

Obama administration seeks first death penalty via military tribunal at Guantánamo

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The Obama administration announced Wednesday that it will conduct its first death penalty prosecution at the Guantánamo Bay prison camp. In a posting on a new web site dedicated to the military tribunals, the Pentagon announced formal charges against Abd al Rahim al Nashiri, who is accused of planning the attack on the USS Cole in the year 2000.

The Saudi-born Nashiri, 46, faces a possible death sentence. He is one of three detainees whom the CIA has admitted to “waterboarding,” and his confession to the crime of which he is accused was extracted under torture. Obama’s decision to move forward with the military tribunal is the latest demonstration of the continuity between his policies and those of his predecessor, George W. Bush.

US government officials allege that Nashiri, the reputed Al Qaeda chief of Arabian Sea operations, was head “of the planning and preparation for the attack” on the USS Cole in the Yemeni port of Aden on October 12, 2000. The attack left 17 sailors dead and 40 wounded, and it crippled the \$1.1 billion warship.

Nashiri is also accused of plotting an attempted strike on the USS The Sullivans in January 2000, as well as planning the attack on a French civilian oil tanker in the Gulf of Aden in 2002 that killed one Bulgarian crew member and caused a 90,000-barrel oil spill. The nine charges against Nashiri include terrorism, committing murder as a war crime, treachery, and attacking civilians.

Documents obtained through the Freedom of Information Act have revealed that Nashiri was tortured repeatedly at a secret CIA prison camp after being captured in 2002. In addition to dozens of waterboarding sessions, an agent revved up a power drill and held it near the head of the captive Nashiri, who was naked and hooded. A handgun was also held

to his temple as an agent carried out a mock firing.

At a closed hearing in 2007, Nashiri said he admitted to the Cole bombing only after the torture. He was one of the final terror suspects whose torture was videotaped by the CIA, but the tapes were destroyed in 2005 as part of a brazen cover-up of the agency’s torture program, for which nobody has ever been held accountable. (See, “US judge denies request for hearings on CIA torture tapes”)

The new Pentagon web site related to the military tribunals was launched in part as a response to media complaints that the tribunal proceedings had been cloaked in secrecy. Four reporters were banned last year from military commissions for allegedly violating Pentagon rules. The Pentagon subsequently lifted the ban, and chose to use the launch of the new site to announce Nashiri’s prosecution.

The web page devoted to Nashiri, however, includes only prosecution documents against him. It omits a July 15 document filed by Nashiri’s Pentagon-provided defense lawyers, which contends that the case is too tainted by delay and charges of CIA torture to proceed. Under revised rules for the military tribunals drafted by the Obama Justice Department, prosecutors reportedly cannot cite evidence obtained through torture.

According to the Pentagon, Nashiri will be arraigned within a month at a newly constructed courthouse at the US prison camp. It will be his first public appearance since he was first detained in 2002. The chief war court judge, Army Col. James L. Pohl, will assign a military judge to the case, possibly himself, to formally charge Nashiri within a month.

Earlier this week, the Obama administration leaked to the press plans to provide closed-circuit broadcasts of Guantánamo tribunal proceedings to media viewing centers in the US, although it is unclear as yet whether

Nashiri's trial will be broadcast.

Pentagon officials and contractors spent the summer readying the tent city and maximum-security court, dubbed Camp Justice. Retired Navy Vice Adm. Bruce MacDonald, overseer of the military court, inspected the camp during the week of September 11, the tenth anniversary of the terror attacks.

One of Obama's primary campaign promises, and one of his first acts as president in 2009, was to sign an executive order purportedly closing Guántanamo and halting the hated military tribunals. In March of this year, however, Obama announced he would be reinstating the tribunals. The administration plans to prosecute 33 of the 171 prisoners still held at the detention camp.

Obama has also explicitly authorized the detention without charges of approximately 50 detainees at the camp, all but assuring the continued operation of the infamous Guántanamo facilities. These prisoners cannot be tried in military tribunals, let alone in civilian courts, because the sole evidence against them consists of confessions extracted through torture.

As the prosecution of Nashiri gets underway, Pentagon lawyers are preparing for the capital trials of five detainees captured by the CIA and accused of conspiring in the September 11 attacks, including Khalid Sheik Mohammed.

At the military tribunals where Nashiri and other detainees will be tried, the standard required to determine guilt is far lower than in civilian courts. The prosecution is also permitted to utilize hearsay evidence that would be thrown out in civilian proceedings. And while the Obama administration has supposedly barred confessions extracted under torture from being admitted into evidence, military prosecutors can be expected to exploit loopholes to do precisely that.

If a death sentence is handed down to any of the defendants, they are expected to be put to death at Guántanamo, although to date no death chamber is known to have been constructed. Defense Secretary Leon Panetta is tasked with picking the method of execution.

The opening of the military tribunals is a demonstration of the Obama administration's commitment to continue the police-state measures of the Bush-Cheney era "war on terror." It follows the reauthorization of the Patriot Act, the strengthening of

the Department of Homeland Security, and the continuation of the Bush administration's military exploits in Iraq and Afghanistan and their expansion now to Libya.

The Obama administration has cited the authoritarian "state secrets" doctrine to block victims of torture and domestic spying from seeking redress through the civilian justice system. He asserts the right of the president to order indefinite military detention of "unlawful enemy combatants" and defends the practice of kidnapping terror suspects and "rendering" them to secret locations to be interrogated at the hands of torturers.

No Bush administration official has been investigated or prosecuted under Obama in connection with ordering or overseeing the systematic use of torture, which is the basis for the extracted confessions of prisoners like Abd al Rahim al Nashiri who now face prosecution and possible death sentences before the military tribunals in Guántanamo.

The establishment by the Bush and Obama administrations of a parallel system of secret military courts, where the Bill of Rights and other democratic protections do not apply, and where the death penalty can be imposed, is a dire warning of things to come.



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