



humanrights@aclu.org

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The ACLU submits this statement regarding recent developments in the U.S.' administration of the death penalty to contribute to the 2014 United Nations Secretary General's report to the Human Rights Council on the death penalty.¹

Basic Facts on Death Penalty in the United States

As of May 6, 2014, 1,379 people² have been executed in the United States since the modern death penalty era began in 1976.³ The U.S. death penalty system in 32 states, the federal system, and the military continues to violate international law. As of January 1, 2014, there were 3,070 people awaiting execution across the country.⁴

Positive Signs in Recent Years

In the last decade the U.S. Supreme Court has outlawed the execution of juveniles, the intellectually disabled, and those who did not commit homicides.⁵ The number of new death sentences has dropped dramatically – from a peak of 315 in 1996 to 80 in 2013.⁶ New York, New Jersey, New Mexico, Illinois, Connecticut, and Maryland have recently repealed the death penalty. In February 2014, Governor Jay Inslee of Washington state declared a moratorium on the death penalty during his term as governor.⁷ Furthermore, both Delaware and New Hampshire came close to repealing the death penalty in 2013 and 2014. After passing in the Senate, Delaware's bill was tabled in the House of Representatives on March 28, 2013.⁸ Conversely, New Hampshire's bill to repeal capital punishment passed in its House of Representatives on March 12, 2014, but for now has been tabled in the Senate.⁹

Increasingly, judges, prosecutors, law enforcement officials, and other former supporters of the death penalty acknowledge that its problems are too legion and the consequences of error too severe.¹⁰ For example, in California, Donald Heller, the leader of the campaign which passed California's harsh death penalty measure in 1978, was a strong advocate of the 2012 ballot measure which would have repealed the death penalty.¹¹ Similarly, former supporter of the death penalty, Senator Bob Odell, voted to repeal capital punishment in his home state of New Hampshire this year, stating that he would not be able to explain or justify an execution to his grandchildren.¹²

In general, support for the death penalty in the U.S. has decreased significantly over the last twenty years. According to a 2013 survey conducted by Pew Research Center, 55% of adults in the U.S. favor the death penalty for people convicted of murder,

while 37% oppose capital punishment. Compared to an identical poll from 1996, which found that 78% of U.S. adults were in favor while only 18% were opposed, the 2013 statistics indicate great progress in U.S. public opinion around the death penalty.¹³

Imposition of the Death Penalty on the Mentally Ill and Intellectually Disabled

In contravention of recommendations by the American Bar Association and leading mental health groups to exempt the severely mentally ill from the death penalty,¹⁴ and of the constitutional prohibition on execution of the intellectually disabled, the U.S. continues to execute both the severely mentally ill and the intellectually disabled. Warren Hill, whom all experts recognize as an intellectually disabled individual, was scheduled to be executed in July 2013;¹⁵ however, his execution was stayed after his counsel challenged Georgia's concealment of its lethal injection providers.¹⁶ In Florida, John Ferguson, a man diagnosed with paranoid schizophrenia, was executed on August 5, 2013 after the U.S. Supreme Court failed to intercede on his behalf.¹⁷ Most recently, on April 9, 2014 Texas executed Ramiro Hernández Llanas, a Mexican national whose IQ level fell well within the parameters of intellectual disability. Despite precautionary measures issued by the Inter-American Commission on Human Rights (IACHR) in Mr. Hernández's case, the U.S. failed to preserve his life pending a petition before the IACHR, in violation of its international legal obligations derived from the Charter of the Organization of American States and the American Declaration of the Rights and Duties of Man.¹⁸

In January 2013, the United States Supreme Court decided unanimously that state prisoners do not have a right to delay their capital appeals on federal habeas review because they are adjudged incompetent, meaning that their cases may proceed even when mental illness or intellectual disability prevents them from effectively participating.¹⁹

