

## STATEMENT OF CLIVE A. STAFFORD SMITH

I, Clive A. Stafford Smith, JD, OBE, of Bridport, Dorset, will say as follows:

1. I am a dual U.K.-U.S. national. I was born in Cambridge in 1959, and spent 1978-2004 in the U.S., and have been domiciled in the U.K. since then.
2. I received my law degree from Columbia Law School in New York in 1984. I am a lawyer licenced to practice in the state of Louisiana. I am a member of the Bar of the Supreme Court of the United States, as well as of various among the inferior U.S. Federal Courts. I have been licenced to practice in the U.S. since 1984.
3. I helped to found the London-based charity Reprieve in 1999, when we were focused primarily focused on death penalty litigation. Since 2002, I and my colleagues at *Reprieve* have represented some 87 prisoners detained by the U.S. at Guantánamo Bay, and others in secretive detention localities around the world. We have carried out extensive investigations into European and other state complicity in U.S. secret detention, rendition and disappearances. We have also for the past ten years had a parallel investigative and legal focus on U.S. extrajudicial killings, in particular those involving drones, in and around the Afghan conflict.
4. I have been asked to comment on matters relating to the charges against Julian Assange, concerning the publication by Wikileaks of the Afghan / Iraq War Logs, The Guantanamo Files, and the US diplomatic cables.
5. In particular, I have been asked to comment on:
  - a. The challenges facing individuals and human rights organisations such as Reprieve, who are seeking to investigate and challenge serious humanitarian and human rights violations by the US and other States, in the context of the Afghan and Iraq conflicts and the wider “War on Terror”.
  - b. The relevance of the above Wikileaks documents in relation to that work of myself and my organisation.
  - c. The ongoing challenges faced by human rights investigators working in this field.

### **Brief Background**

6. Before re-gearing one of the organisations that I founded, *Reprieve*, to deal with the hundreds of people being detained at Guantanamo Bay, from 1984 onwards I had worked almost exclusively representing people facing the death penalty in the Southern United States.
7. Since 2002, I have tried to help reunite all the Guantánamo detainees with the rule of law. When Guantánamo Bay was first opened in 2002, then-Secretary of

Defense Donald Rumsfeld assured the world that the detainees were the “worst of the worst” terrorists in the world, captured on the post-9/11 battlefield of Afghanistan. At that time, while I was sure that some mistakes had been made, I thought for the most part it was likely that most people had been mixed up in some kind of wrong-doing. The principle that drove our litigation was simple - the right to know what crime you are meant to have committed, and to receive a fair trial.

8. We had a serious issue of pleading that we had to resolve with *Rasul* – whether we could legitimately plead that our clients were, on information and belief, innocent and that they had been tortured. There were rumours of torture, to be sure, but nothing that was well-substantiated. In the end, we felt it was fair to plead that, pending access to our clients, on the principle that the government could seek to prove us wrong if they wished. Interestingly, they never did in those first two and a half years. It turned out that our decision was fully justified - almost everyone had been tortured and abused and (far from being the worst of the worst) an extraordinary number of them had nothing to do with terrorism.
9. By the time (June 2004) the U.S. Supreme Court ruled that the writ of Habeas Corpus extended to the detainees at Guantánamo Bay, and ordered that lawyers should have access to our clients, I still thought that most of the people I would meet there had indeed been on the battlefield, and would have some explaining to do. I soon realised I was wrong. Many people held at Guantánamo Bay had not even been detained in Afghanistan, but in Pakistan, and had been turned over to the U.S. not because they were guilty of crimes, but because the U.S. was offering substantial bounties for exclusively Muslim men.
10. Many detainees I met seemed to have had little or nothing to do with the war in Afghanistan – even assuming it should be deemed a crime triable in the U.S. for someone, Afghani or otherwise, to take up arms against the U.S.-led invasion in October 2001. This much is now clarified by the simple fact that 740 of the 780 detainees are no longer in Guantánamo, and nobody can now be released without a finding, by a combination of U.S. intelligence agencies, that he was no threat to the U.S. or its allies.
11. However, no matter how credible I might find a particular client’s story, it would take an enormous amount of investigation to back such a claim up.

### **Investigative challenges – the scope of the problem**

12. In U.S. death penalty defence work, it is normal practice for criminal defence lawyers to work closely with investigators, and for investigation to be prioritised as a key element of defence preparation. Indeed, within obvious ethical constraints, I do a great deal of the investigation myself, because in my experience over 36 years as a lawyer, cases cannot be won without facts.
13. Investigators will be part of any competent legal team and work closely with lawyers. They will carry out extensive research, and be very closely involved with the development of defence evidence. I spent many years in the Deep South litigating to establish rules whereby the state would be forced to provide adequate

funding for investigation and experts, vital to any case, particularly one where the death penalty is at issue.

14. Naturally, we transposed this approach to my new cases representing prisoners held in Guantánamo Bay, and later other victims of U.S. crimes and legal violations in the “War on Terror”. It swiftly became clear however, that alongside the practical challenges of gaining access to my clients, that investigation around their cases was fraught with novel challenges.
15. One might think that the general dearth of compelling prosecution evidence would have made my life as a defence lawyer easy. The problem with Guantánamo, and even more so with even more secretive detentions, was that the government needed little or nothing to hold a person forever. Such rules as exist today allow for a presumption of reliability for the government evidence, and for the use of hearsay and redacted material to be used against him, all under a scheme where the client does not have access to much of the evidence.
16. Many of these challenges were unique and unprecedented for me. The consequences of these challenges persist to the present day, most obviously in the fact that no legal forum anywhere in the world has yet been able to engage the U.S. government in a credible process of legal accountability. At the same time I still represent seven prisoners in Guantánamo Bay, and the supposed basis for their detention is often as shifting and tenuous as it was 18 years ago, sometimes more so.
17. The matters described below first became plain in our initial work in representing our clients in Guantánamo Bay. As Reprieve’s work developed to encompass looking at cases of individuals held in other U.S. detention locations around the world, and victims of violations other than detention and torture (assassination, for example), the challenges we faced were variations on similar themes.

