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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SALEH, et al., Plaintiffs, v. TITAN CORPORATION, et al., Defendants.	Case No. 04 CV 1143 R (NLS) **CLASS ACTION** **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT TITAN CORPORATION'S MOTION TO DISMISS SECOND AMENDED CLASS ACTION COMPLAINT** **FILED BY FACSIMILE** Date: February 7, 2005 Time: 2:00 p.m. Dept. 5 Judge: Hon. John A. Rhoades

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

State Statutes

Federal Regulations

OTHER AUTHORITIES

Titan Corporation has filed a Motion To Dismiss Plaintiffs' Second Amended Complaint and Memorandum in Support Thereof (hereafter "Titan Mem.") that boldly asserts without authority that "Titan can no more be held liable to plaintiffs than can the government," *Titan Mem.* at 3. But Titan fails to explain why a corporation alleged to have engaged in criminal misconduct (including robbery, rape and torture) enjoys sovereign immunity merely because it entered into a contract with the United States. What the United States contracted for was a steady supply of linguists, not a steady supply of torturers. Indeed, the United States' contracts tried to protect against that very possibility by requiring Titan to supervise the linguists and ensure persons capable of bad acts were not sent to Iraq. *See* the Statement of Work C-1.4.1, C-1.4.1.2, C-1.5, C-1.6, C-1.12, C-1.13 attached as Exhibit J to Titan Mem. Titan's opportunistic and cynical attempt to wrap itself in the United States flag should not persuade this Court to dismiss Plaintiffs' Second Amended Complaint ("SAC").

Plaintiffs respectfully request that the Court deny Titan's Opposition and permit the case to be tried by a jury composed of persons who reside in the same district as Titan's corporate headquarters. Permitting the judicial process to proceed in the regular course is, as set forth fully below, required by the controlling legal precedents. Further, permitting the judicial process to proceed best serves the United States' overall interest in holding torturers accountable for their misdeeds. Dismissing the case without factual discovery and telling torture victims they cannot get their day in American courts to challenge the misdeeds of an American corporation who let employees rape and torture detainees serves no interest other than preserving ill-gotten corporate largesse.

STATEMENT OF FACTS

Titan consistently misstates the facts and extrapolates from those misstated facts to erroneous legal conclusions. Thus, although the Motion to Dismiss should really be focused only on Plaintiffs' allegations, Titan's approach makes it necessary for Plaintiffs to correct the factual record. A more complete summary of relevant facts is set forth in Plaintiffs' opposition to the

CACI Defendants' Motion to Dismiss ("Opposition to CACI"), which is hereby incorporated by reference.

This Statement is not exhaustive but responds to Titan's more glaring misstatements. *First*, Titan asserts that Plaintiffs "stated forthrightly in their opening press conference that they had no specific evidence linking Titan to the mistreatment alleged." That is not quite right. What Plaintiffs forthrightly said[1] is that, although there was ample evidence linking Titan employees to the torture known to have occurred at the Abu Ghraib prison, Plaintiffs (some of whom were tortured at places other than Abu Ghraib) are not all able to identify their torturers by name. With some exceptions, that remains true, and is easily remedied by discovery, as discussed below in Section I, below.

The evidence linking Titan to the torture at the Abu Ghraib prison has been and is being compiled by the Plaintiffs and the United States. For example, the United States obtained the following first-hand graphic account describing the conduct of an Abu Ghraib translator:

> I saw the translator Abu Hamid fucking a kid, his age would be about 15-18 years. The kid was hurting very bad and they covered all the doors with sheets. Then when I heard the screaming I climbed the door because on top it wasn't covered and I saw Abu Hamid, who was wearing the military uniform putting his dick in the little kid's ass. I couldn't see the face of the kid because his face wasn't in front of the door. And the female soldier was taking pictures.

See Taguba Report Annex 26, Statement of Kasim Mehaddi Hilas (attached as Exhibit B).

See also Taguba Report Annex 26, Statement of Joseph M. Darby, at 2 (attached as Exhibit C):

> Q: In the folder labeled "28 Oct", there is a picture named "DSC00008". Do you recognize anyone in this photo?

[1] Plaintiffs learned immediately after the press conference that the CACI Defendants had sent someone under the false pretense of being a member of the press to attend and videotape the press conference. Thus, the CACI Defendants likely have a video recording (presumably shared with Titan) that will reveal the precise comments made by counsel for Plaintiffs. Immediately after the press conference, the CACI Defendants publicly threatened to file for sanctions against the attorneys who filed suit, but they have not done so. The relevant CACI press release threatening Plaintiffs' counsel is attached as Exhibit A.

> A: Yes, the large man with his hand on the head of this prisoner is an interpreter named "Addle". I don't know his full name or how to spell it, but that's definitely him. I don't know where he works, but I see him around the prison.

In short, there is an ever-growing body of evidence supporting the veracity of the facts alleged in Plaintiffs' SAC – namely, that Titan employees and others conspired to torture detainees.

Second, Titan's Memorandum asserts the premise that the military exercised complete control over Titan linguists; so therefore Plaintiffs are really challenging the military's actions, not Titan's actions.[2] *See, e.g.*, *Titan Mem*. at 8 ("[t]he military's control over Titan's employees started before they were hired, and became total once they arrived in Iraq"); and 10 ("[i]t is conduct pursuant to this direction [*i.e.*, the Interrogation Rules of Engagement], and the direction received from every level of the military, that plaintiffs contend create a cause of action against Titan.").

In addition to the obvious fact that the Interrogation Rules of Engagement did not call for rapes such as that described above, the contract governing its relationship with the United States directly contradicts many of Titan's sweeping assertions that the military had total control over Titan employees.[3] *See Titan Mem. Statement at Work Exhibit J ("Statement")*. The Statement requires Titan to act as follows:

- Titan shall provide an on-site representative to be on call 24 hours per day, 7 days a week. *Statement at C-1.3.2*.
- Titan shall provide a work force that possess the skills, knowledge and training needed for the linguist positions. *Statement at C-1.4.1*.
- Titan shall provide enough on-site managers to supervise their employees. *Statement at C-1.4.1.1*.

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[2] As should be clear from even a cursory reading of the SAC, Plaintiffs challenge Titan's conduct towards persons being detained, not the military's conduct of the Iraq war on the battle fields. Plaintiffs allege the Torture Conspirators, which includes Defendants' employees and an identifiable number of military and government officials who decided torture should be used as a weapon against terrorism, tortured them. *See, e.g.*, SAC ¶ 1.

[3] Indeed, were Titan's allegations about the military having complete control accurate – which they are not – Titan would be admitting to breaching the laws regarding government contracting. *See Section IV below*.

- Titan shall provide an on-site management that is knowledgeable, mature and experienced enough to work directly with senior military officials. *Statement at C-1.4.1.1.3*.

- Titan shall ensure that the linguists are not "a potential threat to the health, safety, security, general well-being or operational missions of U.S. Forces." *Statement at C-1.4.1.2*.

- Titan shall ensure that the linguists are familiar with and adhere to "standards of conducts as prescribed by U.S. Army instructions, this contract and laws of host nation." *Statement at C-1.4.1.2(f)*.

- Titan shall screen out from potential employment as category II and III linguists anyone who, among other things, had any pending criminal or civil charges, felony arrest record, any involvement in hate crimes, or any involvement in any group or organization that espouses extra-legal violence as a legitimate means to achieve an end. *Statement at C-1.6.1*.

- Titan shall maintain a cadre of managers with appropriate security clearances to supervise the linguists with clearances. *Statement at C-1.6.1.1*.

- Titan shall be primarily responsible to ensure that the linguists are at their work sites when required. *Statement at C-1.11.1*.

- Titan shall provide training and supervision. *Statement at C-4.1*.

The invalidity of Titan's allegation that the military – not Titan – completely controlled its employees is established by reports issued by the military itself. These reports portray Titan and CACI employees as acting outside the scope of any official direction of the military. The Schlesinger Report states CACI personnel were not properly managed by the military to ensure that their operations "fell within the law and authorized chain of command." Final Report of the Independent Panel to Review DoD Detention Operations, August 2004 (hereinafter "Schlesinger Report") at 69 (relevant portions attached as Exhibit D).

See also Investigation of Intelligence Activities at Abu Ghraib, August 2004 (hereinafter "Fay Report") at 52 (relevant portions attached as Exhibit E) ("Proper oversight did not occur at Abu Ghraib due to a lack of training and inadequate contract management and monitoring.); Article 15-6 Investigation of the 800th Military Police Brigade (hereinafter "Taguba Report") at 26

(relevant portions attached as Exhibit F) ("U.S. civilian contractor personnel . . . do not appear to be properly supervised within the detention facility at Abu Ghraib.").[4]

This lack of oversight allowed CACI interrogators and Titan translators great freedom to determine how to treat detainees. Titan's Memorandum implies that Titan employees may have worked under the direction of CACI interrogators. *See Titan Mem. at 11*. This is consistent with the military reports stating Steven Stefanowicz, a CACI employee, allowed and instructed military policemen, "who were not trained in interrogation techniques, to facilitate interrogations by "setting conditions" that were neither authorized [or] in accordance with applicable regulations/policy." *Taguba Report* at 48. According to General Taguba, Stefanowicz clearly knew that his instructions to the military policemen would be equated to physical abuse. *Id.*

Third, Titan's Memorandum impugns Plaintiffs' allegations about Team Titan as fraudulent and "not even made with actual knowledge." *Titan Mem.* at 36-37. The Titan Memorandum suggests that Plaintiffs are simply making up the existence of the email communication from a Titan employee, which they characterize as central to the RICO allegations. The Titan Memorandum mocks Plaintiffs' explanation that they were concerned about tarnishing a third party's reputation and claims Plaintiffs were "disingenuous" and "abandoned" their allegations about Team Titan. *Titan Mem.* at 36 n.34.

It is Titan, not Plaintiffs, who appear to be comfortable making false and misleading statements. Team Titan exists and continues to exist. *SAC Exs. A and B*. As stated in the SAC and is demonstrated by the sequence of correspondence attached as Exhibit G, Plaintiffs amended the Complaint because a third party named Alion contacted Plaintiffs with a legitimate concern about its reputation. Plaintiffs responded as promptly as possible to eliminate any potential harm to this party, and in doing so obtained an email from a Titan employee, who revealed that Titan intends to

[4] The full versions of the Schlesinger Report and Fay Report were attached as Exhibits B and A respectively to Plaintiffs' Motion for Preliminary Injunction Against CACI International. The full version of the Taguba Report was attached as Exhibit H to Plaintiffs' Second Amended Complaint.

use the "Team Titan" contract to deploy persons to Iraq. *Id.* It should also be noted that Titan's Statement of Work contemplates that Titan personnel stationed in Germany shall be involved in the Iraq efforts. Statement at C-3.1. Much needs to be learned during discovery about exactly how Titan and CACI used the "Team Titan" contract to further the Torture Conspiracy, but suffice to say it is clear that Plaintiffs are on firm terrain when alleging that the "Team Titan" exists and the "Team Titan" contract may have been or be used for operations in Iraq or related to Iraq. SAC ¶¶ 54-55.

ARGUMENT

"Like a battlefield surgeon sorting the hopeful from the hopeless, a motion to dismiss invokes a form of legal triage, a paring of viable claims from those doomed by law." *Iacampo v. Hasbro, Inc.*, 929 F. Supp. 562, 567 (D.R.I. 1996). Stated less picturesquely, it is black-letter law that a complaint should not be dismissed under Fed. R. Civ. P. 12(b)(6) unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Here, none of Titan's legal arguments persuades when measured by that standard. Instead, all require as undergirding a wholesale acceptance of the falsehood that Titan employees were fully controlled by the military. See Statement of Facts, above.

This Memorandum explains in Section I that Plaintiffs' inability to provide their torturers' names does not doom the claims Section II explains why Titan cannot avoid vicarious liability for the acts of its employees. Sections III and IV explain why the Alien Tort Claims Act ("ATCS") and Racketeering Influenced Corrupt Organizations (RICO) claims survive the legal triage. Finally, Section V explains how Plaintiffs' Count XXV put Defendants on notice that they violated the law on government contracts. Section VI discusses the Religious Land Use and Institutionalized Persons Act, which defendants correctly argue is probably the wrong act to have relied on in this context. Plaintiffs explain why it may be viable, and also explain why they should have pled under RILUPA's precursor, not RILUPA. Additional arguments for dismissal – the so called "government contractors" defense, and inapplicability of the Constitution and the Religious

Land Use Act – are responded to in full in Plaintiffs' Opposition to the CACI Defendants' Motion To Dismiss. That Opposition (hereinafter "Opposition to CACI") is incorporated in full by reference.

I. PLAINTIFFS' INABILITY TO NAME ALL OF THEIR TORTURERS DOES NOT REQUIRE DISMISSAL.

Titan argues that Plaintiffs' SAC should be dismissed because Plaintiffs did not identify their torturers by name. *Titan Mem.* at 1, 2, 8. This is absurd. First, the SAC alleged criminal conduct by Adel Nahkla and John Israel, both employees or agents of Titan. *See* SAC ¶¶ 16-19; 24.[5] Second, it is black letter law that a victim who was harmed by an unknown individual acting under the color of authority need not identify by name the criminal wrongdoer. The Supreme Court and the Court of Appeals for the Ninth Circuit have permitted plaintiffs to conduct discovery to determine the actual identities of the defendants who harmed them. *See, e.g.*, *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 390 n.2 (1971); *Gillespie v. Civiletti,* 629 F.2d 637, 642 (9th Cir. 1980); s*ee also Garvin v. City of Phila.,* 354 F.3d 215, 220-21 n.6 (3d Cir. 2003); *Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186, 190 (3d Cir. 2001); *Estate of Rosenberg v. Crandell,* 56 F.3d 35, 37 (8th Cir. 1995); *Smith-Bey v. Hosp. Adm'r*, 841 F.2d 751, 759 (7th Cir. 1988); *Yates v. Young*, 772 F.2d 909 (6th Cir. 1985) (unpublished); *Munz v. Parr,* 758 F.2d 1254, 1257 (8th Cir. 1985); *Satchell v. Dilworth,* 745 F.2d 781, 786 (2d Cir. 1984); *Maggette v. Dalsheim*, 709 F.2d 800, 803 (2d Cir. 1983); *Schiff v. Kennedy,* 691 F.2d 196, 197-98 (4th Cir. 1982); *Maclin v. Paulson*, 627 F.2d 83, 87 (7th Cir. 1980); *Williams v. Lower Merion Township.*, No. 94-CV-6863, 1995 U.S. Dist. LEXIS 11083 at *9 (E.D. Pa. Aug. 2, 1995); *Melson v. Kroger Co.*, 550 F. Supp. 1100, 1104 (S.D. Ohio 1982); *Scheetz v. Morning Call, Inc.*, 130 F.R.D. 34, 36-37 (E.D. Pa. 1990).

[5] *See infra* at pp. 8-9 or a discussion of the long standing and well-established principle that a corporation is deemed to act through its employees and agents.

Plaintiffs have obtained from the torture victims physical descriptions and nicknames for some of the wrongdoers.[6] In addition, Plaintiffs have obtained the names of some of the culpable Titan and CACI employees from their co-conspirators. Plaintiffs need only a modest amount of relatively routine discovery to create a record about the identities of the torturers at the Abu Ghraib prison. Establishing the identities of the torturers at other detention centers requires a bit more work, but Plaintiffs counsels' efforts, combined with those of military investigators, are yielding substantial results.

II. TITAN IS VICARIOUSLY LIABLE FOR THE ACTIONS OF ITS EMPLOYEES

Titan's argument that it cannot be held liable for the acts of its employees rests on a shaky foundation – namely, that Plaintiffs neglected to allege that Titan management "formulated or developed policy that encouraged or allowed abuse." *Titan Mem. at 16*. This is simply wrong. Plaintiffs alleged that Titan knowingly recruited individuals willing to torture people, SAC ¶ 86; failed to train employees SAC ¶ 57-60, failed to supervise employees SAC ¶ 57-60, and even acquired other companies to ensure sufficient capacity to reap the rewards of the Torture Conspiracy. SAC ¶ 39. In short, it is not credible for Titan to pretend Plaintiffs failed to allege managerial involvement.

Titan's argument also mistakenly asserts that "military officials have at all time exclusive operational control." *Titan Mem. at 16*. As discussed above in the Statement of Facts, that is simply wrong as well. Plaintiffs clearly alleged that Titan participated with the CACI Defendants and conspiring government officials in the management of the Torture Conspiracy. SAC ¶ 25.

It is black letter law that a party is liable for the acts of its co-venturers in furtherance of a joint venture. 9 Witkin, Summary of Cal. Law (9th ed. 1989) Partnership, §§ 21 at 421. The relationship of joint venturers and partners is that of a mutual agency. Cal. Corp. Code. § 15009(1); *Buckley v. Chadwick*, 45 Cal. 2d 183, 190 (1955); *Madsen v. Cawthorne*, 30 Cal. App. 2d 124, 126

[6] Given that Titan translators improperly wore military uniforms, descriptions of clothing are likely to be a less productive means of identification.

(1938). Therefore, torts of one joint venturer or partner or his employees acting in connection with the venture is imputed to the other joint venturers under ordinary agency principals, *Buckley*, 45 Cal. 2d at 190, even where the tort is willful and malicious and not simply negligent. *Madsen*, 30 Cal. App. 2d at 126. *See also* Cal. Corp Code §§ 15013 (partners liable for "any wrongful act" within scope of partnership). Plaintiffs expressly alleged Titan is liable for the acts of its employees and their co-conspirators (soldiers, government officials) acting to further the Torture Conspiracy. SAC ¶ 27.

It is irrelevant in this context whether the military itself is immune. *See Cambell v. Harris-Seybold Press Co.*, 73 Cal. App. 3d 786, 791 (1977) (noting that a principal does not necessarily enjoy the immunity of his agent, and finding the immunity created for special employees by the California workers compensation statute was personal to the special employee, and so did not inure to the benefit of the special employer); *Cardenas v. Elliston*, 259 Cal. App. 2d 232 (1968); Rest.2d, Agency § 217(b)(ii) & comment ("Immunities, unlike privileges, are not delegable and are available as a defense only to the persons who have them."). Titan does not enjoy the sovereign immunity that might protect the conspiring government actors.

Further, Titan does not even address the issue of its liability for the conduct of others by virtue of an agency relationship. A principal is liable for the intentional torts of his agent committed within the scope of employment. *Farmers Ins. Group v. County of Santa Clara*, 11 Cal. 4th 992, 1004 (1995). To authorize one as an agent, no particular words or writings are necessary, nor need there be consideration. All that is required is conduct by each party manifesting acceptance of a relationship whereby one party is to perform work for the other under the latter's direction. *Hanks v. Carter & Higgins of Calif., Inc*., 250 Cal. App. 2d 156, 161 (1967); *Vargas v. Ruggiero*, 197 Cal. App. 2d 709 (1961). Agency can be established by a precedent authorization or subsequent ratification of another's acts. *Rakestraw v. Rodrigues*, 8 Cal. 3d. 67, 73 (1972); *Farmers Ins. Group,* 11 Cal. 4th at 1003.

Here, Plaintiffs alleged facts sufficient to support their claims under a theory that the soldiers and government officials were acting as agents of Titan and the Torture Conspiracy when

they tortured detainees. A principal's liability extends beyond his actual or possible control of agent to include risks created by the enterprise. The abuses committed by Titan employees, CACI employees, as well as soldiers, were aimed at increasing the available "intelligence." SAC ¶¶ 61, 81, 154. This included issuing or causing to be issued a report that directed the guard force to engage in unlawful behavior SAC ¶ 140. When the non-conspirator acted consistently with that report, they were acting as agents of Titan. Similarly, when Titan sought to hide the facts that the abuses were occurring, Titan was ratifying the acts of other conspirators. SAC ¶ 159-66. In sum, Titan is liable for the acts of the Torture Conspirators even if it could show that a given tort conferred no benefit on the venture or that the torts violated express joint venture policies adopted by the Torture Conspirators. *Id.* at 1004.

III. PLAINTIFFS' SAC ASSERTS THE PRECISE TYPE OF ALIEN TORT CLAIMS ACT ("ATCA") CLAIMS UPHELD BY THE SUPREME COURT IN JUNE 2004

Defendants resurrect a series of ATCA arguments that had been extensively litigated, rejected in the *Sosa v. Alvarez-Machin*, 124 S. Ct. 2739 (2004) case. None of the arguments persuaded the Supreme Court; none should persuade this Court. And of course, even if persuaded, this Court is not free to ignore *Sosa*, a controlling precedent.

A. *Sosa* Reaffirmed that United States Federal District Courts Have Jurisdiction Over Civil Claims Against Torturers.

The Supreme Court's decision in *Sosa* upholds the line of rulings that gave aliens access to the federal district courts under the ATCA to sue their torturers. The Supreme Court held that courts are permitted to create causes of action for claims for which ATCA affords jurisdiction, so long as claimants seek to recover for violations of international norms that rise to the level of "specific, universal, and obligatory." 124 S. Ct. at 2766.

The *Sosa* Court squarely upheld and endorsed the reasoning of the Court of Appeals for the Ninth Circuit in the *In re Estate of Ferdinand Marcos, Human Rights Litigation*, 25 F.3d 1467, 1475 (9th Cir. 1994) case. *Sosa*, 124 S. Ct. at 2765-66.[7] The *Sosa* Court also adopted the reasoning of *Filartiga*: "[F]or purposes of civil liability, the torturer has become – like the pirate and slave trader before him – *hostis humani generis*, an enemy of all mankind." In short, *Sosa* found actionable the claims alleged in Plaintiffs' SAC – torture (*Marcos*, 25 F.3d at 1475; *Tel-Oren*, 726 F.2d at 781; *Filartiga*, 630 F.2d at 878), summary execution (*Marcos*, 25 F.3d at 1475; *Filartiga*, 630 F.2d at 878), and enforced disappearance (*Marcos*, 25 F.3d at 1475; *Filartiga*, 630 F.2d at 878).

The *Marcos* case is directly on point. That case, also brought as a class action ATCA case, arose when, in 1971, President Ferdinand Marcos declared martial law in the Philippines. Military intelligence officials acting under the direction of Marcos and others tortured, killed, or "disappeared" at least 10,000 people over a period of 15 years. One of the victims, an opposition leader named Sison, was:

> interrogated by members of the military, who blindfolded and severely beat him while he was handcuffed and fettered; they also threatened him with death. When this round of interrogation ended, he was denied sleep and repeatedly threatened with death. In the next round of interrogation, all of his limbs were shackled to a cot and a towel was placed over his nose and mouth; his interrogators then poured water down his nostrils so that he felt as though he were drowning. This lasted for approximately six hours, during which time the interrogators threatened Sison with electric shock and death. At the end of this water torture, Sison was left shackled to the cot for the following three days, during which time he was repeatedly interrogated. He was then imprisoned for seven months in a suffocatingly hot and unlit cell, measuring 2.5 meters square; during this period he was shackled to his cot, at first by all his limbs and later by one hand and one foot, for all but the briefest periods (in which he was allowed to eat or use the toilet). The handcuffs were

[7] The Court also cited with approval *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980) and the opinion of Judge Edwards in *Tel-Oren v. Libyan Arab Republic,* 726 F.2d 774, 781 (D.C. Cir. 1984). *Sosa*, 124 S. Ct. at 2766-66.

> often so tight that the slightest movement by Sison made them cut into his flesh.

Hilao v. Estate of Marcos, 103 F.3d 789, 790-91 (9th Cir. 1996).[8] Plaintiffs sued Marcos, alleging three ATCA claims: torture, summary execution, and enforced disappearance. Plaintiffs' claims were upheld, class certification was granted, and damages were distributed to Sison and the class. *Marcos*, 25 F.3d at 1475-76; *Hilao*, 103 F.3d at 791-92. Although the instant case has much in common with *Marcos* – a class action; defendants charged with the actions of others; abuses occurred in a military context (martial law); abuses were conducted by military intelligence; abuses related to interrogations; abuses involved solitary confinement, constant tight shackling, electric shocks, sleep deprivation, and death threats – neither Titan nor the CACI Defendants even attempted to distinguish this case from *Marcos*.[9]

Instead, Defendants argued that the Court should be "cautious" and tried to create the illusion that Plaintiffs are litigating whether the United States should have gone to war in Iraq. Defendants point to a list of five reasons for exercising "judicial caution" that the *Sosa* Court described in the preface to its holding. Defendants argue that the Court's expressed concerns about separation of powers compel dismissal in this case. These reasons included: first, judicial

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[8] Other abuses included:

- Beatings while blindfolded by punching, kicking and hitting with the butts of rifles;
- Use of flat-irons on the soles of a detainee's feet;
- Forcing a detainee while wet and naked to sit before an air conditioner often while sitting on a block of ice;
- Stripping, sexually molesting and raping female detainees; one male plaintiff testified he was threatened with rape;
- Electric shock where one electrode is attached to the genitals of males or the breast of females and another electrode to some other part of the body, usually a finger, and electrical energy produced from a military field telephone is sent through the body;
- Solitary confinement while hand-cuffed or tied to a bed.

In re Estate of Marcos Human Rights Litig., 910 F.Supp. 1460, 1463 (D. Hawaii 1995). All of these acts are disturbingly similar to Plaintiffs' allegations. SAC ¶ 101-170.

[9] *See also Tachiona v. Mugabe*, 216 F. Supp. 2d 262 (S.D.N.Y. 2002) (Awarding damages under ATCA for "cruel, inhuman, or degrading treatment . . . including being bound and gagged and forced to ride in a vehicle for hours, being dragged down the street in front of neighbors and loved ones, and being placed in fear of impending death").

reluctance to make common law; second, the importance of legislative guidance in making common law; third, the importance of separation of powers for creating causes of action; fourth, the principle of separation of powers in the conduct foreign affairs; and fifth, the lack of a Congressional mandate for new causes of action. However, after considering these cautions, 124 S. Ct. at 2762-63, the *Sosa* Court decided, over the dissent of Justice Scalia, that "other considerations persuade us that the judicial power should be exercised on the understanding that the door is still ajar subject to vigilant doorkeeping, and thus open to a narrow class of international norms today." *Id.* at 2764.

Noting that courts have always had a fundamental obligation to apply international law, *id.* at 2764, the Supreme Court proceeded to the question of how to "derive a standard or set of standards for assessing the particular claim Alvarez raises." *Id.* at 2765. The Court adopted a simple standard: judicially-created causes of action under the ATCA are proper only for violations of norms with "definite content and acceptance among civilized nations," meaning norms that are "specific, universal, and obligatory." *Id.* at 2766 (citing *Marcos*, 25 F.3d at 1475). The Court also noted that determining whether a norm has sufficient "definite content" will "involve an element of judgment about the practical consequences of making that cause available to litigants in the federal courts." *Id.* [10]

The *Sosa* Court specifically chose not to adopt "a policy of case-specific deference to the political branches," 124 S. Ct. at 2766 n.21, which is precisely what defendants suggest this court adopt when they present *Sosa*'s five cautionary factors as though they were a five-part test for lower courts to apply to every ATCA claim. *See CACI Mem. at 37; Titan Mem. at 28*. The Court's "cautions" were actually the reasons offered by Petitioner Sosa for denying federal courts the power to create *any* causes of action for ATCA claims – arguments which the *Sosa* court obviously

[10] Defendants can always resurrect their "caution" arguments again on summary judgment if they believe Plaintiffs are unable to demonstrate with admissible fact that the conduct fails to rise to the level of violating a "specific, universal, and obligatory" international norm.

rejected when it held that federal courts *did* have the power to create causes action for certain ATCA claims. *See* Brief of Petitioner Jose Francisco Sosa, No. 03-339, Sosa v. Alvarez-Machain (filed Jan. 23, 2004) at 34-44. For CACI, Titan, and others interested in immunity from international law, the *Sosa* decision was a devastating loss. Thus, it is not surprising that CACI and Titan are trying to resuscitate Sosa's arguments by transforming them from "cautions" into a full-blown legal standard to be applied on a case-by-case basis, one flexible enough to encompass all of their arguments about political questions, time-of-war exceptions, and military contractor immunities.

In any case, even if *Sosa* did prescribe "a policy of case-specific deference to the political branches," 124 S. Ct. at 2766 n.21 – which it clearly does not – this Court cannot trespass on legislative territory by ignoring the fact the United States prohibits torture. The *Sosa* court noted that "Congress . . . has not only expressed no disagreement with our view of the proper exercise of the judicial power, but has responded to its most notable instance by enacting legislation [the Torture Victim Protection Act] supplementing the judicial determination in some detail." *Sosa*, 124 S. Ct. at 2765.[11] As explained *supra*, the principle of separation of powers is not impinged simply because Defendants in this case are government contractors working in a war zone with military and governmental officials. In fact, Plaintiffs' efforts in this civil suit are aligned with the interests of the United States (including those in Congress and the military) as it seeks to investigate episodes of torture and other abuses, and to correct system failures to ensure detainees are not tortured while in United States' custody in the future.

As they do elsewhere, Defendants attempt to transform the principle of separation of powers in the conduct foreign affairs into a prohibition against federal courts exercising jurisdiction over

[11] In the course of rehashing its "military contractor defense" in the context of ATCA, Titan argues that the "combatant activities" of the FTCA expresses an intent to bar ATCA claims such as this one. Titan Mem. at 26. Plaintiffs address these questions in their Opposition to CACI's Motion to Dismiss.

