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Senate

Statement of Senator Dianne Feinstein

Nomination of Alberto Gonzales to be Attorney General of the United States

Mrs. FEINSTEIN. Mr. President, I thank the ranking member.

I rise today to explain why I deeply regret I cannot vote to confirm Alberto Gonzales to be the next Attorney General.

I believe as a general rule the President is entitled to the Cabinet of his choice. But one Department, the Department of Justice, always deserves special attention from Congress because it does not exist solely to extend the President's policies.

Though the Attorney General serves under the President, he must independently interpret the laws as written by Congress and be truly the country's chief law enforcement officer.

I cannot emphasize this enough. The Department of Justice must be independent from the White House. The FBI must be independent. The U.S. attorneys must be independent. The Criminal Law Division, the Environmental Law Division, the Civil Law Division must all be independent. The Solicitor General's Office, which argues before the Supreme Court, must be independent. The Office of Legal Counsel, which is charged with interpreting the law of the executive branch, must be independent. The Civil Rights Division must be independent.

These departments are charged with nothing less than following, interpreting, and implementing the law of the United States of America. The Department of Justice is in charge of defending the Nation in court. It is in charge of advising the rest of the Government about what the law means. It is in charge of overseeing

the investigations of the FBI, and it is in charge of deciding when to prosecute criminals and send them to prison. This is obviously a big portfolio.

The head of the Department of Justice is the chief law enforcement officer of the United States. As such, the Attorney General is in charge of 59 separate divisions within the Department of Justice, which cover more than 110,000 employees. In my view, before we vote to confirm to put someone in charge of all this awesome power -- and it truly is awesome -- it is important for us to know what that individual thinks about the major policies the Department will be implementing. And that is where I have been disappointed by the confirmation process for Judge Gonzales.

When President Bush nominated Judge Gonzales, I think many of us were prepared to give him the benefit of the doubt. But the hearings crystallized how little we knew about his own policy views, how little we knew about his qualities for leadership, his policy views, his management style, his strength of character, and his personal beliefs in those areas where he sets the tone and the policy. I think this was a great missed opportunity.

John Ashcroft served 6 years in the Senate. We knew his service on the Judiciary Committee. We knew about his views. One could decide about his personal views, yes or no. Judge Gonzales has spent so many years serving President George Bush. If confirmed, this will be the fifth job George Bush appointed Judge Gonzales to over the past decade. The

hearings were his first real opportunity to show his own views. I think this is why the hearing process became so important in many of our views.

This was a crucial opportunity for Judge Gonzales. Many of us were prepared to vote for him. If there is a single issue that defines this confirmation process, it is what Judge Gonzales thinks about torture and brutal interrogation practices.

He reminded us again and again that both he and the President condemn torture. But as we know from the Bybee memo of August 2002, for at least 2 years, the Federal Government followed a definition of torture that was excessively narrow. In fact, it was considered so incorrect that the Department of Justice revoked it on the eve of Judge Gonzales' hearing.

That memo defined torture as: "Equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."

For me, in addition to its clear legal and moral importance, the issue of torture became the main way for assessing this next Attorney General. And it was very important for him to state in unambiguous terms what he thought. It was as important a way for us to assess how he approaches a problem as any.

In his opening statement, Judge Gonzales offered a clear, absolute condemnation of torture. He said flatly:

"Torture and abuse will not be tolerated by this administration."

At this point, at the beginning of his testimony, there were no ifs, ands, or buts. But after that, his testimony,

both verbal and in writing, was full of ambiguities. It seemed intended not to make his views clear, but to shield his views, and it seemed to narrow the definition of what counts as torture.

For instance, at the hearing, at one point, Judge Gonzales told Senator Leahy, our ranking member, "I reject that opinion," referring to the Bybee opinion. But at another point in the hearing, he told the same Senator, Senator Leahy:

"I don't have a disagreement with the conclusions then reached by the department."

Those statements are clearly in conflict, and leave me with no idea what he thinks about the Bybee memo. I also note that Judge Gonzales clearly did not do everything he might have done to try to answer the questions put to him.

