

EXHIBIT 19

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

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JAMES E. MITCHELL and)	
JOHN JESSEN,)	
)	
Petitioners,)	Civil Action No.
)	16-MC-0036-JLQ
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

(U) DECLARATION OF
DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE AGENCY
FOR OPERATIONS¹

(U) I hereby declare and state:

I. (U) Background

1. (U) I joined the Central Intelligence Agency ("CIA" or "Agency") approximately 35 years ago and was named the Deputy Director of CIA for Operations in September 2016.

2. (U) Earlier in my career, I served in the field in various capacities, including as Chief of Station in overseas locations. As Deputy Director of CIA for Operations, I lead the

¹ (U) As I am a covert officer of the CIA, my affiliation with the Agency is classified. Accordingly, my signature and signature block will be redacted from the publicly-filed version of this declaration. The original unredacted version, classified SECRET//NOFORN ("S//NF"), can be made available to the Court upon request.

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CIA's Directorate of Operations, ensuring that the Agency's intelligence collection and covert action activities support broader U.S. national security and foreign policy objectives².

3. (U) Through the exercise of my official duties, I am familiar with this civil action and with the relevant motions to compel filed by the Petitioners, Dr. Mitchell and Dr. Jessen, seeking information redacted from documents either already produced in-part to them, or withheld in their entirety. I am submitting this declaration in support of the Government's opposition to the Petitioners' motions to compel in this matter.

4. (U) The purpose of this declaration is to assert a formal claim of the deliberative process privilege, the attorney-client privilege, and the work-product protection. The CIA's former detention and interrogation program was managed by the Directorate of Operations, and I therefore have responsibility for asserting the deliberative process privilege over information concerning the program. The statements made herein are based on my personal knowledge, information provided to me in my official capacity and acquired in the course of performing my official duties, and my evaluation of that information.

² (U) During times relevant to this action, my office was called the National Clandestine Service ("NCS"), and the title of my position was Director, National Clandestine Service. As a result of the Agency's Modernization Program, the name of the NCS reverted back to the Directorate of Operations in 2015.

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5. (U) I am aware that the Petitioners' motion to compel initially sought the disclosure of all information redacted by the CIA pursuant to the deliberative process privilege, attorney-client privilege, and work-product protection, as well as the production of all documents withheld in their entirety pursuant to these privileges. I understand that the Petitioners are no longer challenging all of these redactions and withholdings, and are instead now challenging 68 documents over which CIA has asserted these three privileges. Specifically, Petitioners are challenging 58 documents over which the deliberative process privilege has been asserted, 25 documents over which the attorney-client privilege has been asserted, and 6 documents over which the attorney work-product protection has been asserted.³

6. (U) I have personally conducted a document-by-document review of all of the 68 documents remaining at issue over which the CIA is asserting the deliberative process privilege, attorney-client privilege, and work-product protection. In addition, I have consulted and discussed this matter with knowledgeable attorneys from the CIA's Office of General Counsel. As explained in greater detail below, the

³ (U) Several of the challenged documents assert more than one privilege over the redacted or withheld information, therefore the total number of documents at issue in the Petitioners' motion is 68.

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privileged information has been properly withheld from the challenged documents, and this declaration serves as CIA's formal claim of these three privileges over the 68 documents remaining at issue.

II. (U) Assertion of the Deliberative Process Privilege

7. (U) I understand that the deliberative process privilege extends to deliberative records created prior to a final Agency decision, and I am also aware that this privilege exists, among other reasons, to protect the give-and-take of the consultative process within government agencies and to encourage full and candid discussions among Agency personnel before a final Agency decision is made. In this case, the materials withheld under the deliberative process privilege consist of (i) draft documents, (ii) preliminary and pre-decisional email discussions and recommendations, and (iii) other internal documents containing deliberative information, including internal legal memoranda, cables,⁴ and other guidance.

8. (U) The deliberative process often involves the creation of draft documents by CIA officers. CIA personnel review, edit, and modify these drafts, such as draft reports, cables, and memoranda, in the course of the deliberative process before more senior officials authorize the final product. These

⁴ (U) The Agency uses the term "cables" to refer generally to a secure method of communication between Headquarters and the field.

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drafts can take different forms depending upon the nature of the document, but they generally incorporate an officer's proposed changes, questions, and comments about the preliminary document.

9. (U) Disclosure of drafts would damage CIA's decision-making process. Making electronic changes to a draft document constitutes an efficient means for CIA personnel and other officials to suggest edits, provide advice and recommendations, raise questions or concerns, and provide additional facts and context about relevant events. If electronic draft documents are routinely made public, CIA officers would likely be less willing to make changes or provide comments to documents sent to them for review, or to review drafts for accuracy and completeness over concerns that their recommendations or edits would be made public. Further, the disclosure of draft documents could confuse the public about the Agency's actual position on certain issues by prematurely disclosing views that might be attributed to the CIA, or disclosing draft versions of documents that the public might mistake for the final Agency position on an issue.

10. (U) Furthermore, email discussions often include preliminary assessments by attorneys and other staff members about issues on which they have been asked to make recommendations and give advice. For example, Agency officers routinely email each other to share language for draft

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documents, propose changes to documents, and respond to suggestions about drafts, not to mention forward the draft documents themselves. Similarly, CIA personnel often email each other to share their thoughts and impressions about questions posed to them in the course of making an Agency determination that does not involve a final written product. This electronic dialogue most resembles professional conversations between staff members, which form an integral part of the give-and-take of Agency deliberations.

11. (U) Other forms of internal CIA documents also contain deliberative information. For example, internal legal memoranda, draft versions of cables being sent to other CIA officers for comment, and proposed legal and policy guidance, whether in final or draft form, constitute such deliberative material. These internal records contain advice, analysis, recommendations, proposals, and opinions on issues still in the developmental stage, rather than address an existing final decision or policy. The disclosure of this type of information in discovery could discourage Agency officers from candidly discussing how best to handle sensitive concerns and cause Agency officers to be reticent to make honest comments and prepare and share draft or internal versions of documents. Additionally, disclosure of such documents could tend to reveal the Agency's decision-making process itself.

