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Bagram Theater Internment Facility (BTIF) Policy Review



**OSD(P)/Detainee Policy Office
April 22, 2009**

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Overview of BTIF Population

☐ BTIF operations support US Forces operating under OEF authority only

- Individuals captured by US Forces under ISAF are transferred to the Afghan NDS in 96 hours

☐ Population as of April 20, 2009:

- BTIF Total: (b)(1), Sec. 1.4(a)
 - BTIF population has stayed in 550-650 range for past several years
- Third Country Nationals: (b)(1), Sec. 1.4(a), Sec. 1.4(b)
- Detainees Captured **Outside** Afghanistan: (b)(1), Sec.

☐ Out of theater transfers to Bagram currently limited to 60 days for screening and exploitation purposes only – no long-term detention

- None of the (b)(1) detainees referenced above entered Bagram after March, 2004

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DoD Policy Review of BTIF Procedures

- ☐ **OSD, OGC, Joint Staff, and CENTCOM are currently working to revise both substantive and procedural aspects of the BTIF review process**
- ☐ **Detainee review procedures at the BTIF (UECRBs) were originally established to support GTMO transfer decisions**
 - Review processes originated in 2002-2004 timeframe
 - High-level/Low-Level Enemy Combatant Status tied to GTMO transfer criteria
- ☐ **Linkage between the BTIF and GTMO severed over time**
- ☐ **DoD is working to transition current BTIF operations to the TIFRC model used successfully in Iraq**
 - New facility to open in October 2009
 - (b)(1),Sec. 1.4(a)
 - Requires reorientation of review and release processes to support this model

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Changes Under Consideration

☐ Substantive:

(b)(1), Sec. 1.4(a)

☐ Procedural:

- Ensure detainee is present at all review boards (not just the first)
- Ensure detainees fully understand review process and their role in the process
- Utilization of MNFRC "script" to ensure meaningful participation by the detainee
- Appointment of a personal representative to assist the detainee in the review process
- Legal review of review determinations and review report

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Takeaways from April 22 Discussion

- ☐ As discussed during the April 22 meeting, DoD is revising detainee review procedures in Afghanistan
 - ☐ The draft guidance includes specific points discussed in the April 22 meeting, including
 - The process to implement Article V Tribunals outlined in Army Regulation 190-8 provides the baseline standard
 - The 190-8 process is supplemented by additional procedures (e.g., enhanced notice procedures, personal representatives) - Quasi-advocate role for personal representative (act in “best interest” of the detainee and present information in “the light most favorable” to the detainee)
 - Policy specifically directs certain positive actions already part of operational practice
-
- ☐ We anticipated have new policy guidance signed by the end of May, and are still on that timeline

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Summary of Changes

☐ Substantive:

(b)(1), Sec. 1.4(a)

- For releases, board makes a final determination (not a recommendation to the commander)

☐ Procedural:

- Incorporation of Judge Advocate review to initial, 72-hour, review of new captures

(b)(1), Sec. 1.4(a)

- Adoption of process in 190-8, with the following supplemental procedures:
 - Utilization of review board script to ensure meaningful participation by the detainee
 - Opportunity to present reasonably available witnesses and documentary evidence
 - Appointment of a personal representative to assist the detainee (including during closed portions of the proceedings)
 - Enhanced notification procedures to ensure detainees fully understand the basis of their detention, the review process and their role in the process
 - Utilization of Judge Advocate to advise the board, as required
- Legal sufficiency review of board determinations

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Comparison of Process Models

	Article 5 (AR 190-8)	UECRB (current)	UECRB (future)
Purpose	To determine whether person is EPW	To recommend combatant status and disposition	To determine combatant status and recommend disposition
Nature	Non-adversarial	Non-adversarial	Non-adversarial
Standard	Article 4, GPW	Unlawful Enemy Combatant	Combatant (as defined in March 13, 2009 DOJ filing)
Possible Findings	EPW, RP, innocent civilian, CI	<input type="checkbox"/> Status: HLEC, LLEC, NLEC <input type="checkbox"/> Disposition: GTMO, continued detention at the BTIF, transfer, release w/o conditions	<input type="checkbox"/> Status: does/does not meet combatant criteria (plus threat assessment) <input type="checkbox"/> Disposition: continued detention at the BTIF, transfer for prosecution or reconciliation, release w/o conditions
Timing	Not specified	Capturing unit review within 72 hours; transfer request within 14 days; initial board within 75 days; periodic boards every 6 months	Capturing unit review within 72 hours (w/ JAG); transfer request within 14 days (w/ JAG); initial board within 60 days; periodic reviews every 6 months

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Comparison of Process Models (cont.)

	Article 5 (AR 190-8)	UECRB (current)	UECRB (future)
Composition	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder (preferably JAG)	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder	<input type="checkbox"/> 3 field grade officers authorized access to all relevant information <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder
Legal Advisor	No	No	Yes
Personal Rep.	No	No	Yes; authorized access to all relevant information
Open/ Closed	Open except for deliberation and voting, security; person whose status is to be determined allowed to attend open sessions	Closed; detainee allowed to appear at initial board	Open except for deliberation and voting, security; detainee allowed to attend open sessions
Witnesses	Yes (if reasonably available)	No	Yes (if reasonably available)
Legal sufficiency review	Yes	No	Yes

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Proposed Revisions to Detainee Review Procedures in Afghanistan

**OUSD(P)/Office of Detainee Policy
May 13, 2009**

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Proposed Revisions to Detainee Review Procedures in Afghanistan

- ☐ **DoD is working to enhance the existing detainee review process, both substantively and procedurally**
- ☐ **Existing detainee review procedures (UECRBs) were established to support GTMO transfer decisions**
 - High-Level/Low-Level Enemy Combatant status determinations are tied to GTMO transfer criteria; but linkage between the BTIF and GTMO has been severed over time
- ☐ **Enhanced procedures will improve DoD's ability to assess:**
 - Whether each detainee meets the criteria for lawful detention
 - Level of threat the detainee poses
 - Detainee's potential for rehabilitation, reconciliation and reintegration
- ☐ **Proposed revisions also enhance the detainee's ability to challenge his or her detention**
- ☐ **Concurrently, DoD is working to transition BTIF operations to the TIFRC model used successfully in Iraq**
 - New BTIF to open in Fall of 2009
 - (b)(1), Sec. 1.4(a)
- New detainee review procedures designed to facilitate this shift

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Overview of Proposed Changes

❑ Substantive changes:

- Authority to detain mirrors definition in DOJ's March 13 habeas filing
- (b)(1), Sec. 1.4(a)
- Status determinations and threat assessments no longer tied to GTMO transfer criteria
- Board makes final status determination (not just recommendation to the commander)

❑ Procedural changes:

- Judge Advocates participate in capturing unit's initial, 72-hour review and BTIF commander's review of request to transfer detainee to BTIF for internment
- Requirements of AR 190-8 serve as baseline for initial and periodic review boards, plus several features not required by AR 190-8:
 - Board follows written script to ensure detainee's meaningful participation
 - Open proceedings, except during deliberations/voting or for security reasons
 - Detainee allowed to call reasonably available witnesses and present relevant documentary evidence
 - Personal representative appointed to assist detainee (including during closed sessions)
 - Enhanced notification procedures, to ensure detainee fully understands the basis for his detention, the review process, and his role in the process
 - Judge Advocate serves as legal advisor to the board, as required
 - Judge Advocate conducts legal sufficiency review of board determinations

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Comparison of Detainee Process Models

	Article 5 (AR 190-8)	UECRB (existing)	UECRB (proposed)
Purpose	To determine whether person is EPW	To recommend combatant status and disposition	To determine whether detainee meets criteria for internment and recommend disposition
Nature	Non-adversarial	Non-adversarial	Non-adversarial
Standard	Article 4, GPW	Unlawful Enemy Combatant	Detainable Person, as defined in March 13, 2009 DOJ filing
Possible Findings	EPW, RP, innocent civilian, CI	<input type="checkbox"/> Status: HLEC, LLEC, NLEC <input type="checkbox"/> Disposition: GTMO, continued detention at the BTIF, transfer, release w/o conditions	<input type="checkbox"/> Status: does/does not meet criteria for internment, plus threat assessment <input type="checkbox"/> Disposition: continued internment at the BTIF, transfer for prosecution or reconciliation, release w/o conditions
Timing	Not specified	Capturing unit review within 72 hours; transfer request within 14 days; initial board within 75 days; periodic boards every 6 months	Capturing unit review within 72 hours (w/ JAG); transfer request within 14 days (w/ JAG); initial board within 60 days; periodic reviews every 6 months

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Comparison of Detainee Process Models (cont.)

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Composition	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder (preferably JAG)	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder	<input type="checkbox"/> 3 field grade officers authorized access to all relevant information <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder
Legal Advisor	No	No	Yes
Personal Rep.	No	No	Yes; authorized access to all relevant information
Open/ Closed	Open except for deliberation and voting, security; person whose status is to be determined allowed to attend open sessions	Closed; detainee allowed to appear at initial board	Open except for deliberation and voting, security; detainee allowed to attend open sessions
Witnesses	Yes, if reasonably available	No	Yes, if reasonably available
Legal sufficiency review	Yes	No	Yes

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Unlawful Enemy Combatant Review Board (UECRB) Procedures

~~(S)~~ Synopsis:

(b)(1), Sec. 1.4(a)

Increased capacity at the new BTIF should serve as a partial remedy, but revisions to the existing UECRB procedures and increased staffing at the BTIF may also be necessary.

~~(S//NF)~~ CJTF-101 consistently in-processes approximately ^(b)₍₁₎ new detainees a month at the BTIF, transfers ^(b)₍₁₎ a month from the BTIF to the custody and control of the IROA at the ANDF, and releases several more each month to the International Committee of the Red Cross (ICRC) or at point of capture.

(b)(1), Sec. 1.4(a), Sec. 1.4(b)

~~(S)~~ The recidivism rate among detainees released from the BTIF and the ANDF remains relatively low,

(b)(1), Sec. 1.4(a)

~~(S)~~ Although full exploitation of a detainee's intelligence value requires lengthy detention in many cases, intelligence value alone is not a lawful basis for detention. Rather, detention must be based on a determination that an individual meets the criteria for classification as an enemy combatant, and subsequent decisions to continue to detain, to transfer, or to release the individual should be

¹ ~~(FOUO)~~ Space limitations preclude CJTF-101 from providing rehabilitation and reintegration programs at the existing BTIF. The Command will incorporate such programs into its detention operations at the new BTIF when it opens in late 2009.

(b)(1), Sec. 1.4(b), Sec. 1.4(c)

based primarily on an assessment of whether continued detention by U.S. Forces is necessary to mitigate the threat the individual poses. The UECRB is the forum in which the Command reviews enemy combatant determinations and assesses whether continued detention by U.S. Forces is necessary.³

~~(S)~~

(b)(1), Sec. 1.4(a)

In other words,

(b)(1), Sec. 1.4(a)

(b)(1), Sec. 1.4(a)

~~(S)~~ This situation is likely the result of three key factors – space limitations at the BTIF, the limitations of the existing UECRB procedures, and staffing levels at the BTIF.

(b)(1), Sec. 1.4(a)

Increased capacity at the new BTIF will eliminate this factor when the facility opens in late 2009, but there is no feasible way to increase capacity at the existing BTIF, so a more immediate solution will be based on revisions to the UECRB procedures and/or increased staffing at the BTIF.

~~(S//NF)~~ The existing UECRB procedures satisfy applicable minimum legal requirements and comply with current DoD policy guidance. However, these

³ ~~(S//NF)~~ The UECRB also assesses each detainee's intelligence value, but primarily for purposes of determining whether to classify the individual as a High-Level Enemy Combatant (HLEC) or Low-Level Enemy Combatant (LLEC).

(b)(1), Sec. 1.4(a), Sec. 1.4(c)

(b)(1), Sec. 1.4(a), Sec. 1.4(b), Sec. 1.4(d)

procedures are less robust than the Combatant Status Review Tribunal (CSRT) procedures implemented at Guantanamo, the Multi-National Force Review Committee (MNFRC) procedures implemented in Iraq, and the Article 5 review procedures established by Geneva Convention III and incorporated in Army Regulation 190-8.⁵ Key differences include the following: detainees may appear before the UECRB during an initial review conducted within 75 days of arrival at the BTIF, but not during periodic reviews conducted every six months thereafter; detainees may make a personal statement to the Board, but Board Members are not permitted to ask the detainees questions; detainees are not permitted to call witnesses; detainees are not afforded a personal representative to assist them during the proceedings; all proceedings are closed; the written record of the proceedings is not verbatim; there is no requirement for the Members to include a legal officer; and the convening authority is not a General Court-Martial Convening Authority or equivalent.

~~(S//NO DIS)~~ After interviewing hundreds of BTIF detainees over the course of several years,

(b)(3):10 USC 130(c)

~~(S)~~ A more robust review process that incorporates some or all of the CSRT, MNFRC, and Article 5 procedures will make the UECRB a more effective tool. If revisions to the UECRB process improve the quality and timeliness of UECRB determinations, it will reduce the risk of transferring or releasing individuals whose threat the IROA cannot adequately mitigate. It will also decrease the chances of detaining individuals who do not pose a threat or whose threat the IROA could mitigate. This, in turn,

(b)(1);(b)(7)(A);(b)(7)(B);(b)(7)(D)

Last, but certainly not least, it will enhance the credibility of our detention operations and detention review procedures.

⁵ ~~(S)~~ Although the requirements of Geneva Convention III Relative to the Treatment of Prisoners of War do not, as a matter of law, apply to detainees at the BTIF, since they are held as enemy combatants rather than prisoners of war, this legal consideration does not preclude DoD from adopting Article 5 procedures in the UECRB context as a matter of policy.

~~(S)~~ Finally,

(b)(1), Sec. 1.4(a)

Likewise, if revisions to the UECRB procedures increase the demands on personnel involved in the UECRB process, then staffing in this area will have to increase. On the other hand, a more efficient and effective review process that decreases the average length of detention at the BTIF will reduce the detainee population, which will decrease the demand for guard force personnel at the facility.

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000



POLICY

1 JUL 14 2009

The Honorable Carl Levin
U.S. Senate
228 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Levin:

(U) Please find enclosed a copy of the policy guidance that the Deputy Secretary of Defense approved on July 2, 2009, modifying the procedures for reviewing the status of aliens detained by the Department of Defense at the Bagram Theater Internment Facility (BTIF) in Afghanistan, and related policy guidance regarding the criteria for assessing the threat such aliens represent, and regarding the authority to transfer and release such aliens from the BTIF. The enhanced detainee review procedures significantly improve the Department of Defense's ability to assess whether the facts support the detention of each detainee as an unprivileged enemy belligerent, the level of threat the detainee represents, and the detainee's potential for rehabilitation and reconciliation. The modified procedures also enhance the detainee's ability to challenge his or her detention.

(U) The modified procedures adopt the definitional framework of detention authority that the Administration first published in a Guantanamo habeas filing on March 13, 2009. Under this framework, the Department of Defense has the authority to detain "[p]ersons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, and persons who harbored those responsible for those attacks." The Department of Defense also has the authority to detain "[p]ersons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces."

(U) In addition to assessing whether the facts support the detention of each detainee as an unprivileged enemy belligerent under this framework, the modified procedures require detainee review boards to consider each detainee's threat level and potential for rehabilitation and reconciliation. Moreover, these threat assessments will no longer be linked to the criteria for transferring the detainee to Guantanamo.

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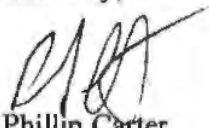
UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

(U) The modified procedures generally follow the procedures prescribed in Army Regulation (AR) 190-8, such as that the proceedings generally shall be open (with certain exceptions including for matters that would compromise national or operational security), including to representatives of the ICRC and possibly non-governmental organizations. Detainees will be allowed to attend all open sessions and call reasonably available witnesses.

(U) Key supplemental procedures not found in AR 190-8 that enhance the detainee's ability to challenge his or her detention include appointment of a personal representative who "shall act in the best interests of the detainee"; whose "good faith efforts on behalf of the detainee shall not adversely affect his or her status as a military officer (e.g., evaluations, promotions, future assignments)"; and who has access to all reasonably available information (including classified information) relevant to the proceedings. The end result is a process that approximates the process used to screen American citizens captured in Iraq.

