



January 22, 2014

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ROBERT REMAR
TREASURER

Dear Ms. McLeod,

In your address to the United Nations Committee Against Torture in November, 2014, you stated on behalf of the United States “that torture and cruel, inhuman, and degrading treatment (CIDT) and punishment are prohibited at all times in all places, and we remain resolute in our adherence to these prohibitions.” Though heartened by your affirmation of the global ban on torture and cruelty, we write to express our concern that the government may nevertheless be applying U.S. policy and law in a manner that could allow for either direct or indirect U.S. participation in torture and other forms of CIDT.

Our concerns are prompted by a growing number of credible media reports and testimony of formerly detained individuals suggesting that the State Department may have failed to prevent – or even actively facilitated – the arbitrary detention of U.S. citizens and foreign nationals by countries that the United States long has recognized engage in torture and ill- treatment. As you will appreciate, such practices could violate U.S. obligations under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR).

We are presently documenting these issues and preparing a report on our findings. As part of this process, we write to request a meeting with you and your colleagues to share our preliminary findings and to learn more about the legal obligations and procedures that guide State Department practice to ensure U.S. compliance with its international human rights obligations. Any information you provide will, as appropriate, be included in our report, which we expect to release in February. We have also submitted a request for information on these issues to representatives of the Federal Bureau of Investigation (FBI), the text of which you may find as an annex to this letter.

We are especially interested to know of the existence of policies and practices that ensure U.S. compliance with domestic and human rights laws,

in the context of embassy administration and consular affairs. In particular, we seek information on the following issues:

1. What protocols, procedures and/or practices are in place to articulate and implement State Department obligations under the 22 U.S. Code § 1732 requirement that the President demand the release of United States citizens wrongfully detained by foreign governments;
2. What protocols, procedures and/or practices are in place to implement and apply Executive Order 13107 (Implementation of Human Rights Treaties) to the conduct of U.S. officials abroad, including FBI agents, diplomatic and consular officials, and other agents acting on behalf of the U.S. government;
3. What protocols, procedures and/or practices are in place to implement and apply the Detainee Treatment Act of 2005 to the conduct of U.S. officials abroad, including FBI agents, diplomatic and consular officials, and other agents acting on behalf of the U.S. government;
4. What protocols, procedures and/or practices U.S. consular officers adhere to in acting upon the Vienna Convention on Consular Relations (VCCR) Article 36 right to visit, converse and correspond with U.S. citizens detained abroad;
5. What safeguards are in place to ensure that information U.S. consular officers provide to FBI Legal Attachés does not result in the arbitrary arrest and detention by foreign governments of any individual seeking U.S. consular services;
6. Statistics on the number of passport revocations and denials made based on the Secretary's determination that an applicant's "activities abroad are causing or are likely to cause serious damage to the national security of or foreign policy of the United States" under 22 CFR 51.60 (c)(4);
7. The existence of any evidentiary standards or procedures required to support the Secretary's determination that a U.S. passport holder or applicant's "activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States" under 22 CFR 51.60 (c)(4);
8. Whether State Department protocol, procedure and/or practice allow for the imposition of any pre-revocation holds or freezes on U.S. passports. If so, please provide information on the evidentiary standards and level of authorization necessary before carrying out such an operation;
9. In the absence of pending criminal charges, under what policies, procedures, and circumstances consular officers would induce a U.S. passport holder's presence at the embassy in order to serve a passport revocation notice or seek information to determine whether one is necessary and appropriate.

We would greatly appreciate the opportunity to discuss these and other issues with you, either by phone or in person, at your convenience.

So that the ACLU will be able to incorporate your responses in the report, we would be grateful if you could confirm your availability to meet or provide us with as much detailed information as possible on the issues raised above no later than February 12, 2014. Please do not hesitate to contact Chris Anders at canders@aclu.org or 202-675-2308.

Thank you for your consideration. We look forward to hearing from you.

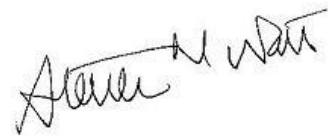
Sincerely,



Laura W. Murphy
Director, ACLU Washington Legislative Office



Christopher E. Anders
Senior Legislative Counsel, ACLU Washington Legislative Office



Steven Watt
Senior Staff Attorney, ACLU Human Rights Program



January 22, 2014

Thomas Class, Sr.
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Our concerns are prompted by a growing number of credible media reports and testimony of formerly detained individuals suggesting that the State Department may have failed to prevent – or even actively facilitated – the arbitrary detention of U.S. citizens and foreign nationals by countries that the United States long has recognized engage in torture and ill- treatment. As you will appreciate, such practices could violate U.S. obligations under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR).

We are presently documenting these issues and preparing a report on our findings. As part of this process, we write to request a meeting to share our preliminary findings and to learn more about the legal obligations and procedures that guide FBI practice to ensure U.S. compliance with its international human rights obligations. Any information you provide will, as appropriate, be included in our report, which we expect to release in February.

