



Leadership Conference on Civil Rights

Phone: 202-466-3311
Fax: 202-466-3435
www.civilrights.org

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Wade J. Henderson

November 29, 2004

The Honorable Orrin G. Hatch
Chairman

Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick L. Leahy
Ranking Member

Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Leahy:

On behalf of the undersigned organizations, we write to you regarding the nomination of White House Counsel Alberto R. Gonzales to the position of Attorney General of the United States. The Attorney General is the nation's chief law enforcement official, with responsibility for enforcing federal law on behalf of all persons under the Constitution. We strongly believe that this appointment is one of the most important that any president can make, and that your constitutionally mandated review of Mr. Gonzales' nomination is especially important.

We believe that every candidate for such an important office must be carefully evaluated on the basis of his or her entire record, including whether he or she has demonstrated a strong commitment to the protection of civil rights and civil liberties. In these areas, we believe that there are aspects of Mr. Gonzales' record that raise concerns and that must be closely scrutinized by the Judiciary Committee before you and the American people can determine his suitability for the position of Attorney General:

- **Mr. Gonzales' role in setting the administration's policy on detention, interrogation, and torture.** As White House Counsel, Mr. Gonzales oversaw the development of policies that were applied for handling prisoners in Afghanistan, Iraq, and elsewhere. He wrote a memo disparaging the Geneva Conventions and arguing that they do not bind the United States in the war in Afghanistan. He was warned by U.S. military leaders that this decision would undermine respect for the law in the military, but he advised the President to reject that advice, with catastrophic results. He requested and reviewed legal opinions that radically altered the definition of torture and claimed U.S. officials were not bound by laws prohibiting torture. Changes made as a result to long-established U.S. policy and practice paved the way for the horrific torture at Abu Ghraib.
- **The administration's failure to disclose a number of critical documents that could show the extent of Mr. Gonzales's involvement in setting policy requiring or encouraging the Defense Department and the CIA to cast aside laws and practices that would have prevented torture.** All of these documents should be disclosed and reviewed by the Committee before the confirmation

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hearing, and the President should waive any purported claims of privilege for these documents. The Committee should seek clear and specific assurances from Mr. Gonzales that as Attorney General he will uphold and enforce across the U.S. government the Geneva Conventions and the absolute legal prohibition on torture and other cruel, inhuman, or degrading treatment or punishment.

- **Mr. Gonzales' role in the formulation of administration policies that undermine checks and balances safeguarding basic rights.** Mr. Gonzales also played a critical role in shaping the administration's core legal theory in the struggle against terrorism, which has been to place individuals beyond the reach of the law by declaring them "enemy combatants" and holding them indefinitely without charge in *incommunicado* military detention. Rather than respect the vital importance of judicial review in ensuring that the government operates within the bounds of the law, the administration has sought unfettered executive authority to deprive persons of their liberty without due process of law. Mr. Gonzales publicly argued that the authority of the President to detain enemy combatants was constrained not so much by the rule of law but "as a matter of prudence and policy" – a radical view that was eventually rejected by an 8-1 majority of the U.S. Supreme Court. The administration's quest for expanded powers of detention and surveillance in measures ranging from the Patriot Act to its misuse of immigration laws to eviscerate the basic rights of non-citizens reflects this same effort to eliminate checks and balances. The Judiciary Committee should seek a firm and precise commitment from Mr. Gonzales that, if confirmed, he would respect the time-honored and vital role of courts in our democracy by reversing policies that attempt to undermine judicial review of executive action.

Similarly, Mr. Gonzales should be asked about his role as legal counsel to then-Governor Bush. Published reports indicate that Gonzales drafted legal summaries in clemency cases and briefed the Governor in a manner wholly inadequate to determine fairly whether the death penalty was the appropriate punishment, whether the condemned prisoner had received a fair trial, or even whether the prisoner was actually innocent.

