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President Barack H. Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

Four years ago, the then-President of the New York City Bar Association (the "Association") wrote to you to offer suggestions on the detention, treatment, and trial of terrorism suspects. During your first term, your Administration made substantial progress on some of these issues, but important elements of your Administration's announced agenda in these areas remain unfulfilled. Mindful of the opportunities that your re-election presents, we write to offer a set of updated recommendations for your second term.

Since its establishment in 1870, the Association has worked to advance and defend the rule of law. A professional association of over 23,000 attorneys, the Association has issued thoroughly researched and thoughtfully reasoned reports and letters to promote America's long-term security through respect for lawful and humane policies.[1] The principal lesson we have learned from our work is that full and faithful respect for the rule of law strengthens our country. Our system of justice – based on time-tested constitutional, statutory, and international norms – is a source of strength, not vulnerability.

The suggestions in this letter have been developed by the Association's Task Force on National Security and the Rule of Law, which oversees and coordinates the Association's effort to ensure that a robust national security policy conforms to our nation's deep and abiding commitment to the rule of law.

[1] Many of these works are collected in James R. Silkenat and Mark R. Shulman, eds., *The Imperial Presidency and the Consequences of 9/11: Lawyers Respond to the Global War on Terror* (2007); more recent works are collected online at http://www2.nycbar.org/Publications/reports/reportsbycom.php?com=138.

DETENTION

Perhaps the thorniest unresolved problem for your second term is finishing the job of closing the detention facility at Guantanamo. We commend you for the steps that you have taken so far: directing the facility's closure at the outset of your Presidency; substantially reducing the population during your first term; articulating a coherent framework for detention policy in your 2009 speech at the National Archives; and ordering the individualized, inter-agency review of each detainee's case that was undertaken in 2009. The information developed during that review should be the basis for action during your second term.

Despite these positive steps, it is an unfortunate reality that the Guantanamo facility remains open and is arguably more entrenched than it was when you first took office. We deplore the way that this issue has become politicized over the past four years, and we urge you to make the closure a significant priority in your second term.

The decision to close the prison was sound when you announced it in 2009, and the passage of time has only weakened the arguments for keeping the facility open. As a nation we have made substantial progress in the struggle against al Qaeda, the Taliban, and associated forces; our country is safer and more secure today than it was in 2009; the Iraq war is over and your Administration has announced a concrete timetable for the end of the combat mission in Afghanistan; and the Guantanamo facility remains a recruiting tool for forces hostile to the United States even as it has become an expensive drain on the public fisc in a time of austerity and budget discipline. We applaud your recent commitment, during the 2012 campaign, to finish the job of closing the Guantanamo prison, and we offer these concrete suggestions:

- In the short term, the top priority should be to release or transfer the 86 detainees (representing more than half of the current population) who have been cleared for release by the Guantanamo Review Task Force.[2] Each day of continued detention is a grave injustice for these individuals and a real moral problem for our country. Our ideals of fairness and justice cannot abide the detention of individuals who have never been charged with any offense, yet who remain in captivity, for many years, despite having been cleared for release or transfer after a thorough review.

- Recognizing the practical and political obstacles to immediate closure, we suggest that the strategy should be to reduce the prison population steadily and incrementally, adamantly resisting any suggestion to add new detainees, with the goal of winnowing the population down to a small number of detainees who ultimately can be handled through transfers, prosecutions, and/or other arrangements before the end of your second term.

- Given the complexity of this project – which presents a tangled web of operational, policy, and political challenges – we recommend that you appoint a prominent,

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[2] U.S. Gen. Accountability Office, *Guantanamo Bay Detainees: Facilities and Factors for Consideration if Detainees Were Brought to the United States* (Nov. 2012) at 9, available at http://www.gao.gov/assets/660/650032.pdf (hereinafter, "November 2012 GAO Report").

respected individual to a senior White House role with full time responsibility for coordinating the Guantanamo closure effort. With your personal support, this person would be positioned to drive consensus within your Administration and to clearly and effectively advance the Administration's position in dealing with Congress.

