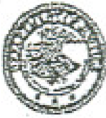

U.S. Department of Justice

Office of Legal Counsel

Office of the Principal Deputy Assistant Attorney General

Washington, D.C. 20530

May 30, 2005

MEMORANDUM FOR JOHN A. RIZZO
SENIOR DEPUTY GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees

You have asked us to address whether certain "enhanced interrogation techniques" employed by the Central Intelligence Agency ("CIA") in the interrogation of high value al Qaeda detainees are consistent with United States obligations under Article 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for U.S. Nov. 20, 1994) ("CAT"). We conclude that use of these techniques, subject to the CIA's careful screening criteria and limitations and its medical safeguards, is consistent with United States obligations under Article 16.[1]

By its terms, Article 16 is limited to conduct within "territory under [United States] jurisdiction." We conclude that territory under United States jurisdiction includes, at most, areas

[1] Our analysis and conclusions are limited to the specific legal issues we address in this memorandum. We note that we have previously concluded that use of these techniques, subject to the limits and safeguards required by the interrogation program, does not violate the federal prohibition on torture, codified at 18 U.S.C. §§ 2340-2340A. *See* Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques that May Be Used in the Interrogation of a High Value al Qaeda Detainee* (May 10, 2005); *see also* Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees* (May 10, 2005) (concluding that the anticipated combined use of these techniques would not violate the federal prohibition on torture). The legal advice provided in this memorandum does not represent the policy views of the Department of Justice concerning the use of any interrogation methods.

~~This memorandum is classified in its entirety.~~

over which the United States exercises at least de facto authority as the government. Based on CIA assurances, we understand that the interrogations do not take place in any such areas. We therefore conclude that Article 16 is inapplicable to the CIA's interrogation practices and that those practices thus cannot violate Article 16. Further, the United States undertook its obligations under Article 16 subject to a Senate reservation, which, as relevant here, explicitly limits those obligations to "the cruel, unusual and inhumane treatment . . . prohibited by the Fifth Amendment . . . to the Constitution of the United States."[2] There is a strong argument that through this reservation the Senate intended to limit the scope of United States obligations under Article 16 to those imposed by the relevant provisions of the Constitution. As construed by the courts, the Fifth Amendment does not apply to aliens outside the United States. The CIA has assured us that the interrogation techniques are not used within the United States or against United States persons, including both United States citizens and lawful permanent residents. Because the geographic limitation on the face of Article 16 renders it inapplicable to the CIA interrogation program in any event, we need not decide in this memorandum the precise effect, if any, of the Senate reservation on the geographic reach of United States obligations under Article 16. For these reasons, we conclude in Part II that the interrogation techniques where and as used by the CIA are not subject to, and therefore do not violate, Article 16.

Notwithstanding these conclusions, you have also asked whether the interrogation techniques at issue would violate the substantive standards applicable to the United States under Article 16 if, contrary to our conclusion in Part II, those standards did extend to the CIA interrogation program. As detailed below in Part III, the relevant constraint here, assuming Article 16 did apply, would be the Fifth Amendment's prohibition of executive conduct that "shocks the conscience." The Supreme Court has emphasized that whether conduct "shocks the conscience" is a highly context-specific and fact-dependent question. The Court, however, has not set forth with precision a specific test for ascertaining whether conduct can be said to "shock the conscience" and has disclaimed the ability to do so. Moreover, there are few Supreme Court cases addressing whether conduct "shocks the conscience," and the few cases there are have all arisen in very different contexts from that which we consider here.

For these reasons, we cannot set forth or apply a precise test for ascertaining whether conduct can be said to "shock the conscience." Nevertheless, the Court's "shocks the conscience" cases do provide some signposts that can guide our inquiry. In particular, on balance the cases are best read to require a determination whether the conduct is "'arbitrary in the constitutional sense,'" *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (citation

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[2] The reservation provides in full:

> That the United States considers itself bound by the obligation under Article 16 to prevent "cruel, inhuman or degrading treatment or punishment," only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

136 Cong. Rec. 36198 (1990). As we explain below, the Eighth and Fourteenth Amendments are not applicable in this context.

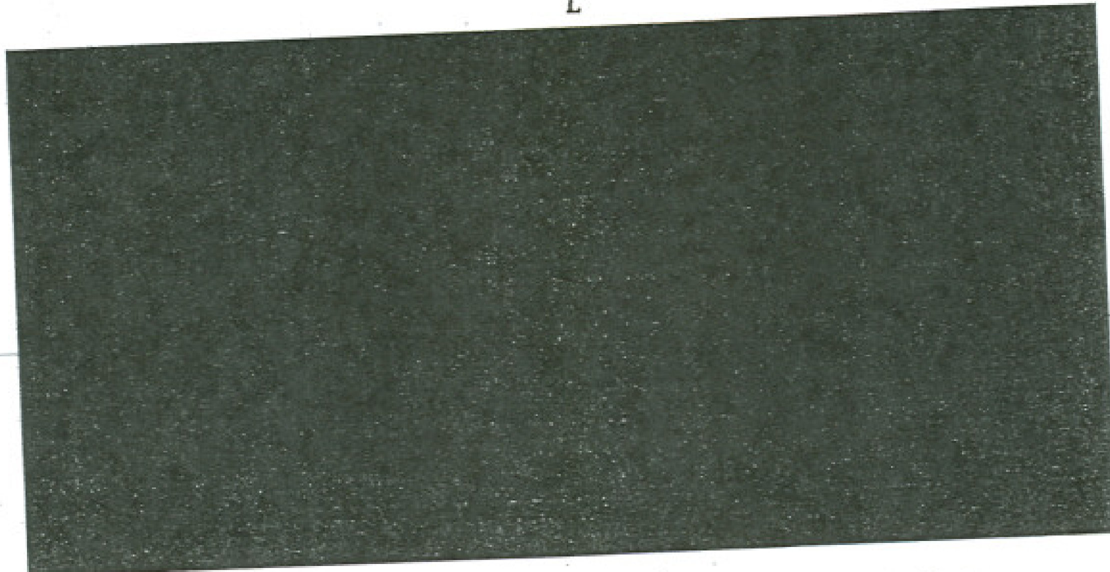
omitted); that is, whether it involves the "exercise of power without any reasonable justification in the service of a legitimate governmental objective," *id.* "[C]onduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *Id.* at 849. Far from being constitutionally arbitrary, the interrogation techniques at issue here are employed by the CIA only as reasonably deemed necessary to protect against grave threats to United States interests, a determination that is made at CIA Headquarters, with input from the on-scene interrogation team, pursuant to careful screening procedures that ensure that the techniques will be used as little as possible on as few detainees as possible. Moreover, the techniques have been carefully designed to minimize the risk of suffering or injury and to avoid inflicting any serious or lasting physical or psychological harm. Medical screening, monitoring, and ongoing evaluations further lower such risk. Significantly, you have informed us that the CIA believes that this program is largely responsible for preventing a subsequent attack within the United States. Because the CIA interrogation program is carefully limited to further a vital government interest and ~~designed to avoid unnecessary or serious harm~~, we conclude that it cannot be said to be constitutionally arbitrary.

