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Gonzales Torture Memo Controversy Builds

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WASHINGTON - Attorney General nominee Alberto Gonzales' confirmation hearing this week may become more contentious because the White House has refused to provide copies of his memos on the questioning of terror suspects.

"We go into the hearing with some knowledge of what has occurred because of press reports or leaks but without the hard evidence that will either exonerate or implicate Judge Gonzales in this policy," complained Sen. Richard Durbin of Illinois, the Senate's No. 2 Democrat, on Monday.

Durbin and other Democrats plan to question Gonzales on his involvement in the crafting of policies concerning questioning - policies that the Justice Department has backed away from.

Still, the issue probably won't be enough to stop Republicans from confirming Gonzales as the first Hispanic attorney general.

Republicans hold 55 seats in the new Senate, while Democrats control 44 seats and there is a Democratic-leaning independent. The Democrats have not yet decided whether to try to block Gonzales' confirmation.

"I think the hearing will be contentious, but in the end Judge Gonzales will be confirmed because he deserves to be confirmed," said Sen. John Cornyn, R-Texas, who will introduce Gonzales at the confirmation hearing.

The Justice Department in 2002 asserted that President Bush's wartime powers superseded anti-torture laws and treaties. Gonzales, while at the White House, wrote similar memos.

Durbin, who sits on the Judiciary Committee, says the White House has refused to give those memos to Democrats so they can determine exactly how the policies were crafted.

"We asked them to produce the memos that they have and can release that were given to Judge Gonzales or were generated by him, and so far they have not claimed executive privilege but have refused to produce this documentation," Durbin said.

The Justice memos have since been disavowed and the White House says the United States has always operated under the spirit of the Geneva Conventions that prohibit violence, torture and humiliating treatment.

But critics say the original documents set up a legal framework that led to abuses at the Abu Ghraib prison in Iraq, in Afghanistan and at the U.S. prison camp for terror suspects at Guantanamo Bay, Cuba.

"What they're trying to do is continue their attacks on President Bush because of his policies since 9/11 that the people didn't buy on Nov. 2," Cornyn said. "They also are trying to muddy the water to make it harder for the president to nominate him for the Supreme Court later on."

On New Year's Eve, the Justice Department made public a new policy backing off those memos.

"The fact that officials in this administration's own Justice Department felt compelled to repudiate an earlier torture memo approved by Mr. Gonzales should itself be sufficient to persuade the senators that he is not fit to be the top law enforcement official in the land," said Ron Daniels, executive director of the Center for Constitutional Rights.

Miguel Estrada, nominated in May 2001 for a lifetime seat on the U.S. Court of Appeals for the District of Columbia - long considered a steppingstone to the U.S. Supreme Court - also got caught up in a memo struggle with Democrats. They wanted copies of memos Estrada wrote while working for the solicitor general's office at the Justice Department, saying those documents would reveal how Estrada thinks. The Justice Department refused to release them.

Democrats ended up filibustering Estrada, who withdrew his nomination.

"I don't want to jump to that conclusion," said Durbin when asked if the same could happen to Gonzales. "I hope that Judge Gonzales will be very open with us and we can have an up or down vote on the merits."

Without a filibuster, the Democrats will not have enough votes to stop Gonzales. But Anthony Romero, executive director of the American Civil Liberties Union, said, "The Senate as a duty not to soft-pedal in its questioning."