



Department of Defense

DIRECTIVE

NUMBER 2310.01E

August 19, 2014

Incorporating Change 2, Effective September 18, 2020

USD(P)

SUBJECT: DoD Detainee Program

References: See Enclosure 1

1. PURPOSE. This directive:

a. Reissues DoD Directive (DoDD) 2310.01E (Reference (a)) to update established policy and assigned responsibilities within DoD for the Detainee Program, including to ensure compliance with the laws of the United States, the law of war, including the Geneva Conventions of 1949 (References (b) through (e)), and all applicable policies, directives, or other issuances.

b. Designates the Under Secretary of Defense for Policy (USD(P)) as the lead proponent for developing, coordinating, and implementing policies and guidance pertaining to detainee operations.

c. Designates the Secretary of the Army as the DoD Executive Agent (EA) for the administration of the DoD Detainee Program in accordance with DoDD 5101.1 (Reference (f)).

d. Is not intended to, and does 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.

2. APPLICABILITY. This directive applies to:

a. 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 (referred to collectively in this directive as the "DoD Components").

b. All DoD personnel (military and civilian) who engage in, conduct, participate in, or otherwise support detainee operations in any capacity.

c. All DoD contractors and contractor personnel who support detainee operations in any capacity.

d. Non-DoD personnel (including foreign government representatives) as a condition of permitting access to DoD detention facilities or to detainees under DoD control.

e. All detainee operations conducted by DoD personnel (military and civilian) or supported by DoD contractors and contractor employees.

3. POLICY. It is DoD policy that:

a. All persons subject to this directive will comply with the law of war with respect to the treatment of all detainees. Until a detainee's release, repatriation, or transfer from DoD custody or control, all persons subject to this directive will, without regard to a detainee's legal status, at a minimum apply:

(1) The standards established in Common Article 3 to References (b) through (e).

(2) The principles in Articles 4-6 of Reference (g) during non-international armed conflict.

(3) The principles in Article 75 of Reference (h) during international armed conflict and occupation.

b. All detainees will be treated humanely and with respect for their dignity, in accordance with applicable U.S. law and policy and the law of war. The humane treatment requirements in this section apply during all military operations, however characterized.

(1) Humane treatment includes:

(a) Adequate food, drinking water, shelter, and clothing.

(b) Reasonable access to the open air, reasonable educational and intellectual activities, and appropriate contacts with the outside world (including, where practicable, exchange of letters, phone calls, and video teleconferences with immediate family or next of kin, as well as family visits).

(c) Safeguards to protect health and hygiene, and protection against the rigors of the climate and the dangers of military activities.

(d) Appropriate medical care and attention required by the detainee's condition, to the extent practicable.

(e) Free exercise of religion, consistent with the requirements of detention.

(f) Reasonable access to qualified interpreters and translators, where applicable and practicable.

(2) All detainees will be respected as human beings without any adverse distinction founded on race, color, religion or faith, political or other opinion, national or social origin, sex, birth, or wealth, or other similar criteria. They will be protected against threats or acts of violence, including rape, forced prostitution, assault, theft, public curiosity, bodily injury, reprisals, torture, and cruel, inhuman, or degrading treatment or punishment. They will not be subjected to medical or scientific experiments or to sensory deprivation intended to inflict suffering or serve as punishment.

(3) The criminal punishment of any detainee for any offense, including serious violations of the law of war, will only be conducted in accordance with a previous judgment pronounced by a regularly constituted court that affords all required judicial guarantees.

c. Detainees will be removed as soon as practicable from the point of capture and transported to a detainee collection point, temporary holding area, or DoD detention facility. Detainees not released or transferred from DoD custody or control from the detainee collection point or holding area will be transported to a DoD detention facility in a secure location within 14 days of capture, barring exceptional circumstances. Detainees will be promptly informed of the reasons for their detention in a language that they understand. Detainees will remain at a DoD detention facility until their release or transfer from DoD custody or control.

d. Detainees will be registered, and property in their possession will be inventoried. Records of their detention and such property will be maintained according to applicable law, regulation, policy, and other issuances.

(1) DoD Components will maintain full accountability for all detainees under DoD control. Detainees will be assigned an Internment Serial Number (ISN) normally within 14 days after their capture by, or transfer to, the custody or control of DoD personnel, barring exceptional circumstances.

(2) The International Committee of the Red Cross (ICRC) will be promptly notified of all ISN assignments.

(3) All detainee records will be maintained, safeguarded, and provided to the USD(P) and other DoD Component heads as appropriate.

