

Bar George W. Bush from entering Canada or Prosecute him for Torture

By [Lawyers Against the War \(LAW\)](#)

Global Research, May 26, 2009

lawyersagainsthewar.org 26 May 2009

Region: [USA](#)

Theme: [Crimes against Humanity](#), [Law and Justice](#)

LAWYERS AGAINST THE WAR

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The Right Honourable Stephen Harper
Office of the Prime Minister
80 Wellington Street
Ottawa ON K1A 0A2

The Honourable Rob Nicholson
Minister of Justice, House of Commons
The Honourable Peter Van Loan
Minister of Public Safety,
House of Commons

The Honourable Jason Kenney
Minister of Immigration, House of Commons
The Honourable Lawrence Cannon
Minister of Foreign Affairs, House of Commons

Dear Prime Minister and Ministers Nicholson, Van Loan, Kenney and Cannon;

Bar George W. Bush from entering Canada or prosecute him for torture.

George W. Bush, former President of the United States of America (U.S.) and Commander in Chief of the Armed Force, is reported to be coming to Toronto Ontario on May 29, 2009.

We write to advise you of your duty to immediately take all necessary steps to prevent George W. Bush from entering Canada, in accordance with the Immigration and Refugee Protection Act (IRPA), s. 35 (1) (a).

If George W. Bush enters Canada we demand that he be arrested, as being inadmissible under the IRPA and as a person suspected of torture, and then either prosecuted in Canada for torture or extradited to another country that is willing and able to prosecute as required by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 (CAT).

We remind you that the failure to take one of these actions violates Canada's international law obligations. In addition such inaction denies remedies to victims, ensures impunity for

perpetrators and encourages other instances of torture. For example, reports released this month conclude that torture and abuse of prisoners in Iraq remains “routine and commonplace.” (Iraq Ministry of Human Rights and Human Rights Watch) George W. Bush stands accused of authoring, supervising and directing the most egregious war crimes and crimes against humanity, including torture, during his eight year term as President and Commander in Chief of the U.S. Armed Forces. As such he is inadmissible to Canada under the ‘Human Rights and International Law Violations’ sections of the ‘Inadmissibility Division’ of the IRPA. Inadmissibility under the IRPA, s. 35(1)(a) is established when there are “reasonable grounds to believe” that the person seeking to enter Canada has been involved directly or indirectly in one or more of the impugned acts, namely gross human rights violations, war crimes or crimes against humanity. Torture is a war crime, a crime against humanity and a gross violation of non-derogable rights. The Supreme Court of Canada has interpreted reasonable grounds as ‘something more than a suspicion and less than proof to the balance of probabilities.’ Evidence of Bush’s involvement in authorizing widespread, long term and brutal torture far exceeds the ‘reasonable grounds’ test.

Evidence that U.S. officials tortured—sometimes to death—prisoners in Guantánamo Bay, Abu Ghraib and Bagram prison, already overwhelming, continues to mount. Human rights and legal advocates around the world are unanimous in citing the legal duty under CAT to prosecute Bush and other senior members of the Bush administration. An Appendix to this letter lists some of the evidence of Bush involvement in torture.

As of the date of this letter, over 200 U.S. human rights groups have signed a petition calling for the appointment of a special prosecutor to prosecute members of the Bush administration for torture and other war crimes. U.S. groups representing over 1,000,000 people have filed complaints calling for the disbarment of the Bush administration lawyers who participated in planning the widespread gruesome torture used by the Bush administration. (John Yoo, Jay Bybee, Stephen Bradbury, Alberto Gonzales, John Ashcroft, Michael Chertoff, Alice Fisher, William Haynes II, Douglas Feith, Michael Mukasey, Timothy Flanigan, and David Addington). All available evidence, including the public statements of former vice-president Dick Cheney, indicates that G.W. Bush authorized torture, sometimes on a case by case basis.

By ratifying CAT in 1987, Canada took on a global duty to prevent and punish torture—a duty owed not just to Canadians but to all humankind. To fulfill this duty, Canada created the jurisdiction to prosecute torture wherever it occurs, when the alleged victim is a Canadian citizen or when the alleged perpetrators enter Canada. The Criminal Code of Canada and the Crimes against Humanity and War Crimes Act make torture anywhere, by anyone, an indictable criminal offence in Canada. The jurisdiction and the duty to prosecute have, in the case of G.W. Bush, already been triggered. The duty and jurisdiction were triggered when it was learned that U.S. officials tortured Canadian citizen Omar Khadr and when G.W. Bush previously entered Canada. We note that Mr. Justice O’Reilly of the Federal Court in the April 23, 2009 judgment in *Khadr v. The Prime Minister et al*, confirmed Canada’s obligation to prevent torture within Canada and to prosecute offenders.

As part of the duty to prevent torture, Canada also has an urgent duty to investigate allegations of torture and of other cruel, inhuman or degrading treatment or punishment. Rulings of the CAT Committee establish that delay by a state to investigate allegations of torture or inhumane or degrading treatment is itself a violation of CAT. Canada’s duty to investigate G.W. Bush for torture became imperative once it was known that the U.S. torture

Omar Khadr—i.e. by March 2004. The duty to prosecute becomes imperative when G.W. Bush crosses the border.

