

Report on Guantánamo Bay Detainee Ammar al Baluchi

UN International Day in Support of Victims of Torture on 26 June 2025

Pathways to Just Reparation for Victims of CIA Torture, Inhumane, and Degrading Treatment

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This report focuses on two NATO members – Romania and Lithuania – but is intended for all other states involved (or believed to be involved) in the rendition and torture of Ammar al Baluchi from 2003 to date and currently detained at Guantanamo Bay. It demands fresh investigations, action and redress for the harm he has suffered and continues to suffer. The UK, in particular, should reveal any relevant material relating to Mr al Baluchi arising from the current trial before the UK Investigatory Powers Tribunal.²

Romania and Lithuania have been chosen for this report since they have already been the subject of decisions against them in the European Court of Human Rights in relation to other detainees (set out below) and appear to have done nothing since to address the necessary redress for Mr al Baluchi. As with those litigants, Mr al Baluchi was also taken to Romania and Lithuania ‘black sites’ as part of the CIA Rendition, Detention and Interrogation (‘RDI’) program post 9/11. The evidence referred to herein suggests Romania and Lithuania acted in a way that was a material cause of harm to Mr al Baluchi and/or those states were complicit in torture and other abuses that have caused him harm.

On 11 April 2025, a military judge at Guantánamo Bay ruled that detainee Ammar al Baluchi’s confessions regarding 9/11 were inadmissible as they were tainted by torture.³ The decision unequivocally states that Mr al Baluchi **was ‘subjected to**

¹ Libertas Chambers, London and Crockett Chambers, Melbourne and on the lists of Counsel at the International Criminal Court and the Kosovo Specialist Chambers, acting on behalf of Mr al Baluchi. Report prepared with Phillipa Stafford and Daphne Yuqing Liu. Detailed research by 6 student interns from Australia.

² The IPT proceedings are reported here: Harry Davis, ‘Claims that UK spy agencies aided CIA torture after 9/11 to be heard in rare trial’, *The Guardian* (Online news, 9 June 2025) < <https://www.theguardian.com/world/2025/jun/09/claims-that-uk-spy-agencies-aided-cia-torture-after-911-to-be-heard-in-rare-trial> >.

³ LETTER [2116640] filed pursuant to FRAP 28j advising of additional authorities filed by Ammar Al-Baluchi [Service Date: 05/20/2025] [23–5251] (Pradhan, Alka) attaching *United States of America v Khalid Shaikh*

physical coercion and abuse amounting to torture, and to conditions which constituted cruel, inhuman, and degrading treatment’.⁴ The decision recognises that he has suffered serious harm.⁵

Mr al Baluchi has been held for decades with no apparent benefit to the global community or the administration of justice. He has been subjected to an extreme and disturbing regime of physical and psychological torture by authorities responsible for his arrest, interrogation, rendition and long-term detainment – contrary to domestic and international law.

This regime and the conditions under which Mr al Baluchi has been held are a direct result of the spiralling state overreach and systemic disregard for international law that has been demonstrated in the post-9/11 ‘war on terror’ political climate. Since September 2001, governments around the world have used national security measures as a pretext to justify serious human rights violations and expansion of government powers. It is a trend that has long been highlighted by human rights advocates and remains a contemporary, urgent, and evolving issue.

This report, prepared to assist Mr al Baluchi and **released on the UN International Day in Support of Victims of Torture on 26 June 2025**, asserts that the incontrovertible acknowledgement by authorities such as the Guantánamo Bay Military Commission that Mr al Baluchi and his fellow detainees have been subject to torture and cruel, inhuman and degrading treatment is an opportunity for states to take accountability for their roles and complicity in these acts. It also highlights the urgency and importance of the wider, on-going global effort to strengthen international human rights principles through accountability, transparency, and just reparations, with the view to preventing and deterring future acts of torture.

Mohammed, Walid Muhammad Salih Mubarak Bin ‘Attash, Ali Abdul Aziz Ali, Mustafa Ahmed Adam Al Hawa (11 April 2025, Military Commission Trial Judiciary Ruling on Mr. al Baluchi’s Motion to Suppress Alleged Statements as Involuntary and Obtained by Torture, AE942SSSS) (*‘Suppression Ruling’*). **Note:** Mr al Baluchi is also named as ‘Ali Abdul-Aziz Ali’, ‘Mr Ali’ and ‘AAB’ in various de-classified documents, military commission decisions, and reports. In the *Suppression Ruling* he is named as ‘Mr Ali’.

⁴ Ibid, 60.

⁵ Ibid, 59–66, 103–104; Dr Leo Shea, ‘Ammar al Baluchi Neuropsychological Evaluation’ (Redacted Report, 17 February 2021) (*‘Shea Report’*); David M Hanrahan, ‘Psychiatric Evaluation and Assessment (Ammar al Baluchi)’ (Expert Report, 16 October 2018).

Mr al Baluchi's civilian counsel, Alka Pradhan, noted '[the *Suppression Ruling*] is the only measure of accountability that Mr al Baluchi has ever received for the brutality he endured, and it is long overdue.'

It is time for all relevant parties to open/reopen investigations into this sorry period of history and for those responsible to be held accountable. This may include criminal prosecution but at the very least should give rise to compensation for the harm caused to Mr al Baluchi and his long-term suffering as a result.

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I. INTRODUCTION

Ten years have passed since Human Rights Watch laid out a clear roadmap to justice for the United States' post-9/11/2001 torture program at 'black sites' across the globe.⁶ Those responsible for over two decades of state sanctioned abuse of detainees must be held accountable. Senior officials in a range of states designed, approved, contributed to and covered up a program of secret detentions, abuse, and torture across the globe. Many facts are now public. Prohibitions on this conduct in law are clear. There is now judicial recognition from the US that information tainted by torture and other human rights abuses is unreliable and inadmissible – but this is just one step in accountability.

The *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment* ('UNCAT'), other international frameworks, and domestic laws demand that credible allegations of torture be investigated and prosecuted. This applies regardless of how much time has passed. Those who planned, approved, and enabled the harm caused to Mr al Baluchi (and others) must face independent, thorough investigation. If the evidence supports it, they must be prosecuted.

The conduct at all black site locations was purposeful, and states were party to an ongoing and deliberate program of incommunicado detention and extraordinary rendition. It is clear from the available evidence that the conditions of the prisons were devised to feature constant and intentional reminders of past torture. Even the provision of 'privileges' such as clothing, exercise, or uninterrupted sleep were used as tools of the broader program, provided incrementally as rewards for compliance with interrogation, with the ever-present threat of removal as a mechanism of control. The fact that one location had objectively 'better' conditions than others, or did not subject the detainees to direct physical punishments does not absolve the authorities of that location from their culpability or complicity in a program because all black site locations formed part of, not only the causal chain, but the *planned and deliberate program of torture, cruel, inhuman and degrading treatment*.⁷ Moreover, being detained incommunicado, outside judicial or ICRC oversight in an unknown location is, in and of itself, an act of torture.⁸

⁶ Human Rights Watch, 'No More Excuses: A Roadmap to Justice for CIA Torture' (Report, 1 December 2015) <<https://www.hrw.org/report/2015/12/01/no-more-excuses/roadmap-justice-cia-torture>>.

⁷ *Suppression Ruling* (n 3), 14–19.

⁸ Dick Marty, *Report for Council of Europe Committee on Legal Affairs and Human Rights*, 'Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report', Doc 11302 (11 June 2007) ('Marty Report 2007'), 51.

In recent years, the European Court of Human Rights ('ECtHR') has handed down two judgments regarding claims by detainees held in CIA custody in Lithuania,⁹ during the relevant period. Namely, the case of *Abu Zubaydah v Lithuania*, and the case of *Al-Hawsawi v Lithuania*.¹⁰ These judgments found that Lithuania's knowledge, cooperation, and involvement in the CIA's operations on its territory amounted to grave violations of Lithuania's obligations under Articles 2, 3, 5, 6, 8, and 13 of the *European Convention on Human Rights* ('ECHR').¹¹ Given the extreme seriousness of the violations, the Court awarded the applicants non-pecuniary damages, as well as costs and expenses. Similarly, in *Al Nashiri v Romania* the Court found that Romania had breached its obligations under Articles 2, 3, 5, 6, 8, and 13 of the ECHR. Notably, the Court held that Romania's conduct enlivened Article 6(1) on account of the Complainant's transfer from its territory, despite the real and foreseeable risk that he would be subject to a 'flagrant denial of justice' and that he may face the death penalty in the US.¹²

This report, prepared to Mr al Baluchi to seek action by Romania and Lithuania, is not a call for symbolic action. It is a demand for real legal consequences. Prosecutors, in countries with jurisdiction – and/or universal jurisdiction – must act. Efforts to avoid and obfuscate responsibility for state misconduct must stop.