We are especially interested to know of the existence of standards and processes to ensure FBI compliance with domestic and human rights laws, as a matter of policy, in the context of overseas detention and interrogation of U.S. and non-U.S. nationals. In particular, we would welcome information on the following specific issues:

FBI Policy and Practice in Overseas Detention and Interrogations

1. Which policies and procedures are followed by FBI interrogators who witness abusive interrogation techniques employed by foreign government representatives in facilities under the control of the foreign government to ensure that agents report or otherwise prevent such instances of abuse;
2. The safeguards the FBI has in place to ensure that information concerning persons of interest is not disseminated to countries that do not comply with the prohibition against torture and CIDT guaranteed by CAT and the ICCPR;
3. What information the FBI provides to U.S. State Department consular officers in a given country when the agency learns of the arrest and detention of a U.S. national within that country;
4. Statistics broken down by country on the frequency and number of instances of reports filed by FBI officials pursuant to the FBI's "Remove and Report" protocol;¹
5. Any other information about implementation of the "Remove and Report" protocol, including any procedures that would trigger the cessation of joint interrogations on the basis of "Remove and Report" filings by FBI officials;
6. What procedures, if any, are recommended by the 2011 *Cross Cultural, Rapport-Based Interrogation* guidance in the case of FBI personnel observing or participating in the harsh treatment of a detainee;
7. The revisions, if any, that have been made to the 2011 *Cross Cultural* guidance to ensure that FBI agents do not use coercive isolation techniques, the widely criticized "Reid technique" or recommendations from the CIA's KUBARK interrogation manual in conducting interrogations abroad;
8. Whether FBI policies or practices concerning the conduct of overseas detention and interrogation distinguish between FBI interrogations conducted for intelligence gathering purposes and those conducted for law enforcement purposes, and if so, how and with what consequences;
9. What safeguards, if any, are required by FBI policy to ensure that intelligence gathering interrogation teams and subsequent law enforcement interrogation teams do not share information or otherwise coordinate efforts over the course of a "two-step" interview series for any particular detainee;

¹ Open Society Justice Initiative, FBI Responds to Kampala Abuse Allegation Cited in Open Society Justice Initiative Report, Press Release, June 17, 2013, available at <http://www.opensocietyfoundations.org/press-releases/fbi-responds-kampala-abuse-allegations-cited-open-society-justice-initiative-report>.

Bureau Obligations under Domestic and International Law with respect to Overseas Detention and Interrogations

10. Whether, and under what conditions, the FBI applies the prohibitions of torture and other forms of abuse found in Executive Order 13491, signed by President Obama on January 22, 2009, to interrogations by foreign governments when conducted with the involvement of or at the behest of the FBI;
11. What obligations the FBI considers the CAT and ICCPR impose on U.S. officials when an individual is detained and interrogated overseas by agents of a foreign government with the involvement or at the behest of the United States.

Bureau Involvement in Specific Overseas Detention and Interrogation

12. Additionally, please confirm and explain the FBI's role (if any) in the following cases:
 - a. the September 2010-April 2011 detention of Dutch-Pakistani national Sabir Khan in Pakistan;²
 - b. the detention of Kenyan national Ahmed Abdullahi Hassan in Somalia beginning in 2009;³
 - c. the one hundred-day detention of Eritrean national Mohamed Ibrahim Ahmed in Nigeria;⁴
 - d. the January 26, 2010 arrest and interrogation of U.S. national Sharif Mobley in Yemen;⁵
 - e. the interrogation of Swedish national Ali Yasin Ahmed in Djibouti beginning in August of 2012;⁶

² Dutch Court Blocks U.S. Extradition Amid Torture Claims, BBC News, July 23, 2013, *available at* <http://www.bbc.com/news/world-europe-23422983>.

³ Jeremy Scahill, The CIA's Secret Sites in Somalia, The Nation, July 12, 2011, *available at* http://www.nationinstitute.org/featuredwork/fellows/2283/the_cia%27s_secret_sites_in_somalia.

⁴ Craig Whitlock, Rendition gets ongoing embrace from Obama administration, The Independent, January 2, 2013, *available at* <http://www.independent.co.uk/news/world/americas/rendition-gets-ongoing-embrace-from-obama-administration-8434963.html> (finding that "[a] diplomatic cable released by the anti-secrecy group WikiLeaks makes clear that Nigerian authorities were reluctant to detain Ahmed and held him for four months under pressure from U.S. officials").

⁵ Spencer Ackerman, American citizen Sharif Mobley is missing in Yemen – lawyers, The Guardian, April 10, 2014, *available at* <http://www.theguardian.com/world/2014/apr/10/american-citizen-sharif-mobley-missing-yemen>.

