

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
079	Report	[Report]	9	08/13/2002	P1/b1;
080	Memorandum	Memorandum - To: Stephen J. Hadley - From: Douglas J. Feith	3	08/17/2002	P1/b1; P5;
081	Memorandum	Memorandum for Condoleezza Rice - From: Brad Wiegmann	7	08/14/2002	P1/b1; P5;
082	Note	Note - To: Condi Rice - From: Al Gonzales <i>LP4WB 2016-0154-17, # 4626</i> <i>R.I.F., 9/18/2019</i>	2	08/15/2002	P1/b1 ; P5;
083	Note	Note - To: Condi Rice, Steve Hadley, & Scooter Libby - From: Al Gonzales <i>LP4WB 2016-0154-17, # 4627</i> <i>R.I.F., 9/18/2019</i>	3	08/14/2002	P1/b1 ; P5;
084	Report	[Report]	8	N.D.	P1/b1; P5;
085	Draft	[Report]	17	N.D.	P1/b1; P5;

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National Security Council - National Security Advisor, Office of the

SERIES:

Rice, Condoleezza

FOLDER TITLE:

[Iraq, August 2002] [6]

FRC ID:

34579

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090	Memorandum	Iraq - To: Andy Card, et al. - From: Alberto R. Gonzales	1	08/08/2002	P5;

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We Have the Right to Oust Saddam

By LEE A. CASEY

AND DAVID B. RIVKIN JR.

With the Taliban's defeat, the global campaign against terrorism is clearly shifting toward an older, more dangerous enemy—Saddam Hussein. Saddam is the senior member of President Bush's axis of evil, and recent statements by administration officials, including Secretary of State Colin Powell, that the U.S. will seek a "regime change" in Baghdad, suggest that his days are numbered.

The remaining issues appear to be when and how that change will be effected, and under what legal authority. As with the recent debate over whether the al Qaeda and Taliban detainees at Guantanamo Bay are entitled to prisoner-of-war status, the legal questions surrounding military action against Saddam promise to be highly contentious.

Ample Authority

Anticipating the president's policy, observers—particularly in Europe—have asserted that any U.S. military operation against Iraq would require United Nations Security Council authorization. This, given French, Russian and Chinese attitudes, will probably not be forthcoming. Luckily, pre-existing Security Council resolutions and the inherent rights of self-defense—recognized by the U.N. Charter and international law—support an attack against Iraq without further Security Council action.

When Iraq occupied Kuwait in 1990, the Security Council adopted a series of resolutions pursuant to its authority under Chapter VII of the Charter to "maintain or restore international peace and security." Among other things, these resolutions authorized the use of military force to drive Saddam from Kuwait and "to restore international peace and security in the area." Although Saddam was expelled from Kuwait in 1991, international peace and security in the area have not been restored.

Iraq has never fully complied with its cease-fire agreements, and no peace treaty has been concluded. Indeed, ever since the close of Desert Storm, the U.S. and Britain have been continuously prosecuting armed conflict with Iraq, enforcing no-fly zones and periodically attacking Iraqi targets.

The Gulf War, in short, has never ended, and additional action against Iraq would be fully justified based on pre-existing U.N. authorization. Moreover, since

has in the past assisted the operations of al Qaeda, or sponsored other attacks against the U.S. or its allies, this provision would fully support measures against him.

In view of his past record of aggression, his bellicose statements and threats against his neighbors and other countries, as well as his involvement with known terrorist groups such as the Palestine Liberation Front, it appears that this standard can be easily met. The individual and collective self-defense imperatives, stem-

The U.S. doesn't need further U.N. action to justify an attack on Iraq. Existing resolutions from the Gulf War, and the right to 'anticipatory self-defense,' are enough.

that action can be based on the Security Council's original resolution authorizing the use of force against Iraq, there is no need to offer Saddam yet another opportunity to comply with the weapons inspection requirements he accepted when Kuwait was liberated. Whatever the merits of such an offer as a public relations ploy (and they are debatable, since Saddam would most likely use the opportunity simply to buy extra time), it is not legally required.

Saddam's debt to the community of nations is both ample and long overdue, and full compliance with U.N. inspection requirements is merely a part of it. All U.N. member states, including the U.S., have a right to prosecute armed operations against Iraq, up to and including the ouster of the Iraqi regime.

In addition, international law has long recognized that states have an inherent right of self-defense. This right was incorporated into Article 51 of the U.N. Charter, which affirms the right of states to act individually or collectively on this basis. If there is any evidence that Saddam was involved in the Sept. 11 attacks, or that he

ming from Baghdad's behavior, are just as strong today as they were in 1990. Again, no additional action by the Security Council would be necessary.