### **Investigative challenges - Guantánamo Security rules**

18. I have a security clearance, so I see the classified evidence. I know that if I do not follow the classification rules I will lose my ability to represent people in Guantánamo, and also face possible criminal sanctions. For these reasons, I respect the rules in their entirety, whether I agree that they are logical or not. However, these rules thwart an investigation to reveal the truth in fundamental ways.
19. Along with two other lawyers, after the first renditions by the U.S. of prisoners taken from Afghanistan to Guantanamo Bay, I brought *Rasul v Bush* on February 19<sup>th</sup>, 2002. This case would extend the rule of law to what was a complete legal black hole. We lost in the District Court and the Court of Appeals, and it was June 2004 – almost two and a half years in to the litigation – when the U.S. Supreme Court ordered access for lawyers to Guantánamo Bay.
20. Even so, a regime had to be established to guide how we would be permitted access to our clients. These rules included:

- a. Anyone who wished to have access to the detainees had to go through a security clearance process.
  - b. We had to agree to meet under conditions that, while supposedly confidential, we knew were subject to monitoring by the authorities. Indeed, there have been various instances when we caught them snooping on our supposedly privileged meetings.
  - c. We had to agree that any notes we took while visiting our clients would be taken from us at the end of any meeting and sent to Washington. Then, originally, we had to fly to Washington DC to type up our notes, which would then be reviewed by the so-called “Privilege Review Team” who would decide what we would be allowed to take out.<sup>1</sup>
  - d. We had to sign a statement guaranteeing that we would never seek funding from the U.S. government.
21. There were many implications of these (and other) rules. For example, we have had to fight tooth and nail to get basic information through the system. The first client I met in 2004 was Moazzam Begg and I typed up some 30 pages on how he had been tortured, how he had witnessed a murder of a prisoner in Bagram Air Force Base, and his current mental health status. It was all censored because the torture and murder apparently reflected “methods and means of interrogation” and the mental health material raised privacy concerns (which clearly my client had waived for me). It took weeks of struggle to get these absurd “rules” changed.
  22. In terms of simply visiting the clients, it costs roughly as much to fly down to Guantánamo from mainland U.S. as it does to fly across the Atlantic. We have to pay all our own costs in Guantánamo (the cost of a room has gone up five-fold since 2004). The real visiting hours have been reduced from roughly 63 hours in 2004 to roughly 25 hours a week today, making the work vastly less efficient. The flights have become ever more difficult - now it is only possible to go on military flights, which are sometimes cancelled or rescheduled at the last minute, and which require one to spend at least a week at the base.<sup>2</sup>
  23. I would have to check to be precise, but I believe I have been to the prison almost forty times since 2004, and I have spent more than an entire year of my life there. This pales in significance compared to the time I and my colleagues – lawyers

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<sup>1</sup> This was hugely expensive. I would have to fly to Guantánamo from the UK, meet my client, send the notes to Washington and then, some three weeks later when the notes arrived, fly to Washington, type up the notes, and then squabble with the PRT over what would be released, sometimes taking them to court over their decisions. Eventually we did prevail upon them to review our hand-written notes rather than requiring us to type them all up – but that only works if the lawyer’s writing is legible. I write everything in capitals to make sure I don’t have to cross the Atlantic to type them up. (No computers or recording devices are allowed.)

<sup>2</sup> Under the recent rules announced in light of Covid-19, if I went there I would have to be quarantined for two weeks, all alone, before I can even visit clients.

and investigators – have spent investigating the cases. For example, I have myself been at least once from either the U.S. or the U.K. to the following countries on behalf of the Guantánamo clients: Afghanistan, Bahrain, France, Jordan, Mauritania, Morocco, Pakistan, Qatar, Sudan, and Yemen. My colleagues have been to many other countries.

24. There are innumerable other obstacles to the work of bringing the rule of law to our clients. For example, I have generally – but rather randomly – been denied access for an independent mental health expert for my clients who are clearly suffering from mental disorders as a result of their torture and isolation over many years. The cost would anyway be prohibitive - recently I calculated that the cost of taking an expert for a minimum of a week, after securing a security clearance for him, would have been more than \$30,000, a sum that is far beyond our charitable means.

### **Investigative challenges - the reality of Guantánamo cases**

25. Without revealing anything that I am not allowed to reveal, I can say that I have been surprised at just how dreadful the U.S. intelligence has been that has been used to justify keeping my clients indefinitely detained without trial.
26. I have – as an American citizen – also been profoundly shocked by the crimes committed against my clients. While there have always been lacunae in the U.S. application of human rights, if you had asked me in 2000, I would never have believed that my government could have cast aside centuries of the evolution of the law in a moment, and descended into officially authorized torture in the manner that occurred in the aftermath of 9/11.
27. One frustration has been the fact that, with a security clearance, I have access to clients and some of the evidence revealing these crimes, but the classification rules prevent me from either achieving justice for the prisoner or at least bringing the case to the court of public opinion such that public pressure may force accountability.
28. I can point to certain concrete examples of how this has been so frustrating, since we have been able to declassify a certain amount of the material, albeit after several years.
29. For example, we were able to get a declassified version of the traverse we filed in the case of Younus Chekkouri. To be sure a large amount of important material that *I had written* had been redacted, and the censors blacked out some ridiculous things which would be obvious to anybody from their context.<sup>3</sup> Furthermore, the

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<sup>3</sup> Over the years I have noted a number of consistently inconsistent, but silly, redactions being made from time to time in such documents. For example, here the censor clearly redacts the Internment Serial Number (ISN) of some of the informants – but only sporadically, making it obvious (for example) that the many redactions in the case of one informant are clearly the same person as in the previous and subsequent paragraphs. There have similarly been absurd redactions involving numbers only, where the fact that a client's child had, perhaps, a 9<sup>th</sup> birthday would be redacted insofar as the number 9 was used. I would know, from an entirely

heavily redacted version was only produced five years after we filed it. Despite this, the version that was released revealed some 1,800 pages of material, described over the 255 pages of our traverse, with its attached 332 exhibits, that we had used in our effort to disprove the allegations made against Mr. Chekkouri.

