THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

October 9, 2015

Mr. Yadh Ben Achour
Special Rapporteur, Human Rights Committee
Human Rights Treaties Division (HRTD)
UN Office of the High Commissioner for Human Rights
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva, Switzerland

Dear Mr. Achour:

The Permanent Mission of the United States of America to the Office of the United Nations and other International Organizations in Geneva presents its compliments to the Human Rights Committee and has the honor of conveying to the Committee the U.S. government's reply to your letter sent on August 6, 2015 regarding the United States' one-year follow-up response on certain concluding observations of the Human Rights Committee on the United States' Fourth Periodic Report on its implementation of the International Covenant on Civil and Political Rights.

The Permanent Mission of the United States avails itself of the opportunity to express once again the commitment of the United States to the protection and promotion of human rights and to the work of the Committee.

Sincerely,

Pamela K. Hamamoto
Ambassador

Reply of the United States of America
To the Special Rapporteur for Follow-up
On Concluding Observations of the Human Rights Committee
On its Fourth Periodic Report on Implementation of the
International Covenant on Civil and Political Rights
October 9, 2015

1. The United States is deeply committed to fulfilling its obligations under the International Covenant on Civil and Political Rights (ICCPR or Covenant) and appreciates the opportunity to participate in the Committee's follow-up process.[1]

2. The United States considers its exchanges with the Committee to be part of an important, long-term dialogue as we continue our ongoing work of protecting human rights and fundamental freedoms at all levels of our government. We welcome the Committee's observations and will continue to take its ideas and recommendations into consideration. Although there remain matters regarding the interpretation or application of the Covenant on which the United States and members of the Committee may not be in full agreement, we have found the process of review and reflection to be useful as we continue to improve our efforts to protect civil and political rights in the United States. It is in this spirit of cooperation that the United States provides the following more recent information to address a number of the Committee's concerns, whether or not they bear directly on States Parties' obligations arising under the Covenant.

Paragraph 5:

3. Consistent with its international obligations and domestic laws, the United States has conducted and will continue to conduct thorough and independent investigations of credible allegations of crimes committed during international operations and of credible allegations of mistreatment of persons in its custody. It will also continue to prosecute, consistent with its international obligations and domestic laws, persons legally responsible for such crimes when

[1] Reference is made to Co-Rapporteur Yadh Ben Achour's recent letter and the decision of the Human Rights Committee at its 114th session on the follow-up report of the United States submitted March 31, 2015. Although the letter is dated October 6, 2015, it was sent on August 6, 2015.

there is sufficient legal basis to do so.[2] For example, following transmission of the United States' one-year follow-up report, on April 13, 2015, four former security guards for Blackwater USA were sentenced to prison terms for their roles in the September 16, 2007 shooting at Nisur Square in Baghdad; Nicholas Abram Slatten was sentenced to a term of life in prison, and Paul Alvin Slough, Evan Shawn Liberty, and Dustin Laurent Heard were each sentenced to prison terms of 30 years and one day. For further details, see the press release of the Federal Bureau of Investigation (FBI) at https://www.fbi.gov/washingtondc/press-releases/2015/four-former-blackwater-employees-sentenced-to-decades-in-prison-for-fatal-2007-shootings-in-iraq.

4. With respect to subparagraph (iv), as previously reported, the Attorney General directed a preliminary review in 2009 of the treatment of certain individuals alleged to have been mistreated while in U.S. government custody subsequent to the 9/11 attacks. That review generated two criminal investigations, but the U.S. Department of Justice (DOJ) ultimately declined those cases for prosecution consistent with the Principles of Federal Prosecution, as explained in the United States' follow-up report dated March 31, 2015. In 2012, DOJ's prosecution team reviewed a copy of the classified Senate Select Committee on Intelligence report and did not find any material new information that they had not previously considered.

5. As a supplement to the United States' one-year follow-up response regarding accountability for unlawful killings, unreasonable force, and mistreatment of detainees, federal prosecutions of law enforcement officials have resulted in the following convictions since March 31, 2015:

- On July 31, 2015, a federal jury in Huntsville, Alabama, convicted a Huntsville Police Department Officer of deprivation of rights under color of law for assaulting and injuring a detainee, as well as obstruction of justice for filing a false police report regarding this incident. For further details, see the FBI press release at https://www.fbi.gov/birmingham/press-releases/2015/huntsville-alabama-police-officer-convicted-of-excessive-use-of-force-and-obstruction-of-justice.

