



How to End Torture and Cruel Treatment

Blueprint for the Next Administration

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FOR THE NEXT U.S. ADMINISTRATION

BLUEPRINT

About Us

Human Rights First believes that building respect for human rights and the rule of law will help ensure the dignity to which every individual is entitled and will stem tyranny, extremism, and violence.

Human Rights First protects people at risk: refugees who flee persecution, victims of crimes against humanity or other mass human rights violations, victims of discrimination, those whose rights are eroded in the name of national security, and human rights advocates who are targeted for defending the rights of others. These groups are often the first victims of societal instability and breakdown; their treatment is a harbinger of wider-scale repression. Human Rights First works to prevent violations against these groups and to seek justice and accountability for violations against them.

Human Rights First is practical and effective. We advocate for change at the highest levels of national and international policymaking. We seek justice through the courts. We raise awareness and understanding through the media. We build coalitions among those with divergent views. And we mobilize people to act.

Human Rights First is a non-profit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.

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How to End Torture and Cruel Treatment

A Three-Stage Plan

“To build a better, freer world, we must first behave in ways that reflect the decency and aspirations of the American people. This means ending the practices of shipping away prisoners in the dead of night to be tortured in far-off countries, of detaining thousands without charge or trial, of maintaining a network of secret prisons to jail people beyond the reach of the law.”

Then-Senator Barack Obama, in Foreign Affairs, “Renewing American Leadership,” July/August 2007

Introduction

The U.S. government’s misguided embrace of torture, secret prisons, and renditions to torture over the past seven years have undermined its counterterrorism efforts, provided enemies with an easy recruiting tool, and diminished the United States’ reputation as a world leader in advancing and upholding human rights. Restoring our nation’s commitment to humane treatment must be a top priority for the next president. This is not a partisan issue; during the 2008 presidential campaign, both President-elect Barack Obama and Senator John McCain acknowledged the damage to the reputation of the United States that has been caused by this policy of torture and official cruelty, and each has vowed as president to uphold existing bans on torture the Bush Administration has flouted.

Making good on this pledge, and inoculating against future abuses, will require both a dismantling of a cynical legal framework that sanctions torture and cruel treatment and a comprehensive examination of policies and practices that have endorsed cruelty. It will also require investment in a sustained long-term strategy for effective human intelligence gathering which adheres to United States and international law.

This Blueprint offers a three-stage strategy for the United States to reclaim its values, ideals, and commitment to human rights, as well as strengthen U.S. intelligence-gathering practices and other counterterrorism efforts.

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A Three-Stage Plan

Summary

FIRST MONTH IN OFFICE

- Renounce torture and official cruelty in the inaugural address.
- Enforce existing bans on torture and cruel treatment by dismantling the legal framework sanctioning torture and cruel treatment, including by:
 - Ordering all U.S. government agencies to comply with domestic laws and international treaty obligations prohibiting torture.
 - Revoking and repudiating all orders and memoranda authorizing cruel treatment or secret detention.
 - Directing the Attorney General to rescind all existing Justice Department Office of Legal Counsel (OLC) opinions authorizing or justifying cruel treatment or secret detention.
- Publicly release documents authorizing cruel treatment, secret detention or rendition.
- Declare a moratorium on specified renditions and direct a comprehensive review of rendition practices and diplomatic assurances.
- Close secret prisons and end the practice of holding “ghost prisoners.”
- Direct the Secretary of Defense and the Director of National Intelligence to undertake a review and reform of U.S. government human intelligence-gathering practices, including interrogation, to enhance the effectiveness of these practices and their compliance with U.S. and international legal obligations.

FIRST SIX MONTHS IN OFFICE

- Recommend establishment of a nonpartisan commission, modeled on the 9/11 Commission, to investigate the facts and circumstances relating to U.S. government detention and interrogation operations since September 11, 2001; assess the strategic impact of these operations; identify lessons learned; make recommendations to avoid future abuses; and make its findings public.
- Direct the Attorney General to investigate potential criminal conduct related to detainee abuse.
- Sign and seek advice and consent of the Senate to ratify:
 - The International Convention for the Protection of All Persons from Enforced Disappearances.
 - The Optional Protocol to the Convention against Torture.
- Propose legislation to repeal the Military Commissions Act, which has promoted official cruelty by sanctioning evidence gained through cruel, inhumane or degrading treatment, and the Detainee Treatment Act’s special trial defense provisions.
- Support legislation to:
 - Prevent abuse and strengthen intelligence gathering.
 - Ensure accountability and provide remedies for abuse.