- For many of the 86 individuals who have been cleared for release, the principal obstacle to transfer is Section 1028 of the National Defense Authorization Act, which establishes significant obstacles preventing detainee transfers to foreign countries. This ill-advised statute infringes on executive authority, unwisely micromanages the difficult task of dealing with individual detainees, and results in a freeze in which the clear losers are the human beings who remain locked up, day after day, long after they have been cleared for release. In September one such individual, Adnan Farhan Abdul Latif, committed suicide, apparently out of desperation. There remains some risk of recidivism by some of the detainees – as is the case whenever any prisoner is released from any prison – but those risks have been overstated and they should not paralyze the entire mechanism of detainee transfer and release.[3] We urge your Administration to speak with one voice on this issue and to let Congress know, in no uncertain terms, that you will veto any future legislation that imposes unacceptable restraints on the Executive Branch's ability to effectuate the transfer and release of cleared prisoners.

- Another significant problem with detainee transfers is the unsettled situation in Yemen, which affects 30 of the 86 detainees who have been cleared for transfer.[4] There is no easy solution to this problem, but the case of the Uighurs shows that creative solutions are possible. A constructive first step would be to lift the ban on transfers to Yemen, stop treating the 30 Yemeni detainees as a monolithic group, and repatriate or transfer to a third country those among the 30 who have been judged to present the lowest risk. A gradual process of transfers would be better than no process at all. More broadly, we suggest that a priority of the newly appointed White House Guantanamo coordinator should be to develop a concrete, sustainable plan to allow for the release of all of the Yemeni detainees who have been cleared for release.

- For those detainees who have engaged in criminal conduct, we urge your Administration to move forward with prosecutions in each case where in the professional judgment of DOJ prosecutors, the admissible evidence would support a prosecution. A recent General Accountability Office report states that there are

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[3] In a report dated September 5, 2012, the Director of National Intelligence found only three confirmed cases of "reengagement" among the 70 detainees who have been released since January 2009. This is a rate of only 4.3%. *See* Director of Nat'l Intelligence, *Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba* (Sept. 5, 2012) at 1, available at http://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/Reports%20and%20Pubs%202012/Summary%20of%20the%20Reengagement%20of%20Detainees%20Formerly%20Held%20at%20GTMO.pdf.

[4] *See* November 2012 GAO Report at 9.

potentially 24 detainees in this category.[5] We commend you for continuing to observe a strong presumption in favor of civilian-court prosecutions, and we believe the NDAA prohibition on prosecutions in U.S. courts, Section 1027, is profoundly misguided. The one Guantanamo detainee who to date has been transferred to New York for prosecution, Ahmed Ghailani, was convicted in 2010 for his role in the 1998 East Africa embassy bombings, and is now serving a sentence of life without possibility of parole at the "Supermax" prison in Florence, Colorado.[6] The legitimacy of Ghailani's conviction and sentence are unquestioned. Despite the hyperbole, there were no disruptions or problems at the courthouse in lower Manhattan during his trial.

- A particular challenge is how to deal with the 46 detainees at Guantanamo who, based on the findings of the 2009 Task Force, cannot safely be released but also cannot feasibly be prosecuted.[7] In your National Archives speech of May 2009, you described this as "the toughest single issue that we will face."[8] Although the legality of detaining these individuals has generally been affirmed by our courts, and the 2009 Task Force found that they pose a real threat, it is unrealistic and legally untenable for them to be held indefinitely without charge or trial. As Defense Department General Counsel Jeh Johnson recently observed in a thoughtful address at Oxford University, the armed conflict against al Qaeda is *not* perpetual and indefinite; to the contrary, "'[w]ar' must be regarded as a finite, extraordinary and unnatural state of affairs," and "[p]eace must be regarded as the norm toward which the human race continually strives."[9] At some point, hopefully sooner than we expect, the armed conflict against al Qaeda will be over and the legal justification for continued long-term detention without trials will evaporate.[10] We suggest that the planned drawdown of combat troops in Afghanistan in 2014 could provide the impetus, politically and legally, to re-

