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DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

JAN 12 2005

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR POLICY
COMMANDER, U.S. CENTRAL COMMAND
COMMANDER, U.S. EUROPEAN COMMAND
COMMANDER, U.S. PACIFIC COMMAND
COMMANDER, U.S. SOUTHERN COMMAND
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND
ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL
OPERATIONS AND LOW INTENSITY CONFLICT
ASSISTANT SECRETARY OF DEFENSE FOR
HEALTH AFFAIRS
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE

SUBJECT: Policy Statement and Guidelines on Body Cavity Searches and
Exams for Detainees Under DoD Control

Body cavity exams for detainees under DoD control shall be conducted in accordance with the attached policy guidance. Please ensure that this guidance is distributed within your organization. The Joint Staff is responsible for implementing this policy.

A handwritten signature in black ink, appearing to read "Paul Wolfowitz".

Attachment:
As stated

OSD 18742-04

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Bagram CENTCOM 304

**Policy Statement and Guidelines on Body Cavity Searches and Exams
of Detainees in DoD Control.**

The United States has a significant and legitimate interest in performing appropriate security searches and medical exams that address the safety, health, and security concerns of DoD personnel and detainees under DoD control. However, the use of body cavity exams and searches may conflict with the customs of some detainees. Therefore, effective immediately, the following guidelines are in effect:

- Do not perform routine detainee body cavity exams or searches (to include hernia exams).
- Body cavity exams may be performed for valid medical reasons with the verbal consent of the patient. However, these exams should not be performed as part of a routine medical intake exam.
- Body cavity searches are to be conducted only when there is a reasonable belief that the detainee is concealing an item that presents a security risk.
- To the extent possible and consistent with military necessity, a body cavity exam or search, whether conducted for medical or security reasons, should be conducted by personnel of the same gender as that of the detainee being searched.
- All body cavity exams and searches will be conducted in a manner that respects the person.
- The first general officer in the chain of command shall be the approval authority for body cavity searches (other than those performed for valid medical reasons).
- For the purposes of this policy, a detainee is a person under the control of the Department of Defense as a result of armed conflict, including the global war on terrorism, and includes enemy combatants, enemy prisoners of war, and civilian internees.

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PRIORITY

AMHS
Communications Center

USER: KELSOECL

TOR: 2/2/2005 9:45:15 PM

Prec: P
DTG: 022136Z Feb 05

From: DOD, CENTCOM, ORGANIZATIONS, USCENCOM JOINT SECURITY(MC)
Subj: FWD: Policy Statement and Guidelines for Body Cavity Searches and Exams for Detainees in DoD Control

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Classification: UNCLASSIFIED

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SUBJ/POLICY STATEMENT AND GUIDELINES FOR BODY CAVITY

/SEARCHES AND EXAMS FOR DETAINEES IN DOD CONTROL//

REF/A/LTR/DEPSECDEF/YMD:20050112//

POC/(b)(6) LTCOL/CALLSIGN:(b)(2) /PENTAGON

/EMAIL:(b)(2) JS.PENTAGON.SMIL.MIL//

GENTEXT/REMARKS/THE UNITED STATES HAS A SIGNIFICANT AND LEGITIMATE INTEREST IN PERFORMING APPROPRIATE SECURITY SEARCHES AND MEDICAL EXAMS THAT ADDRESS THE SAFETY, HEALTH, AND SECURITY CONCERNS OF DOD PERSONNEL AND DETAINEES UNDER DOD CONTROL. HOWEVER, THE USE OF BODY

CAVITY EXAMS AND SEARCHES MAY CONFLICT WITH THE CUSTOMS OF SOME DETAINEES. THEREFORE, EFFECTIVE IMMEDIATELY, THE FOLLOWING GUIDELINES ARE IN EFFECT:

