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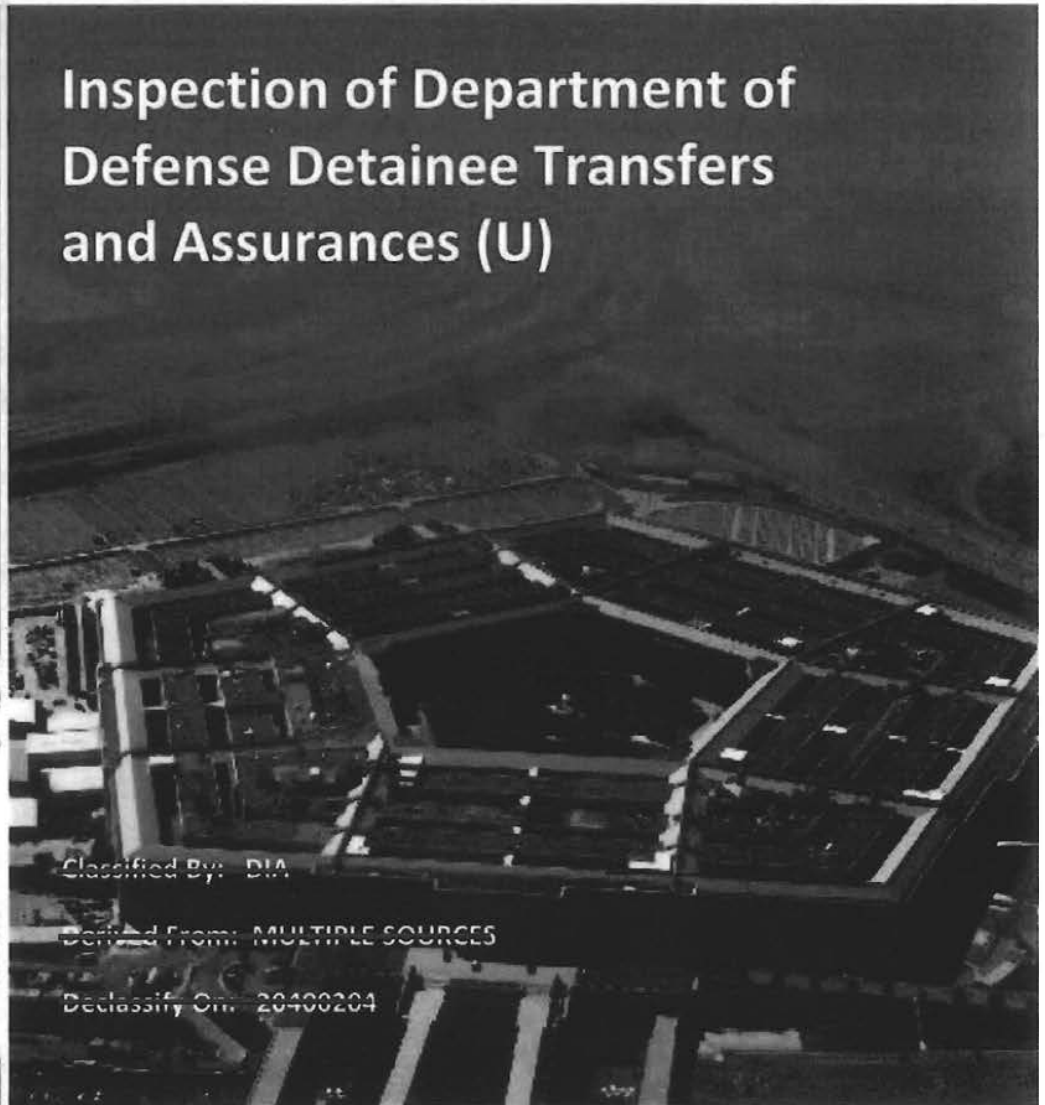
INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 24, 2015



Inspection of Department of Defense Detainee Transfers and Assurances (U)



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(U) INTEGRITY * EFFICIENCY * ACCOUNTABILITY * EXCELLENCE

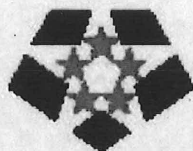
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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
ALEXANDRIA, VIRGINIA 22350-1500

February 24, 2015

MEMORANDUM FOR PRINCIPAL DIRECTOR FOR DETAINEE POLICY OFFICE OF
THE UNDER SECRETARY OF DEFENSE FOR POLICY

SUBJECT: Inspection of Department of Defense Detainee Transfers and
Assurances (Report No. DODIG-2015-083) (U)

(U) This is the fourth inspection conducted under a recommendation of the Special Task Force on Interrogation and Transfer Policies (the Special Task Force), an interagency task force that Executive Order 13491 established on January 27, 2009.

(U) We ensured DoD detainee policies were in place and are being followed. We examined the number of detainees being transferred from the Guantanamo Bay Detention Facility (GTMO) and Afghanistan between March 1, 2013, and December 31, 2014.

