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

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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,

Richard Abel, UCLA School of Law
Bruce Ackerman, Yale University
Catherine Adcock Admay, Duke University
Madelaine Adelman, Arizona State University
Jose E. Alvarez, Columbia Law School (former attorney-adviser, Department of State)
Paul Amar, University of California-Santa Barbara
Fran Ansley, University of Tennessee College of Law
Michael Avery, Suffolk Law School
Amy Bartholomew, Carleton University
Katherine Beckett, University of Washington
George Bisharat, Hastings College of the Law
Christopher L. Blakesley, William S. Boyd School of Law (UNLV)
Gary Blasi, Professor of Law, UCLA School of Law
John Charles Boger, University of North Carolina - Chapel Hill
David Bowker, adjunct, Cardozo Law School (former attorney-adviser, Department of State)
Alice C. Briggs, Franklin Pierce Law Center
John Brigham, University of Massachusetts, Amherst
Peter Brooks, University of Virginia
Rosa Brooks, University of Virginia
William T. Burke, University of Washington School of Law
William Burke-White, University of Pennsylvania School of Law
Kitty Calavita, University of California-Irvine
Henry (Chip) Carey, Georgia State University
Anupam Chander, University of California-Davis
Oscar G. Chase, New York University Law School
Kathleen Clark, Washington University
Cornell W. Clayton, Washington State University
Marjorie Cohn, Thomas Jefferson School of Law
David Cole, Georgetown University Law Center
John Comaroff, University of Chicago
Michael Comiskey, Pennsylvania State University
Marianne Constable, University of California- Berkeley
Don Crowley, University of Idaho
Scott Cummings, UCLA School of Law
Eve Darian-Smith, University of Massachusetts-Amherst
Benjamin Davis, University of Toledo College of Law
Stephen F. Diamond, Santa Clara University School of Law
Hilal Elver, University of California-Santa Barbara
Richard Falk, Princeton University and University of California-Santa Barbara
Thomas G. Field, Jr., Franklin Pierce Law Center
Gregory H. Fox, Wayne State University Law School
Lawrence M. Friedman, Stanford University
Michael Froomkin, University of Miami School of Law
David R. Ginsburg, UCLA School of Law
Angelina Snodgrass Godoy, University of Washington
Leslie F. Goldstein, University of Delaware
Kenneth W. Graham, Jr., UCLA Law School
David Greenberg, New York University
Lisa Hajjar, University of California-Santa Barbara
Joel F. Handler, UCLA School of Law
Hendrik Hartog, Princeton University
Lynne Henderson, University of Nevada-Las Vegas
William O. Hennessey, Franklin Pierce Law Center
Richard A. Hesse, Franklin Pierce Law Center

Elisabeth Hilbink, University of Minnesota
Jennifer L. Hochschild, Harvard University
Scott Horton, Adjunct, Columbia Law School
Derek Jinks, University of Texas School of Law
Jerry Kang, UCLA School of Law
Lisa A. Kelly, University of Washington School of Law
Heinz Klug, University of Wisconsin
Itzhak E. Kornfeld, Drexel University
Ariana R. Levinson, UCLA School of Law
Sanford Levinson, University of Texas Law School
Robert Justin Lipkin, Widener University School of Law
Lynn M. LoPucki, UCLA School of Law
David Luban, Georgetown University Law Center
Deborah Maranville, University of Washington School of Law
Ann Elizabeth Mayer, University of Pennsylvania
Jamie Mayerfeld, University of Washington
Joel Migdal, University of Washington
Martha Minow, Harvard Law School
William W. Monning, Monterrey College of Law
Kathleen M. Moore, University of California-Santa Barbara
Forrest S. Mosten, UCLA School of Law
Ken Mott, Gettysburg College
Stephen R. Munzer, UCLA School of Law
Jyoti Nanda, UCLA School of Law
Smita Narula, New York University School of Law
Julie Novkov, University of Oregon
Frances Olsen, UCLA School of Law
John Orcutt, Franklin Pierce Law Center
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Austin Sarat, Amherst College
Margaret L. Satterthwaite, New York University School of Law
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Benjamin N. Schiff, Oberlin College
David Schultz, Hamline University
Robert A. Sedler, Wayne State University
Barry Shanks, Franklin Pierce Law Center
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Samuel. C. Thompson, Jr., UCLA School of Law
Beth Van Schaack, Santa Clara University School of Law
Andrew Strauss, Widener University School of Law
Stephen I. Vladeck, University of Miami School of Law
Richard Weisberg, Cardozo Law School
Deborah M. Weissman, University of North Carolina School of Law
Burns H. Weston, University of Iowa and Vermont Law School
Adam Winkler, UCLA School of Law
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