

HELP RESTORE WHAT IS BEST ABOUT THE UNITED STATES OF AMERICA.

Help restore our Constitution.

Help restore the rule of law.¹

Help restore our nation's system of checks and balances.

Help restore our nation's commitment to our long-term treaty obligations, including the Geneva Conventions and the Convention Against Torture.

- Contrary to our nation's proud official traditions since the Revolutionary War, kidnapping, disappearance, torture and murder has been officially sanctioned.²
- For the first time in our nation's history, the President has violated a statute passed by Congress that was enacted to prevent the warrantless wiretapping of Americans' communications.³
- For the first time in our nation's history, the Geneva Conventions, other treaties, and US laws prohibiting torture and other cruel, inhuman or degrading treatment have been ignored and violated by order of the President and other members of his Administration.⁴ Also, in unprecedented fashion, the Congress has asserted the authority to re-write and restrict the protections against torture contained in the Geneva Conventions.⁵
- Contrary to his obligation under the Constitution to "take care that the laws be faithfully executed," the President has issued hundreds of "signing statements" after signing bills

into law, purporting to have the authority to disregard the laws.⁶

- In several instances, the courts have prevented challenges to egregious abuses of Executive power by accepting the Administration's claim that "state secrets" would be disclosed by allowing the cases to proceed, foreclosing challenges to the officially sanctioned practice of kidnapping, disappearing, and torturing people around the world and the illegal warrantless wiretapping of citizens' communications.
- Congress passed the Military Commissions Act, which is subversive of our system of checks and balances, the right to habeas corpus, the most elementary notions of due process, and our commitments under the Geneva Conventions, the Convention Against Torture, and the War Crimes Act to refrain from torture or cruel, inhuman, or degrading treatment of detainees.⁷

Let your voice be heard – along with thousands of other Americans. Call for change. Call for reforms that will prevent such abuses from occurring in the future.

Let President Obama and Congress know that we expect them to undertake the following **SEVEN STEPS TO RESTORING THE RULE OF LAW AND PROTECTING OUR CONSTITUTION:**

1. **ACCOUNTABILITY FOR VIOLATIONS OF THE LAW.** Authorize, designate, and assign special prosecutors to investigate and prosecute violations of the law by members of the Administration, particularly for involvement in felonious warrantless wiretapping, torture, and kidnappings of people in the so-called "extraordinary rendition" program.

2. “STATE SECRETS” DOCTRINE. Limit the application of the “state secrets” doctrine in order that the courts will once again provide a meaningful check on abuses of power and violations of law by members of the Executive Branch.
3. VIOLATIONS AND TERMINATION OF TREATY OBLIGATIONS. Make clear what process must be followed before any US treaty obligations are violated or terminated by any member of the Executive branch or by Congress. Congress should also reaffirm its commitment to treaty obligations forbidding aggressive war and torture and repeal the Military Commissions Act.
4. UNCONSTITUTIONAL SIGNING STATEMENTS. Limit the effect of “signing statements” by enacting legislation that (1) instructs the courts they are not to consider signing statements when determining legislative history; (2) prohibits the President from issuing any statement that purports to limit any part of the legislation as being advisory or that purports to assert any authority by the President to determine the scope or applicability of the legislation; and (3) provides that no one can rely upon signing statements as a defense for a violation of the law.
5. CONSTITUTIONAL REQUIREMENT OF A CONGRESSIONAL DECLARATION OF WAR. Reassert Congress’s vital constitutional role and forbid, by a criminal statute with severe penalties, any attack against another nation, except in cases of actual or imminent attack of the US by that nation or as permitted under the United Nations Charter and the Constitution, absent explicit authorization by Congress.

6. ASCERTAINMENT AND DISCLOSURE OF THE TRUTH AND PREVENTION OF FUTURE ABUSES. Appoint a select committee, similar to the Church and Ervin Committees, or a non-partisan Truth Commission, charged with investigating illegal conduct or other abuses of power by the Bush Administration, disclosing such misconduct to the American people, and making recommendations concerning reforms that will prevent or deter similar misconduct in the future.

