psychologist." Ladin
10			Decl., Exh. E at MJ00022632.
11	12.	Mitchell "knew that the bulk of	Objection—Zubaydah. Disputed. Plaintiffs
	12.	psychologists would probably	mischaracterize Dr. Mitchell's
12		object" to his actions. Ladin	cited testimony. Although the
13		Decl., Exh. A, Mitchell Dep.	partial quotation is accurate,
		270:12–13.	Plaintiffs incorrectly attribute the
14		270.12 13.	statement broadly to all of Dr.
15			Mitchell's "actions." In fact, Dr.
16			Mitchell testified that he "knew
			the bulk of psychologists would
17			probably object" to him being the
18			individual that conducted the
			interrogations using EITs.
19			Mitchell Dep. 270:12–13; Mitchell
20			Dep. Ex. 4 (Mitchell's
21			Manuscript) at MJ00022631.
21			Objection—Zubaydah.
22	13.	At Defendant Mitchell's	Disputed. The cited documents
23		recommendation, the CIA	indicate that Dr. Jessen was
		contracted his friend, Defendant	contracted to help "put together an
24		Jessen to help "put together an interrogation program" and	interrogation program" for "use"
25		interrogation program" and implement it on Abu Zubaydah.	exclusively on Zubaydah. Ladin Decl., Exh. E at MJ00022631.
	<u> </u>	implement it on Abu Zubayuan.	Deci., Exil. E at WIJ00022051.
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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_		Dlaintiffe? Undignated Material	Defendants? Degrans and
1	$\ \cdot\ $	Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
2		Ladin Decl., Exh. A, Mitchell	Objection—Zubaydah.
3		Dep. 399:22-400:19; Ladin Decl.,	
4		Exh. E at MJ00022631–32.	
	14.	The program was based on	Defendants do not contest for
5		"Pavlovian Classical	purposes of Plaintiffs' Motion that
6		Conditioning." Ladin Decl., Exh.	the program that they were
7		E at MJ00022632.	contracted to help develop for Zubaydah was based upon
			Pavlovian Classic Conditioning.
8			Ladin Decl., Exh. E at
9			MJ00022631-32. Objection—
10			Zubaydah.
	15.	A prisoner subjected to the	Disputed. Plaintiffs
11		program would be given "a choice,	mischaracterize Dr. Jessen's cited
12		you can start talking or you can get some more physical pressure."	testimony. Dr. Jessen explained how the CIA's interrogation
13		Ladin Decl., Exh. C, Jessen Dep.	program for HVDs (the "HVD
14		161:20–162:2.	Program'') used helplessness as
			described in the Army Field
15			Manual. More specifically,
16			temporary helplessness was
17			induced through physical
			pressures designed to be used in a
18			way that did not harm, but made someone uncomfortable, and the
19			subject knew that the pressures
20			would stop if he cooperated in
			some way. Jessen Dep. 160:19-
21			163:22. Dr. Jessen also testified
22			that during each HVD
23			interrogation, medical,
			psychological, administrative and intelligence staff were able to stop
24			an interrogation if there was a
25			physical or psychological threat to
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			the detainee. <i>Id.</i> at 136:5-16.
3			Thus, an interrogation could be
4			stopped even if the prisoner did
			not cooperate.
5			
6			Defendants further dispute any
7			implication that they were part of
			an interrogation program that was used on Plaintiffs, or on any
8			detainees who were not HVDs.
9			Defs.' SOF ¶ 208-11 (the
10			interrogation techniques proposed
			by Defendants were for use only
11			on HVDs).
12	16.	Mitchell testified that "my	Not contested for purposes of
		thinking on the subject was that,	Plaintiffs' Motion.
13		much like with a dental phobia,	
14		the time that they're going to be	
15		most motivated to get out of it is before the next time" the physical	
		pressures were applied. Ladin	
16		Decl., Exh. A, Mitchell Dep.	
17		358:20–24.	
18	17.	Jose Rodriguez, who was then the	Not contested for purposes of
		head of CTC, explained that he	Plaintiffs' Motion. But, objected
19		heard Defendant Mitchell use the	to as irrelevant to the resolution of
20		phrase "learned helplessness," and	the issues presented in Plaintiffs' Mation (EER, P. Chy. P. 56(a)(1):
21		"explaining these psychological terms," but that Mr. Rodriguez's	Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402).
		own interest was "in getting	1 ED. IX. EVID. 401, 402).
22		results, not in, you know, the	
23		psychological state of people."	
24		Ladin Decl., Exh. B, Rodriguez	
		Dep. 85:6–86:20.	
25	18.	Jose Rodriguez testified that	Not contested for purposes of
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
- 9 -

1	$\ \P\ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		Defendant Mitchell "had a good	Plaintiffs' Motion. Objection—
3		vision for what needed to be	Zubaydah.
4		done," which "was the use of	
_		enhanced interrogations to get Abu	
5		Zubaydah to cooperate with us."	
6		Ladin Decl., Exh. B, Rodriguez	
7	19.	Dep. 37:8–38:4.	Not contosted for nurnesses of
	19.	In July 2002, Defendant Mitchell and others within the CIA assessed	Not contested for purposes of Plaintiffs' Motion. Objection—
8		Abu Zubaydah as uncooperative.	Zubaydah.
9		Am. Answer, ECF No. 77 ¶ 41.	Zuouyuun.
10	20.	Defendants drafted and submitted	Disputed. Not contested for
10		to the CIA a recommended list of	purposes of Plaintiffs' Motion that
11		12 physically coercive methods	Defendants drafted US Bates
12		that they claimed would "instill	001110-11 (the "July 2002
		fear and despair": "Attention	Memo"). But, Plaintiffs
13		Grasp," "Walling," Facial Hold,"	mischaracterize the July 2002
14		"Facial Slap (Insult Slap),"	Memo, which characterizes the 12
15		"Cramped Confinement," "Wall	interrogation methods (i.e. the
13		Standing," "Stress Positions,"	EITs) as "potential physical and
16		Sleep Deprivation," "Water	psychological pressures" not as
17		Board," "Use of Diapers," "Inggeta" and "Mook Duriel"	"physically coercive methods," as
		"Insects," and "Mock Burial." Ladin Decl., Exh. H at U.S. Bates	asserted by Plaintiffs. Additionally, the document states,
18		0001110–11; Ladin Decl., Exh. C,	"[t]he aim of using these
19		Jessen Dep. 114:20–115;11; Ladin	techniques is to dislocate the
20		Decl., Exh. A, Mitchell Dep.	subject's expectations concerning
		262:5–21.	how he is apt to be treated and
21			instill fear and despair."
22			Defendants did not claim that the
			interrogation methods "would
23			instill fear and despair," as
24			asserted by Plaintiffs. Ladin
25			Decl., Exh. H at U.S. Bates
			0001110–11.
26			

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF - 10 -UNDISPUTED MATERIAL FACTS

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

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
	21.	Defendants based their list of	Not contested for purposes of
3		coercive methods on techniques	Plaintiffs' Motion, except that the
4		used in training in the Department	July 2002 Memo does not
		of Defense's Survival, Research,	characterize the EITs as "coercive
5		Evasion and Escape ("SERE")	methods" as asserted by Plaintiffs
6		program. Ladin Decl., Exh. A,	(as discussed immediately above).
		Mitchell Dep. 186:1–187:3.	
7	22.	"The techniques used in SERE	Defendants object to this "fact" as
8		school, based, in part, on Chinese	inadmissible hearsay and
9		Communist techniques used	irrelevant to the resolution of the
		during the Korean War to elicit	issues presented in Plaintiffs' Motion (FED. P. Chy. P. 56(a)(1):
10		false confessions, include stripping students of their clothing, placing	Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 802, 401, 402).
11		them in stress positions, putting	Defendants do not contest that the
		hoods over their heads, disrupting	SASC Report is accurately quoted,
12		their sleep, treating them like	although the relevant portions are
13		animals, subjecting them to loud	not attached as part of Exhibit I to
14		music and flashing lights, and	the Ladin Decl. Ladin Decl., Exh.
14		exposing them to extreme	I.
15		temperatures." S. Comm. on	
16		Armed Servs., 110th Cong., 2d	
		Sess., Report on Inquiry into the	
17		Treatment of Detainees in U.S.	
18		Custody (Comm. Print 2008) at	
		xiii, xxvi (Ladin Decl., Exh. I,	
19		cited hereinafter as "SASC	
20		Report").	
21	23.	Defendant Jessen admitted that	Defendants object to this fact as
		techniques used in SERE training	irrelevant to the resolution of the
22		were based in part on coercive	issues presented in Plaintiffs'
23		interrogation methods inflicted by	Motion (FED. R. CIV. P. 56(e)(1);
		enemies on American soldiers in	FED. R. EVID. 401, 402).
24		the Korean War. He testified that he didn't "know who determines	Defendants further dispute that Dr. Jessen "admitted" that the SERE
25			techniques were based on
		what's legal and illegal, but the	icenniques were based on
26			

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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		techniques were to represent what	interrogation methods used on
3		we thought our enemy might do if	American soldiers during the
4		they weren't adhering to the	Korean War. In response to the
		Geneva Conventions." Ladin	question "Did you ever have an
5		Decl., Exh. C, Jessen Dep. 57:3–	understanding that the SERE
6		14; 65:10–23.	techniques were based in part on
			Chinese Communist techniques
7			from the Korean War?", Dr. Jessen
8			said "I think I do remember that."
			Jessen Dep. 57:3-14. Defendants
9			do not dispute for purposes of
10			Plaintiffs' Motion that Dr. Jessen's
11			testimony is otherwise accurately
	24		quoted.
12	24.	(a) SEDE training differed from	Defendants object to this "fact" as
13		(a) SERE training differed from Defendants' proposal:	compound. (a) Disputed. Plaintiffs
		Techniques were used on	mischaracterize Dr. Jessen's
14		volunteers, not on prisoners	testimony. Dr. Jessen testified
15		with serious injuries and open	that SERE training was
16		wounds. Ladin Decl., Exh. C,	voluntary and that during his
10		Jessen Dep. 134:21–135:20.	experience at SERE, he did not
17		(b) SERE volunteers knew the start	witness a SERE trainee
18		and end date of their training,	participate in the program with
		and could end it at any time,	an open wound or gun-shot
19		while prisoners were made to	wound. Plaintiffs' remaining
20		believe that their interrogation	statements are not supported by
21		could last for the rest of their	Dr. Jessen's testimony. Ladin
		natural lives. Ladin Decl., Exh.	Decl., Exh. C, Jessen Dep.
22		I, SASC Report at 31; Ladin	134:21-135:20. Furthermore,
23		Decl., Exh. J at U.S. Bates	record evidence indicates that
		001957–58.	the CIA was aware that the
24			SERE techniques were safely applied to volunteers at SERE,
25			but that there was no assurance
26		1	and their map no apparation
20			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	$ \P $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			that the same would be true if
3			the SERE techniques were
4			applied to detainees; and that
			this information was provided
5			to the Department of Justice
6			(" <u>DOJ</u> ") Office of Legal
7			Counsel ("OLC") as it was
7			assessing the EITs' legality.
8			Defs.' SOF ¶¶ 150-51, 153,
9			157. (b) Objected to as irrelevant to the
			(b) Objected to as irrelevant to the resolution of the issues
10			presented in Plaintiffs' Motion
11			(FED. R. CIV. P. 56(e)(1); FED.
10			R. EVID. 401, 402) as there is
12			no evidence in the record that
13			any Plaintiff was "made to
14			believe that [his] interrogation
			could last for the rest of [his]
15			natural [life]." Disputed that
16			US Bates 001957-58 supports
17			the broad proposition that
17			"prisoners were made to
18			believe that their interrogation
19			could last for the rest of their
			natural lives[.]" Rather, the document indicates that on
20			August 12, 2002, Zubaydah
21			was told that he would not be
22			leaving the interrogation room
22			for a very long time. Ladin
23			Decl., Exh. J at U.S. Bates
24			001957–58. Not contested for
			purposes of Plaintiffs' Motion
25			that SERE volunteers knew the
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
- 13 -

_			
1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
3			start and end date of their
3			training, and could end it at any
4	25.	Waterboarding as carried out by	time. Objection—waterboarding.
5	23.	Defendants was different from the	Objection—waterboarding.
6		technique used in SERE training: it involved much larger volumes of	Also, disputed. Waterboarding as applied by Defendants on HVDs
7		water, and Defendant Jessen or	was consistent with that used in
8		Defendant Mitchell acknowledged	SERE training. In SERE, "the
		that Defendants' method was	subject is immobilized on his
9		"different because it is 'for real'	back, and his forehead and eyes
10		and is more poignant and convincing." Ladin Decl., Exh. K	covered with a cloth. A stream of
11		at U.S. Bates 001376.	water is directed at the upper lip. Resistant subjects then have the
12			cloth lowered to cover the nose
13			and mouth, as the water continues
			to be applied, fully saturating the
14			cloth, and precluding the passage of air this process can
15			continue for several minutes, and
16			involve up to 15 canteen cups of
17			water." OIG Report at US Bates 001489. This is consistent with
18			US Bates 001376's description of
19			waterboarding an HVD: the Agency interrogator "continuously
20			applied large volumes of water to
			a cloth that covered the detainee's
21			mouth and nose." Ladin Decl.,
22			Exh. K at U.S. Bates 001376.
23			Also, the statement in US Bates
24			001376 cannot be attributed to
25			Defendants. The document identifies the speaker as "one of
26			

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF - 14 -UNDISPUTED MATERIAL FACTS

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			the psychologists/interrogators",
3			and psychologists with a SERE
4			background other than Defendants
5			formed part of Zubaydah's
3			interrogation team. Defs.' SOF ¶¶ 69, 146.
6	26.	Coercive methods were also used	Disputed. Plaintiffs misrepresent
7	20.	on detainees in the CIA program	Dr. Jessen's cited testimony. Dr.
		with a higher frequency than	Jessen testified that the SERE
8		permitted in the SERE program.	pressures were applied to
9		Ladin Decl., Exh. C, Jessen Dep.	detainees "the same as they were
10		156.	applied in the SMU training, but
			their frequency was more in the
11			CIA Program." Dr. Jessen does
12			not state that the pressures were
13			applied more "than permitted in
			the SERE program" and Plaintiffs present no evidence to support this
14			statement. Ladin Decl., Exh. C,
15			Jessen Dep. 156:14-24.
16	27.	(a) Defendants knew the effect of	Defendants object to this "fact" as
		their proposed methods might	compound.
17		be different for prisoners than	(a) Disputed. Plaintiffs
18		for volunteers. Ladin Decl.,	mischaracterize Dr. Jessen's
19		Exh. C, Jessen Dep. 127:11-24.	cited testimony. When asked,
		(b) But when Defendant Mitchell presented his proposal to the	"In your mind, is there a difference between having
20		Director of the CIA and the	these things pressures done to
21		head of CTC, he did not	you by a hostile government
22		mention that fact. Ladin Decl.,	versus in training?", Dr. Jessen
		Exh. A, Mitchell Dep. 281:4–	responded, "In terms of how
23		16.	they're employed, no; in terms
24			of where you're at emotionally,
25			I think it is different I think
			you'd have more concern about
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	$ \P $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			the outcome." Ladin Decl.,
3			Exh. C, Jessen Dep. 127:11-24.
4			Furthermore, the record
			evidence indicates that the CIA
5			was aware that the SERE
6			techniques were safely applied
7			to volunteers at SERE, but that
7			there was no assurance that the
8			same would be true if the
9			SERE techniques were applied
9			to detainees; and that this
10			information was provided to the OLC as it was assessing the
11			EITs' legality. Defs.' SOF ¶¶
			150-51, 153, 157.
12			(b) Disputed. Plaintiffs
13			mischaracterize Dr. Mitchell's
14			cited testimony. Dr. Mitchell
14			testified that in one specific
15			meeting with the Director of
16			the CIA and Jose Rodriguez, he
			did not mention that "the
17			application of SERE
18			techniques, which had been
19			able to be used for many years
			without producing problems,
20			might nonetheless produce
21			problems in a different setting where the subject is not there
			voluntarily." The cited
22			testimony does not indicate that
23			Dr. Mitchell was "presenting" a
24			"proposal" nor that this issue
			was not discussed at some
25			other time. Ladin Decl., Exh.
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			A, Mitchell Dep. 277:11-
3			281:16. Further, as set out in
4			27(a), the CIA was aware that
			the SERE techniques were
5			safely applied to volunteers at
6			SERE, but that there was no
7			assurance that the same would
_ ′			be true if the SERE techniques
8	28.	Defendants told the CIA that these	were applied to detainees.
9	20.	techniques were likely to be safe to	Objection—Zubaydah. Also, disputed. Plaintiffs mischaracterize
		use and effective at extracting	the cited testimony of Dr. Jessen
10		information from Abu Zubaydah.	and Rodriguez. Dr. Jessen testified
11		Ladin Decl., Exh. B, Rodriguez	that he was told Dr. Mitchell and
12		Dep. 98:7–11; Ladin Decl., Exh. C,	Rodriguez had a conversation
		Jessen Dep. 113:4–22.	during which Dr. Mitchell said
13			SERE techniques "had been used
14			for decades without ill effect, and
15			even though the students knew they
			were in training, they still tended to
16			give up information they were supposed to protect and that that
17			might be something that they could
			use that would provide more
18			effectiveness and predictable
19			safety." Exh. C, Jessen Dep.
20			113:4–22. Additionally, Rodriguez
			testified that Drs. Mitchell and
21			Jessen told him that there was "a
22			good chance [the SERE program
23			techniques] could work." Ladin
			Decl., Exh. B, Rodriguez Dep.
24			98:7–11.
25]	<u> </u>

