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## **Report of the Working Group on the Universal Periodic Review**

### **United States of America**

#### **Addendum**

#### **Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review\***

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\* The present document was not edited before being sent to the United Nations translation services.

## **Addendum of the United States of America to the Report of the Working Group on the Universal Periodic Review, United States of America (A/HRC/16/11)**

1. The Government of the United States has carefully reviewed the 228 recommendations received during its Universal Periodic Review (“UPR”). This response reflects our continuing endeavor, in consultation with civil society, to create, in the words of our Constitution, a more perfect union.

2. Given the number and complexity of the recommendations, we responded generally in November 2010, discussing the recommendations in categories. This Addendum similarly addresses the recommendations by categories, and will be supplemented by our oral presentation.

3. What it means for a recommendation to enjoy our support needs explanation. Some recommendations ask us to achieve an ideal, e.g., end discrimination or police brutality, and others request action not entirely under the control of our Federal Executive Branch, e.g., adopt legislation, ratify particular treaties, or take action at the state level. Such recommendations enjoy our support, or enjoy our support in part, when we share the ideal that the recommendations express, are making serious efforts toward achieving their goals, and intend to continue to do so. Nonetheless, we recognize, realistically, that the United States may never completely accomplish what is described in the literal terms of the recommendation. We are also comfortable supporting a recommendation to do something that we already do, and intend to continue doing, without in any way implying that we agree with a recommendation that understates the success of our ongoing efforts.

4. Some countries added to their recommendations inaccurate assumptions, assertions, or factual predicates, some of which are contrary to the spirit of the UPR. In such cases, we have decided whether we support a recommendation by looking past the rhetoric to the specific action or objective being proposed. When we say we “support in part” such recommendations, we mean that we support the proposed action or objective but reject the often provocative assumption or assertion embedded in the recommendation.

### **Civil rights and discrimination**

5. The following recommendations enjoy our support:

- 114, 116, 167, 191, and 198.
- 86. We agree that no one should face violence or discrimination in access to public services based on sexual orientation or their status as a person in prostitution, as this recommendation suggests.
- 107 and 111. We have comprehensive Federal and State legislation and strategies to combat racial discrimination. We are working diligently toward better enforcement and implementation of these laws and programs.
- 68, 101, and 219, in that profiling — the invidious use of race, ethnicity, national origin or religion — is prohibited under the U.S. Constitution and numerous pieces of national legislation.
- 112. We have recently taken concrete steps to address discrimination on the basis of sexual orientation and gender identity, and are engaged in further efforts.

6. The following enjoy our support, in part:

- 62, as explained in paragraphs 3 and 4, i.e., we disagree with some of the premises embedded in this recommendation, but we are committed to the objectives it states, in this case combating discrimination and promoting tolerance. While we recognize there is always room for improvement, we believe that our law is consistent with our CERD obligations. Also see the explanations of 65, and of 107 and 111.
- 64, 67, 94, 98, 100, and 189, as explained in paragraphs 3 and 4. The explanation above for 107 and 111 also applies here.
- 99, as explained in paragraphs 3 and 4, while noting that a migrant’s eligibility for full benefits under certain programs may depend on his/her lawful status.
- 103, as explained in paragraphs 3 and 4, and as it regards investigating and, where appropriate, prosecuting persons who violate criminal laws. We cannot support the part of the recommendation asking that we “guarantee ... fair compensation.” Although mechanisms for remedies are available through our courts, we cannot make commitments regarding outcomes.
- 190. We take effective measures to counter intolerance, violence and discrimination against all members of all minority groups, including Muslims. We cannot support this recommendation, however, to the extent that it asks us to take legislative measures countering insults. Insults (unlike discrimination, threats, or violence) are speech protected by our Constitution.

### **Criminal justice issues**

7. The following enjoy our support:
  - 70, 95, 96, 97, 151, 162, 163, 177, and 179.
  - 145, as U.S. law prohibits torture in all prisons and detention facilities under its control.
  - 208 and 209, noting that law enforcement and immigration officers are lawfully permitted to use deadly force under certain exceptional circumstances, e.g., self-defense or defense of another person.
  - 152, as U.S. law prohibits mistreatment of detainees in U.S. custody, requires investigations of credible mistreatment allegations, and prescribes accountability measures for violations.
8. The following enjoy our support, in part:
  - 118, in that we will continue to ensure that implementation of the death penalty complies with our international obligations; the portion asking that we end capital punishment does not enjoy our support.
  - 134 and 135. We cannot support recommendation 134 with respect to prosecution. We support both recommendations with respect to executions regarding minors and persons with certain intellectual disabilities, but not regarding all persons with any mental illness.
  - 150, as explained in paragraphs 3 and 4. The explanations above for 145, and for 208 and 209, also apply.
  - 173. The first part of this recommendation enjoys our support; we cannot support the recommendation’s second part (“proceed to extradite former Bolivian authorities ...”). See notes on extradition in paragraph 31.