The Supreme Court's decisions also suggest that it is appropriate to consider whether, in light of "traditional executive behavior, of contemporary practice, and the standards of blame generally applied to them," use of the techniques in the CIA interrogation program "is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Id.* at 847 n.8. We have not found evidence of traditional executive behavior or contemporary practice either condemning or condoning an interrogation program carefully limited to further a vital government interest and designed to avoid unnecessary or serious harm. We recognize, however, that use of coercive interrogation techniques in other contexts—in different settings, for other purposes, or absent the CIA's safeguards—might be thought to "shock the conscience." *Cf., e.g., Rochin v. California*, 342 U.S. 165, 172 (1952) (finding that pumping the stomach of a criminal defendant to obtain evidence "shocks the conscience"); *U.S. Army Field Manual 34-52: Intelligence Interrogation* (1992) ("*Field Manual 34-52*") (detailing guidelines for interrogations in the context of traditional warfare); Department of State, Country Reports on Human Rights Practices (describing human-rights abuses condemned by the United States). We believe, however, that each of these other contexts, which we describe more fully below, differs critically from the CIA interrogation program in ways that would be unreasonable to ignore in examining whether the conduct involved in the CIA program "shock[s] the contemporary conscience." Ordinary criminal investigations within the United States, for example, involve fundamentally different government interests and implicate specific constitutional guarantees, such as the privilege against self-incrimination, that are not at issue here. Furthermore, the CIA interrogation techniques have all been adapted from military Survival, Evasion, Resistance, Escape ("SERE") training. Although there are obvious differences between training exercises and actual interrogations, the fact that the United States uses similar techniques on its own troops ~~for training purposes strongly suggests that these techniques are not categorically beyond the~~ pale.

Given that the CIA interrogation program is carefully limited to further the Government's paramount interest in protecting the Nation while avoiding unnecessary or serious harm, we conclude that the interrogation program cannot "be said to shock the contemporary conscience"

when considered in light of "traditional executive behavior" and "contemporary practice." *Lewis*, 523 U.S. at 847 n.8.

I.



Elsewhere, we have described the CIA interrogation program in great detail. *See* Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques that May Be Used in the Interrogation of a High Value al Qaeda Detainee* at 4-15, 28-45 (May 10, 2005) ("*Techniques*"); Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees* at 3-9 (May 10, 2005) ("*Combined Use*"). The descriptions of the techniques, including all limitations and safeguards applicable to their use, set forth in *Techniques* and *Combined Use* are incorporated by reference herein, and we assume familiarity with those descriptions. Here, we highlight those aspects of the program that are most important to the question under consideration. Where appropriate, throughout this opinion we also provide more detailed background information regarding specific high value detainees who are representative of the individuals on whom the techniques might be used.[3]

A.

Under the CIA's guidelines, several conditions must be satisfied before the CIA considers employing enhanced techniques in the interrogation of any detainee. The CIA must,

[3] The CIA has reviewed and confirmed the accuracy of our description of the interrogation program, including its purposes, methods, limitations, and results.

based on available intelligence, conclude that the detainee is an important and dangerous member of an al Qaeda-affiliated group. The CIA must then determine, at the Headquarters level and on a case-by-case basis with input from the on-scene interrogation team, that enhanced interrogation methods are needed in a particular interrogation. Finally, the enhanced techniques, which have been designed and implemented to minimize the potential for serious or unnecessary harm to the detainees, may be used only if there are no medical or psychological contraindications.

1.

[redacted] the CIA uses enhanced interrogation techniques only if the CIA's Counterterrorist Center ("CTC") determines an individual to be a "High Value Detainee," which the CIA defines as:

> a detainee who, until time of capture, we have reason to believe: (1) is a senior member of al-Qai'da or an al-Qai'da associated terrorist group (Jemaah Islamiyyah, Egyptian Islamic Jihad, al-Zarqawi Group, etc.); (2) has knowledge of imminent terrorist threats against the USA, its military forces, its citizens and organizations, or its allies; or that has/had direct involvement in planning and preparing terrorist actions against the USA or its allies, or assisting the al-Qai'da leadership in planning and preparing such terrorist actions; and (3) if released, constitutes a clear and continuing threat to the USA or its allies.

Fax for Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, from [redacted] Assistant General Counsel, Central Intelligence Agency at 4 (Jan. 4, 2005) ("*January 4* [redacted] *Fax*"). The CIA, therefore, must have reason to believe that the detainee is a senior member (rather than a mere "foot soldier") of al Qaeda or an associated terrorist organization, who likely has actionable intelligence concerning terrorist threats, and who poses a significant threat to United States interests.

The "waterboard," which is the most intense of the CIA interrogation techniques, is subject to additional limits. It may be used on a High Value Detainee only if the CIA has "credible intelligence that a terrorist attack is imminent"; "substantial and credible indicators that the subject has actionable intelligence that can prevent, disrupt or delay this attack"; and "[o]ther interrogation methods have failed to elicit the information [or] CIA has clear indications that other . . . methods are unlikely to elicit this information *within the perceived time limit for preventing the attack*." Letter from John A. Rizzo, Acting General Counsel, Central Intelligence Agency, to Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel at 5 (Aug. 2, 2004) ("*August 2 Rizzo Letter*") (attachment).

To date, the CIA has taken custody of 94 detainees [redacted] and has employed enhanced techniques to varying degrees in the interrogations of 28 of these detainees. We understand that two individuals, [redacted]

[redacted] are representative of the high value detainees on whom enhanced techniques have been, or might be, used. On [redacted] the CIA took custody of [redacted] whom the CIA believed had actionable intelligence concerning the pre-election threat to the United States. *See* Letter from [redacted], Associate General Counsel, Central Intelligence Agency, to Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel at 2 (Aug. 25, 2004) ("*August 25* [redacted] *Letter*"). [redacted] extensive connections to various al Qaeda leaders, members of the Taliban, and the al-Zarqawi network, and intelligence indicated [redacted] arranged a . . . meeting between [redacted] and [redacted] [redacted] at which elements of the pre-election threat were discussed." *Id.* at 2-3; *see also* Undated CIA Memo, [redacted]

Intelligence indicated that prior to his capture, [redacted] "perform[ed] critical facilitation and finance activities for al-Qa'ida," including "transporting people, funds, and documents." Fax for Jack L. Goldsmith, III, Assistant Attorney General, Office of Legal Counsel, from [redacted] Assistant General Counsel, Central Intelligence Agency (March 12, 2004). The CIA also suspected [redacted] played an active part in planning attacks against United States forces [redacted] had extensive contacts with key members of al Qaeda, including, prior to their captures, Khalid Shaykh Muhammad ("KSM") and Abu Zubaydah. *See id.* [redacted] was captured while on a mission from [redacted] to establish contact" with al-Zarqawi. *See* CIA Directorate of Intelligence, *US Efforts Grinding Down al-Qa'ida* 2 (Feb. 21, 2004).