The duty to prosecute Bush for torture (and other war crimes and crimes against humanity) once he is in Canada, arises from many sources including: Crimes against Humanity and War Crimes Act (CAHWCA), Criminal Code of Canada, Rome Statute of the International Criminal Court (Rome Statute) and CAT. The Rome Statute, obliges Canada generally to, "...exercise its criminal jurisdiction over those responsible for international crimes." Canada's duty is heightened by refusal of the current U.S. administration to mount investigations and prosecutions of members of the Bush administration. In the face of overwhelming evidence that Bush and other members of the Bush administration conspired to ensure the widespread use of torture on non-U.S. captives held in Guantánamo Bay and other prisons around the world and in the face of enormous pressure from the legal and human rights advocates around the world, the U.S. is opting not to prosecute G.W. Bush and other senior members of the Bush administration.

The government of Canada has no legal options except to either:

1. Bar George W. Bush's entry to Canada under IRPA s. 35; or,
2. Arrest George W. Bush and either prosecute him for torture or extradite him to a state that is willing and able to do so.

We look forward to receiving a timely response to our formal requests for action by the Prime Minister, Minister of Immigration, Attorney General of Canada, Minister of Public Safety and by the Canadian Border Services Agency: actions required by Canadian and by international law.

Sincerely,

Gail Davidson, Lawyers Against the War

Encl.

Appendix re Torture Evidence.

This letter has been copied to:

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Lawyers Against the War (LAW) is a Canada-based committee that opposes war and advocates for adherence to international humanitarian law and against impunity for violators.

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Appendix

The Legal Duty to Prosecute G.W. Bush and other members of the Bush Administration for Torture

I. The International Committee of the Red Cross Report, Regional Delegation for the United States and Canada Report dated February 14, 2007 lists various forms of torture used at Guantánamo Bay Detention Center including:

- 1.3. Other Methods of Ill-treatment
 - 1.3.1. Suffocation by water
 - 1.3.2. Prolonged stress standing
 - 1.3.3. Beatings by use of a collar
 - 1.3.4. Beating and kicking
 - 1.3.5. Confinement in a box
 - 1.3.6. Prolonged nudity
 - 1.3.7. Sleep deprivation and use of loud music
 - 1.3.8. Exposure to cold temperature/cold water
 - 1.3.9. Prolonged use of handcuffs and shackles
 - 1.3.10. Threats
 - 1.3.11. Forced shaving
 - 1.3.12. Deprivation/restricted provision of solid food

II. Admissions of torture by U.S. officials:

-On January 15, 2009 United States Attorney General, Eric Holder stated that "waterboarding" is torture in his Senate confirmation hearing.

-Vice-President Dick Cheney stated unequivocally that the Bush Administration engaged in waterboarding in an interview with ABC News, Monday, Dec., 15, 2008.

-Recently released CIA memos containing the Bush administration's instructions on [torture] extreme interrogation reveal that one prisoner, alleged 9/11 mastermind Khalid Sheikh Muhammed, was subjected to waterboarding 183 times in a single month.

III. U.S. Reports of torture

-In June 2008, Maj. General Antonio M. Taguba (USA-Ret.), author of the U.S. Army's 2004 internal report on Abu Ghraib, Investigation of the 800th Military Police Brigade, stated, "... the Commander-in-Chief [Bush] and those under him authorized a systematic regime of torture.... After years of disclosures by government investigations, media accounts, and reports from human rights organizations, there is no longer any doubt as to whether the current [Bush] administration has committed war crimes. " (Preface to Broken Laws, Broken Lives: Medical Evidence of Torture by U.S. Personnel and its Impacts, A Report by Physicians for Human Rights, June 2008.

-Senate Armed Services Committee Inquiry Into The Treatment Of Detainees In U.S. Custody, Dec. 11, 2008.
<http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>

The bipartisan U.S. Senate Armed Services Committee report, based on an 18-month investigation, 38,000 pages of documents and the testimony of 70 people, concluded, "senior officials [Bush and others] in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees."

IV. UN Special Rapporteur on Torture Opinion:

In February 2009, United Nations Special Rapporteur on Torture, Manfred Nowak, concluded there is now proof of torture authorized by Bush and others. "We possess all the evidence which proves that the torture methods used in interrogation by the U.S. government were explicitly ordered by former U.S. defence minister Donald Rumsfeld...Obviously, these orders were given with the highest U.S. authorities' knowledge."

Professor Nowak further stated that evidence of torture has triggered the legal duty of the U.S. government "to take all necessary steps to bring George W. Bush and Donald Rumsfeld before a court."

V. Spanish Prosecution of Bush Administration officials

Spain has accepted a criminal complaint for torture and initiated a judicial investigation preparatory to prosecution against senior members of the Bush administration who participated in the planning for torture and the means to get away with it. Those charged in Spain are: former U.S. Attorney General Alberto Gonzales; William Haynes II, former general counsel for the Department of Defense; John Yoo, the former Justice Department lawyer who wrote secret legal opinions saying President George W. Bush had the authority to circumvent the Geneva Conventions; Douglas Feith, former undersecretary of defense for policy; Jay Bybee, Yoo's former boss at the Justice Department's Office of Legal Counsel; and David Addington, chief of staff and legal adviser to ex-Vice President Dick Cheney.

The American Civil Liberties supports the Spanish prosecution. A group of U.S. attorneys filed a substantial (141 pages and approximately 20 documents) brief that supports the Spanish prosecution and urges the prosecution be expanded to include George W. Bush. Lead lawyers William F. Pepper said, "It would be an injustice not to prosecute those who occupied the highest positions of authority. It would be like processing Eichmann and overlooking Hitler..."

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