MEMORANDUM FOR JAMES B. COMEY
DEPUTY ATTORNEY GENERAL

Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A

Torture is abhorrent both to American law and values and to international norms. This universal repudiation of torture is reflected in our criminal law, for example, 18 U.S.C. §§ 2340-2340A; international agreements, exemplified by the United Nations Convention Against Torture (the "CAT"); customary international law; centuries of Anglo-American law; and the longstanding policy of the United States, repeatedly and recently reaffirmed by the President.

This Office interpreted the federal criminal prohibition against torture—codified at 18 U.S.C. §§ 2340-2340A—in Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A (Aug. 1, 2002) ("August 2002 Memorandum"). The August 2002 Memorandum also addressed a number of issues beyond interpretation of those statutory provisions, including the President's Commander-in-Chief power, and various defenses that might be asserted to avoid potential liability under sections 2340-2340A. See id. at 31-46.

Questions have since been raised, both by this Office and by others, about the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85. See also, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

It has been suggested that the prohibition against torture has achieved the status of jus cogens (i.e., a peremptory norm) under international law. See, e.g., Siderman de Blake v. Republic of Argentina, 965 F.2d 699, 714 (9th Cir. 1992); Regina v. Bow Street Metro. Stipendiary Magistrate Ex Parte Pinochet Ugarte (No. 3) [2000] I AC 147, 198; see also Restatement (Third) of Foreign Relations Law of the United States § 702 reporters' note 5.
