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Suit by Iraqis and Afghans claims Rumsfeld ordered torture

The Justice Department has asked the judge to throw out the ACLU-supported case against the former defense secretary.

By [Warren Richey](#) | Staff writer of The Christian Science Monitor

WASHINGTON

As Donald Rumsfeld prepares to leave his job as secretary of Defense, the American Civil Liberties Union (ACLU) is seeking to hold him responsible for what it says was widespread torture carried out at his direction.

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Lawyers representing Mr. Rumsfeld and three US Army commanders are set to appear in federal court here Friday in response to a lawsuit charging that the Defense secretary authorized torture and other illegal abuse of military detainees in Afghanistan and Iraq - including at the infamous Abu Ghraib prison.

The case is important because it represents an attempt to hold US officials accountable for alleged illegal abuse of Iraqi and Afghan civilians who were never detained as enemy combatants or charged with any crime. But some legal analysts say the suit may be aimed more at shaping public opinion than winning in court because such cases are difficult to pursue.

The Justice Department lawyers representing Rumsfeld have not responded directly to the torture charges. Instead, they are asking Chief US District Court Judge Thomas Hogan to throw the suit out because Rumsfeld is entitled to immunity from lawsuits challenging his official actions as Defense secretary. Chief Judge Hogan has scheduled two hours of argument on the dismissal request.

The five Iraqi citizens and four Afghan citizens identified in the suit claim that they were subject to beatings, cutting with knives, sexual humiliation, confinement in a wooden box, sleep deprivation, mock executions, and stress positions, the suit says.

"The secretary of Defense personally issued orders and authorized illegal interrogation techniques and caused torture," says ACLU lawyer Lucas Guttentag. "[Rumsfeld] was directly and personally involved."

Mr. Guttentag says that Rumsfeld also "failed to take the required actions to stop abuse in the face of overwhelming uncontroverted evidence that he received and was aware of."

The Defense secretary had been notified of the abuses via Red Cross reports, human rights organization reports, military internal reports, and FBI reports, according to documents obtained by the ACLU under the Freedom of Information Act, Guttentag says.

In addition to Rumsfeld, the suit names Lt. Gen. Ricardo Sanchez, commander of coalition forces in Iraq in 2003 and 2004, Col. Janis Karpinski, commander of the military unit that ran detention facilities in Iraq, and Col.

Thomas Pappas, commander of the military unit that gathered intelligence in Iraq.

The civil suit was filed by lawyers with the ACLU and Human Rights First. It says Rumsfeld and the officers violated constitutional protections, international law, and the Geneva Conventions. The suit seeks compensatory damages and a judicial declaration that the legal rights of the detainees were violated under the Constitution, the Geneva accords, and other international law.

Government lawyers counter that Iraqi and Afghan citizens do not enjoy rights under the US Constitution or the Geneva Conventions to sue senior US officials for official actions taken overseas.

"I think it is a very uphill battle for the litigants here. I don't think this case is going to go very far," says Scott Silliman, a Duke University law professor and director of the Center on Law, Ethics and National Security.

"When you are dealing with the secretary of Defense what you have got to do is show that he was so far outside the scope of his duties as to be culpable," Professor Silliman says. "That is a hard standard to meet."

What makes it a particularly hard standard, Silliman and other legal analysts say, is that Rumsfeld was authorizing new interrogation techniques at the same time Justice Department lawyers were issuing legal memos justifying harsh, coercive interrogation tactics.

To prevail, ACLU lawyers must show that Rumsfeld knew what the law required and intentionally ignored those clearly established requirements. Short of that, Rumsfeld is entitled to immunity, says Richard Samp, a national security and constitutional law expert at the [Washington Legal Foundation](#). "I've seen no document that says 'I hereby command you to inflict the following torture on individuals.' "

Others say immunity is not warranted in Rumsfeld's case. "Accountability, not immunity, for the conduct of military personnel within defendants' command is fundamental to military law, discipline and the law of war," writes Sidney Rosdeitcher in a friend-of-the-court brief filed on behalf of a group of military law experts.

Although allegations in the suit are the equivalent of war crimes, it is a civil case, not a criminal one. Only the US government is empowered to prosecute war crimes in criminal court or before a military court. Various commissions identified command-level problems as contributing to interrogation abuses, but government prosecution has focused on punishing "rogue individuals."