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A human rights group in Berlin, Germany, has filed a criminal complaint against the architects of the George W. Bush administration's torture program. The European Center for Constitutional and Human Rights has accused former Bush administration officials, including CIA Director George Tenet and Defense Secretary Donald Rumsfeld, of war crimes, and called for an immediate investigation by a German prosecutor. The move follows the release of a Senate report on CIA torture which includes the case of a German citizen, Khalid El-Masri, who was captured by CIA agents in 2004 due to mistaken identity and tortured at a secret prison in Afghanistan. So far, no one involved in the CIA torture program has been charged with a crime — except the whistleblower John Kiriakou, who exposed it. We speak to Michael Ratner, president emeritus of the Center for Constitutional Rights and chairman of the European Center for Constitutional and Human Rights, and longtime defense attorney Martin Garbus.

JUAN GONZÁLEZ: A human rights group in Berlin, Germany, has filed a criminal complaint against the architects of the George W. Bush administration's torture program. The European Center for Constitutional and Human Rights has accused former Bush administration officials, including CIA Director George Tenet and Defense Secretary Donald Rumsfeld, of war crimes, and called for an immediate investigation by a German prosecutor. The move follows the release of a Senate report on CIA torture, which includes the case of a German citizen, Khalid El-Masri, who was captured by CIA agents in 2004 due to mistaken identity and tortured at a secret prison in Afghanistan. So far, no one involved in the CIA torture program has been charged with a crime—except the whistleblower John Kiriakou, who exposed it.

AMY GOODMAN: In a statement earlier this week, Wolfgang Kaleck, general secretary of the European Center for Constitutional and Human Rights, said, "By investigating members of the Bush administration, Germany can help to ensure that those responsible for abduction, abuse and illegal detention do not go unpunished," unquote.

Meanwhile, President Obama is standing by his long-standing refusal to investigate or prosecute Bush administration officials for the torture program. In a statement, he called on the nation not to, quote, "refight old arguments." As Obama continues to reject a criminal probe of Bush-era torture, former Vice President Dick Cheney has said he would do it all again. Cheney spoke to NBC's *Meet the Press* Sunday.

DICK CHENEY: With respect to trying to define that as torture, I come back to the proposition torture was what the al-Qaeda terrorists did to 3,000 Americans on 9/11. There is no comparison between that and what we did with respect to enhanced interrogation. ... It worked. It worked now. For 13 years we've avoided another mass casualty attack against the United States. We did capture bin Laden. We did capture an awful lot of the senior guys of al-Qaeda who were responsible for that attack on 9/11. I'd do it again in a minute.

JUAN GONZÁLEZ: Cheney's claim that he would approve torture again highlights a key question: Are top officials above the law, and will the impunity of today lead to more abuses in the future? The question spans a wide chain of command from Cheney, President Bush and other White House officials, who kickstarted the torture program after 9/11; to the lawyers in the Justice Department, who drafted the memos providing legal cover; to the CIA officials, who implemented the abuses and misled Congress and the public; and to the military psychologists, who helped devise the techniques inflicted on prisoners at U.S. military prisons and secret black sites across the globe.

AMY GOODMAN: To talk more about this, we're joined now by two guests. Michael Ratner is back with us, president emeritus of the Center for Constitutional Rights, chair of the European Center for Constitutional and Human Rights. CCR has been working with the European Center to file criminal complaints against Bush administration officials complicit in the use of torture. He's also the author of *The Trial of Donald Rumsfeld: A Prosecution by Book*.

Martin Garbus is also back with us, one of the leading attorneys in the U.S. *Time* magazine calls him "one of the best trial lawyers in the country."

National Law Journal

has named him one of the country's top 10 litigators.

We welcome you both back to *Democracy Now!* Yesterday we were talking to you both about Cuba; today we're talking about all the news that has come out. Martin Garbus, should President Bush, should George Tenet, should Donald Rumsfeld, should Dick Cheney be put on trial for torture?

MARTIN GARBUS: They should be. The bad thing about it is they all have a defense they can rely on: They have the defense of the lawyers' opinions that were given to them—the opinions of Gonzales, Bybee and John Yoo. And unless you can pierce those decisions, you have a very tough time. It seems to me a prosecution that ends badly—and I think it would end badly in the United States—might not be one that will be brought. But what should happen is with respect to those lawyers. When Jay Bybee was elected to the court of appeals in 2002—was nominated and then voted upon by the Senate—and John Yoo presently teaches at Berkeley university. At the—

AMY GOODMAN: At University of California, Berkeley, law school.

MARTIN GARBUS: California. At the time that Yoo was appointed to Berkeley, there was a mass demonstration of students against him. At the time that Bybee was nominated for the judgeship by Bush, he was criticized, but you did not yet have all this information. What Senator Leahy has said, that if you had all this information, Jay Bybee never would have passed. Clearly, if you had all this information that you have now, John Yoo wouldn't be appointed. What should happen is there should be complaints filed in the bar associations. They should be suspended and disbarred. Then, perhaps, if you have a prosecution, you already have established the faultiness, the horrific faultiness, of the legal opinions. So it seems to me, at least in this country, a condition precedent, as we lawyers say, before you can have a prosecution, has to be the invalidation of the legal opinions.

JUAN GONZÁLEZ: And—

MICHAEL RATNER: I want to just say, I'm not here to debate Marty on this. And he's a defense lawyer. But I strongly disagree that Bush, Cheney, et al., would have a defense. This wasn't like these memos just appeared independently from the Justice Department. These memos were facilitated by the very people—Cheney, etc.—who we believe should be indicted. This was part of a conspiracy so they could get away with torture. But that's not the subject here now. I just want to—so, that is clear to me.