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12. (U) Regardless of the specific medium of communication, free and frank exchange of ideas, opinions, and recommendations among CIA officers is critical to the Agency's mission, and release of these materials could chill these exchanges and harm CIA decision-making. This is especially true where, as here, the discussions and recommendations are utilized in the context of sensitive decision-making related to the CIA's counterterrorism and intelligence mission. If CIA employees are aware that their opinions, deliberations, and recommendations may be subject to public disclosure, as well as the scrutiny, second-guessing, and criticism that could follow from such release, the quality and volume of input offered and received is likely to be adversely impacted. Foreseeably, CIA officers could be discouraged from sharing a full range of ideas or opinions, for fear that some comments or recommendations may later be released publicly and criticized as unpopular or controversial. Inhibiting such honest and unfiltered discussion among CIA officers could compromise the CIA's ability to provide U.S. policymakers with complete and frank assessments to assist their decision-making on important matters of national security.

13. (U) The types of deliberative records challenged by Petitioners contributed to the process of reaching several categories of Agency decisions: (i) determinations related to the use of interrogation strategies and enhanced interrogation

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techniques; (ii) determinations related to operational activities at detention facilities; (iii) other operational decision-making related to the former detention and interrogation program; (iv) decisions related to the content of internal reports; and (v) other miscellaneous Agency actions or decisions.

(U) Determinations on the Use of Interrogation Strategies and Enhanced Interrogation Techniques

14. (U) A large portion of the deliberative material challenged by Petitioners relates to determinations as to the use of various interrogation strategies and enhanced interrogation techniques, as explained in greater detail below. The disclosure of the deliberations related to these decisions would divulge opinions, recommendations, and advice generated in the decision-making process about how best to proceed in interrogating particular detainees given the specific circumstances of each case. In many cases, these documents represent communications between CIA officers at Headquarters and in the field, assessing which techniques to employ and longer-term strategies to pursue, and discussing intelligence sources and methods as well as particular intelligence questions to be answered. All of the withheld materials preceded a final decision about how to employ the interrogation techniques and strategies, and therefore, were pre-decisional.

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15. (U) Document No. 25⁵ contains pre-decisional and deliberative recommendations and discussions regarding a specific method and strategy of interrogation (not a physical pressure) suggested by CIA personnel in the field and directed to CIA Headquarters that was designed to elicit intelligence information from Gul Rahman, including discussion of the specific manner in which the strategy would be implemented.

16. (U) Document No. 114 includes pre-decisional and deliberative information consisting of discussions between CIA officers in the field and CIA Headquarters regarding the pre- and post-isolation phases of Abu Zubaydah's interrogations and detentions. These recommendations suggest the participation of specific personnel, use of certain interrogation techniques, changes to Abu Zubaydah's medical care, and analysis of interrogation methods and strategies to utilize in order to gather intelligence information.

17. (U) Document No. 121 also contains pre-decisional and deliberative information consisting of recommendations from CIA officers in the field to CIA Headquarters for a final decision regarding the proposed plans and preparations for the isolation phase of Abu Zubaydah's interrogation. The discussion includes descriptions of the proposed methods and techniques of

⁵ (U) All document numbers refer to the entry number on the CIA Privilege Log produced in discovery on December 20, 2016.

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intelligence gathering that the interrogation team intends to utilize to transition Abu Zubaydah to the isolation phase as well as the actions and information that the team will convey to Abu Zubaydah during this transition period and analysis of the anticipated results of these strategies.

18. (U) Document No. 131 contains pre-decisional and deliberative information consisting of a communication sent by CIA personnel in the field to CIA Headquarters requesting clarification and direction regarding future interrogations of Abu Zubaydah.

19. (U) Document No. 133 consists of a cable and emails containing pre-decisional and deliberative information regarding plans and preparations for the isolation phase of Abu Zubaydah's interrogation. The emails and cable discuss a personnel staffing issue at the Abu Zubaydah detention facility and suggest proposed courses of action to ensure appropriate personnel are on site. The cable also contains a communication from CIA officers in the field to CIA Headquarters explaining the future proposed strategy for the isolation phase of Abu Zubaydah's detention. The discussion includes descriptions of the proposed methods and techniques of intelligence gathering that the interrogation team intends to utilize to transition Abu Zubaydah to the isolation phase as well as the actions members of the team will take and information that the team will convey

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to Abu Zubaydah during this transition period and analysis of the anticipated results of these strategies.

20. (U) Document No. 136 contains pre-decisional and deliberative information consisting of discussions among CIA officers regarding whether to deploy medical personnel to the Abu Zubaydah detention site, including discussions of what type of personnel and the timing for any such deployment. The email also contains deliberative discussions regarding the operational preparations necessary for use of enhanced interrogation techniques on future detainees other than Abu Zubaydah.

21. (U) Document No. 139 contains pre-decisional and deliberative information consisting of a communication from CIA officers in the field to CIA Headquarters seeking clarification and a determination regarding the use of the confinement box on Abu Zubaydah, including information that the CIA field officers have gathered about the use, effectiveness, and likely impact of the confinement box for CIA Headquarters to consider in reaching their decision whether to authorize use of the confinement box.

22. (U) Document No. 149 contains pre-decisional and deliberative information consisting of discussions among CIA officers regarding proposed interrogation strategies, including questions and techniques to utilize on Abu Zubaydah based on an analysis of his current resistance posture.

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23. (U) Document No. 157 contains pre-decisional and deliberative information consisting of a communication from CIA officers in the field to CIA Headquarters requesting guidance and a decision regarding implementation of specific interrogation techniques on Abu Zubaydah. The communication contains the field officers' recommended course of action based on their analysis of Abu Zubaydah's current status and a discussion of various options for CIA Headquarters to consider in making a decision on the next phase of Abu Zubaydah's interrogation.

24. (U) Document No. 167 contains pre-decisional and deliberative information consisting of a communication from CIA Headquarters to the Abu Zubaydah interrogation team discussing a variety of issues related to the next phase of Abu Zubaydah's interrogations, posing various questions to the interrogation team, summarizing the status of internal discussions within various CIA Headquarters components, and requesting information from the interrogation team to assist in decision-making regarding future interrogations of Abu Zubaydah.

25. (U) Document No. 206 is an email exchange containing pre-decisional and deliberative information consisting of suggestions regarding particular interrogation techniques that could be employed in the future interrogations of Abu Zubaydah, including the pros and cons of these various approaches from the

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perspective of obtaining intelligence information from Abu Zubaydah quickly; suggestions for addressing problems that may arise with implementing certain interrogation techniques; and an employee's assessment of Abu Zubaydah's responses to certain lines of questioning. Information concerning the input and recommendations provided by Dr. Mitchell and Dr. Jessen are unredacted.

