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The United States Department of Justice has requested that former President George W. Bush and the highest figures in his administration receive full exemption from being tried for the Iraq War, which the DoJ says was in line with international law.

Apart from Bush, the names listed in the paper the DoJ filed on Tuesday are former Vice President Richard Cheney, former Secretary of Defense Donald Rumsfeld, retired four-star General Colin Powell, former Secretary of State, Condoleezza Rice and former Deputy Secretary of Defense and President of the World Bank, Paul Wolfowitz.

Sundus Saleh, an Iraqi single mother of three who became a refugee, filed a complaint in March in the San Francisco federal court, claiming that the war in her country can be judged as a 'crime of aggression', according to the same legal standards that the Nuremberg Tribunal used for convicting Nazi war criminals of World War II.

Saleh is the lead plaintiff in this class action lawsuit.

The reason for the decision is connected with the 'Westfall Act' certification. The 1988 law gives the Attorney General the power to personally decide whether the United States is actually a defendant in the case. This in turn allows the granting of absolute immunity to politicians for actions carried out while in the government's employ.

Inder Comar of Comar Law has agreed to take the case. The San-Francisco-based firm normally specializes in support to private companies, particularly those in the tech industry. Comar met with Saleh at her home in Jordan to discuss the case.

Chief counsel Comar wrote on the War Is a Crime website explaining that, *"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."*

The lawsuit filed by Saleh says that Cheney, Rumsfeld and Wolfowitz orchestrated the Iraq War in 1998 as part of their involvement with the 'Project for the New American Century', a Washington DC-based non-profit organization that pushed for the overthrow of Iraq's former leader, Saddam Hussein.

In this U.S. Marine handout picture, which was released on November 23, 2004, Iraqi Special Forces and U.S. Marines from the 2nd Squad, 3rd Platoon, L Company, 3rd Battalion, 5th Marine Regiment of the 1st Marine Division, conduct a security patrol towards the palm grove and clear buildings along the way in the war-torn city of Falluja. (Reuters/HO/USM/Lance Corporal James J. Vooris HH/JV) Saleh then alleges that the tragedy of September 11, 2001, was pitched to other members of the Bush cabinet as the perfect excuse to scare the American public into supporting the war in Iraq. The lawsuit also claims that the United States failed to obtain United Nations approval for the invasion, making it an illegal and aggressive act of war.

According to Corey Hill, who is a member and outreach coordinator for Global Exchange, an international human rights organization, Comar Law is invoking something called the Alien Tort Statute, which is a 1789 law that permits a foreign national to sue the US federal court for injuries

*"committed in violation of the law of nations or a treaty of the United States."*

Hill

[explained](#)

this in his article for YES! Magazine, for which he also writes.

All the defendants in the case have been summoned to appear in accordance with the usual legal proceedings. The trial is expected to start in early 2014.

There are, however, several problems that could arise with the allegations. As Paul Stephen, who teaches law at the University of Virginia and is former international law consultant for the Department of State told YES! Magazine, that it would be difficult to sue a government employee for acting

*"under the scope of employment"*

in this case, because of the modified nature of the Westfall Act, giving officials more scope for action.

The second problem may arise from the fact that their actions did not take place on US soil, making it difficult to validate the accusation.

And lastly,

*“courts aren’t open to ruling on matters of a political nature”*

, Hill said in reference to a doctrine in US Constitutional Law that separates clear-cut court cases with those better left to the legislative and executive branches of the government. This doctrine then means that the invasion of Iraq is a political case – not a legal one.

*“If the expectation is that a federal court will declare that the invasion, although duly authorized by Congress, violated international law and thus violates U.S. law, I would respond that we walked up and down that hill with respect to Vietnam... No federal court ever has recognized such a claim,”*

Hill explained.

But Comar is optimistic in so far that in order for the Westfall Act to work in this case, the US government would have to prove that the act of preparing the invasion through a non-profit organization took place within office. But since that was not the case, the law cannot be invoked here. He further explained to Hill that separating a political matter from a purely legal one will also not be easy for the US government, as it may often be a very blurry line. Comar expanded on this position to the ‘War Is a Crime’ website.

*“The good news is that while we were disappointed with the certification, we were prepared for it,” he said. “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.”*