

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION et al.,)	
)	
Plaintiffs,)	No. 09 Civ. 8071 (BSJ) (FM)
)	
v.)	
)	
DEPARTMENT OF DEFENSE et al.,)	
)	
Defendants.)	

DECLARATION OF WILLIAM K. LIETZAU

William K. Lietzau, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Deputy Assistant Secretary of Defense (“DASD”) for Rule of Law and Detainee Policy in the U.S. Department of Defense (“DoD”). I have held this position since February 16, 2010.¹ In this capacity, I am responsible for developing policy recommendations and coordinating policy guidance relating to individuals captured or detained by the Department of Defense. I am a retired Marine Corps officer who served primarily as a judge advocate, including assignments as the Deputy Legal Advisor to the Chairman of the Joint Chiefs of Staff, Staff Judge Advocate to the United States European Command, and Chief of the Law of War Branch for the Department of the Navy’s International Law Division. I also previously served as Deputy Legal Adviser to the National Security Council.

2. The statements in this declaration are based on my personal knowledge and information that I have received in my official capacity.

3. In my current capacity as DASD for Rule of Law and Detainee Policy, I am an Original Classification Authority (“OCA”) pursuant to Executive Order 13,526 (the “Executive Order”). I am familiar with relevant security classification determinations with respect to detainee operations.

¹ Previously, the title was DASD for Detainee Policy. The Rule of Law portfolio was added in June 2011.

4. I make this declaration in support of the Government's motion for partial summary judgment and related relief. In particular, I write to explain the basis for the classification of a particular record entitled "Detainee Review Board Report of Findings and Recommendations (Classified Annex – Enduring Security Threat)" (the "Document"), which is responsive to Plaintiff's April 23, 2009 Freedom of Information Act ("FOIA") request, and to support the Government's request for the Document's return to DoD. As explained below, two copies of the Document were mistakenly provided to Plaintiff American Civil Liberties Union ("ACLU") as part of a recent release of documents pursuant to Paragraph 2 of the "Second Stipulation and Order Regarding Document Searches, Processing, and Production by the U.S. Department of Defense," entered by this Court on August 2, 2010 (the "Production Order").

5. On April 23, 2009, the ACLU sent a FOIA request (the "Request") to the DoD Office of Freedom and Information and Security Review seeking "records pertaining to the detention and treatment of prisoners held at the Bagram Theater Internment Facility ("BTIF") at Bagram Airfield in Afghanistan, including records concerning the process afforded these prisoners to challenge their detention and designation as enemy combatants," and as relevant to the particular matter presently before the Court, records "pertaining to the process for determining and reviewing Bagram prisoners' status, the process for determining whether their detention is appropriate, and the process for determining who should be released." I am familiar with this request and have reviewed its contents in the course of my duties in relation to DoD's response and in preparing this declaration.

6. To date, DoD has reviewed, processed and produced to ACLU in response to the Request multiple sets of responsive documents, together comprising several thousand pages. Prior to each release, DoD reviews each document to determine whether all or part of it might be exempt from release pursuant to any statutory FOIA exemption, including whether all or part of each responsive document was properly classified and was thus exempt from release under FOIA Exemption 1.

7. Due to an error during the review process, the Document in question was mistakenly not identified as exempt from release under provisions of FOIA Exemption 1. During this review process, some, but not all, of the classification markings on the Document were erroneously struck out, perhaps causing reviewers to perceive in error that the Document had been declassified. Thus, on May 13, 2011, DoD produced a set of documents responsive to the

Request, which mistakenly included the Document. As a result, although the Document should have been withheld in its entirety pursuant to Exemption 1 to the FOIA, the Document was mistakenly released to the ACLU.

8. The Document was classified as SECRET by derivation from multiple sources when it was created for use as described below, meaning that the content of the Document was derived from other classified documents. The classification level of information in those original sources carries over when the information is reproduced in a new document, as occurred here. I have reviewed the Document and the relevant guidance and have concluded that information in the Document meets the standards in the Executive Order for classification as SECRET. As required by Section 1.1 of the Executive Order, I certify that the information contained therein is owned by and was produced by and for the United States Government, and, since its inception, has at all times remained under the control of the United States Government, other than the mistaken release to the ACLU presently at issue. I certify that the information contained in the Document pertains to “military plans ... or operations” (Section 1.4(a)) and “foreign relations or foreign activities of the United States” (Section 1.4(d)); and I have determined that the unauthorized disclosure of the information contained in the Document reasonably could be expected to cause serious damage to the national security, as explained below.

