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December 10, 2002

Implementing Guidance for Release or  
Transfer of Detainees under US Department of Defense Control  
to Foreign Government Control

REFERENCES

- (A) ~~(S)~~ *Policy and Guidelines for Transfer of Detainees to Foreign Government Control*, Secretary of Defense, April 4, 2002.
- (B) ~~(S)~~ *Implementing Guidance on Detainee Screening and Processing for Transfers of Detainees in Afghanistan, to Guantanamo Bay Naval Station (GTMO)*, Secretary of Defense, January 7, 2002.
- (C) (U) *War Crimes and Related Investigations within the US Central Command Area of Operations*, Secretary of Defense, January 19, 2002.

PURPOSE

- ~~(S)~~ This guidance implements the Guidelines for Transfer of Detainees to Foreign Government Control of April 4, 2002 (DoD Detainee Transfer Policy), reference (A).
- ~~(S)~~ The guidance describes actions required by the DoD Detainee Transfer Policy when a detainee under Department of Defense control is identified for release or transfer consideration, as stated in reference (A).
- ~~(S)~~ This guidance addresses actions required (unless otherwise directed by the Secretary of Defense) to effect the release or the transfer of detainees to foreign government control once approved by the Secretary of Defense or his designee.

SCOPE

- ~~(S)~~ This implementing guidance applies to detainees under US Department of Defense control who have been screened by a combatant commander in accordance with reference (B), or other Secretary of Defense approved guidance or directives for screening individuals for continued detention, unless otherwise directed by the Secretary of Defense.

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## DEFINITIONS

(U) The following definitions are applicable to this guidance:

1. An "enemy combatant" (EC) for purposes of this guidance is defined as any person that US or allied forces could properly detain under the laws and customs of war. For purposes of this conflict, an EC includes, but is not necessarily limited to, a member or agent of al Qaeda, the Taliban, or another international terrorist organization against which the United States is engaged in armed conflict.
2. "Under DoD Control" means that the individual is either in the physical control of DoD or, if in the physical control of another agency, has been designated by the President or his designee for transfer to DoD control.
3. "Release" is the process by which an individual, who has been determined no longer to pose a threat to the United States or US interests, is released to a foreign government with no promise, in return, for continued detention.
4. "Conditional release" is the release of an EC who has been determined no longer to pose a threat to the United States or US interests, under a promise or agreement of that EC not to take up arms, or participate in further fighting, against the United States or its allies in exchange for freedom.
5. "Transfer" is the process by which the control of an individual is transferred to a foreign government with the promise that certain conditions will be fulfilled, usually including the promise of continued detention as an EC until returned to US control or until his release is authorized by the United States.

## PROCESS

(U) Unless otherwise directed by the Secretary of Defense, within 90 days of a detainee being brought under DoD control, the detaining combatant commander, or his designee, shall review the initial determination that the detainee is an EC. Such review shall be made based upon all available and relevant information available on the date of review and may be subject to further review based upon newly discovered evidence or information.

(U) The detaining combatant commander or his designee shall produce a written assessment regarding the detainee's EC status based upon his review of all available and relevant information concerning the detainee. The review shall be administrative in nature and shall not be deemed to create any right, benefit, or privilege, substantive or

procedural, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person. The detaining combatant commander shall be guided by the following:

- (a) The detaining combatant commander shall consider all relevant and reasonably available information, including any new information that has been identified since the initial status determination.
  - (b) If necessary to make a proper review, the detaining combatant commander may interview witnesses, provided they are reasonably available and such interviews would not affect combat, intelligence gathering, law enforcement, or support operations.
  - (c) The detaining combatant commander may, at his discretion, convene a panel of commissioned officers to review the available evidence and reach a recommended determination.
- (U) After the initial 90-day status review, the detaining combatant commander shall, on an annual basis, reassess the status of each detainee.
- (U) If, as a result of a periodic EC status review (90-day or annual), a detaining combatant commander concludes that a detainee may no longer meet the definition of an EC, the detaining combatant commander shall identify that detainee for possible release or transfer as appropriate.
- (S) A detainee may also be considered for possible release, conditional release, or transfer when:

- (S) Department of Defense, State or Justice, or the Central Intelligence Agency, receives an official request from a foreign government for the release of a detainee or the transfer of a detainee to its control;
- (S) Department of Defense, State or Justice, or the Central Intelligence Agency, initiates a proposal to release or transfer an EC;
- (S) A combatant commander, who has been authorized by the Secretary of Defense to conduct operations that may result in the detention of personnel or to take control of detained personnel, recommends release or transfer of a detainee under his control; or,
- (S) The Secretary of the Army, consistent with reference (C), recommends the release or transfer of a detainee following the conduct of a criminal investigation.

