



SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1000

FEB 15 2019

MEMORANDUM FOR CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF
DEFENSE

SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDER, UNITED STATES SOUTHERN COMMAND
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Policy Memorandum, "Implementing Guidelines for Periodic Review of Detainees
Held at Guantanamo Bay per Executive Order 13567"

References: See Attachment 1

Purpose. This policy memorandum revises the previous Policy Memorandum, dated November 27, 2017, (Reference (c)), and implements Executive Order 13567 (Reference (a)), establishing a policy and process to review, on a periodic basis, the Executive branch's continued discretionary exercise of existing detention authority over detainees held at the Department of Defense (DoD) detention facility at Guantanamo Bay, Cuba (GTMO) pursuant to the Authorization for Use of Military Force, in individual cases.

- The periodic review directed in Reference (a) was established by the authority vested in the President by the Constitution and the laws of the United States, including Public Law 107-40 (Reference (b)).
- This policy memorandum provides the guidelines of the periodic review process, as directed and authorized by section 3 of Reference (a).

Applicability. This policy memorandum applies to the Office of the Secretary of Defense, the Secretaries of the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, U.S. Southern Command, the Office of the Inspector General



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of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter referred to collectively as the “DoD Components”).

Definitions. See Glossary.

Policy. It is DoD policy that:

- Nothing in Reference (a) or these guidelines shall prejudice the authority of the Secretary of Defense to determine the disposition of any detainee not covered by Reference (a).
 - Consistent with section 6 of Reference (a), the Departments of Defense and Justice assess whether prosecution of a detainee is feasible and in the national security interests of the United States.
 - Consistent with section 4 of Reference (a), the Department of State evaluates humane treatment assurances in all cases, consistent with the recommendations of the Special Task Force on Interrogation and Transfer Policies established by Executive Order 13491 (Reference (e)).
- Reference (a) and these guidelines shall be implemented subject to the availability of necessary appropriations and consistent with applicable law, including:
 - Detainee Treatment Act of 2005 (Reference (f)).
 - The Convention Against Torture (Reference (g)).
 - Common Article 3 of the Geneva Conventions (Reference (h)).
 - Other laws relating to the transfer, treatment, and interrogation of individuals detained in armed conflict.
- Reference (a) and these guidelines are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- Nothing in Reference (a) or these guidelines and no determinations made under them shall be construed as grounds for release of detainees covered therein into the United States.

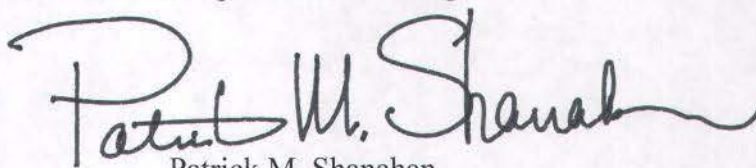
Responsibilities. See Attachment 2.

Procedures. See Attachment 3.

Information Collection Requirements. The Periodic Review Board (PRB) reports

referred to in section 6 of Attachment 2 of this policy memorandum are exempt from licensing requirements in accordance with paragraph C4.4.7. of DoD 8910.1-M (Reference (i)).

Releasability. UNLIMITED. This policy memorandum is approved for public release and is available on the DoD Issuances Website at <http://www.defense.gov>.

A handwritten signature in black ink that reads "Patrick M. Shanahan". The signature is written in a cursive, flowing style with a large initial "P" and "S".

Patrick M. Shanahan
Acting

Attachments:
As stated

ATTACHMENT 1

REFERENCES

- (a) Executive Order 13567, "Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force," March 7, 2011
- (b) Public Law 107-40, "Authorization for Use of Military Force," September 18, 2001
- (c) Policy Memorandum, "Implementing Guidelines for Periodic Review of Detainees Held at Guantanamo Bay per Executive Order 13567," November 27, 2017
- (d) DoD Office of General Counsel Memorandum, "Preservation of Detainee Records," December 19, 2007
- (e) Executive Order 13491, "Ensuring Lawful Interrogations," January 22, 2009
- (f) Public Law 109-148, "Detainee Treatment Act of 2005," December 30, 2005
- (g) United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984
- (h) Common Article 3, Geneva Conventions of 1949, August 12, 1949
- (i) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," June 30, 1998
- (j) DoD Directive 2310.01E, "The Department of Defense Detainee Program," August 19, 2014
- (k) DoD Directive 5143.01, "Under Secretary of Defense for Intelligence (USD(I)), " April 22, 2015
- (l) Executive Order 13492, "Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities," January 22, 2009
- (m) Public Law 114-92, "National Defense Authorization Act for Fiscal Year 2016," November 25, 2015
- (n) Public Law 105-277, "Omnibus Consolidated and Emergency Supplemental Appropriations Act," October 21, 1998
- (o) Executive Order 13526, "Classified National Security Information," December 29, 2009
- (p) Section 102-3.40(k), title 41, Code of Federal Regulations

