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UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

OFFICE OF THE UNDER SECRETARY OF DEFENSE

2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000



POLICY

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

UNCLASSIFIED

JUL 14 2009

Dear Chairman Levin:

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

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

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

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Declassify on: June 30, 2019



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Bagram Policy To

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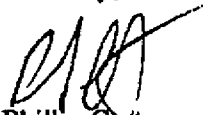
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(U) The modified procedures generally follow the procedures prescribed in Army Regulation (AR) 190-8, such as that the proceedings generally shall be open (with certain exceptions including for matters that would compromise national or operational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

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

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

Sincerely,



Phillip Carter
Deputy Assistant Secretary of Defense
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable John McCain

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2000 DEFENSE PENTAGON
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POLICY

JUL 14 2009

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

Dear Chairman Leahy:

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

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Bagram Policy 20

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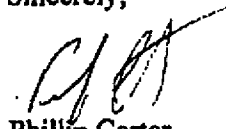
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Sincerely,



Phillip Carter
Deputy Assistant Secretary of Defense
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable Jeff Sessions

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



POLICY

JUL 14 2009

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

Dear Chairman Skelton:

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

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Bagram Policy 22

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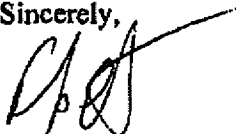
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Sincerely,



Phillip Carter
Deputy Assistant Secretary of Defense
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable Howard P. McKeon

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2000 DEFENSE PENTAGON
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POLICY

JUL 14 2009

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

Dear Chairman Conyers:

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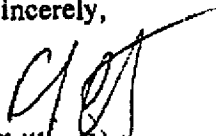
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Sincerely,



Phillip Carter
Deputy Assistant Secretary of Defense
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable Lamar Smith

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