Consistent with its heightened standard for use of the waterboard, the CIA has used this technique in the interrogations of only three detainees to date (KSM, Zubaydah, and 'Abd Al-Rahim Al-Nashiri) and has not used it since the March 2003 interrogation of KSM. *See* Letter from Scott W. Muller, General Counsel, Central Intelligence Agency, to Jack L. Goldsmith III, Assistant Attorney General, Office of Legal Counsel at 1 (June 14, 2004).

We understand that Abu Zubaydah and KSM are representative of the types of detainees on whom the waterboard has been, or might be, used. Prior to his capture, Zubaydah was "one of Usama Bin Laden's key lieutenants." CIA, *Zayn al-Abidin Muhammad Husayn ABU ZUBAYDAH* at 1 (Jan. 7, 2002) ("*Zubaydah Biography*"). Indeed, Zubaydah was al Qaeda's third or fourth highest ranking member and had been involved "in every major terrorist operation carried out by al Qaeda." Memorandum for John Rizzo, Acting General Counsel, Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, *Re: Interrogation of al Qaeda Operative* at 7 (Aug. 1, 2002) ("*Interrogation Memorandum*"); Zubaydah Biography (noting Zubaydah's involvement in the September 11 attacks). Upon his capture on March 27, 2002, Zubaydah became the most senior member of al Qaeda in United States custody. *See IG Report* at 12.

KSM, "a mastermind" of the September 11, 2001, attacks, was regarded as "one of al-Qa'ida's most dangerous and resourceful operatives." CIA, *Khalid Shaykh Muhammad* [redacted] (Nov. 1, 2002) ("*CIA KSM Biography*"). [redacted] Prior to his capture, the CIA considered KSM to be one of al Qaeda's "most important operational leaders . . . based on his

close relationship with Usama Bin Laden and his reputation among the al-Qa'ida rank and file." *Id.* After the September 11 attacks, KSM assumed "the role of operations chief for al-Qa'ida around the world." CIA Directorate of Intelligence, *Khalid Shaykh Muhammad: Preeminent Source on Al-Qa'ida* 7 (July 13, 2004) ("*Preeminent Source*"). KSM also planned additional attacks within the United States both before and after September 11. *See id.* at 7-8; *see also The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* 150 (official gov't ed. 2004) ("*9/11 Commission Report*").[4]

2.

Even with regard to detainees who satisfy these threshold requirements, enhanced techniques are considered only if the on-scene interrogation team determines that the detainee is withholding or manipulating information. In order to make this assessment, interrogators conduct an initial interview "in a relatively benign environment." Fax for Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, from [redacted] Associate General Counsel, Central Intelligence Agency, *Re: Background Paper on CIA's Combined Use of Interrogation Techniques* at 3 (Dec. 30, 2004) ("*Background Paper*"). At this stage, the detainee is "normally clothed but seated and shackled for security purposes," and the interrogators take "an open, non-threatening approach." *Id.* In order to be judged participatory, however, a high value detainee "would have to willingly provide information on actionable threats and location information on High-Value Targets at large—not lower level information." *Id.* If the detainee fails to meet this "very high" standard, the interrogation team develops an interrogation plan, which generally calls for the use of enhanced techniques only as necessary and in escalating fashion. *See id.* at 3-4; *Techniques* at 5.

Any interrogation plan that involves the use of enhanced techniques must be reviewed and approved by "the Director, DCI Counterterrorist Center, with the concurrence of the Chief, CTC Legal Group." George J. Tenet, Director of Central Intelligence, *Guidelines on Interrogations Conducted Pursuant to the* [redacted] at 3 (Jan. 28, 2003) ("*Interrogation Guidelines*").[5] Each approval lasts for a period of at most 30 days, *see id.* at 1-2, although enhanced interrogation techniques are generally not used for more than seven days, *see Background Paper* at 17.

For example, after medical and psychological examinations found no contraindications, [redacted]s interrogation team sought and obtained approval to use the following techniques: attention grasp, walling, facial hold, facial slap, wall standing, stress positions, and sleep deprivation. *See August 25* [redacted] *Letter* at 2. The interrogation team "carefully analyzed Gul's responsiveness to different areas of inquiry" during this time and noted that his resistance increased as questioning moved to his "knowledge of operational terrorist activities." *Id.* at 3.

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[4] Al-Nashiri, the only other detainee to be subjected to the waterboard, planned the bombing of the U.S.S. Cole and was subsequently "recognized as the chief of al Qaeda operations in and around the Arabian Peninsula." *9/11 Commission Report* at 153.

[5] You have informed us that the current practice is for the Director of the Central Intelligence Agency to make this determination personally.

[redacted] feigned memory problems (which CIA psychologists ruled out through intelligence and memory tests) in order to avoid answering questions. *Id.*

At that point, the interrogation team believed [redacted] "maintains a tough, Mujahidin fighter mentality and has conditioned himself for a physical interrogation." *Id.* The team therefore concluded that "more subtle interrogation measures designed more to weaken [redacted] physical ability and mental desire to resist interrogation over the long run are likely to be more effective." *Id.* For these reasons, the team sought authorization to use dietary manipulation, nudity, water dousing, and abdominal slap. *Id.* at 4-5. In the team's view, adding these techniques would be especially helpful [redacted] because he appeared to have a particular weakness for food and also seemed especially modest. *See id.* at 4.

The CIA used the waterboard extensively in the interrogations of KSM and Zubaydah, but did so only after it became clear that standard interrogation techniques were not working. Interrogators used enhanced techniques in the interrogation of al-Nashiri with notable results as early as the first day. *See IG Report* at 35-36. Twelve days into the interrogation, the CIA subjected al-Nashiri to one session of the waterboard during which water was applied two times. *See id.* at 36.

3.