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			Additionally, Dr. Mitchell did not
3			opine on the likely safety of the
4			techniques as applied to detainees,
5			but told the CIA to conduct its
			own due diligence. Mitchell Dep. at 189:8-22. Furthermore, the
6			record evidence indicates that the
7			CIA was aware that the SERE
8			techniques were safely applied to
			volunteers at SERE, but that there
9			was no assurance that the same
10			would be true if the SERE
11			techniques were applied to
			detainees; and that this information was provided to the
12			OLC as it was assessing the EITs'
13			legality. Defs.' SOF ¶¶ 150-51,
14			153, 157.
	29.	(a) Defendants inflicted many of	Object to this "fact" as compound.
15		the methods they had proposed	Objection—Zubaydah.
16		over the 19-day "Aggressive	(a) Not contested for purposes of
17		Phase" of Abu Zubaydah's	Plaintiffs' Motion that at the
		interrogation. Am. Answer,	direction and under the
18		ECF No. 77 ¶ 51; Ladin Decl., Exh. L at U.S. Bates 002382.	supervision of the CIA, Defendants interrogated
19		(b) These methods "were applied in	Zubaydah for 19 days using
20		varying combinations, 24 hours	many of the EITs they had
		a day." Ladin Decl., Exh. M at	proposed to the CIA via the
21		U.S. Bates 002021.	July 2002 Memo. Am.
22			Answer, ECF No. 77 ¶ 51;
23			Ladin Decl., Exh. L at U.S.
			Bates 002382. Defs.' SOF ¶¶ 176-181, 186-189.
24			(b) Disputed. US Bates 002021
25			indicates that for the first 14
26			
-	1		

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			days, psychological and
3			physical pressures were applied
4			to Zubaydah in varying
ا ہ			combinations, 24 hours a day.
5			There is no evidence this
6			occurred for 19 days. Ladin
7			Decl., Exh. M at U.S. Bates 002021.
	30.	(a) On the first day of the	Defendants object to this "fact" as
8] 30.	aggressive phase of Abu	compound. Also, Objection—
9		Zubaydah's interrogation,	Zubaydah.
10		Defendants began using their	(a) Not contested for purposes of
10		proposed methods on him.	Plaintiffs' Motion that at the
11		Either Defendant Mitchell or	direction and under the
12		Defendant Jessen delivered to	supervision of the CIA,
12		Abu Zubaydah the "very firm	Defendants began interrogating
13		and pointed message that things	Zubaydah as set out in US Bates
14		would continue to get worse for	001755-59. Defs.' SOF ¶¶ 176-
15		[him]" but that "at any time	181, 186-189.
_		[Abu Zubaydah] could stop the situation from getting worse by	(b) Objection—waterboarding.
16		providing the required	Defendants dispute what information Zubaydah provided.
17		information." Ladin Decl., Exh.	US Bates 001758 states
18		N at U.S. Bates 001757.	Zubaydah "did not have any
_		(b) Abu Zubaydah "continued to	additional information other
19		deny any additional	than what he had already
20		knowledge." Defendants told	provided to FBI SA
		Abu Zubaydah "their job was to	[REDACTED] and
21		obtain information and that if	[REDACTED]." Ladin Decl.,
22		[he] did not cooperate he was	Exh. N at U.S. Bates 001758.
23		only going to bring more misery	Further, Plaintiffs offer no
		onto himself." Defendants then	evidence about interrogation
24		waterboarded Abu Zubaydah,	methods used by the FBI.
25		who "coughed and vomited in small amounts but continued to	
26	L	Sman amounts out continued to	

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF - 19 -UNDISPUTED MATERIAL FACTS

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		D. 100 A V. 1	
1	$\ \ \ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
2		maintain his position that he did	
3		not have any additional	
4		information other than what he	
5		had already provided" to the	
3		FBI, which had not used Defendants' methods. <i>Id.</i> at	
6			
7	31.	U.S. Bates 001758.	Objection Zubaydah and
	31.	On the second day of the "aggressive phase," Defendants	Objection—Zubaydah and Objection—waterboarding.
8		again inflicted a variety of the	Objection—waterboarding.
9		methods they had proposed on	Additionally, the quoted language
		Abu Zubaydah, including walling,	in US Bates 001801 cannot be
10		stress positions, confinement	attributed to Defendants. The
11		boxes, and waterboarding. Abu	sender is redacted and the
12		Zubaydah again vomited after	interrogation team included many
12		Defendants waterboarded him, and	individuals. Defs.' SOF ¶ 168.
13		again provided "persistent denials"	Furthermore, all cables went
14		that he possessed undisclosed	through the COB without review
		threat information. The	from Defendants and Defendants
15		interrogation team nonetheless	were unable to draft cables during
16		concluded that "there still appears	this time period. Jessen Dep.
		to be areas that subject is	143:2-13; Defs.' SOF ¶ 298.
17		withholding information on - we	
18		have not pinpointed what those	
10		areas are." Ladin Decl., Exh. O at	
19		U.S. Bates 001801.	
20	32.	On the third day of the "aggressive	Objection—Zubaydah and
21		phase," Defendants used their	Objection—waterboarding.
		walling method on Abu Zubaydah	Additionally, quoted language in
22		while demanding "What is it that	US Bates 001804-05 cannot be
23		you do not want us to know?"	attributed to Defendants for the
		After inflicting several more of the	reasons asserted in #31 above.
24		methods they had proposed, Defendants again told Abu	Defendants do not contest for
25		Zubaydah "that he could stop the	purposes of Plaintiffs' Motion that
		Zubayuan mat ne could stop the	purposes of Fiantiffis Wotton that
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		process at any time," while Abu	at the direction and under the
3		Zubaydah "continued with his	supervision of the CIA, Defendants
4		appeal that he has told all that he	interrogated Zubaydah as set out in
		has and muttered 'help me.'"	US Bates 001803-06. Ladin Decl.,
5		Defendants waterboarded Abu	Exh. P at U.S. Bates 001803–1806;
6		Zubaydah and placed him in a	Defs.' SOF ¶¶ 176-181, 186-189.
7		confinement box, after which he	
		"appeared despondent" and "cried	
8		in an apparently genuine fashion." Defendants stuffed Abu Zubaydah	
9		back in a box for several hours.	
		Afterwards, Abu Zubaydah "started	
10		crying and claimed he had given us	
11		everything." The interrogation	
12		team noted "At the risk of stating	
		the obvious, there are potentially	
13		two reasons" that Abu Zubaydah	
14		had not provided the threat	
1.5		information that Defendants	
15		demanded: either he was	
16		concealing it, or actually did not	
17		have the information that his	
		interrogators wanted. The interrogation team noted that, in	
18		their opinion, "it is premature" to	
19		decide which reason explained the	
20		lack of new threat information.	
		Ladin Decl., Exh. P at U.S. Bates	
21		001804–1805.	
22	33.	On the fourth day of the	Objection—Zubaydah and
22		"aggressive phase," after using	Objection—waterboarding.
23		their walling and slapping methods	Defendants do not contest for
24		on Abu Zubaydah, Defendants told	purposes of Plaintiffs' Motion that
25		him that they would stop inflicting	at the direction and under the
		their methods on him if he	supervision of the CIA, Defendants
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF - 21 - UNDISPUTED MATERIAL FACTS

1		\P	Plaintiffs' Undisputed Material	Defendants' Response and
2			Facts and Supporting Evidence	Supporting Evidence
			provided the threat information	interrogated Zubaydah as set out in
3			they demanded. They warned him	US Bates 001942-44. Ladin Decl.,
4			not to make up an answer. Abu	Exh. Q at U.S. Bates 001942–44;
			Zubaydah "began to whimper and	Defs.' SOF ¶¶ 176-181, 186-189.
5			was visibly trembling; he continued	
6			to deny he had any new info to	
			give." Defendants then	
7			waterboarded Abu Zubaydah and	
8			left his cell. When they returned,	
9			they "noted that [Abu Zubaydah's]	
9			distress level increased the moment	
10			the team entered the cell, a sign	
11			that the conditioning strategy was working." Ladin Decl., Exh. Q at	
			U.S. Bates 001943–44.	
12		34.	On the fifth day of the "aggressive	Objection—Zubaydah and
13		<i>Э</i> ¬.	phase," Defendants inflicted a	Objection—waterboarding.
14			series of their methods on Abu	Defendants do not contest for
14			Zubaydah when he told them he	purposes of Plaintiffs' Motion that
15			did not have the information they	at the direction and under the
16			demanded. They told him "that he	supervision of the CIA, Defendants
			had the choice to stop this	interrogated Zubaydah as set out in
17			treatment at any time by providing	US Bates 001945-48. Ladin Decl.,
18			the information we sought, that he	Exh. R at U.S. Bates 001945-48;
			should not waste our time with	Defs.' SOF ¶¶ 176-181, 186-189.
19			denials, and that he better not tell	
20			any lies." Ladin Decl., Exh. R at	
21			U.S. Bates 001946. They observed	
21			that he "continued to cry." He	
22			displayed "despair and	
23			helplessness" throughout the day.	
			Defendants continued to inflict	
24			their methods on him. <i>Id.</i> at U.S.	
25			Bates 001947.	
-	1			

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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS Betts Patterson Mines 701 Pike Street, Suite 1400 Seattle, Washington 98101-3927 (206) 292-9988

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35.

Plaintiffs' Undisputed Material Facts and Supporting Evidence

By the sixth day of the "aggressive interrogation phase," Defendants and the rest of the interrogation team reached a "collective preliminary assessment that it is highly unlikely [Abu Zubaydah] has actionable new information about current threats to the United States." They nonetheless resolved that "the team plans to maintain the current level of psychological pressures for the time being to develop and refine this preliminary assessment." Ladin Decl., Exh. S at U.S. Bates 002341. The medical officer at the site also assessed that "under current medical intervention subject's medical status is likely to deteriorate to an unacceptable level over the next two weeks, and thus will continue to be closely monitored." Id.

Defendants' Response and Supporting Evidence

Objection—Zubaydah. Defendants dispute that the cited cable was sent on the sixth day of Zubaydah's interrogation. The cable was sent on August 10, 2002, which was the seventh day of Zubaydah's interrogation. Exh. S at U.S. Bates 002341; Ladin Decl., Exh. T at U.S. Bates 001955–56 ("The teams assessment remains the same [REDACTED] on 10 August 02 – day seven of the aggressive interrogation phase").

Defendants further dispute the implication that they had the ability to stop Zubaydah's interrogation. US Bates 002341 states that on the seventh day of the interrogation, the interrogation team did "not recommend escalating the pressure" on Zubaydah and requested that a team from CIA Headquarters ("HQS") visit the site where Zubaydah was being interrogated within the next week, or at least arrange a videoconference to "discuss the team's preliminary assessment and post-interrogation steps." Ladin Decl., Exh. S at U.S. Bates 002340-42. In response, HQS sent a cable to the site the same day demanding that Defendants "stay the course" and "the aggressive

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS Betts Patterson Mines 701 Pike Street, Suite 1400 Seattle, Washington 98101-3927 (206) 292-9988

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1	\P	Plaintiffs' Undisputed Material
2		Facts and Supporting Evidence
3		
4		
5		
6		
7	36.	On the seventh day of the
8		"aggressive interrogation phase,"
9		Defendants again subjected Abu Zubaydah to 24 hours of their
10		methods, and he again did not
11		provide any of the new threat
12		information they demanded. Ladin Decl., Exh. T at U.S. Bates
13	27	001955–56.
	37.	On the eighth day of the "aggressive interrogation phase,"
14		Defendants again subjected Abu
15		Zubaydah to their methods, and
16		again acquired no new threat
17		information. Defendants told Abu Zubaydah that "the only way he
18		was going out of that room was in
19		the large box in the corner. They prompted him to tell them what the
20		box was shaped like; he whispered
21		'a coffin.' Interrogators then said subject would not be leaving the
22		room for a long, long, long time,
		because he was in no imminent
23		danger of dying." Ladin Decl.,
24		Exh. J at U.S. Bates 001957–58. While Defendants inflicted their
25		methods on Abu Zubaydah, he was
2.		·

Additionally, quoted language in US Bates 002341 cannot be attributed to Defendants for the reasons asserted in #31 above. Objection—Zubaydah. Defendants do not contest that at the direction and under the supervision of the CIA, Defendants interrogated Zubaydah as set out in US Bates 001955-56. Ladin Decl., Exh. T at U.S. Bates 001955–56; Defs.' SOF ¶¶ 176-181, 186-189, 194-95. Objection—Zubaydah. Defendants further dispute the implication that Defendants had the ability to stop Zubaydah's interrogation. Exh. J at U.S. Bates 001957-60. Defs.' SOF ¶¶ 176-181, 186-189, 194-95. On this same day, the interrogation team again told HQS that they did not think Zubaydah possessed any further information about new or current threats against the United States and that they "looked forward to the upcoming [videoconference]" so that HQS could see the interrogation first hand. Ladin Decl., Exh. U at U.S. Bates 002345-46.

Defendants' Response and

phase must continue." Defs.' SOF

Supporting Evidence

¶¶ 194-95.

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF - 24 - UNDISPUTED MATERIAL FACTS

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		DI LOCATI II	
1	$\ \ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence "trembling and shaking' and	Supporting Evidence
3		"frantically pleaded" that "he had	
		given everything he knew." <i>Id.</i> at	
4		U.S. Bates 001959.	
5	38.	The interrogation team reported	Objection—Zubaydah. Defendants
6		that Defendants' use of the	dispute the assertion that Zubaydah did not provide any new useful
7		methods they proposed "on a 24/7 basis for the last eight days" had	information. The document cited
8		"produced the desired results of	by Plaintiffs states that Zubaydah
		almost total compliance on	had begun providing "new nuggets
9		subject's part." Ladin Decl., Exh.	of information" about past
10		U at U.S. Bates 002346. However, the use of Defendants' methods on	activities. Ladin Decl., Exh. U at U.S. Bates 002345-47; Defs.' SOF
11		Abu Zubaydah had not produced	¶¶ 176-181, 186-189, 194-95.
12		any new threat information, and	Additionally, quoted language in
13		Abu Zubaydah's "persistent	US Bates 002346 cannot be
		responses" had been "I have no more or I have nothing more or	attributed to Defendants for the reasons asserted in #31 above.
14		'I told you everything." <i>Id</i> .	reasons asserted in #31 above.
15		Trota you every ming. 1w.	Defendants do not contest that at
16			the direction and under the
			supervision of the CIA, Defendants
17			interrogated Zubaydah as set out in
18	39.	On the eleventh day of the	US Bates 002345-47.
19	39.	On the eleventh day of the "aggressive phase," the	Objection—Zubaydah. Defendants further dispute the implication that
20		interrogation team reported that	Defendants had the ability to stop
		"subject exhibited initial	Zubaydah's interrogation. Ladin
21		apprehension followed by complete	Decl., Exh. V at U.S. Bates
22		compliance to all verbal and	002363-65; Defs.' SOF ¶¶ 176-
23		nonverbal commands for movement He seemed to	181, 186-189, 194-95. The day
		display a desperate resignation at	before, on August 13, 2002, HQS acknowledged that the
24		his inability to convince the	interrogation team believed that
25		interrogators that he was not	Zubaydah had no additional
26			
	1		

