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## Holder Did Not Disclose Briefs on 'Enemy Combatant'

By CHARLIE SAVAGE and BERNIE BECKER  
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WASHINGTON — During his confirmation last year, Attorney General [Eric H. Holder Jr.](#) failed to notify the Senate that he had signed several briefs urging courts to reject President [George W. Bush](#)'s claim that he had the power to imprison an American citizen as an "enemy combatant," the Justice Department acknowledged Thursday.



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Doug Miller/The New York Times

Republicans on the Senate Judiciary Committee signaled that they were likely to attack Eric H. Holder Jr. over the documents.

"The briefs should have been disclosed as part of the confirmation process," said Matthew Miller, a Justice Department spokesman. "In preparing thousands of pages for submission, it was unfortunately and inadvertently missed. In any event, the attorney general has publicly discussed his positions on detention policy on many occasions, including at his confirmation hearing."

But at a meeting of the Senate Judiciary Committee, which held the confirmation hearing, Republicans signaled that they were likely to attack Mr. Holder over his joining the briefs — and his failure to list them, along with other public documents, on a routine confirmation questionnaire — when he testifies before them later this month.

"Are we expected to believe that then-nominee Holder, with only a handful of [Supreme Court](#) briefs to his name, forgot about his role in one of this country's most publicized terrorism cases?" asked Senator [Jon Kyl](#), Republican of Arizona.

And Senator [Jeff Sessions](#), Republican of Alabama, said the opinions in the briefs "go to the heart of his responsibilities

in matters of national security."

"This is an extremely serious matter," he said, "and the attorney general will have to address it."

The comments opened a new chapter in a controversy over the Obama administration's hiring of lawyers who had worked on detainee-related litigation.

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Last week, a group led by [Liz Cheney](#), a daughter of former Vice President [Dick Cheney](#), and Bill Kristol of The Weekly Standard, produced a [video](#) criticizing the Justice Department for refusing to name seven officials who previously helped detainees challenge their imprisonment.

The video called the lawyers the "[Al Qaeda Seven](#)" and suggested they shared terrorists' values. Critics, including many conservatives, accused the group of McCarthyism. Then National Review published an [article](#) by two former Bush officials highlighting the briefs — and Mr. Holder's failure to disclose them.

The documents were "friend of the court" briefs submitted to the Supreme Court by several former Clinton administration officials, including Mr. Holder and former Attorney General [Janet Reno](#).

Mr. Miller said the group submitted several versions of the brief at different stages in the case of [Jose Padilla](#), an American citizen who had been arrested in Chicago in 2002 and accused of planning an attack for Al Qaeda. President Bush designated Mr. Padilla an enemy combatant, placed him in military custody, cut off his access to a lawyer and declared he could imprison him indefinitely for the purpose of interrogation, without judicial review.

One brief urged the Supreme Court to rule that policy illegal, arguing that "our nation has always been prepared to accept some risk as the price of guaranteeing that the executive does not have arbitrary power to imprison citizens."

Instead, the court voted 5 to 4 to send the case back to a lower court. Still, five of nine justices indicated they disagreed with the Bush administration.

The four dissenters [said](#) that Mr. Padilla was entitled to a hearing and that incommunicado detention for interrogation was unlawful. A fifth, Justice [Antonin Scalia](#), said in a [related case](#) that citizens must be given trials or released.

Mr. Padilla was moved back into the criminal justice system before his case could return to the Supreme Court. He was convicted after a trial in 2007.

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