AMERICA UNRESTORED

An Assessment Of
The Obama Administration's Fulfillment
Of ACLU Recommended "Actions For Restoring America"

Presented by the
AMERICAN CIVIL LIBERTIES UNION

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Because Freedom Can't Protect Itself.

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An Assessment Of The Obama Administration's Fulfillment Of ACLU Recommended "Actions For Restoring America"

In October 2008, two weeks before the presidential election, the ACLU released "Actions for Restoring America," a set of detailed recommendations to the new president for concrete steps he should take to restore civil liberties in America. These recommendations were designed to correct assaults upon American freedoms that were implemented during the previous eight years. That document – which was furnished to the Obama and McCain campaigns and, after the election, to President-elect Obama's transition team – included recommendations for action on the president's first day in office, during his first 100 days, and during his first year.

With the anniversary of President Obama's inauguration upon us, it is now possible to assess the administration's civil liberties performance during its first year through the prism of its record in fulfilling the ACLU's specific recommendations. Because our recommendations focused on steps that the new president could take on his own, without a vote by Congress, they provide a unique measure of the administration's determination to reverse the Bush legacy. For each recommendation, we simply asked the question, "did the administration do this or not?"

This report does not purport to be a complete analysis of the Obama administration's first-year record on civil liberties. The ACLU recognizes that the issues at the top of the nation's agenda are constantly changing, and that different issues inevitably carry different weight. Also, the administration has taken actions – good and bad – that are not reflected in the ACLU's list. For example, while a significant part of how the administration must be judged is in regard to its actions with Congress, our recommendations were limited to executive actions and did not include steps that only Congress could take. In addition, the administration may be preparing actions in some areas that they have not yet had time to carry out because of delays in the Senate confirmation of staff or other factors. And finally, in some instances, the assessment of how the administration has performed with regard to some of our recommendations is inevitably somewhat subjective, as some recommendations are inherently complicated and can involve multiple levels of fulfillment.

Nevertheless, this report is a valuable snapshot of the administration's performance on the very broad range of issues that the ACLU concerns itself with, many of which reach deep into the government. These issues have a broad impact on the lives of many Americans, even if some are not the kind that make headlines.

Results

Our original report contained 142 discrete recommendations to address 66 specific problems or issues. The administration has acted on just over one-third of our recommendations – carrying out 24 outright, and substantively fulfilling another 25, though with qualification. The administration took no action on 66 of our recommendations, while on another 27 actions, the administration substantively failed to comply with our request, but took some positive steps toward achieving the objective.

On our highest-priority "Day One" items, the record is mixed. On torture and abuse, the administration carried out seven of our nine recommendations within the first year. In one of three bold executive orders signed on his second full day in office, President Obama put an end to the prior administration's torture policies. He also ordered the shuttering of the notorious prison at Guantanamo Bay within a year – but the prison remains open. In fact, only one of our four recommendations on Guantanamo has been carried out. Notably, our recommendation on the extraordinary rendition issue was not.

Many of our other top priorities (those we recommended action on within President Obama's First 100 Days) involved domestic national security and privacy issues. The Bush administration had a terrible record in this area, bringing more and more Americans under the purview of a more powerful, surveillance-oriented security establishment. On many of these issues – including spying on Americans, monitoring of activists, terrorism watchlists, the Real ID Act, Secure Flight, and DNA databases, the administration carried out none of our recommendations.

Because the Bush administration embraced unprecedented privacy-invading domestic security policies, we at the ACLU were hopeful that the next president would reject those radical changes, restoring our nation's long tradition of respect for privacy and the rule of law. Our report shows that the administration's performance in that regard has been a significant disappointment. If these policies are not reversed, they become not an aberration, but a precedent – and potentially, a permanent part of American life.

The administration, on a positive note, did fairly well on issues of open government, civil rights, freedom of speech, and reproductive freedom, areas in which they acted on about half of our recommendations.

This report condenses an enormous amount of information about a large number of complex issues and actions taken by the administration. Inevitably there were a number of gray areas and we had to "make the call" on each item based on the information we were able to gather and the nature of the administration's actions.

Chart of recommendations and results

The tables below list the following:

1. The text of our original recommendations for day one, the first 100 days, and the first year of the new administration. For the background (explanation of problem) for each issue, see the original report at www.aclu.org/transition.

2. An explanation of any complexities or judgment calls that were made in the course of evaluating the administration’s compliance with each request. These also include links to sources for the explanation provided.
3. A bottom-line yes/no evaluation of whether the administration acted on our recommendation. An asterisk indicates that in our judgment the answer is a qualified yes (the administration basically did what we recommended but that assessment had to be qualified in some way) or a qualified no (the administration substantively failed to comply with our request but took some positive steps deserving recognition).

THE ACLU'S DAY-ONE RECOMMENDATIONS

	Original individual recommendations	*Evaluation*	*Result*
Torture and Guantanamo			
Torture and Abuse			
1.	The president should issue an executive order, on the first day in office, that orders all agencies to take immediate steps to ensure that torture and abuse is prohibited by the federal government –	On January 22, 2009, his second full day in office, President Obama issued an executive order that fulfilled some but not all of our requests (see lettered items below). The EO ordered the CIA to shut down its detention facilities "as expeditiously as possible," and forbade the CIA from operating any such facilities in the future. Notwithstanding the executive order, however, reports of abuse continue. It is unclear what steps the President or the agencies have taken to ensure effective oversight of the new rules on interrogation. http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf http://www.aclu.org/national-security/president-obama-orders-guantanamo-closed-and-end-torture	– –
a.	that no agency may use any practice not authorized by the Army Field Manual on Intelligence Interrogations,		Yes

b.	that no president or any other person may order or authorize torture or abuse,		Yes
c.	that all violations of Common Article 3 of the Geneva Conventions are prohibited,		Yes
d.	that all persons being held overseas must be registered with the International Committee of the Red Cross in conformity with Defense Department practices, and	The administration has ordered that detainees be registered with the Red Cross within 14 days, according to multiple sources. However, no written policy has been made public, and there have been reports that the policy is not being followed consistently in the field. http://www.nytimes.com/2009/11/29/world/asia/29bagram.html	Yes*
e.	that all intelligence interrogations must be video recorded.	President Obama did not order interrogators to videotape interrogations; however, Congress passed, and the President signed into law, legislation requiring the videotaping of most intelligence interrogations. See section 1080 http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2647enr.txt.pdf	Yes*
2.	The president should order all agencies to comply with requests from Members of Congress for unredacted copies of documents related to the development and implementation of U.S. interrogation policies.	No such order has been issued. Based on meetings with key congressional offices, it appears that the Obama administration has provided more documents, and with fewer redactions, to Congress. However, important documents continue to be withheld from the public.	No
3.	The attorney general should appoint an outside special counsel to investigate and, if warranted, prosecute any violations of federal criminal laws prohibiting torture and abuse – focusing not just on crimes committed in the field, but also on crimes committed by civilians, of any position, in authorizing or ordering torture or abuse.	Attorney General Holder appointed a career prosecutor, John Durham, to conduct a “preliminary” review of a select number of detainee-abuse cases. Mr. Durham has not been allowed, however, to conduct a full investigation of all violations of laws prohibiting torture and abuse; nor has the Attorney General indicated any intention to investigate those who authorized and ordered the use of abusive interrogation techniques. http://www.aclu.org/human-rights_national-	No*

		security/attorney-general-holder-appoint-prosecutor-investigate-torture Statement of Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees http://www.justice.gov/ag/speeches/2009/ag-speech-0908241.html	
4.	The president should order the immediate closure of all secret prisons, and prohibit the CIA and its contractors from detaining anyone.	On January 22, 2009, President Obama issued an executive order requiring the CIA to shut down its detention facilities "as expeditiously as possible" and forbidding the CIA from operating any such facilities in the future. Exec. Order No. 13,491, 74 Fed. Reg. 4,893 (Jan. 22, 2009). http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf ACLU Statement http://www.aclu.org/national-security/president-obama-orders-guantanamo-closed-and-end-torture	Yes
5.	The president should rescind any conflicting previous orders – none of which have been made public and remain secret to this day.	On January 22, 2009, President Obama issued an executive order rescinding interrogation advice given by the Department of Justice between September 11, 2001 and January 20, 2009. http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf	Yes
Guantanamo			
1.	Order the prompt shutdown of the detention facility	On January 22, 2009, President Obama issued an executive order to close the prison camp at Guantánamo Bay within one year. The administration now acknowledges that the one-year deadline to close the facility will not be met on time; however, it maintains its commitment to closing the facility. Exec. Order No. 13,491, 74 Fed. Reg. 4,893 (Jan. 22, 2009). http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf	Yes*

		http://www.aclu.org/national-security/president-obama-orders-guantanamo-closed-and-end-torture	
2.	Order the transfer of any prisoners charged with a crime to a facility within the continental United States for trial in a federal criminal court or before a military court-martial	On November 13, 2009, Attorney General Holder stated that the Department of Justice intended to transfer to the U.S., charge and try the five detainees accused of planning and organizing the attacks of September 11, 2001 in federal criminal court in New York, while a group other detainees will face military commissions, the location of which has not yet been determined. Instead of shutting down the military commissions, the Obama administration continues to use them. The President signed legislation into law that made improvements to the military commissions, however, left significant due process problems in place. There has been no further announcement regarding the status of the remaining detainees at Guantanamo, many of whom have been cleared for release but are still awaiting removal. Others have yet to be cleared or charged. DOJ Press Release http://www.justice.gov/opa/pr/2009/November/09-ag-1224.html ACLU Statement http://www.aclu.org/national-security/911-defendants-be-tried-federal-court.	No*
3.	Order the transfer of all uncharged detainees to countries where they will not be abused or imprisoned without charge.	The Justice and Defense Department task force assigned to review each detainee's case has not yet completed its full review of all detainees. Detainees remain at Guantanamo who have neither been charged nor cleared as of this time. Moreover, the President and top administration officials assert that the government can continue to hold some detainees without charge or trial.	No
4.	Rescind any conflicting previous orders – none of which have been	Although the Obama administration has made numerous policy changes to Guantanamo, it	No*

	made public.	continues to use military commissions and continues to assert that it can hold some detainees without charge or trial.	
Extraordinary Rendition			
1.	Order all agencies, on the first day in office, to end and prohibit any rendition or transfer of any person to another country without judicial process. The president should prohibit the rendition or transfer of any person to another country where there is a reasonable possibility the person would be subject to torture or abuse or detained without charge. Any person subject to any transfer shall have a due process right to challenge any transfer before an independent adjudicator, with a right to a judicial appeal. The executive order should by its terms rescind any conflicting previous order – none of which have been made public.	By executive order, the President ordered the closure of the CIA's prisons and mandated renewed commitment to the Convention Against Torture. However, the administration has not prohibited all extrajudicial transfers of prisoners. Rather, it will continue to rely on diplomatic assurances – an inadequate mechanism – to reduce the likelihood that transferred detainees will face torture. http://articles.latimes.com/2009/feb/01/nation/na-rendition1 (The ACLU has ongoing litigation in this area in the case of Mohamed et al. v. Jeppesen Dataplan, Inc. http://www.aclu.org/national-security/mohamed-et-al-v-jeppesen-dataplan-inc)	No

THE ACLU'S FIRST HUNDRED DAYS RECOMMENDATIONS

Warrantless spying			
1.	Issue an executive order recognizing the president's obligation to comply with FISA and other statutes, requiring the executive branch to do so, and prohibiting the NSA from collecting the communications, domestic or international, of U.S. citizens and residents		No
2.	Issue an executive order prohibiting new FISA powers from being used to conduct suspicionless bulk collection.		No
3.	Re-examine the recent amendments to Executive Order 12333 and revise the order to limit and regulate all intelligence community activities and to fully protect the privacy and civil liberties of U.S. citizens and residents. In particular, the new Executive Order should:		– –
a.	Limit the ODNI, CIA and NSA to collecting and evaluating foreign intelligence information.		No
b.	Prohibit the National Security Agency from intercepting international communications of U.S. persons, absent a warrant based on probable cause.		No
c.	Prohibit the military from playing any role in civilian surveillance within the United States, or in surveillance of U.S. persons abroad.		No
d.	Establish minimization procedures that prevent the collection of	Pursuant to requirements in the FISA Amendments Act of 2008, the Obama	No*

	information regarding U.S. persons not reasonably suspected of involvement in espionage, terrorism or other criminal activity, and require the prompt destruction of U.S. person information inadvertently collected.	administration was required to submit minimization procedures to the FISA court governing the collection, use and dissemination of information collected under new spying authorities granted by that law. There is no publicly available information about the status or substance of those procedures.	
e.	Restrict the FBI to investigating criminal activities, including espionage and terrorism, and eliminate foreign and domestic intelligence investigations of groups or individuals unrelated to criminal offenses.		No
f.	Prohibit the exchange of personally identifiable information between agencies except for evidence of espionage or other criminal activity, which may be transmitted to agencies responsible for investigating or prosecuting such violations.	Pursuant to requirements in the FISA Amendments Act of 2008, the administration was required to submit minimization procedures to the FISA court governing the collection, use and dissemination of information collected under new spying authorities granted by that law. There is no publicly available information about the status or substance of those procedures.	No*
4.	Make publicly available any and all internal policies, procedures or memoranda produced by or for the intelligence and law enforcement agencies regulated under E.O. 12333, which interpret or qualify provisions of that order.		No
5.	Make all minimization procedures designed to protect the privacy and civil liberties of U.S. persons public, as well and any internal policies or memoranda that interpret these procedures.		No
6.	Order the attorney general to launch an investigation to determine if any laws were broken or to appoint a special counsel to do the same.		No

