

**Bowker, David W**

From: Smith, Daniel B  
 it: Thursday, February 07, 2002 11:59 AM  
 : Bowker, David W(Main State Room 6429)  
 Subject: RE: Notifying Posts re: Presidential Decision on Detainees

I'll ask the Line to follow-up directly with the bureaus to be certain this is done.

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

From: Bowker, David W  
 Sent: Thursday, February 07, 2002 11:57 AM  
 To: Smith, Daniel B(S/ES)  
 Subject: RE: Notifying Posts re: Presidential Decision on Detainees

Thank you Dan.

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

From: Smith, Daniel B  
 Sent: Thursday, February 07, 2002 11:57 AM  
 To: Bowker, David W(Main State Room 6429); Wolff, David J(Main State 6205); EAP-ANP-Office-DL; O'Reilly, Kevin M (WHA)(Main State Room 6906); WHA-CAN Exchange Group; Decker, Karen(Main State); EUR-UBI-DL; EUR-WE-DL; EUR-RUS-DL; Steele, Cheryl(Main State); Schedlbauer, Amy W(Main State); SA Staff Assistant-DL; NEA Staff Assistants-DL; Hayward, LaVonya M (PRM)(Main State Rm 5824); Wood, William B (IO/PDAS)(Main State Rm 6323)  
 Cc: Harty, Maura; Schriver, Randall G; Blake, Robert O; Rodley, Carol A  
 Subject: RE: Notifying Posts re: Presidential Decision on Detainees

I have confirmed with the NSC that we are being asked to notify immediately the embassies below of the President's decision. Could EUR, NEA, SA and EAP please confirm asap when and at what level this has been done? IO please confirm that ICRC has also been informed. Many thanks, Dan

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

From: Bowker, David W  
 Sent: Thursday, February 07, 2002 11:45 AM  
 To: Smith, Daniel B(S/ES); Wolff, David J; EAP-ANP-Office-DL; O'Reilly, Kevin M (WHA); WHA-CAN Exchange Group; Decker, Karen; EUR-UBI-DL; EUR-WE-DL; EUR-RUS-DL; Steele, Cheryl; Schedlbauer, Amy W; SA Staff Assistant-DL; NEA Staff Assistants-DL; Hayward, LaVonya M (PRM)(Main State Rm 5824); Wood, William B (IO/PDAS)  
 Cc: Harty, Maura(S/ES); Schriver, Randall G(D); Blake, Robert O(P); Rodley, Carol A(S/ES)  
 Subject: RE: Notifying Posts re: Presidential Decision on Detainees



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We have been instructed to follow the talking points precisely. The background has not been cleared by the NSC or the WH; it has been provided by L for internal use.

Action is immediate. The WH press conference will happen at roughly 12:45, and embassies should hear from us first.

Thanks again for your patience -- we're sending it out as quickly as we receive it.

Dave Bowker

ps -- we will finalize an ALDAC for immediate distribution as soon as possible. You may notify overseas embassies at your discretion as long as you make clear that the talking points are cleared for

UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: WILLIAM E LANDFAIR  
 DATE/CASE ID: 10 MAY 2005 200303827

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TALKING POINTS

-- THE U.S. HAS TREATED AND WILL TREAT ALL TALIBAN AND AL QAIDA DETAINEES HUMANELY AND CONSISTENT WITH THE PRINCIPLES OF THE GENEVA CONVENTION.

-- THE PRESIDENT'S FEBRUARY 7TH DECISION ON TALIBAN AND AL QAIDA DETAINEES CONCERNED THE APPLICABILITY OF THE GENEVA CONVENTION. AFTER CHAIRING TWO MEETINGS OF THE NSC ON THE ISSUE, PRESIDENT BUSH HAS DECIDED THAT THE GENEVA CONVENTION APPLIES TO TALIBAN DETAINEES, BUT NOT THE AL QAIDA DETAINEES.