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
- 25 -

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		holding back information	information on current threats and
3		When the interrogators told him	HQS participated in a
4		that his protests of ignorance	videoconference during which
_		regarding additional information	EITs were applied to Zubaydah.
5		about threats against the U.S.	HQS ordered that the interrogation
6		would not stop them from using the	team "continue with the aggressive
7		water board, subject's eye teared,	interrogation strategy for the next
		his breathing increased, and he appeared desperate." Ladin Decl.,	2-3 weeks" because "the HQS consensus" was that Zubaydah
8		Exh. V at U.S. Bates 002364.	possessed additional information
9		EAH. V at 0.5. Dates 002504.	that was "critical to saving
10			American lives." Specifically,
10			HQS directed the interrogation
11			team to continue waterboarding
12			Zubaydah and apply other
			interrogation pressures. Defs.'
13			SOF ¶¶ 198-99, 201-03.
14			
1.5			Additionally, quoted language in
15			US Bates 002364 cannot be
16			attributed to Defendants for the
17	1	On the Chanth day of the	reasons asserted in #31 above.
	4	On the fifteenth day of the "aggressive phase," Abu Zubaydah	Objection—Zubaydah.
18		was "compliant and totally	Additionally, quoted language in US Bates 001807-08 cannot be
19		submissive," and "continue[d] to	attributed to Defendants for the
20		be fearful of the interrogators. He	reasons asserted in #31 above.
20		"continued to maintain that he	Defendants do not contest that at
21		knows of no threats to the United	the direction and under the
22		States or against United States	supervision of the CIA, they
		interests beyond what he has	interrogated Zubaydah as set out in
23		already provided." Defendants	US Bates 001807-08. Ladin Decl.,
24		walled Abu Zubaydah, and	Exh. W at U.S. Bates 001807-08;
25		"repeatedly and aggressively	Defs.' SOF ¶¶ 176-181, 186-189,
		pressed" him for new details. He	194-95, 198-99, 201-03.
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\P	Plaintiffs' Undisputed Material	Defendants' Response and
	Facts and Supporting Evidence	Supporting Evidence
	"did not have any significant	
	details on this topic beyond what	
	he already provided," and the	
	interrogation team noted that "thus	
	far" the aggressive phase had not	
	resulted in any "significant	
	actionable info beyond previously	
	provided details." Ladin Decl.,	
	Exh. W at U.S. Bates 001807–08.	
41.	On the sixteenth day of the	Objection—Zubaydah and
	"aggressive phase," Abu Zubaydah	Objection—waterboarding.
	"was repeatedly pressured and	
	instructed that revealing the	Defendants further dispute the
	requested information would stop	implication that Defendants had the
	the procedure." He "again stated	ability to stop Zubaydah's
	that he had no information in	interrogation Ladin Decl., Exh. X
	addition to that which he had	at U.S. Bates 002379-81; Defs.'
	already provided, and alternatively	SOF ¶¶ 176-181, 186-189, 194-95,
	begged and cried that procedure be	198-99, 201-03. At this time, in
	stopped." Defendants then	response to the request from the
	waterboarded Abu Zubaydah to the	interrogation team to stop using
	point where he exhibited	EITs, HQS had sent a team to the
	"involuntary body (leg, chest and	site where Zubaydah was being
	arm) spasms." The interrogation	interrogated, GREEN. The HQS
	team then resumed the questioning,	team arrived on August 16, 2002
	while Abu Zubaydah "continued to	(three days before this cable), and
	cry, and claim ignorance of any	the HQS team became actively
	additional information. This	involved in Zubaydah's
	resulted in a second full-face	interrogation, including observing
	watering. At the onset of	this interrogation. Defs.' SOF ¶ 204-06.
	involuntary stomach and leg	204-00.
	spasms, subject was again elevated	Additionally guated language in
	to clear his airway, which was	Additionally, quoted language in US Bates 002380 cannot be
	followed by hysterical pleas. Subject was distressed to the level	attributed to Defendants for the
	Subject was distressed to the level	aurioused to Describants for the

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		that he was unable to effectively	reasons asserted in #31 above.
3		communicate or adequately engage	Defendants do not contest that at
4		the team." Defendants then stuffed	the direction and under the
		Abu Zubaydah into a box and	supervision of the CIA, they
5		bombarded him with noise to	interrogated Zubaydah as set out in
6		continue his "elevated level of	US Bates 001807-08. Ladin Decl.,
		disorientation." Ladin Decl., Exh.	Exh. W at U.S. Bates 001807-08;
7		X at U.S. Bates 002380.	Defs.' SOF ¶¶ 176-181, 186-189,
8			194-95, 198-99, 201-03.
	42.	On the seventeenth day of the	Objection—Zubaydah and
9		aggressive phase, Abu Zubaydah	Objection—waterboarding.
10		"cried and begged the interrogators	Defendants do not contest that at
11		to believe him when he said that he	the direction and under the
11		was not holding back information	supervision of the CIA, Defendants
12		as he was placed in position for	interrogated Zubaydah as set out in
13		watering. Two iterations of the	US Bates 002019-23. Ladin Decl.,
13		watering cycle were applied.	Exh. M at U.S. Bates 002019-23;
14		During the watering he cried,	Defs.' SOF ¶¶ 176-181, 186-189,
15		begged and pleaded; finally	194-95, 198-99, 201-06.
		becoming hysterical." Ladin Decl.,	
16	12	Exh. M at U.S. Bates 002022.	Objection 7-bandah Defendants
17	43.	After seventeen days of the	Objection—Zubaydah. Defendants
		aggressive phase, the interrogation team reported that "psychological	further respond that the quoted language cannot be attributed to the
18		and physical pressures have been	"interrogation team" for the
19		applied to induce complete	reasons asserted in #31 above.
20		helplessness, compliance and	Also, other documents suggest that
20		cooperation from the subject. Our	the team from HQS, not the
21		goal was to reach the stage where	Zubaydah interrogation team,
22		we have broken any will or ability	drafted this cable. Ladin Decl.,
22		of subject to resist or deny	Exh. K at U.S. Bates 001423–24
23		providing us information	("A team of senior CTC officers
24		(intelligence) to which he had	traveled from Headquarters to
		access." Ladin Decl., Exh. M at	[REDACTED] to assess Abu
25		U.S. Bates 002020.	Zubaydah's compliance and
26	-		

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1	$\ \ \ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
2			witnessed the final waterboard
3			session, after which, they reported
4			back to Headquarters that the EITs
5			were no longer needed on Abu Zubaydah.").
	44.	(a) Defendants had previously	Defendants object to this "fact" as
6	44.	claimed Abu Zubaydah was a	compound. Also, Objection—
7		skilled resistor, Ladin Decl.,	Zubaydah.
		Exh. Y at U. S. Bates 001771;	(a) Disputed. Plaintiffs
8		Ladin Decl., Exh. A, Mitchell	mischaracterize Dr. Mitchell's
9		Dep. 252:6–255:21,	cited testimony and US Bates
10		(b) and CIA Headquarters thought	001771. Dr. Mitchell testified
		Abu Zubaydah might still be	that Zubaydah employed
11		withholding information and	resistance techniques, not that
12		that the program Defendants	he was a "skilled resister." Exh.
13		had recommended might yet	A, Mitchell Dep. 252:6–255:21.
		extract new threat information	Furthermore, US Bates 001771
14		from Abu Zubaydah. Ladin	cannot be attributed to Defendants for the reasons
15		Decl., Exh. E at MJ00022666.	asserted in #31 above.
			Nevertheless, all US Bates
16			001771 states is that Zubaydah
17			"is an incredibly strong willed
18			individual which is why he has
			resisted this long." Exh. Y at
19			U. S. Bates 001771.
20			(b) Disputed. Plaintiffs
21			mischaracterize the information
			in MJ00022666. This document discusses the fact that
22			after HQS viewed the
23			videoconference of Zubaydah's
24			interrogation, HQS still wanted
			the interrogation to continue,
25			including waterboarding,
26			

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			despite Defendants' opinion
3			that further interrogation was
4			unnecessary. The document
			does not discuss why HQS had
5			this view or otherwise support
6			Plaintiffs' implications. Ladin
7	15	Defendants did not believe that the	Decl., Exh. E at MJ00022666.
	45.	Defendants did not believe that the	Objection—Zubaydah and
8		final waterboarding session would result in the extraction of new	Objection—waterboarding.
9		threat information, but thought it	Dispute the implication that
		would demonstrate that Abu	Defendants had the ability to stop
10		Zubaydah was compliant. Ladin	Zubaydah's interrogation. US
11		Decl., Exh. K at U.S. Bates	Bates 001423-24 goes on to state,
12		001423–24. Defendant Mitchell	"According to this senior officer,
		stated that "[i]t was ugly and hard	the decision to resume use of the
13		to do." Ladin Decl., Exh. E at	waterboard on Abu Zubaydah was
14		MJ00022668.	made by senior officers of the DO.
15			A team of senior CTC officers
			traveled from Headquarters to
16			[REDACTED] to assess Abu Zubaydah's compliance and
17			witnessed the final waterboard
18			session, after which, they reported
			back to Headquarters that the EITs
19			were no longer needed on Abu
20			Zubaydah. Ladin Decl., Exh. K at
			U.S. Bates 001423–24.
21	46.	After nineteen days of the	Objection—Zubaydah. Defendants
22		aggressive phase Defendants and	dispute the implication that they
23		the rest of the interrogation team	drafted or assented to the language
		issued the "assessment that we	in this cable. The document states
24		have successfully broken subject's willingness to withhold threat and	the "team assessment" is that "we have successfully broken subject's
25		intelligence information. He is	willingness to withhold threat and
26		interrigence information. The is	willinghess to withhold theat and
20			

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$ \P$	Plaintiffs' Undisputed Material	Defendants' Response and
	Facts and Supporting Evidence	Supporting Evidence
	presently in a state of complete	intelligence information. He is
	subjugation and total compliance."	presently in a state of complete
	However, they noted that, having	subjugation and total compliance."
	failed to acquire the threat	It also states "[t]he issue of whether
	information they had demanded	subject in fact has specific threat
	over nineteen days, "[t]he issue of	information (not already provided)
	whether subject in fact has specific threat information (not already	will always be open to some conjecture." Ladin Decl., Exh. L at
	provided) will always be open to	U.S. Bates 002382–83. Defendants
	some conjecture." Ladin Decl.,	did not draft or review this cable.
	Exh. L at U.S. Bates 002382–83.	All cables went through the COB
	. = = = =	without review from Defendants
		and Defendants were unable to
		draft cables during this time period.
		Jessen Dep. 143:2-13; Defs. SOF
		¶ 298. And the interrogation team
		included many individuals other
		than Defendants. Defs.' SOF ¶ 168.
47.	The interrogation team proposed	Objection—Zubaydah. Disputed.
	that, although the "aggressive	The quoted language cannot be
	phase" had been stopped, "we will	attributed to the "interrogation team" or "Defendants". The sender
	carefully continue to observe [Abu Zubaydah] to ensure he remains	of US Bates 002388-90 is redacted
	'compliant' and [Defendants] will	and not otherwise identified. Ladin
	stand by to 'tune him up' as	Decl., Exh. Z at U.S. Bates
	required." After completion of the	002388-90. Also, Defendants did
	aggressive phase of Abu	not draft or review this cable. All
	Zubaydah's interrogation, the team	cables went through the COB
	planned to "systematically drain	without review from Defendants
	him dry of any useful intelligence."	and Defendants were unable to
	Ladin Decl., Exh. Z at U.S. Bates	draft cables during this time period.
	002390.	Jessen Dep. 143:2-13; Defs.' SOF
		¶ 298.
48.	The aggressive interrogation of	Objection—Zubaydah.
	Abu Zubaydah did not end because	

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		he finally provided threat	Disputed. Plaintiffs misrepresent
3		information, but because	the record. Dr. Jessen testified that
4		Defendants and the CIA	after he and Dr. Mitchell thought
		determined that "it was no longer	further interrogation of Zubaydah
5		useful" to continue. Ladin Decl.,	was "no longer useful," the CIA
6		Exh. C, Jessen Dep. 145:21–46:9,	"told us we had to continue"
7		148:6–12.	because "we worked for them and
			they wanted to continue." In fact,
8			Zubaydah's interrogation did not stop until the CIA, at Defendants
9			urging, came to GREEN where
			Zubaydah was being interrogated
10			and witnessed the interrogation.
11			Only then did the CIA allow
12			Defendants to stop interrogating
			because HQS determined that
13			Zubaydah was "total[ly]
14			compliant". Jessen Dep. 145:21–
15			46:9, 147:18–149:7; Defs.' SOF ¶¶
			191-207. Furthermore, the record cited by Plaintiffs does not state
16			whether or not Zubaydah provided
17			threat information, and this
18			assertion is not supported by
			admissible evidence.
19	49.	(a) Defendant Mitchell "had a	Defendants object to this "fact" as
20		visceral reaction to the tapes" of	compound. Also, Objection—
		Defendants' using their methods	Zubaydah.
21		on Abu Zubaydah, and "thought	(a) Disputed. Contrary to
22		they were ugly." He "didn't	Plaintiffs' statement, Dr.
23		like the fact that the tapes were	Mitchell did not "recommend"
		out there" and recommended	that the tapes be destroyed but
24		they be destroyed. Ladin Decl.,	"thought [the tapes] should be
25		Exh. A, Mitchell Dep. 386:10– A23; 389:2–22; 392:10–17.	destroyed". Ladin Decl., Exh.
		1123, 307.2-22, 372.10-17.	
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1	\P	Plaintiffs' Undisputed Material	Defendants' Res
		Facts and Supporting Evidence	Supporting Evi
2		(b) A senior CIA official, Jose	A, Mitchell D
3		Rodriguez, agreed: he believed	389:2–22.
4		the tapes "would make the CIA	(b) Not contested
		look bad," and, if released,	Plaintiffs' Mo
5		would "almost destroy the	further object
6		clandestine service." Rodriguez	irrelevant to t
7		Dep: 92:18–93:25. (c) On Rodriguez's orders, the CIA	the issues pre Plaintiffs' Mo
		destroyed the tapes. Mitchell	P. 56(e)(1); F
8		Dep: 387:21–388:7.	402).
9		P	(c) Not contested
10			Plaintiffs' Mo
			further object
11			irrelevant to t
12			the issues pre
13			Plaintiffs' Mo
			P. 56(e)(1); F 402).
14	50.	Although they had failed to acquire	Objection—Zuba
15		any new threat information, the	The quoted lange
16		interrogation team was "satisfied"	002388-90 canno
		that they had "applied the	the "interrogation
17		techniques aggressively and	"Defendants" be
18		conditioned subject to the point	redacted and not
19		that we can assess he is compliant."	identified. Ladin
		The interrogation team was	U.S. Bates 00238
20		satisfied that Abu Zubaydah did not possess undisclosed threat	went through the review from Def
21		information, and observed that the	Defendants were
22		intelligence they had was	cables during thi
		consistent with what Abu	Jessen Dep. 143:
23		Zubaydah had told them. Ladin	¶ 298.
24		Decl., Exh. L at U.S. Bates	
		002383; Ladin Decl., Exh. Z at	
25		U.S. Bates 002389–90.	
26			

esponse and idence

- Dep. 386:10–23;
- d for purposes of otion. Defendants et to this "fact" as the resolution of esented in lotion (FED. R. CIV. FED. R. EVID. 401,
- d for purposes of otion. Defendants et to this "fact" as the resolution of esented in lotion (FED. R. CIV. FED. R. EVID. 401,

paydah. Disputed. guage in US Bates ot be attributed to on team" or ecause the sender is t otherwise n Decl., Exh. Z at 88-90. All cables e COB without fendants and e unable to draft is time period. :2-13; Defs.' SOF

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF - 33 -UNDISPUTED MATERIAL FACTS

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
	51.	Defendant Mitchell later wrote in	Objection—Zubaydah and
3		response to a question as to why	Objection—waterboarding.
4		Defendants had waterboarded Abu	
_		Zubaydah so many times: "As for	Defendants dispute the implication
5		our buddy, he capitulated the frist	that Defendants had the ability to
6		[sic] time. We chose to expose him	stop Zubaydah's interrogation. As
7		over and over until we had a high degree of confidence he wouldn't	set forth above, Defendants requested to stop waterboarding
		hold back. He said we [sic] was	Zubaydah, but the CIA demanded
8		ready to talk during the first	they continue. Defs.' SOF ¶¶ 190-
9		exposure." Ladin Decl., Exh. AA	207.
10		at U.S. Bates 002581 (emphasis in	
		original).	
11	52.	Defendant Mitchell, summing up	Objection—Zubaydah. Otherwise,
12		Defendants' interrogation of Abu	not contested for purposes of
		Zubaydah, wrote: "I left feeling	Plaintiffs' Motion.
13		good about what we had	
14		accomplished." Ladin Decl., Exh. E at MJ00022671.	
15	53.	After seventeen days of the	Objection—Zubaydah. Defendants
16		"aggressive phase," the	respond that US Bates 002019-23
		interrogation team, which included	cannot be attributed to the
17		Defendants, wrote to CIA	"interrogation team" or
18		headquarters that "the aggressive	"Defendants". The sender is
		phase" of Abu Zubaydah's	redacted and not otherwise
19		interrogation "should be used as a	identified. Ladin Decl., Exh. M at
20		template for future interrogation of	U.S. Bates 002019-23. All cables
21		high value captives." Ladin Decl., Exh. M at U.S. Bates 002023.	went through the COB without review from Defendants and
		LAII. W at O.B. Dates 002023.	Defendants were unable to draft
22			cables during this time period.
23			Jessen Dep. 143:2-13; Defs.' SOF
24			¶ 298.
	54.	Defendants' methods became the	Disputed that the interrogation
25		basis for the CIA's enhanced	methods posed by Defendants were
26			

