



**DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF DEFENSE COUNSEL  
OFFICE OF MILITARY COMMISSIONS**

April 13, 2009

Leon E. Panetta  
Director, Central Intelligence Agency  
Central Intelligence Agency  
Washington, DC 20505

RE: REQUEST TO PRESERVE CIA DETENTION FACILITIES USED TO DETAIN  
HIGH-VALUE DETAINEES—A.K.A. “BLACK SITES”

Dear Mr. Panetta:

We are counsel for Abd Al-Rahim Hussain Mohammed Al-Nashiri. Mr. Al-Nashiri is currently detained at Guantanamo Bay Naval Base. He has been there since September, 2006. From sometime in late 2002 until 2006 he was incarcerated in the secret prison facilities run by the Central Intelligence Agency (CIA).

Your predecessor, General Michael V. Hayden, has admitted that Mr. Al-Nashiri was subjected to water boarding, which is a form of torture, while in the custody of the CIA. According to the publicly released report from the International Committee of the Red Cross (ICRC) which was dated February 14, 2007, and entitled *ICRC Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody*, water boarding was only one of the many forms of torture inflicted on Mr. Al-Nashiri while in the custody of the CIA.

According to that report, while in CIA custody, Mr. Al-Nashiri was also forced to stand with his wrists shackled to a bar in the ceiling for prolonged periods of time—extending to several days—and was threatened with sodomy and with the rape and arrest of his family members. Many of the prisoners the ICRC interviewed did not want their names used in the report. As such, though the ICRC report lists much more cruel, degrading and inhuman treatment, the report is not specific as to what additional treatment was inflicted on Mr. Al-Nashiri while held in the CIA’s “black” sites.

Throughout that time he was not able to communicate with his family, a lawyer or anyone. Effectively the CIA “disappeared” him for four years while it tortured him at will and beyond the eyes of the world.

The CIA and other government agencies also admitted to the purposeful destruction of at least ninety-two video tapes of interrogations and observations of prisoners in its black sites, specifically including the destruction of video tapes of water boarding and other observations of Mr. Al-Nashiri.

Had Mr. Al-Nashiri known that the CIA possessed these video tapes and intended to destroy them, he would have demanded their preservation. However, neither he, his

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lawyers nor the courts learned of the CIA’s plan until after the tapes had been destroyed and now they are forever gone.

In light of the destruction of video taped evidence of the torture inflicted upon Mr. Al-Nashiri and the newly released report from the ICRC describing still more horrific tortures, we noted with interest your message to CIA personnel on April 9, 2009, in which you stated that the CIA would be “decommissioning” the CIA secret facilities.

Although we welcome your decision to cease the secret detention and mistreatment of prisoners of the United States Government, we are concerned that the CIA intends to actually destroy the sites—including the buildings and the equipment used to interrogate and torture Mr. Al-Nashiri—before Mr. Al-Nashiri has had the opportunity to fully investigate his conditions of confinement. We write to avoid the destruction of more evidence—namely the actual secret facilities themselves.

Mr. Al-Nashiri was charged in the Military Commission with offenses that carried the penalty of death. Although those charges have now been dismissed, we fully expect the government to prosecute Mr. Al-Nashiri and again charge him with offenses that could carry the death penalty. In fact the government is now actively working to determine in what forum he will be prosecuted.

Regardless of the forum in which Mr. Al-Nashiri is tried, evidence of his conditions of confinement will be relevant in assessing the reliability of any of his statements and any statements of other prisoners similarly held that the government plans to use against him. This evidence will also be highly relevant during any sentencing proceeding. It is exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and he will be entitled to it.

The CIA’s secret prison facilities and the inquisition-like treatment meted out to its prisoners were a tragic, immoral and illegal period in our history that we all hope has come to an end. But its effects are enduring, especially on someone like Mr. Al-Nashiri who, according to the ICRC report, lived through the horror chambers of at least three different secret prisons. Those buildings, interrogation cells, prisoner cells, shackles, water boards and other equipment must be preserved until such time as we have an adequate opportunity to document it and a court can determine the relevance and materiality of this evidence. As a criminal defendant, the Fifth, Sixth and Eighth Amendments to the United States Constitution will entitle him to discovery of exculpatory evidence and this is surely exculpatory evidence.

Therefore, we are requesting that you preserve all the secret sites. By this letter you are now on notice that we will be seeking discovery and inspection of this highly relevant evidence in whatever court Mr. Al-Nashiri finds himself. We have already lost the video tapes which would have allowed a jury to see what happened to Mr. Al-Nashiri in those secret prisons. We cannot lose the remaining tangible evidence of the actual prisons themselves and the instruments of torture within them.

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