Watchlists		President Obama ordered a review of the U.S. watchlist system in the wake of the attempted Christmas bombing, but it did not appear to be oriented toward addressing the problems of overinclusivity and lack of due process, and may actually exacerbate, rather than ameliorate, the civil liberties problems with watchlists.	
1.	The President should issue an executive order requiring watchlists to be completely reviewed within 3 months, with names limited to only those for whom there is credible evidence of terrorist ties or activities.		No
2.	Repeal Executive Order 13224, which creates mechanisms for designating individuals and groups as terrorist suspects and preventing US persons and companies from doing business with them – a power of such breadth that, the record shows, it inevitably leads to the designation of many innocent people and does more harm than good.		No
Freedom of Information—Ashcroft Doctrine			
1.	Direct the attorney general to rescind the "Ashcroft Doctrine" regarding Freedom of Information Act compliance, which instructs agencies to withhold information whenever there is a "sound legal basis" for doing so, and return to the compliance standard under Attorney General Janet Reno, which promoted an "overall presumption of disclosure" of government information through the FOIA unless it was "reasonably foreseeable that disclosure would be harmful."	Attorney General Holder issued a new FOIA memorandum reversing the "Ashcroft Doctrine" on March 18, 2009. Holder's statement: http://www.justice.gov/opa/pr/2009/March/09-ag-253.html ACLU reaction: http://www.aclu.org/national-security/attorney-general-issues-new-freedom-information-act-guidelines	Yes
Monitoring of activists			
1.	Direct the attorney general and other relevant agency heads (e.g., Defense and Homeland Security) to end government monitoring of political activists.		No

2.	Issue an executive order directing the relevant agencies to refrain from monitoring political activists unless there is reasonable suspicion that they have committed a criminal act or are taking preparatory actions to do so.		No
3.	Direct the attorney general to repeal the new Attorney General Guidelines regarding FBI investigations, and replace them with new guidelines that protect the rights and privacy of innocent persons. The new guidelines should:		– –
a.	Prohibit the use of intrusive investigative techniques absent specific and articulable facts that give a reasonable indication that the subject of the investigation is engaging in a violation of federal law.		No
b.	Specifically prohibit the use of race, religion, national origin, or the exercise of First Amendment-protected activity as factors in making decisions to investigate persons or organizations.	The Department of Justice Civil Rights Division has established a task force to review the 2003 Department of Justice Memorandum on the Use of Race in Federal Law Enforcement, but no timeline for reform has been announced. Attorney General Holder's Testimony before the Senate Judiciary Committee where an internal review of the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies is discussed: http://www.justice.gov/ag/testimony/2009/ag-testimony-0911181.html	No *
c.	Specifically prohibit the reporting of and keeping files on persons engaging in peaceful political activities.		No
DOJ's Civil Rights Division			
1.	The Voting Section should increase emphasis on prosecution of Section 2, Section 5, and Section 203 cases under the Voting Rights Act on behalf of minority	Assistant Attorney General for Civil Rights Tom Perez (confirmed in October 2009) has publically signaled his commitment to reform and transform the Civil Rights	Yes

	communities; make appropriate and timely Section 5 objections; address ongoing concerns regarding the Section's use of US Attorneys' criminal prosecutors for election day monitoring; and address the problems of voter caging and aggressive voter challenges at the polls.	Division and to enforce all the federal civil rights statutes under his jurisdiction. He has discussed the necessity for enforcement of Section 2 and Section 5 of the VRA, in addition to the Section 203 enforcement that was done under the Bush Administration. The Bush Administration, at the ACLU's urging, removed criminal prosecutors from the polls on Election Day. http://www.justice.gov/crt/speeches/perez_testimony_121609.pdf	
2.	The Employment Litigation Section should rescind any policy aimed at limiting or reducing the number of pattern and practice and disparate impact cases, and take steps to increase investigation and litigation of pattern and practice and disparate impact cases alleging race, national origin, and sex discrimination. The Employment Litigation Section should also commit to fully defending and enforcing all settlement agreements and consent decrees into which it has previously entered, including those agreements undermined and attacked under the Bush Administration.	Assistant Attorney General for Civil Rights Tom Perez told Congress that "Restoring vigorous enforcement of Title VII, including pattern and practice cases, is one of our highest priorities." He testified that since Obama assumed office, the Section has filed three Title VII pattern/practice cases, obtained settlements in five such cases, and opened ten new pattern/practice investigations. AAG Perez also noted the Section's victory in July in *US v. City of New York, NY*, in which the government was granted summary judgment on the question of liability for disparate impact for using a written firefighter examination that disadvantaged applicants of color. Perez testimony: http://www.justice.gov/crt/speeches/perez_testimony_12309.pdf	Yes
3.	The Special Litigation Section should reinvigorate its prosecution of pattern and practice law enforcement cases, rebuild its docket of prison conditions of confinement cases and, where appropriate, seek consent decrees by accepting admissions of constitutional violations.	Assistant Attorney General for Civil Rights Tom Perez highlights efforts to investigate and prosecute where appropriate allegations of pattern and practice of discriminatory policing, as well as a handful of suits recently filed to challenge conditions of imprisonment. No numbers are offered, but some specifics are mentioned, for example that the East Haven, CT and Suffolk Co., NY police departments are among those being looked at as targets of potential pattern/practice cases.	Yes *

		Also, in his November 18, 2009 written testimony to the Senate Judiciary Committee, AG Holder said that the 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies was being reviewed internally for proposed changes and additions to address recent criticisms. AAG Perez's December 3, 2009 written testimony to the House Judiciary Committee (http://www.justice.gov/crt/speeches/perez_testimony_12309.pdf) Holder's Nov. 18 2009 testimony: http://www.justice.gov/ag/testimony/2009/ag-testimony-0911181.html	
4.	The Justice Department Civil Rights Division Disability Rights Section should reinvigorate enforcement with regards to access to, and nondiscrimination by, state and local government programs and activities, particularly including voting accessibility, state compliance with Olmstead v. L.C., 527 U.S. 581 (1999), and state and local government employment services. The DOJ should also focus efforts on ensuring that internet websites are accessible and usable by people with disabilities by issuing guidance and, where appropriate, taking actions to enforce the 2004 Americans with Disabilities Act and Section 508 of the Rehabilitation Act (29 U.S.C. § 794d).	DOJ has made modest moves in this area: • DOJ has begun to improve its work on Olmstead litigation. DOJ initiated and settled a case with the state of Texas concerning the care given to residents of the state's 13 facilities for persons with developmental disabilities. • The DOJ filed three strong briefs in Olmstead cases at the end of November. • DOJ has continued its "Project Civic Access (PCA), an initiative to ensure that localities across the country comply with the Americans with Disabilities Act (ADA)." However, it is unclear that the effort has actually been expanded; an investigation settled with Atlanta in December was the 174th under the PCA initiative but just the 13th agreement reached this year. http://www.justice.gov/opa/pr/2009/June/09-crt-634.html http://blogs.usdoj.gov/blog/archives/451 http://www.justice.gov/opa/pr/2009/December/09-crt-1314.html	Yes*

5.	The Educational Opportunities Section should again initiate affirmative cases challenging sex discrimination and race discrimination in education under Title IX and Title VI, including harassment cases and cases challenging unlawful sex segregation in public schools.	The Civil Rights Division of HHS is currently evaluating its caseload and seeking input from groups on stepping up enforcement. Recent cases in which the Educational Opportunities Section has been involved include: • Cook v. Florida High School Athletic Association: private challenge to FL policy that would have exempted many thousands more male than female athletes from sports competition schedule reductions due to budget constraints. The EOS moved to file an amicus brief on the side of the plaintiff, and several days later the case was rendered moot when FHSAA voted to rescind the policy. • A number of ongoing cases in which there have been recent developments, such as McFerren and US v. County Board of Education of Fayette County, a desegregation case in which a consent order was approved in February 2009. http://www.justice.gov/crt/edo/documents/caselist.php)	Yes*
Real ID Act			
1.	The Secretary of Homeland Security should suspend the regulations (73 Fed. Reg. 5272) for the Real ID Act pending congressional review.	Secretary Napolitano has pushed for the passage of the PASS ID Act which leaves many of the worst provisions of the REAL ID Act (from a civil liberties perspective) in place but makes it easier for the states to implement. Testimony of Secretary Napolitano before the Senate Committee on Homeland Security and Governmental Affairs on "Identification Security," July 15, 2009: http://www.dhs.gov/ynews/testimony/testimony_1247749178990.shtm	No

Abortion gag rule			
1.	Rescind the Executive Memorandum of March 28, 2001, known as the "Mexico City policy" or "Global Gag Rule," prohibiting foreign aid to organizations overseas that promote or perform abortions.	On January 23rd, President Obama rescinded the Global Gag Rule. http://www.whitehouse.gov/statement-released-after-the-president-rescinds/. ACLU's response: http://www.aclu.org/reproductive-freedom/aclu-praises-obama%E2%80%99s-decision-rescind-global-gag-rule	Yes
Ban all workplace discrimination against sexual minorities by the federal government and its contractors			
1.	The president should issue an executive order making it a condition of all federal contracts and subcontracts that the contractor and subcontractor agree not to discriminate on the basis of sexual orientation or gender identity in any hiring, firing or terms and conditions of employment. The Department of Labor, Office of Federal Contract Compliance, should issue implementing regulations requiring all government contracts to contain an equal opportunity clause that forbids sexual orientation and gender identity discrimination by federal contractors and subcontractors. As a model, the administration can use current Executive Order 11246, which bans discrimination by contractors and subcontractors on the basis of race, religion, sex and national origin. Similarly, the Department of Labor can use 41 CFR 60-1.4 as a model.		No
2.	The president should issue an executive order updating and expanding EO# 13087 to prohibit discrimination based upon gender identity in federal employment, and ordering all agencies to take those steps necessary to implement the order.	President Obama is effectively meeting this obligation by using executive tools other than an executive order. The President ordered the Office of Personnel Management (OPM) to provide guidance to federal agencies on ensuring	Yes

		that federal employees will not be discriminated against based on factors not related to work performance, which top Administration officials publicly stated will include an explicit prohibition against gender identity discrimination in the federal workplace. Beginning in January 2010, the Obama administration, through the Office of Personnel Management, has started to list gender identity among the classes protected by federal Equal Employment Opportunity (EEO) policies. The EEO policy marks the first time that gender identity discrimination has been explicitly banned from the federal workplace. Presidential Memorandum: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09	
Death penalty			
1.	Declare a federal death penalty moratorium until racial disparities are addressed.		No
2.	Order a new federal study to examine, in particular, why cases are selected for federal prosecution instead of state prosecution, which cases receive plea offers, and the characteristics of cases in which the death penalty is sought by the attorney general.	The ACLU has been told that a subcommittee of the Justice Department's working group on sentencing is currently exploring the federal death penalty, which will focus on numerous aspects of the system. They are expected to submit their report to Attorney General Holder in the coming months. However, it remains unclear at this time how broad or narrow the examination will be or what direction the final report and any accompanying recommendations will take.	Yes*
"Faith-based initiatives"		The Obama administration has not acted on these recommendations. In fact, as a result of economic stimulus spending, even more money is being disbursed using Bush-era	

		government-funded religion rules. The only official action in the area of freedom of belief was the creation of a federal advisory committee – the White House Office of Faith-Based and Neighborhood Partnerships – that is comprised mainly of religious leaders. This committee was created without first repealing Bush-era rules allowing federally funded religious organizations to apply religious hiring tests to employees. http://www.aclu.org/religion-belief/white-house-announces-troubling-faith-based-order-aclu-says-administration-heading-u	
1.	Repeal Executive Order 13279 and issue a new executive order that prohibits government-funded religious employment discrimination, and allows for enforcement of applicable state and local antidiscrimination laws.		No
2.	Repeal Executive Orders 13198, 13199, 13280, 13342, and 13397, and issue a new executive order containing clear standards and protections consistent with the Constitution, including provisions to: a. Ensure that no direct government funds are used to support any religious activity, programming, or materials, and inform beneficiaries of their rights. b. Provide for increased monitoring and oversight by funding agencies to ensure compliance with applicable law. c. Restore and strengthen the fundamental, constitutionally mandated prohibition on direct government funding of houses of worship (while continuing to permit funding of social service organizations that merely are religiously affiliated, and therefore able to segregate their government-funded nonreligious programs from their religious activities). d. Instruct all departments and agencies to issue, to the extent		No

	required, new regulations consistent with the new executive order.		
3.	Issue a new executive order regarding the role of faith-based organizations in publicly funded social services that: a. Prohibits direct government funding of houses of worship and provides clear standards and protections consistent with the Constitution. (There are some circumstances where organizations that have religious affiliations may be able to segregate their government-funded nonreligious programs from their ongoing religious activities. In such cases, the *nonreligious programs* operated by organizations with religious affiliations may participate in some programs provided that they account for the separation of funds and that they adhere to the same rules and regulations that apply to other non-profit entities.) b. Explicitly prohibits religious employment discrimination in government-funded programs. c. Allows for enforcement of applicable state and local antidiscrimination laws. d. Provides real programmatic oversight to ensure accountability and to ensure that no direct government funds are used to support any religious activity, programming, or materials.		No

ALL ACLU FIRST-YEAR RECOMMENDATIONS

NOTE: The folllowing list includes all recommendations, including the Day One, First 100 Days, and First Year recommendations.