Moreover, separate from Saddam's past regional misdeeds—and even assuming that he had no involvement in the Sept. 11 attacks—his dedicated efforts to acquire weapons of mass destruction, combined with his open hostility towards the U.S. and its allies, would alone justify American military action against Iraq. Under the international law doctrine of "anticipatory self-defense," states may take preemptive action against an enemy before an actual attack.

This longstanding rule was not displaced by the narrower terms of the U.N. Charter, and the U.S. has employed the right of anticipatory self-defense on a number of occasions. These instances include the Cuban Missile Crisis and President Reagan's 1986 air raids on Libya. Israel cited this doctrine to justify its 1981 raid on Saddam's nuclear facility in Osirak, and though it was roundly criticized at the time, no sanction was actually imposed by the international community.

Although the right of anticipatory self-defense is narrow in theory—as Secretary of State Daniel Webster noted in 1842, the need for action must be "instant, overwhelming, and leaving no choice of means"—in practice its use is governed by a rule of reason. In determining whether any particular action is justified under this doctrine, especially when weapons of mass destruction are involved, the record of actual practice by states suggests general agreement with Oliver Wendell Holmes's much-quoted formulation on the general law of self-defense—"detached reflection cannot be demanded in the presence of an uplifted knife."

In this case, the U.S. would be on very solid ground. The purpose of Saddam's weapons program is disproportionate to any threat posed by Iran or other neighbors. There is little doubt that these weapons clearly are for use, either by Iraq or by its terrorist surrogates, against the U.S. and its allies.

Effective War

Moreover, a strong U.S. position on the issue of anticipatory self-defense will be critical to our ability to prosecute an effective war against terrorism. A primary purpose of this effort is to prevent additional terrorist attacks on the U.S. and its allies, and this will require striking the terrorists, and their state sponsors, before they have acted. An unnecessarily restrictive view of the right of anticipatory self-defense would make this difficult, if not impossible, and is not required by law.

The bottom line is that we don't need more action by the United Nations. U.S. action against Saddam at this point would be as firmly grounded in international law and practice as any military undertaking in the past 50 years.

Messrs. Casey and Rivkin, attorneys in Washington, served in the Justice Department during the Reagan and first Bush administrations.

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2ND STORY of Level 2 printed in FULL format.

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The Independent (London)

July 29, 2002, Monday

SECTION: TITLE PAGE; Pg. 1

LENGTH: 619 words

HEADLINE: BLAIR WARNED: IRAQ ATTACK 'ILLEGAL';
GOVERNMENT LEGAL ADVISERS SAY UN MANDATE IS NEEDED FOR ACTION

BYLINE: Paul Waugh Deputy Political Editor

BODY:

TONY BLAIR has been told by the Government's own lawyers that British participation in an invasion of Iraq would be illegal without a new United Nations mandate.

The advice, which is highly confidential, has led the Foreign Office to warn Downing Street that a fresh UN resolution could be the best means of ensuring Russian and moderate Arab support for any attack against Saddam Hussein.

Senior government sources say the Prime Minister has also received conflicting legal opinion from law officers that current UN resolutions could offer sufficient cover for any military action. But the very fact that even one part of Government has been told an attack could be illegal will delight the many Labour MPs worried that Mr Blair will unilaterally back an American assault.

The legal advice in favour of a new UN resolution is in tune with similar calls made by Dr Rowan Williams, the incoming Archbishop of Canterbury.

Many Labour backbenchers, including former ministers such as Peter Kilfoyle, have warned that the party will be split for years if Britain takes part in any action against Iraq without proper justification. MPs are now sure to demand publication of the advice from government lawyers.

Although Mr Blair stressed last week that the world was "not at the point of decision", it is clear that some in Downing Street are determined that Britain should back America whenever it does decide to attack.

Yesterday, Ben Bradshaw, Deputy Leader of the House of Commons, underlined Mr Blair's case that inaction against Iraq was not an option.

In line with the Government's legal advice, Mr Bradshaw conceded that "there is an argument" that a new UN mandate would be required for an invasion. But he said there was a counter-argument that legal cover was given by the existing 23 UN resolutions about Iraq's development of weapons of mass destruction and failure to allow weapons inspectors into the country.

"We simply cannot think that by hoping a threat will go away it will. It

The Independent (London), July 29, 2002

won't and Saddam poses a very real one," he told Sky's Sunday with Adam Boulton. "I would not want to come back on this programme in five years' time after something terrible had happened and defend to you that we ignored that threat."