26. (U) Document No. 211 is pre-decisional and deliberative because it contains information provided by a CIA officer to a CIA attorney in order to inform legal decision-making regarding use of the waterboard by reference to comparisons between the waterboard in the SERE setting and the CIA program setting.

27. (U) Document No. 223 contains pre-decisional and deliberative information consisting of recommendations and discussions from CIA officers in the field to CIA Headquarters regarding optimal strategies for future interrogations of Abu Zubaydah. The cable proposes several specific options regarding the future course of Abu Zubaydah's interrogations for CIA Headquarters' consideration and explains the pros and cons of each approach. The focus of the options is not on specific physical pressures or methods but rather on which intelligence requirements the interrogation team should prioritize during interrogations.

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28. (U) Document No. 225 also contains pre-decisional and deliberative information consisting of recommendations and discussions between CIA Headquarters and CIA officers in the field regarding proposed interrogation strategies and methods to use in future interrogations of Abu Zubaydah. The cable contains a discussion of these intelligence strategies and methods, along with an analysis of the pros and cons of utilizing these tactics and techniques in an effort to procure additional intelligence information from Abu Zubaydah.

29. (U) Finally, Document No. 247 consists of emails which are pre-decisional and deliberative because they reflect the discussion among CIA officers regarding efforts to collect specific information about interrogation techniques used in the Department of Defense SERE program for potential use in the future CIA detention and interrogation program. These discussions reflect the priorities and focus of the then-ongoing effort to collect information about SERE techniques in order for senior CIA officials to make a decision regarding whether to authorize these techniques. The first email also has specific handwritten notations at the top of the document reflecting its deliberative status.

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(U) Determinations as to Operational Activities
at Detention Facilities

30. (U) Other deliberative material at issue includes determinations related to operational activities at detention facilities. CIA officers deployed in the field routinely consulted with CIA management at Headquarters on decision-making with regard to the personnel stationed at detention facilities, as well as with regard to various decisions related to the detainees at those facilities. These types of communications are pre-decisional because the documents were created prior to finalizing various Agency decisions regarding the staffing and operational deployments of personnel, or prior to finalizing particular interrogation plans for detainees. Revealing such documents in their entirety could discourage officers in the field from being fully candid with Headquarters-based staff as to the day-to-day operations in the field, and could likewise deter CIA officers at Headquarters from giving detailed assessments of intelligence collected in the field and operational needs.

31. (U) Document No. 22 contains pre-decisional and deliberative information consisting of recommendations and discussions regarding the use of guards at the COBALT facility, including suggested alterations to the guard force to improve performance and security.

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32. (U) Document No. 39 also contains pre-decisional and deliberative information consisting of recommendations and discussions among CIA officers regarding various operational, intelligence, and security considerations relevant to final decisions from CIA Headquarters concerning the interrogation and detention of Gul Rahman.

33. (U) Document No. 101 contains pre-decisional and deliberative information consisting of recommendations and discussions regarding detention facility operations, possible locations for future detention facilities, and the transfer of detainees out of CIA custody.

34. (U) Document No. 103 contains pre-decisional and deliberative information consisting of recommendations and an "initial draft plan" from Dr. Mitchell and Dr. Jessen to CIA personnel regarding composition and resources required for a detention and interrogation team and facility.

35. (U) Document No. 123 contains pre-decisional and deliberative information consisting of a communication from CIA officers in the field to CIA Headquarters requesting clarification and a decision from CIA Headquarters regarding a specific operational practice at the detention facility.

36. (U) Document No. 158 is pre-decisional and deliberative because it consists of a communication from CIA officers in the field to CIA Headquarters summarizing internal

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discussions among the Abu Zubaydah interrogation team regarding various operational, logistical, security, communications, and medical issues for CIA Headquarters to consider in making decisions on the next phase of Abu Zubaydah's interrogations.

37. (U) Document No. 159 is similarly pre-decisional and deliberative because it consists of recommendations and discussions from personnel at a CIA detention facility to CIA Headquarters regarding procedures for secure communications and security at the detention facility; recommendations from interrogation team members to CIA Headquarters regarding the end-game plan and decision-making for Abu Zubaydah's detention; and a summary of a meeting between senior CIA personnel and a senior official with another government agency concerning the next phase of the Abu Zubaydah interrogations.

38. (U) Document No. 197 is a draft cable which is also deliberative, as it lays out various options for staffing and management of the Abu Zubaydah detention facility, including an analysis of those options for a final decision by CIA Headquarters.

39. (U) Document No. 219 also contains pre-decisional and deliberative information consisting of a communication between CIA officers regarding proposed language for inclusion in a future cable addressing interrogation operational procedures at a particular CIA detention facility. The document proposes

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specific draft language for the cable and requests that another CIA officer edit the language and build on the initial draft. The document also contains handwritten notations at the top of the document reflecting personal notes from a CIA officer.

40. (U) Document No. 239 is pre-decisional and deliberative because it contains preliminary recommendations for the staffing of operational activity and the conduct of future renditions.

(U) Other Operational Decision-Making Related to the Former Detention and Interrogation Program

41. (U) CIA also properly withheld pre-decisional and deliberative information related to other operational decision-making in connection with the former detention and interrogation program. These documents contain candid discussions and recommendations for Agency decisions on such matters as future (at the time) captures, renditions, and interrogations; cooperation with foreign partners; the evolution of the former detention and interrogation program as time went by; and other topics. Revealing these pre-decisional records would have a harmful impact on Agency decision-making, as Agency personnel might be reluctant to voice their views or engage in difficult or controversial assignments, or to make comments as to alternative courses of action, if these types of documents were publicly released. If the back-and-forth nature of decision-

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making on operational activity were publicly disclosed in this case, this would have a chilling effect on the ability of the Agency to fully and frankly conduct operations of importance to national security in the future. The documents that reveal this category of deliberative information are explained in greater detail in the paragraphs below.

42. (U) Document No. 23 contains pre-decisional and deliberative information consisting of recommendations and discussions regarding optimal strategies and locations for future interrogations of detainees.

