

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/ccrs-assessment-obama-administrations-record>

Policy Issue Resources

Candidate Obama campaigned on a promise of change. For many, his election inspired hope that we would finally see an end to the secrecy, law-breaking and rampant abuse of executive power that characterized the Bush era. Immediately upon taking office, President Obama issued [three executive orders](#) announcing: the closing of Guantanamo within one year, the shuttering of secret CIA 'black sites,' ending illegal interrogation techniques and torture, and eliminating the numerous Bush administration directives that granted official approval for torture, cruel and inhumane treatment, and abuse. Unfortunately, a closer examination of each of these issues reveals a disturbing pattern of broken promises and false reforms.

Leading up to inauguration day, the Center for Constitutional Rights published [policy recommendations](#) detailing how Obama could repair much of the damage done to our laws and constitution during his first 100 days in office. Below is an updated report and CCRs analysis of how the new administration measures up on these issues after one year in office. Follow the link in each headline for more detailed information and to learn more about CCRs litigation and organizing work and how you can get involved.

Obama's Guantanamo

January 11, 2010 marked the beginning of the ninth year of detention without charge or trial at Guantanamo Bay, Cuba. President Obama failed in his pledge to close the island prison, revived the unfair [military commissions](#) system, arbitrarily halted all transfers from Guantanamo to Yemen, and fought to keep habeas cases out of the courts. This is an anniversary that should not have come. [For more info, read an indepth analysis of this issue.](#)

Preventive Detention

President Obama [has announced](#) his intention to create an indefinite detention scheme that only serves to move Guantanamo to the United States and give it a new name. Pointing to cases where detainees cannot be prosecuted presumably due to evidence tainted by torture, Obama has claimed executive war powers to arbitrarily decide which detainees may pose a threat in the future and to then hold them without charge or trial, and potentially without end. Whether it's in the form of an executive order or legislation, indefinite detention without charge, trial or due process goes against our most fundamental principles of justice and the rule of law. [For more info, read an indepth analysis of this issue.](#)

Torture

The repudiation of the enhanced interrogation techniques including waterboarding, which Obama [announced](#) so quickly after taking office and the [release of the infamous torture memos](#) of the Bush administration, are important first steps. However, Bush-era torture techniques persist through the 2006 amendments to the Army Field Manual making ending torture an unfinished promise. [For more info, read an indepth analysis of this issue.](#)

Accountability for Bush Administration Officials

It is now clear that officials at the highest level of the Bush administration were involved in egregious and illegal actions, including the authorization of torture and other war crimes. Despite the fact that the prosecution of officials responsible for serious human rights abuses is required under both domestic and international law, President Obama has repeatedly indicated his reluctance to pursue prosecutions for these crimes, saying that he prefers to look forward rather than backward. Furthermore, the Department of Justice inquiry into CIA prisoner abuse is limited to investigating the agency's lower-level employees and contractors. Responsibility for the torture program must not be laid solely at the feet of low-ranking CIA operatives. The Attorney General must appoint an independent prosecutor with a full mandate to investigate and prosecute those responsible for torture and other war crimes, as far up the chain of

command as the facts lead.

[For more info, read an indepth analysis of this issue.](#)

Abuse of Executive Authority

It has become clear that President Obama has no intention of returning to the people the power that he inherited from George Bush continuing to rely on the 2001 Authorization for Use of Military Force to wield broad powers to wage an undefined and potentially unending war against terrorism. When Congress authorizes the use of military force, it must not be considered a blanket authorization for unchecked executive authority.

Rendition

In August, the Obama administration [announced new transfer policy recommendations](#) that endorse the continued practice of rendition: the forced transfer of a person to another country to be detained, interrogated and possibly tortured. These transfers are conducted outside of any judicial process and circumvent internationally recognized procedures for arrest or extradition, basically amounting to government kidnapping. The recommendations also endorse relying on diplomatic assurances that transferred prisoners will not be tortured a practice that has been proven to be ineffective. President Obama should immediately ban rendition entirely and abide by international standards that prohibit the transfer of people to countries where there are substantial grounds to believe they are at risk of being tortured.