A vote by MPs on military action was ruled out by Mr Bradshaw, who organises Commons business as deputy to Robin Cook, the Leader of the House.

Mr Bradshaw accepted that the opposition in the Labour ranks was more than a list of "usual suspects" and included moderate loyalists.

"There is also a broader group of people who, of course, are concerned about how it could be done, why it is necessary, where is the evidence, and also the wider repercussions for the Middle East," he said.

Mr Bradshaw dismissed a YouGov internet poll showing 51 per cent opposed to action against Iraq compared with 40 per cent in favour.

"I think the majority of people supported what we did in Afghanistan, the majority of people supported what we did in the Balkans," he said. "And any British government is going to think very, very carefully about deploying British forces in a situation where it does not enjoy majority support in the population and in Parliament."

Speculation about British involvement in a future attack was heightened at the weekend when it was claimed that HMS Ocean, one of the UK's biggest warships, was being kitted out for amphibious use. But military sources insisted no action would take place before December.

Jordan's King Abdullah II told CNN yesterday that he finds the idea of intervention in Iraq while the Israeli-Palestinian conflict has the Middle East in turmoil "somewhat ludicrous".

Leading article, page 12

LOAD-DATE: July 29, 2002

89

THE WHITE HOUSE

WASHINGTON

CLOSE HOLD
EYES ONLY

August 13, 2002

MEMORANDUM TO: CONDOLEEZZA RICE
STEVE HADLEY

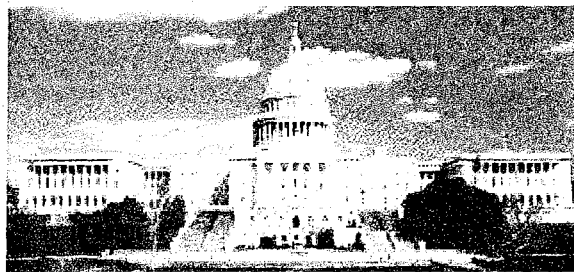
FROM: ALBERTO R. GONZALES *arg*

SUBJECT: USE OF FORCE AUTHORIZATION

In several instances in both the 19th and 20th centuries, the U.S. engaged in extended military engagements that, while not formally declared wars, were authorized by Congress in some form short of a formal declaration of war. Attached are the following Congressional authorizations for the use of force:

1. Vietnam War, Gulf of Tonkin Resolution (August 7, 1964)
2. Gulf War, Public Law 102-1 (January 14, 1991)
3. War Against Terrorism of Global Reach, Public Law 107-40 (September 18, 2001)

Gulf of Tonkin Resolution



Joint Resolution of Congress H.J. RES 1145 August 7, 1964

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Section 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Section 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Read President Johnson's

Return to the page.

Return to my

PL 102-1, January 14, 1991, 105 Stat 3

UNITED STATES PUBLIC LAWS
102nd Congress - First Session
Convening January 3, 1991
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Additions and Deletions are not identified in this document. For Legislative History of Act, see LH database or Report for this Public Law in U.S.C.C. & A.N. Legislative History section.

PL 102-1 (HJRes 77)

January 14, 1991

AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST IRAQ RESOLUTION

Joint Resolution to authorize the use of United States Armed Forces pursuant to United Nations Security Council Resolution 678.

<< 50 USCA § 1541 NOTE >>

Whereas the Government of Iraq without provocation invaded and occupied the territory of Kuwait on August 2, 1990;

Whereas both the House of Representatives (in H.J.Res. 658 of the 101st Congress) and the Senate (in S.Con.Res. 147 of the 101st Congress) have condemned Iraq's invasion of Kuwait and declared their support for international action to reverse Iraq's aggression;

Whereas, Iraq's conventional, chemical, biological, and nuclear weapons and ballistic missile programs and its demonstrated willingness to use weapons of mass destruction pose a grave threat to world peace;

Whereas the international community has demanded that Iraq withdraw unconditionally and immediately from Kuwait and that Kuwait's independence and legitimate government be restored; Whereas the United Nations Security Council repeatedly affirmed the inherent right of individual or collective self-defense in response to the armed attack by Iraq against Kuwait in accordance with Article 51 of the United Nations Charter;

Whereas, in the absence of full compliance by Iraq with its resolutions, the United Nations Security Council in Resolution 678 has authorized member states of the United Nations to use all necessary means, after January 15, 1991, to uphold and implement all relevant Security Council resolutions and to restore international peace and security in the area; and

Whereas Iraq has persisted in its illegal occupation of, and brutal aggression against Kuwait: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for Use of Military Force Against Iraq Resolution".

