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Report No. 11-INTEL-01
December 3, 2010

Inspector General

United States

Department *of* Defense



DEPUTY INSPECTOR GENERAL FOR INTELLIGENCE

**Inspection of DoD Detainee
Transfers and Reliance on Assurances (U)**

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(U) Acronyms and Abbreviations

DoS	Department of State
GTMO	Guantanamo Bay
GIRoA	Government of the Islamic Republic of Afghanistan ¹
ISAF	International Security Assistance Force
NATO	North Atlantic Treaty Organization
USFOR-A	U.S. Forces, Afghanistan
USD(P)	Under Secretary of Defense, Policy

¹ On December 7, 2004, the official name for Afghanistan changed to the Government of the Islamic Republic of Afghanistan (GIRoA) from the Government of Afghanistan. This report will use GIRoA, regardless of the time period being discussed.

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**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704**

MEMORANDUM FOR: DEPUTY ASSISTANT SECRETARY OF DEFENSE.
DETAINEE POLICY

SUBJECT: DoD Detainee Transfers and Reliance on Assurances
(Report Number 11-INTEL-01) (U)

(U) We are providing this report for your information and use. We performed the inspection in response to a recommendation from Special Task Force on Interrogation and Transfer Policies to review assurances for transferees to foreign nations. This inspection was conducted concurrently and coordinated with the Offices of Inspector General of the Department of State and the Department of Homeland Security. We considered comments from the office of the Under Secretary of Defense for Policy, Detainee Policy, on a draft of the report in preparing the final report.

(U) Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, we do not require additional comments.

(U) Please direct questions to me at (703) 604-DoD OIG (b) (6) or DoD OIG (b) (6) at (703) 602-DoD OIG (b) (6).
If you desire, we will provide a formal briefing on the results.

Patricia A. Brannin
Deputy Inspector General
for Intelligence

cc:
Inspector General, Department of State
Inspector General, Department of Homeland Security

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Results in Brief: Inspection of DoD Detainee Transfers and Reliance on Assurances (U)

(U) What We Did

(U) This inspection was conducted pursuant to a recommendation of the Special Task Force on Interrogation and Transfer Policies, an interagency task force created by the President in Executive Order 13491, January 27, 2009.

(U) We inspected DoD release or transfer of detainees from Guantanamo Bay Detention Facility, Afghanistan and Iraq between August 24, 2009, and August 24, 2010, to determine if assurances were obtained that the transferred individuals would not be tortured. We conducted the inspection concurrently and coordinated with the Offices of Inspectors General of the Department of State and the Department of Homeland Security.

(U) What We Found

(U) Policies and procedures exist describing how detainees should be treated humanely while in Department of Defense custody. Department of State has primary authority for negotiating State-to-State assurances. DoD works closely with the Department of State when transferring detainees from Guantanamo Bay Detention Facility using a structured check list and timeline to accomplish the transfer smoothly. Policies and procedures are less structured and formal when transferring from DoD custody in Afghanistan and Iraq. 4,781 detainees were reported transferred from DoD custody between August 24, 2009, and August 24, 2010.

(U) Recommendation

(U) We recommend that the Under Secretary of Defense for Policy, Detainee Policy, incorporate relevant recommendations of the Special Task Force on Interrogation and Transfer Policies into the DoD Directive 2310.01E, "Department

of Defense Detainee Program." If the recommendations are determined not appropriate for DoD, the decision should be approved by the Deputy Secretary of Defense.

(U) Management Comments and our Response

(U) We provided a draft of this report to the office of the Deputy Assistant Secretary of Defense for Detainee Policy. They concurred with the report and recommendation.

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Recommendations Table

Staff	Recommendation Requires Comment	No Additional Comments Required
Under Secretary of Defense for Policy, Detainee Policy	None	None

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(U) Introduction

(U) Objective

(U) Our objective is to respond to the recommendation of the Special Task Force on Interrogation and Transfer Policies, an interagency task force created by the President in Executive Order 13491, to review assurances of humane treatment for transferees to foreign nations; specifically, the process for obtaining assurances, the content of the assurances, the implementation and monitoring of the assurances, and the post-transfer treatment of the person transferred. This inspection was conducted concurrently and coordinated with the Offices of Inspector General of the Department of State (DoS) and the Department of Homeland Security.

