

April 21, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, DC

Dear President Biden,

As organizations interested in government transparency, accountability, and human rights, we support the administration's goal to work toward "rebuilding trust with the American people"¹ and we strongly endorse your commitment to "the highest standards of transparency."² Rebuilding trust requires openness and honesty, and also requires taking a serious look at the problem of excessive national security secrecy, which has expanded unabated over many decades and enabled abuses of power and violations of human rights and civil liberties. Particularly as the nation approaches the 20th anniversary of the September 11th terror attacks later this year, now is the time to begin to peel back the layers of unwarranted and harmful secrecy that have built up over those twenty years and more.

Too often, national security classification and declassification serve only to protect the government from embarrassment or accountability, rather than protecting legitimately sensitive information. Moreover, inadequate attention and resources have left the classification system unable to meet the challenges posed by modern technology. To truly prevent future abuses of power and pursue an administration built on openness and honesty, it is necessary to commit to comprehensive classification reform.

First, we ask that you initiate a bottom-up review and modernization of the classification system as a whole, to ensure that national security classification is truly serving national interests, rather than simply hiding government information - either intentionally through abuse of the system or unintentionally due to outdated technology and expanding backlogs. The primary goals of this review should include the following: 1) to limit the coverage, scope, and duration of classification, 2) to update and streamline the classification system to fit today's environment and identify resource needs for Congress to meet, 3) to ensure the responsible use of classification and declassification authorities government-wide, by both original and derivative classifying entities, and 4) to strengthen oversight of classification policy and implementation, particularly to ensure both are subject to robust checks-and-balances and accountability mechanisms.

¹ Joyella, Mark, "Biden's White House Press Secretary Promises 'Trust And Transparency'," *Forbes*, January 20, 2021, available at: <https://www.forbes.com/sites/markjoyella/2021/01/20/bidens-white-house-press-secretary-promises-trust-and-transparency/?sh=2e7247d44616>

² *Memorandum on Revitalizing America's Foreign Policy and National Security Workforce, Institutions, and Partnerships*, National Security Memorandum, February 4, 2021, available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/memorandum-revitalizing-americas-foreign-policy-and-national-security-workforce-institutions-and-partnerships/>

This process should include the input of all relevant stakeholders, including federal agencies as well as public interest organizations and other outside experts. The best ideas and the best practices should be incorporated into a new executive order on classification policy.

Second, we ask that you take a number of specific actions as the comprehensive review is underway, including starting the declassification process for several important records that can provide some long-needed accountability for past breaches of public trust, and improve disclosures to prevent such abuses going forward. The ongoing existence of and reliance on secret law, in particular, undermines democracy by keeping the public in the dark about the laws that govern our society and the sometimes novel interpretations the Executive Branch adopts of those laws.

The administration should instead adopt a culture of openness, protecting from disclosure only that information that would truly and concretely harm national security, and disclosing by default information that is of high public value and poses little threat. To that end, we urge you to:

- Direct the Department of Justice to commence publishing final, unclassified Office of Legal Counsel legal opinions as a matter of course, and initiate a declassification review of classified opinions to ensure that, at a minimum, declassified portions or summaries may be publicly released;
- At a minimum, direct the Department of Justice to resume periodic public reporting on the use of the state secrets privilege, which too often has been relied upon as an alternative form of immunity that shields the government and even private companies from accountability for systemic violations of the law;
- Direct the Central Intelligence Agency to perform a new declassification review of all aspects of the post-9/11 Rendition, Detention, and Interrogation program, including the full Senate Select Committee on Intelligence report on the subject;
- Adopt a uniform new prepublication review process that has new procedural safeguards and is transparent, narrowly limited in scope, and expedited in application so as to impose only those minimal restrictions on the public speech of current and former government employees that are absolutely necessary to protect national security; and
- Make presidential directives, including changes to previous directives, public to the greatest extent possible, and provide a public summary of any classified directives. We note with appreciation that the administration has made its first four National Security Memoranda available online, and we urge you to continue this practice.³

We urge you to take this opportunity to turn a new page on national security classification by making classification and declassification processes efficient and effective, and bringing important information about how our government functions - including errors and wrongdoing - out of the shadows.

³ For details on these and other steps to reduce national security secrecy, please see our full set of recommendations, *Accountability 2021*, available at: <https://www.accountability2021.org/principle-2/>

We are available to meet with you and discuss our recommendations in more depth. Thank you in advance for your consideration of this matter. Please contact Emily Manna at emanna@openthegovernment.org for more information.

Sincerely,

American Civil Liberties Union
Amnesty International USA
Center for Civilians in Conflict
Center for Constitutional Rights
Center for Victims of Torture
Demand Progress Education Fund
The Digital Democracy Project
Electronic Frontier Foundation
Federation of American Scientists
Freedom of the Press Foundation
Government Accountability Project
Government Information Watch
Human Rights Watch
MuckRock
National Coalition for History
National Religious Campaign Against Torture
National Security Archive
National Security Counselors
Network of Concerned Historians
Open The Government
Project On Government Oversight
The Society for Historians of American Foreign Relations
Society of Professional Journalists
Transparency International - U.S. Office

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Kevin Kosar, American Enterprise Institute*
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cc:

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National Security Advisor
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The Honorable Merrick B. Garland
Attorney General
United States Department of Justice

The Honorable Avril Haines
Director of National Intelligence
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The Honorable William Burns
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