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# REPRIEVE

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TO

Mr Darius Valys  
Prosecutor General of the Republic of Lithuania  
Prosecutor General's Office

CC

HE Mrs Dalia Grybauskaitė  
President of the Republic of Lithuania  
Office of the President of the Republic of Lithuania

Mr Arvydas Anušauskas  
Chairman  
Committee on National Security and Defence  
Seimas of the Republic of Lithuania

Mrs Laima Andrikiene, MEP  
Member of Parliamentary Subcommittee on Human Rights

Mr Henrikas Mickevičius  
Executive Director  
Human Rights Monitoring Institute

## REQUEST FOR INVESTIGATION

Dear Mr Valys,

We are providing legal assistance to the stateless Palestinian Zayn al-Abidin Muhammad Husayn (Abu Zubaydah). Mr Husayn is currently held in Guantanamo Bay. It has been well reported in the international media – and substantiated by official US government statements and a mass of official US government documents released through US “freedom of information act” litigation – that prior to being transferred to Guantanamo Bay around 6 September 2006, Mr Husayn had been held in secret detention in US extraterritorial prisons since his capture on 28 March 2002.

We read with interest the conclusions of the recent inquiry into Lithuanian involvement in the US secret prison programme. We write to request that you urgently investigate new and credible allegations that our client Mr Husayn was held by the US in Lithuania sometime from 2004 to 2006.

### Client background

It now seems clear that, despite initial claims to the contrary, Mr Husayn's interrogation and torture in US secret detention has resulted in little or no intelligence of any value, and falsely tarred Mr Husayn as a high level terrorist. Indeed, Mr Husayn's case has been described as "one of the most distressing examples of hubris in the entire war on terror".<sup>1</sup> When Mr Husayn was seized in a house raid in Faisalabad, Pakistan on 28 March, 2002, he was initially described as "al-Qaeda's chief of operations and top recruiter," who would be able to "provide the names of terrorists around the world and which targets they planned to hit."<sup>2</sup> Mr Husayn spent the next four and a half years in the CIA's secret prison system, before being brought to Guantanamo Bay.<sup>3</sup> But the case against Mr Husayn has steadily unraveled over the years, as officials - first in the Bush administration, and then under President Obama - have conceded that his significance was hugely overstated, he was not a member of al-Qaeda, was not involved in planning any international terrorist attacks, and had no advance knowledge of the 9/11 attacks.

Indeed, this spring the US government refuted its own purpose for holding Mr Husayn, stating that the US government no longer "contended ... that [Mr Husayn] was a member of al-Qaeda or otherwise formally identified with al-Qaeda" or that Mr Husayn "had any personal involvement in planning or executing either the 1998 embassy bombings in Nairobi, Kenya, and Dar-es-Salaam, Tanzania, or the attacks of September 11, 2001."

### Mr Husayn's torture in the US detention system

A wealth of unclassified evidence now in the public domain confirms that Mr Husayn was subjected to sustained and brutal torture during his years in secret US detention. Indeed, the methodology of the CIA's torture programme was developed in large part by using Mr Husayn as a human guinea pig for torture:

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<sup>1</sup> Andy Worthington, *Abu Zubaydah: Tortured for Nothing*, 6 April 2010, <http://www.andyworthington.co.uk/2010/04/06/abu-zubaydah-tortured-for-nothing/>. What is troubling about this is the fact that since Zubaydah's capture (when Donald Rumsfeld described it as "well established" that he was "a close associate" of Osama bin Laden, "and if not the number two, very close to the number two person in the organization"),

<sup>2</sup> Tim McGirk, *Anatomy of a Raid*, 15 April 2002, *Time*, <http://www.time.com/time/magazine/article/0,9171,1002208,00.html>.

<sup>3</sup> President Discusses Creation of Military Commissions to Try Suspected Terrorists, The White House, Office of the Press Secretary, 6 September 2006, <http://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>.