- (A) DO NOT PERFORM ROUTINE DETAINEE BODY CAVITY EXAMS OR SEARCHES (TO INCLUDE HERNIA EXAMS).
- (B) BODY CAVITY EXAMS MAY BE PERFORMED FOR VALID MEDICAL REASONS WITH THE VERBAL CONSENT OF THE PATIENT. HOWEVER, THESE EXAMS SHOULD NOT BE PERFORMED AS PART OF A ROUTINE MEDICAL INTAKE EXAM.
- (C) BODY CAVITY SEARCHES ARE TO BE CONDUCTED ONLY WHEN THERE IS A REASONABLE BELIEF THAT THE DETAINEE IS CONCEALING AN ITEM THAT PRESENTS A SECURITY RISK.
- (D) TO THE EXTENT POSSIBLE AND CONSISTENT WITH MILITARY NECESSITY, A BODY CAVITY EXAM OR SEARCH, WHETHER CONDUCTED FOR MEDICAL OR SECURITY REASONS, SHOULD BE CONDUCTED BY PERSONNEL OF THE SAME GENDER AS THAT OF THE DETAINEE BEING SEARCHED.
- (E) ALL BODY CAVITY EXAMS AND SEARCHES WILL BE CONDUCTED IN A MANNER THAT RESPECTS THE PERSON.
- (F) THE FIRST GENERAL OFFICER IN THE CHAIN OF COMMAND SHALL BE THE APPROVAL AUTHORITY FOR BODY CAVITY SEARCHES (OTHER THAN THOSE PERFORMED FOR VALID MEDICAL REASONS).
- (G) FOR THE PURPOSE OF THIS POLICY, A DETAINEE IS A PERSON UNDER THE CONTROL OF THE DEPARTMENT OF DEFENSE AS A RESULT OF ARMED

CONFLICT, INCLUDING THE GLOBAL WAR ON TERRORISM, AND INCLUDES ENEMY COMBATANTS, ENEMY PRISONERS OF WAR, AND CIVILIAN INTERNEES.//

TO Addressees

- (OR1) HHQL4, GWSARCENT, 3A CMD GRP
- (DN1) DOD, ARMY, ORGANIZATIONS, USATHIRD, 3A CMD GRP(SC)
- (OR2) HEFL21, ARCENT INTEL FT MCPHERSON GA
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- (OR3) NVZR1, CDR COMUSMARCENT(MC)
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- (OR7) XNLA3, MARCENTKUSC
- (DN7) DOD, ARMY, ORGANIZATIONS, MARCENT ARIFJAN KWT, MARCENT-KU(SC)
- (OR8) IRAQ, MNFIRAQCGSC
- (DN8) DOD, ARMY, DEPLOYED, MNF IRAQ, MNF IRAQ CG(SC)
- (OR9) MNFIRAQDETAINEEOPS
- (DN9) DOD, ARMY, DEPLOYED, MNF IRAQ, MNF IRAQ DETAINEE OPS(MC)
- (OR10) HEFL21, TASK FORCE OMAHA
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- (OR11) NVZR1, CDR SOCCENT(MC)
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- (DN13) DOD, AUTODIN PLAS, CE-CS, COMUSNAVCENT
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DEPUTY SECRETARY OF DEFENSE
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FEB 19 2010

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: Revised Policy Guidance on Access to Detainees and Detention Facilities in
Afghanistan (U)

(U) U.S. forces operating under the auspices of Operation Enduring Freedom (OEF) are authorized to detain captured persons consistent with the laws and customs of armed conflict. Additionally, U.S. forces may detain and intern persons who meet specific criteria based on the Authorization for Use of Military Force (AUMF) (Public Law 107-40), dated September 18, 2001, as informed by the laws and customs of armed conflict.

(U) The Department of Defense (DoD) is making a concerted effort to ensure that OEF detention operations are aligned with, and fully support, strategic objectives, including the defeat of the Afghan insurgency. A crucial aspect of this effort is to increase the transparency of OEF detention operations in Afghanistan. On September 18, 2009, the Secretary of Defense established Joint Task Force (JTF) 435, whose mission includes oversight of such operations and coordination of efforts to align them with strategic objectives.

(U) The attached guidance is intended to clarify DoD policy on access to DoD detainees and detention facilities in Afghanistan; to clarify roles and responsibilities in this area, including with respect to the newly established JTF 435; to permit delegation of authority in this area to the theater level wherever possible; and to promote greater transparency. To the extent that the attached guidance conflicts with earlier guidance, the attached guidance prevails.

