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

SUBJECT: Policy Guidance on Department of Defense Detention Operations in Iraq (U)

(U) In accordance with U.S. law, the U.S. Armed Forces are operating within the Multi-National Force-Iraq (MNF-I) to contribute to the maintenance of security and stability in Iraq. MNF-I operations include the temporary detention of persons where necessary for imperative reasons of security.

(U) Detention operations will be conducted in accordance with UN Security Council Resolution 1546 (UNSCR 1546), MNF-I standing operating procedures and policies, CPA Memoranda No. 2 and No. 3 (Revised), and applicable international law to ensure humane treatment of all detainees and to ensure that all detainees are released or repatriated, or transferred to Iraqi control (for release or prosecution), at the earliest opportunity consistent with the security requirements of the MNF-I and the safety of the Iraqi people.

(U) Implementing guidance to this policy is attached. Neither this policy guidance nor the implementing guidance applies to members of the MEK located at Camp Ashraf.

(U) As the Iraqi Transitional Government reaches the end of the political process set forth in UNSCR 1546, Commander, U.S. Central Command shall determine if additional guidance is required and make appropriate requests to the Under Secretary of Defense for Policy, through the Director, Joint Staff.

Attachment: As Stated

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Implementing Guidance for the Conduct of Department of Defense Detention Operations
in the Iraqi Theater of Operations

1. (U) This implementing guidance supersedes the following documents:
 - April 2003 Secretary of Defense-approved DoD Policy Guidance No. 12, *Implementing Guidance Related to Release or Repatriation of Enemy Prisoners of War and other Detainees in Iraq (CJCS302215ZAPR03 Message)*;
 - May 2003 Secretary of Defense-approved DoD Policy Guidance No. 15, *Implementing Guidance Related to Persons on the Gray List (CJCS121705MAY03 Message)*;
 - August 25, 2003 Deputy Secretary of Defense-approved *Policy on Release, and Parole, Transfer and Immunity for Black Listed Iraqis in DOD Control*.

2. (U) In accordance with guidance provided by the Department of Defense, and in coordination with other U.S. Government agencies, Commander, U.S. Central Command (USCENTCOM) shall develop and execute plans and policies to transition DoD detention operations to the Iraqi Government as rapidly as practicable, in coordination with U.S. Embassy Baghdad and the Iraqi Government.

3. (U) All persons, including DoD contractor personnel, participating in DoD detention operations, including interrogations, shall be bound by this policy guidance and all other applicable laws, policies, and procedures.

4. (U) References:
 - Geneva Convention III Relative to the Treatment of Prisoners of War, August 12, 1949;
 - Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, August 12, 1949;
 - UN Security Council Resolution 1546;
 - DoD Directive 2310.1, DoD Enemy POW Detainee Program;
 - DoD Directive 5100.77, DoD Law of War Program;
 - Army Regulation 190-8;
 - Coalition Provisional Authority Memoranda No. 2 and No. 3 (Revised);
 - February 2004 *Global Screening Criteria Guidance*;
 - MOU for Custodial Support to Detainees between MNF-I and Iraqi Minister of Justice; and
 - National Security Presidential Directive 37, *United States Assistance to the Iraqi Special Tribunal*.

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Legal Authority

- 5. (U) UN Security Council Resolution (UNSCR) 1546 (2004) and annexed letters from the U.S. Secretary of State and former Iraqi Prime Minister Allawi authorize MNF-I, including U.S. forces within MNF-I, to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including "internment where this is necessary for imperative reasons of security."
 - 6. (U) UNSCR 1546 authorizes the continued detention of persons detained before June 28, 2004, if such detention continues to be necessary for imperative reasons of security.
 - 7. (U) The authority of U.S. forces within the MNF-I also includes the authority to detain persons alleged to have committed criminal acts under procedures recognized and set forth in Coalition Provisional Authority Memorandum No. 3 (Revised), which, pursuant to the Transitional Administrative Law, is part of Iraqi domestic law.
- 8. (U) In accordance with Geneva Convention III Relative to the Treatment of Prisoners of War, August 12, 1949 (GPW), U.S. forces may capture and detain enemy prisoners of war until the cessation of active hostilities. In accordance with Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (GC), U.S. forces may continue to detain protected persons until the close of hostilities.
 - 9. (U) The continued authority for the detention of enemy prisoners of war and protected persons by U.S. forces is unaffected by the June 28, 2004 transition of governance authority to the Iraqi Interim Government and the subsequent transfer to the Iraqi Transitional Government. U.S. forces are also authorized to detain persons suspected of crimes against humanity and serious violations of the law of war, including grave breaches of the Geneva Conventions, pursuant to Art. 129 of GPW and Art. 146 of GC.
- 10. (U) The customary law of armed conflict is an additional legal basis for detention of enemy combatants until the cessation of hostilities.

