

Spanish court weighs torture charges against former US officials

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A Spanish court has initiated proceedings that are likely to result in criminal charges against six top legal officials in the Bush administration for their role in crafting the justifications for the use of unlawful detention, torture and other internationally outlawed methods in the "war on terrorism."

The accused include former White House counsel and later US Attorney General **Alberto Gonzales** and former Justice Department lawyer **John Yoo**, who authored the infamous "torture memo" that justified waterboarding and narrowly defined torture as acts that "would result in death, organ failure, or serious impairment of bodily functions." Also charged is Yoo's former boss in the Justice Department's Office of Legal Counsel **Jay Bybee**; former Under Secretary of Defense for Policy **Douglas Feith**; former General Counsel for the Department of Defense **William Haynes**; and **David Addington**, who was the former chief of staff and legal advisor to Vice President Dick Cheney.

A Spanish human rights group, the Association for the Dignity of Prisoners, filed the legal case on March 17 in Spain's National Court (*Audiencia Nacional*). The court gave the case to Judge Baltasar Garzón, who gained international fame in 1998 for issuing an arrest order for Augusto Pinochet for the murder, disappearance and torture of Spanish citizens under his military dictatorship in Chile. Pinochet was held under house arrest in Britain for a year and a half until the British government finally rejected Spain's extradition request and allowed him to return to Chile.

Garzón has already turned the 98-page complaint [PDF] over to state prosecutors for review, and lawyers close to the case have stated that it is almost inevitable that a criminal investigation will proceed, potentially resulting in orders for the arrest of the six US officials, placing them in jeopardy of facing the same fate as Pinochet if they travel abroad.

The complaint argues that Spain has jurisdiction to try the American officials under universal jurisdiction, the same principle invoked in the Pinochet case, which holds that

actions so heinous that they rise to the level of crimes against humanity may be tried by any court in the world.

As in the Pinochet case, however, the complaint also anchors its claim on jurisdiction to the fact that five Spanish citizens were victims of the policies crafted and justified by the accused, having been held without charges in Guantánamo and subjected to torture.

It also argues that the US use of torture to extract confessions had forced the Spanish Supreme Court's acquittal of all five of the former Guantánamo detainees, whom Garzón himself had charged with having links to Al Qaeda. This connection provides Garzón with grounds for reopening the case and charging the six former American officials.

The four lawyers who submitted the complaint are the same ones who drafted charges against former Israeli Defense Minister Binyamin Ben Eliezer in connection with the killing of 14 civilians in the 2002 Israeli bombardment of Gaza. A National Court judge has ruled that the charges may go to trial, a decision that touched off a bitter denunciation by the Israeli government.

The complaint traces the development of the Bush administration's creation of the legal framework for carrying out its crimes. It provides a detailed review of the way in which methods of torture were introduced at Guantánamo at the instigation of the highest officials in the Bush administration.

The arguments made by those accused in the complaint centered on the conception that President George W. Bush, as commander-in-chief in the "global war on terrorism," had unchallengeable powers that overrode both domestic and international law, allowing him to ride roughshod over the US Constitution and ignore the Geneva Conventions as well as treaties against torture signed by Washington.

The document is based in large measure on recently released legal memos drafted by the accused in the aftermath of the September 11, 2001, terrorist attacks. In one of nine previously secret memos released by the US Attorney General Eric Holder at the beginning of March, Bybee, of

the Justice Department's Office of Legal Counsel, assured Haynes at the Pentagon that the practice known as "extraordinary rendition," in which those captured by the US were sent to third countries to be tortured, was entirely legal.

"[A]s Commander in Chief and Chief Executive, the President has the plenary constitutional power to detain and transfer prisoners captured in war. We also conclude that neither the GPW [Geneva Convention Relative to the Treatment of Prisoners of War] nor the Torture Convention restrict the President's legal authority to transfer prisoners captured in the Afghanistan conflict to third countries," Bybee wrote.

The complaint filed in the Spanish court charges the six officials with having acted to transform the law into "mere juridical window-dressing for fomenting, practicing and supporting torture in its various forms."

Significantly, the document cites the arguments of American prosecutors in the so-called Judges' Trial in which 16 German jurists and lawyers were prosecuted for war crimes and specifically with creating the legal statutes and practices that facilitated the Hitler dictatorship and its acts of mass murder, aggression and torture.

The complaint states that the accused "are all American lawyers and jurists who under the previous American government and as a function of the posts that they occupied within it...participated actively and decisively in the elaboration, ratification and putting into practice of a body of statutory law and a juridical framework which allowed: depriving an important series of prisoners of fundamental rights; the structuring and implementation of new interrogation techniques that embraced even torture; providing legal cover for the situation of these prisoners; supporting those persons participating in the illicit activities of torture and, above all, establishing absolute impunity for all those functionaries, military, doctors and other personnel who participated in what happened in the Guantánamo Detention Center."

It charges the accused officials with having worked deliberately to repeal the prohibition against torture "by means of twisted interpretations of both US and international norms, with the aim of creating a center of detention and systematic torture, while at the same time procuring impunity for those who implemented these policies, gave orders for their practice, for those who consented and were mute spectators to what was carried out at the base at Guantánamo, where the detained were subjected to terrible tortures."

In a statement to the Associated Press, one of the Spanish lawyers, Gonzalo Boyé, stressed, "Our case is a denunciation of lawyers, by lawyers, because we don't believe our profession should be used to help commit such

barbarities."

While most of those named in the complaint refused to comment, Douglas Feith, the former undersecretary of defense who was implicated in the fabrication of phony intelligence to justify the war against Iraq, claimed the charges "as related to me make no sense," adding that they accused him of "promoting a controversial position that I never advocated."

The Spanish lawyer Boyé responded by advising Feith to read the complaint and get a "very good lawyer." Boyé added, "If he's so sure of what he is saying—then the address of the National Court is 22 Genova Street, second floor."

The complaint includes references to a February 2002 "legal analysis" written by Feith justifying the denial of prisoners taken by the US in the "war on terrorism" all guarantees under the Geneva Conventions. It also quotes extensively from Feith's earlier writings in which he justified this position as a necessary condition for victory in counter-insurgency operations waged by the US military.

It is taken for granted by the media that no matter what the Spanish court decides, the accused former Bush administration officials will never be extradited to stand trial.

Washington accepts the legal principle of universal jurisdiction, except in relation to itself. Just last October, a federal court in Miami found Chuckie Taylor, the son of the former Liberian president, guilty of torture for acts carried out in Liberia. He was sentenced to 97 years in a US prison.

Then-Attorney General Michael Mukasey praised the conviction, declaring, "I hope this case will serve as a model to future prosecutions of this type." Clearly, however, there is no intention of invoking this model in relation to the prosecution being prepared in Spain.

For its part, the Obama administration has signaled its opposition to any attempt to hold the former officials of the Bush administration accountable for their crimes. As President Obama put it, "We need to look forward as opposed to looking backwards."

Moreover, the administration has sent Justice Department lawyers into court to defend these crimes and prevent any legal challenge to the practices of torture, extraordinary rendition and illegal domestic spying.



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