(U) The Department of Defense submits this report on its modification of the procedures for reviewing the status of aliens detained by the Department of Defense at the BTIF in conformity with Section 1405(c) of the Detainee Treatment Act of 2005, Public Law Number 109-163, Title XIV. The modification will not go into effect until at least 60 days from the date of this report. In the meantime, it would be my pleasure to discuss the modified detainee review procedures with Members of the Committee or Committee Staff, at your convenience.

Sincerely,



Phillip Carter
Deputy Assistant Secretary of Defense
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable John McCain

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000



POLICY

JUL 14 2009

The Honorable Patrick Leahy
U.S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

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(U) The modified procedures adopt the definitional framework of detention authority that the Administration first published in a Guantanamo habeas filing on March 13, 2009. Under this framework, the Department of Defense has the authority to detain "[p]ersons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, and persons who harbored those responsible for those attacks." The Department of Defense also has the authority to detain "[p]ersons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces."

(U) In addition to assessing whether the facts support the detention of each detainee as an unprivileged enemy belligerent under this framework, the modified procedures require detainee review boards to consider each detainee's threat level and potential for rehabilitation and reconciliation. Moreover, these threat assessments will no longer be linked to the criteria for transferring the detainee to Guantanamo.

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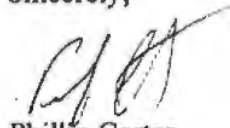
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(U) The modified procedures generally follow the procedures prescribed in Army Regulation (AR) 190-8, such as that the proceedings generally shall be open (with certain exceptions including for matters that would compromise national or operational security), including to representatives of the ICRC and possibly non-governmental organizations. Detainees will be allowed to attend all open sessions and call reasonably available witnesses.

(U) Key supplemental procedures not found in AR 190-8 that enhance the detainee's ability to challenge his or her detention include appointment of a personal representative who "shall act in the best interests of the detainee"; whose "good faith efforts on behalf of the detainee shall not adversely affect his or her status as a military officer (e.g., evaluations, promotions, future assignments)"; and who has access to all reasonably available information (including classified information) relevant to the proceedings. The end result is a process that approximates the process used to screen American citizens captured in Iraq.

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Sincerely,



Phillip Carter
Deputy Assistant Secretary of Defense
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable Jeff Sessions

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000



POLICY

JUL 14 2009

The Honorable Ike Skelton
U.S. House of Representatives
2120 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Skelton:

(U) Please find enclosed a copy of the policy guidance that the Deputy Secretary of Defense approved on July 2, 2009, modifying the procedures for reviewing the status of aliens detained by the Department of Defense at the Bagram Theater Internment Facility (BTIF) in Afghanistan, and related policy guidance regarding the criteria for assessing the threat such aliens represent, and regarding the authority to transfer and release such aliens from the BTIF. The enhanced detainee review procedures significantly improve the Department of Defense's ability to assess whether the facts support the detention of each detainee as an unprivileged enemy belligerent, the level of threat the detainee represents, and the detainee's potential for rehabilitation and reconciliation. The modified procedures also enhance the detainee's ability to challenge his or her detention.

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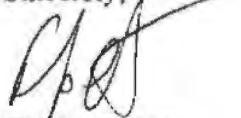
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Sincerely,



Phillip Carter
Deputy Assistant Secretary of Defense
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable Howard P. McKeon

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OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000



POLICY

JUL 14 2009

The Honorable John Conyers, Jr.
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Conyers:

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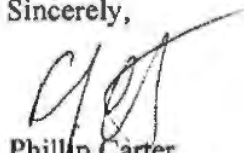
UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

(U) The modified procedures generally follow the procedures prescribed in Army Regulation (AR) 190-8, such as that the proceedings generally shall be open (with certain exceptions including for matters that would compromise national or operational security), including to representatives of the ICRC and possibly non-governmental organizations. Detainees will be allowed to attend all open sessions and call reasonably available witnesses.

(U) Key supplemental procedures not found in AR 190-8 that enhance the detainee's ability to challenge his or her detention include appointment of a personal representative who "shall act in the best interests of the detainee"; whose "good faith efforts on behalf of the detainee shall not adversely affect his or her status as a military officer (e.g., evaluations, promotions, future assignments)"; and who has access to all reasonably available information (including classified information) relevant to the proceedings. The end result is a process that approximates the process used to screen American citizens captured in Iraq.

(U) The Department of Defense submits this report on its modification of the procedures for reviewing the status of aliens detained by the Department of Defense at the BTIF in conformity with Section 1405(c) of the Detainee Treatment Act of 2005, Public Law Number 109-163, Title XIV. The modification will not go into effect until at least 60 days from the date of this report. In the meantime, it would be my pleasure to discuss the modified detainee review procedures with Members of the Committee or Committee Staff, at your convenience.

Sincerely,



Phillip Carter
Deputy Assistant Secretary of Defense
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable Lamar Smith

~~SECRET~~

UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

~~SECRET//NOFORN~~

ACTION MEMO

USD(P)_____

FOR: DEPUTY SECRETARY OF DEFENSE

FROM: Peter F. Verga, Deputy Under Secretary of Defense (PI & CoS)

SUBJECT: Policy Guidance on Review Procedures and Transfer and Release Authority at Bagram Theater Internment Facility (BTIF), Afghanistan (U)

- (U) Recommend you sign the attached memorandum (Tab A) issuing policy guidance that significantly enhances current detainee review procedures for screening and holding individuals in Afghanistan captured by U.S. Operation Enduring Freedom (OEF) Forces, not International Security Assistance Forces (ISAF) (Tab B), and updates detainee transfer and release authority in Afghanistan (Tab C).
 - (U) This policy guidance responds to Commander, USCENTCOM's April 27, 2009 request for guidance (Tab D) and applies only to OEF detentions at the Bagram Theater Internment Facility (BTIF). U.S. Forces operating under the auspices of ISAF will continue to follow ISAF detention policy.
 - (U) The enhanced procedures were developed in close coordination with the White House Counsel's office and NSC staff, the Department of Justice, the Department of State, and the USCENTCOM (Tab E). All believe the changes significantly strengthen our ability to hold individuals who represent a genuine threat to U.S. Forces and stability in Afghanistan.
- (U) The enhanced review procedures will improve the Command's ability not only to assess each detainee held at the BTIF under applicable criteria for lawful detention, but also the level of threat the detainee represents and the detainee's potential for rehabilitation and reconciliation.
 - (U) Additionally, White House Counsel, DoJ, and DoD OGC assess that the proposed revisions could strengthen the Executive Branch's ability to defend its law of war-based detention authority in the face of pending and further challenges in U.S. courts.
- (U) Substantively, the most significant changes to the review procedures are the

Prepared By: (b)(2),(b)(6), Office of Detainee Policy, (b)(2),(b)(6)

Derived from: Multiple Sources
Declassify On: June 30, 2019



~~SECRET//NOFORN~~

extension of the Administration's modified definition of detention authority applicable at Guantanamo to detentions at the BTIF, and a formal delinking of detentions in Afghanistan from the past review policy focusing on onward transfers to the U.S. detention center at Guantanamo.

- (U) The modified definition included as part of a Guantanamo habeas filing on March 13, 2009 requires a showing that a person who "supported" Taliban or al-Qaida forces or associated forces did so "substantially."
- (U) Beyond the assessment of whether a detainee may be lawfully detained, the new procedures also require review boards to consider each detainee's threat level and potential for rehabilitation and reconciliation. Moreover, threat assessments will no longer be linked to the criteria for transfer to Guantanamo.
- (U) Procedurally, although the requirements of AR 190-8 serve as the baseline for the enhanced detainee review procedures, we have sought to add several features not found in AR 190-8 that further strengthen the ability of detainees to challenge their detention.
 - (U) For example, the proceedings will be open to representatives of the ICRC, and possibly other non-governmental organizations, subject to military necessity and force protection criteria as determined by the internment facility commander, except for deliberations and voting or other matters that would compromise security. Detainees will be allowed to attend all open sessions and call reasonably available witnesses, all of which are provisions prescribed by AR 190-8 for Article 5 tribunals.
 - (U) Additionally, a personal representative will be appointed to represent each detainee, which is not required for Article 5 tribunals but is the Department's practice for Combatant Status Review Tribunals at Guantanamo.
 - (U) The personal representative will be required to act in the best interest of the detainee, and will be shielded from unlawful command influence and adverse personnel actions for his or her good faith efforts on behalf of the detainee.
 - (U) A chart comparing the AR 190-8 requirements with the existing and proposed OEF detainee review procedures is attached at Tab F.
 - (U) The end result is a process that approximates the process used to screen American citizens captured in Iraq.

- (U) Finally, this policy guidance designates the approval authorities for transfers and releases, based on: whether the detainee will be transferred or released in Afghanistan or elsewhere; whether the detainee is an Afghan national or a third-country national; and whether the detainee meets the criteria for classification as an Enduring Security Threat, as defined in the policy guidance.
- (U) It is likely that implementation of the personal representative requirement will result in an increased need for resources and funding. We will work with the Joint Staff and OSD Comptroller to ensure that USCENTCOM is equipped for the task.
- (U) These revisions require 60-day notification to Congress under the Detainee Treatment Act. Our office will work with Legislative Affairs to effectuate that notice and procedures will be implemented once we have complied.

RECOMMENDATION: (U) Sign the memorandum at Tab A.

Approve: _____ Disapprove: _____ Other: _____

COORDINATION: TAB G

Attachments:
As stated.

A



~~SECRET//NOFORN~~

DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

JUL 02 2009

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR POLICY
UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE
COMMANDER U.S. CENTRAL COMMAND
COMMANDER U.S. SPECIAL OPERATIONS COMMAND

SUBJECT: Policy Guidance on Review Procedures and Transfer and Release Authority
at Bagram Theater Internment Facility (BTIF), Afghanistan (U)

~~(S//NF)~~ On April 27, 2009, Commander, USCENTCOM requested policy guidance concerning proposed changes to the Unlawful Enemy Combatant Review Board procedures in Afghanistan. Commander, USCENTCOM also requested new guidance in lieu of the 2004 "Global Screening Criteria" (GSC), specifically for detainee threat-level classifications that are not linked to criteria for transfers to detention facilities at Guantanamo Bay (GTMO). The attached policy guidance responds to that request.

(b)(1), Sec. 1.4(a)

Attachment: As Stated

~~Derived from Multiple Sources~~
Declassify on July 4, 2019

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OSD 76338-09



UNCLASSIFIED

**Detainee Review Procedures at Bagram Theater Internment
Facility (BTIF), Afghanistan (U)**

Authority to Detain and Intern (U)

(U) U.S. Forces operating under Operation Enduring Freedom (OEF) authority are authorized to detain persons temporarily, consistent with the laws and customs of war (e.g., in self-defense or for force protection). Additionally, OEF forces are authorized to detain, and to intern at the Bagram Theater Internment Facility (BTIF), persons who meet the following criteria:

- (U) Persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, and persons who harbored those responsible for those attacks;
- (U) Persons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces.

(U) Internment must be linked to a determination that the person detained meets the criteria detailed above and that internment is necessary to mitigate the threat the detainee poses, taking into account an assessment of the detainee's potential for rehabilitation, reconciliation, and eventual reintegration into society. If, at any point during the detainee review process, a person detained by OEF forces is determined not to meet the criteria detailed above or no longer to require internment to mitigate their threat, the person shall be released from DOD custody as soon as practicable. The fact that a detainee may have intelligence value, by itself, is not a basis for internment.

Capturing Unit Review (U)

(U) Commander, USCENTCOM, shall ensure that OEF detainee review procedures include a review by the capturing unit commander, with the advice of a judge advocate, to assess whether persons detained by the unit meet the criteria for detention. This review shall occur prior to requesting a detainee's transfer to the BTIF for internment, and normally within 72 hours of the detainee's capture.

Transfer Request (U)

(U) Commander, USCENTCOM, shall ensure that OEF detainee review procedures include a request, by the capturing unit commander, to transfer to the BTIF those detainees the capturing unit commander assesses may meet the criteria for internment. The capturing unit commander shall forward the transfer request to the BTIF commander for review.

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Detainee Review Procedures at Bagram Theater Internment Facility (BTIF), Afghanistan (U)

Authority to Detain and Intern (U)

(U) U.S. Forces operating under Operation Enduring Freedom (OEF) authority are authorized to detain persons temporarily, consistent with the laws and customs of war (e.g., in self-defense or for force protection). Additionally, OEF forces are authorized to detain, and to intern at the Bagram Theater Internment Facility (BTIF), persons who meet the following criteria:

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- (U) Persons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces.

(U) Internment must be linked to a determination that the person detained meets the criteria detailed above and that internment is necessary to mitigate the threat the detainee poses, taking into account an assessment of the detainee's potential for rehabilitation, reconciliation, and eventual reintegration into society. If, at any point during the detainee review process, a person detained by OEF forces is determined not to meet the criteria detailed above or no longer to require internment to mitigate their threat, the person shall be released from DOD custody as soon as practicable. The fact that a detainee may have intelligence value, by itself, is not a basis for internment.

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Review of Transfer Request (U)

(U) Commander, USCENTCOM, shall further ensure that OEF detainee review procedures include a review by the BTIF commander, with the advice of a judge advocate, to assess whether detainees whose transfer to the BTIF the capturing unit commander has requested meet the criteria for internment. This review shall occur prior to approving a request to transfer a detainee to the BTIF for internment, and normally within 14 days of the detainee's capture.

Initial Detainee Notification (U)

(U) Commander, USCENTCOM, shall ensure that detainees receive timely notice of the basis for their internment, including an unclassified summary of the specific facts that support the basis for their internment. Commander, USCENTCOM shall further ensure that detainees also receive a timely and adequate explanation of the detainee review procedures, including, at a minimum: the fact that the detainee will have an opportunity to present information and evidence to a board of officers convened to determine whether the detainee meets the criteria for internment; the projected dates of the detainee's initial and periodic review boards; and the fact that a personal representative will be appointed to assist the detainee before the review boards. Detainees shall receive such notice and explanation, in writing and orally in a language the detainee understands, within 14 days after the detainee's transfer to the BTIF whenever feasible.

Detainee Review Boards (U)

(U) Commander, USCENTCOM shall ensure that a board of officers reviews all reasonably available information to determine whether each person transferred to the BTIF meets the criteria for internment and, if so, whether the person's continued internment is necessary. These reviews shall occur within 60 days after the detainee's transfer to the BTIF and at least every six months thereafter.

(U) Commander, USCENTCOM shall designate a flag or general officer to serve as the convening authority for review boards.

(U) Review boards shall be composed of three field-grade officers authorized access to all reasonably available information (including classified information) relevant to the determinations of whether the detainee meets the criteria for internment and whether the detainee's continued internment is necessary. In order to ensure the neutrality of the review board, the convening authority shall ensure that none of its members was directly involved in the detainee's capture or transfer to the BTIF. The senior officer shall serve as the president of the review board. Another, non-voting officer shall serve as the recorder for the board proceedings.

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(U) The convening authority shall ensure that a judge advocate is available to advise the review board on legal and procedural matters.

(U) Review boards shall follow the procedures prescribed by AR 190-8, paragraph 1-6.e., as supplemented below:

- (U) The convening authority shall ensure that a personal representative, as described below, is appointed to assist each detainee before the review board.
- (U) Prior to each review board, appropriate U.S. military personnel shall conduct a reasonable investigation into any exculpatory information the detainee offers.
- (U) Review board proceedings shall follow a written procedural script in order to provide the detainee a meaningful opportunity to understand and participate in the proceedings (e.g., similar to the script used in Multi-National Force Review Committee proceedings in Iraq).
- (U) Members of the review board and the recorder shall be sworn. The recorder shall be sworn first by the president of the review board. The recorder will then administer the oath to all voting members of the review board, including the president.
- (U) A written record shall be made of the proceedings.
- (U) Proceedings shall be open except for deliberations and voting by the members and testimony or other matters that would compromise national or operational security if held in the open.
- (U) The detainee shall be advised of the purpose of the hearing, his or her opportunity to present information, and the consequences of the board's decision, at the beginning of the review board proceedings.
- (U) The detainee shall be allowed to attend all open sessions, subject to operational concerns, and will be provided with an interpreter if necessary.
- (U) The detainee shall be allowed to call witnesses if reasonably available and considered by the Board to have relevant testimony to offer, and to question those witnesses called by the review board, subject to any operational or national security concerns. Relevant witnesses serving with U.S. Forces shall not be considered reasonably available if, as determined by their commanders, their presence at the review board would affect combat or support operations. In these cases, written statements, preferably sworn, may be substituted and considered by the review board.

