

November 24, 2009

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear Mr. President:

We write to express our support, in the strongest possible terms, for a complete and independent investigation of *all* former U.S. officials allegedly complicit in incidents—or policies—of torture of detainees housed at Guantánamo Bay and elsewhere. We also exhort you to reconsider your administration’s refusal to disclose evidence of torture even in the face of court orders mandating disclosure. More broadly, we write to remind you of the context in which this issue arises, explain why transparency and robust accountability are a strategic national security imperative, and to expose the self-interest of voices counseling against accountability.

You recently received a letter from seven former CIA directors “urg[ing] you to exercise your authority to reverse Attorney General Holder’s August 24 decision to re-open the criminal investigation of CIA interrogations....”¹ We are grateful that you dismissed their self-serving and internally inconsistent diatribe, and instead affirmed “that nobody’s above the law.”²

On the other hand, your actions in other arenas indicate a troubling willingness to sweep torture under the rug, rather than openly address our nation’s regrettable recent history. First, your administration reversed an earlier decision to disclose evidence of torture, and lobbied Congress to secure a legislative exemption entitling the Defense Department to keep that evidence secret.³ Secretary of Defense Robert Gates executed that authority just last week,⁴ as former White House Counsel Greg Craig (the senior official reportedly most responsible for what little progress your administration has made towards accountability) announced his resignation.⁵

Whether committed in the context of “enhanced” or coercive interrogation, extraordinary rendition, or force feeding, any incident of torture or kidnapping violated international law. The

¹ See Letter from Michael Hayden et al. to President Barack Obama (Sep. 18, 2009), *available at* <http://rawstory.com/blog/2009/09/seven-ex-cia-directors-ask-holder-to-drop-torture-probe/>.

² Transcript: Obama on “Face the Nation” (Sep. 18, 2009), *available at* <http://www.cbsnews.com/stories/2009/09/20/ftn/main5324077.shtml>.

³ Daphne Eviatar, *Obama Signs Law Authorizing Suppression of Torture Photos*, Washington Independent (Oct. 29, 2009) (“President Obama initially agreed to release the photos, but changed his mind after consulting with Defense Secretary Robert Gates and others at the Pentagon, who warned the photos would endanger U.S. servicemen in Iraq and Afghanistan. Two federal courts have already heard and rejected that argument....”)

⁴ See Stephen C. Webster, *Secretary Gates Signs Order Barring Release of Torture Photos*, The Raw Story (Nov. 14, 2009) *available at* <http://rawstory.com/2009/11/secretary-gates-signs-order-barring-release-torture-photos/>.

⁵ See Josh Gerstein & Mike Allen, *Greg Craig Steps Down*, Politico (Nov. 13, 2009), *available at* <http://dyn.politico.com/printstory.cfm?uuid=EBF09328-18FE-70B2-A8AFF56B6B6F2B61> (reporting that the former White House Counsel was “faulted for...law-related distractions for the White House, such as the release of Bush-era legal memos about interrogation of terror suspects and a decision, later reversed, to release photos of prisoners allegedly abused in U.S. custody overseas.”).

Convention Against Torture (CAT) requires state parties to investigate all allegations of any such conduct and refer any evidence for prosecution.⁶ Its commitments are not at all ambiguous. By merely failing to initiate a complete investigation of all officials involved, your administration has declined to follow the CAT's tenets, or the long-established legal precedents established by the Nuremberg Trials. This decision places our nation at risk for further isolation, and effectively invites future torture around the world by undermining principles our nation was once proud to pioneer.

Beyond being illegal, detainee abuse has also undermined several important national security interests. First, by forcing detainees to make unreliable statements, coercive interrogation proved to be a poor vehicle for intelligence gathering.⁷ Second, torture played into the hands of our nation's enemies by facilitating their recruitment efforts.⁸ Finally, torture sapped the morale of junior intelligence agents, as well as the experienced interrogators who complained about torture policies.⁹

The majority of men and women who work in our intelligence services remain committed to the rule of law and to serving our country. What kind of message do we send these public servants by tolerating blatant crimes by their commanders? Legally required investigations of torture will not cause the intelligence community to fear the inconsistency or impermanence of legal rules governing their actions; in fact, they will achieve the opposite effect by restoring long established and sacrosanct principles violated by the past administration.¹⁰

Those who ordered brutality—such as drowning detainees only to resuscitate them in order to repeatedly drown them again—remain immune from even a cursory investigation into their actions. As a result, junior officers reasonably fear that they will bear exclusive responsibility for potential future abuses. In contrast, prosecuting those most culpable for torture policies will allow

⁶ See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed on Apr. 18, 1988 and ratified on Oct. 21, 1994), Art. 12 (“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”); Art. 2(2) (“No exceptional circumstances whatsoever, whether a state of war or a threat of war...or any other public emergency, may be invoked as a justification of torture.”)

