



December 22, 2014

The Honorable Eric Holder  
Attorney General  
Department of Justice  
Robert F. Kennedy Building  
Tenth Street and Constitution Avenue, N.W.  
Washington, D.C. 20530

Re: Request for Appointment of a Special Prosecutor for Torture

Dear Attorney General Holder:

We write to urge you to conduct a full investigation of violations of federal criminal laws relating to the rendition, detention, and interrogation (“RDI”) of prisoners held or questioned by the Central Intelligence Agency (CIA) since the September 11, 2001 attacks. While the Department of Justice

by appointing a special prosecutor; provide the prosecutor with files from the investigation completed by John Durham and his investigators, as well as the full 6,700-page version of the Senate torture report; and ask the prosecutor to conduct a comprehensive criminal investigation of the conduct described in the report, including all acts authorizing or ordering that conduct.

In 2009 we welcomed your decision to expand the scope of the investigation then being led by Mr. Durham into the CIA’s destructio i uc q ? i

Office of Legal Counsel.<sup>1</sup> The request we make today is based on the assumption that Mr. Durham pursued a broad mandate with the same independence that United States attorneys ordinarily have in criminal matters within their jurisdiction.

Even with this assumption, however, we believe the appointment of a special prosecutor is now warranted. First, the Senate torture report reveals significant new information about the nature of the abuse inflicted on the CIA's prisoners; the number of prisoners who were subjected to that abuse; and the decisions that led to the infliction of that abuse. Even if Mr. Durham had access to all of the material to which the SSCI had access, as a White House spokesperson recently indicated, the SSCI has now synthesized a huge volume of information into a narrative that clarifies the extent and seriousness of criminal conduct. There is a qualitative difference between having access to more than six million pages of documents and conducting a criminal investigation based on a 6,700-page report that pieces together those documents into a narrative indicating a vast criminal conspiracy, under color of law, to commit torture and other serious crimes.

Second, even if Mr. Durham's mandate was broad, we have been unable to find any evidence that Mr. Durham or his investigators interviewed any prisoner who was subjected to the RDI program. Our organizations represent, or have interviewed, several persons who were subjected to torture or rendition through the RDI program, and none of them were interviewed during the earlier criminal investigation. During the review in November of the United States before the United Nations Committee against Torture in Geneva, the committee raised concerns, based on letters and accounts from torture victims or their attorneys, over whether Mr. Durham had interviewed any detainee. The United States stated it had interviewed 96 persons as part of the investigation, but it did not indicate whether any of the prisoners who were subjected to abuse and torture were among those interviewed. Given both the prevalence and granularity of the facts described in the Senate torture report, the absence or paucity of victim interviews, particularly when many of the victims remain in U.S. custody, undercuts the credibility of the decision not to indict anyone for torture-related crimes.

Third, Mr. Dur

Fourth, insofar as Mr. Durham's investigation excluded potential crimes committed by those who operated within the guidance of the Office of Legal Counsel, and by those who sought to secure that guidance, a new investigation is warranted to address those crimes. The Senate torture report includes evidence that senior CIA officials did not rely on OLC guidance "in good faith," but rather they knew that the conduct amounted to illegal torture before they ever sought the guidance and went looking for legal cover. They sought a guarantee from the Justice Department's Criminal Division that these acts would not be prosecuted, and only when the Criminal Division declined did they seek a ruling by the OLC, which produced the now-

conduct the investigation and make prosecutorial decisions. An appointment with the plenary powers of the attorney general transferred to the prosecutor would help ensure continuity and objectivity.


We thank you again for your attention to this matter. While we recognize that we are making this request during your last weeks in office, we respectfully submit that the need for the appointment of a special prosecutor is sufficiently urgent that it should not be delayed until the confirmation of a new Attorney General.

Please do not hesitate to contact us to discuss this request.

Sincerely,



Anthony D. Romero  
Executive Director  
American Civil Liberties Union



Kenneth Roth  
Executive Director  
Human Rights Watch