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Testimony of Amrit Singh
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Before
The House Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Oversight Hearing on Torture and the Cruel, Inhuman, and Degrading Treatment of Detainees: The Effectiveness and Consequences of "Enhanced" Interrogation

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Thank you for inviting me to testify before the Subcommittee. On behalf of the American Civil Liberties Union (ACLU), its hundreds of thousands of members and activists, and fifty-three affiliates nationwide, I urge you to ensure that all federal agencies and their personnel comply with longstanding legal prohibitions on torture and cruel inhuman and degrading treatment, and to enact legislation that would extend the application of the United States Army Field Manual to agencies other than the Defense Department, including the Central Intelligence Agency.[1]

My name is Amrit Singh. I am a staff attorney at the Immigrants' Rights Project at the ACLU. Over the last four years, I have litigated several cases relating to the rights of non-citizens generally, and more specifically to the torture and abuse of prisoners held in United States custody abroad. I am counsel to plaintiffs in *Ali v. Rumsfeld*, a lawsuit brought against Defense Secretary Donald Rumsfeld and other high-ranking officials by Iraqi and Afghan

[1] *See* Dep't of Army, FM 2-22.3, Human Intelligence Collector Operations (September 2006), *available at* http://www.fas.org/irp/doddir/army/fm2-22-3.pdf; Dep't of the Army, Field Manual 34-52: Intelligence Interrogation (1992), available at http://www.fas.org/irp/doddir/army/fm34-52.pdf, Ch. 8 (entitled "Approach Techniques and Termination Strategies") and Ch. 9 (entitled "Questioning").

former prisoners for the torture they suffered in U.S. military custody. Since 2003, I have been counsel to plaintiffs in *ACLU v. Dep't of Defense*, a lawsuit brought against the Defense Department, Central Intelligence Agency (CIA), Office of Legal Counsel (OLC) and other federal agencies, challenging their withholding under the Freedom of Information of Act (FOIA) of numerous documents relating to the treatment of prisoners held in United States custody abroad. Defendant agencies in that lawsuit continue to withhold numerous critical documents which remain the subject of ongoing litigation, including an August 2002 OLC memorandum that reportedly advised the CIA about the lawfulness of waterboarding and other harsh interrogation methods. In addition, OLC confirmed in court papers filed just this week that it is withholding three May 2005 memoranda that relate to CIA "enhanced" interrogation methods, which according to news reports include methods such as waterboarding, head slapping, and exposure to frigid temperatures.[2]

While we continue to litigate the improper withholding of information, the FOIA lawsuit has forced the government to publicly disclose more than 100,000 pages of its documents relating to the treatment of prisoners held in U.S. custody overseas, all of which I have personally reviewed. Some of the key documents we've obtained through the FOIA are collected in a new book, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond*, (Jameel Jaffer and Amrit Singh, Columbia University Press, 2007), which provides a detailed account of what took place in overseas U.S. detention centers and why. In reliance on government documents—including interrogation directives, FBI e-mails, autopsy reports, and investigative files—we show in the book that abuse of prisoners was not limited to Abu Ghraib but was pervasive in U.S. detention facilities in Iraq and Afghanistan and at Guantánamo Bay.

The government documents collected in the book also show that senior officials directly and indirectly caused the widespread and systemic abuse and torture of prisoners held in United States custody abroad, in large part by violating long established legal prohibitions against torture and cruel, inhuman and degrading treatment; that clinical descriptions of "enhanced" interrogation methods conceal the severity of the mental and physical damage caused by these methods; and that "enhanced" interrogation methods are not only illegal, they are also ineffective. In sum, the dangers associated with employing such methods are plainly evident from the government's own documents.

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[2] Scott Shane, David Johnston & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2005

I. Government Documents Demonstrate That Policies That Violate Longstanding Legal Prohibitions on Torture And Cruel Inhuman And Degrading Treatment Are Likely To Result In The Widespread Abuse And Torture Of Prisoners

Few principles are as well settled in domestic and international law as those that prohibit the torture and cruel inhuman or degrading treatment of prisoners. *See* Detainee Treatment Act of 2005 Pub. L No. 108-148, 119 Stat. 2680, §1003 (Dec. 30, 2005) ("No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment."); 18 U.S.C. § 2340A (prohibiting acts outside the United States that are specifically intended to cause "severe physical or mental pain or suffering"); 18 U.S.C. § 2441 (making it a criminal offense for U.S. military personnel and U.S. nationals to commit grave breaches of Common Article 3 of the Geneva Convention); 18 U.S.C. § 113 (prohibiting assaults committed "within the special maritime and territorial jurisdiction of the United States"); Uniform Code of Military Justice, ("UCMJ"), 10 U.S.C. § 801 et seq. (2000 ed. and Supp. III) (prohibiting U.S armed forces from engaging in cruelty, oppression or maltreatment of prisoners (art. 93), or assaulting prisoners (art. 128)); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51(1984), *entered into force* June 26, 1987 (treaty ratified by the United States in 1994, prohibiting torture and cruel, inhuman or degrading treatment or punishment); Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, art. 3 (mandating the "humane treatment" of prisoners of war and prohibiting "violence to life and person," including "cruel treatment and torture," and "outrages upon personal dignity, in particular, humiliating and degrading treatment"); Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, art. 3 (requiring the same for civilian detainees). The prohibition against torture is considered to be a *jus cogens* norm, meaning that no derogation is permitted from it under any circumstances. [3]

