

# KAMMEN & MOUDY

*Attorneys at Law*

135 N. PENNSYLVANIA STREET, SUITE 1175

INDIANAPOLIS, IN 46204

RICHARD KAMMEN

JOSHUA MOUDY

**TELEPHONE** (317) 236-0400

**FACSIMILE** (317) 638-7976

---

Grace Atwater

June 24, 2016

Secretariat to the Committee against Torture  
Human Rights Treaties Division  
Office of the United Nations High Commissioner for Human  
Rights (OHCHR)  
Palais Wilson - 52, rue des Pâquis  
CH-1201 Geneva (Switzerland)  
Sent by e-mail to [cat@ohchr.org](mailto:cat@ohchr.org)

Re: Contribution to the List of Issues Prior to the Submission of the Periodic Report of the United States: Medical Neglect in Violation of Articles 2, 14 and 16 of the Convention against Torture

Dear Madam or Sir:

I am learned counsel [death penalty counsel] for Abd Rahim al Nashiri. I write to ask that the Committee against Torture question the United States about its failure to provide Mr. al Nashiri with the medical care required under Articles 2, 14 and 16 of the Convention against Torture. This is a matter of high priority that warrants timely examination by the Committee.

From late 2002 until September 2006, Mr. al Nashiri was held incommunicado in a series of covert CIA “black sites” maintained by the U.S. Central Intelligence Agency. During this time, Mr. al Nashiri was subjected to extreme physical, psychological, and sexual torture. The overarching goals of CIA “interrogation techniques” and conditions of confinement were to reduce Mr. al Nashiri to a psychological state so debilitated that he would lose the will or ability to do anything but comply with his captors’ demands. During a nearly four years of CIA captivity, Mr. al Nashiri was drowned, sodomized, beaten, threatened with a gun and a drill, and subjected to sensory overload and prolonged isolation.<sup>1</sup> In September of 2006, Mr. al Nashiri was transferred to Guantanamo Bay Naval Station, Cuba, where he remains in U.S. custody to this day.

---

<sup>1</sup> [SSCI report at pg. 68] Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Foreword by Senate Select Committee on Intelligence Chairman Dianne Feinstein; Findings and Conclusions; Executive Summary (approved 13 December 2012) (updated for release 3 April 2014) (declassification revisions 3 December 2014) available at <http://www.feinstein.senate.gov/public/index.cfm/senate-intelligence-committee-study-on-cia-detention-and-interrogation-program> (accessed 23 June 2016).

Mr. al Nashiri is a severely traumatized individual. According to Dr. Sondra Crosby, an internationally recognized expert on the effects of torture who medically evaluated Mr. al Nashiri, he “presents as one of the most severely traumatized individuals [she has] ever seen.”<sup>2</sup>

At Guantanamo, at former black site, Mr. al Nashiri is routinely confronted with visual and audible reminders of his time in CIA custody. These reminders trigger traumatic stress and cause him intense anxiety, dissociation, and painful flashbacks to his experience of torture. Yet, at Guantanamo, Mr. al Nashiri has not received mental health treatment appropriate for his condition. Indeed, Dr. Crosby determined that it appears as though the United States is making no present effort to treat the damage that has been inflicted upon him by the United States. He remains misdiagnosed and untreated, and his deterioration is exacerbated by what appears to be willful neglect driven by a desire to avoid culpability for his torture. The required care for torture survivors like Mr. al Nashiri is highly specialized, yet, despite his obvious need for medical treatment, medical authorities at Guantánamo refused to consult with Dr. Crosby when she offered to discuss possible courses of treatments to improve Mr. al Nashiri’s sleep pattern and treat his PTSD.<sup>3</sup> Dr. Crosby observed:

His deterioration is exacerbated by the lack of appropriate mental health treatment at Guantánamo. Based on my assessment and vast experience caring for survivors of torture, the physical and mental health care afforded to him is woefully inadequate to his medical needs. A significant factor in my opinion is that medical professionals, including mental health care providers, have apparently been directly or indirectly instructed not to inquire into the causes of Al-Nashiri’s mental distress, and as a consequence, he remains misdiagnosed and untreated.<sup>4</sup>

As counsel for Mr. al Nashiri, I have similar observations:

[T]he nature of the health care Al-Nashiri has received during the time of his detention until present is constitutionally and medically inadequate. The treatment received by the accused was not “medical care” as an ordinary person would understand it—a patient who is given the confidential help of a doctor to address a medical need. It was, instead, the type of tending that one imagines is given to poorly kept circus animals—symptoms identified with no effort to address their causes and occasionally medicated with powerful, yet inappropriate,

---

<sup>2</sup> See Declaration of Dr. Sondra S. Crosby (Oct. 24, 2015) at ¶ 12. Dr. Crosby’s Declaration is attached to this letter.