⁶ Nermeen Shaikh & Amy Goodman, As Brennan Tapped for CIA, Case of Somali Detainees Highlights Obama's Embrace of Secret Renditions (Interview with Clara Gutteridge and Ephraim Savitt), DEMOCRACY NOW!, Jan. 9, 2013, http://www.democracynow.org/2013/1/9/as_brennan_tapped_for_cia_case; U.S. Attorney's Office, Three Supporters of Foreign Terrorist Organization al Shabaab Charged in Brooklyn Federal Court, Face Life in Prison, EASTERN DISTRICT OF NEW YORK, Dec. 21, 2012, *available at* <http://www.FBI.gov/newyork/press->

- f. the interrogation of Swedish national Mohamed Yusuf in Djibouti beginning in August of 2012;⁷
 - g. the more than year-long detention of British national Madhi Hashi in Djibouti beginning in 2012;⁸
 - h. the December 2010 detention and interrogation of U.S. national Gulet Mohamed in Kuwait;⁹
 - i. the more than one hundred-day detention of Yonas Fikre in the U.A.E;¹⁰
 - j. the May 2010 detention and interrogation of U.S. national Yusuf Wehelie by Egyptian security forces;¹¹
 - k. the summer 2009 detention and interrogation of U.S. national Naji Mansour in Sudan.¹²
13. In regards to each of the above case studies we are particularly interested in receiving information from you about the following issues:
- a. whether FBI officials attempted to recruit the detained individual as an informant, and whether any such recruitment pre- or post-dated the individual's detention and interrogation or took place simultaneously;
 - b. whether the detained individual was placed on the U.S. "No-Fly" list before or after his detention, the justification for their placement on such a list and the procedures followed;
 - c. whether FBI officials or officials representing another agency of the U.S. intelligence community to the FBI's knowledge shared any intelligence concerning the individual in

[releases/2012/three-supporters-of-foreign-terrorist-organization-al-shabaab-charged-in-brooklyn-federal-court-face-life-in-prison.](#)

⁷ *Id.*

⁸ Attorneys for Mr. Hashi allege that Mr. Hashi was immediately arrested by U.S. officials after his release from a more than year-long detention in Djibouti. See Steve Swann, UK Terror Suspect Mahdi Hashi Fights Citizenship Ruling, BBC NEWS, July 25, 2013, available at <http://www.bbc.co.uk/news/uk-23453257>.

⁹ Nick Baumann, Locked Up Abroad – For the FBI, MOTHER JONES, Oct. 2011, available at <http://www.motherjones.com/politics/2011/08/proxy-detention-gulet-mohamed>.

¹⁰ First Amended Complaint Filed by Yonas Fikre Against All Defendants (Nelson, Thomas) (Entered June 17, 2013); Nigel Duara & Malin Rising, Yonas Fikre, US Muslim, Claims He Was Tortured at FBI's Behest in the United Arab Emirates, Huffington Post, Apr. 18 2010,

¹¹ CAIR, Statement of Yusuf Wehelie, July 13, 2012, available at <http://www.cair.com/press-center/press-releases/3490-statement-of-yusuf-wehelie.html> (Alleging interrogation by a CIA representative in Egypt, followed by subsequent interrogation by Egyptian security forces in which questions asked of Mr. Wehelie by Egyptian interrogators were identical to previous questions asked of him by FBI officials).

¹² Nick Baumann, This American Refused to Become an FBI Informant. Then the Government Made His Family's Life Hell, Mother Jones, May/June 2014, available at <http://www.motherjones.com/politics/2014/05/sudan-FBI-informant-naji-mansour-terrorism>.

question with foreign governments who later detained that individual;

- d. whether FBI officials or officials representing another agency of the U.S. intelligence community to the FBI's knowledge aided in any way in the extrajudicial arrest and detention of the individual in question;
- e. whether FBI officials or officials representing another agency of the U.S. intelligence community to the FBI's knowledge provided any representative of a foreign government with questions or case material for the tacit or express purpose of interrogating the individual in question;
- f. whether FBI officials or officials representing another agency of the U.S. intelligence community to the FBI's knowledge determined before any involvement by an agent of the U.S. if the individual in question was "more likely than not" to suffer torture or another form of abuse as a result of that individual's foreseeable interrogation or detention on by the particular foreign government;
- g. whether FBI officials, by participating in or overseeing the interrogation of the individual in question, used coercive isolation techniques, the widely criticized "Reid technique" or recommendations from the CIA's KUBARK interrogation manual;
- h. whether and with what justification FBI officials requested the imposition of a hold or revocation of the individual's passport if the individual is a citizen of the United States.

We would greatly appreciate the opportunity to discuss these and other issues with you, either by phone or in person, at your convenience.

So that the ACLU will be able to incorporate your responses in the report, we would be grateful if you could confirm your availability to meet or provide us with as much detailed information as possible on the issues raised above no later than February 12, 2014. Please do not hesitate to contact Chris Anders at canders@aclu.org or 202-675-2308.

Thank you for your consideration. We look forward to hearing from you.

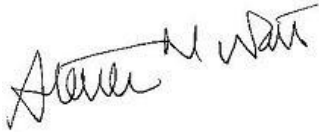
Sincerely,

A handwritten signature in black ink that reads "Laura W. Murphy". The signature is written in a cursive, flowing style.

Laura W. Murphy
Director, ACLU Washington Legislative Office



Christopher E. Anders
Senior Legislative Counsel, ACLU Washington Legislative Office



Steven Watt
Senior Staff Attorney
Human Rights Program, ACLU

cc: The Honorable James Comey, Director of the FBI
James Baker, General Counsel of the FBI