	Original individual recommendations	*Evaluation*	*Result*
Torture and Guantanamo			
Torture and Abuse			
1.	The president should issue an executive order, on the first day in office, that orders all agencies to take immediate steps to ensure that torture and abuse is prohibited by the federal government –	On January 22, 2009, his second full day in office, President Obama issued an executive order that fulfilled some but not all of our requests (see lettered items below). The EO ordered the CIA to shut down its detention facilities "as expeditiously as possible," and forbade the CIA from operating any such facilities in the future. Notwithstanding the executive order, however, reports of abuse continue. It is unclear what steps the President or the agencies have taken to ensure effective oversight of the new rules on interrogation. http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf http://www.aclu.org/national-security/president-obama-orders-guantanamo-closed-and-end-torture	– –
a.	that no agency may use any practice not authorized by the Army Field Manual on Intelligence Interrogations,		Yes

b.	that no president or any other person may order or authorize torture or abuse,		Yes
c.	that all violations of Common Article 3 of the Geneva Conventions are prohibited,		Yes
d.	that all persons being held overseas must be registered with the International Committee of the Red Cross in conformity with Defense Department practices, and	The administration has ordered that detainees be registered with the Red Cross within 14 days, according to multiple sources. However, no written policy has been made public, and there have been reports that the policy is not being followed consistently in the field. http://www.nytimes.com/2009/11/29/world/asia/29bagram.html	Yes*
e.	that all intelligence interrogations must be video recorded.	President Obama did not order interrogators to videotape interrogations; however, Congress passed, and the President signed into law, legislation requiring the videotaping of most intelligence interrogations. See section 1080 http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2647enr.txt.pdf	Yes*
2.	The president should order all agencies to comply with requests from Members of Congress for unredacted copies of documents related to the development and implementation of U.S. interrogation policies.	No such order has been issued. Based on meetings with key congressional offices, it appears that the Obama administration has provided more documents, and with fewer redactions, to Congress. However, important documents continue to be withheld from the public.	No
3.	The attorney general should appoint an outside special counsel to investigate and, if warranted, prosecute any violations of federal criminal laws prohibiting torture and abuse – focusing not just on crimes committed in the field, but also on crimes committed by civilians, of any position, in authorizing or ordering torture or abuse.	Attorney General Holder appointed a career prosecutor, John Durham, to conduct a "preliminary" review of a select number of detainee-abuse cases. Mr. Durham has not been allowed, however, to conduct a full investigation of all violations of laws prohibiting torture and abuse; nor has the Attorney General indicated any intention to investigate those who authorized and ordered the use of abusive interrogation techniques. http://www.aclu.org/human-rights_national-	No*

		security/attorney-general-holder-appoint-prosecutor-investigate-torture Statement of Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees http://www.justice.gov/ag/speeches/2009/ag-speech-0908241.html	
4.	The president should order the immediate closure of all secret prisons, and prohibit the CIA and its contractors from detaining anyone.	On January 22, 2009, President Obama issued an executive order requiring the CIA to shut down its detention facilities "as expeditiously as possible" and forbidding the CIA from operating any such facilities in the future. Exec. Order No. 13,491, 74 Fed. Reg. 4,893 (Jan. 22, 2009). http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf ACLU Statement: http://www.aclu.org/national-security/president-obama-orders-guantanamo-closed-and-end-torture	Yes
5.	The president should rescind any conflicting previous orders – none of which have been made public and remain secret to this day.	On January 22, 2009, President Obama issued an executive order rescinding interrogation advice given by the Department of Justice between September 11, 2001 and January 20, 2009. http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf	Yes
Guantanamo			
1.	Order the prompt shutdown of the detention facility	On January 22, 2009, President Obama issued an executive order to close the prison camp at Guantánamo Bay within one year. The administration now acknowledges that the one-year deadline to close the facility will not be met on time; however, it maintains its commitment to closing the facility. Exec. Order No. 13,491, 74 Fed. Reg. 4,893 (Jan. 22, 2009). http://edocket.access.gpo.gov/2009/pdf/E9-1885.pdf	Yes*

		http://www.aclu.org/national-security/president-obama-orders-guantanamo-closed-and-end-torture	
2.	Order the transfer of any prisoners charged with a crime to a facility within the continental United States for trial in a federal criminal court or before a military court-martial	On November 13, 2009, Attorney General Holder stated that the Department of Justice intended to transfer to the U.S., charge and try the five detainees accused of planning and organizing the attacks of September 11, 2001 in federal criminal court in New York, while a group other detainees will face military commissions, the location of which has not yet been determined. Instead of shutting down the military commissions, the Obama administration continues to use them. The President signed legislation into law that made improvements to the military commissions, however, left significant due process problems in place. There has been no further announcement regarding the status of the remaining detainees at Guantanamo, many of whom have been cleared for release but are still awaiting removal. Others have yet to be cleared or charged. DOJ Press Release http://www.justice.gov/opa/pr/2009/November/09-ag-1224.html ACLU Statement http://www.aclu.org/national-security/911-defendants-be-tried-federal-court.	No*
3.	Order the transfer of all uncharged detainees to countries where they will not be abused or imprisoned without charge.	The Justice and Defense Department task force assigned to review each detainee's case has not yet completed its full review of all detainees. Detainees remain at Guantanamo who have neither been charged nor cleared as of this time. Moreover, the President and top administration officials assert that the government can continue to hold some detainees without charge or trial.	No
4.	Rescind any conflicting previous orders – none of which have been	Although the Obama administration has made numerous policy changes to Guantanamo, it	No*

	made public.	continues to use military commissions and continues to assert that it can hold some detainees without charge or trial.	
Extraordinary Rendition			
1.	Order all agencies, on the first day in office, to end and prohibit any rendition or transfer of any person to another country without judicial process. The president should prohibit the rendition or transfer of any person to another country where there is a reasonable possibility the person would be subject to torture or abuse or detained without charge. Any person subject to any transfer shall have a due process right to challenge any transfer before an independent adjudicator, with a right to a judicial appeal. The executive order should by its terms rescind any conflicting previous order – none of which have been made public.	By executive order, the President ordered the closure of the CIA's prisons and mandated renewed commitment to the Convention Against Torture. However, the administration has not prohibited all extrajudicial transfers of prisoners. Rather, it will continue to rely on diplomatic assurances – an inadequate mechanism – to reduce the likelihood that transferred detainees will face torture. http://articles.latimes.com/2009/feb/01/nation/na-rendition1 (The ACLU has ongoing litigation in this area in the case of Mohamed et al. v. Jeppesen Dataplan, Inc. http://www.aclu.org/national-security/mohamed-et-al-v-jeppesen-dataplan-inc)	No
National Security and Privacy			
Spying on Americans			
1.	Issue an executive order recognizing the president's obligation to comply with FISA and other statutes, requiring the executive branch to do so, and prohibiting the NSA from collecting the communications, domestic or international, of U.S. citizens and residents		No
2.	Issue an executive order prohibiting new FISA powers from being used to conduct suspicionless bulk collection.		No
3.	Re-examine the recent amendments to Executive Order 12333 and revise the order to limit and regulate all		– –

	intelligence community activities and to fully protect the privacy and civil liberties of U.S. citizens and residents. In particular, the new Executive Order should:		
a.	Limit the ODNI, CIA and NSA to collecting and evaluating foreign intelligence information.		No
b.	Prohibit the National Security Agency from intercepting international communications of U.S. persons, absent a warrant based on probable cause.		No
c.	Prohibit the military from playing any role in civilian surveillance within the United States, or in surveillance of U.S. persons abroad.		No
d.	Establish minimization procedures that prevent the collection of information regarding U.S. persons not reasonably suspected of involvement in espionage, terrorism or other criminal activity, and require the prompt destruction of U.S. person information inadvertently collected.	Pursuant to requirements in the FISA Amendments Act of 2008, the administration was required to submit minimization procedures to the FISA court governing the collection, use and dissemination of information collected under new spying authorities granted by that law. There is no publicly available information about the status or substance of those procedures.	No*
e.	Restrict the FBI to investigating criminal activities, including espionage and terrorism, and eliminate foreign and domestic intelligence investigations of groups or individuals unrelated to criminal offenses.		No
f.	Prohibit the exchange of personally identifiable information between agencies except for evidence of espionage or other criminal activity, which may be transmitted to agencies responsible for investigating or prosecuting such violations.	Pursuant to requirements in the FISA Amendments Act of 2008, the administration was required to submit minimization procedures to the FISA court governing the collection, use and dissemination of information collected under new spying authorities granted by that law. There is no publicly available information about the status or substance of those procedures.	No*
g.	Make publicly available any and all internal policies, procedures or		No

	memoranda produced by or for the intelligence and law enforcement agencies regulated under E.O. 12333, which interpret or qualify provisions of that order.		
h.	Make all minimization procedures designed to protect the privacy and civil liberties of U.S. persons public, as well and any internal policies or memoranda that interpret these procedures.		No
i.	Order the attorney general to launch an investigation to determine if any laws were broken or to appoint a special counsel to do the same.		No
Monitoring of activists			
1.	Direct the attorney general and other relevant agency heads (e.g., Defense and Homeland Security) to end government monitoring of political activists.		No
2.	Issue an executive order directing the relevant agencies to refrain from monitoring political activists unless there is reasonable suspicion that they have committed a criminal act or are taking preparatory actions to do so.		No
3.	Direct the attorney general to repeal the new Attorney General Guidelines regarding FBI investigations, and replace them with new guidelines that protect the rights and privacy of innocent persons. The new guidelines should:		– –
a.	Prohibit the use of intrusive investigative techniques absent specific and articulable facts that give a reasonable indication that the subject of the investigation is engaging in a violation of federal law.		No

b.	Specifically prohibit the use of race, religion, national origin, or the exercise of First Amendment-protected activity as factors in making decisions to investigate persons or organizations.	The Department of Justice Civil Rights Division has established a task force to review the 2003 Department of Justice Memorandum on the Use of Race in Federal Law Enforcement, but no timeline for reform has been announced. Attorney General Holder's Testimony before the Senate Judiciary Committee where an internal review of the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies is discussed: http://www.justice.gov/ag/testimony/2009/ag-testimony-0911181.html	No *
c.	Specifically prohibit the reporting of and keeping files on persons engaging in peaceful political activities.		No
Real ID Act			
1.	The Secretary of Homeland Security should suspend the regulations (73 Fed. Reg. 5272) for the Real ID Act pending congressional review.	Secretary Napolitano has pushed for the passage of the PASS ID Act which leaves many of the worst provisions of the REAL ID Act (from a civil liberties perspective) in place but makes it easier for the states to implement. Testimony of Secretary Napolitano before the Senate Committee on Homeland Security and Governmental Affairs on "Identification Security," July 15, 2009: http://www.dhs.gov/ynews/testimony/testimony_1247749178990.shtm	No
Watchlists			
1.	The President should issue an executive order requiring watchlists to be completely reviewed within 3 months, with names limited to only those for whom there is credible evidence of terrorist ties or activities.	President Obama ordered a review of the U.S. watchlist system in the wake of the attempted Christmas bombing, but it did not appear to be oriented toward addressing the problems of overinclusivity and lack of due process.	No
2.	Repeal Executive Order 13224, which creates mechanisms for designating individuals and groups as terrorist suspects and preventing US persons and companies from doing business		No

	with them – a power of such breadth that, the record shows, it inevitably leads to the designation of many innocent people and does more harm than good.		
Financial watchlists			
1.	Reform the Treasury Department Office of Financial Assets Control (OFAC) designation procedure to establish full due process protections for individuals or groups designated for sanctions, create an effective redress program for individuals or organizations mistakenly flagged as a designated person, and issue transparent standards governing such designations. The duties and rights of the Board, including its subpoena power, are detailed in The Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, Title VIII, § 801 (2007).	The Obama Administration has done nothing to curb the use and expansion of financial watchlists.	No
Employee databases			
1.	**No Match letters.** Pledge not to turn the Social Security No Match Letter system into a de facto immigration enforcement tool. Disavow and withdraw the finalized rule republished in the Federal Register on October 23, 2008. (A federal judge issued a preliminary order stopping the government from enforcing the rule last year. The court's order continues to apply to the republished rule.) The republished No Match rule would – if allowed to go into effect – require employers to terminate employees who do not resolve discrepancies identified in a No Match letter within an impossibly short time frame.	The Obama administration has repealed these regulations. http://edocket.access.gpo.gov/2009/pdf/E9-24200.pdf	Yes
2.	**E-Verify.** Suspend enrolling new employers in the “e-verify” (formerly Basic Pilot) program until DHS demonstrates sufficient database	Rather than suspending enrollment, the Obama administration has actually expanded E-Verify to all federal contractors (with some minor exceptions) and is pushing to expand it to all	No