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The president of the review board shall determine whether witnesses not serving with U.S. Forces are reasonably available. At the discretion of the president of the review board, such relevant witnesses may testify by means of video teleconference, teleconference, or sworn written statement, if it would not be feasible for the witness to testify in person.

- (U) The detainee shall be allowed to testify or otherwise address the review board.
- (U) The detainee may not be compelled to testify before the review board.
- (U) The detainee shall be allowed to present reasonably available documentary information relevant to the determination of whether the detainee meets the criteria for internment and/or whether the detainee's continued internment is necessary.
- (U) Following the hearing of testimony and the review of documents and other information, the review board shall determine whether the detainee meets the criteria for internment, as defined above. The review board shall make this determination in closed session by majority vote. Preponderance of the evidence shall be the standard used in reaching the determination.
- (U) If the review board determines that the detainee does not meet the criteria for internment, the detainee shall be released from DoD custody as soon as practicable. If the review board determines that the detainee does meet the criteria for internment, the review board shall recommend an appropriate disposition to the convening authority. The review board shall make this recommendation in closed session by majority vote. Possible recommendations are as follows:
 - (U) Continued internment at the BTIF. Such a recommendation must include a determination not only that the detainee meets the criteria for internment, but also that continued internment is necessary to mitigate the threat the detainee poses.
 - (U) Transfer to Afghan authorities for criminal prosecution.
 - (U) Transfer to Afghan authorities for participation in a reconciliation program.
 - (U) Release without conditions.
 - (U) In the case of a non-Afghan and non-U.S. third-country national, possible recommendations may also include transfer to a third country for criminal prosecution, participation in a reconciliation program, or release.

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- (U) The review board's recommendations regarding disposition shall include an explanation of the board's assessment of the level of threat the detainee poses and the detainee's potential for rehabilitation, reconciliation, and eventual reintegration into society.
 - (U) In assessing threat, the review board shall further assess whether the detainee is an Enduring Security Threat, as defined in separate policy guidance regarding detainee threat assessment criteria and transfer and release authority at the BTIF. "Enduring Security Threat" is not a legal category, but rather an identification of the highest threat detainees for purposes of transfer and release determinations, as discussed below.
 - (U) In assessing potential for rehabilitation, reconciliation, and eventual reintegration into society, the review board shall consider, among other things, the detainee's behavior and participation in rehabilitation and reconciliation programs while detained by OEF forces. Information relevant to the assessment of potential for rehabilitation, reconciliation, and eventual reintegration into society may not be available for purposes of the detainee's initial review, but should be considered as it becomes available.
- (U) A written report of the review board determinations and recommendations shall be completed in each case.

(U) The recorder shall prepare the record of the review board within seven working days of the announcement of the board's decision. The record will then be forwarded to the first Staff Judge Advocate in the BTIF's chain of command.

(U) The record of every review board proceeding resulting in a determination that a detainee meets the criteria for internment shall be reviewed for legal sufficiency when the record is received by the office of the Staff Judge Advocate for the convening authority.

(U) Whenever possible, detainees shall receive notice of the results of their review boards, in writing and orally in a language the detainee understands, within 7 days after completion of the legal sufficiency review.

Personal Representative (U)

(U) The personal representative shall be a commissioned officer familiar with the detainee review procedures and authorized access to all reasonably available information (including classified information) relevant to the determination of whether the detainee meets the criteria for internment and whether the detainee's continued internment is necessary.

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(U) The personal representative shall be appointed not later than 30 days prior to the detainee's review board. The detainee may waive the appointment of a personal representative, unless the detainee is under 18 years of age, suffers from a known mental illness, or is determined by the convening authority to be otherwise incapable of understanding and participating meaningfully in the review process.

(U) The personal representative shall act in the best interests of the detainee. To that end, the personal representative shall assist the detainee in gathering and presenting the information reasonably available in the light most favorable to the detainee. The personal representative's good faith efforts on behalf of the detainee shall not adversely affect his or her status as a military officer (e.g., evaluations, promotions, future assignments).

C

~~SECRET~~

**Detainee Threat Assessment Criteria and Transfer and Release Authority at
Bagram Theater Internment Facility (BTIF), Afghanistan (U)**

Threat Criteria (U)

(U) In assessing whether internment is necessary to mitigate the threat that detainees pose, as is required by separate policy guidance regarding detainee review procedures at the BTIF, detainee review boards shall consider whether detainees meet the criteria for classification as an Enduring Security Threat. Although detainees who are not classified as an Enduring Security Threat can still be detained at the BTIF, there are limitations on the approval authority of a transfer or release decision for those classified as an Enduring Security Threat (see “*Transfer and Release Authority*” paragraph below).

- ~~(S)~~ An “Enduring Security Threat” is an individual who, assessed by capability and commitment.

(b)(1), Sec. 1.4(a)

- ~~(S)~~ The following definitions apply when assessing a detainee’s status as an Enduring Security Threat:

(b)(1), Sec. 1.4(a)

~~SECRET~~

~~Derived from: Multiple Sources~~
~~Declassify on: June 30, 2019~~

~~SECRET~~

(b)(1),Sec. 1.4(a)

Transfer and Release Authority (U)

(U) Commander, USCENTCOM, or his designee, is the approval authority for the transfer or release of detainees in Afghanistan, including transfers of third-country nationals, under the control of OEF forces, to Afghan authorities for criminal prosecution or any other lawful purpose.

(U) Commander, USCENTCOM, or Deputy Commander, USCENTCOM, is the approval authority for the transfer or release of detainees classified as Enduring Security Threats. This authority may not be further delegated. USCENTCOM shall ensure that the Under Secretaries of Defense for Policy and Intelligence are notified, in writing, through the Director, Joint Staff, at least 7 days prior to the release of a detainee designated as an Enduring Security Threat.

(U) The return of third-country nationals to their countries of origin, and the transfer of third-country nationals to countries other than Afghanistan, require approval by the Deputy Secretary of Defense, or his designee. Recommendations for such transfers shall be transmitted to the Under Secretary of Defense for Policy, through the Director, Joint Staff. OSD will ensure that recommendations are coordinated with the Department of State prior to seeking approval from the Deputy Secretary of Defense.

~~SECRET~~

D



~~SECRET//NOFORN~~
UNITED STATES CENTRAL COMMAND
OFFICE OF THE COMMANDER
7115 SOUTH BOUNDARY BOULEVARD
MACDILL AIR FORCE BASE, FLORIDA 33621-5101
ACTION MEMO

27 April 2009

FOR: SECRETARY OF DEFENSE
CHAIRMAN, JOINT CHIEFS OF STAFF

FROM: General David H. Petraeus, Commander, United States Central Command

SUBJECT: Request for Policy Guidance Regarding Unlawful Enemy Combatant Review Board Procedures (U)

Mr. Secretary, Chairman,
~~(S//NF)~~ In February,

(b)(3):10 USC 130(c)

(TAB A). This new development in the longstanding dialogue with the ICRC on this issue accelerated CJTF 101's and this headquarters' on-going review of these procedures. Since your detainee affairs office has also been reviewing these procedures in preparation to move to the new BTIF this fall, I request policy guidance regarding the required components of a strengthened UECRB process, as well as new detention threat-level categories which are de-linked from Guantanamo Bay disposition

(b)(1),Sec. 1.4(a),Sec. 1.4(b),Sec. 1.4(d)

BACKGROUND

- (U) Current UECRB procedures are utilized to determine propriety of long-term detention at the BTIF, including an analysis of a detainee's threat and intelligence levels. UECRB recommendations form the foundation for alternative disposition, such as release or prosecution by the Government of the Islamic Republic of Afghanistan (GIRoA).
- ~~(S//NF)~~ The UECRB process currently uses threat definitions based on the Office of the Secretary of Defense Global Screening Criteria, promulgated in early 2004 (TAB B).
(b)(1),Sec. 1.4(a)

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

DISCUSSION

- ~~(S//NF)~~ This headquarters and the units at the BTIF have enjoyed a long-standing dialogue with

(b)(3):10 Use 130(c)

- (U) I would like to make the UECRBs much more robust, including adding personal representatives for detainees and an opportunity to provide reasonably available witnesses. Other recommended changes to the process are attached (TAB C).
- ~~(S//NF)~~ In addition to process improvements, the Global Screening Criteria do not appropriately support long-term detention decisions in Afghanistan.

(b)(1), Sec. 1.4(a), Sec. 1.4(b), Sec. 1.4(d)

RECOMMENDATION

- ~~(S//NF)~~ Provide guidance regarding the propriety of making attached changes to the UECRB process, as well as a policy replacement for the Global Screening Criteria via a

(b)(1), Sec. 1.4(a)

Attachments

TAB A: ICRC Report, 26 Feb 09

TAB B: Global Screening Criteria, 24 Feb 04

TAB C: CJTF 101 Memorandum dated 21 Apr 09, watch

Copy to:

DASD/DA

J37/DAD

CJCS/LC

~~Classified by: MG Michael B. Jones, CCJ3~~

~~Reason: 1.4 (a)~~

~~Declassify on: 24 April 2019~~

~~SECRET//NOFORN~~

ACLU Bagram OSD-Policy 44



DEPARTMENT OF DEFENSE
HEADQUARTERS, COMBINED JOINT TASK FORCE (CJTF) - 101
BAGRAM AIRFIELD, AFGHANISTAN
APO AE 09354

CJTF-101-CG

11 APR 2009

MEMORANDUM FOR General David Petraeus, Commander, US Central Command

SUBJECT: DRAFT Detention Operations Policy for U.S. Operation ENDURING FREEDOM (OEF) Forces in Afghanistan

1. ~~(S)~~ Attached is an updated detainee policy for U.S. OEF forces in Afghanistan that I intend to implement within the next 15 days to ensure it is fully understood and applied prior to the transfer of authority to CJTF-82. I am forwarding this DRAFT in order to make you aware of my intent to improve OEF detention operations and ensure these changes are consistent with CENTCOM, DOD, and U.S. detention policies.
2. ~~(S)~~ Based on discussions with DOD, CENTCOM, and the ICRC Representatives, I decided to update the CJTF-101 Detention Operations Policy dated 2 September 2008. The attached DRAFT includes the following substantive improvements:
 - a. (U) Enhanced notifications so that detainees better understand the basis for their detention and the Unlawful Enemy Combatant Review Board (UECRB) procedures;
 - b. (U) Changed the UECRB composition (added a Judge Advocate as a voting member);
 - c. (U) Clarified the detainee personal appearance and statement at the initial UECRB;
 - d. (U) Clarified the detainee's ability to present reasonably available evidence to the UECRB;
 - e. (U) Added summarized transcripts, and verbatim findings & recommendations; and
 - f. (U) Added post-UECRB decision notifications to the detainee.
3. ~~(S)~~ As additional manning, facilities, and other resources become available, the following additional changes should be included in future OEF Detention Policy updates:
 - a. (U) Appoint a Personal Representative from a Detainee Assistance Office for each detainee to assist with understanding and preparing for their initial appearance at the UECRB. The Personal Representative could ensure that all reasonably available evidence (items from the detainee's family, the detainee, or GIRoA) is presented to the UECRB for review and consideration; and
 - b. (U) Include the capability for detainees to have witness testimony via telephone or VTC.

~~SECRET~~

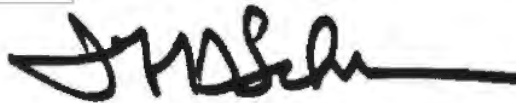
CJTF-101-CG

SUBJECT: DRAFT Detention Operations Policy for U.S. Operation ENDURING FREEDOM (OEF) Forces in Afghanistan

4. ~~(S)~~ This update is designed to improve due process for the entire Bagram Theater Internment Facility (BTIF) population. It is not designed to address the recent Federal court decision granting increased due process (habeas corpus review) to approximately 1% of current BTIF detainees. We are standing by for separate guidance to implement that decision.

5. (U) Point of contact is the CJTF-101 Detention Operations Judge Advocate at

(b)(2)



Attachment
as

JEFFREY J. SCHLOESSER
Major General, USA
Commanding

CF:
CDR. TF Guardian (COL Ethridge)



REPLY TO
ATTENTION OF:

~~SECRET//NOFORN~~
DEPARTMENT OF DEFENSE
HEADQUARTERS, COMBINED/JOINT TASK FORCE (CJTF)-101
BAGRAM AIRFIELD, AFGHANISTAN
APO AE 09354

CJTF-101-CG

MEMORANDUM FOR US Military Forces Conducting Detention Operations in Afghanistan

SUBJECT: Detention Operations Policy Memorandum

1. (U) References. See Enclosure.
2. (U) Purpose. This memorandum establishes the policy for Operation "ENDURING FREEDOM" (OEF) detention operations in Afghanistan. This update supersedes all previous policies and guidance for the categories outlined in this memorandum. Nothing in this memorandum is intended to supersede or conflict with existing U.S. law and Department of Defense (DoD) policy.
3. (U) Applicability.
 - a. (U) The Commander, USCENTCOM has designated the Commanding General, CJTF-101 (and successor organizations) the OEF detention authority in Afghanistan.
 - b. (U) This policy applies to all OEF forces in Afghanistan, except for TF 714 (and its successor organizations and subordinate units). For TF 714, this policy applies only for detainee transfers into the Bagram Theater Internment Facility (BTIF).
 - c. (U) This policy does not apply to U.S. forces NATO OPCON to the International Security Assistance Force (ISAF). U.S. forces NATO OPCON to ISAF will follow ISAF detention procedures outlined in ISAF SOP 362 and subsequent guidance. The procedures and standards of treatment outlined in this Policy will be used by U.S. forces NATO OPCON to ISAF ("ISAF Forces") as guidelines for detention issues not specifically covered by ISAF SOP 362 and subsequent guidance. If there is confusion as to whether a unit is an OEF or ISAF force for detention purposes, contact the CJTF-101 Detention Operations Judge Advocate at DSN 431-4778.
4. (U) Responsibilities. The Commanding General (CG), CJTF-101 is the USCENTCOM executive agent responsible for all U.S. OEF detention operations in Afghanistan. Responsibility for oversight of detention operations has been delegated to the CJTF-101 Deputy Commanding General (Support) (DCG(S)). The CJTF-101 Chief of Detention Operations (Commander, TF Guardian) is responsible for formulating policy and providing operational oversight for U.S. OEF detention operations. All OEF commanders who are conducting OEF

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

CJTF-101-CG

SUBJECT: Detention Operations Policy Memorandum

detention operations in Afghanistan are responsible for implementing and ensuring compliance with this policy.

5. (U) Commander's Intent. Detention operations are tactical missions with strategic implications for all personnel. As we separate terrorists and insurgents from the Afghan population, we must do so in a lawful and humane manner. We have an obligation to treat all Afghan citizens and third-country nationals (TCNs) with dignity and respect. Fulfilling this obligation strengthens our partnership with both the Government of the Islamic Republic of Afghanistan (GIROA) and the Afghan people. Failure to fulfill this obligation leads to a loss of support for both Coalition operations and the GIROA. It also creates operational distractions and potentially strategic repercussions that cost commanders valuable time and effort.

6. (U) Dissemination. Commanders are responsible for ensuring that this policy is followed at all times during detention operations, from the point of detention or capture, during transfer operations, and through release or repatriation. Commanders will disseminate this policy and ensure appropriate implementation at all levels of command. Subordinate units will report dissemination of this policy and the conformance of subordinate command policies and procedures to the Commander, TF Guardian no later than thirty days from receipt of this memorandum. New units arriving in Afghanistan will report no later than thirty days after arrival.

