



DEPUTY SECRETARY OF DEFENSE
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May 9, 2012

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
DIRECTOR, COST ASSESSMENT AND PROGRAM
EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Directive-Type Memorandum (DTM) 12-005, "Implementing Guidelines for Periodic Review of Detainees Held at Guantanamo Bay per Executive Order 13567"

References: See Attachment 1

Purpose. This DTM 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 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 DTM is directed and authorized by section 3 of Reference (a) and section 1023 of Public Law 112-81 (Reference (c)).
- This DTM designates the Secretary of the Navy as the support agent for the periodic review of GTMO detainees.
- This DTM cancels DTM 08-028 (Reference (d)).

- This DTM is effective upon its publication to the DoD Issuances Website; it shall be converted to a new DoD issuance. This DTM shall expire effective November 5, 2012. The first meeting of the Periodic Review Board (PRB) to consider whether the continued detention of any GTMO detainee is warranted shall occur no earlier than 60 days after notification to Congress in accordance with section 1005(c) of the Detainee Treatment Act of 2005 (Reference (e)).

Applicability. This DTM applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General 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 (f)).
- Reference (a) and these guidelines shall be implemented subject to the availability of necessary appropriations and consistent with applicable law, including:
 - Reference (e).
 - 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 PRB reports referred to in section 6 of Attachment 2 of this DTM are exempt from licensing requirements in accordance with paragraph C4.4.7. of DoD 8910.1-M (Reference (i)).

Releasability. UNLIMITED. This DTM is approved for public release and is available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

A handwritten signature in cursive script, appearing to read "Carl S. Carter".

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) Public Law 112-81, "National Defense Authorization Act for Fiscal Year 2012," December 31, 2011
- (d) Directive-Type Memorandum 08-028, "Assignment of Responsibilities for the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC)," May 19, 2008 (hereby cancelled)
- (e) Public Law 109-148, "Detainee Treatment Act of 2005," December 30, 2005
- (f) Executive Order 13491, "Ensuring Lawful Interrogations," January 22, 2009
- (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," September 5, 2006
- (k) Executive Order 13492, "Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities," January 22, 2009
- (l) Public Law 105-277, "Omnibus Consolidated and Emergency Supplemental Appropriations Act," October 21, 1998
- (m) Executive Order 13526, "Classified National Security Information," December 29, 2009
- (n) 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 support agent for 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 shall support the PRB with all intelligence information compilation requirements in accordance with Reference (a).
4. UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF FINANCIAL OFFICER, DEPARTMENT OF DEFENSE. The Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense shall provide funding to the support agent for the periodic review of GTMO detainees as necessary to meet his or her responsibilities.
5. HEADS OF DoD COMPONENTS. The Heads of DoD Components shall provide support as requested by the support agent for the periodic review of GTMO detainees to meet responsibilities as addressed herein.
6. CHAIRMAN OF THE JOINT CHIEFS OF STAFF. The Chairman of the Joint Chiefs of Staff, in addition to the responsibilities in section 7 of Reference (a), shall coordinate on all requests from the support agent for the periodic review of GTMO detainees for support from the Heads of DoD Components.
7. 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 Guantanamo Bay Naval Station 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 and as a continuation of the review process established by Executive Order 13492 (Reference (k)), the President may suspend or amend those procedures or these implementing guidelines, consistent with applicable law, at any time.

2. SCOPE OF THE PRB PROCESS

a. The PRB process described in section 3 of Reference (a) and these guidelines applies to any individual who is detained as an unprivileged enemy belligerent at United States Naval Station, Guantanamo Bay, Cuba, at any time.

b. In the event detainees covered by Reference (a) are transferred from GTMO to another U.S. 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 all relevant materials including information from the final Task Force assessments produced pursuant to Reference (k); the work product of a prior PRB; or any relevant intelligence produced subsequent to either. 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 (k) 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:

a. Baseline threat information included in Reference (k), including but not limited to:

(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 or associated forces 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 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 likelihood the detainee may be subject to trial by military commission, or any other law enforcement interest in the detainee.

(5) 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.

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

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

(8) 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 tends to call into question the legality of detention, the matter will be referred to the Secretary of Defense and the U.S. Attorney General for appropriate action. Any information that tends to call 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 assess the information in consultation with the DoD Office of General Counsel.