⁷ See Ali Soufan, *My Tortured Decision*, N.Y. Times (April 22, 2009) (“[T]raditional interrogation techniques are successful in identifying operatives, uncovering plots and saving lives...I saw that using...alternative methods on other terrorists backfired on more than a few occasions — all of which are still classified. The short sightedness behind the use of these techniques ignored the unreliability of the methods, the nature of the threat, the mentality and modus operandi of the terrorists, and due process.”)

⁸ See, e.g., David Rohde, *Inside the Islamic Emirate*, N.Y. Times (Oct. 18, 2009) (reporting that militants who had kidnapped the author argued that “prisoners had been physically abused and sexually humiliated in Iraq. Scores of men had been detained in Cuba and Afghanistan for up to seven years without charges....To my captors, they were proof that the United States was a hypocritical and duplicitous power that flouted international law.”)

⁹ See Spencer Ackerman, *The 2004 CIA Inspector General Report on Torture*, The Washington Independent (Aug. 24, 2009), available at <http://washingtonindependent.com/56175/the-2004-cia-inspector-generals-report-on-torture>.

¹⁰ See Jason Leopold, *Former Top Interrogators Back Wide-Ranging Criminal Probe Into Torture*, Public Record (Aug. 23, 2009) available at <http://pubrecord.org/torture/3850/former-interrogators-criminal-probe/> (quoting U.S. Air Force Col. Steve Kleinman as saying, “The people who are true professionals don’t see anything wrong with an investigation....I have 25 years of experience in [interrogations] and I don’t have any concern whatsoever that an investigation into how we conducted ourselves since 9/11 would in any way undermine our ability to continue gathering intelligence.”)

the intelligence community an opportunity to continue its important work within the clear legal guidelines that have long governed it, while deterring potential abuses in the future.

The impact of torture on U.S. interests abroad is also difficult to overstate. As the CIA directors themselves concede, our nation depends on its allies to conduct intelligence operations and help ensure national security. Despite their myopic and unsupported presumption that this reliance favors suppressing crucial evidence documenting widespread abuses by U.S. officials, however, respect for foreign allies in fact requires the examination of *all* evidence of torture, and prosecution wherever that evidence leads.¹¹

Some former officials, including past CIA directors and members of the Bush administration, have opportunistically proposed that prosecuting former officials for potential crimes will discourage other countries from supporting foreign U.S. intelligence operations. To the contrary, enforcing international law will help heal breaches with allies—many of which have voiced concerns about detainee mistreatment—and encourage greater support for our national security efforts going forward. Until our nation addresses the prior administration’s deplorable history of torture, the intelligence community’s treatment of detainees will continue to erode the trust of past, present, and future allies more deeply committed to the rule of law.

In addition to its impacts on foreign states we count among our allies, torture also undermines support for U.S. interests among the civil societies in which our troops are deployed. As our nation deploys our military in multiple theatres abroad, we confront a strategic imperative to support voices in those regions who welcome and support our involvement. Attempts to hide widely reported incidents of torture, however, and refusals to hold potential criminals accountable, marginalize those supporters.

Leaders, organizations and grassroots individuals who serve as our ambassadors of goodwill abroad promote a narrative on our behalf, which torture renders implausible within their own societies. We claim, on the one hand, that our military deployments advance human rights, reflecting our historical legacy as a champion of those issues. But this claim will continue to lack contemporary credibility until robust accountability—and prosecution—dispels the cloud of torture and abuse that unfortunately lingers over U.S. foreign policy.

Beyond the impact such prosecution may have on the intelligence community and our foreign allies and supporters, we also speak on behalf of millions of Americans from all walks of life, demographics, professions, backgrounds, and communities who are appropriately appalled by the CIA’s abuses.

Thousands of us have written about how the lack of accountability for official abuses has undermined our opportunity to pursue our own professions with integrity. For instance, while the Justice Department ignores suspected violations of our nation’s most fundamental commitments, police officers and prosecutors working to protect our communities prosecute far less objectionable behavior every day.¹² Similarly, hundreds of teachers have noted that their ability

¹¹ See Raymond Bonner & Jane Perlez, *British Report Criticizes U.S. Treatment of Terror Suspects*, N.Y. Times (July 28, 2007) at A6 (“Britain pulled out of some planned covert operations with the Central Intelligence Agency, including a major one in 2005, when it was unable to obtain assurances that the actions would not result in rendition and inhumane treatment....”).