7. ~~(S//NF)~~ Detention Criteria. In accordance with reference (d) and reference (bbb), U.S. OEF forces are authorized to detain unlawful enemy combatants. As defined below, unlawful enemy combatants include members of international terrorist organizations against which the U.S. is engaged in armed conflict, and other persons who pose a threat to U.S. forces. Detention of persons possessing intelligence value but who do not otherwise represent a threat to U.S. or Coalition forces is not authorized.

a. ~~(S//NF)~~ Screening Criteria. In accordance with references (d), (g), (k), (m), and (n), U.S. forces will screen and identify those unlawful enemy combatants that fall into the following categories. When identified, these individuals should be considered for classification as high-level enemy combatants (HLECs) if these individuals pose a threat to U.S. or Coalition forces and are:

- (1) ~~(S//NF)~~ Al Qaeda personnel;
- (2) ~~(S//NF)~~ Taliban leaders (Afghan and non-Afghan);
- (3) ~~(S//NF)~~ Non-Afghan Taliban personnel (including named individuals who have been identified by the intelligence community; anyone with special skills or education, such as those known as "professor" or "engineer"; and anyone who speaks a western language); or
- (4) ~~(S//NF)~~ Others who may have high operational or strategic intelligence value or law

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enforcement interest.

b. ~~(S//NF)~~ Definitions. In accordance with references (k), (n), (nn), and (iii), the definitions applicable to the above detention and screening criteria are as follows. For other definitions, see paragraph 11.

(1) ~~(S//NF)~~ Afghan Taliban: Afghan officials and fighters of the former regime.

(2) ~~(S//NF)~~ Al Qaeda: Usama bin Laden and his supporters, mostly Arab but including many nationalities, engaged in an armed conflict against the U.S. and Coalition partners.

(3) ~~(S//NF)~~ Taliban leaders: Political officials of the former regime or commanders of battalion-equivalent sized units, normally the equivalent of U.S. military grade O5/O6, with political and/or family connections to the former Taliban regime.

(4) ~~(S//NF)~~ Non-Afghan Taliban: Foreign fighters for the former regime (other than Al Qaeda).

(5) ~~(S//NF)~~ Unlawful Enemy Combatant (UEC): Unlawful enemy combatants are persons not entitled to combatant immunity, who engage in acts against the United States or its coalition partners in violation of the laws and customs of war during an armed conflict. In accordance with reference (cc), for purposes of the war on terrorism the term Unlawful Enemy Combatant is defined to include, but is not limited to an individual who is or was part of or supporting Taliban or al Qaeda forces or associated forces that are engaged in hostilities against the United States or its coalition partners.

c. ~~(S//NF)~~ Detention of Common Criminals. U.S. forces, including those in the field, may only detain enemy combatants, including unlawful enemy combatants. U.S. forces are not authorized to detain "common criminals" having no connection to combat activity. For instance, U.S. forces cannot detain a burglar. If the on-scene commander determines that a detainee is not a UEC, but may be of law enforcement interest to the G1RoA, he will release the individual at or near the point of capture. The on-scene commander may notify local law enforcement authorities why the individual may be of interest to them and of the pending release.

d. ~~(S//NF)~~ Detention of Civilians. In accordance with reference (bbb), temporary detention of civilians is authorized if they are interfering with mission accomplishment or possess information important to mission accomplishment. Temporarily detained civilians must be protected, cared for, and treated with dignity and respect. Temporarily detained civilians will not be removed from the point of detention unless necessary for their own safety.

e. ~~(S//NF)~~ Notification Requirements. In accordance with reference (m), upon identifying detainees who meet one or more of the following categories, units must immediately notify the

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CJTF-101 CJ2 who will forward this information through the CJTF-101 CHOPS and USCENTCOM to the Chairman of the Joint Chiefs and to SECDEF.

- (1) ~~(S//NF)~~ Any U.S. citizen, or any individual claiming to have been born in or be a national of, the United States, or any citizen of a Coalition partner nation.
- (2) ~~(S//NF)~~ Any detainee verified by medical personnel as likely to be age 15 or younger.
- (3) ~~(S//NF)~~ Any GIRA government official, village elder or religious leader (mullah).
- (4) ~~(S//NF)~~ Any detainee identified as a High Value Individual (HVI) in accordance with reference (jj).
- (5) ~~(S//NF)~~ Any other persons whose detention or transfer could raise significant U.S. foreign policy concerns.

8. (U) Standards of Treatment. Once in the custody of OEF forces, the standards set forth in this memorandum will apply, regardless of what unit or organization originally captured the individual and/or the involvement of any non-OEF unit or organization in the previous detention or interrogation of the individual. At a minimum, all OEF forces will at all times treat detainees in accordance with references (a), (e), and (hh)). Note that some categories of detainees, such as enemy prisoners of war (EPWs) enjoy protections under the law of war in addition to those outlined in Common Article 3. Pursuant to Common Article 3, U.S. law, DoD policy, and command guidance, all persons detained by OEF forces will be treated according to the following rules:

- a. (U) Detainees will be treated humanely without any adverse distinction based on race, color, religion or faith, gender, birth, wealth, or any similar criteria.
- b. (U) Detainees must be protected from harm and must not be subjected to murder, mutilation, torture, or cruel treatment.
- c. (U) Detainees will not be abused in any way. They will not be subject to physical abuse, humiliating or degrading treatment, or deprivation of food, sleep, or water.
- d. (U) Detainees will be afforded adequate food, drinking water, shelter, clothing, and medical treatment.
- e. (U) Detainees will be allowed to practice their religion to the extent possible consistent with operational and security restraints. Muslim detainees will be shown the direction of Mecca and told when it is time for prayer.

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f. (U) **Sensory Deprivation.** If necessary, darkened goggles and earmuffs may be placed on a detainee during movement for operational security. Only darkened goggles and earmuffs will be used. In accordance with reference (dd), no form of sensory deprivation may be used as an interrogation technique, to punish a detainee, or to disorient a detainee.

g. (U) Restraints will be the minimum required by the tactical situation. Flex cuffs will be used only when a detained person is an imminent threat to Coalition forces and will only be used for a limited time.

h. (U) **In accordance with reference (ff), photographs of detainees will only be taken for identification, medical, investigative purposes, or in accordance with paragraph 20c below. Detainees, field detention sites (FDS), and theater internment facilities will not be photographed unless expressly authorized by this memorandum or other guidance issued by the CG, CJTF-101 or his designee.**

i. (U) Military Working Dogs (MWDs), contracted dogs, or any other dog, will not be used as part of an interrogation purpose or approach nor to harass, intimidate, threaten, coerce, or frighten a detainee. (See reference ll) MWDs may be used appropriately for the maintenance of good order and discipline in detention facilities, detection of contraband in or near detention facilities, and as an authorized use of force in accordance with the applicable Rules for the Use of Force (RUF) and reference (bb). Examples of the use of MWDs to maintain good order and discipline in detention facilities are: the use of MWDs as part of a riot control formation, as a use of force in the event of a detainee escape or escape attempt, as a show of force during high risk MP detention operations, and force protection operations in support of detention facilities. This paragraph does not limit other uses of MWDs authorized by the RUF and DOD regulations.

j. ~~(FOUO)~~ In accordance with references (x) and (aa), rectal searches (and other body cavity searches) are prohibited unless there is a reasonable belief that the detainee is concealing an item that presents a security risk. The DCG(S), CJTF-101 is the approval authority for body cavity searches. No body cavity search, other than for medical reasons as authorized under paragraphs 8(k) and (o) below, shall be performed without the express approval of DCG(S), CJTF-101.

k. ~~(S//NF)~~ Body cavity exams and hernia exams should not be performed as part of either an intake exam or a routine exam. They may be performed only by a medical doctor and only with the consent of the patient or when determined necessary by a medical doctor. The doctor's decision to conduct an involuntary body cavity exam will be guided by professional judgment and standards similar to those applied to personnel of the U.S. Armed Forces. If a body cavity exam is required, a witness must be present, the detainee must be informed of the reason for the exam in a language he or she understands, and that reason must be documented in the detainee's medical record.

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l. (U) Detainees will not be required to completely disrobe for any reason other than showering, when necessary for medical treatment, or when it is reasonably suspected that the detainee is hiding contraband on his or her body. Great care will be taken at all times – especially during inprocessing medical examinations - to minimize any unnecessary exposure of detainees. Members of the opposite sex will not be present when a detainee completely disrobes. The total number of individuals present will be the minimum necessary for force protection. Screens or similar objects will be used to shield detainees from exposure of nudity to guards. No photos of the genital area will be taken unless required to document injury or for another expressly authorized official purpose and only the minimum number of photos will be taken. In all cases, the individual will be informed, in a language that he or she understands, of the reason why the complete disrobing or photography is necessary.

m. (U) Detainees will be kept at a location that protects them from the environment and other threats. They will be held in interior holding areas and provided overhead protection from the sun and rain. Field Detention Sites (FDS) and Theater Internment Facilities (TIF) will provide all detainees with the following:

(1) (U) Appropriate barrier or floor covering material to protect them from the floor and ground.

(2) (U) Sufficient blankets, clothing, foot covering, and other items needed to protect them from the elements.

(3) (U) Opportunity to conduct basic personal hygiene and adequate access to latrine facilities.

(4) (U) Opportunity to engage in religious practices. OEF forces will demonstrate good will toward detainees by reducing activity during times of prayer. Service members working with detainees will avoid handling or touching a detainee's Koran whenever possible. When military necessity does require the Koran to be searched, inspected, or otherwise touched, the Koran will be handled with care. Two hands should be used when possible, in a manner signifying respect and reverence. Due to negative cultural associations with the left hand, only the right hand should be used to turn pages. Ensure that the Koran is not placed on the ground or floor, near a toilet or sink, near feet, or in dirty/wet areas.

(5) (U) Adequate nutrition. At a minimum, detainees will be provided food and water in the same frequency and of the same quality as the U.S. forces in the same camp or locality. Culturally appropriate meals will be provided when possible. Pork products will not be served to Muslim detainees.

(6) (U) Medical care in accordance with paragraph 8(o).

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(7) ~~(S//NF)~~ Detainees held over 96 hours in an FDS will be provided to the extent possible based on the operational environment: access to a shower, and access to a shower every successive 72 hours thereafter; at least one hot, culturally sensitive meal daily; and one 30 minute period of access to natural light/outdoor air every 24 hours of detention after the first 96 hours.

(8) (U) Detainees held in a Theater Internment Facility will be given daily outdoor recreation time unless military necessity or other legitimate security concerns prevent such access.

(9) (U) Detainees at a TIF and at FDS will be provided a minimum of 35 square feet of "unencumbered" space for single cells and 80 square feet for communal cells.

n. (U) Medical treatment (See references pp and rr). To the extent practicable, medical treatment of detainees should be guided by professional judgments and standards similar to those that would be applied to personnel of the U.S. Armed Forces. The following minimum standards apply:

(1) (U) Screening and Treatment. Medics will evaluate detainees and treat any complaints within their capabilities. Complaints beyond the medics' capabilities will be referred to a medical officer for evaluation and treatment as soon as possible. Medical complaints received outside designated Sick Call hours will be screened by the medic on duty. Detainees with minor complaints (headaches, sore throat, minor pain, etc.) can be told to wait until the next day's Sick Call. In case of emergency, the Medical Officer will be called in and/or MEDEVAC will be called. Detainees will be informed, in a language they understand, of all medical diagnoses.

(2) (U) Documentation. In accordance with reference (rr), accurate and complete medical records shall be created and maintained for all detainees. To document medical complaints, theater internment facilities will utilize the Medical Complaint Record, which will be stored in the detainee's medical record. Other facilities will document all medical examination and treatment in a Memorandum for Record which will be forwarded with the detainee to a theater internment facility. Emergency medical treatment will be documented in the same way as other treatment. Detainees that are being released will be informed, in a language they understand, of any medical condition that requires further treatment.

(3) (U) Patient Privacy. While there is no absolute confidentiality of medical records, detainee medical information should be protected from unauthorized disclosure. Permissible disclosure purposes include preventing harm to any person, maintaining public health, and lawful law enforcement, intelligence, and national security reasons. Release of information for other than treatment purposes must be approved by the medical unit commander and the fact and circumstances of disclosure should be recorded. In any case in which the medical unit

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commander (or other designated senior medical activity officer) suspects that the medical information to be disclosed may be misused, he or she should seek a senior command determination that the use of the information will be consistent with applicable standards.

(4) (U) Consent. In general, health care will be provided with the consent of the detainee. In case of hunger strike, attempted suicide, or other attempted serious self-injury, medical treatment may be directed without the consent of the detainee to prevent death or serious bodily harm. Involuntary treatment must be preceded by a thorough medical and mental health evaluation and the detainee must be counseled concerning the risks of refusing consent. Involuntary treatment must be approved by the commanding officer of the detention facility.

(5) (U) Hunger Strike. Non-medical personnel will not give involuntary nutrition or hydration to a detainee. Individuals will be seen by a medical officer if they go more than 24 hours without drinking or more than 72 hours without eating. Only a medical officer is authorized to provide involuntary nutrition or hydration. The medical officer's recommendation to administer involuntary treatment must be approved by the detention facility commander.

(6) (U) Photos may be taken to document injuries or wounds. The genitals will be covered in all photographs unless necessary to document an injury or identifying mark on the genitals themselves.

(7) (U) Interaction with Detainees. Health care personnel engaged in a professional health care provider - patient relationship with detainees shall not undertake detainee-related activities for purposes other than health care. Health care personnel shall not actively solicit information from detainees for purposes other than health care. Health care personnel engaged in non-treatment activities, such as forensic psychology or psychiatry, behavioral science consultation, forensic pathology, or similar disciplines, shall not engage in any professional health care provider - patient relationship with detainees.

(8) (U) Reporting Possible Violations. Any health-care provider who suspects a possible violation of applicable standards of detainee treatment or who otherwise observes conduct that a reasonable person would suspect constitutes inhumane treatment of a detainee, shall report the suspected violation to the chain of command. Health care personnel who believe that such a report has not been acted upon properly should also report the circumstances to the technical chain, including the Command Surgeon or Military Department specialty consultant. Other reporting mechanisms, such as the Inspector General, CID, or judge advocates, may also be used. Health care personnel will fully document any injuries present during an examination.

(9) (U) Training. Commanders shall ensure that health care personnel involved in the treatment of detainees or other detainee matters receive appropriate training on applicable policies and procedures regarding detainee care and treatment.

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9. (U) Reporting Requirements.

a. (U) Daily Reports. The Commander, TF Guardian, will ensure that all U.S. forces conducting detention operations report all detainees in their control through a Daily Detainee Report (DDR). The DDR will include information on all detainees taken into custody regardless of length of detention. The Commander, TF Guardian, in coordination with the RC-East Provost Marshal, will maintain a database of all individuals who have been detained by OEF and U.S. ISAF OPCON forces. The Commander, TF Guardian, will ensure all ISAF detainees reported through TF Guardian are reported to the RC-East Provost Marshall's Office (PMO).

b. (U) Investigating allegations of abuse, neglect, and violence towards detainees by U.S. forces (See references nn, tt, gggg, and mmmm).

(1) (U) All allegations of detainee abuse or neglect must be immediately reported in a Serious Incident Report to the first O-6 commander in the chain of command, and then directly to the Commander, TF Guardian.

(2) (U) The Commander, TF Guardian will ensure initial reporting of all allegations of detainee abuse or neglect are forwarded to CDR, ARCENT and to CDR, USCENTCOM within 24-hours of discovery. Unless directed otherwise, initial reports will be sent in the Daily Detainee Abuse Update and not in a Serious Incident Report (SIR).

(3) (U) Preliminary Inquiry. Within 24-hours of receiving an initial report of detainee abuse or neglect, task force commanders (O-6) responsible for the detaining unit will conduct a preliminary inquiry into any such report to determine if there is credible evidence to support the allegation and will report their findings to the Commander, TF Guardian. This preliminary inquiry is meant to determine the credibility of the allegation and is not a substitute for any possible CG, CJTF-101 appointed or directed AR 15-6 investigations.

(4) (U) 15-6 Investigations. Based upon the results of the preliminary inquiry, the Commander, TF Guardian, will, within 24-hours of receiving the preliminary inquiry findings, advise the CG, CJTF-101, and the CJTF-101 Staff Judge Advocate (SJA) whether further investigation is necessary. Based upon the Commander, TF Guardian recommendations, the CG, CJTF-101 may appoint a 15-6 investigation, direct the detaining unit to conduct a 15-6 investigation and forward the results through the CJTF-101 SJA to the CG, CJTF-101 for approval, or determine no further investigation is required.

(a) (U) The CG, CJTF-101 is the appointing authority for all AR 15-6 investigations into allegations of detainee abuse or neglect. This authority will not be delegated.