30. What I detail below, however, should be seen in the overall context: Mr. Chekkouri's traverse is the only one of significance among my clients that has been declassified in the 18 years I have worked on Guantánamo Bay. Again, without going into details, the similar injustices that I have witnessed in many cases remain secret to this day.
31. There are some Wikileaks Guantánamo materials that are publicly posted on the New York Times website. The NYT "Guantánamo Docket"<sup>4</sup> contains a large number of public documents that are styled "Combatant Status Review Tribunal" (CSRT) or "Administrative Review Board" (ARB) documents. The CSRT and ARB documents were officially released by the U.S. Government and comprise unclassified "assertions" about most of the 780 detainees. Using Mr Chekkouri as an example, the U.S. released two CSRT documents and five ARB documents, ranging from two to sixteen pages long.
32. The single so-called "Wikileaks" document (labelled "JTF-GTMO Assessment") apparently contains a slightly more detailed rendition of the assertions in the CSRT and ARB documents. From studies conducted by others, including the journalist Andy Worthington, it would seem that the same is generally true for all the hundreds of Guantánamo documents allegedly leaked by Wikileaks. While the public analysis of these documents that has been done by Worthington and others reveals important patterns – for example, the fact that certain informants and allegations appear over and over in scores of cases – the Wikileaks material is only a starting place, the tip of a very important discourse, that would seem to be important to the public interest, about the abysmal intelligence used to detain prisoners and make important public policy decisions.
33. When I heard about the Wikileaks Guantánamo leak, I assumed it would be the kind of think I was used to seeing – the 1800-odd pages of mainly-classified material that I had used to try to disprove the government's case in *Chekkouri*. Instead, the JTF-GTMO Assessments were the worst possible case the government could come up with against each of our clients, an assemblage of the highly unreliable material that was being used in the habeas cases, without the impeachment material.
34. It is worth noting that if there were 13 pages of the *Chekkouri* JTF-GTMO Assessment, we managed to declassify much of the 1800-odd pages of material that undermined the government's often-outlandish claims – roughly 138 pages for each page of their allegations. Thus, with years of work we had to put into the investigation, we were able to expose a mass of material that essentially disproved everything significant that the government alleged.

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legitimate source, that the number was 9 as the family would tell me. (This is a hypothetical example, but based on a frequent reality.)

<sup>4</sup> <https://www.nytimes.com/interactive/projects/guantanamo>.

35. Indeed, because of the seeming bias of the leaked documents, we approached the NYT to ask them to put the disclaimer over the documents that you see on the website:

*“Note: These documents include some assertions that cannot be independently verified. Many allegations have been contested by detainees and their lawyers, and some have been undercut by other evidence.”*

36. A brief discussion of the massive pile of documents relevant to Mr. Chekkouri’s case illustrates a number of factors about the “Wikileaks” Guantánamo materials. Little or nothing complained of by the authorities would seem to be material that truly threatened national security. For example, to the extent that they complained that the identity of their informants was revealed, they later declassified the same ISNs and names of the informants in the *Chekkouri* traverse.
37. Within the confines of the “Secure Facility” in the Washington area, we are allowed to review classified material. However, we have to secure this material from government lawyers who have been strongly resistant to revealing embarrassing materials about their witnesses. Because I was involved in so many cases, I gradually became familiar with half a dozen or more “Super Snitches” in Guantánamo. All of these men made up stories against Mr. Chekkouri. These were (per materials that were belatedly unclassified, 14 years into the Guantánamo experiment):
- a. ISN 111, Motalib
  - b. ISN 230, Al Jadani
  - c. ISN 252, Basardah
  - d. ISN 489, Janko
  - e. ISN 653, Arkan
  - f. ISN 695, Bakr
38. To give just a sense of the many examples laid out in the Chekkouri traverse, Basardah – perhaps the most notorious of all informants – gave a statement that lasted 85 minutes where he informed on 93 individual detainees. (*Chekkouri Traverse, at 207*) This statement, where he inculpated more than one person per minute, was used against Mr. Chekkouri and others to justify their indefinite detention, despite his being found unworthy of belief in a series of cases.
39. Again, merely as an example, another of these informants was a “deeply disturbed man” whose efforts to ingratiate himself to the U.S. military interrogators were largely focused on his desire to go to America to get penis enlargement surgery:

“I was never a 'homo' or gay, but I have a problem. I can't get married because my penis is small sized. I went to the doctor and they said there is no help. They said I couldn't have an operation or surgery of any kind because I'm poor. I want to get the operation or drugs in America or Europe. Who can help me? I can't talk to my family about this problem because it is too shameful. This is not my fault and I still feel like a man. This is bullshit and it's a big problem for me. When I was first in Iraq I knew I needed America to help myself because I don't want to stay alone in life.” (*Declassified Chekkouri Traverse at 248*)

40. Statements by these “Super Snitches” continued to be used as the basis of detaining someone indefinitely without trial even where the military’s own interrogators found an informant to be incredible (*Chekkouri Traverse, at 202*), the military CSRT found an informant to lack credibility (*Chekkouri Traverse, at 175*) or a series of federal judges had found the informant unworthy of belief. (*Chekkouri Traverse, at 202-05*) Indeed, such materials are still used against the detainees I continue to represent today.
41. None of this material can be found in the Wikileaks materials. Thus, what Wikileaks allegedly let into the public domain was, in many ways, the best face that the U.S. government could put on the crimes it had committed against the Guantánamo prisoners. I even wondered whether they had been intentionally leaked to try to justify the existence of the prison. It was only when we – the lawyers and investigators – put in countless hours piecing together the broader information that a fuller picture of the crimes became apparent.

### **Filling in the gaps through a worldwide investigation**

42. There are many facets of the unreliable evidence in Guantánamo that are not revealed by the documents that were gradually turned over to us. For example, it was very difficult for me to understand in the beginning how it was that I was encountering so many detainees who seemed to be totally innocent of anything that could remotely be deemed a crime. Some of the explanations for this leaked out from surprising places: former President Pervez Musharraf, for example, boasted in his book *In The Line of Fire* that perhaps half of the Guantánamo detainees had been “sold” for bounties to the U.S. by Pakistan. They were sold with a story (normally in my experience bogus) to induce payment.
43. The case of Mohammed el Gharani is one of many that illustrates the pernicious impact of these bounties. While the U.S. initially accused Mr. el Gharani of being an al Qaida financier, and a member of the London Cell of Al Qaida, our extensive investigation revealed a rather different story.
44. The U.S. could not even get his age right; instead of being in his mid-20s when he was detained in Karachi, he was actually just 14 when he (an African whose family came from Chad) left the racial discrimination of Saudi Arabia to seek a cheap education in Pakistan.
45. He was sold to the U.S. for a bounty and then interrogated by an American using a translator who spoke Yemeni, rather than Saudi, Arabic. Mr. el Gharani, who

was young and terrorised, misunderstood the word the translator used for “money” (phonetically “*zalat*”) for the Saudi word for “salad”, and when he was asked what “*zalat*” he took to Pakistan, he said he didn’t need to take any – he could get it where he liked. This was the foundation of a fairly ridiculous misunderstanding.

