APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

UNITED STATES OF AMERICA	(Count 1: Commanding, aiding, abetting,
	(counseling, inducing or procuring the
v.	(torture of individuals in control of the
· ·	(United States Government. USC Title 18
GEORGE W. BUSH	(Part I, Chapter 1, § 2 –Principals. Count
(Counts 1, 2, 3, and 4)	(is related to Counts 2 and 3
	(
RICHARD B. CHENEY	(Count 2: Conspiring to enable torture by
(Counts 1, 2, 3, and 4)	(authorizing secret detention and
	(constructing and promulgating false legal
CONDOLEEZZA RICE	(analysis. USC Title 18, Part I, Chapter
(Counts 1, 2, 3, and 4)	(113C, §2340A Torture. (c) Conspiracy.
, , , , ,	(Count 2 is related to Count 3.
DONALD H. RUMSFELD	
(Counts 1, 2, 3, and 4)	(Count 3: Committing acts of torture. US
(, , , , -,,, ,	(Title 18, Part I, Chapter 113C,§2340A
JOHN D. ASHCROFT	(Torture (a) Offense. Count 3 is related to
(Counts 1, 2, 3, and 4)	(Counts 1 and 2.
(, , , , -,, ,	
GEORGE J. TENET	(Count 4: Commission of war crimes—
(Counts 1, 2, 3, and 4)	grave breaches of the Geneva Convention
, , , , ,	(12 August 1949 Common Article 3. USC
JOSE RODRIGUEZ	(Title 18, Part I, Chapter 118, War Crimes
(Counts 1, 2, 3, 4, and 5)	(Count 4 is related to Counts 1, 2 and 3.
(, , , , -, , ,, ,	(
ALBERTO R. GONZALES	(Count 5: Destruction, alteration, or
(Counts 1, 2 3, and 4)	(falsification of records in Federal
	(investigations. USC Title 18, Part I,
DAVID S. ADDINGTON	(Chapter 73, §1519.
(Counts 2, 3, and 4)	(
(· · · · · · · · · · · · · · · · ·	Ì
JOHN C. YOO	
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THE TORTURE TRIAL OF GEORGE W. BUSH/SUSTE 2

(Counts 2, 3, and 4)	(
JAY S. BYBEE (Counts 2, 3, and 4)	((
STEVEN G. BRADBURY (Counts 2, 3, and 4)	((
WILLIAM J. HAYNES (Counts 2, 3, and 4)	((
GEOFFREY D. MILLER (Counts 1, 3, and 4)	((
JOHN A. RIZZO (Counts 2, 3, and 4)	(((
JAMES E. MITCHELL (Counts 1, 3 and 4)	((
JOHN B. JESSEN (Counts 1, 3 and 4)	(

DEFENDANTS

PRESENTMENT

THE GRAND JURY CHARGES THAT:

General Allegations

The defendants were agents of the United States Government in positions of trust by election, appointment or contract.

1. Defendant GEORGE W. BUSH was sworn into office as president of the United States on January 20, 2001.

- 2. Defendant RICHARD B. CHENEY was sworn into office as Vice-President on January 20, 2001.
- 3. Defendant CONDOLEEZZA RICE was appointed National Security Advisor on January 20, 2001 and served as a chief advisor to the President of the United States on national security issues until January 25, 2005 when she was sworn in as Secretary of State. She served as Secretary of State until January 20, 2009.
- 4. Defendant DONALD H. RUMSFELD was sworn in as United States Secretary of Defense on January 20, 2001. He resigned his position on December 18, 2006.
- 5. Defendant JOHN D. ASHCROFT was sworn in as Attorney General of the United States on February 2, 2001. He resigned his position on February 3, 2005.
- 6. Defendant GEORGE J. TENET was Director of Central Intelligence from December 15, 1996 July 11, 2004.
- 7. Defendant JOSE RODRIGUEZ was Chief of Operations, CIA Counterterrorism Center from September 2001 to May 2002. From May 2002 to November 2004, he was the Director of the CIA Counterterrorism Center. From November 2004 to September 2007, he served as Deputy Director of Operations for CIA Counterterrorism Center.