Principles of Detention Operations

- 11. (U) The following principles should be used as guidance in planning and executing DoD detention operations in Iraq:

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(U) General Principles for Detention:

- 12. (U) U.S. forces may detain a person if there are reasonable grounds to believe he or she poses a threat to security or stability in Iraq. "Reasonable grounds" consist of sufficient indicators to lead a reasonable person to believe that detention is necessary for imperative reasons of security, e.g., that the person poses a threat to MNF-I or Iraqi security forces, or to the safety of civilians in Iraq, or that the person otherwise poses a threat to security or stability in Iraq.
- 13. (U) Detention decisions will be made on a case-by-case basis, considering the circumstances of each person's case. MNF-I shall conduct periodic reviews of each detainee's status to determine if there remain reasonable grounds for continued detention; if not, the detainee will be released, conditionally released, repatriated, or transferred to Iraqi Government control, as appropriate.
- 14. (U) No one will be detained without proper cause. The fact that a person may have intelligence value, by itself, is not a basis for detention. Detention must be linked to a security threat as determined by the Combatant Commander, or his designee.
- 15. (U) CPA Memorandum No. 3 (Revised) authorizes the U.S. contingent of MNF-I to apprehend persons suspected of having committed criminal acts and who are not considered security internees. Such persons shall be handed over to Iraqi authorities as soon as practicable, but the U.S. contingent of MNF-I may retain physical control of them at the request of appropriate Iraqi authorities for security or capacity reasons.
 - 16. (U) Detainees placed under the physical control of the U.S. contingent of MNF-I pursuant to the June 2004 Memorandum of Understanding (MOU) between the U.S. contingent of MNF-I and the Iraqi Ministry of Justice will be under the legal control of the Iraqi government.

(U) Treatment of Detainees:

- 17. (U) U.S. Armed Forces shall treat all detainees humanely. In addition, persons qualifying as prisoners of war will receive protections under GPW, and persons detained before June 28, 2004, who meet the requirements for "protected person" status, will receive protections under GC. It is DoD policy that persons detained after June 28, 2004, will be treated in accordance with U.S. obligations under the laws of war and the principles of the Geneva Conventions.
- 18. (U) Persons held in DoD control on behalf of the Iraqi Government will be treated humanely and consistent with the standards set out in CPA Memorandum No.

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3 (Revised), and the June 2004 MOU between the U.S. contingent of the MNF-I and the Iraqi Ministry of Justice, as applicable.

- 19. (U) U.S. Armed Forces will operate detention facilities in a manner that ensures humane treatment and that provides appropriate access to detainees (e.g., by International Committee of the Red Cross (ICRC), family, Iraqi ministries) unless reasons of imperative military necessity require that such access be temporarily restricted.
- 20. (U) Detainees shall be registered in accordance with applicable policies and guidance.

Guidelines for Detention Operations

- 21. (U) Commander, USCENTCOM, or his designee, is the approval authority relating to detainees in DoD legal control for decisions affecting parole, grants of immunity, release, conditional release, repatriation (to country of origin when appropriate) and transfer (to Iraqi control). Commander, USCENTCOM may not delegate this authority for decisions concerning DIA Black List Detainees numbered 1-55 and anyone else suspected of war crimes and atrocities; for all other DIA Black List detainees (i.e., those numbered 56 and above), Commander, USCENTCOM may delegate this authority only to Commander, Multi-National Forces-Iraq (MNF-I).
 - 22. (U) Neither Commander, USCENTCOM, nor Commander, MNF-I, may grant immunity for offenses subject to prosecution in the Iraqi Special Tribunal or where a warrant has been issued for a detainee that alleges he or she committed an offense under Iraqi criminal law.
 - 23. (U) Commander, USCENTCOM shall create procedures and publish guidance governing the detention of persons for imperative reasons of security, and governing the continued detention of those persons detained pursuant to GPW, or pursuant to GC before June 28, 2004. Commander, USCENTCOM may delegate this responsibility only to Commander, Multi-National Forces-Iraq (MNF-I).
 - 24. (U) Those procedures and guidance shall provide for the timely review of all such detentions. An initial review shall take place shortly after DoD forces detain a person. The review process will provide for the prompt release, repatriation (to country of origin when applicable law of war requirements or Geneva Convention principles are met or, as applicable, when the provisions of Iraqi law so permit), or transfer to Iraqi control of detainees, as appropriate, whose detention is no longer justified under the legal authorities cited in paragraphs 5-10 above.