(2) After such consultation, if the DoD Office of General Counsel assesses that the information tends to call into question the legality of detention, the PRS Director will immediately notify the Secretary of Defense and the Attorney General, as well as the other 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 PRB 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 1023(b)(2) of Reference (c).

(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.

(2) A legal advisor, appointed by the General Counsel of the Department of Defense, may assist the PRB during the 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 be a general or flag officer or a member of the SES who reports directly to the Under Secretary of Defense for Policy or designee.

(2) A deputy director, legal advisor, operations officer, administrative officer, and applicable support personnel will be assigned to, and report directly to, the PRS Director.

c. Analytic Task Force (ATF)

(1) Consistent with section 7 of Reference (a), the ATF shall be composed of military officers or full time civilian personnel from the Departments of Defense, Homeland Security, Justice, and State; the Joint Staff; and the Office of the Director of National Intelligence, and other departments and agencies, as required. These representatives shall have appropriate intelligence, counterterrorism, military, diplomatic, or legal expertise, as determined by the heads of the representatives' departments or agencies with the concurrence of the Secretary of Defense.

(2) The ATF shall assemble and analyze all of the information required to be considered by the PRB pursuant to section 3 of Reference (a) or these guidelines in consultation with the Office of the Director of National Intelligence. Consistent with subsection 3.a.(5) of Reference (a), the ATF shall also coordinate the preparation of all substitutes and summaries of such information that its members, in consultation with appropriate information disclosure officers of affected agencies and departments, have determined to require protection from disclosure due to national security or other concerns, including the protection of intelligence sources and methods or law enforcement or legally privileged information.

(a) Any agency or department that so identifies its information shall prepare all substitutes and summaries of that information described in section 3 of Reference (a).

(b) Determinations as to whether a summary or substitute adequately protects information shall be consistent with the opinion of the originating agency or department. All information compiled for these substitutes and summaries shall maintain the original classification of the information unless the originating agency has determined otherwise.

d. PRS Case Administrators. PRS case administrators shall be assigned by the PRS Director and 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. Case administrators shall:

(1) Prepare in a timely manner final PRB packages for each case, consisting of the information assembled and analyzed by the ATF, including the substitutes or summaries described in section 3 of Reference (a) and subparagraph 5.c.(2) of this attachment.

(2) 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.

e. PRS Legal Advisor. In consultation with the DoD Office of General Counsel, the PRS legal advisor shall assist in performing the required reviews described in paragraph 6.c. of this attachment, before forwarding information to the PRB. The PRS legal advisor shall ensure that PRB proceedings comply with Reference (a) and these guidelines.

f. Personal Representative. Personal representatives shall be assigned to 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.

g. Private Counsel. 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.

(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, including his or her detainee client, not authorized to receive it.

h. 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 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.

6. PROCESS FOR INITIAL REVIEW

a. Preliminary Procedures

(1) The PRS shall develop a case management prioritization and assignment system. The Deputy Assistant Secretary of Defense for Rule of Law and Detainee Policy (DASD(RDP)) will inform the PRS of any policy concerns or special issues that could affect the order of consideration of the cases.

(2) The PRB shall make a final decision on case sequencing, based on the PRS recommendation and input from the DASD(RDP).

b. Information Compilation

(1) The ATF, assisted by the Office of the Director of National Intelligence and, as necessary, by other relevant Government departments and agencies, shall compile the detainee dossier, subject to the screening described in paragraph 6.c. of this attachment, which shall include:

(a) A summary of all the relevant information contained in the detainee disposition recommendations produced by the Task Force established in accordance with Reference (k).

(b) Any additional relevant information (as defined in the Glossary) that has become available since the later of the Reference (k) review or prior PRB review, including information discovered as a consequence of information presented by the detainee's personal representative or private counsel. The ATF:

1. As appropriate, shall assemble and analyze additional relevant information that it determines should be considered in assessing any submissions made on behalf of the detainee.

2. Will prepare for the PRB its summary and analysis of such information.

(2) In compiling the information described in paragraph 6.b. of this attachment, the ATF may request information in accordance with subsection 3.a.(8) of Reference (a) from any other executive department or agency which may hold relevant information.

c. Screening of Compiled Information

(1) For the information compiled pursuant to paragraph 6.b. of this attachment, the ATF will seek the concurrence of the agency or department that originated each of the source documents to determine whether the information is relevant 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 whether the Government seeks to rely on that information for that determination.