ATCA claims that arose during time of war.[12] The traditional ATCA claims upheld in *Sosa* have historically arisen out of conditions involving armed conflict. *See Marcos*, 25 F.3d at 1469 (state of martial law); *Kadic v. Karadzic*, 70 F.3d 232, 241-44 (2d Cir. 1995) (civil war in Bosnia); *Presbyterian Church of Sudan v. Talisman Energy, Inc*., 244 F. Supp. 2d 289, 296 (S.D.N.Y. 2003) (civil war in Sudan). The fact that the torturers here are employed by Titan, CACI, and the government does not transform this case into a case involving damages for actions authorized by the government or for acts of war. This case is about recovering for damages caused by Defendants' egregious and unauthorized actions taken in detention centers.

The decisional law Defendants cite in support of their argument that Plaintiffs' claims are non-justiciable simply cannot overcome *Sosa* and is distinguishable. *Ware v. Hylton*, 3.U.S. (3 Dall.) 199 (1796) decided in 1796, involved British subjects whose property was sequestered during the Revolutionary War pursuant to a statute passed by the Virginia legislature. 3 U.S. (3 Dall.) at 199-200. One can hardly claim that the torture suffered by Plaintiffs in this case was authorized by any Congressional directive.

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[12] In terms of contemplating the intent of Congress, it is significant that the FTCA does not preclude all tort claims arising in time of war and that the FCA does not include claims for intentional torts, which remain subject to ordinary judicial process. Thus, the Foreign Claims Act (FCA), 10 U.S.C. § 2734 establishes a procedure for resolving claims arising out of the conduct of the military in time of war. 10 U.S.C. § 2734(b) states:

> A claim may be allowed under subsection (a) only if--
> (1) it is presented within two years after it accrues;
> (2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commission or by the local military commander to be friendly to the United States; and
> (3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat, *except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.*

(emphasis added).

Perrin v. United States, 4 Ct. Cl. 543 (1868) involved a claim by a French subject for compensation for property lost after a United States Navy commander, acting on orders from the President, and with subsequent Congressional approval, destroyed the town of San Juan with firepower from a war ship. 4 Ct.Cl. 543 (1868). The Court held that petitioner's claim rested on his assertion that the destruction of San Juan was a "violation of international law." *Id.* at 544. The Court found that this presented "international political questions, which no court of this country in a case of this kind is authorized or empowered to decide." *Id*. at 545.

In *Frumkin v. JA Jones, Inc.*, 129 F. Supp. 2d 370, 375 (D.N.J 2001), the court dismissed on political question grounds a claim against a German company for damages for being forced to work on the construction of a military base in Germany during World War II. In both *Iwanowa* and *Burger-Fischer*, plaintiffs' forced labor claims against corporations in Nazi Germany were dismissed partially on political question grounds in light of over fifty years of bilateral and multilateral treaties contemplating resolution of WWII reparations through government-to-government negotiations rather than individual litigation. *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 461 (D.N.J. 1999); *Burger-Fischer v. DeGussa AG*, 65 F. Supp. 2d 248, 282 (D.N.J. 1999). The *Frumkin* court specifically noted that in *Burger-Fischer* and *Iwanowa*, as in *Frumkin*, a "post-war claims settlement regime had been exclusively constructed by the political branches," *Frumpkin*, 129 F. Supp. 2d at 377. No such "regime" is in place in Iraq today.

B. ATCA Permits Torture Claims To Be Brought Against Corporations

CACI and Titan can be liable to Plaintiffs under ATCA even though they are corporations. Rather than admit that its arguments lost in *Sosa*, Titan asserts that *Sosa* marked a "sea change" for ATCA. *Titan Mem. at 27*. Titan's convoluted argument is that the precedent supporting private and corporate liability under ATCA has been rendered moot by *Sosa*'s determination that ATCA is a jurisdictional statute, presumably because the courts issuing such precedent based their decisions on their assumption that causes of action under ATCA were statutory rather than based on federal common law. *Id.* & n.24. Therefore, Titan argues, unresolved questions of federal common law

now surround ATCA, and Titan urges the Court to enter the vacuum and limit the scope of ATCA's application out of deference to Congress. *Id.*

This argument is absurd. *Sosa* held very clearly that with respect to the creation of causes of action, *Sosa* ratified existing practices, which are exemplified by *Filartiga*, *Marcos*, and *Kadic*. 124 S. Ct. at 2766. In particular, while discussing the issue of private liability under ATCA, the *Sosa* court noted that there may not have been consensus in 1984 that torture by private actors violated international law, *Tel-Oren*, 726 F.2d at 791-95, but that by 1995 such a consensus did exist, as the Second Circuit found in *Kadic v. Karadzic*, 70 F.3d at 239-41. 124 S. Ct. at 2766 n.20. By framing the issue in this way, it is evident that the Court did not see the issue of private liability under ATCA as an open question of *federal common law*, as Titan suggests;[13] rather, the Court clearly saw it as an issue of what *international law* does and does not forbid. United States courts have repeatedly held that private corporations can be sued under the ATCA. *John Doe I v. Unocal Corp.*, No. 00-56603, 2002 WL 31063976, at *9 (9th Cir. Sept. 18, 2002); *Presbyterian Church of Sudan*, 244 F. Supp. 2d at 311-19 (reviewing ATS and international jurisprudence);[14] *Wiwa v. Royal Dutch Petroleum Co*., 96 Civ. 8386, 2002 WL 319887, *17 -18 (S.D.N.Y. Feb. 28, 2002);

[13] Even if the issue of private liability under ATCA was an issue for federal common law, which it is not, there is no reason to analogize ATCA to *Bivens* and apply *Malesko*'s corporate immunity rule to the ATCA context. Its argument depends on its assumption that *Malesko* creates corporate immunity against all implied causes of action. But *Malesko* held only that *Bivens* actions should not be extended to corporations because "the purpose of Bivens is to deter the officer, not the agency" on the grounds that agencies had no qualified immunity defense and "[t]o the extent aggrieved parties had less incentive to bring a damages claim against individuals, the deterrent effects of the Bivens remedy would be lost." *Malesko*, 534 U.S. at 69. The purpose of creating causes of action under ATCA, by contrast, is to recognize that courts are responsible for enforcing international law. *Sosa*, 124 S. Ct. at 2764. The individual/agency distinction that *Malesko* draws simply has no application in the ATCA context.

[14] Titan suggests that *Presbyterian Church* and the authorities it cited are no longer valid because they assumed ATCA creates causes of action as well as jurisdiction. But that argument assumes corporate immunity without any basis.

Kadic, 70 F.3d at 242-43; *Bowoto v. Chevron Texaco Corp*., 312 F. Supp. 2d 1229 (N.D. Cal. 2004).[15]

C. Plaintiffs' SAC Pleads Seven Historically Recognized Torts

Plaintiffs allege causes of action under ATCA for violations of seven historically recognized "specific, universal, and obligatory" international norms: torture,[16] summary execution,[17] war crimes,[18] crimes against humanity,[19] cruel, inhuman, or degrading conduct,[20] enforced disappearance,[21] and prolonged arbitrary detention.[22] Plaintiffs alleged that they are the victims of

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[15] Indeed, the trials at Nuremberg convicted private defendants of economic plunder and enslavement and mistreatment of civilians and prisoners of war, many of whom were forced to work under inhumane conditions in the defendants' private mines and factories. T. Taylor, *Nuremberg Trials: War Crimes and International Law*, 450 Int'l Conciliation 304 (April 1949) n.159, 303, 305-07, 310-11, 313, 317-19, 331. *See* Int'l Labour Org'n, *Tripartitie Declaration of Principles concerning Multinational Enterprises and Social Policy* (1977) (Major International Labour Organisation human rights conventions apply to multinational enterprises); Andrew Clapham, *Human Rights in the Private Sphere* 97 (1993) (Drafters rejected proposal that prohibition of servitude in Article 8 of the Int'l Covenant on Civil and Political Rights should apply only to governments).

[16] The prohibition against torture has long been recognized as a human rights norm. *See Marcos*, 25 F.3d at 1475; *Filartiga*, 630 F.2d at 878; *Tel-Oren*, 726 F.2d at 781. The Court in *Sosa* specifically noted that these rulings applied the correct standard. *Sosa*, 124 S. Ct. at 2765-66. *See also Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714-17 (9th Cir.1992) (prohibition against torture has attained status of jus cogens norm from which no derogation is permitted).

[17] The prohibition against summary execution has long been recognized as a human rights norm. *Marcos*, 25 F.3d at 1475; *Filartiga*; 630 F.2d at 878; *Tachiona v. Magabe*, 234 F. Supp. 2d 401, 416 (S.D.N.Y. 2002). Indeed, Titan does not even argue that claims based on summary execution fail to meet the *Sosa* standard. Titan Mem. at 29-31.

[18] The prohibition against war crimes has long been recognized as a human rights norm. *Sosa*, 124 S. Ct. at 2783; *Kadic*, 70 F.3d at 236; *Presbyterian Church of Sudan*, 244 F. Supp. 2d at 305.

[19] The prohibition against crimes against humanity has long been recognized as a human rights norm. *Sosa*, 124 S. Ct. at 2783; *Sarei*, 221 F. Supp. 2d at 1151; *Kadic*, 70 F.3d at 236; *Wiwa*, 2002 U.S. Dist. LEXIS 3293, at *27-*28; *Tachiona*, 234 F. Supp. 2d, at 416; *Prosecutor v. Tadic*, IT-94-1, Trial Chamber Para 648 (May 7, 1997), available at http://www.icty.org.

[20] The prohibition against cruel, inhuman, or degrading conduct has long been recognized as a human rights norm. *Hilao v. Estate of Marcos*, 103 F.3d 789 (9th Cir. 1996); *Wiwa*, 2002 U.S. Dist. LEXIS 3293, at *21-22; *Tachiona*, 216 F. Supp. 2d at 281; *Jama v. INS*, 22 F. Supp. 2d 353, 362 (1998).

[21] The prohibition against enforced disappearance has long been recognized as a human rights norm. *Marcos*, 25 F.3d at 1475-76; *Forti v. Suarez-Mason*, 694 F. Supp. 707, 710 (N.D. Cal. 1988)

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violations that *exceed* the international norm: **Torture**: "stretching [Plaintiff Saleh]'s penis with a rope and beating it with a stick" SAC ¶ 103(b); **summary execution**: "the Torture Conspirators wrongfully killed Ibrahiem by torturing him and thereafter refusing to provide him the needed medical attention to prevent his death" SAC ¶ 128; **war crimes**: "stripping [Plaintiff Ismael], tying his hands behind his back and releasing dogs to attack his private parts" SAC ¶ 115; **crimes against humanity**: "the Torture Conspirators committed a series of acts specifically designed to mentally devastate Plaintiffs and putative Class Plaintiffs by attacking and ridiculing their religious faith of Islam" SAC ¶ 155; "[s]exually humiliating [Plaintiff John Doe No. 1] by stripping him naked and parading him in front of other prisoners and prison guards, including women [and] [c]ontinually mocking his Islam faith and interrupting his efforts to pray" SAC ¶ 135; **cruel, inhuman or degrading conduct**: "stripping [Plaintiff Ismael] and tying him together with other detainees and dragging their naked bodies with a leash across the hot summer sand" SAC ¶ 117; **enforced disappearance**: "Plaintiff Ismael's son, Burban, remains detained in an unknown location" SAC ¶ 118; **prolonged arbitrary detention**: "Plaintiff Neisef . . . was detained for seven months in Abu Ghraib Prison . . . and for five months in Buka Prison." SAC ¶ 7; "the Torture Conspirators detained Plaintiff Neisef without cause" SAC ¶ 119.

D. Each Historical Tort Is Actionable

Plaintiffs' factual allegations and legal counts have been pled in sufficient detail to meet the Rule 8 standards, despite Titan's protests to the contrary.[23] *Leatherman v. Tarrant County*

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(citing numerous authorities); *Xuncax v. Gramajo*, 886 F. Supp. 162, 184-85 (D. Mass. 1995); *Tachiona*, 234 F. Supp. 2d at 416; Restatement (Third) of the Foreign Relations Law of the United States § 702 cmt. n.

[22] The prohibition against prolonged arbitrary detention has long been recognized as a human rights norm. *Hilao*, 103 F.3d at 794-95; *Forti*, 672 F. Supp. at 1541 (N.D. Cal. 1987); Restatement (Third) of the Foreign Relations Law of the United States § 702 cmt. n.

[23] The cases cited by defendant, Titan Mem. at 28 n. 25, do not demonstrate that Plaintiffs' SAC failed to plead anything. In *Bigio v. Coca-Cola Co*., 239 F.3d 440, 447 (2d Cir. 2001), the court ruled that "There is *no allegation in the complaint, let alone any hint of evidence*" that Coca-Cola

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Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 168 (1993). *Titan Mem.* at 29-30. Each historical tort is actionable.

1. Torture and Summary Execution

Plaintiffs' claims for torture and summary execution are not precluded by the TVPA, which provides a private cause of action only if the victim was tortured or killed under color of law "of any foreign nation." The legislative history of the TVPA makes clear that TVPA was not intended to restrict in any way ATS claims, which should "remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law." H.R. Rep. No. 102-367, pt. 1, at 4 (1991). The assertion that the TVPA limits the scope of the ATCA has been was rejected by *Sosa*, 124 S. Ct. at 2763, as it was by numerous courts around the country. *See e.g.*, *Kadic*, 70 F.3d at 241; *Sarei v. Rio Tinto PLC*, 221 F. Supp. 2d 1116, 1133 (C.D. Cal. 2002).

It is well established that claims based on the prohibition against summary execution may be brought under the ATCA. *Marcos*, 25 F.3d at 1475; *Filartiga*; 630 F.2d at 878. Indeed, Defendants do not even argue that claims based on torture and summary execution fail to meet the *Sosa* standard. *Titan Mem. at 29-31*.

2. Cruel, Inhuman or Degrading Treatment

Defendants argue, with cursory reference to *Sarei v. Rio Tinto*, 221 F. Supp. 2d 1116, 1163 (C.D. Cal. 2002) that cruel, inhuman or degrading treatment is not actionable. This case was

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was involved in the taking of the plaintiffs' property. *Id.* at 449 (emphasis added). In *Bagguley v. Bush*, 953 F.2d 660, 663 (D.C. Cir. 1991), the court found that a British prisoner who wanted to be transferred England had failed to state a claim that rose to the level of a violation of an international norm because the relevant treaty did not provide for transfer upon a prisoner's demand. In *Aldana v. Fresh Del Monte Produce, Inc.*, 305 F.Supp.2d 1285, 1292 (S.D. Fla. 2003) the Court held allegations of only environmental harms were alleged and the court held they were not, because mere threats of harm did not suffice. In *Sarei v. Rio Tinto*, 221 F. Supp. 2d 1116 (C.D. Cal. 2002) environmental claims were found not to constitute cognizable violations of customary international law. In *Jogi v. Piland,* 131 F. Supp. 24 1024 (C.D. Ill. 2001), the court found that plaintiff failed to allege a treaty violation of the Vienna Convention on Consular Relations had damaged him.

brought against an international mining company with operations in Papua New Guinea. The plaintiffs argued that the company's activities destroyed the environment, harmed the health of its people and incited a 10-year civil war. The court dismissed all claims on political question grounds because of the involvement of the U.S. executive branch in the peace process in Papua New Guinea and the broad nature of the claims was seen as a serious interference. The *Sarei* opinion failed to analyze the content of the norm against cruel, inhuman or degrading treatment, and merely endorsed two opinions, *Forti v. Suarez-Mason*, 694 F. Supp. 707, 711 (N.D. Cal. 1988), and *Hilao v. Estate of Marcos*, 103 F.3d 789 (9th Cir. 1996).[24] Only *Forti* provided any analysis of the substance of the norm.[25]

However, in cases since *Forti*, courts have repeatedly held this cruel, inhuman or degrading treatment to be actionable, using the same standard of *Sosa*. In *Xuncax*, the norm was found actionable and "no less universal than the proscriptions of official torture." 886 F. Supp. at 186-89 (citing to Affidavit of International Law Scholars).[26] In a recent case in this Circuit, these arguments were presented to the court and Judge Charles A. Legge ruled from the bench that plaintiffs could proceed with their claims including cruel, inhuman or degrading treatment.[27] In

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[24] In *Sarei*, the court stated:

> "Plaintiffs here have stated a claim for cruel, inhuman, and degrading treatment, but not for torture. Like the district courts in *Forti* and *Hilao*, the court finds that plaintiffs have not articulated a specific, universal and obligatory norm underlying this claim. Similarly, plaintiffs' claim for gross violations of human rights is not based on any specific provision of international law that is universally recognized."

221 F. Supp. 2d at 1163.

[25] The *Hilao* court, analyzing a jury instruction, found that it "need not decide whether the proscription against 'cruel, inhuman or degrading' treatment is sufficiently specific" because torture and arbitrary detention comprised all the conduct alleged by the plaintiffs. *Hilao*, 103 F.3d at 795.

[26] The Affidavit of International Law Scholars relied upon by the Xuncax court is attached in full as Exhibit H.

[27] *See* http://www.earthrights.org for a transcript. *See also Wiwa*, 2002 U.S. Dist. LEXIS 3293, at *21-*22 (relying on *Forti* and *Xuncax* to conclude cruel, inhuman or degrading treatment is claim

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Jama v. INS, 22 F. Supp. 2d 353 (D.N.J. 1998), the court included in its analysis that the United States has recognized this customary international human rights norm. In *United States v. Iran*, 1980 I.D.J. 3, the United States argued that even though at that time neither the United States nor Iran had ratified treaties proscribing such conduct, they were nevertheless bound by the norm against cruel inhuman or degrading treatment. Torture and cruel, inhuman or degrading treatment are on a continuum, with torture at the extreme end.[28] Here, Plaintiffs have alleged that they were subjected to continued acts of humiliation and degradation in addition to the more brutal acts of torture. It may be that the court ultimately finds, as the *Jama* court did that the "entirety of the conduct" constitutes cruel, inhuman or degrading treatment. 22 F. Supp. 2d at 363. But clearly the claim should survive a motion to dismiss to permit discovery to establish where on the continuum the conduct falls.

3. Enforced Disappearance

Enforced disappearance has been recognized for the past 16 years as a violation which is "specific, universal and obligatory," the standard endorsed by the Supreme Court in *Sosa*. It was among the claims recognized in *Marcos* and *Filartiga*. *See Marcos,* 25 F.3d at 1475-76 ("The prohibition against summary execution or causing disappearance is similarly universal, definable, and obligatory"); *Filartiga*, 630 F.2d at 878. In *Forti,* 694 F. Supp. at 711, the court held that there was "a universal and obligatory international proscription of the tort of "causing disappearance." *See also Xuncax v. Gramajo*, 886 F. Supp. 162, 184-85 (D. Mass. 1995); Restatement (Third) of the Foreign Relations Law of the United States § 702 cmt. n.

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under ATS); *Tachiona*, 234 F. Supp. 2d at 437-38 (cruel, inhuman or degrading treatment universally condemned included forcing relatives to bear torture and degradation of kin, ransacking of property or viewing dead body dragged in front of home); *Najarro de Sanchez v. Banco Central de Nicaragua*, 770 F.2d 1385 (5th Cir. 1985).

[28] *Wiwa*, 2002 WL 319887, at *7-*9 (international law considers "cruel, inhuman or degreading treatment as a general category of prohibited conduct of which torture is at the extreme end); *Tachiona*, 234 F. Supp. 2d at 437-39.

Defendant makes the nonsensical, and unsupported argument that being held incommunicado with their families having no knowledge of their whereabouts is not a disappearance. There is in fact no such limitation on the claim.[29] Titan suggests that Plaintiffs lack standing for enforced disappearance because none is still in custody. However, Plaintiffs clearly have standing to seek damages for the harm alleged to have been suffered by Plaintiff Ismael whose son Burban remains disappeared to an unknown location SAC ¶ 118.

4. Prolonged Arbitrary Detention

Prolonged arbitrary detention has been found by the Court of Appeals for the Ninth Circuit and other Courts to reach the "specific, universal and obligatory" standard adopted by *Sosa*. In particular, *Hilao*, 103 F.3d at 794-95, approved an ATCA claim based on prolonged arbitrary detention. "[A]s to '[p]rolonged arbitrary detention,' the district court instructed the jury that the term meant 'detention of a person in an official detention facility or any other place without any notice of the charges and failure to bring to trial that person within a reasonable time . . . consider[ing] all of the circumstances existing in the Philippines at the time of the detention." *Id.* at 795.

Sosa does not provide any basis for ignoring this controlling Ninth Circuit precedent. Rather, the *Sosa* Court determined that Dr. Alvarez-Machain had not stated a claim cognizable under ATCA, citing the brief period he was detained and the "prompt arraignment." The court held only "that a single illegal detention of less than a day, followed by the transfer of custody to lawful authorities and a prompt arraignment, violates no norm of customary international law so well defined as to support the creation of a federal remedy." *Sosa*, 124 S. Ct. at 2769.

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[29] Titan also argues that there is an insufficient factual basis to hold it responsible for enforced disappearance. Titan simply ignores the allegations that Titan was part of a conspiracy and therefore liable for actions taken by co-conspirators. This circuit and other courts have clearly stated that those who provide substantial assistance in the commission of human rights violations can be liable. *See, e.g., Doe v. Hnocal*, 2002 U.S. App. LEXIS 192623 (9th Cir. Sept. 18, 2002) (appeals court unanimous that Un0cal can be liable for acts physically committed by military); *Presbyterian Church of the Sudan v. Talisman Energy*, 244 F.Supp. 2d 289, 320-24 (S.D.N.Y. 2004) (conspiracy and aiding and abetting are actionable under ATCA).

Here, Plaintiffs were detained for extended periods without charges or other procedural safeguards. SAC ¶¶ 101, 109, 114-15, 119, 132, 134, 137-38. Moreover, each such detention was accompanied by physical abuse. Plaintiffs' claims for prolonged arbitrary detention are clearly cognizable under *Hilao*.[30]

5. Crimes Against Humanity Claims

Defendant's argument that Plaintiffs cannot claim crimes against humanity is legally and factually flawed. Once again, Defendant misstates the definition of the violation. Rather than being the "widespread persecution of entire classes of people," *Titan Mem. at 31*, international law differentiates between two types of crimes against humanity: persecution on political, racial or religious grounds versus other abuses directed at a civilian population.[31] The passage cited by Defendant does not suggest otherwise. *Sarei* states crimes against humanity *includes* persecution.[32]

Plaintiffs clearly alleged persecution on religious grounds. SAC ¶¶ 25, 155, 242. The SAC describes torture (including sexual abuse) that was specifically designed humiliate them as

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[30] For the same reasons stated *supra* with respect to enforced disappearance, Titan cannot for purposes of a motion to dismiss ignore the conspiracy allegations and argue the military had complete responsibility for arbitrary detention. Also, once again, Titan misleads the court with its mistaken assertion that Sosa "implies" two components of arbitrary detention: duration and unlawful motive. *Titan Mem. at 29*.

[31] The Nuremberg Tribunals established that crimes against humanity encompasses: "atrocities and offenses, including but not limited to murder, *extermination*, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population OR persecutions on political, racial or religious grounds." Control Council Law No. 10, Art. II(1)(8) (1945), quoted in *United States v. Flick*, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, 1191 (1949) (emphasis added). This definition has been repeatedly adopted by the international community. Charter of the International Military Tribunal, Art. 6(c), in The Nurnberg Trial, 6 F.R.D. 69, 130 (Int'l. Milit. Trib. 1946); Statute of the International Tribunal for Rwanda, Art. 3, S/RES/955/Ann.1, 33 I.L.M 1602, 1603 (Nov. 8, 1994); Statute of the International Tribunal For the Former Yugoslavia, Art. 5, S/25704/Ann.1, 32 I.L.M. 1192, 1194, adopted S/Res/827, 32 I.L.M. 1203 (May 25, 1993); Rome Statute of the International Criminal Court, U.N. doc. A/CONF. 183/9*, July 17, 1998, Article 7.

[32] The civilian population requirement necessitates either a finding of widespreadness, which refers to the number of victims, or systemacity, indicating that a pattern or methodical plan is evident. *Prosecutor v. Tadic*, IT-94-1, Trial Chamber Para 648 (May 7, 1997), available at http://www.icty.org.

Muslims. SAC ¶¶ 96-97, 103(a)-(e), (i), (o), (q), (s), 117(a), 120(c), 121(a), 122-25, 133(b), 135(a), (d), (i), (j), 141, 147, 149, 150-52, 155, 157(f), (j), (k), (n)-(s), (v). In any case, Plaintiffs alleged that large numbers of people were targeted. SAC ¶¶ 12-14.

6. War Crimes Claims

Titan suggests that the war crimes claim "is vague and undefined in the extreme." *Titan Mem. at 42*. Plaintiffs' allegations mirror the *Kadic* case, which was endorsed by the *Sosa* Court as having applied the appropriate standards and allowed allegations of war crimes to proceed. *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995). *See also Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289, 305 (S.D.N.Y. 2003).

E. ATCA Claimants Are Not Required to Exhaust Their Remedies

Although exhaustion is not a statutory element of the ATCA, and has not traditionally been required in ATS cases, *see, e.g.*, *Sarei*, 221 F. Supp. 2d at 1134-35, the *Sosa* Court briefly mentioned in *dicta* in a footnote that in appropriate circumstances it would consider the issue of exhaustion. *Sosa*, 124 S. Ct. at 2766 n. 21.

Courts analyzing exhaustion in cases involving the ATCA and the TVPA have held that "defendants, not plaintiffs, bear the burden of demonstrating that plaintiffs have not exhausted 'alternative and adequate' remedies." *Wiwa*, 2002 WL 319887 at *17-*18. *See alsoSinaltrainal v. Coca-Cola Co.*, 256 F. Supp. 2d 1345, 1355-58 (S.D. Fla. 2003). *Sosa* does not shift that burden, and defendants have not met their burden to show that plaintiffs have not exhausted their remedies.

First, there are no remedies available for claims against independent contractors such as Titan and CACI. *See* The Coalitional Provisional Authority Administrator L. Paul Bremer issued CAP Order 17, "Status of the Coalition Provisional Authority, MNF—Iraq, Certain Missions and Personnel in Iraq." CPA/ORD/27 June 2004/17 (attached as Exhibit I). Section 4 of that order states: "Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto." *Id*. at 5. Order 17 extended contractor immunity until the disbandment of the Multi National Force, which has yet to be announced. *Id*. at 13. Thus, there is not a remedy available under Iraqi domestic law.

On May 22, 2004, officials from the U.S. Department of Defense announced that "abuse claims would be processed under the Foreign Claims Act ("FCA") and not under the authority of the Geneva Conventions." Christopher Marquis, *The Reach of War: Detainees; U.S. Preparing for Influx of Compensation Claims by Abused Iraqis*, N.Y. Times, May 22, 2004, Foreign Desk. Because the FCA does not provide a remedy for claims against private contractors, FCA is not an alternative remedy for Plaintiffs' claims.[33]

Second, pursuing claims through an administrative process is impossible because the military has indicated in writing to Plaintiffs' counsel that actions against independent private contractors are appropriate to pursue in federal court and will not impact any FCA claims. *See* Exhibit J. Thus, it is absurd to suggest that Plaintiffs need to exhaust some unavailable and inapplicable remedy.

IV. PLAINTIFFS HAVE STATED CLAIMS UNDER RICO

Section 1962 of Title 18 of the United States Code (RICO) prohibits: (a) the use of income "derived . . . from a pattern of racketeering activity" to acquire an interest in, establish, or operate an enterprise engaged in or whose activities affect interstate commerce; (b) the acquisition of any interest in or control of such an enterprise "through a pattern or racketeering activity;" (c) the conduct or participation in the conduct of such an enterprise's affairs "through a pattern of racketeering activity;" and (d) conspiring to do any of the above. In this jurisdiction, RICO pleadings, except in cases involving allegations of fraud, are governed by the notice pleading requirements of Rule 8. *Wagh v. Metris Direct, Inc.*, 363 F.3d 821 (9th Cir. 2003). The Amended

[33] The U.S. Army Claims Manual states, "Liability under the FCA may be based on *acts or omissions of U.S. soldiers or civilian employees of a U.S. military department* only if they are considered negligent or wrongful." Claims Procedures, Department of the Army Pamphlet 27-162, Aug. 8, 2003, at 339. (Emphasis added). Regulation defines civilian employee as: "a person whose activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used; this includes, but is not limited to, full-time Federal civilian officers and employees. 32 C.F.R. § 536.3(b). Titan and CACI are not federal government civilian employees; they are "independent contractors" whose misconduct is not subject to FCA claims.

Complaint sufficiently pleads the elements of a RICO claim under sections 1962(a), (c), and (d).[34] See *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993), (federal civil procedure requires only "notice pleading"); Fed. R. Civ. P. 8(a) requires only a short and plain statement of the claim showing that the pleader is entitled to relief.

Particularity in pleading is required in only two specific instances set forth in Rule 8(b), fraud and mistake. When a plaintiff alleges fraudulent acts as the predicate acts in his RICO claim, Fed.R. Civ. P. 9(b) "requires that circumstances constituting fraud be stated with particularity." *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988), *cert. denied*, 493 U.S. 858 (1989). In the absence of allegations of fraud and mistake, this jurisdiction does not recognize a heightened pleading requirement for a RICO claim. *Nat'l Semiconductor Corp. v. Sporck*, 612 F. Supp. 1316, 1324 (N.D. Cal. 1985).[35]

A. Plaintiffs Adequately Plead a RICO Enterprise

1. Plaintiffs' claims are not precluded by the allegation that certain government employees conspired with Defendants

Plaintiffs have brought their RICO action against two corporations and three of their individual employees. Titan argues it cannot be held liable under RICO because the United States government, which Titan wrongly characterizes as a participant in the RICO conspiracy, is entitled to absolute immunity.

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[34] *See* RICO Case Statement ¶ 1.

