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This is how one of the darkest chapters in U.S. counterterrorism ends: with practically every instance of suspected CIA torture dodging criminal scrutiny. It's one of the greatest gifts the Justice Department could have given the CIA as David Petraeus takes over the agency.

Over two years after Attorney General Eric Holder instructed a special prosecutor, John Durham, to “preliminar[ily] review” whether CIA interrogators unlawfully tortured detainees in their custody, Holder announced on Thursday afternoon that he’ll pursue criminal investigations in precisely two out of 101 cases of suspected detainee abuse. Some of them turned out not to have involved CIA officials after all. Both of the cases that move on to a criminal phase involved the “[death in custody](#)” of detainees, Holder said.

But just because there’s a further criminal inquiry doesn’t necessarily mean there will be any charges brought against CIA officials involved in those deaths. If Holder’s decision on Thursday doesn’t actually end the Justice Department’s review of torture in CIA facilities, it brings it awfully close, as outgoing CIA Director Leon Panetta noted.

“On this, my last day as Director, I welcome the news that the broader inquiries are behind us,” Panetta wrote to the CIA staff on Thursday. “We are now finally about to close this chapter of our Agency’s history.”

From 2002 to 2008, the CIA captured, detained and interrogated an unknown number of suspected “high value” members of al-Qaida. With White House complicity, lawyers from the Justice Department blessed “enhanced interrogation” techniques that the U.S. [used to prosecute people for performing](#), like waterboarding, an act of simulated drowning. (President George W. Bush ordered a stop to waterboarding in 2004.) Other newly approved techniques included the “[insult slap,](#)” [“stress positions,”](#) and [“sleep deprivation beyond 72 hours](#),” several of which were used in [conjunction](#) with [one other](#).

In perhaps the most famous case, Khalid Sheikh Mohammed, the mastermind of 9/11, was [waterboarded 183 times in a single month](#) while the CIA held him at an undisclosed “black site” prison. (Bush closed those prisons in

2006 and sent their occupants to Guantanamo Bay.) Holder's decision means that those who waterboarded Mohammed will not face any criminal penalty.

President Obama ordered an end to the CIA's "enhanced interrogation" program as one of his first acts in office. But his administration was bitterly divided on whether the Justice Department should prosecute either CIA officials and the White House and Justice Department policymakers and lawyers who prompted the torture. Panetta argued vigorously against an inquiry, warning it would place all CIA operations under a legal cloud. Holder ultimately opted to restrict Durham's inquiry — originally focused on the destruction of videotapes of CIA interrogation — to low-ranking interrogators who might have gone beyond the limits of what Justice Department and CIA lawyers authorized for detainee treatment.

Holder's inquiry was the subject of fierce criticism from Republicans, from [ex-Veep Dick Cheney on down](#), even as liberals [bemoaned](#)

Holder's decision not to investigate Bush officials. Given the political heat on Holder, and Obama's pledge to "

[look forward as opposed to looking backwards](#)," it might be surprising that Holder is pursuing criminal inquiries in even two cases. But the test of those cases will be whether they can lead to indictments.

Only one person has ever been convicted in relationship to CIA torture, a [contractor named David Passaro](#), whom a jury [found guilty in 2006](#)

of involvement in the beating death of Afghan detainee Ahmed Wali. Holder did not release the names of the detainees whose deaths prompt the remaining two criminal investigations.

The value of intelligence gleaned from CIA torture is in fierce and highly politicized dispute. One of the very CIA interrogators who avoided Justice Department prosecution, Glenn Carle, writes in a forthcoming book, *The Interrogator*, that "close review of most specific claims of critical intelligence obtained from rendition, detention and enhanced interrogation techniques shows that, in almost every case, the 'intelligence' obtained was faulty and subsequently discredited or suspect, or of secondary importance."

The architects of the torture policies, Carle continues, are “either sincerely misinformed... persist in their delusions, are protecting from criticism the policies they have advocated and the men who made them, or are incapable or unwilling to acknowledge grievous error.”

During his confirmation hearing last Thursday, Petraeus issued a public plea to take the “rear view mirrors off the bus” and drop any inquiries into CIA torture. He also suggested that the CIA might return to abusive interrogations in “[special cases](#)” of imminent danger, prompting [criticism from Sen. Mark Udall](#) (D-Colo.). The Senate confirmed Petraeus as the next CIA director on Thursday, 94-0, practically simultaneously with Holder’s announcement. Udall did not object.

*Photo: Flickr/ [Sandeep Thukral](#) . From Amsterdam’s Museum of Torture*