

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



INOFFICIAL TRANSLATION

**To: The Federal Public Prosecutor General at the Federal
Court of Justice**

Berlin, 6 June 2017

Case Number: GBA 3 ARP 100/14-4

With reference to: Our criminal complaint of 17 December 2014 and submissions of 28 July 2015 and 28 June 2016 – torture by US state agents and other persons

Subject: Follow-up submission on Ms. Gina Cheri Haspel, CIA Deputy Director since February 2017

We submit the following information as a follow-up to our criminal complaint from 17 Dec. 2014 and our submissions of 28 July 2015 and 28 June 2016:

On 2 Feb. 2017 US President Donald Trump appointed Ms Gina Cheri Haspel as Deputy Director of the CIA. Gina Haspel has held various positions since joining the CIA in 1985. From 2002 to 2005 she was involved – in a manner relevant in terms of criminal liability – in the CIA's rendition and torture program which we described in detail in the submission of 28 July 2015. Prior to this year, Gina Haspel's work at the CIA was undercover, and it was only on her appointment as Deputy Director that her name, previous posts and areas of work became known. For this reason, it is only now possible to make submissions relating to her and to link her with some of the previously known incidents.

We submit the following supplementary material:

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EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS e.V.

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ZOSSENER STR. 55-58
AUFGANG D
10961 BERLIN, GERMANY

—
PHONE +49.(030).40 04 85 90
FAX +49.(030).40 04 85 92
MAIL INFO@ECCHR.EU
WEB WWW.ECCHR.EU

—
AMTSGERICHT
BERLIN-CHARLOTTENBURG
VR 26608

—
COUNCIL:
DIETER HUMMEL
LOTTE LEICHT
TOBIAS SINGELNSTEIN

—
GENERAL SECRETARY:
WOLFGANG KALECK

Gina Cheri Haspel, born 1 Oct. 1956, held the following positions, among others, at the CIA: Chief of Base (COB) at the “Cat’s Eye” or “Catseye” secret prison in Thailand in 2002, Chief of Staff for Jose A. Rodriguez Jr., Director of Operations at the CIA Counterterrorism Center, from 2003 to 2005, CIA Station Chief in various countries, and various senior positions in the CIA’s National Clandestine Service.

At the “Cat’s Eye” secret prison in Thailand, (referred to as DETENTION SITE GREEN in the executive summary of the Senate Intelligence Committee Report on CIA’s Detention and Interrogation Program), Mr Zayn Al-Abidin Muhammad Husayn, better known as Abu Zubaydah, was detained and tortured, in particular in August 2002. His case is one of the first and most emblematic cases of the CIA’s use of its newly approved torture methods. His case is set out in detail from page 17 of the executive summary of the Senate Intelligence Committee Report of 9 December 2014. The European Court of Human Right’s decision in Abu Zubaydah v. Poland also contains further information. The Court classified his treatment as torture in accordance with Art. 3 of the European Convention on Human Rights (CASE OF HUSAYN (ABU ZUBAYDAH) v. POLAND, No. 7511/13, ECtHR (Fourth Section), decision from 24 July 2014.

In our submission of 28 July 2015 we set out (pp. 15-20) how Abu Zubaydah was arrested, seriously injured, on 27 March 2002 and rendered to the “Cat’s Eye” prison in Thailand. During his initial detention period, Abu Zubaydah was interrogated by the FBI. The CIA discussed its own interrogation strategy and then took over the interrogation from the FBI. Abu Zubaydah was held in solitary confinement for 47 days from 18 June 2002.

From 4 to 23 Aug. 2002, Abu Zubaydah was severely and continuously tortured. He was waterboarded 83 times. The psychologists James E. Mitchell and John Bruce Jessen (referred to as SWIGERT and DUNBAR in the following citation) were the only people with direct access to him. Other individuals oversaw the torture (p. 40 of the executive summary of the Senate Intelligence Committee Report: *“On August 3, 2002, CIA Headquarters informed the interrogation team at DETENTION SITE GREEN that it had formal approval to apply the CIA’s enhanced interrogation techniques, including the waterboard, against Abu Zubaydah. According to CIA records, only the two CIA contractors, SWIGERT and DUNBAR, were to have contact with Abu Zubaydah. Other CIA personnel at DETENTION SITE GREEN - including CIA medical personnel and other CIA “interrogators with whom he is*

familiar" - were only to observe. From August 4, 2002, through August 23, 2002, the CIA subjected Abu Zubaydah to its enhanced interrogation techniques on a near 24-hour-per-day basis. After Abu Zubaydah had been in complete isolation for 47 days, the most aggressive interrogation phase began at approximately 11:50 AM on August 4, 2002.").