(U) Background

(U) Executive Order 13491, January 27, 2009, established the Special Task Force on Interrogation and Transfer Policies to bring together officials from law enforcement, the U.S. Intelligence Community, and the DoD to identify policies and procedures to ensure that interrogations are conducted in a manner that will strengthen national security consistent with the rule of law. The Special Task Force made policy recommendations with respect to scenarios in which the United States moves or facilitates the movement of 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 the transfer of individuals to countries where they will face torture.

(U) Several recommendations were to clarify and strengthen U.S. procedures for obtaining and evaluating assurances from receiving countries. These included a recommendation that the DoS be involved in evaluating assurances in all cases and a recommendation that the Inspectors General of the DoS, DoD, and Department of Homeland Security prepare and coordinate an annual report on transfers conducted by each of their agencies. This is the first such report.

(U) The Special Task Force also made several recommendations aimed at improving the United States' ability to monitor the treatment of individuals transferred to other countries. These include a recommendation that agencies obtaining assurances from foreign countries insist on a monitoring mechanism, or otherwise establish a monitoring mechanism, to ensure consistent, private access to the individual who has been transferred.

(U) The four areas with direct DoD involvement with detainee releases² or transfers³ are Guantanamo Bay (GTMO) Detention Facility, Afghanistan, Iraq, and Geneva

² For the purpose of this report, we are using the word "release" as defined in the Special Task Force Report "to mean the full release without conditions of an individual."

Conventions transfers. Between August 24, 2009, and August 24, 2010, 52 detainees were transferred from GTMO Detention Facility, 507 detainees were released or transferred in Afghanistan, and 4,222 detainees were transferred in Iraq. There were no additional Geneva Convention transfers.

(U) Scope and Methodology

(U) We conducted this inspection from August 2010 through October 2010 in accordance with the Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspections. Our review encompassed Department of Defense, Joint Staff, Combatant Commands, Task Force 435, Task Force 5-35 and Joint Forces Special Operations Component Command-Iraq policies and procedures. We interviewed subject matter experts, including Office of the Under Secretary of Defense for Policy (USD(P)) Detainee Policy. We reviewed documentation related to the transfer of DoD detainees held at GTMO and in Afghanistan and Iraq from August 24, 2009, to August 24, 2010. We limited our review to only the assurances specified in the objective.

(U) We did not use technical assistance to perform the inspection. We did coordinate with Quantitative Methods and Analysis Division, but due to severe time constraints, we did not employ a statistical sample of detainee files.

³ For the purpose of this report, we are using the word "transfer" as defined in the Special Task Force Report "to mean the transfer of an individual from the custody of the U.S. Government to the custody or control of a foreign government, whether for continued detention, the imposition of security measures, or other similar oversight."

(U) Finding: Existing Directives and Instructions on DoD Detainee Treatment

(U) Existing directives and instructions adequately described how detainees should be treated humanely under the Geneva Conventions while in DoD custody. However, DoS has primary authority for negotiating State-to-State assurances. Detainee operations from GTMO Detention Facility is an example of how DoD and DoS work very closely together to negotiate assurances for released detainees. The policies and procedures in Afghanistan and Iraq are less structured and formal, although there are what appear to be good practices.

(U) Defense Policy for Treatment of Detainees

(U) The DoD has a number of directives and policies that address how detainees should be treated while in DoD custody (Appendix A). In general, the policies do not specifically address how the detainees will be treated once transferred to another country.

(U) The DoD Directive 2310.01E, "The Department of Defense Detainee Program", September 5, 2006, is the current directive for Detainee Policy. It states "all detainees shall be treated humanely and in accordance with U.S. law, the law of war, and applicable U.S. policy" and "at a minimum the standards articulated in common Article 3 to the Geneva Conventions of 1949." Article 3 prohibits "at any time and in any place whatsoever ... violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture." The Office of the USD(P), Detainee Policy, is revising DoD Directive 2310.01E and is considering the Special Task Force recommendation to include verbiage consistent with the policy statement in Section 2242(a) of the 1998 Foreign Affairs Reform and Restructuring Act. The Special Task Force specifically recommended a "statement that the Department of Defense may not transfer any person to a foreign entity where it is more likely than not that the person will be tortured."