Attachment:
As stated



OSD 75261-10



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Access to Detainees and Detention Facilities in Afghanistan (U)

General Statement of Policy (U)

1. (U) It is the policy of the Department of Defense (DoD) to allow limited access to DoD detainees and detention facilities in Afghanistan, consistent with DoD's responsibilities to:

- Ensure humane treatment of detainees;
- Ensure the security and safety of detainees and U.S. Government personnel;
- Obtain intelligence;
- Investigate criminal law enforcement matters; and
- Reinforce Coalition unity.

2. (U) Visits to DoD detainees and detention facilities shall be conducted in conformity with applicable U.S. law, and relevant international law, including but not limited to the Detainee Treatment Act of 2005, as well as applicable DoD policy, including DoD Directive 2310.01E, DoD Directive 3115.09, DoD Directive-Type Memorandum 09-031 (upon publication), U.S. Army Field Manual 2-22.3, and application of the Geneva Conventions' provisions against subjecting detained persons to public curiosity.

3. ~~(FOUO)~~ As used herein, the term "detainees" refers to persons under the control of U.S. forces at DoD Theater Internment Facilities (TIFs) and other DoD detention facilities below the TIF level. The terms "access to detainees" and "visits to detainees" refer to direct contact or conversation with detainees. The terms "access to detention facilities" and "visits to detention facilities" refer more broadly to access to DoD TIFs and other DoD detention facilities below the TIF level that may involve direct or indirect observation of detainees. The term "direct or indirect observation of detainees" refers to any visual observation of detainees through direct line of sight or electronic means, including, but not limited to, the observation of detainees in their cells, living areas, or recreation areas; during interrogations, debriefings, or other questioning; or during detainee review board proceedings.

4. ~~(FOUO)~~ Commander, U.S. Central Command (USCENTCOM), shall ensure that U.S. forces under his command maintain a record of all visits to DoD detainees and detention facilities by non-DoD personnel.

5. ~~(FOUO)~~ The approval authorities prescribed in this policy are further delegable, as follows:

5.1. ~~(FOUO)~~ Approval authorities prescribed for exercise by Commander, USCENTCOM, are further delegable to a Flag or General Officer.

5.2. ~~(FOUO)~~ Approval authorities prescribed for exercise by Commander, Joint Task Force (JTF) 435, are further delegable to a TIF or Field Detention Site (FDS) Commander, as appropriate.

6. ~~(FOUO)~~ The Under Secretary of Defense for Policy (USD(P)) is the approval authority for exceptions to this policy.

References (U)

7. (U) References:

- DoD Directive 2310.01E, *The Department of Defense Detainee Program*, September 5, 2006
- DoD Directive 2311.01E, *DoD Law of War Program*, May 9, 2006
- DoD Directive 3115.09, *DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning*, October 9, 2008
- DoD Directive-Type Memorandum 09-031, *Videotaping or Otherwise Electronically Recording Strategic Interrogations of Persons in the Custody of the Department of Defense* (upon publication)
- Army Regulation 190-8, OPNAVINST 3461.6, AFJI 31-304, MCO 3461.1, *Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees*, October 1, 1997
- U.S. Army Field Manual 2-22.3, *Human Intelligence Collector Operations*, September 2006
- The Detainee Treatment Act of 2005, Public Law No. 109-163, Title XIV, January 6, 2006
- Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949
- Geneva Convention Relative to the Protection of Civilians in Time of War, August 12, 1949

Visits by Foreign Government Agencies and Personnel (U)

8. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by foreign government agencies and personnel to nationals of their respective countries held at DoD detention facilities, including facilities below the TIF level, when these visits are for purposes of obtaining intelligence information, furthering criminal investigations or prosecutions, or facilitating the transfer of detainees to the custody and control of their home countries, except as provided in paragraphs 13 and 14, below.

8.1. ~~(FOUO)~~ Commander, USCENTCOM, may grant blanket approvals for agencies and personnel of the Government of the Islamic Republic of Afghanistan (GIROA), the Government of Pakistan (GoP), and International Security Assistance Force (ISAF) partner nations to visit nationals of their respective countries for these purposes. In all other cases, Commander, USCENTCOM, shall review and decide on each request for access individually.

