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Trump administration invokes “state secrets” in CIA torture case

By Barry Grey

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On Wednesday, the Trump administration filed a brief invoking the "state secrets" privilege in an attempt to block current and former Central Intelligence Agency officials from testifying in a civil suit brought by former detainees who were subjected to torture at a secret CIA interrogation center, or "black site," in Afghanistan.

The motion, filed by the Trump Justice Department based on an affidavit by CIA Director Mike Pompeo, also seeks to quash the release of portions of 172 internal CIA documents.

Among the CIA officials the government is seeking to shield from being forced to testify is Gina Haspel, named by President Trump to the post of deputy CIA director and confirmed by the US Senate. Haspel, a 32-year veteran of the agency, ran a CIA torture site in Thailand in 2002, during the Bush administration, where she oversaw the torture of Abu Zubaydah and Abd al-Rahim al-Nashiri, both of whom were repeatedly waterboarded.

She also gave the order in 2005 to destroy videotapes of the interrogation sessions at the Thai site.

The administration, headed by a man who boasts of his enthusiasm for torture, including waterboarding, intervened in the case of *Salim v. Mitchell*, which is underway in Federal District

Court in Spokane, Washington under the purview of Judge Justin Quackenbush. The suit was filed in 2015 by the American Civil Liberties Union (ACLU) on behalf of Suleiman Abdullah Salim and Mohamed Ahmed Ben Soud, who survived a savage regime of CIA torture, and the family of Gul Rahman, who died at the Afghan site in 2002 after being left naked and shackled to a wall in the freezing cold.

The plaintiffs are suing two military psychologists, James E. Mitchell and John "Bruce" Nessen, who were contracted by the CIA to devise the torture program and help administer it. The two men made millions of dollars for their efforts.

Salim, a Tanzanian who was apparently a victim of mistaken identity, and Soud, a Libyan, claim they suffered lasting psychological and physical damage as a result of their treatment at the hands of the CIA.

In an article posted on its website Thursday, the ACLU wrote: "In accordance with detailed protocols that two CIA-contracted psychologists based on experiments on dogs, the men [Salim and Soud] were confined in dungeons, hung by their arms from the ceiling for days, stuffed into coffin-like boxes, and kept naked, degraded and starved." The ACLU adds that the two men were subjected to waterboarding and prolonged sleep deprivation.

An article published last month by the *Dissenter* gives a graphic illustration of the types of techniques developed and implemented by Mitchell and Nessen, including what they called "learned helplessness." Describing the treatment of Salim after he was abducted, the publication writes:

"The lawsuit alleges the CIA immediately established conditions for 'learned helplessness' by cutting off all of Salim's clothes and then forcibly inserting 'an object into his anus,' causing Salim 'excruciating pain.' They took photos, put Salim in a diaper, pants, and a short-sleeved shirt. He then had earplugs stuffed in his ears, a hood placed over his head, and a pair of goggles and headphones placed over his hood and earplugs. Then, he was cuffed and shackled. He was 'disoriented and terrified' and brought on board an aircraft, where he was chained to the floor and flown for at least eight hours."

Up to now, no case filed by CIA torture victims has survived in the US courts, largely as a result of state secrets motions filed by the Bush and Obama administrations to get the lawsuits tossed out.

The Obama administration, which intervened repeatedly to shut down anti-torture suits and shield Bush administration officials who oversaw and carried out the program, decided against filing a state secrets motion in the current case, in part because the information on which the plaintiffs have based their case is already in the public domain.

The ACLU lawyers are not asking for access to classified information, basing themselves instead on the declassified (and highly redacted) executive summary of the Senate Intelligence Committee report on CIA torture published in December of 2014. That report discusses both the

torture of Salim and Soud and the key role played by Mitchell and Nessen in the “enhanced interrogation” program.

It is the defendants, Mitchell and Nessen, who are seeking the testimony of Haspel and former CIA officials implicated in the torture program, including the agency’s former top lawyer, John Rizzo, the former head of its Counterterrorism Center, José Rodriguez Jr., James Cotsana, a former CIA officer who the defendants claim oversaw their activities, and Cotsana’s successor as chief of special missions of the CIA’s counterterrorism center and chief of the agency’s renditions group, who has not been identified.

The judge previously approved requests for oral depositions by Rizzo and Rodriguez, but the CIA refused to allow Cotsana to testify.

The defense has also asked for dozens of documents from the CIA and the Justice Department. Its contention is that Mitchell and Nessen worked under the authority and supervision of the CIA and they should therefore be protected, as government officials, from civil liability.

In invoking state secrets, the administration has not demanded that the case be shut down, limiting itself instead to seeking to block testimony from CIA officials and prevent the release of internal documents. However, the defense has indicated that it might move for dismissal of the case on the grounds that it is being prevented by the government’s intervention from mounting an effective case.