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- o 25. (U) Those procedures and guidance shall provide for a further review of a detainee's situation at least every six months to determine whether there is a continuing need to detain such a person.
- o 26. (U) The procedures and guidance issued by Commander, USCENTCOM or Commander, MNF-I shall provide for appropriate Iraqi Government participation in decision-making processes.

(U) Third Countries and their Detained Nationals:

- 27. (U) Treatment of third country national (TCN) detainees shall be in accordance with the legal authorities and principles cited in paragraphs 5-10 above.
- 28. ~~(FOUO)~~ Third country (i.e., not Iraq or the United States) requests to take control of a detainee that MNF-I is holding shall be referred to U.S. Embassy Baghdad for processing, and be coordinated with the Iraqi Government, as set forth in paragraphs 30-36 below.
- 29. ~~(FOUO)~~ Commander, USCENTCOM shall create procedures and publish guidance on how MNF-I will manage transfer requests.
- 30. ~~(FOUO)~~ Except as provided in paragraph 35, Commander, USCENTCOM is the approval authority for decisions to transfer a detainee to a third country. Commander, USCENTCOM may not delegate this authority.
- 31. ~~(FOUO)~~ Decisions to transfer a detainee to a third country will be coordinated with U.S. Embassy Baghdad and the Iraqi Government according to the guidance in paragraphs 32-36 below.
 - o 32. ~~(FOUO)~~ With respect to TCN security internees, where practicable, Commander, USCENTCOM should work with U.S. Embassy Baghdad and the Iraqi Government so that the Iraqi Government takes legal control of a detainee whom a third country has requested to be transferred to its control. The Iraqi Government and the third country would then execute the transfer according to applicable procedures and treaties between the two countries, e.g., extradition treaty.
 - o 33. ~~(FOUO)~~ With respect to TCNs determined to be prisoners of war, or protected persons who were detained before June 28, 2004, and who have not yet been released to the legal control of the Iraqi government, decisions concerning transfer to their country of origin or to a third country will be made by Commander, USCENTCOM in accordance with the requirements of GPW and GC. Commander, USCENTCOM shall consult with U.S. Embassy

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Baghdad and the Iraqi Government before conducting any transfer. All discussions with the country of origin or third country shall take place through U.S. Embassy Baghdad.

- o 34. ~~(S)~~ With respect to TCN security internees whose detention began on or after June 28, 2004, decisions concerning transfers to their country of origin or to a third country will be made by Commander, USCENTCOM, in accordance with the principles of GC, including the need to obtain appropriate assurances related to such transfers. U.S. Embassy Baghdad and the Iraqi Government must approve any transfer before Commander USCENTCOM authorizes a transfer. All discussions with the country of origin or third country shall take place through U.S. Embassy Baghdad.
- o 35. ~~(S)~~ With respect to TCNs whom Commander, USCENTCOM, or his designee, has determined are not prisoners of war or protected persons and whom MNF-I is holding as criminal detainees in accordance with Memorandum No. 3 (revised) and the June 2004 MOU, as applicable, the Iraqi Government shall make decisions concerning their transfers to their country of origin or to a third country. Commander, USCENTCOM shall not transfer such detainees directly to their country of origin or to a third country.
- o 36. ~~(S)~~ Commander, USCENTCOM shall notify the Under Secretary of Defense for Policy, through the Director, Joint Staff, of any impending transfers (physical or legal) at least five days before the transfer.

• (U) Defense Intelligence Agency (DIA) Black List:

- 37. (U) The procedures and guidance developed by Commander, USCENTCOM or Commander, MNF-I shall include procedures to review the status of detainees who are on the DIA's Black List.
- 38. ~~(S)~~ Detention decisions involving DIA Black List detainees shall meet the same criteria as for other detainees and be in accordance with the approval authorities listed in paragraph 21 above. However, Commander, USCENTCOM or Commander, MNF-I, as appropriate, shall consult with other U.S. Government departments and agencies before making any parole, transfer, release, or conditional release decision. Such consultations shall include the

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Commander, USCENTCOM shall notify the Under Secretary of Defense for Policy, through the Director, Joint Staff, of any impending DIA Black List detainee parole, transfer (physical or legal), release or

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conditional release decision at least five days before the parole, transfer, release or conditional release.

