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## Spanish Court Threatens U.S. Sovereignty

The *New York Times* recently ran a story entitled “Spanish Court Weighs Inquiry on Torture for 6 Bush-Era Officials.” According to the article, the National Court in Madrid has assigned Baltasar Garzón, “the crusading investigative judge who ordered the arrest of the former Chilean dictator Augusto Pinochet,” to open up a criminal investigation against six Bush administration officials for “providing the legal framework to justify the torture of prisoners at Guantánamo Bay.”

The six officials are former Attorney General Alberto R. Gonzales; Douglas J. Feith, former No. 3 official at the Pentagon; John C. Yoo, former Justice Department lawyer; Jay S. Bybee, Mr. Yoo’s former boss at the Justice Department; William J. Haynes III, former general counsel for the Department of Defense; and David S. Addington, the former legal advisor to Vice President Cheney. It is “highly probable” that this case will proceed, which could lead to international arrest warrants for the six men. Their travel abroad would be severely restricted.

This is, of course, absurd. And it should be proclaimed as such by the White House. For starters, the article itself — written by Marlise Simons, with at-large contributed reporting from Scott Shane and Eric Schmitt — is littered with idiosyncrasies and blatant inaccuracies. Ms. Simons refers to Judge Garzón’s solid “international reputation” for “crusading” against human rights violators, from Pinochet to al Qaida members. The columnist then, amazingly, puts Feith, Gonzales, Yoo, etc. in the same category.

Furthermore, the *Times* completely omits the fact that Gonzalo Boye, the Spanish lawyer who filed the legal complaint against these six U.S. officials, was a former member of the Chilean MIR. He collaborated with the Spanish terrorist gang ETA in the kidnapping of Emiliano Revilla, an innocent Spanish businessman.

For his role in the kidnapping, Boye spent a decade in prison for working with a terrorist group. Upon his release, Boye became a lawyer, and today he remains a far-leftist radical who has defended ETA terrorists, and has made a name for himself as a strong critic of the United States and Israel. Think: The Spanish Bill Ayers.

Not one bit of this is mentioned in the *Times* piece (no wonder they are going out of business).

This entire legal process is a charade. It has nothing to do with objective justice, and everything to do with punitive personal vendettas. Boye and Garzón are claiming transnational authority over, and legal jurisdiction within, our sovereign border. The *Times* article elaborates:

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... 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.

None of this stands up to even a modicum of scrutiny. The Geneva Conventions, for example, are entirely necessary — yet are most certainly archaic, and must be updated. Regardless of whatever one's opinions are about coercive interrogation, the fact remains that it is taboo to raise the legal point that none of the Geneva Conventions — neither the First, Second, Third, or Fourth — offers legal guidelines for interrogating members of a terrorist organization. In fact, the Conventions specifically *exclude* al Qaida-like combatants from protection; to afford these protections to such combatants is, in and of itself, a violation of those very same protections.

In essence, these torture laws — which were written at a time when asymmetrical organizations did not exist in the way that they exist today — must legally catch up to real-world actuality and contemporary morality.

This is a fair, if not unpopular, legal point to make. And yet, if this unprecedented Spanish kangaroo court continues, it will be deemed *criminal* for a cabinet member or government official in the United States to consider such realities, and suggest legal remedies, to their bosses within their respective departments. The Spanish, in effect, will be able to determine what *advice* the President of the United States is allowed to receive from his or her advisors. This is unconscionable behavior from a supposed ally.

The sub-par reporting of this story is disheartening. The moral equivalence it applies between U.S. officials and overseas tyrants who are *really* torturous is disgraceful. But the legal ramifications this Spanish court has created are dangerous; the precedent it sets is troubling, and should be confronted and summarily reversed.

We should have a debate about interrogation laws without impugning the reputations of good-natured and loyal Americans, and without selling our autonomy to the highest — or in this case, the loudest — bidder. President Obama must get on the phone today and warn Prime Minister Zapatero that we will not stand for violations of our sovereignty.

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