- 8. Defendant ALBERTO R. GONZALES was White House Counsel from January 20, 2001 until February 3, 2005. He served as Attorney General from February 3, 2005 until September 17, 2007.
- 9. Defendant DAVID S. ADDINGTON was Counsel to the Vice-President from January 20, 2001 to October 30, 2005. From October 31, 2005 until January 20, 2009 he was Chief of Staff to the Vice President.
- 10. Defendant JOHN C. YOO was a Deputy Assistant Attorney General in the Department of Justice, Office of Legal Counsel from 2001 to 2003.
- 11. Defendant JAY S. BYBEE was Assistant Attorney General, Department of Justice, Office of Legal Counsel from November 2001 to March 2003.
- 12. Defendant STEVEN G. BRADBURY was Principal Deputy Assistant Attorney General from April 2004 to June 2005 and Acting Assistant Attorney General from June 2005 to January 20, 2009.
- Defendant WILLIAM J. HAYNES was Department of Defense General Counsel from May 24, 2001 to February 2008.
- 14. Defendant GEOFFREY D. MILLER was Commander of Detention and Interrogation Operations at Guantanamo Bay Detention Facility from November 2002 until March 2004.

THE TORTURE TRIAL OF GEORGE W.

BUSH/SUSTE

5

From April 2004 until his retirement on July 31, 2006, he was Commander of Operations at Abu Ghraib prison in Iraq.

- 15. Defendant JOHN A. RIZZO was CIA Senior Deputy Legal Counsel from March 1995 through November 2001 and from October 2002 until August 2004. He was CIA Acting General Counsel from November 2001 to October 2002 and again from August 2004 to September 2009.
- 16. Defendant JAMES E. MITCHELL was an officer in the United States Air Force from 1988 until he retired in 2001. He served as Chief of Psychology at the Air Force survival school at Fairchild Air Force Base in Spokane, Washington. In 2002, after his retirement from the military, as part of Mitchell Jessen and Associates, he received a contract from the CIA to develop enhanced interrogation techniques.
- 17. Defendant JOHN B. JESSEN, a United States Air Force retiree, was hired in 2002 by the Central Intelligence Agency to design an enhanced interrogation techniques program.

COUNT ONE

Commanding, aiding, abetting, counseling, inducing or procuring the commission of the torture of individuals in control of the United States of America

THE GRAND JURY CHARGES THAT:

Between September 17, 2001 and January 20, 2009 in the District of Columbia and elsewhere, defendants GEORGE W. BUSH, RICHARD B. CHENEY, CONDOLEEZZA RICE, DONALD H. RUMSFELD, JOHN D. ASHCROFT, GEORGE J. TENET, JOSE RODRIGUEZ, ALBERTO R. GONZALES, GEOFFREY D. MILLER, JAMES E. MITCHELL, AND JOHN B. JESSEN, commanded, aided, abetted, counseled, induced, or procured the torture of individuals in control of the United States of America at secret sites in Europe and at military facilities in Afghanistan, Iraq and Guantanamo Bay, Cuba, by approving secret detention and methods of torture including waterboarding, contracting with individuals to commit torture and falsely declaring laws against torture and degrading and inhumane treatment not applicable, a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.

On or about September 17, 2001, Defendant GEORGE W. BUSH signed a secret Presidential Notification Memorandum authorizing the CIA to capture, hold and interrogate individuals at secret sites in foreign countries, an offense against the terms of the Geneva Conventions, a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.

On or about January 19, 2002, DONALD H. RUMSFELD declared to the Joints Chiefs of Staff that the Geneva Conventions of 1949 do not apply to al Qaeda and Taliban detainees.² This memo resulted in cruel, inhumane treatment and torture of individuals held by the

¹ Sixth Declaration of Marilyn A. Dorn, Information Review Officer, Central Intelligence Agency, Item 61, page 34. https://www.aclu.org/files/pdfs/natsec/20070105 Dorn Declaration 8.pdf

² Memorandum for Chairman of the Joint Chiefs of Staff, from Donald Rumsfeld, *Status of Taliban and Al Qaida*, January 19, 2002.

http://www1.umn.edu/humanrts/OathBetrayed/Rumsfeld%201-19-02.pdf

Department of Defense. The U.S. Supreme Court confirmed that the Geneva Conventions do apply to these prisoners, a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.³

On or about February 7, 2002, GEORGE W. BUSH issued a declaration that the Geneva Conventions do not apply to Taliban and al Qaeda prisoners. The memo instructed the Armed Forces to continue to treat detainees humanely with an implied exception for "military necessity." The CIA was not included in this requirement.⁴ This memo resulted in cruel, inhumane treatment and torture of individuals held by the CIA and the Department of Defense, a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.