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) **AUTHORIZATION.**--The President is authorized, subject to subsection (b), to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677.

(b) **REQUIREMENT FOR DETERMINATION THAT USE OF MILITARY FORCE IS NECESSARY.**-- Before exercising the authority granted in subsection (a), the President shall make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that--

(1) the United States has used all appropriate diplomatic and other peaceful means to obtain compliance by Iraq with the United Nations Security Council resolutions cited in subsection (a); and
(2) that those efforts have not been and would not be successful in obtaining such compliance.

(c) **WAR POWERS RESOLUTION REQUIREMENTS.**--

(1) **SPECIFIC STATUTORY AUTHORIZATION.**--Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) **APPLICABILITY OF OTHER REQUIREMENTS.**--Nothing in this resolution supersedes any requirement of the War Powers Resolution.

SEC. 3. REPORTS TO CONGRESS.

At least once every 60 days, the President shall submit to the Congress a summary on the status of efforts to obtain compliance by Iraq with the resolutions adopted by the United Nations Security Council in response to Iraq's aggression.

Approved January 14, 1991

PL 102-1, 1991 HJRes 77
END OF DOCUMENT

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PL 107-40, September 18, 2001, 115 Stat 224

UNITED STATES PUBLIC LAWS
107th Congress - First Session
Convening January, 2001
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Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 107-40 (SJRes 23)
September 18, 2001
AUTHORIZATION FOR USE OF MILITARY FORCE

Joint Resolution To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

<< 50 USCA § 1541 NOTE >>

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for Use of Military Force".

<< 50 USCA § 1541 NOTE >>

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) IN GENERAL.--That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in

order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) War Powers Resolution Requirements--

(1) SPECIFIC STATUTORY AUTHORIZATION.--Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS.--Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Approved September 18, 2001.

PL 107-40, 2001 SJRes 23
END OF DOCUMENT

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Withdrawal Marker

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Memorandum	Iraq - To: Andy Card, et al. - From: Alberto R. Gonzales	1	08/08/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
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Rice, Condoleezza

FOLDER TITLE:

[Iraq, August 2002] [6]

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2014-0457-F

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- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Congress of the United States

Washington, DC 20515

498179

December 19, 2001

The Honorable George W. Bush
White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Bush:

There has been a lot of discussion by officials in your Administration, among media pundits, and by Members of Congress about where the U.S. should direct our military power next in the global campaign against terrorism. Iraq is the most commonly talked about target, but some individuals have expressed interest in attacking Sudan, Lebanon, Syria, Libya, Somalia or other nations.

As you know, Article I, Section 8 of the U.S. Constitution grants Congress the exclusive authority to declare war. While, as commander-in-chief, we recognize that you conduct the day-to-day operations of the U.S. military, the Constitution and the War Powers Resolution of 1973 grant Congress the prerogative to decide whether to send U.S. troops into hostilities. The use of force resolution approved by Congress specifically safeguarded Congress' war powers by noting that nothing in the resolution "supercedes any requirement of the War Powers Resolution."

We are writing to remind you that while Congress overwhelmingly authorized you to use military force to respond to the September 11, 2001, terrorist attacks, the congressional authorization was limited in scope. Specifically, the joint resolution stated:

"That the President is authorized to use all necessary and appropriate force against those nations, organizations or persons he *determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons*, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."
[emphasis added]

In other words, Congress has only authorized you to use the U.S. military to take action against those responsible for the horrific attacks of September 11, 2001. Your Administration must have compelling evidence of the complicity of another nation in the September 11 attacks in order to use the U.S. military to take action against that nation. Absent such evidence, you need to come back to Congress seeking an additional authorization of force resolution before expanding the military campaign.

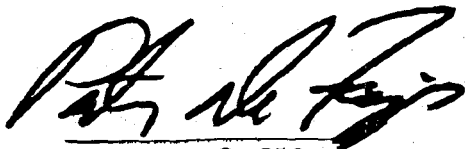
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Mr. President, we share your commitment to combating terrorism. We are pleased with the broad international support your Administration gathered for the global campaign against terrorism. We have been heartened by the strong performance of U.S. troops in Afghanistan. Their brave actions deserve our highest respect, admiration, and recognition. Clearly, the destruction of the Taliban and al-Qaeda has liberated the Afghan people and will ease our ability to bring the terrorists to justice. And, the generosity of average Americans has helped our nation's healing process.

