



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MAY 15 2002

MEMORANDUM FOR THE VICE PRESIDENT

SUBJECT: Potential DoD Detention of John Walker Lindh

- I understand that after my departure from yesterday's meeting in the Roosevelt Room there was a discussion regarding the feasibility of DoD's continued detention of John Walker Lindh in the event of a District Court dismissal of the case against him. I believe there are strong legal and policy grounds to support such continued detention.
- It should be clear that, whatever transpires in court on Lindh, he remains a battlefield detainee—he does not go free.
- I am advised that detention of enemy combatants is well established in U.S. law and the international law of armed conflict, and United States courts have recognized even the detention of enemy United States citizens captured in battle as a valid exercise of the President's constitutional authority as Commander in Chief.
 - Armed forces have traditionally detained enemy combatants to prevent their rejoining enemy forces. Treaties such as the 1949 Geneva Convention Relative to the Treatment of Prisoners of War confirm this traditional exercise of lawful authority. Article 4A(4) of that treaty provides that even civilians accompanying armed forces may be detained until the end of hostilities. Lindh's status as a combatant can only strengthen the case for continued detention by DoD during hostilities.
 - It is ironic that a recent motion by Lindh's attorneys seeks dismissal of the conspiracy to commit murder charge based on the claim that Lindh was a foot soldier entitled to combatant immunity. Even if successful, such an argument only confirms his enemy combatant status and, concomitantly, DoD's authority to detain him as such.
 - **The Supreme Court has confirmed that citizens who associate themselves with opposing military forces are enemy belligerents and may be treated as such. The Ninth Circuit Court of Appeals specifically confirmed that a detainee's status as an American citizen is immaterial to his detention as a prisoner of war.**
- I believe there are strong policy reasons for continued detention.
 - Release after dismissal of U.S. District Court charges would foster the notably undesirable view that the global war on terrorism is merely a law

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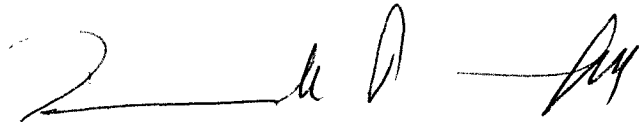
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enforcement action, contrary to the Bush doctrine. While law enforcement aspects are important, we are at war and must not hesitate to apply available legal authorities to protect our national security during this armed conflict.

- To release Lindh could also be seen as an unjustifiable inconsistency in the way we treat enemy combatants. It could strengthen the legal challenge that was just filed to our continued detention of Hamdi, the apparent U.S. citizen who is currently detained in the Norfolk Naval Brig. It would make it increasingly difficult to continue to hold allied nationals who are also being detained as enemy combatants.
- I believe public opinion would strongly support the continued detention of John Walker Lindh. The public views him as an enemy combatant at the least, and a traitor at the worst. To fail to treat him as an enemy combatant could be seen as a weakening of U.S. resolve in the war on terrorism.



CC: Honorable Colin Powell
Honorable John Ashcroft
Honorable George Tenet
Honorable Condoleezza Rice





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MAY 15 2002

Sensitive but Unclassified
INFO MEMO

May 15, 2002, 12:30 p.m.

FOR: SECRETARY OF DEFENSE

FROM: William J. Haynes II, General Counsel *WJ Haynes 5/15/02*

SUBJECT: John Walker Lindh

- Attached is a revised memo to the Vice President, incorporating your edits.
- For your information, the cases referenced in the two sentences in bold type are:
 - *Ex Parte Quirin* – the 1942 Supreme Court case addressing the Nazi saboteurs (which included two naturalized American citizens.)
 - *In re Territo* – the 1946 court of appeals case confirming the lawfulness of holding an American citizen captured in Sicily fighting with the Italians. Territo was detained in a POW camp in California for at least two years, beginning in 1943.
- I concur with your proposed memorandum. We are confident in the legality of detaining enemy combatants while the conflict continues.
- Additional points to consider:
 - Walker Lindh poses at least as much a threat as many other detainees. Like the others, he took up arms on behalf of the Taliban, which supported Al Qaeda.
 - But he may pose an even greater threat precisely because he is an American. If released, he can easily fit into American culture if he chooses; and, as a citizen, he cannot be kept out of the country as can non-U.S. citizens.