accuracy and enforcement of the MOU standards governing employer enrollment, and until the enactment of legislation providing statutorily guaranteed administrative and judicial processes to ensure that workers who are wrongly delayed or denied the right to work are provided a quick, fair and efficient means of getting back to work and being made financially whole. While Congress in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Pub. L. 104-210, 110 Stat. 3009-659 (Sept. 30, 1996) mandated the creation of an electronic verification program, it did not include any details or direction as to the form that that program should take, but left that to the discretion of the executive. Therefore, it is within the president's power to declare that in its current form the e-Verify program is not a success, and to suspend it pending a reevaluation.	employers as part of Comprehensive Immigration Reform. http://edocket.access.gpo.gov/2008/E8-26904.htm Note that the deadline for this rule was January 2009 but that deadline was delayed in response to a lawsuit. The federal contractor rule went into effect in September 2009.	
Secure Flight		
The Department of Homeland Security should delay implementation of the Secure Flight passenger-prescreening program until: 1. The watchlists are substantially reformed so that innocent Americans are not unfairly targeted. 2. The Congress appropriates sufficient funds to compensate the airlines for the new reporting requirement 3. DHS demonstrates that it has created a fair and expeditious system of redress.	The Obama administration has not delayed Secure Flight. A recent DHS Inspector General report underscores that the redress procedure, TRIP, is deeply flawed. DHS Report on TRIP: http://www.dhs.gov/xoig/assets/mgmtrpts/OIG-09-103r_Sep09.pdf ACLU Statement: http://www.aclu.org/technology-and-liberty/department-homeland-security-inspector-general-report-underscores-flaws-syste	No
Harmonize privacy rules		
The US should stop pressuring the European Union to override the EU's own privacy laws and move to harmonize privacy rules in a pro-privacy direction. Key steps include:		

1.	**Reopen negotiations.** Reopen negotiations with allies on the transfer of data internationally, such as those regarding airline passenger records (PNR) or financial data (SWIFT), in order to bring US policies in compliance with international human rights standards.	Airline passenger data agreements reached during the Bush Administration have not been reopened for negotiation. The U.S. reached a temporary agreement on SWIFT with the Council of the European Union in November which included privacy protections – but the European Data Protection Supervisor expressed concern over the agreement's necessity and proportionality and its legal basis. The "High Level Contact Group" has negotiated a set of "common principles" on personal data protection. But, it is unclear what impact these broad principles will have on actual data transfers. http://www.se2009.eu/polopoly_fs/1.21271!menu/standard/file/EU-US%20Joint%20Statement%2028%20October%202009.pdf http://ec.europa.eu/justice_home/fsj/privacy/news/docs/report_hlcg_info_sharingprivacydata_prot.pdf	No*
2.	**Privacy liaison.** Appoint a privacy liaison or officer to the Brussels office of the US Department of Homeland Security.	No person at the EU mission in Brussels specifically tasked with working on privacy has been appointed.	No
Civil Liberties Oversight Board			
1.	Appoint all members to the Privacy and Civil Liberties Oversight Board and strongly urge the Senate to hold prompt confirmation hearings for the candidates.	The administration has not nominated any members to fill the PCLOB.	No
2.	The president's first budget proposal should contain sufficient funds to actually bring the board back into existence as an effective entity.	Although the White House has not filled the board, its Fiscal Year 2010 budget included $2 million for the PCLOB.	Yes
3.	The U.S. attorney general should create a mechanism for issuing subpoenas at the request of the Board. For example, this can be done	The PCLOB is not functioning, so a MoU between the attorney general and the board is not possible.	No

	through the creation of a Memorandum of Understanding between the board and the attorney general in which the attorney general promises to enforce subpoenas issued by the board's request unless he or she certifies that such a subpoena would be unlawful.		
DNA databases			
1.	Direct the Attorney General to order a detailed analysis of the policy and legal issues surrounding the blanket collection of DNA from persons arrested for federal crimes and issue regulations that limit such collection to comply with the Fourth Amendment by prohibiting the taking of DNA samples from arrestees without a warrant.		No
2.	Adopt a position with Interpol that any contribution to an international DNA databank will be dependent on adequate due process and privacy standards, and will be limited to records related to persons convicted of serious offenses.		No

Open Government

Freedom of Information			
1.	Direct the attorney general to rescind the "Ashcroft Doctrine" regarding Freedom of Information Act compliance, which instructs agencies to withhold information whenever there is a "sound legal basis" for doing so, and return to the compliance standard under Attorney General Janet Reno, which promoted an "overall presumption of disclosure" of government information through the FOIA unless it was "reasonably foreseeable that disclosure would be harmful."	Attorney General Holder issued a new FOIA memorandum reversing the "Ashcroft Doctrine" on March 18, 2009. Holder's statement: http://www.justice.gov/opa/pr/2009/March/09-ag-253.html ACLU reaction: http://www.aclu.org/national-security/attorney-general-issues-new-freedom-information-act-guidelines	Yes
FOIA ombudsman			

1.	Return the Freedom of Information Act ombudsman back to the National Archives and Records Administration from the Justice Department, as the law requires	The Obama administration proposed (and Congress provided) $1 million for NARA to create this office, which is expected to be up and running by the end of the year. NARA named Miriam Nisbet as the FOIA ombudsman. NARA Press Release on Nisbet's appointment as the director of the Office of Government Information Services: http://www.archives.gov/press/press-releases/2009/nr09-93.html	Yes
Scientific freedom			
1.	Restore an appropriate balance between the White House Office of Management and Budget (OMB) and federal regulatory agencies. Specifically:		– –
a.	Repeal Executive Order 13422, which dramatically expanded the role of OMB in reviewing all agency regulations, and	Executive Order 13422 has been repealed: http://edocket.access.gpo.gov/2009/pdf/E9-2486.pdf	Yes
b.	Repeal OMB's one-size-fits-all directives on peer review and risk assessment.	In May of 2009 the Administrator of the EPA overturned much of the Bush administration process that increased OMB's and other agencies role in controlling which chemicals are reviewed and what additional studies were included in the EPA's Integrated Risk Information System (IRIS). Other than that, the Obama administration does not appear to have addressed the OMB's Peer Review or Risk Assessment guidelines. http://www.ucsusa.org/scientific_integrity/abuses_of_science/white-house-office-overrules-1.html http://www.whitehouse.gov/omb/inforeg_infopoltech/	No

Signing statements		Since taking office, Mr. Obama has relaxed his criteria for what kinds of signing statements are appropriate. The President has received letters from numerous Members of Congress criticizing his continued use of signing statements. http://www.nytimes.com/2009/08/09/us/politics/09signing.html?_r=3&hpw	
1.	Repudiate all signing statements that permit deviation from statutory law based on claims of inherent Article II power.		No
2.	Reaffirm the president's obligation to abide by acts of Congress as well as the federal courts' exclusive role as interpreter of the law.		No
Presidential documents			
1.	Repeal EO 13233, the executive order limiting presidential authority to release presidential documents of his or her predecessor, and restore President Reagan's EO 12667.	On January 21, 2009 President Obama signed Executive Order 13489, which repealed EO 13233. http://lawprofessors.typepad.com/conlaw/2009/01/obama-reopens-p.html http://edocket.access.gpo.gov/2009/pdf/E9-1712.pdf	Yes
2.	Issue an executive order confirming that the vice president is an entity within the executive branch and is subject to the same requirements as the president vis à vis the preservation of presidential records.		No
Federal websites			
1.	Issue an executive order to require full implementation of the E-Government Act by federal agencies, and to establish measures for accountability for those that fail to do so.	The Administration has not issued an Executive Order to require full implementation of this Act. However Obama has made electronic access to government a priority though the use of new technologies like social networking sites and other portals for accessing government services and providing	No*

		feedback.	
DOJ politicization			
1.	The attorney general should create a blue-ribbon commission to study and make recommendations on remedying the politicization of the Department of Justice under the Bush Administration. The commission should report on its recommendations within 90 days.	No commission has been created; however, Perez appears to be committed to ending politicized hiring practices. http://www.mainjustice.com/2009/12/18/civil-rights-division-aims-to-reduce-policitized-hiring/	No*
Overclassification		President Obama issued an executive order on "Classified National Security Information" on December 29. He also ordered a task force review of the policy regarding controlled unclassified information (CUI), which produced a report and recommendations for the President that was released on December 15, 2009. EO on Classified National Security Information: http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information Task force report: http://www.dhs.gov/xlibrary/assets/cui_task_force_rpt.pdf	
1.	End the practice of reclassifying declassified documents, revise classification procedures to end overuse, and end the practice of using control markings to improperly restrict public access to unclassified information.	The new Executive Order on Classification establishes several reforms to address the problem of overclassification and to improve declassification efforts, including tightened restrictions on reclassifying previously declassified information and the creation of a National Declassification Center. A Presidential Memorandum released with the EO suggests that further reforms may be implemented over time. The CUI Task Force Report included several recommendations to standardize the use of control markings on unclassified information and clarify that control markings are not determinative of release under FOIA. A Presidential Memorandum on CUI is forthcoming.	Yes*

2.	Reform military and intelligence classification rules to reduce unnecessary classification and reduce the time period materials may be classified in compliance with the Moynihan Commission Report.	The new classification EO tightens standards for keeping information classified for more than 25 years, which may improve the current situation, but these time frames are still far longer than the 10 years the Moynihan Commission recommended.	No*
3.	Educate classifying officials regarding the negative security consequences of over-classification and hold original classification authorities responsible for their classification decisions, with penalties for over-classification and rewards for disseminating information.	The new classification EO requires agencies to conduct fundamental classification guidance reviews and strengthen training requirements for Original Classification Authorities. The EO also mandates that derivative classifiers identify themselves on documents they classifiy.	Yes
4.	Draft documents in a manner that allows the greatest distribution of information possible to those in the intelligence and law enforcement communities that can use the information to increase security, to members of Congress, and to the public at large.	The EO emphasizes the responsibility to share information and mandates the use of unclassified versions of documents whenever possible to facilitate greater information sharing. The CUI Task Force recommends that CUI markings not be a basis for withholding information from Congress or the Judiciary.	Yes

Justice and Human Rights

Death penalty			
1.	Declare a federal death penalty moratorium until racial disparities are addressed.		No
2.	Order a new federal study to examine, in particular, why cases are selected for federal prosecution instead of state prosecution, which cases receive plea offers, and the characteristics of cases in which the death penalty is sought by the attorney general.	The ACLU has been told that a subcommittee of the Justice Department's working group on sentencing is currently exploring the federal death penalty, which will focus on numerous aspects of the system. They are expected to submit their report to Attorney General Holder in the coming months. However, it remains unclear at this time how broad or narrow the examination will be or what direction	Yes*

		the final report and any accompanying recommendations will take.	
Travel to Cuba			
1.	Direct the Treasury Department to immediately issue amendments to the Cuban Assets Control Regulations, part 515 of chapter V of 31 CFR, to allow financial transactions without a license for travel to Cuba for educational, cultural, artistic, religious and other purposes relating to the exchange of ideas and information.	Restrictions on travel have been eased but not eliminated http://travel.state.gov/travel/cis_pa_tw/cis/cis_1097.html	No*
2.	Direct the Treasury Department to immediately issue amendments to the Cuban Assets Control Regulations, part 515 of Chapter V of 31 CFR, to allow unlimited visits to family members in Cuba and to allow remittances to meet family needs.	"The president has directed the secretaries of state, treasury and commerce to carry out the actions necessary to lift all restrictions on the ability of individuals to visit family members in Cuba and to send them remittances," said Robert Gibbs on April 13, 2009. Lifting or substantially easing the economic embargo, as set forth in the Cuban Assets Control Regulations and administered by the Treasury Department, would require legislative action by Congress. http://www.treas.gov/press/releases/tg273.htm http://news.bbc.co.uk/2/hi/americas/7997063.stm http://www.huffingtonpost.com/2009/04/13/some-cuba-travel-restrict_n_186197.html	Yes
3.	Restore regulations in effect prior to 2004 allowing fully hosted travel to Cuba for any purpose.		No
Human rights treaties			
1.	Fully implement U.S. treaty obligations by reactivating the Interagency Working Group on Human Rights Treaties (which under the Bush administration was replaced by the Policy Coordination		No