- 174 and 175, as explained in paragraph 4. We are committed to holding accountable persons responsible for human rights violations and war crimes. We cannot, however, support the portion of 174 regarding compensation and remedies, because those are not always applicable. Nor can we support the part of 175 that we accede to the Rome Statute, although we are engaging with State Parties to the Rome Statute on issues of concern.
  - 178. We support this recommendation to the extent that some State laws conform with it. Most inmates do not have the right to vote, however, and former felons do not have the right to vote in some States.
  - 186. We support this recommendation to the extent provided for under the U.S. Constitution and U.S. laws, and consistent with our international obligations.
9. The following do not enjoy our support:
- 56, 180, and 181.
  - 119 through 133 (capital punishment).

### **Indigenous issues**

10. The following enjoy our support:
- 85.
  - 83, 200, 202, 203, 205, and 206, consistent with the “Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples – Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples” (Announcement).
11. The following enjoy our support, in part:
- 199, as explained in paragraph 4.
  - 201. We cannot accept its first part (“recognize ... without conditions”), but its second part (“implement ...”) enjoys our support, consistent with the Announcement.
12. §The following does not enjoy our support:
- 204.

### **National security**

13. The following enjoy our support:
- 89, 90, 139, and 161.
  - 58 and 176, insofar as they recommend compliance with our international law obligations.
  - 66 and 146, because existing Federal criminal laws comply with our obligations under the Convention against Torture.
  - 149, although noting that some of the referenced points may not be fully applicable in every context.
  - 159 and 160. We have made clear our desire to close the Guantánamo Bay detention facility and will continue to work with Congress, the courts, and other

countries to do so in a responsible manner that is consistent with our international obligations. Until it is closed, this Administration will continue to ensure that operations there are consistent with our international legal obligations.

- 188, because our Constitution's Fourth Amendment and existing U.S. law prohibit the use of modern technology for excessive and unjustified interference in individuals' private lives.
  - 218. Persons who are charged with terrorist-related crimes are tried under legally established processes in either civilian courts or military commissions, depending on the nature of the crime and the individual. They are afforded all applicable protections under domestic and international law.
14. The following enjoy our support, in part:
- 59, as explained in paragraph 4. Our Constitution and laws contain appropriate rules to protect the privacy of communications, consistent with our international human rights obligations.
  - 88, as explained in paragraph 4. The United States has consistently invited United Nations Special Rapporteurs to tour the detention facility at Guantánamo, to observe detention conditions, and to observe military commission proceedings. That invitation remains.
  - 60, 137, 138, 140, 155, 166, and 217, as explained in paragraph 4. The U.S. supports recommendations calling for prohibition and vigorous investigation and prosecution of any serious violations of international law, as consistent with existing U.S. law, policy and practice. We reject those parts of these recommendations that amount to unsubstantiated accusations of ongoing serious violations by the United States.
  - 136, 147, 148, 156, and 157. We intend to close the Guantánamo Bay detention facility. The President has closed all CIA detention facilities and has prohibited CIA operation of such facilities. We allow the International Committee of the Red Cross access to individuals detained by the United States pursuant to armed conflict. We investigate allegations of torture, and prosecute where appropriate. We cannot accept portions of these recommendations concerning reparation, redress, remedies, or compensation. Although mechanisms for remedies are available through U.S. courts, we cannot make commitments regarding their outcome. We cannot accept the part of 136 that we close *all* detention centers; the United States maintains certain internment facilities abroad, consistent with applicable U.S. and international law. We cannot agree to the part of 156 that we release all individuals detained pursuant to an armed conflict who are not promptly brought to trial. Regarding recommendation 157, transfers of detainees to their home countries will only be conducted in accordance with our humane treatment policies.
  - 142, as explained in paragraph 4. Our contractors are not authorized to engage in direct hostilities or offensive operations or to commit assassinations. Like U.S. Government personnel, contractors may only use force consistent with our international and domestic legal obligations. We have expressed support for the International Code of Conduct for Private Security Service Providers.
  - 143, as explained in paragraph 4. In U.S. military operations, great care is taken to ensure that only legitimate objectives are targeted and that collateral damage is kept to a minimum.
  - 187, as explained in paragraph 4, and noting that we collect information about our citizens only in accordance with U.S. law and international obligations.

