

Gonzales hearings: Senate to confirm defender of torture as US attorney general

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The nomination of Alberto Gonzales for attorney general marks a significant escalation in the assault upon democratic rights in the United States. Perhaps more than any other figure, Gonzales is identified with the most criminal actions of the Bush administration. As White House counsel, he helped develop a pseudo-legal rationale for preemptive war, indefinite detention of detainees and, most infamously, torture.

Gonzales's nomination signals that the Bush administration is determined to expand the power of the presidency and intensify the assault on constitutional rights and international law. That Gonzales will almost certainly be confirmed with the support of large sections of the Democratic Party exposes the lack of serious commitment to democratic rights within any section of the ruling establishment.

The Senate Judiciary Committee's January 6 confirmation hearings for Gonzales concluded within one day, and a vote on the nomination is expected before the January 20 inauguration.

Even before the hearings began, leading Democrats indicated that, while Gonzales would face some questioning on his role in writing the so-called "torture memos," he would easily be confirmed. New York Democratic Senator Charles Schumer, who serves on the committee, declared, "Generally, for an executive branch position the president gets the benefit of the doubt. The general feeling on the committee is that he has probably met that lowered threshold."

Schumer made this statement as the White House blocked the release of documents directly implicating Gonzales in the formation of the Bush administration's criminal policies. This includes the final draft of the memo written by Gonzales on the non-application of the Geneva Conventions to prisoners captured in Afghanistan and elsewhere. The administration has not claimed executive privilege; it has simply refused to release the documents.

More than anything else, Gonzales is associated with the assertion of virtually unlimited powers for the president. Some of the most significant questioning during the Senate hearing focused on the authority of the president to override legislation passed by Congress and signed into law, including prohibitions on torture.

Senator Richard Durbin, a Democrat from Illinois, asked Gonzales whether the president "can ignore a law passed by this Congress, signed by this president or another one, and decide that it is unconstitutional and refuse to comply with that law."

In response, Gonzales asserted that the president does have this right. "You are asking me whether hypothetically does that authority exist," he stated, "and I guess that I would have to say that hypothetically that authority may exist."

Senator Russ Feingold, Democrat from Wisconsin, picked up the line of questioning later in the session, asking: "What is your view regarding the president's conditional authority to authorize violations of the criminal law, duly enacted statutes that may have been on the books for many years?... Does the president have the authority acting as commander-in-chief to authorize warrantless searches of Americans' homes and wiretaps

of their conversations in violation of the criminal and foreign intelligence surveillance statutes of this country?"

After dissembling for some time, Gonzales stated, "I would have to know what is the national interest that the president may have to consider... It is impossible for me based on the question to answer it." However, any such decision would be "a significant decision," he said, implying that president does in fact have the power to make such a decision.

These statements, which essentially place the president above the law, are in line with the legal decisions made during the first term of the Bush administration by a handful of extreme right-wing lawyers, with Gonzales at their head. The decisions were made beginning immediately after the attacks of September 11, 2001, which the administration seized upon as a pretext for launching far-reaching attacks on democratic rights.

In addition to Gonzales, the group included John Yoo, then deputy assistant attorney general in the Office of Legal Counsel at the Justice Department; Gonzales's deputy Timothy Flanigan; the vice president's counsel, David Addington; and William Haynes, the general counsel at the Department of Defense.

Many of these lawyers are associated with the extreme right-wing Federalist Society, which has favored a vast extension of presidential power. Many were previously clerks for Supreme Court Justices Clarence Thomas and Antonin Scalia, and almost all were involved in some way in the right-wing attempts to impeach President Clinton. They had continual discussions with each other throughout the period in which the series of memos were written.

The debate within the administration on torture was a focal point of the Senate hearings. A memo dated August 1, 2002, signed by Assistant Attorney General Jay Bybee, but written by Yoo at the behest of Gonzales, argued that the president as commander-in-chief has the right to order the torture of detainees, even if this violated legal statutes. The Bybee memo also defined torture in such narrow terms as to allow nearly anything (see "Washington Post publishes memo implicating White House in torture of prisoners," <http://www.wsws.org/articles/2004/jun2004/tort-j17.shtml>).

A *Washington Post* article by R. Jeffrey Smith and Dan Eggen, published January 5 ("Gonzales Helped Set the Course for Detainees"), highlighted Gonzales's critical role in these discussions. According to the *Post*, the torture memo arose directly from a CIA request for legal clarification regarding its treatment of suspected Al Qaeda member Abu Zubaida and other detainees.

"The Justice Department's Office of Legal Counsel took up the task, and at least twice during the drafting, top administration officials were briefed on the results," the *Post* reported. "White House counsel Alberto R. Gonzales chaired the meetings on this issue, which included detailed descriptions of interrogation techniques such as 'waterboarding,' a tactic intended to make detainees feel as if they are drowning. He raised no objections and, without consulting military and State Department experts

in the laws of torture and war, approved” the Bybee memo.