46. But when they worked this out they came up with the notion that – when he would actually have been nine years old – he had been a leading figure in the London cell of Al Qaida, even though he had never left Saudi Arabia at the time. I never worked out where they came up with that mad theory, though I have to assume that it came from an informant who knew he had a lawyer with a British accent, and who confected the story.
47. We represented Mr. el Gharani pro bono – as we represent everyone – and after some years of work, we ended up before a conservative judge in Washington who wrote a scathing opinion ordering rejecting the government’s theories. Far from fighting in Tora Bora, the young lad had never been closer to Afghanistan than Karachi – roughly a thousand kilometres to the south.
48. Then one might consider the case of Ahmed Errachidi, a Moroccan who had been a resident of Britain, who was thought to be the “General of al Qaida” by the U.S. military.
49. The notion that he was a big-time terrorist apparently grew out of an interrogation that was apparently conducted when he was floridly psychotic. I came to understand this one time I saw him when he was in Guantánamo as he was psychotic then – my father was diagnosed bi-polar and could sometimes behave in similar ways.
50. The investigation into Mr. Errachidi encompassed getting a medical release from him through the censors (no easy matter sometimes) and tracking down his work records, material detailing how he had been sectioned in the U.K., as well as other material from Morocco.
51. He was only a chef – “the cook who became the general”. He was ultimately released in 2007.
52. There are many other similar cases which have taken a large amount of investigation and litigation to force what has often been a limited disclosure of truth concerning criminal acts committed against our clients.

### **The Guantánamo Bay issues remain vital and current today**

53. It must be said that the U.S. has, in most respects, resisted what is in my view a vital and public debate on the issue of torture. Indeed, all this must be put in the context of the only truly official investigation into torture by the U.S. authorities,

which was the report issued by the Senate Intelligence Committee.<sup>5</sup> While the Executive Summary, itself redacted, corroborated what some of my clients had told me, it was an extraordinary document in the world of “inquests” insofar as the Senate did not interview any of the victims of torture, but rather relied solely on the documentation in the hands of some of the perpetrators, the Central Intelligence Agency.

54. This remains a very important and active issue today. My current Guantánamo client Ahmed Rabbani, for example, detailed how he was sold for a bounty by the Pakistanis to the U.S. in September 2002, with a false story that he was a notorious terrorist called Hassan Ghul. He insisted from the start that he was a taxi driver from Karachi. I found him credible when we first talked more than a dozen years ago, but proving his case was not easy.
55. A key practical and logistical barrier to investigating many of the crimes committed against my clients has been the trans-national nature of the violations against them. Mr. Rabbani’s is a relatively “typical” Guantánamo Bay defence case insofar as he is ethnically *Rohingya*, his family coming from Burma (Country A); he grew up in Saudi Arabia (Country B); he spent some time in the U.A.E. (Country C); he moved to Karachi, Pakistan (Country D); he was sold for a bounty to the U.S. (Country E); he was rendered into the Afghan war zone (Country F) where he was taken to the CIA’s notorious “Dark Prison” for around seven months of “enhanced interrogation techniques” – aka “extreme torture”, before being taken to another secret CIA detention location we still cannot identify for sure, and then to Guantánamo Bay in Cuba (Country G). Meanwhile his rendition flight to Guantánamo in September 2004 included other torture victims who had been abducted in a number of different countries (Egypt and Thailand included), and tortured in Jordan and Morocco among other places.
56. So here we immediately have many countries with potential relevance to Mr. Rabbani’s case. Still, along with colleagues, I worked on his case for at least seven years before I was able to identify the most important fact in his case. The Senate Intelligence Committee Report confirmed that he had been subjected to “enhanced interrogation techniques” in the US-run secret prison in Afghanistan called COBALT, and that the real Hassan Ghul had been captured and brought there at the same – before being released back to Pakistan where he went back to his terrorist ways prior to being killed by a U.S. drone strike in 2012.
57. This extraordinary information has not yet resulted in Mr. Rabbani’s release largely because President Donald Trump has declared – by tweet, later confirmed in practice – a U.S. policy that nobody would be released from Guantánamo during his Administration.

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<sup>5</sup> See *Report of the Senate Select Committee on Intelligence Committee study of the Central Intelligence Agency’s detention and interrogation program* (2014), at <https://www.intelligence.senate.gov/sites/default/files/documents/CRPT-113srpt288.pdf>.

58. The only way to get Mr. Rabbani out is to skirt the White House by working out the same kind of deal that another detainee struck to testify against one of the High Value Detainees (HVDs) in a military commission. We tried to do this, but the authorities refused him a deal unless he would repeat as fact the statements he had made under torture concerning the HVDs. To his credit, he refused because he had confected false statements to try to get his torturers to back off. He said he could not repeat things that were untrue – even if it would result in his liberation. This is, of course, a violation of the Convention Against Torture on multiple levels. Cf. CAT Article 15 (“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”).
59. Meanwhile Mr. Rabbani is the only Guantánamo prisoner who has been publicly named in the current investigation by the International Criminal Court into war crimes in Afghanistan. This further illustrates the important public policy issues. The U.S. is, in my view, required by CAT Article 9(1) to assist in an investigation into torture:

States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

60. Far from this, President Donald Trump has recently announced an Executive Order that threatens sanctions against anyone who helps the I.C.C. investigate American crimes.<sup>6</sup> This is another attempt to prevent the truth from emerging.