Secondly, whatever we think of those memos, they're of uselessness in Europe. Europe doesn't accept this, quote, "golden shield" of a legal defense. Either it's torture or it's not. Either you did it or you didn't. And that's one of the reasons, among others, why we're going to Europe and why we went to Europe to bring these cases through the European Center.

JUAN GONZÁLEZ: But I wanted to ask you about that, because—as the clip we played of President Obama saying it's no use refighting old arguments, but you are in essence refighting arguments in Europe that the United States refuses to deal with.

MICHAEL RATNER: But, of course, you know, Cheney just showed us exactly why you have to—have to prosecute torture. Because if you don't prosecute it, the next guy down the line is going to torture again. And that's what Cheney said: "I would do it again."

And now, the European case is really interesting. We did try this in 2004—you covered it here. We tried it in 2006—you covered it here. But now, because of the Senate report, we have a much stronger case in Germany than we ever had, particularly with regard to a German citizen, Khalid El-Masri, who was taken off the streets of Macedonia, sent to the Salt Pit, which is known as Cobalt in the Senate report.

AMY GOODMAN: Wait, explain, though.

MICHAEL RATNER: Yeah, yeah.

AMY GOODMAN: Tell us that story. It's a remarkable story. He was on a bus?

MICHAEL RATNER: He was on a bus to take a vacation in Skopje in Macedonia, and he gets pulled off by agents of our government, gets taken off the bus, gets, you know, sodomized, essentially, with a drug, and then gets taken from there to the Salt Pit in Afghanistan, which is a CIA black site torture center, known as Cobalt in the report. He's there for four months. Everybody knows by—at some point along, this is a mistake. There was another guy with a similar name. It wasn't this guy. Even after they're told that it's a mistake, they leave him in there, and they leave him to be tortured. They finally, at the end of this, just take him out of there, and they drop him off somewhere—

AMY GOODMAN: Condoleezza Rice was involved with this, right?

MICHAEL RATNER: Condoleezza Rice, and so was this woman—

AMY GOODMAN: They held him further because they realized they had been torturing the wrong man.

MICHAEL RATNER: That's correct. And the European Court of Human Rights actually weighed in on this case. And what they did is they held Macedonia liable for allowing that kidnapping on their streets, and fined them. And they found that what happened to him on the streets of Macedonia was torture. So—

AMY GOODMAN: Who else was involved?

JUAN GONZÁLEZ: Well, we—I want to go to Khalid El-Masri in his own words, describing his time inside a secret CIA prison in Afghanistan.

KHALID EL-MASRI: [translated] I was the only one in this prison in Kabul who was actually treated slightly better than the other inmates. But it was known among the prisoners that other prisoners were constantly tortured with blasts of loud music, exposed to constant onslaughts of

loud music. And they were—for up to five days, they were just sort of left hanging from the ceiling, completely naked in ice-cold conditions. The man from Tanzania, whom I mentioned before, had his arm broken in three places. He had injuries, trauma to the head, and his teeth had been damaged. They also locked him up in a suitcase for long periods of time, foul-smelling suitcase that made him vomit all the time. Other people experienced forms of torture whereby their heads were being pushed down and held under water.

JUAN GONZÁLEZ: That was Khalid El-Masri describing his torture in a CIA black site. Michael?

MICHAEL RATNER: Well, yes, and they knew he was innocent. And there's a woman who was just identified—who has been identified for a long time, who works for the CIA

. Her name is Bikowsky, Alfreda Frances Bikowsky, who apparently was one of the people who insisted, even though there was people in the agency saying that "We've got the wrong guy," who insisted on having him picked up and taken there. She's also, apparently, one of the models for the woman in

Zero Dark Thirty

. And Jane Mayer recently wrote an

[article](#)

about her; it's, I think, called "The Queen of Torture" or something like that ["The Unidentified Queen of Torture"]—didn't identify her by name. But she is one of the defendants in the lawsuit in Germany.

And let me just say, Germany—whatever happened before, between the NSA spying on Germany and the fact that their citizen has now been revealed to have been kept in a torture place, when it was known that he was innocent, I'm pretty sure that Germany is going to take this very seriously.

And I just spoke to a person you've had on here before, Scott Horton, who's the columnist for *Harper's*

, as well as an expert on national security, and Scott tells me that because of these cases we have filed in Europe, that over a hundred

CIA

agents have been given advice that they should not leave the United States. Let me just say, what we're going to win here in the end, I can't say, but that already to me is a major victory.

MARTIN GARBUS: A major victory would be to prosecute the lawyers themselves—

AMY GOODMAN: Martin Garbus.

MARTIN GARBUS: —because otherwise what's going to happen in the future is you're going to have activities, like Cheney or whomever, you'll have people in the CIA and the NSA relying on faulty legal opinion. So I think a strong emphasis in the United States has to be stop future lawyers from doing the same thing as was done here.

JUAN GONZÁLEZ: And your point is that these memos, they consciously knew that they were violating torture statutes.

MARTIN GARBUS: They consciously knew. And I think Michael is right, of course, that they were doing it under the chain of command—Cheney and the other people. But I think that's very difficult to prove, and I think you should go after the lawyers immediately now.

AMY GOODMAN: And, of course, since that time, John Yoo is an eminent professor at University of California, Berkeley, law school, and Bybee—

MARTIN GARBUS: Jay Bybee is a respected federal judge. "Respected."

AMY GOODMAN: —was elevated to a judgeship.