Death Row Prisoners Spend Excessive Time on Death Row

Condemned prisoners often wait decades in solitary confinement before execution, in violation of internationally-recognized prohibitions against this mistreatment.²⁰ In his 2012 report to the General Assembly, UN Special Rapporteur on torture, Juan Mendez, explained that this "death row phenomenon" produces "severe mental trauma and physical deterioration in prisoners under sentence of death" and can sometimes constitute cruel, inhuman or degrading punishment.²¹ This phenomenon may cause some prisoners, like Robert Gleason who was executed in Virginia in January, to "volunteer" for execution rather than remain on death row.²²

The Death Penalty's Arbitrary and Disproportionate Application

Use of the death penalty is arbitrary and random. Among thousands of potentially eligible cases, only a handful of those convicted are sentenced to death; worse, non-legal factors such as race, class, and geography determine who is sentenced to death.²³

Numerous studies establish that murder of whites, particularly by blacks, results in capital prosecution in far higher percentages than murders of people of color.²⁴ Minorities are overrepresented on death row, as the U.S. government acknowledged in its recent report to the UN Human Rights Committee.²⁵ U.S. constitutional law continues to prevent successful challenges to these racist practices.²⁶ People of color continue to be excluded from capital juries at alarming rates.²⁷

Although policies have been enacted to protect individuals from racial discrimination in death penalty sentencing, unfortunately these measures have been short-lived. For example, North Carolina passed the Racial Justice Act in August 2009, requiring courts to enter a life sentence for any death row defendant who proves that race was a factor in the imposition of his sentence.²⁸ By the end of 2012, the Racial Justice Act had served instrumentally in reducing the death sentences of four inmates in North Carolina.²⁹ In June 2013, however, the North Carolina legislature voted to repeal the Racial Justice Act, leaving 159 death row inmates with unclear legal recourse if racial discrimination played a role in their conviction.³⁰ The State also appealed the four successful cases under the Act to the North Carolina Supreme Court, where they are pending now.

The U.S. Death Penalty System Fails to Protect the Innocent

Since 1973, 144 innocent people in 26 states have been exonerated from death row.³¹ In 2013 and 2014, Reginald Griffin of Missouri and Glenn Ford of Louisiana were released after spending thirty years on death row for murders they did not commit. In both cases, prosecutors had withheld critical evidence that would have proved Griffin's and Ford's innocence decades earlier.³² Despite these rare "success stories," tragically, many death row inmates have not escaped execution.

Other prisoners with strong claims of innocence, like Reginald Clemons in Missouri, also remain on death row. Clemons' case has many of the classic concerns that plague capital punishment – racism, prosecutorial misconduct, a coerced confession, lying witnesses, ineffective defence counsel, and no physical evidence. Concerns about the possibility of executing innocent people prompted Maryland Governor Martin O'Malley to sponsor a strong, and ultimately successful, push for repeal of the death penalty in his state in 2013.³³

Inadequate Counsel and Insufficient Access to Resources

Capital cases require qualified counsel and adequate resources, which very few individuals can afford. Many states fall woefully short of providing them to indigent clients. In 2012, the Supreme Court considered the case of Alabama death row prisoner Corey Maples, who missed a necessary deadline in his appeal when he was abandoned by counsel. The Court faulted Alabama's indigent defense system as contributing to Maples' dilemma, noting its low eligibility requirements for counsel in capital cases and the gross under-compensation of counsel.³⁴ Although Maples' case proceeds, the problems persist, as many on Alabama's death row have no lawyer to

represent them at all.³⁵ U.S. law still permits states to execute prisoners who have no lawyers.³⁶

Limitations on Access to Courts and Violations of ICJ Avena Decision

U.S. federal courts continue to severely restrict access to federal habeas review, as the International Court of Justice (ICJ) determined.³⁷ Recent Supreme Court decisions have made limitations on access to justice even harsher and more restrictive, often curtailing the only avenue for relief available to wrongly convicted or wrongly sentenced prisoners.³⁸

On January 22 and April 9, 2014, the state of Texas executed Mexican citizens Edgar Arias Tamayo and Ramiro Hernández Llanas, respectively, in violation of the United States' obligations under the Vienna Convention on Consular Relations (VCCR). Furthermore, the U.S. Congress has failed to pass the Consular Notification Compliance Act, which would provide an additional mechanism to facilitate U.S. adherence to its international obligations under the VCCR and the 2004 Avena decision of the ICJ.

