

OBAMA WOULD NOT — CANNOT — DEEM ANY ACTIVITIES AUTHORIZED BY GLOVES COME OFF FINDING ILLEGAL

ACLU Executive Director Anthony Romero has what I'm sure he believes to be an out of the box op-ed in the NYT. In it, he calls on President Obama to issue pardons for all those who masterminded the torture program.

But with the [impending release](#) of the report from the Senate Select Committee on Intelligence, I have come to think that President Obama should issue pardons, after all — because it may be the only way to establish, once and for all, that torture is illegal.

[snip]

But let's face it: Mr. Obama is not inclined to pursue prosecutions — no matter how great the outrage, at home or abroad, over the disclosures — because of the political fallout. He should therefore take ownership of this decision. He should acknowledge that the country's most senior officials authorized conduct that violated fundamental laws, and compromised our standing in the world as well as our security. If the choice is between a tacit pardon and a formal one, a formal one is better. An explicit pardon would lay down a marker, signaling to those considering torture in the future that they could be prosecuted.

Mr. Obama could pardon [George J. Tenet](#) for authorizing torture at the C.I.A.'s black sites overseas, [Donald H. Rumsfeld](#) for authorizing the use of

torture at the Guantánamo Bay prison, David S. Addington, John C. Yoo and Jay S. Bybee for crafting the legal cover for torture, and George W. Bush and Dick Cheney for overseeing it all.

There are many many problems with this proposal, some of which Kevin Jon Heller hits in a piece that notes this would not be pardon, but blanket amnesty.

But Romero's proposal (if it is intended as anything beyond a modest proposal meant to call Obama's bluff) fundamentally misunderstands the situation – a situation the ACLU has been at the forefront in exposing.

Obama would not – categorically cannot – admit that what Tenet and Bush and Cheney did on torture is illegal. That's because he has authorized war crimes using the very same Presidential Finding as the Bush Administration used to authorize torture.

As I have laid out at length, the torture program started as a covert op authorized by the September 17, 2001 Gloves Come Off Memorandum of Notification. And along with torture, that Finding also authorized drone strikes. The drone strikes that Obama escalated.

Just 3 days after he assumed the Presidency, a drone strike Obama authorized killed as many as 11 civilians, including one child, and gravely injured a 14 year old boy, Farim Qureshi. And several years into his Administration, Obama ordered the CIA to kill American citizen Anwar al-Awlaki with no due process. As far as we know, both of those things were done using that very same Finding, the Finding that Romero would like Obama to declare authorized war crimes.

When the 2nd Circuit ruled the President – President Obama, not President Bush – could keep a short phrase hidden making it clear torture had been authorized by that Finding in ACLU's

very own torture FOIA, it did so because the Finding still authorized intelligence activities. The Finding authorizing torture was still active – President Obama was still relying on it – at least as recently as 2012.

For Obama to pardon Bush, Cheney, and Tenet, he would have to admit that the same Finding that he used to authorize drone strikes that have killed hundreds of civilians authorized war crimes. There is absolutely zero chance Obama is going to do that.