



Written by [Joe Wolverton, II, J.D.](#) on August 31, 2012

AG Holder Decides Not to Charge CIA Agents in Detainees' Deaths

On August 30, the Obama administration announced that it would not charge CIA agents with any crime in the deaths of two men who reportedly died during interrogation by U.S. intelligence officers.

The decision ends a criminal investigation begun in June 2011 by Attorney General Eric Holder. Holder heeded the recommendation of federal prosecutor John Durham, who in 2009 began his inquiry into the treatment of over 100 prisoners in U.S. custody since the attacks of September 11, 2001.



Durham's investigation into the other detainees held by the CIA ended in 2011 with no charges being filed in those cases either.

In [his statement announcing the decision not to charge the CIA interrogators](#), Holder explained that the Department of Justice "has declined prosecution because the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt."

Although the names of the two men whose deaths were the focus of the probe were not revealed, a grand jury in Alexandria, Virginia has been hearing testimony and reviewing evidence surrounding the death of Gul Rahman while being interrogated at a CIA-controlled prison near Kabul, Afghanistan, as well as the death of Manadel al Jamadi that occurred at the infamous Abu Ghraib prison in Iraq.

As a part of their interrogation of him in November 2002, CIA agents chained Rahman to a concrete wall inside the facility known as the Salt Pit.

In the case of al Jamadi, he died in 2003 while detained by the United States military at the Abu Ghraib facility. Military doctors ruled the death was the result of homicide.

Rather than follow regulations in force at the time, CIA agents chose not to deliver al Jamadi into the custody of the Army. Instead, they covered his head with a sandbag, handcuffed him, and chained him to bars over a window. The interrogators required the prisoner to lean forward thus stretching his arms "painfully behind and above his back" according to the story in the Washington Post.

Al Jamadi endured less than an hour of this treatment before he died.

The [Washington Post reports](#) that after his death, "at least three CIA employees came under scrutiny" for their behavior while interrogating al Jamadi.

Durham investigated these deplorable and deadly actions and has claimed to have found insufficient evidence of any "unauthorized interrogation techniques." That is to say, being chained to walls and being covered with sacks while your limbs are stretched from their sockets is not torture as defined by the government of the United States.

In making such a shocking determination, Durham was guided by the legal direction set out in memos



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written by the Justice Department's Office of Legal Counsel pertaining to the treatment of detainees.

Many Republicans in Congress were outraged when Holder announced his decision last year to proceed in the investigation of the CIA's treatment of detainees suspected of ties to terrorist organizations. These ersatz conservatives argued that such inquiries threatened the safety of intelligence officers prosecuting the War on Terror.

In a comment made during an appearance on CBS's *Face the Nation*, [Senator John McCain \(R-Ariz.\)](#) [said](#) he would consider it "a serious mistake" to investigate allegations of torture by CIA agents.

Holder said in his announcement that Durham's investigation was "limited to a determination of whether prosecutable offenses were committed and was not intended to, and does not resolve, broader questions regarding the propriety of the examined conduct."

Put another way: Torture is still legal and the green light given to the CIA and the military by former president George W. Bush permitting the torture of prisoners is still in effect under President Barack Obama.

When asked about why he wouldn't order criminal investigations in the numerous cases of alleged torture of prisoners during the Bush administration, Obama answered that he had no interest in "looking back."

Perhaps all of us would do well to look back to a time in 1787 when timeless principles of due process, habeas corpus, and the punishment of prisoners were enshrined in the Constitution.

That is unlikely to happen on any official level, however, as the abolition of due process and habeas corpus was codified by Barack Obama in December 2011 when he signed the National Defense Authorization Act into law. A majority of members of Congress from both major political parties voted in favor of the act.

Republican presidential nominee Mitt Romney has refused to commit to vetoing such unconstitutional legislation were he to win the election in November.

At [a Fox News-sponsored debate among Republican presidential candidates](#) held in January, the moderator asked Governor Romney if he would have signed the NDAA.

"Yes, I would have," the now official Republican candidate responded. As boos rained down on him from a small but vociferous group in the crowd, Romney added, "I think it's appropriate in our nation to have the capacity to detain people who are threats to this country."

The potential for despotism shrouded in such language is frightening. Romney embraces the right to deploy the armed forces to arrest and indefinitely detain "threats to this country" without pausing to reflect or reveal the identity of those who will make such determinations.

Not only are both major party presidential candidates in favor of the NDAA, in May [by a vote of 299-120](#), the full House approved the NDAA for Fiscal Year 2013.

The 2013 NDAA retains not only the indefinite detention provisions, but also the section permitting prisoners to be transferred from civilian jurisdiction to the custody of the military.

"The frightening thing here is that the government is claiming the power under the Afghanistan authorization for use of military force as a justification for entering American homes to grab people, indefinitely detain them and not give them a charge or trial," Representative Justin Amash (R-Mich.) said during House debate on an amendment he offered that would have repealed the indefinite



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detention provision of the bill.

Even a cursory reading of the revamped version reveals the presence of these most unconstitutional grants of power, despite assurances that the new language is less offensive to our nearly-1,000-year history of enjoying these basic civil liberties.

That, however, is a look back at history and President Obama wants none of that.

The head of the CIA also counsels against looking back.

On August 30, CIA Director David Petraeus sent a message to employees saying, "As intelligence officers, our inclination, of course, is to look ahead to the challenges of the future rather than backwards at those of the past. Nonetheless, it was very important that we supported fully the Justice Department in its efforts" and "I would like to thank everyone who played a role" in the process.

The *Washington Post* quotes former CIA Director Michael Hayden as saying he was "heartened that the investigation is complete, and I'm heartened by the results. I had great confidence in Mr. Durham. I just regret that many CIA officers had to go through yet another review of these activities."

Looking into the future we see a day where American citizens may be arrested by the military and detained indefinitely based on nothing more than the president's suspicion that they might pose a "threat to national security."

Looking back we see a Constitution that is no longer considered relevant by those in positions of power.

Photo of Attorney General Eric Holder: AP Images



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