7. REPEAL THE MILITARY COMMISSIONS ACT.

Pursuing these measures would be an important beginning to the restoration of the balance of power and system of checks and balances in our federal government, the restoration of the reputation of the United States among other nations, and to the restoration of our constitutional democracy, with the honor and respect it deserves.

If you agree, please fill out the information below and send your letter to every member of the Senate and the House of Representatives and to President-elect Obama:

Dear President-elect Obama and Members of Congress:

I am among millions of Americans concerned about the undermining of the rule of law, violations of our Constitution, domestic laws, and treaty obligations, and the damage inflicted these past several years on our nation's system of checks and balances.

Please make it a priority, within the first six months of the Obama Administration, to:

1. Authorize, designate, and assign special prosecutors to investigate and prosecute violations of the law for involvement in felonious warrantless wiretapping, torture, and kidnappings of people in the so-called “extraordinary rendition” program.
2. Limit the application of the “state secrets” doctrine in order that the courts will once again provide a meaningful check on abuses of power and violations of law by members of the Executive Branch.
3. Make clear what process must be followed before any US treaty obligations are violated or terminated by any member of the Executive branch or by Congress. Congress should also reaffirm its commitment to treaty obligations forbidding aggressive war and torture and repeal the Military Commissions Act.
4. Limit the effect of “signing statements” by enacting legislation that (1) instructs the courts they are not to consider signing statements when determining legislative history; (2) prohibits the President from issuing any statement that purports to limit any part of the legislation as being advisory or that purports to assert any authority by the President to determine the scope or applicability of the legislation; and (3) provides that no one can rely upon signing statements as a defense for a violation of the law.
5. Reassert Congress’s vital constitutional role and forbid, by a criminal statute with severe penalties, any attack against another nation, except in cases of actual or imminent attack of the US by that nation or as permitted under the United Nations Charter and the Constitution, absent explicit authorization by Congress.

6. Appoint a select committee, similar to the Church and Ervin Committees, or a non-partisan Truth Commission, charged with investigating illegal conduct or other abuses of power by the Bush Administration, disclosing such misconduct to the American people, and making recommendations concerning reforms that will prevent or deter similar misconduct in the future.

7. Repeal the Military Commissions Act.

Taking these steps will be a vital contribution to the restoration of the rule of law, our constitutional democracy, and the system of checks and balances essential to protect against abuses of Executive power.

¹ The rule of law, as a safeguard against arbitrary governance, was provided for in the Magna Carta in 1215, which made it clear that King John, who previously governed any way he saw fit, was constrained by rules that applied to everyone alike. Our Constitution, the bedrock of our system of government, is founded on the principle of the rule of law. It spells out the powers of each branch of government and limits what government and government officials can do. For our constitutional form of government to survive, and for the rule of law to prevail over the rule of dictatorship, each branch of government must be constrained by the rule of law, and by the parameters of its constitutionally designated powers. Each branch of government must jealously protect against the other branches exceeding and abusing their power. Members of the Bush administration have endeavored in a systematic and dangerous fashion to extend the powers of the president in abusive, dictatorial fashion, completely at odds with our Constitution and the rule of law. Members of the Bush administration claimed extraordinary, unprecedented executive powers that they believed exempt the president from laws passed by Congress, from treaties to which the United States has bound itself, and from protections of our individual freedoms set forth in the Constitution. They have pursued such authoritarian power, completely at odds with the rule of law, by asserting what they call a “unitary executive” power and a supposed “inherent power” that allows the president to make up the rules, even when contrary to what Congress and our Constitution have required.