8.2. ~~(FOUO)~~ Commander, USCENTCOM, shall provide written notice of such visits and blanket approvals to the Director, Joint Staff, USD(P), and the Under Secretary of Defense for Intelligence (USD(I)), as follows:

8.2.1. ~~(FOUO)~~ Upon approval of the visit or grant of blanket approval, in cases of visits by agencies and personnel of the GIROA, the GoP, or ISAF partner nations to nationals of their respective countries held at DoD TIFs.

8.2.2. ~~(FOUO)~~ At least seven days prior to the visit, in all other cases.

9. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by agencies and personnel of the GIROA and ISAF partner nations to DoD detainees who are not nationals of their respective countries when these visits are for purposes of obtaining intelligence information or furthering criminal investigations or prosecutions.

9.1. ~~(FOUO)~~ Commander, USCENTCOM, shall review and decide on each request for access individually.

9.2. ~~(FOUO)~~ Commander, USCENTCOM, shall provide written notice of such visits to the Director, Joint Staff, USD(P), and USD(I), at least seven days prior to the visit.

9.3. ~~(FOUO)~~ Additionally, Commander, USCENTCOM, shall provide notification of such visits to U.S. Embassy Kabul and, as appropriate, the GIROA.

10. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by agencies and personnel of the GIROA and ISAF partner nations to DoD detention facilities, including facilities below the TIF level, when these visits are for purposes of obtaining intelligence information, furthering criminal investigations or prosecutions, observing detainee review board proceedings, or reinforcing Coalition unity.

10.1. ~~(FOUO)~~ Commander, USCENTCOM, may grant blanket approvals for agencies and personnel of the GIROA and ISAF partner nations to visit DoD detention facilities for these purposes.

10.2. ~~(FOUO)~~ Commander, USCENTCOM, shall provide written notice of such visits or blanket approvals to the Director, Joint Staff, USD(P), and USD(I).

11. ~~(FOUO)~~ Except as provided in paragraphs 8 through 10, above, USD(P) is the approval authority for visits by foreign government agencies and personnel to DoD detainees and detention facilities.

12. ~~(FOUO)~~ Commander, USCENTCOM, shall forward requests for foreign government agencies and personnel from countries other than Afghanistan and ISAF partner nations to visit DoD detainees who are not nationals of their respective countries, through the Director, Joint Staff, to USD(P) for decision, in coordination with the Department of State and, when the visit is for purposes of obtaining intelligence information, with USD(I).

12.1. ~~(FOUO)~~ Before forwarding such requests, Commander, USCENTCOM, shall consult with U.S. Embassy Kabul and, as appropriate, with the GIRoA. Commander, USCENTCOM shall ensure that the results of these consultations are forwarded with the requests.

13. ~~(FOUO)~~ Commander, USCENTCOM, shall forward requests for agencies and personnel of countries listed in Annex A to visit DoD detainees or detention facilities, through the Director, Joint Staff, to USD(P) for decision, in coordination with the Department of State and, when the visit is for purposes of obtaining intelligence information, with USD(I).

13.1. ~~(S)~~/(b)(2)) The list at Annex A includes countries that the Secretary of State has designated State Sponsors of Terrorism, countries that the Secretary of State has designated Not Fully Cooperating with U.S. Counterterrorism Efforts, and other countries whose access to DoD detainees or detention facilities is likely to raise significant policy concerns for the U.S. Government.

13.2. ~~(FOUO)~~ USD(P) may revise this list, in coordination with the Department of State.

14. ~~(FOUO)~~ Commander, USCENTCOM, shall provide written notice, through the Director, Joint Staff, to USD(P), of requests for access to DoD detainees or detention facilities by agencies and personnel of countries not listed in Annex A whose access to DoD detainees or detention facilities might raise significant policy concerns for the U.S. Government, at least seven days prior to granting such access.