ATTACHMENT 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR POLICY. The Under Secretary of Defense for Policy, as the Principal Staff Assistant and advisor to the Secretary of Defense on detainee-related matters and in accordance with DoD Directive 2310.01E (Reference (j)), shall exercise oversight of the periodic review of GTMO detainees, the Periodic Review Secretariat (PRS), and the PRB process.
2. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE. The General Counsel of the Department of Defense shall exercise legal oversight of the activities of the PRB and support the legal responsibilities of the PRS.
3. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE. The Under Secretary of Defense for Intelligence, as the Principal Staff Assistant and advisor to the Secretary of Defense and Deputy Secretary of Defense for Defense Intelligence, Counterintelligence, and Security and in accordance with DoD Directive 5143.01 (Reference (k)), shall ensure the Defense Intelligence Enterprise supports the PRB with all intelligence information compilation and access requirements in accordance with Reference (a).
4. HEADS OF DoD COMPONENTS. The Heads of DoD Components shall provide support as requested by the Under Secretary of Defense for Policy for the periodic review of GTMO detainees to meet responsibilities as addressed herein.
5. CHAIRMAN OF THE JOINT CHIEFS OF STAFF. The Chairman of the Joint Chiefs of Staff shall coordinate on all requests from the Under Secretary of Defense for Policy for the periodic review of GTMO detainees for support from the geographical and functional combatant commands.
6. SECRETARY OF THE NAVY. The Secretary of the Navy, in his or her capacity as support agent for the periodic review of GTMO detainees, shall program and budget for the administrative and logistical support of the PRS, which replaces the Office for Administrative Review of the Detention of Enemy Combatants, in the execution of the PRB process. Such support shall include fiscal support for civilian personnel, travel and transportation, vehicles, information technology, facilities and security, supplies and equipment, and contract administration and support.

ATTACHMENT 3

PERIODIC REVIEW PROCEDURES AND PROCESS

1. INTRODUCTION. Reference (a) establishes a process to review, on a periodic basis in individual cases, the Executive branch's continued discretionary exercise of existing detention authority over detainees held at the DoD detention facility at Guantanamo Bay, Cuba pursuant to Reference (b). Reference (a) does not create any additional or separate source of detention authority and does not affect the scope of detention authority under existing law.

a. The process established in Reference (a) will be conducted in accordance with these implementing guidelines and other procedures implemented by the PRS.

b. Because the process described in Reference (a) has been instituted as a matter of discretion, the President may suspend or amend those procedures or these implementing guidelines, consistent with applicable law, at any time.

2. SCOPE OF THE PERIODIC REVIEW PROCESS.

a. The periodic review process described in section 3 of Reference (a) and these guidelines applies to any individual who is detained as an unprivileged enemy belligerent at the DoD detention facility at Guantanamo Bay, Cuba, at any time.

b. In the event detainees covered by Reference (a) are transferred from GTMO to another United States military detention facility where they remain in continued law of war detention, the process set forth herein shall continue to apply to them.

c. In the event an individual tried and sentenced by a military commission or any other competent tribunal is acquitted or completes his sentence, the matter will be referred to the Review Committee for consideration and appropriate action.

3. STANDARD. Continued law of war detention is warranted for a detainee subject to periodic review if such detention is necessary to protect against a continuing significant threat to the security of the United States. In making that assessment, the PRB may review materials in the detainee's case file as provided by the PRS, to include the detainee compendium compiled by the United States Intelligence Community (IC), and the work product of a prior PRB. Application of this standard is specifically not intended to require a re-examination of the underlying materials that supported the work products of either Reference (1) or a prior PRB and is not intended to create a requirement that each PRB conduct a zero-based review of all original source materials concerning a detainee. In assessing whether a detainee continues to meet this standard, the PRB may consider the following factors, giving weight to each factor as they deem appropriate:

a. The detainee compendium compiled by the IC, which includes baseline threat information including:

(1) The extent to which the detainee was involved in or facilitated terrorist activities, including the extent to which the detainee may have planned or participated in specific terrorist attacks.

(2) The detainee's conduct when acting as part of, or substantially supporting, Taliban or al-Qa'ida forces, associated forces, or other groups that are engaged in hostilities against the United States or its coalition partners.

(3) The level of knowledge, skills, or training possessed by the detainee that has been or could be used for terrorist purposes, including:

(a) Training or ability to plan, lead, finance, organize, or execute acts of terrorism.

(b) Training or ability to facilitate the movement or training of terrorists.

(c) Any specialized training or operational experience (e.g., training in paramilitary tactics, explosives, or weapons of mass casualty).