FIRST YEAR IN OFFICE

- Implement human intelligence collection (including interrogation) reform recommendations to enhance the effectiveness of U.S. intelligence-collection practices and their compliance with legal obligations.
- Institute an interagency human rights compliance deputies committee chaired by the Deputy National Security Advisor and including deputy-level representatives from the Justice, State, and Defense Departments, and the Office of the Director of National Intelligence.

How to End Torture and Cruel Treatment

A Three-Stage Plan

Details

FIRST MONTH IN OFFICE

During the first month in office, the next president should take bold steps to abandon abusive detention and interrogation practices and enforce existing legal obligations to treat all prisoners humanely.

We propose that the next president:

- **Renounce torture and official cruelty in the inaugural address.** The president's inaugural address provides an opportunity to signal to the American people and the world that the United States is serious about renewing its commitment to human rights and the rule of law. In his inaugural address, the next president should renounce torture and announce a single standard of humane treatment across all government agencies based on the Golden Rule, which has long been embraced by the U.S. military: We must not engage in conduct that we would consider unlawful if perpetrated by the enemy against captured Americans.
- **Enforce existing bans on torture and cruel treatment by dismantling the legal framework sanctioning torture and cruel treatment.** The inaugural address should be followed by swift action that clarifies what the U.S. government means when it pledges to treat all prisoners humanely. The next president should:

- **Order all U.S. agencies to comply with domestic laws and international treaty obligations prohibiting torture**, including the Anti-Torture Statute, the Detainee Treatment Act (DTA), the Convention against Torture (CAT), Common Article 3 of the Geneva Conventions, the International Covenant on Civil and Political Rights (ICCPR), and other applicable laws. (For a summary of these legal provisions see Appendix A).
- **Revoke and repudiate all orders and memoranda authorizing cruel treatment or secret detention**, including:
 - Executive Order 13440, issued July 20, 2007, which authorizes the Central Intelligence Agency (CIA) to maintain a secret detention program using interrogation techniques that have been rejected by our own military as unlawful and unproductive.
 - The reported September 17, 2001, Executive Order (and any other directives not yet made public) which authorizes the CIA's secret detention, interrogation, and rendition program.
 - President Bush's February 7, 2002, Memorandum, which states that, as a "matter of policy" rather than law, the U.S. military should treat detainees humanely, and only to the "extent appropriate and consistent with military necessity." This memorandum excuses cruel treatment in cases of "military necessity" and exempts the CIA altogether from abiding by humane treatment standards.

- **Direct the Attorney General to rescind all existing Justice Department Office of Legal Counsel opinions authorizing or justifying cruel treatment or secret detention**, including:

- The August 1, 2002, Memorandum to the CIA on interrogation techniques for suspected al Qaeda members.
- Other secret opinions which imply that the humane treatment standard of Common Article 3 of the Geneva Conventions differs when applied to the CIA.

- **Publicly release documents authorizing cruel treatment, secret detention, or rendition.** Despite multiple congressional hearings and the release of some documents, the American people continue to be denied basic information on the scope of the CIA's secret detention and interrogation program and how abusive interrogation techniques came to be approved at the highest levels of government. A true accounting of past abuses will require that relevant legal opinions, including those no longer in force, be made public. It is imperative that both Congress and the public fully understand the faulty reasoning that was used to circumvent laws mandating humane treatment so that those legal standards can be strengthened and not manipulated again in the future. The next president should:

- **Order the National Security Advisor** to undertake a comprehensive interagency review of all memoranda and documents authorizing, providing legal clearance for, or analyzing secret detention, rendition, treatment of al Qaeda suspects, or permissible interrogation techniques. This review should include all documents written since September 11, 2001, analyzing the Anti-Torture Statute; the War Crimes Act; the Detainee Treatment Act; relevant provisions of the Uniform Code of Military Justice (UCMJ); and U.S. obligations under Common Article 3 of the Geneva Conventions, the Convention against Torture, and the International Covenant on Civil and Political Rights. The review should produce a complete index of all such documents which

should be made public to the fullest extent consistent with legitimate national security interests. No document should be withheld from the index for the purpose of concealing illegal activity or protecting officials from liability.