Lethal Injection Risks Cruel and Unusual Punishment

Although the Supreme Court has held that one current method of lethal injection used in the U.S. is constitutional,³⁹ that method depended upon a drug which is no longer available, thanks to international pressure on the companies that manufacture it. States have hurriedly switched to new, untested methods, with little information released or oversight allowed.⁴⁰ As a result, many states, including South Dakota, Pennsylvania, Colorado, Georgia, Texas, Ohio, and Missouri, have also begun purchasing lethal drugs from compounding pharmacies, which produce derivative drugs that have not been approved by the Food and Drug Administration.⁴¹ Several condemned prisoners have suffered prolonged, excruciating pain during executions under these experimental protocols and drug combinations, including Clayton Lockett and Michael Lee Wilson in Oklahoma, Dennis McGuire in Ohio, and Eric Robert in South Dakota.⁴² The White House characterized the gruesome execution of Clayton Lockett as falling short of the requirement that the death penalty be carried out humanely.⁴³ Special Rapporteur Juan Mendez expressed concern about lethal injection as practiced in the United States in his 2012 report to the General Assembly. He explained that “the conventional view of lethal injection as a peaceful and painless death is questionable” and stated that experts believe lethal injection protocols in the United States “probably violate the prohibition of cruel and unusual punishment.”⁴⁴

Death Penalty Prosecutions under the Military Commissions Act of 2009

The federal government's decision to seek the death penalty in military commissions at Guantánamo Bay against defendants accused of terrorism rather than in federal courts raises troubling international law concerns.⁴⁵ These commissions have been set up to achieve easy convictions and hide the reality of torture.⁴⁶ Their rules violate due

process by allowing hearsay evidence and coerced or secret evidence under some circumstances.⁴⁷

Two death penalty cases are currently proceeding at Guantánamo Bay. The first is against the alleged mastermind of 9/11 Khalid Sheikh Mohammed and four others, and the second is against Abd al-Rahim al-Nashiri, the man accused of planning the U.S.S. Cole bombing in 2000.⁴⁸ Last year, it was discovered that the pre-trial hearings in these capital cases were being monitored and censored by government agents outside the courtroom, unknown to the military judge,⁴⁹ and that microphones had been hidden in rooms set aside for attorney-client meetings.⁵⁰ Most recently, 9/11 defense lawyers have divulged their experiences with FBI interventions in their cases and express growing concern that the FBI has expanded its scope of investigation to include the defense attorneys themselves.⁵¹

New Death Penalty Prosecution in the Boston Marathon Bombing

On January 30, 2013, Attorney General Eric Holder announced that the government would seek the death penalty against Dzhokhar Tsarnaev, the young man accused of bombing the Boston Marathon. Holder stated, “The nature of the conduct at issue and the resultant harm compel this decision,”⁵² even though under federal constitutional law, the death penalty is never required.

Conclusion

The U.S. death penalty system continues to be flawed and unsalvageable. Following the U.S. ICCPR Review in March 2014, the Human Rights Committee highlighted the shortcomings of the U.S.’s capital punishment system and expressed concern over the high number of people wrongfully sentenced to death, racial disparities in death penalty sentencing, inadequate compensation after wrongful conviction, and the lack of oversight of lethal drug providers.⁵³ State by state, momentum is building towards nationwide abolition which would remedy the numerous violations plaguing the system. Important interim reforms could include implementation of measures to prevent police and prosecutor misconduct, and adequate funding for effective indigent defense.⁵⁴ The federal government should also fulfil its commitment in the Universal Periodic Review process to study the racial disparities of the death penalty,⁵⁵ and fully implement the 2012 recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions.⁵⁶ In light of recent events in Oklahoma, the need for an independent investigation of the death penalty on a state-by-state basis is more urgent than ever. On May 2, 2014 President Obama tasked Attorney General Eric Holder with conducting a full policy review of capital punishment in the U.S.,⁵⁷ acknowledging both the cruelty of lethal injections and racial disparities in sentencing.⁵⁸ While this national review is certainly welcome, the federal government should also place a moratorium on all federal death penalty trials as the U.S. continues to grapple with this human rights issue.

