

The following text may be printed, copy/pasted, or downloaded and emailed.

Gonzales: Rules for CIA are different

Bush's directive on torture doesn't cover agency, says nominee for attorney general

ERIC LICHTBLAU
THE NEW YORK TIMES
January 19, 2005

WASHINGTON -- The Central Intelligence Agency and other non-military personnel fall outside the bounds of a 2002 directive issued by President Bush that pledged the humane treatment of prisoners in American custody, Alberto Gonzales, the White House counsel, said in documents released yesterday.

Gonzales, in written responses to questions posed by senators as part of his confirmation for attorney general, also said that a separate congressional ban on cruel, unusual and inhumane treatment "has a limited reach" and does not apply in all cases to "aliens overseas." That position has clear implications for prisoners held in American custody in Guantanamo Bay and Iraq, legal analysts said.

At the same time, however, the administration remains opposed to the use of torture against prisoners, and "the CIA and other non-military personnel are fully bound by this clear policy set forth by the president," Gonzales said.

The administration's views on torture and the treatment of prisoners have been the central focus of Gonzales' confirmation process, and a number of senators have pressed him for a fuller explanation because they said they were not satisfied with the answers he gave at his hearing earlier this month.

His written responses, totaling more than 200 pages on torture and other questions, offered one of the administration's most expansive statements on its positions -- particularly on the question of the laws and policies governing CIA interrogations of terror suspects.

Gonzales' acknowledgement in the written statements that the White House does not consider the CIA to be bound by the same rules as military personnel is significant because the intelligence agency has carried out some of the government's most aggressive and controversial interrogation tactics in interviewing "high-value" terror suspects, including tactics such as "water-boarding," or simulating drowning.

Martin Lederman, a former Justice Department lawyer who has analyzed the administration's legal positions on treatment of prisoners, said the White House appears to have carved an exemption for the CIA in how it goes about interrogating terror suspects, allowing the CIA to engage in potentially abusive conduct outside the United States that would be unconstitutional within its borders.

Although the CIA has been bound by congressional bans on torture, Lederman said that standard is more permissive than the 2002 directive from Bush.

Last month, at the urging of the White House, congressional leaders scrapped a legislative measure that would have imposed new restrictions on the use of extreme interrogation measures by intelligence officers at the CIA and elsewhere. Gonzales said he was not involved in the lobbying effort

"But it's notable," Lederman added, "that Gonzales is not willing to tell the senators or anyone else just what techniques the CIA has actually been authorized to use."

Indeed, Gonzales declined to say in his written responses to the Senate Judiciary Committee what interrogation tactics would constitute torture in his view or which ones should be banned.

That question, he indicated, is again under review by the administration. But if the administration "were to begin ruling out speculated interrogation practices" in public, he said, "we would fairly rapidly provide al-Qaida with a road map concerning the interrogation that captured terrorists can expect to face and would enable al-Qaida to improve its counter-interrogation training to match it," he wrote.

Some Democrats said they remained unsatisfied with Gonzales' responses.

"This was another missed opportunity for straight answers and accountability," said Sen. Patrick Leahy of Vermont, who is the ranking Democrat on the judiciary committee, which is considering Gonzales' nomination as attorney general. The senator said he considered most of Gonzales' written answers to be "vague, unresponsive or AWOL."

Sen. Arlen Specter, R-Pa., who leads the judiciary committee, has scheduled a meeting for this morning on the Gonzales nomination.

But congressional officials said it was unlikely the nomination would come to a vote for at least a week, in part because the committee may not have enough senators for a quorum today and in part because some Democrats want to press the nominee further about the administration's positions on torture. While Gonzales still appears likely to be confirmed, several Democratic senators, including Edward Kennedy of Massachusetts and Charles Schumer of New York, say they are rethinking their support.