This report has *not* been commissioned or prepared by those representing Mr al Baluchi within the US. It therefore does not detail a complete procedural history. The years of detention and interrogations notwithstanding, Mr al Baluchi was not formally informed of allegations against him until his Combatant Status Review Tribunal hearing on 30 March 2007.¹³ Nearly four years after losing his freedom, Mr al Baluchi learnt that he was alleged to have facilitated the 9/11 attacks primarily through alleged financial backing and was categorised as a 'high-value target' by the CIA. To date he has not been convicted of any crime and now, because of the *Suppression Ruling*, the case against him is revealed as largely unreliable and inadmissible given the methodology of the operation.

Suffice it to say that neither Lithuania and Romania have made sufficient, or *any*, effort to investigate his treatment nor to acknowledge their responsibility for his suffering, despite the

⁹ Also known as Location 8 or VIOLET.

¹⁰ *Abu Zubaydah v Lithuania* (ECtHR, application no. 46454/11, 31 May 2018); *Al-Hawsawi v Lithuania* (ECtHR, application no. 6383/17, 16 January 2024).

¹¹ *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) ('ECHR').

¹² *Al Nashiri v Romania* (ECtHR, application no 33234/12, Information Note on the Court's Case Law 218, May 2018).

¹³ *Suppression Ruling* (n 3) 73-74.

decisions in *Al Nashiri v Romania* and *Abu Zubaydah v Lithuania* which found that both respondent states were required to investigate into the ‘circumstances and conditions under which the applicants had been brought into, removed from and treated on their territory, with a view to identifying and, where appropriate, punishing those responsible’.¹⁴ It is also in spite of the expert investigation and reporting, which has unravelled the extent of the CIA’s programs and their activities – which have been published in the face of secrecy, suppression, denials and untruths since as early as 2005.¹⁵ It is clear from the now abundant evidence and ECtHR case law that both Romania and Lithuania are culpable for the acts of torture and cruel, inhuman and degrading treatment which occurred at CIA black sites on their respective territories, and for their roles in the CIA program which caused Mr al Baluchi harm.

The ongoing refusal to investigate (independently and fully) of all those states implicated in the CIA program is itself a violation of international law. Officials are not above the law. Domestic law allows for criminal prosecution and for compensation to be paid. Future administrations must learn from this reaction to 9/11 not to use torture as a political convenience. Accountability is not just about the past; it is a safeguard for the future.

Mr al Baluchi should be properly compensated for the harm he has suffered and the treatment he needs, at the very least by Romania and Lithuania.

II. OVERVIEW

The prohibition on torture is a fundamental tenet of international law. It constitutes a peremptory norm and an absolute human right, and is non-derogable: it cannot be suspended, even for reasons of public emergency or national security, nor in times of war.¹⁶

¹⁴ *Al Nashiri v Romania* (ECtHR, application no 33234/12), Information Note on the Court’s Case Law 218, May 2018; *Al Nashiri v Romania* (ECtHR, application no 33234/12); *Abu Zubaydah v Lithuania* (ECtHR, application no 46454/11).

¹⁵ See, eg, Kevin McNamara, *Report by the Council of Europe Committee on Legal Affairs and Human Rights*, ‘Lawfulness of detentions by the United States in Guantánamo Bay’ (Res 1433, Doc 10497, 26 April 2005) cited in Dick Marty, *Information Memorandum II for the Council of Europe Committee on Legal Affairs and Human Rights*, ‘Alleged secret detentions in Council of Europe member states’ (AS/Jur (2006) 03 rev, 22 January 2006) (‘Marty Information Memo 2006’); Human Rights Watch, ‘Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe’ (online, 6 November 2005) <<https://www.hrw.org/news/2005/11/06/human-rights-watch-statement-us-secret-detention-facilities-europe>>.

¹⁶ Internationally: *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc 1/810 (10 December 1948) (‘UDHR’), art 5; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 7 (‘ICCPR’); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December

However, there is unequivocal evidence that, in the aftermath of 9/11/2001, the United States, through the auspices of the CIA, employed torture as a central method of obtaining intelligence from suspected terrorists. As a key part of the ‘war on terror’, the CIA developed and deployed a program known as Rendition, Detention and Interrogation (‘RDI’) that was designed to create in detainees an ‘exploitable mental state’ that would make them willing to answer questions, through a ‘conditioned fear response’.¹⁷ The program utilised harsh new interrogation methods called ‘Enhanced Interrogation Techniques’ (‘EITs’) and established secret ‘black site’ prisons across the world with the cooperation of various host countries, including Afghanistan, Morocco, Romania and Lithuania.

Called a ‘global spider’s web’, the CIA’s program was enabled by authorisations under the US law, and bilateral agreements with host-countries.¹⁸ These agreements allowed the CIA to set up black sites, collaborate with foreign militaries and intelligence agencies, and to travel freely in military and civilian vehicles and aircraft.¹⁹ Most important were partnerships and authorisations developed under the framework of the North Atlantic Treaty Organisation (NATO), specifically through an agreement with NATO allies which outlined measures that could be used in the ‘campaign against terrorism’ (unilaterally drafted by the US). Evidence shows that the NATO agreement included blanket overflight clearances that enabled the CIA to transfer prisoners across borders without due process, to circumnavigate jurisdictional obligations, act outside the bounds of international law – and do so in secrecy.²⁰ However, the full scope of the terms of these authorisations have largely remained secret, this ‘afforded the

1984, 1465 UNTS 85 (entered into force 26 June 1987) art 37(a) (‘UNCAT’). Regionally: ECHR (n 9) art 3; *American Convention on Human Rights*, OAS Treaty Series No 36, 1144 UNTS 123 (entered into force 18 July 1978), art 5.2; *African Charter on Human and Peoples’ Rights* (OAU Doc. CAB/LEG/67/3, 1520 UNTS 217, entered into force 21 October 1986), art 5; *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (ETS No 126, entered into force 26 November 1987). The prohibition is also codified in International Humanitarian Law instruments including: *Hague Convention Respecting the Laws and Customs of War on Land*, ([1910] ATS 8 entered into force 26 January 1910), annex 1 art 4; *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (75 UNTS 31 (entered into force 21 October 1950); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea* (75 UNTS 85 entered into force 21 October 1950); *Geneva Convention Relative to the Treatment of Prisoners of War* (75 UNTS 135 entered into force 21 October 1950); *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (75 UNTS 287 entered into force 21 October 1950). Under the Rome Statute, torture is considered a war crime and a crime against humanity, in both international and non-international conflicts: *Rome Statute of the International Criminal Court* opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002), arts 7(1)(f), 8(2)(a)(ii) and 8(2)(c)(i)-(ii).

¹⁷ See generally: *Suppression Ruling* (n 3); Marty Report 2007 (n 8).

¹⁸ Dick Marty, *Draft Report for the Council of Europe Committee on Legal Affairs and Human Rights*, ‘Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states’ (Draft Report Part II, Explanatory Memorandum, AS/Jur (2006) 16 Part II, 7 June 2006) (‘Marty Report 2006’), 9; Marty Report 2007 (n 8), 22.

¹⁹ Marty Report 2007 (n 8), 15.

²⁰ Marty Report 2007 (n 8), 15.

CIA a mandate to pursue its “war on terror”, without a published text.’²¹

In each black site location, the detainees were subjected to torture, both physical and psychological, extreme conditions, continued interrogation, absolute isolation, and constant reminders that non-compliance could be met with removal of amenities or further physical torture. The locations themselves were set up to optimise the effects of EIT conditioning: ‘one senior CIA officer stated that Location 2 was itself an enhanced interrogation technique’.²² Detainees were kept entirely incommunicado and were completely reliant on their interrogators. They were never told where they were, where they were going or what would happen to them: detainees were moved from one location to another without notice or explanation, during which time they would be shackled, diapered, blindfolded and otherwise sensorily deprived.²³

Mr al Baluchi is one such detainee who was subjected to EIT-based torture and the harsh conditions of CIA black sites. He was transferred to Guantánamo Bay in 2006 where he remains on charges of facilitating the 9/11 attacks. As the recent ruling from the Military Commissions Trial Judiciary shows, Mr al Baluchi was not only subject to torture as understood to be part of the EIT regime, but was used as a ‘training prop’ for new interrogators and was subjected to particularly cruel treatment by one (chief) interrogator, who was known to be operating outside the bounds of the EIT program and intimidated not only detainees but fellow US government agents working at the ‘black sites’.²⁴

It is only now, over 20 years since his arrest, that Mr al Baluchi’s torture is being acknowledged by the US authorities as having tainted, or *caused*, the admissions he made while under these conditions. It is time that US authorities and the governments of host countries, including Romania and Lithuania, take accountability for his extraordinary and callous treatment.

It is obvious that Romania and Lithuania were involved and complicit in the rendition, secret detention, and ill-treatment of Mr al Baluchi on Romanian and Lithuanian territory and more broadly. This report specifically considers the liability of each country in the torture of Mr al Baluchi, contrary to law, including obligations under the ECHR, the *International Covenant on Civil and Political Rights* (‘ICCPR’), and UNCAT. It is also designed to assist other

²¹ Marty Report 2007 (n 8), 18.