Medical and psychological professionals from the CIA's Office of Medical Services ("OMS") carefully evaluate detainees before any enhanced technique is authorized in order to ensure that the detainee "is not likely to suffer any severe physical or mental pain or suffering as a result of interrogation." *Techniques* at 4; *see OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention* at 9 (Dec. 2004) ("*OMS Guidelines*"). In addition, OMS officials continuously monitor the detainee's condition throughout any interrogation using enhanced techniques, and the interrogation team will stop the use of particular techniques or the interrogation altogether if the detainee's medical or psychological condition indicates that the detainee might suffer significant physical or mental harm. *See Techniques* at 5-6. OMS has, in fact, prohibited the use of certain techniques in the interrogations of certain detainees. *See id.* at 5. Thus, no technique is used in the interrogation of any detainee—no matter how valuable the information the CIA believes the detainee has—if the medical and psychological evaluations or ongoing monitoring suggest that the detainee is likely to suffer serious harm. Careful records are kept of each interrogation, which ensures accountability and allows for ongoing evaluation of the efficacy of each technique and its potential for any unintended or inappropriate results. *See id.*

B.

Your office has informed us that the CIA believes that "the intelligence acquired from these interrogations has been a key reason why al-Qa'ida has failed to launch a spectacular attack in the West since 11 September 2001." Memorandum for Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, from [redacted] [redacted] DCI Counterterrorist Center, *Re: Effectiveness of the CIA Counterintelligence Interrogation Techniques* at 2 (Mar. 2, 2005) ("*Effectiveness Memo*"). In particular, the CIA

believes that it would have been unable to obtain critical information from numerous detainees, including KSM and Abu Zubaydah, without these enhanced techniques. Both KSM and Zubaydah had "expressed their belief that the general US population was 'weak,' lacked resilience, and would be unable to 'do what was necessary' to prevent the terrorists from succeeding in their goals." *Id.* at 1. Indeed, before the CIA used enhanced techniques in its interrogation of KSM, KSM resisted giving any answers to questions about future attacks, simply noting, "Soon, you will know." *Id.* We understand that the use of enhanced techniques in the interrogations of KSM, Zubaydah, and others, by contrast, has yielded critical information. *See IG Report* at 86, 90-91 (describing increase in intelligence reports attributable to use of enhanced techniques). As Zubaydah himself explained with respect to enhanced techniques, "brothers who are captured and interrogated are permitted by Allah to provide information when they believe they have 'reached the limit of their ability to withhold it' in the face of psychological and physical hardships." *Effectiveness Memo* at 2. And, indeed, we understand that since the use of enhanced techniques, "KSM and Abu Zubaydah have been pivotal sources because of their ability and willingness to provide their analysis and speculation about the capabilities, methodologies, and mindsets of terrorists." *Preeminent Source* at 4.

Nevertheless, current CIA threat reporting indicates that, despite substantial setbacks over the last year, al Qaeda continues to pose a grave threat to the United States and its interests. *See* CIA [redacted] You have informed us that the CIA believes that enhanced interrogation techniques remain essential to obtaining vital intelligence necessary to detect and disrupt such emerging threats.

In understanding the effectiveness of the interrogation program, it is important to keep two related points in mind. First, the total value of the program cannot be appreciated solely by focusing on individual pieces of information. According to the CIA Inspector General:

> CTC frequently uses the information from one detainee, as well as other sources, to vet the information of another detainee. Although lower-level detainees provide less information than the high value detainees, information from these detainees has, on many occasions, supplied the information needed to probe the high value detainees further. . . . [T]he triangulation of intelligence provides a fuller knowledge of Al-Qa'ida activities than would be possible from a single detainee.

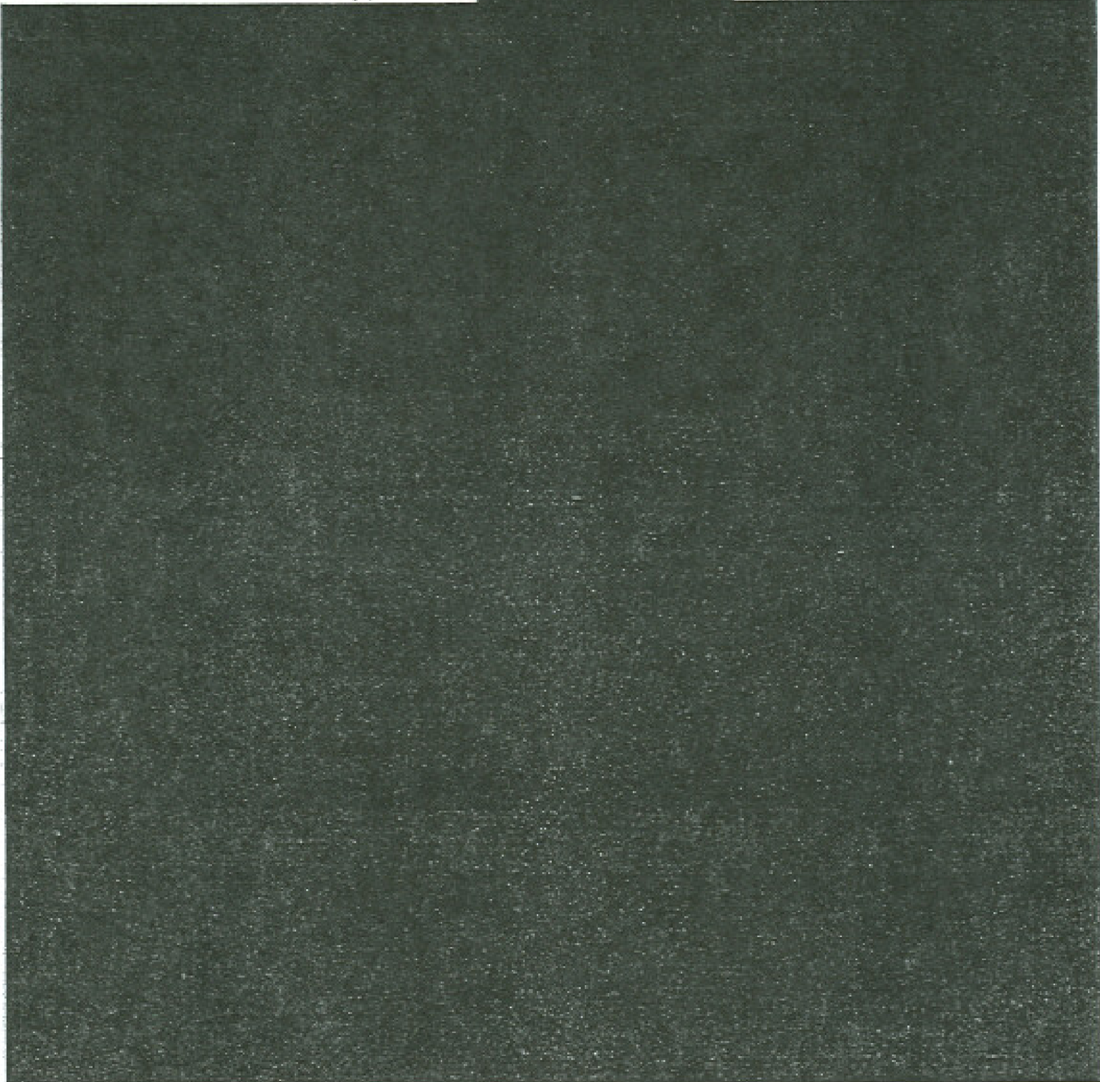
IG Report at 86. As illustrated below, we understand that even interrogations of comparatively lower-tier high value detainees supply information that the CIA uses to validate and assess information elicited in other interrogations and through other methods. Intelligence acquired

