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**IN THE UNITED STATES DISTRICT COURT**

12

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13

**SAN JOSE DIVISION**

14

**BINYAM MOHAMED;  
15 ABOU ELKASSIM BRITEL;  
AHMED AGIZA;  
16 MOHAMED FARAG AHMAD  
BASHMILAH;  
17 BISHER AL-RAWI,**

18

**Plaintiffs,**

19

**v.**

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**JEPPESEN DATAPLAN, INC.,**

21

**Defendant.**

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**Civil Action No. 5:07-cv-02798 (JW)**

**DECLARATION OF CLIVE-STAFFORD  
SMITH IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO THE UNITED STATES'  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, FOR SUMMARY  
JUDGMENT**

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**\* Admitted Pro Hac Vice**

**† Attorneys for and on behalf of Plaintiff BINYAM MOHAMED only**

**++ Attorney for and on behalf of Plaintiff MOHAMED FARAG AHMAD  
BASHMILAH only**

1 I, **CLIVE-STAFFORD SMITH**, of, London, England under penalty of perjury under the  
2 laws of the United States of America, declare as follows, pursuant to 28 U.S.C. § 1746:

- 3
- 4 1. I am co-counsel for Plaintiff Binyam Mohamed in this action and make this  
5 Declaration on his behalf in support of Plaintiffs' Opposition to the United States  
6 Motion to Dismiss, or in the alternative Summary Judgment.
- 7 2. I also represent Mr. Mohamed in habeas corpus proceedings pending before the  
8 district court in the District of Columbia seeking review of his detention by the United  
9 States government at Guantánamo Bay Naval Station, Cuba, and as civilian counsel in  
10 military commissions proceedings that were previously initiated against him.
- 11 3. In my capacity as Mr. Mohamed's counsel, I have met with him at Guantánamo on  
12 numerous occasions. During my many meetings with him, Mr. Mohamed provided  
13 me with a detailed account of his initial detention in Pakistan in 2002; his rendition  
14 from Pakistan to Morocco by the Central Intelligence Agency in 2002; his eighteen  
15 months of arbitrary detention and brutal torture by agents of the Moroccan  
16 government in Tamara prison; his rendition by the CIA to CIA-run prisons in  
17 Afghanistan, including the "Dark Prison" and the Bagram Air Base, and his torture  
18 and other abuse at these facilities; and finally, his transfer from Afghanistan to  
19 Guantánamo. I took copious notes of our conversations and obtained clearance from  
20 the U.S. government to make a typed version of various aspects of these notes public.  
21 Attached hereto as Exhibit A is a true and correct copy of the de-classified account of  
22 Mr. Mohamed's rendition and torture in Morocco and Afghanistan.  
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- 1 4. Mr. Mohammed's detailed and graphic account of his rendition and torture by agents  
2 of the Moroccan and United States' governments has been addressed by numerous  
3 official inquiries at the inter-governmental and national level. On no occasion to my  
4 knowledge has any evidence ever been offered, or come to light, contesting any  
5 aspect of his story.  
6
- 7 5. The European Parliament and Council of Europe both have conducted inquiries and  
8 published reports on the alleged use of European nations by the CIA for secret  
9 detention and unlawful inter-state transfer of prisoners. Through testimony, flight  
10 plans submitted to Eurocontrol, the inter-governmental agency responsible for air  
11 traffic control in Europe, and other information, both regional inquiries substantiate  
12 Mr. Mohamed's account of his rendition from Morocco to Afghanistan.  
13
- 14 6. Based on its examination of flight records, the European Parliament found that Mr.  
15 Mohamed "underwent two 'extraordinary renditions' in the space of 18 months.....";  
16 one from Pakistan to Rabat, Morocco on July 21, 2002, and the second, on January  
17 22, 2004 from Rabat to Kabul, Afghanistan. The European Parliament's report also  
18 notes the admission of "former UK Secretary of State for Foreign and Commonwealth  
19 Affairs, Jack Straw, [...] in December 2005 that UK intelligence officials met  
20 Binyam Mohamed when he was arrested in Pakistan." Attached hereto as Exhibit B is  
21 a true and correct copy of the sections of the European Parliament report relative to  
22 Mr. Mohamed, *available at*  
23 [http://www.europarl.europa.eu/comparl/tempcom/tdip/final\\_report\\_en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf).  
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- 1 7. In its 2006 report, the Council of Europe also corroborates Mr. Mohamed's version of  
2 his rendition. Referencing the same flight records as the European Parliament, the  
3 Council of Europe noted in relation to the second rendition flight that: "The aircraft  
4 N313P, operated on behalf of the CIA, is shown in my official data to have flown  
5 from Rabat to Kabul in the early hours of 22 January 2004. Two days later, as part of  
6 the same circuit, the same plane flew back to Europe and was used in the rendition of  
7 Khaled El-Masri." Attached hereto as Exhibit C is a true and correct copy of the  
8 sections of the Council of Europe report relative to Mr. Mohamed's rendition together  
9 with associated flight records, *available at*  
10 [http://assembly.coe.int/CommitteeDocs/2006/20060606\\_Ejdoc162006PartII-](http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-)  
11 [FINAL.pdf.](http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf)  
12  
13 8. Jeppesen's involvement in Mr. Mohamed's second rendition flight is confirmed by a  
14 telex communication between Jeppesen and its agent in Mallorca, Spain, Mallorcair,  
15 obtained by a Spanish Prosecutor in the course of a criminal investigation in to the use  
16 of Mallorca airport by the CIA as a "staging-post" for CIA rendition flights. In the  
17 telex, Jeppesen requests Mallorcair to provide ground handling services and pay  
18 airport fees for a Boeing business jet registered as N313P from January 25, 2004  
19 through January 27, 2004. Attached hereto as Exhibit D is a link to the true and  
20 correct copy of the telex communication, *available at*  
21 [http://www.ghostplane.net/elmasri.](http://www.ghostplane.net/elmasri)  
22  
23 9. In a statement to Spanish police in the course of the aforementioned criminal  
24 investigation, Mallocair confirmed receipt of instructions from Jeppesen. Attached  
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1 hereto as Exhibit E is a true and correct excerpt of the statement obtained from  
2 Mallocair together with an unofficial English translation thereof, *available at*  
3 <http://www.ghostplane.net/elmasri>.

