

From: Bradford A. Berenson@who.eop.gov
Sent: Wednesday, October 09, 2002 5:48 PM
To: Philbin, Patrick
Subject: Re: FW: enemy combatants

Attachments: Enemy-Cs-Rumsfeld-ltr-9-5-02-FINAL; Enemy-Cs-Ashcroft-ltr9-5-02-FINAL; pic12854.pcx



Enemy-Cs-Rumsfeld-ltr-9-5-02-FINAL.pcx (2 KB)
Enemy-Cs-Ashcroft-ltr9-5-02-FINAL.pcx (2 KB)
pic12854.pcx (2 KB)

Thank you.

(Embedded image moved to file: "Philbin, Patrick" <Patrick.Philbin@usdoj.gov> 10/09/2002 05:41:16 PM pic12854.pcx)

Record Type: Record

To: Bradford A. Berenson/WHO/EOP@EOP

cc:
Subject: FW: enemy combatants

Here are the letters.

-----Original Message-----

From: O'Brien, Pat
Sent: Thursday, September 19, 2002 5:56 PM
To: Rybicki, James E
Cc: Bell, Michael J (OLA); Brown, Jamie E (OLA); Philbin, Patrick; Yoo, John C; Bybee, Jay; Collins, Dan; Bryant, Dan
Subject: FW: enemy combatants

Jim, please check on the status of this response.

Has everyone cc'd seen this letter? We should try to get it answered before the Oct. 8 hearing.

-----Original Message-----

From: Bryant, Dan
Sent: Thursday, September 19, 2002 5:33 PM
To: O'Brien, Pat
Subject: FW: enemy combatants

Take a look at the deadline on the letter. I'm not worried about meeting it, but could you check on its status? Thanks.

-----Original Message-----

From: [REDACTED]
Sent: Thursday, September 19, 2002 4:13 PM
To: Bryant, Dan
Subject: enemy combatants

Dear Dan,

As we discussed, Sen. Feingold has postponed the Constitution Subcommittee hearing from Sept. 24 to Tuesday, October 8th, 10am. This hearing will focus on the detention of US citizens as enemy combatants. Sen. Feingold would like Deputy Attorney General Thompson to testify at the hearing. Attached please find a copy of the Feingold-Levin letters to the Attorney General and Secretary of Defense. Please note that Senators Feingold and Levin have asked the AG to respond by tomorrow, Sept. 20.

Regards,
[REDACTED]

September 5, 2002

The Honorable Donald H. Rumsfeld
Secretary
U.S. Department of Defense
1000 Defense, The Pentagon
Washington, D.C. 20301-1000

Dear Secretary Rumsfeld:

We write to request information on the recent designation of two United States citizens as "enemy combatants." These cases raise fundamental questions about the constitutional protections afforded United States citizens during times of national crisis. As such, it is critical that the Congress be informed as to the process and legal basis for the designation.

As Chairman of the Armed Services Committee and Chairman of the Judiciary Committee Subcommittee on the Constitution, we request the following information regarding the designation of United States citizens as enemy combatants. We understand that both the Department of Defense and the Department of Justice may have a role in determining whether an individual should be designated as an enemy combatant, and we therefore have directed a similar letter to the Attorney General (copy enclosed). Where appropriate, a joint response may be provided.

1. What is the operative definition of "enemy combatant" and what are the criteria used to determine whether a United States citizen will be designated as an enemy combatant? If that definition is contained in a document, please provide a copy of that document and identify the source of the document as well as the agency or person responsible for maintaining the document. Please describe the basis for the definition and the process followed to arrive at the definition.
2. What is the process for designating a person an "enemy combatant"? What agency or individual has the responsibility to make such a designation? Is the ultimate authority to designate a United States citizen as an enemy combatant reserved for the President? If not, who else holds that authority?

What role does the Department of Defense play in this process? Please describe the process that was used to designate Jose Padilla and Yaser Esam Hamdi as enemy combatants.