⁵ The U.S. Supreme Court later confirmed that the Geneva Conventions do apply to these prisoners.⁶

On or about August 2002, RICHARD B. CHENEY, JOHN D. ASHCROFT, AND CONDOLEEZZA RICE were briefed on the CIA use of enhanced interrogation techniques, including waterboarding, and approved the use of those techniques,⁷ a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.

³ US Supreme Court, Hamdan v. Rumsfeld, No. 05-184, Decided June 29, 2006. Syllabus page 6. http://www.supremecourt.gov/opinions/05pdf/05-184.pdf

⁴ Scott W. Muller. Memorandum for the Record, "Humane" Treatment of CIA Detainees. February 12, 2003. http://ciasavedlives.com/bdr/humane-treatment-of-cia-detainees.pdf http://ciasavedlives.com/bdr/humane-treatment-alQaeda-taliban-detainees.pdf

⁵ Supra 73.

⁶ Supra 191.

⁷ George Tenet, Memorandum to National Security Advisor, June 4, 2004. http://ciasavedlives.com/bdr/memo-for-nsa-review-of-cia-interrogation-program.pdf

On or about July 29, 2003, RICHARD B. CHENEY and CONDOLEEZZA RICE met with CIA General Counsel Muller, JOHN D. ASHCROFT, and ALBERTO R. GONZALES, among others, during which CHENEY and RICE agreed that the CIA was executing approved administration policy in performing interrogations using enhanced techniques, including waterboarding, a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.

On or about January 28, 2003, GEORGE TENET issued a memo authorizing the use of enhanced interrogation techniques, including waterboarding, ⁹ a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.

From September 2001 until September 2007, JOSE RODRIGUEZ served in several positions in the CIA Counterterrorism Center. Under his authority, CIA operatives ran secret prisons where detainees were tortured using methods that included waterboarding, a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.

On or about November 2002 until March 2004, GEOFFREY D. MILLER commanded the detention facility at Guantanamo Bay, Cuba, and commanded the detention facility at Abu Ghraib, Iraq from April 2004 to November 2004. In both facilities, he oversaw the

⁸ Supra 72. Pages 117 and 118.

⁹ Guidelines on Interrogations Conducted Pursuant to the Presidential Memorandum of Notification of 17 September 2001, signed by George Tenet, Director of Central Intelligence, January 28, 2003. http://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc12.pdf. Note that the title of the document is redacted in the reference copy, however the complete title is stated in the Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Executive Summary, footnote 280, page 57.

implementation of torture techniques approved by DONALD H. RUMSFELD, ¹⁰ a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals.

During the years 2002 to 2009, JOHN B. JESSEN and JAMES E. MITCHELL contracted with the U.S. Government to develop enhanced interrogation techniques including waterboarding. These techniques were used on detainees in U.S. custody, a violation of Title 18, United States Code, Part I, Chapter 1, § 2 – Principals

COUNT TWO

Conspiring to enable torture by constructing and promulgating false legal analysis.

THE GRAND JURY FURTHER CHARGES THAT:

In September 2001 and for several years thereafter GEORGE W. BUSH, RICHARD B. CHENEY, CONDOLEEZZA RICE, DONALD H. RUMSFELD, JOHN D. ASHCROFT, GEORGE J. TENET, JOSE RODRIGUEZ, ALBERTO R. GONZALES, DAVID S. ADDINGTON, JOHN C. YOO, JAY S. BYBEE, STEVEN G. BRADBURY, WILLIAM J. HAYNES, and JOHN A. RIZZO conspired to generate and promulgate false legal analysis which encouraged others to perform acts of torture, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy.

¹⁰ William J. Haynes II, General Counsel to SECRETARY OF DEFENSE, *Counter-Resistance Techniques*, November 27, 2002 and approved by Donald Rumsfeld on December 2, 2002. http://nsarchive.gwu.edu/NSAEBB/NSAEBB127/02.12.02.pdf

On or about January 9, 2002, JOHN C. YOO issued a letter to WILLIAM J. HAYNES stating that the Geneva Conventions do not apply to members of the al Qaeda organization or the Taliban militia, a violation of Title 18, United States Code, Part I, Chapter 113C, \$2340A Torture. (c) Conspiracy.¹¹

On or about January 11, 2002, William Taft IV, Legal Advisor to the State Department, issued a memo to JOHN C. YOO, warning that the legal analysis in YOO's January 9, 2002 draft memorandum was "seriously flawed". ¹² JOHN C. YOO ignored the advice. The memo was approved by JAY S. BYBEE and issued on January 22, 2002, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy.