[35] Although Titan does not argue that Plaintiffs have failed to identify under which subsections of Section 1962 they are proceeding, they cite *National Semiconductor* solely for the proposition that a complaint must identify the subsection. Titan ignores *Semiconductor's* reference to Rule 8. Titan also cites *United Transportation Union v. Springfield Terminal Co*. (UTU), 869 F. Supp. 42, 49 (D. Me. 1994) for the same proposition: that Plaintiffs must identify the section of subsection of 1962 that was violated. Titan mistakenly cites to *Semiconductor*, *UTU*, and two cases from other jurisdictions to suggest that there is a heightened pleading standard in RICO cases. *Titan Mem*. at 32 n.30. Titan's suggestion that a heightened standard of pleading is required is unsupported by the law of this Circuit. The two cases from other jurisdictions upon which Titan relies support the same principles of notice pleading. *Glenn v. First Nat'l Bank*, 868 F.2d 368, 371 (10th Cir. 1989) supports the applicability of notice pleading under Rule 8 to RICO claims. *Reynolds v. East Dyer Dev. Co.*, 882 F.2d 1249, 1251 (7th Cir. 1989) alleged mail *fraud* and was dismissed for failure to comply with Rule 9.

Based on the principle that the United States itself cannot be a defendant in a RICO action, Titan weaves an elaborate but unsupported argument that these private corporations have absolute immunity. Titan does not – and cannot – cite to a single case announcing this new legal principle that the RICO absolute immunity extends to insulate private corporations from liability merely because they conspire with those government officials willing to act outside the law. This suit does not seek a remedy from the United States; it merely alleges some employees of the United States wrongfully participated in the Torture Conspiracy.

It is black-letter law that the qualified immunity enjoyed by some government employees is not accorded to private actors who conspire with them. *See Richardson v. McKnight*, 521 U.S. 399, 412 (1997) ("private actors are not automatically immune (i.e., § 1983 immunity does not automatically follow § 1983 liability)"); *Wyatt v. Cole*, 504 U.S. 158, 168-69 (1992) (private parties generally are not eligible to receive qualified immunity from suit under § 1983).

Richardson is fatal to Titan's immunity assertion. In *Richardson*, the Supreme Court held that prison guards who are employees of a private prison management firm were not entitled to qualified immunity from suit by prisoners charging a violation of § 1983. Although the governmental unit in *Richardson* was a state rather than the federal government, the principle in *Richardson* is directly applicable to the pending case. *Richardson* points out that the Court has never held "that the mere performance of a governmental function could make the difference between unlimited § 1983 liability and qualified immunity." *Richardson*, 521 U.S. at 408. Further, the Court held that there was no policy reason to extend immunity to private parties because competition and fear of liability will prevent a private entity from being either too timid or too aggressive in its performance. *Id*. at 409. Another policy reason for immunity, the importance of encouraging "talented candidates" for public employment, is inapplicable to private parties. *Id.* at 408. Finally, *Richardson* found that the threat of "distraction engendered by lawsuit" was not sufficient to justify application of immunity where the protection of important rights was at issue.

Id. Under *Richardson*, Titan does not enjoy even the qualified immunity to which a prison guard directly employed by the United States would be entitled.[36]

Titan tries to construct an argument based on numerous cases holding nothing more than that United States government or agencies of the government may not be held liable under RICO. Titan cites the Court of Appeals for the Ninth Circuit decision in *Pedrina v. Han Kuk Chun*, 97 F.3d 1296 (9th Cir. 1996). But there, the Court did not hold that private parties enjoy sovereign immunity. Instead, the Court held that the private corporate defendants could not be liable because of claim preclusion from an earlier state court action. *Id.* Indeed, the Court's analysis clearly implies that both the mayor and the private corporations were *not* entitled to sovereign immunity.

Titan next argues that there is a common law against holding defendant Titan liable under RICO. *Titan Mem*. at 35. But Titan does not identify any common law principle that would entitle a private contractor to immunity. Instead, Titan fails to appreciate the difference in the immunities granted to legislative and judicial conduct and that available to the executive branch and relies on *Chappell v. Robbins*, 73 F.3d 918, 923-25 (9th Cir. 1996). In *Chappell*, the Court found that RICO did not override a common law immunity for *legislators* acting in their legislative capacity. The *Chappell* holding is limited to the issue whether RICO abrogated the principle of immunity for a legislative act. Indeed *Chappell* recognizes that executive employees are not entitled to same absolute immunity available to legislators, citing *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 577-80 (9th Cir. 1984) ("distinguishing qualified executive immunity, which allows liability for voting in bad faith, from absolute legislative immunity"). *Chappell,* 73 F.3d at 921.

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[36] *Berger v. Pierce*, 933 F.2d 393, 397 (6th Cir. 1991) (agency of the federal government is immune from suit under RICO); *Dees v. Cal. State Univ.*, 33 F. Supp. 2d 1190, 1201 (N.D. Cal 1998) (sovereign immunity barred RICO claims against DOL and DOJ, and individual employees thereof in their official capacities); *North Star Contracting Corp. v. Long Island R.R. Co.*, 723 F. Supp. 902, 908 (E.D.N.Y. 1986) (public benefit corporation cannot be held liable for RICO violation); *Harley v. United States DOJ*, No. 94-0807, 1994 U.S. Dist. Lexis 21621 (D.D.C. Oct. 7, 1994); *Norris v. United States DOD*, No. 95-2392, 1996 U.S. Dist. Lexis 22753 (D.D.C. Oct. 29, 1996).

Likewise, the analysis of *Cullinan Assocs., Inc. v. Abramson*, 128 F.3d 301 (6th Cir. 1997) is based on the narrow principle of absolute immune judicial or prosecutorial acts. The *Cullinan* court recognized that absolute immunity is not the norm even for government officials:

> For executive branch officials in both state government (see *Scheuer v. Rhodes,* 416 U.S. 232, 247-48, 94 S.Ct. 1683, 1691-92, 40 L.Ed.2d 90 (1974)) and federal government (see *Butz,* 438 U.S. at 507, 98 S.Ct. at 2911), the form of immunity once known as "good faith" immunity and now called "qualified" immunity is generally deemed sufficient to vindicate the important public interest in allowing government officials to do their work without undue fear of being haled into court for perceived missteps.

Id. at 307-08.

The *Cullinan* court specifically noted that "private parties [were] not immune from suit at common law . . . because the various rationales for good faith immunity are inapplicable to private parties." *Id.* at 310 (citation omitted).

2. The Complaint adequately alleges an enterprise

The SAC adequately pled the existence of a RICO enterprise. "The Ninth Circuit does not require such a detailed showing of an 'enterprise.'" *Semiconductor*, 612 F. Supp. at 1324 *(*citing *United States v. Bagnariol*, 665 F.2d 877, 891 (9th Cir. 1981)). In *Wagh v. Metris Direct, Inc.*, 363 F.3d 821 (9th Cir. 2003) the Ninth Circuit held that "[a] RICO plaintiff must allege a structure for the making of decisions separate and apart from the alleged racketeering activities, because 'the existence of an enterprise at all times remains a separate element which must be proved.'" *Id.* at 831 (Citations omitted).[37] However, *Wagh* expressly recognized that pleading requirements for RICO may not require more than that which is required by Rules 8 and 9.

The SAC alleges that participants in the "enterprise" share a common purpose. The murders, kidnappings, robberies and obscene acts alleged are part of a common plan to intimidate

[37] Titan mistakenly relies on *Wagh v. Metris Direct, Inc.*, 348 F.3d 1102 (9th Cir. 2003). However, that decision was republished and amended at 363 F.3d 821.

detainees into providing "intelligence" to inflate artificially the demand for interrogations and related services. RCS ¶ 5. By designing and implementing this plan Defendants expected to and did obtain a competitive advantage and received additional government contracts and payments for these services. *Id.* The association-in-fact is ongoing as is evidenced by allegations that the participants function as a continuing unit. RCS ¶ 6(b). The executives of CACI, Titan and certain government officials manage and operated the affairs of the enterprise. *Id.*

The SAC further alleges that: Defendant Titan and the CACI Corporate Defendants had close and important relationships with government officials that implemented the Torture Conspiracy through meetings, telephonic discussions, in-person discussions, email discussions and other communications that occurred in, among other places, California, Virginia and the District of Columbia, SAC ¶ 83; that the Torture Conspiracy recruited employees who "would be willing to engage in illegal acts," SAC ¶ 86; the Torture Conspirators issued a report that expressly directed other non-conspirators to violate the law so that the guard force would be actively engaged in setting the conditions for the successful exploitation of the internees, SAC ¶ 140; on November 19, 2003, Torture Conspirators located in Iraq wrested control over the detention conditions in Abu Ghraib prison from those charged with such control under normal military procedures, SAC ¶ 148; Defendants were able to reap handsome monetary rewards in exchange for abusing and torturing Plaintiffs and assisting the United States in securing them in unlawful conditions SAC ¶ 90; and that the fruits of the unlawful conspiracy were invested in the on-going operations of defendant corporation, SAC ¶ 91.

Contrary to Titan's contention, *Wagh* does not require Plaintiffs to "describe" a system of decision making and distributing profits with more specificity. Titan argues that the allegations are insufficient by simply ignoring what is alleged and by implying that the law requires what it does not. When Titan argues that the SAC "does not provide any factual support for the allegation . . . that Titan and CACI had any formal or informal structure for the conduct of interrogations based on preparatory activity in the United States," (*Titan Mem.* at 36), Titan has nonsensically conflated two wholly disparate issues – (1) the sufficiency of the pleadings on enterprise with (2) the unrelated

issue of the relationship of the conduct in the United States to the predicate acts in Iraq.[38] The latter is discussed below. Plaintiffs have alleged facts sufficient to plead the structure of the RICO enterprise and alleged in significant detail how the enterprise operated.

3. Plaintiffs have standing because their loss of property is cognizable under RICO

Each of the RICO Plaintiffs was the victim of the predicate act of robbery. SAC ¶¶ 101, 111, 124, 128, 130. *See* RCS ¶ 5(a) identifying robbery as one of the predicate acts that was the proximate cause of their RICO injuries. In addition, each of the RICO Plaintiffs was a victim of the predicate act of kidnapping.[39] SAC ¶¶ 101, 111, 124, 128, 130. Further certain Plaintiffs suffered injury as a result of Defendant's obstruction of justice in that it gave incentives to their continued detention.[40] As a result of their confinement, certain Plaintiffs suffered loss to the business by virtue of being prevent from carrying on their on-going business. *National Org. for Women, Inc. v. Scheidler,* 510 U.S. 249, 256 (1994); *Mendoza v. Zirkle Fruit Co.,* 301 F.3d 1163, 1170-71 (9th Cir. 2002). Thus, each of the RICO Plaintiffs suffered an injury to business or property.

Titan's argument that Plaintiffs lack standing rests on its deliberate failure to account for the predicate acts of kidnapping and obstruction of justice that caused Plaintiffs harm, and on a series

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[38] Titan also discusses at great length and without any relevance, the content of the a previous pleading which is not the subject of the pending motion. *See Titan Mem. at 36-37, n.24*.

[39] Unlawful confinement is at the core of the crime of kidnapping. "[I]t is the pain of confinement that creates a distinct harm worthy of independent punishment for kidnapping. Once the injury being inflicted by an accompanying crime is excluded, the length and condition of the confinement become the principal determinant in measuring the harm which forms the basis for the kidnapping charge." J.L. Diamond, "Kidnapping: A Modern Definition," 13 *Amer. J. of Crim. L.* 1, 2-3 (1985), cited with approval in *United States v. Garcia*, 854 F.2d 340, 343 (9th Cir. 1988). *See also* 18 U.S.C. § 1201(a)(2) (crime of kidnapping).

[40] Beginning with the ICRC report in April 1, 2003, evidence of the use of torture was made know to the United States government. SAC ¶ 159. Beginning as early as September 2003, the Torture Conspirators took steps to hide their involvement in the commission of crimes including murder. SAC ¶ 164. The attempt to hide their criminal conduct from review by competent authorities enabled the co-conspirators to maintain and prolong the period in which the RICO plaintiffs were confined. Further, the co-conspirators' alleged the ability of obtain intelligence provided the necessary incentive to continue them in detention.

of assertions that are inconsistent with the allegations of the complaint and the RICO Case Statement. Despite the fact that Plaintiffs allege that their property was improperly seized by force – in fact, by robbery – Titan maintains that the seizure of property "preceded the alleged predicate acts." *Titan Mem.* at 38. Robbery is specifically identified as a predicate act under §1961. The robberies were as much part of the attempt to intimidate and demean the detainees as other acts. Predicated acts went on as a backdrop to interrogation even when they did not occur at the time detainees were being interrogated.[41]

Titan's reliance on *Oregon Laborers-Employers Health & Welfare Trust Fund. v. Philip Morris Inc.*, 185 F.3d 957 (9th Cir. 1999) and *Oki Semiconductor Co. v. Wells Fargo Bank*, 298 F.3d 768 (9th Cir. 2002) is well-founded insofar as those decisions correctly set out the requirement that the predicate act be the proximate cause of the injury. *Titan Mem.* at 38. *Oki* is directly on point and supports Plaintiffs' RICO claims.[42] Noting that "RICO liability requires a direct and proximate causal relationship between the asserted injury and the alleged misconduct," the Court of Appeals for the Ninth Circuit held that there was no causal link between the bank employee who subsequently laundered stolen money and the prior theft of the plaintiff's money. 298 F.3d at 774. The Court found that "direct and proximate cause" of plaintiff's loss was the theft. *Id.* Here, the "direct and proximate cause" of Plaintiffs' loss is the robbery.

Similarly, in *Oregon*, the Court of Appeals in this Circuit found that there was no direct link between the losses suffered by the health fund in medical cost and the tobacco companies because "without any injury to smokers, [the funds] would not have incurred the additional expenses in paying for the medical expenses of those smokers." 185 F.3d at 963. The decision in *Oregon* rests

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[41] The murder by torture of the father of plaintiff Ahmed (SAC ¶¶ 111, 112) was a predicate act even if the father and the son were not being interrogated at the time the beatings occurred. The shooting of the detainee Saed in the neck and permitting him to bleed to death (SAC ¶ 104) was a predicate act even if at the time Saed was dying neither he or another detainee watching his death was being interrogated.

[42] Titan asserts with no authority that a RICO plaintiff's property loss must be directly connected to Titan's economic motive. *Titan Mem. at 39*. No precedent requires such a relationship.

on the fact that the injury resulting from the defendant's misconduct was suffered by a third party. Here, the predicate acts of robbery, kidnapping and obstruction of justice directly caused Plaintiffs' injuries. Thus, Plaintiffs have standing pursuant to §1962(c)).

Plaintiffs also have standing pursuant to pursuant to claims under §1962(a). "[A] plaintiff seeking civil damages for a violation of § 1962(a) must allege facts tending to show that he or she was injured by the use or investment of racketeering income." *Wagh*, 393 F.3d at 828 (citing *Nugget Hydroelectric L.P. v. Pacific Gas & Elec. Co.*, 981 F.2d 429 (9th Cir. 1992)). To have standing to sue under § 1962(a), a plaintiff must have allege "that funds derived from the alleged racketeering activity [] were used to injure him." *Id.* at 829. Here, Plaintiffs allege that Titan obtained funds from racketeering activities and reinvested those fund in order to operate the enterprise and the Torture Conspiracy, which subsequently took control over the conditions of Plaintiffs' imprisonment and interrogations in violation of domestic and international law. *See* RCS ¶ 11(b); SAC ¶¶ 79, 94.

Titan actually defends against the RICO claims by arguing that the destruction and theft of Plaintiffs' personal property was proper under "settled principles governing civilized warfare." *Titan. Mem.* at 40. No authority supports Titan's assertions. In *Gondrand v. United States*, 166 Ct. Cl. 473, *1 (1964), upon which Titan relies, the United States military seized property and gave receipts for it. The court held that the United States was not liable to compensate plaintiff because the property was seized through procedures set up by Great Britain, which was to pay compensation. *Id.* at 23. *Gondrand* is inapposite to the pending case, which concerns the criminal theft and destruction of personal property by the criminal Torture Conspiracy in which Defendants participated.

Similarly, Titan's reliance on the "government contractor defense" (*Titan Mem.* at 40) is misplaced. For all the reasons set forth in the Opposition to CACI, the "government contractor" defense does not apply to Titan or CACI.

4. RICO has extraterritorial reach under both the "effects" and "conduct" tests

This Court has jurisdiction over Plaintiffs' RICO claims because conduct that materially furthered the unlawful conspiracy occurred in the United States and because the criminal conduct had an effect in the United States. The RICO statute is silent on the question of whether it confers subject matter jurisdiction to claims involving foreign entities, or acts and conspiracies occurring outside the United States. The Court of Appeals for Ninth Circuit has looked to "the tests used to assess the extraterritorial application of the securities laws to provide useful guidelines for evaluating whether the jurisdictional minimum exists." *Poulis v. Ceasars World, Inc.*, 379 F.3d 654, 663 (9th Cir. 2004). In doing so, this Circuit has approved the application of both the "conduct" and "effects" tests. *Id. See also Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1358-59 (9th Cir. 1988) (*en banc*) (permitting application of RICO in case of fraudulent scheme to expropriate money from Philippines and invest it in the United States); *Butte Mining PLC v. Smith,* 76 F.3d 287, 291 (9th Cir. 1996) (holding that the "conduct" and "effects" tests applied to the securities required dismissal of RICO claims). Plaintiffs' SAC alleges both that (1) conduct occurred in the United States ("conduct test") and (2) events occurring abroad had an effect in the United States ("effects test"). SAC ¶¶ 171, 185.

The conduct test considers whether the defendant's conduct in the United States was significant (as opposed to preparatory) with respect to the alleged violation, and whether it materially furthered the unlawful scheme. *Butte Mining*, 76 F.3d at 291-92 (approving a test articulated in *Grunenthal v. Holz*, 712 F.2d 421, 424 (9th Cir. 1983)); a*ccord Robinson v. TCI/US West Communications, Inc.*, 117 F.3d 900, 906 (5th Cir. 1997) ("the domestic conduct need be only significant to the fraud rather than a direct cause of it.") (citations omitted). In *Grunenthal*, the Court of Appeals for the Ninth Circuit held that the plaintiff had satisfied the conduct test, even though the transaction at issue involved foreign securities and foreign corporations and citizens, because the parties held one meeting in Los Angeles during which the defendants made misrepresentations that were "significant with respect to the alleged violations" and "furthered the fraudulent scheme." 712 F.2d at 425 (citations and internal quotation marks omitted).

Thus, Plaintiffs here may prevail by showing that Titan's domestic conduct was "significant" with respect to the predicate acts, and that Defendants' conduct "furthered" the predicate acts, regardless of where the acts themselves occurred. *Id.* at 424. Plaintiffs' SAC alleges that: both Titan and CACI acquired a number of firms in the United States providing services to security agencies to position themselves to obtain contracts with the United States government (SAC ¶¶ 38-48); they entered into no-bid contracts to supply services to the United States government (SAC ¶ 51); they recruited widely in the United States for employees to carry out these services in Iraq (SAC ¶¶ 52-56); the relationships between defendants' executives and government representatives were fostered at meetings in the United States (SAC ¶ 83); defendants recruited in the United States individuals willing to participate in human rights abuses (SAC ¶ 86); Titan and CACI employees recruited in said manner were essential to the conduct of the interrogations in an unlawful manner (SAC ¶¶ 87, 88); and co-conspirator CACI amended its code to facilitate the criminal conspiracy (SAC ¶ 89). Titan mischaracterizes these as "merely preparatory," but they are not. Titan's conduct in the United States was "significant" to the conspiracy and "furthered" the commission of the predicate acts.[43] Thus, there is jurisdiction under the conduct test.

Titan erroneously argues that the conduct in the United States must "directly cause[]" plaintiffs' injuries. *Titan Mem*. at 41. They offer *Butte Mining* as support. But in *Butte Mining,* the issue was the fact that the wrongdoers were aliens. "[T]he scheme alleged . . . was devised abroad and completed in the United Kingdom." 76 F.3d at 291. The Court reasoned that "Congress in enacting RICO [did not have] the purpose of punishing frauds by aliens abroad even if peripheral preparations were undertaken by them here." *Id.* Here, in stark contrast, the victims are aliens but the wrongdoers are corporations based in the United States and United States citizens. Punishing unlawful conduct by its own citizens is a proper and widely recognized basis for extraterritorial

[43] *ldana v. Fresh Del Monte Produce, Inc.*, 305 F. Supp. 2d 1285 (S.D. Fla. 2003), cited by Titan, is inapposite. There, plaintiffs did not allege meetings or other activities occurring in the United States. The court found that any planning in the United States was too far removed from the wrong-doing to provide a basis for jurisdiction.

jurisdiction. See, for example, *Euro Trade & Forfaiting, Inc. v. Vowell*, No. 00 CIV 8431, 2002 WL 500672 (S.D.N.Y. 2002), where the court found a lack of subject matter jurisdiction over trades by aliens because of the inability of the Plaintiffs "to identify a U.S. party who requires protection *or* punishment." 2002 WL 500672, at *10 (emphasis added).

The conduct alleged also has an effect in the United States because Defendants obtain a competitive advantage in seeking contracts with the United States for interrogation services by engaging in predicate acts that increase the volume of services demanded by the government. Titan relies on a series of cases based on antitrust law (*Titan Mem.* 42) rather than securities fraud law, the standard adopted by the Ninth Circuit in *Butte Mining*, 76 F.3d at 291-92. Titan relies on two other cases which concern interpretation of language in the Foreign Trade Antitrust Improvements Act ("FTAIA"). In *F. Hoffman-La Roche LTD v. Empagran, S.A.*, 124 S.Ct. 2359, 2369 (2004), the court found that Congress "designed the FTAIA to clarify, perhaps to limit, but not *to expand* in any significant way, the Sherman Act's scope as applied to foreign commerce." The Court found that the FTAIA was intended to make clear that the domestic effect of anti-competitive conduct must be an "*adverse* (as opposed to a beneficial)." *Id.* at 2373. In *United States v. LSL Biotechnologies*, 379 F.3d 672, 679 (9th Cir. 2004), the Court made clear that it was interpreting the language of the FTAIA rather than applying the common law "effects" test. There is no basis for Titan's assertion that these two cases, involving the statutory construction of the FTAIA, impose additional conditions on the "effects" test adopted in *Butte Mining*. In sum, jurisdiction exists in this Circuit under the *Butte Mining* "effects" test.

V. PLAINTIFFS HAVE PROPERLY ALLEGED AND HAVE STANDING TO CHALLENGE VIOLATIONS OF GOVERNMENT CONTRACT LAW

Defendants' motions to dismiss Count XXV of Plaintiffs' SAC should be denied because Plaintiffs have properly alleged Defendants violated government contracting laws. Plaintiffs are not required to brief the legal merits of their claims in the SAC; they are only required to place Defendants on notice of those claims. Further, Plaintiffs have standing to sue Defendants for these violations.

A. Plaintiffs' Complaint Properly Alleges a Claim That Defendants Violated United States Contracting Law

CACI and Titan have violated United States law governing the procurement and performance of government contracts by performing inherently governmental functions, offering personal service contracts, and drafting its own statement of work. The procurement and performance of government contracts is regulated by numerous statutes and regulations, but the primary source regulating government contracts is the Federal Acquisition Regulations ("FAR"), codified at 48 C.F.R. § 1.101, *et seq.* The actions of CACI and Titan appear to have violated numerous provisions of the FAR.

First, the FAR clearly prohibits CACI, Titan, or any other contractor from offering or performing any services for the military that are considered "inherently governmental," including conducting intelligence gathering interrogations. The FAR specifically states that "[c]ontracts shall not be used for the performance of inherently governmental functions." 48 C.F.R. § 7.503(a). The FAR includes "a [non-inclusive] list of examples of functions considered to be inherently governmental functions or which shall be "treated as such" and this list specifically categorizes "[t]he direction and control of intelligence and counter-intelligence operations" as an inherently governmental function. 48 C.F.R. § 7.503(c)(8).[44]

Plaintiffs alleged that CACI and Titan entered contracts with the United States "to provide interrogation and other related intelligence services." SAC ¶¶ 1, 56. Plaintiffs alleged that CACI and Titan both recruited heavily to build their capacities to provide interrogations and intelligence services without concern to the training or skill level of the persons hired. SAC ¶ 52, 56-58. Plaintiffs alleged CACI and Titan employees and agents participated with government agents in torturing detainees. SAC ¶ 25. These allegations clearly support a claim that CACI and Titan

[44] Furthermore, not only does the FAR categorize intelligence gathering as an inherently governmental function, a 2000 Army policy specifically classifies any job that involves "the gathering and analysis" of tactical intelligence as "an inherently governmental function barred from private sector performance." Joel Brinkley, *Army Policy Bars Interrogations by Private Contractors*, N.Y. Times, June 12, 2004.

entered and performed contracts that encompassed inherently governmental functions, which violates United States contracting law.

Second, Plaintiffs' allegations support an argument Defendants may have violated government contracting law by entering into personal service contracts with the United States military. The FAR prohibits personal services because they circumvent civil service laws. All employees of the United States must be obtained by direct hire under competitive appointment or other procedures required by civil service laws. 48 C.F.R. § 37.104.[45]

Plaintiffs alleged that CACI and Titan acted as a personnel department for the United States military. Plaintiffs alleged that CACI and Titan hired individuals with no training or knowledge concerning proper interrogation procedures and failed to train or supervise the individuals they hired. SAC ¶¶ 57-58. Once these unqualified individuals were hired, CACI and Titan did not properly supervise or assert control over these individuals. SAC ¶¶ 60-61, 75. Such allegations suffice to state violation of the FAR.

Third, Plaintiffs alleged Defendants exercised undue influence over the contracting process, SAC ¶ 62. That allegation is supported by the Fay Report, which specifically found that Thomas Howard, a CACI employee, "participated" in "writing the statement of work" in CACI's contract. *See Fay Report* at 49. The FAR specifically states that Government agencies should prepare their own statements of work. 48 C.F.R. § 9.505-2(b)(2). If an agency uses a contractor to assist with the development of a statement of work, the contractor is prohibited from supplying the services under that contract unless the contractor is the sole source of the service or more than one contractor was involved in preparing the work statement. *Id.* The reasons for this prohibition is the fact it appears that is exactly what happened with the contracts, which contractor who assists with a statement of work is in a position to draft the statement of work in a manner to favor its own capabilities and services, and will be in a position to obtain an unfair advantage over its

[45] Clearly, if the military actually controlled all Defendants' acts, as Defendants argue as a reason for the Court to grant them sovereign immunities, these laws were violated.

competition. 48 C.F.R. § 9.505-2(b)(1) and (2). Although discovery is needed to learn all the facts, Plaintiffs alleged facts sufficient to state a claim that Defendants violate government contracting law.

B. Plaintiffs Have Standing to Seek Damages for Defendants' Violations of United States Contracting Law

Plaintiffs have the requisite standing under Article III to challenge CACI and Titan's procurement and performance of their military contracts. To satisfy Article III's standing requirements, a plaintiff must establish that: (1) it has suffered a concrete, particularized, and actual injury in fact; (2) there is a causal connection between that injury and defendant's alleged conduct; and (3) the injury can be redressed by a favorable decision. *See, e.g.*, *Harris v. Bd. of Supervisors, Los Angeles County*, 366 F.3d 754, 760 (9th Cir. 2004); *Laub v. U.S. Dept. of Interior*, 342 F.3d 1080, 1085 (9th Cir. 2003).

Plaintiffs have made allegations that suffice to satisfy all these standing requirements. Plaintiffs alleged that they have suffered physical and mental injuries that were caused by torture and abuse. SAC ¶¶ 167-71. Plaintiffs alleged CACI and Titan agents lacked the proper training, qualifications, and supervision to conduct interrogations. SAC ¶¶ 57-62. Plaintiffs alleged they were injured by untrained CACI and Titan employees attempting to perform inherently governmental functions in violation of the FAR. SAC ¶¶ 76-78, 81. Thus, Plaintiffs' concrete, particularized, and actual injuries can be traced to CACI and Titan circumventing federal contracting laws. If the proper procedures would have been followed, Plaintiffs would not have been tortured by improperly trained and improperly supervised individuals.

Additionally, this Court is fully capable of providing a judgment, either monetary or equitable, that can redress the injuries suffered by Plaintiffs and caused by CACI and Titan. Therefore, Plaintiffs have standing to challenge CACI's and Titan's procurement of their illegal contracts that caused improperly trained individuals to interrogate and torture Plaintiffs.

C. The United States is Not an Indispensable Party

Unlike what Defendants contend, the United States is not an indispensable party whose non-joinder requires dismissal of Count XXV. The question whether a party is indispensable can only

be determined in the context of particular litigation, and a party is considered indispensable only if the absent party is actually "necessary" to the litigation. *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1018 (9th Cir. 2002); *Shermoen v. United States*, 982 F.2d 1312, 1317 (9th Cir. 1992); *Allstate Life Ins. Co. v. Sundboll*, No. C-95-1022, 1995 U.S. Dist. LEXIS 14247, *3 (N.D. Cal. Sept. 15, 1995). A party is only considered "necessary" if either (1) the present parties will be denied complete relief in the absence of the party to be joined, *or* (2) the absent party claims an interest that will be impaired or impeded if not joined. Fed. R. Civ. P. 19(a); *Shermoen*, 982 F.2d at 1317.