- **Mr. Gonzales' involvement in shaping the overall civil rights record of the administration.** As many of us have previously stated, this administration's record on civil rights has been weak and ineffective. In limiting both the number and nature of civil rights cases, the Justice Department has failed to use its full enforcement powers to break down existing barriers to equality. Particular areas of concern include, but are not limited to, voting rights, racial profiling, weakened enforcement of sex discrimination laws, and police misconduct issues. The U.S. Commission on Civil Rights recently posted on its website a draft report on the administration's record on civil rights. The 166-page report shows that the administration has done little to advance the civil rights of a number of disadvantaged groups across a host of issue areas. It is vital that the Committee determine Mr. Gonzales' level of involvement in formulating administration policy on the civil rights issues raised in this extremely troubling report and elsewhere. The Committee should ascertain whether, as Attorney General, Mr. Gonzales would ensure that the Department of Justice upholds its vital role as the nation's chief law enforcement entity by fully and vigorously enforcing our nation's civil rights laws.



In addition to closely examining Mr. Gonzales' own record, we believe that the Committee must also, given the troubling record of outgoing Attorney General John Ashcroft, determine whether and to what extent Mr. Gonzales plans to continue the policies adopted by Mr. Ashcroft on important matters of civil rights and civil liberties. For example, we urge the Committee to carefully consider whether Mr. Gonzales would support the continuation of harsh and ineffective anti-immigrant policies imposed in recent years that deny due process and infringe on the basic rights against detention without charge. The Committee should also determine whether Mr. Gonzales shares Mr. Ashcroft's extremist view – most recently expressed in comments made before the Federalist Society – that federal judges “can put at risk the very security of our nation” simply by exercising their responsibility to review the constitutional limits of administrative powers in the campaign against terrorism.

Nowhere is the Senate's “advise and consent” role in the review of a presidential cabinet appointment more important than in the case of Attorney General. As each Senator examines his or her conscience for the appropriate course of action, we strongly urge that you engage in a searching and thorough review of Mr. Gonzales' record, his positions, and his future plans for the Justice Department. We call upon the Judiciary Committee to begin full and fair hearings that must include the voices of individuals who will look to the next Attorney General for equal protection under law for all people.

Thank you for your consideration. If you have any questions, please feel free to contact LCCR Deputy Director Nancy Zirkin at (202) 263-2880, or LCCR Policy Analyst Rob Randhava at (202) 466-6058. We look forward to working with you.

Sincerely,

Wade Henderson, Executive Director
Leadership Conference on Civil Rights

Mark D. Agrast, Senior Vice President for Domestic Policy
Center for American Progress

Barbara Arnwine, Executive Director
Lawyers' Committee For Civil Rights Under Law

Nan Aron, President
Alliance for Justice

Marsha Atkind, President
National Council of Jewish Women (NCJW)

Charles J. Brown, President and CEO
Citizens for Global Solutions



Judith A. Browne, Acting Co-Director
Advancement Project

Rev. Dr. Bob Edgar, General Secretary
National Council of the Churches of Christ in the USA

Tom Gerety, Executive Director and Brennan Center Professor
Brennan Center for Justice at NYU School of Law

Marcia Greenberger, Co-President
National Women's Law Center

Morton H. Halperin, Director
Open Society Policy Center

Todd Howland, Executive Director
RFK Memorial Center for Human Rights

Louise Kantrow, Executive Director
International League for Human Rights

William J. Klinefelter, Assistant to the President, Legislative and Political Director
United Steelworkers of America

Gay McDougall, Executive Director
Global Rights-Partners for Justice

Karen Narasaki, President and Executive Director
National Asian Pacific American Legal Consortium (NAPALC)

Ralph G. Neas, President
People for the American Way

Cesar A. Perales, President and General Counsel
Puerto Rican Legal Defense & Education Fund

Hon. Mary Rose Oakar, President
American-Arab Anti-Discrimination Committee (ADC)

Michael Posner, Executive Director
Human Rights First

Kathy Rodgers, President
Legal Momentum (the new name of NOW Legal Defense & Education Fund)



Anthony Romero, Executive Director
American Civil Liberties Union

Kenneth Roth, Executive Director
Human Rights Watch

Leonard S. Rubenstein, Executive Director
Physicians for Human Rights

Diann Rust-Tierney, Executive Director
National Coalition to Abolish the Death Penalty

William Samuel, Legislative Director
AFL-CIO

William Schulz, Executive Director
Amnesty International USA

Hilary Shelton, Washington Bureau Director
NAACP

Rev. William G. Sinkford, President
Unitarian Universalist Association of Congregations

Andrew L. Stern, International President
Service Employees International Union (SEIU)