<sup>3</sup> Defense Motion to Abate the Proceedings Until the Accused Receives Adequate Medical Care, attachments A & B (Jan. 22, 2014), <http://www.mc.mil/Portals/0/pdfs/alNashiri2/Al%20Nashiri%20II%20%20%28AE205%29.pdf>.

<sup>4</sup> See Declaration of Dr. Sondra S. Crosby (Oct. 24, 2015) at ¶ 14. Dr. Crosby’s Declaration is attached to this letter.

pharmaceuticals to render the animal docile and willing to perform. This is not medical care.<sup>5</sup>

The United States has not provided direct answers to Committee questions reaching this matter. In its combined third to fifth periodic report to the Committee,<sup>6</sup> the United States declined to provide, as asked by the Committee, detailed information on “measures taken to ensure that all detainees who were kept in detention at Guantánamo Bay can have an enforceable right to fair and adequate compensation, in addition to rehabilitation, if a victim of torture or ill-treatment.”<sup>7</sup> Rather, the United States invoked a report of a 2009 investigation conducted by a U.S. Naval officer to determine whether conditions at Guantanamo complied with the United States’ interpretation of Common Article 3 of the Geneva Conventions.<sup>8</sup> This investigation was not conducted by an independent expert. The inspection team did observe, in 2009, that “policies, programs, and structures put in place several years ago, while technically “humane” in their formative stages require review and adjustment over time.”<sup>9</sup>

In response to a question about steps taken to ensure that all detained suspects are afforded fundamental safeguards, the United States asserted to the Committee that, “The medical care detainees receive throughout their time in U.S. custody is generally comparable to that which is available to U.S. personnel serving in the same location.”<sup>10</sup> The United States omitted key facts about the remarkable differences between the health care needs of a relatively young population of soldiers and seamen who are subject to weight, fitness, and mental health requirements, and those of aging, sedentary, and highly traumatized individuals who spent years in conditions designed to engineer their physical and psychological debilitation. Furthermore, this report discounts the current Congressional prohibitions in place that preclude any detainee from being temporarily transported from Guantanamo, even in the face of medical emergency with life or death consequences.

In light of these facts, I respectfully request the Committee present this or a similar query to the United States:

Please provide detailed information about forms of psychological and other medical treatment made available to persons in U.S. detention at Guantanamo

---

<sup>5</sup> Defense Motion to Abate the Proceedings Until the Accused Receives Adequate Medical Care at 6 (Jan. 22, 2014),

<http://www.mc.mil/Portals/0/pdfs/alNashiri2/A1%20Nashiri%20II%20%28AE205%29.pdf>.

<sup>6</sup> CAT/C/USA/3-5.

<sup>7</sup> Id.

<sup>8</sup> ADM Patrick M. Walsh, Vice Chief of Naval Operations, Review of Department Compliance with President’s Executive Order on Detainee Conditions of Confinement (released 23 February 2009) available at

[http://www.defense.gov/Portals/1/Documents/pubs/REVIEW\\_OF\\_DEPARTMENT\\_COMPLIANCE\\_WITH\\_PRESIDENTS\\_EXECUTIVE\\_ORDER\\_ON\\_DETAINEE\\_CONDITIONS\\_OF\\_CONFINEMENTa.pdf](http://www.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf) (accessed 23 June 2016), at 4.

<sup>9</sup> Id. at 7.

<sup>10</sup> Id. at ¶ 32.

who allege they were subjected to torture and ill-treatment while detained pursuant CIA counter-terrorism operations.

/s/ Richard Kammen

Richard Kammen

Attorney at Law

Kammen & Moudy

135 N. Pennsylvania St.

Suite 1175

Indianapolis, In. 46204

317-236-0400

Richard@Kammenlaw.com

Attachment: Declaration of Dr. Sondra S. Crosby (Oct. 24, 2015)