

Apr 14, 2009



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## SCOTT HORTON

### The Bush Six to Be Indicted

by *Scott Horton*



**Spanish prosecutors will seek criminal charges against Alberto Gonzales and five high-ranking Bush administration officials for sanctioning torture at Guantánamo. By Scott Horton.**

Alex Wong / Getty Images



Spanish prosecutors have decided to press forward with a criminal investigation targeting former U.S. Attorney General Alberto Gonzales and five top associates over their role in the torture of five Spanish citizens held at Guantánamo, several reliable sources close to the investigation have told The Daily Beast. Their decision is expected to be announced on Tuesday before the Spanish central criminal court, the Audencia Nacional, in Madrid. But the decision is likely to raise concerns with the human-rights community on other points: They will seek to have the case referred to a different judge.

Both Washington and Madrid appear determined not to allow the pending criminal investigation to get in the way of improved relations.

The six defendants—in addition to Gonzales, Federal Appeals Court Judge and former Assistant Attorney General Jay Bybee, University of California law professor and former Deputy Assistant Attorney General John Yoo, former Defense Department general counsel and current Chevron lawyer William J. Haynes II, Vice President Cheney's former chief of staff David Addington, and former Undersecretary of Defense Douglas J. Feith—are accused of having given the green light to the torture and mistreatment of prisoners held in U.S. detention in “the war on terror.” The case arises in the context of a pending proceeding before the court involving terrorism charges against five Spaniards formerly held at Guantánamo. A group of human-rights lawyers originally filed a criminal complaint asking the court to look at the possibility of charges against the six American lawyers. Baltasar Garzón Real, the investigating judge, accepted the complaint and referred it to Spanish prosecutors for a view as to whether they would accept the case and press it forward. “The evidence provided was more than sufficient to justify a more comprehensive investigation,” one of the lawyers associated with the prosecution stated.

But prosecutors will also ask that Judge Garzón, an internationally known figure due to his management of the case against former Chilean dictator Augusto Pinochet and other high-profile cases, step aside. The case originally came to Garzón because he presided over efforts to bring terrorism charges against the five Spaniards previously held at Guantánamo. Spanish prosecutors consider it “awkward” for the same judge to have both the case against former U.S. officials based on the possible torture of the five Spaniards at Guantánamo and the case against those very same Spaniards. A source close to the prosecution also noted that there was concern about the reaction to the case in some parts of the U.S. media, where it had been viewed, incorrectly, as a sort of personal frolic of Judge Garzón. Instead, the prosecutors will ask Garzón to transfer the case to Judge Ismail Moreno, who is currently handling an investigation into kidnapping charges surrounding the CIA's use of facilities as a safe harbor in connection with the seizure of Khalid el-Masri, a German greengrocer who was seized and held at various CIA blacksites for about half a year as a result of mistaken identity. The decision on the transfer will be up to Judge Garzón in the first instance, and he is expected to make a quick ruling. If he denies the request, it may be appealed.

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Judge Garzón's name grabs headlines in Spain today less because of his involvement in the Gonzales torture case than because of his supervision of the Gürtel affair, in which leading figures of the conservative Partido Popular in Madrid and Valencia are now under investigation or indictment on suspicions of corruptly awarding public-works contracts. Garzón is also the nation's leading counterterrorism judge, responsible for hundreds of investigations targeting Basque terrorist groups, as well as a major recent effort to identify and root out al Qaeda affiliates operating in the Spanish enclaves of North Africa.

Announcement of the prosecutor's decision was delayed until after the Easter holiday in order not to interfere with a series of meetings between President Barack Obama and Spanish Prime Minister José Zapatero. However, contrary to a claim contained in [an editorial](#) on April 8 in the Wall Street Journal, the Obama State Department has been in steady contact with the Spanish government about the case. Shortly after the case was filed on March 17, chief prosecutor Javier Zaragoza was invited to the U.S. embassy in Madrid to brief members of the embassy staff about the matter. A person in attendance at the meeting described the process as "correct and formal." The Spanish prosecutors briefed the American diplomats on the status of the case, how it arose, the nature of the allegations raised against the former U.S. government officials. The Americans "were basically there just to collect information," the source stated. The Spanish prosecutors advised the Americans that they would suspend their investigation if at any point the United States were to undertake an investigation of its own into these matters. They pressed to know whether any such investigation was pending. These inquiries met with no answer from the U.S. side.