15. The following do not enjoy our support:

- 141, 158, and 170.

### **Immigration**

16. The following enjoy our support:

- 80, 104, 108, 165, 183, 212, and 220.
- 106, insofar as it involves enforcing our laws, e.g., hate crimes legislation, and taking appropriate administrative actions.
- 144, insofar as it allows for the exercise of prosecutorial discretion.
- 164, 184, and 210, insofar as they recommend compliance with our obligations under international human rights law.
- 185, insofar as “entitled” to counsel means that a migrant in removal proceedings in immigration court enjoys the right to counsel at his/her own expense, and “fully understand their rights” means to have been provided information in a language they understand.
- 213, understanding “consular assistance” to mean access consistent with Article 36 of the Vienna Convention on Consular Relations and similar provisions in bilateral consular agreements.
- 214, understanding that “basic services” refers to services such as primary education and emergency health services that are provided to migrants regardless of status.
- 223, because this recommendation comports with the United States’ general practice of widely disseminating information on its consular notification and access outreach and training efforts, including to foreign missions in the United States.

17. The following enjoy our support, in part:

- 79 and 105, as explained in paragraph 4. We will continue to both conduct human rights training and awareness campaigns and, where appropriate, bring civil or criminal actions regarding racial profiling, police brutality, and excessive use of force, and other actionable civil rights violations against immigrants. While unlawful presence in the U.S. is not a crime, and the federal government does not support state initiatives that aim to criminalize mere status, we cannot support the parts related to the “criminalization” of migrants, as certain immigration offenses are subject to criminal sanction, e.g., illegal entry.
- 82, as explained in paragraph 4. It is consistent with our continuing efforts to improve our immigration policies and to eliminate xenophobia, racism, and intolerance in our society.
- 102, as explained in paragraph 4, and as our Constitution and numerous statutes prohibit the invidious use of race or ethnicity. The registration requirements of the National Security Entry-Exit Registration System are under review at this time.
- 207, as explained in paragraphs 3 and 4.

18. The following do not enjoy our support:

- 110, as the Federal Executive Branch lacks the authority to repeal or refuse to enforce laws enacted at the State level.

- 182, as we endeavor not to detain irregular immigrants unnecessarily, but our statutes, policies, and practices result in detention other than in “exceptional circumstances.”
- 211. Nevertheless, we note that undocumented migrants in the U.S. already have access to publicly supported healthcare through an extensive network of Migrant Health Centers.

### **Economic, social, and cultural rights and measures, and the environment**

19. The following enjoy our support:
  - 109, 113, 197, and 226.
  - 195, while noting that we are a non-party to the International Covenant on Economic, Social and Cultural Rights, and accordingly we understand the references to rights to food and health as references to rights in other human rights instruments that we have accepted. We also understand that these rights are to be realized progressively.
  - 196, because the U.S. Government seeks to improve the safety net that our country provides for the less fortunate.
20. The following enjoy our support, in part:
  - 51, 221, and 222, as explained in paragraph 4, i.e., disagreeing with premises embedded in these recommendations, but agreeing with their essential objectives (reduce greenhouse gas emissions and cooperate internationally).
21. The following does not enjoy our support:
  - 216.

### **Labor and trafficking**

22. The following enjoy our support:
  - 168, 169, and 193.
  - 115, as we have comprehensive laws aimed at ensuring gender equality at work, and we are taking further action through the President’s Equal Pay Taskforce.
  - 192, as we support the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which reaffirms the commitment of all ILO member States to respect, promote, and realize principles concerning fundamental rights in four categories including freedom of association and collective bargaining. Although not a party to ILO conventions 87 and 98 on those topics, we have robust laws addressing their fundamental principles.
23. The following enjoys our support, in part:
  - 81. Members of minority groups enjoy important anti-discrimination and labor protections. While labor laws apply to undocumented migrant workers, such individuals may not be entitled to certain types of remedies.
24. The following does not enjoy our support:

- 194, as maternity leave is not “mandatory” for either mothers or employers, although employers of a certain size are required to allow certain leave that may be used in connection with the birth or adoption of a child.