### **The public policy issues at stake**

61. The Wikileaks materials in the *Chekkouri* case also reflect the government reciting statements by ISN 1458 (Binyam Mohamed) as if they were true, without mentioning the fact that he was rendered to Morocco for 18 months where the interrogators took a razor blade to his genitals, before rendering him on to the Dark Prison in Kabul for further torture.
62. The case against Mr Mohamed in Guantánamo began as a potential death penalty case where he was alleged to have planned a nuclear attack on the U.S. A brief analysis of this case reflects the kind of work that has to be done to reach the truth in this kind of case.
63. In our defence of Mr. Mohamed, we conducted an investigation that spanned many countries including the Ethiopia (where he was from); Afghanistan, Morocco and Pakistan (in each of which country he had been tortured); Spain (where the plane that rendered him had stopped for the crew to take some R&R); the UK (where he had lived); the US (where his siblings lived and where we traced the aircraft crew); and so forth.

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<sup>6</sup> <https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-certain-persons-associated-international-criminal-court/>.

64. We worked on litigation in a series of countries. One case was against the UK for its complicity (in London); one was against the aircraft company that rendered him (in California); we raised a series of issues regarding the unethical pressure put on me and my co-counsel in his military commission case in Guantánamo; we brought a *habeas* case in Washington; and so forth.
65. The “dirty bomb plot” was hugely significant in that it was a matter of international public policy, rather than “merely” a false confession that might cause trouble for an individual prisoner. The “intelligence” prompted U.S. Attorney General John Ashcroft to announce that the “plot” had been thwarted, involving Jose Padilla and Mr. Mohamed. After years of laborious investigation and work, we were able to expose it as total nonsense, and eventually the prosecutors came down from the death penalty to an offer of time served in his military commissions case – an offer we roundly rejected, resulting eventually in his release without any charges at all.
66. The nub of it all went back to when Mr. Mohamed was being tortured in Pakistan, when the U.S. agents asked him what he knew about nuclear bombs. He refused to cooperate with them, asserting his rights and saying he would only speak with the British authorities as that was where he lived. This made them think he was guilty. So they applied torture, whereupon – to get them to leave him alone - he eventually admitted he had once read an article that detailed “how to build a nuclear bomb”.
67. Anyone with an O-level in physics would have known that he was talking about a spoof. The advice was to put Uranium in a bucket and, with that as a “centrifuge”, swing it around your head to separate the U-235 from the U-239.
68. I traced the spoof article to a magazine from the 1970s, and eventually located the daughter of one of the people who wrote it, then working as a journalist, who was aghast that her mother’s spoof had been the basis of this supposed plot.<sup>7</sup>
69. The U.S. did eventually make some disclosures under pressure from the federal judge, and I got to depose their lead agent for several hours – but the revelations that they made were extremely limited compared to the true extent of the horrific crimes committed against Mr. Mohamed. Indeed, we had to bring litigation in the U.K. to force disclosure of some forty documents in the possession of the U.K. intelligence agencies that may not have been revealed to us in the U.S. proceedings. This litigation became a hotly contested case where the court found that the U.K. had been “mixed up” in the torture committed against Mr. Mohamed. However, the U.K. and the U.S. coordinated to try to limit the materials that the public would see and it was only through strenuous litigation that the public learned some of what had been done to him.

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<sup>7</sup> See Rosa Brooks, *How Mom sent a guy to Gitmo*, L.A. Times (Feb. 26, 2009), at <https://www.latimes.com/archives/la-xpm-2009-feb-26-oe-brooks26-story.html> (describing how her mother, Barbara Ehrenreich, co-wrote a spoof where she “advised those struggling to enrich uranium to make ‘a simple home centrifuge. Fill a standard-size bucket one-quarter full of liquid uranium hexafluoride. Attach a six-foot rope to the bucket handle. Now swing the [bucket] around your head as fast as possible. Keep this up for about 45 minutes.’”).

70. The U.S. never admitted that Mr. Mohamed had been tortured in Morocco, but I went there myself to corroborate what he had told me about how he was flown in and taken to a particular torture camp.
71. We also worked closely with the EU authorities to secure flight records that showed where the aircraft had travelled – matching the flight records with what Mr. Mohamed had told me.
72. With investigative allies, we then laboriously traced these flight records to get the hotel records of the crew from a hotel in the Mediterranean, which provided us with the telephone records, such that we were able to trace the crew back to their homes in, for example, North Carolina. This then became material that helped our colleagues at the American Civil Liberties Union to bring the case that ended up as *Mohamed v. Jeppesen Dataplan*, 614 F.3d 1070 (9<sup>th</sup> Cir. 2010). The government again fought to keep everything secret.
73. When we secured his release to the U.K., the intelligence agencies leaked one of Mr. Mohamed’s statement to the BBC, and it was only because I was on hand at the interview that I was able to prevent the journalist from using a statement (with which I was intimately familiar, and which has been elicited after torture) in violation of the U.N. Convention Against Torture.
74. Mr. Mohamed became one of several people who successfully sued the U.K. government for compensation for U.K. complicity in the crimes committed against him.

### **The Assassination Program**

75. The US modus operandi was, as we now know, specifically designed to disguise locations and confuse the victim. This served a dual purpose. In the language of the CIA psychologists who devised the “enhanced interrogation” (experimental torture) programme, controlling detainees’ experience to such an extent that they had no idea where they were, and were simultaneously completely dependent on their captors, was supposed to facilitate a state of “learned helplessness”. According to the CIA psychologists, inducing this state had previously worked to make dogs compliant and so they thought it would probably work on humans too.
76. This component of the CIA modus operandi also served to disguise the locations of the secret prisons, and protect the identities of the individuals and States helping the US carry out its illegal secret rendition and torture programme. If a detainee did not know where he had been held, what states he had been transited through, or the nationality of his gaolers and interrogators, it would obviously be far more difficult to hold perpetrators to account.
77. The investigative challenges have been many and the cornerstone of all of the challenges has been the multi-levelled regime of secrecy. In many cases these have been even greater than in Guantánamo Bay.

78. One such area is the U.S. Assassination Programme. I have been very interested in this issue, as I believe it to be a fundamental violation of human rights, applying the death penalty without bothering with the formality of a trial.
79. Indeed, with a Washington law firm, we have brought the first major challenge to this in the case of Bilal Abdul Kareem, an African-American journalist reporting from the vicinity of Idlib in Syria on the struggle against the regime of President Bashar Assad.
80. The issue is essentially outlined in a recent backgrounder on the website of the U.S. branch of *Reprieve* that we put up when the government filed its brief in late June 2020:<sup>8</sup>

The US Government has asked the US Court of Appeals for the District of Columbia Circuit to affirm the dismissal of American journalist Bilal Abdul Kareem's challenge to his Government's apparent decision to assassinate him without telling him why, or affording him the constitutional right to due process.