Under these criteria, the United States is not a necessary party to the litigation of Count XXV. The United States has no interest that will be impeded or impaired if not joined in Count XXV. The interest of an absent party must be one that is "legally protected." *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043 (9th Cir. 1983), *cert. denied*, 464 U.S. 849 (1983). Any interest the United States would have in Count XXV is not one that that would be legally protected. Plaintiffs allege in Count XXV that the contracts CACI and Titan entered into and performed were illegal. The United States cannot claim that it has an interest in litigating its right to enter into illegal contracts. *See, e.g.*, *Adler v. Fed. Rep. of Nigeria*, 219 F.3d 869, 880 (9th Cir. 2000) (finding that illegal contracts are unenforceable).

Even if this Court would determine that the United States has a legally protected interest in illegal contracting, the United States is still not a necessary party because CACI and Titan have the same interest and can adequately represent the United States interest. A party is not deemed necessary for joinder purposes if its interests can be adequately represented by an existing party. *See, e.g.*, *Washington v. Daley*, 173 F.3d 1158, 1167-68 (9th Cir. 1999), *rev'd in part on other grounds*, *Midwater Trawlers Coop. v. DOC*, 282 F.3d 710 (9th Cir. 2002); *Eldredge*, 662 F.2d at 538. Like the United States, CACI and Titan will argue that the contracts it entered into were valid and legal. Any arguments that the United States would make will undoubtedly be made by CACI

and Titan (both of whom have highly competent counsel) as they defend Count XXV. Therefore, the United States' interests will be protected and therefore is not a necessary party.[46]

VI. PLAINTIFFS HAVE A CLAIM UNDER EITHER THE RELIGIOUS LAND USE AND INSTUTIONALIZED PERSONS ACT OR ITS PRECURSOR, THE RELIGIOUS FREEDOM RESTORATION ACT

Plaintiffs alleged that Defendants violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). RLUIPA protects "religious exercise, to the maximum extent permitted by the terms of [RLUIPA] and the Constitution." 42 U.S.C. § 2000cc-3(g). There may be an argument that RLUIPA prohibits the federal government and those acting on the federal government's behalf from burdening or restricting a prisoner's religious beliefs. Specifically, RLUIPA defines "government" to include "the United States . . . and any other person acting under color of Federal law." 42 U.S.C. § 2000cc-5(4)(B). While this definition of government may not apply to all the provisions of RLUIPA, it does apply to RLUIPA's prohibitions against governmental burdening and restricting of religious belief and free exercise. *See* 42 U.S.C. § 2000cc-5(4)(B) and 42 U.S.C. § 2000cc-3. Here, Plaintiffs have alleged in their complaint that Defendants and their agents acted under color of Federal law when they burdened the exercise of Plaintiffs' religious beliefs while Plaintiffs were held at Abu Ghraib.

In addition, a review of the portions of RLUIPA that prohibit the United States and persons acting under color of Federal law from burdening or restricting a person's free exercise of religion are *not* limited to only persons held within an "institution." *See* 42 U.S.C. § 2000cc-5(4)(B) and 42 U.S.C. § 2000cc-3. Rather, the United States and persons acting under color of federal law are

[46] Nor would the United States' non-joinder would not preclude this Court from effectively rendering "complete relief" among Plaintiffs and Defendants. *See Eldredge v. Carpenters 46 N. Cal. Counties Joint Apprenticeship & Training Cmty.*, 662 F.2d 534, 537 (9th Cir. 1981), *rev'd on other grounds*, 833 F.2d 1334 (9th Cir. 1987) (Rule 19(a)(1) is concerned only with "relief as between the persons already parties, not as between a party and the absent person whose joinder is sought"). This Court is fully capable of entering a judgment on Count XXV in favor of Plaintiffs or Defendants that would completely satisfy the claim and provide the necessary monetary or equitable relief to satisfy any injuries incurred.

generally prohibited from burdening or restricting a person's free exercise of religion regardless of whether that person is held in an institution.

Even if RLUIPA only applies to persons held within an "institution," detention centers may be considered an institution under RLUIPA. For RLUIPA purposes, an "institution" is and the other detention centers defined to include "any facility or institution which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State." 42 U.S.C. § 1997(1). A State, however, includes any territory or possession of the United States. 42 U.S.C. § 1997(4). Here, the detention centers were under the control of the United States during Plaintiffs' detentions and even to this day. Therefore, they arguably are institutions for RLUIPA purposes.

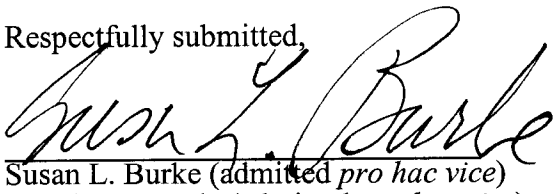
All that being said, Defendants have a valid point that Plaintiffs simply erred in relying on RLUIPA because it was intended to apply to the state, not federal, governments. Plaintiffs' claim is valid in principle, but more properly stated under the precursor to RLUIPA, the Religious Freedom Restoration Act ("RFRA"), which clearly applies to the federal government. Plaintiffs respectfully ask that the Court grant them leave to amend the SAC to answer the same claim under RFRA. Defendants are not prejudiced in any way by this mistake because the substance of the claim remains the same.

CONCLUSION

Plaintiffs have alleged they were tortured and mistreated by Defendants and suffered legally-cognizable injuries as a result. There is absolutely no reason – legal, philosophical or political – that mandates shutting the doors of the American judicial system in the faces of persons tortured while in detention centers under United States' control. That persons tortured and mistreated by Americans holding themselves as acting with the color of authority retain enough faith in the United States' judicial system to submit themselves to it processes is a sign of hope that the Torture Conspirators' egregious conduct has not permanently extinguished the United States' international reputation as a nation that recognizes and respects the inherent human dignity of every individual. Plaintiffs respectfully request that this Court deny Titan's Motion To Dismiss.

DATED: October 22, 2004

Respectfully submitted,



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INDEX OF EXHIBITS

Exhibit	Title of Document
A	CACI Press Release, CACI Rejects Lawsuit as Slanderous and Malicious, June 10, 2004
B	Taguba Report & Annex 26, Statement of Kasim Mehaddi Hilas
C	Taguba Report Annex 26, Statement of Joseph M. Darby
D	Relevant Portions of Final Report of the Independent Panel to Review DoD Detention Operations, August 2004 ("Schlesinger Report")
E	Relevant Portions of Investigation of Intelligence Activities at Abu Ghraib, August 2004 ("Fay Report")
F	Relevant Portions of Article 15-6 Investigation of the 800th Military Police Brigade ("Taguba Report")
G	Correspondence with Alion re Non-Involvement with Titan operations in Iraq
H	Affidavit of International Law Scholars from *Ortiz v. Gramajo*, No 91-11612 (D. Mass)
I	"Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq," CPA/ORD/27 June 2004/17
J	Email from Charlotte R. Herring, LTC, JA to Shareef Akeel, Esq., June 30, 2004

Exhibit A

News Release

CACI International Inc · 1100 North Glebe Road · Arlington Virginia 22201

CACI Rejects Lawsuit as Slanderous and Malicious

Frivolous suit based on false statements, conjecture and speculation

Arlington, VA, June 10, 2004 — CACI International Inc (**NYSE:CAI**) today issued the following statement: Yesterday, a New York-based human rights activist group filed a lawsuit in San Diego federal court. The suit accuses CACI, Titan Corporation of San Diego, and several named individuals of conspiring with the U.S. government to carry out various crimes against detainees at detention centers in Iraq.

CACI rejects and denies the allegations of the suit as being a malicious recitation of false statements and intentional distortions. CACI does not have and has never had any agreement with Titan Corporation or anyone else pertaining to conspiring with the government, or to perpetrate abuses of any kind on anyone. CACI has never entered into a conspiracy with the government, or anyone else, to perpetrate abuses of any kind.

The suit alleges a plethora of heinous acts that the company rejects and denies in their totality.

The company has not, nor have any of its employees, been charged with any wrongdoing or illegal acts relating to any work in Iraq. The lawsuit filed against CACI falsely alleges that CACI had contracts for interrogation work in Guantanamo Bay, Cuba. Similarly, named defendant John Israel is not, and has never been, an employee of CACI. These falsehoods and inaccuracies simply demonstrate the utter lack of investigation prior to filing suit by the entities ultimately behind this lawsuit.

The company has stated repeatedly that it will not condone, tolerate or endorse any illegal behavior at any time. The company will act forcefully and promptly if evidence is discovered showing that its employees acted in violation of the law or of CACI's policies. At the same time, the company will not rush to judgment on the basis of slander, distortion, false claims, partial reports, or any incomplete investigations. The company supports the concepts of the rule of law, due process, and the presumption of innocence.

In light of the frivolous and malicious nature of this lawsuit, as well as the apparent lack of any pre-filing investigation of the facts, the company stated it is examining its options for sanctions against the lawyers who participated in the filing of this lawsuit.

CACI International Inc provides the IT and network solutions needed to prevail in today's new era of defense, intelligence, and e-government. From systems integration and managed network solutions to knowledge management, engineering, simulation, and information assurance, we deliver the IT applications and infrastructures our federal customers use to improve communications and collaboration, secure the integrity of information systems and networks, enhance data collection and analysis, and increase efficiency and mission effectiveness. Our solutions lead the transformation of defense and intelligence, assure homeland security, enhance decision-making, and help government to work smarter, faster, and more responsively. CACI, a member of the Russell 2000 and S&P SmallCap 600 indices, provides dynamic careers for approximately 9,400 employees working in over 100 offices in the U.S. and Europe. CACI is the IT provider for a networked world. Visit CACI on the web at **www.caci.com**.

There are statements made herein which do not address historical facts and, therefore could be interpreted to be forward-

looking statements as that term is defined in the Private Securities Litigation Reform Act of 1995. Such statements are subject to factors that could cause actual results to differ materially from anticipated results. The factors that could cause actual results to differ materially from those anticipated include, but are not limited to, the following: regional and national economic conditions in the United States and the United Kingdom, including conditions that result from terrorist activities or war; failure to achieve contract awards in connection with recompetes for present business and/or competition for new business; the risks and uncertainties associated with client interest in and purchases of new products and/or services; continued funding of U.S. government or other public sector projects in the event of a priority need for funds, such as homeland security, the war on terrorism or rebuilding Iraq; government contract procurement (such as bid protest, small business set asides, etc.) and termination risks; the results of government investigations into allegations of improper actions related to the provision of services in support of U.S. military operations in Iraq; the results of the appeal of CACI International Inc ASBCA No. 53058; individual business decisions of our clients; paradigm shifts in technology; competitive factors such as pricing pressures and/or competition to hire and retain employees; material changes in laws or regulations applicable to our businesses, particularly in connection with (i) government contracts for services, (ii) outsourcing of activities that have been performed by the government, and (iii) competition for task orders under Government Wide Acquisition Contracts ("GWACs") and/or schedule contracts with the General Services Administration; our own ability to achieve the objectives of near term or long range business plans; and other risks described in the company's Securities and Exchange Commission filings.

# # #

For information contact:

Jody Brown
Senior Vice President, Public Relations
(703) 841-7801
jbrown@caci.com

Exhibit B

TRANSLATION OF STATEMENT PROVIDED BY Kasim Mehaddi HILAS, Detainee # 151108, 1300/18 JAN 04:

'Tn the name of God, I swear to God that everything I witnessed everything I am talking about. I am not saying this to gain any material thing, and I was not pressured to do this by any forces. First, I am going to talk only about what happened to me in Abu Ghraib Jail. I will not talk about what happened when I was in jail before, because they did not ask me about that, but it was very bad.

1. They stripped me of ail my clothes, even my underwear. They gave me woman's underwear, that was rose color with flowers in it and they put the bag over my face. One of them whispered in my ear, "today I am going to fuck you", and he said this in Arabic. Whoever was with me experienced the same thing. That's what the American soldiers did, and they had a translator with them, named Abu Hamid and a female soldier, who's skin was olive colored and this was on October 3 or 4, 2003 around 3 or 4 in the afternoon. When they took me to the cell, the translator Abu Hamid came with an American soldier and his rank was sergeant (I believe). And he called told me "faggot" because I was wearing the woman's underwear, and my answer was "no". Then he told me "why are you wearing this underwear", then I told them "because you make me wear it". The transfer from Camp B to the Isolation was full of beatings, but the bags were over our heads, so we couldn't see their faces. And they forced me to wear this underwear all the time, for 51 days. And most of the days I was wearing nothing else.

2. I faced more harsh punishment from Grainer. He cuffed my hands with irons behind my back to the metal of the window, to the point my feet were off the ground and I was hanging there. for about 5 hours just because I asked about the time, because I wanted to pray. And then they took all my clothes and he took the female underwear and he put it over my head. After he released me from the window, he tied me to my bed until before dawn. He took me to the shower room. After he took me to the shower room, he brought me to my room again. He prohibited me from eating food that night, even though I was fasting that day. Grainer and the other two soldiers were taking pictures of every thing they did to me. I don't know if they took a picture of me because they beat me so bad I lost consciousness after an hour or so.

3. They didn't give us food for a whole day and a night, while we were fasting for Ramadan. And the food was only one package of emergency food.

Now I am talking about what I saw:

1. They brought three prisoners completely naked and they tied them together with cuffs and they stuck one to another. I saw the American soldiers hitting them with a football and they were taking pictures. I saw Grainer punching one of the prisoners right in his face very hard when he refused to take off his underwear and I heard them begging for help. And also the American soldiers told to do like homosexuals (fucking). And there was one of the American soldiers they called Sergeant (black skin) there was 7 to 8 soldiers there also. Also female soldiers were taking pictures and that was in the first day

[redacted]

of Ramadan. And they repeated the same thing the second day of Ramadan. And they were ordering them to crawl while they were cuffed together naked.

2. 1 saw the translator Abu Hamid fucking a kid, his age would be about 15-18 years. The kid was hurting very bad and they covered all the doors with sheets. Then when I heard the screaming I climbed the door because on top it wasn't covered and I saw Abu Hamid, who was wearing the military uniform putting his dick in the little kid's ass. I couldn't see the face of the kid because his face wasn't in front of the door. And the female soldier was taking pictures. Abu Hamid, I think he is Egyptian because of his accent, and he was not skinny or short, and he acted like a homosexual (gay). And that was in cell #23 as best as I remember.

3. In the cell that is almost under it, on the North side, and I was right across from it on the other side. They put the sheets again on the doors. Grainer and his helper they cuffed one prisoner in Room #1, named Amjeed, he was Iraqi citizen. They tied him to the bed and they were inserted the phosphoric light in his ass and he was yelling for God's help. Amjeed used to get hit and punished a lot because I heard him screaming and they prohibited us from standing near the door when they do that. That was Ramadan, around 12 midnight approximately when I saw them putting the stick in his ass. The female soldier was taking pictures.

4. I saw more than once men standing on a water bucket that was upside down and they were totally naked. And carrying chairs over their heads standing under the fan of the hallway behind the wooden partition and also in the shower.

Not one night for all the time I was there passed without me seeing, hearing or feeling what was happening to me

And I am repeating the oath / I swear on Allah almighty on the truth of what I said. Allah is my witness."

TRANSLATED BY:

Mr. Johnson ISHO
Translator, Category II
Titan Corporation

VERIFIED BY:

Mr. Abdelilah ALAZADI
Translator, Category II
Titan Corporation

Assigned to:
Prisoner Interview/Interrogation Team (PIT)(CID)(FWD)
10TH Military Police Battalion (CID)(ABN)(FWD)
3rd Military Police Group (CID), USACIDC
Abu Ghraib Prison Complex (ABPC)
Abu Ghraib, Iraq APO AE 09335

[redacted]

For use of this form, see AR 190-45, the proponent agency is ODCSOPS

LOCATION	DATE	Time	FILE NUMBER
Abu Ghraib Prison, Abu Ghraib, Iraq	18 June 04	1300	
LAST NAME, FIRST NAME, MIDDLE NAME	SOCIAL SECURITY NUMBER		GRADE/STATUS
Mehdawi	151108		CIV/Detainee

ORGANIZATION OR ADDRESS

Camp V.I.P., Abu Ghraib Prison, Abu Ghraib, Iraq

I, قاسم مهدي هلاس, want to make the following Statement under oath:

بسم الله الرحمن الرحيم

اقسم بالله العظيم على أني اشهد شهادة الله ولا أبتغي بذلك نفعاً دنيوياً
ايا كان نوعه وكنت مجبوراً على ذلك او مضطراً بسبب سلطه ما.
أتكلم أولاً عن نفسي وما تعرضت له في سجن أبي غريب فقط ولا اتكلم عما تعرضت له في
الاعتقال لأنه لم يطلب مني ولكنه كان سيئاً جداً.
قاموا بسلب كافة ملابسي وحتى الداخلية منها والبسوني لباساً نسائياً بلون وردي
به ورد - ووضعوا الاكياس برؤوسنا واشار احدهم بأذني بعبارة
(اليوم اني انيجك) قالها بالعربيه وكان ذلك حال من كان معي من اقارب
قام بذلك جنود امريكان معهم المترجم (ابو حامد) وجنديه سمراء البشرة وكان ذلك
بتاريخ ٣-٤/١٠/٢٠٠٣ والوقت قريب العصر. وبعد ان قادوني الى الحجر
جاء المترجم ابو حامد مع جندي امريكي كان الموقف (اخلع ذلك) وقال لي وانا ارتدي
هذا اللباس هل انت (منيوك) قلت لا - فقال لماذا ترتدي هذا اللباس اذاً قلت
له انهم البسوني اياه - وكان هذا التحول من الحجز B الى الحاجز عليّ بالضرب ولكن
الاكياس التي وضعوها برؤوسنا حالت دون رؤية وجوههم. واجبروني على لبس هذا
اللباس لمدة الانفرادي وكانت (٥١) يوم اغلبها بدون ملابس.
وتعرضت خلالها الى عقوبات بالغة التعقيد منها أن الحارس (كريز) قام بربط
يدي بالحديد خلف ظهري ومن ثم قام بتعليقي بالنافذه بأستخدام عمدة وثاق القدم
الحديديه وكانت قدماي تتدلى لمدة ٥ خمس ساعات بسبب أني سألته عن وقت
فرض الصلاه وجرد في حينها من هذا اللباس النسائي والبسني اياه في راسي وبعد أن
فك وثاقي من النافذه قام بوثقي بالسرير الى قبيل الفجر وعندها أدخلني الحمام. يتبع ←

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 3 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF___TAKEN AT_DATED___CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE___OF__PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

U.S. Government Printing Office: 1993 – 342-027/80494

Exhibit C

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

LOCATION	DATE / Time	FILE NUMBER
Abu Ghraib, Iraq, APO AE 09335	14 Jan 2004 / 0250 JAN	
LAST NAME, FIRST NAME, MIDDLE NAME	**SOCIAL SECURITY NUMBER**	**GRADE/STATUS**
DARBY, Joseph M.	229-19-2459	E4/SPC/AD

ORGANIZATION OR ADDRESS

372nd Military Police Company, Abu Ghraib Correctional Facility, Abu Ghraib, Iraq, APO AE 09335

I- Joseph M. DARBY, want to make the following Statement under oath:

I arrived at Abu Ghraib sometime around 25 or 26 Oct 03. Shortly after 1 arrived, I was talking with CPL GRAINER and he showed me pictures on his digital camera of a prisoner chained to his cell. The prisoner's arms were chained above his head and he was naked. At the time I didn't think too much of it, as I thought perhaps it was procedure in the Hard Site. CPL GRAINER told me "The Christian in me says it's wrong, but the Corrections Officer in me says 'I love to make a grown man piss himself.

I went on Emergency leave from 9 Nov 03 until 26 Nov 03. When I returned, I learned of a shooting that occurred in the hard site, so ! asked CPL GRAINER if he had pictures of the cell where the inmate was shot because I was curious. CPL GRALNER told me that he did have pictures of the cell, and he handed me two Compact Disks. I think Compact Disks that he gave me were marked "Pics 1" and "Pics 2". The Compact Disks had a greenish color overlay and were in a green case labeled "Memorex". I took the disks with me so I could download the contents to my computer. I thought the disks just had pictures of Iraq, the cell where the shooting occurred and other personal photos. I downloaded the contents of the disks and then I looked at the images that were there. I discovered a bunch of pictures of palaces in Iraq, photos of the city of Hilla, and pictures of Abu Ghraib. I also found a bunch of folders that had dates on them. Within these folders where a bunch of photos that showed nakedfemale prisoners, naked male prisoners and other photos of male prisoners in sexual prisoners. 1 also saw a pyramid of naked prisoners. I returned the disks that 1 borrowed from CPL GRALNER two or three days after I initially borrowed them. I kept a copy of all the photos on my hard drive and then I made two Compact Disks with all the photos. After I made the Compact Disks, I deleted the photos from my hard drive. I thought about the pictures showing the prisoners in sexual positions and I thought that it was just wrong. When I learned CPL GRAINER was going to go back and work at the Hard Site, which is where the photos showing the prisoners being abused occurred, I knew I had to do something. I didn't want to see any more prisoners being abused because 1 knew it was wrong. So I created another Compact Disk with the photos showing the prisoners being abused and wrote an anonymous letter and gave it to CID.

Q: SA PIERON

A: SPC DARBY

Q: Why did you want to be anonymous?

A: I was worried about retaliation from other people in my company if they found out I gave these pictures to CID,

Q: Why did you decide to come forward?

A: I felt the pictures were morally wrong, and I was worried that if CPL GRAINER went back to the Hard Site, he would abuse more prisoners. When you asked if I was the one who originally had the pictures, I said I was, because I know that 1 need to do the right thing and help the investigation.

Q: What do you mean by the Hard Site?

A: I mean Tier 1 of the Baghdad Correctional Facility, Abu Ghraib, Iraq, APO AE 09335.

Q: Have you talked with anyone about these pictures showing prisoners being abused?

A: Yes, my roommate, SGT MCGUIRE.

Q: Other than CPL GRAINER, who knows you have these images?

A: My roommate, SGT Jeremy MCGUIRE. I showed him the pictures today (13 Jan 04) and we talked about what happened to the prisoners and he said that is was wrong. I told him that I was giving the pictures to CID and he didn't object or anything.

EXHIBIT	**INITIALS** OF **PERSON MAKING STATEMENT**	PAGE 1 OF 3 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENTOF___TAKEN AT_DATED____CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS -PAGE___OF__PAGES " WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

U.S. Government Printing Office: 1993 - 342-027/80494

[redacted]

Q: Did CPL GRAINER tell you what was on the Compact Disks he gave you?
A: No, but it was my understanding that they had pictures on them. He didn't mention anything about pictures of prisoners or anything like that.
Q: Other than the Compact Disks have a green tint to them and are marked "Pics 1" and "Pics 2", do you remember anything else about them?
A: No.
Q: Do you know who took the photos?
A: No, but 1 think CPL GRAINER took most of them. In the photo's where CPL GRAINER is present, I don't know who took them.
Q: What type of camera does CPL GRAINER have?
A: I think it's a Sony. It's gray. I also think it's a 5.0 mega pixel camera. I remember that because I admired it.
Q: Do you know where CPL GRAINER keeps the Compact Disks?
A: When CPL GRAINER gave me the disks, he pulled them out of a computer bag about the size of an attaché case.
Q: Do you know if CPL GRAINER, or anyone else, has other pictures of prisoners being abused?
A: 1 believe CPL GRAINER has other pictures on his computer, but I haven't seen them. I have heard rumors that in addition to the pictures on the disks, CPL GRAINER has pictures of two female prisoners taking a shower together and shaving each other's pubic area. I believe these two prisoners are sisters.
Q: Do you know if these two female prisoners were forced to perform these actions?
A: No, I do not.
Q: Do you know if the male prisoners depicted in the photos performed these actions voluntarily?
A: No, but I seriously doubt it.
Q: Why do you think CPL GRAINER and the other soldiers undressed the prisoners and took pictures of them?
A: I think they undressed the prisoners as a form of punishment. I don't know why they would take pictures of them.
Q: Do you know who any of the prisoners in the picture are?
A: No, 1 couldn't identify any of them. I just don't know them.
Q: Do you know who the soldiers in the pictures are?
A: In most of the pictures, yes I do. Some of the pictures are just too blurry or too far away, but I know most of the soldiers involved.
Q: On the Compact Disk you provided, there is a folder labeled "28 Oct". Do you know the name of the female soldier in the photos named "DSC00003", "DSC00004" and "DSC00005", in which it depicts the soldier holding a naked male prisoner by what appears to be a leash tied around the prisoner's neck?
A: SPC ENGLAND. She is an admin clerk assigned to 372nd Military Police Company, which is my company. She was, at some time, CPL GRAINER's girlfriend. I don't think they are going out anymore. I don't know her first name or anything else about her.
Q: In the same pictures, there is another female soldier. Do you know who this soldier is?
A: SPC Megan AMBHUL. She is also in my company.
Q: In the folder labeled "28 Oct", there is a picture named "DSC00008". Do you recognize anyone in this photo?
A: Yes, the large man with his hand on the head of this prisoner is an interpreter named "Addle". I don't know his full name or how to spell it, but that's definitely him. I don't know where he works, but I see him around the prison.
Q: In the folder labeled "28 Oct 03, there is a picture named "DSC00042". Do you recognize anyone in this photo?
Q: SPC HARMON. She is also in my company. I don't know anything else about her. I don't know the other female in the picture other than she is a prisoner.
Q: In the folder labeled "7a nov", there is a picture named " DSC04256". Do you recognize anyone in this photo?
A: The two soldiers are CPL GRAINER and SPC ENGLAND. I don't know who the naked males are.
Q: In the folder labeled "nov 5a", there is a picture named " DSC00050". Do you recognize anyone in this photo?
A: Yes, 1 recpgnize SGT Ivan FREDERICK. He is also in my company.
Q: In the folder labeled "nov 7d", there is a picture named " DSC04251". Do you recognize anyone in this photo?
A: Yes, in the photo I recognize SGT FREDERICK on the left, CPL GRAINER on the right. SPC Jeremy SIVITS in the middle. SPC SIVITS is a mechanic in my company. There is also a movie image on the disk that shows CPL GRAINER striking the prisoner with his fist into what appears to be the prisoner's head.
Q: Do you know why other than Military Police personnel would be in the Hard Site?
A: I don't think they would have any legitimate reason to be there, other than CPL GRAINER inviting them.

U.S. Government Printing Office: 1993 – 354 2-027/80494

Q: Why do you think CPL GRAINER would invite them to the Hard Site?
A: 1 don't know.
Q: Other than the soldiers you have already identified, do you know any of the other soldiers depicted in the photos?
A: No, but I think some they are probably Military Intelligence soldiers, because only the MI soldiers would have any reason to be there.
Q: Do you have anything to add to this statement?
A: No,////END OF STATEMENT///

AFFIDAVIT

I, Joseph M. DARBY, HAVE READ OR HAD READ TO ME THIS STATEMENT, WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OR BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, **AND** WITHOUT COERCION, UNLAWFUL INFULENCE, OR UNLAWFUL INDUCEMENT.

(Signature of Person MakingStatement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by Law to administer oaths, this 14th day of January, 2004 at Abu Ghraib, Iraq, APO AE 09335.

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS
10TH Military Police Battalion (CID)
Baghdad, Iraq, APO AE 09335

SA TYLER M.PIERON

(Typed Name of Person Administering Oath)
Article 136, UCMJ or 5 USC 903
(Authority to Administer Oaths)

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

U.S. Government Printing Office: 1993 - 342-027/80494

Exhibit D

Final Report of the Independent Panel To Review DoD Detention Operations

August 2004

Use of Contractors as Interrogators

As a consequence of the shortage of interrogators and interpreters, contractors were used to augment the workforce. Contractors were a particular problem at Abu Ghraib. The Army Inspector General found that 35 percent of the contractors employed did not receive formal training in military interrogation techniques, policy, or doctrine. The Naval Inspector General, however, found some of the older contractors had backgrounds as former military interrogators and were generally considered more effective than some of the junior enlisted military personnel. Oversight of contractor personnel and activities was not sufficient to ensure intelligence operations fell within the law and the authorized chain of command. Continued use of contractors will be required, but contracts must clearly specify the technical requirements and personnel qualifications, experience, and training needed. They should also be developed and administered in such as way as to provide the necessary oversight and management.

Doctrinal Deficiencies

At the tactical level, detaining individuals primarily for intelligence collection or because they constitute a potential security threat, though necessary, presents units with situations not addressed by current doctrine. Many units adapted their operating procedures for conducting detainee operations to fit an environment not contemplated in the existing doctrinal manuals. The capturing units had no relevant procedures for information and evidence collection, which were critical for the proper disposition of detainees.

Additionally, there is inconsistent doctrine on interrogation facility operations for the fixed detention locations. Commanders had to improvise the organization and command relationships within these elements to meet the particular requirements of their operating environments in Afghanistan and Iraq. Doctrine is lacking to address the screening and interrogation of large numbers of detainees whose status (combatants, criminals, or innocents) is not easily ascertainable. Nor does policy specifically address administrative

Exhibit E

AR 15-6 INVESTIGATION OF THE ABU GHRAIB DETENTION FACILITY AND 205th MILITARY INTELLIGENCE BRIGADE (U)

MG GEORGE R. FAY
INVESTIGATING OFFICER

~~CLASSIFIED BY: AR 380-6~~
~~DECLASSIFY ON: OADR~~

[2] (U) These Delivery Orders were awarded under a Blanket Purchase Agreement (BPA) (NBCHA01-0005) with the National Business Center (NBC), a fee for service activity of the Interior Department. The BPA between CACI and NBC set out the ground rules for ordering from the General Services Administration (GSA) pursuant to GSA Schedule Contract GS-35F-5872H, which is for various Information Technology (IT) Professional Services. Approximately eleven Delivery Orders were related to services in Iraq. While CJTF-7 is the requiring and funding activity for the Delivery Orders in question, it is not clear who, if anyone, in Army contracting or legal channels approved the use of the BPA, or why it was used.

