

# United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

November 20, 2007

The Honorable Michael B. Mukasey  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

The Honorable Michael Chertoff  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Attorney General Mukasey and Secretary Chertoff:

As the Chairman and Ranking Member of the Senate Judiciary Subcommittee on Human Rights and the Law, we have been deeply disturbed to learn that perpetrators of serious human rights abuses have found safe haven in the United States. We write to bring to your attention one very troubling example.

The Subcommittee on Human Rights and the Law held an oversight hearing on “No Safe Haven: Accountability for Human Rights Violators in the United States” on November 14, 2007. The hearing examined the U.S. government’s efforts to identify, investigate and prosecute suspected perpetrators of serious human rights abuses in the United States, or to deport them to be held accountable in an adequate forum in their home country.

One of the witnesses at the hearing, Dr. Juan Romagoza Arce, testified about his experience as a victim of torture. Dr. Romagoza was detained and tortured for 22 days at the National Guard Headquarters in El Salvador in 1980. After his release from prison, Dr. Romagoza fled El Salvador. He arrived in the United States in 1983 and was granted political asylum in 1987.

Unfortunately, two individuals who are responsible for Dr. Romagoza’s torture, General Jose Guillermo Garcia and General Carlos Eugenio Vides Casanova, also found safe haven in the United States. In 1999, Dr. Romagoza and two co-plaintiffs filed a civil lawsuit against Generals Garcia and Vides Casanova for torture and other human

rights abuses. In 2002, a federal jury in West Palm Beach, Florida returned a verdict against the generals for their responsibility for the torture of Dr. Romagoza and the two co-plaintiffs. In 2006, the U.S. Court of Appeals for the Eleventh Circuit upheld the jury verdict.

During the Subcommittee's November 14<sup>th</sup> hearing, we were very troubled to learn that despite this final judgment holding Generals Garcia and Vides Casanova responsible for Dr. Romagoza's torture, these two war criminals continue to live openly and freely in Florida.

We urge you to review the facts in this case and determine whether prosecution and/or removal of General Jose Guillermo Garcia and General Carlos Eugenio Vides Casanova would be appropriate. Please inform us of your findings on this matter.

During the Subcommittee's November 14<sup>th</sup> hearing, it was suggested that perhaps Generals Garcia and Vides Casanova have not been prosecuted and/or removed because of the Justice Department's and the Department of Homeland Security's interpretation of whether U.S. criminal and immigration laws relating to human rights abuses cover those with "command responsibility" for such abuses. Command responsibility is a well-established theory of liability that covers military officers or civilian superiors who knew or should have known about abuses taking place under their command and failed to take steps to stop the abuses or punish the offenders. Please respond to the following questions:

- Can individuals who have command responsibility for torture be prosecuted for torture under the Torture Statute (18 U.S.C. 2340A)?
- Can individuals who have command responsibility for serious human rights abuses be prosecuted for crimes relating to the misrepresentation of their role in such abuses, including visa fraud or false statements?
- Can individuals who have command responsibility for torture or extrajudicial killings be removed under the provisions of the Immigration and Nationalization Act (INA) that establish the commission of torture or extrajudicial killings as a ground for removal (18 U.S.C. 1227(a)(4)(D)) or any other available ground for removal under the INA?

Thank you for your prompt response.

Sincerely,



Richard J. Durbin



Tom Coburn