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ACTION MEMO

USD(P) _____

FOR: DEPUTY SECRETARY OF DEFENSE

FROM: Peter F. Verga, Deputy Under Secretary of Defense (PI & CoS)

SUBJECT: Policy Guidance on Review Procedures and Transfer and Release Authority at Bagram Theater Internment Facility (BTIF), Afghanistan (U)

- (U) Recommend you sign the attached memorandum (Tab A) issuing policy guidance that significantly enhances current detainee review procedures for screening and holding individuals in Afghanistan captured by U.S. Operation Enduring Freedom (OEF) Forces, not International Security Assistance Forces (ISAF) (Tab B), and updates detainee transfer and release authority in Afghanistan (Tab C).
- (U) This policy guidance responds to Commander, USCENTCOM's April 27, 2009 request for guidance (Tab D) and applies only to OEF detentions at the Bagram Theater Internment Facility (BTIF). U.S. Forces operating under the auspices of ISAF will continue to follow ISAF detention policy.

- (U) (b)(5)
(b)(5)

- (U) The enhanced review procedures will improve the Command's ability not only to assess each detainee held at the BTIF under applicable criteria for lawful detention, but also the level of threat the detainee represents and the detainee's potential for rehabilitation and reconciliation.

- (U) (b)(5)
(b)(5)

- (U) Substantively, the most significant changes to the review procedures are the

Prepared By: (b)(2),(b)(6), Office of Detainee Policy, (b)(2),(b)(6)

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extension of the Administration's modified definition of detention authority applicable at Guantanamo to detentions at the BTIF, and a formal delinking of detentions in Afghanistan from the past review policy focusing on onward transfers to the U.S. detention center at Guantanamo.

- (U) The modified definition included as part of a Guantanamo habeas filing on March 13, 2009 requires a showing that a person who "supported" Taliban or al-Qaida forces or associated forces did so "substantially."
- (U) Beyond the assessment of whether a detainee may be lawfully detained, the new procedures also require review boards to consider each detainee's threat level and potential for rehabilitation and reconciliation. Moreover, threat assessments will no longer be linked to the criteria for transfer to Guantanamo.
- (U) Procedurally, although the requirements of AR 190-8 serve as the baseline for the enhanced detainee review procedures, we have sought to add several features not found in AR 190-8 that further strengthen the ability of detainees to challenge their detention.
 - (U) For example, the proceedings will be open to representatives of the ICRC, and possibly other non-governmental organizations, subject to military necessity and force protection criteria as determined by the internment facility commander, except for deliberations and voting or other matters that would compromise security. Detainees will be allowed to attend all open sessions and call reasonably available witnesses, all of which are provisions prescribed by AR 190-8 for Article 5 tribunals.
 - (U) Additionally, a personal representative will be appointed to represent each detainee, which is not required for Article 5 tribunals but is the Department's practice for Combatant Status Review Tribunals at Guantanamo.
 - (U) The personal representative will be required to act in the best interest of the detainee, and will be shielded from unlawful command influence and adverse personnel actions for his or her good faith efforts on behalf of the detainee.
 - (U) A chart comparing the AR 190-8 requirements with the existing and proposed OEF detainee review procedures is attached at Tab F.
 - (U) The end result is a process that approximates the process used to screen American citizens captured in Iraq.

- (U) Finally, this policy guidance designates the approval authorities for transfers and releases, based on: whether the detainee will be transferred or released in Afghanistan or elsewhere; whether the detainee is an Afghan national or a third-country national; and whether the detainee meets the criteria for classification as an Enduring Security Threat, as defined in the policy guidance.
- (U) It is likely that implementation of the personal representative requirement will result in an increased need for resources and funding. We will work with the Joint Staff and OSD Comptroller to ensure that USCENTCOM is equipped for the task.
- (U) These revisions require 60-day notification to Congress under the Detainee Treatment Act. Our office will work with Legislative Affairs to effectuate that notice and procedures will be implemented once we have complied.

RECOMMENDATION: (U) Sign the memorandum at Tab A.

Approve: _____ Disapprove: _____ Other: _____

COORDINATION: TAB G

Attachments:
As stated.

A