[2] The Committee is aware of the United States' position on the territorial scope of a State Party's obligations under the ICCPR, based on explicit language in Article 2(1), as discussed during the U.S. presentation at the Committee's 110th session and in previous exchanges and submissions. *See also* Observations of the United States of America on the Human Rights Committee's Draft General Comment 35, June 10, 2014 (hereinafter "USG Observations on Draft General Comment 35"), and previous U.S. Observations cited therein.

- On June 24, 2015, a former Lowndes County, Georgia, Sheriff's Deputy was sentenced to serve 21 months in prison and two years of supervised release for his role in a civil rights conspiracy aimed at stealing money from Hispanic motorists. On May 6, 2014, the former officer pleaded guilty to a civil rights conspiracy charge, admitting that he participated in a plan with two civilians to subject Hispanic motorists to unlawful traffic stops so that his co-conspirators could then demand that the motorists pay money in order to avoid arrest and/or deportation. For further details, see the FBI press release at https://www.fbi.gov/atlanta/press-releases/2015/former-lowndes-county-georgia-sheriffs-deputy-and-civilian-co-conspirators-sentenced-for-civil-rights-conspiracy-challenge.

- On June 23, 2015, a former Des Moines, Iowa, Police Department Officer was sentenced to serve 63 months in federal prison for using unreasonable force during an arrest in 2013. During the incident, the former officer arrived at a scene where three fellow Des Moines police officers were holding an individual on the ground and a fourth officer was standing over the group. The defendant kicked the victim in the face, knocking out two of his teeth and breaking his nose. For further details, see the FBI press release at https://www.fbi.gov/omaha/press-releases/2015/former-des-moines-iowa-police-officer-sentenced-for-using-excessive-force.

- On May 1, 2015, two former Puerto Rico police officers were sentenced for civil rights and obstruction of justice violations related to the fatal beating of a 19-year-old male in 2008. One officer was sentenced to serve 33 months in prison for violating the victim's civil rights by striking him with a police baton during the incident, and the second was sentenced to serve 24 months for making false statements to a Special Agent of the FBI and to the federal grand jury during the federal civil rights investigation. All six former Puerto Rico police officers who pleaded guilty for their roles in the beating and obstruction of the subsequent civil rights investigation now have been sentenced. For further details, see the FBI press release at https://www.fbi.gov/sanjuan/press-releases/2015/former-puerto-rico-police-officers-sentenced-for-civil-rights-and-obstruction-of-justice-violations-related-to-fatal-beating.

6. State-level prosecutors have likewise continued to pursue allegations of use of excessive force and other abuses by police since our one-year follow-up report in March. On June 8, 2015, for example, a Charleston County grand jury indicted a police officer in North Charleston, South Carolina, on a murder charge in the shooting death of Walter Scott, an African-American man. And on July 29, 2015, a Hamilton County grand jury in Cincinnati, Ohio indicted a former police officer for the University of Cincinnati, on a murder charge in the shooting death of an African-American man, Samuel DuBose.

7. DOJ has also continued its efforts to remedy patterns or practices of police misconduct through civil rights suits. Since our one-year follow up report in March, DOJ has reached a number of significant court-enforceable settlements with state or local law enforcement agencies. For example:

- On July 17, 2015, DOJ reached a partial settlement in its lawsuit against Maricopa County, Arizona, and Maricopa County Sheriff Joseph M. Arpaio. The settlement resolves the United States' claims that the Maricopa County Sheriff's Office (MCSO) conducted unlawful detentions of Hispanics during worksite raids of local businesses in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution, and retaliated against critics of Sheriff Arpaio and MCSO in violation of the First Amendment. For further details, see the DOJ press release at http://www.justice.gov/opa/pr/justice-department-reaches-settlement-civil-rights-lawsuit-against-maricopa-county-arizona.

- On May 28, 2015, DOJ announced a settlement agreement to protect prisoners in an Alabama women's prison from harm caused by sexual victimization by correctional officers. The agreement uses gender-responsive and trauma-informed principles to address and eliminate a culture of abuse, and to ensure that the women prisoners are safe from sexual predation by staff, and able to live in an environment free from sexual assault, sexual harassment, and the constant fear of these abuses. This case and similar investigations further DOJ's goal of zero-tolerance for sexual abuse and sexual harassment in our nation's jails and prisons. DOJ anticipates working cooperatively with additional states, as it has with Alabama, to ensure that prisoners are not sexually abused.

