

FZ24a

L Press Guidance
February 27, 2002

RELEASED IN FULL

STATUS OF DETAINEES IN GUANTANAMO

Q: What is the international legal basis for the U.S. holding the detainees from the Afghanistan conflict at Guantanamo Bay?

-- THE DETAINEES ARE BEING HELD ON THE BASIS OF THEIR HAVING BEEN PART OF AN OPPOSING FORCE IN AN ARMED CONFLICT IN WHICH THE UNITED STATES IS ENGAGED. THUS, THEY ARE BEING HELD BECAUSE THEY ARE ENEMY COMBATANTS.

-- THE CUSTOMARY LAWS OF ARMED CONFLICT GIVE THE U.S. THE RIGHT TO DETAIN THESE COMBATANTS AT LEAST UNTIL THE CONCLUSION OF HOSTILITIES. THESE ACTIONS ARE ENTIRELY CONSISTENT WITH THE 1949 GENEVA CONVENTIONS.

-- THE PRESIDENT HAS DETERMINED THAT THE THIRD GENEVA CONVENTION ON PRISONERS OF WAR DOES NOT APPLY TO THE AL QAEDA DETAINEES. THEREFORE, THEY ARE NOT ENTITLED TO PRISONER OF WAR STATUS. IN

UNCLASSIFIED

**ADDITION, THE PRESIDENT HAS DETERMINED THAT THE
THIRD GENEVA CONVENTION DOES APPLY TO THE
CONFLICT WITH THE TALIBAN. HOWEVER, THE TALIBAN DO
NOT QUALIFY FOR PRISONER OF WAR STATUS.**

**-- IT IS FIRMLY ESTABLISHED IN DOMESTIC AND
INTERNATIONAL LAW THAT COMBATANTS MAY BE
CAPTURED AND DETAINED. THIS WAS STATED EXPLICITLY
BY THE U.S. SUPREME COURT DURING THE SECOND WORLD
WAR. (EX PARTE QUIRIN)**

**-- THE INDIVIDUALS BEING DETAINED AT GUANTANAMO ARE
BEING TREATED HUMANELY CONSISTENT WITH THE
PRINCIPLES OF THE GENEVA CONVENTIONS.**

Drafted: L - E Bloom
x71694 Doc 100812 2/25/02
Cleared: L: W Taft (ok)
L: J Thessin (ok)
L: J Schwartz (ok)
L/NP: E Cummings (ok)
L/PM: D Bowker (ok)
S/WCI - MNewton (ok)
PA -
S/CT - M Wong (ok)

UNCLASSIFIED

DOS-001707

UNCLASSIFIED

NSC – J Bellinger (ok)
DoD/OGC – E Davidson (ok)
DOJ – M Incontro/ D Collins (ok)