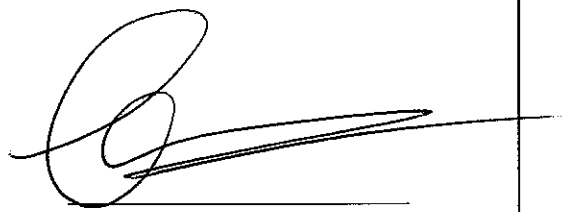
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5 10. Most recently, part of Mr. Mohamed's account of his rendition has been corroborated  
6 by a Parliamentary inquiry in the United Kingdom. In the course of the inquiry,  
7 conducted by the UK Security and Intelligence Committee, the Committee members  
8 "considered whether the UK intelligence and security Agencies had any knowledge of  
9 and/or involvement in, rendition operations (including specific cases), and their  
10 overall policy for intelligence sharing with foreign liaison services (principally the  
11 United States) in this context."

12  
13 11. Specifically, in their consideration of Mr. Mohamed's case, the Committee noted that  
14 "A member of the [UK] Security Service [] interview[ed] [Mr. Mohamed] once, for  
15 approximately three hours, while he was detained in Karachi in 2002" and that "[the  
16 Security Service] were aware of the U.S. plan to transfer him." The Committee  
17 concluded that: "There is a reasonable probability that intelligence passed to the  
18 Americans was used in [Mr. Mohamed's] subsequent interrogation." Attached hereto  
19 as Exhibit F is a true and correct copy of relevant extracts of the Committee's report  
20 dated July, 2007, *available at*  
21 [http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publication](http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/intelligence/20070725_isc_final.pdf)  
22 [s/intelligence/20070725\\_isc\\_final.pdf](http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publication).

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25 I hereby declare under penalty of perjury that the foregoing is true and correct.  
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Executed this 10 day of June 2007.



Clive Stafford Smith