² For instance, President Bush signed an “intelligence finding” authorizing the CIA to hunt down, capture, and kill people suspected of terrorism, anywhere in the world. Before that finding was signed, those deaths would have been considered to be illegal assassinations. Jane Mayer, *The Dark Side* (Doubleday: New York, 2008), pp. 38-40. “[T]he finding called for the President to delegate blanket authority to [CIA Director] Tenet to decide on a case-by-case basis whom to kill, whom to kidnap, whom to detain and interrogate, and how. . . . It authorized the CIA’s officers to break and enter into private property, and to monitor the communications and financial transactions of suspected terrorists . . . “ Mayer, p. 39. The “extraordinary rendition” program, which entailed the kidnapping, disappearance, and torture of people around the world, grew dramatically with President Bush’s encouragement. Also, lawyers in the Bush administration made the case for torture, even claiming that neither Congress nor treaty commitments could restrain the President. His Vice-President, Secretary of Defense, and other top officials pushed for treatment of detainees that clearly constitutes torture under domestic and international law. President Bush declared in a formal order on February 7, 2002, that “none of the provisions of [the] Geneva [Conventions] apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world,” purporting to eviscerate the long-standing legal guarantees of humane treatment in wartime. “We would have seen no rapid deterioration in detainee treatment standards and no spread of torture without President Bush’s February 2002 decision to reject the checks imposed by Congress when it adopted the Geneva Conventions into U.S. law.” Frederick A.O. Schwarz Jr. and Aziz Z. Huq, *Unchecked and Unbalanced* (The New Press: New York, 2007), p. 76.

³ During a rally to support the Patriot Act in 2004, President Bush stated during a press conference that “any time you hear the United States government talking about wiretap, it requires – a wiretap requires a court order. Nothing has changed, by the way. When we’re talking about chasing down terrorists, we’re talking about getting a court order before we do so.” In mid-December 2005, news reports disclosed that for five years the President had secretly ordered the National Security Agency to engage in wiretapping of American citizens’ emails, phone calls, and other communications in blatant violation of the Constitution and the Foreign Intelligence Surveillance Act. That Act, which was passed by Congress after the abusive warrantless wiretapping by the Nixon administration was brought to light by the Church Committee, states that a warrant must be obtained in order to engage in electronic surveillance and that the failure to do so is a federal felony, punishable by a fine of \$10,000 and up to five years imprisonment.

⁴ The Geneva Conventions proscribe cruel treatment, torture, and humiliating and degrading treatment. A violation of these and other safeguards described in the Geneva Conventions are, according to the Conventions, a “grave breach” and a war crime under international law. The International Covenant on Civil and Political Rights proscribes torture and cruel, inhuman, and degrading treatment. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment prohibits the infliction of “torture and other cruel, inhuman and degrading treatment or punishment” of prisoners to obtain information. The treaty, ratified by the United States Senate in 1994, provides: “No

exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other political emergency, may be invoked as a justification of torture.”

The War Crimes Act of 1996, passed by Congress, defines as a “war crime” any conduct defined as a grave breach in any of the Geneva Conventions. In addition to the Senate ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, Congress passed a statute prohibiting U.S. officials, anywhere, from intentionally inflicting “severe physical or mental pain or suffering” upon anyone in their control. A violation would subject the perpetrator to a fine or imprisonment for up to twenty years. Any government official conspiring to abuse a prisoner is subject to the same penalties as the person who inflicts the abuse. 18 USC § 2340.

⁵ Incredibly, in passing the Military Commissions Act, Congress rejected the broad prohibitions against detainee abuse set forth in the Geneva Conventions and the Convention Against Torture. Instead, the legislation prohibits only the infliction of a specific list of abuses, such as murder, rape, biological experiments, and “serious” pain and suffering. Congress also “delegated to the president alone the power to decide whether any particular coercive interrogation technique was prohibited by the list, and it stripped the courts of the power to hear lawsuits based on the Geneva Conventions, meaning the president’s word was final.” Charlie Savage, *Takeover – The Return of the Imperial Presidency and the Subversion of American Democracy* (Little, Brown and Company: New York, Boston and London, 2007), p. 320.

⁶ Under Article II, Section 3 of the Constitution, the president must “take care that the laws be faithfully executed.” Members of the administration, in complete dereliction and contempt of that duty, disregarded statutory laws, treaty obligations, and the Constitution. The administration has even claimed in hundreds of signing statements that the president has the authority, as head of the “unitary executive” branch, to determine the scope, effect, and applicability of laws passed by Congress. According to the American Bar Association, the use of signing statements has been “contrary to the rule of law and our constitutional system of separation of power.”