15. ~~(FOUO)~~ Commander, USCENTCOM, shall ensure that visits by foreign government agencies and personnel are conducted in conformity with applicable U.S. law, and relevant international law, including but not limited to the Detainee Treatment Act of

2005, as well as applicable DoD policy, including DoD Directive 2310.01E, DoD Directive 3115.09, DoD Directive-Type Memorandum 09-031 (upon publication), U.S. Army Field Manual 2-22.3, and application of the Geneva Conventions' provisions against subjecting detained persons to public curiosity.

15.1. (U) Personnel conducting interrogations, debriefings, or other questioning of DoD detainees shall sign a written agreement to abide by DoD interrogation policies and procedures before being allowed access to any detainee.

15.2. (U) A trained and certified DoD interrogator (or an intelligence professional, if an interrogator is not available) shall monitor all interrogations, debriefings, or other questioning.

15.3. (U) Only U.S. service members and DoD employees are authorized to serve as monitors of interrogations, debriefings, or other questioning. Contractor personnel are not authorized to serve as monitors.

15.4. (U) Although physical presence is preferred, monitoring may be accomplished by remote observation, if necessary. In either case, the monitor must be able to hear and understand everything that is spoken. If a translator is used, the translator must translate everything that is spoken. The monitor must maintain the interrogator(s) and detainee in full view and under constant observation.

15.5. (U) If the monitored party does not adhere to DoD policies and procedures, the monitor shall immediately terminate the interrogation, debriefing, or other questioning and report the noncompliance in accordance with DoD Directive 3115.09, Enclosure 3.

Visits by Non-DoD U.S. Government Agencies and Personnel (U)

16. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by non-DoD U.S. Government agencies and personnel to DoD detainees when these visits are for purposes of obtaining intelligence information, furthering criminal investigations or prosecutions, or facilitating the transfer of detainees to the custody and control of their home countries.

16.1. ~~(FOUO)~~ Commander, USCENTCOM, may grant blanket approvals for non-DoD U.S. Government agencies and personnel routinely involved in intelligence collection, criminal investigations and prosecutions, or detainee transfers. In all other cases, Commander, USCENTCOM, shall review and decide on each request for access individually.

17. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by non-DoD U.S. Government agencies and personnel to DoD detention facilities, including facilities below the TIF level, when these visits are for purposes of official U.S. Government business.

17.1. ~~(FOUO)~~ Commander, USCENTCOM, may grant blanket approvals for non-DoD U.S. Government agencies and personnel who routinely conduct official business at DoD detention facilities. In all other cases, Commander, USCENTCOM, shall review and decide on each request for access individually.

18. ~~(FOUO)~~ Commander, USCENTCOM, shall forward requests for visits by non-DoD U.S. Government agencies and personnel to DoD detainees and detention facilities for any purpose not specified in paragraphs 16 and 17, above, through the Director, Joint Staff, to USD(P), or his or her designee, for decision.

19. ~~(FOUO)~~ Commander, USCENTCOM, shall ensure that visits by non-DoD U.S. Government agencies and personnel are conducted in conformity with applicable U.S. law, and relevant international law, including but not limited to the Detainee Treatment Act of 2005, as well as applicable DoD policy, including DoD Directive 2310.01E, DoD Directive 3115.09, DoD Directive-Type Memorandum 09-031 (upon publication), U.S. Army Field Manual 2-22.3, and application of the Geneva Conventions' provisions against subjecting detained persons to public curiosity.

19.1. (U) If conducted for purposes of foreign intelligence collection, visits by non-DoD U.S. Government agencies and personnel to DoD detainees are subject to the provisions of paragraphs 15.1. through 15.5., above.

Visits by International Organizations (IOs) and Non-Governmental Organizations (NGOs) (U)

20. ~~(FOUO)~~ Commander, USCENTCOM, shall publish implementing guidance and procedures regarding access by the International Committee of the Red Cross (ICRC) to DoD detainees and detention facilities, consistent with DoD policy, applicable U.S. law, and relevant international law, and shall ensure that ICRC visits are conducted in conformity with such implementing guidance and procedures.

20.1. ~~(FOUO)~~ Commander, JTF 435, is the approval authority for visits by ICRC representatives to DoD detainees and detention facilities at TIFs and FDSs.