In his written testimony, especially to Senator Kennedy, Judge Gonzales refused to provide the answers or the documents requested. He even refused to conduct a search that would have refreshed his memory.

Let me quote the multiple times judge Gonzales refused to answer Senator Kennedy's questions, and these are all quotes:

"I do not know what notes, memoranda, e-mails or other documents others may have about these meetings, nor have I conducted a search."

Point 2:

"I have no such notes, and I have no present knowledge of such notes, memoranda, e-mail, or other documents and I have not conducted a search."

Point 3:

"I have no present knowledge of any non-public documents that meet that description. However, I have conducted no search."

Point 4:

"I have no present knowledge that there are any documents of the sort requested in the question, although I have not conducted an independent search for such documents."

Point 5:

"I have no present knowledge of any such documents or materials, although I have not conducted a search."

Point 6:

"I have no present knowledge of any such records, although I have not conducted a search."

The last formulation he repeated in two additional instances.

These are not adequate answers to satisfy the nomination process for the confirmation of a person to be the next Attorney General, nor do they bode well for the Judiciary Committee's and this Congress' oversight responsibilities for the Department of Justice.

Judge Gonzales also refused to provide many documents that we requested. In specific, I asked him to provide me with a copy of the final version of his January 2002 memo to the President. That is very important because earlier memos that he had written were different. It was important, if this was his final opinion, that we have an opportunity to look at it, because that opinion was definitive and dispositive.

The January memo is a well known one, where he wrote that the war on terror "renders obsolete Geneva's strict limitations on questioning of enemy prisoners."

If that was only a draft, as he said, as he had emphasized, then I believe it is imperative for us to see the final version, and he refused me that opportunity. He wouldn't provide the memo, saying the White House had declined to allow it.

To tell you the truth, because of the prior history, that simply is not good enough for me.

Also of importance in the questions that he did answer, he seemed to continually narrow, again, the definition of torture. I saw this as a retreat from his original condemnation of torture and abuse and I thought it showed that he was trying more to defend the President's policies than to demonstrate his own views.

That, in my view, is the nub of the problem. Here he was no longer the President's man, he was going to be the chief law enforcement officer, independent, head of 110,000 people, with all kinds of major departmental responsibilities -- environmental law, civil rights law, the Solicitor General, as I stated earlier in my remarks. I saw this narrowing as a retreat from his original condemnation of torture and abuse, and I thought it showed that he was trying, again, more to defend the President than to talk for himself. Let me give an example.

At the hearing he told Senator Durbin that even under the laws implementing the Convention Against Torture:

"aliens interrogated by the United States outside the United States enjoy no substantive rights under the 5th, 8th, and 14th Amendments."

If this is Judge Gonzales' view, it is a significant gap in the prohibition against abuse.

I gave him the opportunity to clarify this issue. In written testimony he confirmed the thrust of the answer, stating to me:

"There is no legal prohibition under the Convention Against Torture on cruel, inhuman or degrading treatment with respect to aliens overseas."

In another written question, I asked Judge Gonzales to specify his own views again on specific harsh interrogation methods. I wrote to him: "Putting aside legal interpretations, in your own personal opinion, should the United States use forced nudity, the threatening of detainees with dogs, or 'water-boarding' when interrogating detainees?"

That was my question in writing. He began his answer by stating: "I feel that the United States should avoid the use of such harsh methods of questioning if possible."

I was asking for a statement by the man. "If possible" is a major loophole, and I truthfully don't know what it means. I don't know how big that loophole is intended to be.

As I was reviewing the correspondence, I was struck, in particular, by a letter that the committee received from a group of 12 esteemed former military leaders -- generals, admirals, even a former chairman of the Joint Chiefs of Staff.