(4) The nature and extent of the detainee's ties with individual terrorists, terrorist organizations, terrorist support networks, or other extremists.

b. Information pertaining to the detainee's potential threat if transferred or released, including but not limited to the factors listed in paragraph 3.a. of this attachment, and:

(1) Information pertaining to the likelihood that the detainee intends to or is likely to engage in terrorist activities upon his transfer or release.

(2) Information pertaining to the likelihood that the detainee will reestablish ties with al-Qa'ida, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, and information pertaining to whether the group the detainee was part of at the time of capture is now defunct.

(3) The potential destination country for the detainee, with specific regard, but not limited, to:

(a) The presence of terrorist groups, instability, or other factors in that country that could negatively influence the detainee's potential to engage in terrorist activities upon transfer.

(b) The likelihood of family, tribal, or government rehabilitation or support for the detainee.

(c) The availability and credibility of measures by the receiving government to mitigate substantially the assessed threat posed by the detainee, including information regarding past detainee transfers to that country, if applicable.

(4) The detainee's conduct in custody, including behavior, habits, traits, rehabilitation efforts, and whether the detainee was considered a danger to other detainees or other individuals.

(5) The detainee's physical and psychological condition.

(6) Any other relevant factors bearing on the threat the detainee's transfer or release may pose to the United States, its citizens, and/or its interests.

(7) Any other relevant information bearing on the national security and foreign policy interests of the United States or the interests of justice.

4. LEGALITY OF DETENTION.

a. The process established under Reference (a) and these guidelines does not address the legality of any detainee's law of war detention, but rather makes discretionary determinations about whether or not a detainee represents a continuing significant threat to the security of the United States.

(1) If, at any time during the periodic review process established in Reference (a), material information calls into question the legality of detention, the matter will be referred to the Secretary of Defense and the United States Attorney General for appropriate action. Any information that calls into question the legality of detention, for example, by tending to undermine a determination of the legality of detention made after March 13, 2009, shall be presented to the PRS Director, who will promptly provide the information to the DoD Office of General Counsel.

(2) If the DoD Office of General Counsel assesses that the information calls into question the legality of detention, the DoD Office of General Counsel will immediately notify the Secretary of Defense and the Attorney General for appropriate action and will apprise the departments and agencies represented on the PRB.

b. Detainees held at GTMO have the constitutional privilege of the writ of habeas corpus, and nothing in Reference (a) or these guidelines is intended to affect the jurisdiction of Federal courts to determine the legality of their detention.

5. PARTICIPANTS IN THE PERIODIC REVIEW PROCESS.

a. PRB. The PRB is responsible for determining whether continued law of war detention is warranted for each detainee subject to the periodic review, subject to any determination by the Review Committee in accordance with section 3.(d) of Reference (a) and paragraph 5.h. of this attachment, and subject to any final decision of the Secretary of Defense to release or transfer a detainee in accordance with section 1034 of Reference (m).

(1) Consistent with section 9.(b) of Reference (a), the PRB should be composed of: one senior official (Senior Executive Service (SES)) or other senior officer or expert with relevant knowledge and experience) each from the Departments of Defense, Homeland Security, Justice, and State, and the Offices of the Chairman of the Joint Chiefs of Staff and the Director of National Intelligence. The PRB is chaired by the DoD, who is also responsible for oversight of the PRB's and PRS's administration and conduct.

(2) A legal advisor, appointed by the General Counsel of the Department of Defense, may assist the PRB during the periodic review process but shall not be a member of the PRB.

b. PRS. The PRS shall perform all administrative functions for the PRB, including scheduling hearings and distributing information to the PRB members.

(1) The PRS Director shall report directly to the Under Secretary of Defense for Policy or designee.

(2) PRS shall consist of civilian and military personnel, as directed.

(3) PRS shall be responsible for the processing of individual detainee cases, including presenting material to the PRB and assisting with any follow-up action required as a result of the PRB's review.

(4) Prepare in a timely manner final case files, consisting of the information assembled and analyzed by the IC, including the substitutes or summaries described in section 3 of Reference (a) and subparagraph 6.b.(4) of this attachment.

(5) Be responsible for ensuring the orderly submission to the PRB of materials prepared for the PRB by the detainee's personal representative and private counsel, as applicable.

c. PRS Legal Advisor. In coordination with the PRB Legal Advisor, the PRS legal advisor shall ensure that PRB proceedings comply with Reference (a) and these guidelines.

d. Personal Representative. Personal representatives shall be assigned by the PRS Director and shall be responsible for assisting the detainee in the PRB proceedings as described in section 3.(a)(2) of Reference (a) and these guidelines, including advocating on behalf of the detainee before the PRB, challenging the Government's information, and introducing relevant information on behalf of the detainee.

(1) The personal representative shall be a military officer of the DoD (other than a judge advocate, chaplain, or public affairs officer), at the grade of O-3 or higher, who shall be detailed to the PRS and possess a security clearance sufficient to review the material before the PRB.

