

WILL MIGUEL ESTRADA REPRESENT JOHN YOO BEFORE SONIA SOTOMAYOR AT SCOTUS?

I had a bit of a contest on Monday to guess which lawyer was representing John Yoo as Jose Padilla's suit against him goes forward.

The winner of that poll is the anonymous reader who noted that Miguel Estrada represented Yoo when Yoo testified before Congress last year. You can let me know by email which deserving charity you'd like me to mail your utterly worthless hubcap to...

The Recorder has more details about the tough work Estrada has ahead of him. (h/t WSJ Law Blog)

John Yoo, author of some of the Bush administration's war-on-terror memos, has hired Washington, D.C., lawyer Miguel Estrada to appeal a ruling that allowed an allegedly mistreated detainee's suit against Yoo.

[snip]

Estrada has already been representing Yoo in an investigation by the Justice Department's Office of Professional Responsibility into the legal work behind the memos. That investigation is ongoing, though the results could be released at any time, and a draft finding reportedly would have referred Bybee and Yoo to State Bar authorities for possible discipline.

As a reminder, this means that Estrada will represent Yoo as he attempts to convince the 9th Circuit to reverse the District Court's ruling

that Padilla's suit against Yoo can move forward. And—it is not unreasonable to imagine—regardless of what the 9th Circuit decides, the Latino the Republicans wished had been the first on SCOTUS (Estrada) might soon face the Latina Republicans will grudgingly see confirmed as Justice in the next few weeks for a big showdown over the rule of law. Any bets on whether Estrada makes more money trying to save Yoo from any consequences for his actions (yes, taxpayers will be footing Estrada's bill) than Sotomayor will make in her first year on SCOTUS?

In addition to reporting that Estrada will represent Yoo, the Recorder has some interesting speculation from some law professors who have been following the case on why Yoo needs his own lawyer.

New York University School of Law professor Stephen Gillers, who has written about the investigation into the memos, said that the Justice Department should not have been Yoo's sole representation in the first place, because conflicts of interest between Yoo and his former employer were too likely to occur.

Yoo may have wanted to make arguments that the Justice Department couldn't pursue, such as implicating other DOJ officials, Gillers said. He speculated that Yoo may have wanted to investigate former Vice President Dick Cheney, former Attorney General Alberto Gonzales, or Cheney's former legal counsel, David Addington.

"Just hypothetically, he might say, 'I was ordered to do this by David Addington, so he should be in this [case] also,'" Gillers said. "DOJ's not going to sue David Addington on behalf of Yoo."

Georgetown University Law Center

professor David Luban, an ethics expert who has also written about the torture controversy, said in an e-mail that he hadn't been tracking the case closely, but that the Justice Department's decision could indicate the government was litigating the Bush administration's position at the district court level, but is now rethinking whether to continue to maintain it. Or, he speculated, it might be that the OPR report will be issued soon and will recommend discipline.

"That by itself would create a conflict of interest in DOJ defending his position in a closely related civil case," he wrote. "Even though OPR is a different subunit of DOJ, it's not a separate law firm." [my emphasis]

Which is all just another way of saying this suit is getting more and more interesting.