¹² See Letter to Attorney General Holder from over 250 legal professionals (June 23, 2009), *available at* <http://bordc.org/alerts/2009-06-23-legal.pdf>.

to impart constitutional norms has suffered as their students have lost faith in our nation's commitment to equal justice.¹³

We recognize your understandable desire to look forward rather than back. The ongoing secrecy surrounding evidence of torture, however, amounts to suppression of evidence. You yourself have affirmed that “nobody's above the law,”¹⁴ even while acting to keep the dark past from being brought to light by pursuing a policy of secrecy.

While Congress has authorized your administration to disregard court orders to disclose photos documenting abuse, the Department of Defense retains—and we request that you exercise—the authority to declassify and release the photos. Torture apologists have concocted the self-serving ruse that releasing the photos would undermine the safety of U.S. troops deployed abroad, ignoring the sad reality that *any potential harm to our troops inheres in the criminal conduct depicted in the photos, not their potential disclosure.*

The extent to which that conduct has undermined our broader national security only reinforces the imperative of prosecution. In contrast, continuing to hide crucial evidence leaves unanswered persisting allegations of abuses by U.S. officials, undermining our nation's military struggles abroad by eroding international trust and encouraging skepticism of our intentions.

Worse yet, the secrecy your administration maintains over torture evidence—much of which appears to have been destroyed by the CIA in an effort to cover its criminal trail¹⁵—appears to reflect the worst conceivable reason not to enforce the law: deference to a political calculus. The possibility that robust accountability may prove contentious, and potentially interfere with the actualization of your administration's agenda on unrelated policy matters, is an illegitimate basis on which to resign enforcing the law.

Moreover, failing to investigate those who conceived, planned, and orchestrated violations of international law does not reflect political neutrality. In fact, *the current investigation, limited to some junior agents, reflects pre-judgment in favor of alleged torturers.* Your administration's decision to hide torture evidence unfortunately compounds past crimes and further erodes the rule of law.

As your own path to the White House demonstrates, we are hardly passive observers of history. However uncomfortable it may seem, you must allow the Department of Justice to deal openly with our nation's crimes and deter their recurrence, and prevent the Department of Defense from suppressing evidence of its own misconduct. Our safety as a nation, as well as the legitimacy of our system of justice, the integrity of our intelligence services, and the strength of our international alliances all depend on your willingness to restore the rule of law by ensuring its equal application to all.

¹³ See Letter to Attorney General Holder from over 450 educators (June 23, 2009), *available at* <http://bordc.org/alerts/2009-06-23-education.pdf>.

¹⁴ See *supra* note 2 and accompanying text.

¹⁵ See Joby Warrick and Walter Pincus, *Station Chief Made Appeal To Destroy CIA Tapes*, Washington Post (Jan. 16, 2008) (reporting that, “[a]ccording to interviews with more than two dozen current and former U.S. officials,” the “principal motive for the tapes' destruction was the clandestine operations division's worry that...the [CIA] could be publicly shamed and that those involved in waterboarding and other extreme interrogation techniques would be hauled before a grand jury or a congressional inquiry....”).

Respectfully submitted,

Bill of Rights Defense Committee (BORDC)
After Downing Street
Alliance for Justice (AFJ)
American Arab Anti-Discrimination Committee (ADC)
American Muslim Voice
Center for Constitutional Rights
Center for Torture Accountability
Civil Liberties Defense Center
Coalition for an Ethical Psychology
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Code Pink: Women for Peace
Defending Dissent Foundation (DDF)
Desis Rising Up and Moving (DRUM)
Islamic Shura Council of Southern California
Justice Through Music
New Jersey Immigration Policy Network
Pakistani American Public Affairs Committee (PAKPAC)
Progressive Christians Uniting
Psychologists for Social Responsibility
South Asian Network
Syracuse Peace Council
Tikkun Chicago
Velvet Revolution
Veterans For Peace
Voters for Peace
Wasatch (UT) Coalition for Peace and Justice
Washington Peace Center
Watertown (MA) Citizens for Environmental Safety
Witness Against Torture

cc: Secretary of Defense Robert Gates
U.S. Senate Committee on Foreign Relations
U.S. House Committee on Foreign Affairs
Attorney General Eric Holder
Deputy Attorney General David Ogden
U.S. Senate Committee on the Judiciary
U.S. House Committee on the Judiciary