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Alito Memos Address Rights Stance

In the 1980s, Supreme Court nominee Samuel Alito approved an FBI effort to get fingerprints from refugees living in Canada, saying foreigners had no U.S. rights.

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WASHINGTON -- As a senior lawyer in the Reagan Justice Department, Samuel Alito argued that immigrants who enter the United States illegally and foreigners living outside their countries are not entitled to the constitutional rights afforded to Americans.

In an opinion that offers insight into the Supreme Court nominee's view of an area of law that has gained new significance with the Bush administration's policies to combat terrorism, Alito gave his approval to an FBI effort in the 1980s to collect from Canadian authorities fingerprint cards of Iranian and Afghan refugees living in that country.

The program to collect background information was constitutional, Alito wrote in a January 1986 memo to the FBI director. And because the refugees were nonresident immigrants of a third country, he reasoned, the FBI could disregard court decisions that prohibited it from spreading "stigmatizing" information about citizens.

With the Supreme Court scheduled to hear a major case next term involving the Bush administration's policy of trying "enemy combatants" in military tribunals, Alito's views of the FBI's old antiterrorism fingerprint program have resonance today, reflecting what legal experts said is a broad and aggressive view of the law.

The memo on the rights of immigrants was among 120 documents from Alito's 16-month tenure as a deputy assistant attorney general in the Office of Legal Counsel that the Justice Department released Monday.

Alito's writings show he was in sync with the philosophy of the Republican administration of which he was a part, staking out strong stances on aggressive law enforcement and on states' rights. The views he expresses also could be construed as paralleling those of the Bush administration as it has pursued its campaign against terrorists, legal experts said.

The current administration has contended, for instance, that al Qaeda and Taliban detainees held at the U.S. naval base in Guantánamo Bay, Cuba, had no right to have their case heard by a U.S. judge. That is in part because, like the Afghan and Iranian refugees in Canada, the recent detainees were not on U.S. soil. That view was rejected by the Supreme Court.

In his 1986 memo, Alito cites a 1950 Supreme Court case to support the contention that nonresident immigrants of other countries have "no due process rights" under the Constitution and a 1970 case that he said suggests illegal immigrants in the United States have limited constitutional rights.

"He seems to be saying that there is no constitutional constraints placed on U.S. officials in their treatment of nonresident aliens or illegal aliens," said conservative constitutional analyst Bruce Fein, who served in the Reagan administration with Alito. ``Could you shoot them? Could you torture them? It's a very aggressive reading of cases that addressed much narrower issues."