

White House bars prosecution of Bush officials who authorized torture

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In the wake of last week's release of the top-secret Bush administration documents setting out a pseudo-legal justification for torture, the Obama administration is caught in a devastating political contradiction.

The documents, legal memos drafted by the US Department of Justice in 2002 and 2005, clearly establish that acts of torture which are criminal under both US and international law were authorized and justified by the highest levels of the Bush administration. But while making the documents public, Obama has asserted that both those responsible for devising the torture policy and those who carried it out will not be prosecuted.

This directly implicates the current administration in the cover-up of crimes carried out by its predecessor, and involves current top US government officials, beginning with Obama, in a flagrant violation of international laws which impose on the administration a legal obligation to prosecute those guilty of torture.

White House Chief of Staff Rahm Emanuel confirmed Sunday that Obama's opposition to any prosecution extends not only to CIA agents who directly participated in torture but also to all the top officials of the Bush administration who authorized and justified the policy.

Emanuel was speaking on the ABC News interview program "This Week with George Stephanopoulos." Responding to a question from Stephanopoulos about Obama's decision to block prosecution of the CIA agents who carried out torture at secret prisons around the world, Emanuel noted that the new administration had banned methods employed at a half dozen CIA "black sites," including waterboarding, slamming prisoners' heads into walls, extreme sleep deprivation and exposure to cold—effectively admitting that their use was repugnant and a violation of law.

Emanuel reiterated the argument made by Obama and Attorney General Eric Holder last week when they rejected any prosecution of those who engaged in torture on the grounds that they had relied on advice from Bush administration lawyers that the abusive interrogation methods were legal.

Stephanopoulos continued, "The president has ruled out prosecution for CIA officials who believed they were following the law. Does he believe that the officials who devised the policies should be immune from prosecution?"

The White House aide initially avoided responding, describing Obama's wrestling with the decision to release the torture memos while barring prosecution of those who acted on them. "He believes that people in good faith were operating with the guidance they were provided," Emanuel said.

Stephanopoulos repeated the question, asking, "What about those who devised the policy?" Emanuel responded, "Yeah, but those who devised the policy, he believes that they were, should not be prosecuted either. And it's not the place that we go, and as he said in that letter, and I would really recommend people look at the full statement, not the letter, the

statement, and that second paragraph: 'This is not a time for retribution. It's a time for reflection. It's not a time to use our energy and our time in looking back and in a sense of anger and retribution.'"

Emanuel's comment makes it clear that Obama has bowed to enormous pressure from the US military/intelligence apparatus. The British newspaper *Independent* reported that four past CIA directors, including Democrats John Deutch and George Tenet, Republican Porter Goss and General Michael Hayden, had lobbied the White House furiously both to block any torture prosecution and to bar release of the torture memos.

Hayden continued to oppose the release of the memos, conducting a public campaign that is unprecedented for a former CIA chief and retired general. He and former attorney general Michael Mukasey wrote an op-ed for the *Wall Street Journal* Friday, and Hayden appeared on "Fox News Sunday" to denounce Obama for allegedly jeopardizing US national security and aiding terrorists by making the memos public.

In his statement exonerating the CIA agents, Obama took note of what he described as "disturbing disunity" in the United States fueled by the secret interrogations. He was referring, not to popular revulsion against torture, but to the growing and publicly expressed bitterness of the CIA and intelligence apparatus at having their criminal acts exposed and their fierce opposition to being held accountable.

There is no doubt that a major factor in Obama's decision against any investigation or prosecution of those responsible for torture was fear that such a course would exacerbate the conflict within the state and threaten the political stability and even the physical security of his own government.

Obama has tread very lightly in relation to the security apparatus, retaining Robert Gates as secretary of defense as well as the generals appointed by Bush to command in Iraq and Afghanistan, and installing military officers and career intelligence agents in key security positions. (CIA Director Leon Panetta, a former Democratic congressman, is a figurehead charged with rebuilding the political standing of the agency, while Deputy Director Stephen Kappes, a 30-year CIA veteran, runs day-to-day operations).

The eventual decision by the White House amounts to making public the evidence of war crimes while barring any prosecution of those who carried out the crimes or those who ordered them. This is a direct violation of international law, according to the United Nations special rapporteur on torture, Manfred Nowak.

In an interview with the Austrian newspaper *Der Standard*, Nowak pointed out that the UN Convention Against Torture requires the prosecution of those who engage in actions like waterboarding that are universally regarded as torture.

"The United States, like all other states that are part of the UN convention against torture, is committed to conducting criminal investigations of torture and to bringing all persons against whom there is sound evidence to court," he told the newspaper.