20.2. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by ICRC representatives to DoD detainees and detention facilities in all other cases.

21. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by representatives of IOs and NGOs to DoD TIFs for purposes of observing detainee review board proceedings.

21.1. ~~(FOUO)~~ Commander, USCENTCOM, may grant blanket approvals for IOs and NGOs that routinely observe detainee review board proceedings. In all other cases, Commander, USCENTCOM, shall review and decide on each request for access individually.

21.2. ~~(FOUO)~~ Commander, USCENTCOM, shall provide written notice of such visits or blanket approvals to the Director, Joint Staff, USD(P), and USD(I).

22. ~~(FOUO)~~ Commander, USCENTCOM, shall forward requests for visits by representatives of IOs and NGOs (other than the ICRC) to DoD detainees and detention facilities for any purpose not specified in paragraphs 20 and 21, above, through the Director, Joint Staff, to USD(P), or his or her designee, for decision in coordination with the Department of State.

Visits by News Media Organizations (U)

23. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by managerial-level representatives of news media organizations to DoD detainees who are employees of their respective organizations, provided that the purpose of the visit does not include writing or producing a news story.

24. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for requests by representatives of news media organizations to visit DoD TIFs for purposes of writing or producing news stories, consistent with relevant Office of the Secretary of Defense (OSD) Public Affairs (PA) policies and procedures.

25. ~~(FOUO)~~ Commander, USCENTCOM, shall forward requests by representatives of news media organizations to visit DoD detainees or detention facilities for any purpose not specified in paragraphs 23 and 24, above, through the Director, Joint Staff, to USD(P) for decision in coordination with OSD PA and USD(I).

26. ~~(FOUO)~~ Except as provided in paragraph 23, above, media access to DoD detention facilities shall not include access to detainees, as defined in paragraph 3, above.

Visits by Family Members and Other Non-Official Visitors (U)

27. ~~(FOUO)~~ Commander, USCENTCOM, shall publish implementing guidance and procedures regarding visits by family members and other non-official visitors (e.g., village elders) to DoD detainees, in order to facilitate such visits, as appropriate.

27.1. ~~(FOUO)~~ Commander, JTF 435, is the approval authority for visits to TIFs by family members and other non-official visitors.

27.2. ~~(FOUO)~~ Commander, USCENTCOM, is the approval authority for visits by family members and non-official visitors in all other cases.

Visits by Attorneys Not Representing the U.S. Government (U)

28. ~~(FOUO)~~ Commander, USCENTCOM, shall forward requests by attorneys not representing the U.S. Government to visit DoD detainees and detention facilities, through the Director, Joint Staff, to USD(P), or his or her designee, for decision, in coordination with the DoD Office of General Counsel.

U.S. Citizens, Nationals, and Resident Aliens (U)

29. ~~(FOUO)~~ Commander, USCENTCOM, shall provide written notice to the Director, Joint Staff, and USD(P), or his or her designee, of all visits and requests to visit any DoD detainee who is a U.S. citizen or claims to have been born in or to be a national or resident alien of the United States, including any dual-national detainee who is a U.S. citizen or claims to have been born in or to be a national or resident alien of the United States, regardless of such person's other nationality or citizenship.

30. ~~(FOUO)~~ Commander, USCENTCOM, also shall provide written notice to the Director, Joint Staff, and USD(P), or his or her designee, of all telephone calls made or received by any DoD detainee who is a U.S. citizen or claims to have been born in or to be a national or resident alien of the United States, including any dual-national detainee who is a U.S. citizen or claims to have been born in or to be a national or resident alien of the United States, regardless of such person's other nationality or citizenship, while such person is under the control of U.S. forces at a DoD detention facility.