[3] (U) There is another problem with the CACI contract. A CACI employee, Thomas Howard, participated with the COR, LTC Brady, in writing the Statement of Work (SOW) prior to the award of the contract (Reference Annex B, Appendix 1, BOLTZ). This situation may violate the provisions of Federal Acquisition Regulation (FAR) 9. 505-2 (b) (1).

[4] (U) On 13 May 2004, the Deputy General Counsel (Acquisition) of the Army issued an opinion that all Delivery Orders for Interrogator Services should be cancelled immediately as they were beyond the scope of the GSA Schedule contract.

(2) (U) Although intelligence activities and related services, which encompass interrogation services, should be performed by military or government civilian personnel wherever feasible, it is recognized that contracts for such services may be required in urgent or emergency situations. The general policy of not contracting for intelligence functions and services was designed in part to avoid many of the problems that eventually developed at Abu Ghraib, i.e., lack of oversight to insure that intelligence operations continued to fall within the law and the authorized chain of command, as well as the government's ability to oversee contract operations.

(3) (U) Performing the interrogation function in-house with government employees has several tangible benefits for the Army. It enables the Army more readily to manage the function if all personnel are directly and clearly subject to the chain of command, and other administrative and/or criminal sanctions, and it allows the function to be directly accessible by the commander/supervisor without going through a Contracting Officer Representative (COR). In addition, performing the function in-house enables Army Commanders to maintain a consistent approach to training (See Paragraph 3.b.(3)) and a reliable measure of the qualifications of the people performing the function.

(4) (U) If it is necessary to contract for interrogator services, Army requiring activities must carefully develop the applicable SOW to include the technical requirements and requisite personnel qualifications, experience, and training. Any such contracts should, to the greatest extent possible, be awarded and administered by an Army contracting activity in order to provide for the necessary oversight, management, and chain of command. Use of contracting vehicles

was listed as being in charge of screening. CIVILIAN-08 (CACI) was in charge of "B Section" with military personnel listed as subordinates on the organization chart. SOLDIER-14 also indicated that CIVILIAN-08 was a supervisor for a time. CPT Wood stated that CACI "supervised" military personnel in her statement, but offered no specifics. Finally, a government organization chart (Reference Annex H, Appendix 6, Tab B) showed a CIVILIAN-02 (CACI) as the Head of the DAB. CIVILIAN-02 is a CACI employee. On the other side of the coin, CIVILIAN-21 indicated in his statement that the Non-Commissioned Officer in Charge (NCOIC) was his supervisor. (Reference Annex B, Appendix 1, SOLDIER-14, CIVILIAN-21, ADAMS, WOOD)

(11) (U) Given the sensitive nature of these sorts of functions, it should be required that the contractor perform some sort of background investigation on the prospective employees. A clause that would allow the government to direct the contractor to remove employees from the theater for misconduct would seem advisable. The need for a more extensive pre-performance background investigation is borne out by the allegations of abuse by contractor personnel.

(12) (U) An important step in precluding the recurrence of situations where contractor personnel may engage in abuse of prisoners is to insure that a properly trained COR is on-site. Meaningful contract administration and monitoring will not be possible if a small number of CORs are asked to monitor the performance of one or more contractors who may have 100 or more employees in the theater, and in some cases, perhaps in several locations (which seems to have been the situation at Abu Ghraib). In these cases, the CORs do well to keep up with the paper work, and simply have no time to actively monitor contractor performance. It is apparent that there was no credible exercise of appropriate oversight of contract performance at Abu Ghraib.

(13) (U) Proper oversight did not occur at Abu Ghraib due to a lack of training and inadequate contract management and monitoring. Failure to assign an adequate number of CORs to the area of contract performance puts the Army at risk of being unable to control poor performance or become aware of possible misconduct by contractor personnel. This lack of monitoring was a contributing factor to the problems that were experienced with the performance of the contractors at Abu Ghraib. The Army needs to take a much more aggressive approach to contract administration and management if interrogator services are to be contracted. Some amount of advance planning should be utilized to learn from the mistakes made at Abu Ghraib.

h. (U) Other Government Agencies and Abu Ghraib.

(1) (U) Although the FBI, JTF-121, Criminal Investigative Task Force, ISG and the Central Intelligence Agency (CIA) were all present at Abu Ghraib, the acronym "Other Government Agency" (OGA) referred almost exclusively to the CIA. CIA detention and interrogation

Exhibit F

ARTICLE 15-6 INVESTIGATION OF THE 800th MILITARY POLICE BRIGADE

SECRET/NO FOREIGN DISSEMINATION

Karpinski, many of the subsequent escapes, accountability lapses, and cases of abuse may have been prevented. **(ANNEXES 5-10)**

27. (U) The perimeter lighting around Abu Ghraib and the detention facility at Camp Bucca is inadequate and needs to be improved to illuminate dark areas that have routinely become avenues of escape. **(ANNEX 6)**

28. (U) Neither the camp rules nor the provisions of the Geneva Conventions are posted in English or in the language of the detainees at any of the detention facilities in the 800th MP Brigade's AOR, even after several investigations had annotated the lack of this critical requirement. **(Multiple Witness Statements and the Personal Observations of the Investigation Team)**

29. (U) The Iraqi guards at Abu Ghraib BCCF) demonstrate questionable work ethics and loyalties, and are a potentially dangerous contingent within the Hard-Site. These guards have furnished the Iraqi criminal inmates with contraband, weapons, and information. Additionally, they have facilitated the escape of at least one detainee. **(ANNEX 8 and 26-SPC Polak's Statement)**

30. (U) In general, US civilian contract personnel (Titan Corporation, CACI, etc…), third country nationals, and local contractors do not appear to be properly supervised within the detention facility at Abu Ghraib. During our on-site inspection, they wandered about with too much unsupervised free access in the detainee area. Having civilians in various outfits (civilian and DCUs) in and about the detainee area causes confusion and may have contributed to the difficulties in the accountability process and with detecting escapes. **(ANNEX 51, Multiple Witness Statements, and the Personal Observations of the Investigation Team)**

31. (U) SGM Marc Emerson, Operations SGM, 320th MP Battalion, contended that the Detainee Rules of Engagement (DROE) and the general principles of the Geneva Convention were briefed at every guard mount and shift change on Abu Ghraib. However, none of our witnesses, nor our personal observations, support his contention. I find that SGM Emerson was not a credible witness. **(ANNEXES 45, 80, and the Personal Observations of the Investigation Team)**

32. (U) Several interviewees insisted that the MP and MI Soldiers at Abu Ghraib (BCCF) received regular training on the basics of detainee operations; however, they have been unable to produce any verifying documentation, sign-in rosters, or soldiers who can recall the content of this training. **(ANNEXES 59, 80, and the Absence of any Training Records)**

33. (S/NF) The various detention facilities operated by the 800th MP Brigade have routinely held persons brought to them by Other Government Agencies (OGAs) without accounting for them, knowing their identities, or even the reason for their detention. The Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib called these detainees "ghost detainees." On at least one occasion, the 320th MP

- Failing to properly supervise his soldiers working and "visiting" Tier 1 of the Hard-Site at Abu Ghraib (BCCF).
- Failing to properly establish and enforce basic soldier standards, proficiency, and accountability.
- Failing to ensure that his Soldiers were properly trained in Internment and Resettlement Operations.
- Failing to report a Soldier, who under his direct control, abused detainees by stomping on their bare hands and feet in his presence.

11. (U) That **Mr. Steven Stephanowicz, Contract US Civilian Interrogator, CACI, 205th Military Intelligence Brigade**, be given an Official Reprimand to be placed in his employment file, termination of employment, and generation of a derogatory report to revoke his security clearance for the following acts which have been previously referred to in the aforementioned findings:
    - Made a false statement to the investigation team regarding the locations of his interrogations, the activities during his interrogations, and his knowledge of abuses.
    - Allowed and/or instructed MPs, who were not trained in interrogation techniques, to facilitate interrogations by "setting conditions" which were neither authorized and in accordance with applicable regulations/policy. He clearly knew his instructions equated to physical abuse.

12. (U) **That Mr. John Israel, Contract US Civilian Interpreter, CACI, 205th Military Intelligence Brigade,** be given an Official Reprimand to be placed in his employment file and have his security clearance reviewed by competent authority for the following acts or concerns which have been previously referred to in the aforementioned findings:
    - Denied ever having seen interrogation processes in violation of the IROE, which is contrary to several witness statements.
    - Did not have a security clearance.

13. (U) I find that there is sufficient credible information to warrant an Inquiry UP Procedure 15, AR 381-10, US Army Intelligence Activities, be conducted to determine the extent of culpability of MI personnel, assigned to the 205th MI Brigade and the Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib (BCCF). Specifically, I suspect that **COL Thomas M. Pappas, LTC Steve L. Jordan, Mr. Steven Stephanowicz,** and **Mr. John Israel** were either directly or indirectly responsible for the abuses at Abu Ghraib (BCCF) and strongly recommend immediate disciplinary action as described in the preceding paragraphs as well as the initiation of a Procedure 15 Inquiry to determine the full extent of their culpability. **(ANNEX 36)**

OTHER FINDINGS/OBSERVATIONS

1. (U) Due to the nature and scope of this investigation, I acquired the assistance of Col (Dr.) Henry Nelson, a USAF Psychiatrist, to analyze the investigation materials from a psychological perspective. He determined that there was evidence that the horrific

Exhibit G

ALION
SCIENCE AND TECHNOLOGY

Aligned with your needs.

June 15, 2004

Via Facsimile (619) 515-1589
and Federal Express
William J. Aceves, Esquire
225 Cedar Street
San Diego, California 92101

Via Facsimile (212) 614-6439
and Federal Express
Michael Ratner
Barbara Olshansky
Jeffrey Fogel
Jennifer Green
Judith Brown Chumsky
Jules Lobel
Center for Constitutional Rights
666 Broadway, Seventh Floor
New York, New York 10012

Via Facsimile (215) 772-7620
and Federal Express
Susan L. Burke, Esquire
Joyce S. Meyers, Esquire
Montgomery, McCracken, Walker
123 South Broad Street
Philadelphia, Pennsylvania 19109

Via U.S. Mail and Federal Express
Susan Feathers
University of Pennsylvania Law
School
3400 Chestnut Street
Philadelphia, Pennsylvania 19104-6204

1750 Tysons Boulevard
Suite 1300
McLean, VA 22102
tel: 703.918.4480
fax: 703.714.6511
www.alionscience.com

Dear All,

Please be advised that recent statements made by you or on your behalf regarding Alion Science & Technology Corporation are false.

To wit, in your Complaint in *Abbas al Rawi et al. v. Titan Corporation, et al.*, filed in the U.S. District Court for the Southern District of California, you state at paragraph 52 that CACI Corporate Defendants and Defendant Titan, together with a third party, formed a joint Enterprise known as "Team Titan." In the remainder of the Complaint, you allege that the actions of which the plaintiffs complain were committed by Team Titan. In Exhibit A to the Complaint, you identify what appears to be a job posting by Titan Corporation for positions in support of a United States Air Force Assistance and Advisory Services contract ("USAF A&AS"), seeking employees in Guantanamo, Cuba and in Iraq.

The USAF A&AS contract is strictly in support of U.S. Air Force operations in Germany and the United Kingdom and has no relationship to Iraq or Cuba. We do not know how your plaintiffs confused the A&AS contract with operations in Iraq or Cuba, or whether the Titan Internet website ever included such disparate

and unrelated Titan programs on the same page. We are unable to find any website that contains the false information you attach as Exhibit A to your Complaint. In any event, Alion does not engage in any work with Titan or any of the defendants listed in the Complaint on any work related to Iraq or Cuba.

Alion is a research and development company primarily providing science and technology support in information technology, chemical technology, and wireless communication, which has antecedents in a university-sponsored not-for-profit dedicated to scientific research for the benefit of the public interest. Alion is not involved in the types of activities that you ascribe to Titan and CACI in your Complaint.

The false statements have been made not only in your Complaint, but also by your representatives at press conferences, and newspapers and media outlets have quoted your representatives mentioning Alion in connection to the lawsuit.

We request that you issue a press release retracting any statement or discrediting any innuendo that Alion has any connection with the activities of which the plaintiffs complain, and file an amended Complaint omitting reference to Alion. If there are any facts or documents we can provide to assist you in doing so, we will be happy to review such requests. However, if you are unwilling to oblige our request, we will reserve the right to pursue recourse.

Thank you very much for your kind attention to this urgent matter. Please do not hesitate to contact me at (703) 269-3482.

Sincerely,

Manik K. Rath

Manik K. Rath
Vice President and Deputy General Counsel

ALION
SCIENCE AND TECHNOLOGY

June 17, 2004

Via Facsimile (215) 772-7620 and Federal Express
Susan L. Burke, Esquire
Montgomery, McCracken, Walker
123 South Broad Street
Philadelphia, Pennsylvania 19109

1750 Tysons Boulevard
Suite 1300
McLean, VA 22102
tel: 703.918.4480
fax: 703.714.6511
www.alionscience.com

Dear Ms. Burke,

To follow up on our telephone conversation earlier today, we have been advised by a representative of Titan that the United States Air Force Assistance and Advisory Services contract ("USAF A&AS") that you reference in your Complaint is not in any way associated with the work that Titan was performing in Iraq described in the Complaint.

Please do not hesitate to contact me at (703) 269-3482 if I can provide any further information.

Sincerely,

Manik K. Rath
Vice President and Deputy General Counsel

Rath, Manik K

From: Erlandson, Marcus R
Sent: Thursday, June 17, 2004 10:07 AM
To: Rath, Manik K
Cc: Abold, Phillip L
Subject: FW: Iraq Abuse Victims Sue Contractor

Manik,

Below is the email from Bill Kolloff, the Titan Program Manager for USAFE A&AS, confirming that no one has used this contract to support operations in Iraq.

Marc

-----Original Message-----
From: William Kolloff [mailto:William.Kolloff@titan.com]
Sent: Fri 6/11/2004 1:31 AM
To: Erlandson, Marcus R
Cc:
Subject: RE: Iraq Abuse Victims Sue Contractor

Marc,

It is just the usual liberal press falsification - USAFE A&AS is not being used for anything outside of the UK and Germany at this time. We are going to the Balkans and some force protection people out of V Corp will deploy to Iraq when they transition to us at the end of September. The translator work in Iraq was performed by another Group at Titan and not associated with ISG or the USAFE A&AS contract in any way.

Bill

-----Original Message-----
From: Erlandson, Marcus R [mailto:MErlandson@alionscience.com]
Sent: Thursday, June 10, 2004 8:06 PM
To: Kolloff, William
Subject: FW: Iraq Abuse Victims Sue Contractor

Bill,

A couple articles appeared in news papers today that have caused a bit of a stir in Alion. The articles refer to a lawsuit filed by Iraqis for alledged prisoner abuse. The articles say that the charges are against Team Titan and cites the USAFE A&AS team, which includes Alion. See highlighted sections in the articles below. My question is was the USAFE A&AS contract used to perform the prisoner interegation work in Iraq? I suspect it was not but I would like confirmation.

Marc

Two Articles published today

Iraq Abuse Victims Sue Contractor

By T. Christian Miller, Times Staff Writer

WASHINGTON — Eight Iraqis filed a federal lawsuit today charging that private contractors working for the U.S. government had systematically tortured them at U.S.-run prisons in Iraq as part of a criminal conspiracy to boost profits.

The lawsuit against San Diego-based Titan Corp. and Virginia-based CACI International charged that employees working as interrogators systematically abused prisoners to extract better intelligence and increase the firms' chances of winning future government contracts.

The lawsuit alleged that the two companies resorted to torture practices far beyond what has been disclosed in the Abu Ghraib prison scandal, including rape and the application of electrical charges to prisoners' genitals.

"We have not heard everything yet," said Shereef Akeel, a Michigan attorney who filed the lawsuit along with the Center for Constitutional Rights, a nonprofit group that specializes in human rights cases. "The stories are coming out now as more Abu Ghraib prisoners are coming out."

The attorneys acknowledged that none of their clients had been able to identify the people who tortured them or whether they worked for contractors or the U.S. government. They said they based their case on a U.S. military report by Maj. Gen. Antonio M. Taguba that named several contractors for knowingly encouraging abuses seen in photos of the abuse at Abu Ghraib prison.

The lawyers said none of their clients was pictured in photos seen in news reports, but their status as detainees had been confirmed through interviews and prisoner identification records.

Officials with CACI denounced the lawsuit as "irresponsible and outrageous."

"CACI regards these allegations as false and malicious," the company said in a statement. "CACI summarily rejects and denies the ill-informed, slanderous and malicious allegations of the lawsuit that attempts to malign the work that we do on behalf of the U.S. government around the world and in Iraq."

Titan officials did not respond to requests for comment.

The lawsuit, filed in San Diego federal District Court, relies on public filings with the Securities and Exchange Commission to portray the two companies as having developed strategies to aggressively pursue government contracts to boost their profits.

CACI, with a market value of about $1.1 billion, has bought 26 companies since the 1990s. Many of them specialized in the defense industry. Titan, whose shareholders approved a $1.66-billion buyout offer this week from defense contractor Lockheed Martin, gets as much as 96% of its revenue from government contracts.

The lawsuit alleged that the reliance on government revenues drove the two companies' employees to cross the line during interrogation sessions in hope of extracting information that would lead to more jobs with the government.

The lawsuit charged that the companies joined with a third company, Alion, to form "Team Titan," a joint venture dedicated to supporting the U.S. military in translation and intelligence services in Iraq and Afghanistan.

"When war becomes a for-profit enterprise, horror, human suffering and degradation is the dividend," said Barbara Olshansky, the deputy legal director for the center.

If you want other stories on this topic, search the Archives at latimes.com/archives.

Second article.

Posted on Wed, Jun. 09, 2004

Human rights lawyers file lawsuit in San Diego against U.S. civilian contractors

SETH HETTENA

Associated Press

SAN DIEGO - Human rights lawyers filed a racketeering lawsuit Wednesday against two U.S. defense contractors, accusing them of conspiring to torture, rape and kill Iraqi prisoners in order to generate more business.

San Diego-based Titan Corp. and CACI International Inc., based in Arlington, Va., were sued in U.S. District Court in San Diego by eight Iraqis and the estate of an Iraqi man who lawyers said was tortured to death.

CACI rejected the allegations as "ill-informed, slanderous and malicious." Titan called the lawsuit "frivolous" and said it had no control over prisoners or how they were handled. Both companies promised to fight the charges.

The lawsuit, filed by the New York-based Center for Constitutional Rights and a Philadelphia law firm, describes acts of shocking brutality:

One Abu Ghraib inmate identified only as Ahmed, claimed that he was forced to watch as his 63-year-old father, Ibraheim, tortured to death in Abu Ghraib prison. Another man, identified as Rasheed, claimed that his toenails were yanked out and his tongue was electrocuted at an unspecified facility in Iraq.

Others claimed they were hooded and raped; beaten with chains, boots and other objects; stripped naked and kept in isolation; urinated on; and prevented from praying or reading the Quran, according to the lawsuit.

Two plaintiffs would not use their names in the lawsuit because of concerns about their safety, according to the lawsuit.

"It is patently clear that these corporations saw an opportunity to build their businesses by proving they could extract information from detainees in Iraq, by any means necessary," said Susan Burke, an attorney for the plaintiffs.

Attorneys acknowledged that the only evidence of abuse were phone and e-mail interviews with the former prisoners and their families in Iraq.

CACI attacked what it called a "despicable action" by the Center for Constitutional Rights, saying it was "outraged that any organization claiming to be a defender of rights could file such an irresponsible suit."

The lawsuit calls for payments for the alleged victims, a ban on future government contracts for Titan and CACI and triple damages allowed under the Racketeer Influenced and Corrupt Organizations Act. The act, drafted to prosecute mob organizations, applies to any legitimate business engaged in a criminal enterprise.

The 52-page complaint names Adel L. Nahkla, a former Titan employee, CACI employee Steven A. Stefanowicz and John Israel, a CACI subcontractor.

In his investigative report, Maj. Gen. Antonio Taguba wrote that he believed Stefanowicz and Israel "were either directly or indirectly responsible for the abuses at Abu Ghraib." Nahkla was listed as a suspect.

The lawsuit claims that Titan and CACI fueled corporate growth with revenues from defense contracts for interrogation, translation, intelligence-gathering and security.

The Army's Intelligence and Security Command said it has paid for $550 million for linguist services under its contract with Titan. About 4,200 people are employed worldwide under the Titan contract, with the majority of translators assigned to Iraq, Kuwait, Qatar and Afghanistan, said INSCOM spokeswoman Deborah Parker.

Titan, CACI and a McLean, Va.-based firm, Alion Science and Technology, formed Team Titan, according to Titan's Web site. Team Titan was hired to provide translators in Iraq and a Navy prison camp at

Guantanamo Bay, Cuba, the lawsuit noted.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP
ATTORNEYS AT LAW

SUSAN L. BURKE
ADMITTED IN PENNSYLVANIA, DISTRICT OF COLUMBIA & VIRGINIA

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610-889-2210
FAX 610-889-2220

June 17, 2004

Manik K. Rath
Alion Science and Technology
1750 Tysons Boulevard
Suite 1300
McLean, VA 22102

Dear Manik:

It was a pleasure speaking with you this morning. You provided us the following information: First, you represented Alion does not, and has not, provided any professional services in Iraq and Cuba, or services related in any way to professional services provided by Titan and CACI in Iraq and Cuba (hereinafter "Complaint Services"). Second, you were not even aware Titan Corporation had identified Alion as part of "Team Titan" on the Titan webpage until Alion saw press reports citing to the Titan webpage excerpt, which we included as an exhibit to the Complaint. Third, you explained that Alion does not have any knowledge about whether the USAF A&AS contract may or may not have been used by either Titan or CACI as a vehicle to bill for Complaint Services. You kindly volunteered to inquire with the United States contracting organization to see if anyone was willing to certify that the USAF A&AS contract was never used as a vehicle to compensate for Complaint Services provided by Titan and/or CACI.

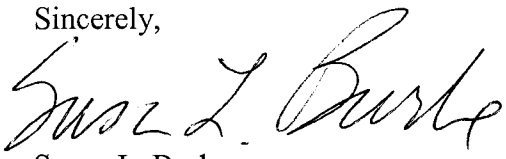
You thereafter promptly provided a copy of an email in which a Titan representative states to an Alion employee that the USAF A&AS contract is not being used "for anything outside of the UK and Germany *at this time*" although it may be so used in the future in relation to "force protection people" deployed to Iraq. We very much appreciate this information. However, the email itself does not suffice to allay our concerns that the USAF A&AS contract may have been used at some time in the past as one of the many contractual vehicles that delivered funds to Titan and CACI for Complaint Services. The email is from Titan, not the United States. The email does not address CACI activities, or possible past Titan activities. If

you were able to obtain a verification from the United States that the USAF A&AS contract itself has never been and will never be used to compensate for Complaint Services, we would certainly be interested in receiving a copy. Otherwise, we will simply need to pursue this and other complex contract issues in the regular course of discovery in the pending litigation.

As you can understand, we view the Titan webpage postings as publicly available evidence of an existing relationship between CACI and Titan that supports the allegations made in the Complaint. However, we certainly do not want Titan's single-handed designation of Alion as part of "Team Titan" to be misconstrued by the public or the press. Thus, we will work directly with you to ensure that the amended complaint language and accompanying press release satisfies Alion's concerns. We will be in touch with proposed language as soon as possible. In the meantime, if you receive any press inquiries, and would like to direct them to me for clarification on Alion's lack of involvement in the matters alleged in the complaint, please feel free to do so.

We are more than willing to act based on your good faith representations as the Vice President and Deputy General Counsel of Alion. We trust if you learn anything in the future that contradicts what you and other Alion employees thought in good faith to be the facts, or what you have been told to be the facts by Titan, you will not hesitate to let us know.

Sincerely,



Susan L. Burke

SLB:mtb

cc: William J. Aceves
Michael Ratner
Barbara Olshansky
Susan Feathers

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ATTORNEYS AT LAW

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June 30, 2004

BY FACSIMILE AND REGULAR MAIL

Manik K. Rath
Alion Science and Technology
1750 Tysons Boulevard
Suite 1300
McLean, VA 22102

Dear Manik:

As set forth in my voicemail to you, we are filing an amended complaint today that addresses Alion's concerns. The amended complaint includes the following language:

> "In the Complaint, plaintiffs had attached as Exhibit A various relevant text excerpted from Defendant Titan's web site. (This information is now located in the printouts attached separately for clarity as Exhibit A and Exhibit B.) In the prior version of Exhibit A, there was a reference to a third party included on Defendant Titan's web site as part of "Team Titan." Defendant Titan had not obtained permission to use the name of this third party on its web site. Although this third party was not named or identified in any way in the Complaint, the plaintiffs want to make crystal clear that they have not and are not making any allegations against this third party. To further that goal, the name of the third party has been redacted from the revised Exhibit A."

In addition, we are issuing a press release about the amendment. The press release states "The amended complaint also makes clear that the third party referenced on the "Team Titan" web site is not an entity subject to the complaint or the allegations.

We appreciate your cooperation on this matter. It was a pleasure working with you.

Very truly yours,

Susan L. Burke

SLB:mtb

Exhibit H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

----------x

DIANNA ORTIZ

Plaintiff,

Civil Action
No. 91-11612 WD

v.

HECTOR GRAMAJO,

Defendant.

----------x

AFFIDAVIT OF INTERNATIONAL LAW SCHOLARS

Deborah E. Anker
Michael J. Bazyler
Charlotte Bunch
Anne-Marie Burley
Abram Chayes
Rhonda Copelon
Anthony D'Amato
Lori F. Damrosch
Drew S. Days, III
Valerie Clare Epps
Richard A. Falk
Tom J. Farer
Joan M. Fitzpatrick
Michael J. Glennon
Claudio Grossman
Virginia A. Leary
Cynthia Lichtenstein
Richard B. Lillich
Jules L. Lobel
Stefan A. Riesenfeld
Celina Romany
Philippe J. Sands
Oscar Schachter
Henry J. Steiner
Detlev F. Vagts
David Weissbrodt
Burns H. Weston

AFFILIATIONS AND QUALIFICATIONS OF SCHOLARS

1. Deborah E. Anker is Coordinator of Immigration Programs at Harvard Law School, where she both supervises students in Harvard-affiliated legal aid clinics and teaches immigration law and refugee and asylum law. She received her LL.M from Harvard Law School, a J.D. from Northeastern University School of Law, and a Masters in Arts and Teaching from the Harvard University Graduate School of Education. From 1978 to 1983, she was Directing Attorney in the Immigration Law Department at the International Institute of Boston and while there was the Coordinator for the American Bar Association's Haitian refugee program. In 1983, she was named among the 20 "most prominent immigration lawyers in the U.S.", Who's Who Among Immigration Lawyers, 6 National Law Journal No. 4, p. 18 (1983), and in 1991 received the Edith M. Lowenstein Memorial Award for Excellence in Advancing the Practice of Immigration Law.

She was a member of the Governor's Council on Asylum and Refugees, Commonwealth of Massachusetts (1990), and presently sits as Chair of the Committee on Asylum and Refugees, American Immigration Lawyers Association (1982-present). She is on the Legal Advisors Council, United Nations High Commissioner for Refugees (1987-present). She has written extensively on asylum and immigration law and three of these were chosen as among the best articles in the field for reprinting in 1981-2, 1989 and 1990, Immigration and Nationality Law Review.

2. Michael J. Bazyler is Professor of Law at Whittier College School of Law where he teaches Comparative Law, Public International Law, International Litigation, and International Business Transactions. He received a B.A. from the University of California, Los Angeles, and a J.D. from the University of Southern California Law Center. He is on the Executive Committee of the International Law Section of the Los Angeles County Bar Association and a member of the American Society of International Law, the American Association for the Comparative Study of Law, Inc., the International Law Association, the International Law Section of the American Bar Association and Amnesty International.

Professor Bazyler has written and lectured extensively on international human rights law, the application of international law in United States courts, Soviet/Russian law, and the rights of women in the Soviet Union. His articles have appeared in the Stanford Journal of International Law, the University of Pennsylvania Law Review, the Columbia Journal of Transnational Law, the Whittier Law Review, and the Northwestern Law Review, among other publications.

3. Charlotte Bunch is Director of the Center for Women's Global Leadership at Douglass College, Rutgers University. At Rutgers, she teaches, among other courses, on women's rights and international human rights. She has lectured on these topics, as well as gender violence, around the country and throughout the world. She has been a consultant to the United Nations

Secretariat for the 1980 World Conference on Women for the United Nations Decade on Women, the National Women's Studies Association and the Asian and Pacific Centre for Women and Development (Thailand).

Professor Bunch has served on the President's National Advisory Committee for Women Sub-Group on Political and Human Rights (1978), the Continuing Committee for the National Women's Conference (1978-1981), the ISIS International Advisory Committee, (1979-present), the Program Committee for the Fourth International Interdisciplinary Congress on Women, the Organizing Committee for the Decade for Human Rights Education (1990-present), and the Board of Directors of the National Council for Research on Women (1991-present). Her publications include books on gender violence, international feminism, feminist education, and feminist theory; she has written articles on feminism and human rights, women's rights as human rights, violence against women, and the UN Decade for Women.

4. Anne-Marie Burley is Assistant Professor of Law at the University of Chicago, where she teaches, among other things, a course on international litigation and arbitration. She has received a M.Phil from Oxford University, a J.D. from Harvard Law School, and will be awarded a D.Phil in International Relations from Oxford University this year. Professor Burley serves as a member of the Executive Council of the American Society of International Law. She is also a member of the International Law Association and has worked, as an assistant to Professor Abram

Chayes, on a variety of international cases.