43. (U) Document No. 37 contains pre-decisional and deliberative information consisting of recommendations and discussions among CIA officers regarding specific taskings for Dr. Mitchell and Dr. Jessen. These discussions include references to possible future project initiatives as well as consideration of which CIA component offices and personnel could offer resources to assist in transitioning the roles of Dr. Mitchell and Dr. Jessen.

44. (U) Document No. 108 contains pre-decisional and deliberative information in its first paragraph regarding the reasons why the document was created, in order to explain the CIA's continued use of contract interrogators.

45. (U) Document No. 117 includes pre-decisional and deliberative information consisting of discussion between CIA

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officers in the field and at CIA Headquarters regarding possible contingency planning and future operations.

46. (U) Document No. 120 includes pre-decisional and deliberative information as the document reflects a discussion among CIA officers regarding a proposed, non-final draft cable. The CIA officers are forwarding a draft cable to other officers for coordination and asking for comments.

47. (U) Document No. 126 consists of two emails regarding the videotapes of Abu Zubaydah's interrogations. Both emails are pre-decisional and deliberative. The first email was sent by Dr. Jessen to a CIA employee to aid the discussion regarding the CIA's strategy to address the videotape destruction. The email includes a draft "paper" summarizing the rationale for videotaping Abu Zubaydah's interrogation and provides a timeline of key decisions and interrogation events. The second email was sent by a CIA employee, informing Dr. Jessen that the employee would discuss a future strategy to address the information Dr. Jessen provided in his email.

48. (U) Document No. 127 is a cable which contains pre-decisional and deliberative information consisting of a communication from CIA Headquarters to CIA officers in the field that includes discussion of a proposal to transfer custody of Abu Zubaydah.

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49. (U) Document No. 176 contains pre-decisional and deliberative information consisting of recommendations and discussions regarding a proposed plan for the CIA's Office of Technical Services to contribute to the CIA's detention and interrogation efforts. The plan contains comments interlined throughout the text, suggesting edits and posing questions for consideration. The document is a working draft of a proposed plan of action for other CIA decision-makers. Document No. 229 is a duplicate of Document No. 176.

(U) Decisions Related to the Content of Internal Reports

50. (U) Other deliberative documents or information that remain at issue in Petitioners' motion to compel can be categorized as draft versions of various reports and memoranda related to the former detention and interrogation program, as well as discussions of deliberative information about Agency actions and recommendations for future Agency action contained in final versions of internal reports. These internal records contain analysis and opinions on issues still in the developmental stage, which had not been finalized as an official Agency decision or policy position. The disclosure of this type of information could suppress the candid assessments necessary in internal memoranda, which exemplify the Agency's deliberative process prior to a final policy determination. In addition, releasing initial, preliminary reports, or draft reports still

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undergoing commentary and a vetting process, could cause confusion to the general public as to what the official Agency position or decision was. Additionally, in some cases, the final version of these reports and memoranda have been publicly released, and releasing the preliminary draft versions of those documents could both generate significant public confusion and reveal the nature and substance of the edits that took place as the reports were being circulated for comment. The following documents contain deliberative material withheld in this category.

51. (U) Document No. 46 is an 89-page, single-spaced, draft memorandum, expressly marked "draft," entitled "Summary and Reflections of the Chief of Medical Services on OMS Participation in the RDI Program." The document is pre-decisional and deliberative because it is a selective, draft account of one CIA officer's impressions of the detention and interrogation program. It was a working draft and was never finalized. It is not the CIA or the Office of Medical Services' final official history, or assessment, of the program.

52. (U) Document No. 47 is a report that contains pre-decisional and deliberative information on several topics, including a discussion of suggested edits to a proposed Congressional notification of Gul Rahman's death (page 45); a summary of email messages between CIA officers discussing a

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preliminary, non-final assessment of the cause of Gul Rahman's death (Page 51-52); and specific recommendations by the CIA Inspector General to other CIA components regarding suggested remedial measures to be taken in the future.

53. (U) Document No. 48 is a report that also contains pre-decisional and deliberative information on several topics, including specific recommendations by the CIA Inspector General to other CIA components regarding suggested remedial measures to be taken in the future (pages 8-10, 106-109); discussions and recommendations among CIA officers concerning additional training and security protocols for the guard staff at the COBALT facility (Pages 61-66); discussions among CIA officers concerning establishment of new detention facilities and factors to consider in that analysis (page 65-66); recommendations by CIA officers regarding improvements to the COBALT facility following Gul Rahman's death; and discussion of potential options regarding the future disposition of CIA detainees (pages 97-99).

54. (U) Document No. 119 is a three-page document that consists of three emails exchanged between employees of the CIA Office of Inspector General in 2004 discussing comments and edits to a draft of the Inspector General's report on the CIA's former detention and interrogation program, including the availability of source material for several paragraphs in the

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draft report. The final version of the report has been disclosed in redacted form as Document No. 48. The emails contain pre-decisional and deliberative information consisting of discussions between CIA officers and attorneys regarding suggested comments and edits to a non-final draft report by the CIA Office of Inspector General.

55. (U) Document No. 137 is an undated 23-page draft memorandum by an unidentified author. Various topics about the CIA's former detention and interrogation program are addressed, with significant discussion of government deliberations regarding what interrogation techniques to authorize for use with Abu Zubaydah. The role of Dr. Mitchell and Dr. Jessen is not a focus of this discussion, although they are referenced. The draft is incomplete and contains various notes and suggestions interlineated in the text regarding how the draft should be revised. Nothing on the face of the document indicates whether those suggestions were adopted. The draft memorandum is pre-decisional and deliberative as it is a non-final memorandum recounting the author's views regarding the history and development of the former detention and interrogation program. The draft nature is evidenced by references in the document consisting of suggestions for topics to include in the memorandum; identification of sources that may have been updated; identification of sources that may provide

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additional information on a topic; and notes reminding the author to fact check.

56. (U) Document No. 188 is an eight-page memorandum from the CIA's Directorate of Science and Technology to the CIA Inspector General providing comments and suggested edits to a draft Inspector General report regarding the CIA detention and interrogation program. The final version of the Inspector General report was produced in redacted form (Document No. 48). The memo is pre-decisional and deliberative because it contains the comments, recommendations, and suggested edits to a non-final draft version of a report authored by the CIA Inspector General.