²² *Suppression Ruling* (n 3), 23.

²³ See generally, *Suppression Ruling* (n 3); Sam Raphael, ‘Unredacted Memo: Ammar al Baluchi’ (Report, 20 November 2024) (‘Raphael Memo’).

²⁴ *Suppression Ruling* (n 3), 26-28.

implicated states to instigate the investigations called for by Human Rights Watch so long ago.

This report asserts, and the *Suppression Ruling* underscores, that these conditions, interrogation techniques and renditions cannot be categorised as discrete events bearing separate liability but must be considered as part of an overarching CIA-designed, transnational regime of torture, cruel, inhuman and degrading treatment, with each jurisdiction making a material and essential contribution to the harm caused. Mr al Baluchi and his fellow detainees were subjected to a continual state of conditioning aimed at producing compliance and cooperation over many years, which *included* transfers and fluctuating states of amenity, designed to perpetuate uncertainty, reliance and the provision of information (with little care about the accuracy or authenticity of the intelligence provided).²⁵

In creating and carrying out this program, the US *and* the host countries that enabled, cooperated in and contributed to the program breached their obligations under international law and domestic law.²⁶ It is imperative that the states complicit in RDI program are held accountable for their role in the torture and cruel, inhuman, and degrading treatment of CIA detainees in the wake of 9/11 and, specifically for this report – for the harm caused to Mr al Baluchi.

III. BACKGROUND

A. CIA Programs: Retention, Detention and Interrogation

Following the 9/11 attacks, under expansive new counterterrorism powers the CIA established interconnected programs and techniques aimed at finding, detaining and extracting intelligence from suspected terrorists, in the name of retribution and national security. The RDI program was initiated under President George W Bush’s covert action memorandum to ‘capture and detain persons who pose a continuing, serious threat of violence or death to U.S. persons and interests or who are planning terrorist activities’.²⁷ The RDI program included the establishment of secret prisons, or black sites, in various locations around the world with cooperation from local authorities. Distinctions were also drawn between medium and high

²⁵ See generally, *Suppression Ruling* (n 3); US Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation* (Redacted Report, 3 December 2014) (‘Senate Report’).

²⁶ Prohibitions on torture under United States law: *Detainee Treatment Act of 2005*, 42 USC § 2000dd; 18 USC §2340A. Lithuanian law: *Constitution of the Republic of Lithuania*, arts 20, 21, 22; *Lithuanian Criminal Code*, art100 (as in force until 30 March 2011), 146, 291, 292. Romanian law: *Romanian Criminal Code*, art 282 (art 267 of the old Criminal Code).

²⁷ *Suppression Ruling* (n 3) 12.

value targets and detainees, determined by the quality of intelligence the CIA believed each target possessed.²⁸ Mr al Baluchi was deemed a ‘high-value’ target (‘HVD’).²⁹

For the purposes of the RDI, new methods of interrogation were developed, called Enhanced Interrogation Techniques (‘EITs’). The EITs were deployed alongside ‘standard’ interrogation techniques to extract information from alleged terrorists detained in the ‘black sites’ through a combination of physical and psychological ill-treatment.³⁰ Some of the EITs approved by the CIA for use on the detainees include:³¹

- **Waterboarding**, a process of pouring water over a cloth placed over the nose and mouth of the detainee, resulting in suffocation by water;
- **Walling**, which involves slamming detainees against a wall with a collar held around the neck;
- **Cramped Confinement**, where detainees were held in cramped boxes to severely restrict their movement;
- **Stress Positions**, where detainees were stripped naked and held with their arms extended and chained above their heads for periods of two to three days continuously and up to two or three months intermittently;
- **Sleep Deprivation**, which also included standing sleep deprivation, where detainees were kept awake for over 82 hours in stress positions;
- **Exposure to Uncomfortably Cold Environments**, detainees were left in intentionally modified cold cells and interrogation rooms. **Water dousing** was also regularly used, in which cold water was poured over a detainee’s body to elicit a drowning sensation and lower a detainee’s body temperature;

²⁸ The RDI is also variously called ‘HVD Program/Programme’, ‘CIA secret detention programme’ or ‘the extraordinary rendition programme’ in reports and cases. See, e.g., Marty Report 2007 (n 8); *Al Nashiri v Romania*, [22].

²⁹ For detailed accounts of the HVD program, see *Al-Nashiri v Poland* (ECtHR application no. 28761/11, judgment, 24 July 2014), [47]–[68]; *Husayn (Abu Zubaydah) v Poland* (ECtHR, application no. 7511/13, judgment, 24 July 2014) [47]–[69]; *Abu Zubaydah v Lithuania* (ECtHR, application no. 46454/11, judgment, 31 May 2018), [20]–[53], in particular [31]; *Al-Nashiri v Romania* (ECtHR, application no. 33234/12, judgment, 31 May 2018), [22]–[61]; *Al-Hawsawi v Lithuania* (ECtHR, application no. 6383/17, judgment, 16 January 2024) [6]–[55].

³⁰ Standard techniques included, ‘but were not limited to, the use of isolation, sleep deprivation for limited periods, reduced caloric intake, deprivation of reading material, use of loud music or white noise, and the use of diapers for limited periods.’ *Suppression Ruling* (n 3), 13 (n 45).

³¹ The techniques used at black sites called ‘EITs’ are explained in detail in the Senate Report (n 25).

- **Forced Shaving**, detainees' heads and notably, their beards, were forcibly shaved;³²
- **Attention Grasp**, physical force in which the interrogator grasps the detainee with their hands on both sides of the collarbone and draws the detainee in their direction in quick motion.

The EITs formed part of the holistic RDI program designed by CIA contract psychologists, Dr James Mitchell and Dr Bruce Jessen,³³ which was '*more coercive than the techniques previously used by the CIA*'.³⁴ The RDI program used a long-term 'conditioning strategy' that exposed the detainees to 'interrogation' and 'debriefing' phases, which cumulatively 'trained' detainees to divulge information and confessions in return for less harsh treatment and more amenities. As signposted in the program's name, the transfer of detainees to other locations formed an integral part of the RDI conditioning nexus. This along with changing conditions, fluctuating access to 'privileges' such as clothing or exercise, and oppressive isolation that ensured detainees were completely reliant on the US government officials assigned to their interrogation and debriefing, meant that detainees, especially Mr al Baluchi, were in a constant state of uncertainty and vulnerability.³⁵

What follows summarises his factual history insofar as it is currently known:

B. Ammar al Baluchi: Personal History

Mr al Baluchi was born in Kuwait on 29 August 1977, the sixth of eight siblings. As a child he lived in Kuwait until his family moved to Iran in around 1990. He was a person who loved education and learning. In 1996, Mr al Baluchi moved to Karachi, Pakistan and completed comprehensive computer studies. In 1998, Mr al Baluchi relocated to Dubai, UAE, where he worked as a computer specialist for a computer services/technology company for three years.

³² The CIA sometimes presented shaving as 'for security and hygiene purposes', see Ibid (n 25), 429. However, it must be noted that forced shaving occurred in the broader context of religious rights denial by, for example, restricting access to the Koran and manipulation of prayer times and direction, and was calculated to undermine the detainee's personal and religious dignity. See: Geoff Loane, ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody' (Report, February 2007), s 1.3.11 (forced shaving) and 20 (religious rights denial) ('ICRC Report').

³³ Drs Mitchell and Jessen formed a business based on their CIA contracting and were paid over US\$81 Million for their work on the RDI program. It is also reported that they actively took part in interrogating and torturing detainees, and that they had no previous experience with interrogations, counter terrorism, or any relevant cultural or linguistic experience. The CIA subsequently indemnified the psychologists from legal liability arising from the program and as at 2014 had paid out more than US\$1 Million as a result. See, eg, Senate Report (n 25), 11; *Suppression Ruling* (n 3), 14; *Salim v Mitchell* (9th Cir, ED Wash, No 15-286, 2016).

³⁴ *Suppression Ruling* (n 3), 13.

³⁵ See generally *Suppression Ruling* (n 3).

Following the closing of the company in 2001, Mr al Baluchi returned to Karachi, Pakistan and primarily remained there until his arrest two years later.³⁶

C. Ammar al Baluchi: Arrest, Detention and Interrogation Timeline

On **29 April 2003**, Mr al Baluchi was captured in **Karachi, Pakistan** by a team of Pakistani rangers and as part of an operation by the Pakistani Intelligence Bureau. He was held for two weeks and subjected to around-the-clock interrogation and violence by the Pakistani authorities.³⁷ Both CIA and FBI agents were present at various times, though documentation of this period is minimal.³⁸

On **15 or 16 May 2003**, the Pakistani authorities transferred Mr al Baluchi into **CIA custody**. During the next three years, Mr al Baluchi was held at five separate CIA black sites in four different countries.