Professor Burley's articles include: The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor, 83 Am. J. Int'l L. 461 (1989); Revolution of the Spirit, 3 Harv. Hum. Rts. J. 1 (1990); and Panel Discussion: Options for a Law-Abiding Policy in Central America, 10 B.C. Third World L.J. 215 (1990). Her article, The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor, was awarded the Francis Deak Prize by the American Journal of International Law.

5. Abram Chayes is Felix Frankfurter Professor of Law at Harvard Law School, where he has taught international law for over 25 years; his courses include International Dispute Settlement, International Litigation, and International Legal Process. He received an A.B. and L.L.B. from Harvard University and an L.L.D. from Syracuse University. From 1961-64, he was the Department of State Legal Advisor. He is the Chair of the Standing Committee on World Order Under Law of the American Bar Association and is a member of numerous other legal and international law organizations, including the American Law Institute and the American Society of International Law. He is an advisor at the Center for Science and International Affairs at the John F. Kennedy School of Government at Harvard University.

Among Professor Chayes' publications are International Law: Materials for an Introductory Course (with Thomas Ehrlich and Andreas F. Lowenfeld, 1968-69); The Cuban Missile Crisis: International Crisis and the Role of Law, (2d ed. 1987), and

Nicaragua [Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) 1984 I.C.J. 392], the United States, and the World Court, 85 Colum. L. Rev. 1445 (1985).

6. Rhonda Copelon is Professor of Law of the City University of New York Law School, where she teaches courses on civil, constitutional and international human rights; she is also co-director of a clinic on Women and Human Rights. She received a B.A. from Bryn Mawr College, Certificat d'Etudes Politique from the Institute d'Etudes Politique in Paris, France, and an LL.B. from Yale Law School. For approximately twenty years, she has been litigating, teaching and writing in the fields of women's rights and international human rights.

Professor Copelon is currently a consultant to the Women and Human Rights Program at the Inter-American Institute of Human Rights, established by the Organization of American States in San Jose, Costa Rica. She has also served as a member of the Expert Committee of jurists convened to draft the Preliminary Inter-American Convention on Violence Against Women (now subject to ratification by the Organization of American States) and was one of the principal counsel in Filartiga v. Pena-Irala. She has written and lectured on human rights and gender-based violence, domestic enforcement of customary norms and the relationship between human rights and women's rights in, among other publications, the Proceedings of the American Society of International Law. She is the co-author, with Babcock, et.al, of

Sex Discrimination and the Law.

7. Anthony D'Amato is Judd & Mary Morris Leighton Professor of Law at Northwestern University. He has received a J.D. from Harvard Law School and a Ph.D. from Columbia University. Professor D'Amato serves or has served as chair of the American Bar Association Committee on International Courts, member of the American Society of International Law, founder of the Human Rights Advocacy Group of the American Society of International Law, member of the International League for Human Rights, and member of the Board of Editors of the American Journal of International Law. He has also served as counsel in several important international law and human rights cases.

Professor D'Amato has written over 150 articles, book reviews, chapters, and comments including: The Alien Tort Statute and the Founding of the Constitution, 82 Am. J. Int'l L. 62 (1988); The Theory of Customary International Law, 1988 Proc. Am. Soc. Int'l L. 242; and The Concept of Human Rights in International Law, 82 Colum. L.R. 1110 (1982). His books include: New Entitlements in International Law (forthcoming); International Law: Process and Prospect (1987); International Law and World Order: A Problem-Oriented Casebook (with Burns H. Weston and Richard A. Falk) (2d ed. 1990); and The Concept of Custom in International Law (1971).

8. Lori F. Damrosch is a Professor of Law at Columbia Law School, where she teaches and writes in the area of public international law and foreign relations law. She received her

B.A. and J.D. from Yale University. During the Carter Administration, she served as Special Assistant to the Legal Adviser of the State Department. She is also former Director of the International Fellows Program at the Columbia School of International and Public Affairs. She is currently a member of the American Society of International Law, where she has been a member of the Executive Council and a Rapporteur for the Study Panel on the International Court of Justice. She is also a member of the Council on Foreign Relations, a Member of the Department of State Advisory Commission on International Law and on the Board of Editors of the American Journal of International Law.

Books by Professor Damrosch include U.S. Law of Sovereign Immunity (with John R. Stevenson & Jeffrey F. Browne, 1983); and The International Court of Justice at a Crossroads (Ed. 1987) (American Society of International Law Certificate of Merit, 1988), and most recently, Law and Force in the New International Order (David Scheffer, co-editor, 1991). She has written numerous articles on international law and the U.S. Constitution, among them International Human Rights Law in Soviet and American Courts, 100 Yale L.J. 2315 (1991) and Foreign States and the Constitution, 73 Va. L. Rev. 483 (1987).

9. Drew S. Days, III, is a Professor of Law and Director of the Orville Schell Center for International Human Rights at the Yale Law School. He teaches courses in federal jurisdiction, civil procedure, constitutional law and international human

rights at Yale University. He received an LL.B. from Yale Law School. He was Associate Counsel with the NAACP Legal Defense Fund and as Assistant Attorney General for the Civil Rights Division of the Department of Justice in the Carter Administration, he was on the United States' amicus curiae memorandum in Filartiga v. Pena-Irala. He also served as a member of the United States delegation to the Madrid meeting on the Helsinki Accords in 1980.

Professor Days has been a member of the Editorial Board of the American Law Institute since 1987 and is also a member of the Board of the Lawyers Committee for Civil Rights Under Law. He has written extensively in the areas of federal jurisdiction, civil procedure and constitutional law, particularly on civil rights and civil liberties issues.

10. Valerie Clare Epps is Professor of International Law at Suffolk University Law School, Boston, where she teaches Constitutional Law, International Law and Immigration Law. She received a B.A. from the University of Birmingham, England, a J.D. from Boston University, and her LL.M from Harvard. She has contributed a chapter to Legal Response to International Terrorism (M. Bassiouni, ed. 1988) and is the author of Reinstating U.S. Acceptance of Compulsory Jurisdiction of the International Court of Justice, 34 Boston Bar Journal 8 (1990).

Professor Epps is a member of the Executive Council of the American Society of International Law, a member of the Executive Committee of the International Law Association (American branch),

the Northeast Regional coordinator of the Amnesty International Legal Support Network, the Chair of the Public International Law section of the Boston Bar Association, and a member of the Executive Council of the Immigration Law section of the American International Law Society.

11. Richard A. Falk is Albert G. Milbank Professor of International Law and Practice at Princeton University. He has received a LL.B. from Yale Law School and a J.S.D. from Harvard Law School. Professor Falk serves or has served on the boards of over 40 international law and international relations organizations and as Vice President of the American Society of International Law. He also serves on the editorial boards of several magazines such as Foreign Policy, American Journal of International Law, The Nation, and World Policy Journal. Professor Falk has provided expert testimony in over a dozen cases and in various legislative and administrative hearings.

Professor Falk has written chapters to over 100 books and over 350 articles covering a wide range of subjects, including international law and human rights. In addition, some of his more than 30 books include: Revitalizing International Law (1989); Reviving the World Court (1986); Human Rights and State Sovereignty (1981); The Vietnam War and International Law, Vol. I-IV (ed. 1968, 1969, 1972, 1976); Legal Order in a Violent World (1968); and The Role of Domestic Courts in the International Legal Order (1964).

12. Tom J. Farer is Professor of International Relations and Director of the Joint-Degree Program in Law and International Relations at American University. He received his J.D. from the Harvard Law School. He was President of the Inter-American Commission on Human Rights of the Organization of American States. Professor Farer is the Vice-President of the International League for Human Rights, and a Member of the Board of Americas Watch. He serves or has served as member of the Advisory Council of the United States Institute of Human Rights, the Executive Board of the Inter-American Institute for Human Rights, the Board of the International League for Human Rights, the Board of the International Human Rights Law Group, and the Editorial Review Board of the Human Rights Quarterly.

Professor Farer's books include: The Grand Strategy of the United States in Latin America (1988); Toward A Humanitarian Foreign Policy: A Primer for Policy (ed. 1980); The Future of the Inter-American System, (ed. 1979). Professor Farer has written over 40 articles and chapters including: Human Rights in Law's Empire: The Jurisprudence War, 85 Am. J. Int'l L. 117 (1991); Human Rights Investment in Hispanic South America: Retrospect and Prospect, 13 Hum. Rts. Q. 99 (1991); The United States and Human Rights in Latin America: On the Eve of the Next Phase, Int'l J., Summer 1988, at 473; The OAS at the Crossroads: Human Rights? 72 Iowa L. Rev. 401 (1987); and Human Rights and Human Welfare in Latin America, Daedalus, Fall 1983.

13. Joan M. Fitzpatrick is a Professor of International Law at the University of Washington Law School in Seattle, Washington. Her courses include international law, constitutional law, federal jurisdiction, and immigration law. She received her B.A. from Rice University, a J.D. from Harvard Law School, and a Diploma in Law from Oxford. She is a member of the Executive Council of the American Society of International Law and the Advisory Council of the Procedural Aspects of International Law Institute. She has also been a Rapporteur for the Enforcement of Human Rights Law Committee of the International Law Association, and Vice-Chair and a Member of the Board of Directors of Amnesty International, USA.

Professor Fitzpatrick's publications include International Human Rights Law in United States Courts: A Comparative Perspective (with Anne Bayesfsky, in progress); Temporary Refuge: Emergency of a Customary Norm, 26 Va. J. Int'l L. 551 (1986); Enforcement of International Human Rights Law in State and Federal Courts in the United States, 7 Whittier L. Rev. 501 (1986), and Derogation from Human Rights Treaties," 22 Harv. Int'l L. J. 1 (1981).

14. Michael J. Glennon is a Professor of International Law at the University of California at Davis, where his courses include Constitutional Law, International Law, and Legislative Process. He received a B.A. from the College of St. Thomas and a J.D. from the University of Minnesota. From 1977-1980, he was counsel to the Senate Foreign Relations Committee. He is a

member of the American Society of International Law, the International Law Association, the American Law Institute and on the Board of Editors of the American Journal of International Law.

He has written widely in international and foreign relations law, including United States Foreign Relations Law (with Thomas Franck, 1981) (awarded certificate of merit by the American Society of International Law); Foreign Relations and National Security Law (with Thomas Franck, 1987); Foreign Affairs and the U.S. Constitution (Louis B. Henkin and William D. Rogers, co-editors, 1990) and Constitutional Diplomacy (1990). He has published numerous articles on international and foreign relations law in publications such as the American Journal of International Law, the Yale Journal of International Law, the Northwestern University Law Review, and the Harvard Journal of International Law.

15. Claudio Grossman is a Professor of International Law at the Washington College of Law at American University, where he is the Director of International Legal Studies and Raymond I. Geraldson Scholar in International and Humanitarian Law. He received his law degree from the University of Chile in Santiago and a Doctor in the Science of Law at the University of Amsterdam. He is an expert on the Inter-American system on the protection of human rights and was legal adviser to the Inter-American Commission on Human Rights for the first cases before the Inter-American Court concerning disappearances in Honduras.

Currently, he is the Commission's legal adviser for the pending human rights cases against the government of Suriname. He is a member of the board of the Interamerican Institute on Human Rights, a member of the Council of the Interamerican Bar Association, a member of the American Society of International Law and the American Society of Comparative Law.

Professor Grossman has published extensively in the area of human rights law, including books, journal articles, reports and book reviews. Some of these publications include Manual Internacional de Derechos Humanos (with Thomas Buergenthal and Pedro Nikken, 1990); The Future of the Inter-American System of Protection of Human Rights, German Y.B. of Int'l L. (1990), and Responses to Human Rights Violations in Domestic Law, Summary of Lectures, International Institute of Human Rights (Strasbourg, 1990).

16. Virginia A. Leary is Professor of International Law and Co-Director of the Human Rights Center at the State University of New York at Buffalo, where she teaches Dispute Settlement in International Law, Human Rights, International Labor Law, International Law and International Organizations. She received a B.A. from the University of Utah, a J.D. from the University of Chicago, a Diploma from the Hague Academy of International Law, and a Ph.D. from the Graduate Institute of International Studies in Geneva, Switzerland.

Prior to joining the Faculty in 1976, she was an official with the International Labor Organization in Geneva and practiced

law in Chicago. She is the Vice-President of the American Society of International Law, and on the Board of Asia Watch, and has undertaken human rights missions for Amnesty International and the International Commission of Jurists. She is the author of a book, numerous monographs, human rights reports, and articles on international human rights law. These include International Labor Conventions and National Law (1982); Asian Perspectives on Human Rights (Claude Welch, co-author, 1991), and The United Nations and Human Rights: Learning from the Experience of the International Labor Organization (with Philip Alston, forthcoming).

17. Cynthia Lichtenstein is a Professor of International Law at Boston College Law School, where she teaches, among other courses, International Law and International Transactions. She received her A.B. from Radcliffe College, a J.D. from Yale, and a M.C.L from the University of Chicago. She is Honorary Vice-President of the American Society of International Law and is President of the American branch of the International Law Association.

Professor Lichtenstein is a member of the Council on Foreign Relations, and the American Law Institute and she was on the Board of Editors of the American Journal of International Law from 1982 - 1991. She has also been a past chair of the Public International Law Committee of the Boston Bar Association. She has written extensively on public and private international law for, among other publications, the American Society of

International Law, New York University Journal of International Law and Politics, and the Michigan Journal of International Law.

18. Richard B. Lillich is Howard W. Smith Professor of Law at the University of Virginia. He received his LL.B from Cornell Law School and a LL.M. and J.S.D. from New York University School of Law. Professor Lillich has served as a member of the Executive Council of the American Society of International Law, founded and is now a member of the Advisory Board of the International Human Rights Law Group, and is also a member of the Advisory Council of the U.S. Institute of Human Rights, the Advisory Board of the Urban Morgan Institute of Human Rights, and the Advisory Council of Interrights (London). He has served as legal consultant to the Department of Justice, held the Stockton Chair of International Law at the U.S. Naval War College, and is currently a legal consultant to the Department of State.

Professor Lillich has written numerous articles on international law topics. He also has written and edited over twenty-five books including: International Human Rights: Problems of Law, Policy, and Practice (2d ed. 1991); The Human Rights of Aliens in Contemporary International Law (1984); International Human Rights Instruments (2d ed. 1990); U.S. Ratification of the Human Rights Treaties: With or Without Reservations? (ed. 1981); and Humanitarian Intervention and the United Nations (ed. 1973).

19. Jules L. Lobel is a Professor at the University of Pittsburgh School of Law, where he teaches, among other courses, Comparative Constitutional Law, Comparative Law, Constitutional

Law, Law and Foreign Affairs, and International Law. He received a B.A. from New York University and a J.D. from Rutgers University - Newark. He is a member of the American Society of International Law.

Professor Lobel has written over 20 books and articles on the application of international law as part of United States law. Some of his articles have appeared in journals such as the Yale Law Journal, the University of Virginia Law Review, University of Pennsylvania Law Review, the American Journal of International Law and the Harvard Journal of International Law.

20. Stefan A. Riesenfeld is Emanuel S. Heller Professor of Law, Emeritus, at University of California School of Law, Boalt Hall and is Professor of Law at University of California School of Law, Hastings. He has received a LL.B. from Boalt Hall and a S.J.D. from Harvard Law School. Professor Riesenfeld has held the position of Counselor of International Law to the Legal Adviser's Office of the Department of State, has participated in representing the United States before the International Court of Justice, and has been consulted by the State Department on questions of law. In addition, Professor Riesenfeld was a drafter of the U.S. government's amicus brief in Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980).

Professor Riesenfeld has written extensively on international law topics. Some of his recent articles include: International Agreements, 14 Yale J. Int'l L. 455 (1989); The Powers of the Congress and the President in International

Relations: Revisited, 75 Cal. L. Rev. 405 (1987); Sovereign Immunity in Perspective, 19 Vand. J. Transnat'l L. 1 (1986).

21. Celina Romany is Professor of Law at City University of New York Law School where she is a co-director of a clinic on Women and Human Rights and a Schell Fellow on International Human Rights at Yale Law School. She received a J.D. from the University of Puerto Rico and her L.L.M. from New York University. She is the Main Representative of the American Association of Jurists at the United Nations and a member of the Advisory Board of the Women's Rights Project of Human Rights Watch.

Professor Romany was one of the drafters, appointed by the Inter-American Commission of Women, of the Preliminary Inter-American Convention on Violence Against Women (now subject to ratification by the Organization of American States). She is the author of A Feminist Critique of International Human Rights Law (forthcoming, University of Pennsylvania Press, Human Rights Series).

22. Philippe J. Sands is Director of the Center for International Environmental Law, School of Law, at Kings College, and a Visiting Professor of Law at New York University and a consultant to Milbank, Tweed, Hadley & McCloy, New York. He has received an LL.M in international law from Corpus Christi College, Cambridge. Professor Sands has served as counsel or adviser in cases before the English High Court, the European Court of Justice, the European Commission of Human Rights, and

the Iran-U.S. Claims Tribunal. He has also provided expert opinions for ICC arbitrations and for a U.S. district court in the Second Circuit.

Professor Sands has written many articles on international law, including: European Community Environmental Law: The Evolution of a Regional Regime of International Environmental Protection 100 Yale L.J. 2511 (1991); Decisions of International Tribunals: The Year in Review, 1 Yearbook Int'l Env. L. (1991); Environment, Community and International Law, 30 Harv. Int'l L.J. 393 (1989); and Jus Cogens and International Law 1988 Conn. J. Int'l L. 364 (with M.E. Turpel).

23. Oscar Schachter is Hamilton Fish Professor Emeritus of International Law and Diplomacy at Columbia University. He received a B.S.S. at the City College of New York and a J.D. from Columbia University. He was formerly an official with the State Department, Director of the General Legal Division of the United Nations, President of the American Society of International Law, and Co-Editor-in-Chief of the American Journal of International Law. In 1990, he was an adviser to the U.N. Commission to Transnational Corporations. He has been a Judge in the Canadian-French Court of Arbitration since 1989. He is an advisor to the American Law Institute's Restatement (Third) of the Foreign Relations Law of the United States and is a member of the Institut de Droit International.

Professor Schachter has written numerous articles and books on international human rights and humanitarian law; his articles

have been published in, among many other journals, the American Journal of International Law, the Michigan Law Review, and The University of Chicago Law Review. His books include Toward Wider Acceptance of United Nations Treaties (M. Nawaz and J. Fried, co-authors, 1971), International Law, Cases and Materials (with Louis Henkin, Richard C. Pugh and Hans Smit, 1987) and, most recently, of International Law in Theory and Practice (1991).

24. Henry J. Steiner is a Professor of Law and Director of the Human Rights Program at the Harvard Law School, where his courses include Human Rights and Foreign Policy, Human Rights and International Law;, and Human Rights Research. He received his B.A., M.A. and L.L.B. from Harvard University. He is a member of the American Society of International Law.

Professor Steiner has published articles, reports and books on international law and human rights and is co-author of a casebook on both topics, with Detlev Vagts, Transnational Legal Problems (1986). Most recently, he was the author of Diverse Partners: Non-Governmental Organizations in the Human Rights Movement (1991), and is the editor of and an author in Ethnic Conflict and the U.N. Human Rights System, (forthcoming, 1991). Some of his articles on international law and human rights include Political Participation as a Human Right, 1 Harv. Hum. Rts. Y.B. 77 (1988) and The Youth of Rights, 104 Harv. L. Rev. 917 (1991).

25. Detlev Vagts is Bemis Professor of Law at Harvard Law School, where he teaches, among other courses, International Law.

He received his A.B. from Harvard University and his L.L.B. from Harvard Law School. He was Counselor of International Law at the U.S. Department of State from 1976-1977. He is an Associate Reporter for the Restatement (Third) of Foreign Relations Law of the United States and is a member of the American Society of International Law, the American Foreign Law Association, the International Law Association, and is Book Review Editor of the American Journal of International Law.

Professor Vagts is the co-author, with Henry J. Steiner, of Transnational Legal Problems (1986), and the author of numerous articles on international law, including An Introduction to International Civil Practice, 17 Vand. J. of Transnat'l L. 1 (1984) and Senate Materials and Treaty Interpretation, 83 Am. J. Int'l L. 546.

26. David Weissbrodt is Briggs & Morgan Professor of Law at the University of Minnesota. He received a J.D. from the University of California School of Law, Boalt Hall. Professor Weissbrodt has served as an officer, counsel, delegate, or member of the board of directors of several human rights organizations. For example, he presently serves as legal counsel of the Center for Victims of Torture and for the Minnesota Lawyers International Human Rights Committee. Over the past 15 years he has served 10 years on the Board of Directors of Amnesty International (AI) U.S.A. and has been an AI delegate to the U.N. Commission on human rights and on AI factfinding visits to Canada, Congo, Guinea, Guyana, Haiti, Hong Kong, Kenya, Malaysia

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Professor Weston has published over 50 books and articles on international law subjects, including: a leading casebook on International Law and World Order (2d ed. 1990); U.S. Ratification of the International Covenant on Economic, Social and Cultural Rights: With or Without Qualification? in U.S. Ratification of Human Rights Treaties, (Richard B. Lillich, co-editor, 1981); Human Rights, 20 Encyclopedia Britannica 713 (15th ed. 1986); Regional Human Rights Regimes: A Comparison and Appraisal, 20 Vand. J. Transnat'l L. (1987); and Human Rights in the World Community: Issues and Action, (Richard Pierre Claude and Burns H. Weston, co-editors, 2d ed., 1992).

I. INTRODUCTION

Torture, cruel, inhuman, or degrading treatment, arbitrary detention, summary execution and disappearance violate universal, obligatory, and definable norms of international law. These acts are both condemned in and defined by international agreements and state pronouncements. No state claims the right to cause, encourage, or condone torture, cruel, inhuman, or degrading treatment, arbitrary detention, summary execution or disappearance. There is an international consensus that certain definable acts constitute torture, cruel, inhuman, or degrading treatment, arbitrary detention, summary execution or disappearance.

II. UNIVERSAL AND OBLIGATORY CUSTOMARY INTERNATIONAL NORM AGAINST TORTURE

A. The international law prohibition against torture is universal.

1. Numerous international instruments prohibit torture. See, e.g., Universal Declaration of Human Rights, art. 5, adopted Dec. 10, 1948, G.A. Res. 217A, U.N. Doc. A/811 at 71 (1948); International Covenant on Civil and Political Rights, art. 7, adopted Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); American Convention on Human Rights, art. 5(2), opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36 at 1, O.A.S. Doc. OEA/Ser. L/V/II.50, doc. 6 at 27 (1980), reprinted in 9 I.L.M. 673 (1970) (entered into force July 18, 1978); European Convention for the Protection of Human Rights and

Fundamental Freedoms, art. 3, opened for signature Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953); African Charter on Human and Peoples' Rights, art. 5, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5 (entered into force Oct. 21, 1986), reprinted in 21 I.L.M. 58 (1982); Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2, adopted Dec. 9, 1975, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/1034 (1975); and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2, adopted Dec. 10, 1984, G.A. Res. 46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987).

2. The constitutions of over fifty-five nations prohibit torture either explicitly or implicitly.[1] No nation today asserts a right to torture its own or another nation's citizens. That the prohibition against torture is sometimes honored in the breach does not diminish its binding status as a norm of international law.[2]

3. All branches of the United States Government recognize and respect the international law norm prohibiting torture. Recently, on October 27, 1990, the United States Senate gave its

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[1] Filartiga v. Pena-Irala, 630 F.2d 876, 884 (2d Cir. 1980).

[2] J. Brierly, The Outlook for International Law 4-5 (1944) ("States often violate international law, just as individuals violate municipal law; but no more than individuals do States defend their violations by claiming that they are above the law.").

advice and consent to ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State Department's Legal Adviser has stated that one "essential purpose" of the Convention is "to codify international law regarding the crime of torture." Convention Against Torture: Hearing Before the Committee on Foreign Relations, United States Senate, 101st Cong., 2d Sess. 4 (1990) (statement of Abraham Sofaer).[3] The federal courts have consistently held that torture is one of the torts in violation of the law of nations over which federal district courts have jurisdiction.[4]

B. The prohibition against torture is obligatory under international law.

The prohibition against torture is non-derogable and therefore obligatory under international law. See, e.g., International Covenant on Civil and Political Rights, art. 4, adopted Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976) (derogation from right to be free of torture not permitted even in time of public emergency); Body of Principles for the

[3] Accord Restatement (Third) of Foreign Relations Law § 702 comment (a) (generally agreed that torture violates customary international law).

[4] See Filartiga v. Pena-Irala, 630 F.2d 876, 878 (2d Cir. 1980)(torture, summary execution); Forti v. Suarez-Mason, 672 F. Supp. 1531, 1541 (N.D. Cal. 1987) (torture), on reconsideration, 694 F.Supp. 707 (N.D. Cal. 1988) (summary execution, disappearance). Cf. Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984), cert, denied, 470 U.S. 1003 (1985) (Edwards J., concurring).

Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6, G.A. Res. 43/173, 43 U.N. GAOR Supp. (No. 49) at 297, U.N. Doc. A/43/49 (1988) ("No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.").

C. The prohibition against torture is definable.

1. An act constitutes torture if it (1) inflicts severe pain and suffering, either physical or mental; (2) is inflicted by or at the instigation of a public official, and (3) is inflicted for a purpose such as obtaining information or a confession from the victim, punishing the victim, or intimidating the victim or a third person. See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, adopted Dec. 10, 1984, G.A. Res. 46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987); Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, adopted Dec. 9, 1975, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/1034 (1975).

2. The Torture Convention provides criteria by which to determine whether a particular act constitutes torture. A consensus has developed among international law publicists that the following acts constitute torture, though the list is by no means exhaustive:

a) Rape,[5] sexual abuse[6] and other forms of gender-based

[5]See e.g. U.S. Department of State, Country Report on Human

violence.[7]

b) Sustained, systematic beating. Beating will particularly constitute torture if it is performed with truncheons or other instruments,[8] or if it is performed while the victim is bound or otherwise forced into a position that will increase the pain of the beating.[9]

Rights Practices for 1991 (1992) (characterizing rape by government agents as a form of torture); International Human Rights Abuses Against Women: Hearings Before the Subcomm. on Human Rights and International Organizations of the House Comm. on Foreign Affairs, 101st Cong., 2d Sess. 142 (1990) (testimony of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs) (rape in detention is form of torture).

[6]Cable from Secretary of State to All Diplomatic and Consular Posts Re: Instructions for 1991 Country Reports on Human Rights Practices, P 211857Z (August 1991) (rape and other sexual abuse during arrest and detention or as a result of operations by government or opposition forces in the field constitutes torture and other cruel, inhuman, or degrading treatment or punishment); Statement of the United Nations Special Rapporteur on Torture to the UN Commission on Human Rights, E/CN.4/1992/SR.21 (Summary Record for the 21st meeting, February-March 1992) (rape or other forms of sexual assault in detention constitute torture).

[7]U.N. Committee on the Elimination of Discrimination Against Women, Adoption of Report, 11th Sess., General Recommendation No. 19, at 2, U.N. Doc. CEDAW/C/1992/L.1/Add.15 (1992) (gender-based violence violates the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment). See also U.N. Economic and Social Council Commission on the Status of Women, Physical Violence Against Detained Women that is Specific to their Sex, 34th Sess., Agenda item 5, U.N. Doc. E/CN.6/1990/L.18 (1990) (calls upon Member States to take appropriate measures to eradicate these acts of violence and to report to the Secretary General on legislation and other measures they have taken to prevent such violence).

[8]See J. H. Burgers & H. Danelius, The U.N. Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 117 (1988).

[9]Bassiouni, An Appraisal of Torture in International Law and Practice: The Need for an International Convention for the

Beating will also constitute torture if it is directed at certain parts of the body, such as the genitals or the soles of the feet.[10] Beating alone is sufficient to constitute torture if it is sustained and systematic.[11]

(c) Electric shocks, infliction of burns, exposure to extreme heat or cold.[12]

(d) Binding or otherwise forcing the victim into positions that cause pain.[13]

(e) Denying food, water, or medical attention when that denial will cause the victim to suffer, or will cause the victim to continue to suffer, severe physical or mental pain and suffering.[14]

III. UNIVERSAL AND OBLIGATORY CUSTOMARY INTERNATIONAL NORM AGAINST CRUEL, INHUMAN, OR DEGRADING TREATMENT

A. The norm against cruel, inhuman, or degrading treatment is universally recognized under international law.

The Universal Declaration of Human Rights, article 5, adopted Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810, at

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Prevention and Suppression of Torture, in Convention Against Torture: Hearing Before the Comm. on Foreign Relations, United States Senate, 101st Cong., 2d Sess. 144 (1990).

[10]Id. at 144.

[11]Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Exec. Rep. 30, 101st Cong., 2d Sess. 14 (1990).

[12]Bassiouni, supra note 8, at 144.

[13]Exec. Rep. 30, supra note 10, at 14.

[14]Bassiouni, supra note 8, at 144.

71 (1948) provides: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment" (emphasis added). The universal norm prohibiting cruel, inhuman, or degrading treatment is treated with equal dignity as the prohibition against torture by all of the major international instruments.[15] Moreover, the prohibition against cruel, inhuman, or degrading treatment has been received into customary international law.[16]

B. The prohibition against cruel, inhuman or degrading treatment is obligatory and nonderogable.

The norm against cruel, inhuman, or degrading treatment is obligatory under all conditions and circumstances. See, e.g., International Covenant on Civil and Political Rights, art. 4,

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[15]See Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 16, adopted Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, opened for signature Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953); the American Convention on Human Rights, art. 5, opened for signature Nov. 22, 1969, O.A.S. T.S. No. 36, at 1, O.A.S. Doc. OEA/Ser. L/V/II.50, doc. 6 at 27 (1980) (entered into force July 18, 1978); the International Covenant on Civil and Political Rights, art. 7, adopted Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 717 (entered into force Mar. 23, 1976); African Charter on Human and Peoples' Rights, art. 5, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986). See also Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2, adopted Dec. 9, 1975, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/1034 (1975).

