

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2006/04/05/open-letter-attorney-general-alberto-gonzales>

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More than 100 professors of law and legal studies sent an open letter to Attorney General Alberto Gonzales today, criticizing his failure to condemn a number of abusive interrogation techniques, including waterboarding, exposure of detainees to extreme temperatures, forced standing, binding in stress positions, and severe sleep deprivation. The letter, whose signatories included several former government attorneys, asks Gonzales to issue a clear public statement regarding the humane treatment of detainees overseas, and to clarify that abuses such as waterboarding are subject to prosecution as crimes.

The 2006 Defense Authorization Act, passed by Congress in January 2006, contains new provisions clarifying that all individuals acting under the color of U.S. law categorically are prohibited from engaging in or authorizing cruel, inhuman and degrading treatment of detainees in U.S. custody. These provisions were passed by Congress to rectify lack of clarity in regard to detention and interrogation techniques, and to prevent conduct that is prohibited by international law and illegal under domestic criminal law.

We are now writing to urge you to issue a clear public statement about specific legal standards applicable to detention and interrogation of detainees overseas, under this legislation and other existing laws. Such a statement is necessary because, notwithstanding the 2006 Defense Authorization Act, you and other administration officials have not yet made clear statements about the specific legal standards applicable to the detention and interrogation of detainees in U.S. custody overseas. We are concerned that this lack of clarity continues to lead to confusion about the legality of specific interrogation techniques.

We are particularly concerned about your continuing failure to issue clear statements about illegal interrogation techniques, and especially your failure to state that waterboarding a technique that induces the effects of being killed by drowning constitutes torture, and thus is illegal. We urge you to make such a statement now.

The Convention Against Torture prohibits practices that constitute the intentional infliction of severe pain or suffering, whether physical or mental. The federal torture statute, 18 U.S.C. 2340A, similarly prohibits acts outside the United States that are specifically intended to cause severe physical or mental pain or suffering.

Waterboarding is torture. It causes severe physical suffering in the form of reflexive choking, gagging, and the feeling of suffocation. It may cause severe pain in some cases. If uninterrupted, waterboarding will cause death by suffocation. It is also foreseeable that waterboarding, by producing an experience of drowning, will cause severe mental pain and suffering. The technique is a form of mock execution by suffocation with water. The process incapacitates the victim from drawing breath, and causes panic, distress, and terror of imminent death. Many victims of waterboarding suffer prolonged mental harm for years and even decades afterward.

Waterboarding, when used against people captured in the context of war, may also amount to a war crime as defined under the federal war crimes statute 18 U.S.C. 2441, which criminalizes grave breaches of the Geneva Conventions (in international armed conflicts), and violations of Article 3 common to the four Geneva Conventions (in non-international armed conflicts). Waterboarding is also an assault, and thus violates the federal assault statute, 18 U.S.C. 113, when it occurs in the special maritime and territorial jurisdiction of the United States, a jurisdictional area which includes government installations overseas. In cases involving the U.S. armed forces, waterboarding also amounts to assault, and cruelty and maltreatment under the Uniform Code of Military Justice.

Under the laws of the land, U.S. personnel who order or take part in waterboarding are committing criminal actstorture, assault, and war crimeswhich are punishable as felony offenses. The Department of Justice should clarify this to all U.S. personnel, and prosecute violations of the law.

We have no doubt that if a captured American were subjected to waterboarding, the U.S. government would condemn this as torture and demand or seek prosecution.

We also urge you to clarify the legality of other abusive interrogation techniques, such as subjection to extreme temperatures, forced

standing, binding in stress positions, and severe sleep deprivation. These techniques, like waterboarding, cause physical and mental suffering and are illegal under domestic and international law. At minimum, these techniques amount to cruel, inhuman, or degrading treatment, categorically prohibited under the 2006 Defense Authorization Act; and they violate U.S. obligations under international human rights and humanitarian laws, including the Convention Against Torture and the Geneva Conventions. Depending on how they are used, these and other abusive techniques can amount to torture, potentially prosecutable under the U.S. torture and war crimes statutes. The U.S. State Department has condemned numerous other countries for utilizing these techniques, in many cases stating that the techniques amount to torture.

As the Attorney General, you have the responsibility to speak clearly on matters of the legal standards for detention and interrogation of prisoners, and as the executive branch's chief legal officer, you are obliged to enforce U.S. laws.

Moreover, you owe it to U.S. military and security personnel, including those who authorize and conduct interrogations, to specify accurately that the techniques described above are not legal. This is vitally important because personnel who rely on advice to the contrary place themselves in legal peril.

We sincerely hope that you will uphold the legal standards discussed above, and make efforts to articulate them clearly and publicly.

Signed,

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