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		interrogation program. Ladin	the basis of one overarching CIA
3		Decl., Exh. B, Rodriguez Dep.	interrogation program, and
4		59:19–60:25, 63:6–10.	specifically that the interrogation
			methods posed by the Defendants
5			were the basis of interrogation for
6			any Plaintiff. The interrogation
7			methods proposed by Defendants
			became the basis only for the
8			CIA's interrogation of Zubaydah and later the CIA's HVD Program.
9			Rodriguez Dep. 183:22-184:25;
			186:17-20; Defs.' SOF ¶¶ 209-11.
10	55.	(a) Defendants participated in the	Defendants object to this "fact" as
11		program's initial expansion,	compound.
12		opining on potential lessons	(a) Disputed. Plaintiffs
		from Abu Zubaydah's	mischaracterize the underlying
13		interrogation for future	documents. Contrary to
14		interrogations. Ladin Decl.,	Plaintiffs' statement, the
		Exh. BB at U.S. Bates 001611;	documents do not indicate that
15		Ladin Decl., Exh. DD at U.S.	Defendants participated in "the
16		Bates 001891–92.	program's" initial expansion.
17		(b) Defendants' contracts expanded	Rather, US Bates 001611
		after Abu Zubaydah's	indicates that all those involved
18		interrogation as well. For example, less than two months	in Zubaydah's interrogation,
19		after Abu Zubaydah's	including CTC Legal, the incoming and outgoing Chief of
		interrogation, the value of	Base, the Usama Bin Laden
20		Defendant Jessen's contract had	taskforce, the Office of
21		already doubled. Ladin Decl.,	Technical Services, IC SERE
22		Exh. CC at U.S. Bates 000086,	psychologists, and additional
		000092, 000094.	personnel, were asked for
23			observations,. Similarly, US
24			Bates 001891-92 indicates that
			in December 2002, after the
25			CIA had already designed and
26			

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			operated a training for "High-
3			Value Target" interrogation
4			techniques, Defs.' SOF ¶ 226,
			Dr. Mitchell, as "one data
5			point" was asked for feedback
6			from Zubaydah's interrogation.
			Ladin Decl., Exh. DD at U.S.
7			Bates 001891–92. As stated at
8			US Bates 001891, CTC was
			"[c]learly in charge of the
9			operation" and thus the CIA
10			determined how to use the
11			information it requested from
11			Defendants and had complete
12			control over any "expansion."
13			(b) Defendants object to this "fact" as irrelevant to the resolution of
			the issues presented in
14			Plaintiffs' Motion (FED. R. CIV.
15			P. 56(e)(1); FED. R. EVID. 401,
			402). Disputed that Dr.
16			Mitchell's contract value
17			increased, as Plaintiffs present
18			no such evidence. Not
10			contested for purposes of
19			Plaintiffs' Motion that Dr.
20			Jessen's original contract
			amount was to be a maximum
21			amount of \$135,000 from July
22			22, 2002 until July 21, 2003 and
			that in October 2002, Dr.
23			Jessen's maximum contract
24			amount was increased to
25			\$267,500, with the same
			duration. Ladin Decl., Exh. CC
26			

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
3			at U.S. Bates 000086, 000092, 000094.
4	56.	Defendants were aware of a	Defendants object to this "fact" as
		phenomenon called "abusive drift":	irrelevant to the resolution of the
5		once coercion was employed,	issues presented in Plaintiffs'
6		interrogators would tend to exceed	Motion (FED. R. CIV. P. 56(e)(1);
7		any approved limits, resulting in even more severe abuse of	FED. R. EVID. 401, 402). Plaintiffs make no allegation that Defendants
		prisoners. Ladin Decl., Exh. C,	exceeded the legal boundaries set
8		Jessen Dep. 35:24–36:17; Ladin	by DOJ for the EITs because of
9		Decl., Exh. E at MJ00022633,	abusive drift or otherwise.
10		MJ00022857.	
11			Disputed. Plaintiffs
			mischaracterize the record. Dr. Jessen testified that abusive drift is
12			a phenomenon that occurs when,
13			"without proper oversight and []
14			independent eyes on authorities,
			people can start to push the limits
15			of what they're authorized to do."
16			Dr. Jessen's role at SERE was to
17			"make sure that [he] identified that and stopped it." He also indicated
			that "abusive drive" was more
18			likely to happen in real life than in
19			training scenarios. Ladin Decl.,
20			Exh. C, Jessen Dep. 35:24–36:17.
21			Dr. Mitchell wrote about his
			similar role at SERE when he was
22			responsible for determining what
23			went wrong in interrogations and specifically "monitor[ing] and
24			directly intervene[ing] to prevent
			escalating abusive drift that
25			could lead to increased risk of
26			

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			lasting mental or physical harm
3			among students." He further wrote
4			that when he saw photographs from
			Abu Ghraib—which was not part
5			of any CIA interrogation
6			program—he was "dismayed" and
7			"angry" because he "had studied
7			the psychological mechanisms that
8			lead to that sort of abusive drift."
9			Ladin Decl., Exh. E at
9			MJ00022633, MJ00022857.
10			Defendants do not contest that they
11			were aware of "abusive drift." The remainder of Plaintiffs' statement
			is disputed. Plaintiffs' statement
12			that "once coercion was employed,
13			interrogators would tend to exceed
			any approved limits, resulting in
14			even more severe abuse of
15			prisoners" is unsupported by the
16			record and contrary to Dr. Jessen's
			testimony explaining that abusive
17			drift occurs when there is not
18			proper oversight.
	57.	Defendants "designed a program	Disputed that the interrogation
19		for the CIA to get prisoners to talk,	methods posed by Defendants were
20		but the CIA would decide which	the basis of one overarching CIA
21		prisoners to apply it to." Ladin	interrogation program and,
		Decl., Exh. B, Rodriguez Dep.	specifically, that the interrogation
22		244:9–12.	methods posed by Defendants were
23			the basis for interrogation of any
			Plaintiff. The interrogation methods proposed by Defendants
24			became the basis only for the
25			CIA's interrogation of Zubaydah
26		1	on i b interrogation of Eurosydum
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DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	$\ \ \ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
3			and later the CIA's HVD Program.
ا د			Rodriguez Dep. 183:22-184:25; 186:17-20; Defs.' SOF ¶¶ 209-11.
4			Not contested that the CIA would
5			decide which HVDs would be
			interrogated and how interrogations
6			would be conducted. Rodriguez
7			Dep. 125:23-126:3, 167:15-19,
8			169:4-8, 174:6-10, 183:22-184:25,
			186:17-20; US Bates 001631-32;
9			US Bates 001593; US Bates
10			001594; Rizzo Dep. 60:10-25, 85:1-
11			12, 187:2-25, 188:1-7, 192:23-25.
11			Also, the CIA assessed and
12			approved all interrogation plans. US Bates 001592; US Bates 001635.
13			The CIA
14	58.	When the CIA sought approval for	Not contested for purposes of
		the program, it submitted to the	Plaintiffs' Motion that the CIA
15		Justice Department's Office of	asked the DOJ's OLC to evaluate
16		Legal Counsel only the 12 methods	the legality of the EITs because
17		Defendants had proposed.	they had been recommended "by
17		Deposition of John Rizzo 47:4–15	CTC management[.]" Rizzo Dep.
18		(Ladin Decl., Exh. EE, cited hereinafter as "Rizzo Dep.").	47:4-48:1.
19	59.	By January 2003, the methods that	Disputed. Contrary to Plaintiffs'
20		Defendants had proposed and used	statement, Mr. Rizzo, Deputy
		on Abu Zubaydah were	General Counsel at the CIA in
21		standardized as the official	January 2003, did not testify that
22		"Enhanced Interrogation	"the methods that Defendants had
		Techniques" in the "enhanced	proposed and used on Zubaydah
23		interrogation program" used on	were standardized as the official
24		CIA prisoners. Ladin Decl., Exh.	'Enhanced Interrogation
25		FF at U.S. Bates 001170–72; Ladin	Techniques." Rather, Mr. Rizzo testified that US Bates 001170-72
		Decl., Exh. EE, Rizzo Dep. 64:8–	testified that U.S. Bates 0011/0-/2
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		23.	represented instructions as to how
3			interrogations were to be conducted
4			within the legal authorization and
			stated that the techniques
5			developed for Zubaydah "served as
6			a template for the enhanced
7			interrogation techniques that were
			used on a number of subsequent
8			high value detainees." Ladin Decl., Exh. EE, Rizzo Dep. 64:8–65:15.
9			EXII. EE, KIZZO Dep. 04.8–03.13.
			Defendants further respond that US
10			Bates 00170-72 does not reflect
11			"methods Defendants had proposed
12			and used on Abu Zubaydah," but
			includes interrogation techniques
13			not contained in the July 2002
14			Memo. Specifically, it includes the
1.5			use of isolation, reduced caloric
15			intake, deprivation of reading
16			material, use of loud music or
17			white noise (non-harmful), and the
			abdominal slap. Ladin Decl., Exh. FF at U.S. Bates 001170–72.
18			11 at 0.3. Bates 0011/0-72.
19			Finally, it is disputed that the
20			interrogation methods posed by
			Defendants were the basis of one
21			overarching CIA interrogation
22			program for use on all CIA
			detainees and, specifically, that the
23			interrogation methods posed by
24			Defendants were the basis for
25			interrogation of any Plaintiff. The
			EITs were proposed by Defendants
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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	1	
\P	Plaintiffs' Undisputed Material	Defendants' Response and
	Facts and Supporting Evidence	Supporting Evidence
		for use on Zubaydah and later for
		use in the CIA's HVD Program.
		Rodriguez Dep. 183:22-184:25;
		186:17-20; Defs.' SOF ¶¶ 209-11.
		Even then, EITs were applied to HVDs in only specific
		circumstances when the proper
		approvals were granted. Defs. SOF
		¶¶ 216-24.
60.	The list of "Enhanced Techniques"	Disputed. US Bates 001170-72
	standardized in the January 2003	does not indicate EITs had become
	guidelines are "the attention grasp,	"standardized" but that "the use of
	walling, the facial hold, the facial	each specific [EIT] must be
	slap (insult slap), the abdominal slap, cramped confinement, wall	approved by Headquarters in advance, and may be employed
	standing, stress positions, sleep	only by approved interrogators for
	deprivation beyond 72 hours, the	use with the specific detainee, with
	use of diapers for prolonged	appropriate medical and
	periods, the use of harmless	psychological participation in the
	insects, [and] the waterboard."	process." Ladin Decl., Exh. FF at
	Ladin Decl., Exh. FF at U.S. Bates	U.S. Bates 001170–72. Not
	001172. The list of "standard	contested for purposes of Plaintiffs'
	techniques" included "isolation,	Motion that US Bates 001170-72 is
	sleep deprivation not to exceed 72	accurately quoted.
	hours, reduced caloric intake	
	use of loud music or white noise	
	and the use of diapers for limited periods." <i>Id</i> .	
61.	(a) With the exception of the	Defendants object to this "fact" as
	"abdominal slap" technique, the	compound.
	standardized "Enhanced	(a) Not contested for purposes of
	Techniques" are the methods	Plaintiffs' Motion. Ladin Decl.,
	Defendants proposed in July	Exh. FF at U.S. Bates 001170–
	2002. Ladin Decl., Exh. H at	72; Exh. H at U.S. Bates
	U.S. Bates 001110–11.	001110–11.

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF - 41 -UNDISPUTED MATERIAL FACTS

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

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		(b) The "abdominal slap" was a	(b) Disputed. Defendants' Answer
3		technique that Defendants used	at ¶ 77 does not state the
4		on Abu Zubaydah in an	abdominal slap was used "in an
		interrogation that they claimed	interrogation that they claimed
5		was successful. ECF No. 77 ¶	was successful" and this
6		49.	assertion is unsupported by
7			admissible evidence. ECF No.
/			77 ¶ 49. Not contested for
8			purposes of Plaintiffs' Motion that Defendants used the
9			"abdominal slap" on Zubaydah
			during interrogation.
10	62.	"As initially proposed, sleep	Defendants deny any implication
11		deprivation was to be induced by	that they played a role in the
12		shackling the subject in a standing	development of methodologies for
		position, with his feet chained to a	inducing sleep deprivation. The
13		ring in the floor and his arms	OPR Report does not identify who
14		attached to a bar at head level, with	made this proposal. Otherwise, not
		very little room for movement."	contested for purposes of Plaintiffs'
15		Office of Professional	Motion.
16		Responsibility, Rep. on	
17		Investigation into the OLC's	
		Memoranda Concerning Issues	
18		Relating to the CIA's Use of "Enhanced Interrogation	
19		Techniques" on Suspected	
20		Terrorists 36 n.35, U.S. Bates	
20		000643 (2009) (Ladin Decl., Exh.	
21		GG, cited hereinafter as "OPR	
22		Report"). "[D]etainees were	
		typically shackled in a standing	
23		position, naked except for a	
24		diaper." OPR Report 126, U.S.	
25		Bates 000733; Ladin Decl., Exh. C,	
		Jessen Dep. 228:20–229:2.	
26			

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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
	63.	Defendants' list of methods was	Disputed that US Bates 001170-72
3		specifically sent to COBALT.	was "Defendants' list of methods,"
4		Ladin Decl., Exh. FF at U.S. Bates	as it was drafted by the CTC Legal
		001170–72. Ladin Decl., Exh. B,	Department at the direction of the
5		Rodriguez Dep. 71:20–73:24.	CIA's then General Council, Scott
6			Muller, with no involvement from
7			Defendants. Rizzo Dep. at 185:23-
_ ′			186:21. Rizzo Decl. ¶ 51. Not
8			contested that US Bates 001170-72
9	64.	Prisoners at COBALT were	was transmitted to COBALT. Disputed to the extent this implies
	04.	subjected to total darkness "to	Defendants had any involvement in
10		disorient prisoners so they didn't	determining conditions at
11		know if it was day or night." Ladin	COBALT. CIA Staff Officer
12		Decl., Exh. HH at U.S. Bates	stated the prisoners were kept in
12		001126.	total darkness because "he wanted
13			to disorient prisoners so they didn't
14			know it was day or night." Ladin
			Decl., Exh. HH at U.S. Bates
15			001126. And because there was
16			only one light switch for all the
17			lights in the cell area, CIA Staff
			Officer decided to keep them off all
18	65.	Prisoners at COBALT were	the time. Defs.' SOF ¶ 262. Disputed to the extent this implies
19	05.	deprived of amenities: "A prisoner	Defendants had any involvement in
20		begins his confinement with	setting the conditions at COBALT.
		nothing in his cell except a bucket	CIA Staff Officer was responsible
21		used for human waste," but can be	for the final construction of
22		given "rewards for cooperation."	COBALT and for detainee affairs.
23		These "rewards" included lights to	Defs. SOF ¶ 255-57.
		cut the endless darkness, earplugs	
24		to block out the endless music, a mat to sleep on, and extra blankets	
25		against the cold. <i>Id.</i> at U.S. Bates	
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		001127.	
3	66.	Prisoners at COBALT were kept in	Disputed that prisoners at
4		diapers "solely to humiliate the	COBALT were kept in diapers
		prisoner for interrogation	"solely to humiliate the prisoners
5		purposes." When guards ran out of	for interrogation purposes." There
6		diapers, they either used "a	was also "hygienic reasons" for the
7		handcrafted diaper secured by duct	use of diapers because there were
_ ′		tape," or kept the prisoners nude.	"no drains in the cells" that would
8		<i>Id.</i> at U.S. Bates 001126.	facilitate clean-up if a detainee had an accident between breaks.
9			Tompkins Decl., Ex. 18 at US
			Bates 001086. Defendants do not
10			dispute for purposes of Plaintiffs'
11			Motion that when guards ran out of
12			diapers, they either used "a
			handcrafted diaper secured by duct
13			tape," or kept the prisoners nude.
14			<i>Id.</i> at U.S. Bates 001126.
	67.	(a) In November 2002, Mr.	Defendants object to this "fact" as
15		Rahman was abducted and	compound. Defendants further
16		taken to COBALT.	respond that Plaintiffs
17		(b) Defendants traveled to	mischaracterize the record.
		COBALT that same month,	(a) Disputed. Mr. Rahman was
18		during which Defendant Jessen personally participated in	captured in Pakistan in October 2002. He was transferred to
19		multiple interrogations of Mr.	COBALT in November 2002.
20		Rahman at COBALT during	Defs.' SOF ¶¶ 284-85; Exh. KK
		which Mr. Rahman was kept	at 001547.
21		naked or in a diaper, "in cold	(b) Disputed that Defendants had
22		conditions with minimal food	control over Mr. Rahman's
		and sleep," and subjected to	treatment at COBALT. Dr.
23		physical assault. Ladin Decl.,	Jessen was at COBALT when
24		Exh. II at U.S. Bates 001076;	Mr. Rahman arrived. Defs.'
25		Ladin Decl., Exh. JJ at 001051;	SOF ¶ 287. It was the
		Ladin Decl., Exh. KK at	COBALT COB's responsibility
26			