(2) If the detainee refuses to participate before his PRB, the personal representative shall still perform these duties to the extent practicable. If the detainee has private counsel assisting in the PRB proceedings, the personal representative shall endeavor to work cooperatively with counsel and shall facilitate interaction between private counsel and the PRS.

(3) The personal representative shall not share, discuss, or disclose:

(a) Any classified information with any detainee.

(b) Any of the information that the Government has determined must be withheld from private counsel in accordance with subsection 3.(a)(5) of Reference (a) to any private counsel, although the personal representative may discuss with private counsel the contents of any sufficient substitute or summary of that information that the Government has provided to such counsel.

e. The United States Intelligence Community (IC).

(1) Consistent with section 7 of Reference (a), the IC, in coordination with the Office of the Director of National Intelligence, will compile a detainee compendium consisting of a presentation of specific facts that includes information about the detainee and notes inconsistent reporting where appropriate.

(2) Consistent with subsection 3.(a)(4) and 3.(a)(5) of Reference (a), the compendium will draw from all-source reporting as well as any prior products created for previous PRB reviews when appropriate, and, to the extent possible, include the maximum amount of information drawn from those products that is relevant to whether continued detention is necessary to protect against a continuing significant threat to the security of the United States.

f. Private Counsel. If elected by the detainee, Private Counsel may assist the personal representative and the detainee in proceedings before the PRB, as described in these guidelines, at no expense to the Government, provided that such private counsel:

(1) Is admitted to the practice of law in a State, district, territory, or possession of the United States, or before a Federal court.

(2) Has not been the subject of any sanction or disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct.

(3) Is currently holding or is eligible and is anticipated to receive clearance for access to information classified at the Secret level or higher. No classified information may be shared until such clearance is granted and/or confirmed.

(4) Has agreed to appropriate conditions as provided by the PRS, in consultation with the DoD Office of General Counsel and the Office of the Director of National Intelligence, to:

(a) Comply with all applicable regulations or instructions for counsel, including any rules for conduct during the proceedings.

(b) Protect any classified information disclosed during the course of representation of the detainee in accordance with all applicable law.

(c) Not divulge classified information to any person who is not authorized to receive it, including his or her detainee client.

g. Review Committee. In accordance with section 9.(d) of Reference (a), the Review Committee shall be composed of the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff. In accordance with section 3.(d) of Reference (a), the Review Committee is responsible for reviewing PRB determinations if unanimous consensus within the PRB cannot be reached or if a Review Committee member seeks a review of a PRB determination within 30 days of that determination. Review Committee review that does not result in unanimous consensus shall be resolved by a meeting that is convened by the National Security Advisor.

6. PROCESS FOR INITIAL REVIEW.

a. Preliminary Procedures.

(1) The PRS shall identify detainees subject to periodic reviews and develop a case sequence management prioritization and assignment system. PRS shall obtain input from the Under Secretary of Defense for Policy (USDP) or his or her designee regarding any policy concerns or special issues that could affect sequencing of the cases.

(2) The PRB shall make the final decision on case sequencing and any subsequent revisions.

b. Information Compilation.

(1) The IC will compile the detainee compendium as described in subparagraph 5.f. of this attachment, subject to the screening described in subparagraph 6.b.(2) of this attachment.

(2) Department of Justice (DOJ)-Led Interagency Screening Team Process

(a) The Screening Team will review the compendium for information that may implicate cruel, inhuman, or degrading treatment (CIDT) concerns or other information that requires exclusion. This review is required only for new custodial information that is provided to the PRB that contains CIDT information.

(b) The DOJ will lead the Screening Team, but the review will be an interagency effort. The Screening Team will remove proscribed information from the compendium where that information supports the conclusion that the detainee poses a threat to the national security of the United States. The Screening Team will identify but not remove from the compendium potentially mitigating information, including mitigating information that may implicate CIDT concerns.

(3) Classification Downgrade

(a) Pursuant to Reference (a), versions of the compendium will be prepared for:

(i) the PRB, at whatever level of classification is required;

(ii) the personal representative consistent with Section 3.(a)(5) of Reference (a);

(iii) Private Counsel (if applicable), consistent with Section 3.(a)(5) of Reference (a); and

(iv) the detainee, an unclassified summary of the factors and information consistent with Section 3.(a)(1) of Reference (a).

(b) Departments and agencies owning information contained within the compendium will conduct a process for classification downgrade of the screened compendium to allow for preparation of the required versions.

(4) Preparation of Substitutes and Summaries

(a) An originating department or agency may determine that some or all of its material cannot be presented in original form for the reasons provided in Section 3.(a)(5) of Reference (a). In those instances, the originating agency shall prepare a meaningful substitute or summary of that information for inclusion in the appropriate compendium version.