from the interrogation program also enhances other intelligence methods and has helped to build the CIA's overall understanding of al Qaeda and its affiliates. Second, it is difficult to quantify with confidence and precision the effectiveness of the program. As the *IG Report* notes, it is difficult to determine conclusively whether interrogations have provided information critical to interdicting specific imminent attacks. *See id.* at 88. And, because the CIA has used enhanced techniques sparingly, "there is limited data on which to assess their individual effectiveness." *Id.* at 89. As discussed below, however, we understand that interrogations have led to specific, actionable intelligence as well as a general increase in the amount of intelligence regarding al Qaeda and its affiliates. *See id.* at 85-91.

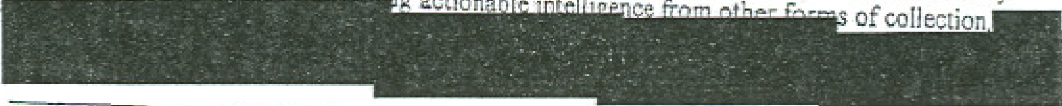
With these caveats, we turn to specific examples that you have provided to us. You have informed us that the interrogation of KSM—once enhanced techniques were employed—led to the discovery of a KSM plot, the "Second Wave," "to use East Asian operatives to crash a hijacked airliner into" a building in Los Angeles. *Effectiveness Memo* at 3. You have informed us that information obtained from KSM also led to the capture of Riduan bin Isomuddin, better known as Hambali, and the discovery of the Guraba Cell, a 17-member Jemaah Islamiyah cell tasked with executing the "Second Wave." *See id.* at 3-4; CIA Directorate of Intelligence, *Al-Qa'ida's Ties to Other Key Terror Groups: Terrorists Links in a Chain* 2 (Aug. 28, 2003). More specifically, we understand that KSM admitted that he had tasked Majid Khan with delivering a large sum of money to an al Qaeda associate. *See* Fax from [REDACTED] DCI Counterterrorist Center, *Briefing Notes on the Value of Detainee Reporting* at 1 (Apr. 15, 2005) ("*Briefing Notes*"). Khan subsequently identified the associate (Zubair), who was then captured. Zubair, in turn, provided information that led to the arrest of Hambali. *See id.* The information acquired from these captures allowed CIA interrogators to pose more specific questions to KSM, which led the CIA to Hambali's brother, al-Hadi. Using information obtained from multiple sources, al-Hadi was captured, and he subsequently identified the Guraba cell. *See id.* at 1-2. With the aid of this additional information, interrogations of Hambali confirmed much of what was learned from KSM.[6]

Interrogations of Zubaydah—again, once enhanced techniques were employed—furnished detailed information regarding al Qaeda's "organizational structure, key operatives, and modus operandi" and identified KSM as the mastermind of the September 11 attacks. *See Briefing Notes* at 4. You have informed us that Zubaydah also "provided significant information on two operatives, [including] Jose Padilla[,] who planned to build and detonate a 'dirty bomb' in the Washington DC area." *Effectiveness Memo* at 4. Zubaydah and KSM have also supplied important information about al-Zarqawi and his network. *See* Fax for Jack L. Goldsmith III, Assistant Attorney General, Office of Legal Counsel, from [REDACTED] Office of General Counsel, CIA, [REDACTED]

[6] We discuss only a small fraction of the important intelligence CIA interrogators have obtained from KSM. [REDACTED]



More generally, the CIA has informed us that, since March 2002, the intelligence derived from CIA detainees has resulted in more than 6,000 intelligence reports and, in 2004, accounted for approximately half of CTC's reporting on al Qaeda. *See Briefing Notes* at 1; *see also IG Report* at 86 (noting that from September 11, 2001, through April 2003, the CIA "produced over 3,000 intelligence reports from" a few high value detainees). You have informed us that the substantial majority of this intelligence has come from detainees subjected to enhanced interrogation techniques. In addition, the CIA advises us that the program has been virtually indispensable to the task of deriving actionable intelligence from other forms of collection.



[7] As with KSM, we discuss only a portion of the intelligence obtained through interrogations of Zubaydah.

C.

There are three categories of enhanced interrogation techniques: conditioning techniques, corrective techniques, and coercive techniques. *See Background Paper* at 4. As noted above, each of the specific enhanced techniques has been adapted from SERE training, where similar techniques have been used, in some form, for years on United States military personnel. *See Techniques* at 6; *IG Report* at 13-14.

1. Conditioning techniques

Conditioning techniques are used to put the detainee in a "baseline" state, and to "demonstrate to the [detainee] that he has no control over basic human needs." *Background Paper* at 4. This "creates . . . a mindset in which [the detainee] learns to perceive and value his personal welfare, comfort, and immediate needs more than the information he is protecting." *Id.* Conditioning techniques are not designed to bring about immediate results. Rather, these techniques are useful in view of their "cumulative effect . . . , used over time and in combination with other interrogation techniques and intelligence exploitation methods." *Id.* at 5. The specific conditioning techniques are nudity, dietary manipulation, and sleep deprivation.

Nudity is used to induce psychological discomfort and because it allows interrogators to reward detainees instantly with clothing for cooperation. *See Techniques* at 7. Although this technique might cause embarrassment, it does not involve any sexual abuse or threats of sexual abuse. *See id.* at 7-8. Because ambient air temperatures are kept above 68°F, the technique is at most mildly physically uncomfortable and poses no threat to the detainee's health. *Id.* at 7.

Dietary manipulation involves substituting a bland, commercial liquid meal for a detainee's normal diet. We understand that its use can increase the effectiveness of other techniques, such as sleep deprivation. As a guideline, the CIA uses a formula for caloric intake that depends on a detainee's body weight and expected level of activity and that ensures that caloric intake will always be set at or above 1,000 kcal/day. *See id.* at 7 & n.10.[6] By comparison, commercial weight-loss programs used within the United States not uncommonly limit intake to 1000 kcal/day regardless of body weight. Detainees are monitored at all times to ensure that they do not lose more than 10% of their starting body weight. *See id.* at 7. The CIA also sets a minimum fluid intake, but a detainee undergoing dietary manipulation may drink as much water as he pleases. *See id.*

Sleep deprivation involves subjecting a detainee to an extended period of sleeplessness. Interrogators employ sleep deprivation in order to weaken a detainee's resistance. Although up to 180 hours may be authorized, the CIA has in fact subjected only three detainees to more than

[6] As we explained in *Techniques*: "The CIA generally follows as a guideline a calorie requirement of 900 kcal/day + 10 kcal/kg/day. This quantity is multiplied by 1.2 for a sedentary activity level or 1.4 for a moderate activity level. Regardless of this formula, the recommended minimum calorie intake is 1500 kcal/day, and in no event is the detainee allowed to receive less than 1000 kcal/day." *Id.* at 7 (footnote omitted). The guideline caloric intake for a detainee who weighs 150 pounds (approximately 68 kilograms) would therefore be nearly 1,900 kcal/day for sedentary activity and would be more than 2,200 kcal/day for moderate activity.