9. The Document is a form used by DoD to memorialize the findings and recommendations of a Detainee Review Board (“DRB”) at the Detention Facility in Parwan (“DFIP”), the facility that was opened in December 2009 to replace the BTIF as the U.S. military’s theater internment facility in Afghanistan. The DRB is an administrative board of military officers charged with (a) determining whether the criteria are satisfied to subject an individual to detention by U.S. Armed Forces pursuant to the Authorization for Use of Military Force,² as informed by law-of-war principles; and, if so, (b) making a disposition recommendation to the convening authority (e.g., continued internment, transfer to Afghanistan authorities for prosecution or participation in a reintegration program). In making its recommendation, the DRB does a threat assessment, which includes whether the detainee meets the criteria for classification as an Enduring Security Threat (“EST”), as that term is defined in policy guidance authored by the Deputy Secretary of Defense. EST is not a category created by law or one with implications related to the lawfulness of detention, but rather is a means of

² Pub. L. No. 107-40, § 2(a), 115 Stat. 224 (2001) (codified at 50 U.S.C. § 1541).

identifying the highest-threat detainees for purposes of implementing the U.S.'s discretionary transfer and release determinations. Due to the significant threat posed, the transfer or release of ESTs must be approved at a higher level than is required to approve the transfer or release of non-ESTs.

10. The criteria for assessing a detainee's status as an EST and the definitions used during that assessment are classified. The Detainee Review Procedures and the unclassified portion of the EST guidance have previously been provided to the ACLU pursuant to its FOIA request. See *Policy Guidance on Review Procedures and Transfer and Release Authority at Bagram Theater Internment Facility (BTIF), Afghanistan*, Bates No. Bagram-Policy 30-92 (produced to ACLU on May 14, 2010), attached hereto as Exhibit A. The classified portion of this EST guidance was withheld pursuant to Exemption 1. See *id.* at Bagram-Policy 40-41. However, this same classified information (the EST criteria and definitions) was included on the Document mistakenly released to the ACLU.

11. Afghanistan continues to be an active theater of war. Public release of the criteria and definitions listed in the Document for determining whether a particular detainee meets the criteria for classification as an EST would allow detainees to engage in conduct and manipulation specifically intended to undermine this crucial evaluation and determination — an evaluation that pertains not to whether there is a legal basis to detain the individual, but rather to the nature and extent of threat the individual poses. If the Document were publicly released, the EST criteria and definitions set forth in the Document would be reasonably likely to become known to hostile forces and, in turn, to increase their ability to undermine the accuracy of critical U.S. assessments regarding a detainee's identity and threat level. This could then result in the premature release or transfer of a high-threat individual under conditions not designed to mitigate his threat. Information received from interrogations of individuals is an essential component in DoD's assessment. Based on past experience, DoD has learned that insurgents in Afghanistan and elsewhere are able to obtain and synthesize information, including U.S. Government information that is publicly available, and can and do adapt their behavior and responses to post-capture interrogations accordingly, with a goal of evading determinations that might result in detention.

12. It is common for detained individuals to fabricate cover stories designed to obscure or minimize their involvement in terrorist or insurgent activity. Consequently, U.S. forces are

sometimes unable to correctly identify a detained individual, or to determine accurately his organizational position in enemy forces or his threat to U.S. forces, allied forces, and the civilian population in the area of operations. The ability of U.S. forces to accurately ascertain a detainee's threat level is important for a number of strategic and operational reasons, as explained below.

13. First, the transfer or release of a detainee who is otherwise lawfully detained can advance important strategic objectives. In Afghanistan, detainee releases can and do support counter-insurgency and reconciliation initiatives being implemented by DoD at the local or national level. In evaluating the benefit of such initiatives, DoD personnel must consider the risk posed to the safety and security of U.S. forces, which requires an accurate assessment of a detainee's threat level, thus enabling a commander to accurately weigh the benefit of a detainee's release against the security risk posed by a release designed to support reconciliation initiatives. This process fails when U.S. forces cannot accurately measure the threat posed by a detainee. The more information about our evaluative criteria to which enemy forces have access, the more likely a detainee will develop a false "cover story" to obscure or minimize information that would reveal his true threat level. This would significantly compromise the ability of commanders to safely utilize detainee releases as part of counter-insurgency and reconciliation initiatives.