(4) Biometric identification information (BII) will be collected from all detainees in accordance with DoDD 8521.01E (Reference (i)) as soon as practicable after their capture by, or transfer to, the custody or control of DoD personnel, and will be included in detainee records. BII collected on detainees who are U.S. citizens or U.S. resident aliens will be conducted in accordance with U.S. law and policy and all applicable DoD regulations.

e. No person subject to this directive will accept the transfer of a detainee from another U.S. Government department or agency, coalition force, allied personnel, or other personnel not affiliated with the DoD, except in accordance with applicable law, regulation, policy, and other issuances.

f. Subject to the requirements of the law of war and this directive, POWs and unprivileged belligerents may lawfully be detained until a competent authority determines that the conflict has ended or that active hostilities have ceased, and civilian internees may lawfully be detained until the reasons that necessitated the civilian's internment no longer exist. Detention pending efforts to ensure a safe and orderly release or transfer is also authorized.

g. Certain categories of detainees held during international armed conflict or cases of occupation, such as prisoners of war (POWs) as described in Reference (d), and certain civilian internees as described in Reference (e), enjoy protections and privileges under the law of war beyond the minimum standards of treatment established in this directive. Such detainees will be afforded all applicable protections and privileges under the law of war until their release, repatriation, or transfer.

h. During international armed conflict, should any doubt arise as to whether a detainee belongs to any of the categories enumerated in Article 4 of Reference (d) and as such is entitled to the protections and privileges afforded POWs, such detainees shall enjoy treatment as POWs until a tribunal convened in accordance with Article 5 of Reference (d), determines whether the detainee is entitled to such status or treatment.

i. DoD personnel will review periodically the detention of all individuals in DoD custody or control who do not receive the protections afforded POWs. Such reviews may include:

(1) Preliminary assessments of the detainee's status and threat.

(2) Formal determinations of the lawfulness and continued necessity of detention.

(3) Determination of the status of unprivileged belligerents held in long-term detention, presided over by a military judge.

j. In addition to reviewing the detention of all individuals captured by, or transferred to, DoD custody or control, a competent authority may assess the propriety of prosecuting detainees for violations of the law of war or other offenses.

k. Individual detainees may be segregated from other detainees for:

(1) Administrative purposes (e.g., medical assessment, screening, communicable disease, in-processing, disciplinary infractions).

(2) Security reasons (e.g., the general security of the camp and guard force).

(3) The safety and security of detainees (e.g., gender, age, mental or physical disability).

(4) The need to prevent collusion by detainees or the investigation of law enforcement matters.

In instances when segregation results in diminished conditions of confinement, it will last only as long as is necessary to accomplish the administrative, security, medical, or law enforcement objective, and will be conducted in accordance with all applicable law, regulation, policy, and other issuances, including, but not limited to, References (d), (e), and (j) through (n).

l. Without prejudice to paragraph q of this section, access for non-DoD personnel to detainees and detention facilities will be permitted in limited circumstances consistent with the DoD's responsibilities to:

- (1) Ensure humane treatment of detainees.
- (2) Ensure the safety and security of detainees and U.S. Government personnel.
- (3) Obtain intelligence and conduct law enforcement investigations.
- (4) Facilitate transfer and repatriation efforts.

Such access will be conducted in accordance with applicable law, regulation, policy, and other issuances, including but not limited to References (j) through (n).

m. No detainee will be released, repatriated, or transferred out of DoD custody or control except in accordance with applicable law, regulation, policy, and other issuances.

(1) In general, POWs will be repatriated and unprivileged belligerents (who do not qualify for protected person status under Reference (e)) will be released or transferred to the custody of another country after a competent authority determines that, for such purposes, active hostilities have ceased, and as soon as a safe and orderly transfer or release is practicable. However, detainees who have been convicted of an offense or against whom criminal proceedings for an offense are pending may be detained until the end of such proceedings, and, where applicable, until the completion of the punishment.

(2) Unprivileged belligerents may be released or transferred while active hostilities are ongoing if a competent authority determines that the threat the individual poses to the security of the United States can be mitigated by other lawful means. Such mitigation may involve credible assurances that a receiving country will take appropriate steps to mitigate any threat the detainee poses to the security of the United States and its interests, parole agreements by the detainee, or other agreements with the government of the receiving State.

(3) POWs may be granted parole in accordance with Article 21 of Reference (d), if authorized by USD(P).

(4) Retained persons will not be deemed POWs, but will be afforded all the benefits and protections of POWs while they are retained in accordance with References (b) and (d). Retained persons will be retained only so long as their services are needed by U.S. forces to attend to the health or spiritual needs of the POW population. Retained persons will not be employed in any other manner.