[16]See, e.g., Declaration of Tehran, Final Act of the International Conference on Human Rights 3, at 4, para. 2, 23 GAOR, U.N. Doc. A/CONF. 32/41 (1968) (noting status of Universal Declaration of Human Rights, including prohibition against cruel, inhuman or degrading treatment, as customary international law).

adopted Dec. 16, 1966, entered into force Mar. 23, 1976, G.A. Res. 2200, 21 U.N. GAOR Supp. (No.16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 717 (derogation from right to be free of cruel, inhuman, or degrading treatment not permitted even in time of public emergency); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6, G.A. Res. 43/173, 43 U.N. GAOR Supp. (No. 49), U.N. Doc. A/43/49, at 297 (1988) ("No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."). No state claims the right to cause, encourage, or condone cruel, inhuman, or degrading treatment.

All branches of the United States Government recognize and respect the universal and obligatory international law norm against cruel, inhuman, or degrading treatment. In giving its advice and consent to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, supra, the United States Senate has recently reaffirmed this position.[17] In the Hostages Case (U.S. v. Iran), 1980 I.C.J. 3, the Executive Branch invoked provisions of international human rights

[17] See also 22 U.S.C. § 262d(a)(1) (stating U.S. policy to seek to channel international assistance away from those countries that violate internationally recognized human rights including cruel, inhumane, or degrading treatment); 22 U.S.C. § 2304(d)(1) (defining internationally recognized human rights to include cruel, inhuman, or degrading treatment). The U.S. Department of State's Country Reports detail state acts that violate the international norm against torture as well as the norm against cruel, inhuman, or degrading treatment. See, e.g., Country Reports on Human Rights Practices for 1981 at 329 (Argentina).

instruments proscribing cruel, inhuman, or degrading treatment in its case against Iran seeking redress for the taking of U.S. citizens as hostages. Judge Edwards in Tel Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984), cert. denied, 470 U.S. 1003 (1985), identified cruel, inhuman, or degrading treatment as among a "handful of heinous actions--each of which violates definable, universal, and obligatory norms" of international law. Id. at 781.[18]

C. The prohibition against cruel, inhuman, or degrading treatment is definable.

Article 16 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51), at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987), defines state obligations specifically with regard to "other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture as defined in article 1 [defining torture], when such acts are committed at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

1. Cruel, inhuman, or degrading treatment consists of acts committed against a person deprived of his or her liberty[19] which

[18]See also Restatement (Third) of Foreign Relations Law § 702(d), which declares: "A state violates international law if, as a matter of state policy, it practices, encourages, or condones ...torture or other cruel, inhuman, or degrading treatment or punishment."

[19]Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 1 & 6, G.A. Res.

cause severe mental or physical suffering that is unjustifiable. While there does exist an overlap between torture and cruel, inhuman or degrading treatment, it is possible and practicable for a court to distinguish acts constituting cruel, inhuman or degrading treatment and to identify acts that fall within its scope.

2. The distinction between cruel, inhuman, or degrading treatment on the one hand, and torture on the other, rests on the special stigma to be attached to those who commit torture. Torture is aggravated and deliberate cruel, inhuman, or degrading treatment, causing very serious and cruel suffering. Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, S. Exec. Rep. 30, 101st Cong., 2d Sess. 13 (1990) ("[T]orture is at the extreme end of cruel, inhuman and degrading treatment.").[20] Cruel, inhuman, or degrading treatment constitutes a non-deliberate--or deliberate, but less severe--infliction of suffering.[21]

3. The unjustified physical and mental suffering caused by

43/173, 43 U.N. GAOR Supp. (No. 49), U.N. Doc. A/43/49, at 297 (1988); J. H. Burgers & H. Danelius, supra note 7, at 149.

[20]See Ireland v. United Kingdom, 25 Eur. Ct. H.R. (ser. A) 65-67, at para. 167 (1978); Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, para. 2, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976) ("Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.").

[21]See J.H. Burgers & H. Danelius, supra note 7, at 150 ("Unlike in the definition of torture . . . . the purpose of the act is irrelevant in determining whether or not the act should be considered to constitute cruel, inhuman or degrading treatment.").

cruel, inhuman or degrading treatment includes the creation of "a state of anguish and stress by means other than bodily assault."[22]

[22] Report of November 5, 1969, Greece v. United Kingdom, Yearbook XII 461 (1969) cited in P. van Dijk & G. van Hoof, Theory and Practice of European Convention on Human Rights (1990), at 228 n. 75.

4. Degrading treatment is that which grossly humiliates a person before others or forces the person to act against his/her will or conscience,[23] or incites fear, anguish, or inferiority capable of humiliating and debasing a person and attempting to break his/her moral resistance.[24]

5. Whether treatment is cruel, inhuman, or degrading depends upon an assessment of all the particularities of a concrete case,[25] including the specific conditions at issue, duration of the measures imposed, the objectives pursued by the perpetrators, and the effects on the person(s) involved.[26]

6. There is a consensus among international law publicists

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[23] Id. at 186, cited in P. van Dijk & G. van Hoof, supra note 26, at 228 n. 73.

[24] Ireland v. United Kingdom, 25 Eur. Ct. H.R. (ser. A) 65-67, at para. 167 (1978).

[25] Similar case-by-case application has been undertaken by federal courts in cases of torture. See Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980); Forti v. Suarez-Mason, 672 F. Supp. 1531 (N.D. Cal. 1987), modified by 694 F. Supp. 707 (N.D. Cal. 1988). The duty of a federal judge in defining and applying the evolving international norm of cruel, inhuman, or degrading treatment is comparable to applying the flexible, evolving standard of cruel and unusual punishment under the Eighth Amendment of the United States Constitution. See, e.g., Wells v. Franzen, 777 F.2d 1258 (7th Cir. 1985); Medcalf v. Kansas, 626 F. Supp. 1179 (D. Kan. 1986).

[26] See, e.g., Tyrer Case, 26 Eur. Ct. H.R. (ser. A) 15, at para. 30 (1978) (distinctive element of degradation is degree of humiliation adjudged according to circumstances of individual case); Ireland v. United Kingdom, 25 Eur. Ct. H.R. (ser. A) 65-67, at paras. 166-68 (1978) (minimum level of severity required to determine violation depends on circumstances of particular case including duration of treatment and physical and mental effects). J.H. Burgers & H. Danelius, supra note 7, at 70, 122; P. van Dijk & G. van Hoof, supra note 27, at 232.

that the following acts constitute cruel, inhuman, or degrading treatment, though the list is by no means exhaustive.

(a) Sexual abuse[27] and other forms of gender-based violence.[28]

(b) Forcing detainees to stand for long periods of time, subjecting detainees to sights and sounds that have the effect or intent of breaking down their resistance and will, or inflicting severe mental or physical stress on detainees in order to obtain information or confession.[29]

(c) Deportation or expulsion from, or refusal of admission to, one's own country without due process or under exceptional circumstances such as discriminatory application of law or the intentional infliction of physical or mental suffering.[30]

(e) Failure or refusal to satisfy certain basic needs of the person, such as the needs for food, water, or sleep, if the pain or suffering inflicted is not severe enough to constitute torture.[31]

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[27]See supra note 6.

[28]See supra note 7.

[29]See Ireland v. United Kingdom, 25 Eur. Ct. H.R. (ser. A) 65-67, at paras. 166-68 (1978); Bouton v. Uruguay (37/1978), Report of the U.N. Hum. Rts. Comm. GAOR, 35th Sess., Suppl. No. 40 (1980), Annex XIV.

[30]See East African Asians v. United Kingdom, 3 Eur. H.R. Rep. 76, at paras. 186-88 (Eur. Comm'n H.R. 1973); P. van Dijk & G. van Hoof, supra note 20, at 235-36.

[31]J.H. Burgers & H. Danelius, supra note 7, at 118.

(f) Deliberate indifference to a detainee's medical needs and deprivation of the basic elements of adequate medical treatment.[32]

IV. UNIVERSAL AND OBLIGATORY CUSTOMARY INTERNATIONAL NORM AGAINST ARBITRARY DETENTION

A. The prohibition against arbitrary detention is universal.

1. Numerous international agreements prohibit arbitrary detention.[33] Moreover, international judicial decisions and

[32]With respect to detainees and prisoners, both the Eighth Amendment of the U.S. Constitution and the Standard Minimum Rules for the Treatment of Prisoners, adopted July 31, 1957, E.S.C. Res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. Res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977) (adding article 95), provide U.S. courts with guidelines to assist in applying the principle of cruel, inhuman, or degrading treatment in a particular case. See, e.g., Lareau v. Manson, 507 F. Supp. 1117 (D. Conn. 1980) modified on other grounds, 651 F.2d (2d Cir. 1981) (finding Standard Minimum Rules as significant expressions of obligations to prisoners under international law). See also Estelle v. Gamble, 429 U.S. 97, 103-04 (1976) (by reason of deprivation of liberty, state has obligation and duty to provide adequate and humane care to confined persons); Kyle v. Allen, 732 F. Supp. 1157, 1158 (S.D. Fla. 1990) (recognition that prison conditions can deprive inmates of minimal civilized measure of life's necessities).

[33]See American Convention on Human Rights, art. 7(3), opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36, at 1, O.A.S. Doc. OEA/Ser. L/V/II.50, doc. 6 at 27 (1980) (entered into force July 18, 1979,; International Covenant on Civil and Political Rights, art. 9, adopted Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No.16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5, opened for signature Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953); Universal Declaration of Human Rights, arts. 3 & 9, adopted Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948); African Charter on Human and Peoples' Rights, art. 6, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986).

The United Nations Commission on Human Rights has recently adopted a resolution establishing a working group on arbitrary detention. U.N. Doc. E/CN.4 1991/L.77, adopted without vote Mar.

unequivocal statements endorsed by nearly all of the states in the international community accept the norm of customary international law condemning arbitrary detention.[34]

2. All branches of the United States Government recognize and respect the international law norm prohibiting arbitrary detention. Members of the executive branch and Congress agree that arbitrary detention violates international law.[35] The federal courts have declared that "[n]o principle of international law is more fundamental than the concept that human beings should be free from arbitrary imprisonment." Rodriguez-Fernandez v. Wilkinson, 654 F.2d 1382, 1388 (10th Cir. 1981).[36]

1991.

[34]See, e.g.. Hostages Case, 1980 I.C.J. 3, at para. 91 ("Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights."); Winterwerp Case, 33 Eur. Ct. H.R., (ser. A), at para. 39 (1979) ("[N]o detention that is arbitrary can ever be regarded as 'lawful.'").

[35]See, e.g., Derian, Human Rights in United States Foreign Policy--The Executive Perspective, in International Human Rights Law and Practice 183 (J. Tuttle ed. 1978) (Assistant Secretary of State for Human Rights and Humanitarian Affairs, Patricia M. Derian, describing U.S. human rights policy as seeking "greater observation of all governments of the rights of the person including freedom from torture and cruel and inhuman treatment, freedom from the fear of security forces breaking down doors and kidnapping citizens from their homes, and freedom from arbitrary detention"); Fraser, Human Rights and United States Foreign Policy--The Congressional Perspective, in International Human Rights Law and Practice 173, 176 (J. Tuttle ed. 1978).

[36]See also Forti v. Suarez-Mason, 672 F.Supp. 1531, 1541 (N.D.

B. The prohibition against arbitrary detention is obligatory under international law.

Numerous international instruments prohibit arbitrary detention. See, e.g., International Covenant on Civil and Political Rights, art. 4, adopted Dec. 16, 1966, entered into force Mar. 23, 1976, G.A. Res. 2200, 21 U.N. GAOR Supp. (No.16), at 52, U.N. Doc. A/6316 (1966) (derogation from right to be free of arbitrary detention permitted only in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed).

C. The prohibition against arbitrary detention is definable.[37]

1. Detention is arbitrary when it is illegal and unjust.[38] As the Restatement (Third) of Foreign Relations Law explains: "Detention is arbitrary if it is not pursuant to law; it may be

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Cal. 1987) ("There is case law finding sufficient consensus to evince a customary international human rights norm against arbitrary detention."); De Sanchez v. Banco Central De Nicaragua, 770 F.2d 1385, 1397 (5th Cir. 1985) ("[T]he standards of human rights that have been generally accepted--and hence incorporated into the law of nations--. . . encompass . . . such basic rights as the right not to be murdered, tortured, or otherwise subjected to cruel, inhuman or degrading punishment; . . . and the right not to be arbitrarily detained."); Soroa-Gonzales v. Civiletti, 515 F.Supp. 1049, 1061 n.18 (N.D. Ga. 1981).

[37]See, e.g. Forti v. Suarez-Mason, 672 F.Supp. 1531, 1542 (N.D. Cal. 1987) (norm against arbitrary detention "is readily definable in terms of the arbitrary character of the detention").

[38]See Hassan, The International Covenant on Civil and Political Rights: Background and Perspective on Article 9(1), 3 Den. J. Int'l L. & Pol'y 153, 181-83 (1973); Marcoux, Protection From Arbitrary Arrest and Detention Under International Law, 5 B.C. Int'l & Comp. L.R. 345 (1982).

arbitrary also if 'it is incompatible with the principles of justice or with the dignity of the human person.'" See id. § 702 comment h (1987) (quoting Statement of U.S. Delegation, 13 GAOR, U.N. Doc. A/C.3/SR.863, at 137 (1958)).

2. There is a consensus among international law publicists that arbitrary detention occurs when a person is detained without warrant, probable cause, articulable suspicion or notice of charges and is not brought to trial.[39]

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[39]The International Covenant on Civil and Political Rights, art. 9, adopted Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) states:

> 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
> 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release ....
> ...
> 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5, opened for signature Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953), states:

> 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

V. UNIVERSAL AND OBLIGATORY CUSTOMARY INTERNATIONAL NORM AGAINST SUMMARY EXECUTION.

A. The international law prohibition against summary execution is universal.

1. Numerous international instruments prohibit summary execution. Summary execution is prohibited by the Universal Declaration of Human Rights of 1948, adopted Dec. 10, 1948, G.A. Res. 217A, U.N. GAOR 71, U.N. Doc. A/811 (1948), reprinted in 43 Am. J. Int'l L. Supp. 127 (1949). Article 3 guarantees the right to life, and articles 10 and 11 state the only method through which rights can be denied:

> a. the lawful detention of a person after conviction by a competent court;
>
> b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
>
> c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.
>
> . . .
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release pending trial. . . .
>
> . . .
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 10

> Everyone is entitled in full equity to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

> 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
>
> 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Similarly, all the other major human rights instruments recognize a right to life coupled with a right to due process to protect that right. See American Declaration of the Rights and Duties of Man, arts. 1, 18 & 26, signed May 2, 1948, Res. XXX, Final Act, Ninth Int'l Conf. of American States, Bogota, Colombia, Mar. 30-May 2, 1948, at 38 (Pan-American Union 1948), O.A.S. Off. Rec. OEA/Ser.L/V/II.23/Doc.21/Rev. 6 (English 1979), reprinted in 43 Am. J. Int'l L. Supp. 133 (1949); International Covenant on Civil and Political Rights, art. 6, adopted Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966)999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (signed but not ratified by United States); European Convention for the Protection of Human Rights and Fundamental Freedoms, § I, art. 2, opened for signature, Nov. 4, 1950, Europ. T.S. No. 5, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953);

African [Banjul] Charter on Human and Peoples' Rights, arts. 4-7, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3/Rev. 5, (1981), reprinted in 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986). Further, the international community continually "condemns the practice of summary executions and arbitrary executions ...." G.A. Res. 22, 36 U.N. GAOR Supp. (No. 51) at 168, U.N. Doc. A/36/51 (1981).

2. United States law recognizes summary execution as a violation of international law. In Forti v. Suarez-Mason, 672 F. Supp. 1531, 1542 (N.D. Cal. 1987), the court held that "[t]he proscription of summary execution or murder by the state appears to be universal, is readily definable, and is of course obligatory."

The Fifth Circuit, distinguishing the taking of property from summary execution as a universal violation of international human rights, has similarly stated:

> [T]he standards of human rights that have been generally accepted -- and hence incorporated into the law of nations -- are still limited. They encompass only such basic rights as the right not to be murdered ....

De Sanchez v. Banco Central De Nicaragua, 770 F.2d 1385, 1397 (5th Cir. 1985) (emphasis added).

Congress has also recognized summary execution as an international human rights violation. Provisions in 22 U.S.C. §§ 262d (aid to international financial institutions), 2151n (development aid) and 2304 (security assistance) (1988) all deny U.S. funding to countries that practice "gross violations of

internationally recognized human rights," and define these violations to include a "flagrant denial of the right to life, liberty or the security of person," a concept that encompasses summary execution.

The Restatement (Third) of Foreign Relations Law of the United States § 702 (1987) states, "[a] state violates international law if, as a matter of state policy, it practices, encourages or condones ... the murder [of individuals] ...."[40]

B. The prohibition against summary execution is obligatory under international law.

The prohibition against summary execution is non-derogable and is thus obligatory under international law. See, e.g., International Covenant on Civil and Political Rights, arts. 4 & 6, (the right not to be arbitrarily deprived of life is never derogable, not even in times of public emergency[41]); European Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 2 & 15, opened for signature Nov. 4, 1950, Europ. T.S. No. 5, 213 U.N.T.S. 221, (entered into force Sept. 3, 1953) (neither war nor any other public emergency is a justification for summary execution).

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[40] The Restatement's list of international human rights violations was cited, inter alia, by Judge Edwards in his concurrence in Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984), cert. denied, 470 U.S. 1003 (1985), as a gauge of what constitutes a violation of international law for purposes of 28 U.S.C. § 1350 (1988).

[41] See also International Covenant on Economic, Social and Cultural Rights, art. 5, adopted Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

C. The prohibition against summary execution is definable.

An act constitutes summary execution if it (1) intentionally results in the proximate death of an individual; (2) is not the result of a fairly and publicly constituted tribunal based on the existing law of the state, and (3) is caused by or at the instigation of a public official. See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva I), opened for signature Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31 (entered into force Oct. 21, 1950). See also Restatement (Third) of Foreign Relations Law of the United States, § 702 comment f (1987) ("Under this section, it is a violation of international law for a state to kill an individual other than as lawful punishment pursuant to conviction in accordance with due process of law, or as necessary under exigent circumstances, for example by police officials in line of duty in defense of themselves or of other innocent persons, or to prevent serious crime.")

VI. UNIVERSAL AND OBLIGATORY CUSTOMARY INTERNATIONAL NORM AGAINST DISAPPEARANCE

A. The international law prohibition against disappearance is universal.

1. International law uniformly condemns disappearance as a violation of international human rights. See, e.g., Organization of American States, Inter-American Commission of Human Rights, GA Res. 666, (XIII-0/83) of Nov. 18, 1983. (denouncing "disappearance" as "an affront to the conscience of the

hemisphere and ... a crime against humanity"); Velásquez Rodriguez case, Inter-Am. C.H.R., paras. 155-58 (1988), reprinted in 9 Hum. Rts. L.J. 212, 238-39 (1988) (finding that Honduras in "disappearing" Velásquez Rodriguez violated his rights to life, humane treatment and personal liberty as defined by Articles 4, 5 and 7 of the American Convention on Human Rights, opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36, (entered into force July 18, 1978)); G.A. Res. 173, 33 U.N. GAOR Supp. (No. 45) at 158, U.N. Doc. A/33/45 (1979) (disappearance violates the Universal Declaration of Human Rights, G.A. Res. 217A (III)); U.N. Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 35th Sess., U.N. Doc. E/CN.4/1983/4, U.N. Doc. E/CN.4/Sub.2/1982/43 (29 September 1982); United Nations Economic and Social Council Resolution 1979/38 of May 10, 1971; Annual Report of the Inter-American Commission on Human Rights, Inter-Am. C.H.R. 26, OEA/ser. L/V/II.43, doc. 21 (1977) at 26; H.R. Con. Res. 285, 96th Cong., 2d. Sess. (1980); Annual Report of the Inter-American Commission on Human Rights, Inter-Am. C.H.R. 113, OEA/ser. L/V/II.54, Doc. 9, Rev. 1 (1980), Draft Declaration on the Protection of All Persons from Enforced Disappearance, U.N. Comm'n on Hum. Rts., U.N. Doc. E/CN.4/1991/WG.10/CRP.3/REV.1/Corr. (8 November 1991).

2. International law universally condemns disappearance as violating fundamental human rights contained in numerous international instruments.[42] The United Nations Working Group on Enforced or Involuntary Disappearances reported that:

> 130. The information in this and prior reports shows that a wide range of the human rights of the victim himself and his family which are recognized in various international human rights instruments are violated or infringed by enforced or involuntary disappearances ....
>
> 131. The right to liberty and security of person is the principal human right denied by the practice of enforced or involuntary disappearance. Related rights, such as the right to freedom from arbitrary arrest, right to a fair trial in criminal matters and the right to recognition as a person before the law, are all involved. In addition, the right to humane conditions of detention and freedom from torture, cruel or degrading treatment or punishment are involved. The very fact of being detained as a disappeared person, isolated from one's family for a long period is certainly a violation of the right to humane conditions of detention and has been represented to the Group as torture. Further, some of the information before the group deals with the conditions of detention, including ill-treatment, suffered by the missing or disappeared persons. The right to life is also involved;
>
> 133. ... a reading of the Universal Declaration of Human Rights and the International Covenants on Human Rights shows that to a greater or lesser degree practically all basic

[42] The United Nations Economic and Social Council Working Group on Enforced or Involuntary Disappearances finds that disappearances violate the following principal international instruments: Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; African Charter on Human and People's Rights; American Declaration of the Rights and Duties of Man; American Convention on Human Rights; European Convention on Human Rights; and the Geneva Conventions of 1949. Report of the Working Group on Enforced or Involuntary Disappearances: Question of the Human Rights Of All Persons Subjected to Any Form of Detention or Imprisonment, In Particular: Question of Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/1983/14 (21 January 1983).

> human rights of such a person are infringed.[43] [footnotes and citations omitted]

See also Draft Declaration on the Protection of All Persons from Enforced Disappearance, art. 1 (2), U.N. C.H.R., U.N. Doc. E/CN.4/1991/WG.10/CRP.3/REV.1/Corr. (8 November 1991).[44] When an individual is disappeared, that individual may be presumed to have been summarily executed, and in any event to have been arbitrarily detained without any acknowledgement of accountability for that person's whereabouts.[45] The illegality of disappearance thus follows from the well-settled illegality of summary execution, discussed supra pp. 20-24, and arbitrary detention, discussed infra pp. 43-47.

A violation of the right to be free from disappearance infringes not only the rights of the individual disappeared, but also the rights of that individual's family members. Family members who lose a spouse, parent or sibling are subjected to severe emotional and often economic harm. Disappearance is an effective tool of terror precisely because it both removes an

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[43] Id.

[44] Art. 1(2) states: "It [disappearance] violates the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right of life."

[45] See Velásquez Rodriguez case, Inter-Am. Ct. H.R., para. 188 (1988), reprinted in 9 Hum. Rts. L.J. 212, 244 (1988). ("The context in which the disappearance of Manfred Velásquez occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed.")

individual opposed to the state and frightens and punishes family and friends of the disappeared. Family members of the disappeared suffer continued anguish, as they are indefinitely unaware of the status of their loved ones. See U.N. Report of the Working Group on Enforced or Involuntary Disappearances, 39th Sess., U.N. Doc. E/CN.4/1983/14 (21 January 1983) at 47 (human rights of family and particularly children are infringed by the disappearance of a family member); U.N. Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 35th Sess., U.N. Doc. E/CN.4/1983/4, U.N. Doc. E/CN.4/Sub.2/1982/43) (29 September 1982) at 74 (acknowledging "reports of threats against, attacks on or the arrest of relatives of missing persons actively seeking the whereabouts of their missing family members," reiterating "the right of families to know the fate of their relatives" and urging "protection of persons, including relatives, who seek the whereabouts of missing persons ...."). Family members of the disappeared, along with all other persons, have the right to be free from cruel, inhuman, or degrading treatment or punishment, a universally proscribed violation of fundamental human rights discussed below. Disappearance of an individual per se works cruel and inhuman treatment on his or her family members. Draft Declaration on the Protection of All Persons from Enforced Disappearance, art. 1 (2), U.N. Comm'n on Hum. Rts., U.N. Doc. E/CN.4/1991/ WG.10/CRP.3/REV.1/Corr. (8 November 1991) ("Such enforced or involuntary disappearance places the persons subjected thereto

outside the protection of the law and inflicts severe suffering on them and their families.")

3. All branches of the United States government recognize and respect the international law norm against disappearance.[46] Congress has declared disappearance to be a gross violation of human rights:

> the term "gross violations of internationally recognized human rights" includes ... causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty or the security of person ....

22 U.S.C. § 2304(d)(1) (1988) (grounds for denial of foreign security assistance). See also 22 U.S.C. §§ 262d (1988) (aid to international financial institutions shall be channeled away from countries whose governments commit such gross violations of human rights) and 2151(n) (grounds for a denial of development aid) (1988).

In Forti v. Suarez-Mason, the court held that there is "a universal and obligatory international proscription of the tort of `causing disappearance.'" 694 F.Supp. 707, 711 (N.D. Cal. 1988).

The Department of State has stated that disappearance is a fundamental human rights violation contravening customary international law. More than a decade ago, Assistant Secretary of State for Human Rights and Humanitarian Affairs Patricia

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[46] The Restatement (Third) of Foreign Relations Law § 702 (1987) specifically states, "A state violates international law if, as a matter of state policy, it practices, encourages, or condones... causing the disappearance of individuals...."

Derian described disappearances as "one of the more tragic and insidious instances of human rights abuses occurring in today's world." Protection of Human Rights, 1979 Digest of United States Practice in International Law § 6, at 529. Pursuant to 22 U.S.C. § 262d(c)(1) and § 2304(b)(1) (1988), the State Department has submitted annual "Country Reports" to Congress, many of which have specifically enumerated "disappearances" under violations of "respect for the integrity of the person." See, e.g., Country Reports on Human Rights Practices for 1981 at 329 (1981) (Argentina).

B. The prohibition against disappearance is obligatory.

In Forti v. Suarez-Mason, 694 F.Supp. 707, 711 (N.D. Cal. 1988), the Court held that there is "a universal and obligatory international proscription of the tort of `causing disappearance'") (emphasis added). See also Organization of American States, Inter-American Commission of Human Rights, General Assembly Resolution 666, (XIII-0/83) of Nov. 18, 1983 (denouncing "disappearance" as "an affront to the conscience of the hemisphere and ... a crime against humanity"); Velásquez Rodriguez case, Inter-Am. Ct. H.R., paras. 155-58 (1988), reprinted in 9 Hum. Rts. L.J. 212, 238-39 (1988) (finding that Honduras in "disappearing" Velasquez Rodriguez violated his rights as defined by Articles 4, 5 and 7 of the American Convention on Human Rights, opened for signature Nov. 22, 1969, O.A.S.T.S. No. 36, entered into force July 18, 1978, reprinted in 9 Int'l Legal Materials 673 (1970)); G.A. Res. 173, U.N. GAOR, 33d Sess. Supp. No. 45, at 158, U.N. Doc. A/33/45 (1979) (disappearance violates the Universal Declaration of Human Rights, G.A. Res. 217A (III)); Draft Declaration on the Protection of All Persons from Enforced Disappearance, art. 7, U.N. Comm'n Hum. Rts., U.N. Doc. E/CN.4/1991/WG.10/ CRP.3/REV.1/Corr. (8 November 1991) ("No circumstance whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency may be invoked to justify enforced or involuntary disappearances."). Moreover, the nonderogability of the norm against disappearance flows from the

fact that disappearance invariably violates the fundamental human rights to be free from summary execution or arbitrary detention, both of which are non-derogable and thus universal. See sections II supra, pp. 20-24 and VI infra, pp. 43-47.

C. The prohibition against disappearance is definable.

An act constitutes disappearance if it involves "(1) an abduction by state officials or their agents, followed by (2) official refusals to acknowledge the abduction or to disclose the detainee's fate." Forti v. Suarez-Mason, 694 F.Supp. 707, 711 (N.D. Cal. 1988). See also G.A. Res. 173, 33 U.N. GAOR Supp. (No. 45) at 158, U.N.Doc. A/33/45 (1979) (noting "difficulties in obtaining reliable information from competent authorities as to the circumstances of [disappeared] persons, including reports of persistent refusal of such authorities or organizations to acknowledge that they hold such persons in their custody or otherwise to account for them"); Draft Inter-American Convention on the Forced Disappearance of Persons, Inter-Am. C.H.R. 351-357, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988) (Article II defines "disappearance" as an "abduction or detention of any person by an agent of a State or by a person acting with the consent or acquiescence of a State," coupled with official refusal to acknowledge the abduction); Annual Report of the Inter-American Commission on Human Rights, Inter-Am. C.H.R. 26, OEA/ser.L/V/II.43, doc.21 (1977), (noting frequency of government denial of allegations of disappearance). See also Berman & Clark, State Terrorism: Disappearances, 13 Rutgers L.J. 531, 533

(1982) ("The denial of accountability is the factor which makes disappearance unique among human rights violations...")