On **15 or 16 May 2003**, Mr al Baluchi was taken to a CIA black site in **Afghanistan**, known as **Location 2** or COBALT.³⁹

On **22 September 2003**, Mr al Baluchi was transferred to a CIA black site in **Romania**, known as **Location 7** or BLACK. During the rendition, he was subject to body cavity check, blindfold, mouth covering, noise suppressors over ears, and shackling. At the site, interrogators were present at the nominal ‘debriefing’ and threatened prisoners, including Mr al Baluchi, with return to the torture site.

On **12 April 2004**, Mr al Baluchi was transferred from Location 7 to a CIA black site in **Morocco**, known as **Location 5**. During the rendition, he was handcuffed, eyes covered and allowed minimal clothing. At the site, Mr al Baluchi was held within earshot of the others being tortured and subjected to constant light.

On **18 February 2005**, Mr al Baluchi was transferred from Location 5 to a CIA black site in **Lithuania**, known as **Location 8** or VIOLET. During the rendition, he was held with flex cuffs, restricted of visual and auditory senses, and made to wear a diaper. At the site, Mr al Baluchi was subjected to constant light, isolation, and time deprivation.

³⁶ Shea Report (n 5) 4-5.

³⁷ Raphael Memo (n 23); *Suppression Ruling* (n 3); Senate Report (n 25), 388.

³⁸ *Suppression Ruling* (n 3), 21.

³⁹ Raphael Memo (n 23); Senate Report (n 25); Ibid.

On **24 March 2006**, Mr al Baluchi was transferred from Location 8 to a CIA black site in **Afghanistan**, known as **Location 9** or BROWN or ORANGE.

On **5 September 2006**, Mr al Baluchi was transferred from Location 9 to **Guantánamo Bay**, Cuba. He was one of 14 ‘high value detainees’ transferred to Guantánamo Bay at this time.⁴⁰ Since then, he has been held at Camp Echo II and under the formal custody of the US Department of Defence. He has now been detained for 22 years. Medical evidence is available to support the need for compensation for the harm he has suffered and continues to suffer.

D. Ammar al Baluchi: Experience of Torture and other abusive treatment

The fact of Mr al Baluchi’s torture is unequivocal. The *Suppression Ruling* confirms in no uncertain terms that Mr al Baluchi was ‘subjected to physical coercion and abuse amounting to torture, and to conditions which constituted cruel, inhuman, and degrading treatment.’⁴¹ He was held incommunicado, a ‘ghost prisoner’, at six CIA black sites for over three years, with no contact with anyone other than RDI personnel.⁴² He did not know where he was, how long he would be held, or what would happen to him once he no longer had value as an intelligence source. He was questioned over 1000 times.⁴³ Mr al Baluchi recalled:

‘Among the many things that were going through my mind was the conviction that I was about to be killed. It was just a matter of when. I was counting every second, every minute, and on many occasions [sic] I thought I was already dead. I had to go through an effort every time, every moment, to know if I was dead or alive.’⁴⁴

The detail of Mr al Baluchi’s experiences of torture and cruel, inhuman, and degrading treatment are set out in the *Suppression Ruling*, in declassified internal documents, and in reports.⁴⁵ This evidentiary material accords with Mr al Baluchi’s own statements and the stories of other CIA detainees, whose experiences have been the subject of ECtHR rulings, which found both Romania and Lithuania responsible for the treatment of detainees at black site

⁴⁰ ICRC Report (n 32).

⁴¹ *Suppression Ruling*, p. 60.

⁴² CIA Inspector General, ‘Report regarding Allegations of Torture by Ammar al Blauchi [extract]’ (Report, undated 2008, declassified in March 2022), 58 (‘CIA Report’); *Suppression Ruling* (n 3), 69.

⁴³ *Suppression Ruling* (n 3), 56.

⁴⁴ Statements of Ammar al Baluchi, c. 2015, 7 (‘al Baluchi statements’).

⁴⁵ See, eg, *Suppression Ruling* (n 3); Senate Report (n 25); CIA Report (n 40); Raphael Memo (n 23); ICRC Report (n 32).

locations in their territories.⁴⁶

An abridged accounting of the torture and cruel, inhuman and degrading treatment to which Mr al Baluchi was subject follows:

(i) Afghanistan – Location 2 or COBALT (May – September 2003)

One senior CIA officer reported that ‘Location 2 was itself an enhanced interrogation technique’.⁴⁷ It was the heart of the RDI program.⁴⁸ It has been described variously as ‘a dungeon’ and ‘like something out of a horror show’ – it had an unpleasant smell that seemed to be amplified by the smell produced by fearful detainees.⁴⁹ A delegation from the Federal Bureau of Prisons stated that they had ‘never been in a facility where individuals are so sensory deprived’.⁵⁰ Similarly, officials from the CIA Rendition Group ‘concluded that the facility’s baseline conditions involved so much deprivation that any further deprivation would have limited impact on the interrogations’.⁵¹

Mr al Baluchi arrived at Location 2 on or around 15 or 16 May 2003. At Location 2, Mr al Baluchi was shackled in a stand-alone concrete box, stripped naked or made to wear only a diaper, fed only once a day, and given a single bucket for toileting but no drainage for disposal.⁵² Amongst the cells he was held in, two were designed for sleep deprivation and all had speakers which piped loud music into the cells at high volume without reprieve. Mr al Baluchi was subjected to extreme isolation and continual darkness.⁵³

On arrival he was interviewed by a CIA psychologist who determined that Mr al Baluchi was ‘minimally cooperative’ and ‘too robust to require his intervention’.⁵⁴ Mr al Baluchi was then interrogated for over four hours. What follows this first interrogation is a well-documented account of torture, beginning with a ‘bath’, which may have involved having his genitals and

⁴⁶ See, eg, al Baluchi statements (n 44); *Abu Zubaydah v Lithuania*; *Al-Nashiri v Romania*; *Al-Hawsawi v Lithuania*.

⁴⁷ *Suppression Ruling* (n 3), 23. Also noting that in 2002, a detainee at Location 2, Gul Rahman died of hypothermia, having been left overnight after being doused in cold water.

⁴⁸ Raphael Memo (n 23), 5; Central Intelligence Agency, ‘Memo: [Redacted] Interview of [Redacted]’ date redacted [Dec 2002], (Document, sourced by American Civil Liberties Union, for *Salim v Mitchell* (ACLU-RDI 6675, Bates no. 1081-1098) on 2 September 2016), 15.

⁴⁹ *Suppression Ruling*, p. 22-23.

⁵⁰ Raphael Memo (n 23), 3 quoting Senate Report (n 25), 60.

⁵¹ *Ibid* 5 quoting Senate Report (n 25), 60–61.

⁵² *Suppression Ruling* (n 3), 23.

⁵³ *Ibid*, 22-23.

⁵⁴ *Ibid*, 24.

anus scrubbed with a brush that would then be used to scrub his mouth, and being placed in the standing sleep deprivation position for 12 hours.⁵⁵ The following day, having been kept nude, without food or being allowed to sleep Mr al Baluchi was interrogated for 2 hours, while nude, hooded and kept standing.

Mr al Baluchi was interrogated using EIT's, which had been approved for use on him: '[He] was shackled and naked, not fed any food, forced to stand, and not permitted to sleep for approximately 82 hours.'⁵⁶ According to Mr al Baluchi, CIA agents '[s]mashed [his] head against the wall repeatedly', 'suspended [him] to the ceiling in a dark cold cell', exposed him to 'water drowning' during which Mr al Baluchi was 'sure they were going to finally kill me'.⁵⁷

CIA documentation shows that Mr al Baluchi was initially tortured using EITs for three and half days. It is known that Mr al Baluchi's key interrogator at this time was 'NX2', an interrogator known for operating outside the boundaries of authorised EITs and having the belief that his job was to 'break' the detainees, so it is possible that torture occurred outside the reported, 'official' conduct. NX2 reportedly also intimidated or attempted to intimidate other RDI personnel, including CIA contract psychologist Dr Mitchell, and had a coterie of 'acolytes' who were trained in his version of EIT usage. These junior interrogators were not only trained by NX2 but were trained *on* Mr al Baluchi. The trainees conducted EITs improperly, excessively and over long periods of time: trainees lined up to practice methods again and again on him until they themselves were too tired to continue.⁵⁸ The US Senate Select Committee's Report of 2014 stated that interrogation of detainees at Location 2 was done by untrained officers used harsh techniques that were outside even the EIT's supposedly authorised, and that there were few formal records of detainees at the site.⁵⁹

At Location 2, Mr al Baluchi was also placed in stress-position kneeling, with the addition of a broomstick placed behind the knees – a very painful factor that could result in knee dislocation.⁶⁰ Other EIT's used on Mr al Baluchi included multiple instances of 'walling' and 'water-dousing'. He was kept in a cell naked, in a standing sleep deprivation position with his hands chained to the ceiling at eye level. He was denied food and water. A CIA report describes

⁵⁵ Ibid, 24-25

⁵⁶ Ibid, 25.

⁵⁷ al Baluchi statements (n 44).

⁵⁸ *Suppression Ruling* (n 3), 24-29.

⁵⁹ Senate Report (n 25), 10.