### **Domestic implementation of human rights**

25. The following enjoy our support:

- 225.
- 65. We regularly engage in such reviews of our laws in light of our human rights obligations, including through the enforcement of our Federal civil rights laws and implementation of our domestic civil rights programs, litigation and judicial review, our reports to U.N. human rights treaty bodies, engagement with U.N. Special Procedures, and active discussions with civil society. Although the Federal government does not consistently or systematically review State laws, our civil rights mechanisms allow for review of State laws, as appropriate.
- 74. There are Federal and State institutions to monitor human rights; we are considering whether this network of protection is in need of improvement.
- 87. Programs at the Federal and State levels provide training on human rights, particularly on issues related to civil rights and non-discrimination; we are continuing to explore ways to strengthen such programs.

26. The following enjoys our support, in part.

- 227. This recommendation enjoys our support except for the last part regarding making our decision-making publicly available. We apply the Leahy laws (which impose human rights-related restrictions on assistance to foreign security forces) to all countries receiving U.S. security assistance, and we respond appropriately in cases of abuse. However, to do so, we consider information from all sources, including classified sources, and cannot make our decision-making public.

27. The following do not enjoy our support:

- 224, although we will continue to support fully the UPR and its strengthening.
- 72 and 73. Although we are reviewing whether domestic institutions that monitor human rights need improvement, we cannot now commit to a particular plan.
- 84. The State Department’s annual human rights reports do not rank the human rights situations of countries. We do, however, engage in robust assessment of our own record of respecting human rights, as described in paragraph 25.
- 228, due to currently applicable restrictions.

### **Treaties and international human rights mechanisms**

28. The following enjoy our support:

- 10, 11, 13, 14, 20, 21, 22, 26, 28, 30, 33, 34, 35, 39, 43, 47, 48, 49, and 93. We support the recommendations asking us to ratify the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and ILO Convention 111. We also support the recommendations that we ratify the Convention on the Rights of the Child, as we support its goals and intend to review how we could move toward its ratification.



We also support recommendations urging deliberative treaty actions, such as that we “consider ratifying” them.

- 54. This recommendation is consistent with the longstanding U.S. policy of supporting the International Court of Justice and taking appropriate action to comply with judgments of the Court. The United States intends to continue to make best efforts to ensure compliance with the *Avena* judgment.
29. The following enjoy our support, in part:
- 1 through 9, 15 through 19, 23, 24, 25, 27, 37, 38, 40, 41, and 42. We support the parts of these recommendations asking us to ratify those treaties, identified above, of which the Administration is most committed to pursuing ratification. We cannot support the other portions. Nor can we support “without reservations” in 1.
  - 29. We support the second part (“observe international standards ...”), understanding such standards to mean applicable international human rights law.
  - 44 and 45, as explained in paragraph 4. We do not believe that any reservations, understandings, and declarations accompanying our ratification of international instruments undermine our obligations, or the treaty’s object or purpose. We cannot support the part of 45 regarding individual procedures.
  - 52, as explained in paragraph 4. The US Government complies with its international humanitarian law obligations, but we note that international humanitarian law governs conduct in the context of armed conflict, and cannot accept this recommendation’s implication that we are in an armed conflict with the Palestinian people.
30. The following do not enjoy our support:
- 12, 31, 32, 36, 46, 50, 91, and 92.
  - 53. Following discussions between the two governments, the Government of Nicaragua decided not to pursue any further action based on this case, and the International Court of Justice accordingly removed the case from its list on September 26, 1991.
  - 63. We believe that our law is consistent with our CERD obligations.
  - 71, while noting that the United States takes all reasonable measures, consistent with the Optional Protocol, to prevent servicemembers under 18 years of age from engaging directly in hostilities.

### **Other recommendations**

31. We received a few recommendations that do not fit neatly into specific categories. Some call on the U.S. Government to extradite particular individuals. Decisions on extradition cases are made on a case-by-case basis, consistent with our international legal obligations, and the United States cannot prejudge the outcome of any particular case.

32. The following do not enjoy our support:

- 55, 57, 61, 69, 75, 76, 77, 78, 117, 153, 154, 171, 172, and 215.