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[5] *Id.*

[6] See U.S. Att'y's Office for the S. Dist. of N.Y., *Ahmed Khalfan Ghailani Found Guilty in Manhattan Fed. Court of Conspiring in the 1998 Destruction of United States Embassies in E. Africa Resulting in Death* (Nov. 17, 2010), available at http://www.fbi.gov/newyork/press-releases/2010/nyfo111710a.htm.; Transcript of Sentencing at 71, *United States v. Ghailani*, S10 98 Cr. 1023 (LAK) (No. 1098).

[7] *See* November 2012 GAO Report at 9.

[8] *Remarks by the President on Nat'l Sec.*, Nat'l Archives (May 21, 2009), available at http://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09.

[9] Jeh Charles Johnson, Gen. Counsel of the U.S. Dep't of Def., *The Conflict Against Al Qaeda and its Affiliates: How Will It End?*, Address at the Oxford Union, Oxford Univ. (Nov. 30, 2012), available at http://www.lawfareblog.com/2012/11/jeh-johnson-speech-at-the-oxford-union/.

[10] Although the question is settled as a matter of domestic U.S. law, there is today a lack of consensus in some quarters as to whether the United States is currently engaged in an armed conflict with global reach under international law.

examine the cases of the long-term detainees, whether through Periodic Review Boards or otherwise, with a view toward eventual prosecution, transfer, or release as appropriate.

- As noted in the recent study by the General Accountability Office, moving Guantanamo detainees to secure prison facilities in the United States may be a viable option for the future.[11] To date, political opposition and statutory prohibitions have prevented such a step, *see, e.g.*, NDAA Sections 1026 and 1027, but it should be explored in your second term as a cost-efficient alternative that would help achieve the goal of closing Guantanamo. However, moving detainees to the U.S., in the long run, should not be a substitute for the eventual prosecution, transfer, or release of such detainees.

- Finally, it is essential that Guantanamo detainees continue to have reasonable access to counsel and to the federal courts to test the legality and circumstances of their detention. Such access is mandated by the Supreme Court's decision in *Boumediene v. Bush*, 553 U.S. 723 (2008), which affirmed the constitutional rights of Guantanamo detainees to petition Article III courts for a writ of habeas corpus. Earlier this year, the Justice Department sought to impose new restrictions on counsel access for detainees whose habeas cases have been terminated. The government's position was rejected by the Chief Judge of the U.S. District Court for the District of Columbia. *See* Memorandum Opinion, *In re: Guantanamo Bay Detainee Continued Access to Counsel*, Miscellaneous No. 12- 398 (RCL) (Sept. 6, 2012) (No. 1009). On December 14, 2012, the DOJ abandoned its appeal of the Chief Judge's well-reasoned decision. We urge the DOJ to continue to comply with court orders governing counsel access.

TREATMENT

In the area of detainee treatment, we commend your Administration for taking real, immediate, and effective steps to reverse the ill-advised policies from the period immediately after 9/11. In particular, we applaud your January 2009 Executive Order banning so-called "enhanced interrogation techniques" and mandating interrogations in accordance with the Army Field Manual.[12] We also commend Attorney General Holder's decision, in April 2009, to release the so-called "Torture Memos" originally issued (and later retracted) by the DOJ's Office of Legal Counsel.[13] Exposing those memoranda to the light of day was critically important to ensure that their flawed analysis, false conclusions, and moral bankruptcy were repudiated once and for all.

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[11] *See* November 2012 GAO Report.

[12] Exec. Order No. 13491, 74 Fed. Reg. 16 (Jan. 22, 2009), available at http://www.gpo.gov/fdsys/pkg/FR-2009-01-27/pdf/E9-1885.pdf.