⁶⁰ *Suppression Ruling* (n 3), 29-30.

the facial and belly slaps used on Mr al Baluchi. An interrogator conceded:

‘[Mr al Baluchi] could have thought the facial and belly slaps were beatings, even though they were approved EITs’⁶¹

and another stated that:

‘a facial slap to someone who is shackled and cannot do anything is ‘beating the crap out of him’ [...] there is no honour in it.’⁶²

After at least 4 days of torture, sleep deprivation, forced nakedness, forced standing and starvation Mr al Baluchi was ‘rewarded’ for some compliance: clothing and a sleeping mat in his cell. During this session he was so sleep deprived that he was falling asleep during the interrogation. A CIA psychologist noted that Mr al Baluchi could be now easily threatened with a return to the sleep-deprived state in order to make him cooperate.⁶³ This marked the beginning of a period of ‘assessment’ and ‘debriefing’ in which his compliance with questioning was tested through further intensive questioning, the provision of further amenities such as solid food, and the constant threat of privilege reversal should he not comply.⁶⁴

Once Mr al Baluchi reached the ‘debriefing’ stage it meant that he was ‘compliant’ enough that physical torture was no longer necessary – ‘the mere threat or inference of physical violence, in addition to built-in cues or reminders’ was determined to be enough to maintain compliance with his interrogators.⁶⁵

In the five months Mr al Baluchi was at Location 2, he was ‘questioned’ approximately 135 times.

(ii) Romania – Location 7 or BLACK (September 2003 – April 2024)

Both the 2007 Marty Report and the judgment of *Al Nashiri v Romania* describe in detail the permission, complicity, and participation of Romania in the CIA’s RDI program.⁶⁶ It is clear

⁶¹ CIA Report (n 40), 17.

⁶² Ibid.

⁶³ *Suppression Ruling* (n 3), 33.

⁶⁴ *Suppression Ruling* (n 3), 34.

⁶⁵ *Suppression Ruling* (n 3), 38.

⁶⁶ See, eg, Marty Report 2007 (n 8), Section IV(i-ii), [201]–[218], *Al Nashiri v Romania* [551]–[552] on CIA ‘operating agreements’ made with Romania to provide black site premises and on state officials that ‘knew about, authorised and stand accountable for Romania’s role’ in the CIA’s secret detention facilities in Romanian territory’.

that Romanian authorities acted cooperatively with the CIA, establishing the black site prison and allowing the CIA to file false flight plans to disguise the extraordinary rendition required to facilitate the RDI program.⁶⁷

Mr al Baluchi was detained in Romania for 7 months. In contrast to the ‘dark place’ of Location 2, Location 7 was a ‘place of sterile, white light’.⁶⁸ He described it as ‘living in a refrigerator’.⁶⁹ The walls were white, the cells had bright light, and white noise played 24 hours a day. While some amenities were provided, such as some clothing, a mattress and a shower once per week, Mr al Baluchi was subject to constant solitary confinement and was not allowed out to exercise. It was also made clear that non-compliance with questioning would result in the meagre ‘privileges’ being revoked or EIT methods again being applied.

It is reported that some prisoners, including Mr al Baluchi, were not physically tortured at this site, but interrogators were certainly present, ‘playing a role that was clearly designed to intimidate’.⁷⁰ By this stage, physical torture was no longer necessary as the presence of interrogators provided an inferred threat that was enough to ensure compliance. It was also enough to engender fear in the detainees: Mr al Baluchi became “‘very, very nervous” during debriefing sessions, rocking back and forth in his chair and with his legs shaking’.⁷¹

The isolation and reliance on personnel continued at Location 7. The site’s own manager was troubled by the effects of long-term isolation on the detainees and felt that the personnel sent to work at the site were of low quality – ‘basically incompetent’ – and the information being procured from the detainees ‘useless’.⁷² Despite this, Mr al Baluchi was questioned almost daily in rooms that were specifically set up to remind him of the torture he experienced at Location 2.

He became increasingly anxious and fearful at Location 7.⁷³ It is clear that Mr al Baluchi was subject to mental torture at this site. He was warned that ‘every day was a test for him and that new people would be talking to him and assessing him’.⁷⁴

⁶⁷ *Al Nashiri v Romania* [134]–[138], [336]–[342], [367]–[393], [519], [562]–[565].

⁶⁸ al Baluchi statements (n 44), 5.

⁶⁹ *Ibid.*

⁷⁰ Raphael Memo (n 23), 8.

⁷¹ Raphael Memo (n 23), 8 quoting CIA Report, [78].

⁷² *Ibid* quoting Senate Report (n 25) 143–144.

⁷³ *Suppression Ruling* (n 3), 45.

⁷⁴ *Ibid*, 44.

According to a report by Dr Charles A. Morgan:

‘[w]ith respect to the formation of fear-based context conditioning, it is irrelevant as to whether the similarity in the confinement spaces or interrogation spaces Mr al Baluchi experienced across the various sites was deliberate and by design. Similarities across sites would only facilitate and enhance the formation of fear based contextual conditioning [...] each re-exposure that was coupled with fear, would serve to strengthen Mr al Baluchi’s fear conditioned memories – and strengthen the fear conditioned response’⁷⁵

The fear-based contextual conditioning and the fear-conditioned responses created therein meant that Mr al Baluchi would, for example, connect the noise of a cell door with fears that ‘the security officers were coming for him’, and other unrelated sounds or activities with immediate fear of being harmed.⁷⁶ He inevitably faced the constant fear that if he failed to ‘comply’, torture would be inflicted on him again.

Mr al Baluchi was questioned at least 167 times during his detention in Romania.⁷⁷

(iii) Morocco – Location 5 (April 2004 - February 2005)

Mr al Baluchi was detained in Morocco, Location 5, for 11 months. Like Location 7, the conditions at the Moroccan black site included 24/7 light and ‘sound masking’. In Morocco, he was given some extra amenities, including a few extra pieces of clothing, some items for prayer, two books, a blanket and a pillow, and was allowed to shower three times a week. He was still subject to absolute isolation and was not allowed to exercise. He was not told where he was or what would be done with him.⁷⁸ Sanitation in the Morocco site was considered poorer than other facilities – the cells had no toilets.⁷⁹

Mr al Baluchi and other detainees reported overhearing another detainee being tortured during the night and over a two-week period. When questioned about it by an interrogator, Mr al Baluchi reported that he was 100 percent sure it was a woman’s voice, and that it had kept him from sleeping and made him feel unwell. He was told it was not a woman.⁸⁰ Mr al Baluchi

⁷⁵ Charles A Morgan, Supplemental Declaration on ‘Creation of an “exploitable state of mind”’ (Expert Report, 5 January 2024) (‘Report of Dr Morgan’).

⁷⁶ *Suppression Ruling* (n 3), 52.

⁷⁷ *Ibid*, 42.

⁷⁸ *Suppression Ruling* (n 3), 45–46.

⁷⁹ CIA Report (n 40), 30.

⁸⁰ *Suppression Ruling* (n 3), 47.

stated:

I spent my days and nights listening to the sounds of others being tortured with the lights always on, not bright, not dim, just on.⁸¹

Mr al Baluchi was subject to constant questioning at Location 5 and additionally, was ‘assessed’ by personnel as to his level of continued compliance or resistance – that is, whether his ‘conditioning’ was still in effect. Officers reported that this was the case and that he gave ‘no active resistance’. It was noted that his access to amenities could be changed as part of a plan to ‘influence his behaviour to a specific end’. A psychological assessment stated that Mr al Baluchi was experiencing anxiety about people coming into his cell and had ‘strong social reassurance needs’.⁸²

Mr al Baluchi was questioned approximately 274 times at Location 5.⁸³

(iv) Lithuania – Location 8 or VIOLET (February 2005 – March 2006)

Mr al Baluchi was also detained at a prison in Lithuania owned and operated by the CIA, referred to as ‘Detention Site Violet’ or ‘Location 8’, from 18 February 2005 to 25 March 2006.

In *Abu Zubaydah v Lithuania*, it was established that Lithuanian authorities actively cooperated with the CIA in a deliberate effort to conceal the transit of CIA rendition aircraft through Lithuanian territory. Between 2002 and 2005, US aircraft entered Lithuanian airspace on at least 29 occasions. Notably, flight N787WH landed at Palanga International Airport on 18 February 2005, and analysis of CIA flight data confirms that Mr al Baluchi was onboard this flight, along with fellow detainees, Abu Zubaydah and Mustafa al-Hawsawi.⁸⁴ It is clear that Lithuania was aware of, involved in, and cooperated with the CIA’s operations on its territory and, therefore, Mr al Baluchi’s transfer in and out of Lithuania.

After his transfer from Morocco to Lithuania Mr al Baluchi and other detainees were given additional personal items to ‘insure [sic] positive motivation and establishment of control’.⁸⁵ Debriefings were also to begin immediately to show the detainees that their overall position had not changed: it was ‘business as usual’. An interrogator reminded Mr al Baluchi that his

⁸¹ Raphael Memo (n 23), 11.