Spanish officials are highly conscious of the political context of the case and have measured the Obama administration's low-key reaction attentively. Although Spain is a NATO ally that initially supported "the war on terror" under Bush with a commitment of troops in both Iraq and Afghanistan, relations with the Bush administration deteriorated after Zapatero became prime minister and acted quickly to withdraw the Spanish contingent in Iraq. In the 2008 presidential campaign, Republican John McCain referred to Spain as a hostile state in comments that mystified Spaniards (it appears that McCain may have confused Spain with Venezuela and Zapatero with Hugo Chávez). Recently, the United States and Spain also wrangled over Spain's decision to withdraw its troop commitment in Kosovo as well. Both Zapatero and Obama, however, have given a high priority to improving relations between the two long-standing allies. Spanish newspapers hailed the fact that Obama referred to Zapatero three times as "my good friend" during the recent European summit meetings, a sharp contrast with meetings at which former President Bush gave Zapatero a cold shoulder.

Both Washington and Madrid appear determined not to allow the pending criminal investigation to get in the way of improved relations, which both desire, particularly in regard to coordinated economic policy to confront the current financial crisis and a reshaped NATO mandate for action in Afghanistan. With the case now proceeding, that will be more of a challenge. The reaction on American editorial pages is divided—some questioning sharply why the Obama administration is not conducting an investigation, which is implicitly the question raised by the Spanish prosecutors. Publications loyal to the Bush team argue that the Spanish investigation is an "intrusion" into American affairs, even when those affairs involve the torture of five Spaniards on Cuba.

The Bush Six labored at length to create a legal black hole in which they could implement their policies safe from the scrutiny of American courts and the American media. Perhaps they achieved much of their objective, but the law of unintended consequences has kicked in. If U.S. courts and prosecutors will not address the matter because of a lack of jurisdiction, foreign courts appear only too happy to step in.

*Scott Horton is a law professor and writer on legal and national-security affairs for Harper's magazine and The American Lawyer, among other publications.*

April 13, 2009 | 8:34pm

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## COMMENTS

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1 2 →

sort by date:

***jdavxc***

Hahaha...this is a joke, right?!.....and I hear Tibet will be indicting the Chinese president for torture and war crimes, and are requesting extradition any day now.

9:14 pm, Apr 13, 2009

(1) | | |

***roger37***

Instead of belittling the gesture, maybe you should consider it an indication of the opinion of the rest of the world about the US under Bush.

10:31 pm, Apr 13, 2009

(3) | | |

***Grundy***

Jesh, one airhead commenting about the other airheads in Spain. What a development. Get some information and some education please and not just hearsay to base your comments on.

10:42 pm, Apr 13, 2009

|

***da47ve***

Bite me roger37,

The only idiot in this charade is the bamster government...I can't wait for the egg to fly in the face of Obama when he attempts to prosecute these guys...

10:45 pm, Apr 13, 2009

|

***ELLamer***

@da47ve

actually Obama is the one (still) blocking the investigation.... why do you think the Spanish investigation is otherwise newsworthy.

We signed a treaty to investigate all allegations of torture and are not doing our part. I'm pissed at Obama for not investigating. If you don't think there should be a investigation into torture than Obama should be your hero currently.

I have the slightest eek of a sneaking suspicion that you have the slightest of tendencies to sometimes maybe blame Obama for the smallest part of everything regardless of reality.

6:10 am, Apr 14, 2009

|

***maxpower1013***

haha it took spain to hold US officials accountable for torture. sad

9:19 pm, Apr 13, 2009

(1) | | |

***aBigDeal***

Let's hold Spain accountable for the Anti-American sentiment that results in Jetliners crashing into our buildings.

Let's indict their bull fighters for animal cruelty while were at it.

12:45 am, Apr 14, 2009

(1) | | |

***ELLamer***

Ok I'm all for it but lets wait until they torture one of our citizen first... Fair is Fair you know.

6:11 am, Apr 14, 2009

|

***idiotking***

Well, Judge Garzon clearly has a lot of experience with war criminals, terrorists, and corrupt politicians... so I'm not terribly surprised that Gonzales, Feith, Yoo, et. all wound up in his docket!

Regardless of your political affiliation, one has to be ashamed of the incompetence, ignorance, and arrogance that bunch displayed... what fool would think that torture -- sorry, "enhanced interrogation techniques, or things that we call torture when someone does it to US" -- possibly provides anything of value worth setting aside our moral standing and principles? If you torture someone, they'll either endure it, or they'll tell you anything to make it stop... not necessarily anything true!

9:22 pm, Apr 13, 2009

(1) | | |

***ELLamer***

Yes this is one of the rare things that my liberal and conservative friends all agree on.

6:13 am, Apr 14, 2009

| | |

***MaliciousDisorder***

What a bunch of looosers.. Why not start with active politicians like Harry Reid or Nancy Pelosi, or maybe Al Gore for his global warming fraud

9:25 pm, Apr 13, 2009

(1) | | |

***PeorgieTirebiter***

So, which of the six being investigated are "inactive" politicians? Probably a good idea to start getting your Doctor's notes read to you; malicious and malignant are easily confused by lazy readers too.