(S) When any element of the Department of Defense initiates or receives from the Department of State or Justice, or from the Central Intelligence Agency, a request for release or transfer of a detainee under DoD control, it shall forward the request to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict.

- (S) The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall notify the Secretary of the Army, the General Counsel of the Department of Defense, the Director of the Joint Staff, and the designated point of contact for detainee transfer matters at the Departments of State and Justice and at the Central Intelligence Agency of the request.

(S) When a request conflicts with the requirements of a combatant commander or the Criminal Investigation Task Force (or DoD lead for criminal investigations for the region, when directed) concerning a particular detainee, the Secretary of the Army and the Director of the Joint Staff shall advise the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict when the case can be ready for interagency consideration. The process for determining readiness for interagency consideration shall be conducted in a manner consistent with paragraphs below concerning instances when a combatant commander or the Secretary of the Army identifies a detainee for release or transfer.

(S) In the case of release, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, in conjunction with the General Counsel of the Department of Defense, shall assess whether the detainee should still be detained as an EC or should be released (including whether any conditions should apply to his release, e.g., under a conditional release or other agreement).

(U) Recommendations for release or transfer, coordinated with the Department of State, Department of Justice and the Central Intelligence Agency as appropriate, shall be made to the Secretary of Defense or his designee for decision.

(U) In addition to other responsibilities prescribed herein, the Secretary of the Army and relevant combatant commanders shall assess detainees for potential release (including under conditional release or other agreements) or transfer on a comprehensive and ongoing basis.

(S) When a combatant commander or the Secretary of the Army identifies a detainee for possible release or transfer to foreign government control, as set out in reference (A):

- (S) If the detaining combatant commander recommends release or transfer, he shall notify the Commander of the Criminal Investigation Task Force (or DoD lead for criminal investigations for the region, when directed) and forward a completed detainee file to the Director of the Joint Staff for review. The

detainee file shall include all supporting documentation to provide the information specified in paragraphs 1, 2.a-d., 3.a., 3.b., and 3.d. of Annex A.

- (S) If the Commander of the Criminal Investigation Task Force (or the DoD lead for criminal investigations for the region, when directed) recommends release or transfer, he shall prepare the file and forward to the Secretary of the Army the completed detainee file including all supporting documentation to provide the information specified in paragraphs 1, 2.e., 3.b. and 3.c. of Annex A.
  - (S) If the case is under review and the file is not complete, the Secretary of the Army, or the Director of the Joint Staff, as appropriate, shall inform the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict of the status of the file.
  - (S) In cases where a detaining combatant commander and/or the Commander of the Criminal Investigation Task Force (or the DoD lead for criminal investigations for the region, when directed) recommend release or transfer of a detainee, based on their respective mandates, the recommendation package shall include the following:
    - (S) the detainee file complete with all supporting documentation necessary for the Interagency Experts Group to make an informed recommendation (use information specified in the TAB to this document);
    - (S) any conditions the detaining combatant commander or the Commander of the Criminal Investigation Task Force (or the DoD lead for criminal investigations for the region, when directed) believes are necessary for the detainee to be held by a foreign government; and
    - (S) an assessment of the threat the detainee poses to the United States or US interests, and a recommendation concerning how to address that threat - with all supporting documentation so the Interagency Experts Group can make an informed recommendation (use information specified in Annex A to this document).
- (S) The Secretary of the Army and the Director of the Joint Staff shall provide completed files with all supplementary materials and recommendations to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict.
- (S) The Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict has responsibility

for reviewing each file for administrative completeness and ensuring each is consistent with current policy guidance.

(S) The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall provide completed files of detainees identified for possible release or transfer to foreign government control to the representatives of the following DoD organizations, at a minimum, for review and a recommendation on whether the case is appropriate for a coordinated release determination or further review by the Interagency Experts Group on Detainees (Interagency Experts Group):

- (S) the Office of the Secretary of the Army,
- (S) the Office of the General Counsel of the Department of Defense, and
- (S) the Joint Staff.

(S) Note: If the case is determined at this point as not appropriate for review by the Interagency Experts Group, the case shall be returned to the Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict for further action.

(S) The Interagency Experts Group consists of representatives from the Departments of Defense, State and Justice, and the Central Intelligence Agency, who are charged by their respective agencies with the review of cases involving the possible release or transfer of detainees. A representative of the Department of Defense shall chair the Interagency Experts Group.