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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

	l		
1	$ \P $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		001547–49.	to monitor COBALT. Defs.'
3			SOF ¶ 288. At the request of
4			COBALT's COB, Dr. Jessen
_			observed interrogations of Mr.
5			Rahman and then participated in
6			other interrogations of Mr.
7			Rahman. Defs.' SOF ¶¶ 289,
_ ′			291-92. During this time, Mr.
8			Rahman was sometimes naked
9			and sometimes had clothing. When Mr. Rahman was naked,
			he had a blanket. Ladin Decl.,
10			Exh. JJ at 001050-51. Dr.
11			Jessen observed Mr. Rahman
12			being subjected to rough
			treatment on one occasion.
13			Defs.' SOF ¶ 299. Dr. Mitchell
14			arrived at COBALT later.
1.5			Ladin Decl., Exh. KK at
15			001548. Dr. Mitchell did not
16			interrogate Rahman or observe
17			the application of any
			interrogation techniques on Rahman, although Dr. Mitchell
18			did observe one custodial
19			debriefing of Rahman. Defs.'
20			SOF ¶ 308.
	68.	(a) Defendant Jessen advised the	Defendants object to this "fact" as
21		CIA that Mr. Rahman displayed	compound.
22		a "sophisticated level of	(a) Disputed. Dr. Jessen
23		resistance training," because he	specifically testified that he did
		"complained about poor	not recall Mr. Rahman
24		treatment," and said he couldn't	complaining about poor
25		think because he was so cold.	treatment or complaining about the violation of his human
		Ladin Decl., Exh. LL at U.S.	uic violation of his human
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
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Plaintiffs' Undisputed Material Facts and Supporting Evidence Bates 001073. (b) Defendant Jessen was asked to assess Mr. Rahman for resistance methods and to design an interrogation plan. Ladin Decl., Exh. C, Jessen Dep. 238:11–241:15. Dep. 238:10–14. Furthermore, Dr. Jessen did not draft or review US Bates 001072-74 or any other cable at COBALT so the information contained in it cannot be attributed to him. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298. Defendant Mitchell participated in one of Defendant Jessen's sessions with Mr. Rahman, Ladin Decl., Exh. MM at U.S. Bates 001290. Defendants' Response and Supporting Evidence rights. Jessen Dep. 211:20- 213:20. He further testified that he did not recall ever assessing that Mr. Rahman used health and welfare behaviors as a resistance technique. Jessen Dep. 232:10-14. Furthermore, Dr. Jessen did not draft or review US Bates 001072-74 or any other cable at COBALT so the information contained in it cannot be attributed to him. Jessen Dep. 143:2-13; Defs.' SOF ¶ 298. (b) Disputed. Jessen testified only that he was asked to look at Rahman "to give the Chief of Base recommendations on how they should continue interrogating him, try to get information." He does not state he was asked to "design" an interrogation plan. Disputed. Dr. Mitchell did not interrogate Rahman or observe the application of any interrogation techniques on Rahman, although Dr. Mitchell did observe one custodial debriefing of Rahman. Defs.' SOF ¶ 308. The document cited by Plaintiff does not indicate				
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Defs.' SOF ¶ 308. The document cited by Plaintiff does not indicate	21			
cited by Plaintiff does not indicate				_
	22			"
23 that Dr. Jassan was present in the	23			<u> </u>
that Dr. Jessen was present in the				-
24 debriefing that Dr. Mitchell observed, and there is no other	24			_
25	25			coserved, and mere is no other

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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Betts Patterson Mines 701 Pike Street, Suite 1400 Seattle, Washington 98101-3927 (206) 292-9988

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			evidence that he was. Ladin Decl.,
3			Exh. MM at U.S. Bates 001290.
4	70.	Defendant Jessen conducted an	Not contested for purposes of
		assessment as to whether Mr.	Plaintiffs' Motion.
5		Rahman "would be profoundly or	
6		permanently affected by continuing	
		interrogations, to include HVT-	
7		enhanced measures." As part of	
8		his assessment, Defendant Jessen	
9		used one of the "enhanced	
9		interrogation techniques" that	
10		Defendants had proposed for use	
11		on Abu Zubaydah—a facial slap	
		"to determine how he would	
12		respond." Defendant Jessen concluded that Mr. Rahman "was	
13		impervious to it," and assessed that	
		Mr. Rahman would not be	
14		"profoundly and permanently	
15		affected" by the use of any of the	
16		methods Defendants had proposed	
16		for use on Abu Zubaydah. Ladin	
17		Decl., Exh. C, Jessen Dep. 238:22-	
18		241:15, 211:7–15.	
	71.	Defendant Jessen advised that	Disputed. Plaintiffs
19		rather than using the more active	mischaracterize US Bates 001057-
20		"enhanced interrogation	58. Dr. Jessen did not characterize
		techniques," Mr. Rahman's	"enhanced interrogation
21		interrogators should instead focus	techniques" as active or inactive.
22		on "deprivations": "it will be the	Rather, Dr. Jessen concluded the
23		consistent and persistent	following, "Because of [Mr.
23		application of deprivations (sleep	Rahman's] remarkable physical
24		loss and fatigue) and seemingly	and psychological resilience and
25		constant interrogations which will	determination to persist in his
		be most effective in wearing down	effective resistance posture
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		this subject's resistance posture." employing enhanced measures i	
3		Ladin Decl., Exh. NN at U.S. Bates	not the first or best option to yield
4		001057–58.	positive interrogation results
			The most effective interrogation
5			plan for Gul Rahman is to continue
6			the environmental deprivations he
			is experiencing and institute a
7			concentrated interrogation
8			exposure regimen. This regimen
9			would ideally consist of repeated
7			and seemingly constant
10			interrogations It will be the
11			consistent and persistent application of deprivations (sleep
			loss and fatigue) and seemingly
12			constant interrogations which will
13			be most effective in [] wearing
14			down [] this subject's resistance
14			posture. It will be important to
15			manage the deprivations so as to
16			allow the subject adequate rest and
			nourishment[.]" Ladin Decl., Exh.
17			NN at U.S. Bates 001057–58.
18	72.	(a) During the weeks Mr. Rahman	Defendants object to this "fact" as
		spent in the CIA prison before	compound. Defendants further
19		his death, Rahman was mostly	respond that Plaintiffs
20		naked or wearing a diaper.	mischaracterize the record.
21		Ladin Decl., Exh. MM at U.S.	(a) Not contested for purposes of
		Bates 001291.	Plaintiffs' Motion. Ladin Decl.,
22		(b) Defendant Jessen admitted that	Exh. MM at U.S. Bates 001291.
23		Mr. Rahman's diaper and clothes were removed at the	(b) Disputed. This information is not supported by US Bates
		interrogators' direction. <i>Id</i> .	001291. Furthermore, the
24		interrogators direction. 14.	record indicates that CIA
25			Officer, not Dr. Jessen, used
26		1	,, 4004
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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and	
2		Facts and Supporting Evidence Supporting Evidence		
			Mr. Rahman's clothing "to try	
3			to manipulate and motivate	
4	72	() TPI 1' 1 1'	Rahman." US Bates 001050.	
5	73.	(a) The diaper and nudity were used to humiliate Mr. Rahman,	Defendants object to this "fact" as compound.	
6		and had the intended effect:	(a) Disputed. Plaintiffs	
		Mr. Rahman was "particularly	mischaracterize US Bates	
7		concerned with being naked in	001293. The document does	
8		front of the guards," and	not discuss why CIA Staff	
9		"asked to be covered" during every interrogation. <i>Id.</i> at U.S.	Officer had Mr. Rahman naked. US Bates 001293 states only	
10		Bates 001293.	that "Rahman was particularly	
		(b) This was in accord with	concerned with being naked in	
11		Defendants' proposal that	front of [REDACTED] the	
12		diapers be used to "leverage" a	guards. Every time Rahman	
13		prisoner's being "very sensitive to situations that reflect a loss of	came to the interrogation room, he asked to be covered."	
14		status or are potentially	(b) Disputed. Plaintiffs present no	
		humiliating." Ladin Decl., Exh.	evidence that CIA Staff Officer	
15		H at U.S. Bates 001110–11.	was aware of Defendants'	
16			proposals, which were	
17			specifically related to Zubaydah, in US Bates 001110-	
18			11 or that Mr. Rahman being in	
			a diaper was related to	
19			Defendants' proposal. Also,	
20			Plaintiffs again mischaracterize US Bates 001110-11 which	
21			discusses the use of diapers	
22			specifically with Zubaydah who	
23			"spen[t] much time cleaning	
			himself and seem[ed] to go out	
24			of his way to avoid circumstances likely to bring	
25			him in contact with potentially	
26				

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
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1	$ \P $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			unclean objects or material.
3			And who was "very sensitive to
4			situations that reflect a loss of
			status or are potentially
5			humiliating." Defendants
6			therefore stated, as specific to
7			Zubaydah, "One way to
7			leverage his concerns, while
8			helping ensure his wound
9			doesn't become infected with
			human waste is to place him in an adult diaper." Even if
10			CIA Officer had knowledge of
11			US Bates 001110-10, there is no
			evidence Rahman was similarly
12			"fastidious" or that diapers were
13			used in response to such
14			fastidiousness. Ladin Decl.,
			Exh. H at U.S. Bates 001110-
15			11.
16	74.	According to Defendant Jessen,	Disputed. Plaintiffs
		Mr. Rahman was subjected to	mischaracterize US Bates 001049
17		consistent sleep deprivation for	and 001051. The document states
18		days, with Mr. Rahman "chained to	only that "Jessen stated that the use
19		the overhead bar in his cell," to	of sleep deprivation with Rahman
		induce "sleep deprivation right	started very early. The sleep
20		from the beginning." Ladin Decl., Exh. JJ at U.S. Bates 001049,	deprivation was consistent for the first few days. He was chained to
21		001051.	the overhead bar in his cell." The
22		001031.	documents do not contain the
22			second quoted excerpt. Ladin
23			Decl., Exh. JJ at U.S. Bates
24			001049, 001051.
	75.	According to Defendant Jessen,	Not contested for purposes of
25		Mr. Rahman "was without clothes	Plaintiffs' Motion.
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material
2		Facts and Supporting Evidence
3		very early on in his incarceration,"
		and "didn't have clothing more than he did have clothing." <i>Id.</i> at
4		U.S. Bates 001050.
5	76.	Defendant Jessen observed other
6		interrogators and guards using a "hard takedown" on Mr. Rahman:
7		the renditions team dragged Mr.
8		Rahman out of his cell, cut his
9		clothes off, taped him, and put a
		hood over his head. They slapped him and punched him as they ran
10		him up and down the long corridor
11		adjacent to his cell. When Mr.
12		Rahman stumbled, the team dragged him along the ground.
13		Afterwards, Mr. Rahman had
14		abrasions on his head and leg and
15		crusty contusions on his face, leg, and hands. Defendant Jessen told a
16		CIA interrogator at COBALT that
		he had not used the technique, but
17		it was worth trying. Ladin Decl., Exh. JJ at U.S. Bates 1051.
18		Defendant Jessen suggested to the
19		CIA interrogator that if you do a
20		hard takedown, you should
21		"leverage that in some way" Ladin Decl., Exh. C, Jessen Dep. 197:12–
22		198:7. Defendant Jessen said an
23		interrogator should speak to the
		prisoner afterwards, to "give them something to think about." Ladin
24		Decl., Exh. HH at U.S. Bates
25		001133.
26		

Disputed to the extent that it implies Dr. Jessen approved of or otherwise ordered the hard takedown. The rough treatment/hard takedown was not one of the interrogation techniques in the July 2002 Memo. Dr. Jessen advised COBALT's COB that he should not use unauthorized techniques such as rough treatment/hard takedown. Dr. Jessen specifically told COBALT's COB that he did not use the hard takedown and that even if it was effective at dislocating Rahman's expectations, for that to be useful, Rahman would have to be interviewed after it was implemented instead of being placed back in his cell alone, which is what COBALT's COB had done with Rahman. Defs.' SOF ¶¶ 299-303.

Defendants' Response and

Supporting Evidence

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
3	77.	Defendant Jessen said the hard	Disputed to the extent that it
		takedown was a "good technique, but these kinds of things need to be	implies Dr. Jessen approved of or otherwise ordered the hard
4		written down and codified with a	takedown. Dr. Jessen advised
5		stamp of approval or you're going	COBALT's COB that he should
6		to be liable." Ladin Decl., Exh. JJ	not use unauthorized techniques
		at U.S. Bates 001049.	such as rough treatment/hard
7			takedown. Defs.' SOF ¶¶299-300.
8			Defendants do not contest for purposes of Plaintiffs' Motion that
9			the underlying document is
10			accurately quoted.
11	78.	After several days during which	Disputed. After conducting a
12		Mr. Rahman had been kept in a diaper, his hands chained to an	captivity assessment, Dr. Jessen recommended to "continue the
13		overhead bar in accord with	environmental deprivations [Mr.
14		Defendants' sleep deprivation	Rahman] is experiencing" instead
		method, and after Defendant Jessen	of enhanced interrogation
15		observed that Mr. Rahman	techniques. US Bates 001057 does
16		displayed early signs of hypothermia, Defendant Jessen	not indicate that Dr. Jessen's assessment occurred after Mr.
17		recommended that the CIA	Rahman had spent several days
18		"continue the environmental	"kept in a diaper, his hands chained
		deprivations [Mr. Rahman] is	to an overhead bar in accord with
19		experiencing." Ladin Decl., Exh.	Defendants' sleep deprivation
20		NN at U.S. Bates 001057.	method and after Defendant Jessen observed that Mr. Rahman
21			displayed early signs of
22			hypothermia." Ladin Decl., Exh.
			NN at U.S. Bates 001057.
23	79.	(a) Defendant Jessen claimed that	Defendants object to this "fact" as
24		Mr. Rahman "continues to use "health and welfers" hehaviors	compound.
25		'health and welfare' behaviors and complaints as a major part	(a) Disputed. Dr. Jessen specifically testified that he did
26		and complaints as a major part	specifically testified that he did

DEFENDANTS' RESPONSE TO
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¶	Plaintiffs' Undisputed Material	Defendants' Response and
"	Facts and Supporting Evidence	Supporting Evidence
	of his resistance posture."	not recall ever assessing that
	Ladin Decl., Exh. II at U.S.	Mr. Rahman used health and
	Bates 001077.	welfare behaviors as a
	(b) Defendant Jessen explained that	resistance technique. Jessen
	"health and welfare behavior" is	Dep. 232:10-14. Furthermore,
	"[a]ny complaint dealing with	Dr. Jessen did not draft or
	health and welfare," and gave as	review US Bates 001077 or any
	an example the complaint "I'm	other cable at COBALT, and
	cold." Ladin Decl., Exh. C,	there is no evidence to support
	Jessen Dep. 234:10–235:4.	attributing the information to
	(c) Defendant Jessen also identified	him. Jessen Dep. 143:2-13;
	as specific examples of Mr.	Defs.' SOF ¶ 298.
	Rahman's "sophisticated level	(b) Not contested for purposes of
	of resistance training" that Mr.	Plaintiffs' Motion.
	Rahman's "claimed inability to	(c) Disputed. Dr. Jessen explained
	think due to conditions (cold),"	that he would assume "I'm
	that he "complained about poor	cold" was a resistance technique
	treatment," and that he	if it was not cold. But, if it was
	"complained about the violation	cold, he would go get a doctor
	of his human rights." Ladin	and ask them if it was too cold.
	Decl., Exh. LL at U.S. Bates	Jessen Dep. at 234:22-235:14.
	001073.	Dr. Jessen specifically testified
	(d) Jessen stated that after he saw	that he did not recall Mr.
	Mr. Rahman "showing the early	Rahman complaining about
	stages of hypothermia," he	poor treatment or complaining
	"ordered the guards to give him	about the violation of his human
	a blanket." Ladin Decl., Exh. JJ	rights. Jessen Dep. 211:20-
	at 1050.	213:20. Furthermore, Dr.
		Jessen did not draft or review
		US Bates 001072-74 or any
		other cable at COBALT so the
		information contained within
		cannot be attributed to him.
		Jessen Dep. 143:2-13; Defs.
		SOF ¶ 298.

