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U.S. releases new memo defining torture

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WASHINGTON --The Justice Department released a rewritten legal memo on what constitutes torture, backing away from its own assertions prior to the Iraqi prison abuse scandal that torture had to involve "excruciating and agonizing pain."

The 17-page memo omitted two of the most controversial assertions made in now-disavowed 2002 Justice Department documents: that President Bush, as commander in chief in wartime, had authority superseding U.S. anti-torture laws and that U.S. personnel had several legal defenses against criminal liability in such cases.

The new document said torture violates U.S. and international law.

"Consideration of the bounds of any such authority would be inconsistent with the president's unequivocal directive that United States personnel not engage in torture," said the memo from Daniel Levin, acting chief of the Office of Legal Counsel, to Deputy Attorney General James Comey.

Critics in Congress and many legal experts 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. After the Iraqi prison abuses came to light, the Justice Department in June disavowed its previous legal reasoning and set to work on the replacement document.

The Justice Department memo, dated Thursday, was released less than a week before the Senate Judiciary Committee was to consider Bush's nomination of his chief White House counsel, Alberto Gonzales, to replace John Ashcroft as attorney general.

Democrats have said they would question Gonzales closely on memos he wrote that were similar to the now-disavowed Justice Department documents that critics said appeared to justify torture.

The release also coincided with continuing revelations of possible detainee abuse, most recently a series of memos from FBI agents uncovered in an American Civil Liberties Union lawsuit alleging instances of Defense Department wrongdoing during a variety of interrogations.

The new Justice Department memo sets a far different tone, beginning with this sentence: "Torture is abhorrent both to American law and values and to international norms."

The document, again directly contradicting the previous version, says torture need not be limited to pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."

Instead, the memo concludes that anti-torture laws passed by Congress equate torture with physical suffering "even if it does not involve severe physical pain" but still must be more than

"mild and transitory." That can include mental suffering under certain circumstances, but it would not have to last for months or years, as the previous document said.

"This damage need not be permanent, but it must continue for a prolonged period of time," the memo says.

In addition, the memo clearly states that U.S. personnel involved in interrogations cannot contend that their actions were motivated by national security needs or other reasons. And, it says, the interrogator cannot justify torture after telling the victim that he could avoid it if only he would cooperate.

"Presumably, that has frequently been the case with torture, but that fact does not make the practice of torture any less abhorrent or unlawful," the Justice Department memo says.

Most of the original memos were signed by then-assistant Attorney General Jay Bybee, who was writing in the shadow of the Sept. 11, 2001, terror attacks as government officials scrambled to confront a new terrorist foe. Bybee is now a judge on the 9th U.S. Circuit Court of Appeals, based in San Francisco.

The Pentagon, Justice Department and CIA have opened numerous investigations into allegations of prisoner abuse and some detainee deaths stemming from the war on terror and in Iraq. Several U.S. soldiers have also been subjected to court-martial proceedings for their roles in the alleged abuse, some of which was documented in photographs from Abu Ghraib circulated worldwide earlier in 2004.