

MOTION OF THE CENTER FOR CONSTITUTIONAL RIGHTS
TO APPEAR AS ACUSACIÓN POPULAR

Through this motion, the Center for Constitutional Rights seeks admission as *acusación popular* in Preliminary Investigation 150/09-N. Pursuant to Articles 101 and 270 of the *Ley de Enjuiciamiento Criminal*, according to the Article 125 of the Spanish Constitution, and for the reasons set forth below, this motion should be granted.

The Center for Constitutional Rights (CCR) is a legal and educational organization based in New York.¹ CCR has a long history of engaging in litigation and advocacy related to the respect and enjoyment of international human rights. In 1980, lawyers from CCR opened U.S. federal courts to international human rights claims through its victory in the land-mark case, *Filártiga v. Peña-Irala*.² CCR has litigated cases on behalf of survivors of human rights abuses from numerous countries, including Nicaragua, Haiti, Guatemala, Bosnia-Herzegovina and Burma, brought against U.S. and foreign officials as well as multi-national corporations.³ CCR staff or board members have authored a number of leading books and articles on international human rights, and CCR is recognized as an authority on the subject.⁴ This expertise extends to the area of universal jurisdiction.⁵

Since 2002, CCR has represented plaintiffs who have been subjected to every facet of the United States' torture program, from Guantánamo detainees, to Abu Ghraib torture survivors, and victims of extraordinary rendition and CIA ghost detention. CCR has represented former detainees in U.S. federal courts in habeas corpus proceedings and civil actions, seeking habeas relief, injunctions or damages. CCR makes this motion taking into account the plaintiffs it represents who seek redress and accountability for the serious violations of international law to which they were subjected.

CCR has led the legal battle over Guantánamo for the last eight years: it filed the first habeas corpus petition in early 2002, sent the first ever habeas attorney to the base and sent the first attorney to meet with a former CIA "ghost detainee" there. Among the individuals that CCR

¹ For more information on CCR, visit: www.ccrjustice.org.

² 630 F.2d 876 (2d Cir. 1980).

³ For more information, see: <http://www.ccrjustice.org/past-cases> and <http://www.ccrjustice.org/current-cases>.

⁴ See e.g., INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS B. Stephens, J. Chomsky, J. Green, P. Hoffman and M. Ratner, (Martinus Nijhoff, 2d ed., 2008); J. Green, R. Copelon, P. Cotter and B. Stephens, *Affecting the Rules for the Prosecution of Rape and Other Gender-Based Violence before the International Criminal Tribunal for the Former Yugoslavia: A Feminist Proposal and Critique*, 5 Hastings Women's Law Journal 171 (1995).

⁵ THE PINOCHET PAPERS: THE CASE OF AUGUSTO PINOCHET IN SPAIN AND BRITAIN, Reed Brody and Michael Ratner, Eds. (Kluwer Law International: The Hague, 2000); INTERNATIONAL PROSECUTION OF HUMAN RIGHTS CRIMES, W. Kaleck, M. Ratner, T. Singelstein, P. Weiss, Eds. (Springer: Berlin, 2007).

represents is Mohammed al Qahtani, a Saudi citizen who was subjected to a special interrogation plan at Guantánamo, which was developed by the military, with advice from CIA representatives, and refined by psychologists. U.S. government officials later faced strong criticism when the legal memoranda rationalizing the legality of these methods were released. The illegal techniques employed during Mr. Al Qahtani's interrogation were discussed at length in the Senate Armed Services Committee's "Inquiry Into the Treatment of Detainees in U.S. Custody" declassified in April of 2009. CCR also represents Majid Khan, who is one of the 14 "ghost detainees" transferred to Guantánamo in September 2006 from secret CIA detention, and more than 330 Iraqis who were tortured and otherwise seriously abused during years of detention without charge. CCR currently represents a number of former detainees or their families in civil actions against former U.S. officials for the treatment they suffered while in detention in Guantánamo.⁶

CCR has also sought accountability for the criminal violations committed by U.S. officials against certain of its plaintiffs through its initiation of proceedings in Germany and France.⁷

CCR has in-depth knowledge and understanding of the factual record around torture and illegal detentions, including of the legal memoranda, investigations and reports, and the plaintiffs' accounts of the treatment to which they were subjected, and has analyzed this record to determine which high-level officials bear individual responsibility.⁸ Drawing on publically released government documents, among other sources, CCR has examined the question of which U.S. officials established the torture program, authorized torture, created an environment conducive to torture by demanding "more actionable" intelligence, and failed to punish those who committed torture and thereby prevent further abuses. CCR has further examined the relationship between the civilian and military structures in developing interrogation policies led to the torture and abuse of detainees in Afghanistan, Guantánamo, Iraq, and elsewhere. Legal memos drafted in the weeks and months after September 11, 2001, set the "torture program" in motion – a consequence intended by the authors and the recipients of the memos. As is now known, these memoranda sought to unilaterally redefine U.S. obligations under the Geneva Conventions and narrow the definition of torture in order

