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Obama DOJ Asks Court to Grant Immunity to George W. Bush For Iraq War

By Inder Comar

August 22, 2013

In court papers filed today ([PDF](#)), the United States Department of Justice requested that George W. Bush, Richard Cheney, Donald Rumsfeld, Colin Powell, Condoleezza Rice and Paul Wolfowitz be granted procedural immunity in a case alleging that they planned and waged the Iraq War in violation of international law.

Plaintiff Sundus Shaker Saleh, an Iraqi single mother and refugee now living in Jordan, filed a complaint in March 2013 in San Francisco federal court alleging that the planning and waging of the war constituted a “crime of aggression” against Iraq, a legal theory that was used by the Nuremberg Tribunal to convict Nazi war criminals after World War II.

“The DOJ claims that in planning and waging the Iraq War, ex-President Bush and key members of his Administration were acting within the legitimate scope of their employment and are thus immune from suit,” chief counsel Inder Comar of Comar Law said.

The “Westfall Act certification,” submitted pursuant to the Westfall Act of 1988, permits the Attorney General, at his or her discretion, to substitute the United States as the defendant and essentially grant absolute immunity to government employees for actions taken within the scope of their employment.

In her lawsuit, Saleh alleges that:

- Richard Cheney, Donald Rumsfeld and Paul Wolfowitz began planning the Iraq War in 1998 through their involvement with the “Project for the New American Century,” a Washington DC non-profit that advocated for the military overthrow of Saddam Hussein.
- Once they came to power, Saleh alleges that Cheney, Rumsfeld and Wolfowitz convinced other Bush officials to invade Iraq by using 9/11 as an excuse to mislead and scare the American public into supporting a war.
- Finally, she claims that the United States failed to obtain United Nations approval prior to the invasion, rendering the invasion illegal and an act of impermissible aggression.

“The good news is that while we were disappointed with the certification, we were prepared for it,” Comar stated. “We do not see how a Westfall Act certification is appropriate given that Ms. Saleh alleges that the conduct at issue began prior to these defendants even entering into office. I think the Nuremberg prosecutors, particularly American Chief Prosecutor Robert Jackson, would be surprised to learn that planning a war of aggression at a private non-profit, misleading a fearful public, and foregoing proper legal authorization somehow constitute lawful employment duties for the American president and his or her cabinet.”

The case is Saleh v. Bush (N.D. Cal. Mar. 13, 2013, No. C 13 1124 JST).