(U) Between March 1, 2013, and December 31, 2014, 1,380 detainees were reported transferred from DoD custody in GTMO and Afghanistan. This is a decrease from the 4,765 detainees reported transferred in our last report, "Inspection of DoD Detainee Transfers and Assurances," Report No. DODIG 2013-127, September 23, 2013. The decrease is due to DoD transitioning operations to the Government of the Islamic Republic of Afghanistan because "Operation Enduring Freedom," was ending on December 28, 2014.

(U) Background

(U) Executive Order 13491, January 27, 2009, established the Special Task Force on Interrogation and Transfer Policies to bring together officials from DoD and the U.S. Intelligence Community to identify policies and procedures to ensure that interrogations are conducted in a manner that would strengthen national security consistent with the rule of law. The Special Task Force made policy recommendations in a report with respect to scenarios in which the United States moves or helps move a person from one country to another, or from U.S. custody to the custody of another country to ensure that U.S. practices in such transfers comply with U.S. law, policy, and international obligations and do not result in transferring individuals to countries where they will face torture.

(U) As defined in the Special Task Force's report, the four areas having direct DoD involvement with detainee transfers are GTMO, Iraq¹, Afghanistan, and Geneva Conventions transfers. Between March 1, 2013, and December 31, 2014, 39 detainees were reported transferred from GTMO Detention Facility, and 1,341 detainees were reported transferred in Afghanistan. DoD conducted no detainee transfers outside of GTMO and Afghanistan, between March 1, 2013, and December 31, 2014, that would fall under the Geneva Conventions rules.

(U) Policy

(U) DoD has several policies that address how detainees should be treated while in DoD custody. In general, the policies do not specifically address how the detainees will be treated once transferred to another country.

(U) DoD Directive 2310.01E, "The Department of Defense Detainee Program," August 19, 2014, is the current directive for Detainee Policy. It states that "all detainees will be treated humanely and with respect for their dignity, in accordance with applicable U.S. law and policy and the law of war." Furthermore, it said that "no detainee will be transferred to the custody of another country when a competent authority has assessed that it is more likely than not that the detainee would be subjected to torture." Finally, it stated that:

In addition, the risks that the detainee would suffer other forms of ill-treatment, such as arbitrary deprivation of life (including as the result of a death sentence pronounced without fundamental guarantees of a fair trial) or persecution on account of race, religion, nationality, membership in a particular social group, or the expression of a particular political opinion, should also be considered in a decision to transfer.

(U) The Chairman of the Joint Chiefs of Staff Instruction 3290.01D, "Program for Detainee Operations," June 1, 2012, states that "detainees shall be treated humanely and in accordance with U.S. law, the law of war, and applicable U.S. policy." The document details different Joint Staff responsibilities while detainees are in U.S. custody.

¹ (U) On December 31, 2011, DoD transitioned military actions to Iraq and therefore, has no remaining Iraq detainees.

(U) GTMO Transfers

(U) DoD maintains custody and control of the detainees held at the detention facilities at GTMO. Between March 1, 2013, and December 31, 2014, 39 detainees were reported transferred: 5 to Algeria, 4 to Afghanistan, 3 to Georgia, 5 to Kazakhstan, 1 to Kuwait, 5 to Qatar,² 3 to Saudi Arabia, 5 to Slovakia, 2 to Sudan, and 6 to Uruguay.

(U) Section 1028 (a), (b), and (d) of the National Defense Authorization Act for Fiscal Year 2013 required the Secretary of Defense to certify to Congress that certain conditions had been met, or provide a national security waiver, in order to transfer a detainee from GTMO. Section 1035 (b) of the National Defense Authorization Act for Fiscal Year 2014, requires the Secretary of Defense to determine actions have been taken or are planned to be taken which will substantially mitigate the risk of a detainee engaging or reengaging in any terrorist or other hostile activity that threatens the United States or United States persons or interests, and that the transfer is in the national security interest of the United States.

(U) Section 1028 (a)(2) of the National Defense Authorization Act for Fiscal Year 2013, and Section 1035 (a)(2) of the National Defense Authorization Act for Fiscal Year 2014, both authorize the Secretary of Defense to transfer a detainee to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction. All GTMO transfers completed from March 1, 2013, to December 25, 2013, complied with Section 1028 (a), (b), and (d) of the National Defense Authorization Act for Fiscal Year 2013. Moreover, all GTMO transfers completed from December 26, 2013, to December 31, 2014, complied with Section 1035 (b) of the National Defense Authorization Act for Fiscal Year 2014.