On or about January 25, 2002, ALBERTO R. GONZALES issued a memo to GEORGE W. BUSH stating that opting out of the Geneva Conventions would provide a solid defense against violation of the War Crimes Act (Section 2441), a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy. 13

¹¹ Memorandum for William J. Haynes II, General Counsel, Department of Defense, from John Yoo, Deputy Assistant Attorney General, Application of Laws and Treaties to al Qaeda and Taliban Detainees, January 9, 2002. http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.09.pdf

Memorandum for John Yoo from William Taft IV, Your Draft Memorandum of January 9th, January 11, 2002. http://nsarchive.gwu.edu/torturingdemocracy/documents/20020111.pdf.

¹³ **Memo From Alberto Gonzales To President Bush**, "Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban", January 25, 2002. http://nsarchive.gwu.edu/torturingdemocracy/documents/20020125.pdf

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DAVID S. ADDINGTON has been identified as the author of the January 25, 2002 Memorandum for the President which was issued by ALBERTO R. GONZALES stating that the Geneva Conventions do not apply to the conflict with al Qaeda and the Taliban, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy.¹⁴

On or about March 13, 2002, JAY S. BYBEE declared in a memo to WILLIAM J.

HAYNES that the president has the authority to transfer detainees to countries where they might be tortured, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy. 15

On or about August 1, 2002, JAY S. BYBEE wrote a memo to ALBERTO GONZALEZ that declares that the infliction of severe physical pain for interrogation purposes does not constitute torture if it does not cause organ failure or death, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy. ¹⁶

JOHN C. YOO violated his fiduciary responsibility to give sound legal advice to the President of the United States by issuing several memos redefining torture to give the

¹⁴ Executive Intelligence Review, *Cheney's Lawyer Addington Penned Key Torture Memo*, July 16, 2004 http://www.larouchepub.com/other/2004/3128addington_memo.html

¹⁵ Memorandum for William J. Haynes,II, General Counsel, Department of Defense by Jay Bybee, March 13, 2002. http://www2.gwu.edu/~nsarchiv/torturingdemocracy/documents/20020313.pdf

¹⁶ Memo for Alberto R. Gonzales, Counsel to the President, August 1, 2002, by Jay S. Bybee. http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.08.01.pdf

2

appearance that certain torture techniques are lawful, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy.¹⁷

STEPHEN G. BRADBURY issued a memorandum to JOHN A. RIZZO stating that certain interrogation techniques including waterboarding do not violate U.S. law, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy. 18

JOHN A. RIZZO sought legal cover for CIA torture as evidenced by a memo from the Justice Department Office of Legal Counsel responding to his question about the elements of the crime of torture,.¹⁹ and a request for Office of Legal Counsel approval of specific torture techniques for use in the interrogation of Abu Zubaydah, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy.²⁰

STEVEN G. BRADBURY provided false legal cover to the CIA to use techniques individually and in combination, including waterboarding, that are clearly torture, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy.²¹

¹⁷ John Yoo Memo To Alberto Gonzales stating that certain torture techniques are legal. August 1, 2002. http://nsarchive.gwu.edu/torturingdemocracy/documents/20020801-3.pdf

¹⁸ Supra 46.

¹⁹ John Yoo letter to John Rizzo, July 13, 2002.

http://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/letter-rizzo2002.pdf

²⁰ Jay Bybee ,Memorandum for John Rizzo Acting General Counsel of the Central Intelligence Agency. August 1, 2002.

http://nsarchive.gwu.edu/torturingdemocracy/documents/20020801-2.pdf

²¹ Supra 45

DONALD H. RUMSFELD approved interrogation techniques to be used at Guantanamo Bay, Cuba detention facility including waterboarding. RUMSFELD approved the techniques contained in a series of memos by military commanders and military legal counsel who may also be subject to conspiracy charges, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy.²²

On or about December 2002, Alberto Mora, U.S. Navy General Counsel objected to the techniques approved by DONALD H. RUMSFELD. RUMSFELD conspired with WILLIAM J. HAYNES to obtain a memo from JOHN C. YOO falsely stating that the techniques did not violate U.S. or international law, a violation of Title 18, United States Code, Part I, Chapter 113C, §2340A Torture. (c) Conspiracy.²³

COUNT THREE

Committing an act of torture under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

