

By Charlie Savage

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Judge Neil M. Gorsuch spent 14 months as a key Justice Department official during the Bush administration, and dealt with matters related to the war on terror. Credit Doug Mills/The New York Times

WASHINGTON — In December 2005, Congress handed President George W. Bush a significant defeat by tightening legal restrictions against torture in a law called the Detainee Treatment Act. Soon afterward, Neil M. Gorsuch — then a top Justice Department official — [sent an email](#) to a White House colleague in case he needed “cheering up” about the administration’s setback.

The email from Judge Gorsuch, nominated by President Trump to fill the vacancy on the

Supreme Court caused by the death of Justice Antonin Scalia, linked to articles about a less-noticed provision in the act that undercut the rights of Guantánamo Bay detainees by barring courts from hearing their habeas corpus lawsuits.

“The administration’s victory is not well known but its significance shouldn’t be understated,” wrote Judge Gorsuch, who had helped coordinate the Justice Department’s work with Congress on the bill.

The email about the court-stripping provision — which the Supreme Court later rejected — is among more than [150,000 pages of Bush-era Justice Department and White House documents](#) involving Judge Gorsuch disclosed by the Trump administration ahead of his Senate confirmation hearings next week.

Judge Gorsuch’s time in the executive branch was brief. He joined the Justice Department in June 2005 as the principal deputy associate attorney general, meaning he was the top aide to the No. 3 official in the department. He left in August 2006, when Mr. Bush appointed him as a federal appeals court judge in Denver.

But those 14 months were tumultuous ones for the Bush administration amid controversies over detainee abuses, military commissions, warrantless surveillance and its broad claims of executive power. Judge Gorsuch’s job put him at the center of both litigation and negotiations with Congress over legislation about such topics.

References to those efforts may offer clues to Judge Gorsuch’s approach to the sort of national-security and executive power issues that rarely come before his appeals court but can be crucial at the Supreme Court.

In November 2005, for example, Judge Gorsuch visited Guantánamo for a briefing and tour. Afterward, he [wrote a note](#) to the prison operation commander, offering a glowing review.

“I was extraordinarily impressed,” Judge Gorsuch wrote. “You and your colleagues have developed standards and imposed a degree of professionalism that the nation can be proud of,

and being able to see first hand all that you have managed to accomplish with such a difficult and sensitive mission makes my job of helping explain and defend it before the courts all the easier.”

During the negotiations with Congress over the Detainee Treatment Act, Judge Gorsuch [helped persuade](#) lawmakers to weaken a provision that permitted a civilian appeals court to review decisions by military tribunals. The original draft let judges scrutinize whether a tribunal had “applied the correct standards,” but the revised one only let them look to see whether the tribunal had applied standards set by the Pentagon.

The change, “in response to our concerns,” Judge Gorsuch wrote, “reduces significantly the potential for judicial creativity.”

[Document](#)

[Neil Gorsuch and the War on Terror](#)

[The Trump administration has released more than 150,000 documents from Judge Neil M. Gorsuch's tenure as a Justice Department official in 2005 and 2006. They show that he was heavily involved in the Justice Department's work dealing with a range of legal and political controversies that the Bush administration was grappling with at the time related to the war on terror. Here are some examples.](#)



U.S. Department of Justice

Office of the Associate Attorney General

Principal Deputy Associate Attorney General

Washington, D.C. 20530

November 17, 2005

General Jay W. Hood
JTF-GTMO/CE
APO, AE 09360

Dear General Hood:

Thank you very much for allowing me to visit Guantanamo Bay last week. I was extraordinarily impressed. You and your colleagues have developed standards and imposed a degree of professionalism that the nation can be proud of, and being able to see first hand all that you have managed to accomplish with such a difficult and sensitive mission makes my job of helping explain and defend it before the courts all the easier.

Thank you again for taking so much time and trouble to make sure we received such a helpful and thorough briefing and tour.

Warm regards,

A handwritten signature in black ink, appearing to read "Neil Gorsuch".

Neil M. Gorsuch

cc: William J. Haynes, II, Esquire
Frank Jimenez, Esquire

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