[13] *Dep't of Justice Releases Four Office of Legal Counsel Opinions* (Apr. 16, 2009), available at http://www.justice.gov/opa/pr/2009/April/09-ag-356.html.

Nearly four years after your January 2009 Executive Order, there appears to be a strong, bipartisan consensus that "enhanced interrogation" techniques are unlawful, immoral, and ineffective.[14] However, there are occasional suggestions, from some quarters, that perhaps the lines can and should be blurred.[15] It is critical that these occasional suggestions be swiftly refuted and that it be clearly understood, around the world, that the United States observes clear, bright lines against torture. Otherwise our own service members will be placed at increased risk and our counterterrorism effort will be undermined. In your second term, we urge you and your Cabinet officers to continue to speak out, loudly and clearly, against torture and to reinforce the message that the United States strictly adheres to interrogation techniques that are lawful, humane, and effective.

DRONES AND "TARGETED KILLINGS"

The issue of "targeted killings" is a difficult one. The authority of our government to kill individuals, including U.S. citizens, away from an active theater of traditional warfare and without a trial or other public evidence of due process, raises many important questions. In addition to Constitutional, statutory, and treaty-based concerns, it portends global implications that may undermine humanity's general assumptions about the security of life under the law, even in time of armed conflict. We acknowledge the speeches that members of your Administration have given, endeavoring to shed light on the standards that have been employed to make these life-and-death decisions,[16] but we believe these statements are not sufficient and

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[14] *See* Detainee Treatment Act of 2005 (mandating DOD interrogation in accordance with Army Field Manual; co-sponsored by many Republicans and passed in the Senate by a 90-9 vote); *McCain's Stance on Torture Becomes Riveting Issue in Campaign* (Nov. 16, 2007), available at http://www.nytimes.com/2007/11/16/us/politics/16mccain.html?pagewanted=all; *McCain says torture did not lead to bin Laden* (May 12, 2011), available at http://www.msnbc.msn.com/id/43007276/ns/politics-more_politics/t/mccain-says-torture-did-not-lead-bin-laden; *What Americans Stand For* (Sept. 17, 2006) available at http://www.thedailybeast.com/newsweek/2006/09/17/what-americans-stand-for.html (discussing Senator Graham's stance against torture). In this regard, we commend courageous officials such as former Navy General Counsel Alberto Mora and former Assistant Attorney General Jack Goldsmith for, respectively, objecting to the "enhanced interrogation" policy and retracting its spurious legal foundation. *See* Alberto Mora, *Statement of Alberto J. Mora, Senate Committee on Armed Services, Hearing on the Treatment of Detainees in U.S. Custody* (Jun. 17, 2008), available at http://www.armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf; Jack Goldsmith, *More on the Romney Team Interrogation Memo* (Oct. 3, 2012), available at http://www.lawfareblog.com/2012/10/more-on-the-romney-team-interrogation-memo/.

[15] *See* Charlie Savage, *Election to Decide Future Interrogation Methods in Terrorism Cases* (Sept. 27, 2012), available at http://www.nytimes.com/2012/09/28/us/politics/election-will-decide-future-of-interrogation-methods-for-terrorism-suspects.html?_r=0.

[16] *See, e.g.*, Jeh Johnson, Gen. Counsel of the Dep't of Def., *Nat'l Sec. Law, Lawyers and Lawyering in the Obama Admin.*, Dean's Lecture at Yale Law School (Feb. 22, 2012), available at http://www.lawfareblog.com/2012/02/jeh-johnson-speech-at-yale-law-school/; Harold Koh, Legal Adviser, U.S. Dep't of State, *The Obama Admin. and Int'l Law*, Annual Meeting of the Am. Soc'y of Int'l Law, (Mar. 25, 2010), available at http://www.state.gov/s/l/releases/remarks/139119.htm; John Brennan, Assistant to the President for Homeland Security and Counterterrorism, *The Ethics and Efficacy of the President's Counterterrorism Strategy*, Address at the Woodrow Wilson Int'l Ctr. for Scholars (Apr. 30, 2012), available at http://www.lawfareblog.com/wp-content/uploads/2012/04/WilsonCenterFinalPrepared1.pdf.

that it is necessary to provide greater transparency so that the nation and the world can have confidence in the legality of the decisions that are being made. More transparency in this area will, we believe, result in greater national security, not less.