57. (U) Document No. 210 is a four-page document authored by the CIA's Office of Medical Services that consists of the Office's initial notes, both typed and hand-written, on a draft of the CIA Office of Inspector General's Report on Gul Rahman provided to the Office for review and comment. The document also contains pre-decisional and deliberative information consisting of an assessment of the report's conclusion and the factual basis for the report's conclusion; references to facts rebutting the draft report's conclusion; and comments on the report's recommendations relevant to the Office of Medical Services. The final version of the Inspector General report on Gul Rahman was produced in redacted form (Document No. 47).

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58. (U) Document No. 212 is a three-page memorandum for the Inspector General from the Director of the Counterterrorism Center ("CTC") providing CTC's coordinated response and comments to the draft CIA Office of Inspector General report about the CIA program. The final version of the Inspector General report was produced in redacted form (Document No. 48). The memorandum is pre-decisional and deliberative because it provides comments and suggestions from a CIA component office to the Office of Inspector General regarding errors, omissions, and corrections to the Inspector General's non-final draft report. The memorandum identifies specific paragraphs and sections of the draft report that require correction and revision before final issuance of the report.

59. (U) Document No. 213 is a memorandum for the CIA Inspector General from CIA's Office of Medical Services, providing comments on a draft report of the Office of Inspector General's Report about the CIA program. The final version of the Inspector General report was produced in redacted form (Document No. 48). The memorandum is pre-decisional and deliberative because it provides comments and suggestions from a CIA component office to the Office of Inspector General regarding errors, omissions, and corrections to the Inspector General's non-final draft report. The memorandum identifies specific paragraphs and sections of the draft report that

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require correction and revision before final issuance of the report. Sections of the memorandum also contain discussion of the internal deliberations and recommendations by the Office of Medical Services during the approval process for the use of the enhanced interrogation techniques and with respect to medical guidelines for the use of enhanced interrogation techniques.

60. (U) Document No. 214 consists of two emails (two pages), dated January 2003, containing an exchange between a CIA employee and a CIA attorney about the current status of the draft report on the death of Gul Rahman. The final version of this report on Gul Rahman was produced in redacted form (Document No. 39). The first email contains a request to the report's author explaining that the CIA General Counsel wants an update about the status of the report. The second email contains a response from the report's author explaining the status of the report and a summary of the information the report will likely contain. The document is pre-decisional and deliberative because it provides a summary of the contents of the non-final report on the death of Gul Rahman. The email summarizes the current organization, content, and recommendations of the report, which the author describes in the email as being "in very rough draft" form and about "3/4's done".

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61. (U) Document No. 215 is a two-page memorandum described as a "preliminary note" about the status of the investigation into the death of Gul Rahman. The document is also pre-decisional and deliberative because it is a preliminary note sent from the field comprising the investigator's thoughts as he completed his initial investigation in the days immediately following Gul Rahman's death. The investigation was not yet complete, the cause of death could not yet be confirmed, and he provided a preliminary, non-final update regarding the status of the investigation prior to the submission of his final report. The final version of this report on Gul Rahman was produced in redacted form (Document No. 39).

62. (U) Document No. 221 is a three-page memorandum dated June 2004 for the Deputy Director for Operations from several senior CIA officers regarding a review of CIA's detention and interrogation program. Six documents are appended to the memorandum. The first appended document is a May 2004 memorandum for the Deputy Director for Operations from Chief of the Information Operators Center. The second appended document consists of portions of a June 2004 memorandum in which CIA officers discuss the effectiveness and implementation of the Guidelines on Confinement Conditions for CIA Detainees; and recommendations regarding strategies for improving the effectiveness of the guidelines, implementation of certain

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interrogation techniques, and administrative procedures. The third appended document is a June 2004 paper authored by Dr. Mitchell and Dr. Jessen titled "Using Coercive Pressure in Interrogation of High Value Targets." This document was provided separately to the parties in discovery. The fourth appended document is a June 2003 Memorandum for a CIA officer from a senior Office of Medical Services employee in which the Office of Medical Services comments on the effectiveness of the Guidelines on Confinement Conditions for CIA Detainees and the Guidelines on Interrogations and the effectiveness of several interrogation techniques. The document also includes recommendations regarding monitoring detainee health. The fifth appended document is a November 2003 report discussing some of the actionable intelligence obtained during detainee interrogations. The sixth appended document is an undated glossary of terms concerning interrogation techniques. The document lists and describes various physical and behavioral pressures utilized during interrogations, including operational guidance regarding the use of these methods. The report contains pre-decisional and deliberative information consisting of the various recommendations by the authors of the report regarding the operation, management, and oversight of the CIA program.

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63. (U) Document No. 230 is an 11-page paper marked "draft" prepared by the CIA's Office of Technical Service entitled "Psychological Terms Employed in the Statutory Prohibition of Torture." The draft paper was transmitted by a CIA attorney to attorneys in the Department of Justice's ("DOJ") Office of Legal Counsel in July 2002. The draft paper contains an analysis, from the psychological perspective, of the terms employed in the federal torture statute. The report also includes an assessment from Dr. Mitchell and Dr. Jessen regarding use of enhanced interrogation techniques on Abu Zubaydah and the possible psychological impact of such use. This document is pre-decisional and deliberative because it is marked "draft" and contains analysis of legal terminology from the perspective of psychological and medical professionals in the CIA's Office of Technical Services for the purposes of assisting future CIA decision-making regarding the use of enhanced interrogation techniques on Abu Zubaydah.

64. (U) Document No. 231 is pre-decisional and deliberative, as it contains recommendations for ways in which the CIA's Office of Technical Services can assist in developing the CIA's interrogation capability. The memo contains recommendations regarding staffing, budget, organization, training, and project initiatives.

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65. (U) Document No. 235 consists of a four-page draft memorandum written by the CIA's Office of Technical Services regarding a proposed plan for that office to contribute to the CIA's detention and interrogation efforts. The draft plan contains pre-decisional and deliberative information consisting of recommendations and discussions regarding a proposed plan for the CIA's Office of Technical Services to contribute to the CIA's detention and interrogation efforts. The document is a working draft of a proposed plan of action for other CIA decision makers.

