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## **Rendition, Secrecy, and the Wrong Side of History**

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At a federal court in San Francisco this morning, Department of Justice representative Douglas Letter told the 9th Circuit Court of Appeals that the Obama administration's stance on a lawsuit alleging rendition and torture was "exactly" the same at the Bush administrations. The Obama administration's decision to continue invoking "state secrets" in lawsuits challenging the Bush White House's rendition and torture policies is an early indication that the new administration may be unwilling to truly undo some of the most egregious and inhuman excesses of the war on terror. Unfortunately for the future of our country, if the Obama administration refuses to do the politically difficult work of allowing Dick Cheney's infamous "dark side" to be challenged in court, it is almost certain that the war on terror's most deplorable institutions will define our national identity well into the foreseeable future.

At a swearing-in ceremony January 21st, President Obama pledged "a new era of open government," promptly ordered Guantanamo Bay and secret CIA "black site" prisons closed, and then issued instructions to federal agencies to err on the side of openness when processing Freedom of Information Act requests. In issuing these orders, the President invoked Supreme Court Justice Louis D. Brandeis: "Sunshine is the best disinfectant."

Over the last eight years, an excessive use of state secrecy has brought us to a point of moral and political crisis. Merely acknowledging the existence of these policies is not going to eradicate the disappearances, renditions, suspensions of the Constitution, and torture. If the Obama administration is serious about changing these policies, it has to allow the courts to adjudicate the programs that enable these atrocities. Victims must be allowed their day in court.

By continuing the Bush Administration's legal strategy of relying on the "state secrets privilege" to unilaterally keep its most controversial programs out of the courts, the Obama Administration is tacitly endorsing extralegal institutions and spaces with an inexplicit caveat that they are not to be abused. But the long and twisted history of extralegal spaces – from slave colonies to concentration camps – shows that when spaces are created where anything can happen, horrors will inevitably take place. One of the main functions of the checks and balances in the American system is precisely to prevent the creation of spaces outside the law. In the American system, the "sunshine" Louis Brandeis referred to is the system of checks and balances and the courts.

"You are on the wrong side of history," President Obama announced in his inauguration address to world leaders who "cling to power through corruption and deceit and the silencing of dissent." This is a sentiment many Americans expressed when they voted to remove the Bush administration from power in favor of "change." But changing the course of history is difficult and messy. By issuing orders closing down Guantanamo Bay

and the black site program, yet resorting to legal arguments designed to keep those institutions insulated from the courts, the Obama administration is preserving the underlying system that makes renditions and tortures possible.

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