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December 9, 2007

Rt. Hon. David Milliband
Secretary of State
Foreign & Commonwealth Office
c/o House of Commons
1 Parliament Street
London SW1A 2NE
By Fax & Mail: 020 7 219 4780

*Re: Photographic evidence of the
Use of Torture Evidence against Binyam Mohamed*

Dear Mr. Milliband,

I am writing concerning Binyam Mohamed, the British resident from Kensington who the U.S. apparently plans to continue holding in Guantanamo Bay, and who I am here representing in his *habeas corpus* proceedings.

I should say first that I appreciate your government's support for Reprive's clients in Guantanamo, and I know that your colleagues are working to secure justice for Mr. Mohamed. There are several matters of urgent concern but this is so fundamental that it merits a separate letter.

As you know, the only purported basis for the US holding Mr. Mohamed is an allegation that he is an ('illegal') enemy combatant. Five and a half years after his initial seizure, he is not currently charged in a military commission (the proceeding deemed 'kangaroo courts' by Lord Justice Steyn and properly rejected categorically as unfair by your government), and he has never been offered a fair trial.

As you are aware, Mr. Mohamed was rendered to Morocco by the Central Intelligence Agency and tortured for 18 months in a way that was medieval. There can be no rational dispute that this is true. We have the CIA flight records which precisely match Mr. Mohamed's version of events, he has nothing to do with Morocco, and he was not taken there by the CIA for a Club Med vacation.

Mr. Mohamed was supposedly found to be an “enemy combatant” at a Combatant Status Review Tribunal (CSRT) in 2004. These are proceedings that fall even further short of basic due process than the military commissions – holding people based on secret allegations, and admitting torture evidence. He strongly repudiates this finding as false.

I have been privy to materials that allegedly support the finding that Mr. Mohamed should be held, and while I cannot discuss some here (due to classification rules), I can state unequivocally that I have seen *no evidence of any kind against Mr. Mohamed that is not the bitter fruit of torture.*

In this regard, one, the U.S. has not complied with its most basic obligations under the Convention Against Torture. Under Article 15, the United States “shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” *United Nation Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, art. 15, Apr. 18, 1988, Sen. Exec. Rpt. 101-30, 1465 U.N.T.S. 85 (ratified Oct. 21, 1994).

The US concedes that this applies to any CSRT finding. “Article 15 of the Convention is a treaty obligation of the United States, and the United States is obligated to abide by that obligation in Combatant Status Review Boards and Administrative Review Boards.” U.S. Dep’t. of State, Legal Advisor John B. Bellinger III, *U.S. Delegation Oral Responses to Article 15 Committee Questions*, Geneva, Switzerland (Question 42) (May 5, 2006)(available at <http://www.state.gov/g/drl/rlsl>).

Given the opportunity, we can prove that the evidence was the fruit of torture. Indeed, we can prove that a photographic record was made of this by the CIA. Through diligent investigation we know when the CIA took pictures of Mr. Mohamed’s brutalized genitalia, we know the identity of the CIA agents who were present including the person who took the pictures (we know both their false identities and their true names), and we know what those pictures show.

We will be seeking the agents’ prosecution as a party to these savage events. You will have heard in the past week the news of the CIA cover-up, whereby the CIA is destroying photographic evidence of crimes committed in violation of the CAT. Presumably this illegal policy will include destruction of the pictures in Mr. Mohamed’s case.

I am therefore requesting that you urgently make the following representations to the US:

- * One, that they preserve evidence of crimes committed against Mr. Mohamed, as required by law.
- * Two, that they *immediately* comply with the Convention Against Torture by allowing a new CSRT where there are adequate charges, where the evidence is not secret, and where his lawyers are permitted to challenge the torture evidence used against him.
- * Three, that he not be subjected to a military commission procedure that your government has condemned, and that itself violates the CAT.

I am also asking that you seek the assistance of the Attorney General to negotiate directly with the US, as Lord Goldsmith did under identical circumstances with our earlier two British clients, Moazzam Begg and Feroz Abbasi.

I realize how shocking it is that the closest ally of the UK has been committing this kind of crime. I am copying this letter to the US authorities, as it is well past time that these crimes came into the light of day.

I would be grateful for an urgent reply.

Yours sincerely

Clive Stafford Smith

cc. (by e-mail) Simon Mustard, British Embassy
Lt. Col. Yvonne Bradley, USAF
Prof. Joseph Margulies
Hon. Condoleeza Rice, Secretary of State
Hon. Robert Gates, Secretary of Defense