



Written by [Thomas R. Eddlem](#) on December 14, 2009

ACLU Says Obama Is Creating “Impunity” for Torturers

“The Bush administration constructed a legal framework for torture, but the Obama administration is constructing a legal framework for impunity,” the American Civil Liberties Union said in a post originally published on the leftist DailyKos blogsite.

At issue is the Obama administration’s continuing attempts to exempt top policymakers and the torturers themselves from investigation of violation of federal [felony torture statutes](#). Attorney General Eric Holder [announced](#) upon his August 24 appointment of Deputy Assistant Attorney General John Durham to investigate widely reported examples of institutionalized torture by CIA personnel that “I have made it clear in the past that the Department of Justice will not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees.” Holder’s original mandate was to investigate only the Justice Department’s Office of Legal Counsel and the mid-level officials — such as torture memo author John Yoo — who gave a legal imprimatur to the Bush policy approved at top levels of the White House.



Torture and “conspiracy to commit torture” carry among the most serious penalties under federal law. Officials who approve of or direct torture are guilty of [felony torture](#) and punishable by up to 20 years in prison per incident (or for life if death results from the torture).

“It would be a dangerous precedent to conclude that lawyers who played a critical role in an illegal program are immune from criminal investigations,” ACLU Executive Director Anthony Romero [concluded](#) back in May. “No one is above the law.”

But “above the law” is just what has happened thus far. At least 34 detainees at Guantanamo and a once-secret prison at Baghram Air Force Base died from abuse that even defense agencies investigations have termed “homicide” cases. As a [Human Rights First report](#) noted in 2006, only 12 U.S. officials have faced disciplinary hearings in those 34 cases.

And those “homicide” figures don’t count abuse that has led to suicide. One detainee in 2006, Las Mani Shaman Turki Al-Habardi Al-Utaybi, committed suicide days before he was scheduled to be released back to his home country of Saudi Arabia. No one had told him of his pending release. Al-Utaybi was a



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deserter from the Saudi military, according to [the U.S. Combat Status Review Board file on him](#), but the Saudis gave him a temporary release “because the physical training was too intense” for him. Al-Utaybi’s flight from military service led to Islamic missionary work (for a mainstream organization) in Pakistan, where he was picked up by Pakistani officials for his fraudulent passport. The Pakistanis turned him over to the United States as a possible terrorist and U.S. officials declared another “victory” in the so-called “war on terror.” U.S. officials never charged Al-Utaybi with committing a crime or plotting any specific crime, but instead the Combat Status Review Board report on him focused upon the illegal means he used to escape his military service in Saudi Arabia (forged passports and illegal immigration to Pakistan).

Al-Utaybi served more than five years of virtual isolation in Guantanamo before his death, but a [report](#) released December 7 by Seton Hall Law School Professor Mark Denbeaux reveals that Al-Utaybi’s death may have been prevented. The report documents that various Standard Operating Procedures had been violated by guards on the night of Al-Utaybi’s death, including the fact that Al-Utaybi was not discovered for more than two hours after his death even though guards were required to make bed checks upon prisoners every 10 minutes.

Then, in a final act of degradation against the innocent detainee, the U.S. military repatriated Al-Utaybi’s body to his Saudi family [without its vital organs](#) (brain, heart, liver and kidney).

The ACLU [broadside](#) against the Obama policy stressed that “the administration has not made good on its promise of accountability. Now the administration is suppressing the evidence rather than disclosing it, and protecting torturers instead of investigating them. It is shielding Bush administration officials from civil liability, criminal investigation, and even public scrutiny.”

The ACLU is careful to say that it’s not too late. However, they [stress](#) that “if the administration doesn’t change course, it will accomplish something that the Bush administration never managed: It will institutionalize a sweeping immunity doctrine for torturers.”

While conservatives have long rightly disagreed with the ACLU on a host of issues, the fact that the Eighth Amendment bans “cruel and unusual punishments” means that any constitutionalist conservative would heartily second the sentiment in that ACLU statement. God-given rights should never be violated, which is why the Constitution enumerates rights that all human beings possess and makes no exceptions in its restrictions on the federal government. Because rights are God-given and possessed by all, the rights to trial by jury and against torture are not limited to only those who are deemed “good citizens” by government officials. Once governments can take away the rights of some individuals, then rights become mere privileges that governments can take from anyone at whim.

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