(b) If the originating department or agency indicates that a meaningful substitute or summary cannot be prepared, the information at issue shall be removed altogether and shall not be presented to the PRB, provided that any facts removed from the compendium do not include mitigating information.

(5) Other Inputs to Detainee Dossiers

(a) Specific information that is relevant to the PRB's determination, but is beyond the scope of the compendium, will be included in the dossier.

(b) This additional information will include:

(i) Department of State Country Assessment of diplomatic considerations or security assurances pertaining to Guantanamo detainees;

(ii) Office of Military Commissions Prosecution Position Memorandum on the likelihood of prosecution in a military commission; and

(iii) Joint Task Force – Guantanamo Medical Summary of the mental and physical health of the detainee.

(c) These interagency assessments do not require screening prior to submission to the PRB as described above in subparagraph 6.b.(2) as they do not contain custodial statements that could be the product of CIDT.

(6) Compilation of the Detainee Dossier and Case File

(a) PRS will compile a detainee dossier, which will include the screened compendia and four interagency assessments discussed in subparagraph 6.b.(5).

(b) PRS will also compile a case file, which consists of up to four versions of the detainee dossier and any information submitted by the personnel representatives, private counsel and detainee, as described below. The dossier versions will be produced consistent with subparagraph 6.b.

c. PRB Review for Sufficiency of Substitutes and Summaries.

(1) A representative within the Office of Detainee Policy will review each substitute and/or summary along with the underlying withheld information and determine whether the substitute and/or summary is sufficient to provide the detainee's personal representative and private counsel with a meaningful opportunity to assist the detainee during the review process.

(2) If any summaries or substitutes are determined to be insufficient, the PRS will request the originating agency or department rewrite all or some of the substitutes and/or summaries to satisfy any deficiencies or sufficiency requirements identified.

(3) If, in the discretion of the originating agency or department, an adequate or meaningful substitute or summary cannot be prepared in a manner that protects the withheld information, the originating agency or department will notify the PRS of that determination and the information will not be submitted to the PRB for consideration provided it does not include mitigating information.

(4) Any revised substitutes or summaries must be reviewed and approved by the representative within the Office of Detainee Policy.

d. Information Provided to the PRB. The PRB will receive from the PRS:

(1) All information compiled pursuant to paragraph 6.b. of this attachment, following the screening described in subparagraphs 6.b.(2) of this attachment, together with all information considered by any prior PRB review, including all mitigating information (as defined in the Glossary) that was compiled pursuant to paragraph 6.b. of this attachment, or otherwise is made available to the PRB and that is not cumulative or needlessly repetitive.

(2) All substitutes or summaries provided to the personal representative or private counsel.

(3) The unclassified information provided to the detainee.

(4) Any information submitted by the detainee, the personal representative, or private counsel, as described below, prior to the hearing.

(5) The PRB will not consider any information for the purposes of the review that is not provided by PRS.

e. Information Provided to the Personal Representative. The PRS will provide the detainee's personal representative the information compiled pursuant to paragraph 6.b. of this attachment, following the screening described in subparagraphs 6.b.(2) of this attachment, as well as any appropriate substitutes or summaries prepared and deemed sufficient pursuant to subparagraph 6.b.(4) and paragraph 6.c. of this attachment.

f. Information Provided to Private Counsel. The PRS will provide the detainee's private counsel the information compiled pursuant to paragraph 6.b. of this attachment, following the screening described in subparagraphs 6.b.(2) of this attachment, as well as any appropriate substitutes or summaries prepared and deemed sufficient pursuant to subparagraph 6.b.(4) and paragraph 6.c. of this attachment.

g. Information Provided to the Detainee.

(1) An unclassified summary of the factors and information the PRB will consider will be produced for the detainee.

(2) The unclassified summary shall be translated into a language the detainee understands and provided to the detainee.

(3) Advance notice of the PRB review shall be provided to the detainee in writing and in a language the detainee understands.

h. Information Submitted by the Detainee.

(1) The personal representative and private counsel, if any, shall be provided with advance notice of the PRB review, as well as a reasonable opportunity to meet or talk to the detainee to discuss the PRB process and the information the detainee may wish to submit.

(2) The personal representative and private counsel, if any, may prepare a written submission for the PRB, which may include a written statement from the detainee. The written submission shall include all factual information that the detainee intends to present in the PRB proceedings. Such submission shall only contain information relevant and material to the determination of whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States. Relevance and materiality of the information is determined by the PRB.

(3) The detainee, in his written submission, may make reference to information known to him but which is classified. This is also the case during any oral submission made by the

detainee, his personal representative, private counsel, or potential witness. As part of its deliberative process, the PRB shall evaluate the detainee's submission in order to ensure that all activities related to Reference (a) comply with Reference (n) regarding the handling, dissemination, and protection of national security information.