² (U) On May 31, 2014, U.S. Army Sergeant Bowe Bergdahl was released from Taliban captivity in exchange for five GTMO detainees that were transferred to the Government of Qatar. The Secretary of Defense evaluated the factors under Section 1035(c) of the Fiscal Year 2014 National Defense Authorization Act, including that the Government of Qatar had taken actions, or planned to take actions, that would substantially mitigate the risk that the five detainees to be transferred would engage or reengage in terrorist or other hostile activity. After this evaluation, the Secretary of Defense made the determination required by Section 1035(b), that the five GTMO detainees could be transferred. Therefore, on May 31, 2014, the Secretary of Defense notified the appropriate Congressional Committees of his determination in writing. In consultation with the Department of Justice, the Administration concluded that the five detainee transfers could lawfully proceed in the exercise of the President's constitutional authority to protect Americans abroad, notwithstanding the absence of 30 days' Congressional notice in Section 1035(d).

~~(S//NF)~~ The Department of State negotiated the assurances for all of the transfers from DoD custody at GTMO Detention Facility to foreign nations. Prior to DoD relinquishing custody, meetings and teleconferences are held between cognizant Combatant Commands, the Department of State, and the Office of the Director for Detainee Policy, Office of the Under Secretary of Defense for Policy, to ensure that appropriate paperwork, including state-to-state assurances, had been completed. Moreover, a Detainee Transfer Working Group meets every two weeks to discuss issues related to transferees. The working group is comprised of representatives from the Departments of Justice, State, and Defense, along with representatives from the Director of National Intelligence, Federal Bureau of Investigation, Central Intelligence Agency, Joint Staff, and Homeland Security.

(U) Afghanistan Transfers

~~(U//FOUO)~~ Combined Joint Inter-Agency Task Force 435 had oversight responsibility of U.S. detention operations in Afghanistan. Between March 1, 2013, and December 31, 2014, 1,341 detainees were reported transferred from U.S. custody. Some 1,284 Afghan detainees were reported transferred to the Government of the Islamic Republic of Afghanistan. An additional 57 third-country-national detainees were reported transferred: 42 to Pakistan, 6 to Afghanistan, 2 to Saudi Arabia, 2 to Yemen, 1 each to France, Kazakhstan, Kuwait, Morocco, and Turkey. With the 1,341 detainees reported transferred, DoD has no remaining detainees in Afghanistan.

~~(S//NF)~~ U.S. Forces, Afghanistan Detention Operations Policy Memorandum, July 11, 2010, stated that "detainees will be treated humanely without any adverse distinction based on race, color, religion or faith, gender, birth, wealth, or any similar criteria" and that "(d)etainees will not be abused in anyway." Combined Joint Inter-Agency Task Force 435 conducted Detainee Review Boards to determine if detainees meet the criteria for continued detention and whether they warranted continued internment to mitigate their threat. Should a detainee not meet the criteria to remain detained according to the Detainee Review Board Policy Memorandum, July 11, 2010, "the person shall be released from DoD custody as soon as practicable."

~~(S//NF)~~ STATE (b) (1), 1.4(b), 1.4(d)

[REDACTED]

~~(S//NF)~~ STATE (b)(1), 1-4(b), 1-4(d)
[Redacted]

~~(S//NF)~~ STATE (b)(1), 1-4(b), 1-4(d), (b) (7)(E)
[Redacted]

(U) Geneva Convention Transfers

(U) DoD conducted no detainee transfers outside of GTMO Detention Facility and Afghanistan, between March 1, 2013, and December 31, 2014, that would fall under the Geneva Conventions rules.

(U) Follow up from the Last Detainee Transfer Report

(U) We had two open recommendations in our September 23, 2013, report:

Recommendation 1

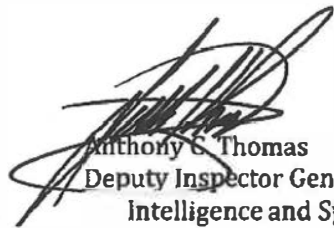
~~(S//NF)~~ *In conjunction with other relevant U.S. government agencies, the Deputy Assistant Secretary of Defense (Rule of Law and Detainee Policy) create an Afghanistan Detainee Transition Plan for the DoD-held detainees by January 31, 2014.*

(U) This recommendation is closed. All DoD-held detainees in Afghanistan were transferred by December 31, 2014.

Recommendation 2

(U) The Deputy Assistant Secretary of Defense (Rule of Law and Detainee Policy) complete the revisions by December 31, 2013, to DoD Directive 2310.01E, "Department of Defense Detainee Program," including adding the statement about not transferring detainees to foreign countries that are more likely than not to be tortured.

(U) This recommendation is closed. The Director for Detainee Policy, Office of the Under Secretary of Defense for Policy,³ incorporated this change into DoD Directive 2310.01E, "Department of Defense Detainee Program," and published it on August 19, 2014.



Anthony C. Thomas
Deputy Inspector General for
Intelligence and Special
Program Assessments

³ (U) The successor DoD organization to the Deputy Assistant Secretary of Defense (Rule of Law and Detainee Policy).

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