- **Direct responsible agency heads** to:
 - Declassify and make public, to the fullest extent consistent with legitimate national security interests all documents authorizing or providing legal clearance for secret detention, rendition, or interrogations by any U.S. government agency, including the CIA; all documents examining abusive practices or the authorization of such practices; and all other relevant documents identified in the course of the National Security Advisor's review. No document should be withheld from the public to conceal illegal activity or protect officials from liability. (For a partial list of such documents, see Appendix B).
 - Fully comply with outstanding congressional requests by the House and Senate judiciary, armed services and intelligence committees for un-redacted OLC memoranda, legal analyses, and advice regarding the U.S. government's detention, interrogation, and rendition practices.

■ **Declare a moratorium on specified renditions and direct a comprehensive review of rendition practices and diplomatic assurances.** The United States has for several years used renditions, involving the extrajudicial transfer of terrorism suspects from U.S. government custody, essentially to “outsource” abusive interrogation and detention. The U.S. government has claimed that obtaining secret diplomatic assurances from receiving governments (even those with long records of torture) that transferees will not be tortured or abused is itself sufficient to satisfy the United States’ obligations under the Convention against Torture, which prohibits the transfer of any person to a country where there are substantial grounds for believing that the person would be in danger of being subjected to torture. These diplomatic assurances—also used problematically in immigration and other contexts—have proven too often to be hollow, and individuals have in fact been tortured upon transfer. To protect against transfers to torture in the future, the next president should:

- **Suspend extrajudicial transfers of individuals** in U.S. government custody abroad to any other country where the torture of prisoners is a systemic human rights problem.
- **Direct the National Security Advisor to undertake a comprehensive 90-day interagency review** to assess rendition practices and the use of diplomatic assurances in all contexts, and to develop new regulations to ensure the United States complies with its obligations under the Convention against Torture. This review should be conducted in cooperation with the Attorney General, the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, and the Director of the Central Intelligence Agency. The rendition moratorium described above should continue until this review is completed and the necessary regulations put into effect.

■ **Close secret prisons and end the practice of holding “ghost prisoners.”** After refusing for years to confirm or deny secret CIA detentions, on September 6, 2006, President Bush admitted the existence of a clandestine CIA detention program with authority to hold prisoners in secrecy, without acknowledgement even to the International Committee of the Red Cross (ICRC). Holding prisoners in secret facilities allows for torture and abusive detention and interrogation practices, and it undermines the U.S. government’s ability to demand that our enemies provide ICRC access, now and in future wars, to detained U.S. personnel. The next president should:

- **Direct that the ICRC be given notification of, and access to, any detainees** in the custody of the U.S. intelligence community.
- **Direct the Secretary of Defense and the Director of the CIA to account for all persons** who have been secretly detained by their respective agencies, and to publicly release—to the fullest extent consistent with legitimate national security and detainee privacy interests—the detainees’ names; the circumstances of their coming into U.S. custody and the reasons for their detention; the duration and locations of their detention in U.S. custody; and (for those no longer in U.S. custody) the dates and circumstances of their releases, transfers, or deaths.

■ **Direct the Secretary of Defense and the Director of National Intelligence to undertake a review of U.S. government human intelligence-gathering practices, including interrogation, to enhance the effectiveness of these practices and their compliance with U.S. and international legal obligations.** Intelligence experts agree that abusive interrogation practices actually impede efforts to elicit actionable intelligence, and that non-coercive, rapport-building techniques provide the best opportunity for obtaining accurate and complete information. To ensure that government agents are better able to undertake effective intelligence-gathering efforts, the next president must be prepared to invest substantially more resources in effective human intelligence collection. As a foundation for this investment, the next president should direct the Secretary of Defense and the Director of National Intelligence to undertake a review of U.S. military and civilian intelligence programs and provide specific recommendations for improving human intelligence collection. This review should examine, among other things:

- Best practices, techniques, and lessons learned relating to human intelligence collection.
- Provision of professional education and development in specialized intelligence skills, including specialized language and cultural skills.
- Promotion and facilitation of research on human intelligence collection.