"I would describe it this way," said one former National Security official: "[Mr Husayn] was an experiment. A guinea pig. I'm sure you've heard that a lot. There were many enhanced interrogation [methods] tested on him that have never been discussed before we settled on the 10 [techniques]."<sup>4</sup>

Shortly after his capture, Mr Husayn was reportedly flown to a secret underground prison in Thailand, where "he was stripped, held in an icy room and subjected to constant, earsplittingly loud music."<sup>5</sup> The New York Times has reported that whilst held in Thailand, "At times, [Mr Husayn], still weak from his wounds, was stripped and placed in a cell without a bunk or blankets. He stood or lay on the bare floor, sometimes with air-conditioning adjusted so that, one official said, [Mr Husayn] seemed to turn blue"<sup>6</sup> In *The Dark Side*, Jane Mayer noted that Mr Husayn was "held naked in a small cage, like a dog."<sup>7</sup> And in his statement to the ICRC, Mr Husayn explained how, even before he was waterboarded, he was strapped naked to a chair for several weeks in a cell that was "air-conditioned and very cold," deprived of food, subjected to extreme sleep deprivation for two to three weeks — partly by means of loud music or incessant noise, and partly because, "If I started to fall asleep one of the guards would come and spray water in my face".<sup>8</sup>

As it turned out, this selection of techniques was but a preamble to what would follow during Mr Husayn's long journey through the US secret prison system, which included being waterboarded at least 83 times,<sup>9</sup> beatings, hooding, confinement in small, coffin-like boxes, and daily shaving of his bodily hair.<sup>10</sup>

### Locations of Mr Husayn's abuse

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<sup>4</sup> Jason Leopold, *Torture Diaries, Drawings and the Special Prosecutor*, Truthout, Monday 29 March 2010, <http://www.truth-out.org/torture-diaries-drawings-and-special-prosecutor58108>.

<sup>5</sup> David Johnston, *At a Secret Interrogation, Dispute Flared Over Tactics*, New York Times, 10 September 2006; <http://www.nytimes.com/2006/09/10/washington/10detain.html? r=1>.

<sup>6</sup> David Johnston, *At a Secret Interrogation, Dispute Flared Over Tactics*, New York Times, 10 September 2006; <http://www.nytimes.com/2006/09/10/washington/10detain.html? r=1>.

<sup>7</sup> Jane Mayer, *The Dark Side: The Inside Story of How The War on Terror Turned into a War on American Ideals*, Anchor Books (2009).

<sup>8</sup> ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody (WAS 07/76), 14 February 2007.

<sup>9</sup> Zubaydah was one of two prisoners whose interrogations between April and August of 2002 were captured on 90 videotapes that the CIA destroyed in November 2005, as public attention began focusing on allegations that the Bush administration had subjected "war on terror" prisoners to brutal torture [see enclosure 2 for further information].

<sup>10</sup> ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody (WAS 07/76), 14 February 2007.

In the face of multiple, concurrent sources confirming Mr Husayn's sustained, barbaric and futile torture in extraterritorial US detention, it is clearly of utmost importance to clarify the locations where this abuse occurred, if only to learn why this was allowed to happen, and to make sure it never recurs. This is compelled by the relevant states' obligations under international criminal and humanitarian law, supranational human rights law, and relevant domestic legislation. There are also legal principles that relate to Mr Husayn's ongoing US habeas litigation.

Unclassified evidence now in the public domain confirms that after being held in Thailand for around eight months, on 4 December 2002, Mr Husayn was "rendered" with another prisoner to a secret prison in Szymany, Poland. Mr Husayn was held in Szymany for almost ten months, before being transferred along with four other prisoners to a then-secret CIA section of the US military base at Guantanamo Bay. According to recent media reports, Mr Husayn was then held near Rabat, Morocco.

Mr Husayn arrived in Morocco in the spring of 2004. Between then and his second rendition to Guantanamo Bay in September 2006, recent information has come to us from a confidential and extremely reliable unclassified source, confirming that Mr Husayn was held in a secret CIA prison in Lithuania. This information come from the most credible sources inside the United States, and is not subject to doubt.

We need hardly remind you of Lithuania's duty to seriously investigate these allegations, and the importance of the preliminary work done by journalists and other fact-finders who protect their sources, in the exposure of US abuses on European soil.

#### Taking the Lithuanian inquiry forward

On the basis of the above, we hereby request an urgent investigation into the Mr Husayn's unlawful deprivation of liberty (CC Article 146) and unlawful transportation across the border of the Republic of Lithuania (CC Article 292).

In addition, Mr Husayn's detention in Lithuania also invokes the spectre of enforced disappearance and torture – both crimes under International Criminal Law.

The circumstances of this case also suggest that as a signatory to the European Convention on Human Rights, the Lithuanian Government is under a positive obligation to investigate the allegations.