- 39. ~~(S)~~ Commander, USCENTCOM shall monitor all decisions concerning DIA Black List detainees or anyone suspected of war crimes or atrocities to ensure that their releases or transfers are conducted in a timely manner. If such a detainee is not released or transferred to Iraqi Government control within 60 days of approval, Commander, USCENTCOM will notify the Under Secretary of Defense for Policy, through the Director, Joint Staff, of the reasons for continued detention.

(U) Detainees Suspected of War Crimes or Atrocities:

- 40. (U) National Security Presidential Directive 37, *United States Assistance to the Iraqi Special Tribunal*, dated May 13, 2004, reaffirms that a key element in Iraq's establishment of democratic self-government is the investigation and prosecution of members of the former Iraqi regime and the Iraqi Ba'ath Party for crimes within the jurisdiction of the Iraqi Special Tribunal (IST).
- 41. (U) Where there is a credible suspicion that a detainee has committed a serious violation of the law of war or a crime against humanity, Commander, MNF-I should continue to detain this person, independent of any determination as to whether he or she poses a threat to the security of MNF-I or the Iraqi people. MNF-I may continue to detain such persons until a determination is made regarding in which forum such persons may be prosecuted. Although MNF-I does not detain persons who are solely material witnesses, Commander, MNF-I should encourage such persons to remain available to investigators after being released.
- 42. (U) If the person is suspected of having committed a war crime against U.S. or MNF-I personnel, the matter should be referred to Commander, USCENTCOM and the Secretary of the Army for appropriate action under DoD Directive 5100.77, *DoD Law of War Program*. If the suspected offense(s) do not involve U.S. or MNF-I personnel, CDR MNF-I should refer the matter to Chief of Mission, U.S. Embassy Baghdad for a decision or appropriate action and notify the Under Secretary of Defense for Policy through the Director, Joint Staff.

(U) Criminals:

- 43. (U) As noted above in paragraphs 7 and 15, consistent with CPA Memorandum No. 3 (Revised), which, pursuant to the Transitional Administrative Law ("TAL"), is a part of Iraqi domestic law, MNF-I may detain persons suspected of having committed criminal acts that violate Iraqi law. Commander, MNF-I shall transfer those persons to Iraqi authorities as soon as practicable.

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- 44. (U) Those detainees suspected by MNF-I to have committed a crime under Iraqi law may be transferred to Iraqi control on presentation of an arrest warrant or other charging document or, in accordance with Iraqi law and paragraphs 30-36 above, they may be transferred to a third country for prosecution.
- 45. (U) Criminals held by MNF-I in accordance with the June 2004 MOU between the U.S. contingent of the MNF-I and the Iraqi Ministry of Justice shall be afforded the due process provided in the June 2004 MOU and in CPA Memorandum No. 3 (Revised).

~~(S)~~ Enemy Combatants in the War on Terrorism

- 46. ~~(S)~~ The Department of Defense recognizes that forces reporting to Commander, USCENTCOM may detain persons who may be classified as enemy combatants in the war on terrorism (as defined in the Deputy Secretary's *Global Screening Criteria for Detainees*, approved February 20, 2004).
- 47. ~~(S)~~ If Commander, USCENTCOM determines that a detained person may be an enemy combatant in the war on terrorism, Commander, USCENTCOM shall notify the [REDACTED]

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~~(S)~~ United States Citizens

- 48. ~~(S)~~ In the event forces reporting to Commander, USCENTCOM in the Iraq theater of operations capture and detain a person who is a U.S. citizen, or claims to have been born in, or to be a national or a resident alien (i.e., Green-card holder) of the United States, (including all dual U.S. citizens), regardless of such person's other nationalities or citizenship, Commander, USCENTCOM shall process that person in accordance with the Deputy Secretary's *Global Screening Criteria for Detainees* and the *Guidance on Detention of a U.S. Citizen in Iraq at Annex A*.
 - 49. ~~(S)~~ Commander, USCENTCOM shall notify immediately the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, and the Chief of Mission, U.S. Embassy Baghdad of such captures and detentions.
 - 50. ~~(S)~~ Information responsive to the guidance in Annex A shall be provided to the Secretary of Defense within 30 days of capture or of DoD forces taking control of the person, as operational conditions permit.
 - 51. ~~(S)~~ Commander, USCENTCOM may authorize release of such a person in accordance with the guidance contained in Annex A.