For further details, see the DOJ press release at http://www.justice.gov/opa/pr/justice-department-reaches-landmark-settlement-alabama-protect-prisoners-julia-tutwiler.

- On May 26, 2015, DOJ announced that it had entered into an agreement with the City of Cleveland to reform the Cleveland Division of Police, following DOJ's finding that the police department engages in a pattern or practice of using excessive force in violation of the Fourth Amendment. The agreement requires the City of Cleveland to implement widespread reforms and changes, focused on building community trust, creating a culture of community and problem-oriented policing, officer safety and training, and officer accountability. Under the agreement, the parties will jointly select an independent monitor to assess and report whether the requirements of the agreement have been implemented for a term of at least five years. For further details, see the DOJ press release at http://www.justice.gov/opa/pr/justice-department-reaches-agreement-city-cleveland-reform-cleveland-division-police.

8. In addition, following the death of Freddie Gray in Baltimore in April 2015, DOJ announced on May 8, 2015 the opening of a civil pattern or practice investigation into the Baltimore, Maryland, Police Department, focusing on the use of force; stops, searches, and arrests; and whether there is a pattern of discriminatory policing. DOJ's Office of Community Oriented Policing Services (COPS) and Community Relations Service (CRS) will provide technical assistance to Baltimore to promote changes and improvements even as the investigation proceeds. For further details, see the DOJ press release at http://www.justice.gov/opa/pr/justice-department-opens-pattern-or-practice-investigation-baltimore-police-department.

9. Effective remedies in the form of compensation have also continued to be provided at the state level for victims of abuse. In May 2015, for example, the City of Chicago, Illinois, created a $5.5 million "reparations fund" for victims of police torture or physical abuse by former Chicago Police Commander Jon Burge or his subordinates between 1972 and 1991. Most of these victims were African-American or Hispanic. And in July 2015, New York City agreed to a $5.9 million settlement with the family of Eric Garner, who died after being placed in a chokehold during an arrest by Staten Island police officers in July 2014.

Paragraph 10:

10. The United States' views regarding the scope of a State Party's responsibility under the ICCPR to regulate private conduct of non-State actors are reflected in the USG Observations on Draft General Comment 35 and in previous U.S. Observations cited therein. The Obama Administration continues to support common-sense legislation that would reduce the incidence of gun violence in the United States. The Administration, which has made progress on a number of previously announced actions to reduce gun violence, continues to urge the Congress to take a hard look at such legislative proposals.

11. The United States has nothing more recent to report with respect to Stand Your Ground provisions under various state laws. The United States Commission on Civil Rights, which is an independent, bipartisan agency established by the Congress to investigate, report, and make recommendations to the President and the Congress on civil rights matters, has not yet completed the review that it initiated in May 2013 related to such laws.

Paragraph 21:

12. The Administration has clearly stated its desire to close the Guantanamo Bay detention facility and to continue working with the Congress, the courts, and other countries to do so in a responsible manner that is consistent with our international obligations. Until it is closed, the United States will continue to ensure that operations there are consistent with its international obligations.[3]

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[3] As previously observed, the applicability of ICCPR obligations in situations of armed conflict raises difficult questions regarding the role of international humanitarian law (IHL) as the *lex specialis* with respect to the conduct of hostilities and the protection of war victims. While the United States agrees as a general matter that armed conflict does not suspend or terminate a State's obligations under the Covenant within its scope of application, we do not believe that the Committee's recommendations with respect to law of war detentions and related operations accord sufficient weight to this well-established principle. *See* USG Observations on Draft General Comment 35, paragraphs 19-22, and previous U.S. Observations cited therein. As further stated in paragraph 24 of the United States' one-year follow-up report and previous submissions, the United States continues to have legal authority under the law of war to detain Guantanamo detainees until the end of hostilities. Also as stated in paragraph 30 of its one-year follow-up report and previously, all current military commission proceedings incorporate fundamental procedural guarantees that meet or exceed the fair trial safeguards required by Common Article 3 and other applicable law, and are further consistent with those in Additional Protocol II of the 1949 Geneva Conventions.

13. Within this framework, the United States wishes to emphasize that the Periodic Review Board (PRB) process is a discretionary, administrative, interagency process intended to assist the executive branch in making informed decisions as to whether detainees held at Guantanamo Bay should remain in detention under the law of war. Whenever the PRB process results in a final determination that continued detention of a particular detainee is no longer necessary to protect against a continuing significant threat to U.S. national security, the United States undertakes appropriate efforts to identify a suitable transfer location outside the United States, consistent with applicable law and the national security and foreign policy interests of the United States.