(S) The Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall provide to the Interagency Experts Group all the pertinent DoD information relevant to their consideration of each case proposed for release or transfer.

(S) Representatives to the Interagency Experts Group will evaluate each case and recommend to their respective Deputies or, as appropriate, Principals, appropriate disposition of the detainee based on their assessment of the considerations in reference (A). As required, the case will be returned to the Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict for further action.

- (S) The Interagency Experts Group will evaluate cases based upon information in the packages and other information they may have developed on the cases. Specifically, the Interagency Experts Group will evaluate information pertaining to the (b)(1) [redacted] and the

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threat the detainee poses to the United States and US interests. The Interagency Experts Group will either develop the recommendations on disposition of the detainee for recommendation by Deputies (or Principals, as appropriate) or refer the case back to the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict for additional information.

- (S) Consistent with reference (A), the Interagency Experts Group also will assess and recommend appropriate conditions that should be applied to the release or transfer of a detainee.

(S) The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall ensure that a written copy of the decision of the Secretary of Defense or his designee on release or transfer in each instance is provided to DoD Correspondence Control Division and the Director of the Joint Staff for appropriate dissemination and implementation.

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## RESPONSIBILITIES

### Under Secretary of Defense for Policy

(S) Maintain oversight of the policy and guidelines for release or transfer of detainees to the control of a foreign government.

### Assistant Secretary of Defense for Special Operations and Low Intensity Conflict

(S) Responsible for overall development, coordination and promulgation of DoD policies and plans related to the possible release or transfer of persons detained in connection with the war on terrorism.

(S) Serve as the focal point for proposals for release or transfer of detainees and be responsible for forwarding the files to and informing other agencies of cases as appropriate.

- (S) Notify the Secretary of the Army, the General Counsel of the Department of Defense, and the Director of the Joint Staff of any request for release or transfer of a detainee to the control of a foreign government.
- (S) Notify the requesting agency of case status and actions pending when a case is proposed for consideration and when a case cannot be completed expeditiously.
- (S) Monitor progress of proposed cases for release or transfer and provide a case status report to the Secretary of the Army, the General Counsel of the Department of Defense, and the Director of the Joint Staff twice each month.

(S) Direct the Detainee Policy Group to support the administrative functions associated with the detainee release or transfer determination process.

(S) Provide an appropriate lead DoD representative to the Interagency Experts Group.

(S) Notify the Department of State, Office of War Crimes Investigations, of the detainee's location at the time the detainee is transferred to foreign government control or released.

(S) Take appropriate action when a case under consideration for transfer or release is returned by the Interagency Experts Group for further action.



Detainee Policy Group within the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict

(S) Review each detainee file to ensure all documentation on the following is included:

- (S) basic administrative data;
- (S) personnel and medical record;
- (S) summary of the detaining combatant commander's EC status review;
- (S) complete record of the results of intelligence interrogations, reports and summaries on the detainee and (b)(1) [redacted] (b)(1) [redacted]
- (S) record of criminal investigation interviews, reports and summaries on the detainee, and a statement assessing the sufficiency of the law enforcement investigation;
- (S) a legal opinion regarding the proposed recommended disposition of each case, including a review of any proposed actions by the receiving government pursuant to its laws;
- (S) an assessment of the threat the detainee poses to the United States or US interests;
- (S) a recommendation from the detaining combatant commander and/or (as appropriate) the Commander of the Criminal Investigation Task Force (or the DoD lead for criminal investigations for the region, when directed) regarding (b)(1) [redacted] any stipulations or conditions connected with such recommendation, and an assessment of any threat to the United States posed by the detainee;
- (S) a report of detainee conduct from the detaining combatant commander; and
- (S) any available assessments made by the Departments of Defense, State and Justice, and the Central Intelligence Agency, of the applicable foreign government's willingness and capability, including under its domestic legal system, to meet the conditions of any potential transfer.

(S) Ensure each file is consistent with current policy guidance.

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(S) Make detainee files expeditiously available to the Interagency Experts Group and no later than five working days before the group convenes, if a meeting is scheduled to consider a particular case or group of cases, unless this requirement cannot be met due to extraordinary circumstances. In that case, detainee files should be provided to the group as far in advance of its meeting as possible.

(S) Establish the procedures and agenda for the Interagency Experts Group meetings.

(S) Compile and maintain the records of deliberations by the Interagency Experts Group, record decisions, and prepare the final recommendation to the Deputy Secretary of Defense or Secretary of Defense, as appropriate.