- ¹ Human Rights Council, Decision 18/117 (Sept. 28, 2011).
- ² Death Penalty Information Center, Executions by Year, *available at* <http://www.deathpenaltyinfo.org/executions-year>.
- ³ *Gregg v. Georgia*, 428 U.S. 153 (1976); *Proffitt v. Florida*, 428 U.S. 242 (1976); *Jurek v. Texas*, 428 U.S. 262 (1976); *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana*, 428 U.S. 325 (1976).
- ⁴ NAACP Legal Defense and Educational Fund, *Death Row USA* (Winter 2014), *available at* http://www.naacpldf.org/files/publications/DRUSA_Winter_2014.pdf.
- ⁵ *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Kennedy v. Louisiana*, 554 U.S. 407 (2008).
- ⁶ Death Penalty Information Center, *The Death Penalty in 2013: Year End Report* (Dec. 2013), *available at* <http://deathpenaltyinfo.org/documents/YearEnd2013.pdf>.
- ⁷ Jonathan Kaminsky, *Washington state governor declares death penalty moratorium*, Reuters (Feb. 11, 2014), *available at* <http://www.reuters.com/article/2014/02/12/us-usa-executions-washingtonstate-idUSBREA1A1TC20140212>.
- ⁸ Jon Swaine, *New Hampshire opponents of death penalty urge repeal with proposed law*, The Guardian (Apr. 5, 2014), *available at* <http://www.theguardian.com/world/2014/apr/05/new-hampshire-death-penalty-proposed-law>.
- ⁹ Death Penalty Information Center, *New Hampshire Retains Death Penalty on Tie Vote* (Apr. 17, 2014), *available at* <http://www.deathpenaltyinfo.org/node/5749>.
- ¹⁰ In 2009, the American Law Institute withdrew the section of the Model Penal Code upon which most state statutes were based, because it no longer wanted to play any role in legitimizing the death penalty. American Law Institute, Report of the Council to the Membership of The American Law Institute on the Matter of the Death Penalty (Apr. 15, 2009), *available at* <http://deathpenaltyinfo.org/documents/alicoun.pdf>; Franklin E. Zimring, *Pulling the Plug on Capital Punishment*, Natl. Law Journal (Dec. 7, 2009).
- ¹¹ As Heller explained, "I am convinced now that [the death penalty] has never deterred anyone from committing a murder... In my mind, I realized what I did was a big mistake." Adam Nagourney, *Fighting to Repeal an Execution Law They Once Championed*, N.Y. Times, Apr. 6, 2012.
- ¹² Katharine Q. Seelye, *Measure to Repeal Death Penalty Fails by a Single Vote in New Hampshire Senate*, New York Times (Apr. 17, 2014), *available at* <http://www.nytimes.com/2014/04/18/us/in-new-hampshire-measure-to-repeal-death-penalty-fails-by-a-single-vote.html>.
- ¹³ Pew Research Center: Religion & Public Life Project, *Shrinking Majority of Americans Support Death Penalty* (Mar. 28, 2014), *available at* <http://www.pewforum.org/2014/03/28/shrinking-majority-of-americans-support-death-penalty/>.
- ¹⁴ American Bar Association, Resolution 122A, *available at* <http://www.deathpenaltyinfo.org/documents/122AREport.pdf>; National Alliance on Mental Illness and Murder Victims' Families for Human Rights, *Double Tragedies* (July 6, 2009), *available at* http://www.nami.org/Content/ContentGroups/Policy/Issues_Spotlights/Death_Penalty/DoubleTragedies.pdf; American Psychological Association, *The Death Penalty in the United States*, *available at* <http://www.apa.org/about/governance/council/policy/death-penalty.aspx>; E. Packard, *Associations Concur on Mental Disability and Death Penalty Policy*, 38 Monitor on Psychology 14 (Jan. 2007).