(<http://www.abanet.org/media/releases/news072406.html>)

At least three times during the Bush administration, Congress passed laws forbidding U.S. troops from engaging in combat in Columbia. “After signing each bill into law, Bush used a signing statement to inform the military that he need not obey any of the Columbia restrictions because he was commander in chief. The combat ban and troop cap, he declared, would be interpreted merely ‘as advisory in nature.’” Savage, p 237.

In 2004, Congress passed an intelligence bill that required the Justice Department to inform Congress about the FBI’s use of special national-security wiretaps in the United States. President Bush issued a signing statement asserting that he could disregard the law and withhold all the information sought by Congress. Savage, p. 239.

When President Bush signed the Foreign Relations Authorization Act for Fiscal Year 2003, he issued a signing statement that said that he would treat Congress's statutory mandate as being only a recommendation to him. In short, he was saying that he did not need to follow the law and, instead of vetoing legislation, he said he will just disregard parts of it, similar to the line item vetoes previously held to be unconstitutional by the Supreme Court (except dissimilar to the extent Congress has no opportunity to "override" the President's disregard of legislation, as it would have in the case of a veto).

When Congress was considering renewal of parts of the initial USA PATRIOT Act surveillance powers, an agreement, reflected in the new legislation, was reached between Congress and Bush administration officials pursuant to which the President was to provide Congress more details on how the powers were being used. However, after his White House signing ceremony on March 9, 2006, President Bush issued a signing statement, decreeing that, contrary to the terms of the law earlier negotiated between Congress and the Bush administration, he was entitled to withhold information as he saw fit. He stated that he would interpret any provision in the law obliging him to provide information to Congress "in a manner consistent with the president's constitutional authority to supervise the unitary executive branch and to withhold information." In short, he alone decides the law. In the administration's view, checks and balances are simply an archaic relic, no longer applicable to a president, at least during his undeclared so-called war against terrorism.

That utter contempt for Congress, for the rule of law, and for the separation of powers was on display when a signing statement was issued in connection with the Detainee Treatment Act of 2005. The administration had been unsuccessful in convincing Congress to allow the administration to continue having detainees tortured, so a signing statement was issued when the president signed the legislation, saying that the prohibition of cruel, inhuman and degrading treatment of detainees would be construed as the president saw fit. That signing statement is a chilling reminder not only of the administration's support of torture, but of its view that the president can ignore Congress's laws whenever he wants. The signing statement said, in effect, that regardless of the law passed by Congress, the president would order or permit torture as he deemed appropriate. (For excellent discussions about the assertion of the power to pick and choose what laws the president will follow, as reflected in his signing statements, see Savage, pp. 236-249; Schwartz and Huq, pp 91-92.)

Thomas Paine wrote in *Common Sense*, "In America the law is king. For as in absolute governments the King is law, so in free countries the law ought to be king; and there ought to be no other." The "unitary executive" excuse for an imperial presidency, an assertion of the right to ignore laws as the president wishes, is subversive to the most fundamental principles of our constitution. The hundreds of applications by the Bush administration of that theory to place the president above the law, and to allow him to decide when and under what circumstances he will follow the law, is subversive to the most fundamental principles of our constitutional system of government.

⁷ The Military Commissions Act, perhaps the most subversive and dangerous legislation passed by the United States Congress, provides, among other things, that (1) evidence obtained through abusive interrogations can be used to convict a detainee; (2) only a specific list of offenses against detainees is prohibited, contrary to the general prohibitions against torture and other cruel, inhuman, and degrading treatment set forth in the Geneva Conventions and the Convention Against Torture; (3) the president alone can determine whether any particular coercive interrogation technique is prohibited by the statute; (4) the courts are denied any power to decide whether the Geneva Conventions are being violated; (5) the federal courts are stripped of the power to consider any habeas corpus lawsuits filed by noncitizen “enemy combatants,” denying them the right to challenge the basis for their detention in US courts; and (6) the president has the power to seize American citizens as “enemy combatants,” even if they have nothing to do with Al Qaeda, and imprison them without trial.