(S) Maintain records of Deputies' and/or Principals' recommendations and the decision of the Secretary of Defense or his designee in each case and promulgate as appropriate.

(S) Create a compendium of all records relating to assessments of the detainees' ongoing threat to the United States and US interests.

(S) Maintain a record of any foreign government request for release or transfer, and notify the Interagency Experts Group of the pending request when the file is forwarded for consideration.

(S) Take action as requested by the Interagency Experts Group when a case under consideration for release or transfer is returned for further action.

#### **Assistant Secretary of Defense for Public Affairs**

(U) Monitor the public affairs aspects of potential and actual detainee transfers or releases, provide public affairs policy guidance as appropriate in coordination with the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict and the General Counsel of the Department of Defense, and provide coordination of public affairs matters with other Federal Departments and Agencies as appropriate.

#### **General Counsel of the Department of Defense**

(S) Review and advise on all legal matters associated with possible release (including under conditional release or other agreements) or transfer of detainees, including with respect to the drafting and approval of international agreements, and the assessment of matters relating to criminal investigations and prosecutions of detainees.

### Director of the Joint Staff

- (S) Ensure appropriate coordination with combatant commanders and Services on matters affecting detainee release or transfer. Such coordination, where possible, will include notification to both the detaining combatant commander and the combatant commander into whose area of responsibility a detainee is to be transferred or released.
- (S) Notify the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict when requests for release or transfer of a detainee are made before interrogations, interviews and investigations are complete and advise when/if the case can be prepared for release or transfer consideration.
- (S) Forward combatant commanders' recommendations on detainee release (including under a conditional release or other agreement) or transfer to the Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict for processing with any supplementary materials and recommendations.

### Combatant Commanders

- (S) Consistent with reference (A) and when authorized to conduct operations in the war on terrorism that may result in the detention of personnel, compile relevant information concerning detainees under their control whom they intend to propose for release (including under a conditional release or other agreement) or transfer to the control of a foreign government, and ensure, as appropriate, that the status of each detainee under their control is reassessed on an annual basis.

### Secretary of the Army

- (S) Notify the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict when he receives requests for release or transfer of a detainee before (b)(1) complete and advise when/if the case can be prepared for consideration for release (including under a conditional release or other agreement) or transfer.
- (S) Provide the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict a review and recommendation of cases to be considered for release or transfer.

**Commander of the Criminal Investigation Task Force or DoD lead for criminal investigations for the region, when directed by Secretary of Defense**

(S) Provide detainee information related to criminal investigations, as appropriate, for review by the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, the General Counsel of the Department of Defense, the Director of the Joint Staff, and the Interagency Experts Group.

**Interagency Experts Group**

(S) Provide any relevant information to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict bearing on a determination whether a detainee should continue to be detained as an EC and whether a detainee should be released or transferred.

(S) Evaluate each case of proposed transfer or release in accordance with the applicable policy guidance and make recommendations to the Deputies or Principals as appropriate. Each agency represented will make a recommendation to its respective Deputy or Principal and provide recommendations for appropriate conditions, if any, for release or transfer.

(S) Return to the Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict any case that requires further action before considering the detainee for release or transfer, or any cases of detainees posing a continued threat to the United States or US interests.

**National Detainee Reporting Center**

(U) When directed by the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, provide information on release or transfer of detainees as appropriate to the International Committee of the Red Cross.

**EXECUTION OF TRANSFER**

(S) The US Government will facilitate air movement of detainees to approved foreign governments. Movement of detainees to appropriate destinations will be by groups whenever possible. The Department of Defense or other agencies, as appropriate, will provide in-transit security for detainees being transferred on US Government aircraft. Except in extraordinary circumstances, aircraft transferring detainees will not stop in the United States or US territories.

(S) DoD shall maintain control and accountability of detainees until they are transferred to the designated foreign government.

(S) The manifest for flights transporting detainees for release or transfer shall identify, at a minimum, the following information on each detainee:

- (S) name;
- (S) internment serial number (ISN);
- (S) nationality; and
- (S) physical and mental condition.

(S) The manifest shall be used as an official receipt of release or transfer. U.S. Transportation Command shall provide the National Detainee Reporting Center a copy of the manifest.

(S) The detaining combatant commander responsible for detention prior to detainee movement for release or transfer shall:

- (S) ensure all detainees are medically screened for flight and transfer. Sick, wounded, or infirm detainees will not be transferred until certified "fit for movement" by competent medical authorities;
- (S) ensure copies of the detainee's medical records accompany him when he is transferred or released.

