

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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November 23, 2016

While you have recently stepped back from some of these proposals, suggesting that certain campaign promises were merely ideas or opening bids in a negotiation, none has been clearly and unequivocally retracted. In particular, statements that indicate backtracking from US human rights commitments and the rule of law threaten the well-being of people within the United States and US standing in the world. Even leaving positions on issues ambiguous can have a lasting corrosive effect.

Accordingly, we believe it imperative that you explicitly retract the following proposals that would violate or threaten core human rights under US law or the international legal obligations of the United States.

#### Reinstating Torture and Targeting Civilians

Torture and other cruel, inhuman and degrading treatment or punishment violates US law, including the federal torture statute and the War Crimes Act. It also violates long-recognized protections under the laws of war, including the 1949 Geneva Conventions.

Reinstating any sort of interrogation program that involves torture, including waterboarding, or ill-treatment will expose senior administration officials and US military personnel to criminal liability within the US and abroad. Any legal opinion from the Justice Department's Office of Legal Counsel or other department attempting to justify torture will be legally void. It will put legal counsel involved at risk of liability for conspiracy or related charges, and it will not serve to protect anyone purporting to rely on such an opinion that would so clearly not have been rendered in good faith. You recently suggested that after speaking with military leaders, you have come to realize that torture might not be as effective as you had previously thought. This is an important acknowledgment but you should state unequivocally that your administration will never use torture or cruel treatment and that it will abide by US and international law banning it.

Similarly, reverting to past practices of detaining people in US custody incommunicado or in secret facilities or rendering them to third countries where they are likely to face torture or other ill-treatment, would violate US obligations under federal and international law prohibiting arbitrary detention, torture, mistreatment, enforced disappearance and other abuses. All those responsible for such violations, including as a matter of command responsibility, would be subject to criminal prosecution both in the US and abroad.

Reinstating torture and other methods of coercive interrogation would also undermine US national security. Past use of torture by the US continues to serve as a rallying cry for anti-US armed groups. Experienced US interrogators have emphasized that information obtained through torture is notoriously unreliable, often producing time-wasting false leads, while lawful interrogation methods produce more accurate information. The US has more intelligent, effective, and principled ways of responding to national security threats than stooping to barbaric practices used by groups such as the Islamic State. Respecting fundamental rights has always been in the best long-term interests of the United States.

During the campaign you also suggested that families of terrorism suspects could be targets of lethal strike operations. Later, you sought to clarify your position by saying that you would not issue orders for US military personnel to disobey the law. Acknowledging legal limits on the use of force by US forces was a positive step, but as you undoubtedly know, family members of combatants may not legally be targets of attack unless they are directly participating in the hostilities. Attacking them violates international legal protections for civilians and is a form of collective punishment. Anyone ordering such attacks would be subject to prosecution for war crimes. You should reaffirm US commitments to the Geneva Conventions and other international laws of war.

#### Expanding Indefinite Detention at Guantanamo Bay

The detention of hundreds of men indefinitely at Guantanamo Bay without charge or trial over the past 15 years has done long-term

damage to US credibility on human rights and compromised relationships with allies. Senior officials in the administration of George W. Bush came to recognize the harm to US standing caused by Guantanamo. The administration released several hundred detainees. The Obama administration further reduced the prisons population, citing among other reasons, the danger that Guantanamo poses as a recruiting tool for extremist groups. Your administration should likewise be looking for ways to undo the damage done by Guantanamo by appropriately transferring the dwindling number of detainees still held there and shutting down the facility. You should also certainly not add any detainees to Guantanamo.

The US should instead detain and prosecute all individuals accused of terrorist offenses in accordance with international law. That means disbanding the fundamentally flawed military commissions at Guantanamo Bay, whose handful of convictions have mostly been overturned on appeal, and prosecuting current and future terrorism suspects in courts that comport with international fair trial standards. US federal courts have prosecuted hundreds of terrorism cases since 9/11 but Congress has misguidedly banned the transfer of Guantanamo detainees to the US for detention or trial. Your administration should support lifting the ban so that the cases, stalled for years in the dysfunctional military commissions, can move forward in federal court. For example, it is a profound embarrassment a victory for blind ideology over any interest in justice that the suspects in the September 11, 2001 attacks have still not been tried because their prosecution has proceeded before the military commissions rather than in federal court. Victims and their family members, as well as the defendants, would be much better served by the federal-court system, which while not without its flaws, is well established and widely respected. The use of the discredited military commissions is particularly pointless because a major aim was to prevent revelation of US torture of the suspects, but the details of that torture have now largely been disclosed in the Senate Select Committee on Intelligence's public summary of its longer report on the Central Intelligence Agency's detention and interrogation program.