Nowak said that the excuse given by Obama, that the CIA torturers were

relying on legal advice and instructions from the US government, could only be a mitigating factor, not a basis for absolution. “The fact that you carried out an order doesn’t relieve you of your responsibility,” he said. Obama’s only option was to issue a formal presidential pardon or have Congress enact a legal amnesty, he said.

Last month Nowak, an Austrian law professor, urged the Obama administration to bring charges against former president George W. Bush and former defense secretary Donald Rumsfeld for torture and abuse of prisoners at Guantanamo Bay and Abu Ghraib. He said the UN was in possession of documents that proved Rumsfeld gave orders for the torture of the prisoners, and that the abuse was not the result of a handful of rank-and-file soldiers acting on their own.

Criticism by human rights groups

Civil liberties and human rights organizations in the United States and internationally have condemned Obama’s exoneration of the CIA torturers. An Amnesty International representative, Tom Parker, told the British Broadcasting Corporation, “Bottom line here is you’ve had crimes committed.” He continued: “These are criminal acts. Torture is illegal under American law. It’s illegal under international law. America has an international obligation to prosecute the individuals who carry out these kinds of acts.”

The US branch of Amnesty International blasted the Obama decision as a “get-out-of-jail-free card to individuals who, by US Attorney General Eric Holder’s own estimation, were involved in acts of torture.”

A statement from the Center for Constitutional Rights said, “Whether or not CIA operatives who conducted waterboarding are guaranteed immunity, it is the high-level officials who conceived, justified and ordered the torture program who bear the most responsibility for breaking domestic and international law, and it is they who must be prosecuted.”

Anthony Romero, executive director of the American Civil Liberties Union, whose lawsuit ultimately compelled Obama to make a decision about releasing the torture memos, said that the ban on prosecution of CIA torturers was a response to “partisan concerns and political agendas.” Rebutting Obama’s language about “looking forward,” he added, “We have to look back before we can move forward as a nation. When crimes have been committed, the American legal system demands accountability.”

Such criticism has been little reported in the American media. The Sunday talk shows on all four television networks sought to limit discussion to whether Obama’s release of the torture memos was advisable, highlighting right-wing attacks by former Bush administration officials and Republican congressional leaders.

Not a single program invited a speaker opposed to the Obama policy of amnesty for the torturers. As in the initial news coverage of Obama’s decision, there appears to be a semi-official ban on use of the word “torture” to characterize the treatment of the CIA prisoners.

There is, however, deeply felt popular opposition to the torture program and Obama’s decision to protect those responsible. Several prominent individuals had letters published in the *New York Times* Friday criticizing the Obama decision.

Colleen Rowley, a retired FBI agent who helped expose the FBI headquarters cover-up of the preparation of the 9/11 attacks, wrote, “If holding the CIA operatives accountable for violating federal or international laws is retribution, then the prosecution of ordinary citizens for crimes is also retribution. The president does not have the authority to be selective about who should or should not be charged with a crime...”

A career Justice Department civil attorney, John S. Koppel, declared his

“personal view” that “Obama should not sanction impunity for high-ranking government officials who approved or facilitated the use of torture. Using torture is not merely an ethics violation. It is also a domestic and international crime...”

The chairwoman-elect of the board of trustees of the American Medical Association, Rebecca J. Patchin, wrote that the CIA’s “use of health personnel in torture” was a clear violation of the AMA’s code of medical ethics. “In addition, physicians must help support victims of torture, strive to prevent torture, and report any instance of torture and coercive interrogation,” she wrote.

These were clearly only examples of a flood of letters and e-mails to the *Times* and other newspapers protesting Obama’s decision to whitewash Bush administration torture policies. The *Times* itself published an editorial Sunday suggesting that top Bush administration officials, including former vice president Dick Cheney, former defense secretary Donald Rumsfeld and former attorney general Alberto Gonzales, should be questioned under oath, and urging that Jay Bybee, author of one of the torture memos and now a federal appeals court judge, should be impeached and removed from the bench.

The editorial was notably silent on former president George W. Bush, who, as head of the executive branch and commander in chief, bears the ultimate legal responsibility for all the crimes carried out by his administration. This omission only underscores the political cowardice of American liberalism, including the Democratic Party establishment and the media, which tremble before the power of the US military/intelligence apparatus.

The actions of the Obama administration, with the full support of congressional Democrats and the endorsement or complicity of the media, demonstrate a central political fact: There is no constituency for the defense of democratic rights in any section of the US ruling elite.

The Obama administration is focused on the defense of the financial interests of the stratum of billionaires and multi-millionaires at the top of American society. This social program is incompatible with the defense of democracy.

A struggle in defense of democratic rights can develop only on the basis of the independent and leading role of the working class, which must articulate and mobilize the deeply felt sentiments of tens of millions of people who are appalled at the identification of the United States with torture, secret prisons and the panoply of crimes once associated with military dictatorships and fascism.



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