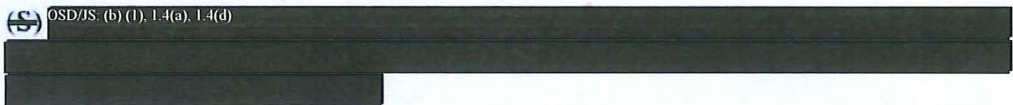
(U) Deputy Secretary of Defense memorandum, Subject: Policy Guidance on Department of Defense Detention Operations in Iraq, September 16, 2005, stated that detention operations will be conducted in such a way and in accordance with

...applicable international law to ensure humane treatment of all detainees and to ensure that all detainees are released or repatriated, or transferred to Iraqi control (for release or prosecution), at the earliest opportunity consistent with the security requirements of the MNF-I [Multi-National Forces-Iraq] and the safety of the Iraqi people.


(U) The Chairman of the Joint Chiefs of Staff Instruction 3290.01B, Program for Detainee Operations, February 9, 2007, states "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.

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(S) OSD/JS: (b) (1), 1.4(a), 1.4(d)



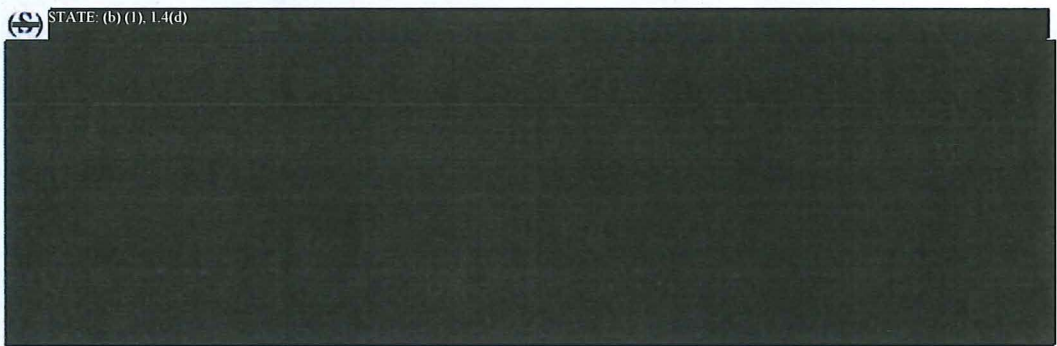
OSD/JS: (b) (1), 1.4(a), 1.4(d)



(U) There are four scenarios where DoD could reasonably be expected to be involved in detainee releases or transfers. These include from GTMO Detention Facility, from DoD custody in Afghanistan, from DoD custody in Iraq, and under Geneva Conventions guidelines transfers.

(U) Process for Detainee Transfer from Guantanamo Bay Detention Facility


(S) STATE: (b) (1), 1.4(d)



(U) Process for Detainee Release or Transfer in Afghanistan

(U) Within Afghanistan, U.S. troops are under operational control of either U.S. Forces – Afghanistan (USFOR-A) or North Atlantic Treaty Organization's (NATO) International Security Assistance Force (ISAF). The USFOR-A Commander has dual responsibilities as the ISAF Commander. 507 detainees were released or transferred from DoD custody between August 2009 and August 2010 in Afghanistan.

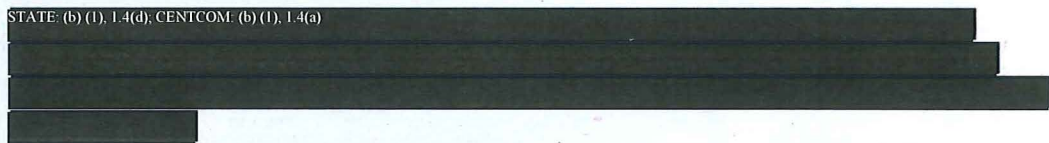
(S//NF) STATE: (b) (1), 1.4(d), CENTCOM: (b) (1), 1.4(a)



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STATE: (b) (1), 1.4(d); CENTCOM: (b) (1), 1.4(a)



~~(S//NF)~~ STATE: (b) (1), 1.4(d); CENTCOM: (b) (1), 1.4(a); OSD/JS: (b) (1), 1.4(b), 1.4(d)



(U) USFOR-A monitors the post-transfer treatment of the detainees that are transferred to the GIRoA for criminal prosecution at the Afghan National Detention Facility (near Kabul) and the Detention Facility in Parwan. Task Force 435 has regular access to the Afghan National Detention Facility as guard trainers and mentors and is able to monitor assurances. USFOR-A runs the Detention Facility in Parwan where detainees are held pending prosecution under Afghan law.