- ¹⁵ Anthony Romero, *Warren Hill, an Intellectually Disabled Death Row Prisoner, Is Scheduled to Die Next Week. His Execution Must Be Stayed*, American Civil Liberties Union Blog of Rights (Jul. 10, 2013), *available at* <https://www.aclu.org/blog/capital-punishment/warren-hill-intellectually-disabled-death-row-prisoner-schedule-die-next>.
- ¹⁶ Ed Pilkington, *Georgia court blocks Warren Hill execution as state acquires new drugs*, The Guardian (Jul. 18, 2013), *available at* <http://www.theguardian.com/world/2013/jul/18/georgia-blocks-warren-hill-execution-new-drugs>.
- ¹⁷ Anna Arceneaux, *Florida Will Kill Severely Mentally Ill Man Unless Supreme Court Intervenes*, American Civil Liberties Union Blog of Rights (Jul. 31, 2013), *available at* <https://www.aclu.org/blog/capital-punishment/florida-will-kill-severely-mentally-ill-man-unless-supreme-court-intervenes>.
- ¹⁸ Press Release, *IACHR condemns execution of Ramiro Hernandez Llanas in the United States*, Organization of American States: Inter-American Commission on Human Rights (Apr. 11, 2014), *available at* https://www.oas.org/en/iachr/media_center/PReleases/2014/036.asp.
- ¹⁹ *Ryan v. Gonzales*, 133 S. Ct. 696 (2013).
- ²⁰ *See, e.g., Pratt & Morgan v. AG for Jamaica*, 4 All. E.R. 769, Judicial Committee of the Privy Council (Nov. 2, 1993); *Soering v. United Kingdom*, 11 Eur. Ct. H.R. 439 (Ser. A, No. 161) (July 7, 1989).
- ²¹ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/67/279, paras. 42, 48 (Aug. 9, 2012) (by Juan Mendez), *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement>
- ²² *See, e.g.,* Dena Potter, *Robert Gleason, Inmate Who Asked to Die, Will Be Executed*, Huffington Post (Jan. 15, 2013) http://www.huffingtonpost.com/2013/01/15/robert-gleason-execution_n_2482079.html.
- ²³ *See, e.g.,* A. Mikulich & S. Cull, *Diminishing All of Us: The Death Penalty in Louisiana*, Jesuit Social Research Institute (Mar. 2012) (death penalty is applied in only 1% of Louisiana murders); L. Montgomery, *Md. Questioning Local Extremes on Death Penalty*, Wash. Post (May 12, 2002) (the city of Baltimore only had one person on death row while its surrounding county had 9 people on death row, with one-tenth less murders); R. Willing and G. Fields, *Geography of the Death Penalty*, USA Today (Dec. 20, 1999) (one county in Ohio produces about 25% of the state's death sentences, though only 9% of the state's murders occur there).
- ²⁴ *See, e.g.,* David Baldus, et al., *Racial Discrimination in the Administration of the Death Penalty: the Experience of the United States Armed Forces (1984-2005)*, 101 J. Crim. Law & Criminology 1227 (Fall 2011); Amnesty International, *United States of America: Death by Discrimination – the Continuing Role of Race in Capital Cases* (Apr. 2003); U.S. Department of Justice, *The Federal Death Penalty System: A Statistical Survey (1988-2000)* (Sept. 12, 2000).
- ²⁵ Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights (Dec. 30, 2011).
- ²⁶ *McCleskey v. Kemp*, 481 U.S. 279, 312 (1987).
- ²⁷ Equal Justice Initiative, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* (Aug. 2010), *available at* <http://eji.org/eji/files/EJI%20Race%20and%20Jury%20Report.pdf>.
- ²⁸ American Civil Liberties Union, *North Carolina Racial Justice Act* (Dec. 7, 2011), <http://www.aclu.org/capital-punishment/north-carolina-racial-justice-act>.
- ²⁹ American Civil Liberties Union, *North Carolina v. Tilmon Golphin, Christina Walters, and Quintel Augustine* (Dec. 17, 2012), <http://www.aclu.org/capital-punishment-racial-justice/north-carolina-v-tilmon-golphin-christina-walters-and-quintel>.