	Committee on Democracy, Human Rights and International Operations). The interagency working group was created under Executive Order 13107 on December 10 1998 with a strong mandate stating that "it shall be the policy and practice of the Government…fully to respect and implement its obligations under the international human rights treaties to which it is a party," including the ICCPR (International Covenant on Civil and Political Rights), the CAT (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), and the CERD (Convention on the Elimination of All Forms of Racial Discrimination), "and other relevant treaties … to which the United States is now or may become a party in the future."		
2.	The Working Group should create an open and transparent process for treaty reporting, coordinated by permanent staffers (which is the practice for the State Department's human rights reports on other countries). In particular, a database for tracking compliance with various treaty obligations should be continually updated and open to the public, and mechanisms should be created to allow for review of U.S. treaty reports by the public and other branches of government before their submission to international bodies.		No
3.	The Working Group should compile a comprehensive human rights report on the United States on an annual basis (again, as is currently done by the State Department for other countries).		No
Mutual Legal Assistance Treaties			
1.	Open a review of all MLATs and extradition agreements negotiated by Bush Administration for the purpose of assuring that they conform to Human Rights Principles – for example, those contained in the International Covenant on Civil and Political Rights (ICCPR).		No

'Special Administrative Measures' for prisoners		The problem has not been addressed. The need for DOJ to address these issues with SAMs is even more urgent now that the Obama administration has committed to closing Guantanamo and bringing those detainees to the United States for detention and trial.	
1.	The Justice Department should repeal the regulation that directs the Bureau of Prisons to facilitate the monitoring or review of communications between detainees and attorneys. Repeal the Special Administrative Measures (SAMs) that restrict communications by certain Bureau of Prisons detainees and prisoners, and end the ability of wardens and the attorney general to issue SAMs. In particular, 28 C.F.R. §§ 501.2(e), 501.3(d), (f) should be repealed. And 28 C.F.R. §§ 501.2(c), 501.3(c) should be amended to comply with the previous regulations.		No
2.	Because of the extreme social isolation allowable under the SAMs, the BOP should conduct a mental health screening of all individuals currently subject to the SAM rules. This screening should be performed by competent and objective mental health personnel. Any individuals identified as seriously mentally ill should be immediately removed to an institution that can provide appropriate mental health services in an appropriate setting.		No
Prisoner communications			
1.	Withdraw Proposed Rule 28 CFR 540.200 et seq.	The Bureau of Prisons (BOP) appears to have abandoned this formal rulemaking, but imposed similar draconian restrictions through institution-specific rules, such as the Terre Haute Communication Management Unit (CMU) Institution Supplement. (The National Prison Project of the ACLU is challenging the institution of these restrictions in *Benkhala v. Federal Bureau of Prisons*, a federal lawsuit alleging that BOP violated the Administrative Procedure	No*

		Act when it created CMUs without engaging in the required notice and comment period at the time the units were created. http://www.aclu.org/prisoners-rights/benkahla-v-federal-bureau-prisons-et-al)	
Crack/Powder Sentencing			
1.	The attorney general should revise the US Attorneys' Manual to require that crack offenses are charged as "cocaine" and not "cocaine base," effectively resulting in elimination of the disparity. There is currently no regulation in place to be amended or repealed; there is, of course, a federal statutory scheme that prohibits cocaine use unless pursuant to prescription or approved research. US Attorneys, however, have broad charging discretion to decide what types of cases to prosecute, and with drugs, what threshold amounts will trigger prosecution. The US Attorneys' Manual contains guidelines promulgated by the attorney general and followed by U.S. Attorneys and their assistants.	While this specific action has not been taken, the Justice Department is currently examining the crack/powder sentencing disparity, as well as numerous other areas of federal sentencing policy, through a working group on sentencing, which is expected to submit a report to Attorney General Holder in the coming months. In addition, Justice Department officials have testified in numerous congressional hearings that they support Congress acting to completely eliminate the sentencing disparity between crack and powder cocaine. This is the first time that the Justice Department has supported this position. However, the Department has not clarified the exact nature of its position, particularly whether it supports the true equality represented by Representative Scott's (D-VA) Fairness in Cocaine Sentencing Act (H.R. 3245) and Senator Durbin's (D-IL) Fair Sentencing Act (S. 1789). Assistant Attorney General Larry Beurer testimony before the Senate Subcommittee on Crime and Drugs hearing entitled "Restoring Fairness to Federal Sentencing: Addressing the Crack-Powder Disparity containing the quote, "The Administration believes Congress's goal should be to completely eliminate the sentencing disparity between crack cocaine and powder cocaine." http://judiciary.senate.gov/pdf/09-04-29BreuerTestimony.pdf	No*

Drug Policy			
Medical marijuana			
1.	Halt the use of Justice Department funds to arrest and prosecute medical marijuana users in states with current laws permitting access to physician-supervised medical marijuana. In particular, the US Attorney general should update the US Attorneys' Manual to de-prioritize the arrest and prosecution of medical marijuana users in medical marijuana states. There is currently no regulation in place to be amended or repealed; there is, of course, a federal statutory scheme that prohibits marijuana use unless pursuant to approved research. But US Attorneys have broad charging discretion in determining what types of cases to prosecute, and with drugs, what threshold amounts that will trigger prosecution. The US Attorneys' Manual contains guidelines promulgated by the Attorney general and followed by US Attorneys and their assistants.	The Justice Department issued a "clarification and guidance" to U.S. Attorneys on October 19, 2009, establishing a federal policy disfavoring the investigation and/or prosecution of medical marijuana program participants who are in compliance with the laws of their state. This shift in federal policy is intended to more wisely and efficiently direct federal law enforcement resources, but it will also facilitate the creation of stronger state-level controls. Prior to this policy statement, many state governments failed to establish systems for agency oversight due to a perceived incompatibility of state and federal law. Concerns remain about the extent to which the new policy will be honored by individual U.S. Attorneys, however. For example, Joseph Russoniello, federal prosecutor for the northern district of California, who was appointed in 2007 by then-President George W. Bush, was widely quoted in the press after the Holder memorandum was issued: "I think it's unfortunate that people have for some reason picked up on this as a change in policy, because it's really not a change at all." Asked if federal officials will halt the investigation and prosecution of medical marijuana operations in the state, Russoniello said simply, "The short answer is no." – http://www.sfgate.com/cgi-bin/blogs/inthemission/detail?&entry_id=50860#ixzz0VqwdiaXf	Yes*
2.	The DEA Administrator should grant Lyle Craker's application for a Schedule I license to produce research-grade medical marijuana for use in DEA- and FDA-	Craker's license has not yet been granted, but neither has the DEA issued a final binding ruling denying the application. The Deputy Administrator requested (and	No*

	approved studies. This would only require DEA to approve the current recommendation of its own Administrative Law Judge.	Craker filed) further briefing related to Craker's pending motion for reconsideration but nothing further has happened, perhaps suggesting that DOJ has ordered DEA not to take final action in the case until the new DEA Administrator and Deputy Administrator are appointed and confirmed by the Senate.	
3.	All relevant agencies should stop denying the existence of medical uses of marijuana – as nearly one-third of states have done by enacting laws – and therefore, under existing legal criteria, reclassify marijuana from Schedule I to Schedule V.		No
4.	Issue an executive order stating that, "No veteran shall be denied care solely on the basis of using marijuana for medical purposes in compliance with state law." Although there are many known instances of veterans being denied care as a result of medical marijuana use, we have not been able to identify a specific regulation that mandates or authorizes this policy.	While no executive order has been issued, the VA hospital in Battle Creek, Michigan sent a letter to the advocacy group Veterans for Medical Marijuana Access, on June 19, stating that, "The Office of the General Counsel has determined that no VA physician shall complete any forms for the State of Michigan for medical marijuana. However, for patients whose treatment plan from a non-VA physician includes use of medical marijuana, presence of marijuana in a urine drug screen is acceptable." This policy statement, however, apparently pertains only to this single Michigan medical center. Copy of the letter: http://www.veteransformedicalmarijuana.org/bcvaletter.pdf	No*
Civil Rights			
Discrimination against sexual minorities with federal dollars			
1.	The president should issue an executive order making it a condition of all federal contracts and subcontracts that the contractor and subcontractor agree not to discriminate on the basis of sexual orientation or gender identity in any		No

	hiring, firing or terms and conditions of employment. The Department of Labor, Office of Federal Contract Compliance, should issue implementing regulations requiring all government contracts to contain an equal opportunity clause that forbids sexual orientation and gender identity discrimination by federal contractors and subcontractors. As a model, the administration can use current Executive Order 11246, which bans discrimination by contractors and subcontractors on the basis of race, religion, sex and national origin. Similarly, the Department of Labor can use 41 CFR 60-1.4 as a model.		
2.	The president should issue an executive order updating and expanding EO# 13087 to prohibit discrimination based upon gender identity in federal employment, and ordering all agencies to take those steps necessary to implement the order.	President Obama is effectively meeting this obligation by using executive tools other than an executive order. The President ordered the Office of Personnel Management (OPM) to provide guidance to federal agencies on ensuring that federal employees will not be discriminated against based on factors not related to work performance, which top Administration officials publicly stated will include an explicit prohibition against gender identity discrimination in the federal workplace. Beginning in January 2010, the Obama administration, through the Office of Personnel Management, has started to list gender identity among the classes protected by federal Equal Employment Opportunity (EEO) policies. The EEO policy marks the first time that gender identity discrimination has been explicitly banned from the federal workplace. Presidential Memorandum: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09	Yes

The Civil Rights Division			
1.	The Voting Section should increase emphasis on prosecution of Section 2, Section 5, and Section 203 cases under the Voting Rights Act on behalf of minority communities; make appropriate and timely Section 5 objections; address ongoing concerns regarding the Section's use of US Attorneys' criminal prosecutors for election day monitoring; and address the problems of voter caging and aggressive voter challenges at the polls.	Assistant Attorney General for Civil Rights Tom Perez (confirmed in October 2009) has publically signaled his commitment to reform and transform the Civil Rights Division and to enforce all the federal civil rights statutes under his jurisdiction. He has discussed the necessity for enforcement of Section 2 and Section 5 of the VRA, in addition to the Section 203 enforcement that was done under the Bush Administration. The Bush Administration, at the ACLU's urging, removed criminal prosecutors from the polls on Election Day. http://www.justice.gov/crt/speeches/perez_testimony_121609.pdf	Yes
2.	The Employment Litigation Section should rescind any policy aimed at limiting or reducing the number of pattern and practice and disparate impact cases, and take steps to increase investigation and litigation of pattern and practice and disparate impact cases alleging race, national origin, and sex discrimination. The Employment Litigation Section should also commit to fully defending and enforcing all settlement agreements and consent decrees into which it has previously entered, including those agreements undermined and attacked under the Bush Administration.	Assistant Attorney General for Civil Rights Tom Perez told Congress that "Restoring vigorous enforcement of Title VII, including pattern and practice cases, is one of our highest priorities." He testified that since Obama assumed office, the Section has filed three Title VII pattern/practice cases, obtained settlements in five such cases, and opened ten new pattern/practice investigations. AAG Perez also noted the Section's victory in July in *US v. City of New York, NY*, in which the government was granted summary judgment on the question of liability for disparate impact for using a written firefighter examination that disadvantaged applicants of color. Perez testimony: http://www.justice.gov/crt/speeches/perez_testimony_12309.pdf	Yes
3.	The Special Litigation Section should reinvigorate its prosecution of pattern and practice law enforcement cases, rebuild its docket of prison conditions of confinement cases and, where appropriate, seek consent decrees by accepting admissions of constitutional violations.	Assistant Attorney General for Civil Rights Tom Perez highlights efforts to investigate and prosecute where appropriate allegations of pattern and practice of discriminatory policing, as well as a handful of suits recently filed to challenge conditions of imprisonment. No numbers	Yes *

		are offered, but some specifics are mentioned, for example that the East Haven, CT and Suffolk Co., NY police departments are among those being looked at as targets of potential pattern/practice cases. Also, in his November 18, 2009 written testimony to the Senate Judiciary Committee, AG Holder said that the 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies was being reviewed internally for proposed changes and additions to address recent criticisms. AAG Perez's December 3, 2009 written testimony to the House Judiciary Committee (http://www.justice.gov/crt/speeches/perez_testimony_12309.pdf) Holder's Nov. 18 2009 testimony: http://www.justice.gov/ag/testimony/2009/ag-testimony-0911181.html	
4.	The Justice Department Civil Rights Division Disability Rights Section should reinvigorate enforcement with regards to access to, and nondiscrimination by, state and local government programs and activities, particularly including voting accessibility, state compliance with Olmstead v. L.C., 527 U.S. 581 (1999), and state and local government employment services. The DOJ should also focus efforts on ensuring that internet websites are accessible and usable by people with disabilities by issuing guidance and, where appropriate, taking actions to enforce the 2004 Americans with Disabilities Act and Section 508 of the Rehabilitation Act (29 U.S.C. § 794d).	DOJ has made modest moves in this area: • DOJ has begun to improve its work on Olmstead litigation. DOJ initiated and settled a case with the state of Texas concerning the care given to residents of the state's 13 facilities for persons with developmental disabilities. • The DOJ filed three strong briefs in Olmstead cases at the end of November. • DOJ has continued its "Project Civic Access (PCA), an initiative to ensure that localities across the country comply with the Americans with Disabilities Act (ADA)." However, it is unclear that the effort has actually been expanded; an investigation settled with Atlanta in December was the 174th under the PCA initiative but just the 13th agreement reached this year.	Yes*