(U) U.S. ISAF personnel do not have the resources to monitor the post-transfer treatment of detainees.

(U) Potential Best Practice: Under USFOR-A, Task Force 435 was assigned responsibility for detention, interrogation and biometrics operations in Afghanistan. Pursuant to this assignment and in accordance with Deputy Secretary of Defense Policy Memorandum of July 2, 2009, Task Force 435 conducts Detainee Review Boards to determine if detainees meet criteria for continued detention and whether they warrant continued internment to mitigate their threat.

(U) When the Review Board decides that a detainee should be released, Task Force 435 uses a shura (Arabic word for consultation) release process in coordination with the GIRoA. Under this program, detainees are released during a shura ceremony where senior GIRoA officials sign for custody of the detainees. These same senior officials, as well as provincial, district, tribal, and family leaders, sign "Guarantor Statements" pledging to assist the detainees with re-entry into Afghan society.

(U) The "Guarantor Statement" (Appendix B) does not specifically state that the detainee will be treated humanely or will not be tortured, but does state that the Guarantor(s) will monitor the release and "take steps that he [the detainee] does not associate with criminals, insurgents, international terrorists or other groups who rely on violence to oppose the Afghan government." These processes relate to detainees being released back into society, not into the custody as a detainee of the GIRoA.

(U) Task Force 435 is not manned to track or monitor released detainees. However, they conducted two post-release shuras between January and August 2010 where former detainees went a central location to assess the progress of their re-entry into Afghan

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society. The Task Force did not receive any complaints of mistreatment. During these two events, 72 of 240 released detainees were interviewed.

(U) Process for Detainee Transfer in Iraq


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



(S) STATE: (b) (1), 1.4(d)



STATE: (b) (1), 1.4(d)



(U) The Commander of DoD OIG: (b) (7)(E) signed supplemental guidance on February 12, 2010, stating:

...no detainee may be returned or transferred to a host nation unit where credible information exists indicating that the detainee was abused or maltreated while in that unit's custody or in other cases where there is good reason to believe that the detainee will be subjected to abuse or maltreatment. ...assurances may be verbal or written, but in all cases must be properly documented and forwarded to the TSF CHOPS [Temporary Screening Facility Chief of current Operations] and DoD OIG: (b) (7)(E) Legal Advisor for inclusion in the detainee's record and investigation files.


(U) The Chiefs of Iraqi National Security Agency and Counter Terrorism Department signed a Memorandum for Record in August 2008 that documents assurances between Iraq and the Multi-National Force-Iraq which states that individuals that are transferred to Iraqi custody will be treated humanely and not be subject to mistreatment or torture.

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



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STATE (b) (1), 1.4(d)



(U) Geneva Conventions Transfer

(U) There were no detainee transfers conducted by the DoD outside of GTMO Detention Facility, Afghanistan and Iraq during the year ending August 24, 2010, that would fall under the Geneva Conventions rules.

(U) Conclusion

(U) Between August 2009 and August 2010, 4,781 reported detainees were released or transferred from U.S. custody in GTMO Detention Facility, Afghanistan and Iraq.

(U) The process for obtaining and the content of assurances vary based on location. Transfers from GTMO are more structured and formal than those occurring in Afghanistan and Iraq. Task Force 435 in Afghanistan initiated a best practice when releasing detainees to help reintegrate them into Afghan society by enlisting the help of senior Afghan government officials and local leaders via a shura ceremony. Individual assurances are not obtained for DoD detainees being released or transferred in Iraq or from ISAF in Afghanistan. However, where State-to-State assurances have not been obtained, the task forces in Afghanistan and Iraq are checking for any indicators of possible post-release torture prior to an individual's release or transfer. DoS is responsible for ensuring assurances are in place when detainees are transferred from GTMO Detention Facility.

(U) The implementation and monitoring of the assurances and the post-transfer treatment of the person transferred is not tasked to DoD; however, Office of USD(P), Detainee Policy, receives DoS cables concerning released GTMO Detention Facility detainees. Although Task Force 435 in Afghanistan does not have the resources to monitor post-release treatment of the detainees, they held post-release shuras designed to bring former detainees to a central location to assess the progress of their re-entry into Afghan society.

(U) The Office of USD(P) Detainee Policy is revising and updating relevant policy and will incorporate the Task Force recommendations related to transfer assurances as appropriate.