(4) The personal representative and private counsel, if any, may provide the PRS with any detainee request for witnesses. The request shall include sufficient information to enable the PRB to assess the request under subparagraph 6.i. of this attachment.

(5) The personal representative shall advise the PRS whether the detainee intends to participate in the periodic review process. The personal representative shall also inform the PRS whether the detainee desires to personally appear before the PRB.

(6) The detainee can elect to participate in the periodic review process and/or personally appear before the PRB at any time prior to the detainee's PRB.

i. Consideration of the Detainee's Requests for Witnesses.

(1) The detainee shall be permitted to call witnesses, provided that the PRB:

(a) Concludes that the information to be provided by the witness is relevant and material to the determination of whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States.

(b) Finds that the witness is available and willing to appear before the PRB in person and/or remotely by telephone or video conference. In lieu of a personal appearance, the PRB may allow the witness to provide his or her testimony in written or video form.

(2) PRB decisions on the detainee's requests for witnesses shall be made by consensus. The PRB shall inform the PRS of its decision on witnesses prior to any final presentation by the personal representative, private counsel, or detainee.

(3) The PRS shall inform the personal representative of the PRB's decision.

j. Conduct of the PRB Hearing.

(1) The PRB shall review all information provided as described in paragraph 6.d. of this attachment. The PRB is limited to reviewing only information that is provided consistent with these guidelines. If the PRB determines that any of the documents cited in the information submitted pursuant to paragraph 6.d. are necessary for it to complete its assessment, access to these underlying documents may be requested of the document originator through the Office of the Director of National Intelligence.

(2) After reviewing the information, the PRB may request additional information it deems necessary to inform its decision properly.

(a) In this event, the PRB shall meet with PRS to obtain additional information or to discuss any unresolved questions.

(b) If the PRS produces additional information for the PRB, following the screening described in subparagraph 6.b.(2) of this attachment, the information will be provided before the hearing to the personal representative, the detainee's private counsel, and the detainee consistent with paragraphs 6.e., 6.f., and 6.g. of this attachment.

(3) The detainee, personal representative, and private counsel, if any, shall present the detainee's information that is relevant to whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States.

(4) At the hearing, the detainee, his personal representative, and his private counsel, shall be permitted to:

(a) Present to the PRB written or oral statements consistent with the provisions of paragraph 6.h. of this attachment.

(b) Answer any questions posed by the PRB.

(c) Call witnesses permitted pursuant to paragraph 6.i. of this attachment.

(5) The PRS shall provide administrative support to the PRB, to include handling any PRB requests for additional information that arise before or after the hearing. Any additional information that the PRS may provide to the PRB after the hearing shall be screened in accordance with the procedures described in subparagraph 6.b.(2) of this attachment, and shall be provided to the personal representative and the detainee's private counsel, if any, consistent with paragraphs 6.e., 6.f., and 6.g. of this attachment.

k. Determinations of the PRB.

(1) Consistent with subsection 3.(a)(6) of Reference (a), the PRB shall consider the reliability of any information provided to it in making its determination. The PRB shall not rely on information obtained as a result of torture or cruel, inhuman, or degrading treatment. Any questions regarding these matters that arise during the review process, including PRB deliberations, shall be directed to the PRB and PRS legal advisors who will consult with the General Counsel of the Department of Defense and the general counsel of the department or agency that acquired the information, as necessary.

(2) After reviewing all relevant information provided to it, the PRB shall deliberate and make a prompt determination as to whether continued law of war detention of the detainee remains necessary to protect against a continuing significant threat to the security of the United States. This determination shall be by unanimous consensus and in writing on the determination form. The objective of deliberations is to achieve unanimous consensus and the Board will meet as long as required.

(3) If unanimous consensus cannot be reached by the PRB, the reasons for the non-consensus shall be included in the PRB's written determination form and provided to the Review Committee. The case will then go before the Review Committee as outlined in subparagraph 6.1.(2) of this attachment.

(4) If the PRB determines that continued law of war detention is no longer necessary, the PRB shall recommend any conditions that relate to the detainee's transfer. Such recommendations may include potential destination countries outside of the United States; participation in an appropriate rehabilitation, reconciliation, or reintegration program in the destination country; or other threat mitigation or country-specific recommendations.

1. Review Committee Review of PRB Determinations.

(1) If the PRB determines by unanimous consensus that continued law of war detention either remains necessary or no longer remains necessary to protect against a continuing significant threat to the security of the United States, the PRB shall forward its determination through the PRS to the Review Committee. If no Review Committee member(s) seek review of the PRB determination within 30 days of that determination, the Review Committee will be deemed to have concurred in the determination of the PRB.

(2) If the PRB fails to reach a unanimous consensus determination on the issue of whether continued law of war detention remains necessary, the PRB shall forward its written determination form through the PRS to the Review Committee.

(a) The reasons for non-consensus will be documented on the written determination form.

