

Secret Detention, Extraordinary Rendition, & Torture: New Evidence of DOD Cooperation with CIA Ghost Detention Program

By [Center for Constitutional Rights \(CCR\)](#)
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Rights Groups Release Documents Obtained in FOIA Case Relating to Secret Detention, Extraordinary Rendition, and Torture Program

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New Evidence of DOD Cooperation with CIA Ghost Detention Program

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February 12, 2009, New York and Washington, DC—Documents obtained through a Freedom of Information Act lawsuit confirm Department of Defense involvement in the CIA's ghost detention program, revealed three prominent human rights groups today. The groups—**Amnesty International USA (AIUSA)**, the **Center for Constitutional Rights (CCR)**, and the **Center for Human Rights and Global Justice (CHRGJ)**—today released documents obtained from the U.S. Department of Defense (DOD) and U.S. Department of State (DOS), resulting from their lawsuit seeking the disclosure of government documents that relate to secret detention, extraordinary rendition, and torture. At a public press conference, the groups revealed that these documents confirm the existence of secret prisons at Bagram and in Iraq; affirm the DOD's cooperation with the CIA's ghost detention program; and show one case where the DOD sought to delay the release of Guantánamo prisoners who were scheduled to be sent home by a month and a half in order to avoid bad press.

"These newly released documents confirm our suspicion that the tentacles of the CIA's abusive program reached across agency lines," said **Margaret Satterthwaite, Director of the NYU International Human Rights Clinic**. "In fact, it is increasingly obvious that defense officials engaged in legal gymnastics to find ways to cooperate with the CIA's activities. A full accounting of all agencies must now take place to ensure that future abuses don't continue under a different guise."

While 928 of the 950 pages of documents from the Transportation Command of the DOD are reprinted news articles, there is one internal email dated February 17, 2006—relating to Guantánamo detainees scheduled for release—that is of note. It recommends "hold[ing] off on return flights for 45 days or so until things die down. Otherwise we are likely to have hero's welcomes awaiting the detainees when they arrive." The email also recommends transfer in a smaller, more discrete plane and has attached a reference to the United

Nations (UN) report released around that time criticizing Guantánamo.

“It is astonishing that the government may have delayed releasing men from Guantánamo in order to avoid bad press,” said **CCR attorney Gitanjali Gutierrez**, who represents many of the men held in Guantánamo and has made 30 trips to the base since 2004. “Proposing to hold men for a month and a half after they were deemed releasable is inexcusable. The Obama Administration should avoid repeating this injustice and release the innocent individuals with all due haste.”

The 78 documents obtained from the DOS consist of 55 copies of press reports, transcripts of press briefings and public statements, or talking points for use with the press and public; seven public reports by NGOs, UN bodies, and the U.S. government; and 16 internal documents that disclose no new information.

The 2007 lawsuit is based on Freedom of Information Act (FOIA) requests dating back to 2004. Morrison & Foerster LLP serves as co-counsel in the case. Previous government releases also included documents largely already in the public record, including, in one instance, a copy of the Geneva Conventions.

“Out of thousands of pages, most of what might be of interest was redacted,” said **Tom Parker, Policy Director for Counterterrorism, Terrorism and Human Rights, for AIUSA**. “While the sheer number of pages creates the appearance of transparency, it is clear this is only the tip of the iceberg and that the government agencies have not complied with spirit of President Obama’s memo on Freedom of Information Act (FOIA) requests. We call on Attorney General Eric Holder and the Obama administration to put teeth into the memo and work actively to comply with FOIA requests.”