Mr Kareem is a recipient of the Edward R. Murrow and Peabody Awards, who grew up in Mount Vernon, New York, and used to be a stand-up comedian in New York City. He has been reporting on the conflict from Syria since it began. In 2016, he narrowly escaped being killed on five separate occasions, including two strikes on cars he was travelling in and a further two strikes on the headquarters of his news agency, On The Ground News. He believes the US Government has mistakenly identified him as a terrorist for interviewing armed groups in Syria, a vital part of his journalistic work. Bilal exposes the untold stories of the Syria conflict and aims to build cross-cultural dialogue between East and West. He was inspired by his mother, Phyliss Phelps – a journalist during the civil rights era and a lifelong member of the NAACP and Rainbow Coalition.

In June 2018, the U.S. District Court for the District of Columbia ruled that Mr Kareem had presented a plausible case that he had been placed on the 'kill list' – and that, if true, then the Government must afford him ordinary due process rights, rejecting the suggestion that this was a solely "political question" delegated to the president. However, on a second motion to dismiss the US Government succeeded on the grounds that the case could not be heard without reference to state secrets, the disclosure of which would prejudice national security. The district court's dismissal of Mr Kareem's case means that the government may target an American journalist in secret, without reference to the US Constitution.

Mr Kareem appealed the district court's decision to the US Court of Appeal for the District of Columbia Circuit, arguing that whether a US journalist is on the kill list should not be a "state secret" and that the lower court's ruling simply allows for the death penalty without any due process. The US

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<sup>8</sup> <https://reprieve.org.uk/press/us-government-claims-american-journalist-has-no-right-to-challenge-its-decision-to-assassinate-him/>.

Government filed its brief in response to Mr Kareem’s appeal last evening, asserting that the need to preserve “state secrets” trumps a US citizen’s constitutional right to life and that the case poses a political rather than a legal question – the latter argument one that was failed in the district court. At a time when the presumption of guilt and state sanctioned violence dominates our news feeds, Bilal Abdul Kareem is simply asking ‘Are you trying to kill me? And if so, why?’

81. It took a lot of investigation to work up this case – I have a privileged memo that is more than 350 pages long detailing all the cases we looked into – and we brought this case because it additionally raised the issue targeting journalists.
82. The other plaintiff in the District Court case was Ahmad Zaidan, an Al Jazeera journalist who had been targeted – according to a leaked powerpoint presentation – because of the metadata on his phone that showed he had interviewed a number of notorious people up to and including Usama Bin Laden himself. Of course, there is hardly a journalist in the world who would not do that, and Mr. Zaidan was, we understand, chosen by Bin Laden because he spoke Arabic and worked for the station that broadcasts to the largest Arab audience.
83. The various high profile examples of U.S. government attacks on journalists, leakers and those journalists who worked with them, has since the earliest days of the Afghan conflict, appeared to have had a strong chilling effect, with one key effect being that there has always been a dearth of individuals from inside government, willing to go “on the record” to evidence U.S. violations. For this reason, documentary evidence such as the Wikileaks disclosures, have become of key importance in our work to evidence war crimes and human rights violations by the US and its allies.

### **Drone Killings**

84. An example of the way that Wikileaks documents have enabled us at Reprieve to evidence grave violations that we may otherwise have struggled with, involves our work on drone killings in Pakistan. WikiLeaks cables have contributed to court findings that US drone strikes are criminal offences and that criminal proceedings should be initiated against senior US officials involved in such strikes. We have worked closely with our colleagues at the Islamabad-based Foundation for Fundamental Rights on these cases, as well as with Imran Khan (now Pakistan Prime Minister) who made a major issue out of these human rights violations over several years.
85. In 2011 and 2012, three Petitions were brought to the High Court of Peshawar challenging the legality of US drone strikes in Pakistan.<sup>9</sup> These petitions raised

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<sup>9</sup> *F.M.Sabir (Advocate, High Court Peshawar) v Federation of Pakistan (through Ministry of Defence and 5 others)* (W.P.No. 3133/2011); *Defence of Pakistan Council (through its Provincial Convenient Syed Yousaf Shah and 6 others) v Federation of Pakistan (through its Secretary Interior and 4 others)* (W.P.No. 3134/2011); and *Noor Khan v Federation of Pakistan (through Governor Khyber Pakhtunkhwa and 5 others)* (W.P.No. 1550-P/2012).

‘identical questions of law and fact’<sup>10</sup> and included prayers to order the Respondents:

- a. to protect the ‘right to life’ of its citizens and use force if need be to stop extrajudicial killings with drones;
- b. to provide redress for the criminal offences committed by those involved inside and outside Pakistan in drone operations;
- c. to immediately contact the Security Council of the UN for violations of Pakistan’s territorial sovereignty and demand the adoption of a resolution condemning drone strikes and requiring the US to stop the strikes in Pakistan;
- d. to gather data of victims of drone strikes and encourage any such victims to come forward for the wrong done to them and approach the UNHRC and Special Rapporteur on extrajudicial, summary or arbitrary executions for launching their complaint;
- e. to use its ‘right to reparation’ for the wrongful act under customary international law and international law on State Responsibility and seek remedies available therein.<sup>11</sup>

86. One of my motivations for working on these cases was that the U.S. drone campaign appeared to be horribly mismanaged and was resulting in paid informants giving false information about innocent people who were then killed in strikes. For example, when I shared the podium with Imran Khan at a “jirga” with the victims of drone strikes, I said in my public remarks that the room probably contained one or two people in the pay of the CIA. What I never guessed was that not only was this true but that the informant would later make a false statement about a teenager who attended the jirga such that he and his cousin were killed in a drone strike three days later. We knew from the official press statement afterwards that the “intelligence” given to the U.S. involved four “militants” in a car; we knew from his family just him and his cousin going to pick up an aunt. There is a somewhat consistent rule that can be seen at work here: it is, of course, much safer for any informant to make a statement about someone who is a “nobody”, than someone who is genuinely dangerous.

