

June 22, 2017

To:

Chairman John Thune  
Ranking Member Bill Nelson  
Committee on Commerce, Science, and Transportation

CC: All Other Senators

We write to express our serious concerns regarding the nomination of Steven G. Bradbury for general counsel of the Department of Transportation (DOT). Mr. Bradbury's role in justifying torture and cruel, inhuman, or degrading treatment of individuals held in U.S. custody marked him as an architect of the torture program. Not only should the Senate be concerned about confirming a nominee who had a central role in the criminal violation of human rights, but his work during that period calls into question his ability to provide the kind of rigorous, independent legal analysis that is required of any top government lawyer.

Mr. Bradbury was acting head of the Department of Justice's (DOJ) Office of Legal Counsel (OLC) from 2005 to 2009. During that time, Mr. Bradbury wrote several legal memoranda that authorized waterboarding and other forms of torture and cruel, inhuman, or degrading treatment. As such, he is most prominently—and correctly—known as one of the authors of the “torture memos.”<sup>1</sup> His analysis directly contradicted relevant domestic and international law regarding the treatment of prisoners, and helped establish an official policy of torture and detainee abuse that has caused incalculable damage to both the United States and the prisoners it has held.<sup>2</sup>

Mr. Bradbury's role in the torture program, even then, was notorious—so much so that the Senate refused to confirm him as assistant attorney general for the Office of Legal Counsel during the Bush Administration. The Senate now knows even more about Mr. Bradbury's record, and the harm caused by his opinions, based on oversight by the Senate Select Committee on Intelligence and its report on the Central Intelligence Agency's (CIA) use of torture and abuse.

In Mr. Bradbury's time as acting head of the OLC, he demonstrated an unwavering willingness to defer to the authority and wishes of the president and his team instead of providing objective and independent counsel. During congressional testimony in 2007, Mr. Bradbury responded to questions about the president's interpretation of the law of war by declaring, “The President is always right”—a statement that is as outrageous as it is inaccurate.<sup>3</sup> The DOJ Office of Professional Responsibility (OPR) reviewed Mr. Bradbury's “torture memos” and determined that they raised questions about

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<sup>1</sup> See “The Torture Documents,” The Rendition Project, *available at*: <https://www.therenditionproject.org.uk/documents/torture-docs.html>.

<sup>2</sup> See Torture Act 18 U.S.C. § 2340 (1994); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 7, The US ratified Convention against Torture in 1994. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), entered into force March 23, 1976, art. 2. The US ratified the ICCPR in 1992.

<sup>3</sup> Amanda Terkel, “Justice Department Lawyer to Congress: ‘The President is Always Right,’” *Think Progress*, July 12, 2006, *available at*: <https://thinkprogress.org/justice-department-lawyer-to-congress-the-president-is-always-right-1ce40cf3ab61>.

the objectivity and reasonableness of Mr. Bradbury's analyses; that Mr. Bradbury relied on uncritical acceptance of executive branch assertions; and that in some cases Mr. Bradbury's legal conclusions were inconsistent with the plain meaning and commonly held understandings of the law.<sup>4</sup> Senior government officials from the Bush Administration who worked with Mr. Bradbury have said that they had "grave reservations" about conclusions drawn in the Bradbury torture memos and have described Mr. Bradbury's analysis as flawed, saying the memos could be "considered a work of advocacy to achieve a desired outcome."<sup>5</sup>

Moreover, Mr. Bradbury's 2007 torture memo was written with the purpose of evading congressional intent and duly enacted federal law. The Detainee Treatment Act of 2005 (DTA), legislation that passed the Senate with a vote of 90-9, stated, "No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment." However, Mr. Bradbury's memo explicitly allowed the continuation of many of the abusive interrogation techniques that Congress intended to prohibit in the DTA.<sup>6</sup>

Perhaps most concerning from a congressional oversight perspective, Mr. Bradbury affirmatively misrepresented the views of members of Congress to support his legal conclusions. Specifically, in his 2007 memo he relied on a false claim that when the CIA briefed "the full memberships of the House and Senate Intelligence Committees and Senator McCain... none of the Members expressed the view that the CIA detention and interrogation program should be stopped, or that the techniques at issue were inappropriate."<sup>7</sup> In fact, Senator McCain had characterized the CIA's practice of sleep deprivation as torture both publicly and privately, and at least four other senators raised objections to the program.<sup>8</sup>

As a senior government lawyer, Mr. Bradbury authorized torture and cruel treatment of detainees in violation of U.S. and international law. Mr. Bradbury demonstrated either an inability or an unwillingness to display objectivity and reasonableness in evaluating the president's policy proposals. We ask that in reviewing Mr. Bradbury's nomination for general counsel of the Department of Transportation, another profoundly important position of public trust, you take these serious and disturbing factors into consideration.

Sincerely,

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<sup>4</sup> "Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of 'Enhanced Interrogation Techniques' on Suspected Terrorists," U.S. Department of Justice Office of Professional Responsibility, July 29, 2009, *available at*: [https://www.aclu.org/files/pdfs/natsec/opr20100219/20090729\\_OPR\\_Final\\_Report\\_with\\_20100719\\_declassificationns.pdf](https://www.aclu.org/files/pdfs/natsec/opr20100219/20090729_OPR_Final_Report_with_20100719_declassificationns.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> Jane Mayer, *The Dark Side* (New York: Doubleday, 2008): 321-322.

<sup>7</sup> Steven Bradbury, "Memorandum for John A. Rizzo Acting General Counsel, Central Intelligence Agency," U.S. Department of Justice Office of Legal Counsel, July 20, 2007, *available at*: <https://www.justice.gov/olc/file/886296/download>

<sup>8</sup> "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program," Executive Summary, Senate Select Committee on Intelligence, December 13, 2012, 435-436, *available at*: [https://www.feinstein.senate.gov/public/\\_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf](https://www.feinstein.senate.gov/public/_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf)

American Civil Liberties Union

Appeal for Justice

Center for Constitutional Rights

Center for Victims of Torture

The Constitution Project

Council on American-Islamic Relations

Defending Rights & Dissent

Human Rights First

Human Rights Watch

The Leadership Conference on Civil and Human Rights

National Religious Campaign Against Torture

Open Society Policy Center

Physicians for Human Rights

Win Without War