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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.

(S) The attached guidance establishes a framework for review of detentions by U.S. Forces operating under Operation Enduring Freedom authority and establishes transfer and release authority for different categories of detainees. The guidance draws on lessons learned from reconciliation and reintegration programs in Iraq and changes the focus of the review from screening for the purpose of transfers to GTMO to supporting counter-insurgency operations. The guidance does not entirely displace the 2004 GSC, but it does supersede aspects of it, including the definition of unlawful enemy combatants. Where the attached policy guidance conflicts with the 2004 GSC, this guidance prevails. Specifically, the policy guidance prescribes revised detention criteria and replaces high-level/low-level enemy combatant distinctions with a determination of whether or not a detainee should be classified as an Enduring Security Threat. Pursuant to Executive Order 13493, the Department of Defense is participating in an interagency review of detention policy related to the conflict in Afghanistan and to counter-terrorism operations generally. (b)(5)

Attachment: As Stated

Derived from Multiple Sources  
Declassify on June 4, 2019

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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:

- (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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### *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).

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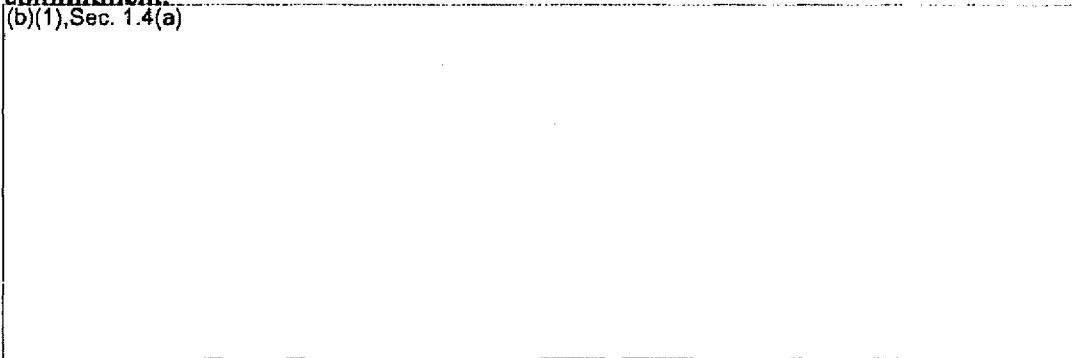
**Detainee Threat Assessment Criteria and Transfer and Release Authority at  
Bagram Theater Internment Facility (BTIF), Afghanistan (U)**

*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).

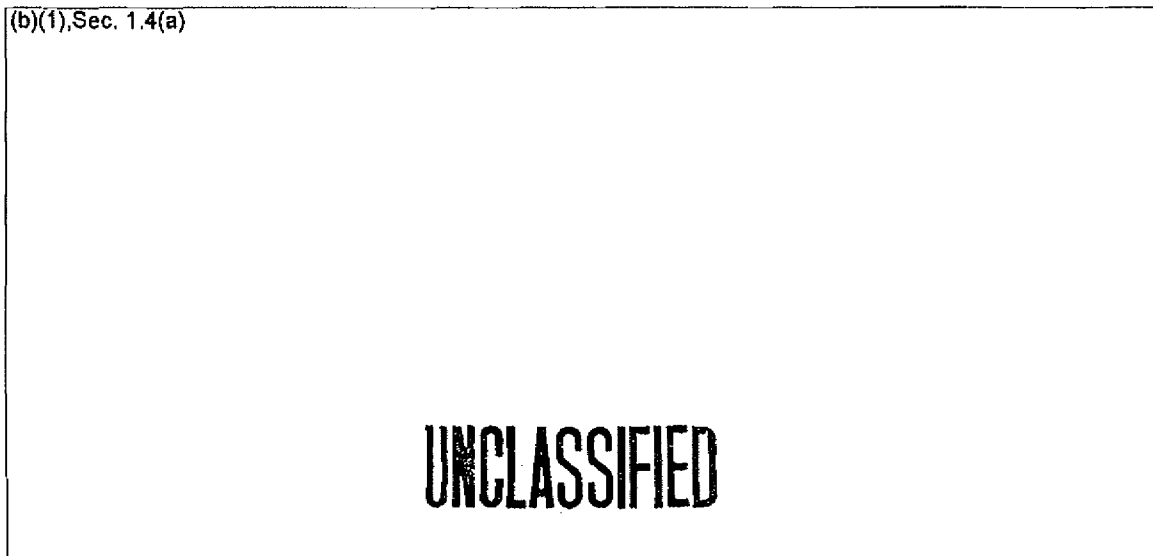
- ~~(S)~~ An “Enduring Security Threat” is an individual who, assessed by capability and commitment.

(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)



(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.

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