- ³⁰ Death Penalty Information Center, Death Row Inmates by State (2014), available at <http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year?scid=9&did=188#state>.
- ³¹ Death Penalty Information Center, The Innocence List (Jan. 23, 2013), available at <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row>. In his recently released book, "Anatomy of a Wrongful Execution," Professor James Liebman examined the execution of Carlos DeLuna. He concluded that DeLuna had been wrongly convicted "on the thinnest of evidence: a single, nighttime, cross-ethnic eyewitness identification and no corroborating forensics." James Liebman, Los Tocayos Carlos, Columbia Human Rights Law Review, Vol. 43, No. 3 (Summer 2012) available at <http://www3.law.columbia.edu/hrlr/ltr/>. In May 2012, the University of Michigan Law School and the Center on Wrongful Convictions at Northwestern University released a report entitled "Exonerations in the United States, 1989–2012" and launched the National Registry of Exonerations, providing an unprecedented look at the problem of wrongful convictions. Samuel Gross and Michael Shaffer, Exonerations in the United States, 1989-2012, National Registry of Exonerations (May 2012) available at http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf.
- ³² Death Penalty Information Center, Innocence Cases (2014), available at <http://www.deathpenaltyinfo.org/node/4900#144>.
- ³³ Matt Bush, O'Malley Takes on Death Penalty in Maryland State Hearing, WAMU 88.5 (Feb. 14, 2013), available at http://wamu.org/news/13/02/14/omalley_takes_on_death_penalty_in_maryland_senate_hearing.
- ³⁴ Maples v. Thomas, 132 S. Ct. 912, 917 (2012) (citing American Bar Association, Evaluating Fairness and Accuracy in State Death Penalty Systems: The Alabama Death Penalty Assessment Report 117–120 (June 2006)).
- ³⁵ Maples v. Thomas, 132 S. Ct. 912, 917 (2012) (citing American Bar Association, Evaluating Fairness and Accuracy in State Death Penalty Systems: The Alabama Death Penalty Assessment Report 112 (June 2006)).
- ³⁶ Murray v. Giarratano, 492 U.S. 1 (1989).
- ³⁷ Case concerning Avena and other Mexican Nationals (Mex. v. U.S.), Judgment, 2004 I.C.J. 124 (Mar. 31), available at <http://www.icj-cij.org/docket/files/128/8188.pdf>.
- ³⁸ American Civil Liberties Union, Slamming The Courthouse Doors: Denial of Access to Justice and Remedy in America, at 9 (Dec. 2010), available at http://www.aclu.org/files/assets/HRP_UPRsubmission_annex.pdf#page=9.
- ³⁹ Baze v. Rees, 553 U.S. 35 (2008).
- ⁴⁰ Death Penalty Information Center, Changes to state execution protocols, Lethal Injection (2013), <http://www.deathpenaltyinfo.org/lethal-injection-moratorium-executions-ends-after-supreme-court-decision#changes>
- ⁴¹ Death Penalty Information Center, Compounding Pharmacies and Lethal Injection, available at <http://www.deathpenaltyinfo.org/compounding-pharmacies>.
- ⁴² Cassandra Stubbs, Failed Experiments: Stop All Lethal Injections Now, American Civil Liberties Union Blog of Rights (May 1, 2014), available at <https://www.aclu.org/blog/capital-punishment/failed-experiments-stop-all-lethal-injections-now>.
- ⁴³ *Id.*
- ⁴⁴ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/67/279, at ¶ 38 (Aug. 9, 2012) (by Juan Mendez), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement>.
- ⁴⁵ Report of the Special Rapporteur on Extrajudicial, summary or arbitrary Executions, Human Rights Council, (May 28, 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.5.pdf>; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/6/17/Add.3 (Nov. 22, 2007), available at <http://daccess-ods.un.org/TMP/9489911.html>.