(b) (U) The CJTF-101 SJA is responsible for drafting the AR 15-6 appointment

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memoranda and advising the CG and investigating officers

(c) (U) Any allegation supported by credible evidence necessitating a CG appointed AR 15-6 investigation is deemed a serious incident and must be reported immediately as an SIR through command channels to SECDEF.

(5) (U) The Commander, TF Guardian will immediately notify the U.S. Army Criminal Investigation Command (CID) at Bagram Airfield when there are detainee deaths or when credible reports of detainee abuse or neglect are reported as an SIR through command channels to SECDEF.

c. (U) Investigating allegations of abuse, neglect, and violence by Afghan Forces. OEF personnel are not authorized to investigate Afghans concerning detainee abuse or neglect allegations. Allegations of abuse by Afghan National Security Forces (ANA, ANP, ABP) and NDS personnel, supported by credible evidence necessitating an SIR as required by paragraph 9b, will be declassified, approved for release by the CJTF-101 Foreign Disclosure Office (FDO), and forwarded by the CJTF-101 to the CSTC-A Commander, ATTN: Office of Detainee Affairs, for resolution with appropriate GIRoA authorities. After declassification, these reports must include sufficient information to allow GIRoA officials to investigate the incident.

10. (U) Detainee Processing Guidance (See reference m).

a. (U) Actions at Point of Capture.

(1) ~~(S//NF)~~ Initial "Unlawful Enemy Combatant" Determination. At point of capture, the on-scene commander makes an initial field assessment whether or not an individual is an unlawful enemy combatant. All individuals detained under suspicion of being an UEC will be reported as detainees, will be treated humanely at all times, and are subject to the processing timelines outlined in this memorandum. In almost all cases, an individual removed from the battlefield, such as by MEDEVAC, will be properly categorized as a detainee and must be reported as such. It will normally not be necessary to question an individual wounded on the battlefield to determine that he is an enemy combatant.

(2) (U) Compliance with these requirements will be documented for each detained person. A DA Form 1594 is the appropriate tool to track detainee handling. In order to meet these requirements, units will obtain and stock a sufficient number of forms to ensure proper processing of detainees. The forms necessary, at a minimum, are DA Form 4137 (Evidence/Property Custody Document), DD Form 2745 (Capture Tag), DD Form 629 (Receipt for Prisoner of Detained Person), and DD Form 2708 (Receipt for Inmate or Detained Person). The commanding officer of the capturing unit will ensure that:

(a) (U) All detainees are protected, safeguarded, and accounted for from time of capture

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to transfer of custody. At all times, detainees will be treated in accordance with this policy memorandum and the CJTF-101 Detention Operations SOP.

(b) (U) Search all detained persons immediately after capture. Units will inventory all equipment, documents, and personal property collected during the search using a DA Form 4137 (Evidence/Property Custody Document). These items will be forwarded with the detainee. Units may confiscate and forward to CJTF-101 for intelligence exploitation those items listed in reference (tt). When operationally feasible, searches will be conducted by members of the same sex as the detainee.

(c) (U) Tag all detained persons at the time of capture using a DD Form 2745. At a minimum, capturing units must provide the: date of capture, location of capture (grid coordinates), capturing unit, and any special circumstances of the capture (how the individual was captured). The DD Form 2745 has three parts. Part A is attached to the individual with wire, string, or other type of durable material. Part B is retained by the capturing unit and maintained in the unit's records. Part C is attached to the property confiscated from the detainee, so that it may later be matched to that detainee and the corresponding DA Form 4137.

(d) (U) Document all pre-existing injuries, diseases, or ailments in the capture data. Any medical treatment provided will also be documented.

b. ~~(S//NF)~~ Initial Detention and Screening. Capturing units will transfer detained persons from point of capture to a FDS as soon as operationally feasible and within 72 hours of capture.

(1) (U) Accountability will be maintained for all individuals transferred between capture sites, FDS, and other collection points or facilities. Units designated to receive detained persons at these sites will prepare a receipt DD Form 629 (Receipt for Prisoner or Detained Person) or DD Form 2708 (Receipt for Inmate or Detained Person) with a list of each detainee's name attached. A copy of the receipt will be provided to the capturing unit escort. All equipment, documents, and personal property collected during the initial search and listed on DA Form 4137 will be transferred with the individual.

(2) ~~(S//NF)~~ Screening. The capturing unit has 72 hours from the time of capture to further screen detainees and to submit an Unlawful Enemy Combatant Transfer Request (UECTR) to the CJTF-101 CJ2 for those detained persons believed to meet the screening criteria outlined in paragraph 7a, who possess important intelligence information or represent a threat to U.S. or Coalition forces justifying continued detention. Screening will be conducted by personnel trained in screening techniques and authorized by the unit commander to conduct screening. All screening will be conducted in accordance with paragraph 13 of this memorandum. [Note: Intelligence value alone is not a sufficient basis for detention. UECTRs must indicate that the individual is reasonably believed to (1) pose a threat to U.S. or Coalition forces and (2) be an unlawful enemy combatant.]

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(3) ~~(S//NF)~~ Units are required to notify the CJTF-101 CJ2 of the inability to meet the 72-hour requirement for UECTR submission and will provide a justification for their inability to meet this requirement. The CJTF-101 CJ2 is the approval authority for any extension of time required. Unless an extension is granted, the capturing unit must release the individual.

c. ~~(S//NF)~~ CJTF-101 UECTR Review. Within 72 hours of receiving an UECTR from a capturing unit, the CJTF-101 CJ2 shall staff the UECTR through the Joint Interrogation Facility (JIF) and Joint Intelligence Support Element (JISE) for comments and recommendations and shall either approve or deny the capturing unit's request. The CJTF-101 CJ2 is the final approval authority for all UECTRs.

(1) ~~(S//NF)~~ The CJTF-101 CJ2 will forward approved UECTRs to the Commander, TF Guardian and will notify the capturing unit. Upon approval, the capturing unit will make all reasonable efforts to transfer the detainee immediately to a theater internment facility for further processing. A detainee will not be processed into a theater internment facility without an approved UECTR signed by the CJTF-101 CJ2.

(2) ~~(S//NF)~~ The capturing unit must transfer a detainee to a TIF within 96 hours of UECTR approval and no later than 10 days from date of capture. Requests for extension past 10 days must be approved by the DCG(S), CJTF-101 and in accordance with paragraph 10h(2) below. Any such request will contain appropriate justification for the delay. In accordance with the CENTCOM Intra-Theater Airlift Priorities, detainee movements have air asset priority over all other missions except those that are required for combat operations.

(3) ~~(S//NF)~~ If the CJTF-101 CJ2 denies the UECTR, a signed disapproval memorandum shall be forwarded to the capturing unit. The capturing unit will make arrangements to release the detainee immediately.

(4) (U) Upon release, all personal items seized and any currency held at time of capture, must be returned and the individual will be transported to the point of capture by the capturing unit. Individual weapons and contraband will not be returned to the individual. The capturing unit will forward all records relating to the detainee to the CJTF-101 CJ2. The CJTF-101 CJ2 will maintain a database of all detainees released from FDS.

d. ~~(S//NF)~~ Use of Foreign Guard Force. Operational necessity may require U.S. forces to utilize Afghan National Security Force (ANSF) forces to guard detained persons. ANSF guards should only be used when there are not enough U.S. Service members to effectively guard the detainees. Afghan Security Guards (ASG) or other contract guard forces are not considered part of the ANSF and will not be used to guard detainees. U.S. forces will ensure that the OIC, or in the absence of an OIC, the NCOIC, is a U.S. Service member. The OIC or NCOIC will be held accountable for the ANSF guards' conduct and will ensure that the ANSF guard force

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understands and complies with the standards of treatment outlined in this memorandum and other applicable guidance. Utilizing ANSF guards to assist in guarding detainees does not constitute a temporary transfer of custody as discussed in paragraph 12c.

e. ~~(S//NF)~~ Processing of Injured Detainees. Detainee processing timelines begin at the moment an individual is captured, detained, or brought under U.S. or Coalition control. On-scene commanders will make an initial determination as to whether an individual is an "unlawful enemy combatant" based upon all the facts and circumstances available at the time of capture.

f. ~~(S//NF)~~ Processing at a Theater Internment Facility (TIF). All detainees received at a TIF will be processed in accordance with approved SOPs. The Bagram Theater Internment Facility (BTIF) is the only active TIF in Afghanistan.

g. ~~(S//NF)~~ Internment Serial Numbers (ISN) (See references cc, ii, and kk). CJTF-101, TF Guardian is responsible for issuing ISNs to detainees.

(1) ~~(S//NF)~~ An ISN will be issued within 24 hours of arrival at a theater internment facility and normally not later than 14 days after capture/detention.

(2) ~~(S//NF)~~ As an exceptional measure, the CG, CJTF-101 may approve a delay of assignment of an ISN for a period up to 21 days from the day of capture/detention with written notification to CDRUSCENTCOM. For delays between 22 and 30 days, the CG, CJTF-101 may request, with supporting justification, an extension from CDRUSCENTCOM.

h. ~~(S//NF)~~ Transfer to locations outside Afghanistan. Detainees may be transferred to locations outside Afghanistan only with SECDEF approval (reference h). Only high-level enemy combatants (HLECs) are eligible for transfer to locations outside of Afghanistan. Once approved, transfers will occur as quickly as possible.

(1) ~~(S//NF)~~ Detainees found to meet the screening criteria outlined in paragraph 7a may be recommended for HLEC status.

(2) ~~(S//NF)~~ Upon CG, CJTF-101 approval of the Unlawful Enemy Combatant Review Board's (UECRB) HLEC recommendation, TF Guardian will forward a request to USCENTCOM for approval of the recommended HLEC Status. Once the CG, CJTF-101 has approved the UECRB's HLEC recommendation and the request for HLEC approval has been forwarded, the detainee will not be transferred or released unless the detainee is properly reclassified as an LLEC or upon order from higher headquarters in the detention chain-of-command.

11. (U) Status of Detained Person Definitions. There are several terms commonly used to describe the status of detained persons. Definitions are as follows:

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a. (U) Detainee. In accordance with DoD Directive 2310.01E (reference nn), a detainee is any person captured, detained, held, or otherwise under the control of DoD personnel (military, civilian, or contractor employee). It does not include persons held primarily for law enforcement purposes except where the United States is the occupying power.

b. ~~(S//NF)~~ Unlawful Enemy Combatant (UEC) (See references nn and iii). See paragraph 7b(5). All persons held at theater internment facilities are unlawful enemy combatants until determined otherwise by the DCG(S), CJTF-101. A determination that an individual is an enemy combatant during operations in Afghanistan is equivalent to a determination that a detainee is an unlawful enemy combatant. UECs may be further classified as:

(1) ~~(S//NF)~~ Low Level Enemy Combatant (LLEC). An LLEC is an UEC who is not a threat beyond the immediate battlefield and/or does not have high operational or strategic intelligence or law enforcement value. LLECs are not eligible for transfer to U.S. internment facilities outside of Afghanistan. LLEC status is conferred by the DCG(S), CJTF-101 upon recommendation of the UECRB.

(2) ~~(S//NF)~~ High Level Enemy Combatants (HLEC). An HLEC is a UEC who has high operational or strategic intelligence value or law enforcement interest. Specific criteria are outlined in paragraph 7a.

c. ~~(S//NF)~~ No Longer Enemy Combatant (NLEC). An NLEC is a detained individual where there is not sufficient information to classify him as a UEC (HLEC or LLEC). Any such detained individual must be recommended for classification as an NLEC and released. Classification as an NLEC does not require a determination that a detainee has no possible future threat to US or Coalition Forces. An NLEC is someone who no longer poses a threat on the immediate battlefield, or where there is not sufficient information to make a UEC status determination.

12. ~~(S//NF)~~ Release, Transfer, and Receipt of Detainees.

a. ~~(S//NF)~~ Definition of Release and Transfer (see references h, i, and j).

(1) ~~(S//NF)~~ Release. Release is the process by which an individual who has been determined to no longer pose a threat to the United States or its interests is released to a foreign government, non-governmental agency, or on his own recognizance with no expectation of continued detention.

(2) ~~(S//NF)~~ Transfer. Transfer is the process by which custody and control of a detainee is transferred from one custodial agent to another custodial agent, including individuals who are selected to participate in Program Tokhim e Sol (PTS). In the case of transfers to a foreign government, the transfer is executed with the expectation, whether desired by U.S. forces or not,

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that the foreign government will retain custody of the individual.

b. ~~(S//NF)~~ Release and Transfer of NLECs, LLECs, and HLECs. The CG, CJTF-101 has the authority to release LLECs and NLECs. Transfer of detainees to foreign governments excluding GIRoA, will be coordinated with the Office of the Secretary of Defense, Detainee Affairs Branch. Transfers are authorized in accordance with CJTF-101 Detention Operations SOP, Annex F.

(1) ~~(S//NF)~~ NLECs. The authority to release NLECs has been delegated to the DCG(S), CJTF-101. NLECs will be released no later than 15 days after being designated an NLEC and no more than 7 days after the FRAGO ordering their release is published. During the period between approval and release, all NLECs shall, to the maximum extent practicable, be separated from the general detainee population under as few restrictions as possible. The Commander, TF Guardian will take prudent steps to begin reintegrating the NLEC into the civilian population in order to ease transition from detention.

(2) ~~(S//NF)~~ LLECs. The authority to release LLECs or transfer LLECs to the GIRoA (to the ANDF or for Program Takim-e-Sol "PTS") is the CG, CJTF-101 in accordance with references (t), (u), and (ffff). Transfer of LLEC detainees to the GIRoA will be coordinated through CENTCOM and in accordance with reference (zz). Authority to transfer of LLECs to other than GIRoA is USCENCOM or SECDEF.

(a) ~~(S//NF)~~ LLECs may be released or transferred to foreign governments when it is determined that such transfer does not pose a substantial threat to the United States or its interests, the detainee possesses no actionable intelligence necessary to protect U.S. forces or interests, and there is no reasonable fear that the detainee will be subject to persecution or inhumane treatment if released into the custody of a third-country.

(b) ~~(S//NF)~~ Release or transfer of LLECs should be consistent with U.S. national security interests. The CJTF-101 will coordinate with representatives of relevant agencies in theater and representatives of GIRoA prior to releasing LLECs.

(c) ~~(S//NF)~~ Non-CJTF-101 DoD organizations may take custody of LLECs upon approval by the CG, CJTF-101. The approval authority will not be delegated.

(3) ~~(S//NF)~~ HLECs. Release of HLECs may only be authorized by SECDEF or his designee. Transfer of HLECs to foreign governments, including the GIRoA or Afghan forces, requires authorization of SECDEF or his designee through USCENCOM.

(4) (U) Non-DoD United States Government (USG) agencies will not take custody of detainees under the control of CJTF-101 except in accordance with current U.S. law and policy. These operations will not be conducted without the authorization of SECDEF or his designee.

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(5) (U) The ICRC will be informed of all initial transfers into and all permanent releases from a TIF. When possible, the ICRC will be invited to conduct exit interviews of detainees being repatriated to third countries. The results of these interviews will be forwarded through USCENCOM to the Office of the Secretary of Defense for its consideration of whether the detainee has a well-founded fear of persecution.

(6) (U) U.S. OEF forces will not release or transfer detainees to non-U.S. forces that have a known history of non-compliance with international standards for humane treatment and/or those that lack apparent capability to properly provide for the detainee. Detainees who express a fear of maltreatment will not be transferred until their concerns have been fully evaluated.

c. ~~(S//NF)~~ Temporary Transfer of Custody to Afghan Forces. In accordance with paragraph 10e, above, utilizing ANSF forces to assist U.S. Service members with guarding detainees does not constitute transfer of custody. However, operational necessity may occasionally justify the temporary transfer of custody of detainees to ANSF forces when no U.S. Service members are available to supervise the ANSF guards. Temporary transfer of custody should only occur when providing U.S. oversight would significantly degrade the capturing unit's ability to conduct operations. If temporary transfer of custody to Afghan Forces is required, the following restrictions and procedures will apply:

(1) (U) The U.S. OIC or NCOIC of the unit that transfers control of the detainees will ensure that the receiving ANSF unit or organization knows and understands their responsibilities under international law to safeguard detainees. If there is any suspicion based on experience or circumstances existing at the time that the receiving ANSF unit or organization will not treat a detainee humanely or in a manner consistent with international law, U.S. forces will not temporarily transfer custody of the detainee.

