

The New York Times

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers [here](#) or use the "Reprints" tool that appears next to any article. Visit www.nytreprints.com for samples and additional information. [Order a reprint of this article now.](#)

March 29, 2009

Spanish Court Weighs Inquiry on Torture for 6 Bush-Era Officials

By [MARLISE SIMONS](#)

LONDON — A Spanish court has taken the first steps toward opening a criminal investigation into allegations that six former high-level Bush administration officials violated international law by providing the legal framework to justify the torture of prisoners at [Guantánamo Bay](#), Cuba, an official close to the case said.

The case, against former Attorney General [Alberto R. Gonzales](#) and others, was sent to the prosecutor's office for review by [Baltasar Garzón](#), the crusading investigative judge who ordered the arrest of the former Chilean dictator [Augusto Pinochet](#). The official said that it was "highly probable" that the case would go forward and that it could lead to arrest warrants.

The move represents a step toward ascertaining the legal accountability of top Bush administration officials for allegations of torture and mistreatment of prisoners in the campaign against terrorism. But some American experts said that even if warrants were issued their significance could be more symbolic than practical, and that it was a near certainty that the warrants would not lead to arrests if the officials did not leave the United States.

The complaint under review also names [John C. Yoo](#), the former Justice Department lawyer who wrote secret legal opinions saying the president had the authority to circumvent the [Geneva Conventions](#), and [Douglas J. Feith](#), the former under secretary of defense for policy.

Most of the officials cited in the complaint declined to comment on the allegations or could not be reached on Saturday. However their defenders have said their legal analyses and policy work on interrogation practices, conducted under great pressure after the 2001 terrorist attacks, are now being unfairly second-guessed after many years without a terrorist attack on the United States.

The court case was not entirely unexpected, as several human rights groups have been asking judges in different countries to indict Bush administration officials. One group, the Center for Constitutional Rights, had asked a German prosecutor for such an indictment, but the prosecutor declined.

Judge Garzón, however, has built an international reputation by bringing high-profile cases against human rights violators as well as international terrorist networks like [Al Qaeda](#). The arrest warrant for General Pinochet led to his detention in Britain, although he never faced a trial. The judge has also been outspoken about the treatment of detainees at Guantánamo Bay.

Spain can claim jurisdiction in the case because five citizens or residents of Spain who were prisoners at Guantánamo Bay have said they were tortured there. The five had been indicted in Spain, but their cases were dismissed after the Spanish Supreme Court ruled that evidence obtained under torture was not admissible.

The 98-page complaint, a copy of which was obtained by The New York Times, is based on the Geneva Conventions and the 1984 Convention Against Torture, which is binding on 145 countries, including Spain and the United States. Countries that are party to the torture convention have the authority to investigate torture cases, especially when a citizen has been abused.

The complaint was prepared by Spanish lawyers, with help from experts in the United States and Europe, and filed by a Spanish human rights group, the Association for the Dignity of Prisoners.

The National Court in Madrid, which specializes in international crimes, assigned the case to Judge Garzón. His acceptance of the case and referral of it to the prosecutor made it likely that a criminal investigation would follow, the official said.

Even so, arrest warrants, if they are issued, would still be months away.

Gonzalo Boye, the Madrid lawyer who filed the complaint, said that the six Americans cited had had well-documented roles in approving illegal interrogation techniques, redefining torture and abandoning the definition set by the 1984 Torture Convention.

Secret memorandums by Mr. Yoo and other top administration lawyers helped clear the way for aggressive policies like [waterboarding](#) and other harsh interrogation techniques, which the [C.I.A.](#) director, the attorney general and other American officials have said amount to torture.

The other Americans named in the complaint were William J. Haynes II, former general counsel for the Department of Defense; Jay S. Bybee, Mr. Yoo's former boss at the Justice Department's Office of Legal Counsel; and [David S. Addington](#), who was the chief of staff and legal adviser to Vice President [Dick Cheney](#).

Mr. Yoo declined to comment on Saturday, saying that he had not seen or heard of the petition.

Mr. Feith, who was the top policy official at the Pentagon when the prison at Guantánamo was established, said he did not make the decision on interrogation methods and was baffled by the allegations. "I didn't even argue for the thing I understand they're objecting to," he said.

But Mr. Boye said that lawyers should be held accountable for the effects of their work. Noting that the association he represents includes many lawyers, he said: "This is a case from lawyers against lawyers. Our profession does not allow us to misuse our legal knowledge to create a pseudo-legal frame to justify, stimulate and cover up torture."

Prosecutions and convictions under the Torture Convention have been rare.

Reed Brody, a lawyer at [Human Rights Watch](#) who has specialized in this issue, said that even though torture was widely practiced, there were numerous obstacles, including "a lack of political will, the problem of gathering evidence in a foreign country and the failure of countries to pass the necessary laws."

This year for the first time, the United States used a law that allows it to prosecute torture in other countries. On Jan. 10, a federal court in Miami sentenced Chuckie Taylor, the son of the former Liberian president, to 97 years in a federal prison for torture, even though the crimes were committed in Liberia.

Last October, when the Miami court handed down the conviction, Attorney General [Michael B. Mukasey](#) applauded the ruling and said: "This is the first case in the United States to charge an individual with criminal torture. I hope this case will serve as a model to future prosecutions of this type."

The United States, however, would be expected to ignore an extradition request for former officials, although other investigations within the United States have been proposed. Calls for the Justice Department to open a criminal investigation have so far been resisted by the Obama administration, but for more than four years, the Justice Department ethics office has been conducting its own investigation into the work of Mr. Yoo and some of his colleagues.

While the officials named in the complaint have not addressed these specific accusations, Mr. Yoo defended his work in an opinion column in *The Wall Street Journal* on March 7, warning that the Obama administration risked harming national security if it punished lawyers like himself.

"If the administration chooses to seriously pursue those officials who were charged with preparing for the unthinkable, today's intelligence and military officials will no doubt hesitate to fully prepare for those contingencies in the future," Mr. Yoo wrote.

Scott Shane and Eric Schmitt contributed reporting from Washington.

This article has been revised to reflect the following correction:

Correction: April 5, 2009

Because of an editing error, an article last Sunday about a Spanish judge's criminal inquiry into allegations that six Bush administration officials broke international laws banning torture misidentified, in some copies, a foreign defendant in a Miami federal case brought under a law that allows the United States to prosecute torture in other countries. The defendant in that case, concerning torture committed in Liberia, was Chuckie Taylor, also known as Charles Arthur Emmanuel, the son of former Liberian President Charles Taylor — not the former president himself.

[Copyright 2009 The New York Times Company](#)

[Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)