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			(d) Not contested for purposes of
3			Plaintiffs' Motion.
4	80.	Four days after Defendant Jessen	Disputed. Dr. Jessen's
_		left COBALT, an interrogator	recommendations had included
5		conducted a brief question session	"continue the environmental
6		with Mr. Rahman "based on	deprivations he is experiencing and institute a concentrated
7		Jessen's recommendation that Rahman be left alone and	interrogation exposure regimen.
		environmental deprivations	This regimen would ideally consist
8		continued." Ladin Decl., Exh. MM	of repeated and seemingly constant
9		at U.S. Bates 001312.	interrogations It will be
10			important to manage the
			deprivations so as to allow the
11			subject adequate rest and
12			nourishment[.]" Ladin Decl., Exh.
13			NN at U.S. Bates 001057–58. CIA
			Officer conducting one brief
14			interrogation session four days later is not consistent with Dr. Jessen's
15			recommendation that Mr. Rahman
16			be subject to "repeated and
			seemingly constant interrogations."
17			Ladin Decl., Exh. MM at U.S.
18			Bates 001312.
19	81.	Two days later, Mr. Rahman—	Disputed. US Bates 001272-73
		deprived of food, sleep, clothing,	does not support the assertion that
20		and warmth—died of hypothermia. <i>Id.</i> at U.S. Bates 001272–73.	Mr. Rahman was deprived of food or sleep after Defendants departed
21		1a. at U.S. Bates 0012/2-/3.	COBALT. Ladin Decl., Exh. MM
22			at U.S. Bates 001272-73. Not
			contested that six days after
23			Defendants left COBALT, Mr.
24			Rahman died of hypothermia.
25			Ladin Decl., Exh. MM at U.S.
23			Bates 001272-73.
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material
2		Facts and Supporting Evidence
	82.	After Mr. Rahman's death,
3		Defendant Jessen told an
4		investigator that Mr. Rahman "knew how to use physical
5		problems or duress as a resistance
6		tool." Ladin Decl., Exh. JJ at U.S.
		Bates 001053.
7	83.	Defendant Jessen also told the
8		investigator that "if a detainee is
9		strong and resilient, you have to
		establish control in someway [sic] or you're not going to get
10		anywhere. If bound by the Geneva
11		Convention, this person would not
12		break. You have to try different
		techniques to get him to open up
13		You want to instill fear and
14		despair." <i>Id.</i> at U.S. Bates
15	84.	001050–51. Defendant Jessen reported that the
16	04.	atmosphere at COBALT "was
		excellent for the type of prisoners
17		kept there—'nasty but safe,'" and
18		that the CIA officer who had
19		ordered that Mr. Rahman be
		chained during his final days, pantless, to a freezing concrete
20		floor "was very level headed and
21		acted in a measured manner."
22		Defendant Jessen stated he would
		work with the CIA officer
23		"anytime, anyday." Ladin Decl.,
24		Exh. HH at U.S. Bates 001124;
25		Ladin Decl., Exh. JJ at U.S. Bates 001053.
26		001000.
20	1	

Plaintiffs' Motion. Not contested for purposes of Plaintiffs' Motion. Disputed. Plaintiffs mischaracterize the cited documents. Dr. Jessen described CIA Staff Officer as "very level headed and acted in a measured manner" and further stated that "he would work with [REDACTED] anytime, anyday [sic]" in reference to his experience with that officer prior to Mr. Rahman's death. The underlying documents do not discuss CIA Staff Officer ordering Mr. Rahman to be short chained, nor is there any indication that Dr. Jessen knew how Mr. Rahman died or that that CIA Staff Officer had

Defendants' Response and

Not contested for purposes of

Supporting Evidence

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS Betts Patterson Mines 701 Pike Street, Suite 1400 Seattle, Washington 98101-3927 (206) 292-9988

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Plaintiffs' Undisputed Material Facts and Supporting Evidence Ordered Mr. Rahman's short chained, ultimately causing Mr. Rahman's death. Ladin Decl., Exh. JH at U.S. Bates 001124; Ladin Decl., Exh. JJ at U.S. Bates 001053. Dr. Jessen left COBALT six days before Mr. Rahman's death. Ladin Decl., Exh. KK at 001549. Not contested for purposes of Plaintiffs' Motion. 86. While he was held at COBALT, Mr. Salim was subjected to conditions that included deprivation of natural light and any ability to distinguish between day and night, continuous loud music and noise, isolation. Mr. Salim felt that he was "treated like I wasn't human, worse than an animal." Salim Decl. ¶ 6. 87. Interrogators also subjected Mr. Salim to forced nudity, diapers, and sleep deprivation through shackling in a painful position that made it impossible to sleep. For about a week he was "chained[], naked except for a diaper, by [his] arms outstretched and at eye level. The only position [he] could safely adopt was a squatting position that 20 21 22 23 24 25 26 27 28 28 29 29 20 20 21 21 22 23 24 25 26 26 27 28 28 29 29 20 20 20 21 21 22 23 24 25 26 27 28 28 29 29 20 20 21 21 22 23 24 25 26 27 28 28 29 29 20 20 21 21 22 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 23 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 23 23 24 26 27 28 28 29 29 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 20 21 21 22 22 23 23 24 25 26 27 28 28 29 29 20 20 20 20 20 20 20 20 20 20 20 20 20				
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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

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1	$\ \ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		very quickly became	
3		uncomfortable and extremely	
4		painful. The excruciating stress	
5		position, together with the putrid smell and deafening noise, made it	
		impossible for [him] to sleep."	
6		Salim Decl. ¶ 7.	
7	88.	Mr. Salim was deprived of any	Disputed that clothing, toilet, and
8		"amenities," including clothing, a	washing facilities were considered
		toilet, and any ability to keep	"amenities." Further disputed that
9		himself clean. Salim Decl. ¶¶ 6, 9.	Mr. Salim was always deprived of
10			clothing, which he received when
11			he was interrogated. Salim Decl.
	89.	Forced nudity and use of diapers	(ECF No. 181) ¶¶ 6, 9. Disputed. Plaintiffs offer no
12	89.	had the desired impact on Mr.	support for their characterization of
13		Salim: "The forced nudity left	the "desired impact" of forced
14		[him] feeling vulnerable, helpless,	nudity and diapers. Defendants do
		and deeply humiliated." Salim	not contest the description of Mr.
15		Decl. ¶ 9.	Salim's feelings. Salim Decl. ¶ 9.
16	90.	The "aggressive phase" of Mr.	Disputed there was an "aggressive
17		Salim's interrogation began about a	phase" of Mr. Salim's interrogation
		week after his initial detention,	or that Mr. Salim was subject to "torture" because Plaintiffs offer
18		once he was examined by someone he believed to be a doctor. Shortly	nothing to support these
19		after the examination, his torture	statements. Defendants do not
20		increased in severity. Salim Decl.	contest for purposes of Plaintiffs'
		¶ 8.	Motion that Mr. Salim's
21			interrogation began about a week
22			after his initial detention, after he
23			was examined by someone he
			believed to be a doctor, and that
24			after the examination, interrogators increased his "ill-treatment" and
25			
			"used a variety of abusive

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF - 57 -UNDISPUTED MATERIAL FACTS

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\P	Plaintiffs' Undisputed Material	Defendants' Response and
	Facts and Supporting Evidence	Supporting Evidence
		interrogation methods[.]" . Salim Decl. ¶ 8.
91.	CIA records confirm that interrogators subjected Mr. Salim to "enhanced interrogation techniques" that included "nudity" and "sleep deprivation, water dousing, cramped confinement, facial slap, attention grasp, belly slap, and walling." Ladin Decl., Exh. PP at U.S. Bates 001567; Ladin Decl., Exh. QQ at U.S. Bates 001609.	Not contested for purposes of Plaintiffs' Motion.
92.	Mr. Salim was stuffed, while "naked, chained and shackled," inside "a small wooden box, measuring about three square feet." Once interrogators locked him in the pitch black, rancid-smelling box, he "vomited out of pain and fear." Interrogators locked him in the box only once, but used it repeatedly as a threat, stuffing him inside the box for short intervals without locking the door. "Even the threat of the small box filled [Mr. Salim] with dread." Salim Decl. ¶ 11.	Not contested for purposes of Plaintiffs' Motion.
93.	Interrogators subjected Mr. Salim to repeated walling, combined with the repeated use of the attention grasp, facial slap, and abdominal slap methods. They wrapped his neck in a cloth collar, pulled him towards them, then slammed him	Disputed. Mr. Salim's declaration does not use the terms "walling," "attention grasp," "facial slap," or "abdominal slap." Salim Decl. ¶ 12. The terms "walling", "facial slap", and "attention grasp" had very specific meanings as

DEFENDANTS' RESPONSE TO
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UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		into a wooden wall over and over	described in the July 2002 Memo,
3		while assaulting him in the face	and Mr. Salim describes actions
4		and stomach, before interrogating	that are different from the
		him. "As the session continued, it	descriptions set forth in the July
5		became more and more painful,"	2002 Memo. For instance,
6		for Mr. Salim, inflicting physical	"walling" does not include being
		pain, and "severe headache[s] and	struck in the stomach and the
7		dizziness immediately after the	"facial slap" was to be done in a
8		session ended [and that] lasted for	specific way so as not to cause
		hours." Salim Decl. ¶ 12.	severe pain, but to induce shock.
9			Furthermore, the "abdominal slap"
10			was not included in the July 2002
11			Memo. US Bates 001109-1111.
11	94.	Shortly after the walling and	Disputed. Mr. Salim's declaration
12		physical assault session,	does not use the term "cramped
13		interrogators subjected Mr. Salim	confinement." Salim Decl. ¶ 13.
		to cramped confinement in a "tall,	"Cramped confinement," as
14		thin, coffin-like box." He was	described in the July 2002 Memo, is different from what Mr. Salim
15		forced inside, and his hands were chained above his head in a painful	describes. Defendants, in their July
		position. He was left in darkness,	2002 Memo, described "cramped
16		with music blasting him, for two or	confinement" as being "placed in a
17		three hours. After he was released	confined space the dimensions of
18		from the box, he experienced a	which restricts movement. The
10		splitting headache, and his	container is usually dark."
19		shoulders felt dislocated. Salim	Defendants did not suggest an
20		Decl. ¶ 13.	individual should be chained to a
		"	metal rod in the box or that music
21			should be blasted into the box.
22			US Bates 001109-1111.
	95.	Interrogators subjected Mr. Salim	Not contested for purposes of
23		to a prolonged period of sleep	Plaintiffs' Motion.
24		deprivation through forced	
25		standing in a painful position. His	
23		hands were chained above his head,	
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DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		and he was positioned so that his	
3		feet barely touched the floor. He	
4		was left to hang from his chains,	
5		naked, in the darkness, barraged	
		with music played at ear-splitting levels for what seemed like four or	
6		five days. He was provided only	
7		sips of water, and remained	
		standing with his arms chained	
8		above his head even when he had	
9		to relieve himself. He was taken	
10		down only for interrogation.	
		Whenever he would drift into	
11		sleep, he "was immediately jolted	
12		awake from the excruciating pain	
13		that shot through [his] arms and shoulders as they momentarily	
		supported [his] full body weight."	
14		Afterwards Mr. Salim suffered	
15		searing pain in his upper and lower	
16		back. His legs became swollen, a	
		large cut had opened on his hand,	
17		and the cast covering his broken	
18		fingers began giving off a	
19		sickening smell. Mr. Salim received only limited medical	
		treatment from a doctor or nurse	
20		for these years. Salim Decl. ¶ 15.	
21	96.	Interrogators subjected Mr. Salim	Disputed. Mr. Salim's declaration
22		to various sessions in which he was	does not use the term "enhanced
		subjected to "enhanced	interrogation techniques." Rather,
23		interrogation techniques" in	it states only that after he was
24		combination without questioning,	examined by a doctor, he was
25		interspersed with sessions in which	subjected to "a variety of abusive
		he was assaulted while	
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DEFENDANTS' RESPONSE TO
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\P	Plaintiffs' Undisputed Material	Defendants' Response and
	Facts and Supporting Evidence	Supporting Evidence
	interrogators demanded	interrogation methods." Salim
	information. Salim Decl. ¶ 8.	Decl. ¶ 8.
97.	Interrogators also subjected Mr. Salim to water dousing that approximated the water board method. They stripped him naked and forced him to lie on a large plastic sheet, after which they repeatedly doused him with gallons of icy water. The water was so cold it stopped his breathing. In between dousings, he was subjected to slaps and other physical assault. During some of the later sessions, a hood was placed over Mr. Salim's head. When the hood was soaked, it clung to his face, causing to "choke and suffocate" and feel like he was drowning. After each 20-30 minute session, his interrogators "pulled up the corners of the freezing cold sheet and rolled [him] inside, leaving him "to shiver violently in the cold for about 10 or 15 minutes" before further interrogation. This procedure was repeated over and over for days. Salim Decl. ¶ 10.	Disputed. There is no evidentiary support for Plaintiffs' assertion that "water dousing" was similar to the "water board." The July 2002 Memo describes the water board as follows: "individuals are bound securely to an inclined bench. Initially a cloth is placed over the subject's forehead and eyes. As water is applied in a controlled manner, the cloth is slowly lowered until it also covers the mouth and nose. Once the cloth is saturated and completely covering the mouth and nose, subject would be exposed to 20 to 40 seconds of restricted airflow. Water is applied to keep the cloth saturated. After the 20 to 40 seconds of restricted airflow, the cloth is removed and the subject is allowed to breach unimpeded. After 3 or 4 full breaths, the procedure may be repeated. Water is usually applied from a canteen cup or small watering can with a spout." US Bates 001110-11. "Water dousing" on the other hand, as described by Mr. Salim, involved laying a detainee on a plastic sheet or towel and pouring water on the detainee from a container while the interrogator questions the detainee. Water is