⁶ See *Al-Zahrani v. Rumsfeld* (legal pleadings and background information about the case available at: <http://www.ccrjustice.org/ourcases/current-cases/al-zahrani-v.-rumsfeld>) and *Celikogus v. Rumsfeld*, (legal pleadings and background information about the case available at: <http://www.ccrjustice.org/ourcases/current-cases/celikogus-v.-rumsfeld>). See also *Rasul v. Rumsfeld* (legal pleadings and background information about the case available at <http://www.ccrjustice.org/ourcases/current-cases/rasul-v.-rumsfeld>)

⁷ CCR works closely with a number of partners in Europe, including European Center for Constitutional and Human Rights (ECCHR) and the International Federation for Human Rights (FIDH), on the issue of holding high-level U.S. officials accountable for torture. CCR and its partners have expertise in filing cases under the universal jurisdiction principle in France and Germany, and expertise in the relevant areas of international law. For a discussion on these cases, see K. Gallagher, *Universal Jurisdiction in Practice: Efforts to Hold Donald Rumsfeld and Other High-level United States Officials Accountable for Torture*, 7 *Journal of International Criminal Justice* 1087-1116 (2009), available at: <http://jicj.oxfordjournals.org/cgi/content/full/mqp077?ijkey=ATpEUad4WQbfcB&keytype=ref>

⁸ See, e.g., *THE TRIAL OF DONALD RUMSFELD: A PROSECUTION BY BOOK*, Michael Ratner and the Center for Constitutional Rights, (The New Press: New York, 2008).

to justify the use of torture techniques such as waterboarding.⁹ The result was the authorized and systematic torture and ill-treatment of persons deprived of their freedom without charge and without basic rights in Guantánamo, Iraq, Afghanistan and other corners of the globe through the use of secret detention sites and extraordinary rendition.

Based on its knowledge of the foregoing, CCR intends to provide this investigation with analysis of various U.S. government reports, memoranda and investigations, provide factual information regarding the treatment of specific persons detained at Guantánamo and other locations, as appropriate, and other aspects of the detention and interrogation program, and persons involved therein. CCR further intends to assist this investigation in gathering and analyzing information about specific persons believed to have ordered, directed, conspired, aided and abetted, or other wise participated directly, indirectly or through command responsibility in the torture and other serious mistreatment of persons detained at U.S. run detention facilities.

Based on the public positions taken by President Barack Obama and individuals within the United States Department of Justice and the United States Congress, it is apparent that criminal prosecutions in the United States for these crimes are not forthcoming. Upon releasing the latest round of “torture memos” in April 2009, President Obama said, *“In releasing these memos, it is our intention to assure those who carried out their duties relying in good faith upon legal advice from the Department of Justice that they will not be subject to prosecution. ...nothing will be gained by spending our time and energy laying blame for the past.”* Despite the long list of statutory, constitutional and international law violations that our plaintiffs allege U.S. officials authorized, condoned, encouraged or committed against them, which numerous Governmental investigations and reports have confirmed, no high-level U.S. official has been held accountable for their crimes, and no effective investigation has been commenced to examine the violations that serve as the basis for this investigation.

⁹ See, e.g., <http://f11.findlaw.com/news.findlaw.com/hdocs/docs/doj/bybee12202mem.pdf> (Application of Treaties and Laws to al Qaeda and Taliban detainees); http://www.usdoj.gov/opa/documents/memorandum_03132002.pdf (President’s power to transfer captured terrorists to the control and custody of foreign nations); <http://www.washingtonpost.com/wp-srv/nation/documents/dojinterrogationmemo20020801.pdf> (Standards of Conduct for Interrogation under 18 U.S.C. §§2340-23340A); <http://news.findlaw.com/hdocs/docs/doj/bybee80102ltr.html> (Legality under international law of interrogation methods to be used on captured Al Qaeda operatives); <http://www.aclu.org/safefree/torture/34745res20030314.html> (Military Interrogation of Alien Unlawful Combatants Held Outside the United States); and http://luxmedia.vo.llnwd.net/o10/clients/aclu/olc_08012002_bybee.pdf (Interrogation of an Al Qaeda operative).



CCR is committed to ensuring that those who bear the greatest responsibility for serious violations of international law are held accountable – in whatever forum will render justice to our clients and the other victims’ of torture, abuse, arbitrary detention and rendition due to the policies employed during the so-called “War on Terror.” For that reason, it respectfully requests that its motion to join this case as *acción popular* be granted.

Signed:

Date:

Michael Ratner *for*

April 21, 2010

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