

Papers offer insight on court nominee; ALITO ARGUED IMMIGRANTS HAVE LIMITED RIGHTS

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Body

As a senior lawyer in the Reagan Justice Department, Samuel Alito Jr. 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. Because the refugees were non-resident 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 anti-terrorism 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 in response to a Freedom of Information request by the Washington Post and other news organizations. The agency withheld 70 other documents, asserting that they were exempt from disclosure on grounds of privacy, attorney-client privilege or rules relating to classified information. Names and other details were blacked-out on some documents that were released.

Still, the memos, letters and other papers, most of them written by Alito, provide the most vivid picture available to date of the future nominee's role and views from December 1985 to March 1987, when he worked on legal matters as a high-ranking political appointee during President Reagan's second term. He would go on to become U.S. attorney for New Jersey and, later, an appeals court judge.

His writings show Alito 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.

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The current administration has contended, for instance, that Al-Qaida and Taliban detainees held at the U.S. naval station 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 about whom Alito wrote, the recent detainees were not on U.S. soil. That view was rejected last year by a divided Supreme Court.

In his 1986 memo, Alito cites a 1950 Supreme Court case to support the contention that non-resident 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.

Conservative constitutional analyst Bruce Fein, who served in the Reagan administration with Alito, said that by the time Alito wrote the memo the Supreme Court had ruled that school-age illegal immigrants had a right to a public education.

"He seems to be saying that there is no constitutional constraints placed on U.S. officials in their treatment of non-resident aliens or illegal aliens. Could you shoot them? Could you torture them?" Fein asked. "It's a very aggressive reading of cases that addressed much narrower issues."

On other law enforcement issues, Alito also took a pro-government approach. In a January 1986 memo, Alito expressed several concerns about ethics guidelines for prosecutors that had been proposed by the D.C. Bar Association, saying they would impose "unworkable burdens" on attorneys responsible for bringing criminals to justice.

In another memo a few months later, Alito cited a loophole he said would allow IRS attorneys investigating taxpayers to get around an American Bar Association rule that prohibited attorneys from secretly recording conversations.

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