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			applied so as not to enter the nose
3			or mouth and interrogators were
4			not supposed to cover the
			detainee's face with a cloth. Water
5			dousing was proposed by someone
6			other than Drs. Mitchell and Jessen
			in March 2003. Defs.' SOF ¶
7			265(b); Mitchell Dep. 374:19-
8			375:2. Plaintiffs do not dispute
			that Mr. Salim was subjected to
9			"water dousing" as described in
10			Mr. Salim's declaration, but not
11	08	Interrogetors also stronged Mr	waterboarding. Salim Decl. ¶ 10.
	98.	Interrogators also strapped Mr. Salim to a water board and	Not contested for purposes of Plaintiffs' Motion.
12		threatened to pour water directly	Traintills Wotton.
13		into his mouth and nose. But	
		instead they spun him around 360	
14		degrees several times, until he was	
15		"dizzy, nauseous, and completely	
16		disoriented." Salim Decl. ¶ 14.	
	99.	The use of all these abuses, applied	Not contested for purposes of
17		repeatedly and in combination	Plaintiffs' Motion.
18		produced in Mr. Salim "a constant	
		state of terror." Salim Decl. 17.	
19	100.	Mr. Salim also suffered severe	Disputed. Plaintiffs present no
20		physical and mental pain as a result	evidence that "Defendants"
21		of interrogators subjecting him to	methods" were used on Mr. Salim.
21		Defendants' methods. Salim Decl.	Defendants had no involvement
22		¶ 18; Deposition of Suleiman	with how detainees were treated at
23		Abdullah Salim 162:3–12, 167:7–	COBALT. Defs.' SOF ¶¶ 253-265.
		19, 168:24–169:14, 171:9–21	In fact, as stated above, the
24		(Ladin Decl., Exh. OO, cited	interrogation methods used on Mr.
25		hereinafter as "Salim Dep.").	Salim differed from those proposed
			by Defendants. Plaintiffs' also
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DEFENDANTS' RESPONSE TO
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		D	
1	$\ \ \ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			mischaracterize Mr. Salim's
3			testimony. Mr. Salim testified that
4			his long term injuries include
_			"dizziness," "pain in [his] arms,"
5			and "pains in [his] back and around
6			[his] waist." Mr. Salim also
7			claimed that he has an "eye
_ ′			problem" but admitted that no
8			doctor ever told him his eye
9			problem was related to his detention at COBALT.
			Furthermore, Mr. Salim does not
10			categorize any of these injuries as
11			"severe" and was unable to
12			describe the level of pain he
12			allegedly endured. Salim Dep. at
13			162:3-12, 167:7-19, 168:24-
14			169:14, 171:9-21.
15			Additionally, Mr. Salim admitted
16			to experiencing flashbacks, but
			those flashbacks were not limited
17			to his time at COBALT, but
18			included his time at Bagram in
19			military custody. Salim Dep. at
	101	Intermediate and application	265:22-266:17.
20	101.	Interrogators' repeated application of Defendants' methods broke Mr.	Disputed. Plaintiffs present no evidence that "Defendants"
21		Salim physically and mentally to	methods" were used on Mr. Salim.
22		the point that he attempted to take	Defendants had no involvement
22		his own life by overdosing on	with how detainees were treated at
23		painkillers that CIA medics had	COBALT. Defs.' SOF ¶¶ 253-265.
24		given to him and that he had	In fact, as stated above, the
		stockpiled over the weeks of his	interrogation methods used on Mr.
25		confinement at COBALT. Salim	Salim differed from those proposed
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		Decl. ¶ 17.	by Defendants. Plaintiffs also
3			misrepresent Mr. Salim's
4			declaration. Mr. Salim states that
			as a result of the "interrogators'
5			abusive methods and the inhumane
6			conditions" he decided to end his
			life and he attempted to swallow
7			painkillers that he had stockpiled.
8			Mr. Salim does not connect
			Defendants to his treatment at
9			COBALT nor does he claim that he
10			was "broke[n] physically or
11	102	Interrogetors standed the	mentally[.]" Salim Decl. ¶ 17.
	102.	Interrogators stopped the "aggressive phase" of Mr. Salim's	Disputed. Mr. Salim testified only that he was at the other CIA
12		immediately after his unsuccessful	facility, which he called "Salt Pit,"
13		suicide attempt and transferred him	for one year and some months.
		from the interrogation cell at	The testimony does not state there
14		COBALT to another CIA facility	was an "aggressive phase" of Mr.
15		nearby. Ladin Decl., Exhibit OO,	Salim's interrogation nor does it
16		Salim Dep. 180:12–181:12.	state Mr. Salim was transferred to
		1	the "Salt Pit" immediately after he
17			unsuccessfully attempted to
18			commit suicide. Plaintiffs do not
			provide any other admissible
19			evidence to support these
20			statements. Salim Dep. 180:12-
21	102	M C 1: 1 / 11 /1	181:12.
	103.	Mr. Salim was detained by the	Disputed. Mr. Salim's declaration
22		CIA without charge or trial for	states only that he was transferred
23		another year and several months. Salim Decl. ¶ 17.	to another CIA prison nearby. Salim Decl. ¶ 17.
	104	On June 9, 2004, the CIA	Not contested for purposes of
24	104.	transferred Mr. Salim from its	Plaintiffs' Motion.
25		custody to the custody of the U.S.	11000011.
26		Table by to the chartony of the old.	
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DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
3		Department of Defense at Bagram	
ا د		Air Force Base, where Mr. Salim was held without charge or trial,	
4		until August 2008. Ladin Decl.,	
5		Exh. PP at U.S. Bates 001567;	
		Ladin Decl., Exhibit OO, Salim	
6		Dep. 218:12–16.	
7	105.	While he was detained at Bagram,	Disputed. US Bates 001529 states
8		the Department of Defense	a "review led to the conclusion that
		determined that Mr. Salim had not	although [Salim] was an associate
9		been involved in terrorist	of the conspirators, he was
10		operations, and that there was no basis to detain him. Ladin Decl.,	uniformly considered too addicted to drugs to be trusted with
11		Exh. RR at U.S. Bates 001529.	operations." US Bates 001529
12		Exil. Ret at 0.5. Bates 001525.	does not support Plaintiffs'
			statements that the DoD
13			determined he "had not been
14			involved in terrorist operations" or
1.5			that there had been "no basis to
15			detain him." Ladin Decl., Exh. RR
16	106	L. A 2000 d D	at U.S. Bates 001529.
17	106.	In August 2008, the Department of Defense released Mr. Salim with a	Not contested for purposes of Plaintiffs' Motion.
		certification that he "has been	Tranititis Motion.
18		determined to pose no threat to the	
19		United States Armed Forces or its	
20		interests in Afghanistan." Ladin	
		Decl., Exh. SS.	
21	107.	Mr. Ben Soud was held at	Not contested for purposes of
22		COBALT for over a year, between	Plaintiffs' Motion.
23		April 2003 and April 2004. Ben	
	100	Soud Decl. ¶ 3.	Defendants state that they played
24	108.	At COBALT, Mr. Ben Soud was subjected to conditions that	Defendants state that they played no role in determining the
25		included deprivation of natural	conditions under which Mr. Ben
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DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		light and any ability to distinguish	Soud was held or the interrogation
3		between day and night, continuous	techniques employed while he was
4		loud music and noise, isolation,	in CIA custody. Defs.' SOF ¶¶
		and deprivation of amenities	274-282. Not contested for
5		beyond a bucket for human waste.	purposes of Plaintiffs' Motion.
6		These "extremely harsh and	
7		debilitating" conditions caused him	
		"severe mental anguish and	
8	100	distress." Ben Soud Decl. ¶ 6. Mr. Ben Soud was deprived of	Not contested for purposes of
9	109.	sleep by being chained and	Plaintiffs' Motion
		shackled in painful positions.	Tidilitiis Wotion
10		Guards chained him in three	
11		different stress positions, which	
12		caused him acute back and knee	
		pain and exacerbated the pain in his	
13		broken left foot. Ben Soud Decl. ¶	
14		7. When Mr. Ben Soud could not	
1.5		be forced to stand because of his	
15		broken foot, guards would bang	
16		loudly on the door to his cell to	
17		keep him awake. Once the cast on	
		his leg was removed, guards would unchain him and forcibly march	
18		him around the prison, naked,	
19		every half-hour throughout the	
20		night. Mr. Ben Soud found the	
		experience "extremely humiliating	
21		and degrading," and "incredibly	
22		painful, especially in [his] foot,	
		which had only recently healed."	
23		Ben Soud Decl. ¶ 8.	
24	110.	For the first two months at	Disputed. Mr. Soud's declaration
25		COBALT, Mr. Ben Soud was kept	states only that Mr. Soud was kept
		naked or in diapers. In May 2003,	naked until May 2003. The
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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		after the worst of his torture was	declaration does not indicate Mr.
3		over, interrogators finally provided	Soud was subject to "torture."
4		Mr. Ben Soud with clothing for the	Plaintiffs do not provide any other
		first time. Ben Soud Decl. ¶ 11.	admissible evidence to support this
5			additional statement. Ben Soud
6			Decl. (ECF No. 180) ¶ 11.
7	111.		Disputed. Plaintiffs offer no
_ /		diapers had the desired impact on	admissible evidence to support
8		Mr. Ben Soud, who, as a devout	their assertion as to the "desired
9		man, found the forced nudity	impact" on Mr. Ben Soud. Ben
		"especially humiliating and degrading," and felt "vulnerable	Soud Decl. ¶ 11. Defendants do not contest the description of Mr.
10		and helpless." Ben Soud Decl.	Salim's feelings. Ben Soud Decl. ¶
11		11.	11.
12	112.	The "aggressive phase" of Mr. Ben	Disputed. Mr. Ben Soud's
		Soud's interrogation began some	declaration states only that Mr. Ben
13		two weeks after his initial detention	Soud's interrogation increased in
14		at COBALT, after CIA	severity about two weeks after his
1.5		interrogators had repeatedly asked	initial detention at COBALT, after
15		him the same questions. Ben Soud	CIA interrogators had repeatedly
16		Decl. ¶ 9, 10.	asked him the same questions. The
17			declaration does not indicate there was an "aggressive phase" of Mr.
			Ben Soud's interrogation.
18			Plaintiffs do not provide any other
19			admissible evidence to support this
20			assertion. Ben Soud Decl. ¶¶ 9, 10.
	113.	CIA records confirm that	Not contested for purposes of
21		interrogators subjected Mr. Ben	Plaintiffs' Motion.
22		Soud to "enhanced interrogation	
23		techniques" that included "nudity,	
		sleep deprivation, insult slap,	
24		abdominal slap, attention grasp,	
25		cramped confinement, water	
		dousing, walling, stress positions,"	
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DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		dietary manipulation, and "facial	
3		hold." Ladin Decl., Exh. PP at	
4		U.S. Bates 001581; Ladin Decl.,	
5	11/	Exh. QQ at U.S. Bates 001609. Interrogators subjected Mr. Ben	Disputed. Mr. Ben Soud's
	117	Soud to repeated sessions of the	declaration does not use the t
6		walling method in combination	"walling," "facial slap," or
7		with facial slap and abdominal slap	"abdominal slap." Terms
8		methods over a four or five week-	"walling," "facial slap," or
		long period. The sessions followed	"abdominal slap" had very sp
9		a methodical procedure: an	meanings described in the Jul
10		interrogator would place a foam	2002 Memo, and Mr. Ben So
11		collar around Mr. Ben Soud's neck,	describes actions that are diff
		slap him firmly in the face and then the stomach, and then throw him	from the descriptions for the in the July 2002 Memo. For
12		repeatedly against a wooden wall.	instance, "walling" does not
13		Each time he was smashed into the	include being struck in the sto
14		wall, the noise was "deafening and	and the "facial slap" was to b
		terrifying." The process would be	done in a specific way so as r
15		repeated for 20 or 30 minute	cause severe pain, but to indu
16		sessions, and was interspersed with	shock. Furthermore, the
17		questioning. The walling method	"abdominal slap" was not inc
		and questioning were repeated over and over, "on a daily basis for	in the July 2002 Memo. US I 001109-1111.
18		many hours. As the sessions	001109-1111.
19		continued, they became	
20		increasingly painful. [Mr. Ben	
		Soud] developed a severe headache	
21		and dizziness immediately after a	
22		session ended, which lasted for	
22		hours thereafter." As Mr. Ben	
23		Soud's interrogations became more	
24		aggressive, the sessions increased	
25		in ferocity resulting in "more acute	
		pain in [his] body, headaches and	
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Mr. Ben Soud's does not use the terms "facial slap," or al slap." Terms "facial slap," or al slap" had very specific described in the July o, and Mr. Ben Soud ctions that are different escriptions for the EITs 2002 Memo. For walling" does not ing struck in the stomach cial slap" was to be pecific way so as not to re pain, but to induce rthermore, the al slap" was not included 2002 Memo. US Bates 11.

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

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1		\P	Plaintiffs' Undisputed Material	Defendants' Response and
2			Facts and Supporting Evidence	Supporting Evidence
			dizziness." Ben Soud Decl. ¶ 12.	
3		115.	Interrogators subjected Mr. Ben	Disputed. Mr. Ben Soud's
4			Soud to cramped confinement in a	declaration does not use the term
5			tall thin wooden box, with his arms	"cramped confinement." The
3			chained over his head and loud	"Cramped confinement" as
6			music blasting in his ears. Ben	described in the July 2002 Memo is
7			Soud Decl. ¶ 15. Interrogators also	different from what Mr. Ben Soud
			subjected Mr. Ben Soud to	experienced. Defendants, in the July 2002 Memo, described
8			cramped confinement in a significantly smaller box,	"cramped confinement" as being
9			measuring approximately 3 ft by 3	"placed in a confined space the
			ft. He was locked inside for	dimensions of which restricts
10			roughly forty-five minutes, and	movement. The container is
11			experienced physical and mental	usually dark." Defendants did not
12			pain, including "acute lower back	suggest an individual should be
			pain," severe leg pain—particularly	chained to a metal rod in the box or
13			in the leg with the broken foot, and	that music should be blasted into
14			in his knees, neck, and elbows. He	the box. US Bates 001109-1111.
			was filled with dread when	
15			interrogators would later repeatedly	
16			threaten to stuff him back inside	
17			the box. Ben Soud Decl. ¶ 16.	
1/		116.	Towards the end of the "aggressive	Disputed that Mr. Ben Soud's
18			phase" of Mr. Ben Soud's	declaration states there was an
19			interrogation, interrogators	"aggressive phase" of Mr. Ben
			subjected Mr. Ben Soud to a new sleep deprivation method,	Soud's interrogation. Ben Soud Decl. ¶ 17. Further disputed that
20			involving a painful standing stress	the pain Mr. Ben Soud experiences
21			position. For roughly 36 hours he	has remained the same, when Mr.
22			was hung by the arms from a metal	Ben Soud testified that the pain he
22			rod, naked and positioned so that	feels in his back has lessened over
23			the balls of his feet (one of which	time. Soud Dep. at 250:11-252:1.
24			was broken) barely touched the	•
			ground. Although the room was	
25			pitch-black it was impossible to fall	
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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF - 69 -UNDISPUTED MATERIAL FACTS

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	\P	Plaintiffs' Undisputed Material	Defendants' Response and
		Facts and Supporting Evidence	Supporting Evidence
		asleep, and loud music was blasted	
		for the duration of his time in the	
		sleep deprivation cell. "After a	
		very short time, alone in that room	
		and unable to sleep, [Mr. Ben	
		Soud] began to hallucinate and	
		slowly became hysterical." Once	
		he was released, he was unable to	
		walk and guards had to carry him	
		to an examination room for	
		treatment. His legs "had become	
		engorged and swollen with fluid,"	
		in particular the leg that had been	
		broken. "Both limbs were	
		excruciatingly painful," as were his	
		arms and back. The pain lasted for	
		many days, and remains with him.	
		Ben Soud Decl. ¶ 17.	
	117.		Disputed. There is no evidentiary
		interrogators subjected Mr. Ben	support for Plaintiffs' assertion that
		Soud to additional coercive	"water dousing" was similar to the
		methods, including water dousing	"waterboard". Defendants' July
		and another approximation of	2002 Memo describes the water
		waterboarding. During the water	board as follows: "individuals are
		dousing sessions, guards would	bound securely to an inclined
		force him, naked, onto a large	bench. Initially a cloth is placed
		plastic sheet, which they pulled up	over the subject's forehead and
		to form a shallow basin. They	eyes. As water is applied in a
		doused him with buckets of cold	controlled manner, the cloth is
		water until he was partially	slowly lowered until it also covers
		submerged. The water was so cold	the mouth and nose. Once the
		that it was physically painful, and	cloth is saturated and completely
		he shivered violently. The sessions	covering the mouth and nose,
		lasted about half an hour to forty	subject would be exposed to 20 to
		minutes, sometimes longer, and	40 seconds of restricted airflow.

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
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Plaintiffs' Undisputed Material Facts and Supporting Evidence

were interspersed with interrogations where Mr. Ben Soud, naked and shivering, was questioned. After about two weeks, the method's intensity was increased by placing a hood over Mr. Ben Soud's head prior to pouring the water. The addition of the hood caused him to feel like he was drowning. Mr. Ben Soud was subjected to this water treatment multiple times a day for four or five weeks. Ben Soud Decl. ¶13.

Defendants' Response and Supporting Evidence

Water is applied to keep the cloth saturated. After the 20 to 40 seconds of restricted airflow, the cloth is removed and the subject is allowed to breach unimpeded. After 3 or 4 full breaths, the procedure may be repeated. Water is usually applied from a canteen cup or small watering can with a spout." US Bates 001110-11. "Water dousing" on the other hand, as described by Mr. Ben Soud, was when a detainee is laid down on a plastic sheet or towel and water is poured on the detainee from a container while the interrogator questions the detainee. Water is applied so as not to enter the nose or mouth and interrogators were not supposed to cover the detainee's face with a cloth. Water dousing was proposed by someone other than Drs. Mitchell and Jessen in March 2003. Defs.' SOF ¶ 265(b); Mitchell Dep. 374:19-375:2. Furthermore, Mr. Ben Soud's declaration does not indicate there was an "aggressive phase" of his interrogation and Plaintiffs do not provide any other admissible evidence to support this additional statement. Defendants do not dispute that Mr. Ben Soud was subject to "water dousing" as

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF - 71 - UNDISPUTED MATERIAL FACTS