A *New York Times* article the same day cited administration officials stating that Gonzales “intervened directly with the Justice Department lawyers in 2002 to obtain” the memo.

Only a week before the Senate’s nomination hearing on Gonzales, the Justice Department issued a new memorandum repudiating the Bybee memo and stating, “Torture is abhorrent both to American law and values and to international norms.” The release of the new memo was an obvious attempt to deflect criticism from Gonzales prior to the hearing. Significantly, however, the new memo did not address the supposed constitutional authority of the president as commander-in-chief to order torture in violation of US law.

Pressed by Senator Patrick Leahy as to whether the president could authorize torture, Gonzales repeatedly stated that the question was “hypothetical,” given the claim that the president would not authorize torture. He refused to state that the president did not have this right: “I am not prepared in this hearing to give you an answer to such a question.”

Gonzales also refused to state whether or not the CIA was given the Bybee memo, and refused to acknowledge—claiming lack of memory—that he had requested the memo. He withheld all details on meetings between the lawyers during the preparation of the memo, and would not state whether or not he was informed of the particular techniques, including waterboarding, that the CIA was interested in using.

Repeatedly citing the new Justice Department memo as evidence that the US does not engage in torture, Gonzales insisted that the entire discussion about the previous memo was irrelevant. In fact, whatever pious words the government might now issue, the evidence is overwhelming—including thousands of pages of documents recently released by the ACLU—that torture is commonly employed by the US military and intelligence agencies. Gonzales played a crucial role in justifying these torture methods.

The torture memo was one of a series put out by Gonzales and his cohorts. The first of these memos was written September 25, 2001, just two weeks after the terrorist attacks on New York and Washington. Written by Yoo at the behest of Gonzales, the memo stated, “The President may deploy military force preemptively against terrorist organizations or the States that harbor or support them, whether or not they can be linked to the specific terrorist incidents of September 11.”

Yoo stated that the President was not required to provide proof that countries targeted by the US for attack were involved themselves in attacking the United States or even posed a threat to US national security. “In the exercise of his plenary power to use military force, the President’s decisions are for him alone and are unreviewable” (see “Post 9/11 memo argued for unlimited presidential war-making powers,” <http://www.wsws.org/articles/2004/dec2004/yoo-d22.shtml>).

Gonzales also played a critical role in arguing that the president has the “inherent authority” to order that an individual be arrested, held without charges, tried in a military tribunal and even executed without recourse to courts within the United States or anywhere else. Gonzales, Addington and Flanigan drafted a November 13, 2001, executive order setting out these powers. The decision was made behind the backs of not only the American people, but sections of the Bush administration itself, including National Security Adviser Condoleezza Rice and the Justice Department.

The White House counsel was among the most extreme advocates of abolishing democratic rights, arguing that these detainees should not have access to civilian lawyers, and that they should not have the presumption of innocence.

Gonzales himself authored a January 25, 2002, memo arguing that the Geneva Conventions should not be applied to any prisoners captured in the war against Afghanistan. His position was on the extreme right wing of the Bush administration. He wrote, “The war against terrorism is a new kind of war.... The nature of the new war places a high premium on other

factors, such as the ability to quickly obtain information from captured terrorists and their sponsors.... In my judgment, this new paradigm renders obsolete Geneva’s strict limitations on questioning of enemy prisoners and renders quaint some of its provisions.”

Gonzales’s record includes his services to then-Texas Governor Bush in the 1990s. He was Bush’s counsel in the Texas statehouse, responsible for preparing memos on clemency appeals filed for individuals on death row. As governor, Bush commuted only one death sentence, and this was a case in which Gonzales had originally recommended against clemency. In his memos, Gonzales often neglected to include information supportive of the request for commutation.

A January 6 *Washington Post* article notes that in one case, Gonzales neglected to mention that the Texas attorney general had conducted a prior investigation of the person scheduled to be executed and concluded that the accused was not guilty of the crime for which he was charged.

While at the White House, Gonzales consistently argued for an expansion of government secrecy. He sought to prevent any disclosure of details of the meetings held by Vice President Richard Cheney in the preparation of administration energy policy. These meetings, held with top executives of energy corporations, reportedly discussed preparations for divvying up Iraqi oil fields.

Gonzales was the administration’s point man in its relations with the 9/11 Commission. The administration originally opposed the panel’s formation. After the White House acquiesced to its creation, Gonzales fought against attempts to get the president and vice president to testify. Eventually, the president agreed to meet with commission members behind closed doors, but only if he could be accompanied by Cheney.

Above all, Gonzales has been and will be “Bush’s man.” He has continually sought to protect the president and expand the powers of the presidency. Given the extensive crimes it has committed, it is critical for the administration to have someone deeply loyal to Bush heading the government branch supposedly responsible for enforcing the law.



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