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From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

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THE WHITE HOUSE

WASHINGTON

March 5, 2003

Dear Senator Daschle:

As you know, some Democrat Senators have engaged in a filibuster to prevent a vote on Miguel Estrada's nomination. They have stated that they want more information about Mr. Estrada's record before they will end the filibuster and allow the full Senate to vote up or down on the nomination. We strongly believe that the Senate has sufficient information and should hold an immediate up or down vote. In an effort to be responsive, however, I wrote to you on February 27 to indicate that Senators who want more information can and should avail themselves of three different and important sources: Senators should meet with Mr. Estrada, pose written questions to him, and/or pose inquiries to his former superiors in the Department of Justice and Judiciary. Since my offer of February 27, however, I understand that no Senator has submitted any questions to Mr. Estrada and that no Senator has submitted any inquiries to his former superiors. And only one Senator, Senator Byrd, has scheduled a meeting with Mr. Estrada.

We are deeply disappointed by and do not understand the near-uniform lack of response thus far to my suggestion of ways in which Senators could gather more information about Mr. Estrada. Being respectful of those who have stated that they want more information, however, I want to reiterate what I stated in my letter of February 27. I urge Senators engaged in the filibuster to avail themselves of the existing opportunities to gather additional information. Senators who want more information can and should promptly meet with Mr. Estrada, pose written questions to him, and/or pose inquiries to his former superiors in the Department of Justice and Judiciary. If the asserted basis for the filibuster -- the need for more information -- is the actual motivation, Senators who have engaged in the filibuster should avail themselves of these existing sources of information.

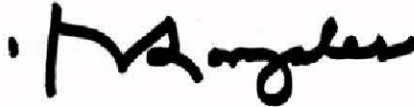
My renewed invitation is not to suggest that we find merit in the contention that Senators currently do not have sufficient information to vote up or down on Mr. Estrada. In that regard, I ask all Senators who have engaged in the filibuster to carefully compare the extensive transcript of Mr. Estrada's hearing, as well as his subsequent written answers, to the transcripts of the hearings of President Clinton's three appointees to the D.C. Circuit: David Tatel, Judith Rogers, and Merrick Garland. (Two of these three nominees had no prior judicial experience, like Mr. Estrada.) Such a comparison demonstrates beyond any reasonable debate that Mr. Estrada was asked for and has already provided far more information than any of those three appointees. Judge Tatel was asked a total of three questions at his hearing. Judges Rogers and Garland were each asked fewer than 20 questions at their hearings. The three appointees of President Clinton -- combined -- thus answered fewer than half the number of questions at their hearings that Mr. Estrada answered at his hearing. What is more, both Judge Rogers and Judge Garland declined to give their personal views on disputed legal and policy questions. Judge Rogers refused even to give her views when asked about the notion of an evolving Constitution. And

Judge Garland did not answer questions about his personal views on the death penalty and on various Supreme Court precedents, stating only that he would follow the precedents. In short, we believe that the criticism of Mr. Estrada's answers at his hearing is misplaced and reveals an unfair double standard being applied to Mr. Estrada.

We strongly believe that the record justifies an immediate up or down vote. I also respectfully urge those Senators who continue to filibuster on the ground that they need more information to avail themselves of the existing sources of information.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Gonzales", with a stylized flourish at the end.

Alberto R. Gonzales
Counsel to the President

The Honorable Thomas A. Daschle

Copy: The Honorable Bill Frist
All United States Senators