White House rejects criminal charges in CIA destruction of torture videos

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The five-year statute of limitations for criminally prosecuting the Central Intelligence Agency (CIA) officials who destroyed videos depicting torture during interrogations expired Monday with no charges being filed. The lapsing of the case followed a nearly three-year-long investigation by a special prosecutor.

Before their destruction, government officials were ordered by courts to preserve all records of so-called "enhanced interrogations." Both before and after the videos were destroyed, officials lied repeatedly about the recordings' existence.

Monday's non-action is the latest by the Obama administration to cover up Bush era war crimes. Previously, Attorney General Eric Holder invoked the "state secrets" privilege to quash a case brought by torture victims against the private contractor hired by the CIA to transport them abroad for torture, and to block a case brought against the National Security Agency for illegal wiretapping.

Holder's lawyers also successfully petitioned the Supreme Court to overturn a lower court order mandating the release of photos, which depict torture and abuse of inmates held at Abu Ghraib and other notorious Bush-era detention facilities. Although Obama pledged to close the concentration camp at Guantanamo Bay, Cuba, within a year of his inauguration, it still holds 240 prisoners, most having languished there for years without charges or trials of any sort.

The destroyed video recordings were made in 2002, while the CIA was interrogating and torturing two alleged high-level al Qaeda figures, Abu Zubaydah and Abd al-Rahim al-Nashiri, at a secret Thailand prison. In addition to other so-called "enhanced interrogation techniques," Abu Zubayadah, for example, was water boarded at least 83 times, and deprived of sleep for more than 48 hours.

Aware that human rights abuses were taking place in the aftermath of the September 11 attacks—and in the run up to the illegal invasion of Iraq—the American Civil Liberties Union (ACLU) filed a Freedom of Information Act case in 2003 to force disclosure of the government's secret interrogation programs. The trial court issued an order the following year directing the US government to either turn over or preserve all documents that might respond to the lawsuit, which obviously encompassed the video recordings.

Ninety-two video recordings were removed from a safe in Thailand and destroyed over a three-and-a-half hour period on the morning of November 9, 2005 at the direction of Jose A. Rodriguez, Jr., the head of the CIA's clandestine service.

According to an internal CIA email obtained by the ACLU earlier this year, "Jose raised with [CIA Chief Porter Goss]…and explained that he (Jose) felt it was extremely important to destroy the tapes and that if there was any heat he would take it. (PG [Porter Goss] laughed and said that actually, it would be he, PG, who would take the heat.) PG, however, agreed with the decision.

"As Jose said, the heat from destroying is nothing compared to what it would be if the tapes ever got into the public domain—he said that out of context, they would make us look terrible; it would be 'devastating' to us."

The destruction of the videos followed on the heels of a November 2, 2005 *Washington Post* report disclosing the CIA interrogation program overseas. Subsequent articles detailed techniques used, and on November 18, ABC News reported for the first time the CIA interrogators used water-boarding—near drowning denounced as torture since the Spanish-American War.

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As an additional explanation for the timing of the videos' destruction, on November 3, 2005, United States District Judge Leonie Brinkema, then presiding over the conspiracy case against alleged 9/11 co-conspirator Zacarias Moussaoui, asked government lawyers about recordings of interrogations of high level al Qaeda members. On November 14, the government responded that no recordings existed.

The New York Times first reported in December 2007 that the videos had been destroyed. The next month, a special prosecutor, John H. Durham, was appointed by Bush administration Attorney General Michael Mukasey, to investigate potential obstruction of justice offenses. The Obama administration, through Attorney General Holder, took over supervision of Durham's investigation a year later.

Despite much ballyhoo over the initiation of the investigation, it ended with the following statement, quoted here in its entirety, from Matthew Miller, the director of the Department of Justice's Office of Public Affairs:

"In January 2008, Attorney General Michael Mukasey appointed Assistant United States Attorney John Durham to investigate the destruction by CIA personnel of videotapes of detainee interrogations. Since that time, a team of prosecutors and FBI agents led by Mr. Durham has conducted an exhaustive investigation into the matter. As a result of that investigation, Mr. Durham has concluded that he will not pursue criminal charges for the destruction of the interrogation videotapes."

The New York Times quotes Leon E. Panetta, Obama's CIA director, as saying that his agency was "pleased with the decision" not to bring charges against agency officers involved in destroying the tapes.

Jose Rodriguez' well-connected Washington lawyer, Robert Bennett, said the department made "the right decision because of the facts and the law," calling Rodriguez "a true patriot who only wanted to protect his people and his country."

Anthony D. Romero, the ACLU Executive Director, denounced the decision not to prosecute as "stunning," adding, that "there is ample evidence of a cover up regarding the destruction of the tapes. The Bush administration was instructed by a court of law not to destroy evidence of torture, but that's exactly what it did."

Romero continued, "The issue is not just the destruction of the tapes but the acts of torture that they depicted, which evidence—including recent statements by former President Bush—shows were authorized at the highest levels of the Bush administration. Water boarding is torture and torture is a crime."

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