- ⁴⁶ See, e.g., Noa Yachot, Censorship at Guantanamo: Thoughts and Memories Don't Belong to the Government, American Civil Liberties Union Blog of Rights (Mar. 22, 2013), <http://www.aclu.org/blog/national-security/censorship-guantanamo-thoughts-and-memories-dont-belong-government>; Steve Vladeck, CMCR Denies Mandamus in Military Commission Media Access Cases, Lawfare (Mar. 28, 2013), <http://www.lawfareblog.com/2013/03/cmcr-denies-mandamus-in-military-commission-media-access-cases/>.
- ⁴⁷ U.S. Dep't of Defense, Manual for Military Commissions (Apr. 27, 2010), available at http://www.defense.gov/news/2010_Manual_for_Military_Commissions.pdf; Military Commissions Act of 2009, 10 U.S.C. § 47A.
- ⁴⁸ Denny LeBoeuf, Guantanamo and the Death Penalty: Two Terrible Ideas Come Together, American Civil Liberties Union Blog of Rights (Jan. 17, 2012), <http://www.aclu.org/blog/national-security/guantanamo-and-death-penalty-two-terrible-ideas-come-together>; Carol Rosenberg, Pentagon approves 9/11 Death Penalty Tribunal, Miami Herald (April 4, 2012), available at http://www.miamiherald.com/2012/04/04/2731254_p2/us-says-sept-11-trial-to-resume.html
- ⁴⁹ Carol Rosenberg, Guantanamo judge says 'external body' was wrong to censor war court, The Miami Herald (Jan. 29, 2013), available at <http://www.miamiherald.com/2013/01/29/v-print/3206764/guantanamo-judge-says-external.html#storylink=cpy>
- ⁵⁰ Carol Rosenberg, FBI hid microphones in Guantanamo, but no one listened, prison commander testifies, The Miami Herald (Feb. 12, 2013), available at <http://www.miamiherald.com/2013/02/13/3232992/fbi-hid-microphones-in-guantanamo.html#storylink=cpy>
- ⁵¹ Brett Max Kaufman, The FBI Derails the 9/11 Hearings at Guantánamo, American Civil Liberties Union Blog of Rights (Apr. 14, 2014), available at <https://www.aclu.org/blog/national-security/fbi-derails-911-hearings-guantanamo>.
- ⁵² Adam Goldman and Sari Horwitz, U.S. to Seek Death Penalty in Boston Bombing Case, The Washington Post (Jan. 30, 2014), available at http://www.washingtonpost.com/world/national-security/us-to-seek-death-penalty-in-bostonbombing-case/2014/01/30/c15465d8-8785-11e3-833c-33098f9e5267_story.html.
- ⁵³ U.N. Human Rights Comm., Concluding Observations on the Fourth Report of the United States of America, ¶ 4, advance unedited version (March 27, 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUSA%2fCO%2f4&Lang=en.
- ⁵⁴ See American Civil Liberties Union, Suggested List of Issues to Country Report Task Force on the United States, Human Rights Committee, 107th Session, 29-32 (submitted Dec. 10, 2012), available at https://www.aclu.org/files/assets/aclu_u.s._iccpr_issues.pdf.
- ⁵⁵ American Civil Liberties Union, Unfinished Business: Turning the Obama Administration's Human Rights Promises into Policy (Mar. 21, 2012), available at https://www.aclu.org/files/assets/unfinished_business_aclu_final.pdf.

⁵⁶ UN Human Rights Council, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns : Addendum, Follow-up to the mission to Colombia (15 May 2012), A/HRC/20/22/Add.2, available at <http://www.refworld.org/docid/501690b12.html>.

⁵⁷ Peter Baker, Obama Orders Policy Review on Executions, New York Times (May 2, 2014), available at http://www.nytimes.com/2014/05/03/us/flawed-oklahoma-execution-deeply-troubling-obama-says.html?_r=0.

⁵⁸ Laura Murphy, President Obama Condemns Oklahoma Execution; Asks Attorney General to Investigate Death Penalty, American Civil Liberties Union Press Release (May 2, 2014), available at <https://www.aclu.org/capital-punishment/president-obama-condemns-oklahoma-execution-asks-attorney-general-investigate>.