[For more info, read an indepth analysis of this issue.](#)

Abuse of the State Secrets Privilege

The Obama administration is continuing Bush-era arguments and attempting to dismiss entire lawsuits brought by torture victims by invoking the state secrets privilege. In September, the Attorney General issued new [policies governing the use of this privilege](#) that purport to raise the standard governing what information can be protected. Unfortunately, these new procedures amount to nothing more than a promise that the executive will police itself. The judicial system can, and must, serve as a check upon the power of the executive, and as a mechanism for ensuring accountability for executive-branch abuses. Using the state secrets privilege to prevent judges from seeing the evidence in question is an end run around judicial review and an unacceptable shield for government lawbreaking.

[For more info, read an indepth analysis of this issue.](#)

Human Rights Abuse by Military Contractors

Military contracting is out of control. President Obama has continued to support and expand the use of private military contractors in Iraq, Afghanistan and elsewhere and he opposed a ban on military contractors from participating in interrogations. This administration must [stop outsourcing security](#) and end the use of private military contractors to perform core governmental functions, and instead hold corporations and those who run them accountable for human rights violations committed while in the service of the United States.

[For more info, read an indepth analysis of this issue.](#)

Ghost Detentions

Included in President Obamas January 22 [Executive Order regarding Interrogations](#) is a promise to shutter CIA black sites as expeditiously as possible and to not operate them in the future. However, his administration has not released any information about the current status of U.S. government black sites and has implemented a Guantanamo style sham review process for detainees at Bagram in Afghanistan, some of whom were transferred there from other countries. The power of secret detention and enforced disappearance lies in its arbitrary and secretive nature. It is time for the United States to come clean about ghost detentions by releasing the identities and whereabouts of everyone it has detained in the war on terror, even if they have been released, transferred to another state or are deceased.

Material Support Prosecutions

The Obama administration has continued to vigorously defend the use of material support statutes which make it a crime to provide support including humanitarian aid, literature distribution and political advocacy to any foreign entity that the government has designated as a terrorist group. These provisions amount to guilt by association, criminalizing many activities that have long been understood to be constitutionally protected. The Supreme Court heard CCRs challenges to the constitutionality of these provisions in the consolidated case of [Holder v. Humanitarian Law Project](#) in February 2010.

[For more info, read an indepth analysis of this issue.](#)

Protecting the Right to Dissent

At the September meetings of the G20 in Pittsburgh, we saw the Obama administration continuing the practice of deliberate and coordinated disruption of lawful political protests through heavy surveillance, brutal force and mass arrests that effectively suspend the First and Fourth Amendments and suppress the right to dissent. This administration has also continued and enhanced the use of terrorism prosecutions against animal rights and environmental activists, indicating that the Green Scare the repression of environmental activists by designating them terrorists continues in full swing.

Restrictions on Travel to Cuba

President Obama campaigned with the promise to ease the ban on U.S. nationals travelling to Cuba, and to engage in a dialogue with the Cuban government without preconditions. In March 2009, the Obama administration announced a roll-back of the restrictions on family-related travel which falls far short of lifting the travel ban in its entirety, since it leaves in place the restrictions on general travel to Cuba. The Cuba travel ban is a relic of unsuccessful Cold War policy and the Obama administration should discard it entirely and annul the penalties previously imposed against individuals under these restrictions.

[For more info, read an indepth analysis of this issue.](#)

After a full year in office, President Obama has failed to live up to his promises in many areas of critical importance, including: human rights, torture, rendition, secrecy and accountability. The Obama administration must act decisively to undo the grave damage to human rights and human lives, the rule of law and the U.S. Constitution wreaked by the previous administration. President Obama must take this opportunity to restore, protect and expand human rights, build a more just and equitable society within our borders and make the United States a more responsible member of the world community. The Center for Constitutional Rights will continue to push the President to show true leadership in undoing the shameful legacy of the Bush administration and to demand justice and real change in 2010.

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