-- AL QAIDA IS A FOREIGN TERRORIST GROUP AND CANNOT BE CONSIDERED A STATE PARTY TO THE GENEVA CONVENTION. ITS MEMBERS THEREFORE ARE NOT COVERED BY THE GENEVA CONVENTION AND CANNOT HAVE POW STATUS UNDER IT.

-- IN CONTRAST, AFGHANISTAN IS A PARTY TO THE GENEVA CONVENTION. ALTHOUGH WE HAVE NOT RECOGNIZED THE TALIBAN AS THE LEGITIMATE AFGHAN GOVERNMENT, THE PRESIDENT DETERMINED THAT TALIBAN MEMBERS ARE COVERED BY THE TREATY BECAUSE AFGHANISTAN IS A PARTY TO THE CONVENTION.

-- UNDER ARTICLE 4 OF THE CONVENTION, HOWEVER, TALIBAN DETAINEES ARE NOT ENTITLED TO POW STATUS. THEY DO NOT FALL WITHIN ANY OF THE CATEGORIES OF PERSONS SET FORTH IN ARTICLE 4 WHO QUALIFY FOR POW TREATMENT.

-- THE GENEVA CONVENTION REQUIRES A TRIBUNAL ONLY IF THERE IS "ANY DOUBT". THE U.S. HAS NO DOUBT THAT THE AL QAIDA AND TALIBAN DETAINEES [BEING HELD IN GUANTANAMO] ARE NOT POWS.

-- THIS DECISION DOES NOT AFFECT TREATMENT OF THE DETAINEES. THEY HAVE BEEN AND WILL BE TREATED HUMANELY AND RECEIVE: THREE MEALS A DAY, MEDICAL CARE, CLOTHING, SHELTER, SHOWERS, AND THE OPPORTUNITY TO WORSHIP. THE INTERNATIONAL COMMITTEE OF THE RED CROSS CAN VISIT EACH DETAINEE PRIVATELY, A RIGHT ACCORDED ONLY TO POWS.

-- THE WAR ON TERRORISM IS A NEW TYPE OF WAR NOT ENVISIONED WHEN THE GENEVA CONVENTION WAS SIGNED IN 1949. IN THIS WAR, GLOBAL TERRORISTS TRANSCEND NATIONAL BOUNDARIES, AND INTENTIONALLY TARGET THE INNOCENT.

-- THE PRESIDENT HAS MAINTAINED THE UNITED STATES' COMMITMENT TO THE GENEVA CONVENTION, WHILE RECOGNIZING THAT THE CONVENTION SIMPLY DOES NOT COVER EVERY SITUATION IN WHICH PEOPLE MAY BE CAPTURED OR DETAINED BY MILITARY FORCES, AS WE SEE IN AFGHANISTAN TODAY. HE ARRIVED AT A JUST, PRINCIPLED, AND PRACTICAL SOLUTION TO A DIFFICULT ISSUE.

-- THE U.S. REMAINS COMMITTED TO THE GENEVA CONVENTION AND PROUD OF ITS 50 YEARS OF COMPLIANCE WITH THE CONVENTION. WE ARE ALSO OPEN

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TO DISCUSSING WITH OTHER NATIONS THE POSSIBILITY OF A NEW INSTRUMENT CONCERNING THE TREATMENT OF DETAINED PERSONS IN CONFLICTS NOT ENVISIONED IN 1949.

-- THIS DECISION SHOULD HAVE NO LEGAL OR PRACTICAL EFFECT ON U.S. ARMED FORCES, WHICH ARE A REGULAR ARMED FORCE THAT COMPLIES WITH THE LAWS AND CUSTOMS OF WAR.