⁸² *Suppression Ruling* (n 3), 48.

⁸³ *Ibid*, 47.

⁸⁴ *Abu Zubaydah v Lithuania* [111]–[131], [174] ; Raphael Memo (n 23), 12.

⁸⁵ CIA Report (n 40), 32.

access to amenities were linked to his behaviour.⁸⁶

The Lithuanian facility was described as better than the other black sites, as it was used as a place for continued debriefing and long-term detention.⁸⁷ Nonetheless, it was still designed to evoke memories of previous facilities, according to Mr al Baluchi:

I saw every day the hooks on the floor and the ceiling to remind me of the places before where I was chained to the floor or suspended from the ceiling. It was here that manipulation of time was used to ensure that I never knew when to pray, whether it was night or day or even what day it was on the calendar.⁸⁸

As in Romania, Location 8 was a place of light 24 hours a day and had a PA system outside cells which was used to mask outside noises and conversations. While Mr al Baluchi had access to more amenities at Location 8 due to his continued compliance, he was still not allowed outside, and his cell had no windows. He was kept completely isolated except for RDI staff.⁸⁹

During his detention in Lithuania, Mr al Baluchi became concerned that he was being used an experiment, giving the example that he was afraid to report a pressure sore on his nose from his rendition because he was afraid it was done on purpose to see what his reaction to it would be.⁹⁰ An interrogator at Location 8 described Mr al Baluchi as especially sensitive to both kindness and punishment. Dr Jessen noted that this level of fear after a year and a half in the debriefing phase was unexpected.⁹¹ It is very clear that Mr al Baluchi was constantly in fear – he described being afraid to tell a lie and afraid to tell the truth as he did not know how either would be received. He stated he was terrified of being misunderstood and that the smallest thing could remind him of the early days of interrogation: hearing a cell door open would make him think he was going to be tortured, or strange sounds would make him think he would be harmed.⁹²

Another interrogator reported that Mr al Baluchi was “consumed by the uncertainty of his position” and what would happen to him once his intelligence value was exhausted’.⁹³ Though

⁸⁶ *Suppression Ruling* (n 3), 50.

⁸⁷ CIA Report (n 40) 33-34; Raphael Memo (n 23), 13.

⁸⁸ Raphael Memo (n 23); al Baluchi statements (n 44).

⁸⁹ *Suppression Ruling* (n 3), 49–50.

⁹⁰ CIA Report (n 40), 35–36.

⁹¹ *Suppression Ruling* (n 3), 52.

⁹² CIA Report (n 40), 36–37.

⁹³ *Ibid*, 36.

at Location 8, it was clear Mr al Baluchi retained ‘vivid memories of his earlier interrogations’.⁹⁴ It seems that Mr al Baluchi was trapped in the position of knowing that the interrogators were the only people who could ‘help’ him, while also being terrified of what they may do to him.⁹⁵

Mr al Baluchi was questioned approximately 424 times over 14 months at Location 8.⁹⁶

All prisoners held at Location 8 including Mr al Baluchi, were rendered to Location 9 (Detention Site Brown/Orange) in Afghanistan from Lithuania on 25 March 2006, on two CIA aircrafts.⁹⁷

(v) Afghanistan – Location 9 or BROWN/ORANGE (March 2006 – September 2006)

Location 9 facilities were like those at Location 8. Mr al Baluchi experienced incrementally better amenities at Location 9. For example, the cell lights were dimmed at certain times of the day and he was given unlimited water and food which met basic requirements. He could adjust the temperature in his cell, but it had no windows, and he was still not allowed outside. He was also still isolated from anyone other than RDI staff and was not told where he was or what would happen to him.

Mr al Baluchi remained compliant at Location 9 and his anxiety levels were observed to be consistently high. He retained vivid memories of his past interrogation but had also developed a strong dependency on his interrogators and sought reassurance from them and assistance in coping with his detention.⁹⁸ He was described as ‘easily rattled’.⁹⁹

Mr al Baluchi was questioned 92 times in the 7 months he was at Location 9.

(vi) Rendition to Guantánamo Bay, Cuba (September 2006 – to date)

In September 2006, fourteen ‘HVDs’ including Mr al Baluchi were transferred to Guantánamo Bay and transferred to custody of the US Department of Defense.

⁹⁴ Ibid.

⁹⁵ Ibid, 37; *Suppression Ruling* (n 3), 51.

⁹⁶ *Suppression Ruling* (n 3), 53.

⁹⁷ Raphael Memo (n 23), 15.

⁹⁸ *Suppression Ruling* (n 3), 55 – 56.

⁹⁹ Ibid, 56.

Mr al Baluchi has been held in Camp 7 at Guantánamo Bay for nearly 19 years as at the writing of this report. The *Suppression Ruling* of April 2025 states that the conditions at Camp 7 were markedly similar to those of the black site locations. From the darkness of Location 8, Mr al Baluchi was again returned to a place of 24-hour light.¹⁰⁰ However, the rendition to Guantánamo Bay would give Mr al Baluchi his first contact with a person who was not an agent or official of the US in over 3 years.¹⁰¹

It is now acknowledged that the modest improvements in conditions at Guantánamo Bay were not even remotely enough to ameliorate the effects of the continual ‘conditioning’ – the years of total isolation, physical and mental torture, inhumane and degrading living conditions – he experienced during his CIA detention. The ‘lingering taint of torture’ cannot have been erased by the knowledge that he was no longer in CIA custody but now in the hands of another US government department.¹⁰² In Mr al Baluchi’s own words:

My torturers sent many different people to talk to me, something like 150, at the different prisons I was in [...] I would talk to all of them and tell them whatever they wanted to hear to avoid more pain. The interrogators at Guantánamo prison were the same, just one more set of interrogators with hundreds of questions.¹⁰³

Furthermore, Mr al Baluchi’s physical and mental health conditions have been exacerbated by his detention at Guantánamo Bay.¹⁰⁴

(vii) Rendition treatment and conditions

The forcible and unpredictable transfer of detainees from one black site location to another is a key part of the RDI program. The rendition of detainees served several purposes: not only is it expedient for CIA detainees to be interrogated outside the US¹⁰⁵ but it also creates a sense of uncertainty in detainees which assists in retaining (or amplifying) their conditioning and exploitability. Detainees were subject to inhumane and degrading treatment not just at black sites but during the rendition process. During each transfer Mr al Baluchi was subject to treatment such as body cavity searches, blindfolding, mouth covering, diapering and strapping

¹⁰⁰ Ibid, 61.

¹⁰¹ Ibid, 62.

¹⁰² Ibid, 90, 105.

¹⁰³ al Baluchi statements (n 44), 9.

¹⁰⁴ Dr Stephen Xenakis, Assessment of Ammar al Baluchi (Expert Report, 26 May 2016); *Suppression Ruling* (n 3) [91]–[105].

¹⁰⁵ 2006 Marty Report (n 16), 11-15.

to the floor of the plane for the duration of the flight.¹⁰⁶

It has been held by the ECtHR that the transfer of detainees is a breach of human rights obligations both due to the fact that the rendition procedures formed part of the nexus of torture, and cruel, inhumane, and degrading treatment, and because detainees were allowed to be transferred from the territories despite the real and foreseeable risks that they would be denied justice and may be subjected to the death penalty following a US military trial.¹⁰⁷

IV. CAUSATION & CULPABILITY

It is established conclusively and beyond reasonable doubt that Romania and Lithuania hosted CIA black sites on their territories and that the states were aware of the nature and purpose of the CIA RDI program conducted at those locations.¹⁰⁸

When a state contributes to extraordinary rendition, its responsibility hinges on its involvement, knowledge, and actions concerning the program. This issue has been addressed by the ECtHR in a series of judgments delivered between late 2012 and early 2024 involving Romania, Lithuania, Poland, Italy, and North Macedonia.¹⁰⁹

These states are found responsible for their essential contribution to the treatment of the detainees. The Court framed the responsibility as ‘complicity’, a notion codified in international law by the UN International Law Commission.¹¹⁰ On this basis, Romania and Lithuania are responsible for aiding and assisting the US in the commission of wrongful acts.¹¹¹

¹⁰⁶ See, eg, *Suppression Ruling* (n 3), 41; Raphael Memo (n 23), 6, 10, 12.

¹⁰⁷ See, eg, *Abu Zubaydah v Lithuania*; *Al Nashiri v Romania*.

¹⁰⁸ To establish a state’s responsibility for the victimisation of Mr al Baluchi, the standard of proof is ‘beyond reasonable doubt’. However, the ECtHR has stressed that for state responsibility, this has a distinct and independent meaning and should not automatically be equated with the standard in criminal law. Rather, ‘proof may follow from the co-existence of sufficiently strong, clear and concordant inference or of similar un rebutted presumptions of fact’. See *Gäfgen v Germany* (ECtHR, application no. 22978/05, 1 June 2010) [92]; *El-Masri v the Former Yugoslav Republic of Macedonia* (ECtHR application no. 39630/09, 13 December 2012) [151] (‘*El Masri*’) (‘it has never been [the ECtHR’s] purpose to borrow the approach of the national legal systems that use [the ‘beyond reasonable doubt’] standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States’ responsibility under the Convention.’). See also *Al Nashiri v Romania* information note.