- Enhancement of cooperation between human intelligence collectors in the intelligence community.
- Development of clear, comprehensive, and consistent training programs for intelligence personnel regarding their humane treatment obligations.
- Establishment of a national center on human intelligence collection that focuses on improving human intelligence collection and professionalizing the training and career development of interrogators across agency lines.

FIRST SIX MONTHS IN OFFICE

During his first six months in office, the next president should show his long-term commitment to ending abusive practices by supporting legislative efforts to prevent future abuse and to learn the truth about U.S. detention and interrogation operations since September 11, 2001; by directing efforts to hold officials responsible for abuse; and by signing and supporting ratification of treaties prohibiting torture and disappearances.

We propose the next president:

- **Recommend establishment of a nonpartisan commission, modeled on the 9/11 Commission, to investigate the facts and circumstances relating to U.S. government detention and interrogation operations since September 11, 2001; assess the strategic impact of these operations; identify lessons learned; make recommendations to avoid future abuses; and make its findings public.** Despite multiple congressional hearings on interrogation policies, internal Justice Department investigations, and military investigations in the aftermath of Abu Ghraib, the information currently available to Congress and the public on U.S. detention and interrogation practices since September 11, 2001, is fragmented and incomplete. In order to learn from the mistakes of the past and prevent future abuse, the next president should recommend the appointment of a nonpartisan adequately-funded commission with subpoena power, modeled on the National Commission on Terrorist Attacks Upon the United States, to produce, within one year, a complete public report of U.S. detention and interrogation practices and policies since September 11, 2001. This report should include:
 - An independent, impartial and thorough examination of U.S. detention and interrogation policies and practices in Iraq, Afghanistan, Guantanamo Bay and secret U.S. prison facilities, rendition practices, including how and why such practices and policies were authorized.
 - An assessment of strategic gains (such as attacks provably averted) and strategic losses (such as failure to gain reliable information or encourage cooperation by detainees as a result of coercive interrogations; undermining of the rule of law, both domestically and abroad; and harm to U.S. counterterrorism efforts, including through diminished cooperation by allies) due to these policies and practices.
 - Lessons learned, including specific recommendations to prevent against future abuses.
- **Direct the Attorney General to investigate potential criminal conduct related to detainee abuse.** The next president should direct efforts by the Justice Department to investigate individuals and hold them accountable for authorizing or engaging in abuse of prisoners. In particular, the Attorney General should:
 - Re-evaluate for potential prosecution all detainee abuse cases referred (formally or informally) since September 11, 2001 to the Justice Department by the Department of Defense and the CIA Inspector General that the Justice Department has declined for prosecution, including the 22 cases reported to have been declined by Justice Department letter, dated February 8, 2008, to Senator Richard Durbin. Provide additional investigative and prosecutorial resources to expedite the Justice Department's review of pending detainee abuse cases.
 - Conclude the Justice Department's ongoing investigation into the destruction of the CIA interrogation tapes.
 - Broaden the Justice Department's CIA tape destruction investigation to include any potential criminal conduct depicted on the tapes, to include the direction or authorization of such conduct.

- **Sign, and seek advice and consent of the Senate to ratify, the International Convention for the Protection of all Persons from Enforced Disappearances and the Optional Protocol to the Convention against Torture.** Ratification by the United States of these two treaties will send a clear message to the world that the United States is serious about upholding its humane treatment obligations:
 - Ratification of the International Convention for the Protection of all Persons from Enforced Disappearances would subject the United States government to the treaty’s strict prohibition on disappearances: “no exceptional circumstances whatsoever,” including war, the threat of war, or a public emergency, may be used to justify enforced disappearances.
 - The Optional Protocol is a preventive safeguard against torture and abuse. Ratification would require the U.S. government to allow periodic visits by international expert and national bodies to any place under U.S. jurisdiction and control where persons are deprived of their liberty.