1	$ \P $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			described in Mr. Ben Soud's
3			declaration. Ben Soud Decl. ¶ 13.
4	118.	Mr. Ben Soud was also strapped to	Disputed to the extent Plaintiffs'
_		a waterboard with a hood placed	claim this constituted
5		over his head. He was then spun	waterboarding, which had a
6		around, and buckets of cold water	specific meaning as set forth in the
7		were poured over him while his feet were elevated. The water ran	July 2002 Memo. US Bates 001109-11. Furthermore, Plaintiffs
		into his mouth and up his nose,	admit that what Mr. Ben Soud was
8		causing him to feel like he was	subject to was not an authorized
9		drowning as he choked and	technique. Mr. Soud's Response to
10		struggled for breath. "Although	Jessen's RFA at No. 7.
		interrogators did not pour water	
11		directly over [his] mouth and nose,	
12		they threatened to do so if [he]	
		didn't cooperate." The threat	
13	110	terrified him. Ben Soud Decl. ¶ 14.	
14	119.	Interrogators subjected Mr. Ben	Disputed. Mr. Ben Soud's
15		Soud to various sessions in which	declaration does not use the term
		he was subjected to "enhanced interrogation techniques" in	"enhanced interrogation
16		interrogation techniques" in combination, interspersed with	techniques," "walling," "facial hold," "facial slap," or "abdominal
17		interrogation sessions when he	slap." In fact, it does not even use
18		would be assaulted while	the term "assault." Rather, it states
		interrogators demanded	that Mr. Ben Soud was subject to
19		information. During these	repeated beatings, which caused
20		sessions, the combined physical	him "acute pain." Salim Decl. ¶
21		assaults (consisting of repeated	18. Defendants further respond
21		uses of the attention grasp, facial	that the July 2002 Memo did not
22		hold, facial slap, and abdominal	propose beatings, nor is it apparent
23		slap methods) caused him "acute	from Mr. Ben Soud's description
		pain" which lasted for hours after	whether any of the treatment described is consistent with
24		the interrogations. Ben Soud Decl. ¶18.	Defendants' suggestions. US Bates
25		¹ 0.	001109-11.
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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
	120.	Interrogators stopped the	Disputed. Mr. Ben Soud's
3		aggressive phase of Mr. Ben	declaration does not indicate there
4		Soud's torture about five or six	was an "aggressive phase" of his
		weeks after they had started it. Ben	interrogation, nor does it claim Mr.
5		Soud Decl. ¶ 5, 19.	Ben Soud was "tortured."
6			Plaintiffs do not provide any other
7			admissible evidence to support
			these statements. Defendants do
8			not dispute that Mr. Ben Soud's interrogation lessened around the
9			end of May 2003. Ben Soud
			Decl. ¶¶ 5, 19.
10	121.	Mr. Ben Soud suffered severe	Not contested for purposes of
11		mental and physical pain as a result	Plaintiffs' Motion
12		of the combination of abuses he	
		was subjected to, in combination	
13		with the humiliating and degrading	
14		conditions of his confinement. He	
15		felt "completely hopeless and	
		helpless," and experienced "a	
16		constant state of terror,	
17		apprehension and dread," which began to let up only "once	
		interrogators stopped using some of	
18		the worst of their interrogation	
19		methods, around the end of May,	
20		2003." Ben Soud Decl. ¶ 19.	
	122.	(a) Mr. Ben Soud was detained by	Defendants' object to this "fact" as
21		the CIA until August 2004,	compound.
22		when the CIA transferred Mr.	(a) Not contested for purposes of
22		Ben Soud to the custody of the	Plaintiffs' Motion that Mr. Ben
23		Qaddafi dictatorship in Libya.	Soud was detained by the CIA
24		Mr. Ben Soud was imprisoned	until August 2004. Defendants
25		by the Qaddafi regime for his	object to the remainder of this
		membership in a group opposed	asserted fact as irrelevant to the
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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	Ι,			
1		\P	Plaintiffs' Undisputed Material	Defendants' Response and
2			Facts and Supporting Evidence	Supporting Evidence
			to the dictatorship, and	resolution of the issues
3			remained in prison until	presented in Plaintiffs' Motion
4			Qaddafi's overthrow in January	(FED. R. CIV. P. 56(e)(1); FED.
_			2011. Deposition of Mohamed	R. EVID. 401, 402).
5			Ahmed Ben Soud 225:17–	(b) Through his dealings with the
6			226:7, 228:4–16, 238:16–23	Libyan Islamic Fighting Group
7			(Ladin Decl., Exh. TT). (b)Mr. Ben Soud never fought	("LIFG"), Mr. Ben Soud had meetings with Abu Faraj al-
-			against the United States. Ben	Libi, who Mr. Ben Soud knew
8			Soud Decl. 20.	was a member of Al-Qa'ida.
9			50 44 2 00 1. 2 0.	After September 11, 2001,
10				members of LIFG started
				cooperating with Al-Qa'ida.
11				Defs.' SOF ¶¶ 275-76.
12		123.	After Qaddafi was killed in 2011,	Defendants object to this "fact" as
12			President Obama announced that	irrelevant to the resolution of the
13			"the dark shadow of tyranny has	issues presented in Plaintiffs'
14			been lifted" from Libya. Remarks	Motion (FED. R. CIV. P. 56(e)(1);
15			by the President on the Death of	FED. R. EVID. 401, 402).
			Muammar Qaddafi, Oct. 20, 2011. https://obamawhitehouse.archives.gov/the-press-	
16			office/2011/10/20/remarks-president-death-	
17			muammar-qaddafi (Ladin Decl., Exh.	
18		104	UU).	D: 4 1 14 DI: 4:00
		124.	As the years progressed, Defendants remained "involved in	Disputed as related to Plaintiffs.
19			the selection and development of	The CIA conducted training in "High-Value Target" interrogation
20			interrogation and exploitation	techniques in late 2002. The
21			techniques" and were "instrumental	training was designed, developed,
			in training and mentoring other	and conducted by individuals from
22			CIA interrogators and debriefers."	CTC other than Drs. Mitchell and
23			Ladin Decl., Exh. VV at U.S. Bates	Jessen, and Drs. Mitchell and
			001585–86.	Jessen played no role in the
24				interrogation training. Individuals
25				from JPRA were instructors at this
26				training. Defs.' SOF ¶ 226. Dr.

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			Mitchell testified that he was not
3			involved in training or mentoring
4			until after 2005. Mitchell Dep.
			343:6-344:11. Defendants further
5			object to this "fact" as irrelevant to
6			the resolution of the issues
7			presented in Plaintiffs' Motion
_ /			(FED. R. CIV. P. 56(e)(1); FED. R.
8			EVID. 401, 402) because as of
9			August 2004, Plaintiffs were not in CIA custody. Defs.' SOF ¶¶ 273,
			277-78, 324.
10	125	Defendants formed Mitchell,	Not disputed for purposes of
11	123.	Jessen & Associates to meet the	Plaintiffs' Motion, but Defendants
12		"growing demand for expert	object to these facts as irrelevant to
12		consultation, operational	the resolution of the issues
13		interrogation and exploitation	presented in Plaintiffs' Motion
14		capabilities" in the CIA program.	(FED. R. CIV. P. 56(e)(1); FED. R.
		<i>Id.</i> at U.S. Bates 001586.	EVID. 401, 402) because when
15		Defendants' company acquired a	Mitchell, Jessen & Associates
16		"sole source contract to support	("MJA") was formed in 2005,
17		CTC's rendition, detention, and	Plaintiffs were no longer in CIA
		interrogation program." Ladin	custody. Defs.' SOF ¶¶ 273, 277-
18		Decl., Exh. WW at U.S. Bates 001629. Mitchell, Jessen &	78, 324, 336.
19		Associates contracted with the CIA	
		to continue providing "professional	
20		services by Drs. Mitchell and	
21		Jessen." Ladin Decl., Exh. XX at	
22		U.S. Bates 001906. Defendants	
		submitted a technical proposal for	
23		their company, claiming they	
24		would respond to a need "to	
		continue developing and refining	
25		the program," as "an outside source	
26			

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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1	$\ \ \ $	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		of professional expertise in the area	
3		of human exploitation,	
4		interrogation, debriefing, and the	
		management of detainees in ways	
5		that facilitate intelligence	
6		collection." Ladin Decl., Exh. VV	
7	106	at U.S. Bates 001585.	
7	126.	In 2006, Defendants spent several	Not disputed for purposes of
8		days considering refinements to	Plaintiffs' Motion, but Defendants
9		their list of methods, and decided	object as irrelevant to the
		that "nudity, slaps, facial holds,	resolution of the issues presented in
10		dietary manipulation, and cramped	Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402)
11		confinement," were, in fact, "completely unnecessary."	because as of August 2004,
		Defendants believed walling and	Plaintiffs were no longer in CIA
12		sleep deprivation were essential.	custody. Defs.' SOF ¶¶ 273, 277-
13		They briefed their	78, 324.
		"recommendations to the mid-level	70, 321.
14		CIA officers who were working the	
15		issue for CIA leadership." Ladin	
16		Decl., Exh. E at MJ00022862:	
	127.	In 2007, Secretary of State	Defendants object to this "fact" as
17		Condoleezza Rice wanted a	compound. Defendants further
18		personal briefing on the program	object to this fact as irrelevant to
		from its original architects.	the resolution of the issues
19		Defendants, accompanied by John	presented in Plaintiffs' Motion
20		Rizzo, met with the Secretary.	(FED. R. CIV. P. 56(e)(1); FED. R.
21		Ladin Decl., Exh. EE, Rizzo Dep.	EVID. 401, 402) because as of
21		68:14¬69:8. During the discussion	August 2004, Plaintiffs were no
22		of sleep deprivation, the Secretary	longer in CIA custody. Defs.' SOF
23		of State expressed concern that	¶¶ 273, 277-78, 324.
		Defendants' method—which	
24		involved shackling a prisoner's	Defendants do not dispute that
25		hands to an overhead tether—	Defendants met with Secretary of
		evoked an image similar to the	State Condoleezza Rice and John
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DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

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Plaintiffs' Undisputed Material **Defendants' Response and Facts and Supporting Evidence Supporting Evidence** prisoner abuse scandal that had Rizzo as set out in US Bates 001175-76 and that Mr. Rizzo taken place at Abu Ghraib. Ladin Decl., Exh. YY at U.S. Bates referenced Defendants as "the original architects of the program." 001175–76. Defendants "indicated the possibility of devising alternative methods to deprive Disputed that there was one sleep," and resolved to "work on overarching CIA interrogation alternative methods for program, and specifically that the implementing sleep deprivation interrogation methods posed by the Defendants were the basis of EIT and propose courses of interrogation for any Plaintiff. The action." Id. at U.S. Bates 001176-77. interrogation methods proposed by Defendants became the basis only for the CIA's interrogation of Zubaydah and later the CIA's HVD Program. Rodriguez Dep. 183:22-184:25; 186:17-20; Defs.' SOF ¶¶ 209-11. Defendants object to this "fact" as Defendants played additional 128. leading roles in the program, including "provid[ing] high-level

leading roles in the program, including "provid[ing] high-level briefings to the 7th floor," i.e., to CIA's top management, as well as the production of papers evaluating and justifying the use of "coercive physical pressures" as part of interrogation. Ladin Decl., Exh. ZZ at U.S. Bates 001909; Ladin Decl., Exh. AAA at U.S. Bates 002285–2291.

Defendants object to this "fact" as irrelevant to the resolution of the issues presented in Plaintiffs' Motion (FED. R. CIV. P. 56(e)(1); FED. R. EVID. 401, 402) because US Bates 001909 discusses the actions of MJA, which was formed in 2005 and US Bates 002285-91 was drafted in February 2005. Ladin Decl., Exh. ZZ at U.S. Bates 001909; Ladin Decl., Exh. AAA at U.S. Bates 002285-91. As of August 2004, Plaintiffs were no longer in CIA custody. Defs.' SOF ¶¶ 273, 277-78, 324.

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF - 77 UNDISPUTED MATERIAL FACTS

1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			Disputed. Plaintiffs
3			mischaracterize US Bates 002285-
4			91, which is a paper titled
			"Interrogation and Coercive
5			Physical Pressures: A Quick
6			Overview." This document
7			explains some pros and cons to
_ /			applying "legal and approved
8			coercive interrogation techniques"
9			on "high value detainees[.]" In this paper, Defendants again reiterated
			that if interrogation techniques
10			were applied improperly, it could
11			induce a "severe sense of
12			hopelessness" that would
12			undermine efforts to obtain
13			intelligence. Ladin Decl., Exh.
14			AAA at U.S. Bates 002285–2291
15			Disputed that there was one
16			overarching CIA interrogation
17			program, and specifically that the
			interrogation methods posed by the Defendants were the basis of
18			interrogation for any Plaintiff. The
19			interrogation methods proposed by
20			Defendants became the basis only
20			for the CIA's interrogation of
21			Zubaydah and later the CIA's HVD
22			Program. Rodriguez Dep. 183:22-
			184:25; 186:17-20; Defs.' SOF ¶¶
23			209-11.
24			
25			Plaintiffs also mischaracterize US
			Bates 001909. The document does
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
			not state that "Defendants played
3			additional leading roles in the
4			program", but outlines the areas in
			which the CIA contracted with
5			MJA. As discussed earlier,
6			Defendants were involved only in
7			the CIA's HVD Program, and
7			specifically were not involved with
8			the interrogation for Plaintiffs
9			Salim and Ben Soud. Ladin Decl.,
			Exh. ZZ at U.S. Bates 001909; see
10	120	Defendants were narroundly noid	Defs.' Resp. Pls.' SOF ¶ 54. Defendants object to these "facts"
11	129.	Defendants were personally paid millions of dollars by the CIA as	as irrelevant to the resolution of the
		independent contractors for	issues presented in Plaintiffs'
12		"research and development as well	Motion (Fed. R. Civ. P. 56(e)(1);
13		as operational services." Ladin	Fed. R. Evid. 401, 402). Disputed
14		Decl., Exh. XX at U.S. Bates	that Defendants were individually
14		001906.	paid millions of dollars. From
15		001900.	2001-05, Dr. Mitchell was paid
16			\$1,459,601.43 as an independent
10			contractor to the CIA. From 2002-
17			05, Dr. Jessen was paid
18			\$1,204,550.42 as an independent
			contractor to the CIA. Ladin
19			Decl., Exh. XX at U.S. Bates
20			001906.
21	130.	After the program was investigated	Disputed. As discussed above,
21		by the Senate Select Committee on	there was not one overarching CIA
22		Intelligence, the CIA agreed with	interrogation program and
23		the Committee's conclusion that	Defendants were involved only
		the CIA "allowed a conflict of	with the CIA's HVD Program and
24		interest to exist wherein the	not with interrogation of Plaintiffs
25		contractors who helped design and	Salim and Ben Soud. See Defs.'
		employ the enhanced interrogation	Resp. Pls.' SOF ¶ 54.
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
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1	\P	Plaintiffs' Undisputed Material	Defendants' Response and
2		Facts and Supporting Evidence	Supporting Evidence
		techniques were also involved in	Additionally, the CIA did not
3		assessing the fitness of detainees to	"agree" with the Committee's
4		be subjected to such techniques and	conclusion. Rather the CIA
_		the effectiveness of those same	responded to the Committee's
5		techniques." Ladin Decl., Exh.	conclusion by stating, that the
6		BBB, CIA Response at 10; Ladin	Committee's Report "correctly
7		Decl., Exh. B, Rodriguez Dep.	points out that the propriety of the
/		133:2–20.	multiple roles performed by
8			contracted psychologists—
9			particularly their involvement in
			performing interrogations as well as assessing the detainees' fitness
10			and the effectiveness of the very
11			techniques they had devised—
10			raised concerns and prompted
12			deliberation within CIA, but it fails
13			to note that at least some of these
14			concerns were addressed" in early
			2003. Ladin Decl., Exh. BBB, CIA
15			Response at 10. Further, objected
16			to as irrelevant to the resolution of
			the issues presented in Plaintiffs'
17			Motion (FED. R. CIV. P. 56(e)(1);
18			FED. R. EVID. 401, 402).
19	131.	Until the CIA program was	Defendants object to this "fact" as
19		shuttered and Defendants' contract	irrelevant to the resolution of the
20		was terminated in 2009, Mitchell,	issues presented in Plaintiffs'
21		Jessen, and Associates received	Motion (FED. R. CIV. P. 56(e)(1);
		\$81 million in taxpayer money. ECF No. 77 ¶ 68; Ladin Decl.,	FED. R. EVID. 401, 402) because MJA was not formed until 2005,
22		Exh. BBB, CIA Response at 11,	after Plaintiffs were released from
23		49.	C. Defs.' SOF ¶¶ 273, 277-78, 324.
24		• • • • • • • • • • • • • • • • • • • •	Disputed. As discussed above,
			there was not one overarching CIA
25			interrogation program and
26			

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
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\P	Plaintiffs' Undisputed Material	Defendants' Response and
	Facts and Supporting Evidence	Supporting Evidence
		Defendants were involved only
		with the CIA's HVD Program and
		not with the interrogations of
		Plaintiffs Salim and Ben Soud. See
		Defs.' Resp. Pls.' SOF ¶ 54. From
		2005 through 2009, MJA was paid
		approximately \$72 million. Dr. Mitchell's profit percentage from
		MJA was in the "small single
		digits." Defs.' SOF ¶ 336-37.
	Christop <u>ctompki</u> Betts, P 701 Pike	cher W. Tompkins cher W. Tompkins, WSBA #11686 ches@bpmlaw.com Catterson & Mines, P.S. e St, Suite 1400 WA 98101
	James T	Smith, admitted <i>pro hac vice</i>
	<u>smith-jt</u>	@blankrome.com
		Paszamant, admitted pro hac vice
	·	ant@blankrome.com
	-	N. Rosenthal, admitted <i>pro hac vice</i>
		al-j@blankrome.com Rome LLP
		8th Street
		phia, PA 19103
	1 1111000	r,

ins WSBA #11686 P.S. ro hac vice ed *pro hac vice* ted pro hac vice Philadelphia, PA 19103 Henry F. Schuelke III, admitted pro hac vice hschuelke@blankrome.com **Blank Rome LLP** 1825 Eye St. NW Washington, DC 20006 Attorneys for Defendants Mitchell and Jessen

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF - 81 -UNDISPUTED MATERIAL FACTS

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

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June, 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:

Emily Chiang echiang@aclu-wa.org ACLU of Washington Foundation 901 Fifth Ave, Suite 630 Seattle, WA 98164	Paul Hoffman hoffpaul@aol.com Schonbrun Seplow Harris & Hoffman, LLP 723 Ocean Front Walk, Suite 100 Venice, CA 90291
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	Steven M. Watt, admitted pro hac vice swatt@aclu.org Dror Ladin, admitted pro hac vice dladin@aclu.org Hina Shamsi, admitted pro hac vice hshamsi@aclu.org ACLU Foundation 125 Broad Street, 18th Floor New York, NY 10007
Avram D. Frey, admitted pro hac vice afrey@gibbonslaw.com Daniel J. McGrady, admitted pro hac vice dmcgrady@gibbonslaw.com Kate E. Janukowicz, admitted pro hac vice kjanukowicz@gibbonslaw.com Lawrence S. Lustberg, admitted pro hac vice llustberg@gibbonslaw.com Gibbons PC One Gateway Center Newark, NJ 07102	Anthony DiCaprio, admitted pro hac vice ad@humanrightslawyers.com Law Office of Anthony DiCaprio 64 Purchase Street Rye, NY 10580

By <u>s/Karen L. Pritchard</u>
Karen L. Pritchard

<u>kpritchard@bpmlaw.com</u>
Betts, Patterson & Mines, P.S.

Betts

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS NO. 2:15-CV-286-JLQ

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

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