



The  
CENTER for  
VICTIMS of  
TORTURE



December 1, 2021

The Honorable Antony Blinken  
Secretary of State  
United States Department of State  
2201 C Street NW  
Washington, DC 20520

The Honorable Benjamin W. "Ben" Moeling  
Chargé d'Affaires  
United States Mission to the UN, Geneva  
United States Department of State  
2201 C Street NW  
Washington, DC 20520

The Honorable Linda Thomas-Greenfield  
United States Permanent Representative to the  
UN  
United States Mission to the UN  
799 United Nations Plaza  
New York, NY 10017

Ambassador Susan E. Rice  
Assistant to the President for Domestic Policy  
and Director  
Domestic Policy Council  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Secretary Blinken, Ambassador Thomas-Greenfield, Chargé d'Affaires Moeling, and Ambassador Rice:

We write to express deep concerns about reports that the Biden administration has submitted to human rights treaty monitoring bodies, and to urge the administration to take the steps necessary to comply fully with its international human rights treaty obligations.

President Biden recently [said](#) "leading by example means taking action at home." We agree. As many world leaders gather on December 9 and 10 for the [Summit for Democracy](#) — which overlaps with International Human Rights Day, and where advancing human rights is one of three key objectives — the President should demonstrate that US actions reflect its commitments.

In 2021, the United States issued three reports regarding its compliance with [the International Covenant on Civil and Political Rights](#), the [International Convention on the Elimination of All Forms of Racial Discrimination](#), and the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \("CAT"\)](#), respectively. The reports assert that "the United States is committed to performing its obligations" under the treaties, but then fail to even mention exploring new interagency mechanisms to promote US accountability. The reports also fail to report accurately on policies and practices that do not comply with CAT, or otherwise contradict the reports' assertions. In this letter, we draw your attention to three such problems with the United States' [report](#) on its compliance with CAT (the "report").

First, the report obscures United States border policies that violate CAT on a daily basis. While such violations have [occurred](#) for [some time](#), they worsened after adoption of the family separation policy in April 2018, the Migrant Protection Protocols (MPP) in 2019, and the [unnecessary](#) and [illegal](#) expulsion policy under Title 42 in March 2020. The report [asserts](#) that migrants arriving at US borders are being screened by asylum officers under either the credible or reasonable fear standard to ensure that they are not returned to a country where they would be in danger of torture. The report elides the [fact](#) that the [Title 42](#) and [MPP](#) programs turn people seeking protection back to places where they are, as US officials know, targets of torture, kidnappings and brutal attacks. Not only do Customs and Border Protection (CBP) officials administering Title 42 and the MPP program [repeatedly](#) and [systematically failed](#) to refer migrants for such screenings, but “screenings” that fall short of the Refugee Convention and CAT standards – even if they do occur -- do not constitute an adequate safeguard, especially given the systematic targeting of asylum seekers and migrants subjected to these policies.

That these policies and CBP’s failure to provide these referrals, violate US nonrefoulement obligations under CAT is tragically borne out by those [cases](#) in which Mexican officials appear to have been directly implicated in the torture of individuals returned to Mexico under MPP. In other cases, [nonstate actors](#) have committed abuses of comparable severity. Mexican officers—including local, state, and federal police and immigration officials—are [involved in, complicit in, or turn a blind eye](#) to the [violence, torture and kidnappings](#) carried out by the deadly cartels that control vast stretches of territory in Mexico.

The Committee against Torture, which provides authoritative interpretation of the CAT, is [clear](#) that the duty not to return applies “equally” in cases where a government “is unable to prevent” acts of severe abuse committed by nonstate actors. Moreover, [Haitians](#), [Nicaraguans](#), [Mexicans](#), and other asylum seekers expelled by the United States to their home countries under Title 42 have consistently reported that they have been denied the opportunity to raise their fears of persecution or torture prior to their return. There is overwhelming evidence that the United States is failing to provide even the unduly restrictive so-called “shout test” to migrants under Title 42 (i.e., a chance for a referral if a migrant makes a “spontaneous and reasonably believable claim” that they fear being tortured). As of November 2021, only [3,217 migrants](#) were referred for screening out of 1,163,000 border expulsions under Title 42 since March 2020; and of these, only 272 passed their initial screening interviews.

The impact has been particularly cruel to Haitians, some [8,500](#) of whom have been forcibly removed to Haiti since late September, the vast majority under Title 42. Former US Special Envoy Daniel Foote has called Haiti a highly dangerous “[collapsed state](#)” that may have the highest [kidnapping rate](#) in the world. Former US State Department Legal Advisor [Harold Koh](#) pointed out that the US applies Title 42 to individuals “*to whom our legal obligations under the Refugee treaties and parallel statutes have undeniably attached,*” but provides no affirmative screening for an individual’s fear of persecution. That omission “inevitably create[s] an unacceptably high risk that a great many people deserving of asylum will instead likely be returned to countries where they fear persecution, death, or torture.” The Title 42 policies thus “violate our legal obligation not to expel or return (“refouler”) individuals” — “especially migrants fleeing from Haiti.”