(b) Review Committee members will consider the case via a paper review, staffed by their respective PRB members. Review Committee members will rely only on the same information available to their PRB member. Board members will then report results and rationale of his/her Review Committee member to the PRB and PRS.

(c) PRS will record each Review Committee member's decision and rationale.

(d) If the Review Committee cannot come to a unanimous consensus decision, the review will be conducted as an agenda item during a Principals Committee meeting.

(3) If a Review Committee member seeks a review of a PRB determination within 30 days of that determination, the Review Committee shall conduct a review of the detainee's case.

(a) The Review Committee member(s) seeking a review will provide his/her rationale for the request to the PRB through his/her Board member.

(b) Review Committee members will consider the case via a paper review, staffed by their respective PRB members. The rationale provided by the Review Committee member seeking review must be included as part of the review request to each Review Committee

member. Review Committee members will rely only on the same information available to their PRB member. Board members will then report results and rationale of his/her Review Committee member to the PRB and PRS.

(c) PRS will record each Review Committee member's decision and rationale.

(d) If the Review Committee cannot come to a unanimous consensus decision, the review will be conducted as an agenda item during a Principals Committee meeting.

(4) The Review Committee's decision shall be made by unanimous consensus. A Review Committee decision shall be final.

m. Notification to Detainee and Personal Representative.

(1) The PRB shall provide an unclassified written summary of the final determination to the detainee, in a language the detainee understands, within 30 days of the determination, when practicable. The summary shall also be provided to the detainee's personal representative and, if applicable, to the detainee's private counsel. The final determination is considered close-hold until presented to the detainee.

(2) If the final determination is that continued law of war detention remains necessary to protect against a continuing significant threat to the security of the United States, the PRS shall schedule a file review for the detainee within 6 months.

(3) If the final determination is that continued law of war detention is no longer necessary to protect against a continuing significant threat to the security of the United States, then, as specified in section 4 of Reference (a), the Secretaries of State and Defense shall be responsible for ensuring that vigorous efforts are undertaken to identify a suitable transfer location for the detainee, outside of the United States, consistent with the national security and the foreign policy interests of the United States and the commitment set forth in section 2242(a) of Public Law 105-277 (Reference (n)).

7. SUBSEQUENT FULL REVIEWS. The PRS shall ensure that the process described in section 6 of this attachment is repeated at least once every 3 years for each eligible detainee described in paragraph 2.a. of this attachment.

8. PROCESS FOR FILE REVIEWS.

a. Information Compilation. Within 6 months of the date of the determination of the last review, the IC, in coordination with other relevant Government departments and agencies, shall compile any additional relevant information related to the detainee identified since the last review.

b. Information Provided to the PRB. The PRS shall provide to the PRB all information compiled in accordance with paragraph 8.a. of this attachment, subject to the screening described in subparagraph 6.b.(2) of this attachment, together with all information considered by any prior PRB review. The PRB will not consider any additional information when conducting the file review.

c. Information Provided to the Personal Representative. The PRS shall provide to the personal representative all information that is provided to the PRB, subject to the same limitations described in paragraph 6.e. of this attachment.

d. Information Provided to the Private Counsel. The PRS shall provide to the private counsel all information consistent with paragraph 6.f. of this attachment.

e. Information Provided to the Detainee. The PRS shall provide an unclassified summary of the factors and information the PRB will consider in evaluating whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States. The written summary shall be completed in accordance with paragraph 6.g. of this attachment.

f. Notice to the Personal Representative The PRS shall provide advance notice to the personal representative of the pending file review and of the deadlines for submission of any written statement by the detainee.

g. Information Submitted by the Detainee.

(1) The personal representative and private counsel, if any, shall be provided a reasonable opportunity to meet or talk to the detainee to discuss the upcoming submission and file review.

(2) The personal representative and private counsel, if any, may assist in preparing the detainee's written submission, if any, for the PRB.

(3) The personal representative shall provide the detainee's written submission, if any, to the PRS to forward to the PRB.

h. Determinations of the PRB.

(1) If the PRB determines by unanimous consensus that no significant question is raised about whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States, the PRB shall forward its determination to the PRS for Review Committee consideration.

(a) If no Review Committee member seeks a review of the PRB determination within 30 days of that determination, the Review Committee will be deemed to have concurred in the conclusion of the PRB, the status will remain unchanged and the detainee will be scheduled for the next file review or full review, as appropriate.

(b) If one or more Review Committee members seek a review of the PRB determination within 30 days of that determination, then a full review pursuant to the standards in section 3.(a) of Reference (a) and consistent with the initial review described under section 6 of this attachment will be conducted as soon as practicable.

(2) If the PRB determines by unanimous consensus that a significant question is raised as to whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States, the PRB shall, as soon as practicable, convene a full review pursuant to the standards in section 3.(a) of Reference (a) and consistent with the initial review described under section 6 of this attachment.