- **Propose legislation to repeal the Military Commissions Act (MCA), which has promoted official cruelty by sanctioning use of evidence gained through cruel, inhumane or degrading treatment, and the special trial defense provisions of the Detainee Treatment Act.** An essential step in dismantling the legal framework that sanctions torture and cruel treatment and weakens accountability for war crimes is repeal of the MCA. As part of the military commission system it established, the MCA permits introduction of evidence obtained through coercion, including cruel, inhuman and degrading treatment. The next president should support repeal of the MCA; any criminal prosecution of Guantanamo detainees should be undertaken in U.S. federal courts. Section 1004 of the DTA (which was amended by the MCA) makes it easier for defendants to claim reliance on legal authority like the torture memos to justify their actions. Together, the MCA and special defense provisions of the DTA make it more difficult both for victims to obtain relief for torture and cruelty and for prosecutors to hold abusers criminally accountable.

- **Support legislation to prevent abuse and strengthen human intelligence gathering.** The next president should:
 - **Support legislation to mandate ICRC access to any detainees in the custody of the U.S. intelligence community.** Statutorily mandating ICRC access to prisoners in the custody of U.S. government intelligence agencies would ensure a measure of transparency and deter abuse.

- **Urge Congress to enact legislation requiring the video recording of intelligence interrogations.** This mandate should cover at least all interrogations of detainees held in centralized theater military detention facilities, and all detainees in the custody of the intelligence community. The video recording of intelligence interrogations would strengthen intelligence gathering by allowing the careful examination (both contemporaneously and post-interrogation) of body language and source collector interaction, and by providing training material to teach more effective interrogation techniques. It also would help to deter abuse while protecting interrogators from spurious claims of abuse.
- **Support legislation to ensure accountability and provide remedies for abuse.** The next president should:
 - **Support legislation to ensure jurisdiction over civilians and contractors implicated in detainee abuse.** The Attorney General and other Bush Administration officials have expressed concern that current law does not provide sufficient jurisdiction over U.S. government contractors for violent abuses committed overseas. The next president should urge Congress to clarify and expand the Military Extraterritorial Jurisdiction Act (MEJA) to ensure effective enforcement of prohibitions on torture and other abuses committed by civilians employed or contracted by the U.S. government.
 - **Support legislative reform of the state secrets privilege to ensure that victims of abuse have effective remedies for human rights violations.** Over the last several years, the U.S. government has invoked the state secrets privilege in cases challenging torture and rendition to torture, seeking dismissals of lawsuits at very preliminary stages before any evidence can be produced. Courts have accepted the government's claims of risk to national security without independently reviewing the information in order to assess any actual risk from disclosure. This practice has impinged upon the right of individuals to seek and obtain redress for human rights violations, including those resulting from government misconduct.

FIRST YEAR IN OFFICE

By the end of the first year in office, the next administration should initiate efforts to strengthen the nation's commitment to humane treatment and invest in strengthening the U.S. government's intelligence-gathering capabilities, thus developing a more effective counterterrorism strategy.

We propose the next president:

- **Implement human intelligence-collection, including interrogation, reform recommendations to enhance the effectiveness of U.S. intelligence-collection practices and their compliance with legal obligations.** The next president should implement recommended reforms emerging from the interagency review led by the Secretary of Defense and the Director of National Intelligence to enhance both the effectiveness of U.S. human intelligence collection activities, including interrogations, as well as their compliance with domestic and international legal obligations. These reforms undoubtedly will require the commitment of additional resources; the next president should be prepared to seek congressional appropriation of the funds necessary to support effective and humane means of human intelligence collection.
- **Institute an interagency human rights compliance deputies committee, chaired by the Deputy National Security Advisor and including deputy-level representatives from the Justice, State, and Defense Departments, and the Office of the Director of National Intelligence.** The next president should order the committee to:
 - **Provide guidance** when questions arise regarding U.S. government compliance with its human rights obligations.
 - **Assess the extent** to which abusive detainee treatment policies may have been grounded in flawed post-September 11, 2001, interpretations of U.S. reservations and understandings to Article 1 (defining torture) and Article 16 (prohibiting cruel treatment) of CAT, and Article 7 (prohibiting torture and cruel treatment) of the

ICCPR. To the extent this was the case, develop guidance for interpretations that would avoid such abuses in the future.