11:22 pm, Apr 13, 2009

| | |

***Hawnzz***

I can just hear Fox News/O'Reilly now. Let the games begin!

9:46 pm, Apr 13, 2009

| | |

***Joanne38***

These prisoners were not at Gitmo because they were great people. Spanish prosecutors need to move on and get a life. This is such a joke or should I say they are making themselves a joke of the world.

9:50 pm, Apr 13, 2009

(2) | | |

***idiotking***

You don't know that -- there have been instances of mistaken identity, and otherwise innocent people who got caught at the wrong place at the wrong time. If they're terrorists, I say hang 'em high, but not without proving it first! That's what justice is all about!

10:05 pm, Apr 13, 2009

(1) | | |

***Grundy***

Finally, some logic from you - I'm impressed - a little.

10:45 pm, Apr 13, 2009

|

***optimus***

You are clod blooded,i hope in the future if you are ever arrested and convicted wrongfully and while in jail or prison you are beaten and stab you'll understand.The big man upstairs may show you the errors of your thought process.

11:16 pm, Apr 13, 2009

| | |

***DrEvil***

That's so special will we have to choose 1 or 2 to hear the verdict in English?

9:52 pm, Apr 13, 2009

(1) | | |

***roger37***

That's so disgusting. The embodiment of the "Ugly American."

10:32 pm, Apr 13, 2009

**Joanne38**

Scott Horton seems to have a chip on his shoulder pertaining to the Bush Administration. It is obvious he has no life other than surrounding himself with hate. He sounds like a very unhappy sad miserable person. I think we all know what his agenda is by all these make believe articles trying to make them sound legitimate.

9:56 pm, Apr 13, 2009

(1) | | |

**idiotking**

Unhappy... sad... miserable... you mean, like someone who writes a post speculating on the psyche of a writer, with no basis or argument, because they disagree with his politics? Guess it takes one to know one...

10:06 pm, Apr 13, 2009

(1) | | |

**Grundy**

Now this is more like the king of idiots that I know and .....

10:46 pm, Apr 13, 2009

**jacklegs**

I hold the view that CIA stands for Cash In Advance, and FBI Fascist Bureaucracy Ink. I believe FBI bureaucrats knew something was going to happen, with planes on 9 / 11, but they didn't know what, and possibly not the date. But they knew something was up!

Besides, to have an excuse to destroy our First Amendment heck all the Freedoms in our Bill of Rights, our right to privacy, everything - they needed for something like 9 / 11 to happen.

They (FBI-CIA-NSA) aren't tapping every phone in America because they are looking for terrorists! They are tapping and storing every body's telephone conversations, like the old East German Stasi, to protect their own operations, their futures and the domestic intelligence jobs they have lined up for their children.

Your kid talks on the phone how he or she is going to law school to qualify for FBI to get in and do the right thing to clean the Bureau up - when it comes time to apply, those telephone conversations from more than a few years ago, will cancel them out from consideration for a position.

So the reason for the telephone tapping was / is response to 9/11. . . They claim. I say it was their excuse.

What was / is the reason to destroy all that we as a people stand for by torturing people and let us not forget, some of the people that were tortured in our name were not guilty of anything. They were falsely accused and falsely arrested - to meet a quota.

They were tortured. Hail to the Spanish jurists! Who could be opposed to righting a wrong - telling the truth. Note how Obama protects Bush. Obama is not a leader. He is a winner. He won the election. His remarks about not looking backward are bogus. We have a huge Justice department - plenty of staff to investigate and get at the truth.

The intelligence community is against this investigating. Mike Isakoff (spelling his name wrong I apologize) remarks on Rachel Madow's MSNBC Show that high intelligence officials may have been involved.

So maybe one of the 'high intelligence officials' could or would state he was personally told by Cheney that the president said he (the intelligence official) should proceed.

We don't know. But we are entitled to know. Let the cow chips fall where they may. I am a candidate for president. Upon election I am going to unseal both the father's and the son's Executive Orders.

What Barky Obama fails to understand is that these high offices are public offices. They belong to us, to we, the people.

The elected are only the holders, on our behalves, sworn to protect our Rights. Anyone planning a visit to Europe should spend some money visiting Spain! We owe them for getting the investigative ball rolling.

Michael Stephen Levinson

PS: Echo in your telephone usually means someone is listening live, though there is more modern silent equipment out there.

I get the echo a lot because the lowly agents in the field know that I am a poet 'author of prophetic works' an agent once said to me, with respect, and not an enemy and that I know all about the echo so they turn it up to (silently) advise me NOT TO SAY ANYTHING so they don't have to write a huge transcription down.

michaelslevinson.com

9:56 pm, Apr 13, 2009

(1) | |

**optimus**

I know it may sound harsh but the united states government is a joke. President Obama like his predecessors have to protect the former president, it's a fraternity for Christ sake. President Bush did the job he was suppose to do, now it's Obama's turn to do his, if he doesn't remember what happen to lincoln and Kennedy. Think about it for a second.