14. The PRB process does not address the legality of any individual's detention under the authority of the Authorization for Use of Military Force, as informed by the law of war. Consistent with the decisions of our federal courts, detainees at Guantanamo Bay may petition for a writ of habeas corpus to challenge the legality of their detention. The PRB process is not intended to affect the jurisdiction of federal courts to determine the legality of detention of detainees at Guantanamo Bay. If, at any time during the PRB process, material information calls into question the legality of detention, the matter would be referred immediately to the Secretary of Defense and the Attorney General for appropriate action.[4]

15. Since our follow-up report on March 31, eight more Guantanamo detainees have been transferred: six Yemenis who were previously approved for transfer have been transferred to Oman,[5] one Moroccan also previously approved for transfer has been repatriated,[6] and a Saudi approved for transfer through the PRB process has recently been repatriated to Saudi Arabia.[7] In addition, since March 24, 2015 (the most recent point of reference on which our follow-up report was based), the PRB has conducted eight more hearings, bringing the total of PRB hearings to 22 since it commenced proceedings in October 2013. Of these 22 hearings, 19 final determinations have been made public and three are currently pending. Of the 19 published determinations, the PRB has determined that continued detention of 14 of the detainees reviewed is no longer necessary to protect against a continuing significant threat to the United States. Three of these

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[4] *See* Executive Order 13567, Sec. 8.
[5] *See* U.S. Department of Defense (DoD) News Release dated June 13, 2015 at http://www.defense.gov/News/News-Releases/News-Release-View/Article/605565/detainee-transfer-announced.
[6] *See* DoD News Release dated September 17, 2015 at http://www.defense.gov/News/News-Releases/News-Release-View/Article/617549/detainee-transfer-announced.
[7] *See* DoD News Release dated September 22, 2015 at http://www.defense.gov/News/News-Releases/News-Release-View/Article/618219/detainee-transfer-announced.

detainees have already been transferred to their countries of origin, a Saudi national and a Kuwaiti national, who were reported in our follow-up report last March,[8] and the Saudi national reported above. The remaining 11 are now eligible for transfer subject to appropriate security assurances and consistent with our humane transfer policy. Furthermore, since March 24, 2015, the PRB has conducted three more file reviews, for a total of six. One resulted in a determination to continue law of war detention, one led to a second full PRB hearing, which determined that the individual's continued detention was no longer necessary to protect against a continuing threat to the United States, and the third determination is currently pending. Accordingly, of the 114 detainees who remain at Guantanamo, 54 are currently designated for transfer. Of the 60 others, 10 are currently facing charges, awaiting sentencing, or serving criminal sentences, and the remaining 50 continue to be eligible for review by the PRB. Further information, including periodic updates on PRB hearings and determinations, is posted by the Periodic Review Secretariat at www.prs.mil/.

16. The Administration continues to advance its plans for the responsible closure of the detention facility. On June 30, 2015 the Secretary of State announced the appointment of a new State Department Special Envoy for Guantanamo Closure, Lee Wolosky. Special Envoy Wolosky will lead ongoing diplomatic engagements to make possible the closure of the Guantanamo detention facility in a timely manner, consistent with American interests and the security of our people. He will work closely with Paul Lewis, who is the Department of Defense Special Envoy for Guantanamo Detention Closure.

17. Most recently in furtherance of the Administration's Guantanamo closure plans, Department of Defense officials have conducted initial assessments of two potential facilities in the continental United States to accommodate a limited number of detainees at Guantanamo who cannot currently be transferred abroad safely and responsibly. As the Secretary of Defense recently remarked during a press briefing on August 20, 2015: "Ultimately, the facility surveys will provide me, the rest of the president's national security team and Congress with some of the information needed to chart a responsible way forward and a plan so that we can close the

[8] Further details on the two individuals previously transferred following PRB determinations can be found in DoD News Releases dated November 5, 2014 at http://www.defense.gov/News/News-Releases/News-Release-View/Article/605262/detainee-transfer-announced, and dated November 22, 2014 at http://www.defense.gov/News/News-Releases/News-Release-View/Article/605289/detainee-transfer-announced.

detention facility at Guantanamo and this chapter in our history once and for all." *See* http://www.defense.gov/News/News-Transcripts/Transcript-View/Article/614330/department-of-defense-press-briefing-with-secretary-carter-in-the-pentagon-pres.