(2) (U) U.S. forces will conduct a medical examination before transferring temporary custody of a detainee, and maintain a written record of the examination. Any degradation in the detainee's health while in ANSF custody will be documented. If there is degradation of the detainee's health or injuries that were not present prior to the transfer to ANSF, that information will be immediately reported as a serious incident report (SIR) through the chain of command to the CJTF-101 CJ3 CHOPS and the CJTF-101 SJA.

d. ~~(S//NF)~~ Receipt of Detainees from GIRoA. OEF forces in Afghanistan are not authorized to accept detainees from GIRoA without express approval by the CG, CJTF-101.

(1) ~~(S//NF)~~ The following exception and limitation applies to the CJSOTF-A: CJSOTF-A has standing approval to accept detainees from GIRoA, however this approval does not extend to detainees held by the Afghan NDS that were previously held by ISAF Forces. The CG, CJTF-101 must approve, or recommend approval to the CDRUSCENTCOM (IAW paragraph 12d(2),

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below), on a case-by-case basis, CJSOTF-A accepting detainees held by the NDS that were previously held by ISAF Forces.

(2) ~~(S//NF)~~ The U.S. Office of the Secretary of Defense (Detainee Affairs) is the approval authority for U.S. OEF forces receiving detainees from the GIRoA that had previously been detained by a Coalition ISAF force when that Coalition partner nation has a detainee transfer arrangement with the GIRoA. U.S. forces will not take custody of a detainee under these circumstances until specifically approved by OSD(DA).

e. ~~(S//NF)~~ Other Foreign Governments. Receipt of detainees from any foreign government other than GIRoA requires approval by CDRUSCENTCOM. Detainees accepted from foreign governments will undergo the same in-processing procedures as all other detainees, including an assessment of the detainee's physical and mental health. Only those individuals who meet the detention criteria outlined in paragraph 7 above will be accepted.

f. ~~(S//NF)~~ Receipt of Detainees from ISAF. OEF forces will not accept detainees from other Coalition forces acting as part of ISAF or from U.S. units NATO OPCON to ISAF. Requests for exception to this prohibition must be forwarded through the Commander, TF Guardian to the CG, CJTF-101.

g. ~~(S//NF)~~ Receipt of Detainees from non-DoD U.S. Government Agencies is prohibited without, at a minimum, CDR, USCENTCOM approval. Requests must be forwarded through the CG, CJTF-101 to CENTCOM for review/approval.

13. (U) Screening and Interrogation Techniques. Commanders of FDS or detainee holding areas where any screening or intelligence-related questioning is conducted are responsible for ensuring the humane treatment of all detainees. Persons conducting screening and intelligence-related questioning will not cover or mask their face. Detainees will never be subjected to sensory deprivation and will not be questioned while wearing darkened goggles or earmuffs for security during movement. Questioning will not take place at any time if medical personnel determine questioning will adversely impact the detainee's health or significantly impact recovery from wounds.

a. (U) Interrogations. All interrogations will be in accordance with FM 2-22.3, reference (xx).

(1) (U) Interrogations will only be conducted by trained interrogators who are certified by the CJTF-101 Joint Interrogation Facility (JIF) OIC. All interrogators must be trained and certified by CJTF-101 prior to being permitted to conduct interrogations of detainees under OEF control. This provision does not apply to TF 714 and its successor and/or subordinate organizations conducting interrogations outside an FDS or the BTIF.

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(2) (U) **Interrogations will only be conducted in approved FDSs or the BTIF.** For a list of current approved FDSs, contact TF Guardian operations.

(3) (U) The CG, CJTF-101 delegates to the Commander, TF Guardian the approval authority for access to detainees by non-DoD USG agencies and non-CJTF-101 DoD organizations. Any such unit or organization requesting access to CJTF-101 detainees must agree to abide by DoD policies and procedures before being allowed access to any CJTF-101 detainee. Interrogations by non-DoD personnel must be monitored in accordance with references (dd) and (uu).

b. ~~(S//NF)~~ Tactical Questioning (TQ). In accordance with references (xx) and (qqqq), TQ is the expedient initial questioning for information of immediate tactical value. It is an effort to obtain combat information that is critical to successful mission accomplishment and is for immediate use by the brigade, battalion, or subordinate unit. By definition, TQ is limited to direct questioning. No other technique or interrogation approach will be used during TQ. In accordance with reference (qqqq) U.S. forces OPCON to ISAF may use direct questioning in accordance with Chapter 9, FM 2-22.3.

(1) (U) TQ will be used to obtain the basic information required by the unit to determine the identity of individuals, whether or not they are enemy combatants, and information regarding immediate force protection threats. TQ will not normally exceed 30 minutes.

(2) ~~(S//NF)~~ TQ may be conducted by the following personnel: all mission commanders, Soldiers (SSG and above) who have been trained by CJTF-101 interrogators or U.S. Army Intelligence Center and School instructors, U.S. Military intelligence officers, counterintelligence agents, civilian contract screeners, civilian Law Enforcement Professional contractors, and all source intelligence analysts. Any officer or NCO who commands a unit or leads a mission and needs timely information to conduct their current mission, may perform TQ, but may not delegate this authority.

c. (U) Separation (see references xx, aaa, and rrrr). Separation will not be used against any detainee without written authorization from the DCG(S), CJTF-101. Requests for separation will be in memorandum format, comply with the requirements of FM 2-23.3, Appendix M (reference xx), and will be routed through the CJTF-101 SJA for DCG(S), CJTF-101 signature.

14. (U) Rules of Engagement/Rules for the Use of Force (RUF) (See references bbb, qqq, and jjjj). CJTF-101 forces will use force consistent with OEF ROE when dealing with detainees (reference bbb). All use of force in theater internment facilities will be done in accordance with applical U.S. laws and policies.

a. (U) Nothing in these rules limits a commander's inherent authority and obligation to use all necessary means available and to take all appropriate action in self-defense of the

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commander's unit or other coalition forces in the vicinity.

b. (U) When the use of force is necessary, guards shall use the minimum amount of force necessary. Any use of force will be proportional in that it should be reasonable in intensity, duration, and magnitude based on all facts known at the time. Warning shots are not authorized.

c. (U) The on-scene commander may authorize the use of riot control agents to protect and control detainees during a disturbance and for self-defense in accordance with reference (bbb).

d. (U) Defense of detainees from harm by third parties is authorized.

e. (U) The following options will be considered when determining the appropriate amount of force to be used:

(1) (U) Verbal persuasion.

(2) (U) Unarmed self-defense techniques.

(3) (U) Chemical aerosol irritant projectors (when authorized by the on-scene commander in accordance with paragraph 14c).

(4) (U) MP/riot control club.

(5) (U) Tasers. (Tasers will only be used by persons certified in their use and only when authorized by the Commander, TF Guardian.)

(6) (U) Military working dogs. See paragraph 8i, above. Use of MWDs is prohibited in FDSs and theater internment facilities except when expressly authorized by the DCG(S), CJTF 101.

(7) (U) Presentation of deadly force capability.

(8) (U) Deadly force.

f. (U) Deadly force is justified only under conditions of extreme necessity. A detained person is subject to deadly force only when:

(1) (U) Lesser means have been exhausted, are unavailable, or cannot reasonably be employed;

(2) (U) The risk of death or serious bodily injury to innocent persons is not significantly increased by use of deadly force; and

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(3) (U) Deadly force appears necessary either to protect U.S. forces who reasonably believe themselves or others to be in immediate threat of death or serious bodily harm or to prevent the escape of detainees.

g. (U) Use of force during escape attempts. In the event of an escape attempt, apply the following rules for the use of force:

(1) (U) Shout "halt" three (3) times. The detention facility commander must ensure that each detainee understands the meaning of the English word "halt".

(2) (U) Use the least amount of force necessary to halt a detainee.

(3) (U) Deadly force may only be used against an OEF detainee if there are no other physical barriers preventing escape from an FDS or from the BTIF, and the risk of death or serious injuries to others is not significantly increased by the use of deadly force.

h. (U) Deadly force is not authorized to prevent the escape of an ISAF detainee except where necessary to prevent an act which constitutes an immediate threat to life.

15. (U) Detainee Discipline. Maintaining and enforcing detainee discipline must be done in a humane manner. The intentional or negligent infliction of physical pain as a punishment for infractions is prohibited. The OIC and NCOIC of the facility where the detainee is held will be held accountable for the enforcement of detainee discipline and will ensure that all persons involved with detainee operations know and understand the standards of treatment outlined in this memorandum and applicable SOPs.

a. (U) Detainees are expected to obey the established rules and procedures at all facilities. Detainee discipline will be enforced in accordance with authorized SOPs.

b. ~~(S//NF)~~ Disciplinary Segregation. Detainees may be segregated for disciplinary reasons in accordance with authorized SOPs. Disciplinary segregation will not normally be for a period longer than 30 days.

c. ~~(S//NF)~~ Administrative Segregation. Detainees will only be placed in administrative segregation to protect the health of the detainee or others, to ensure the safety of the detainee or others, when necessary as a force protection or security measure, or for other valid law enforcement purposes. Detainees in administrative segregation will enjoy privileges commensurate with their custody level. Normally, administrative segregation will not extend past 30 days.

d. ~~(S//NF)~~ The Commander, TF Guardian is the approval authority for administrative and

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disciplinary segregation between 11 and 20 days. The DCG(S), CJTF-101 is the approval authority for administrative and disciplinary segregation between 21 and 30 days.

16. ~~(S//NF)~~ Detainee Due Process. In accordance with references (m) and (sss), an Unlawful Enemy Combatant Review Board (UECRB) will review the initial determination that an individual detained in the BTIF is an UEC and will conduct semi-annual reviews of each detainee to recommend further detention, transfer, or release. The UECRB is administrative in nature and is not a judicial or quasi-judicial proceeding; it does not create a right, benefit, or privilege against the United States.

a. ~~(S//NF)~~ UECRB Composition. The UECRB may consist of one or more 3-person (commissioned officer) boards appointed in writing by the CJTF-101 DCG(S). UECRBs may be "standing boards" appointed by the DCG(S) for an established period of time or may be specifically appointed "as necessary" for detention reviews. The UECRB will normally meet on a weekly basis in a location determined by the Commander, TF Guardian.

(1) ~~(S//NF)~~ Each UECRB will consist of the following membership:

- (a) ~~(S//NF)~~ One operations member (field-grade officer with operational background).
- (b) ~~(S//NF)~~ One intelligence member (field-grade officer with intelligence background).
- (c) ~~(S//NF)~~ One legal member (judge advocate officer).

(2) ~~(S//NF)~~ The Commander, TF Guardian will prepare, as required, the selection slate from the above identified officers for DCG(S) approval.

(3) ~~(S//NF)~~ The senior member present at each UECRB will be the UECRB president for that board proceeding. All members have an equal vote, and a 2/3 vote establishes the Board's recommendations.

(4) ~~(S//NF)~~ The UECRB members will follow the procedural script developed by the Commander, TF Guardian and the CJTF-101 SJA.

(5) (U) UECRB Recorder. The UECRB will also be attended by a non-voting recorder (officer or enlisted Service member) designated by the Commander, TF Guardian who is responsible for making a summarized written record of the proceedings.

b. (U) Translator. A minimum CAT II certified linguist will be used as required.

c. (U) UECRB Invitees. UECRB proceedings are closed. The following persons may be invited to attend, as necessary and at the discretion of the UECRB, in order to provide the

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UECRB information necessary to make an informed decision:

- (1) ~~(S//NF)~~ Criminal Investigation Task Force (CITF).
- (2) ~~(S//NF)~~ Capturing unit representative.
- (3) ~~(S//NF)~~ Interagency representative with an interest in the detainee (OGA, FBI, etc.).
- (4) ~~(S//NF)~~ CJTF-101 CJ2X representative.

d. ~~(S//NF)~~ UECRB Procedure. The UECRB normally meets on a weekly basis to discuss and determine the status of detainees.

(1) ~~(S//NF)~~ Initial UECRB. Within 90 days of capture, or 75 days of inprocessing at the BTIF (whichever comes first), all detainees will have their cases reviewed by the UECRB.

(a) (U) Not later than 10 days prior to the initial UECRB, each detainee will be provided a written notice of the review that clearly explains the basis for detention as an UEC, specific facts that support the detention as an UEC, an explanation of the initial UECRB review process (including the rights to make a statement and to submit written evidence on his or her behalf), and the anticipated date for his or her initial UECRB. This information will also be clearly communicated to the detainee ~~verbally~~ ^{orally} in a language he or she understands.

(b) (U) This review is very important. The purpose of the review is to examine all available evidence and make a recommendation to the DCG(S), CJTF-101 whether or not the detainee is lawfully detained as an unlawful enemy combatant. Any UECRB recommendation that a detainee remain in detention will be based on a preponderance of the evidence. At the Initial Review, detainees will have an opportunity to make a statement to the UECRB. TF Guardian (in conjunction with the detaining unit, the CJTF-101 CJ2 CIO, and the Detainee Assessment Branch) is responsible for ensuring all exculpatory evidence relating to a detention is presented during the UECRB review. The Detainee Assessment Branch (DAB) will provide the Board with full translations of any evidence submitted by the detainee, his family, or the GIRoA.

(c) (U) Using the detention criteria outlined in paragraph 7, the JIF Senior Interrogators and Detainee Assessment Branch (DAB) Military Police Investigators will recommend whether an individual be classified as an HLEC, LLEC, or NLEC. If requested by the UECRB, capturing unit representatives are encouraged to attend the UECRB and provide any information on the detainee or other circumstances that may help the UECRB voting members assess the detainee's status; the UECRB will consider all information that the capturing unit presents.

- (2) ~~(S//NF)~~ Semi-annual Review following initial UECRB. The United States has an

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interest in not retaining control over large numbers of individuals detained during OEF operations in Afghanistan. To that end, detainees will have their status reviewed and reassessed semi-annually by the UECRB. If new information that warrants reassessment is received, the UECRB may review a detainee's status prior to the semi-annual review. These reviews and reassessments will take into account any new information acquired since capture and will assess the information's effect on the detainee's status. Prior to each review, the Behavioral Science Consultation Team (BSCT) at TF Guardian will provide an assessment of the detainee's recidivism potential to the UECRB.

e. ~~(S//NF)~~ UECRB Recommendations. Based on the evidence in each case file; the recommendations of the JIF, the capturing unit, and other government agencies, and UECRB member discussions, each UECRB member votes in writing, with specific reasons for the decision listed, to recommend to the DCG(S), CJTF-101 whether each detainee be classified as an HLEC, LLEC, or NLEC. A majority vote (2 of 3 votes) is required to produce a recommendation. The UECRB may make the following recommendations:

- (1) ~~(S//NF)~~ High Level Enemy Combatant (HLEC);
- (2) ~~(S//NF)~~ Low Level Enemy Combatant (LLEC) [with further recommendation to "retain in theater", "transfer", or "release"];
- (3) ~~(S//NF)~~ Low Level Enemy Combatant – PTS Transfer (LLEC-PTS); or
- (4) ~~(S//NF)~~ No Longer Enemy Combatant (NLEC) [with further recommendation to "release"].

f. ~~(S//NF)~~ UECRB Recommendation Memorandum. Following each weekly session, the UECRB recorder shall produce a memorandum that states the recommendation concerning each detainee reviewed, whether or not there was a dissenting vote, and the UECRB's assessment of the evidence that supports its recommendation. If the UECRB determines that a detainee meets the criteria outlined in paragraph 7(a), the assessment shall state which criteria are met and what evidence supports the finding. Each UECRB member participating in the UECRB will sign the UECRB Recommendation Memorandum.

g. (U) Processing UECRB Recommendations.

(1) ~~(S//NF)~~ The Commander, TF Guardian forwards the UECRB recommendation to the DCG(S), CJTF-101. The DCG(S) will review the UECRB recommendation and approve or disapprove a recommendation that a detainee be classified as an NLEC or LLEC. Recommendations that a detainee be classified as an HLEC, or that an LLEC be released, will be forwarded to the CG, CJTF-101 for final approval.

