

Former detainees argue right to sue Rumsfeld over torture

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Nine former detainees are seeking the right to sue outgoing Defense Secretary Donald Rumsfeld and three other senior US Army leaders for torture suffered at US-run prisons in Afghanistan and Iraq. The suit was argued Friday before Chief Judge Thomas F. Hogan of the US District Court for the District of Columbia.

The case marks the first time a federal court has considered whether top US officials can be held legally accountable for torture and abuse of detainees held in military custody. It has far-reaching implications for the thousands of prisoners held and tortured in the name of the “war on terror” by the US at facilities in Guantánamo, Iraq, Afghanistan and other countries worldwide.

The suit was first filed in March 2005 by the American Civil Liberties Union (ACLU) and Human Rights First on behalf of prisoners held at Abu Ghraib in Iraq, Kandahar and Bagram in Afghanistan and other US-run facilities. The plaintiffs are asking for unspecified monetary damages and that their treatment be declared illegal.

In addition to Rumsfeld, the suit names three US military officials as defendants: Lt. Gen. Ricardo S. Sanchez, former top commander in Iraq; Col. Thomas M. Pappas, former chief military intelligence officer at Abu Ghraib; and former Brig. Gen. Janis L. Karpinski, military police commander at Abu Ghraib before her demotion following revelations of torture at the facility.

The suit charges that while in US custody, the men were subjected to abuse, torture and other cruel and degrading treatment. This included repeated severe beatings (some to the point of unconsciousness), sexual humiliation and assault, death threats, mock executions, restraint in excruciating positions, cutting with knives, being locked in boxes and being urinated upon. All of the men were subsequently released without charges.

The ACLU and Human Rights First argue that the US Constitution and international treaties signed by the US clearly prohibit torture and require government leaders to act when they know or should have known that abuses are being committed. The Bush administration contends that constitutional protections do not apply to non-citizens outside the US, or to those they have classified as “enemy combatants.”

President Bush and other top administration officials have maintained in the face of overwhelming evidence to the contrary that the US “does not torture.” In a farewell ceremony at the Pentagon on Friday, Donald Rumsfeld claimed that the “single worst day” of his nearly six-year term as defense secretary was when he learned in the spring of 2004 of the Abu Ghraib prisoner abuses.

Countering such claims, the civil rights groups’ lawsuit charges that Rumsfeld and the other defendants had been aware of the abuse for years. They were repeatedly notified of abuse and torture of detainees in Iraq and Afghanistan in reports by the International Red Cross, complaints by other human rights organizations and through documents compiled by the US military itself.

The suit further charges that in December 2002, Rumsfeld personally approved of illegal interrogation techniques, including such brutal methods as the use of “stress positions,” isolation and sensory deprivation, humiliation through the removal of clothing, and intimidation through the use of dogs.

Lucas Guttentag of the ACLU, lead counsel for the former prisoners, also argued that because Iraqi law had been suspended after the US invasion, if US officials cannot be held accountable under US law for their actions, the detainees will be left with no legal recourse—a veritable “rights-free zone” for the victims

of abuse at the hands of the US military.

Guttentag added, “There must be legal accountability in a court of law for high-ranking government officials who order or allow torture in violation of the most fundamental legal norms that govern our society. Torture is universally prohibited, but Secretary Rumsfeld and the other defendants have not been held responsible for the orders they gave and the abuse they permitted.”

Deborah Pearlstein, director of Human Rights First’s Law and Security program, commented on the suit, “Our clients’ case is about ensuring that there’s meaningful accountability, to create an effective deterrent against future violations and to ensure the courts’ ongoing role in enforcing the law against torture.”

Referring to last June’s decision in *Hamdan v. Rumsfeld*, in which the US Supreme Court struck down the Bush administration’s military commissions set up to try prisoners at Guantánamo Bay, Cuba, Pearlstein added, “The Supreme Court has made it clear that wartime does not create a law-free zone.”

Government lawyers argue that the suit should be dismissed because Rumsfeld was acting within the course of his official duties, and that the right of detainees to sue in this case could expand foreign citizens’ rights to file suits in US courts far beyond what the Supreme Court has so far allowed.

Judge Hogan questioned whether the plaintiffs had the right to sue under the US Constitution. “There is substantial difficulty in recognizing claims of non-citizens held in other countries,” he said. In an indication of the implications of the suit, he asked Guttentag what would prevent Osama bin Laden from taking George Bush to court for authorizing the military to hunt him down and kill him. “Where does it stop?” Hogan asked.

Hogan added that if former detainees had the right to sue for violations of their rights under the terms of the Geneva Conventions and other international treaties, it would allow “individuals around the world to sue here in the US” for a range of injuries—not simply those limited to torture. In other words, allowing the prosecution of Rumsfeld in this case could open the floodgates for a raft of prosecutions of US government crimes.

The judge did not rule immediately in the District

Court case, but said he would render a decision quickly. The suit in US federal court follows similar charges filed November 14 in Germany by the US-based Center for Constitutional Rights (CCR) and several other human rights organizations on behalf of 12 victims of US torture and illegal detention.

The complaint was submitted to a German prosecutor on behalf of 11 Iraqis formerly detained at Abu Ghraib and 1 Saudi prisoner currently held in Guantánamo. Defendants in the case include Rumsfeld, former White House counsel and current Attorney General Alberto Gonzales, former CIA director George Tenet, and 11 other current and former Bush administration officials and military officers. German law allows such cases to be heard in Germany regardless of where the alleged war crimes were committed.

As in the ongoing US suit, the allegations in the German case relate to the role of these government officials in devising and implementing an international network of torture and illegal detention. They bring into focus the role of high-level US government and military officials in operating a systematic network of torture and abuse in violation of international law—engineered and implemented at the top levels of the Bush administration, including Donald Rumsfeld, President Bush and Vice President Dick Cheney.



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