VII. CONCLUSION

Torture, cruel, inhuman or degrading treatment, arbitrary detention, summary execution and disappearance are violations of the law of nations and customary international law. The international law prohibitions against each of these human rights violations are universal, obligatory and definable.

Respectfully submitted,

s/ above-named law professors

(original signature sheets attached)

Exhibit I

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 17 (REVISED)

STATUS OF THE COALITION PROVISIONAL AUTHORITY, MNF - IRAQ, CERTAIN MISSIONS AND PERSONNEL IN IRAQ

Pursuant to my authority as head of the Coalition Provisional Authority (CPA), and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolutions 1483 (2003), 1511 (2003) and 1546 (2004),

Noting the adoption of a process and a timetable for the drafting of an Iraqi constitution by elected representatives of the Iraqi people in the Law of Administration for the State of Iraq for the Transitional Period (TAL) on March 8, 2004,

Conscious that states are contributing personnel, equipment and other resources, both directly and by contract, to the Multinational Force (MNF) and to the reconstruction effort in order to contribute to the security and stability that will enable the relief, recovery and development of Iraq, as well as the completion of the political process set out in the TAL,

Noting that many Foreign Liaison Missions have been established in Iraq that after June 30, 2004 will become Diplomatic and Consular Missions, as defined in the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963,

Recalling that there are fundamental arrangements that have customarily been adopted to govern the deployment of Multinational Forces in host nations,

Conscious of the need to clarify the status of the CPA, the MNF, Foreign Liaison, Diplomatic and Consular Missions and their Personnel, certain International Consultants, and certain contractors in respect of the Government and the local courts,

Recognizing the need to provide for the circumstances that will pertain following June 30, 2004, and noting the consultations with the incoming Iraqi Interim Government in this regard and on this order,

I hereby promulgate the following:

Section 1
Definitions

1) "Multinational Force" (MNF) means the force authorized under U.N. Security Council Resolutions 1511 and 1546, and any subsequent relevant U.N. Security Council resolutions.

2) "MNF Personnel" means all non-Iraqi military and civilian personnel (a) assigned to or under the command of the Force Commander or MNF contingent commanders, (b)

subject to other command authority to aid, protect, complement or sustain the Force Commander, or (c) employed by a Sending State in support of or accompanying the MNF.

3) "Force Commander" means the Commander appointed to exercise unified command of the MNF, or his or her designee.

4) "CPA Personnel" means all non-Iraqi civilian and military personnel assigned to, or under the direction or control of, the Administrator of the CPA.

5) "Sending State" means a State providing personnel, International Consultants, services, equipment, provisions, supplies, material, other goods or construction work to: (a) the CPA, (b) the MNF, (c) international humanitarian or reconstruction efforts, (d) Diplomatic or Consular Missions, or (e) until July 1, 2004, Foreign Liaison Missions.

6) "Foreign Liaison Missions" means representative missions operated by States until July 1, 2004.

7) "Foreign Liaison Mission Personnel" means those individuals who are authorized by the Iraqi Ministry of Foreign Affairs to carry Foreign Liaison Mission personnel identification cards until July 1, 2004.

8) "Diplomatic and Consular Missions" means those missions belonging to States with diplomatic or consular relations with Iraq that are in operation on or after June 30, 2004.

9) "Premises of the Missions" means all premises, including the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of Diplomatic and Consular Missions, including residences of the heads of missions on or after June 30, 2004.

10) "Iraqi legal process" means any arrest, detention or legal proceedings in Iraqi courts or other Iraqi bodies, whether criminal, civil, or administrative.

11) "Contractors" means non-Iraqi legal entities or individuals not normally resident in Iraq, including their non-Iraqi employees and Subcontractors not normally resident in Iraq, supplying goods or services in Iraq under a Contract.

12) "Contract" means:

a) a contract or grant agreement with the CPA or any successor agreement thereto, or a contract or grant agreement with a Sending State, to supply goods or services in Iraq, where that supply is:

i) to or on behalf of the MNF;
ii) for humanitarian aid, reconstruction or development projects approved and organized by the CPA or a Sending State;
iii) for the construction, reconstruction or operation of Diplomatic and Consular Missions; or
iv) until July 1, 2004, to or on behalf of Foreign Liaison Missions; or

b) a contract for security services provided by Private Security Companies to Foreign Liaison Missions and their Personnel, Diplomatic and Consular Missions and their personnel, the MNF and its Personnel, International Consultants, or Contractors.

13) "Subcontractors" means non-Iraqi legal entities or individuals not normally resident in Iraq, including their non-Iraqi employees, performing under contract with a Contractor to supply goods or services in Iraq in furtherance of the Contractor's Contract.

14) "Private Security Companies" means non-Iraqi legal entities or individuals not normally resident in Iraq, including their non-Iraqi employees and Subcontractors not normally resident in Iraq, that provide security services to Foreign Liaison Missions and their Personnel, Diplomatic and Consular Missions and their personnel, the MNF and its Personnel, International Consultants and other Contractors.

15) "Vehicles" means civilian and military vehicles operated by or in support of MNF, the CPA, Foreign Liaison Missions, International Consultants and, in the course of their official and contractual activities, Contractors.

16) "Vessels" means civilian and military vessels operated by or in support of the MNF, the CPA, Foreign Liaison Missions, International Consultants and, in the course of their official and contractual activities, Contractors.

17) "Aircraft" means civilian and military aircraft operated by or in support of the MNF, the CPA, Foreign Liaison Missions, International Consultants and, in the course of their official and contractual activities, Contractors.

18) "The Government" means the Iraqi Interim Government from June 30, 2004, the Iraqi Transitional Government upon its formation, and any successor government for the duration of this Order, including instrumentalities, commissions, judicial, investigative or administrative authorities, and regional, provincial and local bodies.

19) "International Consultants" means all non-Iraqi personnel who are not CPA personnel and, after June 30, 2004, are not accredited to a Diplomatic or Consular Mission, but are provided by Sending States as consultants to the Government and are officially accepted by the Government.

Section 2
Iraqi Legal Process

1) Unless provided otherwise herein, the MNF, the CPA, Foreign Liaison Missions, their Personnel, property, funds and assets, and all International Consultants shall be immune from Iraqi legal process.

2) All MNF, CPA and Foreign Liaison Mission Personnel and International Consultants shall respect the Iraqi laws relevant to those Personnel and Consultants in Iraq including the Regulations, Orders, Memoranda and Public Notices issued by the Administrator of the CPA.

3) All MNF, CPA and Foreign Liaison Mission Personnel, and International Consultants shall be subject to the exclusive jurisdiction of their Sending States. They shall be immune from any form of arrest or detention other than by persons acting on behalf of their Sending States, except that nothing in this provision shall prohibit MNF Personnel from preventing acts of serious misconduct by the above-mentioned Personnel or Consultants, or otherwise temporarily detaining any such Personnel or Consultants who pose a risk of injury to themselves or others, pending expeditious turnover to the appropriate authorities of the Sending State. In all such circumstances, the appropriate senior representative of the detained person's Sending State in Iraq shall be notified immediately.

4) The Sending States of MNF Personnel shall have the right to exercise within Iraq any criminal and disciplinary jurisdiction conferred on them by the law of that Sending State over all persons subject to the military law of that Sending State.

5) The immunities set forth in this Section for Foreign Liaison Missions, their Personnel, property, funds and assets shall operate only with respect to acts or omissions by them during the period of authority of the CPA ending on June 30, 2004.

Section 3
Diplomatic and Consular Missions

All Premises of Diplomatic and Consular Missions will be utilized by Diplomatic and Consular Missions without hindrance and subject to the requirements of and receiving the protections provided for in the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963. This Order does not prevent the Government and any State from entering into other bilateral arrangements for existing or new premises.

Section 4
Contractors

1) Sending States may contract for any services, equipment, provisions, supplies, material, other goods, or construction work to be furnished or undertaken in Iraq without restriction as to choice of supplier or Contractor. Such contracts may be awarded in accordance with the Sending State's laws and regulations.

2) Contractors shall not be subject to Iraqi laws or regulations in matters relating to the terms and conditions of their Contracts, including licensing and registering employees, businesses and corporations; provided, however, that Contractors shall comply with such applicable licensing and registration laws and regulations if engaging in business or transactions in Iraq other than Contracts. Notwithstanding any provisions in this Order, Private Security Companies and their employees operating in Iraq must comply with all CPA Orders, Regulations, Memoranda, and any implementing instructions or regulations governing the existence and activities of Private Security Companies in Iraq, including registration and licensing of weapons and firearms.

3) Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto. Nothing in this provision shall prohibit MNF Personnel from preventing acts of serious misconduct by Contractors, or otherwise temporarily detaining any Contractors who pose a risk of injury to themselves or others, pending expeditious turnover to the appropriate authorities of the Sending State. In all such circumstances, the appropriate senior representative of the Contractor's Sending State in Iraq shall be notified.

4) Except as provided in this Order, all Contractors shall respect relevant Iraqi laws, including the Regulations, Orders, Memoranda and Public Notices issued by the Administrator of the CPA.

5) Certification by the Sending State that its Contractor acted pursuant to the terms and conditions of the Contract shall, in any Iraqi legal process, be conclusive evidence of the facts so certified.

6) With respect to a contract or grant agreement with or on behalf of the CPA and with respect to any successor agreement or agreements thereto, the Sending State shall be the state of nationality of the individual or entity concerned, notwithstanding Section 1(5) of this Order.

7) These provisions are without prejudice to the exercise of jurisdiction by the Sending State and the State of nationality of a Contractor in accordance with applicable laws.

Section 5
Waiver of Legal Immunity and Jurisdiction

1) Immunity from Iraqi legal process of MNF, CPA and Foreign Liaison Mission Personnel, International Consultants and Contractors is not for the benefit of the individuals concerned and may be waived pursuant to this Section.

2) Requests to waive immunity for MNF, CPA and Foreign Liaison Mission Personnel and International Consultants shall be referred to the respective Sending State. Such a waiver, if granted, must be express and in writing to be effective.

3) Requests to waive immunity for Contractors shall be referred to the relevant Sending State in relation to the act or acts for which waiver is sought. Such a waiver, if granted, must be express and in writing to be effective.

Section 6
Communications

1) The MNF shall engage in radiocommunications in accordance with the Annex hereto and is authorized, in coordination with the Government, to use such facilities as may be required for the performance of its tasks. Issues with respect to communications shall be resolved pursuant to this Order and the Annex hereto.

2) Subject to the provisions of paragraph (1) above:

   a) The MNF, Diplomatic and Consular Missions and Contractors may, in consultation with the Government, install and operate radiocommunication stations (including terrestrial radio and television broadcasting stations and satellite stations) to disseminate information relating to their mandates. The MNF, Diplomatic and Consular Missions and Contractors also may install and operate radiocommunication transmitting and receiving stations, including satellite earth stations, and install and operate other telecommunications systems including by laying cable and land lines, to provide communications, navigation, radio-positioning and other services useful in fulfilling their respective mandates. The MNF, Diplomatic and Consular Missions and Contractors shall also have the right to exchange telephone, voice, facsimile and other electronic data with relevant global telecommunications networks. The MNF, Diplomatic and Consular Missions and Contractors may continue to operate after June 30, 2004 existing radiocommunication transmitting and receiving stations, including broadcasting stations and other telecommunications systems operated by them or their predecessors on or prior to June 30, 2004, in accordance with existing authorizations and assignments of radio frequency spectrum. Subject to the Annex

hereto, the radio broadcasting stations, radio transmitting and receiving stations, and telecommunications systems operated pursuant to this Section by the MNF, Diplomatic and Consular Missions and Contractors shall be operated in accordance with the International Telecommunication Union Constitution, Convention and Radio Regulations, where applicable. The frequencies on which any new radiocommunication transmitting and receiving stations, including broadcasting stations, may be operated shall be decided upon in coordination with the Government to the extent required under and in accordance with the Annex hereto. Such use of the radio-frequency spectrum shall be free of charge for MNF and Diplomatic and Consular Missions.

b) The MNF, Diplomatic and Consular Missions and Contractors may connect with local telephone, facsimile and other electronic data systems. Existing connections to such local systems (made by them or their predecessor entities) shall remain in place following June 30, 2004. The MNF, Diplomatic and Consular Missions and Contractors may make new connections to such local systems after consultation and in accordance with arrangements with the Government. The use of such existing and new systems shall be charged at the most competitive rate to the MNF, Diplomatic and Consular Missions and Contractors.

3) The MNF may arrange through its own facilities for the processing and transport of private mail to or from MNF Personnel. The Government shall be informed of the nature of such arrangements and shall not interfere with or censor the mail of the MNF, or MNF Personnel.

4) The Code of Wireless Communications, Code No. 159 of 1980, to the extent not already superseded, is hereby repealed.

Section 7
Travel and Transport

1) All MNF, CPA and Foreign Liaison Mission Personnel, International Consultants and Contractors, to the extent necessary to perform their Contracts, shall enjoy, together with vehicles, vessels, aircraft and equipment, freedom of movement without delay throughout Iraq. That freedom shall, to the extent practicable with respect to large movements of personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within Iraq, be coordinated with the Government. The Government shall supply the MNF with, where available, maps and other information concerning the locations of mine fields and other dangers and impediments.

2) Vehicles, vessels and aircraft shall not be subject to registration, licensing or inspection by the Government, provided that Contractors' vehicles, vessels and aircraft shall carry appropriate third-party insurance.

3) All MNF, CPA and Foreign Liaison Mission Personnel, International Consultants and Contractors, to the extent necessary to perform their Contracts, together with their

vehicles, vessels and aircraft, may use roads, bridges, canals and other waters, port facilities, airfields and airspace without the payment of dues, tolls or charges, including landing and parking fees, port, wharfage, pilotage, navigation and overflight charges, overland transit fees, and similar charges. Exemption will not be claimed from charges for services requested and rendered, and such charges shall be at rates most favourable to CPA, MNF and Foreign Liaison Mission Personnel, and International Consultants and Contractors.

4) The Force Commander shall coordinate with the appropriate institutions of the Government regarding the rules and procedures governing Iraqi civil airspace and will manage the air traffic system for all military and civilian air traffic. The Force Commander will control airspace required for military operations within Iraq for the purpose of deconflicting military and civil uses. The Force Commander shall implement the transfer to civilian control of the airspace over Iraq to the appropriate institutions of the Government in a manner consistent with ensuring the safe and efficient operation of an air traffic management system, with security requirements, and Iraqi national capability to resume control over Iraqi national airspace no later than the MNF departure from Iraq.

Section 8
Customs and Excise

1) The MNF may establish, maintain and operate commissaries, exchanges and morale and welfare facilities at its headquarters, camps and posts for the benefit of MNF Personnel, and, at the discretion of the Force Commander, other non-Iraqi persons who are the subject of this Order, but not of locally recruited personnel. Such commissaries, exchanges and morale and welfare facilities may provide consumable goods and other articles. The Force Commander shall take all reasonable measures to prevent abuse of such commissaries, exchanges and morale and welfare facilities and the sale or resale of such goods to persons other than MNF Personnel. The Force Commander shall give consideration to requests of the Government concerning the operation of the commissaries, exchanges and morale and welfare facilities.

2) MNF, CPA and Foreign Liaison Mission Personnel, International Consultants and Contractors may:

   a) Import, free of duty or other restrictions, and clear without inspection, license, authorization, other restrictions, taxes, customs duties, or any other charges, equipment, provisions, supplies, fuel, technology, and other goods and services, including controlled substances, which are for their exclusive and official or contractual use and for the MNF for resale in the commissaries, exchanges and morale and welfare facilities provided for above;

   b) Re-export unconsumed provisions, supplies, fuel, technology, and other goods and equipment, including controlled substances, without inspection, license, authorization, other restrictions, taxes, customs duties or any other charges, or

otherwise dispose of such items on terms and conditions to be agreed upon with competent Government authorities.

3) An efficient procedure, including documentation, will be coordinated with the Government to expedite importation, clearances, transfer or exportation.

4) MNF, CPA and Foreign Liaison Mission Personnel, International Consultants and Contractors shall be subject to the laws and regulations of Iraq governing customs and foreign exchange with respect to personal property not required by them by reason of their official duties and presence in Iraq. A Sending State's certification that property of MNF, CPA and Foreign Liaison Mission Personnel, International Consultants and Contractors is required by them by reason of their official duties shall be conclusive evidence of the facts so certified.

5) Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for MNF Personnel, including the civilian component, upon prior written notification from the Force Commander.

Section 9
Facilities for the MNF

1) The MNF may use without cost such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of the MNF. All premises currently used by the MNF shall continue to be used by it without hindrance for the duration of this Order, unless other mutually agreed arrangements are entered into between the MNF and the Government. While any areas on which such headquarters, camps or other premises are located remain Iraqi territory, they shall be inviolable and subject to the exclusive control and authority of the MNF, including with respect to entry and exit of all personnel. The MNF shall be guaranteed unimpeded access to such MNF premises. Where MNF Personnel are co-located with military personnel of Iraq, permanent, direct and immediate access for the MNF to those premises shall be guaranteed.

2) The MNF may use water, electricity and other public utilities and facilities free of charge, or, where this is not practicable, at the most favorable rate, and in the case of interruption or threatened interruption of service, the MNF shall have, as far as possible, the same priority as essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by the MNF on terms and conditions to be agreed with the competent Government authority. The MNF shall be responsible for the maintenance and upkeep of facilities so provided.

3) The MNF may generate, within its premises, electricity for its use and may transmit and distribute such electricity.

4) There shall be an area within central Baghdad that shall be designated as the "International Zone." The International Zone shall have the boundaries that the MNF has established for this purpose. The MNF shall retain control of the perimeter of the International Zone and all rights of entry and exit, and all matters of security within the International Zone shall be subject to the control of the MNF. The activities and assignment of Iraqi security personnel within the International Zone shall be as mutually agreed upon between the MNF and the Government. Iraqi citizens living within the International Zone will remain subject to Iraqi law. Services, utilities and maintenance not otherwise performed or undertaken by the MNF within the International Zone shall be provided to the MNF by the Government free of charge or at the most favorable rate as agreed between the Force Commander and the Government.

Section 10
Taxation, Provisions, Supplies, Services and Sanitary Arrangements

1) The MNF, Sending States and Contractors shall be exempt from general sales taxes, Value Added Tax (VAT), and any similar taxes in respect of all local purchases for official use or for the performance of Contracts in Iraq. With respect to equipment, provisions, supplies, fuel, materials and other goods and services obtained locally by the MNF, Sending States or Contractors for the official and exclusive use of the MNF or Sending States or for the performance of Contracts in Iraq, appropriate administrative arrangements shall be made for the remission or return of any excise or tax paid as part of the price. In making purchases on the local market, the MNF, Sending States and Contractors shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy.

2) Contractors shall be accorded exemption from taxes in Iraq on earnings from Contracts, including corporate, income, social security and other similar taxes arising directly from the performance of Contracts. MNF Personnel, CPA Personnel, Foreign Liaison Mission Personnel and International Consultants shall be accorded exemption from taxes in Iraq on earnings received by them in their capacity as such Personnel and Consultants.

3) The MNF and the Government shall cooperate with respect to sanitary services and shall extend to each other the fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases, consistent with relevant international law.

Section 11
Recruitment of Local Personnel

The MNF, Sending States and Contractors may recruit, hire and employ locally such personnel as they require. The terms and conditions of recruitment, hiring and

employment by the MNF, Sending States and Contractors shall be determined by respectively the MNF, Sending States and the terms of the Contractor's Contract.

Section 12
Currency

The MNF shall be permitted to purchase from the Government in mutually acceptable currency, local currency required for the use of the MNF, including to pay MNF Personnel, at the rate of exchange most favorable to the MNF.

Section 13
Entry, Residence and Departure

1) MNF, CPA and Foreign Liaison Mission Personnel, and International Consultants shall have the right to enter into, remain in, and depart from Iraq.

2) The speedy entry into and departure from Iraq of MNF, CPA and Foreign Liaison Mission Personnel, Contractors and International Consultants shall be facilitated to the maximum extent practicable. For that purpose, MNF, CPA and Foreign Liaison Mission Personnel, and International Consultants shall be exempt from passport and visa regulations and immigration inspection and restrictions as well as payment of any fees or charges on entering into or departing from Iraq. They shall also be exempt from any regulations governing the residence of aliens in Iraq, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Iraq.

3) For the purpose of such entry or departure, MNF Personnel shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Force Commander or any appropriate authority of a Sending State providing personnel to the MNF; and (b) a national passport or personal identity card issued by the appropriate authorities of a Sending State providing personnel to the MNF.

4) For the proper performance of Contracts, Contractors shall be provided with facilities concerning their entry into and departure from Iraq as well as their repatriation in time of crisis. For this purpose, there shall promptly be issued to Contractors, free of charge and without any restrictions, all necessary visas, licenses or permits.

Section 14
Uniforms and Arms

While performing official duties, MNF Military Personnel shall wear the national military uniform of their respective Sending States unless otherwise authorized by the Force Commander for operational reasons. The wearing of civilian dress by MNF

Military Personnel may be authorized by the Force Commander at other times. MNF Personnel and Private Security Companies may possess and carry arms while on official duty in accordance with their orders or under the terms and conditions of their Contracts. As authorized by the ambassador or the chargé d'affaires of a Sending State, Diplomatic and Consular personnel may possess and carry arms while on official duty.

Section 15
Identification

Upon request by the Government, a Sending State shall confirm that an individual falls into one of the categories covered by this Order.

Section 16
Permits and licenses

1) A permit or license issued by the MNF, the CPA, Foreign Liaison Missions or Sending States for the operation by their Personnel, including non-Iraqi locally recruited personnel, of any vehicles and for the practice of any profession or occupation in connection with their functions, shall be accepted as valid, without tax or fee, provided that no permit to drive a vehicle shall be issued to any person who is not already in possession of an appropriate and valid license issued by the appropriate authorities of the Sending State.

2) Licenses and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels, including those operated by Contractors exclusively by or for the MNF, the CPA and Foreign Liaison, Diplomatic and Consular Missions shall be accepted as valid.

Section 17
Deceased members

The Force Commander and Sending States may take charge of and transfer out of Iraq or otherwise dispose of the remains of any MNF, CPA and Foreign Liaison Mission Personnel, International Consultants and Contractors who die in Iraq, as well as their personal property located within Iraq.

Section 18
Claims

Except where immunity has been waived in accordance with Section 5 of this Order, third-party claims including those for property loss or damage and for personal injury, illness or death or in respect of any other matter arising from or attributed to acts or omissions of CPA, MNF and Foreign Liaison Mission Personnel, International Consultants, and Contractors or any persons employed by them for activities relating

to performance of their Contracts, whether normally resident in Iraq or not and that do not arise in connection with military operations, shall be submitted and dealt with by the Sending State whose personnel (including the Contractors engaged by that State), property, activities or other assets are alleged to have caused the claimed damage, in a manner consistent with the Sending State's laws, regulations and procedures.

Section 19
Supplemental Arrangements

The Force Commander and the Government may conclude supplemental arrangements or Protocols to this Order and shall ensure close and reciprocal liaison at every appropriate level.

Section 20
Effective Period

This Order shall enter into force on the date of signature. It shall remain in force for the duration of the mandate authorizing the MNF under U.N. Security Council Resolutions 1511 and 1546 and any subsequent relevant resolutions and shall not terminate until the departure of the final element of the MNF from Iraq, unless rescinded or amended by legislation duly enacted and having the force of law.

6/27/04

L. Paul Bremer, Administrator
Coalition Provisional Authority

ANNEX

ARRANGEMENTS CONCERNING
USE OF THE RADIO FREQUENCY SPECTRUM

ARTICLE I: GENERAL PRINCIPLES

1) The Government, including the Iraqi Communications and Media Commission and any successor or other entity with authority relating to radio frequency spectrum in Iraq (collectively referred to as the "Commission"), shall render all decisions planning, managing, allocating and assigning radio frequency spectrum in a manner that recognizes and safeguards the radio frequency spectrum needs of the MNF.

2) Consistent with Sections 5(2)(i) and 5(2)(m) of CPA Order No. 65, the Government, through the Commission, will coordinate with the Force Commander regarding any pending or proposed action or regulatory decision that may affect MNF's use of radio frequency spectrum, in order to ensure that no such actions or decisions will interfere with military requirements necessary in the interest of the national security of Iraq.

3) Nothing contained in this Annex shall be interpreted to abridge or deny the ability of the MNF to utilize existing and future frequency assignments to operate communications, navigation and other military facilities and networks required to facilitate internal operations and to safeguard the security and reconstruction of Iraq.

ARTICLE II: TABLE OF ALLOCATIONS

1) The initial Table of Allocations, which designates bands as Civil, Military or Shared, is attached hereto as Appendix 1. Neither the Government nor the Force Commander may change the Table of Allocations except in accordance with the provisions set forth in this Annex.

2) No changes to the Table of Allocations that reallocate, reassign or otherwise affect the bands designated as Military, the MNF's use thereof, or the MNF's use of frequencies assigned to it in the bands designated as Civil or Shared Uses shall be effective unless agreed to by the Force Commander.

3) Subject to paragraph 2) of this Article II, the Commission may reallocate radio frequency spectrum and/or revise the Table of Allocations in the bands designated as Civil or Shared by providing thirty days' prior written notice to the Force Commander of such reallocation and/or revision.

ARTICLE III: ASSIGNMENT OF RADIO FREQUENCIES

1) The Commission controls the assignment of frequencies in the bands designated as Civil or Shared Uses and serves as the approval authority for frequency assignments in these bands, and shall render its decisions in accordance with these regulations. Except as set forth in this Annex, no person may operate radio transmitting equipment in the bands designated as Civil or Shared without the authorization of the Commission.

2) The Force Commander controls assignment of frequencies in the bands designated as Military and serves as approval authority for these bands. Decisions by the Force Commander regarding assignments in the bands designated as Military are committed to his complete discretion and are not subject to review by the Government. No person may operate radio transmitting equipment in the bands designated as Military without the authorization of the Force Commander.

3) In addition to the use of any bands designated as Military Uses that have been authorized by the Force Commander, the Force Commander shall have the right to retain and request frequency assignments from the Commission whenever necessary, in the bands designated as Civil or Shared. Requests by the Force Commander for frequency assignments in the bands designated as Civil or Shared Uses shall be addressed and coordinated with the Commission in the following manner:

    a. Following June 30, 2004, the military and civil defense forces (including the MNF) will retain the frequency assignments in the bands designated as Civil or Shared that were held immediately prior to that date, including those assignments held by the MNF, which shall retain the assignments previously held by Coalition Forces, and may transfer those assignments to any successor entity for the protection of Iraq's national security.

    b. The Force Commander may submit written requests to the Commission for additional frequency assignments in the bands designated as Civil or Shared Uses. Upon receipt of a written request for frequency assignment(s) from the Force Commander, the Commission will render its written decision to grant or deny such request(s) in a manner that will not interfere with military requirements necessary in the interest of security;

    c. The Commission shall respond in writing to requests for frequency assignments from the Force Commander within thirty days of receipt of such requests to either grant the requested authorization or provide a written explanation of its denial of the request;

    d. If the MNF is not employing a frequency that is assigned to it in a band designated as Civil or Shared, the Commission may request that the unused assignment be returned for reassignment or reallocation, and such request shall

be honored by the Force Commander, unless the Force Commander provides a written statement explaining that the MNF must continue to hold the assignment because of a security interest, such as civil defense or public safety. Such statement, if made by the Force Commander, shall be conclusive.

e. The MNF shall be exempt from any and all requirements to pay recurring or nonrecurring fees for use of radio frequency spectrum, or for requesting and obtaining existing or future frequency assignments, including any administrative, processing or other fees.

f. Requests for frequency assignments by the Force Commander shall be submitted to the Commission in a format agreed to between the Force Commander and the Commission.

g. The Commission will not release any information regarding the MNF's use of radio frequency spectrum to any person (including other Government agencies) without the explicit prior written consent of the Force Commander.

4) The Commission shall protect frequency assignments held by the MNF, Diplomatic and Consular Missions and Contractors from interference.

ARTICLE IV
CHANGES TO THIS ANNEX

1) The terms of this Annex may be changed only upon the written agreement of the Commission and the Force Commander.

2) The Commission and the Force Commander may agree on more detailed procedures, in writing, to carry out the intent of this Annex.

3) The Commission and the Force Commander may each delegate their responsibilities under this Annex to appropriate representatives.

Exhibit J

Melamed, Dailey & Akeel, P.C.

From: "Herring, Charlotte LTC USARCS" <charlotte.herring@claims.army.mil>
To: <meldailey@voyager.net>
Sent: Wednesday, June 30, 2004 11:04 AM
Subject: Saleh

Mr. Akeel -

As we discussed today, and as confirmed by the Acting Commander, USARCS, you filing a claim on behalf of your client in a court of US jurisdiction against the contractors (Titan et al.) will not affect any recommendation made on the FCA claim of Mr. Saleh.

Charlotte R. Herring
LTC, JA
Chief, Foreign Torts

US Army Claims Service
4411 Llewellyn Avenue
Fort George G. Meade, MD 20755-5360
(301) 677-7009 ext. 253 (DSN 622)
Fax: 6652

CERTIFICATE OF SERVICE

I, Jonathan H. Pyle, do hereby certify that on the 22nd day of October 2004, I caused a true and correct copy of the foregoing Memorandum of Points and Authorities in Opposition to Defendant Titan Corporation's Motion to Dismiss Second Amended Class Action Complaint to be served via U.S. First Class Mail, postage prepaid, upon the following individuals at the addresses indicated:

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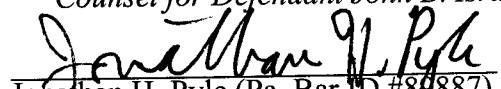

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