### **Deporting Millions of Immigrants**

Your proposal to deport or incarcerate two million or even three million people who have had some contact with the criminal justice system would put the US on course for massive rights violations. Experience has shown that when immigration agencies try to deport millions of criminals, often with minor or no actual convictions, people with deep ties in the US, who contribute to their families and communities, pay the price. The risks to due process and community safety are also severe. Expanding the flawed expedited removal mechanism to carry out deportations more rapidly, for example, would cause enormous damage to due process and risk numerous wrongful deportations. Your proposal to ramp up immigration enforcement using local police would have the effect of promoting racial profiling, fear, and distrust of police, ultimately damaging public safety.

### **Extreme Vetting, Onerous Asylum Seeker and Immigrant Registration Requirements, and Global Refugee Policy**

Your proposals to require Muslim immigrants to register with the government and to subject certain nationals to new extreme vetting procedures would cause serious harm. Both proposals were put forward in vague terms during the campaign, yet it is difficult to see how either could be implemented without denying people the internationally protected rights to seek asylum from persecution and to protection against discrimination. The registration proposal in particular conjures images of some very dark chapters in US and world history. Any kind of registration program would likely do harm to millions of law-abiding people and families who live and work in the US, for no apparent reason other than prejudice. US immigration, refugee resettlement, and asylum procedures already include very rigorous forms of security screening.

The US has for decades been the global leader in refugee resettlement. We strongly urge you not to undermine that leadership by curtailing refugee resettlement into the United States. A sudden attempt to curb the number of refugees coming to the United States could upend the entire global system of refugee resettlement discouraging other countries as well from accepting more refugees at a time when the world is facing the greatest number of displaced people since the end of the Second World War.

### **Curtailing Womens Rights in the US and Abroad**

The United States is one of only a few countries, rich or poor, that has experienced a recent increase in women dying in childbirth. Women and men in the US need access to comprehensive sexual and reproductive health care, including birth control, prenatal care, care and treatment for sexually transmitted infections, obstetric care, and access to safe and legal abortion. Such care should be available to all, including low-income and marginalized populations.

You have proposed several measures that would dramatically undermine such access. This includes your proposal to repeal most of the Affordable Care Act, which expanded access to health care including sexual and reproductive health care without putting forward any complementary proposal to ensure that millions of people who have benefitted under the act would not lose access to affordable health care. You also pledged that in nominating Supreme Court justices, your priority would be to put pro-life judges who would automatically overturn *Roe v. Wade* on the bench, which would open the door for the criminalization of abortion in many states. You have accepted the Supreme Courts ruling upholding marriage equality on the ground that it is settled law, but the courts recognition of reproductive freedom has been settled for more than forty years, with a series of cases reaffirming the privacy rights first protected in *Roe v. Wade*. In addition, you have said that you will support making the Hyde Amendment, which blocks Medicaid funding for abortion except when the pregnancy results from rape or incest or endangers the womans life, a permanent law. These proposals, if enacted, would cause harm to millions of women.

Beyond these direct policy proposals, you have for many years made statements about women that are deeply offensive and fly in the face of human rights principles of dignity and equality. While you deny having committed sexual assault, you have spoken of it with a callousness that deeply concerned people around the country, risked normalizing violence against women, and jeopardized the standing of the US in global efforts to combat gender-based violence. As president you should no longer disregard such violence and discrimination but will have a duty to make strong efforts to combat it by fully supporting laws, policies, and government institutions that promote womens safety from violence.

With regard to respecting womens rights at the international level, your administration should support the maintenance of institutions and the enforcement of laws and policies that promote global womens issues. For years, under both Democratic and Republican administrations, the United States has shown strong leadership in attacking such damaging practices as child marriage, gender-based

violence, and human trafficking. You are in a position to enhance rather than undermine that important legacy. Critical will be nominating a highly qualified proponent of women's rights to lead the State Department's Office of Global Women's Issues, and ensuring that the office has sufficient resources and authority.

### **Weakening Media Freedom**

During your campaign, you suggested you would attempt to weaken libel laws to make it easier to sue the media. Existing libel laws are designed to protect freedom of expression and ensure that the US has a robust free media, which is essential to ensuring public accountability and strong democratic institutions. Any efforts to erode such freedoms, including by strengthening libel laws, would be profoundly harmful to journalists ability to hold government to account. Ultimately, they would harm a fundamental and enduring component of US democracy.

### **Encouraging Hate Speech and Bias Crimes**

When asked, you have publicly disavowed support for white nationalists; however your appointment of Stephen Bannon as your chief strategist and senior counselor shows a reaffirmation, rather than a disavowal, of the racist, misogynistic, and xenophobic rhetoric that characterized your presidential campaign. Bannons stewardship of Breitbart News is widely recognized as promoting White Nationalisms message of hatred and intolerance and its accompanying racist and anti-Muslim discourse.

Regardless of whether you believe Bannon personally holds those views, his appointment to a high-level position sends the message that your administration will tolerate and perhaps even endorse or encourage views that might incite violence, discrimination, or hatred against marginalized populations. Particularly when coupled with the nomination to attorney general of Senator Jeff Sessions, who as you know was denied confirmation as a federal judge because of allegations of racism, Bannons appointment suggests your administration will also be slow to act, if at all, when hate crimes and other bias crimes are committed. You should rescind Bannons appointment, and state forcefully, publicly, and clearly that discriminatory acts and statements will have no place in your administration.