14. An operational consequence associated with high-threat detainees escaping categorization as ESTs is the risk that such detainees will be transferred or released without appropriate safeguards. The United States has no interest in holding detainees longer than necessary. Accordingly, detainees are recommended for transfer or release when the responsible authority believes the risk of reengagement by the detainee can be sufficiently mitigated by some lawful means other than continued internment by U.S. forces, to include transfer of individuals to the custody and control of the Government of Afghanistan or an appropriate third country. This complex assessment requires the most comprehensive and accurate assessment possible of the threat posed by the detainee. Providing enemy forces with our EST evaluative criteria will assist their efforts to escape detection as high-threat individuals and compromise the accuracy of DoD's assessment of their threat level. Consequently, highly dangerous detainees may be transferred or released under circumstances that will not mitigate that threat. This is likely to

lead to violent consequences and operate to the detriment of future military operations, operational security, and national security.

15. Additionally, an EST classification determination carries significant threat implications inside the detention facility and may affect detainee movements, housing considerations, force protection, and counterinsurgency/information operations efforts within the detainee population itself. Accurate evaluation of a detainee's threat level is also important in operational decisions regarding what measures are adopted to mitigate any threat posed by the detainee while in detention. The current fight against violent extremism is not limited to the battlefield. U.S. detention forces are engaged in an on-going counter-insurgency within DoD facilities, including the DFIP. Arming enemy forces with the information they need to avoid an accurate threat classification will counter our efforts to segregate the most dangerous detainees from less violent and radicalized detainees in our facilities and ultimately expose both the guard force and other detainees to increased risk of harm.

16. Furthermore, commanders in the field require critical and timely intelligence about enemy forces to facilitate their decision-making process. Obtaining accurate intelligence about enemy forces is essential to the successful prosecution of the current conflict, including the conduct of our ground operations. Developing such intelligence depends in part on accurately assessing each detainee and how he fits into the larger security threat. Our ability to develop a clear intelligence picture of enemy forces and the impact of our operations on these forces will be undermined if we provide detainees and others with our evaluative criteria and definitions because detainees with the knowledge of EST criteria and definitions would be able to take counter-intelligence actions to obscure this specific type of information. For instance, as explained below, a detainee could make a statement that denies or minimizes his role in a particular activity that could be relevant to the EST determination. Such a statement might not only result in an inaccurate EST assessment about this individual, but could also interfere with the ability of coalition forces to understand his position within the organization to which he belongs, and the planning and activities in which the organization engages. As a result, such misinformation could ultimately result in the misapplication of force by DoD.

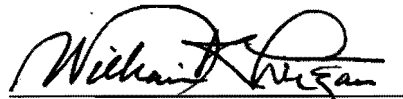
17. Finally, DoD personnel in Afghanistan have expressed concerns that public release of our EST criteria could have significant deleterious repercussions with respect to our diplomatic relationships with Afghanistan and various other countries. EST criteria and

determinations are not currently a topic in our sensitive bilateral discussions with other countries. Revelation of EST criteria would likely complicate those discussions, for reasons I could share with the Court *ex parte* and *in camera*, if requested.

18. The claim that detainees will always try to minimize their threat level does not undermine the importance of keeping concealed the specifics of our EST criteria. Recognizing the rapid pace at which our forces, including interrogators, are often required to work, timely initial assessments are critical. Similarly, considering the fact that we conduct thousands of DRB's each year, with limited assets, any improvement in a detainee's ability to target a fabrication puts the accuracy of a DRB's determination at risk. Providing a detainee with our evaluative criteria would facilitate his ability to effectively falsify information on the threat and his role in it. Specifically, the more knowledge a detainee may have about the specific criteria that will categorize him as a serious threat, the more likely he will be able to quickly fabricate a story that admits to sufficient culpability to make his story believable while avoiding criteria that would make him an EST. Inaccurately assessing the threat posed by detainees can lead to inaccurate intelligence assessments of enemy forces and the impact of our operations on these forces. We know from experience that inaccurate intelligence assessments have a direct and negative impact on our operations and endanger the lives of our service members.

19. Based upon the foregoing, I have determined that the Document, together with the EST criteria and definitions it sets forth, remains properly classified at the SECRET level.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on 13th day of July 2011.