(3) If the PRB cannot reach unanimous consensus regarding whether a significant question is raised as to whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States, the PRB shall submit this information to the PRS to forward to the Review Committee.

i. Review Committee Review of PRB File Review Determinations.

Review Committee members shall review the information described in paragraph 8.b. of this attachment, as well as information submitted by the detainee pursuant to these guidelines. The Review Committee's decision shall be by unanimous consensus. Until the Review Committee reaches a unanimous consensus decision, determinations made in accordance with Reference (1) or under a previous PRB remain in effect. A Review Committee decision shall be final. If the Review Committee cannot come to a unanimous consensus decision, then the review will be conducted as an agenda item during a Principals Committee meeting.

j. Notification to Detainee and Personal Representative.

(1) The PRB shall provide an unclassified written summary of any final determination to the detainee in a language the detainee understands, within 30 days of the final determination, when practicable. The unclassified summary shall also be provided to the detainee's personal representative and, if applicable, to the detainee's private counsel.

(2) If the final determination is that no significant question has been raised as to whether continued law of war detention remains necessary to protect against a continuing significant threat to the security of the United States, the PRS shall schedule the next file review or full review, as appropriate.

9. PRESERVATION OF WRITTEN RECORD. All documents provided to the PRB shall remain the product of the originating agency or department who shall be responsible for their proper storage and protection. All documents produced by the PRB shall carry with them the original classification and sourcing of the underlying material and may not be stored, disposed of, or released without the consent of the originating department or agency. Detainee records will be preserved as directed in reference (d).

10. HANDLING OF CLASSIFIED MATERIAL.

a. All parties shall have due regard for classified information and safeguard it in accordance with all applicable instructions and regulations. The producers of the compendium, personal representative, PRB, PRS, private counsel, and the originating agency shall coordinate with an information security officer designated by the PRS in the handling and safeguarding of all classified material before, during, and after the PRB process subject to paragraph 10.d. of this attachment.

b. The PRS Director has the responsibility and the duty to ensure that all PRB activities comply with Executive Order 13526 (Reference (o)) regarding the handling, dissemination, and protection of national security information. It shall remain within the sole discretion of the originating agency or department to determine how its information must be handled and protected. Classified information and law enforcement-sensitive information may be used in the PRB process only with the concurrence of the originating agency.

c. The PRS Director, the PRS staff, PRB members, personal representatives, and any other participants in the PRB process do not have the authority to declassify or change the classification level of any classified information.

d. The PRB is heavily reliant on executive agencies and departments to provide the information upon which to base its determinations. The Department of Defense shall, through the PRS, collaborate with information protection officials at the concerned agencies or departments to continue commonly agreed upon standards for information protection and handling. These standards shall address how information is handled by the PRB and its constituent elements, where that information is stored, accessed, and handled.

11. HANDLING OF FREEDOM OF INFORMATION ACT REQUESTS. In the event information preserved in the records of PRB proceedings and sourced to an agency or department other than the Department of Defense is the subject of a Freedom of Information Act request, the Department of Defense shall coordinate the response to that request with all concerned agencies or departments.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

CIDT	Cruel, Inhuman, or Degrading Treatment
DTM	Directive-Type Memorandum
GTMO	Naval Station Guantanamo Bay, Cuba
IC	The United States Intelligence Community
NSC	National Security Council
PRB	Periodic Review Board
PRS	Periodic Review Secretariat
SES	Senior Executive Service

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this policy memorandum.

continuing significant threat. A threat to the national security of the United States that cannot be sufficiently mitigated through feasible and appropriate security measures associated with a transfer of the detainee.

law of war detention. For the purpose of these implementing guidelines, law of war detention means detention authorized by the Congress under Reference (b), as informed by the laws of war.

mitigating information. As used in this directive, mitigating information is any information that is pertinent to the determination of whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States and that serves to weigh plausibly against a determination of continued law of war detention.

PRB. The organization responsible for issuing determinations for each detainee's case. The PRB is composed of one senior official (SES or other senior officer or expert with relevant knowledge and experience) each from the Departments of Defense, Homeland Security, Justice, and State and the Offices of the Chairman of the Joint Chiefs of Staff and the Director of National Intelligence. The PRB is an "Operational Committee" as defined under section 102-3.40(k) of title 41, Code of Federal Regulations (Reference (p)).

PRS. The organization responsible for organizing, coordinating, and administering the PRB process.

relevant information. Information pertinent to the determination of whether continued law of war detention of the detainee is necessary to protect against a continuing significant threat to the security of the United States, including all mitigating information.

Review Committee. Composed of the Secretary of Defense, the Secretary of State, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff, the committee is responsible for adjudicating non-consensus PRB determinations as provided in this policy memorandum.