

By Daniel Tencer

From [The Raw Story](#) | Original Article

John Yoo, the former Bush administration lawyer who gained notoriety for penning a number of the so-called "torture memos" justifying the use of "enhanced interrogation techniques" on terrorism suspects, has filed an appeal of a lawsuit against him with a court on whose bench sits another torture "architect" from the Bush administration.

Yoo's lawyers have filed an appeal against a lawsuit by convicted terrorist supporter Jose Padilla to the US Ninth Circuit Court of Appeals. One of the judges on that bench is Jay Bybee, who served early on in the Bush administration in the same Office of Legal Counsel where Yoo wrote the torture memos.

Bybee is known for having written the "Bybee memo," which spelled out the definition of "enhanced interrogation techniques" the Bush administration used against terrorism suspects, now abandoned by the Obama Justice Department. Yoo wrote a number of controversial memos regarding torture, including one that declared "enhanced interrogation" only met the legal definition of torture if it caused pain equal to "organ failure, impairment of bodily function or even death."

Both Bybee and Yoo are [defendants in a Spanish prosecution](#) of the principal creators of the Bush administration's torture policies.

In their appeal to the Ninth Circuit Court, Yoo's lawyers declared that a lawsuit against him by convicted terrorist supporter Jose Padilla could "open the floodgates to politically motivated lawsuits" against government officials, the *San Francisco Chronicle* [reported](#) Wednesday.

"Threatening executive branch lawyers with personal liability for reaching allegedly incorrect legal conclusions regarding the constitutionality of a president's wartime actions would infringe

on the core war-making authority that the Constitution reserves to the political branches," the *Chronicle* quoted attorney Miguel Estrada.

Last June, federal court Judge William White [allowed Padilla's lawsuit](#) against Yoo to proceed. Padilla's lawyers had argued that the inmate had been tortured during his three-year detention at a naval brig in South Carolina, largely on the basis of the justifications provided to the administration by Yoo.

The lawsuit stated Padilla suffered "gross physical and psychological abuse at the hands of federal officials as part of a systematic program of abusive interrogation intended to break down Mr Padilla's humanity and his will to live." Padilla's lawyers are seeking a symbolic \$1 in punitive damages and a declaration by the court that his treatment was unconstitutional.

Yoo's lawyers are now appealing Judge White's decision. Padilla's lawyers have until Dec. 9 to challenge the appeal, [notes](#) the San Francisco *Appeal*.

Padilla's arrest at Chicago's O'Hare Airport in May, 2002, on his return from Egypt, was widely publicized. Initial statements from authorities identified him under his Muslim name, Abdullah al-Muhajir. He was accused of planning a dirty bomb attack.

In what many observers saw as a White House test of the limits of constitutional powers, the Bush administration declared Padilla, a US citizen, an "enemy combatant" who was not eligible for a civilian trial, and kept him in detention at a naval brig in South Carolina for three-and-a-half years.

Under pressure from civil-liberties groups, the Bush administration granted Padilla access to civilian courts, and in 2007 he was convicted of aiding a terrorist organization. The indictment in that case made no mention of the dirty bomb plot for which he was initially detained.

Yoo rose to public prominence in the later years of the Bush administration, as his and others' memos on torture practices came to light. He now teaches law at the University of California in

Berkeley. No date has been set for the appeals court hearing to dismiss Padilla's lawsuit against him.