

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC

November 21, 2016

Dear President Obama:

On your first day in office, you embraced the goals of ensuring the public's trust and strengthening our democracy in a memorandum on transparency and open government. As your administration winds down and our democracy faces strong headwinds, we urge you to take the following important steps to empower citizens, Congress, and the courts to protect our system of separated powers and make sure that our government continues working as the founders intended.

Justice Department Office of Legal Counsel Opinions

Formal opinions by the Justice Department's Office of Legal Counsel serve as binding law for the executive branch, but an unknown number of opinions are not available to the public or Congress. Please identify the total number of formal opinions currently in effect, their dates of issuance, and subject matter. For formal opinions currently in effect that have not been released to the public, please provide a summary of each opinion, prioritizing those relevant to national security/ civil liberty matters. Please also withdraw or invalidate any remaining OLC memoranda or other executive branch guidance that could be used to justify abuse of detainees.

Significant Foreign Intelligence Surveillance Court Opinions

The USA Freedom Act requires government officials to conduct declassification reviews of each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court that includes a significant construction or interpretation of any provision of law. The Department of Justice has argued, however, that the review and declassification process does not apply to FISC opinions issued prior to the enactment of USA Freedom in June 2015. Please ensure that all significant opinions are publicly released, regardless of when they were issued.

Parallel Construction

Parallel construction is process by which law enforcement builds a parallel (i.e. a separate) evidentiary basis for a criminal investigation in order to conceal how the investigation began, thereby hiding the source of the investigation. Its use can raise significant concerns when information obtained as part of intelligence investigations, which have a lower standard for gathering information, are used for criminal investigations. Please release guidance on when the government makes a determination that information is "derived from" for Fourth Amendment purposes, or for when information is deemed sufficiently attenuated such that notice under the Fourth Amendment or federal law is no longer required. Furthermore, please release guidance

addressing when intelligence community governmental actors (domestic and foreign) or corporate entities serve as confidential informants to law enforcement.

Inspector General Reports

A number of agency Inspector General reports relating to national security or surveillance are unknown to the public or have not been publicly released. Please identify the total number of agency Inspector General reports, their dates of issuance, titles, and subject matter. For unreleased reports relating to national security or surveillance matters, please provide a short summary of each report.

Permanent Disposal of Surveillance Information

The federal government has collected significant amounts of information/data on U.S. persons through surveillance. Please direct a government-wide review of whether data is being permanently disposed of in accordance with current policies regarding retention, and consider applying a more strenuous requirement to permanently dispose of all information gathered through surveillance except for information necessary to retain (or required by law to be retained).

Senate Select Committee on Intelligence Study of the Central Intelligence Agency's Detention and Interrogation Program (a.k.a. "The Torture Report")

In December 2012, the Senate Select Committee on Intelligence approved a final report on the Central Intelligence Agency's detention and interrogation program, including its use of torture, during 2001-2007. The Senate provided the 6,700 page report to the President and other executive branch officials so that it could be read and used to create safeguards against a return to torture. Instead, most copies of the report have been kept in locked safes, and at least one copy has been destroyed. The Justice Department has instructed government officials to not read the report and prevent staff access to the report, and is preventing the National Archives and Records Administration from determining whether the report constitutes a federal record under the Federal Records Act. Please direct appropriate senior staff, such as those inside the Central Intelligence Agency and the Departments of Defense, Justice, and State, to ensure that the report is preserved, archived and read, and to make recommendations to you and your successor based on their review of the report and its findings. In addition, please encourage the National Archives to make a determination on whether the report is a federal record. Finally, please declassify and release to the public at minimum the report's table of contents.

Section 702 of the Foreign Intelligence Surveillance Act of 1978 Amendments Act

Section 702 of the FISA Amendments Act allows the government to surveil persons outside the United States but often sweeps up US person data. The legislation is set to sunset in 2017 unless, as is likely, Congress acts. Please identify the number of US persons whose information has been gathered under section 702 and the number of communications collected that are to or from a point inside the United States.

Acknowledge and Declassify Widely-Known Information

News reports and statements by foreign governments have identified both people the United States rendered to foreign custody as part of the “war on terror” and black sites used by the CIA as secret detention facilities. Nevertheless, the government has not declassified this information even though it is widely known, which impedes government officials from discussing the matter. Please publicly acknowledge and declassify the names of persons rendered to foreign custody and the locations of black sites when such information is already reasonably known to the public.

Briefings for Congress and the Privacy and Civil Liberties Oversight Board

Executive branch briefings of Congress and the PCLOB often are undertaken upon request or in light of a particular circumstance. At the end of the administration, we urge you to brief members of Congress, relevant committees, and the PCLOB on matters that it will be helpful for them to be apprised of as they conduct oversight in upcoming years, with a particular emphasis on connecting the dots and sharing information concerning which they may be insufficiently aware or focused.

Whistleblowers

Federal law and presidential directives do not afford Intelligence Community contractors the same whistleblower protections as are afforded to other federal contractors. For example, it does not prohibit employment-related retaliation and provides no mechanism for challenging retaliation that may occur as a result of having made a disclosure. The existence of this disparity is contested by some policymakers. We ask that you publicly acknowledge this gap in whistleblower protections for Intelligence Community contractors.

Korematsu Day

There has been much discussion of late around racial profiling and mass detention. We recommend you follow the leads of California and Virginia and declare a federal Fred Korematsu day, named after the American of Japanese descent who challenged the government’s placement of Japanese-Americans into internment camps during World War II, an action for which the government eventually officially apologized.

We welcome the opportunity to discuss this with you further. No less than our shared legacy of a vibrant democratic government is at stake. Please contact Daniel Schuman, policy director at Demand Progress, at daniel@demandprogress.org or 202-577-6100.

Sincerely yours,

Advocacy for Principled Action in Government
Arab American Institute
Association of Research Libraries

Bill of Rights Defense Committee/Defending Dissent Foundation
Californians Aware
Campaign for Liberty
Center for Democracy and Technology
Center for Media Justice
Center for Popular Democracy
Council on American-Islamic Relations
CREDO
Demand Progress
Electronic Frontier Foundation
Fight for the Future
FreedomWorks
Government Accountability Project (GAP)
OpenTheGovernment.org
Other98
People For the American Way
Presente.org
Project On Government Oversight
Restore The Fourth
RootsAction.org
The Constitution Project
Tim Edgar
Win Without War
Woodhull Freedom Foundation
X-Lab
18MillionRising.org
350.org