(5) Civilian internees interned for imperative reasons of security or for their protection will be transferred or released when the reasons that necessitated internment no longer exist and a safe and orderly transfer or release is practicable. A civilian internee convicted of a criminal offense will be released from punitive confinement when the court administered sentence to confinement ends.

(6) No detainee will be transferred to the custody of another country when a competent authority has assessed that it is more likely than not that the detainee would be subjected to torture. In addition, the risks that the detainee would suffer other forms of ill-treatment, such as arbitrary deprivation of life (including as the result of a death sentence pronounced without fundamental guarantees of a fair trial) or persecution on account of race, religion, nationality, membership in a particular social group, or the expression of a particular political opinion, should also be considered in a decision to transfer. For detainees entitled to POW status or treatment under Reference (d) or to protected status under Reference (e), any transfer also must comply with the applicable provisions of References (d) and (e).

(7) DoD Components will coordinate with USD(P) in advance of transfers that involve the movement of detainees across international boundaries, to a country other than the detainee's country of origin, or where the transfer might raise other significant foreign policy considerations. USD(P) will coordinate such transfers with the Department of State and the Director of National Intelligence, as appropriate.

n. All persons subject to this directive will:

(1) Receive instruction and training, commensurate with their duties, in:

(a) The laws, regulations, policies, and other issuances applicable to detainee operations.

(b) The prevention of violations of such laws, regulations, policies, and other issuances.

(c) The requirement to report alleged or suspected violations of such laws, regulations, policies, and other issuances that arise in the context of detainee operations.

(2) Receive instruction and training, in advance of conducting, participating in, or supporting detainee operations. Training requirements and certifications of completion will be documented according to applicable law and policy.

o. In accordance with DoDD 2311.01 (Reference (n)), all persons subject to this directive will report possible, suspected, or alleged violations of the law of war, for which there is credible information, that occur in the context of detention operations.

p. The direction and control of DoD detainee operations is an inherently governmental function and may only be performed by U.S. Government civilian or military personnel in accordance with DoDD 1100.4 (Reference (o)).

q. The services of the ICRC will be accepted and used to perform humanitarian functions related to detainees during, and in relation to, any armed conflict, however characterized, to which the United States is a party. The ICRC will be given access to all DoD detention facilities and the detainees housed therein, subject to reasons of imperative military necessity.

4. RESPONSIBILITIES. See Enclosure 2.

5. RELEASABILITY. **Cleared for public release**. This directive is available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

6. SUMMARY OF CHANGE 2. This administrative change updates:

a. The title of the Under Secretary of Defense for Intelligence to the Under Secretary of Defense for Intelligence and Security in accordance with Public Law 116-92 (Reference (p)).

b. Additional organizational changes reflecting direction in statute or Secretary and Deputy Secretary of Defense direction.

7. EFFECTIVE DATE. This directive is effective August 19, 2014.



Robert O. Work
Deputy Secretary of Defense

Enclosures

1. References
2. Responsibilities

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 2310.01E, “The Department of Defense Detainee Program,” September 5, 2006 (hereby cancelled)
- (b) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949
- (c) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949
- (d) Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949
- (e) Geneva Convention Relative to the Treatment of Civilian Persons in Time of War of August 12, 1949
- (f) DoD Directive 5101.1, “DoD Executive Agent,” September 3, 2002, as amended
- (g) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of June 8, 1977
- (h) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of June 8, 1977
- (i) DoD Directive 8521.01E, “DoD Biometrics,” January 13, 2016, as amended
- (j) Title XIV of Public Law 109-163, “National Defense Authorization Act for Fiscal Year 2006,” January 6, 2006 (also known as “The Detainee Treatment Act of 2005”)
- (k) DoD Directive 3115.09, “DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning,” October 11, 2012, as amended
- (l) U.S. Army Field Manual 2-22.3, “Human Intelligence Collector Operations,” September 6, 2006
- (m) Deputy Secretary of Defense Memorandum, “Screening of Foreign Nationals Prior to Granting Them Access to DoD Detention Facilities for Official Visits,” August 4, 2011
- (n) DoD Directive 2311.01, “DoD Law of War Program,” July 2, 2020
- (o) DoD Directive 1100.4, “Guidance for Manpower Management,” February 12, 2005
- (p) Public Law 116-92, “National Defense Authorization Act for Fiscal Year 2020,” December 20, 2019

ENCLOSURE 2

RESPONSIBILITIES

1. USD(P). The USD(P):

a. Develops policy and guidance pertaining to all detainee matters, including access, detainee review processes, transfer and release authority, photos, and biometrics.

b. Prepares, coordinates, reviews, and approves all implementing policies and guidance developed pursuant to the DoD Detainee Program, including all detainee matters involving interaction between DoD and other U.S. Government departments or agencies.

c. Reviews, ensures coordination of, and approves all implementing policy or guidance developed pursuant to this directive by DoD Components.

d. Serves as the principal DoD interlocutor with the ICRC for detainee issues, and develops policy and procedures to ensure the proper handling and timely reporting of ICRC communications regarding detainees to appropriate DoD and U.S. Government officials.

2. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS

(USD(P&R)). The USD(P&R) establishes and implements policy to ensure that education and training programs satisfy DoD Component requirements in the areas of language, culture, customs, detention security, and related matters, and to ensure that persons subject to this directive have been provided the requisite training, knowledge, and skills necessary to perform detainee operations duties.

3. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). Under the authority, direction, and control of the USD(P&R), the ASD(HA) develops policies, procedures, and standards for medical program activities consistent with this directive for medical program activities required by the DoD Detainee Program.

4. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS

(ASD(M&RA)). Under the authority, direction, and control of the USD(P&R), the ASD(M&RA), develops policies, procedures, and standards for Reserve Components consistent with this directive for National Guard and Reserve activities required for the DoD Detainee Program.

5. UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS (USD(AT&L)). The USD(AT&L):

a. Establishes policies and procedures, in coordination with the USD(P), the General Counsel of the Department of Defense (GC DoD), and the appropriate DoD Component heads,

to ensure that all DoD contracts pursuant to which contractor employees interact with detainees include a requirement that such contractor employees receive training regarding international and U.S. law applicable to detention operations.

b. Ensures that any contracts providing contractor employees to accompany DoD Components in conducting, participating in, or supporting detainee operations require the contractor to complete training and receive information on the law, regulations, and policies applicable to detention operations, and the requirements to report possible, suspected, or alleged violations that arise in the context of detention operations, and prohibit contractor personnel from performing inherently governmental functions in accordance with Reference (n).

6. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE AND SECURITY (USD(I&S)). The USD(I&S):

a. Exercises primary responsibility for establishing policy pertaining to DoD intelligence interrogations, detainee debriefings, and tactical questioning in accordance with DoDD 3115.09 (Reference (k)).

b. Acts as the primary liaison between the DoD and other agencies of the Intelligence Community on intelligence matters pertaining to detainees.

7. GC DoD. The GC DoD:

a. Provides legal advice on detainee matters to OSD organizations and, as appropriate, other DoD Components.

b. Coordinates with the Department of Justice and other agencies regarding detainee-related litigation matters and on matters pertaining to detainees who may be U.S. citizens, dual-nationals with U.S. citizenship, or U.S. resident aliens, as appropriate.

8. DoD COMPONENT HEADS. The DoD Component heads:

a. Ensure that all Component personnel are properly trained in accordance with paragraph 3.n. of the front matter of this directive.

b. Forward copies of all implementing Component policy or guidance developed pursuant to this directive to the USD(P) for review before issuance.

c. Ensure plans provide for qualified interpreter and translator personnel to support the conduct of detainee operations.

9. SECRETARY OF THE ARMY. In addition to the responsibilities in section 8 of this enclosure and in his or her capacity as DoD EA for DoD Detainee Operations Policy, the Secretary of the Army:

- a. Ensures that all DoD EA responsibilities and functions for the administration of DoD detainee operations policy are assigned and executed in accordance with Reference (f) and this directive.
- b. Develops and publishes guidance necessary for the DoD-wide implementation of detainee operations in coordination with the USD(P).
- c. Communicates directly with the DoD Component heads as necessary to carry out assigned functions. The Chairman of the Joint Chiefs of Staff will be informed of communications to the Combatant Commanders.
- d. Designates a single point of contact within the Department of the Army for detainee operations, who will also provide advice and assistance to the USD(P).
- e. Plans for and operates a national-level detainee reporting center and its elements (e.g., theater and lower levels) to account for detainees. Coordinates with the USD(P) to provide reports on detainee operations to the Secretary of Defense and others as appropriate.
- f. Provides DoD-wide detainee operations-related planning and programming guidance to the USD(P); the USD(AT&L); the USD(I&S); the USD(P&R); the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense; the Director, Cost Analysis and Program Evaluation; and the Chairman of the Joint Chiefs of Staff. Provides copies of such guidance to the other Secretaries of the Military Departments for information.
- g. Establishes detainee operations training and certification standards, in coordination with the other Secretaries of the Military Departments and the Chairman of the Joint Chiefs of Staff.
- h. Develops programs to ensure that all DoD detainee operations; doctrine; tactics, techniques, and procedures; and regulations or other issuances are subject to periodic review, evaluation, and inspection for effectiveness and compliance with this directive.
- i. Provides implementing regulations to USD(P) for review and coordination with the Senate Armed Services Committee and House Armed Services Committee.

