

Making the Case: How to Respond to Critics on the Boston Marathon Bombings

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Takeaways

Critics call for Dzhokhar Tsarnaev to be treated as an enemy combatant, but this is ill-informed and counterproductive because:

- The Boston Marathon Bombers don't fit the enemy combatant definition
- Labeling them enemy combatants throws the case into legal limbo
- Law enforcement has a proven record of handling terrorism cases

Since the arrest of the suspect in the Boston Marathon bombings, Dzhokhar Tsarnaev, a few vocal politicians have criticized the actions of law enforcement and the Obama administration. They insist that the suspect should be handled as an “enemy combatant” within a military framework, rather than through civilian courts—courts which have effectively brought to justice a number of high-profile terrorists.

This memo outlines such criticisms and offers guidance and supporting information in responding to these accusations.

The Marathon bomber belongs in federal court, where he will be tried like many terrorists before him. These attacks on law enforcement and the President are ill-informed and counterproductive.

The Tsarnaev brothers do not fit the “enemy combatant” designation.

Senators Lindsey Graham, John McCain, Kelly Ayotte, and Representative Peter King issued a joint statement saying Tsarnaev “clearly is a good candidate for enemy combatant status.” ¹

We will prosecute this terrorist through our civilian system of justice... this is absolutely the right way to go and the appropriate way to go.



— Jay Carney, White House Spokesman, April 22, 2013

Senator Graham cited the suspect’s Chechen ethnicity and violence in the Caucasus as justification ², and further noted, “[W]e could hold him for a period of time, we could question him without a lawyer, and none of the evidence could be used against him in the criminal proceeding.” ³

- We have a precise definition of who our “enemy” is. According to the Authorization for Use of Military Force (AUMF), we are at war only with the groups who attacked us on 9/11. ⁴ The U.S. government has defined these as al Qaeda, the Taliban who harbored al Qaeda, and associated forces. People in such groups can be considered “enemy combatants.”
- Even if they were part of a violent Chechen group, the Tsarnaevs would not be defined as “enemy combatants.” Such groups are not part of this definition.
- In any case, Chechnya-based groups were not responsible for the attacks on 9/11 and have not targeted the United States homeland. The Chechen group responsible for multiple brutal attacks against civilian targets in Russia denied responsibility for the Boston attack, saying “Caucasian mujahedeen do not engage in military action with the United States of America.” ⁵

Using the “enemy combatant” label would be wrong —there’s no apparent link to al Qaeda in this case.

Using the “enemy combatant” status would delay prosecution and final justice.

There appears to be a great deal of evidence with which to try Dzhokhar Tsarnaev in civilian courts and put him away forever. Placing him in military custody would muddy the legal waters and may in fact help him gain his freedom.

- Labeling an individual an enemy combatant means that they could be held in custody by the military, not by law enforcement.⁶
- The law surrounding enemy combatant cases is unclear and some cases have taken years to resolve even the initial legal matters.⁷

Labeling Dzhokhar Tsarnaev, a U.S. citizen, an “enemy combatant” would throw the case into legal limbo, delaying justice for the victims.

Federal courts are superior to military commissions in cases like this.

- The military commissions are only for non-U.S. citizens.⁸
- American citizens on U.S. soil are tried by the federal justice system, not by military tribunals. Military commissions have only seen seven terrorism convictions since their post-9/11 inception, and two of those convicted are already free.⁹

- Jose Padilla, a U.S. citizen, was labeled an enemy combatant in a controversial Bush administration move; eventually that administration transferred him to the civilian court system, avoiding a Supreme Court battle over his status.¹⁰

“Federal civilian courts—not military commissions—are the best way to ensure justice for victims of the bombings.”

Invoking the “public safety” exception first, followed by the Miranda warning, was the right call.

Critics object to reading the suspect his Miranda rights.

- Federal prosecutors announced that they were delaying giving Tsarnaev a Miranda warning, invoking a “public safety” exception, and gathered a great deal of evidence from him at that time.¹¹
- The public safety exception was recognized by the Supreme Court in 1984 and allows law enforcement officials to question a suspect without Mirandizing in cases where there’s concern about an ongoing threat to public safety.¹²
- Once it became clear that the immediate threat was over, it made sense to move the suspect into the criminal justice system by reading him his rights. According to press reports, the suspects had already confessed the bombing to a witness, so prosecutors can make their case without Tsarnaev’s pre-Miranda statements.¹³

“Law enforcement officials made the right call by first ensuring the public’s safety and by then ensuring that

proper procedures were followed to swiftly implement justice.

It's a mistake to make this case about Islam.

Some critics of the Administration's approach to Boston assume that the U.S. is at war with radical Islam. Senator Graham said, "We're at war with radical Islamists and we need to up our game."¹⁴ Congressman King said, "We're at war with Islamic terrorism. It's coming from people within the Muslim community by the terrorists coming from that community, just like the mafia comes from Italian communities."¹⁵

- Successful counterterrorism relies on communities working with law enforcement to identify bad actors. According to the New America Foundation, "Over one-fifth of the post-9/11 Islamist terrorism cases originated with tips from Muslim community members or involved the cooperation of the families of alleged plotters."¹⁶
- In 2010, the FBI arrested a man plotting to bomb the Washington, D.C. Metro after a member of the local Muslim community contacted it.¹⁷
- It's clear that the Tsarnaev brothers are considered outliers by their community. Even their uncle, Ruslan Tsarni, called them "losers... [they] put a shame (sic) on the entire Chechen ethnicity."¹⁸

This kind of argument harms our counterterrorism efforts

Conclusion

Law enforcement officials identified, tracked down, and captured suspects in the Boston Marathon bombing in less

than a week. Second-guessing their decisions before all the facts are in is unwise and bad public policy.

Moreover, the steps recommended by critics are counterproductive and have long been discredited by law enforcement and intelligence professionals.

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END NOTES

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