96 hours of sleep deprivation. Generally, a detainee undergoing this technique is shackled in a standing position with his hands in front of his body, which prevents him from falling asleep but also allows him to move around within a two- to three-foot diameter. The detainee's hands are generally positioned below his chin, although they may be raised above the head for a period not to exceed two hours. *See id.* at 11-13 (explaining the procedures at length). As we have previously noted, sleep deprivation itself generally has few negative effects (beyond temporary cognitive impairment and transient hallucinations), though some detainees might experience transient "unpleasant physical sensations from prolonged fatigue, including such symptoms as impairment to coordinated body movement, difficulty with speech, nausea, and blurred vision." *Id.* at 37; *see also id.* 37-38. Subjects deprived of sleep in scientific studies for longer than the 180-hour limit imposed by the CIA generally return to normal neurological functioning with as little as one night of normal sleep. *See id.* at 40. In light of the ongoing and careful medical monitoring undertaken by OMS and the authority and obligation of all members of the interrogation team, and of OMS personnel and other facility staff, to stop the procedure if necessary, this technique is not be expected to result in any detainee experiencing extreme physical distress. *See id.* at 38-39.[9]

With respect to the shackling, the procedures in place (which include constant monitoring by detention personnel, via closed-circuit television, and intervention if necessary) minimize the risk that a detainee will hang by his wrists or otherwise suffer injury from the shackling. *See id.* at 11. Indeed, these procedures appear to have been effective, as no detainee has suffered any lasting harm from the shackling. *See id.*

Because releasing a detainee from the shackles would present a security problem and would interfere with the effectiveness of the technique, a detainee undergoing sleep deprivation frequently wears an adult diaper. *See* Letter from [redacted] Associate General Counsel, Central Intelligence Agency, to Dan Levin, Acting Assistant Attorney General, Office of Legal Counsel at 4 (Oct. 12, 2004) ("*October 12 [redacted] Letter*"). Diapers are checked and changed as needed so that no detainee would be allowed to remain in a soiled diaper, and the detainee's skin condition is monitored. *See Techniques* at 12. You have informed us that diapers are used solely for sanitary and health reasons and not in order to humiliate the detainee.

2. Corrective techniques

Corrective techniques entail some degree of physical interaction with the detainee and are used "to correct, startle, or to achieve another enabling objective with the detainee." *Background Paper* at 5. These techniques "condition a detainee to pay attention to the interrogator's questions and . . . dislodge expectations that the detainee will not be touched." *Techniques* at 9.

[9] In addition, as we observed in *Techniques*, certain studies indicate that sleep deprivation might lower pain thresholds in some detainees. *See Techniques* at 36 n.44. The ongoing medical monitoring is therefore especially important when interrogators employ this technique in conjunction with other techniques. *See Combined Use* at 13-14 & n.9, 16. In this regard, we note once again that the CIA has "informed us that the interrogation techniques at issue would not be used during a course of extended sleep deprivation with such frequency and intensity as to induce in the detainee a persistent condition of extreme physical distress such as may constitute 'severe physical suffering.'" *Id.* at 16.

This category comprises the following techniques: insult (facial) slap, abdominal slap, facial hold, and attention grasp. *See Background Paper* at 5; *see also Techniques* at 8-9 (describing these techniques).[10] In the facial hold technique, for example, the interrogator uses his hands to immobilize the detainee's head. The interrogator's fingers are kept closely together and away from the detainee's eyes. *See* Pre-Academic Laboratory (PREAL) Operating Instructions at 19 ("*PREAL Manual*"). The technique instills fear and apprehension with minimal physical force. Indeed, each of these techniques entails only mild uses of force and does not cause any significant pain or any lasting harm. *See Background Paper* at 5-7.

3. Coercive techniques

Coercive techniques "place the detainee in more physical and psychological stress" than the other techniques and are generally "considered to be more effective tools in persuading a resistant [detainee] to participate with CIA interrogators." *Background Paper* at 7. These techniques are typically not used simultaneously. The *Background Paper* lists walling, water dousing, stress positions, wall standing, and cramped confinement in this category. We will also treat the waterboard as a coercive technique.

Walling is performed by placing the detainee against what seems to be a normal wall but is in fact a flexible false wall. *See Techniques* at 8. The interrogator pulls the detainee towards him and then quickly slams the detainee against the false wall. The false wall is designed, and a c-collar or similar device is used, to help avoid whiplash or similar injury. *See id.* The technique is designed to create a loud sound and to shock the detainee without causing significant pain. The CIA regards walling as "one of the most effective interrogation techniques because it wears down the [detainee] physically, heightens uncertainty in the detainee about what the interrogator may do to him, and creates a sense of dread when the [detainee] knows he is about to be walled again." *Background Paper* at 7. A detainee "may be walled one time (one impact with the wall) to make a point or twenty to thirty times consecutively when the interrogator requires a more significant response to a question," and "will be walled multiple times" during a session designed to be intense. *Id.* At no time, however, is the technique employed in such a way that could cause severe physical pain. *See Techniques* at 32 n.38.[11]

In the water dousing technique, potable cold water is poured on the detainee either from a container or a hose without a nozzle. Ambient air temperatures are kept above 64°F. The

[10] As noted in our previous opinions, the slap techniques are not used in a way that could cause severe pain. *See, e.g., Techniques* at 8-9, 33 & n.39; *Combined Use* at 11.

[11] Although walling "wears down the [detainee] physically," *Background Paper* at 7, and undoubtedly may startle him, we understand that it is not significantly painful. The detainee hits a flexible false wall designed to create a loud sound when the individual hits it and thus to cause shock and surprise. *See Combined Use* at 6 n.4. But the detainee's head and neck are supported with a rolled hood or towel that provides a C-collar effect to help prevent whiplash; it is the detainee's shoulder blades that hit the wall; and the detainee is allowed to rebound from the flexible wall in order to reduce the chances of any injury. *See id.* You have informed us that a detainee is expected to feel "dread" at the prospect of walling because of the shock and surprise caused by the technique and because of the sense of powerlessness that comes from being roughly handled by the interrogators, not because the technique causes significant pain. *See id.*

maximum permissible duration of water exposure depends on the water temperature, which may be no lower than 41°F and is usually no lower than 50°F. *See id.* at 10. Maximum exposure durations have been "set at two-thirds the time at which, based on extensive medical literature and experience, hypothermia could be expected to develop in healthy individuals who are submerged in water of the same temperature" in order to provide adequate safety margins against hypothermia. *Id.* This technique can easily be used in combination with other techniques and "is intended to weaken the detainee's resistance and persuade him to cooperate with interrogators." *Id.* at 9.