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Annex A to Iraq Detention Policy Guidance

Guidance on Detention of a U.S. Citizen in Iraq ~~(FOUO)~~

- ~~(FOUO)~~ The following guidance is provided for cases involving an apparent U.S. citizen, or an individual claiming to have been born in, or to be a national or a resident alien of, the United States (i.e., including all dual U.S. citizens), regardless of other nationalities or citizenship he or she may have, detained in the conflict in Iraq:
 - ~~(FOUO)~~ Continue to process this detainee as a security internee in Iraq under existing MNF-I procedures, including timely notification to the International Committee of the Red Cross (ICRC).
 - ~~(FOUO)~~ Determine if reasons of imperative military necessity require limiting ICRC access to this detainee as an exceptional and temporary measure. If you determine that limiting access is appropriate, notify the Under Secretary of Defense for Policy, through the Director, Joint Staff.
 - ~~(FOUO)~~ Convene a board using procedures consistent with Army Regulation 190-8, Section 1-6 (Tribunals) to determine this detainee's status as a person detained in the conflict in Iraq. In addition, using the same board, and consistent with "Global Screening Criteria for Detainees" determine if this detainee is an enemy combatant in the war on terrorism, applying the following definition:
 - ~~(FOUO)~~ An enemy combatant in the war on terrorism for purposes of this determination shall mean an individual who is 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.
 - ~~(FOUO)~~ Based upon the board's determination, use the appropriate guidance below to determine if the detainee may be released or should be detained pending further guidance.
 - ~~(FOUO)~~ Regardless of the board's determination, immediately upon its completion forward a copy of the findings of the board with supporting documentation to the Under Secretary of Defense for Policy, through the Director, Joint Staff.

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Guidance if the Board Recommends Continued Detention

- o ~~(S)~~ If the board determines that this detainee (a) should be detained in Iraq for imperative reasons of security in accordance with UN Security Council Resolution 1546 or (b) is an enemy combatant in the war on terrorism, further guidance will be provided by the Under Secretary of Defense for Policy, through the Director, Joint Staff.
- o ~~(S)~~ Provide an intelligence assessment of this detainee to the Under Secretary of Defense for Intelligence, through the Director, Joint Staff, including your assessment of the detainee's tactical and strategic intelligence value.
- o ~~(S)~~ Provide a detailed description of the intelligence, circumstances, and reasons for initial detention. Specifically, please provide detailed information on what led to the initial suspicions of this individual, the circumstances of initial capture and detention, and the results of any in-theater investigations that bear on his or her continued detention.
- o ~~(S)~~ Provide all relevant information and a detailed description concerning participation of other U.S. agencies in the capture, detention, and interrogation of this detainee. In addition, where available, provide a preliminary report of their intentions for future disposition.
- o ~~(S)~~ Identify a point of contact at USCENTCOM to provide further information regarding this detainee and all aspects of his detention, as necessary. The DoD point of contact is the Deputy Assistant Secretary of Defense for Detainee Affairs within the Office of the Under Secretary of Defense for Policy.
- o ~~(S)~~ Provide your assessment of when information concerning this detainee may be disclosed publicly without compromising ongoing military operations.
- o ~~(S)~~ Provide your assessment of the willingness and ability of the Iraqi Transitional Government (ITG) to request transfer of this detainee for possible criminal prosecution and its capacity to detain the person properly.
- o ~~(S)~~ Further guidance will be provided following an assessment of the intelligence information you provide, and consultation with other USG agencies as appropriate.

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Guidance if the Board Recommends Release

- ~~(S)~~ If the board determines that this detainee: (a) should not be detained in Iraq for imperative reasons of security in accordance with UN Security Council Resolution 1546, and (b) is not an enemy combatant, Commander, USCENTCOM, or his designee is authorized to release this detainee.
- ~~(S)~~ If Commander, USCENTCOM, or his designee determines that U.S. Embassy in Baghdad and State Department assistance is required for safely releasing this detainee, Commander, USCENTCOM or his designee should contact U.S. Embassy Baghdad to enlist its assistance as needed.
- ~~(S)~~ Commander, USCENTCOM, or his designee, shall notify the Under Secretary of Defense for Policy, through the Director, Joint Staff, of any release of a detainee.

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