Second – with respect to policies and practices related to the Guantanamo Bay detention facility and the CIA’s post-9/11 torture program – the submission similarly ignores executive branch actions inconsistent with its CAT obligations. For example, throughout the reporting period, government lawyers have:

- [Attempted](#) to use, and [continued](#) to defend the authority to use, evidence obtained from torture against torture victims (a position a Guantanamo military commission judge accepted);
- Refused to disclose evidence related to torture necessary for torture victims to defend themselves [against criminal](#) charges or [challenge](#) the legality of their detention (in particular the evidence in the [Senate Select Committee on Intelligence Study of the Central Intelligence Agency's Detention and Interrogation Program](#) ("Torture Report");
- [Asserted](#) wrongly that the prohibition on torture is not yet a peremptory norm of international law, and that CAT "is not binding 'law' for a court to consider, apply, or rely on"; and
- Have not sought to hold anyone criminally accountable for CIA torture, notwithstanding hundreds of pages in the Torture Report detailing obviously criminal conduct (such as that perpetrated against Majid Khan, who recently [described publicly](#) and with specificity years of CIA torture he endured—including abusive and coercive methods far beyond those which Bush administration lawyers purported to authorize).

The report is equally problematic on these issues in other ways. For example, notwithstanding [substantial evidence](#) to the contrary, it maintains that men detained at Guantanamo receive health care comparable to that afforded to military personnel stationed at the Naval base. But it fails to mention, and the military has never denied, that medical professionals [do not ask](#) CIA torture program victims about their experiences, and so their medical records are devoid of trauma histories—leading to misdiagnoses and improper treatment. Perhaps most astounding, the submission [states](#) that the United States cannot disclose information related to CIA torture program rendition victims for *privacy* reasons; in other words, to serve *victims'* interests. (We assume that the administration did not contact each of those victims to ask if they would prefer it protect their personal information rather than disclose that it tortured them through the rendition process itself or that it sent them to torture in third countries).

Third, the report provides cursory evidence of any accountability for law enforcement abuse in the US. It hides the very low rates of prosecution for unlawful use of force by law enforcement officers by [combining](#) statistics on federal prosecutions for law enforcement officers with all other individuals federally prosecuted, and identifies no individual accountability measures other than federal prosecutions. The report also fails to address the fact that Black people in the United States are killed by law enforcement officers at a rate that is [three times higher](#) than white people. While we welcome the modest return to pattern or practice investigations by the Department of Justice mentioned in the report, the scant evidence of accountability for law enforcement use of force stands in stark contrast to the [high rates of law enforcement abuse and killings](#) in the US (as of November 2021, NGO compilations created to address the lack of accurate governmental statistics indicate that at least [910 people](#) were killed in 2021 by police in the United States).

Similarly, the report outlines various measures aimed at standard setting and accountability for CBP use of force incidents, but fails to acknowledge the widespread evidence that these measures are failing to prevent repeated incidents of CBP misconduct, including sexual assault and other forms of violence, against migrants. Evidence of such abusive incidents include reports of individuals killed by border agents, such as [Claudia Gomez](#) who was killed in 2019; other individuals [injured](#) by border agents; abuses committed by [Border Patrol's Critical Incident Teams](#); CBP's [abusive treatment](#) of Haitian migrants in September 2021 in Del Rio, Texas; and 160 reports in US government records of physical, sexual, and verbal abuse, as well as due process violations by US border officials, obtained and reported on by [Human Rights Watch in October 2021](#).

These are but three examples contained in the CAT report alone. There are many similar failings on other issues not mentioned here contained in the CAT report as well as in the US government's reports under the ICCPR and CERD.

We urge you to re-commit the United States to full compliance with its treaty obligations during the upcoming Summit for Democracy and in observance of International Human Rights Day. In follow up to the summit, the US should create a permanent federal inter-agency body co-chaired by the White House's National Security Council and Domestic Policy Council that would include all relevant agencies tasked with reviewing and implementing US human rights obligations and commitments. With respect to US obligations under CAT, the US government should issue an amended report to accurately assess its compliance and commitment to remedy failures to comply, as well as prioritize a requested visit from the United Nations Special Rapporteur on Torture and provide unimpeded access to detention facilities in line with the [Terms of Reference](#) on such visits.

Thank you for your ongoing leadership and commitment to democracy and human rights. We look forward to further discussion of the critical issues we have raised in this letter. Thomas Rachko, Senior Coordinator for the US Program of Human Rights Watch ([rachkot@hrw.org](mailto:rachkot@hrw.org)) would be happy to assist with scheduling such a meeting.

Sincerely yours,

Al Otro Lado  
Amnesty International – USA  
American Civil Liberties Union  
Center for Victims of Torture  
Haitian Bridge Alliance  
Human Rights First  
Human Rights Watch  
Leadership Conference on Civil and Human Rights  
Refugees International