Urgent action by the Lithuanian authorities in respect of these allegations must involve:

1. *Seek clarification from Mr Husayn*

One way of clarifying allegations that Mr Husayn was held in Lithuania would be to seek clarification from Mr Husayn himself. We have attached a list of (non-leading) questions at enclosure 1, for your approval and any supplements. If we do not hear from you by September 30<sup>th</sup>, we will assume that you wish us to arrange for the list of questions *as is*, to be presented to Mr Husayn. Whilst you may be aware that statements from Mr Husayn are subjected to stringent classification review, we expect you will wish the US government to co-operate with your investigation by allowing you access to such testimony that has relevance to the Lithuanian inquiry. We will therefore ask our US-based colleagues to submit an appropriate an urgent declassification request of Mr Husayn's answers to the questions listed at enclosure 1. In the alternative or in addition to the approach above, the Lithuanian authorities could request from the US that they be allowed to interview Mr Husayn themselves, with counsel present.

*2. Seek urgent preservation and disclosure of all relevant evidence in the possession of US authorities*

Given the recent disturbing reports in relation to the destruction of documents and communications relating to torture in the US prison system, the Lithuanian authorities should urgently seek agreement from the CIA, the Department of Defense, the FBI, and any other relevant US government departments that they preserve and disclose:

- i. All documents, information and evidence relating to the transfer to and from, detention and treatment of Mr Husayn whilst he was held in Lithuania;
- ii. All documents, information and evidence relating to the construction and operation of the CIA prison/s in Lithuania;
- iii. All documents, information and evidence relating to all flights into or out of Lithuania in connection to the construction and/or operation of the CIA prisons.

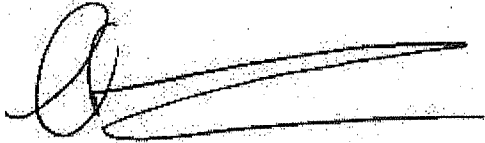
*3. Seek urgent preservation and disclosure of all evidence in the possession of Lithuanian authorities*

The Inquiry should also request that all relevant Lithuanian government departments preserve and disclose:

- All documents, information and evidence relating to the transfer to and from, detention and treatment of Mr Husayn whilst he was held in Lithuania;
- All documents, information and evidence relating to the construction and operation of the CIA prison/s in Lithuania;
- All documents, information and evidence relating to all flights into or out of Lithuania in connection to the construction and/or operation of the CIA prisons.

Finally, we hope to assist the Lithuanian "dynamics of truth" in the future.  
Please do not hesitate to contact us if we can help you in any way.

Yours faithfully,



Clive A. Stafford Smith, OBE  
Director, Reprieve

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PROPOSED QUESTIONS FOR CLARIFICATION BY ZAYN AL-ABIDIN MUHAMMAD HUSAYN CONCERNING HIS ILLEGAL RENDITION TO AND FROM LITHUANIA AND HIS ILLEGAL SECRET DETENTION THERE

Please describe in as much detail as possible the location(s) of your detention in Lithuania between spring 2004 and your arrival at Guantanamo Bay for the second time, in September 2006.

In particular, please provide clarification on the following matters:

- i. The date and time of your transfer to Lithuania with a full description of the transfer, including the location you were flown from, and all aircraft facilities used for your transfer.
- ii. The route taken and can you describe any intermediate stops.
- iii. Any details of the aircraft, or its personnel.
- iv. As full a description as possible of the airport where you landed, who you know was there, what you heard, and how you were treated.
- v. A full description of your transfer from the airport to the prison.
- vi. Dimensions and description of cell/cells;
- vii. Number of cells in the facility/ies;
- viii. Description of other spaces in the facility/ies, including any corridors, interrogation rooms, libraries, recreation areas. Please draw a plan of the facility/ies if possible;
- ix. Conditions of confinement and treatment in the facility/ies, including but not limited to temperature at the facility/ies, food, recreation available, and all instances of abuse;
- x. Any identifying characteristics of any personnel who you may have encountered at this time.
- xi. Any identifying characteristics of any other prisoners who may also have been held therein Lithuania.
- xii. Any information you have learned, then or since, concerning other prisoners held in Lithuania.
- xiii. Any and all statements made by US personnel during this time;
- xiv. The identity and any information concerning any potential witnesses to your detention and/or treatment in detention, including but not limited to: aircraft personnel, prison personnel,

interrogators, fellow-prisoners, anyone else you came into contact with;

- xv. Details of any and all transfers into, out of, and between prison facilities where you were held in Lithuania from your arrival there until your departure to Guantanamo Bay in September 2006.
- xvi. The date and time of your departure from Lithuania with a full description of it, including but not limited to: your transfer to the airport, a description of any aircraft used for your transfer, aircraft facilities used for your transfer, all personnel you came into contact with during your transfers, conditions of transfer.