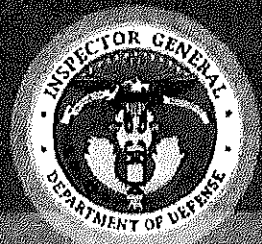


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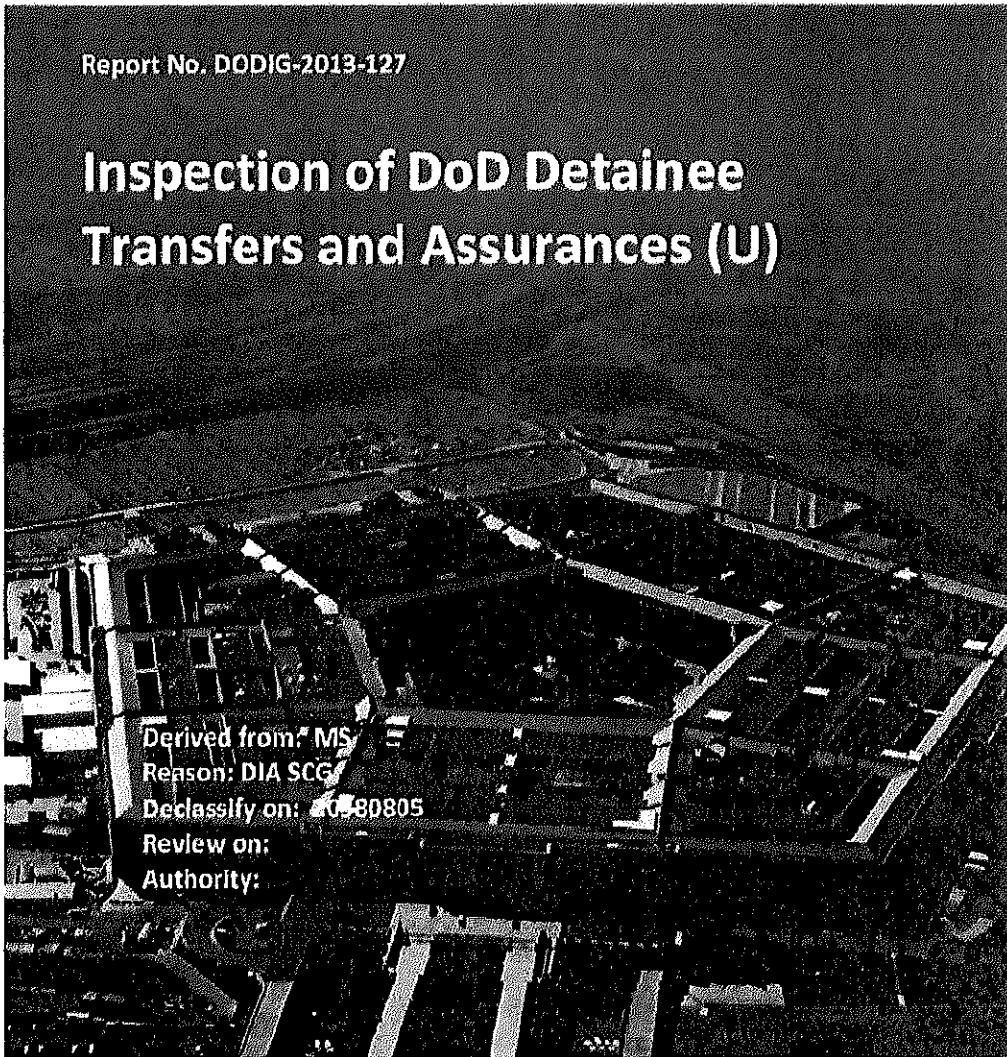
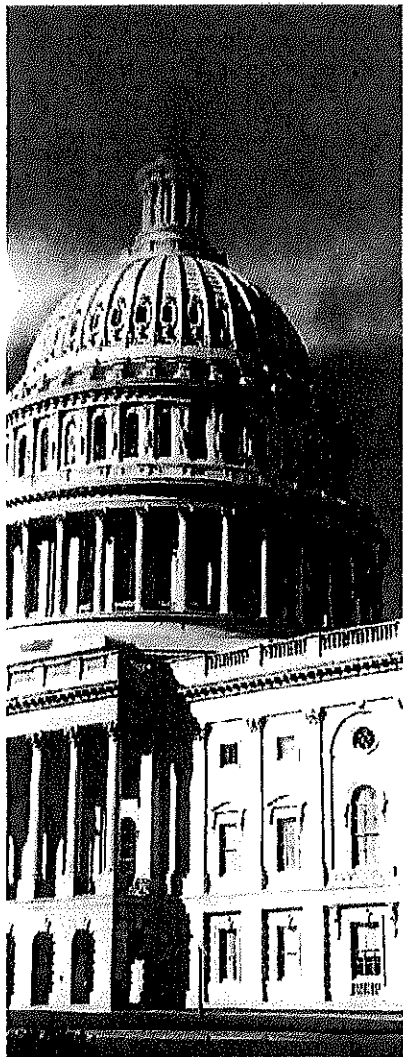
INSPECTOR GENERAL

Department of Defense

September 23, 2013

Report No. DODIG-2013-127

Inspection of DoD Detainee Transfers and Assurances (U)



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SEP 23 2013


MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE,
(RULE OF LAW AND DETAINEE POLICY)

SUBJECT: Inspection of Department of Defense Detainee **Transfers** and Assurances
(Report Number DODIG-2013-127) (U)

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

(U) We reviewed assurances that individuals transferred between August 24, 2011, and February 28, 2013, from DoD custody to foreign nations would not be tortured; specifically, this involves the process for obtaining assurances, the content of the assurances, the implementation and monitoring of the assurances, and the post-transfer treatment of persons transferred from Guantanamo Bay Detention Facility (GTMO), Iraq, and Afghanistan. We conducted the inspection independently, but with the coordination of the Office of Inspector General of the U.S. Department of State.