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## -----Original Message-----

**From:** Smith, Daniel B  
**Sent:** Thursday, February 07, 2002 11:33 AM  
**To:** Bowker, David W(Main State Room 6429); Wolff, David J(Main State 6205); EAP-ANP-Office-DL; O'Reilly, Kevin M (WHA)(Main State Room 6906); 'WHA-CAN Exchange Group'; Decker, Karen(Main State); EUR-UBI-DL; EUR-WE-DL; EUR-RUS-DL; Steele, Cheryl(Main State); Schedlbauer, Amy W(Main State); SA Staff Assistant-DL; NEA Staff Assistants-DL; Hayward, LaVonya M (PRM)(Main State Rm 5824); Wood, William B (IO/PDAS)(Main State Rm 6323)  
**Cc:** Harty, Maura; Schriver, Randall G; Blake, Robert O; Rodley, Carol A  
**Subject:** RE: Notifying Posts re: Presidential Decision on Detainees

To clarify, no one should contact any local embassies until L indicates we have the final language from the White House and the White House is prepared to release the decision.

## -----Original Message-----

**From:** Smith, Daniel B  
**Sent:** Thursday, February 07, 2002 11:23 AM  
**To:** Bowker, David W(Main State Room 6429); Wolff, David J(Main State 6205); EAP-ANP-Office-DL; O'Reilly, Kevin M (WHA)(Main State Room 6906); 'WHA-CAN Exchange Group'; Decker, Karen(Main State); EUR-UBI-DL; EUR-WE-DL; EUR-RUS-DL; Steele, Cheryl(Main State); Schedlbauer, Amy W(Main State); SA Staff Assistant-DL; NEA Staff Assistants-DL; Hayward, LaVonya M (PRM)(Main State Rm 5824); Wood, William B (IO/PDAS)(Main State Rm 6323)  
**Cc:** Harty, Maura; Schriver, Randall G; Blake, Robert O; Rodley, Carol A  
**Subject:** RE: Notifying Posts re: Presidential Decision on Detainees

David,

Per our conversation, I understand L expects the regional bureaus to notify their respective local embassies among the nine listed below "at the highest level possible." I also understand that the ICRC needs to be notified. We will circulate immediately a copy of the draft decision and talking points. The bureaus will, however, also clearly need the final text from L as soon as that is available. Dan

## -----Original Message-----

**From:** Bowker, David W  
**Sent:** Thursday, February 07, 2002 11:08 AM  
**To:** Bowker, David W; Wolff, David J; EAP-ANP-Office-DL; O'Reilly, Kevin M (WHA); WHA-CAN Exchange Group; Decker, Karen; EUR-UBI-DL; EUR-WE-DL; EUR-RUS-DL; Steele, Cheryl; Schedlbauer, Amy W; SA Staff Assistant-DL; NEA Staff Assistants-DL; Smith, Daniel B(S/ES)  
**Subject:** RE: Notifying Posts re: Presidential Decision on Detainees

WH is announcing its decision at roughly 12:45 today. We have a draft of the decision and are

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putting together an Immediate ALDAC, priority to the posts listed below.

The WH will be feeding us talking points momentarily and when they do, we're told that we need to notify the 9 local embassies here in DC and then the capitals as per below. Hopefully, all before 12:45(!).

We will relay the final talking points as soon as we receive them.

Thanks for your patience,  
Dave Bowker

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

**From:** Bowker, David W  
**Sent:** Wednesday, February 06, 2002 6:00 PM  
**To:** Wolff, David J; EAP-ANP-Office-DL; O'Reilly, Kevin M (WHA); WHA-CAN Exchange Group; Decker, Karen; EUR-UBI-DL; EUR-WE-DL; EUR-RUS-DL; Steele, Cheryl; Schedlbauer, Amy W; SA Staff Assistant-DL; NEA Staff Assistants-DL  
**Subject:** Notifying Posts re: Presidential Decision on Detainees

All:

Apologies for the sweeping list of recipients. We understand that the President has made a decision as to the status of detainees at GTMO. We do not know what he has decided but expect to know very soon. As soon as we know the decision, it will be important to notify the following countries at the highest levels (prior to any public announcements we hope):

[REDACTED]

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L is preparing an ALDAC, but we expect that the Secretary will want notices to go out by phone in the mean time.

I will send a follow-up email when we have more news.  
Dave Bowker  
L/PM  
Attorney-Adviser  
x76863

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