This letter was signed by Brigadier General David M. Brahms, Retired, U.S. Marine Corps; Brigadier General James Cullen, Retired, U.S. Army; Brigadier General Evelyn P. Foote, Retired, U.S. Army; Lieutenant General Robert Gard, Retired, U.S. Army; Vice Admiral Lee F. Gunn, Retired, U.S. Navy; Rear Admiral Guter Don Guter, Retired, U.S. Navy; General Joseph Hoar, Retired, U.S. Marine Corps; Rear Admiral John D. Hutson, Retired, U.S. Navy; Lieutenant Claudia Kennedy, Retired, U.S. Army; General Merrill McPeak, Retired, U.S. Air Force; Major

General Melvyn Montano, Retired, U.S. Air Force National Guard; and General John Shalikashvili, former Chairman of the Joint Chiefs of Staff. Let me paraphrase the letter. They write as retired military professionals in the U.S. Armed Forces to express their deep concern about the nomination of Alberto Gonzales and they urge us in the hearing to detail his views concerning the role of the Geneva Conventions in U.S. detention and interrogation policy and practice. They go on to say:

“Mr. Gonzales appears to have played a significant role in shaping U.S. detention operations. . . . It is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops around the world.”

They then talk about the memo Judge Gonzales wrote to the President on January 25, 2002, advising him the Geneva Conventions don't apply to the conflict then underway in Afghanistan. They say more broadly that he wrote the war on terrorism presents a new paradigm that renders obsolete the Geneva protections.

Then they go on to say, and I think this is important:

“The reasoning Mr. Gonzales advanced in this memo was rejected by many military leaders at the time, including Secretary of State Colin Powell who argued that abandoning the Geneva Conventions would put our soldiers at greater risk, would ‘reverse over a century of U.S. policy and practice in supporting the Geneva Conventions,’ and would ‘undermine the protections of the rule of law for our troops, both in this specific conflict [Afghanistan] and in general”

That is a huge problem out there because at best, these hearings and the written questions and answers which are voluminous are really unable to clarify any of the positions of Alberto Gonzales, the man, Alberto Gonzales, head of one of the largest and most powerful agencies of the American Government, the U.S. Department of Justice.

We look at the Department of Justice one way, but most Americans look at it as being a major citadel of power in the United States. And on occasion, we have seen that power

exercised. If you are going to set the policy, if you are going to set the tone, if you are going to be the head of this Department, I want to know what you as a man, or as a woman, think, and particularly at this time.

Yes, it is clear that the problems we will face in the future are most likely to be with respect to non-state actors, and with respect to torture, which I am speaking about now. Therefore, it is extraordinarily important to know what this man thinks. If you ask me today, despite the hearings, despite 200 pages of questions and answers, I cannot really tell you. I cannot really be sure that if the White House says one thing, the head of the Department of Justice would be willing to stand up and say another. I just do not know, based on the past jobs he has had and his past performance, if he is prepared to be independent.

I have to say to this body that is important. Every one of us knows that Janet Reno was an independent Attorney General. I do not know that Alberto Gonzales will be. I don't know his management style. I don't know the vision he has for this Department. I don't know the goals he would set.

I know he is an extension of the President. I know that he can legally enable the President. I know he gives the President advice, and I think much of that advice has brought us into a terrible place where our military could well in the future be jeopardized.

I am one, frankly, who believes the Military Code of Justice has stood the U.S. military in good stead. I am one who believes the Geneva Convention - - the Convention Against Torture -- is the right thing. I am one who believes we should follow those, even in this non-state war.

I want to comment on one other issue, and then I will yield the floor.

I think Judge Gonzales is going to be confirmed. He is a talented lawyer and has a compelling life story. I certainly want to work with him.

I want to say one thing about some who may say this is a qualified Hispanic, and indeed he is. Nobody should think that the Hispanic community is unified on this nomination. I will put into the Record, if I may, letters from the Congressional Hispanic Caucus, certain editorials from newspapers, the

statement of the Mexican-American Legal Defense and Education Fund, a statement of the Mexican-American Political Association, a letter from Major General Melvyn Montano, and other letters.

I ask unanimous consent to have them printed in the Record.

Mr. President, in summary, I very much regret this, but I think the U.S. Department of Justice is a unique Department. I think whoever is the head of it has to stand on his own two feet, has to be totally independent of Congress, of the White House, and has to be willing to submit to rigorous oversight by the Senate, by the Judiciary Committee, and has to set a tone which enables the Department of Justice to function as a fair and independent voice of the American people, as its chief law enforcement officer.

I very much regret that I will vote no on this nomination.

I thank the Chair. I yield the floor.