Annex A

Countries that the Secretary of State has designated State Sponsors of Terrorism (U)

- (U) Cuba
- (U) Iran
- (U) Sudan
- (U) Syria

Countries that the Secretary of State has designated Not Fully Cooperating with U.S. Counterterrorism Efforts (U)

- (U) North Korea
- (U) Venezuela
- (U) Eritrea

Other countries whose access to DoD detainees or detention facilities is likely to raise significant policy concerns for the U.S. Government ~~(S)~~/(b)(2)

- ~~(S)~~/(b)(2) (b)(1)
- ~~(S)~~/(b)(2) (b)(1)
- ~~(S)~~/(b)(2) (b)(1)

(FOUO) Note: Amendments to this Annex require the approval of the Under Secretary of Defense for Policy, in coordination with the Department of State.

~~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.

~~(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. We anticipate a thorough review of the 2004 GSC at the conclusion of this process.

Attachment: As Stated

Derived from Multiple Sources
Declassify on June 4, 2019

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 Bagram CENTCOM 319

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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,
 - remains a continuing and serious threat to conduct or facilitate a substantial violent act against the people of Afghanistan, Coalition Forces, U.S. personnel in Afghanistan, or Afghan National Security Forces;
 - poses a threat outside of Afghanistan to the broader theater of operations, the United States, U.S. citizens, or to U.S. allies; and, if either of the first two criteria are met; and,
 - whose threat may not be mitigated in view of a situation of evident increased stability in Afghanistan and/or the increased capability of Afghan National Security Forces.

- ~~(S)~~ The following definitions apply when assessing a detainee’s status as an Enduring Security Threat:
 - ~~(S)~~ A “substantial violent act” is more than mere participation in insurgent or terrorist violence; it is an act that, by its nature or scale, significantly undermines stabilization efforts, Afghan governmental operations, or U.S. military operations. Examples include, but are not limited to: a complex or large-scale attack on U.S. Forces, Afghan National Security Forces, U.S. civilians, or Afghan civilians; a mass casualty attack (e.g., vehicle borne or suicide vest borne IED); an attack utilizing specialized weapons, including explosively formed projectiles or chemical/radiological weapons; or political assassination.

 - ~~(S)~~ In assessing *capability*, the review board should consider the detainee’s ability to plan, lead, finance, or organize acts of terrorism; to train others to commit acts of terrorism; or to facilitate the entry of foreign fighters or special weapons into Afghanistan; and any specialized training the detainee has received in constructing or assembling weapons of mass casualty.

- ~~(S)~~ In assessing *commitment*, the review board should consider the detainee's ideological or political motivation; past conduct; group affiliation; behavior while under control of U.S. Forces; and expressed desire to perpetrate a substantial violent act.
- ~~(S)~~ The definitions and criteria, above, are not intended to be exhaustive, and may be supplemented as necessary by USCENTCOM, consistent with the intent to identify those detainees who present the greatest threat to undermine stabilization and counter-terrorism efforts, or to export terrorist violence beyond the borders of Afghanistan.

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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DEPUTY SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1010

APR 14 2008

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD AGENCIES

SUBJECT: Authority to Transfer Low-Level Enemy Combatants in Afghanistan (S)

~~(S)~~ In accordance with the Deputy Secretary of Defense memorandum of December 10, 2002, Commander, USCENTCOM, or his designee, is authorized to approve the transfer of Afghan national low-level enemy combatants under DoD control in Afghanistan to the Government of Afghanistan.

~~(S)~~ In exercising this authority, Commander, USCENTCOM, or his designee, will implement a process that ensures that each low-level enemy combatant detainee's threat level, intelligence value, and law enforcement interest are evaluated and documented prior to transfer. Commander, USCENTCOM, or his designee, will also coordinate all such transfers with representatives of relevant U.S. Government agencies in theater and representatives of the Government of Afghanistan. Additionally, Commander, USCENTCOM, or his designee, will provide quarterly reports to the Under Secretary of Defense for Policy, through Director, Joint Staff, on how this authority is being exercised.

Derived from: Multiple Sources
Reasons: 1.4 (a), (c), (d)
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DEPUTY SECRETARY OF DEFENSE
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APR 23 2009

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Delegation of Authority to Waive the Autopsy Requirement for Detainee Deaths in USCENTCOM AOR

Pursuant to the Secretary of Defense memorandum of June 9, 2004, *Procedures for Investigation into Deaths of Detainees in the Custody of the Armed Forces of the United States*, in the event of a detainee death, the pertinent commander shall immediately report the death to the appropriate Department of Defense investigative agency. The investigative agency then shall contact the Office of the Armed Forces Medical Examiner (OAFME) to determine whether an autopsy will be performed. In most cases, it is necessary for the detainee's body to be transported to the United States for an autopsy to be performed.