¹⁰⁹ *El-Masri*; *Husayn (Abu Zubaydah) v Poland* (ECtHR application no. 7511/13, 24 July 2014); *Al Nashiri v Poland* (ECtHR application no. 28761/11, 24 July 2014); *Nasr and Ghali v Italy* (ECtHR application no. 44883/09, 23 February 2016); *Abu Zubaydah v Lithuania*; *Al Nashiri v Romania*; *Al-Hawsawi v Lithuania*.

¹¹⁰ *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, Yearbook of the International Law Commission 2001, Vol. II(2), p. 27.

¹¹¹ *Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN Doc A/Res/56/83 (12 December 2001) as corrected by UN Doc A/56/49 (Vol I)/Corr.4.

Meanwhile, the cooperation was provided *knowingly and intentionally* to facilitate the overall rendition program. Given the publicly available information and the scale of the program, it is inconceivable that Romania and Lithuania was unaware of the nature and purposes of the CIA's activities.¹¹²

In *Abu Zubaydah v Lithuania*, the ECtHR found that Lithuanian authorities knew that the CIA operated on Lithuanian territory, a detention facility to secretly detaining and interrogating terrorist suspects captured within the 'war on terror' operation by the US authorities.¹¹³ Additionally, the court found that the applicant had established beyond a reasonable doubt that Lithuania not only ought to have known but did know of the nature and purposes of the CIA activities in the country.¹¹⁴ Moreover, the evidence showed that Lithuanian authorities provided 'cooperation and support' for the detention program and that, in appreciation, were offered and accepted financial reward from the US.¹¹⁵

In *Al-Nashiri v Romania*, the ECtHR found that Romania had participated in the ill-treatment and incommunicado detention of the Applicant by way of their agreement and provision of facilities to the CIA. Moreover, the Applicant's torture and secret detention, and his transfer despite risks of further torture, isolation, and death penalty can be attributed to Romania because the acts occurred on Romanian territory with the 'acquiescence and connivance' of the Romanian authorities.¹¹⁶ Additionally, Romania had a responsibility to positively prevent such acts on its territory and failed to do so.¹¹⁷

A. Applicable Legal Frameworks

Lithuania and Romania both criminalise this conduct under domestic law.¹¹⁸ They are also bound by the international and regional treaties underpinning the illegality of extraordinary renditions and torture, in particular the ICCPR, ECHR, and UNCAT.¹¹⁹

¹¹² See: *El-Masri* [218].

¹¹³ *Abu Zubaydah v Lithuania* [532].

¹¹⁴ *Abu Zubaydah v Lithuania* [576].

¹¹⁵ *Abu Zubaydah v Lithuania* [572].

¹¹⁶ *Al Nashiri v Romania* [458]–[460].

¹¹⁷ *Al Nashiri v Romania* [459].

¹¹⁸ See, eg, *Romanian Criminal Code*, art 282 (art 267 of the old Criminal Code); *Constitution of the Republic of Lithuania*, arts 20, 21, 22; *Lithuanian Criminal Code*, arts 100 (as in force until 30 March 2011), 146, 291, 292.

¹¹⁹ Arbitrary detention: ICCPR, art 9(1); ECHR, art 6. Torture and CIDT: ICCPR, art 7; ECHR, art 3; UNCAT. ICCPR entered into force for Romania in 1974 and for the newly independent Lithuania in 1991. Romania

Their compliance of the ICCPR is overseen by the UN Human Rights Committee ('HRC'), which has the authority to review individual complaints.¹²⁰ Both states also accepted the UNCAT's monitoring regime and recognise the competence of the UN Committee Against Torture to receive individual communications.¹²¹ Critically, both states are subject to the binding jurisdiction of the European Court of Human Rights.¹²² ECtHR judgments obligate them to not only pay any ordered compensations but also to take measures to ensure non-repetition, by, for example, conducting investigations or overhauling laws.¹²³ The Council of Europe's Committee of Ministers shall supervise the execution of the Court's rulings.¹²⁴

In addition, both Lithuania and Romania engage in the Universal Periodic Review carried out by the UN human rights bodies and procedures.¹²⁵

Ultimately, each state had knowledge of the circumstances of the said wrongful acts and the acts in question would be wrongful if committed by themselves and had they actively participated in the deprivation of liberty.

B. Romania and Lithuania's responsibility for the treatment of Mr al Baluchi

The relevant acts against Mr al Baluchi were carried out on the territories of Romania and Lithuania. These two states made essential contribution to the commission of the violation. They not only 'created the conditions for [the rendition program] to happen and made no attempt to prevent it from occurring', but also provided the assistance that was 'the necessary condition for the effective operation of the CIA secrete detention facilities', specifically Locations 7 (Black) and 8 (Violet) which held Mr al Baluchi.¹²⁶

Given the continued secrecy and lack of comprehensive independent investigation into the treatment of Mr al Baluchi, the evidence as to the direct roles of each state may not yet be fully available for this report. For instance, it is not entirely clear whether Mr al Baluchi was tortured

acceded to the UNCAT in 1990, and Lithuania in 1996. Both states have ratified the ECHR: Romania in 1994 and Lithuania 1995.

¹²⁰ Lithuania acceded First Optional Protocol to the ICCPR in 1991, and Romania in 1993.

¹²¹ UNCAT, art 22.

¹²² ECHR, art 32.

¹²³ ECHR, art 46.

¹²⁴ ECHR, art 46.

¹²⁵ See, eg, *Human Rights Council Report of the Working Group on the Universal Periodic Review (Lithuania)*, UN Doc A/HRC/19/15 (19 December 2011); *Human Rights Council Report of the Working Group on the Universal Periodic Review (Romania)*, UN Doc A/HRC/38/6 (5 April 2018).

¹²⁶ *Al Nashiri v Romania* [677], [690]; *Abu Zubaydah v Lithuania* [642], [656].

while detained in Lithuania and Romania. Nevertheless, the existing information is sufficient to establish the responsibility of these two states.

First and foremost, torture is not limited to that of the physical form. There is an inherent *psychological* harm to an arbitrary, unacknowledged, prolonged, incommunicado detention in secret places. Such detention can, in itself, constitute a form of cruel, inhuman or degrading treatment.¹²⁷ Mr al Baluchi undoubtedly endured this on the territory of Lithuania and Romania, which shall be held accountable accordingly.

Further, the absence of conclusive proof that Mr al Baluchi was *physically* tortured in Lithuania and Romania does not absolve the two states of responsibility of torture. It is clear that the CIA's RDI program was designed to be a multi-faceted process of *conditioning*, a process that is 'intimate' and uniquely degrading because of the meticulously curated features of: (i) careful physical conditioning of detainee and cell; (ii) permanent surveillance; (iii) mundane routines becoming unforgettable memories; and (iv) exertion of physical and psychological stress.¹²⁸ Any pause in physical torture at the Lithuanian and Romanian black sites must be understood as a calculated part of this holistic conditioning. It can neither be construed as Lithuania or Romania's stance against torture, nor as their refusal to condone or participate therein.¹²⁹

Indeed, both Romanian or Lithuanian cooperated in facilitating the preparation and execution of the CIA's rendition, secret detention, and interrogation operations.¹³⁰ Concretely, their cooperation encompasses providing premises, logistics, services, and securing the areas for CIA operations, as well as the transportation of CIA teams with Mr al Baluchi on land.¹³¹

In particular, the Romanian and Lithuanian authorities would have been aware of the transfer of detainees in and out of their territories. For all practical purposes, it is plainly implausible that personnel responsible for security arrangements, reception of flights, and on-land transit would not have witnessed at least some elements of Mr al Baluchi's transfer, such as the unloading of a blindfolded and shackled passenger from the planes arriving at the CIA black

¹²⁷ See, e.g. *Torture and other cruel, inhuman or degrading treatment or punishment*, GA Res 60/148, UN Doc A/RES/60/148 (16 December 2005).

¹²⁸ Marty Report 2007 (n 8), [242].

¹²⁹ If 'EITs' were deployed and Romanian and/or Lithuanian officials were present during the offending acts, the state would rise beyond a mere complicit and become indirectly responsible due to the acquiescence or connivance, even though the offending acts were performed by foreign agents. See *El-Masri*, para. 206.

¹³⁰ *Al Nashiri v Romania* [676]–[677]; *Abu Zubaydah v Lithuania* [576]; *Al-Hawsawi v Lithuania* [161] and [215].

