

United States Senate

WASHINGTON, DC 20510

October 31, 2014

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, Northwest
Washington, DC 20500

Dear Mr. President:

We are staunch supporters of the historic actions you have taken to prohibit torture and the use of cruel, inhuman or degrading treatment and punishment by U.S. personnel, including Executive Order 13491, which you signed on your second day in office. We write regarding a significant opportunity to build upon this commitment, namely the United States' upcoming presentation before the Committee Against Torture.

In particular, we urge you to make it clear that your administration supports the extra-territorial application of Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). As you know, Article 16 requires each signatory to "undertake to prevent in any territory under its jurisdiction ... acts of cruel, inhuman or degrading treatment or punishment." President Ronald Reagan signed and submitted the CAT to the Senate in 1988, and the Senate ratified the CAT in 1990.

The New York Times reported recently that your administration was considering whether to adopt the Bush administration's position that Article 16 does not apply outside the United States, and therefore has no application when aliens are interrogated by or with the consent of U.S. officials overseas. We strongly objected to this interpretation when it was expressed by the Bush administration, and urge you to expressly repudiate that limitation when the United States appears before the Committee.

The plain text of Article 16 requires the United States to prevent acts of cruel, inhuman or degrading treatment or punishment "in any territory under its jurisdiction." In 2005, when Alberto Gonzales was nominated to be Attorney General, he testified to the Senate Judiciary Committee that a reservation adopted by the Senate during ratification of the CAT limits the extraterritorial application of Article 16. He stated, "as a direct result of the reservation the Senate attached to the CAT, the Department of Justice has concluded that under Article 16 there is no legal prohibition under the CAT on cruel, inhuman or degrading treatment with respect to aliens overseas." This interpretation of the Senate reservation is also reflected in a memorandum that you declassified, dated May 30, 2005, from then Office of Legal Counsel Principal Deputy Assistant Attorney General Stephen Bradbury to then Central Intelligence Agency Senior Deputy General Counsel John Rizzo on "Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees."

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This is a fundamentally flawed understanding of the Senate's actions. By virtue of Executive Order 13491, you have already revoked the Bradbury memo referenced above, and we now urge you to endorse a broader view of U.S. commitments under Article 16. Former State Department Legal Adviser Abraham Sofaer, who served under President Reagan and President George H.W. Bush and testified before the Senate in support of CAT ratification, has rejected the notion that the Senate's reservation was intended to limit the territorial scope of Article 16 in any way. As Sofaer explained in a 2005 letter, the Senate reservation clarified that the term "cruel, inhuman, or degrading treatment or punishment" in Article 16 would not have a broader meaning than that expressed by the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. The reservation thus specified the *type* of conduct prohibited, but said nothing to alter the geographic scope of the prohibition. Former State Department Legal Advisers John Bellinger, who served under George W. Bush, and Harold Koh, who served in your administration, also have rejected the Bush administration's interpretation. And the Detainee Treatment Act of 2005 further reflects that Congress views the prohibition on cruel, inhuman, or degrading treatment or punishment to apply "regardless of nationality or physical location" of the detainee. *See* 42 U.S.C. § 2000dd.

We urge you to use the United States' upcoming appearance before the Committee Against Torture as an opportunity to reaffirm our country's full commitments under Article 16 and to promote a broad understanding of the extraterritorial reach of that part of the Convention. We hope that reports that your administration is considering adopting the same flawed reasoning as the Bush administration are incorrect. It is crucial that the United States signals to the world that we have put the dark chapter of the Bush administration's torture program behind us, and are not seen as attempting to leave open the possibility of using so-called "enhanced" interrogation techniques ever again.

Thank you for your attention to this important matter.

Sincerely,


PATRICK LEAHY
United States Senator


DIANNE FEINSTEIN
United States Senator


RICHARD DURBIN
United States Senator