In particular, the Administration should release (with redactions if necessary) the legal memorandum that, as described in press reports, provided the basis for the drone strike against Anwar al-Awlaki.[17] In addition, the Association endorses the project, recently reported in the *New York Times*, to develop clear, written, detailed standards to guide the drone policy.[18] We urge you to make such standards public at the earliest feasible time and in as much detail as possible. Given the importance and relative novelty of the drone strategy, we believe this program should be the subject of informed public discussion and that, so long as the program is in use, decisions to use drone strikes should be made with the strictest of scrutiny and in a manner best calculated to avoid collateral damage.

TRIAL

In your National Archives speech, you announced a strong presumption in favor of civilian-court trials.[19] The Association strongly agrees with this approach. The record of the past 20 years overwhelmingly demonstrates that the Article III courts are up to the challenge of handling even the most complex terrorism cases.[20] The lengthy roster of just, credible, and, when appropriate, tough Article III prosecutions is a testament to the dedication and professionalism of the judges, prosecutors, defense counsel, and agents who have handled these cases. Another strength of civilian prosecutions is that they integrate our citizenry as jurors and trial observers. Our justice system is recognized at home and abroad as a bulwark of due process and procedural fairness and, indeed, as one of the central hallmarks of our democratic system of

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[17] Charlie Savage, *Secret U.S. Memo Made Legal Case to Kill a Citizen* (Oct. 8, 2011), available at http://www.nytimes.com/2011/10/09/world/middleeast/secret-us-memo-made-legal-case-to-kill-a-citizen.html?pagewanted=all..

[18] *See* Scott Shane, *Election Spurred a Move to Codify U.S. Drone Policy* (Nov. 24, 2012), available at http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html?pagewanted=all.

[19] Remarks by the President on Nat'l Sec., *supra* note 8.

[20] In a 2011 article, former Assistant Attorney General David S. Kris compiles voluminous evidence documenting the proven effectiveness of the criminal justice system in dealing with accused terrorists. David S. Kris, *Law Enforcement as a Counterterrorism Tool*, 5 J. Nat'l Security L. & Policy 1, 13-26 (Jun. 26, 2011), available at http://www.jnslp.com/2011/06/26/law-enforcement-as-a-counterterrorism-tool/. Mr. Kris' paper cites example after example in which the civilian court system, and FBI and DOJ investigators, developed critical intelligence; thwarted ongoing plots; and secured credible, just convictions and severe sentences. *Id*. at 14-17 (citing prosecutions of, among others, Ouassama Kassir, Ahmed Omar Abu Ali, Zacarias Moussaoui, Iyman Faris, John Walker Lindh, Hosam Maher Husein Smadi, Najibullah Zazi, David Headley, Tahawwur Rana, Faisal Shahzad, and Ahmed Ghailani); *see also* Richard B. Zabel & James J. Benjamin, Jr., Human Rights First, *In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts* (2008) (citing and discussing statistical data and scores of examples of successful Article III terrorism prosecutions dating back to the 1980s); Richard B. Zabel & James J. Benjamin, Jr., Human Rights First, *In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts, 2009 Update and Recent Developments* (2009) (same).

government. We should continue to make full use of it as a proven, effective part of our nation's counterterrorism strategy.