- **Reassess the position of the United States** regarding the territorial scope of application of the ICCPR and Articles 3 and 16 of the CAT. The position that these provisions do not apply to U.S. government conduct outside U.S. territory was used by the Bush Administration to sanction coercive interrogation techniques abroad and allow rendition to torture. Develop recommendations for a revised position that would effectively proscribe such abuses in the future.
- **Evaluate the extent to which the United States is complying with Article 2 of the ICCPR**, which obligates state parties to provide effective remedies, including judicial remedies, to victims of human rights violations, and develop recommendations for enhancing compliance.

Conclusion

The challenge of restoring the U.S. government's commitment to humane treatment and the rule of law lies with the next administration and President-elect Barack Obama has said that he recognizes this reality.

Human Rights First three-stage plan for ending torture and official cruelty will strengthen U.S. government human intelligence-gathering practices and other counterterrorism efforts, and will re-establish the United States' moral authority as a nation devoted to human rights.

Appendix A

Key Sources of U.S. Legal Obligations¹

The Torture Convention Implementation Act (18 U.S.C. §§ 2340, 2340A): The Anti-Torture Act was enacted in 1994 to comply with the United States' obligation under the Convention Against Torture to criminalize acts of torture. The Act's definition of "torture" requires an individual acting under color of law specifically to intend to inflict severe physical or mental pain or suffering. The law covers conduct by U.S. nationals and those present in the United States for acts attempted or committed outside the United States.

War Crimes Act (18 U.S.C. § 2441(a)): The 1997 War Crimes Act (WCA) authorizes prosecution of war crimes committed "inside or outside the United States" by or against U.S. nationals or members of the U.S. armed forces. The WCA was amended in 2006 by the Military Commissions Act, limiting coverage to only specified so-called "grave breaches" of Common Article 3 of the Geneva Conventions, such as "torture" and "cruel or inhuman treatment."

The Detainee Treatment Act of 2005 (42 U.S.C. § 2000dd): Enacted as part of the Department of Defense Appropriations Act of 2006 (Title X, H.R. 2863), the Detainee Treatment Act prohibits "cruel, inhuman, or degrading treatment or punishment" (acts that violate the 5th, 8th and 14th Amendments) of detainees, and provides for "uniform standards" for interrogation, limiting the military to interrogation techniques authorized by the Army Field Manual (currently FM 2-22.3, *Human Intelligence Collector Operations*). The Act also removed federal court jurisdiction over Guantanamo detainees challenging the legality of their detention. Section 1004 of the DTA provides extraordinary defenses and protections in criminal prosecutions and civil litigation to persons accused of detainee abuse.

Military Commissions Act (MCA) (Pub. L. No. 109-366): Enacted by Congress in 2006 after the Supreme Court's decision in *Hamdan v. Rumsfeld*, the MCA narrowed the scope of the War Crimes Act to cover only specified so-called "grave breaches" of Common Article 3, such as "torture" and "cruel or inhuman treatment." The MCA narrowly defines "torture" as "an act specifically intended to inflict severe physical or mental pain or suffering ... for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind." "Cruel or inhuman

treatment" is narrowly defined as "an act intended to inflict severe or serious physical or mental pain or suffering, including serious physical abuse[.]" The MCA permits introduction of evidence before military commissions obtained through coercion, including cruel, inhuman and degrading treatment.

Common Article 3 of the Geneva Conventions: Found in all four Geneva Conventions, Common Article 3 defines core obligations that must be respected in armed conflicts of any kind. It prohibits violence against persons in detention (among others), including murder, mutilation, cruel treatment and torture, outrages upon personal dignity, and humiliating and degrading treatment.

