

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

January 4, 2005

The Honorable Alberto R. Gonzales
Counsel to the President
The White House
Washington, DC 20500

Dear Judge Gonzales:

I am disappointed that, contrary to your promises to me to engage in an open exchange and to answer my questions in connection with your confirmation process, you have not answered my letters. I expected answers to my letters dated May, 17, June 15, December 3, and December 21, 2004, to come from you. The responses from David Leitch, Deputy Counsel to the President, fail to fully address the questions contained in my correspondence.

In his most recent letter, Mr. Leitch claimed that, except for the final version of the January 25, 2002, memo, all requested documents regarding interrogation policy have been made public. In fact, I and other Senators have requested a number of documents from you and other Administration officials that have not been released. While some of these documents may not specifically address interrogation policies, they are nonetheless relevant to your nomination. They are listed below, for your convenience.

Please provide copies of the referenced documents no later than January 5, 2005. For any document that you refuse to release, state the basis for your refusal and whether the President is asserting executive privilege.

1. Memorandum for Alberto Gonzales, Counsel to the President, from Patrick F. Philbin, Deputy Assistant Attorney General, OLC, Re: Legality of the Use of Military Commissions to Try Terrorists (Nov. 6, 2001). I requested this document from you in a letter of June 15, 2004. In a letter dated December 17, 2004, Mr. Leitch refused to release the document because it addresses legal issues that are "currently the subject of litigation in cases such as *Hamden v. Rumsfeld*."
2. Memorandum for William J. Haynes, General Counsel, DOD, from John Yoo, Deputy Assistant Atty. Gen. and Patrick F. Philbin, Deputy Assistant Atty. Gen., Re: Possible Habeas Jurisdiction Over Aliens Held in Guantanamo Bay (December 28, 2001). I requested this document in a letter to Attorney General Ashcroft dated May 28, 2004. There has been no response to this request.

The Honorable Alberto R. Gonzales

January 4, 2005

Page 2

3. Memorandum to William J. Haynes, General Counsel, DOD, from John Yoo, Deputy Assistant Atty. Gen. and Patrick F. Philbin, Deputy Assistant Atty. Gen., Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees (January 9, 2002). I requested this document in a letter to Attorney General Ashcroft dated May 28, 2004. There has been no response to this request.
4. Memorandum to John Yoo, Deputy Assistant Atty. Gen., from William Howard Taft IV, Department of State Office of Legal Advisor, Re: Response to the January 9 Yoo/Delahunty memo (January 11, 2002). I requested this document in a letter to Attorney General Ashcroft dated May 28, 2004. I also requested all relevant documents from Secretary of State Powell in a letter dated July 6, 2004. There has been no response to these requests.
5. Final version of draft Memorandum for the President from Alberto Gonzales, Counsel to the President, Re: Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban (Jan. 25, 2002). I requested this document in letters to you dated May 17, 2004, and June 15, 2004. Mr. Leitch's December 17 letter refused to provide it based on "longstanding practice."
6. Interim Ruling from Assistant Attorney General Jack L. Goldsmith, Office of Legal Counsel, Re: Directing the CIA to return Hiwa Abdul Rahman Rashul to Iraq and defining a new category of persons in Iraq whom he said did not qualify for protection under the Geneva Conventions (October 2003). I requested this document in letter to Attorney General Ashcroft dated October 29, 2004. There has been no response to this request.
7. Memorandum for Alberto Gonzales, Counsel to the President, from Jack Goldsmith, Assistant Attorney General, Office of Legal Counsel, Re: "Protected Persons" in Occupied Iraq (March 18, 2004). I requested this document in a letter to Attorney General Ashcroft dated October 29, 2004. There has been no response to this request.
8. Final version of draft Memorandum for Alberto Gonzales, Counsel to the President, from Jack Goldsmith, Assistant Attorney General, Office of Legal Counsel, Re: Permissibility of Relocating Certain "Protected Persons" from Occupied Iraq (March 19, 2004). I also requested this document in my October 29 letter to Attorney General Ashcroft.

My letters to you and to the Department of Justice, State, and other agencies have included requests for other relevant documents not specifically listed in the letters. Some documents were cited in other memoranda and some were described in the press without specific identifying information, such as an author or date. These documents are also relevant to the consideration of your nomination. My request includes, but is not limited to, the following:

The Honorable Alberto R. Gonzales
January 4, 2005
Page 3

9. Memorandum for Alberto Gonzales, Counsel to the President, and William J. Haynes, General Counsel, Department of Defense, from John Yoo, Deputy Assistant Attorney General and Robert J. Delahunty, Special Counsel, Office of Legal Counsel, Re: Authority for Use of Military Force to Combat Terrorist Activities Within the United States (October 17, 2001). This memo was cited on page 32 of the August 1, 2002, Bybee memo and page 29 of the January 22, 2002, Bybee memo. It appears that the same memo is cited on pages 16 & 21 of the February 26, 2002, Bybee memo, but the date is listed as October 23, rather than October 17.
10. Memorandum to William J. Haynes, General Counsel, DOD, from Jay S. Bybee, Assistant Atty. Gen., Re: The President's Power as Commander in Chief to Transfer Captured Terrorists to the Control and Custody of Foreign Nations (March 13, 2002). This memo was cited on page 38 of the August 1, 2002, Bybee memo.
11. Memorandum to the CIA from "top officials in the deputy attorney general's office," regarding specific interrogation methods that the CIA could use against top al-Qaeda members, dated August 2002, or thereabouts. This memo is cited in a June 28, 2004, *USA Today* article.
12. Study by the CIA raising questions about the significance of detainees held at Guantanamo Bay, dated September 2002, or thereabouts. This memo is cited in a June 21, 2004, *New York Times* article.

Again, in order that these documents are available to all Committee members prior to your confirmation hearings, I ask that you respond by January 5, 2005.

Sincerely,



PATRICK LEAHY
Ranking Democratic Member

cc: The Honorable Arlen Specter