66. (U) Document No. 237 is a six-page draft memorandum dated 2002 from a senior CIA officer in the CIA's Office of Technical Services to another senior CIA officer in the Office of Technical Services. The draft memorandum proposes the establishment of a new office within the Office of Technical Services to handle counterterrorism and interrogation matters. The draft document contains handwritten comments in the margins and on the typewritten text of the document. The document references the use of SERE psychologists generally, but does not specifically reference Dr. Mitchell or Dr. Jessen. The draft also includes a two-page attachment to the memorandum titled "legal and policy guidance" that contains legal analysis of the proposed office's legal authorities. The draft document is pre-decisional and deliberative because it contains recommendations

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and discussions regarding the creation of a new office within the CIA's Office of Technical Services to handle counterterrorism and interrogation matters, including an analysis of the proposed office's legal and policy guidelines. The deliberative nature of the document is also evidenced by the handwritten comments throughout the draft suggesting edits to the document.

67. (U) Document No. 238 is an eight-page memorandum from the Chief of the CIA's Office of Medical Services to the CIA Inspector General providing comments and suggested edits to the Inspector General's draft report regarding the death of Gul Rahman. The final version of the Inspector General report on Gul Rahman was produced in redacted form (Document No. 47). The memo is pre-decisional and deliberative because it contains the comments, recommendations, and suggested edits by a CIA component office regarding a non-final draft version of a report authored by the CIA Inspector General.

(U) Other Miscellaneous Agency Actions or Decisions

68. (U) CIA also withheld other deliberative, pre-decisional documents involving miscellaneous Agency actions or decisions within the context of the former detention and interrogation program. These documents include emails, cables, and draft documents, such as draft handbooks and training material, containing deliberative information. These internal

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records contain discussions among CIA officers in response to official requests for information from the Director of the CIA and DOJ, analysis and opinions as to the future of the detention and interrogation program and lessons learned from the earlier stages of its development, and deliberative training materials. The disclosure of this type of information could suppress the candid assessments necessary for successful intelligence operations, especially sensitive or potentially sensitive ones such as the former detention and interrogation program. Agency decision-making and planning functions most effectively when officers can focus on the substance of their views and not worry about whether their views or particular recollections may be subjected to public scrutiny at some indeterminate time in the future. The documents described in the following paragraphs include these types of internal materials.

69. (U) Document No. 105 is a two-page document consisting of three emails exchanged between CIA attorneys and other CIA personnel in September 2006, discussing requests for information, including a request from DOJ, regarding the background and foundation for the CIA's enhanced interrogation techniques. The emails contain pre-decisional and deliberative information consisting of a recommended response to the inquiries from DOJ.

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70. (U) Document No. 135 consists of an email exchange among CIA officers regarding a proposed response about the origins of the videotaping of Abu Zubaydah's interrogations, in response to a tasking from the Director of the CIA.

71. (U) Document No. 227 is a one-page note from Dr. Mitchell dated June 2002 to a senior CIA officer with three appended documents. The first appended document contains information regarding a recommended curriculum for the interrogator training program and largely copies the information contained in the email. The second appended document outlines the composition of a proposed interrogation team and provides a brief description of the operational responsibilities of each team member. The third appended document is a draft memorandum suggesting ways that the CIA's Office of Technical Services can assist in developing the CIA's interrogation capability. The email and attachments are pre-decisional and deliberative because they contain Dr. Mitchell's personal recommendations to CIA Headquarters for the content and curriculum of a future program to train CIA interrogators.

72. (U) Document No. 233 is a 38-page draft training manual and curriculum dated November 2002 describing the efforts to establish a high value target interrogator training program, to include the content of the training program. The document covers a wide range of topics related to interrogation and

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intelligence gathering, tactics, techniques, and procedures as well as operational protocols to follow during deployment. The document is marked "DRAFT" on every page and therefore contains pre-decisional and deliberative information regarding the content of the interrogation training program prior to adoption of the final manual and curriculum.

73. (U) Document No. 241 is an email among CIA officers discussing the agenda for an interrogator training class. The email attaches a three-page draft synopsis of the training class. The draft synopsis consists of a one-page summary of the purpose and goals of the training class and a two-page schedule for the training class, including dates, times, and subjects to be covered. The synopsis is pre-decisional and deliberative because it is a non-final draft version of training materials to be distributed at a later date. The cover email describes the document as "draft" and states that it is pending final approval from CIA management.

74. (U) Document No. 242 is a compilation of comments and critiques written by an individual who attended a CIA interrogator training course of the individuals who served as instructors during the training course. The document has not redacted the comments pertaining to Dr. Mitchell and Dr. Jessen, but does redact the comments related to other instructors. The redacted comments are pre-decisional and deliberative because

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they reflect comments, suggestions, and critiques of the CIA training course obtained for future use by CIA officers charged with operating the training class in order to assist them in making future adjustments and improvements to the course.

75. (U) Document No. 244 is a cable consisting of Dr. Jessen's recommendations for a proposed handbook governing detainee interrogation and management. The recommendations are general and not detainee specific. The recommendations discuss interrogation strategies, detainee management concepts, and intelligence gathering techniques. The recommendations set forth in paragraph 3 until the end of the document are pre-decisional and deliberative because they reflect Dr. Jessen's personal recommendations of topics and areas to cover in a future CIA operational handbook for detainee management. The recommendations were sent by Dr. Jessen to CIA officers for their consideration and deliberation in connection with a future decision by CIA Headquarters.

III. (U) Assertion of the Attorney-Client Privilege

76. (U) As mentioned above, the CIA has also asserted the attorney-client privilege over 25 of the challenged documents. I understand that the attorney-client privilege protects confidential communications between clients and their attorneys made for the purpose of securing legal advice or services.

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77. (U) I have conducted a document-by-document review of all 25 of these documents. Here, the withheld information involves confidential communications between CIA attorneys in the CIA's Office of General Counsel and other CIA personnel in the performance of the attorney's official duties to provide legal advice to CIA officers and component offices. Moreover, these records implicate a request from a CIA employee or office seeking an opinion on the law, legal advice, or legal assistance with an issue related to an intelligence-related matter. Should this withheld information be disclosed, it would inhibit open communication between CIA offices and their attorneys, thereby depriving the Agency of the full and candid counsel of its legal staff. The following explanations describe the materials subject to the attorney-client privilege which have been properly withheld. I hereby assert the attorney-client privilege over the following challenged documents.

78. (U) Document No. 46 is an 89-page, single-spaced, draft memorandum, expressly marked "draft," entitled "Summary and Reflections of the Chief of Medical Services on OMS Participation in the RDI Program." The attorney-client privilege applies to this document because it contains preliminary legal advice and guidance from attorneys in the CIA's Office of General Counsel, as well as information about particular actions those attorneys took with respect to advising

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CIA officers in the course of the detention and interrogation program.