(S) Unless otherwise provided (e.g., through a reimbursement agreement with the receiving government), the Department of Defense shall fund the activities necessary for Department of Defense to effect the release or transfer of detainees to the control of another government.

(S) The personal effects and property of detainees approved for release or transfer shall be moved with the detainee. Appropriate US Government officials will retain effects offering continued intelligence or law enforcement value (or otherwise determined necessary for retention), or transfer them to the appropriate foreign government authority.

(S) Detainees shall be transferred under security conditions deemed appropriate by the transferring and receiving combatant commanders until released/transferred to other authority. Detainees shall be provided a copy of the conditional release agreement or other such agreement that they sign prior to their release or transfer.

ANNEX A

[Outline of required information on a detainee whose release or transfer to the control of a foreign government is under consideration by the Interagency Experts Group]

EXECUTIVE SUMMARY FOR [NAME/PHOTO]:

1. Personal Information:

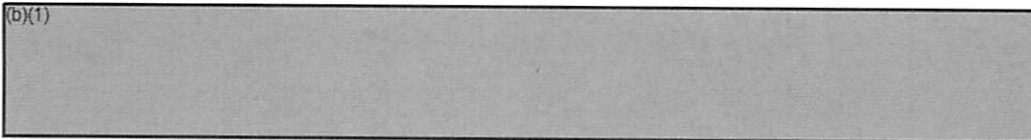
- a. Internment Serial Number:
- b. Citizenship:
- c. Date Of Birth:
- d. Medical/Psychiatric Records:
- e. Personnel Record:

2. Detention Information:

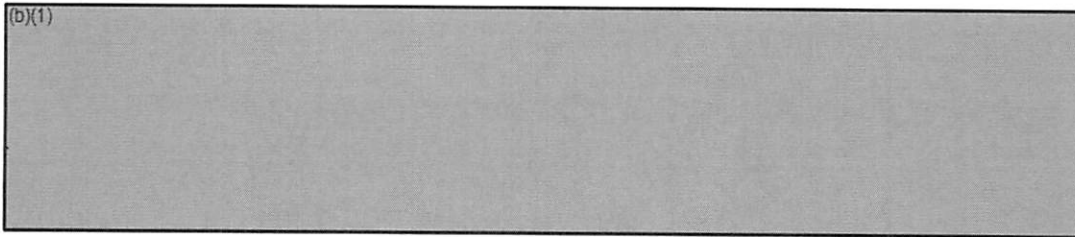
- a. Circumstances and place of capture:
- b. Basis for screening in detainee:
- c. Summary of conduct while in detention:
- d. Summary of intelligence interrogations and reports:
- e. Summary of law enforcement interviews and reports:

3. Assessments and Recommendations:

- a. EC status assessment.

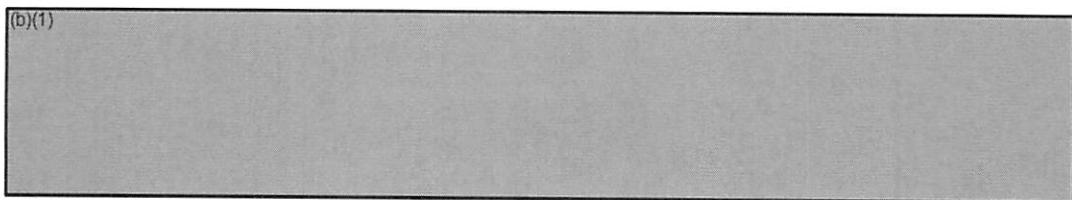
(b)(1)  


(b)(1)



d. Combatant commander's and the Commander of the Criminal Investigation Task Force (or DoD lead for criminal investigations for the region) recommendation based on an assessment of the threat the detainee poses to the United States or to US interests (supporting documentation appended).

(b)(1)

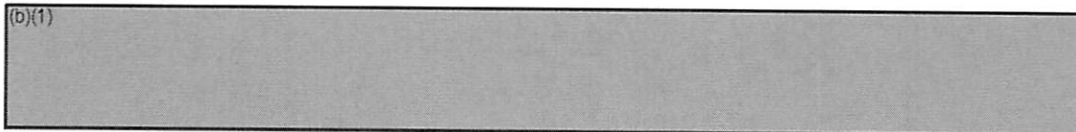


4. Conclusions:

a. Whether the proposed release or transfer will constitute a threat to the United States or US interests.

b. Whether continued detention of this individual is required for a US criminal investigation or prosecution.

(b)(1)



d. Legal basis to support the transfer or release (including conditional release).

(b)(1)