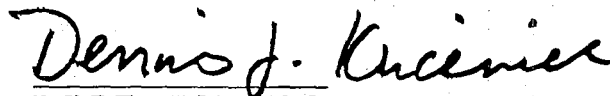
While we, the undersigned, may have differing opinions on the wisdom of military action against Iraq or other nations, we are united in our belief that it is important to protect the constitutional prerogatives of the Congress. It is critical, as a representative democracy, that profound decisions on war and peace rest with the branch closest to the people - the legislative branch. Therefore, we would again remind you of your constitutional obligation to return to Congress to seek authorization before expanding the military campaign against terrorism.

We look forward to working with you in our mutual desire to enhance the security of the American people.

Sincerely,



PETER DeFAZIO
Member of Congress



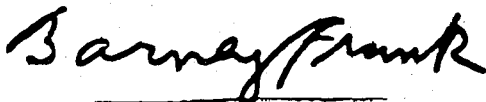
DENNIS KUCINICH
Member of Congress



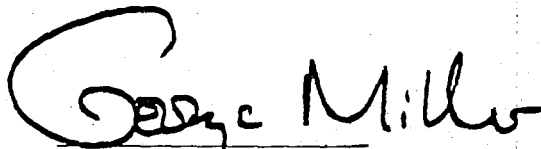
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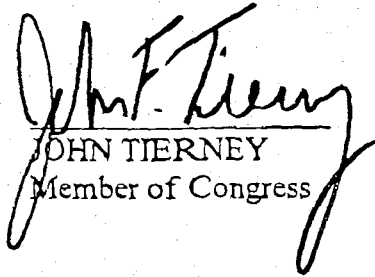
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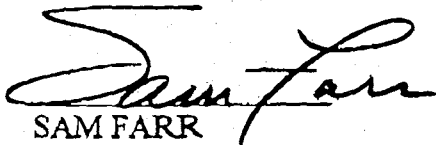
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Member of Congress




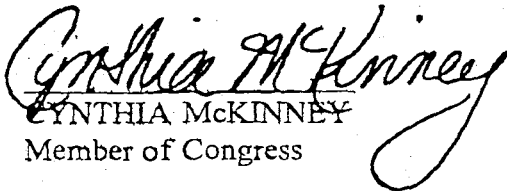
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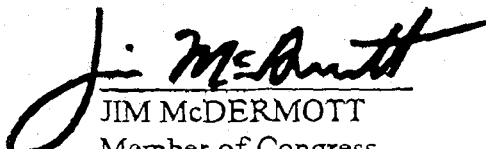

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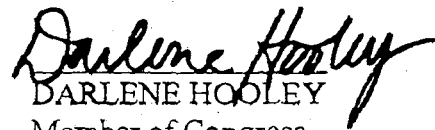

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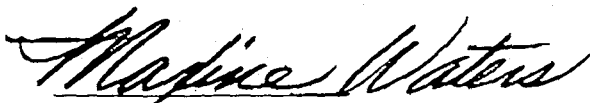

LYNN WOOLSEY
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CYNTHIA MCKINNEY
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LYNN RIVERS
Member of Congress


JIM McDERMOTT
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DARLENE HOOLEY
Member of Congress


MAXINE WATERS
Member of Congress

THE WHITE HOUSE

WASHINGTON

April 18, 2002

The Honorable Peter DeFazio
U.S. House of Representatives
Washington, D.C. 20315

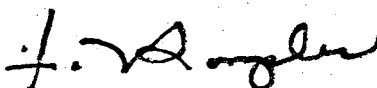
Dear Representative DeFazio:

I am writing in response to your letter asserting that the President has a constitutional obligation to obtain authorization from Congress before expanding the military campaign against terrorism.

The President has broad constitutional authority as Commander in Chief, and as the sole organ of the federal government in foreign affairs, to deploy the Armed Forces of the United States, especially to defend American citizens from attacks and threats by foreign terrorist organizations. In Senate Joint Resolution 23, P.L. 107-40, the Congress expressly confirmed that "the president has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States." A formal declaration of war or other authorization from the Congress is not required to enable the President to undertake the full range of actions that may be necessary to protect our national security. Moreover, under the terms of S.J. Res. 23, Congress has already expressed its support for use of force against anyone who -- as determined by the President -- aided the September 11 attacks or harbored those who did so. The President is committed to continuing to work closely with the Congress, however, to ensure that we have all the tools we need to fight and win the war on terrorism.

On behalf of the President, thank you for your support to our efforts.

Sincerely,



Alberto Gonzales
Counsel to the President