WILLIAM K. LIETZAU

Deputy Assistant Secretary of Defense
for Rule of Law and Detainee Policy
U.S. Department of Defense

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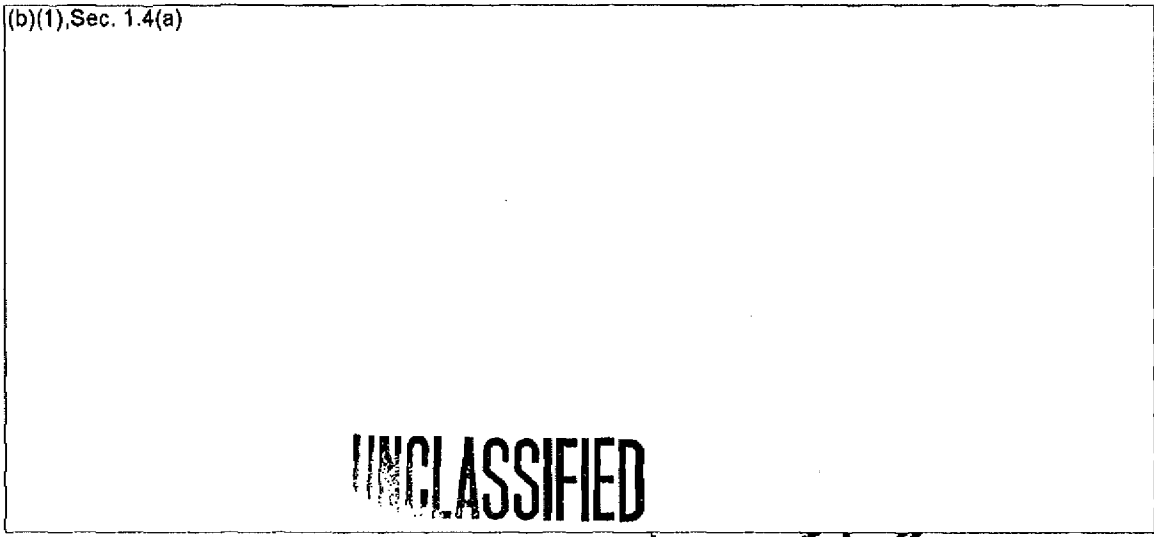
MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR POLICY
UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE
COMMANDER U.S. CENTRAL COMMAND
COMMANDER U.S. SPECIAL OPERATIONS COMMAND

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.



(b)(1), Sec. 1.4(a)



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W. H. Colby

Attachment: As Stated

Derived from Multiple Sources
Declassify on June 4, 2019

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OSD 76338-09



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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)

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Derived from: Multiple Sources
Declassify on: June 30, 2019

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(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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Comparison of Detainee Process Models

	Article 5 (AR 190-8)	UECRB (existing)	UECRB (proposed)
Purpose	To determine whether person is EPW	To recommend combatant status and disposition	To determine whether detainee meets criteria for internment and recommend disposition
Nature	Non-adversarial	Non-adversarial	Non-adversarial
Standard	Article 4, GPW	Unlawful Enemy Combatant	Detainable Person, as defined in March 13, 2009 DOJ filing
Possible Findings	EPW, RP, innocent civilian, CI	<input type="checkbox"/> Status: HLEC, LLEC, NLEC <input type="checkbox"/> Disposition: GTMO, continued detention at the BTIF, transfer, release w/o conditions	<input type="checkbox"/> Status: does/does not meet criteria for internment, plus threat assessment <input type="checkbox"/> Disposition: continued internment at the BTIF, transfer for prosecution or reconciliation, release w/o conditions
Timing	Not specified	Capturing unit review within 72 hours; transfer request within 14 days; initial board within 75 days; periodic boards every 6 months	Capturing unit review within 72 hours (w/ JAG); transfer request within 14 days (w/ JAG); initial board within 60 days; periodic reviews every 6 months

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Comparison of Detainee Process Models (cont.)

	Article 5 (AR 190-8)	UECRB (existing)	UECRB (proposed)
Composition	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder (preferably JAG)	<input type="checkbox"/> 3 officers, at least 1 field grade <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder	<input type="checkbox"/> 3 field grade officers authorized access to all relevant information <input type="checkbox"/> Senior officer is President <input type="checkbox"/> Non-voting recorder
Legal Advisor	No	No	Yes
Personal Rep.	No	No	Yes; authorized access to all relevant information
Open/ Closed	Open except for deliberation and voting, security; person whose status is to be determined allowed to attend open sessions	Closed; detainee allowed to appear at initial board	Open except for deliberation and voting, security; detainee allowed to attend open sessions
Witnesses	Yes, if reasonably available	No	Yes, if reasonably available
Legal sufficiency review	Yes	No	Yes

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Policy Coordination Sheet

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

USP Number: USP007105-09

<u>Title/Organization</u>	<u>Name</u>	<u>Date</u>
DASD, APSA/CEN	Mr. Sedney	May 18, 2009
GC	Mr. Johnson	May 21, 2009
USD(C)	Mr. Hale	May 22, 2009
Director, Joint Staff	LTG McChrystal	June 4, 2009

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