Stress positions and wall standing are used to induce muscle fatigue and the attendant discomfort. *See Techniques* at 9 (describing techniques); *see also PREAL Manual* at 20 (explaining that stress positions are used "to create a distracting pressure" and "to humiliate or insult"). The use of these techniques is "usually self-limiting in that temporary muscle fatigue usually leads to the [detainee's] being unable to maintain the stress position after a period of time." *Background Paper* at 8. We understand that these techniques are used only to induce temporary muscle fatigue; neither of these techniques is designed or expected to cause severe physical pain. *See Techniques* at 33-34.

Cramped confinement involves placing the detainee in an uncomfortably small container. Such confinement may last up to eight hours in a relatively large container or up to two hours in a smaller container. *See Background Paper* at 8; *Techniques* at 9. The technique "accelerate[s] the physical and psychological stresses of captivity." *PREAL Manual* at 22. In OMS's view, however, cramped confinement "ha[s] not proved particularly effective" because it provides "a safehaven offering respite from interrogation." *OMS Guidelines* at 16.

The waterboard is generally considered to be "the most traumatic of the enhanced interrogation techniques," *id.* at 17, a conclusion with which we have readily agreed, *see Techniques* at 41. In this technique, the detainee is placed face-up on a gurney with his head inclined downward. A cloth is placed over his face on which cold water is then poured for periods of at most 40 seconds. This creates a barrier through which it is either difficult or impossible to breathe. The technique thereby "induce[s] a sensation of drowning." *Id.* at 13. The waterboard may be authorized for, at most, one 30-day period, during which the technique can actually be applied on no more than five days. *See id.* at 14 (describing, in detail, these and additional limitations); *see also* Letter from [redacted] Associate General Counsel, Central Intelligence Agency, to Dan Levin, Acting Assistant Attorney General, Office of Legal Counsel at 1 (Aug. 19, 2004) ("*August 19 [redacted] Letter*"). Further, there can be no more than two sessions in any 24-hour period. Each session—the time during which the detainee is strapped to the waterboard—lasts no more than two hours. There may be at most six applications of water lasting 10 seconds or longer during any session, and water may be applied for a total of no more than 12 minutes during any 24-hour period. *See Techniques* at 14.

As we have explained, "these limitations have been established with extensive input from OMS, based on experience to date with this technique and OMS's professional judgment that the health risks associated with use of the waterboard on a healthy individual subject to these limitations would be 'medically acceptable.'" *Id.* at 14 (citing *OMS Guidelines* at 18-19). In addition, although the waterboard induces fear and panic, it is not painful. *See id.* at 13.

II.

We conclude, first, that the CIA interrogation program does not implicate United States obligations under Article 16 of the CAT because Article 16 has limited geographic scope. By its terms, Article 16 places no obligations on a State Party outside "territory under its jurisdiction." The ordinary meaning of the phrase, the use of the phrase elsewhere in the CAT, and the negotiating history of the CAT demonstrate that the phrase "territory under its jurisdiction" is best understood as including, at most, areas where a State exercises territory-based jurisdiction; that is, areas over which the State exercises at least de facto authority as the government. As we explain below, based on CIA assurances, we understand that the interrogations conducted by the CIA do not take place in any "territory under [United States] jurisdiction" within the meaning of Article 16. We therefore conclude that the CIA interrogation program does not violate the obligations set forth in Article 16.

Apart from the terms of Article 16 as stated in the CAT, the United States undertook its obligations under the CAT subject to a Senate reservation that provides: "[T]he United States considers itself bound by the obligation under Article 16 . . . only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." There is a strong argument that in requiring this reservation, the Senate intended to limit United States obligations under Article 16 to the existing obligations already imposed by these Amendments. These Amendments have been construed by the courts not to extend protections to aliens outside the United States. The CIA has also assured us that the interrogation techniques are not used within the United States or against United States persons, including both U.S. citizens and lawful permanent resident aliens.

A.

"[W]e begin with the text of the treaty and the context in which the written words are used." *Eastern Airlines, Inc. v. Floyd*, 499 U.S. 530, 534 (1991) (quotation marks omitted). *See also* Vienna Convention on the Law of Treaties, May 23, 1969, art. 31(1), 1155 U.N.T.S. 331, 340 (1980) ("A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.").[12] Article 16 states that "[e]ach State Party shall undertake to prevent *in any territory under its jurisdiction* other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture." CAT Art. 16(1) (emphasis added).[13] This territorial limitation is confirmed

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[12] The United States is not a party to the Vienna Convention and is therefore not bound by it. Nevertheless, Article 31(1)'s emphasis on textual analysis reflects international interpretive practice. *See, e.g.*, Rudolf Bernhardt, "Interpretation in International Law," *in 2 Encyclopedia of Public International Law* 1416, 1420 (1995) ("According to the prevailing opinion, the starting point in any treaty interpretation is the treaty text and the normal or ordinary meaning of its terms.").

[13] Article 16(1) provides in full:

Each State Party undertakes to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in

by Article 16's explication of this basic obligation: "In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment." *Id.* Articles 11 through 13 impose on each State Party certain specific obligations, each of which is expressly limited to "territory under its jurisdiction." *See infra* pp. 18-19 (describing requirements). Although Article 10, which as incorporated in Article 16 requires each State Party to "ensure that education and information regarding the prohibition" against cruel, inhuman, or degrading treatment or punishment is given to specified government personnel, does not expressly limit its obligation to "territory under [each State's] jurisdiction," Article 10's reference to the "prohibition" against such treatment or punishment can only be understood to refer to the territorially limited obligation set forth in Article 16.