(2) The ATF shall prepare for the PRB all information on which the Government seeks to rely to determine whether a detainee meets the standard in section 3 of this attachment,

as well as all mitigating information. The ATF, in consultation with the Office of the General Counsel of the Department of Defense and other relevant agencies, will exclude from submission to the PRB information that should not be relied upon by the PRB for any reason, including those identified in paragraph 6.k. With respect to particular questions that arise regarding these matters, the PRS legal advisor will consult with the Office of the General Counsel of the Department of Defense and the general counsel of the department or agency that acquired the information, as necessary to address these matters.

(3) Information that is presented to the PRB shall be further screened by the ATF, in coordination with appropriate information disclosure officers of affected agencies, to determine whether any of the information should be withheld from the personal representative or private counsel, pursuant to the following criteria:

(a) Withholding information from the personal representative is permissible only in exceptional circumstances when it is necessary to protect national security, including intelligence sources and methods.

(b) Withholding information from private counsel is permissible when necessary to protect national security including intelligence sources and methods or to protect law enforcement sensitive or legally privileged information.

(4) In instances where information is to be withheld from the personal representative or private counsel pursuant to subparagraph 6.c.(3) of this attachment, the PRS shall request that the agency or department that has made this determination prepare a substitute or summary of this information, in coordination with the ATF and in consultation with the PRS legal advisor, that is sufficient to provide the personal representative or private counsel with a meaningful opportunity to assist the detainee during the review process.

(a) Determinations as to whether a summary or substitute adequately protects information shall be made consistent with the opinion of the originating agency or department.

(b) If, in the determination of the originating agency or department, an adequate and meaningful substitute cannot be prepared, the originating agency or department shall advise the PRS of that fact and the information shall be withheld from consideration by the PRB.

(5) The detainee shall be provided an unclassified summary of the information the PRB will consider, as provided in paragraph 6.g. of this attachment. In preparing this summary, the ATF shall rely on the agencies or departments that originated the information to declassify, substitute, or summarize that information for use in preparing this summary.

(6) The PRB shall be provided with any substitutes and summaries provided to the detainee's personal representative or private counsel along with the information withheld.

(a) Subject to the restrictions contained in subparagraph 6.c.(4) and paragraph 10.b. of this attachment and consistent with applicable statutes, orders, and regulations governing handling of classified information, the PRB shall determine, by consensus, whether any substitutes or summaries of information withheld from the detainee's personal representative or private counsel are sufficient to provide the personal representative or private counsel with a meaningful opportunity to assist the detainee during the review process.

(b) As noted in subparagraph 6.c.(4) of this attachment, if an adequate substitute cannot be prepared, the PRB shall not consider that information in making its determination.

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.c.(1) and (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 either provided to the detainee or provided to the personal representative or private counsel.

(3) Any information submitted by the detainee, the personal representative, or private counsel prior to the hearing pursuant to paragraph 6.h. of this attachment.

e. Information Provided to the Personal Representative. The PRS will transmit to the detainee's personal representative the information compiled pursuant to paragraph 6.b. of this attachment, following the screening described in subparagraphs 6.c.(1), (2), and (3) of this attachment, as well as any appropriate substitutes or summaries prepared pursuant to subparagraph 6.c.(4) of this attachment.

f. Information Provided to Private Counsel. The PRS will transmit to the detainee's private counsel the information compiled pursuant to paragraph 6.b. of this attachment, following the screening described in subparagraphs 6.c.(1), (2), and (3) of this attachment, as well as any appropriate substitutes or summaries prepared pursuant to subparagraph 6.c.(4) of this attachment.

g. Information Provided to the Detainee

(1) In consultation with relevant agencies and departments, the ATF shall prepare an unclassified description of the factors and summary of the 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. This written summary shall be sufficiently comprehensive to provide adequate notice to the detainee of the information to be considered by the PRB in making that determination. In preparing this summary, the ATF

shall rely on the agencies or departments that originated the information to declassify, substitute, or summarize that information for use in preparing this summary.

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

(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 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 (a) 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 an explanation of how 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. The request shall also include any information on how each witness may be made available to provide a statement for the PRB.

(5) The personal representative shall inform the PRS whether the detainee desires to appear before the PRB at the time the personal representative provides the written submission.

(6) The personal representative shall advise the PRS whether the detainee intends to participate in the hearing or PRB process.