		http://www.justice.gov/opa/pr/2009/June/09-crt-634.html http://blogs.usdoj.gov/blog/archives/451 http://www.justice.gov/opa/pr/2009/December/09-crt-1314.html	
5.	The Educational Opportunities Section should again initiate affirmative cases challenging sex discrimination and race discrimination in education under Title IX and Title VI, including harassment cases and cases challenging unlawful sex segregation in public schools.	The Civil Rights Division of HHS is currently evaluating its caseload and seeking input from groups on stepping up enforcement. Recent cases in which the Educational Opportunities Section has been involved include: • Cook v. Florida High School Athletic Association: private challenge to FL policy that would have exempted many thousands more male than female athletes from sports competition schedule reductions due to budget constraints. The EOS moved to file an amicus brief on the side of the plaintiff, and several days later the case was rendered moot when FHSAA voted to rescind the policy. • A number of ongoing cases in which there have been recent developments, such as McFerren and US v. County Board of Education of Fayette County, a desegregation case in which a consent order was approved in February 2009. http://www.justice.gov/crt/edo/documents/caselist.php)	Yes*
Other Agencies' Civil Rights Enforcement			
1.	The Department of Labor (DOL) should revive efforts to hold businesses accountable and protect the rights of all workers. DOL should, for example, reinstate the Office of Federal Contract Compliance Program's Equal Opportunity Survey, a vital tool in ensuring that federal contractors and subcontractors comply with non-discrimination requirements. DOL should similarly conduct surveys to	DOL has not so far indicated that it intends to reinstate the Equal Opportunity Survey. DOL does not appear to be conducting FMLA surveys. However, in November 2009, DOL did amend its Employment Law Guide in an effort to hold businesses more accountable. The guide, which describes the major statutes and regulations	No*

	assess whether employers are complying with the FMLA.	administered by the U.S. Department of Labor (DOL) that affect businesses and workers, is designed to help businesses develop wage, benefit, safety and health, and nondiscrimination policies. http://www.dol.gov/opa/media/press/asp/oasp20091467.htm	
2.	The Department of Education (ED) should take a more proactive role in promoting diversity and equal opportunity in education. Currently, the ED supports failing race neutral education policies and single-sex education policies that lack proper safeguards against discrimination and stereotyping. The ED's Office of Civil Rights (OCR) should reinstate its support for affirmative action policies, as well as repeal regulations vastly expanding unnecessary sex segregation in public schools. ED should meaningfully study and seek to remedy sex and race-based disparities in education.	The ED has not repealed regulations vastly expanding unnecessary sex segregation in public schools, and has not meaningfully studied and sought to remedy sex-based disparities in education. The Department of Ed has initiated an expanded data collection effort focusing on students of color and students with disabilities. They are collecting data that will help with civil rights enforcement in the schools, including a focus on, for example, corporal punishment, zero tolerance policies, restraint and seclusion, and school based arrests. http://edocket.access.gpo.gov/2009/pdf/E9-21935.pdf ACLU reaction: http://www.aclu.org/racial-justice/aclu-comments-department-education-s-proposed-changes-biannual-civil-rights-data-coll	No*
3.	The Department of Agriculture should actively promote equal opportunity for disadvantaged farmers and provide compensation for past discrimination. The USDA has assisted a very small percentage of African American farmers filing for restitution for past discrimination.	In April 2009 Agriculture Secretary Tom Vilsack announced plans to actively promote equal opportunity in Department of Agriculture programs and operations. On May 6, 2009, the Obama Administration announced plans to allocate $1.25 billion to pay for settlement claims of African American farmers discriminated against by the Department of Agriculture. However, the USDA has not listed any information with regard to disadvantaged farmers in the unified agenda released 12/07/09.	Yes*

		http://www.usda.gov/documents/NewCivilRightsEra.pdf. http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr_20090506_rel_0155.html.	
4.	Urge the EEOC to reverse or modify any policy or practice that has reduced race, national origin, and sex discrimination cases pursued by the commission. The president should call upon the commission to reinvigorate its class action and disparate impact cases, undertaking measures to strengthen enforcement of laws prohibiting wage discrimination, pregnancy discrimination, and caregiver discrimination. The commission should also be urged to issue EEOC Guidance indicating that the Supreme Court's decision in Hoffman Plastics v. NLRB does not limit claims or remedies under Title VII for any form of discrimination, including discriminatory firings, for undocumented workers. The EEOC should also be urged to take steps to reduce its backlog of cases. The president should make appointments to the EEOC that reflect these priorities.	The president has not issued a public call to the commission to reinvigorate its class action and disparate impact cases. However, the President's appointments to the EEOC, including Chai Feldblum and Jacqueline Berrien, appear to be sympathetic to reversing such policies and practices. The White House proposed an increase in the EEOC's budget by more than $23 million for FY2010, and Acting Chair Stuart Ishimaru has indicated that clearing backlogs and pursuing systematic cases will be priorities for the agency. White House budget proposal: http://www.gpoaccess.gov/usbudget/fy10/pdf/appendix/oia.pdf Report on final Commerce-Justice-Science Appropriations Bill: http://appropriations.house.gov/pdf/FY10_CJS_Conference_Summary.pdf),http://www.nationaljournal.com/decisionmakers/dm/441/ EEOC FY 2009 Performance and Accountability Report at http://www.eeoc.gov/eeoc/plan/upload/2009par.pdf.	Yes*
5.	The Department of Housing and Urban Development (HUD) should finalize and adopt regulations addressing sexual harassment in housing under the Fair Housing Act that were initially proposed in 2000 under the Clinton Administration, thus making clear that the Fair Housing Act's prohibition on sex discrimination in	This has not been done, but HUD intends to issue a notice of proposed rulemaking in June 2010 that would amend HUD's Fair Housing Regulations to establish standards for the Department will use in harassment cases under the FHA. The Department seeks to provide clear guidance for the benefit of housing consumers and	No*

	housing reaches sexual harassment.	providers, as well as legal practitioners for evaluating sexual harassment claims under the Fair Housing Act. http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=2529-AA94	
Federal Racial Profiling			
1.	Issue an executive order prohibiting racial profiling by federal officers and banning law enforcement practices that disproportionately target people for investigation and enforcement based on race, ethnicity, national origin, sex or religion. Include in the order a mandate that federal agencies collect data on hit rates for stops and searches, and that such data be disaggregated by group.		No
2.	DOJ should issue guidelines regarding the use of race by federal law enforcement agencies. The new guidelines should clarify that federal law enforcement officials may not use race, ethnicity, religion, national origin, or sex to any degree, except that officers may rely on these factors in a specific suspect description as they would any noticeable characteristic of a subject.	No such guidelines have been issued. However, the ACLU has learned that the Justice Department's Civil Rights Division has established a task force to review the 2003 Department of Justice Memorandum on the Use of Race by Federal Law Enforcement. No timeline for reform has been announced.	No*
Affirmative action			
	Act to renew efforts to promote diversity in education and the workplace by reversing agency guidance or practices that have eliminated or imposed heightened requirements to sustain affirmative action programs. Federal departments and executive agencies should renew enforcement of and compliance with executive orders covering civil rights. For example, the administration should emphasize the necessity of complying with the following executive orders and pursuing the following requirements and goals:		
1.	Equal employment in the federal government (*see, e.g.*, EO # 11478, 13152)	The EEOC issued a Notice of Proposed Rulemaking in September 2009 proposing	Yes*

		to revise its ADA regulations and accompanying interpretative guidance in order to implement the ADA Amendments Act of 2008. These proposed changes include amending the definition of disability in favor of broadening coverage to the maximum extent permitted by the terms of the ADA, and setting a policy that the determination of whether an individual has a disability not demand extensive analysis. The new regulations make it easier for an individual seeking protection under ADA to establish that he or she has a disability within the meaning of the ADA. Also, beginning in January 2010, the Obama administration, through the Office of Personnel Management, has started to list gender identity among the classes protected by federal Equal Employment Opportunity (EEO) policies. The EEO policy marks the first time that gender identity discrimination has been explicitly banned from the federal workplace. Notice of ADA Proposed Rulemaking: http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=3046-AA85 Presidential Memorandum: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09	
2.	Nondiscrimination in federally conducted education and training programs (*see, e.g.*, EO # 13160)	The Department of Labor Employment & Training Administration indicates that it plans a NPRM for January 2011 on amending regulations. to ensure that "National Registered Apprenticeship System is consistent and in alignment with changes in Affirmative Action regulations and EEO laws and court cases that have occurred over the past three decades [e.g. Americans with Disabilities Act (ADA) and	Yes*

		the Age Discrimination in Employment Act (ADEA)], and recent revisions to Title 29 CFR part 29."—from the Unified Agenda released 12/07/09. Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=1205-AB59	
3.	Increased opportunities for women-owned small businesses (*see, e.g.*, EO # 13157)	Currently, the Small Business Administration (SBA) is prohibited from using FY09 funds to implement programs under the Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures. The Small Business Administration has indicated that in February 2010 it plans to withdraw a proposed October 2008 rule and propose a new rule to establish and implement an effective WOSB procurement program. "SBA is committed to moving forward to implement a successful WOSB procurement program." http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=3245-AF80	Yes*
4.	Increased opportunities and access for disadvantaged businesses in federal contracting (*see, e.g.*, EO # 13170).	The SBA issued a NPRM in October, with final action anticipated for April 2010, proposing changes to its 8(a) business development program. While some of the proposed changes are technical, SBA is addressing criticism that the program rules are too restrictive and serve to unfairly preclude firms from being admitted to the program.	Yes*
Rights of people with disabilities			
1.	Sign the U.N. Convention on the Rights of Persons with Disabilities and seek its ratification. While the United States was a leader in being the first country to adopt a global disability rights law (the ADA), the Convention goes further in a number of steps, and addresses some shortcomings	President Obama's remarks on signing the UN Convention on the Rights of Persons with Disabilities on July 30, 2009: http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Rights-of-Persons-with-Disabilities-Proclamation-	Yes

	of the ADA. The Convention requires countries to adopt measures to ensure access, and redress discrimination in broader ways than does the ADA. A majority of countries have signed the Convention.	Signing/	
2.	The Justice Department should amend its proposed rules of June 17, 2008, adopting the 2004 Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (2004 ADAAG). If the rules have been finalized, it should initiate a new rulemaking to rescind several provisions of the rules, including: • "Safe harbors": The DOJ has proposed a number of safe harbor provisions that would exempt from compliance numerous types of municipal facilities and limit required access modifications. Required modifications should be addressed on a case-by-case basis as under current law and regulation. Better is an approach in which past efforts at compliance should be considered as one factor in the program access analysis. • Access to court: The 2004 ADAAG delineated required modifications for court access, but unfortunately the DOJ's proposal would effectively not adopt these. The 2004 ADAAG guidelines for courthouse accessibility should be adopted. • Prisons and jails: The proposed DOJ rules contain many admirable requirements for access in prisons and jails, but the rule also creates an express exception from the integration mandate where the correctional agency believes it "appropriate to make an exception for a specific individual." This exception would swallow the rule and should be removed. • The Department proposes amending § 35.172(a) to state that agencies enforcing Title II "shall investigate complaints." The regulation currently provides that agencies "shall investigate each complete	The Obama administration put a hold on the rulemaking and sent it back to DOJ shortly after coming into office. However, it did not stop the rulemaking outright, and the DOJ now indicates that it expects to issue new regulations on this in March 2010, and those regulations will apparently be final with no additional comment period. As a result, we simply do not know which of the particular actions we recommended will be reflected in the final rule. Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities (Section 610 Review) http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=1190-AA44 Nondiscrimination on the Basis of Disability in State and Local Government Services (Section 610 Review) http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=1190-AA46	No*

	complaint." Agencies should continue to investigate each complaint instead of selecting among them.		
3.	The Social Security Administration should resolve the Social Security disability benefits determination backlog thoroughly, expeditiously and fairly. A current backlog of benefits determination cases is leaving hundreds of thousands of people who are in desperate need of assistance on years-long waiting lists to receive the benefits promised to them in law. In particular, Social Security should undertake a complete review of the process for administering disability cases, and should seek additional funding as necessary to reduce this backlog.	Under the Obama administration the SSA has significantly improved its attention to this issue. The SSA declared that "Eliminating the hearings backlog remains SSA's highest priority," and in a hearing in September, SSA said total backlogs had decreased for 9 months. In the spring Congress appropriated funds for additional personnel to work on the backlog. This represents a turnaround. However, decreases in the total outstanding cases and the time to resolution have been extremely modest, and are still objectionably long. http://www.socialsecurity.gov/appeals/congressional-booklets.html http://www.ssa.gov/pressoffice/pr/hearings-backlog-pr.htm	Yes*
4.	The departments of Veterans Affairs and Defense should implement the recommendations of the Veterans' Disability Benefits Commission (VDBC). As documented by the VDBC, the Dole-Shalala Commission, and in myriad news reports, the DoD's and VA's treatment of wounded and disabled veterans has not lived up to our promises to them. If implemented, the VDBC's recommendations would dramatically improve the lives of our disabled veterans	This was a big basket, and it was not acted on globally. Some of this was included in the Veterans' Benefits Improvement Act of 2008 (passed last fall). But other problems have not been addressed despite improvement. A recent rulemaking does include the following initiatives: • Non-competitive bidding and contract set-asides for veteran-owned small businesses and service-disabled veteran-owned small businesses proposed under the authority of the Veterans Benefits, Health Care, and Information Technology Act of 2006. http://www.gpo.gov/fdsys/pkg/FR-2009-12-08/pdf/E9-28461.pdf • Proposed revision of policies and information provided to applicants for federal financial assistance to disabled veterans in obtaining specially adapted housing, to make the process more	Yes*