Examples of DOD Joint Chiefs of Staff (JS) and TRANSCOM Documents of Interest:

- JS 986 (May 28, 2004 Information Paper : “Applicability of Geneva Conventions to “Ghost Detainees” in Iraq) shows that the DOD interpreted the “security internee” provisions of the Geneva Conventions to allow for “ghosting” of detainees by prohibiting the International Committee of the Red Cross (ICRC) from visiting. It also shows that the DOD recognized that indefinitely prohibiting the ICRC from visiting or failing to notify the ICRC of the existence of detainees was illegal under the Geneva Conventions.
- JS 1026 & 1048 (Identical pages with different redactions from the Vice Chairman of the Joint Chiefs of Staff’s “Detainee Update” presentation regarding “Internment Serial Number Policy [ISN],” appear to be dated August 2005) show that the DOD did not, as a matter of course, register detainees with the ICRC until they had been in custody for up to 14 days and that authorization was sought to hold some individuals for up to 30 days without ISN/registry with ICRC to “maximize intelligence collection,” even though “there is some disagreement as to legal basis to go beyond 14 days.” These policies demonstrate the ease with which the CIA could have used DOD facilities as “sorting facilities” without having to worry about ICRC oversight or revelation of the ghost detainee program.
- JS 712, 713, 903, 919 (December 8, 2005, records from Detainee Senior Leadership Oversight Council Meeting) contain references to a previously unreleased section of the Church Report and discuss the need for the DOD to develop and enforce guidelines governing their relationship with “Other Government Agencies,” including the CIA, in order

to regulate interrogation and other “operations overseas.” These documents demonstrate that the DOD and CIA were in an ad hoc relationship, apparently unconstrained by formal guidelines.

- TRANSCOM 1 (February 17, 2006, email exchange between unnamed USTRANSCOM Political Advisor and General Norton Schwartz, then TRANSCOM Commander, currently the Air Force Chief of Staff) shows that in early 2006, in response to the release of a critical UN special rapporteur report on Guantánamo, high-level personnel within the US Transportation Command discussed delaying the return of releasable Guantánamo detainees to avoid bad press.
- JS 43 (July 25, 2007, ICRC Report of Undisclosed Detention Facility at Bagram) Highly redacted report from ICRC concerning secret detention facility at Bagram Air Force Base.
- Multiple Records detail the implementation of recommendations from the Ryder Report concerning detainee operations in Iraq, including the need to develop appropriate programs for juveniles and mentally ill detainees. The records also review in detail the efforts to implement the recommendations from numerous reports related to detainee operations, including the following
 - Comprehensive Reviews: Schlesinger (comprehensive review of detainee operations); Church (review of DOD interrogation operations); Church Gaps & Seams Report;
 - Assessments: Ryder (Detainee Operations), DAIG (Functional Assessment), NAVY IG (Detainee Care at GTMO), Jacoby (Detainee Operations in Afghanistan), and Miller (Interrogation Operations), USAIR IG (Reserve MP/MI Unit);
 - Investigations: Taguba (800th MP Brigade); Kerm (205th MI Brigade); CID (serious crimes); Formica (detainee abuse); SOUTHCOM (FBI interrogation memos); and
 - Ongoing Investigations as of the date of document: DAIG (senior accountability); Navy IG FOIA; Surgeon General Medical review
- The records from the Joint Chiefs of Staff include:
 - April 28, 2005 DSLOC (Detainee Senior Leadership Oversight Committee) Open Recommendations Review (begins at JS 44);
 - Aug 3, 2005 DSLOC Open Recommendation Review (begins at JS 426);
 - Dec. 8, 2005, DSLOC Meeting (begins at JS 770);
 - Aug. 19, 2004, Brief for the Secretary of Defense on Gaps & Seams (Church) (begins at JS 947);
 - Jan. 27, 2005, DSLOC Briefing for all OSD Components (begins at JS 987); and
 - Date unclear, Detainee Update briefing for Vice Chairs Joint Chiefs of Staff (begins at JS 1022)

AIUSA, CCR, and NYU CHRJG filed FOIA requests with several U.S. government agencies, including the CIA, DOD, DOS, DOJ, and DHS beginning in 2004. This is the first time the DOD has provided any documents in response.

To see the most recent documents from the DOD and DOS, as well as the prior filings and the documents previously released through this litigation, click [here](#).

For more information or copies of legal filings in the case and released documents, please contact jnessel@ccrjustice.org, opghaffen@juris.law.nyu.edu, or ssingh@aiusa.org.

For more information about the organizations involved, please see their websites: www.ccrjustice.org, www.chrgj.org and www.amnestyusa.org.

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The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

- 30 -

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