~~(S//NF)~~(b)(1) 1.4(c)



(U) Background

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

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(U) (b)(3) 50 U.S.C. § 3024(i)



(U) Policy

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

(U) DoD Directive 2310.01E, "The Department of Defense Detainee Program," September 5, 2006, is the current directive for Detainee Policy. It states that "all detainees shall be treated humanely and in accordance with US law, the law of war, and applicable US policy" and "at a minimum the standards articulated in common Article 3 to the Geneva Conventions of 1949." Article 3 prohibits "at any time and in any place whatsoever ... violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture." The Office of the Deputy Assistant Secretary of Defense (Rule of Law and Detainee Policy) is revising DoD Directive 2310.01E and will include the Special Task Force recommendation to add language consistent with the policy statement in Section 2242(a) of the 1998 Foreign Affairs Reform and Restructuring Act, Public Law 105-277. The Special Task Force specifically recommended a statement that the Department of Defense may not transfer any person to a foreign entity where it is more likely than not that the person will be tortured.

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

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

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

(U) GTMO Transfers

~~(S//NF)~~(b)(1) 1.4(c)
[Redacted]

(U) According to Section 1028(b) et seq. of the National Defense Authorization Act of Fiscal Year 2012, all GTMO detainee transfers require a Secretary of Defense written certification, with the concurrence of the Secretary of State, and in consultation with the Director of National Intelligence. This certification includes a statement that the government of the country the detainee is being transferred to is not a designated state sponsor of terrorism.² However, Section 1028(a)(2)(A) & (B) of the National Defense Authorization Act of Fiscal Year 2012 provides two exceptions to this certification requirement: (1) a court order, (2) or a pretrial agreement entered into before its enactment.

~~(S//NF)~~(b)(1) 1.4(c)
[Redacted]

~~(S//NF)~~(b)(1) 1.4(c)
[Redacted]

¹ (U//FOUO) On September 8, 2012, one GTMO detainee committed suicide by ingesting a large number of prescription medications that he hid on his person. The detainee's remains were transferred to Yemen.

² (U) Section 1028 (b)(1)(A) of the National Defense Authorization Act of Fiscal Year 2012.

(U) Iraq Transfers

~~(S//NF)~~(b)(1) 1.4(c)
[Redacted]

~~(S)~~(b)(1) 1.4(c)
[Redacted] II
[Redacted] II
[Redacted]

(b)(1) 1.4(c)
[Redacted]


(U) Afghanistan Transfers

~~(S//NF)~~(b)(1) 1.4(c)
[Redacted]

~~(S//NF)~~(b)(1) 1.4(c)
[Redacted]

~~(S//NF)~~(b)(1) 1.4(c)
[Redacted]

(b)(1) 1.4(c)



~~(S//NF)~~ OSD/JS - (b)(1) 1.4(b), and 1.4(d)



(U) Geneva Conventions Transfer

(U) DoD conducted no detainee transfers outside of GTMO Detention Facility, Afghanistan, and Iraq from August 24, 2011, to February 28, 2013, that would fall under the Geneva Conventions rules.

(U) The Afghanistan Detainee Transfer Transition Plan

~~(S//NF)~~ OSD/JS - (b)(1) 1.4(a), and USCENTCOM - 1.4(a) and 1.4(g)



(U) Follow up from the Last Detainee Transfer Report

(U) We recommended in our February 28, 2012, report that the Deputy Assistant Secretary of Defense (Rule of Law and Detainee Policy) incorporate a relevant recommendation of the Special Task Force on Interrogation and Transfer Policies into the DoD Directive 2310.01E, "Department of Defense Detainee Program." We recommended the following statement should be added at the end of paragraph f under Section 4 Policy on page 3:

Specifically, the Department of Defense policy is to not transfer any person to a foreign entity where it is more likely than not that the person will be tortured.

(U) This statement is consistent with the policy statement in section 2242(a) of the 1998 Foreign Affairs Reform and Restructuring Act and is referenced in the Special Task Force's report. The Office of the Deputy Assistant Secretary of Defense (Rule of Law

and Detainee Policy)--the office responsible for revising DoD Directive 2310.01E--said the revised Directive will incorporate this principle. It also said the Directive was on track to be revised by December 31, 2013.

~~(U//FOUO)~~ Next Inspection


(U//~~FOUO~~) Our next inspection will likely start in the fall of 2014. In anticipation of the 2014 Afghanistan drawdown, we will start requesting monthly detainee transfer updates in January 2014.

~~(S//NF)~~ Recommendations:

(1) ~~(S//NF)~~ USCENTCOM [REDACTED]
- (b)(1) 1.4(a)

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

(b)(6), (b)(7)(C)


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

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