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(2) ~~(S//NF)~~ The official status determination will be recorded in a memorandum signed by the appropriate approval authority.

(3) (U) The detainee will be notified, in writing and ^{orally} ~~verbally~~ in a language he or she clearly understands, within 14 days of the approval authority's decision concerning the detainee's status classification.

h. ~~(S//NF)~~ Release Authority.

(1) ~~(S//NF)~~ NLECs. Authority to release NLECs resides with the DCG(S), CJTF-101.

(2) ~~(S//NF)~~ LLECs. Authority to release LLECs, including those LLECs recommended for transfer to the GIRoA under PTS, resides with CG, CJTF-101 in accordance with references (t), (u), and (ffff). The CJTF-101 Political Advisor will relay release information to the U.S. Charge d'Affairs at the U.S. Embassy when a LLEC has been approved for release.

(3) ~~(S//NF)~~ HLECs.

(a) ~~(S//NF)~~ Authority to release SECDEF-approved HLECs or persons recommended for HLEC status by the CG, CJTF-101, resides with SECDEF or his designee.

(b) ~~(S//NF)~~ Authority to reclassify HLECs to some other status (LLEC, NLEC) resides with CDRUSCENTCOM and must be based on a reassessment of the evidence pertaining to the detainee. If transfer to a U.S. detention location outside of Afghanistan has already been requested, notice of reclassification must be sent through USCENTCOM to the Joint Staff.

17. (U) Release Procedures (See references h and j). If a detainee is approved for release, the release may occur through either subordinate commands where the individual was captured or through the ICRC. Detainees accepted into the PTS program are normally released to GIRoA officials.

a. (U) TF Guardian will provide notification of release to the CG, CJTF-101 and the CJTF-101 Political Advisor. The CJTF-101 Political Advisor will relay the release information to the U.S. Charge d'Affairs at the U.S. Embassy. The U.S. Embassy will notify the GIRoA of the release as appropriate.

(1) (U) If released through a subordinate command, the detainee will be released at or near the point of capture. Subordinate commands will give advance notice of impending detainee releases to capturing units and, where appropriate, to local officials.

(2) (U) Releases through the ICRC will be coordinated with the ICRC representative in Kabul.

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b. (U) Detainees will be released within 15 days of release approval. Delays beyond 15 days require notifying the CG, CJTF-101. All personal property annotated on the DA Form 4137 (Evidence/Property Custody Document), with the exception of electronic devices, weapons, ammunition, and items that are illegal under Afghan law or pose a security threat, will be returned to the detainee upon release. An individual released may file a claim for missing property under the Foreign Claims Act.

18. ~~(S//NF)~~ Transfer of HLECs. Individuals classified as HLECs and recommended for transfer to a U.S. detention location outside of Afghanistan will be added to the Detainee Action Team (DAT) Matrix. The Commander, TF Guardian, after concurrence from the CG, CJTF-101, will forward the DAT matrix and transfer request to USCENTCOM (CCJ2/HUMINT). The JIF OIC will place the interrogation dossiers for each nominee in an appropriately classified public folder accessible by the DAT and USCENTCOM.

19. (U) The International Committee of the Red Cross. The ICRC is a neutral international humanitarian organization that has a special mandate from the international community to monitor the conditions of individuals who are detained as a result of armed conflict. The ICRC is authorized access to theater internment facilities and the FDSs in the CJTF-101 AOR.

a. (U) ICRC Liaison. The CJTF-101 SJA is the ICRC Liaison. The CJTF-101 Detention Operations Judge Advocate is the Deputy ICRC Liaison and primary point of contact with the ICRC.

b. (U) Visits and Contacts with the ICRC. In accordance with references (n) and (o), all contacts and correspondence with the ICRC must be reported through the chain of command to the Office of the Secretary of Defense (OSD). Individuals making contact or receiving correspondence from the ICRC will immediately report the contact or correspondence to the CJTF-101 Detention Operations Judge Advocate.

c. (U) Family and Village Elder Visitations in coordination with ICRC (See references iii and ppp). Detainees will be afforded the opportunity to participate in family and village elder visitation programs. The BTIF will provide access to video teleconferencing and family face-to-face visitation. Detainees will be eligible to participate in either one 20 minute video teleconference or one 60 minute face-to-face visitation every two months. All detainees in good disciplinary standing are eligible to participate in the family visitation privilege. Detainees in disciplinary segregation will not be eligible.

20. ~~(S)~~ Foreign Access to Detainees and Detainee Information. In accordance with reference (oo), the CG, CJTF-101 is authorized to approve GIRoA requests for access to Afghan nationals detained at theater internment facilities in Afghanistan, and Government of Pakistan (GOP) requests for access to Pakistani nationals detained at theater internment facilities in Afghanistan.

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a. ~~(S//REL)~~ In accordance with reference (ss), the CG, CJTF-101 is authorized to release information on detainees necessary to facilitate transfer of custody to GIRoA officials and to approve access to theater internment facilities by GIRoA officials for the purpose of observing operations in preparation for transition of detainees and detainee operations to the GIRoA.

b. ~~(S//NF)~~ Information regarding TCNs will not be released to the GIRoA.

c. ~~(S)~~ Photographing of Detainees. The ICRC is approved to photograph TCNs and Afghans, who are not able to participate in either the video teleconferencing or family face-to-face visitation, for the purpose of allowing those photographs to become part of Red Cross Messages (RCM) for the detainees' families. No photograph shall be released by the CJTF-101 unless it is first determined that the use of such photograph will not negatively affect current sources or methods of human intelligence collection. The ICRC will only be allowed to take RCM photographs of the above specified detainees in a location designated by the BTIF Commander. Once taken, the CJTF-101 ICRC Liaison, or his designee, and the BTIF Commander will review the photographs to ensure that the photographs will not reveal the security or force protection posture of the BTIF.

d. ~~(S//NF)~~ Approval authority for all other requests for access by foreign governments resides with the Under Secretary of Defense for Policy.

21. (U) Command Relationships and Responsibilities for Detention Operations.

a. (U) Detention Operations Command Relationships.

(1) (U) The DCG(S), CJTF-101 is the executive agent for detention operations for CJTF-101 and performs oversight for all tasks associated with detainee operations except as noted in this memorandum.

(2) ~~(S//NF)~~ The Commander, TF Guardian, is designated the Chief of Detention Operations. With DCG(S) oversight, he is responsible for all detention operations, to include safe detainee treatment during interrogation operations in the BTIF, secure custody of detainees at all locations, and detainee physical well-being. The Commander, TF Guardian reports directly to the DCG(S), CJTF-101. The Commander, TF Guardian will coordinate detention operations directly with CJTF-101 subordinate unit commanders and, as necessary, US OEF component commanders conducting detention operations in Afghanistan.

(3) (U) The Commander of the MP Confinement Battalion is the OIC for theater internment facilities and reports directly to the Commander, TF Guardian. The MP Confinement Battalion Commander will ensure that all detainees at theater internment facilities are detained in a humane and secure environment.

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(4) (U) All CJTF-101 detainee interrogators, unless otherwise organized by CJTF-101 order, are under OPCON of TF Guardian. The CJTF-101 CJ-2 and MI Company Commander establish intelligence collection priorities and provide technical guidance to CJTF-101 interrogators.

b. (U) Subordinate unit commanders are responsible for ensuring that FDSs under their operational control operate in accordance with all applicable detention policies. Subordinate unit commanders will appoint a local commander for each FDS within their AO and maintain a record of each appointment memorandum.

c. (U) FDS commanders have primary responsibility for the safeguarding and care of all detainees in their custody. FDS commanders will ensure that all CJTF-101 and non-CJTF-101 personnel abide by the standards set forth in this policy memorandum. All FDS commanders will appoint an OIC and NCOIC who are responsible for supervising the daily operations of the facility. Commanders will maintain a copy of each OIC and NCOIC appointment memorandum.

d. (U) Concept. All units overseeing detention operations will develop and manage a weekly Senior Leader Inspection checklist and log. Personnel in the rank of O-4 and above will conduct on-site inspections of the site or facility. If no field grade officers are located on the FOB, the ranking officer will conduct these inspections. Weekly checks of sites and facilities will occur between 1500z and 2400z. Upon completion of the inspection, the senior leader will notify the TF Guardian Joint Operations Center telephonically at VOSIP 318-431-7058 or via adobe breeze with the following information:

(1) (U) Line 1: DTG of inspection.

(2) (U) Line 2: Number of detainees at site.

(3) (U) Line 3: Unit guarding the detainees.

(4) (U) Line 4: Condition of the detainees.

(5) (U) Line 5: Condition of the FDS/Readiness to accept detainees.

(6) (U) Additionally, when visited by personnel in the ranks of E-9 or O-6 and above, OICs/NCOICs will record the visit as well as any comments/suggestions made by the visiting personnel.

e. (U) FDS OICs and NCOICs will ensure that guard forces and interrogation personnel understand the separation between their roles and responsibilities, and that guard force personnel remain focused on the accountability, control, and safeguarding of the detainees.

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f. (U) FDS OICs and NCOICs will ensure that all non-CJTF-101 personnel who are authorized to interrogate detained individuals at CJTF-101 facilities abide by the standards of conduct outlined in this memorandum. Access to detainees held in CJTF-101-controlled FDSs by non-CJTF-101 personnel must be expressly approved by the CJ2 CIO.

g. (U) Commanders are responsible for the conduct of interrogators and other persons while the detainee is under their control regardless of the organization of the interrogator or person interacting with the detainee.

(1) (U) Under no circumstance will personnel performing guard force duties assist or participate in any interrogation procedures or perform any act that would constitute abuse.

(2) (U) Guard force personnel may make observations of detainee interaction and behavior and report this information to interrogators. Interrogators, in turn, may provide guard force personnel with information they obtain on planned disturbances, escape attempts, or other detainee misconduct.

22. (U) Training and Certification. Commanders are responsible for training of all personnel in the proper treatment and handling of detainees. TF Guardian will maintain a list of all FDS commanders, OICs and NCOICs, and is responsible for ensuring the proper training and certification of these personnel.

23. (U) Death of a Detainee.

a. (U) Notification of Death of a Detainee Within the Bagram Theater Internment Facility (BTIF) or the Custody of TF Guardian.

(1) ~~(S)~~ In accordance with references (p) and (q), the BTIF Commander must immediately report the death of a detainee currently detained at the BTIF to the Army Criminal Investigation Division (CID). For the purposes of this Annex, any detainee who has been transferred from the BTIF to the Combat Support Hospital (CSH) for treatment is still considered part of the BTIF population and the BTIF Commander remains responsible for adhering to all applicable reporting requirements.

(2) (U) In consultation with the CJTF-101 Detention Operations Judge Advocate (CJTF-101 DETOPS JA), Task Force Guardian will generate and submit a Serious Incident Report (SIR) which will be immediately forwarded to the CJTF-101 Chief of Operations (CHOPS).

(3) ~~(S)~~ Task Force Guardian will immediately notify the CJTF-101 Commanding General (CG) and Deputy Commanding General - Support (DCG-S) by the most expeditious means necessary identifying the deceased, date, time, and circumstances of death (to the extent known),

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and confirm the notification of death to CID.

(4) ~~(S)~~ CID will immediately contact the Office of the Armed Forces Medical Examiner (AFME). The AFME will determine whether an autopsy will be performed. The presumption is that an autopsy will be required in every situation unless waived in writing by the Office of the Secretary of Defense (OSD).

(5) ~~(S)~~ Headquarters (HQ) USCENTCOM/CCJA-DT will be immediately notified of the death by the most expeditious means necessary identifying the deceased, date, time, and circumstances of death (to the extent known), and confirm the notification of death to CID.

(6) ~~(S)~~ In accordance with reference (p), CDR USCENTCOM, through CJCS, will notify SECDEF of any death of an enemy prisoner of war, retained person, civilian internee or anyone else detained while in US custody.

(7) ~~(S)~~ TF Guardian will notify the US Embassy – Kabul of any detainee death. TF Guardian will also prepare a correspondence notifying the Government of the Islamic Republic of Afghanistan (GIROA). The correspondence will be sent by the most expeditious means to the Attorney General of Afghanistan.

(8) (U) Once all other notifications have been made and circumstances permit, the DETOPS JA in coordination with the Commander, TF Guardian and the CJTF-101 Staff Judge Advocate, will notify the International Committee of the Red Cross (ICRC) of the detainee death and begin coordination for assistance with the return of the remains to the family.

b. (U) Notification of Death of a Detainee Outside the Custody of TF Guardian.

(1) ~~(S)~~ If the death does not occur in the BTIF, the commander of the unit that exercised custody over the deceased detainee must immediately notify CID.

(2) (U) In consultation with the unit's servicing Judge Advocate, the unit will generate and submit an SIR to TF Guardian who will immediately forward the SIR to the CJTF-101 Chief of Operations (CHOPS).

(3) (U) All other notifications will proceed in accordance with paragraphs 23a(3) – (8) above.

(4) (U) The unit may conduct, when necessary, an investigation into the circumstances of death. Commander, CJTF-101 is the appointing authority for all formal AR 15-6 investigations into the death of a detainee.

24. (U) Requests for Information. Formal and informal requests for information concerning

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detainee operations in the CJOA will be handled as follows:

a. (U) Informal Requests. Family members and village elders requesting information on a particular detainee will be directed to consult the ICRC which maintains a comprehensive list of detainees in both U.S. and Afghan detention facilities. The ICRC can be contacted by telephone at +93 70 234 530/70 297 777, by e-mail at kaboul.kab@icrc.org, or at their main office at:

The International Committee of the Red Cross
Charahi Haji Yaqoub
Shar-I-Naw
Kabul, Afghanistan

b. (U) Formal Requests from other U.S. Government agencies. Official requests for information made by DoD or other U.S. government agencies will be routed to the CJTF-101 CJ2 for appropriate action. The CJTF-101 CJ2, with assistance from other staff sections, will prepare an appropriate response to the request taking into account the security classification of the information requested.

c. (U) Formal Requests from Foreign Governments. An official request from any foreign government should be directed through the State Department to the CJTF-101 Political Advisor who will route the request to the CJTF-101 CJ2. An official request from the GIRoA is any request that comes from a provincial governor or from a member of the Afghan national government.

25. (U) Public Affairs. Given the sensitive nature of media reporting on detention operations, all contact and coordination with the media will go through the CJTF-101 Public Affairs Office (CJTF-101 PAO). This includes, but is not limited to, interviews and discussions with media by telephone, e-mail, and/or direct contact. If any Soldier or contracted civilian involved with detention operations is contacted by the media, they will immediately notify their chain of command, who will seek guidance from the CJTF-101 PAO.

a. (U) The media will not have access to FDSs or theater internment facilities, unless expressly authorized by the CG, CJTF-101 or his designated representative. Media will not observe or cover interrogation operations.

b. (U) Tenant units co-located with detention facilities at Forward Operating Bases (FOBs) will coordinate with the CJTF-101 PAO through their chain of command before any media will be allowed on the installation. The FOB commander must be informed of all visits and media access will not be allowed without prior approval. Media will not, under any circumstances be allowed to take photographs or video of the FDS or unit/facility.

c. (U) No photographs or video that are not expressly authorized by this memorandum or

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approved SOPs will be taken of a detainee's face or any other features that can result in the disclosure of their identity. All authorized photographs will be classified SECRET or higher.

d. (U) No photographs or video will be allowed that reveals the security or force protection posture of any FOB or detention facility. Personnel who have security concerns with media coverage should immediately inform the escort, who will determine what action should be taken to safeguard information from public disclosure.

e. (U) Media are not allowed to interview or otherwise directly interact with detainees.

f. (U) Military personnel who work at the detention facilities may be asked by hometown media to be interviewed about their job and experiences in Afghanistan. The first officer in the Service member's chain of command in the grade O-5 will coordinate with the CJTF-101 PAO for approval of any media interview.

g. ~~(S//NF)~~ Media coverage of detainee releases is not authorized while detainees are in the custody of CJTF-101 personnel. Once detainees are released or transferred to the GIRoA, and are no longer physically located on Bagram Airfield or other US location, the GIRoA may authorize media coverage of the event.