In deference to cultural and/or religious sensitivities, it may be prudent to waive the autopsy requirement in certain cases. Specifically, in cases following death from natural causes, the potentially negative consequences of performing an in-theater autopsy or transporting a detainee's remains to the United States could undermine security operations and endanger U.S. Forces and may outweigh current procedures that are intended, in part, to protect individual service members, the Department, and the U.S. Government from unsubstantiated claims of abuse or mistreatment. In recent months, the



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OSD 75712-09





**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

June 9, 2004

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
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DIRECTOR, NET ASSESSMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES**

**SUBJECT: Procedures for Investigation into Deaths of Detainees in the Custody of
the Armed Forces of the United States**

- References:**
- (a) DoD Directive 2310.1, "DoD Program for Enemy Prisoners of War (EPOW) and other Detainees," August 18, 1994
 - (b) DoD Directive 5100.77, "DoD Law of War Program," December 9, 1998
 - (c) AR 190-8, OPNAVINST 3461.6, AFJI 31-304, MCO 3461.1, "Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees," 1 October 1997
 - (d) 10 U.S.C. 1471, Forensic pathology investigations
 - (e) DoD Directive 5154.24, "Armed Forces Institute of Pathology," October 3, 2001
 - (f) DoD Instruction 5154.30, "Armed Forces Institute of Pathology Operations," March 18, 2003

This memorandum reiterates and clarifies procedures for investigating deaths of detainees in the custody of the Armed Forces, including the requirement for an autopsy.

References (a), (b) and (c) establish policy and procedure for investigations of possible violations of protections afforded enemy prisoners of war, retained personnel, civilian internees, and other detainees, including procedures in cases of deaths of such



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persons. References (d), (e), and (f) provide that the Office of the Armed Forces Medical Examiner has primary jurisdiction and authority within DoD to determine the cause and manner of death in any DoD death investigation. This jurisdiction may be exercised as part of DoD death investigations of enemy prisoners of war, retained personnel, civilian internees, and other detainees in the custody of the Armed Forces of the United States.

In the case of a death of such an individual, the commander of the facility (or if the death did not occur in a facility, the commander of the unit that exercised custody over the individual) shall immediately report the death to the responsible investigative agency; Army Criminal Investigation Division, Navy Criminal Investigative Service, or Air Force Office of Special Investigations. This investigative agency shall contact the Office of the Armed Forces Medical Examiner (AFME). The AFME will determine whether an autopsy will be performed. The regional combatant commander shall notify the Secretary of Defense, through the Chairman, Joint Chiefs of Staff, of all deaths occurring in US armed forces custody.

Upon declaration of death, the remains will be placed in a clean body bag and secured awaiting instructions from the appropriate investigating agency. The remains will not be washed and all items on or in the body will be left undisturbed except for weapons, ammunition, and other items that pose a threat to the living. The body will not be released from United States custody without written authorization from the investigative agency concerned or the Armed Forces Medical Examiner.

In summary, in the case of death of any individual described above, while in custody of the Armed Forces of the United States, it is presumed that an autopsy shall be performed, unless an alternative determination is made by the Armed Forces Medical Examiner. Determination of the cause and manner of death in these cases will be the sole responsibility of the AFME or other physician designated by the AFME.

Points of contact for procedures under this memorandum are: AFME, CDR (b)(6), (b)(2), DSN (b)(2), (b)(2)@AFIP.OSD.Mil; ARMY CID, SA (b)(6), (b)(2), DSN (b)(2), (b)(2)@Belvoir.Army.Mil; NCIS, SA (b)(6), (b)(2), DSN (b)(2), (b)(2)@NCIS.Navy.Mil; OSI, SA (b)(6), (b)(2), (b)(2), DSN (b)(2), (b)(2)@ogn.af.mil.

This memorandum is effective immediately.