87. This kind of horrific action was provoking immense anger, causing America’s status in Pakistan to plummet, and was making life more dangerous for Americans, not less.

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<sup>10</sup> *Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [1] [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr\\_Justice\\_Dost\\_Muhammad\\_Khan/wp\\_1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp_1551-12.pdf)

<sup>11</sup> *Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [1] (i)-(vi). [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr\\_Justice\\_Dost\\_Muhammad\\_Khan/wp\\_1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp_1551-12.pdf)

88. Our client's Petition No. 1550-P/2012 — *Noor Khan v Federation of Pakistan (through Governor Khyber Pakhtunkhwa and 5 others)* — used Wikileaks cables to illustrate the Government's stance towards drone strikes and, in particular, to highlight the background to the Parliament's unanimous resolution of 14 May 2011 that 'continued drone attacks on the territory of Pakistan are not only unacceptable but also constitute violations of the principles of the Charter of the [UN], international law and humanitarian norms'.<sup>12</sup> Specifically, the Petitioner noted that:

there have been reports in the media partly based on cables leaked through Wikileaks suggesting a very different stance on the part of the Respondents (the Government) in private. Wikileaks cables include official correspondence mainly between US diplomatic missions abroad and the State Department of the United States of America, leaked onto the internet. These cables include comments and observations sent by the US Ambassador in Pakistan. Petitioner has seen a very different view of his government from these documents. One such cable reports a meeting held on August 21, 2008 between the US Ambassador at the time (Ms. Anne Patterson), the Prime Minister of Pakistan (Mr. Yousaf Raza Gillani) and the Interior Minister (Mr. Rehman Malik): \*\*\* Malik suggested we hold off alleged Predator attacks until after the Bajaur operation. The PM brushed aside Rehman's remarks and said '*I don't care if they do it as long as they get the right people. We'll protest in the National Assembly and then ignore it.*'<sup>13</sup>

89. Importantly, WikiLeaks cables released in November 2010 had revealed the Pakistani Government's support for the drones even when they were making public protests for the sake of domestic appearances. (A selection of the more than 4,000 cables were also published by Pakistan's leading English-language newspaper, *Dawn*, in May 2011.)<sup>14</sup> The cache included the cable quoting former Prime Minister Yousuf Raza Gilani.<sup>15</sup>

90. According to Saba Imtiaz, a Pakistani author and journalist, "[t]he publication of the leaked cables was extraordinary in that ... the documents showed how closely the United States was involved in Pakistani politics and revealed the specific types

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<sup>12</sup> Writ Petition under Article 199 of Constitution the Islamic Republic of Pakistan, 1973. [14] [https://reprise.org.uk/wp-content/uploads/2014/10/2012\\_04\\_13\\_PUB\\_FFR\\_petition\\_17th\\_March\\_drone\\_attack\\_Pakistan.pdf](https://reprise.org.uk/wp-content/uploads/2014/10/2012_04_13_PUB_FFR_petition_17th_March_drone_attack_Pakistan.pdf)

<sup>13</sup> Writ Petition under Article 199 of Constitution the Islamic Republic of Pakistan, 1973. [14] [https://reprise.org.uk/wp-content/uploads/2014/10/2012\\_04\\_13\\_PUB\\_FFR\\_petition\\_17th\\_March\\_drone\\_attack\\_Pakistan.pdf](https://reprise.org.uk/wp-content/uploads/2014/10/2012_04_13_PUB_FFR_petition_17th_March_drone_attack_Pakistan.pdf) (quoting US embassy cables: *Pakistan backs US drone attacks on tribal areas* (23 Aug. 2008, 14:12).

<sup>14</sup> Jane Perlez. 'Newspaper in Pakistan publishes Wikileaks cables.' *New York Times* (20 May 2011) <https://www.nytimes.com/2011/05/21/world/asia/21wikileaks.html>

<sup>15</sup> Cable 08ISLAMABAD2802\_a: Immunity for Musharraf likely after Zardari's election as President (23 August 2008) [https://wikileaks.org/plusd/cables/08ISLAMABAD2802\\_a.html](https://wikileaks.org/plusd/cables/08ISLAMABAD2802_a.html)

of demands and request made by Pakistani officials and political to US officials.”<sup>16</sup>

91. In a single judgment delivered on 11 May 2013 — *Foundation for Fundamental Rights (FFR) v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94) — Chief Justice Dost Muhammad Khan held, *inter alia*, that:

- a. drone strikes carried out by the CIA and US Authorities are a ‘*blatant violation of basic human rights*’ — including ‘*a blatant breach of absolute right to life*’<sup>17</sup> — and ‘*a war crime*’;<sup>18</sup>
- b. drone strikes carried out against individuals not engaged in combat with the US Authorities or Forces ‘*amount to breaches of International Law and Conventions on the subject matter*’ and are thus ‘*absolutely illegal*’ and a ‘*blatant violation of the sovereignty of the State of Pakistan*’;<sup>19</sup>
- c. the civilian casualties (and damage to property) are an ‘*unconscionable crime on the part of the US Authorities including CIA*’;<sup>20</sup>
- d. the US Government ‘*is bound to compensate all the victims’ families*’;<sup>21</sup>
- e. the Government of Pakistan shall ‘*ensure that in future such drone strikes are not conducted and carried out*’ and, if proper warnings do

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<sup>16</sup> Saba Imtiaz. ‘What do Pakistanis really think about drones?’. In Peter Bergen and Daniel Rothenberg (eds). *Drone Wars: Transforming Conflict, Law and Policy* (2015) 89-112, 96-97.

