

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

November 19, 2015

Dear Attorney General Lynch:

We write in support of the American Civil Liberties Union's November 5 letter, which urges you not to seek dismissal on state secrets grounds of a lawsuit recently filed by three victims of torture identified in the publicly-released summary of the Senate Select Committee on Intelligence Study of the CIA's Detention and Interrogation Program ("SSCI Report"). The Justice Department has previously used the state secrets privilege to block lawsuits by victims of the CIA's discontinued torture program. With so much information about the CIA's detention and interrogation program now in the public domain, however, the Department's calculation as to whether aspects of the program may be litigated without disclosure of state secrets should be different now.

In accordance with the Justice Department's September 23, 2009 Policies and Procedures Governing Invocation of the States Secrets Privilege, the state secrets privilege should only be invoked "when genuine and significant harm to national defense or foreign relations is at stake and only to the extent necessary to safeguard those interests." The privilege should not be used to "conceal violations of law," or "prevent embarrassment to a person, organization or agency of the United States Government." The Department's guidance requires that invocations of the state secrets privilege be narrowly tailored, and that the Department seek dismissal only if no other remedy would be sufficient. Seeking dismissal of claims that are based on information in the SSCI Report would be manifestly inappropriate under this standard, because litigation based on public information "would not reasonably be expected to cause significant harm to national security."

Previous use of the state secrets privilege to deny victims of CIA torture access to the courts violated the United States' binding obligations to provide redress to victims of government torture. It diminished the public's trust in the fairness of the judicial process. And it damaged the United States' international credibility and ability to provide leadership on human rights issues. Now that release of the SSCI Report has demonstrated that the CIA's torture program may be openly discussed and examined, the Justice Department should not act to bar victims of that program from seeking redress in U.S. courts.

We ask that you consider the recent progress made in the United States to bring transparency to past use of torture and cruel, inhuman and degrading treatment, and to move away from these practices. Our eight organizations, each of which works to combat torture at home and abroad, support of the ACLU request, and add our own request that you allow the suit to go forward without intervention and attempted dismissal.

Respectfully,

Brennan Center for Justice



Center for Constitutional Rights



The Center for Victims of Torture



The Constitution Project



Human Rights First



Human Rights Watch



National Religious Campaign Against Torture

Physicians for Human Rights



Cc: Mr. Nitin Shah, Chief of Staff, Department of Justice
Mr. Stuart F. Delery, Acting Associate Attorney General, Department of Justice
Ms. Lisa Monaco, Assistant to the President for Homeland Security and Counterterrorism
Mr. Stephen E. Pomper, Senior Director for Multilateral Affairs and Human Rights, National Security Council