### **Backtracking on the Right to Health**

We urge you to withdraw your pledge to repeal and replace most of the Affordable Care Act. This legislation has so far provided insurance coverage for 20 million uninsured Americans. The Affordable Care Act should not be repealed or substantially amended without ensuring that these gains are preserved an assurance to which you have so far not credibly committed. The Affordable Care Acts expansion of Medicaid and subsidized insurance plans are key steps toward addressing significant economic, racial, and gender-based disparities in access to health care in the US and parallel poor performance on several key health indicators. As with maternal mortality (see above), the US is one of few countries in the world where HIV prevalence rates have not gone down in recent years. Mortality rates among middle-aged non-Hispanic Whites have increased in recent years, driven in significant part by high incidence of accidental drug overdoses and suicides. Improving access to mental health services and treatment for substance use disorders, both key elements of the Affordable Care Act and its emphasis on preventative, comprehensive, and community-based health services, is critical to reversing this trend.

### **Undermining Environmental Protections**

During your campaign, you have announced an intention to dismantle the Environmental Protection Agency (the EPA). Gutting environmental rules and regulations risks undermining bedrock protections of people and their environment. The EPA plays a crucial role in, among other things, studying pollutants harmful to human health, establishing rules to curb dangerous pollutants, monitoring to ensure compliance, and prosecuting certain polluters. To cite a few of its recent actions, the EPA has set limits on emissions of mercury, arsenic, and other toxic substances from power plants, established a stricter air quality standard on the noxious gas ozone, and launched numerous enforcement actions to protect communities from exposure to toxic lead. We urge your administration to demonstrate leadership by ensuring the EPA can to continue its work to protect public health and the environment.

### **Relations with Abusive Governments: Russia, Syria and Egypt**

Your stated interest in collaborating with Syrian President Bashar al-Assad and Russian President Putin in Syria is of grave concern given the massive crimes committed by the Syrian government against civilians, Russias continued military support to the Syrian government despite those ongoing crimes, and Russias own involvement in unlawful aerial attacks in Syria. In the last five and a half years, the Syrian government has repeatedly used an overly broad definition of terrorism that has allowed it to justify attacks against any opposition group or activist who opposes or is perceived as opposing the Assad government. It has also fought the war by targeting and besieging civilians in opposition-held parts of the country in violation of the laws of war. The Russian government has embraced these practices and contributed to Syria military equipment and technical, financial, and human support to assist Assad in his brutal campaigns. It has also joined in the bombing of civilians and civilian structures. In addition, Russia has provided President Assad political protection at the UN Security Council.

Over the course of the war, these widespread and systematic rights abuses have fueled instability, driving millions of civilians from their homes and creating a strong incentive for the emergence of extremist groups that now pose a threat well beyond Syrias borders. In these circumstances, partnering militarily with Russia would likely ratchet up abuse against civilians, intensify the adverse consequences, undermine prospects for a diplomatic resolution of the conflict, and discredit the United States throughout the region. Partnering with Russia and Syria on military operations could also make the US government complicit in their war crimes and crimes against humanity and expose US personnel to legal liability.

Similarly, the absence of any mention of Egypt's substantial human rights abuses and weak adherence to the rule of law when discussing the US-Egyptian partnership raises further concerns. In the last three years, authorities in Egypt have banned protests, arrested scores of LGBT people, prosecuted religious minorities, imprisoned tens of thousands, put thousands of civilians before military trials, embarked on a draconian campaign against civil society and the media, and, in 2013, shot at least 817 protesters at Rabaa Square in the course of twelve hours a slaughter on a par with Chinas crushing of the Tiananmen Square democracy movement. Armed groups, from an Islamic State affiliate in the Sinai Peninsula to various extremists in the mainland, continue to regularly kill members of the security forces,

while the governments overly broad counterterrorism response has led to the arrest of thousands of non-violent dissidents and many others erroneously targeted. Such intense repression, sooner or later, is bound to destabilize one of Americas most important regional allies. Sweeping these issues to the side is a deeply short-sighted approach.

Unless circumstances in Egypt change dramatically and the US is able to rectify long standing human rights vetting concerns that continue to be problematic, we believe suspending military and security assistance to Egypt is not only the right decision but also one that will make clear that Cairos repressive trajectory will make it difficult to continue a status quo US-Egyptian alliance.

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As president, you will have the heavy responsibility to prevent enactment of dangerous pledges and proposals that were made in the course of the campaign. A first step will be to unequivocally retract such proposals, condemn hateful rhetoric and acts undertaken in your name, and commit to respecting the obligations of the United States under international human rights and humanitarian law.

Sincerely,

Human Rights Watch / ACLU Joint Submission Regarding the United States Record Under the International Convention on the Elimination of All Forms of Racial Discrimination

Asylum Seekers Abused in the US and Deported to Harm in Cameroon

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