		easily understandable and transparent. http://www.gpo.gov/fdsys/pkg/FR-2009-10-05/pdf/E9-23842.pdf • Revision to rules governing Vocational Rehabilitation and Employment Program for veterans, to expand the VA's duty to assist veterans in proving their eligibility for the program, and to make instructions and guidelines clearer and easier to understand. http://www.gpo.gov/fdsys/pkg/FR-2009-07-06/pdf/E9-15860.pdf Veterans Benefits, Health Care, and Information Technology Act of 2006: http://www.gpo.gov/fdsys/pkg/FR-2009-12-08/html/E9-28461.htm	
5.	HHS should dramatically expand its experimental "Money Follows the Person" (MFP) program for the financing of disability benefits. MFP refers to an overall strategy for appropriating funds in a way that supports an individual's choice of settings. This allows individuals to get services more locally, gives people with disabilities more control in determining where they live and receive services, and allows them to do so closer to their homes and families. At the same time, it allows states to deliver services in a more cost-effective manner, and helps them to comply with a court decision, Olmstead v. L.C., 527 U.S. 581 (1999), which requires that state services be provided in the most integrated setting possible and where appropriate, in a person's community.	The administration has increased the size of MFP, although not necessarily "dramatically." In June 2009 the administration proclaimed a "Year of Community Living" which would make 1,000 housing vouchers available for individuals with disabilities transitioning from institutions to the community. The program targets states operating MFP demonstration programs. HUD will also award an additional 3,000 housing vouchers to serve non-elderly people with disabilities and encourage Public Housing Authorities to form working relationships with state Medicaid agencies interested in addressing community living needs of beneficiaries. President Obama's FY2010 budget proposal requested a $50 million increase in the funding for the MFP demonstration program, an increase of over 14%. http://www.hhs.gov/news/press/2009pres/06/20090622a.html http://www.hhs.gov/asrt/ob/docbudget/2010budgetinbriefo.html	Yes*

School harassment based on sexual orientation and gender identity			
1.	Make clear that harassment based on lack of conformity to gender stereotypes violates the law. In particular, the Department of Education Office of Civil Rights (OCR) should issue a revised guidance manual on sexual harassment. OCR should reaffirm that sexual harassment includes harassment directed at students for their lack of conformity to gender stereotypes, and should clarify that this includes harassment of students (who may be – or may simply be perceived to be – lesbian, gay, bisexual or transgender) because of their lack of conformity to gender stereotypes in areas such as appearance, mannerisms, interests, dating partners or other ways of expressing their gender.		No
Benefit plans covering domestic partners			
1.	The federal government should make it clear that under the rules covering benefit plans, spousal-type benefits can be extended to plan participants with domestic partners. In particular, the Internal Revenue Service (IRS) should evaluate all the provisions about spouses in the laws concerning federal tax qualified benefits plans, and for all those laws which are not limiting, issue a regulation or other administrative directive clarifying that the federal tax qualified benefits plan of a private or public employer that treats same-sex partners the same as spouses for plan benefits will not be disqualified. One example is the joint and survivor annuity available under certain plans. The minimum survivor annuity requirements set out in 26 U.S.C. § 417 are minimum requirements that do not prevent employers from allowing same-sex spouses or domestic partners the same access to the joint and survivor annuities as opposite-sex provisions made available to different-sex spouses. The IRS should	The IRS has not actually told any of the states that provide spousal-type benefits to same-sex spouses that their plans are disqualified, but it has not clarified the policy, conducted an evaluation, or taken administrative action on tax qualified benefit plans.	No

	issue guidance addressing joint and survivor annuities and all other spousal benefits that can be made available by employers without subjecting their plan to disqualification.		
Same-sex couples under Medicaid			
1.	The Centers for Medicare and Medicaid Services (CMS) should end the disparity between Medicaid beneficiaries with opposite-sex spouses and those with same-sex domestic partners under the rules on liens, adjustments and recoveries, and transfers of assets CMS has express statutory authority to establish criteria for hardship waivers. For example, 42 U.S.C. § 1396p(c)(2)(D) says: "An individual shall not be ineligible for medical assistance . . . to the extent that . . . the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary." The State Medicaid Manual § 3258.10(C)(5) says: "Undue hardship exists when application of the transfer of assets provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered. Undue hardship also exists when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter, or other necessities of life." CMS could clarify that, under this subregulatory guidance, the term "undue hardship" encompasses the loss of the home of a long-term care beneficiary so long as his or her same-sex domestic partner is residing in the home.		No
2.	CMS should carry out a comprehensive review of the Medicaid program in order to identify all other program benefits that are enjoyed by beneficiaries with opposite-sex spouses that may be extended to beneficiaries with same-sex domestic partners. In all such instances, CMS should, at a minimum, clarify for states that recognize the relationships of		No

	same-sex domestic partners (i.e., states that permit same-sex couples to enter into marriages, civil unions, domestic partnerships, or reciprocal beneficiaryships) that they may extend such benefits to beneficiaries with same-sex domestic partners, consistent with their obligations under state law, without risk of a disallowance or noncompliance action by CMS. CMS could do this either through notice-and-comment rulemaking or through subregulatory guidance (e.g., a State Medicaid Director letter).		
Discrimination against sexual minorities in adoption and foster care			
1.	The Department of Health and Human Services should amend federal regulations to prevent states that receive federal funding for foster care maintenance payments and adoption assistance from excluding prospective adoptive and foster parents because of sexual orientation and gender identity. In particular, 45 CFR Part 1355 – the general provisions concerning the Administration on Children, Youth and Families, Foster Care Maintenance Payments, Adoption Assistance, and Child and Family Services – should be amended to add the following provision: Using all qualified adoptive and foster resources. No adoption or foster placement may be delayed or denied based on a prospective adoptive or foster parent's sexual orientation, gender identity or expression, where such characteristic is unrelated to the individual placement needs of a particular child.		No
Discrimination By the Federal Government and Federal Contractors Against People with HIV			
1.	Ban discrimination against people with HIV by the government, federal contractors and subcontractors. Issue an executive order ensuring that no federal agency categorically bars people with HIV	The Obama administration has not issued an executive order banning discrimination based on HIV status by federal agencies and contractors. It has, however, made progress in resolving some specific issues	No*

	from working under any federal contract, and requiring all agencies, contractors and subcontractors to individually assess whether a person living with HIV can perform the functions of the position or activity. Department of Labor, Office of Federal Contract Compliance, should issue regulations to implement the order. As a model, the president can use current Executive Order 11246, which bans discrimination by contractors and subcontractors on the basis of race, religion, sex and national origin, and the Department of Labor can use 41 CFR 60-1.4	relating to the exclusion of individuals with HIV. For example, the State Department instituted a policy change that eliminates a previous requirement that contracting employees be free from all "communicable diseases" (and which had been interpreted to prevent hiring contractors with HIV). The change resulted from the settlement of an ACLU lawsuit on behalf of a U.S. Army veteran who was denied a security job because he has HIV. http://www.aclu.org/hiv-aids/aclu-reaches-settlement-veteran-denied-state-department-contractor-job-because-he-has-hiv	

Freedom of Speech

Political protest			
1.	Issue an executive order directing the Secret Service to end the use of so-called "free speech zones," and repeal procedures in the Presidential Advance Manual for deterring political protest.		No
2.	The Advance Manual must be revised to afford full First Amendment protection to all demonstrators or protesters and limit safeguards to only those individuals who engage in or have stated they will engage in activity unprotected under *Brandenburg v. Ohio*.		No
Media Consolidation			
1.	Urge the FCC to address the growing problem of media consolidation, and to suspend and reverse its rule loosening cross-media ownership (73 Fed. Reg. 9481, 21 Feb 2008), and make appointments to the commission with that goal in mind.	In May 2009, the Commission informed the Third Circuit Court of Appeals that the rule did not reflect the views of a majority of the members of the Commission and that the agency therefore supported keeping the stay of the newspaper/broadcast cross-ownership rule in place. In September 2009, the Commission's Media Bureau issued a *Public Notice* announcing "a series of workshops as a first	Yes

		step in beginning the Federal Communication Commission's 2010 quadrennial review of its media ownership rules." http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293815A1.pdf	
Network neutrality			
1.	Urge the FCC to continue to administratively enforce the principle of an open Internet upon Internet network providers, as it did with its Comcast decision in August 2008. Specifically, the president should urge the FCC to provide for meaningful enforcement available to all users of text messaging, short code, and broadband services, and uphold the concepts of neutrality, non-discrimination, equality of access, and non-exclusivity in the provision of those services.	The FCC and Chairman Genachowski have been strongly supportive of net neutrality and the Obama administration has continued to publicly and actively support it. Chairman Genachowski's remarks, "Preserving a Free and Open Internet: A Platform for Innovation, Opportunity, and Prosperity" http://openinternet.gov/read-speech.html	Yes
2.	Urge the FCC to issue regulations that codify its "Four Freedoms" of an open Internet and the principles outlined in the Commission's Comcast/BitTorrent ruling.	The FCC recently began the process of codifying these principles in regulation: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-93A1.pdf	Yes
3.	Make appointments to the FCC with these priorities in mind.	Obama administration appointees have supported net neutrality up to this point.	Yes
Online censorship of soldiers			
1.	The military should end online censorship of soldiers deployed overseas, except where it involves suppression of mission-critical or classified information. Troops stationed overseas should be permitted to exercise their speech and associational rights, subject only to legitimate operational security concerns. Censorship of communications and information that do not implicate those concerns must be prohibited. To the extent that the bandwidth or network services are currently inadequate, appropriations		No

	should be committed to remove those barriers. Those who would fight and die to defend our freedoms abroad should not be denied those same rights themselves.		
Fleeting expletives			
1.	Urge the FCC to end its policy of fining broadcasters for fleeting expletives and momentary lapses of decency standards. 19 FCC Rcd 4975 (2004) Make appointments to the commission with this goal in mind	The Obama administration and his appointments to the FCC appointments have remained quiet on the issue. (The Supreme Court ruled narrowly in April 2009 in favor of the policy, yet stopped short of deciding whether the policy violates the Constitution.)	No
World Intellectual Property Organization (WIPO)			
1.	Direct US negotiators to reverse the current policy and strike a negotiating posture with WIPO that emphasizes the free flow of information and respect for the fair use of information. (The head negotiator for the U.S. delegation changes depending upon the topic of the meeting; in the recent past it has been the director of the US Patent and Trademark Office, Secretary of State and other officials.)	US negotiating positions at WIPO have shifted in the direction of the public interest on several issues, including a proposed broadcasting treaty, work on copyright exceptions and limitations, and copyright exceptions and limitations for the blind and visually impaired.	Yes*
Freedom of Belief			
The faith-based initiative		The Obama administration has not acted on these recommendations. In fact, as a result of economic stimulus spending, even more money is being disbursed using Bush-era government-funded religion rules. The only official action in the area of freedom of belief was the creation of a federal advisory committee – the White House Office of Faith-Based and Neighborhood Partnerships – that is comprised mainly of religious leaders. This committee was created without first repealing Bush-era rules allowing federally funded religious organizations to apply religious hiring tests to employees. http://www.aclu.org/religion-belief/white-	

		house-announces-troubling-faith-based-order-aclu-says-administration-heading-u	
1.	Repeal Executive Order 13279 and issue a new executive order that prohibits government-funded religious employment discrimination, and allows for enforcement of applicable state and local antidiscrimination laws.		No
2.	Repeal Executive Orders 13198, 13199, 13280, 13342, and 13397, and issue a new executive order containing clear standards and protections consistent with the Constitution, including provisions to: e. Ensure that no direct government funds are used to support any religious activity, programming, or materials, and inform beneficiaries of their rights. f. Provide for increased monitoring and oversight by funding agencies to ensure compliance with applicable law. g. Restore and strengthen the fundamental, constitutionally mandated prohibition on direct government funding of houses of worship (while continuing to permit funding of social service organizations that merely are religiously affiliated, and therefore able to segregate their government-funded nonreligious programs from their religious activities). h. Instruct all departments and agencies to issue, to the extent required, new regulations consistent with the new executive order.		No
3.	Issue a new executive order regarding the role of faith-based organizations in publicly funded social services that: e. Prohibits direct government		No

	funding of houses of worship and provides clear standards and protections consistent with the Constitution. (There are some circumstances where organizations that have religious affiliations may be able to segregate their government-funded nonreligious programs from their ongoing religious activities. In such cases, the *nonreligious programs* operated by organizations with religious affiliations may participate in some programs provided that they account for the separation of funds and that they adhere to the same rules and regulations that apply to other non-profit entities.) f. Explicitly prohibits religious employment discrimination in government-funded programs. g. Allows for enforcement of applicable state and local antidiscrimination laws. h. Provides real programmatic oversight to ensure accountability and to ensure that no direct government funds are used to support any religious activity, programming, or materials.		
Broaden the mandate of the Special Counsel for Religious Discrimination			
1.	The new administration should broaden the special counsel's mandate expressly to include vigorous enforcement of the Establishment Clause in order to help ensure that the government does not promote, endorse, or favor any religious practice or belief.		No