79. (U) Document No. 47 contains non-final preliminary assessments of Gul Rahman's death, and other preliminary recommendations. The attorney-client privilege is applicable to this document because it consists of descriptions of communications to and from CIA attorneys regarding the legal status of detainees, the legality of certain interrogation techniques, and the preliminary assessment of Gul Rahman's death.

80. (U) Document No. 48 is covered by the attorney-client privilege because it consists of descriptions of communications to and from CIA attorneys regarding the legality of interrogation techniques (page 12), discussions and recommendations among CIA officers concerning additional training and security protocols for the guard staff at the COBALT facility (Pages 61-66); potential legal consequences for CIA officers participating in the detention and interrogation program (pages 94-95); and discussion of potential options regarding the future disposition of CIA detainees (pages 97-99).

81. (U) Document No. 95 consists of an email written by a CIA attorney to other CIA officers concerning a CIA cable copied below the email regarding an extension of Dr. Mitchell's contract with the CIA. The attorney-client privilege is

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applicable because the email is a communication from a CIA attorney containing thoughts, mental impressions, and a recommended course of action regarding Dr. Mitchell's contract with the CIA.

82. (U) Document No. 101 consists of a cable covered by the attorney-client privilege because it is a cable written by a CIA attorney from CTC to other CIA officers, including other CIA attorneys, titled "lessons for the future," containing various recommendations regarding future detention operations.

83. (U) Document No. 102 is a two-page memorandum dated January 10, 2003 from a senior CIA officer in the Office of Technical Services to the Chief of the CTC legal staff, briefly summarizing the resistance strategies used by Abu Zubaydah during interrogation sessions from April to August 2002, provided in response to a request for this information from CTC legal staff and the CIA General Counsel. The memorandum notes that it is based on analysis provided by Dr. Mitchell and Dr. Jessen. The memorandum does not discuss the use of enhanced interrogation techniques with Abu Zubaydah, only the strategies he used to resist questioning. The attorney-client privilege is applicable because the emails were sent to and from CIA attorneys for the purpose of collecting information about the background and foundation for the CIA's enhanced interrogation techniques in response to an inquiry from DOJ.

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84. (U) Document No. 105 is a two-page document consisting of three emails exchanged between CIA attorneys and other CIA personnel in September 2006 discussing requests for information, including a request from DOJ, regarding the background and foundation for the CIA's enhanced interrogation techniques. The attorney-client privilege is applicable because the emails were sent to and from CIA attorneys for the purpose of collecting information about the background and foundation for the CIA's enhanced interrogation techniques in response to an inquiry from DOJ.

85. (U) Document No. 106 consists of cables coordinated between CIA officers and attorneys in the CIA's Office of General Counsel. The attorney-client privilege is applicable because the cables were sent from CIA attorneys to CIA personnel in the field in order to provide background on the legal aspects of the use of enhanced interrogation techniques.

86. (U) Document No. 119 is a three-page document consisting of three emails exchanged between employees of the CIA Office of Inspector General in 2004 discussing comments and edits to a draft of the Inspector General's report on the CIA's detention and interrogation program, including the availability of source material for several paragraphs in the draft report. The attorney-client privilege is applicable because the emails respond to an inquiry from the CIA Office of General Counsel

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regarding questions about specific paragraphs in the draft report, and the emails include a discussion among attorneys in the CIA Inspector General's office regarding who should respond to that inquiry.

87. (U) Document No. 126 consists of two emails regarding the videotapes of Abu Zubaydah's interrogations. The attorney-client privilege is applicable because the email discusses meetings where attorneys in CIA's Office of General Counsel gave legal advice to clients, and the content of their advice.

88. (U) Document No. 127 is a communication from CIA Headquarters to CIA officers in the field regarding a proposal to transfer custody of Abu Zubaydah. The attorney-client privilege is applicable because the cable routing information indicates it was sent by a CIA attorney to another CIA officer for inclusion in a collection of information the attorney was gathering. As this communication was sent in response to a request by an attorney to gather information so that attorney could advise a client, the attorney-client privilege applies.

89. (U) Document No. 130 is a cable sent from a CIA attorney to a CIA officer. The attorney-client privilege is applicable because the cable routing information indicates it was sent by a CIA attorney to another CIA officer for inclusion in a collection of information that the attorney was gathering. As this communication was sent in response to a request by an

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attorney to gather information so that attorney could advise a client, the attorney-client privilege applies.

90. (U) Document No. 131 is a cable between CIA officers in the field and CTC staff at CIA Headquarters. The attorney-client privilege is applicable because the cable was sent by CIA personnel in the field to the CIA CTC legal staff, among others, and contains discussion of potential legal risk to CIA officers who conduct interrogations of Abu Zubaydah.

91. (U) Document No. 165 is a two-page email from January 2003 consisting of an email exchange between a CIA lawyer and Dr. Jessen. The attorney-client privilege is applicable to this document because it consists of communication between a CIA lawyer and Dr. Jessen regarding information discussed at a recent meeting of senior-level CIA officers, including the General Counsel.

92. (U) Document No. 169 is a cable from CIA Headquarters to CIA officers in the field, discussing the interrogation of Abu Zubaydah. The attorney-client privilege is applicable to this document because it consists of communication from CIA Headquarters, which includes CIA attorneys on the distribution and also states that CIA attorneys assisted in drafting the cable, discussing the impact of the DOJ authorization regarding the legality of enhanced interrogation techniques.

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93. (U) Document No. 171 is a one-page email communication written by a CIA attorney to other CIA officers. The attorney-client privilege is applicable to this document because it is a communication from a CIA attorney sent to other CIA personnel responding to questions about the CIA's efforts to collect information to provide to the DOJ in connection with the preparation of the DOJ's memoranda regarding the legality of the proposed enhanced interrogation techniques.

94. (U) Document No. 196 is a cable from a CIA officer to recipients including a CIA attorney with the Office of General Counsel. The attorney-client privilege is applicable to this document because it is a communication prepared for a CIA Office of General Counsel attorney by a CIA officer/client. The cable documents legal advice and authorities with respect to the use of enhanced interrogation techniques.