10. CHAIRMAN OF THE JOINT CHIEFS OF STAFF. In addition to the responsibilities in section 8 of this enclosure, the Chairman of the Joint Chiefs of Staff:

- a. Provides appropriate oversight to the Combatant Commanders to ensure their detainee operations policies and procedures are consistent with this directive.
- b. Designates a single point of contact within the Joint Staff for matters pertaining to the implementation of this directive.
- c. Ensures that operational joint exercises routinely test the capabilities of the DoD Components to conduct, participate in, and support detainee operations, consistent with this directive.

11. COMBATANT COMMANDERS. In addition to the responsibilities in section 8 of this enclosure, the Combatant Commanders:

a. Plan, execute, and oversee Combatant Command detainee operations in accordance with this directive and implementing issuances.

b. Develop programs and issue appropriate guidance and orders implementing this directive. All such programs and guidance will be subjected to periodic review and evaluation for compliance and efficacy.

c. Ensure, when detention facilities are in their area of responsibility:

(1) That procedures are established for the treatment of persons consistent with this directive and References (b) through (o), as applicable.

(2) That detainees are provided with information, in their own language, concerning the rights, duties, and obligations with regard to their detention, which may include applicable provisions of the Geneva Conventions.

(3) That periodic, unannounced and announced inspections of detention facilities are conducted to provide continued oversight of detainee operations.

(4) Intelligence interrogations, detainee debriefings, and tactical questioning operations are conducted in accordance with Reference (k).

d. Report to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff when capturing, detaining, or accepting custody under the law of war over any person:

(1) Who may be a U.S. citizen or national, a citizen of a coalition or ally nation, or an individual under the age of 18 years.

(2) Who is suspected of having committed a serious violation of the law of war (e.g., a war crime or other criminal act resulting in death, significant injury, or significant property damage or loss).

(3) Whose death occurs within the control of DoD personnel.

(4) Whose transfer to a DoD detention facility is likely to raise significant policy concerns.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ASD(HA)	Assistant Secretary of Defense for Health Affairs
ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
BII	biometric identification information
DoDD	DoD directive
DoD EA	DoD Executive Agent
GC DoD	General Counsel of the Department of Defense
ICRC	International Committee of the Red Cross
ISN	Internment Serial Number
POW	prisoner of war
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD(I&S)	Under Secretary of Defense for Intelligence and Security
USD(P)	Under Secretary of Defense for Policy
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this directive.

civilian internee. Any civilian, including any person described by Article 4 of Reference (e), who is in the custody or control of DoD during an armed conflict or case of occupation, such as those held for imperative reasons of security or protection.

detainee. Any individual captured by, or transferred to the custody or control of, DoD personnel pursuant to the law of war. This does not include persons being held solely for law enforcement purposes, except where the United States is the occupying power. Detainees who are U.S. citizens or U.S. resident aliens will continue to enjoy all applicable rights and privileges under U.S. law and DoD regulations.

detainee operation. Any operation conducted by DoD personnel involving detainees who are within DoD custody or control.

DoD detention facilities. Encompass all temporary holding facilities, screening facilities, and longer-term internment facilities.

law of war. The part of international law that regulates the conduct of hostilities and the protection of victims of armed conflict in both international and non-international armed conflict and occupation, and that prescribes the rights and duties of neutral, non-belligerent, and belligerent states. It is often called the “law of armed conflict” or “international humanitarian law,” and is specifically intended to address the circumstances of armed conflict. It encompasses all international law applicable to the conduct of military operations in armed conflicts that is binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party (e.g., the Geneva Conventions of 1949), and applicable customary international law.

POW. An individual who is described by Articles 4 and 5 of Reference (d) and who is in the custody or control of DoD.

retained person. An individual who is described by Article 28 of Reference (b) and Article 33 of Reference (d) and who is in the custody or control of DoD.

unprivileged belligerent

An individual who is not entitled to the distinct privileges of combatant status (e.g., combatant immunity), but who by engaging in hostilities has incurred the corresponding liabilities of combatant status. Examples of unprivileged belligerents are:

Individuals who have forfeited the protections of civilian status by joining or substantially supporting an enemy non-state armed group in the conduct of hostilities.

Combatants who have forfeited the privileges of combatant status by engaging in spying, sabotage, or other similar acts behind enemy lines.

The term “unlawful enemy combatant” used in other DoD regulations is synonymous with the term “unprivileged belligerent” contained in this directive.