Government documents demonstrate that an official policy that permits deviations from these longstanding prohibitions on torture and cruel inhuman and degrading treatment opens the door to widespread prisoner abuse and

[3] Restatement (Third) of the Foreign Relations Law of the United States § 331 cmt. e & § 702(d) cmt. n (1987).

torture. This fact is evident from a comparison of the Abu Ghraib photographs leaked to the press in April of 2004 and the interrogation directives issued by Secretary Rumsfeld for use in Guantánamo Bay. Several of these images showed naked and hooded prisoners stacked on top of one another; shackled in obviously painful positions to railings, doors, and metal racks; and cowering before unmuzzled military dogs. When the photographs were published, senior administration officials insisted that the conduct depicted therein was that of "rogue" soldiers, and that the abuse of prisoners was not a matter of policy. However, many of the Abu Ghraib photographs reflected the same kinds of abusive methods—such as "stress positions," the "removal of clothing," and the exploitation of "individual phobias" such as the "fear of dogs"—that Defense Secretary Donald Rumsfeld had earlier authorized for use on prisoners at Guantánamo Bay. *See* Administration of Torture at 18, 8, A-83, A-96. Several other Abu Ghraib photographs depicted prisoners wearing women's underwear on their heads and being dragged across the floor on a leash. Those were the same methods that interrogators had employed against Guantánamo prisoner Mohammed al Qahtani, in the fall of 2002. *See id.* at 18, 8-9, A-116, 117. Government documents similarly show that techniques such as stress positions, prolonged isolation, sleep and light deprivation, forced nudity, and intimidation with military dogs--all of which were authorized for use at Guantánamo by Secretary Rumsfeld in December 2002--also came to be used by interrogators in Afghanistan. *See id.* at 19.

While much of the widespread abuse described in government documents reflects direct applications of authorized interrogation methods, some of this abuse is also attributable to "force drift," a phenomenon described by former Navy General Counsel Alberto Mora as the tendency for the "escalation" of force used to extract information "once [an] initial barrier against the use of improper force [has] been breached." *See id.* at 30-31. By issuing directives that violated laws requiring humane prisoner treatment and declaring that the "gloves were off," the chain of command in effect gave interrogators license to apply still more abusive variations of authorized interrogation methods. *See id.* at 31.

Thus, in November 2003, interrogators in Iraq killed Abed Hamed Mowhoush, a fifty-six-year-old Iraqi general, during an interrogation in which they put him into a sleeping bag and tied him up with electrical cord. An Army officer reprimanded for Mowhoush's death asserted that the "sleeping bag technique" was a "stress position" that he considered to have been authorized by a "September 10 2003 CJTF-7 order," and that "[i]n SERE, this position is called close confinement and can be very effective." *See id.* at 33, A-246-47. Numerous autopsy reports attribute the homicide deaths of prisoners in U.S.

custody to "strangulation," "asphyxia," and "blunt force injuries." *See id.* at 29-30. One such autopsy report records the homicide death of a 47-year old Iraqi male who was shackled to the top of a doorframe with a gag in his mouth at the time he lost consciousness and became pulseless and died. *See id.* at 30. Other autopsy reports confirm that in December 2002, U.S. interrogators at Bagram Collection Point in Afghanistan killed two prisoners by subjecting them to "blunt force injuries." *See id.* at 19, 20, A-185-86, 187.

II. Clinical Descriptions Of Enhanced Interrogation Methods Conceal The Severity Of The Mental And Physical Harm Inflicted By These Methods

Documents obtained through the FOIA litigation further demonstrate that clinical descriptions of so-called "enhanced" interrogation methods are deceptive, and that these innocuous sounding methods in fact are likely to cause severe mental and physical damage, especially when employed in combination with other methods.

This is evident from an FBI agent's description of the devastating effects of interrogations in which military personnel employed "environmental manipulation"—i.e. exposure to extreme temperatures—in combination with other techniques:

> On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated and defecated on themselves, and had been left there for 18–24 hours or more[.] On one occa[s]ion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold[.] When I asked the MP's what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved[.] On another occasion, the A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees[.] The detainee was almost unconscious on the floor, with a pile of hair next to him[.] He had apparently been literally pulling his own hair out throughout the night[.]