<sup>17</sup> *Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [12] [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr Justice Dost Muhammad Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf)

<sup>18</sup> *Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [22](i) [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr Justice Dost Muhammad Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf)

*Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [22](ii) [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr Justice Dost Muhammad Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf)

<sup>20</sup> *Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [22](iii) [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr Justice Dost Muhammad Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf)

<sup>21</sup> *Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [22](iv) [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr Justice Dost Muhammad Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf)

not work, ‘shall have the right ... and legal obligations to shutdown the drones’;<sup>22</sup>

- f. the Government of Pakistan is ‘directed to take the matter seriously before the Security Council of the UNO’ and, if that does not succeed because of the exercise of veto power by the US, then an ‘urgent meeting of the General Assembly be requisitioned’.<sup>23</sup>

92. There is no direct reference within the judgment to the content of the Wikileaks cables. However I can state with confidence that the cables were a key part both of our evidence-development process and our submissions to the Court. The case was a landmark judgment for drone victims and their families in Waziristan. Naureen Shah, an academic at Columbia Law School and co-author of several studies on drones, emphasised that the ruling increased the pressure on the U.S. to respond to claims of civilian deaths in drones strikes, noting that:

“The US government can’t afford to be silent on civilian deaths any more...The Peshawar High Court says that drone strikes are carried out “at random” and kill hundreds of civilians. That’s a damning charge that may be overstated. The US government must answer it with investigations and public disclosure about who is being killed and on what legal basis. If the US does not respond, it risks the appearance of indifference – to human life, and to the rule of law.”<sup>24</sup>

93. The result of this litigation is that the drone strikes, which were in their hundreds and causing many of innocent deaths, stopped very rapidly. There were none reported that I know of in 2019. In my view, as a frequent visitor to Pakistan, this not only put a stop to a massive human rights abuse, but also saved the United States from further damage to an already tarnished reputation.

### **Legal limits and political blocks**

94. Even where we have been able to gather sufficient evidence to, in principle, start a criminal investigation, or commence litigation aimed at seeking confirmation of the facts of a violation, further information, and ultimately redress for victims, we have been blocked in almost every jurisdiction by legal limitations and by politics.

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<sup>22</sup> *Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [22](v) [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr Justice Dost Muhammad Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf)

<sup>23</sup> *Foundation for Fundamental Rights v Federation of Pakistan (and 4 others)* (2013 PLD Peshawar 94), W.P. No 1551-P/2012, Judgment (11 May 2013) [22](vi) [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr Justice Dost Muhammad Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf)

<sup>24</sup> Alice Ross. ‘Pakistani Court rules CIA Drone Strikes are Illegal.’ *The Bureau of Investigative Journalism* (9 May 2013) <https://www.thebureauinvestigates.com/stories/2013-05-09/pakistani-court-rules-cia-drone-strikes-are-illegal>

95. This has, importantly, been evidenced by Wikileaks. For example, the following is some of the evidence of political blocking and interference by the U.S. in rendition investigations in Spain and Germany:

- a. Cable 07BERLIN242, issued on 6 February 2006: Records, *inter alia*, that US Deputy Chief of Mission (DCM) ‘reiterated [the US’s] strong concerns about the possible issuance of international arrest warrants in the al-Masri case’ and ‘pointed out that [the US’s] intention was not to threaten Germany, but rather to urge that the German Government weigh carefully ... the implications for relations with the US.’ The German National Security Advisor ‘assured the DCM that the Chancellery [was] well aware of the bilateral political implications of the case’. The DCM ‘pointed out that the USG would likewise have a difficult time in managing domestic political implications if international arrest warrants are issued.’<sup>25</sup>
- b. Cable 06MADRID1490, issued on 9 June 2006: Recording, *inter alia*, that ‘[r]egarding the CIA flights issue, Vice President de la Vega said Spain’s inclusion in the Council of Europe report had caught the Zapatero Government totally off guard and she insisted Spain had nothing to hide on the issue. She said the Spanish Government felt comfortable that it could contend with domestic concerns regarding CIA flights through Spain, asking only that the USG provide Spain any relevant information to avoid any surprises.’<sup>26</sup>
- c. Cable 06MADRID3104, issued on 28 December 2006: Records, *inter alia*, that the Mallorcan ‘Free Association of Attorneys’ and a group of Mallorcan professional filed a motion calling upon a National Court Justice to name 13 presumed USG officials as suspects in connection with the transit of a CIA flight that stopped in Palma de Mallorca in January 2004, and that ‘[i]t is possible that this case could eventually result in an official request to the USG.’ Noted that ‘[t]he National Court Prosecutor in this case...is well known to [the US] as Spain’s liaison to the Embassy’ and that the US ‘find him to be an engaging and helpful colleague and anticipate that he will be sensitive to the Spanish Governments’ preference that this case not proceed.’<sup>27</sup>

96. There has also been the following evidence relating to investigations into Poland renditions:

On 30 August 2011 Wikileaks published a partial extract of the original cable, classified “confidential”, sent by the US Ambassador in Poland to the Secretary of State Office and dated 13 December 2005. This was a report prepared in connection with the Polish Foreign

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<sup>25</sup> Cable 07BERLIN242: Chancellery aware of USG concerns: [https://wikileaks.org/plusd/cables/07BERLIN242\\_a.html](https://wikileaks.org/plusd/cables/07BERLIN242_a.html)

<sup>26</sup> Cable 06MADRID1490: Ambassador’s meeting with Vice President [https://wikileaks.org/plusd/cables/06MADRID1490\\_a.html](https://wikileaks.org/plusd/cables/06MADRID1490_a.html)

<sup>27</sup> Cable 06MADRID3104: Spain/CIA flights: Plaintiffs demand 13 USG officials be named as suspects [https://wikileaks.org/plusd/cables/06MADRID3104\\_a.html](https://wikileaks.org/plusd/cables/06MADRID3104_a.html)

Minister's upcoming visit to Washington. It read, in its relevant part, as follows:

*“Meller’s [Foreign Minister] staff expects that the rendition and “CIA prisons” issue will continue to dog the Polish government, despite our and the Poles’ best efforts to put this story to rest. In response to sustained media pressure, PM Marcinkiewicz announced December 10 that his government will order an internal probe ‘to close the issue’. Meller anticipates being asked about renditions by the Polish press while in Washington, and the MFA [Ministry for Foreign Affairs] has asked that we remain in close contact to coordinate our public stance.”*

### **Ongoing challenges**

97. The evidence discussed above is only a small amount of the material concerning U.S. war crimes and human rights violations. I speak as an American citizen when I say that it is of vital ongoing significance to the very soul of our nation. I am currently working on a number of cases where similar issues. We have a long way to go.

The foregoing is a true and accurate account of my knowledge of this matter.

Done this 14<sup>th</sup> day of July, 2020.



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Clive A. Stafford Smith