The obligations imposed by the CAT are thus more limited with respect to cruel, inhuman, or degrading treatment or punishment than with respect to torture. To be sure, Article 2, like Article 16, imposes an obligation on each State Party to prevent torture "in any territory under its jurisdiction." Article 4(1), however, separately requires each State Party to "ensure that *all* acts of torture are offenses under its criminal law." (Emphasis added.) The CAT imposes no analogous requirement with respect to cruel, inhuman, or degrading treatment or punishment.[14]

Because the CAT does not define the phrase "territory under its jurisdiction," we turn to the dictionary definitions of the relevant terms. *See Olympic Airways v. Husain*, 540 U.S. 644, 654-55 (2004) (drawing on dictionary definitions in interpreting a treaty); *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 180-81 (1993) (same). Common dictionary definitions of "jurisdiction" include "[t]he right and power to interpret and apply the law[; a]uthority or control[; and t]he territorial range of authority or control." *American Heritage Dictionary* 711 (1973); *American Heritage Dictionary* 978 (3d ed. 1992) (same definitions); *see also Black's Law Dictionary* 766 (5th ed. 1979) ("[a]reas of authority"). Common dictionary definitions of "territory" include "[a]n area of land[; or t]he land and waters under the jurisdiction of a state, nation, or sovereign." *American Heritage Dictionary* at 1329 (1973); *American Heritage Dictionary* at 1854 (3d ed. 1992) (same); *see also Black's Law Dictionary* at 1321 ("A part of a country separated from the rest, and subject to a particular jurisdiction. Geographical area under the jurisdiction of another country or sovereign power."); *Black's Law Dictionary* at 1512 (8th ed. 2004) ("[a] geographical area included within a particular government's jurisdiction; the portion of the earth's surface that is in a state's exclusive possession and control"). Taking these

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article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

[14] In addition, although Article 2(2) emphasizes that "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture," the CAT has no analogous provision with respect to cruel, inhuman, or degrading treatment or punishment. Because we conclude that the CIA interrogation program does not implicate United States obligations under Article 16 and that the program would conform to United States obligations under Article 16 even if that provision did apply, we need not consider whether the absence of a provision analogous to Article 2(2) implies that State Parties could derogate from their obligations under Article 16 in extraordinary circumstances.

definitions together, we conclude that the most plausible meaning of the term "territory under its jurisdiction" is the land over which a State exercises authority and control as the government. *Cf. Rasul v. Bush*, 124 S. Ct. 2686, 2696 (2004) (concluding that "the territorial jurisdiction of the United States" subsumes areas over which "the United States exercises complete jurisdiction and control") (internal quotation marks omitted); *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 123 (1923) ("It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control[.]").

This understanding of the phrase "territory under its jurisdiction" is confirmed by the way the phrase is used in various provisions throughout the CAT. *See Air France v. Saks*, 470 U.S. 392, 398 (1985) (treaty drafters "logically would . . . use[] the same word in each article" when they intend to convey the same meaning throughout); J. Herman Burgers & Hans Danelius, *The United Nations Convention Against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 53 (1988) ("*CAT Handbook*") (noting that "it was agreed that the phrase 'territory under its jurisdiction' had the same meaning" in different articles of the CAT).

For example, Article 5 provides:

> Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 [requiring each State Party to criminalize all acts of torture] in the following cases:
>
> (a) When the offences are committed in any *territory under its jurisdiction* or on board a ship or aircraft registered in that State;
>
> (b) When the alleged offender is a national of that State;
>
> (c) When the victim is a national of that State if that State considers it appropriate.

CAT art. 5(1) (emphasis added). The CAT thereby distinguishes jurisdiction based on territory from jurisdiction based on the nationality of either the victim or the perpetrator. Paragraph (a) also distinguishes jurisdiction based on territory from jurisdiction based on registry of ships and aircraft. To read the phrase "territory under its jurisdiction" to subsume these other types of jurisdiction would eliminate these distinctions and render most of Article 5 surplusage. Each of Article 5's provisions, however, "like all the other words of the treaty, is to be given a meaning, if reasonably possible, and rules of construction may not be resorted to to render it meaningless or inoperative." *Factor v. Laubenheimer*, 290 U.S. 276, 303-04 (1933).

Articles 11 through 13, moreover, use the phrase "territory under its jurisdiction" in ways that presuppose that the relevant State exercises the traditional authorities of the government in such areas. Article 11 requires each State to "keep under systematic review . . . arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction." Article 12 mandates that "[e]ach State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is

reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." Similarly, Article 13 requires "[e]ach State Party [to] ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities." These provisions assume that the relevant State exercises traditional governmental authority—including the authority to arrest, detain, imprison, and investigate crime—within any "territory under its jurisdiction."

Three other provisions underscore this point. Article 2(1) requires each State Party to "take effective legislative, administrative, judicial or other measures to prevent such acts of torture in any territory under its jurisdiction." "Territory under its jurisdiction," therefore, is most reasonably read to refer to areas over which States exercise broad governmental authority—the areas over which States could take legislative, administrative, or judicial action. Article 5(2), moreover, enjoins "[e]ach State Party . . . to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him." Article 7(1) similarly requires State Parties to extradite suspects or refer them to "competent authorities for the purpose of prosecution." These provisions evidently contemplate that each State Party has authority to extradite and prosecute those suspected of torture in any "territory under its jurisdiction." That is, each State Party is expected to operate as the government in "territory under its jurisdiction."[15]

This understanding is supported by the negotiating record. *See Zicherman v. Korean Air Lines Co.*, 516 U.S. 217, 226 (1996) ("Because a treaty ratified by the United States is not only the law of this land, see U.S. Const., Art. II, § 2, but also an agreement among sovereign powers, we have traditionally considered as aids to its interpretation the negotiating and drafting history . . . ."); Vienna Convention on the Law of Treaties, art. 32 (permitting recourse to "the preparatory work of the treaty and the circumstances of its conclusion" *inter alia* "to confirm" the ordinary meaning of the text). The original Swedish proposal, which was the basis for the first draft of the CAT, contained a predecessor to Article 16 that would have required that "[e]ach State Party undertake[] to ensure that [a proscribed act] does not take place *within its jurisdiction*." Draft International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted by Sweden on January 18, 1978, arts. 2-3, E/CN.4/1285, *in CAT Handbook* app. 6, at 203 (emphasis added); *CAT Handbook* at 47. France objected that the phrase "within its jurisdiction" was too broad. For example, it was concerned that the phrase might extend to signatories' citizens located in territory belonging to other nations. *See* Report of the Pre-Sessional Working Group, E/CN.4/L.1470 (1979), *reprinted in*

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[15] Article 6 may suggest an interpretation of the phrase "territory under its jurisdiction" that is potentially broader than the traditional notion of "territory." Article 6(1) directs a State Party "*in whose territory* a person alleged to have committed [certain offenses] is *present*" to take the suspected offender into custody. (Emphases added.) The use of the word "territory" in Article 6 rather than the phrase "territory under its jurisdiction" suggests that the terms have distinct meanings. *See Factor*, 290 U.S. at 303-04 (stating that treaty language should not be construed to render certain phrases "meaningless or inoperative"). Article 6 may thus support the position, discussed below, that "territory under its jurisdiction" may extend beyond sovereign territory to encompass areas where a State exercises de facto authority as the government, such as occupied territory. *See infra* p. 20. Article 20, which refers to "the territory of a State Party" may support the same inference.