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 either in person, by telephone, or through video conference. In lieu of a personal appearance, the PRB may allow the witness to provide his or her testimony in written 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 through the case administrator at least 30 days 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 in paragraph 6.d. of this attachment. 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 task, access to these underlying documents may be requested of the document originator through the ATF. Information from a final Task Force assessment produced pursuant to Reference (k) is afforded a rebuttable presumption of validity in these proceedings. Therefore, the PRB shall treat that assessment as accurate, to the extent it is not rebutted by credible and reliable information presented by the Government, the detainee, or the detainee's personal representative or private counsel.

(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 the PRS case administrator to obtain additional information or to discuss any unresolved questions.

(b) If the case administrator produces additional information for the PRB, following the screening described in paragraph 6.c. 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, or 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 for the PRB after the hearing shall be screened in accordance with the procedures described in paragraphs 6.b. and 6.c. 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. Decision 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 PRS legal advisor 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 decision shall be by consensus and in writing.

(3) If consensus cannot be reached by the PRB, the reasons for the non-consensus shall be included in the PRB's written decision and provided to the Review Committee.

(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.

l. Review Committee Review of PRB Decisions

(1) If the PRB concludes by 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 decision through the PRS to the Review Committee. If no Review Committee members seek 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.

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

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

(4) The Review Committee's decision shall be made by consensus. Until a consensus decision is reached by the Review Committee, determinations made in accordance with Reference (k) or under a previous PRB remain in effect. A Review Committee decision that continued law of war detention remains necessary shall be final.

(5) Pursuant to section 1023(b)(2) of Reference (c), the Secretary of Defense shall be responsible for any final decision to release or transfer an individual. The Secretary of Defense shall consider Review Committee and PRB decisions in making a final decision, but shall not be bound by a Review Committee or PRB determination.

m. 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 determination, when practicable. The summary shall also be provided to the detainee's personal representative and private counsel.

(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 the file review 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 (l)). In general, detainees designated for transfer through the PRB process will be referred to the Guantanamo Detainee Transfer Working Group for implementation of the transfer decision.

7. SUBSEQUENT FULL REVIEWS. The PRS shall ensure that the process described in section 6 of this attachment is repeated 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 ATF, in coordination with other relevant Government departments and agencies, shall compile any additional relevant information related to the detainee 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 paragraph 6.c. of this attachment, together with all information considered by any prior PRB 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 that is provided to the personal representative, subject to the same limitations described in 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. Decision of the PRB

(1) If the PRB determines by 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 status will remain

unchanged and the detainee will be scheduled for the next file review or full review, as appropriate.

(2) If the PRB determines by 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 promptly 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 a 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 submit this information to the PRS to forward to the Review Committee.

i. Review Committee Review of PRB Decisions

(1) The Review Committee shall conduct a review:

(a) Any time the PRB cannot reach 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; or

(b) A Review Committee member seeks a review of a PRB determination within 30 days of that determination.

(2) 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 consensus. Until the Review Committee reaches a consensus decision, determinations made in accordance with Reference (k) or under a previous PRB remain in effect. A Review Committee decision that continued law of war detention remains necessary shall be final.

(3) Pursuant to section 1023(b)(2) of Reference (c), the Secretary of Defense shall be responsible for any final decision to release or transfer an individual. The Secretary of Defense shall consider Review Committee and PRB decisions in making a final decision, but shall not be bound by a Review Committee or PRB determination.

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 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.

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 ATF, 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 (m)) 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, ATF staff, 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. Prior to formal establishment of the PRB, the Department of Defense shall, through the PRS, collaborate with information protection officials at the concerned agencies or departments to establish 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, conditions for access to information and the conditions and location where the work of the ATF shall be conducted.

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

ATF	Analytic Task Force
DASD(RDP)	Deputy Assistant Secretary of Defense for Rule of Law & Detainee Policy
DTM	Directive-Type Memorandum
GTMO	Naval Station Guantanamo Bay, Cuba
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 DTM.

ATF. The organization responsible for all of the data collection and collating, and the writing of all reports, substitutes, and summaries described in section 3 of Reference (a). Consistent with section 7 of Reference (a), the ATF is composed of detailed personnel from the Departments of Defense, Homeland Security, Justice, and State; the Joint Staff, and the Office of the Director of National Intelligence, and other departments and agencies, as required.

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 continuing 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 (n)).

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 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, the committee is responsible for reviewing PRB determinations as provided in this DTM.