Paragraph 22:

18. Consistent with Article 17, protection of the law against arbitrary and unlawful interference with privacy is provided by the U.S. Constitution and domestic laws.[9] There have been several legal developments in this area since our one-year follow-up report.

19. A new statute, the USA FREEDOM Act of 2015 (the Act), was enacted in June 2015, and contains a number of provisions that modify U.S. surveillance authorities and other national security authorities through legislation, and increase transparency regarding the use of these authorities. Specifically, the Act prohibits bulk collection by the Government under Title V of the Foreign Intelligence Surveillance Act (FISA) (also referred to as Section 215), the FISA pen register and trap and trace provision, and through the use of National Security Letters.

20. The Act replaces the National Security Agency bulk telephony metadata program under FISA with a new mechanism, under which the Government may only make targeted requests for telephone records held by communication service providers pursuant to individual orders from the Foreign Intelligence Surveillance Court (FISC), rather than requesting such records in bulk. In lieu of the bulk collection program, this new mechanism will allow the Government to submit to the FISC an application identifying a specific selection term such as a suspected terrorist's telephone number and, if that court approves the application, receive from the provider records of both the suspected terrorist and certain individuals in contact with that individual.

21. With respect to transparency, the Act requires the declassification (or, where that is not possible, declassified summaries) of opinions by the FISC or Foreign Intelligence Surveillance Court of Review that involve significant or novel interpretations of the law. It also increases the Government's public reporting obligations regarding specific uses of FISA authorities, and

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[9] As stated in paragraph 33 of its one-year follow-up report, the United States does not share the Committee's view as to the applicability of the legal concepts of "necessity" and "proportionality" to Article 17 of the ICCPR, which are derived from certain regional jurisprudence and are not broadly accepted internationally, and which are not supported by the travaux of the treaty. *See also* USG Observations on Draft General Comment 35, addressing the Committee's application of such concepts in relation to its interpretation of the term "arbitrary" under Article 9.

permits recipients of FISA orders to make either annual or semiannual reports of the approximate aggregate number of FISA orders they have received.

22. In addition, the Act creates a standing panel of cleared amicus curiae ("friends of the court") that the FISC or Foreign Intelligence Surveillance Court of Review shall appoint, absent a finding that such appointment is inappropriate, in FISA cases involving significant or novel interpretations of the law. Among other things, the amici are required to provide the courts with legal arguments that advance the protection of individual privacy and civil liberties.

23. Finally, in the area of oversight mandates, the Act also introduces a requirement that the Inspectors General of DOJ and the Intelligence Community audit the effectiveness and use of FISA authority to obtain production of tangible things from 2012 to 2014, including an examination of the adequacy of minimization procedures. Both Inspectors General are required by the Act to report the results of their audits to Congress.

24. With respect to the Committee's concern about access to remedies by persons who believe their rights have been violated, U.S. law generally provides a variety of avenues for seeking compensation and redress for alleged denial of constitutional and related statutory rights, as noted in paragraph 113 of the United States' Fourth Periodic Report. Specific remedies were previously described in paragraph 98 of the Initial U.S. Report and paragraph 59 of the Second and Third Periodic Report. Further, pursuant to FISA, an aggrieved person against whom evidence obtained or derived from FISA collection is introduced or otherwise used or disclosed in any trial, hearing, or other proceeding may move to suppress such evidence on the grounds that the information was unlawfully acquired or the surveillance was not made in conformity with an order of authorization or approval. *See, e.g.,* 50 U.S.C. § 1806. Such redress is available to any aggrieved person regardless of his or her nationality, and claims are heard before a neutral judge.

25. As we have noted previously, in January 2014, the President issued Presidential Policy Directive-28 (PPD-28), which enunciates standards for the collection and use of foreign signals intelligence. It emphasizes that we do not collect foreign intelligence for the purpose of suppressing criticism or dissent, or for disadvantaging any individual on the basis of ethnicity, race, gender, sexual orientation, or religion, and that agencies within our intelligence community

are required to adopt and make public, to the greatest extent feasible, procedures for the protection of personal information of non-U.S. persons. It also requires that privacy and civil liberties protections be integral in the planning of those activities, and that personal information be protected at appropriate stages of collection, retention, and dissemination.

26. PPD-28 recognizes that all persons should be treated with dignity and respect, regardless of nationality or place of residence, and that all persons have legitimate privacy interests in the handling of their personal information collected through signals intelligence. It therefore requires U.S. signals intelligence activities to include appropriate safeguards for the personal information of all individuals.