Your National Archives speech also envisioned a role for trial in military commissions for "detainees who violate the laws of war."[21] Although military commissions have a long history going back to the Revolutionary War, the attempt to re-introduce them as they were constituted after 9/11 was fundamentally flawed, culminating in the Supreme Court's 2006 decision finding that the commission's regime was unlawful under the Geneva Conventions.[22]

In 2009, in the wake of your National Archives speech, our country moved to a new regime of "reformed" military commissions which are substantially better than the discredited predecessor system. We commend Brigadier General Mark Martins for his efforts as Chief Prosecutor to promote due process, transparency, and professionalism in the reformed military commissions.[23] Nevertheless, and although it is premature to render any judgment about the legitimacy and effectiveness of the reformed commissions, it must be acknowledged that there continue to be problems with this parallel system of justice:

- The commissions have proceeded at an agonizingly slow pace. It is hard to believe, for example, that the individuals accused of perpetrating the 9/11 attacks have still not been brought to justice.

- Because of their novelty, the commissions are still, in some areas, "making it up as they go along." In contrast with the Article III courts, which rely on a robust body of precedent and a deep and experienced group of lawyers and judges, the reformed military commissions sometimes find themselves in uncharted waters. This is a real problem, especially where the cases are so difficult.

- The commissions are hobbled by their limited jurisdiction. In *Hamdan v. United States*, the D.C. Circuit reversed the conviction of a military commission defendant on grounds that the offense of conviction – material support for terrorism – was not a war crime and thus was not amenable to prosecution before a military commission.[24] A similar issue is presently before the D.C. Circuit in the case of Ali Hamza Ahmad Suliman al Bahlul. In a civilian prosecution, there would have been no doubt about the court's jurisdiction to adjudicate the charges against these defendants.

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[21] Remarks by the President on National Security, *supra* note 8.

[22] *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

[23] *See* Brigadier Gen. Mark Martins, Chief Prosecutor, Military Comm'ns, *Legitimacy and Comparative Law in Reformed Military Comm'ns*, Remarks at the N.Y.C. Bar Ass'n (Jan. 10, 2012), available at http://www2.nycbar.org/pdf/2190_001.pdf.

[24] *Hamdan v. United States*, 696 F.3d 1238 (D.C. Cir. Oct. 16, 2012).

- Defense counsel – who are of course essential to any legitimate system of justice – have been subjected to particular burdens and difficulties in the military commissions proceedings. Due in part to the security restrictions, defense counsel have struggled with basic requirements such as having privileged communications with their clients and managing the difficult challenges of pretrial preparation and mounting a defense. Some of the most problematic restrictions were imposed by a prior Guantanamo commander, illustrating the impracticality of carrying out high-profile, complex prosecutions in a remote location.[25]

- Notwithstanding the good intentions and dedicated efforts of the military and civilian lawyers handling the commissions, we believe there will be continuing suspicions that the commissions remain a form of "second class" justice and that the decisions about whom to prosecute in commissions are based on dubious considerations. In short, it will be a real challenge for military commissions to earn the same legitimacy as civilian courts or courts martial.

Although we recognize the need to continue with the military commissions cases that are now pending, we are gravely concerned about the prospect of military commissions becoming institutionalized as a parallel system of justice for the long term. Such a development would be at odds with the remarks of Jeh Johnson at Oxford, in which he reminded us all that the current armed conflict is bound to end – and hopefully sooner rather than later. Accordingly, we recommend that in your second term, your Administration refrain from referring any new cases to military commissions (including any new cases against existing Guantanamo detainees) and that, instead, efforts focus on completing the existing cases promptly, fairly, and in a manner that as nearly as possible comports with the procedures and norms applicable to civilian courts and/or courts martial. Should there be any future military commission prosecutions, we suggest that they occur within the United States, and not at Guantanamo, and that they be limited to a very small number with a clear and overriding nexus to armed conflict and international war crimes.

ACCOUNTABILITY

If the last twelve years have taught us anything, it is that crucial decisions about detention, treatment and trial must not be made by a small group of insulated Executive Branch officials without meaningful accountability to the coordinate branches of government, the citizenry, and the press. We urge you to re-examine the Justice Department's invocation of the state secrets doctrine in litigation, and to mandate a more sensible and discerning approach to classification of sensitive materials.