26. (U) Violations. Commanders are responsible for ensuring that all detention operations are conducted in accordance with this policy, Common Article 3 of the Geneva Conventions, and the laws of armed conflict. Suspected or alleged violations will be reported through the chain of command to the Chief, Detention Operations, appropriately investigated, and referred to a competent authority for criminal investigation and disposition as appropriate. Commanders will report through command channels the final disposition of cases involving violations of this policy. Suspected or alleged violations may also be reported through other appropriate military officials, such as criminal investigators, inspectors general, or judge advocates.

27. (U) **Punitive Order. Portions of this Policy Memorandum are punitive. The punitive provisions are highlighted in bold print. Persons subject to the UCMJ may be punished for violating the punitive provisions of this memorandum. Civilians serving with, employed by, or accompanying the Armed Forces of the United States in the CJTF-101 CJOA may face criminal prosecution or adverse administrative action for violations of the punitive provisions of this memorandum.**

28. (U) The points of contact for clarification or interpretation of this memorandum as well as any situation not covered herein are Commander, TF Guardian at DSN: 318-431-4324 or the CJTF-101 Detention Operations Judge Advocate at DSN: 318-431-4778.

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Enclosure
as

JEFFREY J. SCHLOESSER
Major General, USA
Commanding

CF:
Commander, USCENTCOM
Commander, USFOR-A
Commander, CSTC-A
Commander, CFSOCC-A
Commander, Task Force Guardian
Commander, Task Force Paladin
Commander, Combined Joint Special Operations Task Force

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ENCLOSURE 1 – Detention Operations References

(U) References:

- a. (U) III Geneva Convention: Relative to the Treatment of Prisoners of War (Geneva Convention III), 12 August 1949.
- b. (U) Army Regulation 190-14, Carrying of Firearms and Use of Force for Law Enforcement and Security Duties, 12 March 1993.
- c. (U) Army Regulation 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, 1 October 1997.
- d. (U) Presidential Military Order, Detention, Treatment, and Trial of Certain Non-Citizens in the War against Terror, 13 November 2001.
- e. ~~(S)~~ Presidential Memorandum, Humane Treatment of al Qaeda and Taliban Detainees, 7 February 2002.
- f. ~~(S//NF)~~ DEPSECDEF Memorandum, Implementing Guidance for Release or Transfer of Detainees under U.S. Government Control to Foreign Government Control, 10 December 2002.
- g. ~~(S)~~ CENTCOM Message, Clarification Message to Mod 1 to SECDEF Implementing Guidance – Screening, 10 February 2003.
- h. ~~(S)~~ CJCS EXORD, Detainee Transfer and Release, Mod 1, 23 January 2004.
- i. ~~(S//REL)~~ CENTCOM Message, Clarification to Mod 1 to SECDEF Implementing Guidance - Release and Transfer, 23 January 2004.
- j. ~~(S//REL)~~ DEPSECDEF Expedited Detainee Release, 21 February 2004.
- k. ~~(S//NF)~~ DEPSECDEF Global Screening Criteria, 24 February 2004.
- l. ~~(FOUO)~~ ST 2-91.6, Small Unit Support to Intelligence, March 2004.
- m. ~~(S)~~ CJCS Message, Criteria and Guidelines for Screening and Processing Persons Detained by the DOD in Connection with the War on Terror, 3 March 2004.
- n. ~~(S)~~ CJCS Message, Detainee Screening in Afghanistan, 4 March 2004.
- o. ~~(U//FOUO)~~ NDRC OEF Classification Matrix, 9 March 2004.

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- p. (U) SECDEF Memorandum, Procedures for Investigation into Deaths of Detainees in the Custody of the Armed Forces of the United States, 9 June 2004.
- q. ~~(S)~~ CENTCOM Message, Detainee Death Investigations, 11 June 2004.
- r. ~~(S//REL)~~ SECDEF Memorandum, Handling of Reports from the International Committee of the Red Cross, 14 July 2004.
- s. (U) CFC FRAGO 09-617, Amplifying Instructions for Handling ICRC Issues, 18 July 2004.
- t. ~~(S)~~ DEPSECDEF Memorandum, Authority to Release LLECs in Afghanistan, 17 November 2004.
- u. ~~(S//REL)~~ CENTCOM Message - Authority to release LLECs under DoD control in Afghanistan, 1 December 2004.
- v. ~~(S//REL)~~ CENTCOM FRAGO 09-683 - Legal Reporting, 4 December 2004.
- w. ~~(S//REL TO CCF)~~ CJTF-76 FRAGO 87 to OPORD 04-05, Provides Guidance to All CJTF-76 Components for the Recovery, Transfer, and Disposal of Uncontrolled Ordnance/Munitions Caches and All Weapons Discovered or Confiscated in the Field, 28 December 2004.
- x. ~~(U//FOUO)~~ OSD Policy on Detainee Body Cavity Searches and Exams, 12 January 2005.
- y. ~~(S//REL)~~ CFC FRAGO 09-707, Detainee Operations Responsibilities, 21 January 2005.
- z. ~~(S//REL)~~ CENTCOM Message, Policy Guide on International Committee of the Red Cross (ICRC) Access to DoD Detention Facilities, 31 January 2005.
- aa. (FOUO) CENTCOM Memorandum, Policy Statement and Guidelines for Body Cavity Searches and Exams for Detainees in DoD Control, 2 February 2005.
- bb. ~~(S//REL)~~ CJCS Standing Rules Of Engagement (SROE), 13 June 2005.
- cc. ~~(S//NF)~~ SECDEF Policy on Detainee ISNs, 20 September 2005.
- dd. (U) DODI 3020.41-Contractor Personnel Authorized to Accompany U.S. Armed Forces, 3 October 2005.

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ee. ~~(S//NF)~~ CENTCOM Message - ICRC Medical Officials Access to Detainee Medical Records, 14 October 2005.

ff. (U) CENTCOM Memorandum, USCENTCOM Policy Prohibiting Photographing or Filming Detainees or Human Casualties or Possessing, Distributing, or Posting Visual Images Depicting Human Casualties, 21 October 2005.

gg. (U) DEPSECDEF Interrogation Treatment, 30 December 2005.

hh. (U) Detainee Treatment Act of 2005, 6 January 2006.

ii. ~~(S)~~ CJCS Memorandum, Internment Serial Number (ISN) Policy Implementing Guidance, 19 January 2006.

jj. (U) AR 190-40 Serious Incident Report, 9 February 2006.

kk. ~~(S)~~ CFC FRAGO 09-960, USCENTCOM Implementing Guidance on Assigning Internment Serial Numbers (ISN), 24 March 2006.

ll. (U) DoD Directive 5200.31E, DoD Military Working Dog (MWD) Program, 29 March 2006.

mm. ~~(S//NF)~~ CFC FRAGO 09-707 Mod 1 to CENTCOM Message. Detainee Operations Responsibilities, 10 April 2006.

nn. (U) DoD Directive 2311.01E, DoD Law of War Program, 9 May 2006.

oo. ~~(S)~~ DEPSECDEF Memorandum, Foreign Government Access to Theater Internment Facilities in Afghanistan, 20 May 2006.

pp. (U) DoD Instruction 2310.08E, Medical Program Support for Detainee Operations, 6 June 2006.

qq. (U) Army Regulation 190-47, The Army Corrections System, 15 June 2006.

rr. (U) Army Regulation 40-66, Medical Records Administration, 21 June 2006.

ss. ~~(S//REL)~~ CFC FRAGO 07-1038, Access to Detainee Information, Interrogation Information and Theater Internment Facilities (TIF) in Afghanistan, 27 June 2006.

tt. ~~(S//REL)~~ CENTCOM FRAGO 07-435 - Command and Control in Afghanistan, 1 July 2006.

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- uu. (U) SECDEF Memorandum, Application of Common Article III, 7 July 2006.
- vv. ~~(S)~~ CENTCOM Message, USCENTCOM High Value Individuals, 31 August 2006.
- ww. (U) DoD Directive 2310.01E, DoD Detainee Program, 5 September 2006.
- xx. (U) U.S. Army Field Manual 2-22.3, Human Intelligence Collector Operations, 6 September 2006.
- yy. ~~(S//REL)~~ CENTCOM FRAGO 07-435 Mod 1, Command and Control in Afghanistan, 4 October 2006.
- zz. ~~(S//NF)~~ CENTCOM Frago 09-1106, Foreign Gov Access to TIFs in Iraq and Afghanistan, 16 October 2006.
- aaa. ~~(U//FOUO)~~ CENTCOM Memo - Approval of Restricted Interrogation Technique, 17 October 2006.
- bbb. ~~(S//NF)~~ USCENTCOM Consolidated Serial One Rules Of Engagement For Operation Enduring Freedom Mod 002, 15 December 2006.
- ccc. ~~(S//REL)~~ CENTCOM FRAGO 07-435 Mod 02, Command and Control in Afghanistan, 18 January 2007.
- ddd. ~~(S//REL)~~ CFC FRAGO 07-435, Mod 3 Command and Control in Afghanistan, 29 January 2007.
- eee. (U) CJCS Instruction 5810.01C, Implementation of the DoD Law of War Program, 31 January 2007.
- fff. ~~(S//NF)~~ DEPSECDEF Memo, Enemy Combatant Status Determinations, 1 February 2007.
- ggg. ~~(S)~~ DEPSECDEF Memo, Amendment to Foreign Government Access to TIFs in Afghanistan, 26 February 2007.
- hhh. (U) USARCENT FRAGO 150 to OPORD 05-009, Administrative Control, 28 February 2007.
- iii. ~~(S)~~ DEPSECDEF Memo, Family and Village Elder Access to Detainees at the BTIF, 3 March 2007.

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lll. (U) CJTF-76 FRAGO 85 to OPORD 07-03, Procedural Guidance for U.S. and Coalition Forces for Handling Captured Enemy Weapons and Equipment (CEWA) and Unexploded Ordinance (UXO) Procedures, 28 March 2007.

mmm. (U) Army Regulation 190-45, Law Enforcement Reporting, 30 March 2007.

nnn. ~~(U//FOUO)~~ USD(I) Clarification of Intelligence Interrogation Policy – Monitoring of Non-DoD Interrogations, Debriefings, and Questioning of Detainees , 4 April 2007.

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qqq. ~~(S//NF)~~ CENTCOM OEF ROE - Mod 002 Change 001, 21 May 2007.

rrr. (U) CENTCOM Regulation 10-3 - Terms of Reference For Component Commanders, 29 May 2007.

sss. ~~(S//NF)~~ CENTCOM FRAGO 09-1267 Enemy Combatant Status Determination In The USCENTCOM AOR, 7 July 2007.

ttt. ~~(S//REL)~~ CJTF-82 FRAGO 522 to OPORD 07-03, Provides Updated CCIR/SIR/SIGACT Reporting to Subordinate Units, 25 July 2007.

uuu. ~~(S//NF)~~ CJTF-82 FRAGO 562 to OPORD 07-03, Rotary Wing Movement of Detainees, 9 August 2007.

vvv. (U) U.S. Army Field Manual 3-19.40, Internment/Resettlement Operations, 4 September 2007.

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xxx. (U) SECDEF Amended Policy Guidance on ICRC Communications, 5 October 2007.

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zzz. ~~(S//NF)~~ U.S.CENTCOM Delegation of Authority to Approve International Committee of the Red Cross (ICRC) Access to Below TIF Facilities, 24 October 2007.

aaaa. (U) U.S. Army Field Manual Interim 4-02.46, Medical Support to Detainee Operations, 8 November 2007.

bbbb. (U) FRAGO 757 to CJTF-82 OPOD 07-03 Policy and Procedures for ICRC Access To FDSs in the CJTF-82 AOR, 8 December 2007.

cccc. (U) U.S. Army Field Manual 3-19.40, Internment/Resettlement Operations, Change 1, 17 December 2007.

dddd. ~~(U//FOUO)~~ CENTCOM Interrogation Policy (Int, Deb, TQ), 19 March 2008.

eeee. ~~(S)~~ DEPSECDEF Memorandum, Authority to Transfer Low-Level Enemy Combatants in Afghanistan, 14 April 2008.

ffff. ~~(S//REL)~~ CENTCOM Memo Delegation Authority - LLEC Transfer to ANDF, 15 May 2008.

gggg. ~~(U//FOUO)~~ CENTCOM Serious Incident Report Chart, 16 May 2008.

hhhh. ~~(S//REL)~~ CENTCOM FRAGO 07-565, Establishment of USFOR-A, 4 October 2008.

iiii. (U) DoD Directive 3115.09, Change 1, DoD Intelligence Interrogations, Detainee Debriefings and Tactical Questioning, 9 October 2008.

jjjj. ~~(S//NF)~~ CENTCOM OEF ROE - Mod 002 Change 002, 4 November 2008.

kkkk. ~~(S//REL)~~ CENTCOM FRAGO 07-565 Mod 1 Establishment of USFOR-A, 20 December 2008.

llll. ~~(S//REL)~~ CENTCOM FRAGO 07-565 Mod 2 Establishment of USFOR-A, 22 December 2008.

mmmm. ~~(S//REL)~~ CENTCOM FRAGO 09-707 Mod 2 Detainee Operations Responsibilities, 28 December 2008.

nnnn. ~~(S//REL)~~ CENTCOM Authorization to Share Biometrics with GIRoA, 29 January 2009.

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pppp. ~~(S//REL)~~ CENTCOM FRAGO 07-565 Mod 3 Establishment of USFOR-A, 17 March 2009.

qqqq. ~~(S//REL)~~ ISAF Policy on Tactical Questioning, 2 April 2009.

rrrr. ~~(S//NF)~~ CENTCOM FRAGO 09-1543, Directive for Units Conducting Interrogations, 9 April 2009.

ssss. ~~(S//REL)~~ CENTCOM FRAGO 07-565, Mod 4 Establishment of USFOR-A, 13 April 2009.

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GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D.C. 20301-1600

To the Deputy Secretary -

I believe this is a solid
worth product. It originated
with CS/DCM, received
a thorough review here, and
was also reviewed (because
they are very interested)
by the Solicitor General and
the A.W.C. House Counsel. This
will help us get it right and
help in the litigation.

W.H.

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Comparison of Detainee Process Models

	Article 5 (AR 190-8)	UECRB (existing)	UECRB (proposed)
Purpose	To determine whether person is EPW	To recommend combatant status and disposition	To determine whether detainee meets criteria for internment and recommend disposition
Nature	Non-adversarial	Non-adversarial	Non-adversarial
Standard	Article 4, GPW	Unlawful Enemy Combatant	Detainable Person, as defined in March 13, 2009 DOJ filing
Possible Findings	EPW, RP, innocent civilian, CI	<input type="checkbox"/> Status: HLEC, LLEC, NLEC <input type="checkbox"/> Disposition: GTMO, continued detention at the BTIF, transfer, release w/o conditions	<input type="checkbox"/> Status: does/does not meet criteria for internment, plus threat assessment <input type="checkbox"/> Disposition: continued internment at the BTIF, transfer for prosecution or reconciliation, release w/o conditions
Timing	Not specified	Capturing unit review within 72 hours; transfer request within 14 days; initial board within 75 days; periodic boards every 6 months	Capturing unit review within 72 hours (w/ JAG); transfer request within 14 days (w/ JAG); initial board within 60 days; periodic reviews every 6 months

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Comparison of Detainee Process Models (cont.)

	Article 5 (AR 190-8)	UECRB (existing)	UECRB (proposed)
Composition	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder (preferably JAG)	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder	<input type="checkbox"/> 3 field grade officers authorized access to all relevant information <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder
Legal Advisor	No	No	Yes
Personal Rep.	No	No	Yes; authorized access to all relevant information
Open/ Closed	Open except for deliberation and voting, security; person whose status is to be determined allowed to attend open sessions	Closed; detainee allowed to appear at initial board	Open except for deliberation and voting, security; detainee allowed to attend open sessions
Witnesses	Yes, if reasonably available	No	Yes, if reasonably available
Legal sufficiency review	Yes	No	Yes

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Policy Coordination Sheet

Subject: Policy Guidance on Review Procedures and Transfer and Release Authority at Bagram Theater Internment Facility (BTIF). Afghanistan (U)

USP Number: USP007105-09

<u>Title/Organization</u>	<u>Name</u>	<u>Date</u>
DASD, APSA/CEN	Mr. Sedney	May 18, 2009
GC	Mr. Johnson	May 21, 2009
USD(C)	Mr. Hale	May 22, 2009
Director, Joint Staff	LTG McChrystal	June 4, 2009

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