

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 7, 2008

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

Dear Secretary Chertoff:

On November 20, 2007, we wrote to you to inquire whether prosecution and/or removal of General José Guillermo Garcia and General Carlos Eugenio Vides Casanova, two individuals found to have been responsible for Dr. Juan Romagoza's torture by a U.S. federal court, would be appropriate. In response to our letter, Assistant Secretary Donald H. Kent, Jr. responded that the Department of Homeland Security (DHS) continues to review these cases with the Department of Justice. We are encouraged by this news and would like to bring to your attention some information that we hope you will consider as part of your review.

As you know, Congress included in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRPTA) an amendment to the Immigration and Nationality Act to make "any act of torture or extrajudicial killing" grounds for deportation. Interestingly, the Senate Committee Report (108-209) outlining the justification for the legislative provisions that were ultimately enacted in 2004 as part of the IRTPA noted the presence of Generals Garcia and Vides Casanova in the United States and their alleged involvement in serious human rights abuses in El Salvador:

In 1980, four American churchwomen were raped and murdered by the Salvadoran National Guard. Two former officials in the government of El Salvador allegedly covered up the murders. According to the United Nations' Truth Commission in El Salvador, one of the officials "concealed the fact that the murders had been carried out pursuant to superior orders," and the other "made no serious effort to investigate those responsible for the murders." *Id.*, at 48. Both of these Salvadoran former officials currently reside in Florida.

Other information that you may find helpful to your review relates to the provision of the Immigration and Nationality Act (INA) that establishes the commission of torture or extrajudicial killings as a ground for removal (18 U.S.C. § 1227(a)(4)(D)).

That information can also be found in Senate Committee Report 108-209, which provides insight into what conduct Congress intended to reach with 18 U.S.C. § 1227(a)(4)(D):

The statutory language—‘committed, ordered, incited, assisted, or otherwise participated in’--is intended to reach the behavior of persons directly or personally associated with the covered acts, including those with command responsibility. Command responsibility holds a commander responsible for unlawful acts when (1) the forces who committed the abuses were subordinates of the commander (i.e., the forces were under his control either as a matter of law or as a matter of fact); (2) the commander knew, or, in light of the circumstances at the time, should have known, that subordinates had committed, were committing, or were about to commit unlawful acts; and (3) the commander failed to prove that he had taken the necessary and reasonable measures to (a) prevent or stop subordinates from committing such acts, or (b) investigate the acts committed by subordinates in a genuine effort to punish the perpetrators.

It has been almost nine years since Dr. Romagoza filed a civil case in U.S. courts to hold Generals Garcia and Vides Casanova accountable for his torture in El Salvador, more than five years since a federal court first held the two generals responsible for Dr. Romagoza’s torture, and more than three years since, motivated in part by the facts surrounding the presence of Generals Garcia and Vides Casanova in the United States, Congress enacted legislation authorizing the removal of aliens who have committed torture or extrajudicial killings. Given these facts, we fail to understand how these two former generals continue to live freely in the United States and hope to see an appropriate and timely resolution to the Department’s review of their cases.

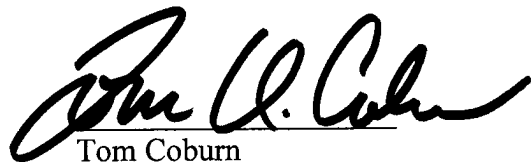
**When do you expect to conclude your review of the circumstances of the presence of the two generals in the United States?**

Thank you for your prompt response.

Sincerely,



Richard J. Durbin



Tom Coburn