95. (U) Document No. 211 is a one-page email dated February 2004 from a senior CIA employee to the CIA's CTC legal staff following up on a question an attorney had asked regarding the difference between use of the waterboard at SERE school and use of the waterboard in the CIA program. The attorney-client privilege applies to the email because it was sent by a CIA officer to a CIA attorney for the purpose of providing information that the attorney requested about the use of the

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waterboard in different operational settings for purposes of legal analysis.

96. (U) Document No. 212 is a three-page memorandum for the Inspector General from the Director of the Counterterrorism Center providing the Center's coordinated response and comments to the draft CIA Office of Inspector General report about the CIA's detention and interrogation program. The attorney-client privilege is applicable to this document because it discusses a CIA attorney's efforts to revise and correct errors in an OIG draft report, and the steps the attorney took.

97. (U) Document No. 214 consists of two emails (two pages) dated January 2003 containing an exchange between a CIA employee and a CIA attorney about the current status of the draft report on the death of Gul Rahman. The attorney-client privilege applies to the email because it was written in response to an inquiry from the CIA General Counsel about the status of the draft report and the email includes multiple CIA attorneys as recipients. The author is responding to a request by the CIA Office of General Counsel for an update on Gul Rahman's death, and the email is then incorporated into an email chain sent to CIA Office of General Counsel attorneys.

98. (U) Document No. 216 consists of a short, half-page email from a CIA officer to a CIA attorney forwarding the attorney an operational cable regarding the interrogation of Gul

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Rahman. The operational cable is copied below the email. The attorney-client privilege applies to the email because it was sent by a CIA officer to a CIA attorney informing the attorney of specific actions undertaken during the interrogations of Gul Rahman in order for the attorney to review those actions.

99. (U) Document No. 226 is a communication from CIA officers in the field to CIA Headquarters consisting of a summary of the aggressive stage of Abu Zubaydah's interrogations during August 2002, and a recommended course of action for future interrogations. The attorney-client privilege is applicable because the communication was sent to CIA attorneys for their legal review of the proposed course of action.

100. (U) Document No. 230 is an 11-page paper marked "draft" prepared by the CIA's Office of Technical Services entitled "Psychological Terms Employed in the Statutory Prohibition of Torture." The draft paper was transmitted by a CIA attorney to attorneys in DOJ's Office of Legal Counsel in July 2002. The attorney-client privilege applies to this document because it states that it was prepared in response to a request by the CIA's Office of General Counsel and CTC for information about the interpretation of the terms used in the federal torture statute from the perspective of psychologists and medical professionals. CIA lawyers then provided the report to DOJ attorneys for their consideration in assessing the

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legality of the proposed interrogation techniques on Abu Zubaydah.

101. (U) Document No. 237 document is a six-page draft memorandum dated 2002 from a senior CIA officer in the CIA's Office of Technical Services to another senior CIA officer in the Office of Technical Services. The draft memorandum proposes the establishment of a new office within the Office of Technical Services to handle counterterrorism and interrogation matters, and included legal guidance. The attorney-client privilege applies to this document because it was prepared in conjunction with the provision of legal advice from the CIA Office of General Counsel.

102. (U) Document No. 247 consists of two separate email chains from July 2002. The first email chain is dated July 26, 2002, and contains communications between CIA attorneys and other CIA officers regarding information they were collecting about the interrogation techniques used in the Department of Defense SERE program. The attorney-client privilege applies to the first email because it was sent by a CIA officer to a CIA attorney for the purpose of providing information about the SERE techniques as relevant to the then-pending legal analysis regarding the proposed interrogation techniques.

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IV. (U) Assertion of the Attorney Work-Product Protection

103. (U) I further understand that Petitioners seek information that CIA has deemed protected under the attorney work-product protection. The attorney work-product protection shields from disclosure records created in anticipation of litigation. Accordingly, I understand that the doctrine does not extend to materials created in the ordinary course of business or for non-litigation purposes.

104. (U) I have conducted a document-by-document review of all six of the challenged documents over which CIA asserts the attorney work-product protection. The challenged documents redacted in this case were created by CIA attorneys in anticipation of litigation, such as potential civil lawsuits. Withholding these records will ensure that CIA attorneys can prepare for litigation in the future without having to fear that their correspondence, notes, and memoranda will be subject to discovery. I hereby assert the work product protection over the following challenged documents.

105. (U) Document No. 101 is a cable written by a CIA attorney from CTC to other CIA officers, including other CIA attorneys, titled "lessons for the future," containing various recommendations regarding future detention operations. The document was written in anticipation of potential litigation over the use of enhanced interrogation techniques.

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106. (U) Document No. 105 is comprised of a series of email communications. The emails were sent to and from CIA attorneys for the purpose of collecting information about the background and foundation for the CIA's enhanced interrogation techniques, as well as details about the application of the techniques, in response to an inquiry from DOJ. The document was written in anticipation of potential litigation over the use of enhanced interrogation techniques.

107. (U) Document No. 106 is a cable written by attorneys in CTC, and sent to CIA personnel in the field, in order to provide background on the legal aspects of the use of enhanced interrogation techniques. The cable was written in anticipation of future litigation regarding the use of enhanced interrogation techniques.

108. (U) Document No. 130 is a memorandum written by one attorney in the CIA's Office of General Counsel and sent to another attorney in the Office of General Counsel, forwarding a cable. The attorney work product doctrine is applicable because the cable routing information indicates it was sent by a CIA attorney to another CIA attorney for inclusion in a collection of information that the attorney was gathering in anticipation of litigation on the use of enhanced interrogation techniques.

109. (U) Document No. 214 consists of two emails (two pages) dated January 2003 containing an exchange between a CIA

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employee and a CIA attorney about the current status of the draft report on the death of Gul Rahman (final version at produced at Document No. 47). The document was written in anticipation of potential litigation regarding the death of Gul Rahman.

110. (U) Document No. 230 is an 11-page paper marked "draft" prepared by CIA's Office of Technical Service entitled "Psychological Terms Employed in the Statutory Prohibition of Torture." The draft paper was transmitted by a CIA attorney to attorneys in DOJ's Office of Legal Counsel in July 2002. The document was written in anticipation of potential litigation over CIA interrogations.

V. (U) Conclusion

111. (U) For the reasons set forth herein, I am asserting the deliberative process privilege, the attorney-client privilege, and the attorney work-product protection over the 68 documents remaining at issue in the Petitioners' motion to compel.

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I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this [REDACTED] day of [REDACTED] 2017.

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