See id. at 16.

Similarly, FBI agents who observed Guantánamo prisoner al-Qahtani after he had been subjected to "intense isolation for over three months . . . in a cell that was always flooded with light" documented the fact that he "was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end)." *See id.* at 7-8.

In explaining his objection to coercive interrogation methods such as "deprivation of light and auditory stimuli" and "using detainees' individual phobias to induce stress" authorized in December 2002 by Secretary Rumsfeld for use at Guantánamo, former Navy General Counsel Alberto Mora wrote:

> What did "deprivation of light and auditory stimuli" mean? Could a detainee be locked in a completely dark cell? And for how long? A month? Longer? What precisely did the authority to exploit phobias permit? Could a detainee be held in a coffin? Could phobias be applied until madness set in? Not only could individual techniques applied singly constitute torture, I said, but also the application of combinations of them must surely be recognized as potentially capable of reaching the level of torture.

See id. at 13. In this context, news reports of secret OLC memoranda authorizing the CIA to use combinations of enhanced interrogation methods are particularly troubling.[4]

III. Government Documents Demonstrate That "Enhanced" Interrogation Methods Are Not Only Illegal, They Are Also Ineffective.

Government documents procured through the FOIA litigation confirm that so called "enhanced" interrogation methods are not only illegal, they are also ineffective at producing reliable intelligence. Seasoned law enforcement officials have documented their position that aggressive interrogation methods—including so called "SERE" (Survival, Evasion, Resistance, Escape) methods mployed by the Defense Department at Guantánamo Bay—"were not effective or producing intel that was reliable." *See Administration of Torture* at 10, A-130, 131.

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[4] Scott Shane, David Johnston & James Risen, *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2005

One FBI document—a memorandum written by the FBI's Behavioral Analysis Unit (BAU)—states that, between late October and mid-December 2002, FBI personnel stationed at Guantánamo Bay concluded that interrogators with the Defense Intelligence Agency's Defense Human Intelligence Services (DHS) "were being encouraged at times to use aggressive interrogation tactics in [Guantánamo] which are of questionable effectiveness and subject to uncertain interpretation based on law and regulation." The BAU memorandum continues:

> Not only are these tactics at odds with legally permissible interviewing techniques used by U.S. law enforcement agencies in the United States, but they are being employed by personnel in GTMO who have little, if any, experience eliciting information for judicial purposes. The continued use of these techniques has the potential of negatively impacting future interviews by FBI agents as they attempt to gather intelligence and prepare cases for prosecution.

See Administration of Torture at 11, A-133.

In another document that appears to have been forwarded to Guantánamo Commander Major General Geoffrey Miller in late 2002, the FBI also complained about aggressive interrogation methods proposed by the Defense Intelligence Agency's Defense Human Intelligence Services (DHS). The document states: "Many of DHS's methods are considered coercive by Federal Law Enforcement and [Uniform Code of Military Justice] standards." The same document continues: "[R]eports from those knowledgeable about the use of these coercive techniques are highly skeptical as to their effectiveness and reliability." *See Administration of Torture* at 11, A-140.

The FBI's concerns about aggressive interrogation techniques were shared by some military personnel, including the Defense Department's Criminal Investigation Task Force ("CITF"), a component responsible for investigating crimes committed by detainees before their capture. There were two occasions when CITF personnel met with Major General Miller to object to interrogation methods on the grounds that these methods would not help in prosecuting detainees. *See id.* at 12. On December 2nd, 2002, Colonel Brittain Mallow, CITF's commander at Guantánamo, prohibited CITF agents from "participat[ing] in the use of any questionable techniques" and ordered them to report "all discussions of interrogation strategies" to CITF leadership. *Id.* at 12, A-145. Two weeks later, a CITF Special Agent in Charge wrote a memorandum

questioning a December 10th Defense Department document titled "SERE interrogation Standard Operating Procedure." The memo suggests that CITF personnel shared the FBI's concern that information obtained through SERE techniques would be unreliable and also unusable in court proceedings. "Both the military and [law enforcement agencies] share the identical mission of obtaining intelligence in order to prevent future attacks on Americans," the memo states. "However, [law enforcement agencies] ha[ve] the additional responsibility of seeking reliable information/evidence from detainees to be used in subsequent legal proceedings." *Id.* at 12-13, A-18.

CONCLUSION

For all of the foregoing reasons, I urge you to ensure that all federal agencies and their personnel comply with longstanding legal prohibitions on torture and cruel inhuman and degrading treatment, and to enact legislation that would extend the application of the United States Army Field Manual to agencies other than the Defense Department, including the Central Intelligence Agency.