¹³¹ *Al Nashiri v Romania* [589]; *Abu Zubaydah v Lithuania* [576].

site.¹³² Further, both states assisted in disguising the actual flight routes of CIA rendition aircraft by validating incomplete or false flight plans.¹³³ In other words, without the active cooperation from the Romania and Lithuania authorities, the deprivation of Mr al Baluchi's liberty and his ill-treatment could not have occurred.¹³⁴

When an individual suffers harm as Mr al Baluchi did on their territories, strong presumptions of fact arise. The burden then shifts to the Lithuanian and Romanian authorities to provide a 'satisfactory and convincing explanation' as to their lack of factual and constructive knowledge.¹³⁵ If absent, inferences can be drawn towards these states' acquiescence, connivance, or active facilitation of Mr al Baluchi's victimisation.¹³⁶ Simply put, ignorance of facts – wilful or otherwise – is not an adequate defence.

C. Failure to Effectively Investigate

Romania and Lithuania have also failed to *effectively* investigate the treatment of Mr al Baluchi. This implicit obligation is imposed by the same human rights treaties that protect individuals against arbitrary detention and torture. To fulfil this obligation, the investigation must be prompt, thorough, and independent from the executive.¹³⁷ Authorities must make a serious attempt to find out what happened and take all reasonable steps available to secure the evidence.¹³⁸ Both countries have had ample opportunity to investigate, acknowledge their role in Mr al Baluchi's treatment and extraordinary rendition and to take responsibility for it. The release of the *Suppression Ruling* in April 2025 is yet another opportunity for each state to take action in terms of investigation and accountability.

(i) Romanian inquiries

On 21 December 2005, Romania established a Senate Inquiry Committee to investigate the claims of CIA detention facilities or flights on Romanian territory. However, the Committee reached a sweeping conclusion rejecting any such possibility despite extensive evidence to the

¹³² *Al Nashiri v Romania* [578]; *Abu Zubaydah v Lithuania* [564].

¹³³ *Al Nashiri v Romania* [562]–[566]; *Abu Zubaydah v Lithuania* [559]–[561].

¹³⁴ See *Rantsev v Cyprus & Russia* (ECtHR application no. 25965/04, 7 January 2010), [321].

¹³⁵ *El-Masri*, [152].

¹³⁶ *Ibid*; *Al Nashiri v Poland* [393]–[400]; *Abu Zubaydah v Poland* [393]–[400]; *Nasr and Ghali v Italy*, [219]–[220]; *Al Nashiri v Romania*, [490]–[498]; *Abu Zubaydah v Lithuania*, [480]–[488].

¹³⁷ *El-Masri*, [183]–[184].

¹³⁸ *Ibid*, [183].

contrary from valuable and credible sources.¹³⁹ Clearly, the inquiry was an ‘exercise in denial and rebuttal’ with no ‘impartial consideration of the evidence’.¹⁴⁰ In *Al Nashiri v Romania* the Court pointed out that Romanian Senate Inquiry Committee would have had at its disposal the same materials as the international inquiry bodies who were investigating the CIA program in the on their territory at or around the same time.¹⁴¹ Therefore, it is not surprising that Romania’s denial has been characterised as, not just premature and superficial,¹⁴² but a deliberate cover-up with no genuine inquisitiveness.¹⁴³

Romania’s failure to comply with the requirement of a prompt, thorough and effective investigation amounts to a continuing violation of Mr al Baluchi’s rights.¹⁴⁴

(ii) Lithuanian inquiries

On 5 November 2009, the Lithuanian Parliament (Seimas) launched a parliamentary investigation into the allegations of transportation and confinement of individuals detained by the CIA on Lithuanian territory.¹⁴⁵ In *Abu Zubaydah v Lithuania*, the court noted that while the findings of the inquiry were adopted by the Lithuanian government, and an investigation was launched, this was discontinued in 2011, despite appeals from NGOs and the European Parliament to resume proceedings and consider emerging evidence.¹⁴⁶

After the US Senate Report was declassified in 2014, the Lithuanian Prosecutor General re-opened the investigation and requested assistance from US authorities in accessing declassified documents and information.¹⁴⁷ On 6 February 2015 this investigation was joined with ‘investigation No. 01-2-000-15-14 concerning Mr Mustafa Ahmed al-Hawsawi and unlawful

¹³⁹ Marty Report 2007 (n 8), [228].

¹⁴⁰ Ibid [230].

¹⁴¹ *Al Nashiri v Romania*, [645]

¹⁴² *Al Nashiri v Romania*, [645] citing Giovanni Claudio Fava, ‘Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners’ (Report, A6-0020/2007, 26th January 2007).

¹⁴³ Marty Report 2007 (n 8), [228].

¹⁴⁴ *Al Nashiri v Romania*, [741].

¹⁴⁵ *Resolution of the Seimas on the Findings of the Parliamentary Investigation by the Seimas Committee on National Security and Defence Concerning the Alleged Transportation and Confinement of Persons Detained by the Central Intelligence Agency of the United States of America in the Territory of the Republic of Lithuania*, Resolution No XI-659 of the Seimas of the Republic of Lithuania, adopted 19 January 2010 (‘Seimas Inquiry’).

¹⁴⁶ Ibid; *Abu Zubaydah v Lithuania*, [611]–[617].

¹⁴⁷ Investigation No. 01-2-00016-10 under art 228 §1 (abuse of office) of the Lithuanian Criminal Code; *Abu Zubaydah v Lithuania*, [207]. Note that the US refused Lithuania’s request for information and also refused a second request by the Prosecutor in August 2018, which was made after the *Abu Zubaydah* judgment. See: *Al-Hawsawi v Lithuania* [99].

transportation of persons across the State border.’¹⁴⁸ However, to date, there has been no outcome from that investigation, charges or otherwise. Despite the fact, in January 2024, the ECtHR found that Mr al-Hawsawi’s rights had been violated by the Lithuanian state for its complicity in the CIA’s RDI program on its territory.

In relation to Mr al Baluchi, Lithuania has not investigated or sought to acknowledge his suffering nor the causes of his suffering, despite clear evidence from ECtHR jurisprudence and the many reports produced since 2006 that CIA detainees were subject to torture and cruel, inhuman and degrading treatment on Lithuanian territory. Given Lithuania’s lack of movement on its investigations since 2015, and in the face of multiple ECtHR judgments compelling them to act, it seems very unlikely that they will do so of their own volition.

V. HARM CAUSED

Mr al Baluchi has endured physical and psychological harm, loss of liberty, and other sufferings arising from his unlawful detention and ill-treatment. For example, while in CIA custody between 2003 and 2006, including on Lithuanian territory, Mr al Baluchi suffered ongoing major psychological issues, including anxiety symptoms due to the stress of being in custody, intrusive thoughts of imagined potential mistreatment, and a diminished capacity to cope with sustained confinement.¹⁴⁹ This is notwithstanding the physical effects of actual torture, inhuman and degrading treatment, including, extended sensory deprivation and overload, harsh temperatures, dietary manipulation, continuous shackling, sleep deprivation, beatings to the point of unconsciousness, excruciating stress positions, and various forms of water torture.

VI. OTHER STATES

Romania and Lithuania are by no means the only states complicit in the CIA’s program of extraordinary rendition. Mr al Baluchi himself was detained in and transferred with the assistance of Pakistan, Afghanistan, Morocco and, of course, the United States. Rendition flights commonly zig-zagged across participating territories to disguise flight plans. It is also certain that a black site was operated in Poland,¹⁵⁰ and there is evidence that at least 54

¹⁴⁸ An offence defined in art 292 of the Lithuanian Criminal Code, Ibid [208].

¹⁴⁹ See, eg, Report of Dr Morgan (n 75); *Suppression Ruling* (n 3); Raphael Memo (n 23).

¹⁵⁰ *Al Nashiri v Poland* (no. 28761/11), 24 July 2014, para. 490.

countries have participated in the rendition program, either by allowing CIA aircraft to land or pass through their territories, by arresting and transferring detainees to CIA custody or by hosting black sites at either CIA or government-run locations in their territory.¹⁵¹ These states must acknowledge their role in the extraordinary rendition and treatment of detainees like Mr al Baluchi.

VII. CONCLUSION

The violations documented in this report occurred over two decades. Yet their consequences remain immediate for both for Mr al Baluchi and for the integrity of international legal norms. Pursuing accountability, as urged in this report, is essential to upholding the rule of law and advancing international human rights legal justice. The ‘war on terror’ has provided a blueprint for states to circumvent law and due process under the guise of national security. The reasons for Mr al Baluchi’s ongoing detention are significantly opaque. It is now clear that any admissions made by him were made under extreme duress and are unable to be used against him in court. He is suffering continuing harm, and he is, at the very least, entitled to compensation from Lithuania and Romania for the psychological and physical effects of CIA custody, along with the ongoing symptoms he suffers because of his permanent diagnoses.

Ultimately, Mr al Baluchi should be released, compensated and properly medically treated.

¹⁵¹ Natalie Nougayrède, ‘CIA torture report: Europe must come clean about its own complicity’ (Online News, The Guardian, 9 December 2014) < <https://www.theguardian.com/commentisfree/2014/dec/09/cia-torture-report-europe-complicity-britain>>; Senate Report (n 25).