THE GRAND JURY FURTHER CHARGES THAT:

²² Various authors, series of memorandum. October 11, 2002 through December 2, 2002. http://www.washingtonpost.com/wp-srv/nation/documents/dodmemos.pdf

²³ John Yoo, Memorandum for William J. Haynes II, General Counsel of the Department of Defense *Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United State.* March 14, 2003. https://www.aclu.org/files/pdfs/safefree/yoo_army_torture_memo.pdf

4

Beginning in September, 2001 and for several years thereafter, GEORGE W. BUSH, RICHARD B. CHENEY, CONDOLEEZZA RICE, DONALD H. RUMSFELD, JOHN D. ASHCROFT, GEORGE J. TENET, JOSE RODRIGUEZ, ALBERTO R. GONZALES, DAVID S. ADDINGTON, JOHN C. YOO, JAY S. BYBEE, STEVEN G. BRADBURY, WILLIAM J. HAYNES, GEOFFREY D. MILLER, and JOHN A. RIZZO violated USC Title 18, Part I, Chapter 113C,§2340A Torture (a) Offense by directing or conspiring to have others perform acts of torture.

On or about August 2002, JAMES E. MITCHELL and JOHN B. JESSEN, water boarded detainee Abu Zubaydah at a CIA black site in Europe.²⁴

On or about March 2003, JAMES E. MITCHELL water boarded detainee Khalid Sheikh Mohammed at a CIA black site in Europe.²⁵

COUNT FOUR

Commission of war crimes, especially grave breaches of the Geneva Convention, 12 August 1949, Common Article 3, including violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages, outrages upon personal dignity, in particular humiliating and degrading treatment.

²⁴ Supra 72. Page 40. Code name Swigert is James Mitchell. Code name Dunbar is Dr. Bruce Jessen.

²⁵ Jason Leopold, Psychologist James Mitchell Admits He Waterboarded al Qaeda Suspects. Vice News. December 15, 2014.

THE GRAND JURY FURTHER CHARGES THAT:

By developing false rationale stating that the Geneva Conventions do not apply to al Qaeda and Taliban detainees, with the result that detainees were tortured or treated with violence, cruelty, humiliating and degrading treatment, JOHN D. ASHCROFT, ALBERTO R. GONZALES, DAVID S. ADDINGTON, JOHN C. YOO, JAY BYBEE, STEVEN G. BRADBURY, WILLIAM J. HAYNES AND JOHN A. RIZZO, failed in their fiduciary duty by supporting their principals in the commission of war crimes, a violation of USC Title 18, Part I, Chapter 118, War Crimes Commission of war crimes—especially grave breaches of the Geneva Convention 12 August 1949 Common Article 3.

By declaring, ordering or approving instruction to members of the U.S. Armed Forces that the Geneva Conventions do not apply to al Qaeda and Taliban detainees, GEORGE BUSH, RICHARD CHENEY, CONDOLEEZZA RICE, DONALD H. RUMSFELD, GEORGE TENET, JOSE RODRIGUEZ, GEOFFREY D. MILLER, JAMES E. MITCHELL, AND JOHN B. JESSEN, facilitated the commission of war crimes by those under their command, a violation of USC Title 18, Part I, Chapter 118, War Crimes, Commission of war crimes—especially grave breaches of the Geneva Convention 12 August 1949 Common Article 3.

COUNT FIVE

Destruction of Federal Property with the intent to avoid criminal prosecution by destroying evidence.

THE TORTURE TRIAL OF GEORGE W. BUSH/SUSTE

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THE GRAND JURY FURTHER CHARGES THAT:

On or about November 9, 2005, JOSE RODRIGUEZ destroyed or ordered destruction of ninety-two video tapes documenting the interrogations of Abu Zubaydah and Abd al-Rahim al-Nashiri, who were interrogated on or about 2002. Some of the tapes included the waterboarding of one or more of the subjects. The tapes were destroyed to avoid their disclosure in potential future investigations of the CIA torture program by the U.S. Senate. Seven days after the media exposed the CIA secret prisons, JOSE RODRIGUEZ destroyed video tapes of the torture of Abu Zubayda. Destruction of Federal records is a crime under USC Title 18, Part I, Chapter 73, § 1519 Destruction, alteration, or falsification of records in Federal investigations and

Robert Levy, Foreperson

bankruptcy.

Louise Allen, Deputy Foreperson

Timothy Madegen, Special Prosecutor