International Covenant on Civil and Political Rights (ICCPR): The ICCPR, ratified by the United States in 1992, elaborates on the civil and political rights and freedoms of the Universal Declaration of Human Rights. Article 7 of the ICCPR guarantees an individual's right to be free from torture and cruel, inhuman or degrading treatment or punishment; the treaty expressly prohibits state parties from derogating from this right even in times of "public emergency." Article 2 of the ICCPR obligates state parties to provide effective remedies, including judicial remedies, to victims of human rights violations.

UN Convention Against Torture (CAT): The CAT, ratified by the United States in 1994, prohibits torture and cruel, inhuman or degrading treatment by state actors or those acting with state acquiescence "for the purpose of obtaining information or a confession, or to punish on suspicion of a crime, or to intimidate or coerce." The CAT does not permit torture in any "circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency." The treaty also prohibits the expulsion, return or extradition of a person to country "where there are substantial grounds for believing" that the person "would be in danger of being subjected to torture."

¹ See Human Rights First & Physicians for Human Rights, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality*, August 2007.

Appendix B

During the first month in office, the next president should direct agency heads to declassify and make public, to the fullest extent consistent with legitimate national security interests, documents authorizing or analyzing secret detention, rendition practices or interrogation, including the following:

- The reported September 17, 2001, Executive Order authorizing the CIA detention and interrogation program.
- Memorandum for Alberto Gonzales, Counsel to the President, and William J. Haynes, General Counsel, Department of Defense, from John Yoo, Deputy Assistant Attorney General and Robert J. Delahunt, Special Counsel, OLC, Re: Authority for Use of Military Force to Combat Terrorist Activities Within the United States (October 17, 2001).
- Memorandum for Alberto Gonzales, Counsel to the President, from Patrick F. Philbin, Deputy Assistant Attorney General, OLC, Re: Legality of the Use of Military Commissions to Try Terrorists (November 6, 2001).
- Memorandum for John Yoo, OLC, from James C. Ho, Attorney-Advisor, OLC, Re: Possible Interpretations of Common Article 3 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (February 1, 2002).
- Memorandum for William J. Haynes II, General Counsel, Department of Defense, from Jay S. Bybee, Assistant Attorney General, OLC, Re: The President's Power as Commander in Chief to Transfer Captured Terrorists to the Control and Custody of Foreign Nations (March 13, 2002).
- Memorandum for Daniel Bryant, Assistant Attorney General, Office of Legislative Affairs, from John Yoo, Deputy Assistant Attorney General, OLC, Re: Applicability of 18 U.S.C. § 4001(a) to Military Detention of United States Citizens (June 27, 2002).
- OLC memorandum to the CIA on interrogation techniques for al Qaeda members (August 1, 2002) (a redacted version has been released).
- CIA study raising questions about the significance of Guantanamo detainees (circa September 2002, referenced in press reports).
- Memorandum for Alberto R. Gonzales, Counsel to President Re Protected Persons in Occupied Iraq (March 18, 2004).
- 2004 CIA Inspector General's report on interrogation techniques used on al Qaeda members, including its "DOJ Analysis" section (a redacted version was provided to the American Civil Liberties Union as a result of a Freedom of Information Act lawsuit).
- Department of Homeland Security, Office of Inspector General, Report No. OIG-08-18, "The Removal of a Canadian Citizen to Syria." (March 2008) (a redacted version has been released).
- DoJ memorandum regarding liability of interrogators under the Convention Against Torture and the Anti-Torture Act when a prisoner is not in U.S. custody (referred to in press reports but no specific date is known).
- Undisclosed OLC opinions and other DoJ documents interpreting the 2005 Detainee Treatment Act, the Anti-Torture Statute, the Military Commissions Act revision of the War Crimes Act, ICCPR, CAT, Common Article 3 of the Geneva Conventions, and the applicability of the Fourth Geneva Convention in Iraq, including memoranda interpreting the applicability of these treaties and laws on the CIA.
- The report, when complete, of the Justice Department's Office of Professional Responsibility's ongoing investigation of the "circumstances surrounding" legal opinions establishing legal bases for the CIA's interrogation program, and "whether the legal advice contained in those memoranda was consistent with the professional standards that apply to Department of Justice attorneys."



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