(U) Recommendation

(U) We recommend that the Under Secretary of Defense for Policy, Detainee Policy, incorporate relevant recommendations of the Special Task Force on Interrogation and Transfer Policies into the DoD Directive 2310.01E, "Department of Defense Detainee

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Program." If decisions are made that the recommendations are not appropriate for DoD, the decision should be approved by the Deputy Secretary of Defense.

(U) Management Comments. The Deputy Assistant Secretary of Defense for Detainee Policy concurred with the recommendation.

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(U) Appendix A. Policies and Doctrine

(U) Department of Defense Directive 2310.01E, Subject: The Department of Defense Detainee Program September 5, 2006: Policy and responsibilities within the Department of Defense for a Detainee Program to ensure compliance with the laws of the United States, the law of war, including the Geneva Conventions of 1949.


(U) Secretary of Defense Memorandum, Subject: Policy Guidance on Department of Defense Detention Operations in Iraq, September 16, 2005: Generally describes how detention operations will be conducted in accordance with UN Security Council Resolution 1546, standing operational procedures and policies, and applicable international law to ensure humane treatment of all detainees and to ensure that all detainees are released or repatriated or transferred at the earliest opportunity consistent with security requirements.

(S) Chairman of the Joint Chiefs of Staff Instruction 3290.01B, Subject: Program for Detainee Operations, February 9, 2007: Designates a single point of contact within the joint Staff for matters pertaining to the implementation of DoD detainee policy, assigns other joint staff responsibilities, and provides guidance regarding detainee operations.

(S) OSD/JS: (b) (1), 1.4(a), 1.4(d)



(S) OSD/JS: (b) (1), 1.4(a), 1.4(d)



(S) STATE: (b) (1), 1.4(d)



(U) Arrangement between the Minister of Defense of the Islamic Republic of Afghanistan and the United States Central Command Concerning Access to Detainees, February 13, 2007. This agreement describes United States access to detainees being held by the Government of Afghanistan.

(U) Memorandum for Commander, Task Force 5-35 from TF 5-35 SJA, May 10, 2010. Legal review of request to transfer detainees to the Government of the Islamic Republic of Afghanistan's National Directorate of Security. An example of how TF 5-35 documents and approves transfers from U.S. custody to Afghanistan.

(U) Appendix B. Guarantor Statement

In the Name of Allah, the compassionate, the merciful



Guarantor Statement

This shall affirm that United States forces are releasing _____ from custody in order that he may peacefully return to his home. The United States conducted a careful review of the facts and circumstances surrounding this person's detention and found that he was properly detained. He is now being released with the expectation that he will not participate in violent anti-government activities.

We agree to monitor _____ We will take steps to ensure that he does not associate with criminals, insurgents, international terrorists or other groups who rely on violence to oppose the Afghan government. We will meet with _____ regularly and monitor him on how to peacefully reintegrate into Afghan society. We commit to support him and his family in their effort to be peaceful and contributing members of Afghan society.

We the undersigned persons understand that the successful reintegration of this former detainee rests with his community and himself. Reintegration depends upon the former detainee renouncing violence, not supporting the insurgency and living honorably according to Afghan laws and customs. We commit to supporting the good conduct of this former detainee and we understand that his future behavior is a matter of our responsibility.

Name _____

Name _____

Name _____

Date _____

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(U) Appendix C. OUSD(P), Detainee Policy Comments



POLICY

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

DEC 2 2009

MEMORANDUM FOR Patricia Brauman, Deputy Inspector General for Intelligence

SUBJECT: DoD Detainee Transfers and Reliance on Assurances (Report Number 11-INTEL-01) (U)

(U) Thank you for the opportunity to review the Inspection of DoD Transfers and Reliance on Assurances, conducted in accordance with the recommendations of the Special Interagency Task Force on Interrogation and Transfer Policies created by Executive Order 13491, *Ensuring Lawful Interrogations* (January 22, 2009).

(U) My office has reviewed the findings and recommendations of the report, and has no objections. As the report notes, we are currently revising DoD Directive 2310.01E, and will consider whether or not relevant Special Task Force recommendations regarding transfers are appropriate for inclusion in the directive.

Sincerely,

William K. Lietzau
Deputy Assistant Secretary of Defense
for Detainee Policy



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Inspector General
Department of Defense

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