The two psychologists were answerable to Gina Haspel as Chief of Base of the secret prison in Thailand. As head of the prison, Gina Haspel signed several cables (extracts printed in the executive summary of the Senate Intelligence Committee Report) to CIA headquarters concerning the torture of Abu Zubaydah. One officially published cable from 15 July 2002 suggests that as Chief of Base, Gina Haspel was the only person with the authority to end the torture of Abu Zubaydah (see p. 34 of the executive summary of the Senate Intelligence Committee Report: *"On July 15, 2002, a cable providing details on the proposed interrogation phase stated that only the DETENTION SITE GREEN chief of Base would be allowed to interrupt or stop an interrogation in process, and that the chief of Base would be the final decision-making authority as to whether the CIA's interrogation techniques applied to Abu Zubaydah would be discontinued."*). Gina Haspel failed to make use of this power. Instead she watched as *"Zubaydah vomited, passed out and urinated on himself while shackled ... lost consciousness and bubbles began gurgling from his mouth [during a waterboarding session],"* citation from Raymond Bonner, *CIA Cables Detail Its New Deputy Director's Role in Torture*, ProPublica, 22 Feb. 2017, available at <https://www.propublica.org/article/cia-cables-detail-its-new-deputy-directors-role-in-torture>; see also p. 41 of the executive summary of the Senate Intelligence Committee Report: *"...At approximately 6:20 PM, Abu Zubaydah was waterboarded for the first time. Over a two-and-a-half-hour period, Abu Zubaydah coughed, vomited, and had 'involuntary spasms of the torso and extremities' during waterboarding,"* and p. 43-44 of the same report: *"At times Abu Zubaydah was described as 'hysterical' and 'distressed to the level that he was unable to effectively communicate.' Waterboarding sessions 'resulted in immediate fluid intake and involuntary leg, chest and arm spasms' and 'hysterical pleas.' In at least one waterboarding session, Abu Zubaydah 'became completely unresponsive, with bubbles rising through his open, full mouth.' According to CIA records, Abu Zubaydah remained unresponsive until medical intervention, when he regained consciousness and expelled 'copious amounts of liquid.'"*

On 4 Dec. 2002 Abu Zubaydah was taken to a secret prison in Poland as the secret prison in Thailand was being closed. In November 2002 Mr. Abd Al Rahim Hussayn Muhammad Al Nashiri was also detained at the secret prison in Thailand. He was tortured by CIA personnel. His torture included being subjected to waterboarding at least three times, before being brought to the secret prison in Poland (see p. 67 of the executive summary of the Senate Intelligence Committee Report).

In her roles as head of the secret prison and subsequently as Chief of Staff at the CIA Counterterrorism Center, Gina Haspel also destroyed evidence on numerous occasions from 2002 to at least November 2005. She sought assurances from CIA headquarters that Abu Zubaydah would “*remain in isolation and incommunicado for the remainder of his life*” (see p. 35 of the executive summary of the Senate Intelligence Committee Report). Abu Zubaydah is still being detained without conviction at Guantánamo Bay.

After taking up her position as Chief of Staff at the CIA’s Counterterrorism Center in early 2003, Gina Haspel pushed for the destruction of 92 video tapes said to show the torture and interrogation of Abu Zubaydah in Thailand. The order was given by her superior, CIA Counterterrorism Center’s Director of Operations Jose Rodriguez, based on a draft order by Gina Haspel; the tapes were destroyed on 9 Nov. 2005 (see Mark Mazzetti, *U.S. Says C.I.A. Destroyed 92 Tapes of Interrogations*, New York Times, 2 March 2009, http://www.nytimes.com/2009/03/03/washington/03web-intel.html?_r=0).

Our submission of 28 July 2015 sets out detailed information on the CIA’s Counterterrorism Center and its role in the abduction, detention and torture of Khaled El Masri. Pages 41 to 45 detail the role and function of the Counterterrorism Center. Additionally we note here that from 2003 to 2005 (the timeframe relevant for the El Masri case), Gina Haspel was Chief of Staff for Jose Rodriguez at the Counterterrorism Center.

The experts named in the submission of 28 July 2015 can also give further information on Gina Haspel and the role she played. Her role has also been described in books written by two of her former colleagues. She is not explicitly named in the texts – as at the time of publication her identity was still undisclosed (Raymond Bonner, ProPublica, 22.2.2017, see above) – but it is possible to infer that the descriptions relate to her. The two books are “Hard Measures” by her superior at

the Counterterrorism Center, Jose A. Rodriguez Jr. (published by Threshold Editions, 30 April 2013), and “Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying to Destroy America” from CIA psychologist James E. Mitchell (published by Crown Forum, 29 Nov. 2016).

There is currently a civil lawsuit pending against CIA psychologists Mitchell and Jessen before the US District Court for the Eastern District of Washington. The role of the two psychologists is described in detail in the submission of 28 July 2015. Further information, including on the proceedings in the US in which former high-level CIA employees have been called as witnesses, can be provided on request. These proceedings also led to the publication of a series of relevant documents, including daily cables on Abu Zubaydah’s torture, available at www.thetorturedatabase.org.

For the purposes of determining criminal liability, what is most relevant is the fact that as head of the secret prison in Thailand, Gina Haspel followed each day of the Abu Zubaydah’s torture from 4 to 23 Aug. 2002 and she alone had the responsibility to end this torture but failed to do so. In November 2002, a second man, Mr. Al Nashiri, was tortured at the secret prison in Thailand and Gina Haspel did nothing to stop this. Her partially successful efforts to ensure evidence was destroyed or disappeared show that she was at all times fully aware of her involvement in the commission of crimes.

Given the systematic torture by the CIA in the years 2002 to 2005 – confirmed by the US Senate Intelligence Committee report – the publication of Gina C. Haspel’s name and previous roles has given rise to a very strong basis for suspicion. The next step would be the issuance of an arrest warrant for her.

We call for the appropriate measures to be taken should Gina C. Haspel travel to Germany or the Schengen Area. Previously named witnesses and expert witnesses remain available to give evidence.

We reserve the right to make further submissions.

Wolfgang Kaleck

ECCHR General Secretary