In addition, although there is no political constituency in their favor, we believe the government should fairly compensate those who have suffered as a result of unlawful conduct by

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[25] *See* Letter from Samuel W. Seymour, President, New York City Bar Association, to Jeh C. Johnson, Gen. Counsel, United States Dep't of Def. (Apr. 18, 2011), available at http://www2.nycbar.org/pdf/report/uploads/20072108-LettertoDeptofDefensereProtectiveOrderGoverningCounselAccesstoDetainees.pdf (objecting to Protective Order and Procedures for Counsel Access to Detainees Subject to Military Comm'n Prosecution at the United States Naval Station in Guantanamo Bay, Cuba, dated Mar. 4, 2011).

the government in our quest for security. Persons who have been unlawfully detained and abused, and who have suffered direct harms as well as loss of income, reputation, opportunity, and a sense of personal security, should be fairly compensated. In this regard, the United States should adhere to its treaty obligations, including under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Geneva Conventions.

We wish to highlight two cases in which there is a strong record of unlawful detention and abuses supporting compensation.

- Maher Arar, a Canadian citizen, was seized by U.S. officials based on information from Canadian authorities, later determined to be false, and rendered to Syria despite that country's reputation for torture. Mr. Arar claims he was tortured by the Syrians and held for almost a year before he was released through the efforts of the Canadian government. After a thorough inquiry led by the Chief Justice of the Supreme Court of Ontario, the Canadian government paid Mr. Arar over $9 million (Canadian dollars) in settlement of his claims, apologized to him and cleared his name. The United States has not only failed to compensate, or apologize to, Mr. Arar, but has persuaded our courts to deny him a forum to adjudicate his claims.

- The European Court of Human Rights found that the CIA, in collaboration with the Macedonian government, tortured Khalid El Masri, a German citizen. The European court awarded Mr. El Masri damages against Macedonia, castigated the CIA and Macedonia, and challenged Germany for its failure to properly investigate and act on Mr. El Masri's complaint (a failure which apparently resulted from U.S. diplomatic pressure). The United States previously acknowledged to Germany that Mr. El Masri's seizure and detention in Afghanistan was a mistake. Yet the United States has refused to apologize to Mr. El Masri and, as in the case of Mr. Arar, has persuaded our federal courts to deny him a forum for his claims.

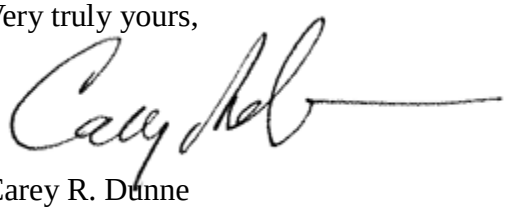
The failure to provide compensation or at least a civil forum to adjudicate such claims in these and other cases amounts to a breach of our country's obligations under the Convention Against Torture. We urge you to see that these wrongs are remedied as soon as possible either by negotiating compensation with persons so abused or establishing an administrative process to adjudicate their claims.

Finally, although we acknowledge numerous investigations and other efforts to shed light on matters such as torture and extraordinary rendition, the Association urges you to support a fuller and more transparent accounting than has occurred to date. In particular, we urge prompt declassification and release in as much detail as possible of the recently-adopted Senate Select Committee on Intelligence report on "enhanced interrogation." As part of our core mission, we have called upon foreign governments to undertake meaningful inquiries into alleged human rights abuses, often echoing similar appeals by the U.S. government. The Association believes that the efficacy of such initiatives can only be enhanced by applying the same principles at home.

CONCLUSION

Your second term presents an opportunity to reaffirm the bold statement, from your first inaugural address, that "we reject as false the choice between our safety and our ideals."[26] Toward that end, we hope the recommendations in this letter are helpful.

Very truly yours,



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[26] President Barack Obama, Inaugural Address (Jan. 20, 2009), available at http://www.whitehouse.gov/video/President-Barack-Obamas-Inaugural-Address-January-20-2009.