11:12 pm, Apr 13, 2009

| |

**flyoverland**

Rather misleading headline.

You will turn on TV Land and find a show other than the Jeffersons or Good Times playing before anything comes of this.

10:00 pm, Apr 13, 2009

| |

**Gerardm**

Yes, YES! Finally, a nod to accountability. Obama is dead wrong to try to tap dance around this issue. Defending the Republic and the Constitution, and thereby clawing back America's moral standing in the world from the Bush damage, should be as important a priority as the economy.

10:03 pm, Apr 13, 2009

| |

**AndrainNY**

What fools the Spanish appear to be.

10:06 pm, Apr 13, 2009

(1) | |

**roger37**

Glass houses---

10:34 pm, Apr 13, 2009

| |

**NinaMiller**

Thank god for Zapatero. Somebody has to be the grownup.

And, hey, Joanne38, I hear you're not such a good person either.

10:25 pm, Apr 13, 2009

| |

**Grundy**

I hear that the Spanish did another good job while they were wearing their black robes during the dark ages - many received the same logical and unbiased judgements based on 'facts' and not emotional feelings to get the nod of the fanatics of the world.

10:49 pm, Apr 13, 2009

| |

**vincevan**

What a pack of monstrous hypocrites you Stinking Liberals really are. You had a chance show your stuff - to prosecute the Clintons and his staff when

they were illegally bombing Aspirin Factories and killing whole families in Bosnia from 30,000 feet.

What did we get from you? Zero! Now, you are all P&V to side with one of the most gutless & corrupt governments on the planet. Well, good luck with that, TWO BIT PHONIES!

10:52 pm, Apr 13, 2009

***optimus***

Nothing is going to come from this so-call investigation,I would like to see those responsible pay for their crimes against humanity.I won't like our troops to be captured and tortured,no way so i think some of us should look at this situation more widely,and keep politics out.

11:20 pm, Apr 13, 2009

***Viewsonic***

I am disappointed in the Spaniards. They are going after this guy because ,although Spain gave him his European Spanish blood,they don't like him because he is waaay too white boy like. American white boy, at that!!!! That's not good! Hey Spain ,instead of going after this guy, why don't you declare war on that dysfunctional and pathetic SPANISH country you created called "MEXICO"?????!!!! Stop wasting our time ,otherwise!!!

11:47 pm, Apr 13, 2009

***Spasticula***

Let the floodgate open. Never again will should America be as criminal as the Bush Six (losers all) acheived.

12:15 am, Apr 14, 2009

***Jelperman***

In the immortal words of Detective McGarrett:

Book 'em Danno!

12:28 am, Apr 14, 2009

***afgail***

Gonzo should learn a lot from the experience of being brought to justice by a Spanish court. He clearly did not understand the meaning of the word, justice, while he was head of the Department of Justice. Serves him right for putting loyalty to Bush ahead of loyalty to the law.

12:59 am, Apr 14, 2009

***Jelperman***

Viva España!

12:59 am, Apr 14, 2009

***Tommytoons***

I agree with Jelperman, Book'em Danno, now Gonzales, won't have to just worry about getting a job, worthy of his August talents! Send them to the Hague, keep them in the United States until we grow a set and indict them ourselves!!! Travel will be increasingly difficult for these fools!!! Thank you Spain!!!

1:09 am, Apr 14, 2009

***canditaylor68***

Hate to tell you but Obama has the same policy about terrorists. He made a public comment about rescinding it,while signing an order that left loopholes wide enough for the same practices to be done. Tell you what-when our guys in the military find terrorists-lets just shoot them on sight-all problems solved.

1:22 am, Apr 14, 2009

***SmirkinJudas***

You're right on both counts.

2:29 am, Apr 14, 2009

[canditaylor68](#)

Intelligence Policy: New Perspective or Familiar Approach?  
Search this story-the army manual oks waterboarding and other interrogation techniques for terrorists. Obama is using the same policies as Bush did.

1:27 am, Apr 14, 2009

[SmirkinJudas](#)

This Horton "writer" makes an all-too-clear effort to make the Spaniards appear credible--rather than pompous--Obama administration admiring and Bush officials guilty. It's like he thinks he's a spinner for the Obama campaign.

Meanwhile, Madrid has hardly proved an ally of the US or any democracy since the train station bombings and Spanish voters consequently carried out terrorists' voting prescriptions.

Maybe Obama and Zapatero admire their mutual tendency to flee?

2:09 am, Apr 14, 2009

1 2 →

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