3. Do the criteria for determining enemy combatant status vary depending upon whether an individual is a citizen of the United States? Do the criteria vary if the person is taken into custody outside the United States? Do they vary if the person is taken into custody on the battlefield?
4. What rights does a United States citizen designated as an enemy combatant have to challenge that designation other than the right to habeas corpus review? What is the scope of the detainee's right to counsel if the detainee seeks to challenge the enemy combatant designation?
5. What are the time limits on the government's authority to detain United States citizens designated as enemy combatants? The government has argued that "the authority to detain enemy combatants in a time of war . . . is well established." Under the current circumstances, who determines when this time has expired and how will that determination be made?
6. According to published reports, the Administration is considering establishing a committee to determine whether United States citizens should be designated as enemy combatants. What is the timetable for establishing such a committee? What is the membership of the committee expected to be? What is the legal authority and basis for the use of such a committee? What procedures are being established to guide this committee?
7. Are U.S. citizens other than Hamdi and Padilla being held as enemy combatants? If so, how many and who are they? In each case, please describe the process that was used to designate each person as an enemy combatant. What are the Administration's procedures for notifying Congress and the American people that someone has been designated an enemy combatant?
8. Has the Defense Department made any related changes to existing U.S. military regulations implementing the Geneva Conventions of 1949?

In addition to the information requested above, please provide a complete, un-redacted copy of the President's orders designating Padilla and Hamdi as enemy

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September 5, 2002
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combatants.

We strongly urge you to provide a complete response to this inquiry by September 20, 2002. Please call us or have your staff call [REDACTED] if you have any questions about this request.

Sincerely,

Russell D. Feingold
Chairman
Subcommittee on the Constitution
Committee on the Judiciary

Carl Levin
Chairman
Committee on Armed Services

cc: The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice

Enclosure

September 5, 2002

The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General:

Over the past several months, each of us has written to you requesting information about individuals detained in connection with the Justice Department's investigation of the September 11 attacks. You have failed to respond to several letters, and when the Department did respond, the replies were neither timely nor complete. For example, following a delay of more than three months, the Department provided only a partial response to Senator Levin's March 28, 2002, inquiry, and a subsequent July 18, 2002, letter has gone unanswered. Further, you have failed to respond fully to an October 31, 2001, letter and you have failed to respond at all to a June 21, 2002, letter and August 14, 2002, letter regarding detainees sent by Senator Feingold and several other members of Congress. Your unresponsiveness to legitimate congressional inquiry impedes our efforts to fulfill our constitutional responsibilities. This is unacceptable, and we strongly urge you to provide a complete response to the prior letters and this letter by September 20, 2002.

In addition to seeking complete responses to these prior inquiries, we request information on the recent designation of two United States citizens as "enemy combatants." These cases raise fundamental questions about the constitutional protections afforded United States citizens during times of national crisis. As such, it is critical that the Congress be informed as to the process and legal basis for the designation.

As Chairman of the Armed Services Committee and Chairman of the Judiciary Committee Subcommittee on the Constitution, we request the following information regarding the designation of United States citizens as enemy combatants. We understand that both the Department of Defense and the Department of Justice may have a role in determining whether an individual should be designated as an enemy combatant, and we

therefore have directed a similar letter to the Secretary of Defense (copy enclosed).
Where appropriate, a joint response may be provided.

1. What is the operative definition of "enemy combatant" and what are the criteria used to determine whether a United States citizen will be designated an enemy combatant? If that definition is contained in a document, please provide a copy of that document and identify the source of the document as well as the agency or person responsible for maintaining the document. Please describe the basis for the definition and the process followed to arrive at the definition.
2. What is the process for designating a person an "enemy combatant"? What agency or individual has the responsibility to make such a designation? Is the ultimate authority to designate a United States citizen as an enemy combatant reserved for the President? If not, who else holds that authority? What role does the Department of Justice play in this process? Please describe the process that was used to designate Jose Padilla and Yaser Esam Hamdi as enemy combatants.
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The Honorable John D. Ashcroft
September 5, 2002
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What is the membership of the committee expected to be? What is the legal authority and basis for the use of such a committee? What procedures are being established to guide this committee?

7. Are U.S. citizens other than Hamdi and Padilla being held as enemy combatants? If so, how many and who are they? In each case, please describe the process that was used to designate each person as an enemy combatant. What are the Administration's procedures for notifying Congress and the American people that someone has been designated an enemy combatant?

In addition to the information requested above, please provide a complete, un-redacted copy of the President's orders designating Padilla and Hamdi as enemy combatants.

Again, we strongly urge you to provide a complete response to this inquiry by September 20, 2002. Please call us or have your staff call [REDACTED] if you have any questions about this request.

Sincerely,

Russell D. Feingold
Chairman
Subcommittee on the Constitution
Committee on the Judiciary

Carl Levin
Chairman
Committee on Armed Services

cc: The Honorable Donald H. Rumsfeld
Secretary
U.S. Department of Defense

Enclosure