Immigration

Local immigration enforcement			
1.	Stop entering into or soliciting 287(g) MOUs with states and localities, and give notice to relevant states and localities that all prior 287(g) MOUs will no longer be effective, in order to return all federal immigration enforcement powers to DHS only.	In response to intense public criticism from the ACLU and many other organizations across the country, ICE has attempted to improve its 287(g) program by issuing a standard MOU and renegotiating all existing 287(g) agreements. However, these efforts do not amount to any type of meaningful improvement or reform of the current program. http://www.ice.gov/pi/nr/0910/091016washingtondc.htm. ACLU's response: http://www.aclu.org/immigrants-rights/ice-should-end-not-expand-agreements-local-and-state-law-enforcement-says-aclu and http://www.aclu.org/immigrants-rights/dhs-continues-state-and-local-immigration-enforcement-program-without-meaningful-c	No*
Immigration raids			
1.	Issue a moratorium on immigration raids pending a thorough review of their fairness and efficacy.	DHS never publicly issued a moratorium on workplace raids. However, in practice, it has replaced large-scale raids and sweeps with a policy based on employer audits: http://www.ice.gov/pi/nr/0911/091119washingtondc2.htm	Yes*
ID theft prosecutions			
1.	Stop charging and prosecuting immigrant workers for aggravated identity theft and related crimes and instead enforce workplace labor protections under the law.	On May 4th, the Supreme Court held that "aggravated identity theft" cannot be used to criminalize persons who have no knowledge that a false ID or Social Security number or other means of identification they are using belongs to another person: http://www.aclu.org/blog/immigrants-rights/highest-court-ends-misuse-identity-theft-law-punished-innocent-immigrant-work	Yes

2.	Stop the use of stipulated judicial orders of removal.	No policy change has been announced but to our knowledge no such orders have been used.	Yes*
Deportation to nations that torture			
1.	Prohibit the reliance on "diplomatic assurances" to deport (pursuant to 8 C.F.R. § 208.18(c)) or otherwise transfer persons from the United States. At a minimum, ensure that no such assurances are used without an opportunity for meaningful judicial review of whether they are sufficient to comply with U.S. obligations under the UN Convention Against Torture.	Based on its position on extraordinary rendition, it appears that the Obama administration will continue to rely on diplomatic assurances, including where there is no judicial review.	No
Detention standards			
1.	Promulgate enforceable and strengthened detention standards that are binding on all facilities that house immigration detainees.	ICE remains opposed to promulgating enforceable detention standards and this has not been done. However, ICE is undertaking a detention reform effort, and ICE Assistant Secretary John Morton has publicly stated his commitment to transforming the ICE detention system from the current criminal/punitive approach into a civil administrative model that prioritizes the health and safety of detainees: http://www.ice.gov/pi/nr/0908/090806washington.htm, http://www.ice.gov/pi/nr/0910/091006washington.htm, ACLU's response: http://www.aclu.org/immigrants-rights_prisoners-rights/dhs-plan-improve-immigration-detention-encouraging-step	No*
2.	Issue a moratorium on contracting for, or construction of, additional immigration detention bed space pending a comprehensive review of the feasibility and effectiveness of alternatives to detention and less restrictive forms of detention.	Congress provided no funds for new detention bed capacity in the FY2010 Homeland Security Appropriations bill – the first time that bed space has been level-funded in a long time. Additionally, Congress increased the appropriation for alternatives to detention from $63 million in fiscal 2009 to $70 million in 2010. Although the Obama administration did not issue a moratorium, Congress's action, which	Yes*

		effectively brought about the same outcome, followed statements by ICE Assistant Secretary John Morton that he was committed to transforming the ICE detention system from the current criminal/punitive approach into a civil administrative model that prioritizes the health and safety of detainees. In addition, the administration had not requested any funds for additional bed space in its FY2010 budget proposal. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2892enr.txt.pdf http://www.dhs.gov/ynews/releases/pr_1254839781410.shtm http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf http://www.whitehouse.gov/omb/budget/fy2010/assets/dhs.pdf (p. 19)	
Expedited removal			
1.	Repeal the 2004 Attorney general authorization for use of "expedited removal" against persons arrested inside the United States. At minimum, suspected undocumented immigrants who are present inside the United States should not be removed without any meaningful administrative review.		No
Board of Immigration Appeals			
1.	Restore the BIA as a meaningful appellate body.	The Obama administration has not taken any of the recommended actions in this area.	– –
a.	Restore the BIA in both quantity and quality of judges by appointing 10 qualified judges to the BIA.		No
b.	Repeal the "streamlining" regulations to ensure careful and meaningful administrative BIA review.		No
c.	Restore the full measure of judicial		No

	review that normally governs final agency action under the Administrative Procedures Act and historically applied to immigration decisions until the current restrictions were enacted in the 1996 IIRIRA.		
d.	Halt the practice of AWO (Affirmance Without Opinion) decisions of immigration court orders, thereby returning to the BIA practices in place prior to the streamlining initiative. A restored BIA also furthers the goal of restoring full judicial review over immigration matters by establishing an immigration administrative process in which the courts can legitimately place confidence, that corrects errors by the immigration judges, and will likely diminish the volume of cases reaching the federal courts.		No
Women's Rights			
Single-sex education			
1.	The Department of Education should require the agency to rescind 2006 Title IX single-sex education regulations and revert to prior law. The restored ED regulations would then prohibit coeducational schools from segregating students by sex for classes or other activities in almost all circumstances, with very narrow exceptions for sex education and contact sports.		No
Fair housing for domestic violence victims			
1.	HUD should issue and enforce regulations implementing the fair housing protections of VAWA and ensure that public housing authorities and section 8 owners carry out VAWA's mandate.	This has not yet been done. However, in the semiannual unified agenda released on December 7, 2009, HUD said that it plans to issue a final rule in June 2010 revising HUD's regulations for its public and assisted housing programs authorized under the United States	No*

		Housing Act to conform to the statutory amendments made by VAWA. The comment period on the Interim Final Rule ended in January 2009. http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=2577-AC65.	
Discrimination remedies			
1.	Urge the Equal Employment Opportunity Commission to issue guidance stating that the Supreme Court decision, Hoffman Plastic Compounds v NLRB, does not limit claims or remedies available under existing law (Title VII) for any form of discrimination against undocumented workers, including discriminatory firings. Make appointments to the EEOC with that goal in mind.	The EEOC has issued no new guidance on Hoffman and the White House has not (publicly at least) urged the commission to do so. The Administration has nominated three Commissioners and a General Counsel to fill the EEOC vacancies. These nominees have had their Senate hearing, have been marked up in Committee, and are now pending a Senate confirmation vote.	No*
Home health care workers			
1.	The Department of Labor (DOL) should amend its Fair Labor Standards Act (FLSA) regulations to make clear that home health care workers are entitled to wage and overtime protections in order to fix the Supreme Court decision in *Long Island Care at Home Ltd. v. Coke*. The problematic provision is 29 C.F.R. § 552.109(a), which declares that third-party employers of workers providing companionship services need not pay those employees the federal minimum wage or overtime. As the Supreme Court explained, "On at least three separate occasions during the past 15 years, the Department considered changing the regulation and narrowing the exemption in order to bring within the scope of the FLSA's wage and hour coverage companionship workers paid by third parties (other than family members of persons receiving the services, who under the proposals were to remain exempt). 58 Fed.Reg. 69310-69312 (1993); 60	DOL is looking at the issue, but has not so far amended the FLSA regulations to fix the Coke case. Labor Secretary Solis told the AP in June 2009, "As secretary of labor, I intend to fulfill the department's mandate to protect America's workers, including home health care aides, who work demanding work schedules and receive low wages." http://www.nytimes.com/2009/08/10/nyregion/10coke.html	No*

	Fed.Reg. 46798 (1995); 66 Fed.Reg. 5481, 5485 (2001). But the Department ultimately decided not to make any change. 67 Fed.Reg. 16668 (2002)."		

Reproductive Freedom

Global gag rule on abortion			
1.	Rescind the Executive Memorandum of March 28, 2001, known as the "Mexico City policy" or "Global Gag Rule," prohibiting foreign aid to organizations overseas that promote or perform abortions.	On January 23rd, President Obama rescinded the Global Gag Rule. http://www.whitehouse.gov/statement-released-after-the-president-rescinds/. ACLU's response: http://www.aclu.org/reproductive-freedom/aclu-praises-obama%E2%80%99s-decision-rescind-global-gag-rule	Yes
Abortion restrictions			
1.	The President's budget should strike language restricting abortion funding for (i) Medicaid-eligible women and Medicare beneficiaries (the Hyde amendment); (ii) federal employees and their dependents (FEHB Program); (iii) residents of the District of Columbia; (iv) Peace Corps volunteers; (v) Native American women; and (vi) women in federal prisons. The next President should indicate that the Administration is committed to working with Congress to fully repeal these restrictions.	President Obama struck the DC abortion funding rider from his budget, but left all other riders intact: http://www.whitehouse.gov/omb/budget/fy2010/assets/appendix.pdf	No*
2.	The budget should also strike language known as the Weldon amendment, which states that "none of the funds made available in [the Departments of Labor, HHS and Education Appropriations bill] may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any	President Obama's FY2010 budget includes the Weldon language: http://www.whitehouse.gov/omb/budget/fy2010/assets/appendix.pdf (p. 796 in the document; 800 in the PDF)	No

	institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." (Consolidated Appropriations Act, 2008, Pub. L. No. 110-161 § 508(d), 121 Stat. 1844, 2209.		
Emergency contraceptives			
1.	The Department of Defense should mandate that emergency contraception be included in the Basic Core Formulary for every military base.		No
2.	The FDA should review and evaluate the scientific data underlying the age restriction on over-the-counter access to emergency contraception to ensure that FDA policy is based on sound science, not politics.	The FDA took no action on its own initiative, but on March 23, 2009, a federal court ordered the FDA to reconsider its decision to limit over-the-counter access to emergency contraception to 18 year olds. The court also ordered the FDA to make over-the-counter access to emergency contraception immediately (within 30 days) available to 17 year olds, finding the FDA's justification for denying over-the-counter access to 17 year olds "lacks all credibility" and was based on "fanciful and wholly unsubstantiated 'enforcement' concerns." President Obama did not appeal the decision. http://reproductiverights.org/en/case/tummino-v-von-eschenbach-ny.	Yes*
3.	The Department of Justice should modify the sexual assault protocols issued by the agency in 2004 to include the routine offering of pregnancy prophylaxis (or "emergency contraception") to sexual assault victims who are at risk of pregnancy from rape.		No
Regulations on birth control and religious refusals			
1.	HHS should act to suspend enforcement of the rule and undertake a review of its potential impact on patients' access to health	On March 10th, HHS issued a notice of proposed rulemaking to rescind the health care denial rule. The comment period on the proposal	Yes*

	care services.	closed on April 9th, and we are awaiting the agency's final action. Notice of Proposed Rule Making: http://edocket.access.gpo.gov/2009/pdf/E9-5067.pdf ACLU's release: http://www.aclu.org/reproductive-freedom/obama-administration-initiates-review-bush-health-care-denial-rule	
Abortion clinic violence			
1.	The attorney general should re-establish these or similar taskforces. Doing so would help ensure that existing laws prohibiting clinic violence are fully enforced and that state and local law enforcement are aware of the critical role they play in ensuring the safety of patients and providers.	The Task Force on Violence against Health Care Providers has been reinvigorated and given energy and attention at the highest levels of the Department of Justice.	Yes
Affordable birth control			
1.	The Secretary of HHS, who oversees the Centers for Medicare and Medicaid Services, should propose rules to ensure that all safety-net providers and college and university health clinics are eligible for affordable birth control.	The Secretary of HHS did not propose such rules, but in March Congress passed and President Obama signed the FY2009 Omnibus Appropriations bill, which restores access to affordable birth control for all safety-net providers and university health clinics. Omnibus Appropriations Bill http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1105enr.txt.pdf ACLU release: http://www.aclu.org/reproductive-freedom/omnibus-appropriations-bill-advances-reproductive-health-care	Yes*
The shackling of pregnant prisoners			
1.	Issue an executive order directing all federal departments and agencies responsible for the custody or control		No

	of pregnant prisoners and detainees to end this practice. The order should apply to all women, both adults and juveniles, in the custody or control of any federal agency, department or contractor, including those held by state or local governments by agreement or order of any federal authority.		