

Spanish judge launches new torture probe of Bush officials

Paul Mitchell, Chris Marsden
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Spain's top investigative judge, Baltasar Garzón, has launched a new criminal investigation into allegations of torture at Guantánamo Bay and other US prison camps that will target the "possible material authors, enablers and accomplices" of the illegal abuse of detainees.

In a strongly worded court order issued Wednesday, Garzón indicated that he would investigate the role of high-level Bush administration officials in what he called an "authorized and systematic plan for torture and harsh treatment of people deprived of their freedom without any charges and without the most basic elemental rights for detainees, set forth and demanded by international treaties."

Guantánamo Bay, he wrote, could be seen as "a true 'limbo' in the legal sense which is defined by a multitude of treaties and conventions signed by the International Community."

Garzón clearly implied that he would consider bringing charges against Bush officials who authored, directed or sanctioned the use of torture, not simply the CIA agents who carried it out or the Justice Department lawyers who provided pseudo-legal justifications.

He wrote that previously classified Bush Justice Department memos released last month by the Obama administration indicated the existence of a torture program at the US prison at Bagram air base in Afghanistan as well as at Guantánamo that had been sanctioned at "almost an official level." There was, therefore, "penal responsibility in the different structures of execution—command, design and authorization of this systematic plan for torture."

He added that the memos, drafted by Justice Department lawyers in 2002 and 2005, provided evidence "of what previously could only be insinuated."

In a ten-page writ, Garzon wrote that abuses at Guantanamo and other US prisons for terror suspects suggest "the existence of a concerted plan to carry out a multiplicity of crimes of torture." He said he would request copies of the memos from the Obama administration and also ask Spanish judge Ismael Moreno for the information he has gathered in the course of an investigation into CIA rendition flights that landed in Spain.

Although Garzón did not name potential targets of his probe, the language of his writ raises the possibility of his issuing

arrest warrants for top Bush officials such as Vice President Dick Cheney, Defense Secretary Donald Rumsfeld, National Security Adviser and later Secretary of State Condoleezza Rice, and Bush himself.

In 1998, Garzón issued an arrest warrant for Augusto Pinochet while the former Chilean dictator was visiting Britain and demanded his extradition to stand trial in Spain. This set off a legal dispute that forced Pinochet to remain under house arrest in Britain for 17 months. Top Bush administration officials, including the former president, now have good reason to avoid leaving the US for fear of a similar fate, or worse.

Garzón cited Spain's "universal jurisdiction" statutes and provisions in the Geneva Conventions and international laws banning torture that obligate signatories to prosecute officials of any government who violate the proscriptions against torture. He said he would review the testimony of four former Guantánamo Bay detainees. All four were tried for being Al Qaeda members several years ago, but Hamed Abderrahman Ahmed and Lahcen Ikassrien were acquitted by Spain's High Court, and Abdul Latif al Banna and Omar Deghayes had their warrants for arrest in the UK cancelled.

The detainees allege that they "had suffered from the practice of various acts of physical and psychological aggression against their persons during their detention in different countries, under the authority of US Army personnel." The list of abuses includes beatings, sexual assault, exposure to extreme heat and cold and continuous loud music, long periods of interrogation and sleep deprivation.

Garzón's announcement compounds the political crisis that has enveloped the Obama administration over the US' use of torture and other violations of domestic and international law. Obama has sought to give the impression that his administration represents a break from these practices, while defending some of the most egregious crimes, such as the abduction and "disappearance" of individuals and their "rendition" to face imprisonment and torture at the hands of other governments.

Obama decided on April 16 to release the Bush-era memos approving methods such as waterboarding, which his administration has acknowledged constitute torture. He did so only under the pressure of a court-imposed deadline for their

release.

At the same time, he ruled out any investigation or prosecution of CIA agents who carried out torture. He evidently hoped thereby to put an end to the simmering controversy over torture, placating his liberal supporters and world opinion while reassuring the intelligence and military establishment and Bush officials that they would not be held accountable.

The move had the opposite effect, sparking public denunciations of the administration by Bush officials, including Cheney and former CIA Director Michael Hayden, who have sought to mobilize disaffected sections of the intelligence and military apparatus and right-wing forces more generally by defending the torture of alleged terrorists and charging Obama with undermining US national security.

In the face of a mounting conflict within the state, administration officials have declared their opposition to any public investigation of Bush's torture program. This places Obama in the position of acknowledging state crimes while defending the perpetrators.

The Democratic leadership in Congress has followed Obama's lead, opposing any criminal investigation of Bush administration officials and rallying instead behind a Senate Intelligence Committee probe that is being conducted behind closed doors, based on assurances that it will be "bipartisan" and "non-political" and that most, if not all, of the findings will remain classified.

Garzón's announcement on Wednesday follows his attempt to bring torture charges against six Bush administration officials involved in the drafting of the torture memos. Spain's attorney general, Candido Conde-Pumpido, has publicly opposed this investigation and sought to quash it. The move to block the investigation came after high-level discussions between Washington and Madrid, including direct talks between Obama and Socialist Party (PSOE) Prime Minister José Luis Zapatero.

Garzón's new investigation is an act of defiance that ups the political ante, targeting the high-level Bush officials who authored the torture program.

At a press conference Wednesday, Obama reiterated his belief that the waterboarding authorised by Bush was torture. Yet top former representatives of the Bush administration continue to defend such practices and their sanctioning of them.

One of those named in Garzón's original case, Jay Bybee, who as deputy assistant attorney general signed some of the torture memos, was appointed by Bush to a federal appeals court judgeship. He faces growing demands for his impeachment. On Wednesday, he broke his silence and defended his role in approving the torture of detainees. He told the *New York Times*, "I believed at the time, and continue to believe today, that the conclusions were legally correct."

If anything, Condoleezza Rice's defence of her actions is more brazen than that of Bybee. On Thursday, the *Huffington Post* web site posted an account of a recent exchange between

Rice and students during a speaking appearance at Stanford University. When students asked her whether waterboarding was torture, she replied, "[B]y definition, if it was authorized by the president, it did not violate our obligations under the Convention Against Torture."

Rice's position is that Bush personally sanctioned waterboarding and that presidential authority overrides the rule of law. In seeking to defend herself, she has effectively placed Bush himself directly in the line of fire.

Obama's attorney general, Eric Holder, refused to say whether the US would cooperate with Garzón's investigation. In reply to a question, he merely said, "Obviously, we would look at any request that would come from a court in any country and see how and whether we should comply with it."

Michael Ratner, president of the Center for Constitutional Rights (CCR), which represents many of the Guantánamo Bay detainees, said of Garzón's new investigation, "The torture conspirators are in deep trouble. Even if the US fails in its obligation to criminally investigate, Spain will. The conspirators can run, but they can't hide. It is conceivable that arrest warrants have already been issued or will be soon. Indictments will almost surely follow. The torture team's travel options are narrowing."

The attitude of the American political and media establishment to Garzón's investigation is indicated by the virtual silence with which the media has greeted it. It has barely been reported on the television news channels and been given only the most perfunctory coverage in the print media. An article was published in the electronic edition of the *New York Times* Wednesday, but not in the next day's print edition.

This response demonstrates once again the complicity of the media, both in the criminal actions perpetrated by the Bush administration and the efforts by Obama to prevent those guilty of state crimes from being held accountable.



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